

**TITLE 25
CORPORATION ORDINANCE**

**CHAPTER 1
TITLE, POLICY, CONSTITUTIONAL AUTHORITY
AND PURPOSE OF THIS ORDINANCE**

Section 25-1-1. Title.

This Ordinance shall be known as the Flandreau Santee Sioux Tribal Corporation Ordinance.

Section 25-1-2. Policy.

Indian Tribes have been consistently recognized as sovereign throughout the history of the United States of America, and to retain as governmental powers, where consistent with the trusteeship of the United States, all powers necessary to commercially utilize their undivided resources for the economic benefit of the Tribe, and to possess the power to charter corporations to do so. It is the policy of the Flandreau Santee Sioux Tribe in the enactment of this Ordinance to exercise its retained inherent sovereign governmental authority to implement Tribal corporate, economic, and commercial powers, as it exercises all other inherent governmental authority pursuant to the provisions of the Flandreau Santee Sioux Tribal Constitution.

Section 25-1-3. Constitutional Authority.

The Constitution of the Flandreau Santee Sioux Tribe Article VIII provides for the exercise of corporate, economic and commercial powers by the Tribe acting through the Executive Committee to further the economic advancement of the Flandreau Santee Sioux people. More specifically, this Ordinance is enacted by the Flandreau Santee Sioux Tribe Executive Committee under the authority vested in said Committee by Section 1, Subsections (e), (f), and (g) of Article VIII of the Constitution and Bylaws if the Flandreau Santee Sioux Tribe as amended. The Executive Committee reserves the right to repeal or amend the provisions of this Ordinance as necessary.

Section 25-1-4. Purpose of this Ordinance.

1. Tribal members have endured more than a century of economic deprivation and oppression. This fact has been recognized by the Congress of the United States through numerous Acts intended to assist in the development of Indian resources. There is now a need and an opportunity to develop Flandreau natural and human resources to provide a standard of living and education to all Tribal members equal to that of all citizens of the United States. The Tribe adopts this Act in order to meet the following independent goals;
 - I. to exercise Tribal sovereign powers;
 2. to carry out a constitutional mandate;
 3. to develop Tribal resources to the greatest extent possible;

4. to raise the standard of living and education for all Tribal members; and
 5. to enter into and take advantage of other business and commercial opportunities available to the Tribe.
2. To accomplish the goals set out in (1) above, the Executive Committee hereby finds that for the purposes of efficiency and wise stewardship, it is necessary for the management and economic development of Tribal resources to be separated from other governmental functions of the Tribe and placed within the responsibility of person or entities different from the Executive Committee, but still functioning under that governmental authority emanating from the Tribal Constitution. By this dynamic, commercial development may take place within, and be based upon, the sphere of the economic marketplace rather than within the sphere of the Tribal political concerns.
 3. To further accomplish the goals set out above, this Ordinance is designed to develop all Tribal resources including, but not limited to:
 - a. The Tribal labor force on or near the Flandreau Santee Sioux Indian Reservation;
 - b. Waters and lands;
 - c. Fish and wildlife;
 - d. Agricultural products and livestock; and
 - e. Fiscal surpluses from the Tribal gaming enterprise.
 4. The Tribal for many years has operated governmental programs to protect the economic and social welfare of Tribal members and to protect the health and security of all persons on and near the Reservation. The Tribe has recently enjoyed an opportunity for continued economic development as a consequence of revenues generated from a Tribal gaming enterprise. It is intended that the corporations created under this Ordinance will increase the revenues to the Tribe though investment in the chartering of additional commercial ventures. The ventures will generate additional Tribal resources which may be used to fund governmental programs for the protection and security of Tribal members and residents of the Reservation, as well as providing additional opportunities for employment and advancement among the members of the Flandreau Santee Sioux Tribe.

CHAPTER 2 GENERAL SUPERVISION

**Section 25-2-1.
Sioux Tribe.**

Corporation – Supervision – Secretary of the Flandreau Santee

The Secretary of the Flandreau Santee Sioux Tribe shall have general supervision of the incorporation of all private corporations organized under the Ordinances of this Tribe, except as otherwise expressly provided.

Section 25-2-2. Articles of Incorporation – Examination and Issuance of Certificate of Incorporation – Return of Disapproved Articles.

Whenever articles of incorporation with application for a charter or certificate of incorporation shall be presented to the Secretary of the Flandreau Santee Sioux Tribe, the secretary shall carefully examine the same, and if the secretary is satisfied from such examination, that such articles comply with the Ordinance, and that the corporation is being formed for lawful purposes, a charter or certificate of incorporation shall be issued, but if the secretary shall find that such articles of incorporation are incomplete in any material point, the secretary shall return the same to the incorporators with his reasons therefor and shall withhold a charter or certificate of incorporation until such articles shall have been made to comply with the law.

**CHAPTER 3
BUSINESS CORPORATIONS: FORMATION AND GENERAL POWER**

Section 25-3-1. Definitions – Certification – Shares Held for Another.

As used in Chapter 25-3 into 25-8A, inclusive, unless the context otherwise requires, the term:

1. “Reservation” means the boundaries of Moody County, South Dakota.
2. “Articles of Incorporation” means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.
3. “Authorized Shares” means the shares of all classes which the corporation is authorized to issue.
4. “Authorized to Vote” Shares are “authorized to vote” when they are issued and outstanding as authorized by the articles of incorporation to vote on the question raised.
5. “Board” means the board of directors of a corporation.
6. “Capital Surplus” means the entire surplus of a corporation other than its earned surplus.
7. “Class” if used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
8. “Corporation” or “Domestic Corporation” means a corporation for profit subject to the provisions of said chapters, except a foreign corporation.
9. “Director” means a member of the board.
10. “Distribution” means a direct or indirect transfer of money or other property, except its own shares, or incurrance of indebtedness, by a corporation to or for the benefit of any of

its shareholders in respect of any of its shares, whether by dividend or by purchase, redemption or other acquisition of its shares, or otherwise.

11. "Earned Surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.
12. "Employee" includes officers but not directors. A director may accept duties which make him also an employee.
13. "Foreign Corporation" means a corporation organized for profit that is incorporated under laws other than the Ordinances of this Tribe for a purpose or purposes for which a corporation may be incorporated under this Chapter.
14. "Good Faith" means honesty in fact in the conduct of the act or transaction concerned.
15. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.
16. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statutes, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the term used in the statute.
17. "Knows" A person "knows" or has "knowledge" of a fact if the person has actual knowledge of it. A person does not "know" of a fact merely because the person has reason to know of the fact.
18. "Net Assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.
19. "Notice" is given by a corporation to a person when mailed to the person at the last known address of the person, when

communicated to the person orally, when handed to the person, when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, or when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice is given to a corporation when mailed or delivered to it at its registered office. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.

20. "Officer" means a person elected, appointed, authorized or otherwise designated as an officer by the board, and any other person considered elected as an officer of a corporation.
21. "Organization" means a domestic or foreign corporation partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise and any other legal or commercial entity.
22. "Outstanding Shares" means all shares duly issued and not reacquired by a corporation.
23. "Person" includes a natural person and an organization.
24. "Registered Office" means the place on the Flandreau Santee Sioux Reservation designated in the articles of incorporation as the registered office of the corporation.
25. "Related Corporation" means a parent or subsidiary of a corporation or another subsidiary of a parent of the corporation.
26. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
27. "Shareholder" means one who is a holder of record of shares in a corporation. If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of a specified person or persons. The resolution shall set forth:
 - a. The classification of shareholders who may certify;
 - b. The purpose or purposes for which the certification may be made;

- c. The form of certification and information to be contained therein;
- d. If the certification is with respect to a record date or closing of the stock transfer books within which the certification must be received by the corporation; and
- e. Such other provisions with respect to the procedure as are considered necessary or desirable.

Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

28. "Shares" means the units into which the proprietary interests in a corporation are divided.

29. "Stated Capital" means, at any particular time, the sum of

- a. the par value of all shares of the corporation having a par value that have been issued;
- b. the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and
- c. such amounts not included in clauses (a) and (b) of this subdivision as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees, and other charges imposed by this Ordinance.

30. "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation

31. "Surplus" means the excess of the net assets of a corporation over its stated capital.

32. "Surviving Corporation" means the domestic or foreign corporation resulting from a merger.
33. "Treasury Shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.
34. "Vote" includes authorization by written or electronic document signed and transmitted by all of the persons, shareholders or directors, required to take the action described. The term also means the counterparts of a written or electronic document signed and transmitted by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing and transmitting it, and all the counterparts, taken together, constitute one written action by all of the persons signing them;
35. "Written Action" means a written or electronic document signed and transmitted by all of the persons, shareholders or directors, required to take the action described. The term also means the counterparts of a written or electronic document signed and transmitted by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing and transmitting it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

Section 25-3-2. Applicability – Foreign and Domestic Corporation – Excepted Corporation.

Any foreign or domestic corporation for profit is governed by the provisions of Chapter 25-3 to 25-8A, inclusive.

Section 25-3-3. Purposes for Which Corporation May Be Organized – Compliance with Other Laws.

Corporations may be organized under this Chapter for any lawful purpose or purposes; and in any case where the law requires compliance by a corporation with another law or other law it shall comply therewith.

Section 25-3-4. Persons Necessary to Organize Corporations – Method of Organizing.

One or more natural persons of the age of majority may act as incorporator or incorporators of a corporation by acknowledging and delivering an original and one exact or conforming copy of the articles of incorporation for such corporation to the Secretary of Flandreau Santee Sioux Tribe.

Section 25-3-5. Contents of Articles of Incorporation.

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 authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value. Or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the number of shares of each such class, or that such shares are to be without par value;
5. If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and limitations and relative rights in respect of the shares of each class;
6. If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
7. A statement that the corporation will not commence business until consideration of the value at least one thousand dollars has been received for the issuance of shares;
8. Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;
9. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulations of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under Chapter 25-3 to 25-8A, inclusive, is required or permitted to be set forth in the bylaws;

10. The street address, or a statement that there is no street address, of the registered office, the name of its registered agent at such address and his written consent to the appointment'
11. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;
12. The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in 25-3 to 25-8A, inclusive.

Section 25-3-6. Filing Articles with Secretary of the Flandreau Santee Sioux Tribe – Fees – Secretary’s Endorsement – Certification of Corporation.

The original document of the articles of incorporation shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe for filing and shall be accompanied by one exact or conforming copy. If the secretary finds that the articles of incorporation conform to law, the secretary shall, when all fees have been paid as prescribed in Chapter 25-8A:

1. Endorse the word “filed” on the original document and on the exact or conforming copy and the month, day, and year of the filing;
2. File the original document in his office; and
3. Issue a certificate of incorporation to which he shall affix the exact or conforming copy.

The certificate of incorporation, together with the exact or conforming copy of the articles of incorporation affixed thereto by the Secretary of Flandreau Santee Sioux Tribe shall be returned to the incorporators or their representative.

Section 25-3-6.1. Filing of documents by Secretary of the Flandreau Santee Sioux Tribe – Effect.

The secretary’s duty to file documents under this Ordinance is ministerial. The secretary filing or refusing to file a document does not:

1. Affect the validity or invalidity of the document in whole or part;
2. Relate to the correctness or incorrectness of information contained in the document; or
3. Create a presumption that the document is either valid or invalid or that information contained in the document is either correct or incorrect.

Section 25-3-6.2. Correction of Filed Document – Articles of Correction – Effective Date.

Any corporation may correct a document it has filed with the secretary of the Flandreau Santee Sioux Tribe if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged. A document may be corrected;

1. By preparing articles of correction that describe the document (including its filing date) or the are attached to a copy of the document; that specify the

incorrect statement and the reason it is incorrect or the manner in which the execution was defective execution; and

2. By delivering the articles to the secretary for filing.

Articles of correction are effective back to the effective date of the document they correct except as to persons who have relied on the uncorrected document and who have been adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Section 25-3-6.3. Certificate of Existence – Certification of Authority – Contents – Conclusive Evidence.

Any person or governmental entity may apply to the secretary of the Flandreau Santee Sioux Tribe for a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation. A certification of authorization states:

1. A domestic corporation's corporate name or a foreign corporation's corporate name used in this Tribe's
2. That the domestic corporation is duly incorporated under the Ordinances of this Tribe, the date of its incorporation and the period of its duration if less than perpetual; or that the foreign corporation is authorized to transact business;
3. That all fees and penalties owed to the Tribe have been paid, if payment is reflected in the records of the secretary and nonpayment affects the existence or authorization of the corporation;
4. That the most recent annual report has been delivered to the secretary;
5. That articles of dissolution have not been filed; and
6. Other facts of record in the office of the secretary requested by the applicant.

Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary may be relied upon as conclusive evidence that the corporation is in existence or is authorized to transact business on this Reservation.

Section 25-3-7. Beginning of Corporate Existence – Certificate as Conclusive of Proper Incorporation – Exceptions.

Upon issuance of a certificate of incorporation, the corporate existence begins. A certificate of incorporation is conclusive evidence that all registration requirements have been fulfilled and that the corporation has been incorporated under Chapter 25-3 to 28-8A, inclusive, except as against this Tribe in a proceeding to cancel or revoke the certificate of incorporation or except in involuntary dissolution of the corporation.

Section 25-3-7.1. Renewal of Corporate Existence After Expiration of Period of Duration – Procedure – Forms – Filing Fee – Penalty for Expired Years, Amount.

Any corporation organized under the laws of this Tribe, whose period of duration has expired and has not been renewed and whose existence has not been terminated pursuant to Sections 25-7-15 and 25-7-16, and such corporation has continued to transact its business, may renew its corporate existence from the date of the expiration of its period of duration with the same force and effect as if renewed prior to the expiration of its term of existence by taking the same proceedings and paying to the secretary the same fees as provided by law for renewal of the corporate existence of the corporation. Such renewal

of corporate existence shall be made on forms prescribed and furnished by the Secretary of Flandreau Santee Sioux Tribe. Filing fee shall be based on capital stock as provided by subdivision 25-8A-9(1). In addition to the above fee, a penalty of twenty dollars per year for the period of duration which its corporate existence has been expired shall be charged.

Section 25-3-7.2. Time for Proceedings to Renew Corporate Existence After Expiration of Period of Duration.

Proceedings as authorized by Section 25-3-7.1 to obtain such extension may be taken at any time.

Section 25-3-7.3. Acts and Contracts Subsequent to Expiration of Original Period of Existence Legalized by Renewal Proceedings.

When steps as authorized by Section 25-3-7.1 are taken within such period, or have been heretofore taken, such proceedings shall relate back to the date of the expiration of said original corporate period, and when said period is extended as provided in Section 25-3-7.1 , any and all corporate acts and contracts done, performed, made and entered into after the expiration of said original period, shall be and each is hereby declared to be legal and valid; provided, that such acts and contracts done, performed, made and entered into after the expiration of said original period would have been legal and valid during the period of incorporation.

Section 25-3-8. Amendment of Articles of Incorporation – Extent of Amendment.

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

Section 25-3-9. Proper Subjects of Amendment.

In particular, and without limitation upon the general power of amendment granted by Section 25-3-8, a corporation may amend its articles of incorporation, from time to time, so as:

1. To change its corporate name;
2. To change its period of duration;
3. To change, enlarge or diminish its corporate purposes;
4. To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue;
5. To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued;
6. To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;

7. To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;
8. To change shares having par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;
9. To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes;
10. To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorize, whether issued or unissued;
11. To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;
12. To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;
13. To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;
14. To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined are to be changed;
15. To revoke, diminish or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;
16. To limit, deny or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

Section 25-3-10. Procedure for Amendment.

Amendment to the articles of incorporation shall be made as provided by Sections 25-3-11 to 25-3-13, inclusive.

Section 25-3-11. Resolution of Proposed Amendment – Vote by Shareholders – Number of Amendments Submitted – Adoption Without Vote – Restated Articles.

The board of directors shall adopt a resolution setting forth a proposed amendment to the articles of incorporation and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors, and the provisions for adoption by shareholders shall not apply.

If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the corporation's own shares, or solely to do so and to change the number of authorized shares in proportion thereto, may be adopted by the board of directors, and the provisions for adoption by shareholders do not apply unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.

Section 25-3-12. Notice of Proposed Amendment – Including in Notice of Annual Meeting.

Written notice setting forth a proposed amendment to the articles of incorporation or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in Chapter 25-5 for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

Section 25-3-13. Vote of Shareholders at Meeting – Majority Necessary for Adoption.

At the meeting described in Section 25-3-12 a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

Section 25-3-14. Classes of Shares Entitled to Vote – Particular Amendments.

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of such class;
2. Increase or decrease the par value of the shares of such class;
3. Effect an exchange, reclassification or cancellation of all or parts of the shares of such class;
4. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class;
5. Change the designations, preferences, limitations or relative rights of the shares of such class;
6. Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes;
7. Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class;
8. In the case of a preferred or special class of shares, divide the unissued shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;
9. Limit or deny the existing preemptive rights of the shares of such class;
10. Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

Section 25-3-15. Execution and Verification of Adopted Amendment – Contents.

Any articles of amendment shall be executed by the chairman of the board of directors, by the corporation's president or by another of the corporation's officers. If directors have not been selected or the corporation has not been formed, the articles of amendment shall be executed by an incorporator. If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, the articles of amendment shall be executed by that fiduciary. The article of amendment shall be acknowledged and shall set forth:

1. The name of the corporation;
2. The amendment so adopted;
3. The date of the adoption of the amendment by the shareholders or by the board of directors if no shares have been issued;
4. The number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of such class;
5. The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the

- number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect;
6. 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; and
 7. If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement expressed in dollars of the amount of stated capital as changed by such amendment.

Section 25-3-16. Forwarding Amendment to Secretary of the Flandreau Santee Sioux Tribe – Approval – Fees- Endorsement – Issuance of Certificate of Amendment.

The original and one exact or conforming copy of the articles of amendment shall be delivered to the secretary. If the secretary finds that the articles of amendment conform to law, when all fees have been paid as prescribed in Chapter 25-8A, the secretary shall:

1. Endorse the word “filed” on the original and the copy and the month, day and year of filing.
2. File the original in his office; and
3. Issue a certificate of amendment to which he shall affix the copy.

The certificate of amendment with the copy affixed thereto shall be returned to the cooperation or its representative.

Section 25-3-17. Effective Date of Amendment.

Upon the issuance of the certificate of amendment by the secretary, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

Section 25-3-18. Amendment Not to Affect Pending Claims or Rights of Third Parties.

No amendment to the articles of incorporation shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such 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.

Section 25-3-19. Procedure for Restatement of Articles.

A corporation may at any time restate its articles of incorporation as theretofore amended, in the manner provided by Sections 25-3-20 to 25-3-22, inclusive .

Section 25-3-20. Resolution of Restatement – Vote of Shareholders.

The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation and directing that they be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

Section 25-3-21. Notice to Shareholders – Notice of Annual Meeting.

Written notice setting forth the proposed restated articles of incorporation shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in Chapter 25-3 for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed restated articles may be included in the notice of such annual meeting.

Section 25-3-22. Vote of Shareholders – Majority Vote Required.

At the meeting required by Section 25-3-21 a vote of the shareholders entitled to vote thereon shall be taken on the proposed restated articles. The proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

Section 25-3-23. Execution and Verification of Restated Articles – Contents.

Upon an approval by the shareholders pursuant to Section 25-3-22, restated articles of incorporation shall be executed by the chairman of the board of directors, by its president or by another of its officers. If directors have not been selected or the corporation has not been formed, the restated articles shall be executed by an incorporator. If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, the restated articles shall be executed by that fiduciary. The restated articles shall be acknowledged and shall set forth:

1. The name of the corporation;
2. The period of its duration;
3. The purpose or purposes which the corporation is then authorized to pursue;
4. The aggregate number of shares which the corporation has authority to issue; if such shares consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are divided into classes, the number of shares of each such class or that such shares are without par value;
5. If the shares are divided into classes, the designation of class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
6. If the shares of any preferred or special class are issuable in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same have been fixed, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.
7. Any existing provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;

8. Any provisions, not inconsistent with law, which are then set forth in the articles of incorporation as theretofore amended, for the regulation of the internal affairs of the corporation; and
9. A statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

Section 25-3-24. Forwarding to Secretary of Flandreau Santee Sioux Tribe – Fee – Endorsing and Filing – Issuance of Restated Certificate.

The original and one exact or conforming copy of the restated articles of incorporation shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe. If the Secretary of the Flandreau Santee Sioux Tribe finds that such restated articles of incorporation conform to law, when all fees have been paid as prescribed in Chapter 25-8A, he shall:

1. Endorse the word “filed” on the original and the copy and the month, day and year of filing.
2. File the original in his office; and
3. Issue a restated certificate of incorporation to which he shall affix the copy.

The restated certificate of incorporation with the copy affixed thereto shall be returned to the corporation or its representative.

Section 25-3-25. Effective Date of Restated Articles.

Upon the issuance of the restated certificate of incorporation by the Secretary of the Flandreau Santee Sioux Tribe, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

Section 25-3-26. Corporate Facilities Required – Registered Office.

Each corporation shall have and continuously maintain on this Reservation a registered office which may be, but need not be, the same as its place of business.

Section 25-3-27. Corporate Facilities Required – Registered Agent.

Each corporation shall have and continuously maintain in this Tribe a registered agent, which agent may be any duly enrolled member of the Flandreau Santee Sioux Tribe over the age of eighteen (18) whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to do or engage in any business in this Tribe, having a business office identical with such registered office.

Section 25-3-28. Change of Registered Office or Agent – statement to Secretary of Flandreau Santee Sioux Tribe – Contents.

A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of the Flandreau Santee Sioux Tribe a statement setting forth:

1. The name of the corporation;
2. The current street address, or a statement that there is no street address, of its registered office;
3. If the current address of its registered office is to be changed, the street address, or a statement that there is no street address, of the new registered office;
4. The name of its current registered agent;
5. If its registered agent is to be changed, the name of the successor registered agent and his written consent to the appointment;
6. That the street address of its registered office and the street address of the business office of its registered agent, as either is changed, will be identical;
7. That such change was authorized by resolution duly adopted by its board of directors.

Section 25-3-29. Execution and Verification of Statement – Filing by Secretary of Flandreau Santee Sioux Tribe – Effective Date of Change.

The statement required by Section 25-3-28 shall be executed by the chairman of the board of directors, by the corporation's president or by another of the corporation's officers. If directors have not been selected or the corporation has not been formed, the statement shall be executed by an incorporator. If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, the statement shall be verified and delivered to the Secretary of the Flandreau Santee Sioux Tribe. If the Secretary of the Flandreau Santee Sioux Tribe finds that the statement conforms to the provisions of this Chapter, the secretary shall file the statement. After filing of a change of address of the registered office or of an appointment of a new registered agent, or both, the change becomes effective.

officers. If directors have not been selected or the corporation has not been formed, the statement shall be executed by an incorporator. If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, the statement shall be executed by that fiduciary. The statement shall be verified and delivered to the Secretary of Flandreau Santee Sioux Tribe. If the Secretary of the Flandreau Santee Sioux Tribe finds that the statement conforms to the provisions of this chapter, the secretary shall file the statement. After filing of a change of address of the registered office or of an appointment of a new registered agent, or both, the change becomes effective.

25-3-30. Resignation by Registered Agent . Duplicate to Secretary of the Flandreau Santee Sioux Tribe . Effective date of resignation. Any registered agent of a corporation may resign as agent upon filing an original written notice thereof and an exact or conforming copy thereof with the Secretary of the Flandreau Santee Sioux Tribe, who shall mail the copy to the corporation at its registered office. The appointment of the agent shall terminate thirty days after receipt of notice by the Secretary of the Flandreau Santee Sioux Tribe.

25-3-31. Change of Address by Registered Agent. Filing with Secretary of the Flandreau Santee Sioux Tribe. Notice to corporation. If a registered agent changes his business address to another location within the Reservation, the agent may change the address and the address of the registered office of any corporation of which he is registered agent by filing a statement as required by §* 25-3-28 to 25-3-30, inclusive, except that it need be signed only by the registered agent, need not be responsive to subdivision 25-3-28 (5) or (7) and shall recite that a copy of the statement has been mailed to each affected corporation.

25-3-32. Service of Legal Papers on Registered Agent. The registered agent appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

25-3-33. Failure to Appoint Registered Agent. Secretary of the Flandreau Santee Sioux Tribe as agent for service. Method of service. If a corporation fails to appoint or maintain a registered agent in this Tribe, or if its registered agent cannot be found at its registered office, the Secretary of the Flandreau Santee Sioux Tribe shall be an agent of such corporation upon whom any process, notice or demand may be served. Service on the Secretary of the Flandreau Santee Sioux Tribe of any process, notice or demand shall be made by delivering to the secretary or any clerk having charge of the corporation department an original and one exact or conforming copy of the process, notice or demand.

25-3-34. Duty of Secretary of Flandreau Santee Sioux Tribe After Service - Notice to corporation. If any process, notice or demand is served on the Secretary of the Flandreau Santee Sioux Tribe, he shall send the copy by certified or registered mail to the corporation at its registered office. The Secretary of the Flandreau Santee Sioux Tribe shall keep a record of all processes, notices and demands served upon him under §25-3-33 and shall record the time of service and his response.

25-3-35. Service by Additional Means Unaffected. Nothing contained in §25-3-33 or 25-3-34 shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

25-3-36. Corporate names - Use of particular words. In order to protect the public against confusion between corporations and to guard against unfair competition, the name of any corporation except a nonprofit corporation shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one of such words.

25-3-37. Corporate Names - Indication of Purpose.

In order to protect the public against confusion between corporations and to guard against unfair competition, the name of a corporation 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 stated in its articles of incorporation.

The name of a corporation also shall not be the same as, or deceptively similar to, the name of any corporation existing under the laws of the Flandreau Santee Sioux Tribe, or the State of South Dakota, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Ordinance, or the name of a corporation which has in effect a registration of its corporate name as provided in this Ordinance, or by the laws of the State of South Dakota.

25-3-38. Corporate Names - Names Similar to Other Names - Names Not in English— Reorganization.

In order to protect the public against confusion between corporations, or between corporations and limited partnerships, and to guard against unfair competition, the name of any corporation:

(1) Must be distinguishable upon the records of the Secretary of the Flandreau Santee Sioux Tribe from the name of any other corporation, whether for profit or not for profit, organized under the Ordinances of this Tribe or the State of South Dakota; the name of any foreign corporation, whether for profit or not for profit, authorized to engage in any business in this Tribe; or any corporate name reserved or registered as permitted by the laws of this Tribe; or the name of any limited partnership certified or registered in this Tribe; or the name of any limited liability company. Corporate names or limited partnership names already in use, with generic, proper, geographical or descriptive terms which have acquired a secondary meaning shall be protected. This subdivision does not apply if the applicant files with the Secretary of Flandreau Santee Sioux Tribe either:

25-3-41. Application for Reservation

Maximum reservation period. The reservation of the exclusive right to the use of a corporate name shall be made by filing with the Secretary of the Flandreau Santee Sioux Tribe an application to reserve a specified corporate name, executed by the applicant. If the Secretary of the Flandreau Santee Sioux Tribe finds that the name is available for corporate use, the secretary shall reserve the same for the exclusive use of the applicant for a period of one hundred and twenty days, which period shall not be extended.

25-3-42. Transfer of reserved right.

Notice to Secretary of the Flandreau Santee Sioux Tribe. The right to the exclusive use of a specified corporate name reserved pursuant to §25-3-41 may be transferred to any other person or corporation by filing in the office of the Secretary of the Flandreau Santee Sioux Tribe a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

25-3-43. Registration of Corporate Name.

Any corporation organized and existing under the laws of any state of the United States may register its corporate name under this chapter, provided its corporate name conforms to the requirements of this chapter.

25-3-44. Procedure for Registration.

Registration under §25-3-43 shall be made by:

(1) Filing with the Secretary of the Flandreau Santee Sioux Tribe

(a) an application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is doing or engaging in business, and a brief statement of the business in which it is engaged, and

(b) a certificate setting forth that such corporation is in good standing under the laws of the state wherein it is organized, executed by the Secretary of Flandreau Santee Sioux Tribe of such state or by such other official as may have custody of the records pertaining to corporations; and

(2) Paying to the Secretary of the Flandreau Santee Sioux Tribe a registration fee in the amount of one dollar for each month, or fraction thereof, between the date of filing such application and December thirty-first of the calendar year in which such application is filed.

25-3-45. Effective Date of Registration.

Registration under §25-3-43 shall be effective until the close of the calendar year in which the application for registration is filed.

Section 25-4-24. Liability of Personal Representative of Shareholder.

An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation for any unpaid portion of the consideration for which shares were issued or to be issued, but the estate and funds in his hands shall be so liable.

Section 25-4-25. Liability of Party Holding Shares as Security.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

Section 25-4-26. Consideration for Issuance of Shares.

The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation.

Section 25-4-27. Non Assessability of Shares.

When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

Section 25-4-28. Notes or Future Services as Payment.

Neither promissory notes nor future services shall constitute payment or part payment, for shares of a corporation.

Section 25-4-29. Determination of Value Received.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

Section 25-4-30. Services in Organizing Corporation as Value.

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and 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 or assessable.

Section 25-4-31. Consideration for Shares with Par Value.

Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

Section 25-4-32. Consideration for No-Par Shares - Shareholders' Right to Fix Consideration.

Shares without par value may be issued for such consideration expressed in dollars, as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

Section 25-4-33. Consideration for Treasury Shares. Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

Section 25-4-34. Consideration for Stock Dividend Shares. That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

Section 25-4-35. Consideration for Conversion or Exchange Shares. In the event of a conversion of shares, or in the event of an exchange of shares with or without par value for the same or a different number of shares with or without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange or conversion shall be deemed to be: (1) The stated capital then represented by the shares so exchanged or converted, and (2) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and (3) Any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.

Section 25-4-36. Stated Capital - Par and No-Par Shares. In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus. In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in §25-4-37 or 25-4-38 that only a part thereof shall be stated capital.

Section 25-4-37. Allocation of Consideration Received for No-Par Shares. Within a period of sixty days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

Section 25-4-38. Allocation in Merger, Consolidation, or Acquisition Situation. If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the provisions of §25-4-36 or 25-4-37 may instead be allocated to earned surplus by the board of directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in chapter 25-3 of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

Section 25-4-39. Increasing Stated Capital - Transfer of Surplus. The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all of or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

Section 25-4-40. Minimum Paid-In Capital. A corporation except corporations not for profit shall not do or engage in any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until there has been paid in for the issuance of shares consideration of the value of at least one thousand dollars.

Section 25-4-41. Reserves Created Out of Earned Surplus - Payment of Dividends. A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by chapters 25-3 to 25-8A, inclusive.

Section 25-4-42. Payment of Deficits Out of Capital Surplus or Earned Surplus. A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

Section 25-4-43. Acquisition of Corporation's Own Shares - Two-Thirds Vote - Limitations. A corporation shall have the right to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least two-thirds of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.

Section 25-4-44. Acquisition of Shares as Restriction Against Surplus. To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto.

Section 25-4-45. Acquisition of Own Shares for Particular Purposes Permitted. Notwithstanding the limitation of §25-4-43 and 25-4-44, a corporation may purchase or otherwise acquire its own shares for the purpose of: (1) Eliminating fractional shares; (2) Collecting or compromising indebtedness to the corporation; (3) Paying dissenting shareholders entitled to payment for their shares; (4) Effecting, subject to the other provisions of chapters 25-3 to 25-8A, inclusive, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

Section 25-4-46. Insolvent Corporation Prohibited from Purchasing Own Shares. No purchase of or payment for its own shares shall be made by a corporation at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

Section 25-4-47. Stockholders' Preemptive Rights to Unissued Shares. The shareholders of a corporation shall have the preemptive right to acquire unissued or treasury shares of the corporation, or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is limited or denied in the articles of incorporation.

Section 25-4-48. Issuance of Shares to Employees - Shareholders' Rights. Unless otherwise provided by its articles of incorporation, any corporation may issue and sell its shares to its officers or employees or to the officers or employees of any subsidiary corporation, without first offering such shares to its shareholders, for such consideration and upon such terms and conditions as shall be approved by the holders of a majority of all shares entitled to vote thereon or by its board of directors pursuant to like approval of the shareholders.

Section 25-4-49. Redeemable Shares - Restrictions on Redemption. No redemption or purchase of redeemable shares shall be made by a corporation when it is Insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

Section 25-4-50. Redemption as Cancellation - Statement of Cancellation Required. When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in §25-4-51 and 25-4-52.

Section 25-4-51. Execution and Verification of Statement – Contents - Delivery to Secretary of the Flandreau Santee Sioux Tribe. An original and one exact or conforming copy of the statement of cancellation required by §25-4-50 shall be executed by the chairman of the board of directors, by the president or by another of the officers or, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary, and shall set forth: (1) The name of the corporation; (2) The number of redeemable shares canceled through redemption or purchase, Itemized by classes and series; (3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation; (4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation; and (5) If the articles of incorporation provide that the canceled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation. The original and the copy of the statement shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-4-52. Approval by Secretary of the Flandreau Santee Sioux Tribe — Endorsement and Filing. If the Secretary of the Flandreau Santee Sioux Tribe finds that

a statement delivered pursuant to §25-4-51 conforms to law, when all fees have been paid as prescribed in chapter 25-8A, the Secretary shall: (1) Endorse the word “filed” on the original and the copy and the month, day and year of filing; (2) File the original in his office; (3) Return the copy to the corporation or its representative. Section 25-4-53. Cancellation as Reducing Stated Capital - Canceled Shares as Unissued Shares - Reissuance Conditions. Upon the filing of a statement of cancellation pursuant to §25-4-51, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

Section 25-4-54. Other Means of Cancellation or Reducing Stated Capital Nothing contained in § 25-4-50 to 25-4-53, inclusive, shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner pennitted by chapters 25-3 to 25-8A, inclusive.

Section 25-4-55. Cancellation of Shares Reacquired by Corporation - Statement of Cancellation. A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed as provided in § 25-4-56 and 25-4-57.

Section 25-4-56. Contents of Statement of Cancellation - Delivery to Secretary of the Flandreau Santee Sioux Tribe. An original and one exact or conforming copy of the statement of cancellation required by §25-4-55 shall be executed by the chairman of the board of directors, by the president or by another of the officers or if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary. The statement shall be acknowledged and shall set forth: (1) The name of the corporation; (2) The number of reacquired shares canceled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption; (3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation; and (4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation. The original and the copy of the statement shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-4-57. Approval and Endorsement by Secretary of Flandreau Santee Sioux Tribe. If the Secretary of the Flandreau Santee Sioux Tribe finds that a statement delivered pursuant to §25-4-56 conforms to law, when all fees have been paid as prescribed in chapter 25-8A, the Secretary of the Flandreau Santee Sioux Tribe shall: (1) Endorse the word “filed” on the original and the copy and the month, day and year of filing; (2) File the original in his office; and (3) Return the copy to the corporation or its representative.

Section 25-4-58. Canceled Shares as Unissued. Upon the filing of a statement of cancellation, pursuant to §25-4-56 the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

Section 25-4-59. Other Means of Canceling Shares or Reducing Stated Capital. Nothing contained in §25-4-55 to 25-4-58, inclusive, shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by chapters 25-3 to 25-8A, inclusive.

Section 25-4-60. Increasing Capital Surplus. The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

Section 25-4-61. Reduction of Stated Capital - Procedure. A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the manner provided by §25-4-62 to 25-4-69, inclusive.

Section 25-4-62. Resolution of Proposed Reduction - Submission to Shareholders. The board of directors shall adopt a resolution setting forth the amount of a proposed reduction of stated capital and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

Section 25-4-63. Notice to Shareholders. Written notice, stating that the purpose or one of the purposes of the meeting of the shareholders referred to in §25-4-62 is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in chapter 25-5 for the giving of notice of meetings of shareholders.

Section 25-4-64. Stockholders' Meeting - Majority Vote Required. At the meeting referred to in §25-4-62 a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

Section 25-4-65. Statement of Reduction - Contents of Statement - Delivery to Secretary of the Flandreau Santee Sioux Tribe. If a reduction of the stated capital of a corporation has been approved as provided in §25-4-64, an original and one exact or conforming copy of such statement shall be executed by the chairman of the board of directors, by the president or by another of the officers or if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary. The

statement shall be acknowledged and shall set forth: (1) The name of the corporation; (2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption; (3) The number of shares outstanding, and the number of shares entitled to vote thereon; (4) The number of shares voted for and against such reduction, respectively; and (5) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction. The original and the copy of the statement shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-4-66. Approval and Endorsement by Secretary of Flandreau Santee Sioux Tribe. If the Secretary of the Flandreau Santee Sioux Tribe finds that a statement delivered pursuant to §25-4-65 conforms to law, when all fees have been paid as prescribed in chapter 25-8A, the Secretary of the Flandreau Santee Sioux Tribe shall: (1) Endorse the word “filed” on the original and the copy and the month, day and year of filing; (2) File the original in his office; and (3) Return the copy to the corporation or its representative.

Section 25-4-67. Filing Statement as Reducing Capital. Upon the filing of a statement pursuant to §25-4-66, the stated capital of the corporation shall be reduced as therein set forth.

Section 25-4-68. Circumstances Under Which Capital May Not Be Reduced. No reduction of stated capital shall be made under the provisions of 25-4-61 to 25-4-67, inclusive, which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

Section 25-4-69. Surplus Created by Reduction of Stated Capital. The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus.

Section 25-4-70. Dividends - Circumstances Under Which Dividends May Not Be Paid. The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent, or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation subject to the provisions of §25-4-71 to 25-4-76, inclusive.

Section 25-4-71. Payment of Dividends - Funds Available. Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in §25-4-72 to 25-4-76, inclusive.

Section 25-4-72. Dividends by Corporations Exploiting Natural Resources - Reserve Depletion. If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserve and the amount per share paid from such reserve shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

Section 25-4-73. Stock Dividends Out of Reacquired Shares. Dividends may be declared and paid in a corporation's own shares out of any treasury shares that have been reacquired out of surplus of the corporation.

Section 25-4-74. Stock Dividends Out of Unissued Shares - Transfer of Surplus to Stated Capital - Par and No-Par Shares. Dividends may be declared and paid in a corporation's own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions: (1) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount at least equal to the aggregate par value of the shares to be issued as a dividend. (2) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated 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 stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

Section 25-4-75. Stock Dividend in Different Class of Stock - Authorization. No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

Section 25-4-76. Stock Split Without Increasing Stated Capital. A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of §25-4-70 to 25-4-75, inclusive.

Section 25-4-77. Distribution of Corporate Assets in Partial Liquidation. The board of directors of a corporation may, from time to time, distribute to its shareholders in partial liquidation, out of stated capital or capital surplus of the corporation, a portion of its assets, in cash or property, subject to the provisions of §25-4-78 to 25-4-83, inclusive.

Section 25-4-78. Distribution by Insolvent Corporation Prohibited. No distribution in partial liquidation shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

Section 25-4-79. Authorization for Distribution Required. No distribution in partial liquidation shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of at least a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

Section 25-4-80. Payment of Cumulative Dividends as Condition to Distribution. No distribution in partial liquidation shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preference in dividends shall have been fully paid.

Section 25-4-81. Payment of Shareholders' Preferential Rights as Condition to Distribution. No distribution in partial liquidation shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

Section 25-4-82. Identification of Distribution as Partial Liquidation. Each distribution pursuant to §25-4-77, when made, shall be identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

Section 25-4-83. Payment of Cumulative Preferred Rights Out of Capital Surplus - Conditions and Identification. The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

Chapter 25-5 Business Corporations: Shareholders' Rights

Section 25-5-1. Shareholders' Meetings - Time and Place of Meetings. Shareholders may be held at such place, either within or without this Reservation, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

Section 25-5-2. Annual Meetings - Court Order - Failure to Hold. An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. If the annual meeting is not held within any thirteen month period the Tribal Court may, on the application of any shareholder, summarily order a meeting to be held. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Section 25-5-3. Special Meetings - Proper Parties to Call. Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

Section 25-5-4. Taking Action Without Meeting - Consent in Writing - Effect of Consent. Any action required by chapters 25-3 to 25-8A, inclusive, to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Secretary of the Flandreau Santee Sioux Tribe under chapters 25-3 to 25-8A, inclusive.

Section 25-5-5. Notice of Meeting - Purpose of Meeting - Procedure for Notice - Exception. Written 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 be delivered not less than ten nor more than fifty 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 persons calling the meeting, to each shareholder of record entitled to vote at such meeting. 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 stock transfer books of the corporation, with postage thereon prepaid.

Section 25-5-6. Waiver of Notice. Whenever any notice is required to be given to any shareholder of a corporation under the provisions of chapters 25-3 to 25-8A, inclusive, or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 25-5-7. Parties Entitled to Dividends, to Notice and to Vote - Transfer Books - Closing Transfer Books. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting.

Section 25-5-8. Board of Directors' Authority to Fix Voting Cut-Off Date. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors, may fix in advance a date as the record date for any determination of shareholders for any of the purposes mentioned in §25-5-7, such date in any case to be

not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken.

Section 25-5-9. Cut-Off Date in Absence of Action by Board or Closing Books. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

Section 25-5-10. Cut-Off Dates as Applicable to Adjourned Meetings. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in §25-5-7 to 25-5-9, inclusive, such determination shall apply to any adjournment thereof.

Section 25-5-11. Shareholders Entitled to Vote - Voting List - Inspection - Transfer Books as Prima Facie Evidence of Right to Vote. The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

Section 25-5-12. Failure to Prepare List or Permit Inspection - Liability for Damages. An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders or produce and keep it open for inspection at the meeting, as provided in §25-5-11, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage. Failure to comply with the requirements of §25-5-11 shall not affect the validity of any action taken at such meeting. 25-5-13. Quorum for meeting - Majority vote as controlling. - Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. 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 or voting by classes is required by chapters 25-3 to 25-8A, inclusive, or the articles of incorporation or bylaws.

Section 25-5-14. Shares Entitled to Vote. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or

classes are limited or denied by the articles of incorporation as permitted by chapters 25-3 to 25-8A, inclusive.

Section 25-5-15. Shares Not Entitled to Vote. Neither treasury shares, nor shares of its own stock held by a corporation in a fiduciary capacity, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

Section 25-5-16. Manner of Voting - Proxy - Solicitation of Proxy. A shareholder may vote either in person or by proxy executed in writing or by electronic transmission by the shareholder or by the shareholder's duly authorized attorney in fact. No proxy is valid after eleven months from the date of its execution, unless otherwise provided in the proxy. A solicitation for proxies shall specifically state the matters for which proxies are sought, and no proxy may be voted on any matter not specified in the solicitation. If the vote is made by electronic transmission, the transmission shall either set forth or be submitted with information from which it can be determined that the transmission was authorized by the shareholder or proxy holder.

Section 25-5-17. Voting for Directors - Cumulative Voting. At each election for directors every shareholder entitled to vote at such election 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 and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of candidates.

Section 25-5-18. Voting Shares Held by Other Corporation. Shares standing in the name of another corporation, domestic or foreign, 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.

Section 25-5-19. Voting Shares Held by Personal Representative or Trustee - Shares Held by Receiver. Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver 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 was appointed.

Section 25-5-20. Voting Pledged Shares. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Section 25-5-21. Voting Redeemable Shares - Notice of Redemption. Redeemable shares which have been called for redemption shall not be entitled to vote on any matter and shall not be deemed outstanding shares on and after the date on which written notice of redemption has been mailed to shareholders and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

Section 25-5-22. Matters Requiring More Than Majority Vote. Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by chapters 25-3 to 25-8A, inclusive, with respect to such action, the provisions of the articles of incorporation shall control.

Section 25-5-23. Voting Trusts - Time Limitation - Filing Copy of Trust - Inspection. Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent, or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

Section 25-5-23.1. Agreements Among Shareholders as to Voting. Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements are not subject to the provisions of §25-5-23 regarding voting trusts.

Section 25-5-24. Books and Records - Shareholder Lists - Place of Keeping. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or register, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

Section 25-5-25. Persons Entitled to Examine Books and Records. Any person who shall have been a shareholder of record for at least six months immediately preceding his demand or who shall be the holder of record of at least five percent of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for

any proper purpose, its books and records of account, minutes and record of shareholders and to make extracts therefrom.

Section 25-5-26. Refusal of Right to Inspect - Liability for Penalty and Damages.

Any officer or agent who, or a corporation which, shall refuse to allow any shareholder described in §25-5-25, or his agent or attorney, to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, as provided by §25-5-25, shall be liable to such shareholder in a penalty of ten percent of the value of the shares owned by such shareholder, in addition to any other damages or remedy afforded him by law.

Section 25-5-27. Defenses to Action for Penalties. It shall be a defense to any action for penalties under §25-5-26 that the person suing therefor has within two years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

Section 25-5-28. Court Order Compelling Examination of Books. Nothing contained in § 25-5-24 to 25-5-27, inclusive, shall impair the power 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 the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

Section 25-5-29. Availability of Financial Statements. Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

Chapter 25-6

Business Corporations: Directors, Officers and Agents

Section 25-6-1. Directors as Managers of Corporation - Qualifications - Compensation. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors or unless otherwise provided in the articles of incorporation.

Section 25-6-1.1. Definition: "Signed" For the purposes of any section requiring signing, if an electronic signature is required or the term, signed, is used in connection with an electronic transmission, the term means an electronic sound, symbol, or process

attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Section 25-6-2. Annual Election of Directors by Shareholders - Term of Office. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

Section 25-6-3. First Directors - Statement in Articles - Term of Office. 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, and until their successors shall have been elected and qualified.

Section 25-6-4. Composition of Board of Directors - Number of Directors - Term. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial 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, but no decrease shall have the effect of shortening the term of any incumbent director. 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.

Section 25-6-5. Election of Directors - Staggering Term of Office. When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the articles of incorporation 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 two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

Section 25-6-6. Election of Directors - Cumulative Voting - Procedure. Cumulative voting shall be allowed where several directors are to be elected for terms of the same duration: (1) They shall be chosen by the same ballot or vote, each shareholder entitled to vote to have the right to multiply the number of votes to which he may be entitled under provisions hereof, by the number of directors to be so elected, and cast all of such votes for one candidate, or distribute them among two or more candidates, as he may prefer. (2) Where such right of cumulative voting is exercised, there shall be deemed elected the

candidates receiving the most votes for the places to be filled by such election, but where such right of cumulative voting is not exercised, an election shall require a majority of the eligible votes represented at such corporate meeting. (3) If there exists a tie vote between candidates, with resulting failure of choice as to any place as director, such choice shall be determined by drawing of lots under such procedure that all rights of the candidates involved in such tie are adequately safeguarded.

Section 25-6-7. Vacancies on Board of Directors. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 25-6-8. Term of Office of Director Elected to Increase Number. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Section 25-6-9. Meetings of Board of Directors - Regular Meetings - Special Meetings — Waiver of Notice of Meeting - Use of Conference Telephone or Similar Equipment. Meetings of the board of directors, regular or special, may be held either within or without this Reservation. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special 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 notice of such meeting unless required by the bylaws. Except as may be otherwise restricted by the article of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

Section 25-6-10. Written Waiver of Notice. If any notice is required to be given to any director of a corporation under the provisions of chapters 25-3 to 25-8A, inclusive, or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing or by electronic transmission signed and transmitted by the person or persons entitled to such notice, whether before or after the time stated therein, is equivalent to the giving of such notice.

Section 25-6-11. Written Consent to Dispense With Meeting. Unless otherwise provided by the articles of incorporation or bylaws, any action required by chapters 25-3 to 25-8A, inclusive, to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken

without a meeting if a consent in writing or by electronic transmission, setting forth the action so to be taken, shall be signed and transmitted before such action by all of the directors, or all of the members of the committee, as the case may be. Such consent has the same effect as a unanimous vote.

Section 25-6-12. Quorum of Directors. 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.

Section 25-6-13. Designation of Directors' Executive Committee - Authority of Committee. If the articles of incorporation or 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 articles of incorporation or the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors in the management of the corporation, except as provided by § 25-6-14.

Section 25-6-14. Limitations on Authority of Committee. No executive committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation.

Section 25-6-15. Directors' Liability - Unauthorized Dividend or Distribution. In addition to any other liabilities imposed by law upon directors, directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of chapters 25- 3 to 25-8A, inclusive, or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of said chapters or the restriction in the articles of incorporation.

Section 25-6-16. Directors Liability - Unauthorized Purchase of Shares. In addition to any other liabilities imposed by law upon directors, directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of chapters 25-3 to 25-8A, inclusive, shall be jointly and severally liable to the corporation for the amount

of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of said chapters.

Section 25-6-17. Directors' Liability - Unauthorized Distribution of Assets. In addition to any other liabilities imposed by law upon directors, the directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

Section 25-6-18. Directors' Liability - Loan of Corporate Assets. In addition to any other liabilities imposed by law upon directors, the directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation, or the making of any loan secured by shares of the corporation, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

Section 25-6-19. Directors' Liability - Commencing Business Before Obtaining Minimum Capital. In addition to any other liabilities imposed by law upon directors, if a corporation shall commence business before it has received at least one thousand dollars as consideration for the issuance of shares, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of one thousand dollars as shall not have been received before commencing business, but such liability shall be terminated when the corporation has actually received one thousand dollars as consideration for the issuance of shares.

Section 25-6-20. Circumstances Under Which Directors Assent Will be Presumed. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by certified or registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 25-6-21. Good Faith Actions of Director. A director shall not be liable under §25-6-15 to 25-6-17, inclusive, if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

Section 25-6-22. Directors Entitled to Contribution From Benefited Shareholders.

Any director against whom a claim shall be asserted under or pursuant to §25-6-15 or 25-6-17 for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of said sections, in proportion to the amounts received by them respectively.

Section 25-6-23. Directors Entitled to Contribution From Assenting Directors. Any director against whom a claim shall be asserted under or pursuant to §25-6-15 to 25-6-21, inclusive, shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

Section 25-6-24. Corporate Officers - Appointment of Officers and Assistants - Minutes and Records - Simultaneous Holding of More Than One Office.

A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws. Any duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors. Either the bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation. Any individual may simultaneously hold more than one office in a corporation.

Section 25-6-25. Authority of Officers. Any officer or agent of the corporation, as between himself and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, as may be determined by resolution of the board of directors not inconsistent with the bylaws, or as directed by an officer authorized by the board of directors to prescribe the duties of other officers not inconsistent with the bylaws.

Section 25-6-26. Removal of Officers - Effect on Contract Rights. Election or appointment of an officer or agent of a corporation shall not of itself create contract rights. Any officer or agent may be removed by the board of directors, or by the executive committee, if any, 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.

Section 25-6-27. Indemnification of Corporate Agents for Liability From Good Faith Acts on Behalf of Corporation. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative other than an action by or in the right of the corporation by reason of the fact that that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid

in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding if that person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful.

Chapter 25-7 Business Corporations: Dissolution

Section 25-7-1. Corporations Not Having Commenced Business - Dissolution by Incorporators. A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the manner provided by §25-7-2 and 25-7-3.

Section 25-7-2. Dissolution by Incorporators - Articles of Dissolution - Contents. An original and one exact or conforming copy of the articles of dissolution under §25-7-1 shall be executed by a majority of the incorporators and acknowledged by them and shall set forth: (1) The name of the corporation; (2) The date of issuance of its certificate of incorporation; (3) That none of its shares has been issued; (4) That the corporation has not commenced business; (5) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto; (6) That no debts of the corporation remain unpaid; (7) That a majority of the incorporators elect that the corporation be dissolved. The original and the copy of the articles of dissolution shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-7-3. Approval of Articles of Dissolution by Secretary of Flandreau Santee Sioux Tribe – Endorsement and Filing - Certificate of Dissolution. If the Secretary of the Flandreau Santee Sioux Tribe finds that the articles of dissolution delivered pursuant to §25-7-2 conform to law, when all fees have been paid as prescribed in chapter 25-8A, the Secretary of the Flandreau Santee Sioux Tribe shall: (1) Endorse the word “filed” on the original and the copy and the month, day and year of filing; (2) File the original in his office; (3) Issue a certificate of dissolution to which he shall affix the copy. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto shall be returned to the incorporators or their representative. Upon issuance of such certificate of dissolution the existence of the corporation shall cease.

Section 25-7-4. Dissolution - Proposal by Board of Directors - Notice to Shareholders — Approval by Majority. A corporation’s board of directors may propose dissolution for submission to the shareholders. For a proposal to dissolve to be adopted: (1) The board of directors shall recommend dissolution to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and (2) The shareholders entitled to vote must approve the proposal to dissolve as provided herein. The board of directors may condition its submission of the proposal for dissolution on any basis. The corporation shall notify

each shareholder, whether or not entitled to vote, of a proposed shareholders' meeting in accordance with the provisions of §25-5-5. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation. Unless the articles of incorporation or the board of directors require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

Section 25-7-5. Articles of Dissolution - Contents - Effective Date. At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of Flandreau Santee Sioux Tribe for filing articles of dissolution. The articles of dissolution shall be executed by the chairman of the corporation's board of directors, by its president or by another of its officers or, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary. The articles shall be acknowledged and shall set forth: (1) The name of the corporation; (2) The date dissolution was authorized; (3) If dissolution was approved by the shareholders, the number of votes entitled to be cast on the proposal to dissolve and either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and (4) If voting by voting groups was required, the information required herein shall be provided separately for each voting group entitled to vote separately on the plan to dissolve. A corporation is dissolved upon the effective date of its articles of dissolution.

Section 25-7-6. Existence After Dissolution - Appropriate Business. A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including: (1) Collecting its assets; (2) Disposing of its properties that will not be distributed in kind to its shareholders; Dissolution of a corporation does not: (1) Transfer title to the corporation's property; (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records; (3) Subject its directors or officers to standards of conduct different from those prescribed in chapter 25-6; (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation or removal of its directors or officers or both; or change provisions for amending its bylaws; (5) Prevent commencement of a proceeding by or against the corporation in its corporate name; (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or (7) Terminate the authority of the registered agent of the corporation.

Section 25-7-7. Dissolved Corporation - Disposal of Claims - Notice to Claimants - Claim Defined. A dissolved corporation shall dispose of the known claims against it by following the provisions herein. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall: (1) Describe information that must be included in a claim; (2) Provide a mailing address where a claim may be sent; (3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and (4) State that the claim will be barred if not received by the deadline. A claim against the dissolved corporation is

barred: (1) If a claimant who was given written notice under this section does not deliver the claim to the dissolved corporation by the deadline; (2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. (3) Issue a certificate of dissolution to which he shall affix the copy. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto shall be returned to the representative of the dissolved corporation.

Section 25-7-8. Liquidation Under Supervision of Court. V After filing by the Secretary of the Flandreau Santee Sioux Tribe of articles of dissolution, the corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the judicial circuit in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court.

Section 25-7-9. Revocation of Dissolution - Authorization - Contents of Articles of Revocation of Dissolution. A corporation may revoke its dissolution within one hundred twenty days of its effective date. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of the Flandreau Santee Sioux Tribe for filing an original and one exact or conforming copy of the articles of revocation of dissolution, together with a copy of its articles of dissolution. The articles of revocation of dissolution shall be executed by the chairman of the corporation's board of directors, by its president or by another of its officers or, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary. The articles shall be acknowledged and shall set forth: (1) The name of the corporation; (2) The effective date of the dissolution that was revoked; (3) The date that the revocation of dissolution was authorized; (4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect; (5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and (6) If shareholder action was required to revoke the dissolution, the information required by §25-7-5. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred. Section 25-7-10. Delivery of Articles of Dissolution to Secretary of the Flandreau Santee Sioux Tribe - Endorsement and Filing - Certificate of Dissolution. An original and one exact or conforming copy of articles of dissolution described in §25- 7-5 shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe. If the Secretary of the Flandreau Santee Sioux Tribe finds that such articles of dissolution conform to law, when all fees have been paid as prescribed in chapter 25-8A, he shall: (1) Endorse

the word “filed” and the month, day and year of filing; (2) File the original in his office; and

Section 25-7-11. Cessation of Corporate Existence - Exceptions. Upon the issuance of a certificate of dissolution pursuant to §25-7-10 the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter.

Section 25-7-12. Involuntary Dissolution - Conditions. A corporation may be dissolved involuntarily by a decree of the Tribal Court in an action filed by the Tribal Prosecutor if it is established that: (1) The corporation procured its articles of incorporation through fraud; or (2) The corporation has continued to exceed or abuse the authority conferred upon it by law.

Section 25-7-13. Annual Certification of Corporations Eligible for Dissolution. The Secretary of the Flandreau Santee Sioux Tribe shall certify to the Tribal Prosecutor, from time to time, the names of all corporations which have given cause for dissolution as provided in chapters 25-3 to 25-8A, inclusive, together with the facts pertinent thereto.

Section 25-7-14. Certification to Tribal Prosecutor - Notice to Corporation - Action by Tribal Prosecutor - Certification as Prima Fade Evidence. If the Secretary of the Flandreau Santee Sioux Tribe certifies the name of a corporation to the Tribal Prosecutor as having given cause for dissolution, the Secretary of the Flandreau Santee Sioux Tribe shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the Tribal Prosecutor shall file an action in the name of the Tribe against such corporation for its dissolution.

Section 25-7-15. Administrative Dissolution. The Secretary of the Flandreau Santee Sioux Tribe may commence a proceeding under §25-7-16 to administratively dissolve a corporation if: (1) The corporation does not pay within sixty days after they are due any fees or penalties imposed under the provisions of chapter 25-8A; (2) The corporation does not deliver its annual report to the Secretary of Flandreau Santee Sioux Tribe within sixty days after it is due; (3) The corporation is without a registered agent or registered office on this Reservation for sixty days or more; (4) The corporation does not notify the Secretary of Flandreau Santee Sioux Tribe within sixty 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; or (5) The corporation’s period of duration stated in its articles of incorporation expires. 25-7-1 6. Notice of grounds for dissolution - Time limit for corrections - Certificate of dissolution - Existence after dissolution - Authority of agent. If the Secretary of the Flandreau Santee Sioux Tribe determines that one or more grounds exist under § 25-7-15 for dissolving a corporation, the secretary shall serve the corporation with written notice of his determination under § 25-3-32. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary that each ground determined by the secretary does not exist within sixty days after service of the notice is perfected, the Secretary of the Flandreau Santee Sioux Tribe shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The

secretary shall file the original of the certificate and serve a copy on the corporation under §25-3-32. A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under §25-7-6 and notify claimants under §25-7-7. Administrative dissolution of a corporation does not terminate the authority of its registered agent.

Section 25-7-16.1. Application for Reinstatement - Contents - Certificate of Reinstatement - Effective Date. Any corporation administratively dissolved under § 25-7-16 may apply to the Secretary of the Flandreau Santee Sioux Tribe for reinstatement. Such application may be made by the chairman of the board of directors of the corporation, its president or another officer, or if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary. The application shall be acknowledged. The applicant shall submit with the application the appropriate filing fee. The secretary shall base filing fees on capital stock as provided in subdivision 25-8A-9(1), plus any delinquent annual reports for the period prior to the reinstatement application. The application shall: (1) Recite the name of the corporation 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; (3) State that the corporation's name satisfies the requirements of chapter 25-3; and (4) Contain a certificate from the Tribal Treasurer reciting that any taxes or fees administered and collected by the department which were owed by the corporation have been paid. If the Secretary of the Flandreau Santee Sioux Tribe determines that the application contains the information required and that the information is correct, the secretary shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement. The Secretary of the Flandreau Santee Sioux Tribe shall file the original of the certificate, and serve a copy on the corporation under §25-3-32. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

25-7-16.2. Denial of reinstatement - Notice - Appeal - Court action. If the Secretary of the Flandreau Santee Sioux Tribe denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under §25-2-32 with a written notice that explains the reason or reasons for denial. The corporation may appeal the denial of reinstatement to Tribal Court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of the Flandreau Santee Sioux Tribe's certificate of dissolution, the corporation's application for reinstatement and the Secretary of Flandreau Santee Sioux Tribe's notice of denial. The court may order the secretary to reinstate the dissolved corporation or may take other action the court considers appropriate. The court's final decision may be appealed in the same manner as in any other civil proceeding.

Section 25-7-17. Venue and Process. Every action for the involuntary dissolution of a corporation shall be commenced by the Tribal Prosecutor in Tribal Court. Summons shall issue and be served as in other civil actions.

Section 25-7-18. Service by Publication - Time for Default. If process is returned not found in an action commenced pursuant to §25-7-17, the Tribal Prosecutor shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. If no newspaper is published in the county where the registered office of the corporation is situated, publication of such notice shall be made in some newspaper having general circulation in the community where such registered office is situated. Unless a corporation shall have been served with summons, no default may be taken against it earlier than thirty days after the first publication of such notice.

Section 25-7-19. Jurisdiction of Court - Action by Shareholder. The Tribal Court shall have full power to liquidate the assets and business of a corporation in an action by a shareholder when it is established: (1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof or (2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or (3) That the shareholders are deadlocked in voting power, and have failed, for a period which included at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or (4) That the corporate assets are being misapplied or wasted. 25-7-20. Jurisdiction of court - Action by creditor. The Tribal Court shall have full power to liquidate the assets and business of a corporation in an action by a creditor: (1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or (2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

Section 25-7-21. Jurisdiction of Court - Application by Corporation. The Tribal Court shall have full power to liquidate the assets and business of a corporation upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court.

Section 25-7-22. Jurisdiction of Court - Action by Tribal Prosecutor. The Tribal Court has authority to liquidate the assets and business of a corporation when a proceeding has been commenced by the Secretary of Flandreau Santee Sioux Tribe pursuant to §25-7-16 to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a certificate of dissolution. 25-7-23. Venue of proceeding for dissolution - Shareholders as parties. Proceedings under §25-7-19 to 25-7-22, inclusive, shall be brought in the county in which the registered office or the principal office of the corporation is situated. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

Section 25-7-24. Injunctions and Receivers in Dissolution Actions. In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had. 25-7-25. Notice ordered by court - Appointment of receivers for collection of assets - Powers and duties of receivers - Disposition of proceeds. After a hearing had upon such notice as the court may direct to be given to all parties to proceedings to liquidate the assets and business of a corporation and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers may, subject to the order of the court, sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at a public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of the liquidation and to the payment of the liabilities and obligations of the corporation, and unless provided by this chapter any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

Section 25-7-26. Actions By or Against Receiver - Jurisdiction of Court. A receiver of a corporation appointed under the provisions of §25-7-25 shall have authority to sue and defend in Tribal Courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

Section 25-7-27. Compensation of Receiver and Attorneys - Payment Out of Corporate Assets. The court in proceedings to liquidate the assets and business of a corporation shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

Section 25-7-28. Claims Against Liquidating Corporation - Notice to Claimants and Creditors - Time for Filing Proof of Claim. In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall not be less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before

the date so fixed¹ may be barred, by order of court, from participating in the distribution of the assets of the corporation.

Section 25-7-29. Discontinuance of Liquidation Proceedings. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Section 25-7-30. Decree of Involuntary Dissolution - Cessation of Corporate Existence. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Section 25-7-31. Filing Decree With Secretary of the Flandreau Santee Sioux Tribe. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary. No fee shall be charged by the clerk for preparing the same or by the secretary for the filing thereof.

Section 25-7-32. Distributions Due to Unknown Claimants - Deposit With Tribal Treasurer. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Tribal Treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the Tribal Treasurer of his right thereto.

Section 25-7-33. Other Remedies Unaffected - Time for Bringing Other Action - Procedure. The dissolution of a corporation either by the issuance of a certificate of dissolution by the secretary, or by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this chapter, or by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

Section 25-7-34. Dissolution by Expiration of Charter - Amendment of Articles. If a corporation is dissolved by the expiration of its period of duration, whether or not proceedings have commenced under §25-7-16 pursuant to subdivision 25-7-15 (5), such corporation may amend its articles of incorporation at any time during a period of two years after such dissolution so as to extend its period of duration. Such amendment shall be considered an application for reinstatement under §25-7-16.1.

Chapter 25-8.

Business Corporations: Foreign Corporations

Section 25-8-1. Certificate of Authority - Requirement. No foreign corporation shall have the right to do or engage in any business on this Reservation until it shall have procured a certificate of authority so to do from the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-8-1.1. Actions Not Constituting Transaction of Business on Reservation. Without excluding other activities which may not constitute transacting business on this Reservation, a foreign corporation shall not be considered to be transacting business on this Reservation, for the purposes of this chapter, by reason of carrying on this Reservation any one or more of the following activities: (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes; (2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs; (3) Maintaining bank accounts; (4) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities; (5) Effecting sales through independent contractors; (6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this Tribe before becoming binding contracts; (7) Creating evidences of debt, mortgages or liens on real or personal property; (8) Securing or collecting debts or enforcing any rights in property securing the same; (9) Transacting any business in interstate commerce; (10) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

Section 25-8-2. Permitted Activities Under Certificate of Authority. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to do or engage on this Reservation in any business which a corporation organized under chapter 25-3 is not permitted to transact.

Section 25-8-3. Conditions Under Which Certificate of Authority May Not Be Denied. A foreign corporation may not be denied a certificate of authority by reason that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the Ordinances of this Tribe and nothing contained in chapters 25-3 to 25-8A, inclusive, may be construed to authorize this Tribe to regulate the organization or the internal affairs of such corporation.

Section 25-8-4. Rights Conferred by Certificate of Authority. A foreign corporation which has received a certificate of authority under this chapter shall or until a certificate of revocation or of withdrawal has been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authority is issued. Except as otherwise provided in chapters 25-3 to 25-8A, inclusive, a foreign corporation shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

Section 25-8-5. Corporate Name Requirements. No certificate of authority shall be issued to any corporation unless the corporate name of such corporation shall conform to the requirements of chapter 25-3 as to names of corporations.

Section 25-8-6. Change of Name to Conform to Requirements. If a foreign corporation which is authorized to do or engage in any business on this Reservation changes its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it may not thereafter do or engage in any business on this Reservation until it has changed its name to a name which is available to it under the Ordinances of this Tribe or has otherwise complied with the provisions of this title.

Section 25-8-7. Application for Certificate of Authority - Contents of Application-Execution and Verification. Any foreign corporation, in order to procure a certificate of authority to do or engage in any business on this Reservations, shall apply therefor to the Secretary of the Flandreau Santee Sioux Tribe. The application shall state: (1) The name of the corporation and the state or country under whose laws it is incorporated; (2) If the name of the corporation does not contain the word "corporation," "company," "incorporated" or "limited," or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use on this Reservation; (3) The date of incorporation and the period of duration of the corporation; (4) The Street address, or a statement that there is no street address, of the principal office of the corporation in the state or country under whose laws it is incorporated; (5) The street address, or a statement that there is no street address, of the proposed registered office of the corporation on this Reservation, the name of its proposed registered agent on this Reservation at such address and his written consent to the appointment; (6) The purpose or purposes of the corporation in doing or engaging in any business on this Reservation; (7) The names and respective addresses of the directors and officers of the corporation; (8) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; (9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class; (10) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in chapter 25-3; (11) Such additional information as may be necessary or appropriate in order to enable the Secretary of Flandreau Santee Sioux Tribe to determine whether such

corporation is entitled to a certificate of authority to do or engage in any business on this Reservation and to determine and assess the fees payable as prescribed in chapter 25-8A. An original and one exact or conforming copy of the application shall be made on forms prescribed and furnished by the Secretary of the Flandreau Santee Sioux Tribe and shall be executed by the chairman of the corporation's board of directors, by the corporation's president or by another of the corporation's officers and shall be acknowledged by one of the officers signing such application.

Section 25-8-8. Delivery of Application to Secretary of the Flandreau Santee Sioux Tribe - Accompanying Documents - Endorsement and Filing by Secretary of the Flandreau Santee Sioux Tribe- Issuance of Certificate of Authority. An original and one exact or conforming copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of Flandreau Santee Sioux Tribe, together with a certificate of existence (or a document of similar import), duly acknowledged by the Secretary of Flandreau Santee Sioux Tribe or other officer having custody of corporate records in the state or country under whose laws it is incorporated. If the Secretary of the Flandreau Santee Sioux Tribe finds that such application conforms to law, when all fees have been paid as prescribed in chapter 25-8A, the secretary shall: (1) Endorse the word "filed" on the original and the copy and the month, day and year of filing; (2) File in his office the original of the application and the certificate of existence or equivalent document; and (3) Issue a certificate of authority to do or engage in any business on this Reservation to which he shall affix the copy of the application. The certificate of authority, together with the copy of the application affixed thereto by the Secretary of the Flandreau Santee Sioux Tribe, shall be returned to the corporation or its representative.

Section 25-8-9. Rights Conferred by Certificate of Authority - Suspension or Revocation of Certificate. Upon the issuance of a certificate of authority by the Secretary of the Flandreau Santee Sioux Tribe, the corporation shall be authorized to do or engage in any business on this Reservation for those purposes set forth in its application, subject, however, to the right of this Tribe to suspend or to revoke such authority as provided in this chapter.

Section 25-8-10. Maintenance of Registered Office. Each foreign corporation authorized to do or engage in any business on this Reservation shall have and continuously maintain on this Reservation a registered office which may be, but need not be, the same as its place of business on this Reservation.

Section 25-8-11. Maintenance of Registered Agent. Each foreign corporation authorized to do or engage in any business on this Reservation shall have and continuously maintain on this Reservation a registered agent, which agent may be either an individual Tribal Member, or a corporation, or a foreign corporation authorized to do or engage in any business on this Reservation, having a business office identical with such registered office.

Section 25-8-12. Change of Registered Office or Agent - Statement Filed With Secretary of the Flandreau Santee Sioux Tribe - Contents. A foreign corporation authorized to do or engage in business on this Reservation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary a statement setting forth: (1) The name of the corporation; (2) The street address, or a statement that there is no street address, of its current registered office; (3) If the address of its registered office is to be changed, the street address, or a statement that there is no street address, of the new registered office; (4) The name of its current registered agent; (5) If its registered agent is to be changed, the name of the successor registered agent and his written consent to the appointment; (6) That the address of its registered office and the street address of the business office of its registered agent, as changed, will be identical; (7) That such change was authorized by resolution duly adopted by its board of directors. Such statement shall be executed by the corporation by its president or a vice president, acknowledged by him, and delivered to the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-8-12.1. Resignation of Registered Agent. Any registered agent of a foreign corporation may resign as such agent upon filing an original and one exact or conforming copy of written notice thereof with the Secretary of the Flandreau Santee Sioux Tribe, who shall forthwith mail the copy to the corporation at its principal office on the Reservation. The appointment of such agent shall terminate thirty days after receipt of notice by the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-8-13. Action by Secretary of the Flandreau Santee Sioux Tribe. If the Secretary of the Flandreau Santee Sioux Tribe finds that a statement delivered to him pursuant to §25-8-12 conforms to the provisions of chapters 25-3 to 25- 8A, inclusive, the secretary shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Section 25-8-14. Change of Address Within County. If a registered agent changes his or its business address to another place within the same county, the agent or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required by §25-8-12 except that it need be signed only by the registered agent and need not be responsive to subdivision 25-8-12 (5) or (7) and must recite that a copy of the statement has been mailed to each such corporation.

Section 25-8-15. Service on Registered Agent. The registered agent appointed pursuant to §25-8-1 1 by a foreign corporation authorized to do or engage in any business on this Reservation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Section 25-8-16. Failure to Maintain Registered Agent - Service on Secretary of Flandreau Santee Sioux Tribe. Whenever a foreign corporation authorized to do or engage in any business on this Reservation shall fail to appoint or maintain a registered

agent on this Reservation, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the Secretary of the Flandreau Santee Sioux Tribe shall be an agent of such corporation upon whom any such process, notice, or demand may be served.

Section 25-8-17. Acts Constituting “Doing Business” on the Reservation - Service on Secretary of the Flandreau Santee Sioux Tribe. A foreign corporation without a certificate of authority, by virtue of its acceptance of the privilege extended by law to nonresidents and others to operate, conduct, engage in, and carry on business on this Reservation, constitutes an appointment by the foreign corporation of the Secretary of the Flandreau Santee Sioux Tribe as its agent on whom all process and any action or proceeding against it, arising out of the transaction, operation, or connected with the transaction of business on this Reservation, may be served with the same legal force and effect as if served personally within the Flandreau Santee Sioux Reservation. Any corporation that sells, consigns, or leases by any means whatsoever tangible or intangible personal property through brokers, jobbers, wholesalers, or distributors to any person, firm, or corporation on this Reservation, is conclusively presumed to be both engaged in substantial and not an isolated activity within this Reservation, and in operating, conducting, engaging in, or carrying on a business in this Reservation.

Section 25-8-18. Method of Serving Secretary of the Flandreau Santee Sioux Tribe - Duties of Secretary of the Flandreau Santee Sioux Tribe. Service on the Secretary of Flandreau Santee Sioux Tribe of any process, notice, or demand referred to in §25-8-16 or 25-8-17 shall be made by delivering to him or to any clerk having charge of the corporation department of his office an original and one exact or conforming copy of such process, notice or demand. If any such process, notice or demand is served on the secretary, he shall forward the copy by registered or certified mail addressed to the corporation at its principal office in the state or country under whose laws it is incorporated. Any such service on the secretary shall be returnable in not less than thirty days. The secretary shall keep a record of all processes, notices and demands served upon him under this section and shall record the time of service and his responding action.

Section 25-8-19. Service by Other Methods Unaffected. Nothing contained in § 25-8-16 to 25-8-18, inclusive, shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Section 25-8-20. Amendment of Articles of Foreign Corporation - Filing With Secretary of the Flandreau Santee Sioux Tribe - Effect of Amendment. If the articles of incorporation of a foreign corporation authorized to do or engage in any business on this Reservation are amended in any manner that the number of shares, types or classes of its stock are affected, such foreign corporation, within thirty days after such amendment becomes effective, shall file in the office of the Secretary of Flandreau Santee Sioux Tribe a copy of such amendment duly acknowledged by the secretary or other officer

having custody of corporate records in the state or country under whose laws it is incorporated.

Section 25-8-21. Merger of Foreign Corporation - Filing Copy of Merged Articles With Secretary of the Flandreau Santee Sioux Tribe - New Certificate of Authority Unnecessary - Exceptions. If a foreign corporation authorized to do or engage in any business on this Reservation is a party to a statutory merger permitted by the laws of the state or country where it is incorporated, and if such corporation is the surviving corporation, within thirty days after such merger becomes effective, it shall file with the secretary a complete and detailed assessment of the effect the merger has on its stock. The assessment shall be duly acknowledged by the secretary or other officer having custody of corporate records of the Tribe under whose laws such statutory merger was effected. It is not necessary for such corporation to procure either a new or amended certificate of authority to do or engage in any business on this Reservation unless the name of such corporation is changed thereby or unless the corporation desires to pursue on this Reservation different purposes than those which it is currently authorized to transact.

Section 25-8-22. Circumstances Under Which Amended Certificate of Authority is Necessary - Procedure. Any foreign corporation authorized to do or engage in business on this Reservation shall procure an amended certificate of authority if it changes its corporate name or desires to pursue other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the Secretary of the Flandreau Santee Sioux Tribe. The requirements for the form and contents of such application, manner of its execution, filing of an original and one exact or conforming copy thereof with the secretary, issuance of an amended certificate of authority and effect thereof are the same as for an original application for a certificate of authority.

Section 25-8-23. Withdrawal of Foreign Corporation - Certificate of Withdrawal - Application - Contents - Execution and Verification. Any foreign corporation authorized to engage in business on this Reservation may withdraw from doing business after procuring from the Secretary of the Flandreau Santee Sioux Tribe a certificate of withdrawal. To procure a certificate of withdrawal, the corporation shall deliver to the secretary an original and one exact or conforming copy of an application for withdrawal which states: (1) The name of the corporation and the state or country under the laws of which it is incorporated; (2) That the corporation is not doing or engaging in any business on this Reservation; (3) That the corporation surrenders its authority to do or engage in any business on this Reservation; (4) That the corporation revokes the authority of its registered agent on this Reservation to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising on this Reservation during the time the corporation was authorized to do or engage in any business on this Reservation may thereafter be made on such corporation by service thereof on the secretary; (5) A post office address to which the secretary may mail a copy of any process against the corporation that may be served on him; (6) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by

classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application; (7) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application; (8) A statement, expressed in dollars, of the amount of stated capital of the corporation as of the date of application; or unless the corporation desires to pursue on this Reservation different purposes than those which it is currently authorized to transact. (9) Such additional information as may be necessary or appropriate in order to enable the Secretary of Flandreau Santee Sioux Tribe to calculate and assess any unpaid fees payable by such foreign corporation as prescribed in chapter 25-8A. The original and the copy of the application for withdrawal shall be made on forms prescribed and furnished by the secretary and shall be executed by the chairman of the board of directors, by the corporation's president or by another of the corporation's officers or, if the corporation is in the hands of a receiver, trustee or other court-appointed receiver, shall be executed on behalf of the corporation by such receiver, trustee or other court-appointed receiver. The application shall be acknowledged.

Section 25-8-24. Filing Application With Secretary of the Flandreau Santee Sioux Tribe - Endorsement and Filing - Issuance of Certificate of Withdrawal. The original and the exact or conforming copy of the application for withdrawal shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe. If the secretary finds that the application conforms to the provisions of chapters 25-3 to 25-8A, inclusive, when all fees have been paid as prescribed in chapter 25-8A, he shall: (1) Endorse the word "filed" on the original and the copy and the month, day and year of filing; (2) File the original in his office; and (3) Issue a certificate of withdrawal to which he shall affix the copy. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto shall be returned to the corporation or its representative.

Section 25-8-25. Cessation of Authority To Do Business Locally. Upon the issuance of a certificate of withdrawal pursuant to §25-8-24, the authority of the corporation to do or engage in any business on this Reservation shall cease.

Section 25-8-26. Revocation of Authority To Do Business Locally - Conditions Under Which Certificate May Be Revoked. A certificate of authority of a foreign corporation to engage in business on this Reservation may be revoked by the Secretary of the Flandreau Santee Sioux Tribe upon the conditions prescribed in §25-8-27 if: (1) The corporation has failed to file its annual report within the time required by chapter 25-8A or has failed to pay any fees or penalties prescribed by chapter 25-8A when they have become due and payable; or (2) The corporation has failed to appoint and maintain a registered agent on this Reservation as required by this chapter; or (3) The corporation has failed, after change of its registered office or registered agent, to file in the office of the Secretary of Flandreau Santee Sioux Tribe a statement of such change as required by this chapter; or (4) If required to do so pursuant to §25-8-20 or 25-8-21, the corporation has failed to file in the office of the Secretary of Flandreau Santee Sioux Tribe any amendment to its articles of incorporation or any assessment of effect on stock by merger within the time prescribed by this chapter; or (5) A misrepresentation has been made of

any material matter in any application, report, affidavit or other document submitted by the corporation pursuant to chapters 25-3 to 25- 8A, inclusive.

Section 25-8-27. Required Procedure for Revocation. No certificate of authority of a foreign corporation may be revoked by the Secretary of the Flandreau Santee Sioux Tribe unless: (1) He shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office on this Reservation; and (2) The corporation fails prior to revocation to file such annual report, or pay such fees, or penalties, or file the required statement of change of registered agent or registered office, or file articles of amendment if required pursuant to §25-8-20 or an assessment of effect on stock by merger as required pursuant to §25-8-21, or correct such misrepresentation.

Section 25-8-28. Certificate of Revocation - Filing - Notice to Corporation - Cessation of Authority To Do Business Locally. Upon revoking any certificate of authority pursuant to §25-8-26, the of the Flandreau Santee Sioux Tribe shall: (1) Issue an original and a copy of a certificate of revocation; (2) File the original in his office; and (3) Mail to the corporation at its registered office on this Reservation a notice of revocation accompanied by the copy. Upon issuance of a certificate of revocation, the authority of the corporation to engage in any business on this Reservation shall cease.

Section 25-8-29. Uncertified Corporations Prohibited from Maintaining Local Actions. No foreign corporation doing or engaging in any business on this Reservation without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any Tribal Court on this Reservation, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any Tribal Court on this Reservation by any successor or assignee of such corporation on any right, claim or demand arising out of the doing or engaging in of any business by such corporation on this Reservation, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

Section 25-8-30. Defense of Actions Permitted - Validity of Contracts and Acts. The failure of a foreign corporation to obtain a certificate of authority to do or engage in any business on this Reservation does not impair the validity of any contract or act of such corporation, and does not prevent such corporation from defending any action, suit or proceeding in any Tribal Court on this Reservation.

Section 25-8-31. Liability of Uncertified Corporation for Fees - Action by Tribal Prosecutor. Any foreign corporation which engages in any business on this Reservation without a certificate of authority is liable to this Tribe for the years or parts thereof during which it engaged in any business on this Reservation without a certificate of authority in an amount equal to all fees which would have been imposed by chapter 25-8A upon such corporation had it applied for and received a certificate of authority to engage in business on this Reservation as required by this chapter and thereafter filed all reports required by chapters 25-3 to 25-8A, inclusive, plus all penalties imposed by said chapters for failure

to pay such fees. The Tribal Prosecutor shall bring proceedings to recover all amounts due this Tribe under the provisions of this section.

Chapter 25-8A

Business Corporations: Supervision

Section 25-8A-1. Annual Report Required - Contents of Annual Report. Any domestic corporation, except a bank or a trust company, and any foreign corporation, except a savings bank or a trust company advancing and loaning money on this Reservation as authorized by this title, authorized to engage in any business on this Reservation, within the time prescribed by this chapter, shall file an annual report stating: (1) The names of the corporation and the state, Indian Tribe or country under whose laws it is incorporated; (2) The street address of the registered office of the corporation on this Reservation and the name of its registered agent on this Reservation at such address and, in the case of a foreign corporation, the street address of its principal office on this Reservation or country under whose laws it is incorporated; (3) A brief statement of the character of the business in which the corporation is actually engaged on this Reservation; (4) The names and respective addresses of the directors and officers of the corporation; (5) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; (6) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; (7) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in chapter 25-3; and (8) Such additional information as may be necessary or appropriate in order to enable the Secretary of the Flandreau Santee Sioux tribe to discharge his statutory duties.

Section 25-8A-2. Short Form Report Filed When No Change Since Last Report - Report Corporation's Street Address. If no changes have been made in the corporation structure since the last annual report so that all information set forth in its prior annual report pursuant to §25- 8A-1 would be identical, a short form as prescribed by the Secretary of Flandreau Santee Sioux Tribe, acknowledged by the appropriate officer stating that fact, may be filed in lieu of the annual report at or before the time the annual report is due. A short form may be used to report a corporation's street address.

Section 25-8A-3. Date as of Which Information Must Be Given - Execution and Acknowledgment. The annual report required by §25-8A-1 shall be made on forms prescribed and furnished by the Secretary of Flandreau Santee Sioux Tribe and the required information shall be given as of the date of the execution of the report, except as to the information required by subdivisions 25-8A-1 (7) and (8), which shall be given as of the close of business on the day prior to the anniversary date of the corporation next preceding the date provided in §25-8A-3 for filing such report. It shall be executed by the chairman of the board of directors, by its president or another of its officers or if the corporation has not been formed, by an incorporator, or, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary. The report shall be acknowledged.

Section 25-8A-4. Date as of Which Report Must Be Filed - First Annual Report - Deposit in Mail. The annual report of a domestic or foreign corporation required by §25-8A-1 shall be delivered to the Secretary of Flandreau Santee Sioux Tribe before the first day of the second month following the anniversary month of the corporation each year, except that the first annual report of a domestic or foreign corporation shall be filed before the first day of the second month following the anniversary month of the corporation at the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Secretary of Flandreau Santee Sioux Tribe. Proof to the satisfaction of the Secretary of Flandreau Santee Sioux Tribe that prior to the deadline date such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement.

Section 25-8A-5. Delinquent Reports To Be Filed and Fees Paid Before Current Report Accepted. In addition to the penalty imposed by subdivision 25-8A-9 (22), any domestic or foreign corporation which fails to comply with statutory requirements of filing annual reports with the Secretary of Flandreau Santee Sioux Tribe, shall be required to file all delinquent reports and to pay the required filing fees therefor before the Secretary of Flandreau Santee Sioux Tribe shall accept the corporation's subsequent annual reports for filing.

Section 25-8A-6. Permission to Report as of Different Date. The Secretary of Flandreau Santee Sioux Tribe, upon written request which in his judgment seems just and reasonable, may grant to a corporation the right to report for any other fiscal year and to file such report before the first day of the second month following the anniversary month of the corporation.

Section 25-8A-7. Filing Proper Report - Return of Improper Report for Correction. If the Secretary of Flandreau Santee Sioux Tribe finds that an annual report of a domestic or foreign corporation conforms to the requirements of this chapter, he shall file it. If he finds that it does not conform, he shall return it to the corporation for corrections and the penalties prescribed in §25-8A-9 for failure to file a report within the time provided in §25-8A-3 do not apply, provided the report is corrected to conform to the requirements of this chapter and returned to the Secretary of Flandreau Santee Sioux Tribe within thirty days from the date on which it was returned to the corporation.

Section 25-8A-8. Fees and Charges Collectible by Secretary of Flandreau Santee Sioux Tribe. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect in accordance with the provisions of chapters 25-3 to 25-8A, inclusive: (1) Fees for filing documents and issuing certificates; (2) Miscellaneous charges; (3) License fees.

Section 25-8A-9. Amounts of Fees. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect for: (1) Filing articles of incorporation and issuing a certificate of incorporation or filing an application of a foreign corporation for a certificate of authority to transact business on this Reservation and issuing the certificate: Authorized capital

stock of \$25,000 or less \$ 100 Over \$25,000 and not exceeding 100,000 125 Over \$100,000 and not exceeding 500,000 200 Over \$500,000 and not exceeding 1,000,000 300 Over \$1,000,000 and not exceeding 1,500,000 400 Over \$1,500,000 and not exceeding 2,000,000 500 Over \$2,000,000 and not exceeding 2,500,000 600 Over \$2,500,000 and not exceeding 3,000,000 700 Over \$3,000,000 and not exceeding 3,500,000 800 Over \$3,500,000 and not exceeding 4,000,000 900 Over \$4,000,000 and not exceeding 4,500,000 1,000 Over \$4,500,000 and not exceeding 5,000,000 1,100 For each additional \$500,000, \$250 in addition to \$1,100. For purposes only of computing fees under this section, the dollar value of each authorized share having a par value shall be equal to par value and the value of each authorized share having no par value shall be equal to one hundred dollars per share. The maximum amount charged under this subdivision may not exceed sixteen thousand dollars; (2) Filing articles of amendment and issuing a certificate of amendment, fifty dollars; (3) Filing restated articles of incorporation, fifty dollars; (4) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars; (5) Filing an application to reserve a corporate name, twenty dollars; (6) Filing a notice of transfer of a reserved corporate name, ten dollars. (7) Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars; (8) Filing a statement of the establishment of a series of shares, fifty dollars; (9) Filing a statement of cancellation of shares, fifty dollars; (10) Filing a statement of reduction of stated capital, fifty dollars; (11) Filing a statement of revocation of voluntary dissolution proceedings, ten dollars; (12) Filing articles of dissolution, ten dollars; (13) Filing an application of a foreign corporation for an amended certificate of authority to transact business on this Reservation and issuing an amended certificate of authority, fifty dollars; (14) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business on this Reservation, fifty dollars; (15) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business on this Reservation, fifty dollars; (16) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ten dollars; (17) Filing any other statement or report except an annual report, of a domestic or foreign corporation, ten dollars; (18) Filing by a domestic corporation of articles of amendment, restated articles of incorporation, or articles of merger or consolidation in which the surviving corporation is a domestic corporation, which provides authority to increase the number of authorized shares of such corporation, in addition to the other fees imposed by this section, an additional fee shall be charged as shall make, together with the fee paid at the time of the incorporation, a total sum equal to the fee which would be required under this section in case the corporation had been incorporated for such total increased capitalization; (19) Filing by a foreign corporation of articles of amendment or articles of merger when the surviving or new corporation is a foreign corporation, which articles provide authority to increase the number of authorized shares of such foreign corporation, in addition to the other fees imposed by this section, an additional fee shall be charged as shall make, together with the fee paid at the time of authorization based on the fee schedule in subdivision (1) of this section, a total sum equal to the fee which would be required under this section in the case the corporation had been authorized for such total increased capitalization; (20) All articles of amendment or articles of merger if the surviving or new corporation is a foreign corporation shall be filed with the Secretary of Flandreau Santee

Sioux Tribe within thirty days after they have been filed with the Secretary of Flandreau Santee Sioux Tribe or other proper officer of the state wherein the corporation is organized. In case of failure to so file within the time specified in this subdivision, the corporation shall pay to the Secretary of Flandreau Santee Sioux Tribe on the filing of such articles of amendment or articles of merger a penalty of twenty-five dollars; (21) Filing an annual report of a domestic or foreign corporation, thirty dollars; (22) Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter is subject to a penalty of fifty dollars to be assessed by the Secretary of Flandreau Santee .Sioux Tribe; (23) Issuing a certificate of existence, fifteen dollars; (24) Filing articles of correction, twenty dollars.

Section 25-8A-10. Fees for Certified Copies. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect for furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar per page and ten dollars for the certificate and affixing the seal thereto.

Section 25-8A-11. Fees for Service of Process. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect, at the time of any service of process on the Secretary of Flandreau Santee Sioux Tribe as resident agent of a corporation, twenty-five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

Section 25-8A-12. Officer or Director Failing to Answer Interrogatories or Signing False Report - Civil Fine. Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the Secretary of Flandreau Santee Sioux Tribe in accordance with the provisions of this chapter, or who signs any article, statement, report, application or other document filed with the Secretary of Flandreau Santee Sioux Tribe which is known to such officer or director to be false in any material respect, is subject to a civil fine in any amount not exceeding five hundred dollars.

Section 25-8A-13. Interrogatories to Corporation by Secretary of Flandreau Santee Sioux Tribe - Time for Answer - Proper Party to Answer. The Secretary of Flandreau Santee Sioux Tribe may propound to any corporation subject to the provisions of chapters 25-3 to 25-8A, inclusive, and to any officer or director thereof, such interrogatories as necessary to enable him to ascertain whether the corporation has complied with all the provisions of those chapters. Such interrogatories shall be answered within thirty days after mailing, or within additional time as fixed by the Secretary of Flandreau Santee Sioux Tribe. The answers shall be full and complete, in writing and under oath. If interrogatories are directed to an individual they shall be answered by him and, if directed to a corporation, they shall be answered by its president, vice-president, secretary or assistant secretary.

Section 25-8A-14. Corporation Failing to Answer Interrogatories - Civil Fine. Any corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within

the time prescribed by this chapter interrogatories propounded by the Secretary of Flandreau Santee Sioux Tribe in accordance with the provisions of this chapter, is subject to a civil fine in any amount not exceeding five hundred dollars.

Section 25-8A-15. Documents Not Filed Until Interrogatories Answered. The Secretary of Flandreau Santee Sioux Tribe need not file any document to which interrogatories propounded pursuant to §25-8A-13 relate until the interrogatories are answered as provided in §25-8A-13, and not then if the answers disclose that the document is not in conformity with the provisions of chapters 25-3 to 25-8A, inclusive.

Section 25-8A-16. Certification of Violations to Attorney General. The Secretary of Flandreau Santee Sioux Tribe shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of chapters 25-3 to 25-8A, inclusive.

Section 25-8A-17. Confidential Nature of Interrogatories and Answers - Exceptions. Interrogatories propounded by the Secretary of Flandreau Santee Sioux Tribe and the answers thereto shall not be open to public inspection nor shall the Secretary of Flandreau Santee Sioux Tribe disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this Tribe.

Section 25-8A-18. Administrative Powers of Secretary of Flandreau Santee Sioux Tribe. The Secretary of Flandreau Santee Sioux Tribe has the power and authority necessary to enable him to administer chapters 25-3 to 25-8A, inclusive, efficiently and to perform the duties therein imposed upon him.

Section 25-8A-19. Appeal From Action of Secretary of Flandreau Santee Sioux Tribe - Procedure. If the Secretary of Flandreau Santee Sioux Tribe fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or other document required by chapters 25-3 to 25-8A, inclusive, to be approved by him before filing, within thirty days after receipt of the documents, he shall give written notice of disapproval to the persons or corporation who sent the documents, specifying the reasons for disapproval. Any person or corporation receiving notice of disapproval may take an appeal to the Tribal Court as in other like matters.

Section 25-8A-20. Right of Foreign Corporation to Appeal Revocation Order. If the Secretary of Flandreau Santee Sioux Tribe revokes a certificate of authority to engage in business on this Reservation of any foreign corporation, pursuant to the provisions of chapters 25-3 to 25-8A, inclusive, such foreign corporation may appeal to the Tribal Court as in other like matters.

Section 25-8A-21. Secretary of Flandreau Santee Sioux Tribe's Certificates as Prima Fade Evidence. All certificates issued by the Secretary of Flandreau Santee Sioux Tribe in accordance with the provisions of chapters 25-3 to 25-8A, inclusive, and all copies of

documents filed in his office in accordance with the provisions of those chapters when certified by him shall be received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Secretary of Flandreau Santee Sioux Tribe under the great seal of this Tribe as to existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

Section 25-8A-22. Forms for Use of Secretary of Flandreau Santee Sioux Tribe. Any report required by chapters 25-3 to 25-8A, inclusive, to be filed in the office of the Secretary of Flandreau Santee Sioux Tribe shall be made on forms which shall be prescribed and furnished by the Secretary of Flandreau Santee Sioux Tribe. Forms for all other documents to be filed in the office of the Secretary of Flandreau Santee Sioux Tribe shall be furnished by the Secretary of Flandreau Santee Sioux Tribe on request, but their use, unless otherwise specifically prescribed in those chapters, may not be mandatory.

Chapter 25-9 Nonprofit Corporations: Formation and Powers

Section 25-9-1. Definitions. As used in chapters 25-9 to 25-14, inclusive, unless the context otherwise requires, the term: (1) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger. (2) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated. (3) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated. (4) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of chapters 25-9 to 25-14, inclusive, except a foreign corporation. (5) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this Tribe. (6) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs. (7) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws; (8) "Nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers.

Section 25-9-2. Applicability to Domestic Corporations. The provisions of chapters 25-9 to 25-14, inclusive, relating to domestic corporations shall apply to all corporations organized hereunder.

Section 25-9-3. Applicability to Foreign Corporations. The provisions of chapters 25-9 to 25-14, inclusive, relating to foreign corporations shall apply to all foreign nonprofit corporations doing or engaging in any business on this Reservation for a purpose or purposes for which a corporation might be organized under this chapter.

Section 25-9-4. Purposes and Authority of Corporations - Particular Purposes — Exceptions. Corporations may be organized under this chapter for any lawful purpose, including any one or more of the following purposes: (1) Agricultural; (2) Animal husbandry; (3) Athletic; (4) Benevolent; (5) Charitable; (6) Civic; (7) Cultural; (8) Educational; (9) Eleemosynary; (10) Fraternal; (11) Horticultural; (12) Literary; (13) Patriotic; (14) Political; (15) Religious; (16) Scientific; (17) Social; and (18) Professional, commercial, industrial, or trade association. However, labor unions, cooperative organizations, other than housing cooperatives, communals, and organizations subject to any of the provisions of the banking laws of this Tribe may not be organized under this chapter.

Section 25-9-5. Incorporators - Articles of Incorporation. Three or more natural persons of the age of majority may act as incorporators of a corporation by acknowledging and delivering to the Secretary of the Flandreau Santee Sioux Tribe one original and one exact or conforming copy of the articles of incorporation for such corporation.

Section 25-9-6. Contents of Articles of Incorporation - Necessary Recitals. 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) If the corporation is to have no members, a statement to that effect; (5) If the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation designating the class or classes of members and stating the qualifications and rights of the members of each class; (6) If the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed; (7) Any provisions, 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, including any provision for distribution of assets on dissolution or final liquidation; (8) The street address, or a statement that there is no street address, of its initial registered office, the name of its initial registered agent at such address and his written consent to the appointment; (9) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors; and (10) The name and address of each incorporator. It is not necessary to set forth in the articles of incorporation any of the corporate powers enumerated in chapters 25-9 to 25-14, inclusive.

Section 25-9-7. Corporate Name - Indication of Purpose. The corporate name 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.

Section 25-9-8. Use of Same or Similar Name Prohibited - Non-English Name Except Dakota Name To Be Transliterated. In order to protect the public against confusion between corporations or between corporations and limited partnerships, the name of any nonprofit corporation: (1) May not be the same as or must be distinguishable upon the records of the Secretary of the Flandreau Santee Sioux Tribe from the name of

any other corporation, whether for profit or not for profit, organized under the laws of this Tribe; or the name of any foreign corporation, whether for profit or not for profit, authorized to engage in any business on this Reservation; or any corporate name reserved or registered as permitted by the laws of this Tribe; or the name of any limited partnership certified or registered in this Tribe. Corporate names or limited partnership names already in use, with generic, proper, geographical or descriptive terms which have acquired a secondary meaning shall be protected. This subdivision does not apply if the applicant files with the secretary either: (a) The written consent signed by the president or a vice-president and by the secretary or an assistant secretary of the other corporation; by a holder of a reserved or registered name; or by a general partner of a limited partnership to use the same or a distinguishable name; (b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name on this Reservation; or (c) In the case of a foreign corporation if the corporate name is not available for use, a resolution of its board of directors adopting an assumed name for use in transacting business on this Reservation, which assumed name is not deceptively similar to the name of any domestic corporation, any foreign corporation authorized to engage in any business on this Reservation, or any corporate name reserved or registered as permitted by the Ordinances of this Tribe, or the name of any limited partnership certified or registered on this Reservation, or any other assumed name filed with the Secretary of the Flandreau Santee Sioux Tribe by a foreign corporation authorized to transact business on this Reservation. (2) Shall be transliterated into letters of the English alphabet, if it is not in English except Dakota.

Section 25-9-9. Reservation of Name - Parties Entitled to Reserve. The exclusive right to the use of a corporate name may be reserved by: (1) Any person intending to organize a corporation under this chapter; (2) Any domestic corporation intending to change its name; (3) Any foreign corporation intending to make application for a certificate of authority to do or engage in any business on this Reservation; (4) Any foreign corporation authorized to do or engage in any business on this Reservation and intending to change its name; (5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to do or engage in any business on this Reservation.

Section 25-9-10. Procedure for Reservation of Name - Maximum Time of Reservation. The reservation of the exclusive right to the use of a corporate name shall be made by filing with the Secretary of the Flandreau Santee Sioux Tribe an application to reserve a specified corporate name, executed by the applicant. If the secretary finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of one hundred and twenty days, which period shall not be extended. Section 25-9-11. Transfer of Reserved Right - Notification to Secretary of Flandreau Santee Sioux Tribe. The right to the exclusive use of a specified corporate name reserved pursuant to §25-9-9 may be transferred to any other person or corporation by filing in the office of the Secretary of the Flandreau Santee Sioux Tribe a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

Section 25-9-12. Articles of Incorporation - Endorsement and Filing by Secretary of the Flandreau Santee Sioux Tribe - Issuance of Certificate of Incorporation. One original and one exact or conforming copy of the articles of incorporation shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe. If the secretary finds that the articles of incorporation conform to law, when all fees have been paid as prescribed in chapters 25-14, he shall: (1) Endorse the word “filed” on the original and the copy and the month, day and year of filing; (2) File the original in his office; and (3) Issue a certificate of incorporation to which he shall affix the copy. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto, shall be returned to the incorporators or their representative.

Section 25-9-13. Commencement of Corporate Existence - Certificate as Conclusive Evidence of Compliance - Exceptions. 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 chapter, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

Section 25-9-14. Amending Articles of Incorporation. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under chapters 25-9 to 25-14, inclusive.

Section 25-9-15. Procedure for Amendment. Amendments to the articles of incorporation shall be made in the manner provided by §25-9-16 or 25-9-17. **Section 25-9-16. Resolution of Amendment - Submission to Members at Meeting - Notice of Meeting - Contents of Notice - Majority Vote Required.** If the members are entitled to vote on an amendment to the articles of incorporation, the board of directors or the members shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in chapter 25-10 for the giving of notice of meetings of members. If the members adopt a resolution setting forth a proposed amendment, written notice shall also be provided to the board of directors. The proposed amendment shall be adopted upon receiving at least a majority of the vote entitled to be cast by members present or represented by proxy at any meeting of the members.

Section 25-9-17. Procedure in Absence of Members Entitled to Vote - Adoption of Amendment by Board of Directors. Where there are no members, or no members entitled to vote on an amendment to the articles of incorporation, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Section 25-9-18. Submission of More Than One Amendment. Any number of amendments to the articles of incorporation may be submitted and voted upon at any one meeting.

Section 25-9-19. Articles of Amendment - Contents of Articles. An original and an exact or conforming copy of the articles of amendment shall be executed by the chairman of the board of directors, by the corporation's president or by another of its officers or, if the corporation has not been formed, by an incorporator, and shall set forth: (1) The name of the corporation; (2) The amendment so adopted; (3) If there are members entitled to vote thereon, (a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least a majority of the votes entitled to be cast by members present or represented by proxy at such meeting, or (1.) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; (4) If there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office. 25-9-20. Delivery to Secretary of the Flandreau Santee Sioux Tribe - Fees — Endorsement and filing Issuance of certificate of amendment. The original and the copy of the articles of amendment shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe. If the secretary finds that the articles of amendment conform to law, when all fees have been paid as prescribed in chapters 25- 14, he shall: (1) Endorse the word "filed" on the original and the copy and the month, day and year of filing; (2) File the original in his office; and (3) Issue a certificate of amendment to which he shall affix the copy. The certificate of amendment, together with the copy of the articles of amendment affixed thereto, shall be returned to the corporation or its representative.

Section 25-9-21. Effective Date of Amendment. Upon the issuance of the certificate of amendment by the Secretary of the Flandreau Santee Sioux Tribe, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

Section 25-9-22. Preexisting Actions Unaffected - Change of Name as Not Abating Action. No amendment to the articles of incorporation shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporation name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

Section 25-9-23. Restatement of Articles of Incorporation - Procedure. A domestic corporation may at any time restate its articles of incorporation as theretofore amended, in the manner provided by § 25-9-24 to 25-9-30, inclusive.

Section 25-9-24. Resolution of Restatement - Submission to Members. If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting

forth the proposed restated articles of incorporation and directing that they be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting.

Section 25-9-2 5. Notice of Proposed Restatement - Contents of Notice. Written notice setting forth the proposed restated articles or a summary of the provisions thereof shall be given to each member entitled to vote thereon, within the time and in the manner provided in chapter 25-10 for the giving of notice of meetings of members. If the meeting be an annual meeting, the proposed restated articles or a summary of the provisions thereof may be included in the notice of such annual meeting.

Section 25-9-2 6. Vote of Membership - Majority Vote Required. At the meeting required by §25-9-25 a vote of the members entitled to vote thereon shall be taken on the proposed restated articles, which shall be adopted upon receiving the affirmative vote of a majority of the members entitled to vote thereon present at such meeting or represented by proxy.

Section 25-9-27. Procedure in Absence of Members Entitled to Vote - Adoption of Restatement by Board of Directors. If there are no members, or no members entitled to vote thereon, the proposed restated articles shall be adopted at a meeting of the board of directors upon receiving the affirmative vote of a majority of the directors in office.

Section 25-9-28. Approval of Restated Articles - Contents of Articles - Delivery to Secretary of the Flandreau Santee Sioux Tribe. Upon approval pursuant to §25-9-26 or 25-9-27, one original and one exact or conforming copy of the restated articles of incorporation shall be executed by the chairman of the board of directors, by its president or by another of its officers and shall set forth: (1) The name of the corporation; (2) The period of its duration; (3) The purpose or purposes which the corporation is authorized to pursue; and (4) Any other provisions, not inconsistent with law, which are then set forth in the articles of incorporation as theretofore amended, except that it shall not be necessary to set forth in the restated articles of incorporation the registered office of the corporation, its registered agent, its directors or its incorporators. The restated articles of incorporation shall state that they correctly set forth the provisions of the articles of incorporation as theretofore amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments thereto. The original and the copy of the restated articles of incorporation shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-9-28.1. Restated Articles May Incorporate Proposed Amendments - Conditions. When filing restated articles of incorporation with the Secretary of the Flandreau Santee Sioux Tribe pursuant to § 25-9-28, the restated articles may incorporate proposed amendments if: (1) The provisions of 25-9-16 and 25-9-17 have been complied with; (2) The information required pursuant to § 25-9-19 accompanies the filing; (3) The filing contains a statement that, except for any indicated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation; and (4) The filing contains a statement that the restated articles

of incorporation as amended supersede the original articles of incorporation and all previous amendments.

Section 25-9-29. Approval by Secretary of the Flandreau Santee Sioux Tribe – Fees - Endorsement and Filing - Issuance of Restated Certificate of Incorporation. If the Secretary of Flandreau Santee Sioux Tribe finds that restated articles delivered to him pursuant to §25-9-28 conform to law, when all fees have been paid as prescribed in chapters 25-14, he shall: (1) Endorse the word “filed” on the original and the copy and the month, day and year of filing; (2) File the original in his office; and (3) Issue a restated certificate of incorporation to which he shall affix the copy. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto, shall be returned to the corporation or its representative.

Section 25-9-30. Effective Date of Restated Articles. Upon the issuance of the restated certificate of incorporation by the Secretary of Flandreau Santee Sioux Tribe, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

Section 25-9-31. Meeting of First Board of Directors - Organization Meeting - Notice of Meeting. 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, either within or without this Reservation, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days’ notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

Section 25-9-32. First Meeting of Members - Notice of Meeting. A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three days’ notice, for such purposes as shall be stated in the notice of the meeting.

Section 25-9.33. Adoption of Initial Bylaws - Amendment of Bylaws - Permissible Contents of Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

Section 25-9-34. Changing Number of Board of Directors - Bylaws Controlling Absent Provision in Articles. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Section 25-9-35. Maintenance of Registered Office. Each corporation shall have and continuously maintain on this Reservation a registered office which may be, but need not be, the same as its principal office.

Section 25-9-36. Maintenance of Registered Agent. Each corporation shall have and continuously maintain on this Reservation a registered agent, which agent may be either an individual resident on this Reservation whose business office is identical with the registered office required by §25-9-35, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs on this Reservation, having an office identical with such registered office.

Section 25-9-37. Procedure for Changing Registered Office or Registered Agent - Statement to Secretary of the Flandreau Santee Sioux Tribe - Contents of Statement. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of Flandreau Santee Sioux Tribe a statement setting forth: (1) The name of the corporation; (2) The street address of its current registration office or a statement that there is no street address; (3) If the address of its registered office is to be changed, the street address, or a statement that there is no street address, of its new registered office; (4) The name of its current registered agent; (5) If its registered agent is to be changed, the name of its successor registered agent and the new agent's written consent to the appointment; (6) That the street address, or a statement that there is no street address, of its registered office and the address of the office of its registered agent, as changed, will be identical; and (7) That such change was authorized by resolution duly adopted by its board of directors. Such statement shall be executed by the chair of the board of directors, by the corporation's president or by another of the corporation's officers and delivered to the secretary.

Section 25-9-38. Approval by Secretary of the Flandreau Santee Sioux Tribe - Filing and Effective Date. If the Secretary of the Flandreau Santee Sioux Tribe finds that a statement delivered to secretary pursuant to §25-9-37 conforms to the provisions of this chapter, the secretary shall file such statement in his office, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Section 25-9-39. Resignation of Registered Agent - Written Notice to Secretary of the Flandreau Santee Sioux Tribe - Termination of Agency. Any registered agent of a corporation may resign as such agent upon filing an original and an exact or conforming copy of written notice thereof with the Secretary of the Flandreau Santee Sioux Tribe, who shall forthwith mail the copy to the corporation at its registered office. The appointment of the agent shall terminate thirty days after receipt of notice by the secretary.

Section 25-9-40. Change of Address of Registered Agent Within County - Statement to Secretary of the Flandreau Santee Sioux Tribe - Recitals. If a registered agent

changes his or its business address to another place, said agent or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required 25-9-37 except that it need be signed only by the registered agent and need not be responsive to subdivision 25- 9-37 (5) or (7) and must recite that a copy of the statement has been mailed to each such corporation.

Section 25-9-41. Service of Process on Registered Agent. The registered agent appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Section 25-9-42. Failure to Appoint Registered Agent - Service on Secretary of Flandreau Santee Sioux Tribe - Method of Service. If a corporation fails to appoint or maintain a registered agent on this Reservation, or if its registered agent cannot with reasonable diligence be found at its registered office, the Secretary of the Flandreau Santee Sioux Tribe shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Service on the secretary of any such process, notice, or demand shall be made by delivering to him, or any clerk having charge of the corporation department of his office, an original and one exact or conforming copy of such process, notice or demand.

Section 25-9-43. Duties of Secretary of the Flandreau Santee Sioux Tribe - Record of Service. If any process, notice or demand is served on the Secretary of the Flandreau Santee Sioux Tribe pursuant to §25-9-42, he shall forward the copy by registered mail, addressed to the corporation at its registered office. The secretary of the Flandreau Santee Sioux Tribe shall keep a record of all processes, notices and demands served upon him under §25-9-42 and shall record the time of service and his responding action.

Section 25-9-44. Other Methods of Service Unaffected. Nothing contained in § 25-9-41 to 25-9-43, inclusive, shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Section 25-9-45. Powers of Corporation - Perpetual Succession. Each corporation shall have power to have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

Section 25-9-46. Powers of Corporation - Capacity to Sue and Be Sued. Each corporation shall have power to sue and be sued, complain and defend, in its corporate name.

Section 25-9-47. Powers of Corporation - Corporate Seal. Each corporation shall have power to have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

Section 25-9-48. Powers of Corporation - Dealing in Real or Personal Property. Each corporation shall have power to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

Section 25-9-49. Powers of Corporation - Disposal of Corporate Assets. Each corporation shall have power to sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

Section 25-9-50. Powers of Corporation - Lending Money. Each corporation shall have power to lend money to its employees other than its officers and directors, and otherwise assist its employees, officers and directors.

Section 25-9-51. Powers of Corporation - Securities Holdings - Government Obligations. Each corporation shall have power to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic, or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, Indian Tribe, state, territory, governmental district or municipality or of any instrumentality thereof.

Section 25-9-52. Powers of Corporation - Contracting - Borrowing - Issuance of Securities. Each corporation shall have power to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

Section 25-9-53. Powers of Corporation - Lending - Investing - Property Holding. Each corporation shall have power to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

Section 25-9-54. Powers of Corporation - Extraterritorial Operations. Each corporation shall have power to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by chapters 25-9 to 25-14, inclusive, in any Indian Tribe, state, territory, district, or possession of the United States, or in any foreign country.

Section 25-9-55. Powers of Corporation - Officers and Agents. Each corporation shall have power to elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation.

Section 25-9-56. Powers of Corporation - Adoption of Bylaws. Each corporation shall have power to make and alter bylaws, not inconsistent with its articles of incorporation or

with the Ordinances of this Tribe, for the administration and regulation of the affairs of the corporation.

Section 25-9-57. Powers of Corporation - Indemnification - Defense of Actions. Each nonprofit corporation may: (1) Indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fee, judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with such action, suit or proceeding if that person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nob contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which that person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful; and (2) Indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by that person in connection with the defense or settlement of such action or suit if that person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification may be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence or misconduct in performance of any duty to the corporation unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which the court deems proper.

Section 25-9-57.1. Indemnification Against Expenses and Attorneys' Fees. To the extent that a director, officer, employee or agent of a nonprofit corporation has been successful on the merits or otherwise in defense of any action, suit proceeding referred to in subdivisions 25-9-57 (1) and (2), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

Section 25-9-57.2. Authorization of Indemnification - Requirements - Manner of Determination. Any indemnification under subdivisions 25-9-57 (1) and (2), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subdivisions (1) and (2) of §25-9-57. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.

Section 25-9-57.3. Authorization of Payment of Expenses Prior to Final Disposition of Action - Receipt of Undertaking - Terms and Conditions. Any expense incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of such director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized by § 25-9-57 to 25-9-57.7, inclusive. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

Section 25-9-57.4. Indemnification Not Exclusive of Other Rights - Continuation of Benefits to Former Employees - Benefits to Deceased Employees. No indemnification provided by §*25-9-57 to 25-9-57.7, inclusive, is exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 25-9-57.5. Powers of Corporation - Purchase and Maintenance of Liability Insurance. Any nonprofit corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any liability asserted against that person and incurred by that person in such capacity, or arising out of such status, whether or not the corporation would have the power to indemnify that person against such liability under the provisions of § 25-9-57 to 25-9-57.7, inclusive.

Section 25-9-57.6. Definition — “Corporation.” For purposes of §*25-9-57 to 25-9-57.7, inclusive, references to “the corporation” includes, in addition to the resulting corporation, any constituent corporation, including any constituent of a constituent, which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or

was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of § *25-9-57 to 25-9-57.7, inclusive, with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

Section 25-9-57.7. Definitions. For purposes of §25-9-57 to 25-9-57.7, inclusive, references to “other enterprises” include employee benefit plans; references to “fines” include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” include any service as a director, officer, employee or agent of the corporation which impose duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries. Any person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan is deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in § §25-9-57 to 25-9-57.7, inclusive.

Section 25-9-58. Powers of Corporation - Pension Plans. Each corporation shall have power to pay pensions and establish pension plans or pension trusts for any or all of its directors, officers and employees.

Section 25-9-59. Powers of Corporation - Cessation of Activities. Each corporation shall have power to cease its corporate activities and surrender its corporate franchise.

Section 25-9-60. Powers of Corporation - Other Powers. Each corporation shall have power to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

Section 25-9-61. Restrictions on Private Foundations - Definition of Terms. Terms as used in §25-9-61 to 25-9-69, inclusive, shall have the following meaning: (1) “Excess business holdings,” as defined in section 4943 (c) of the Internal Revenue Code; (2) “Internal Revenue Code,” the United States Internal Revenue Code of 1954, as amended; (3) “Private foundation,” as defined in section 509 (a) of the Internal Revenue Code; (4) “Self-dealing,” as defined in section 4941 (d) of the Internal Revenue Code; (5) “Taxable expenditure,” as defined in section 4945 (d) of the Internal Revenue Code.

Section 25-9-62. Restrictive Provisions as to Income and Property Deemed Incorporated in Foundation Charter. Any instrument creating a corporation which is a private foundation and any instrument governing the use, retention, or disposition by such corporation of any of its income or property shall be deemed to have incorporated within such instrument with the same effect as though such language were set forth verbatim in such instrument the provisions set forth in § 25-9-63 to 25-9-67, inclusive, and except as the contrary is provided in §25- 9-68 and 25-9-69, such provisions shall govern the

corporation as to the use, retention, and disposition of its income and property irrespective of any provisions of any such instrument, statute, or other law of this Tribe to the contrary.

Section 25-9-63. Self-Dealing by Foundation Prohibited. The corporation described in §25-9-62 shall not engage in any act of self-dealing which would give rise to any liability for the tax imposed by section 4941 (a) of the Internal Revenue Code.

Section 25-9-64. Distributions Required of Foundation. The corporation described in §25-9-62 shall distribute for each of its taxable years amounts at least sufficient to avoid liability for the tax imposed by section 4942 (a) of the Internal Revenue Code.

Section 25-9-65. Excess Business Holdings Prohibited to Foundation. The corporation described in §25-9-62 shall not retain any excess business holdings which would give rise to any liability for the tax imposed by section 4943 (a) of the Internal Revenue Code.

Section 25-9-66. Investments Which Jeopardize Charitable Purpose Prohibited to Foundation. The corporation described in §25-9-62 shall not make any investments which would jeopardize the carrying out of any of the exempt purposes of the corporation, within the meaning of section 4944 of the Internal Revenue Code so as to give rise to any liability for the tax imposed by section 4944 (a) of the Internal Revenue Code.

Section 25-9-67. Taxable Expenditures Prohibited to Foundation. The corporation described in §25-9-62 shall not make any taxable expenditure which would give rise to any liability for the tax imposed by section 4945 (a) of the Internal Revenue Code.

Section 25-9-68. Judicial Determination That Required Restrictions Would Be Contrary to Charter. Sections 25-9-62 to 25-9-67, inclusive, shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of any instrument described in §25-9-62 and that such instrument may not properly be changed to conform to §25-9-62 to 25-9-67, inclusive.

Section 25-9-69. Tribal Powers Over Corporation Unimpaired. Nothing in § 25-9-61 to 25-9-68, inclusive, shall impair the rights and powers of the Tribal Court of the Reservation with respect to any corporation.

Section 25-9-70. Ultra Vires Unavailable to Invalidate Transfers of Property. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer.

Section 25-9-71. Circumstances Under Which Ultra Vires May Be Asserted - Actions By Members or Directors - Injunctions. Notwithstanding §25-9-70, the fact that a corporation is without capacity or power to do an act or to make or receive a

conveyance or transfer of real or personal property may be asserted in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

Section 25-9-72. Circumstances Under Which Ultra Vires May Be Asserted - Actions By Corporation Against Officers or Directors. Notwithstanding §25-9-70, the fact that a corporation was without capacity or power to do an act or to make or receive a conveyance or transfer of real or personal property may be asserted in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the officers or directors of the corporation for exceeding their authority.

Section 25-9-73. Circumstances Under Which Ultra Vires May Be Asserted - Actions by Tribal Prosecutor to Dissolve or Enjoin Corporation. Notwithstanding §25-9-70, the fact that a corporation is without capacity or power to do an act or to make or receive a conveyance or transfer of real or personal property may be asserted in a proceeding by the Tribal Prosecutor, as provided in chapters 25-12, to dissolve the corporation, or in a proceeding by the Tribal Prosecutor to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the Tribal Prosecutor.

Section 25-9-74. Unauthorized Acting as Corporation - Liability. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

Section 25-9-75. Executive Board Power to Prescribe Additional Regulations. The Legislature shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of chapters 25-9 to 25-14, inclusive, and the Executive Board shall have power to amend, repeal or modify said chapters at pleasure.

Section 25-9-76. Severability and Saving Clause. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of chapters 25-9 to 25-14, inclusive, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of said chapters, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of said chapters so adjudged to be invalid or unconstitutional.

Section 25-9-77. Citation of Nonprofit Corporation Law. Chapters 25-9 to 25-14, inclusive, shall be known and may be cited as the “Flandreau Santee Sioux Nonprofit Corporation Act.” Chapter 25-10. Corporations: Members, Directors and Officers

Section 25-10-1. Classes of Members - Corporations Without Members - Articles of Incorporation as Governing - Certificates of Membership. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or by the bylaws. A corporation may issue certificates evidencing membership therein.

Section 25-10-2. Exoneration From Personal Liability. The directors, officers, employees and members of the corporation shall not, as such, be liable on its obligations.

Section 25-10-2.1. Liability of Director, Trustee or Officer Serving Without Compensation. No director, trustee or officer serving without compensation, other than reimbursement for actual expenses, of any corporation organized under this chapter, and which is exempt from taxation pursuant to Section 501(a) of the Internal Revenue Code, 26 U.S.C. Section 501(a) and is listed as an exempt organization in Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c), as amended, is liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director, trustee, or officer while acting in his official capacity as such director, trustee or officer, unless the act or omission involved willful or wanton misconduct.

Section 25-10-3. Members’ Meetings - Time and Place. Meetings of members of a corporation may be held at such place, either within or without this Reservation, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation on this Reservation.

Section 25-10-4. Annual Members’ Meeting - Time and Place - Failure to Hold Meeting. An annual meeting of the members of a corporation shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Section 25-10-5. Special Meetings of Members - Calling Special Meeting - Requisite Percentage of Members to Call Special Meeting. Special meetings of the members of a corporation may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

Section 25-10-6. Taking Action Without Meeting - Written Consent - Effect of Written Consent. Any action required by chapters 25-9 to 25-14, inclusive, to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of a committee of directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the members entitled to vote with respect to the subject matter thereof, or all of the directors, or all of the members of the committee of directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of Flandreau Santee Sioux Tribe under chapters 25-9 to 25-14, inclusive.

Section 25-10-7. Notice to Members of Meeting - Manner of Giving Notice. Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

Section 25-10-8. Articles or Bylaws as Limiting Right to Vote - Vote in Absence of Limitation Provision. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

Section 25-10-9. Voting Procedure - Proxy Votes - Voting By Mail. A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

Section 25-10-10. Cumulative Voting for Directors. The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cast the whole number of his votes for one candidate or distribute them upon two or more candidates, as he may prefer.

Section 25-10-11. Corporations Without Members Entitled to Vote - Powers of Directors. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

Section 25-10-12. Bylaw Provisions Governing Vote or Quorum - Quorum in Absence of Bylaw Provision - Majority Vote Required. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by chapters 25-9 to 25-14, inclusive, the articles of incorporation or the bylaws.

Section 25-10-13. Board of Directors - Qualifications of Directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

Section 25-10-14. Number of Directors - Bylaws as Governing - Increasing or Decreasing Number of Directors - Decrease as Not Affecting Term. The number of directors of a corporation shall not be less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of 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, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. 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.

Section 25-10-15. First Board of Directors - Term of Office. The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws.

Section 25-10-16. Election or Appointment of Directors - Term Office. Directors after the first board shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Section 25-10-17. Classes of Directors - Term of Office. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

Section 25-10-18. Removal of Directors. A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation. Section 25-

10-19. Vacancy on Board of Directors - Filling By Majority Vote of Remaining Directors - Term of Office. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

Section 25-10-20. Quorum of Directors - Provisions of Articles or Bylaws as Governing. 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 otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. 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 chapters 25-9 to 25-14, inclusive, the articles of incorporation or the bylaws.

Section 25-10-21. Directors' Meetings - Notice of Meetings - Waiver - Meetings by Teleconference. Meetings of the board of directors, regular or special, may be held either within or without this Reservation, and upon such notice as the bylaws may prescribe. Attendance of a director at any 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 notice of such meeting. Unless restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated by the board of directors may participate in a meeting of such board or committee by means of teleconference or similar communications equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by a board or committee member in a teleconference constitutes presence in person at a meeting.

Section 25-10-22. Committees of Directors - Authority of Committee - Responsibility of Board of Directors. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him by law. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be

designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present.

Section 25-10-23. Articles or Bylaws as Governing Vote of Directors. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the directors or members or any class of members than required by chapters 25-9 to 25-14, inclusive, the provisions of the articles of incorporation or bylaws shall control.

Section 25-10-24. Corporate Officers - Appointment and Term of Office - Ex Officio Members of Board of Directors. The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary. The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors. The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws. Unless the articles of incorporation or the bylaws so prescribe, officers need not be directors.

Section 25-10-25. Removal of Officers - Contract Rights Unaffected. Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer or agent shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 25-10-26. Notice to Members or Directors - Written Waiver. Whenever any notice is required to be given to any member or director of a corporation under the provisions of chapters 25-9 to 25-14, inclusive, or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 25-10-27. Indemnification of Corporate Agents for Liability From Good Faith Acts on Behalf of Corporation. A nonprofit corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative other than an action by or in the right of the corporation by reason of the fact that that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent or another corporation, limited liability company, partnership, joint venture, trust or other

enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with the action, suit or proceeding if that person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful.

Section 25-10-28. Definitions. Terms used in § 25-10-28 to 25-10-30, inclusive, mean: (1) "Nonprofit organization," any organization which is exempt from taxation pursuant to Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c) as amended; (2) "Volunteer," an individual performing services for a nonprofit organization or a nonprofit corporation, without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee or direct service volunteer.

Section 25-10-29. Immunity of Volunteers of Nonprofit Organizations. Any volunteer of a nonprofit organization or a nonprofit corporation, shall be immune from civil liability in any action brought in any court on this Reservation on the basis of any act or omission resulting in damage or injury if: (1) The individual was acting in good faith and within the scope of such individuals official functions and duties for the nonprofit organization or the nonprofit corporation; and (2) The damage or injury was not caused by gross negligence or willful and wanton misconduct by such individual.

Section 25-10-30. Person Not Immune Where Negligent Operation of Vehicle Caused Injury. No immunity provided in § 25-10-28 to 25-10-30, inclusive, extends to any person causing personal injury or wrongful death resulting from the negligent operation of a motor vehicle.

Chapter 25-11 Nonprofit Corporations: Records and Reports

Section 25-11-1. Requirement That Books and Records Be Kept - Particular Records - Place of Keeping - Stockholder List. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office a record of the names and addresses of its members entitled to vote.

Section 25-11-2. Inspection of Books or Records. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

Section 25-11-3. Shares of Stock Prohibited - Dividends and Profits Prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers.

Section 25-11-3.1. Directors Not Liable for Distribution in Good Faith Reliance on Financial Statements or Accountant's Report. A director of a nonprofit corporation shall not be liable for any unauthorized dividend or distribution of assets if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of the corporation having charge of his books of account, or stated in a written report by a certified public accountant failing to reflect the financial condition of the corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

Section 25-11-4. Compensation of Members, Directors or Officers - Distributions Upon Final Liquidation. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and may make distributions upon dissolution or final liquidation as permitted by chapters 25-12, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit.

Section 25-11-5. Loans to Directors or Officers - Liability for Assenting to Loan. No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

Section 25-11-6. Annual Report Required of Domestic Corporation - Contents - Form - Signature and Verification. Any domestic nonprofit corporation authorized to engage in business on this Reservation shall file, within the time prescribed by § 25-11-7 a report setting forth: (1) The name of the corporation; (2) The street address, or a statement that there is no street address, of the registered office of the corporation on this Reservation and the name of its registered agent at such address; (3) A brief statement of the nature of the affairs which the corporation is conducting; (4) The amount of property which the corporation may hold and the amount of property held; and (5) The names and respective addresses of the directors and officers of the corporation. The report shall be made on forms prescribed and furnished by the Secretary of Flandreau Santee Sioux Tribe and the information therein contained shall be given as of the date of the execution of the report. It shall be executed for the corporation by the chairman of the board of directors, by its president or by another of its officers. It shall be acknowledged by the officer executing the report. If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, the report shall be executed and acknowledged on behalf of the corporation by that fiduciary.

Section 25-11-7. Time of Filing Annual Report - Proof of Mailing. A report of a corporation shall be delivered to the Secretary of Flandreau Santee Sioux Tribe before the first day of the second month following the anniversary month of the corporation of each year. Proof to the satisfaction of the Secretary of Flandreau Santee Sioux Tribe that prior to the deadline date such report was deposited in the United States mail in a sealed

envelope, properly addressed, with postage prepaid, shall be deemed compliance with this requirement.

Section 25-11-8. Conforming Report Filed - Return for Correction - Penalties Waived if Returned Promptly. If the Secretary of the Flandreau Santee Sioux Tribe finds that a report filed pursuant to §

Section 25-11-7. Conforms to the Requirements of §25-11-6, the Secretary Shall File the Same. If the secretary finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections. If returned, the penalties prescribed for failure to file such report within the time provided shall not apply if the report complies with the requirements of §25-11-6 and returned to the secretary within thirty days from the date on which it was mailed to the corporation by the secretary.

Section 25-11-9. Penalty Assessed for Failure to File Report. Any domestic nonprofit corporation that fails or refuses to file its report within the time prescribed by § 25-11-7 to 25-11-8, inclusive, is subject to a penalty of twenty-five dollars to be assessed by the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-11-10. Delinquent Reports and Fees Required Before Acceptance of Current Report. Any corporation which fails to comply with the filing requirements of § 25-11-6, shall be required to file all delinquent reports and to pay the required filing fees before the Secretary of the Flandreau Santee Sioux Tribe may accept any additional reports.

Section 25-11-11. Administrative Dissolution. The Secretary of the Flandreau Santee Sioux Tribe may commence a proceeding under §25-11-11 .1 to administratively dissolve a corporation if:

- (1) The corporation does not pay within sixty days after they are due any fees or penalties imposed by chapters 25-9 to 25-14, inclusive, or other law;
- (2) The corporation fails to file any two successive reports required under §25-11-6 and 25-11-7;
- (3) The corporation is without a registered agent or registered office on this Reservation for sixty days or more;
- (4) The corporation does not notify the Secretary of Santee Sioux Tribe within sixty 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; or
- (5) The corporation's period of duration stated in its articles of incorporation expires.

Section 25-11-11.1. Notice of Dissolution - Time Limit for Corrections - Continued Existence - Authority of Registered Agent. If the Secretary of the Flandreau Santee Sioux Tribe determines that one or more grounds exist under §25-11-11 for dissolving a corporation, the secretary shall serve the corporation with written notice of his determination under § 25-9-41. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary that each ground determined by the secretary does not exist within sixty days after service of the notice is

perfected under § 25-9-41, the secretary shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary shall file the original of the certificate and serve a copy on the corporation under § 25-9-41. A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under chapter 25-12 and notify claimants under § 25-26-4 and 25-12-32. Administrative dissolution of a corporation does not terminate the authority of its registered agent.

Section 25-11-12. Petition for Reinstatement After Dissolution of Corporate Existence - Execution and Filing. Any corporation whose corporate existence has been revoked or dissolved may petition for reinstatement as a corporation organized under the Ordinances of the Flandreau Santee Sioux Tribe. Such petition for reinstatement shall be made upon forms prescribed and furnished by the Secretary of Flandreau Santee Sioux Tribe and the information therein contained shall be given as of the date of the execution of such petition. Such petition shall be executed for the corporation by the chairman of the board of directors, by its president, or by another of its officers or if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary. An original and one exact or conforming copy of the petition shall be acknowledged and filed with the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-11-12.1. Denial of Reinstatement - Appeal - Court Action. If the Secretary of the Flandreau Santee Sioux Tribe denies a corporation's petition for reinstatement following administrative dissolution, the secretary shall serve the corporation under §25-9-4 1 with a written notice that explains the reason or reasons for denial. The corporation may appeal the denial of reinstatement to the Tribal Court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary's certificate of dissolution, the corporation's application for reinstatement and the Secretary of Flandreau Santee Sioux Tribe's notice of denial. The court may order the secretary's to reinstate the dissolved corporation or may take other action the court considers appropriate. The court's final decision may be appealed in the same manner as in any other civil proceedings.

Section 25-11-13. Change of Name Required on Reinstatement. If the corporate name of any reinstated corporation is deceptively similar to the corporate name either reserved or registered pursuant to § 2 5-9-9 to 25-911, inclusive, or to a corporate name of any corporation to which a certificate of incorporation or certificate of authority has been granted, or to the name of any limited partnership certified or registered on this Reservation, such reinstated corporation shall be required to adopt another name.

Section 25-11-14. Conforming Petition for Reinstatement Filed - Certificate. If a petition for reinstatement is filed and complies with the law, upon payment of the fee as provided under §25-14-6, together with submission of the reports required under §25-1 1-6 and 25-11-7, the Secretary of the Flandreau Santee Sioux Tribe shall endorse the word "filed" on the original and the copy and the month, day and year of filing. He shall file

the original in his office and issue a certificate of reinstatement of corporation to which he shall affix the copy. The certificate of reinstatement of corporation, together with the copy of the petition for reinstatement, shall be returned to the applicants or their representatives.

Section 25-11-15. Information Required by Secretary of the Flandreau Santee Sioux Tribe Upon Sale, Transfer, or Merger of at Least Thirty Percent of Nonprofit Corporation Assets. Upon the sale, transfer, or merger of at least thirty percent of the assets of a nonprofit corporation, the following information shall, within sixty days of such sale, transfer, or merger, be submitted to the Secretary of the Flandreau Santee Sioux Tribe:

- (1) Name and address of the parties involved in the sale, transfer, or merger;
- (2) Terms and conditions of the sale, transfer, or merger;
- (3) Dollar value of the assets being sold, transferred, or merged, including an account of how the value was determined; and
- (4) An explanation of how the sale, transfer, or merger furthers the purpose of the nonprofit corporation. The information shall be submitted on forms provided by the secretary.

Chapter 25-12 Nonprofit Corporations: Dissolution and Liquidation

Section 25-12-1. Procedure for Dissolution. A corporation may dissolve and wind up its affairs in the manner provided by § 25-12-2 to 25-12-4, inclusive.

Section 25-12-2. Vote of Members - Meeting for Vote - Notice of Meeting - Contents of Notice - Two-Thirds Vote Required. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in chapter 25-10 for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy.

Section 25-12-3. Dissolution by Board of Directors in Corporation Without Members Entitled to Vote. Where there are no members, or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Section 25-12-4. Resolution to Dissolve - Cessation of Business Affairs - Notice of Proposed Dissolution to Creditors - Collection and Distribution of Assets. Upon the adoption of a resolution to dissolve by the members, or by the board of directors where

there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

Section 25-12-5. Manner of Distribution of Assets - Particular Assets - Remaining Assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (1) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor;
- (2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
- (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;
- (4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or of members, or provide for distribution to others;
- (5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in this chapter.

Section 25-12-6. Plan for Distribution of Assets - Adoption of Plan. A plan providing for the distribution of assets, not inconsistent with the provisions of chapters 25-9 to 25-14, inclusive, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the manner provided by § 25-12-7 and 25-12-8.

Section 25-12-7. Membership Vote on Plan - Meeting - Notice of Meeting - Two-Thirds Vote Required. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by chapter 25-10 for the giving of notice of meeting of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

Section 25-12-8. Adoption of Plan by Corporation Having No Members Entitled to Vote. Where there are no members, or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Section 25-12-9. Articles of Dissolution - Time for Adoption - Contents. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter, an original and one exact or conforming copy of articles of dissolution shall be executed and acknowledged by the chairman of its board of directors, by its president or by another of its officers or if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary, which statement shall set forth:

- (1) The name of the corporation;
- (2) If there are members entitled to vote thereon,
 - (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or
 - (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;
- (3) If there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office;
- (4) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
- (5) A copy of the plan of distribution, if any, as adopted by the corporation, or a statement that no plan was so adopted;
- (6) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter; and
- (7) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Section 25-12-10. Delivery of Articles to Secretary of the Flandreau Santee Sioux Tribe - Endorsement and Filing by Secretary of the Flandreau Santee Sioux Tribe - Issuance of Certificate of Dissolution. An original and one exact or conforming copy of articles of dissolution shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe. If the secretary finds that the articles of dissolution conform to law, when all fees have been paid as prescribed in chapters 25-14, he shall:

- (1) Endorse the word "filed" on the original and the copy and the month, day and year of filing
- (2) File the original in his office; and

(3) Issue a certificate of dissolution to which he shall affix the copy. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto, shall be returned to the representative of the dissolved corporation.

Section 25-12-11. Cessation of Corporate Existence - Exceptions. Upon the issuance of a certificate of dissolution pursuant to §25-12-10 the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter.

Section 25-12-12. Revocation of Dissolution Action - Procedure. A corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary of Flandreau Santee Sioux Tribe, revoke the action theretofore taken to dissolve the corporation, in the manner provided by § 25-12-13 and 25-12-14.

Section 25-12-13. Revocation of Dissolution Resolution - Meeting - Notice of Meeting - Two- Thirds Vote Required. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in chapter 25-10 for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

Section 25-12-14. Revocation in Corporation Having No Members Entitled to Vote. Where there are no members, or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Section 25-12-15. Effect of Adoption of Revocation Resolution. Upon the adoption of a resolution to revoke voluntary dissolution proceedings by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again conduct its affairs.

Section 25-12-16. Involuntary Dissolution by Court Decree - Action by Tribal Prosecutor - Grounds of Action. The provisions of §25-11-11 notwithstanding, a corporation maybe dissolved involuntarily by a decree of the Tribal Court in an action filed by the Tribal Prosecutor if it is established that:

- (1) The corporation procured its articles of incorporation through fraud; or
- (2) The corporation has continued to exceed or abuse the authority conferred upon it by law.

Section 25-12-17. Periodic Certification by Secretary of Flandreau Santee Sioux Tribe to Tribal Prosecutor of Non-complying Corporations - Notice to Corporation - Action by Tribal Prosecutor. The Secretary of the Flandreau Santee Sioux Tribe shall certify, from time to time, the names of all corporations which have given cause for dissolution as provided in this chapter, together with the facts pertinent thereto. Whenever the secretary shall certify the name of a corporation to the Tribal Prosecutor as having given any cause for dissolution, the secretary shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the Tribal Prosecutor shall file an action in the name of the Tribe against such corporation for its dissolution.

Section 25-12-18. Venue of Tribal Prosecutor's Action - Service of Process. Every action for the involuntary dissolution of a corporation shall be commenced by the Tribal Prosecutor in the Tribal Court. Summons shall issue and be served as in other civil actions.

Section 25-12-19. Service by Publication - Contents of Publication - Newspaper of Publication. If process in an action for the involuntary dissolution of a corporation is returned not found, the Tribal Prosecutor shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. If no newspaper is published in the county where the registered office of the corporation is situated, publication of such notice shall be made in some newspaper having general circulation in the community where such registered office is situated.

Section 25-12-20. Power of Court in Liquidation Proceedings - Actions by Member or Director. Tribal Court shall have full power to liquidate the assets and affairs of a corporation in an action by a member or director when it is made to appear:

- (1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or
- (2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
- (3) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two years to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
- (4) That the corporate assets are being misapplied or wasted; or
- (5) That the corporation is unable to carry out its purposes.

Section 25-12-21. Power of Tribal Court in Liquidation Proceedings - Action by Creditor. Tribal Courts shall have full power to liquidate the assets and affairs of a corporation in an action by a creditor:

- (1) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or
- (2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

Section 25-12-22. Power of Court in Liquidation Proceedings - Application by Corporation. Tribal Courts shall have full power to liquidate the assets and affairs of a corporation upon application by a corporation to have its dissolution continued under the supervision of the court.

Section 25-12-23. Power of Court in Liquidation Proceedings - Action by Tribal Prosecutor. Tribal Courts shall have full power to liquidate the assets and affairs of a corporation when an action has been filed by the Tribal Prosecutor to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Section 25-12-24. Venue of Actions. Proceedings under § 25-12-20 to 25-12-23, inclusive, shall be brought in the Tribal county.

Section 25-12-25. Proper Parties to Action. It shall not be necessary to make directors or members parties to any action or proceedings under § 25-12-20 to 25-12-23, inclusive, unless relief is sought against them personally.

Section 25-12-26. Preservation of Corporate Assets - Injunctions and Receivers. In proceedings to liquidate the assets and affairs of a corporation the Tribal Court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be required to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

Section 25-12-27. Appointment of Liquidating Receiver - Authority of Receiver - Order Appointing Receiver. After a hearing had upon such notice as the court may direct to be given to all parties to proceedings to liquidate the assets and affairs of a corporation and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

Section 25-12-28. Disposition of Assets Resulting From Sale of Corporate Property - Manner of Distribution - Disposition of Remaining Assets. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

- (1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
- (2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;
- (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation, pursuant to a plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;
- (4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
- (5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

Section 25-12-29. Expenses of Liquidation - Compensation of Receiver - Attorneys' Fees. The court in proceedings to liquidate the assets and affairs of a corporation shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

Section 25-12-30. Capacity of Receiver to Sue and Be Sued - Jurisdiction of Court. A receiver of a corporation appointed under the provisions of §25-12-26 or 25-12-27 shall have authority to sue and defend in Tribal Court in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

Section 25-12-31. Qualifications of Receiver - Bond. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business on this Reservation, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

Section 25-12-32. Claims of Creditors - Proof of Claim - Time for Filing - Failure to File Timely Proofs. In proceedings to liquidate the assets and affairs of a corporation the

Court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. Section 25-12-33. Discontinuance of Liquidation Proceedings - Redelivery of Assets to Corporation. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the Tribal Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Section 25-12-34. Decree of Involuntary Dissolution - Cessation of Corporate Existence. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Section 25-12-35. Copy of Decree Filed With Secretary of Flandreau Santee Sioux Tribe - Fee. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of the Flandreau Santee Sioux Tribe. No fee shall be charged by the secretary for the filing thereof.

Section 25-12-36. Disposition of Undistributable Assets - Unknown Claimants - Deposit With Tribal Treasurer for Subsequent Payment. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Tribal Treasurer and shall be paid over to such person or to his legal representative upon proof satisfactory to the Tribal Treasurer of his right thereto.

Section 25-12-37. Preexisting Rights and Claims Unaffected by Dissolution - Time for Assertion - Protection of Remedy. The dissolution of a corporation either

- (1) by the issuance of a certificate of dissolution by the Secretary of the Flandreau Santee Sioux Tribe, or
- (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this chapter, or

(3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

Section 25-12-38. Dissolution by Expiration of Period of Duration - Extension of Period of Duration. If a corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time within two years after the date of such dissolution so as to extend its period of duration. Such amendment shall be considered to be a petition for reinstatement under §25-11-12.

Chapter 25-13 Nonprofit Corporations: Foreign

Section 25-13-1. Certificate of Authority . Application - Contents - Forms - Execution. Any foreign corporation, in order to procure a certificate of authority to engage in business on this Reservation, shall make application to the Secretary of the Flandreau Santee Sioux Tribe, which application shall set forth:

- (1) The name of the corporation and the Indian Tribe, state or country under the laws of which it is incorporated;
- (2) The date of incorporation and the period of duration of the corporation;
- (3) The street address of the principal office of the corporation in the Indian Tribe, state or country under whose laws it is incorporated;
- (4) The street address, or a statement that there is no street address, of the proposed registered office of the corporation on this Reservation, the name of its proposed registered agent on this Reservation at such address and his written consent to the appointment;
- (5) The purpose or purposes of the corporation in engaging in business on this Reservation;
- (6) The names and respective addresses of the directors and officers of the corporation; and
- (7) Such additional information as may be necessary in order to enable the secretary to determine whether such corporation is entitled to a certificate of authority to engage in business on this Reservation. An original and one exact or conforming copy of the application shall be made on forms prescribed and furnished by the secretary and shall be executed and acknowledged by the chairman of the board of directors, by the corporation's president or by another of the corporation's officers.

Section 25-13-2. Forwarding Application to Secretary of Flandreau Santee Sioux Tribe. The original and the copy of the application for a certificate of authority shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe, together with a certificate of existence (or a document of similar import) duly acknowledged by the secretary or

other official having custody of corporate records in the Indian Tribe, state or country under whose laws it is incorporated.

Section 25-13-3. Approval by Secretary of Flandreau Santee Sioux Tribe -

Endorsement and Filing. If the Secretary of the Flandreau Santee Sioux Tribe finds that an application delivered to him pursuant to §25-13-2 conforms to law, when all fees have been paid as prescribed in chapters 25-14, the secretary shall:

- (1) Endorse the word “filed” on the original and the copy and the month, day and year of filing;
- (2) File in his office the original of the application and the certificate of existence or equivalent document; and
- (3) Issue a certificate of authority to conduct affairs on this Reservation to which he shall affix the copy. The certificate of authority, together with the copy of the application affixed thereto, shall be returned to the corporation or its representative.

Section 25-13-4. Issuance of Certificate of Authority - Authority Conferred by

Certificate. Upon the issuance of a certificate of authority by the Secretary of Flandreau Santee Sioux Tribe, the corporation shall be authorized to do or engage in any business on this Reservation for those purposes set forth in its application, subject, however, to the right of this Tribe to suspend or to revoke such authority as provided in this chapter.

Section 25-13-5. Circumstances Under Which Certificate May Not Be Denied - Difference Between Local and Foreign Law - Regulation of Internal Affairs of Corporation Prohibited.

A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the Ordinances of this Tribe, and nothing contained in chapters 25-9 to 25-14, inclusive, shall be construed to authorize this Tribe to regulate the organization or the internal affairs of such corporation.

Section 25-13-6. Certificate as Conferring No Greater Rights Than Those Enjoyed by Local Corporations.

A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued; and, except as otherwise provided in chapters 25-9 to 25-14, inclusive, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

Section 25-13-7. Corporate Name as Affecting Right to Certificate - Purpose

Indicated by Name. No certificate of authority shall be issued to a foreign corporation if the corporate name of such corporation shall 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.

Section 25-13-8. Name Similar To or Same as Other Corporation. No certificate of authority may be issued to any corporation unless its corporate name conforms to the requirements of chapter 25-9 pertaining to names of corporations. 25-13-9. Change of name to prohibited name - Suspension of certificate of authority. Whenever a foreign corporation which is authorized to conduct affairs on this Reservation shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter do or engage in any business on this Reservation until it has changed its name to a name which is available to it under the Ordinances of this Tribe.

Section 25-13-10. Certificate as Not Authorizing Acts Prohibited Locally. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct on this Reservation any affairs which a corporation organized under chapter 25-9 is prohibited from conducting.

Section 25-13-11. Certificate as Requisite for Doing Business. No foreign corporation shall have the right to do or engage in any business on this Reservation until it shall have procured a certificate of authority so to do from the Secretary of the Flandreau Santee Sioux Tribe.

Section 25-13-12. Failure to Obtain Certificate as Barring Suit Within Reservation. No foreign corporation which is doing or engaging in any business on this Reservation without a certificate of authority shall be permitted to maintain any action, suit or proceeding in Tribal Court until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in Tribal Court by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation on this Reservation, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

Section 25-13-13. Failure to Obtain Certificate as Not Barring Defense to Action Within Reservation. The failure of a foreign corporation to obtain a certificate of authority to do or engage in any business on this Reservation shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in Tribal Court.

Section 25-13-14. Liability for Doing Business on Reservation Without Certificate - Fees and Reports - Interest and Penalties - Action by Tribal Prosecutor. A foreign corporation which does or engages in any business on this Reservation without a certificate of authority shall be liable to this Tribe, for the years or parts thereof during which it did or engaged in any business on this Reservation without a certificate of authority, in an amount equal to all fees which would have been imposed by chapter 25-14 upon such corporation had it duly applied for and received a certificate of authority to do or engage in any business on this Reservation as required by this chapter and thereafter filed all reports required by this chapter and chapters 25-14, plus all interest and penalties imposed by this chapter or chapter 25-14 for failure to pay such fees. The

Tribal Prosecutor shall bring proceedings to recover all amounts due this Tribe under the provisions of this section.

Section 25-13-15. Circumstances Under Which New Certificate of Authority is Necessary - Change of Corporate Name - Additional Corporate Purposes - Application for New Certificate of Authority. Any foreign corporation authorized to do or engage in business on this Reservation shall procure an amended certificate of authority if it changes its corporate name or desires to pursue other or additional purposes than those set forth in its application for a certificate of authority by making application therefor to the Secretary of the Flandreau Santee Sioux Tribe. The requirements for the form and contents of such application, manner of its execution, filing of an original and one exact or conforming copy of the application with the secretary, issuance of an amended certificate of authority and effect thereof are the same as for an original application for a certificate of authority.

Section 25-13-16. Annual Reports by Foreign Corporations - Contents of Reports - Dates of Reports - Execution. Any foreign corporation authorized to engage in business on this Reservation, shall file, within the time prescribed by this chapter, an annual report setting forth:

- (1) The name of the corporation and the Indian Tribe, state or country under whose laws it is incorporated;
 - (2) The street address, or a statement that there is no street address, of the registered office of the corporation on this Reservation and the name of its registered agent at such address and the address of its principal office in the Indian Tribe, state or country under whose laws it is incorporated;
 - (3) A brief statement of the character of the affairs which the corporation is conducting on this Reservation; and
 - (4) The names and respective addresses of the directors and officers of the corporation.
- The annual report shall be made on forms prescribed and furnished by the Secretary of Flandreau Santee Sioux Tribe and the information therein contained shall be given as of the date of the execution of the report. It shall be executed and acknowledged by the chairman of the board, by the corporation's president or another of the corporation's officers or, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, it shall be executed and acknowledged on behalf of the corporation by that fiduciary.

Section 25-13-17. Delivery of Report to Secretary of Flandreau Santee Sioux Tribe - Time for Delivery - Mailing Before Date as Compliance. Such annual report of a foreign corporation shall be delivered to the Secretary of Flandreau Santee Sioux Tribe before the first day of the second month following the anniversary month of the corporation of each year, except that the first annual report of a foreign corporation shall be filed before the first day of the second month following the anniversary month of the corporation of the year next succeeding the calendar year in which its certificate of authority was issued by the Secretary of the Flandreau Santee Sioux Tribe. Proof to the satisfaction of the secretary that prior to the deadline date such report was deposited in

the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement.

Section 25-13-18. Approval of Proper Report - Return of Improper Report - Time for Correction. If the Secretary of the Flandreau Santee Sioux Tribe finds that a report delivered to him pursuant to §25-13-17 or 25-13-19 conforms to the requirements of this chapter, he shall file the same. If the secretary finds that it does not so conform, the secretary shall promptly return the same to the corporation for any necessary corrections, in which event the penalties prescribed in chapter 25-14 for failure to file such report within the time provided in §25-13-17 or 25-13-19 shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the secretary within thirty days from the date on which it was mailed to the corporation by the secretary.

Section 25-13-19. Reports by Religious Corporations - Request by Secretary of Flandreau Santee Sioux Tribe - Form and Contents - Time for Filing - Failure to File - Penalty. No foreign religious corporation need file an annual report as required by §25-13-16, unless such report be requested by the Secretary of the Flandreau Santee Sioux Tribe. If the secretary shall request a filing of such report by any foreign religious corporation such shall be made on forms prescribed by and furnished by the secretary, shall be executed in the manner as is required in any annual report as prescribed 25-13-16, and shall be returned and filed with the secretary within ninety days of such request. Any such corporation which fails to file an annual report within ninety days after having been requested so to do, shall be subject to a penalty of fifty dollars to be assessed by the secretary.

Section 25-13-20. Maintenance of Registered Office. Each foreign corporation authorized to do or engage in any business on this Reservation shall have and continuously maintain on this Reservation a registered office which may be, but need not be, the same as its principal office.

Section 25-13-21. Maintenance of Registered Agent - Address of Agent. Each foreign corporation authorized to do or engage in any business on this Reservation shall have and continuously maintain on this Reservation a registered agent, which agent may be either an individual resident on this Reservation whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to do or engage in any business on this Reservation, having an office identical with such registered office.

Section 25-13-22. Change of Registered Office or Agent - Statement to Secretary of Flandreau Santee Sioux Tribe — Contents of Statement. Any foreign corporation authorized to engage in business on this Reservation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of Flandreau Santee Sioux Tribe a statement setting forth:

(1) The name of the corporation;

- (2) The street address, or a statement that there is no street address, of its current registered office
- (3) If the address of its registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent;
- (5) If its registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment;
- (6) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and
- (7) That such change was authorized by resolution duly adopted by its board of directors. The statement shall be executed and acknowledged for the corporation by the chairman of the board of directors, by the corporation's president or by another of the corporation's officers or, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

Section 25-13-23. Filing of Statement by Secretary of Flandreau Santee Sioux Tribe - Effective Date of Change. If the Secretary of the Flandreau Santee Sioux Tribe finds that a statement delivered to him pursuant to §25-13-22 conforms to the provisions of this chapter, the secretary shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Section 25-13-24. Change of Business Address Within County - Statement to Secretary of Flandreau Santee Sioux Tribe - Contents. If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required by §25-13-22 except that it need be signed only by the registered agent and need not be responsive to subdivision §25-13-22 (5) or (7) and must recite that a copy of the statement has been mailed to each such corporation.

Section 25-13-25. Service of Process on Registered Agent. The registered agent appointed by a foreign corporation authorized to do or engage in any business on this Reservation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Section 25-13-26. Failure to Appoint Registered Agent - Service on Secretary of Flandreau Santee Sioux Tribe. Whenever a foreign corporation authorized to do or engage in any business on this Reservation shall fail to appoint or maintain a registered agent on this Reservation, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the Secretary of the Flandreau Santee Sioux Tribe shall be an agent of such corporation upon whom may be served any process, notice, or demand required or permitted by law to be served upon the corporation.

Section 25-13-27. Contract or Tort Within Reservation as Consent to Serve Secretary of Flandreau Santee Sioux Tribe. If a foreign corporation makes a contract with a resident of the Flandreau Santee Sioux Tribe to be performed in whole or in part by either party on this Reservation, or if such foreign corporation commits a tort in whole or on this Reservation against a resident of the Flandreau Santee Sioux Tribe, such acts shall be deemed to be doing business on this Reservation by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the Secretary of Flandreau Santee Sioux Tribe to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort. The making of the contract or the committing of the tort shall be deemed to be the agreement of the foreign corporation that any process against it which is so served upon the secretary shall be of the same legal force and effect as if served personally within the Flandreau Santee Sioux Tribe Reservation.

Section 25-13-28. Method of Serving Secretary of Flandreau Santee Sioux Tribe - Duties of Secretary of Flandreau Santee Sioux Tribe - Records. Service on the secretary of any process, notice, or demand pursuant to §25-13- 26 or 25- 13-27 shall be made by delivering to him, or to any clerk having charge of the corporation department of his office, an original and one exact or conforming copy of such process, notice or demand. If any such process, notice or demand is served on the secretary, the secretary shall forward the original by registered or certified mail, addressed to the corporation at its principal office in the Indian Tribe, state or country under whose laws it is incorporated. Any service on the secretary shall be returned in not less than thirty days. The secretary shall record all processes, notices and demands served upon him under this section and shall record the time of service and his action in response.

Section 25-13-29. Additional Methods of Service Unaffected. Nothing contained in § 25-13-25 to 25-13-28, inclusive, shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Section 25-13-30. Withdrawal of Foreign Corporation From Reservation - Certificate of Withdrawal - Application to Secretary of Flandreau Santee Sioux Tribe - Contents of Application. Any foreign corporation authorized to engage in business on this Reservation may withdraw from this Reservation after obtaining from the Secretary of the Flandreau Santee Sioux Tribe a certificate of withdrawal. To obtain a certificate of withdrawal, the foreign corporation shall deliver to the secretary an application for withdrawal, which shall set forth:

- (1) The name of the corporation and the state or country under whose laws it is incorporated;
- (2) That the corporation is not doing or engaging in any business on this Reservation;
- (3) That the corporation surrenders its authority to do or engage in any business on this Reservation;
- (4) That the corporation revokes the authority of its registered agent on this Reservation to accept service of process and consents that service of process in any action, suit or

proceeding based upon any cause of action arising on this Reservation during the time the corporation was authorized to conduct affairs on this Reservation may thereafter be made on such corporation by service thereof on the secretary; and

(5) A post office address to which the secretary may mail a copy of any process against the corporation that may be served on him. -An original and one exact or conforming copy of the application for withdrawal shall be made on forms prescribed and furnished by the secretary and shall be executed and acknowledged by the chairman of the board, by the corporation's president or by another of the corporation's officers, or, if the corporation is in the hands of a receiver, trustee or by other court-appointed fiduciary, by that fiduciary.

Section 25-13-31. Endorsement and Filing by Secretary of Flandreau Santee Sioux Tribe — Issuance of Certificate of Withdrawal. An original and one exact or conforming copy of the application for withdrawal shall be delivered to the Secretary of the Flandreau Santee Sioux Tribe. If the secretary finds that such application conforms to the provisions of this chapter, when all fees have been paid as prescribed in chapters 25-14, he shall:

- (1) Endorse the word "filed" on the original and the copy and the month, day and year of filing;
- (2) File the original in his office; and
- (3) Issue a certificate of withdrawal to which he shall affix the copy. The certificate of withdrawal, together with the copy of the application for withdrawal affixed, shall be returned to the corporation or its representative.

Section 25-13-32. Cessation of Authority to Conduct Local Business. Upon the issuance of a certificate of withdrawal pursuant to §25-13-31, the authority of the corporation to conduct affairs on this Reservation shall cease.

Section 25-13-33. Revocation of Certificate of Authority - Grounds for Revocation. The certificate of authority of a foreign corporation to do or engage in any business on this Reservation may be revoked by the secretary upon the conditions prescribed in §25-13-34 when:

- (1) The corporation has failed to file its annual report within the time required by this chapter, or has failed to pay any fees or penalties prescribed by this chapter or chapter 25-14 when they have become due and payable; or
- (2) The corporation has failed to appoint and maintain a registered agent on this Reservation as required by this chapter; or
- (3) The corporation has failed, after change of its registered agent, to file in the office of the Secretary of the Flandreau Santee Sioux Tribe a statement of such change as required by this chapter; or
- (4) The corporation has failed to file in the office of the secretary any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or
- (5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters 25-9 to 25-14, inclusive.

Section 25-13-34. Notice and Procedure for Revocation - Time for Notice - Corrective Action by Corporation. No certificate of authority of a foreign corporation shall be revoked by the Secretary of Flandreau Santee Sioux Tribe unless

- (1) He shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office on this Reservation, and
- (2) The corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement or change of registered agent, or file such articles of amendment or articles of merger, or correct such misrepresentation.

Section 25-13-35. Issuance and Filing of Certificate of Revocation - Notice to Corporation. Upon revoking any certificate of authority, the Secretary of Flandreau Santee Sioux Tribe shall:

- (1) Issue an original and one exact or conforming copy of a certificate of revocation;
- (2) File the original in his office; and
- (3) Mail to the corporation at its registered office on this Reservation a notice of revocation accompanied by the copy.

Section 25-13-36. Cessation of Authority To Do Business Locally. Upon the issuance of such certificate of revocation, the authority of the corporation to do or engage in any business on this Reservation shall cease.

Chapter 25-14 Nonprofit Corporations: Supervision

Section 25-14-1. General Powers of Secretary of Flandreau Santee Sioux Tribe. The Secretary of Flandreau Santee Sioux Tribe shall have the power and authority reasonably necessary to enable him to administer chapters 25-9 to 25-14, inclusive, efficiently and to perform the duties therein imposed upon him.

Section 25-14-2. Appeal From Actions of Secretary of Flandreau Santee Sioux Tribe - Notice of Disapproval by Secretary of Flandreau Santee Sioux Tribe - Time for Notice. If the Secretary of the Flandreau Santee Sioux Tribe shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by chapters 25-9 to 25-14, inclusive, to be approved by the secretary before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

Section 25-14-3. Appeal to Tribal Court - Venue - Petition and Supporting Documents - Trial de Novo. From disapproval of any articles or document described in §25-14-2, the person or corporation delivering the same to the Secretary of Flandreau Santee Sioux Tribe may appeal to the Tribal Court by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary; whereupon the matter shall be

tried de novo by the court, and the court shall either sustain the action of the secretary or direct him to take such action as the court may deem proper.

Section 25-14-4. Right of Foreign Corporation to Appeal Revocation of Certificate of Authority - Procedure for Appeal - Trial de Novo. If the Secretary of the Flandreau Santee Sioux Tribe shall revoke the certificate of authority to conduct affairs on this Reservation of any foreign corporation, pursuant to the provisions of chapters 25-13, such foreign corporations may, in the manner provided by §25-14-3, appeal to the Tribal Court for the county where the registered office of such corporation on this Reservation is situated, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs on this Reservation and a copy of the notice of revocation given by the secretary; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary or direct him to take such action as the court may deem proper.

Section 25-14-5. Appeal from Order of Tribal Court – Procedure. Appeals from all final orders and judgments entered by the Tribal Court under § 25-14-3 or 25-14-4 in review of any ruling or decision of the Secretary of the Flandreau Santee Sioux Tribe may be taken as in other civil actions.

Section 25-14-6. Fee of Secretary of Flandreau Santee Sioux Tribe – Particular Fees. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect for:

- (1) Filing articles of incorporation and issuing a certificate of incorporation, twenty-five dollars;
- (2) Filing articles of amendment and issuing a certificate, ten dollars;
- (3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ten dollars;
- (4) Filing a statement of change of address of registered office or change of registered agent, or both, five dollars;
- (5) Filing articles of dissolution, five dollars;
- (6) Filing an application of a foreign corporation for a certificate of authority to conduct business on this Reservation and issuing a certificate of authority, one hundred dollars;
- (7) Filing an application of foreign corporation for an amended certificate of authority to conduct affairs on this Reservation and issuing an amended certificate of authority, twenty dollars;
- (8) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars
- (9) Filing any other statement or report, including an annual report, of a foreign corporation, ten dollars;

- (10) Filing an annual report of a domestic nonprofit corporation under Chapter 25-11, ten dollars; and
- (11) Filing a petition for reinstatement and issuing a certificate of reinstatement, twenty-five dollars.

Section 25-14-7. Fee for Service of Process. The Secretary of the Flandreau Santee Sioux Tribe shall charge and collect, at the time of any service of process on the Secretary as resident agent of a corporation, twenty-five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

Section 25-14-8. Fee for Certified Copy. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect for furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar per page, and ten dollars for the certificate and affixing the seal thereto.

Section 25-14-8. Fee for Certified Copy. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect for furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar per page, and ten dollars for the certificate and affixing the seal thereto.

Section 25-14-9. Prima Facie Effect of Certificates of Secretary of Flandreau Santee Sioux Tribe - Admissibility. All certificates issued by the Secretary of Flandreau Santee Sioux Tribe in accordance with the provisions of chapters 25-9 to 25-14, inclusive, and all copies of documents filed in his office in accordance with the provisions of said chapters when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary under the great seal of this Tribe, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

Section 25-14-10. Failure of Foreign Corporation to File Annual Report - Penalty. Each foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by chapter 25-13 shall be subject to a penalty of fifty dollars to be assessed by the Secretary of Flandreau Santee Sioux Tribe.

Section 25-14-11. Interrogatories by Secretary of Flandreau Santee Sioux Tribe to Determine Compliance With Statutes. The Secretary of Flandreau Santee Sioux Tribe may propound to any corporation, domestic or foreign, subject to the provisions of chapters 25-9 to 25-14, inclusive, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of said chapters applicable to such corporations.

Section 25-14-12. Answer to Interrogatories - Time for Answer - Extension of Time - Proper Party to Answer. Interrogatories propounded pursuant to §25-14-11 shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of Flandreau Santee Sioux Tribe, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice-president, secretary or assistant secretary, or treasurer or assistant treasurer thereof.

Section 25-14-13. Withholding Filing of Documents Pending Answer - Certification of Certain Answers to Tribal Prosecutor. The Secretary of Flandreau Santee Sioux Tribe need not file any document to which interrogatories propounded pursuant to §25-14-11 relate until such interrogatories be answered as provided in §25-14-12, and not then if the answers thereto disclose that such document is not in conformity with the provisions of chapters 25-9 to 25-14, inclusive. The secretary shall certify to the Tribal Prosecutor, for such action as the Tribal Prosecutor may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of said chapters.

Section 25-14-14. Interrogatories and Answers as Confidential - Exception in Case of Criminal Proceedings. Interrogatories propounded by the Secretary of Flandreau Santee Sioux Tribe and the answers thereto shall not be open to public inspection nor shall the secretary disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this Tribe.

Section 25-14-15. Failure to Answer Interrogatories - Civil Fine. Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the Secretary of Flandreau Santee Sioux Tribe in accordance with the provisions of this chapter, is subject to a civil fine in any amount not exceeding five hundred dollars.

Section 25-14-16. Director or Officer Failing to Answer Interrogatories or Signing False Report - Civil fine. Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the Secretary of Flandreau Santee Sioux Tribe in accordance with the provisions of this chapter, or who signs any article, statement, report, application or other document filed with the secretary which is known to such officer or director to be false in any material respect, is subject to a civil fine in any amount not exceeding five hundred dollars.

Section 25-14-17. Forms Prescribed by Secretary of Flandreau Santee Sioux Tribe - Use Not Mandatory. All reports required by chapters 25-9 to 25-14, inclusive, to be filed in the office of the Secretary of Flandreau Santee Sioux Tribe shall be made on forms which shall be prescribed and furnished by the secretary. Forms for all other

documents to be filed in the office of the secretary shall be furnished by the secretary on request therefor, but the use thereof, unless otherwise specifically prescribed in said chapters, shall not be mandatory.

Chapter 25-15

Corporations: Fraud and Mismanagement

Section 25-15-1. Fraudulent Subscription Agreement - Misdemeanor. Any person:

- (1) Who signs the name of a fictitious person to a subscription for, or agreement to take stock in a corporation, existing or proposed; or
- (2) Who procures another to sign such subscription or agreement,
 - (a) Knowing that the other person does not have the means or does not intend in good faith to comply with all the terms thereof or
 - (b) Under an understanding or agreement that the terms of the subscription or agreement will not be complied with or enforced; is guilty of a misdemeanor.

Section 25-15-2. Fraudulent Deception of Public Officer in Connection With Issuance of Stock - Felony. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is guilty of a felony.

Section 25-15-3. Fraudulent Prospectus or Report - Felony. Any officer of a corporation existing under the Ordinances of this Tribe or transacting business here, or any person holding himself out as such an officer, who, knowingly and with intent to defraud any person or the public generally, subscribes, endorses, verifies or otherwise assents to the issuing or publishing of any report, prospectus or statement concerning the condition, business or prospects of the corporation, calculated to give to the shares of stock of such corporation either a greater or less apparent value than they really possess, is guilty of a felony.

Section 25-15-4. Receipt of Corporate Property Without Proper Accounting Entry as Theft. Any director, officer or agent of a corporation, who knowingly receives or possesses property of the corporation, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make or cause to be made a full and true entry thereof in the books or accounts of the corporation, is guilty of a theft.

Section 25-15-5. Fraudulent Section Corporate Insolvency - Participating Directors - Misdemeanor. Every insolvency of a corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe. In every case of a fraudulent insolvency of a corporation,

every director thereof who participated in such fraud, if no other punishment is prescribed therefor, is guilty of a misdemeanor.

Section 25-15-6. Fraudulent Mutilation or Falsification of Corporate Books as Felony. Any director, officer, agent or member of a corporation, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to the corporation, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in a book of accounts, or other record or document kept by the corporation, is guilty of a felony.

Section 25-15-7. Refusal to Permit Stockholder Access to Books - Misdemeanor. Any officer or agent of a corporation having or keeping an office within this Reservation, who has in his custody or control any book, paper, or document of the corporation, and who refuses to give to a stockholder or member of the corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

Section 25-15-8. Unauthorized Use of Another's Name in Corporate Publications - Misdemeanor. Any person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, a prospectus, circular or other advertisement or announcement of a corporation or joint stock association, existing or intended to be formed, with intent to permit it to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of the corporation or association, is guilty of a misdemeanor.

Section 25-15-9. Participation in False Report or Refusing to Make Report as Misdemeanor. Except as otherwise specially provided, any director, officer or agent of a corporation who knowingly concurs in making or publishing a written report, exhibit or statement of its affairs or pecuniary condition, containing a material statement which is false, or who intentionally refuses or neglects to make or deliver a written report, exhibit or statement required by law, is guilty of a misdemeanor.

Section 25-15-10. Director's Liability for Failure to Perform Duties - Misdemeanor. Any director of a corporation who intentionally does an act, as director, which is expressly forbidden by law, or intentionally omits to perform a duty expressly imposed upon him as director, by law, the punishment for which act or omission is not otherwise prescribed, is guilty of a misdemeanor.

Section 25-15-11. Director Deemed to Possess Knowledge. Every director of a corporation is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors, is a violation of this chapter.

Section 25-15-12. Presence of Director at Meeting as Concurrence - Written Dissent - Procedure. Every director of a corporation, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this chapter

occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors, or if absent from such meeting and the record of such violation appears on the record or minutes of the board of directors and he remains a director for six months thereafter without causing, or in writing requiring his dissent from such violation to be entered in the minutes of the directors.

Section 25-15-13. Definition “Director.” The term “director,” as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter, or known by law.

Section 25-15-14. Foreign Incorporation No Defense. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another state, government, or country, if it was one carrying on business, or keeping an officer therefor, within this Reservation.

Chapter 25-16 Limited Liability Companies

Section 25-16-1. Limited Liability Company - Definitions. Terms used in this chapter mean:

- (1) “Articles of organization,” the articles of organization filed with the Secretary of Flandreau Santee Sioux Tribe for the purpose of forming a limited liability company;
- (2) “Bankrupt,” bankrupt or debtor under the federal bankruptcy code of 1978, Title II of the United States Code, as amended, or an insolvent under any state insolvency act;
- (3) “Court,” any court having jurisdiction in the case;
- (4) “Foreign limited liability company,” any limited liability company organized under laws other than the Ordinances of this Tribe;
- (5) “Limited liability company,” or “company,” any limited liability company organized and existing under this chapter;
- (6) “Net contributions,” the sum of total agreed contributions under subdivisions 25-16-12 (5) and (6) less any return of those contributions to members pursuant to § 25-16-23.
- (7) “Operating agreement,” any valid written agreement of the members as to the affairs of a limited liability company and the conduct of its business. The operating agreement may contain any provisions for the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the law or the articles of organization;
- (8) “Person,” includes natural persons, partnerships, associations, cooperative corporations, limited liability companies, and corporations. For the purposes of this chapter, whenever the term person, is defined to include both corporation and partnership, it shall be deemed to include limited liability company;
- (9) “Real property,” includes land, any interest, leasehold or estate in land and any improvements on it.

Section 25-16-2. Identification as Limited Liability Company in the Name of the Company. The words, limited liability company, or the abbreviation L.L.C. shall be the last words of the name of every limited liability company formed under the provisions of this chapter and, in addition, the limited liability company name may not:

(1) Contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its articles of organization; or
(2) Be the same as, or deceptively similar to, the name of a limited liability company, corporation or limited partnership existing under the Ordinances of this Tribe or a foreign corporation authorized to transact business on this Reservation, or a name the exclusive right to which is, at the time, reserved in the manner provided under the Ordinances of this Tribe. Omission of the word "limited" or as abbreviated, "L.L.C." in the use of the name of the limited liability company shall render any person who participates in the omission, or knowingly acquiesces in it, liable for indebtedness, damage or liability occasioned by the omission. The identification "a limited liability company" or "L.L.C." shall appear after the name of the limited liability company on all correspondence, stationery, checks, invoices and any and all documents and papers executed by the limited liability company.

Section 25-16-3. Limited Liability Company - Reservation of Right of Use of Company Name - Transfer of Right. The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited liability company under this chapter and to adopt that name;
(2) Any domestic limited liability company or any foreign limited liability company registered on this Reservation which, in either case, intends to adopt that name;
(3) Any foreign limited liability company intending to register on this Reservation and adopt that name; and
(4) Any person intending to organize a foreign limited liability company and intending to have it registered on this Reservation and adopt that name. The reservation shall be made by filing with the Secretary of Flandreau Santee Sioux Tribe an application, executed by the applicant, to reserve a specified name. If the Secretary of Flandreau Santee Sioux Tribe finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty days after the expiration of the last one hundred twenty-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Section 25-16-4. Signing of Articles of Organization - Delivery to Secretary of Flandreau Santee Sioux Tribe. Two or more persons who shall be members upon the issuance of the certificate of organization may form a limited liability company by signing, verifying and delivering one original and one exact or conforming copy of the articles of organization for such limited liability company to the secretary.

Section 25-16-4.1. Membership - Number Requirements. Pursuant to this chapter, any limited liability company shall have two or more members. **Section 25-16-5. Purpose of Company.** A limited liability company may be organized under this chapter for any lawful purpose.

Section 25-16-6. Rights of Company. Each limited liability company organized and existing under this chapter may:

- (1) Sue and be sued, complain and defend, in its name;
- (2) Purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or an interest in it, wherever situated;
- (3) Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- (4) Lend money to and otherwise assist its members;
- (5) Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares or other interests in or obligations of other limited liability companies, domestic or foreign corporations, associations, general or limited partnerships or individuals, or direct or indirect obligations of the United States or of any government, Indian Tribe, state, territory, governmental district or municipality or of any instrumentality of it;
- (6) Make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises and income;
- (7) Lend money for its proper purposes, invest and reinvest its funds and take and hold real property and personal property for the payment of funds so loaned or invested;
- (8) Conduct its business, carry on its operations and have and exercise the powers granted by this chapter in any state, territory, Indian Tribe, district or possession of the United States, or in any foreign country;
- (9) Elect or appoint managers and agents of the limited liability company, and define their duties and fix their compensation;
- (10) Amend its articles of organization only by unanimous agreement of the members unless otherwise provided in the articles of organization;
- (11) Make, alter or amend operating agreements, not inconsistent with its articles of organization or with the Ordinances of this Tribe, for the administration and regulation of the affairs of the limited liability company. Such amendment shall be by unanimous agreement of the members unless otherwise provided in the articles of organization but such articles of organization may in no event allow amendment to the operating agreement on less than majority vote of the members;
- (12) Cease its activities and surrender its certificate of organization;
- (13) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized;
- (14) Become a member of a general partnership, limited partnership, joint venture, or similar association, or any other limited liability company.

Section 25-16-7. Registered Office and Registered Agent on Reservation Required.

Each limited liability company shall have, and continuously maintain on this Reservation, a registered office which may be, but need not be, the same as its place of business, and a registered agent, which agent may be either an individual resident on this Reservation whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business on this Reservation, having a business office identical with such registered office.

Section 25-16-8. Changing Registered Office or Agent - Resignation of Agent. A limited liability company may change its registered office or agent, or both, upon filing in the office of the Secretary of Flandreau Santee Sioux Tribe a statement setting forth:

- (1) The name of the limited liability company;
- (2) The address of its then registered office;
- (3) If the address of its registered office be changed, the address to which the registered office is to be changed;
- (4) The name of its then registered agent;
- (5) If its registered agent be changed, the name of its successor registered agent;
- (6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;
- (7) That the change was authorized by affirmative vote of a majority of the members of the limited liability company. The statement shall be verified by one or more of its managers if management of the limited liability company has been vested by the members in a manager or managers or if management of the limited liability company is retained by the members, then by any member and delivered to the Secretary of Flandreau Santee Sioux Tribe. If the Secretary of Flandreau Santee Sioux Tribe finds that the statement conforms to the provisions of this chapter, he shall file the statement in his office, and upon filing the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, is effective. Any registered agent of a limited liability company may resign as agent upon filing a written notice thereof, executed with the Secretary of Flandreau Santee Sioux Tribe, who shall forthwith mail a copy thereof to the limited liability company at its registered office by certified mail, return receipt requested. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of notice by the Secretary of Flandreau Santee Sioux Tribe.

Section 25-16-9. Time Limit to Appoint and Maintain Agent - Forfeiture of Rights and Privileges for Failure to Maintain or Properly Change Agent or Office or Failure to Pay Fee. If any limited liability company has failed for thirty days to appoint and maintain a registered agent on this Reservation, or has failed for thirty days after change of its registered office or registered agent to file in the office of the Secretary of Flandreau Santee Sioux Tribe a statement of the change, or has failed to pay the fee required by this chapter, the company shall be deemed to be transacting business within this Reservation without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made effective in the following manner. The Secretary of Flandreau Santee Sioux Tribe shall mail by certified mail, return receipt requested, notice of its failure to comply with aforesaid provisions. Unless compliance is made within thirty days of the delivery of notice, the limited

liability company shall be deemed defunct and to have forfeited its certificate of organization acquired under the Ordinances of this Tribe.

Section 25-16-10. Service of Process on Agent - Service on Secretary of Flandreau Santee Sioux Tribe in Absence of Agent. The registered agent so appointed by a limited liability company shall be an agent of the company upon whom any process, notice or demand required or permitted by law to be served upon the company may be served. If a limited liability company fails to appoint or maintain a registered agent on this Reservation, or whenever its registered agent cannot with reasonable diligence be found at the registered office, the Secretary of Flandreau Santee Sioux Tribe shall be an agent of the company upon whom any process, notice or demand may be served. Service on the Secretary of Flandreau Santee Sioux Tribe of any process, notice or demand shall be made by delivering to and leaving with him, or with any clerk of his office, duplicate copies of such process, notice or demand. If any such process, notice or demand is served on the Secretary of Flandreau Santee Sioux Tribe, he shall immediately cause one of the copies thereof to be forwarded by certified, return receipt requested, mail addressed to the limited liability company at its registered office. Any service so had on the Secretary of Flandreau Santee Sioux Tribe shall be returnable in not less than thirty days. The Secretary of Flandreau Santee Sioux Tribe shall keep a record of all processes, notices and demands served upon him under this section and shall record therein the time of such service in his action with reference thereto. Nothing in this chapter limits or affects 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 permitted by law.

Section 25-16-11. Records Required at Principal Place of Business. Each limited liability company shall keep in its principal place of business:

- (1) A current list of the full name and last known business address of each member;
- (2) A copy of the certificate of organization and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
- (3) Copies of the limited liability company's federal income tax returns, if any, for the three most recent years; and
- (4) Copies of any then effective operating agreement and of any financial statements of the limited liability company for the three most recent years. Records kept under this section are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours.

Section 25-16-12. Articles of Organization - Required Content. The articles of organization shall set forth:

- (1) The name of the limited liability company;
- (2) The period of its duration, which may not exceed thirty years from the date of filing with the Secretary of Flandreau Santee Sioux Tribe;
- (3) The purpose for which the limited liability company is organized;
- (4) The address of its principal place of business on this Reservation and the name and address of its registered agent on this Reservation together with the agents written consent to the appointment;

- (5) The total amount of cash and a description and agreed value of property or services initially or to be initially contributed;
- (6) The total additional contributions, if any, agreed to be made by all members and the times at which or events upon the happening of which they shall be made, including any consent or affirmative vote required for assessing the additional contributions;
- (7) If the limited liability company is to be managed by a manager or managers, the articles of organization shall so state and shall set out the names and addresses of such manager or managers who are to serve as managers until the first annual meeting of members or until their successors are elected and qualify. If the management of a limited liability company is reserved to the members, the names and addresses of the members shall be set out in the articles of organization;
- (8) Any other provision, not inconsistent with law, which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which under this chapter are required or permitted to be set out in the operating agreement of the limited liability company. It is not necessary to set out in the articles of organization any of the powers enumerated in this chapter.

Section 25-16-13. Filing Articles of Organization - Certificate Issued. The original and one exact or conforming copy of the articles of organization shall be delivered to the Secretary of Flandreau Santee Sioux Tribe. If the Secretary of Flandreau Santee Sioux Tribe finds that the articles of organization conform to law, he shall, when all fees have been paid as prescribed:

- (1) Endorse both the original and the exact or conforming copy the word "Filed" and the month, date and year of the filing;
- (2) File the original in his office;
- (3) Issue a certificate of organization to which he shall affix the exact or conforming copy. The certificate of organization, together with the exact or conforming copy of the articles of organization affixed to it by the Secretary of Flandreau Santee Sioux Tribe, shall be returned to the principal office of the limited liability company or to its representative.

Section 25-16-14. Certificate of Organization. Upon the issuance of the certificate of organization, the limited liability company shall be considered organized, and such certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized under this chapter, except as against this Tribe in a proceeding to cancel or revoke the certificate of organization or for involuntary dissolution of the limited liability company. No limited company may transact business or incur indebtedness, except that which is incidental to its organization, or except for obtaining subscriptions for or payment of contributions, until the Secretary of Flandreau Santee Sioux Tribe has issued a certificate of organization.

Section 25-16-15. Articles - Amendment - When Required. The articles of organization shall be amended when:

- (1) There is a change in the name of the limited liability company;
- (2) There is a false or erroneous statement in the articles of organization;

- (3) There is a change in the time as stated in the articles of organization;
- (4) There is an increase in net contributions of the members such that it exceeds the total agreed contributions set forth in the most recent articles of organization or the most recent amendment thereto;
- (5) The members desire to make a change in any other statement in the articles of organization in order that it shall accurately represent the agreement between them.

Section 25-16-15.1. Amendment to Articles of Organization - Contents - Changes Set Forth for Contributions. An amendment to the articles of organization shall be clearly identified therein and the caption of the document containing the amendment shall contain the word “amendment” or “amendments.”

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- (1) Endorse both the original and the exact or conforming copy the word “Filed” and the month, date and year of the filing;
- (2) File the original in his office;
- (3) Issue a certificate of organization to which he shall affix the exact or conforming copy. The certificate of organization, together with the exact or conforming copy of the articles of organization affixed to it by the Secretary of Flandreau Santee Sioux Tribe, shall be returned to the principal office of the limited liability company or to its representative.

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- (1) There is a change in the name of the limited liability company;
- (2) There is a false or erroneous statement in the articles of organization;
- (3) There is a change in the time as stated in the articles of organization;
- (4) There is an increase in net contributions of the members such that it exceeds the total agreed contributions set forth in the most recent articles of organization or the most recent amendment thereto;

(5) The members desire to make a change in any other statement in the articles of organization in order that it shall accurately represent the agreement between them.

Section 25-16-15.1. Amendment to Articles of Organization - Contents - Changes Set Forth for Contributions. An amendment to the articles of organization shall be clearly identified therein and the caption of the document containing the amendment shall contain the word “amendment” or “amendments.” An amendment to the articles of organization shall be acknowledged and shall set forth:

- (1) The name of the limited liability company;
- (2) The amendment adopted; and
- (3) The date of the adoption of the amendment by the members or by the managers as provided in the articles of organization or operating agreement of the limited liability company. If an amendment affects a change in the amount of cash or property agreed to be contributed, the change shall be reflected in the amendment.

Section 25-16-1 5.2. Amendment - Filing - Conformance Prescribed by Secretary of Flandreau Santee Sioux Tribe - Endorsement - Amended Certificate. The original and one exact or conforming copy of the amendment to the articles of organization shall be delivered to the Secretary of Flandreau Santee Sioux Tribe. If the Secretary of Flandreau Santee Sioux Tribe finds the amendments conform to law, the Secretary of Flandreau Santee Sioux Tribe shall, when all fees have been paid as prescribed:

- (1) Endorse both the original and the exact or conforming copy the word “Filed” and the month, date, and year of the filing;
- (2) File the original in the Secretary of Flandreau Santee Sioux Tribe’s office;
- (3) Issue an amended certificate of organization to which the Secretary of Flandreau Santee Sioux Tribe shall affix the exact or conforming copy. The amended certificate of organization, together with the exact or conforming copy of the amended articles of organization affixed to it by the Secretary of Flandreau Santee Sioux Tribe shall be returned to the principal office of the limited liability company or to its representative.

Section 25-16-16. Management of Company - Provisions in Articles of Organization - Operating Agreement. Management of the limited liability company shall be vested in its members in proportion to their contribution to the capital of the limited liability company, as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members unless otherwise provided in the articles of organization. However, if provision is made for it in the articles of organization, management of the limited liability company may be vested in a manager or managers who shall be elected by the members in the manner prescribed by the operating agreement of the limited liability company. If the articles of organization provide for the management of the limited liability company by a manager or managers, they shall be elected annually by the members in a manner provided in the operating agreement. The manager or managers shall also hold the offices and have the responsibilities accorded to them by the members and set out in the operating agreement of the limited liability company.

Section 25-16-17. Liability of Members and Managers. Neither the members of a limited liability company nor the managers of a limited liability company managed by a

manager or managers are liable under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company.

Section 25-16-18. Contracting Debt Only by Managers or Members. Except as otherwise provided in this chapter, no debt may be contracted or liability incurred by or on behalf of a limited liability company, except by one or more of its managers if management of the limited liability company has been vested by the members in a manager or managers or, if management of the limited liability company is retained by the members, then by any member.

Section 25-16-19. Contributions to Capital by Member. The contributions to capital of a member to the limited liability company may consist of cash or property or services rendered but neither promissory notes nor future services shall constitute the contribution of any member.

Section 25-16-20. Conveyance of Real and Personal Property - Instruments and Documents Binding. Real and personal property owned or purchased by a limited liability company shall be held and owned, and conveyance made, in the limited liability company name. Instruments and documents providing for the acquisition, mortgage or disposition of property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more managers if management of the limited liability company has been vested by the members in a manager or managers or, if management of the limited liability company is retained by the members, then by any member.

Section 25-16-21. Interest of Member as Constituting Personal Estate - Transfer or Assignment by Unanimous Written Consent. The interest of all members in a limited liability company constitutes the personal estate of the member and may be transferred or assigned as provided in the operating agreement. However, if all of the other members of the limited liability company other than the member proposing to dispose of his interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest has no right to participate in the management of the business and affairs of the limited liability company or to become a member. The transferee is only entitled to receive the share of profits or other compensation by way of income and the return of contributions, to which that member would otherwise be entitled.

Section 25-16-22. Distribution of Profits. The limited liability company may, from time to time, divide the profits of its business and distribute the same to the members of the limited liability company upon the basis stipulated in the operating agreement if, after distribution is made, the assets of the limited liability company are in excess of all liabilities of the limited liability company except liabilities to members on account of their contributions.

Section 25-16-23. Return of Member Contribution. No member may receive out of limited liability company property any part of his contribution to capital until:

- (1) All liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or there remains property of the limited liability company sufficient to pay them;
- (2) The consent of all members is had, unless the return of the contribution to capital may be rightfully demanded as provided in this chapter;
- (3) The articles of organization are canceled or so amended as to set out the withdrawal or reduction. Subject to the provisions of this section, a member may rightfully demand the return of his contribution:
 - (1) On the dissolution of the limited liability company; or
 - (2) After the member has given all other members of the limited liability company six months prior notice in writing if no time is specified in the articles of organization for the dissolution of the limited liability company.

Section 25-16-24. Liability of Member to Company. A member is liable to the limited liability company:

- (1) For the difference between his contributions to capital as actually made and that stated in the articles of organization as having been made; and
- (2) For any unpaid contribution to capital which he agreed in the articles of organization to make in the future at the time and on the conditions stated in the articles of organization. A member holds as trustee for the limited liability company:
 - (1) Specific property stated in the articles of organization as contributed by such member, but which was not contributed or which has been wrongfully or erroneously returned; and
 - (2) Money or other property wrongfully paid or conveyed to such member on account of his contribution. The liabilities of a member as set out in this section can be waived or compromised only by the consent of all members; but a waiver or compromise does not affect the right of a creditor of the limited liability company who extended credit or whose claim arose after the filing and before a cancellation or amendment of the articles of organization, to enforce the liabilities. If a contributor has rightfully received the return in whole or in part of the capital of his contribution, the contributor is nevertheless liable to the limited liability company for any sum, not in excess of the return with interest, necessary to discharge its liability to all creditors of the limited liability company who extended credit or whose claims arose before the return.

Section 25-16-25. Indemnification of a Member or Manager. The limited liability company may indemnify a member or manager or former member or manager of the limited liability company against expenses actually and reasonably incurred by him in connection with the defense of an action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such member or manager, except in relation to matters as to which he may be adjudged in the action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; and to make any other indemnification that is authorized by the articles of organization or by an article of the operating agreement or resolution adopted by the members after notice.

Section 25-16-26. Liability Action Without Authority. Any person who assumes to act as a limited liability company without authority to do so is jointly and severally liable for all debts and liabilities.

Section 25-16-27. Right to Receive Cash in Return for Contribution. In the absence of a statement in the articles of organization to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution to capital.

Section 25-16-28. Dissolution - Termination Upon Winding Up Affairs. On dissolution the limited liability company is not terminated, but continues until the winding up of the limited liability company's affairs are completed.

Section 25-16-29. Dissolution Upon Occurrence of Certain Events. A limited liability company organized under this chapter shall be dissolved upon the occurrence of any of the following events:

- (1) If the period fixed for the duration of the limited liability company expires;
- (2) By the unanimous written agreement of all members;
- (3) Upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of all the remaining members under a right to do so stated in the operating agreement of the limited liability company; or
- (4) If there ceases to exist at least two members of the limited liability company.

Section 25-16-30. Dissolution of Company by Member. A member of a limited liability company may have the limited liability company dissolved and its affairs wound up if:

- (1) The member rightfully but unsuccessfully has demanded the return of his contribution;
- or
- (2) The other liabilities of the limited liability company have not been paid, or the limited liability company property is insufficient for their payment and the member would otherwise be entitled to the return of his contribution.

Section 25-16-31. Delivery of Articles of Dissolution to Secretary of Flandreau Santee Sioux Tribe - Content. As soon as possible after dissolution, the limited liability company shall deliver to the Secretary of Flandreau Santee Sioux Tribe for filing, one original and one exact or conforming copy articles of dissolution. The articles of dissolution shall be executed by one or more of its managers if management of the limited liability company has been vested by the members in a manager or managers or, if management of the limited liability company is retained by the members, then by any member or, if the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary. The articles shall be acknowledged and shall set forth:

- (1) The name of the limited liability company;
- (2) The date and event causing dissolution; and

(3) If dissolution was caused by unanimous consent of the members a list of the members of the limited liability company.

Section 25-16-32. Order of Payments After Dissolution - Assets Proportioned Among Members. In settling accounts after dissolution, the liabilities of the limited liability company are entitled to payment in the following order:

- (1) Those to creditors, in the order of priority as provided by law, except those to members of the limited liability company on account of their contributions;
- (2) Those to members of the limited liability company in respect to their share of the profits and other compensation by way of income on their contributions; and
- (3) Those to members of the limited liability company in respect to their contributions to capital. Subject to any statement in the operating agreement, members share in the limited liability company assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of the claims.

Section 25-16-33. Derivation Action by Member. A member may bring a derivative action in the right of a limited liability company to recover a judgment in its favor if members or managers with authority b do so have refused to bring the action or if an effort to cause those members or managers to bring the action is not likely to succeed.

Section 25-16-34. Membership Status of Plaintiff Derivative Action. In a derivative action, the plaintiff shall be a member at the time of bringing the action and shall have been a member at the time of the transaction of which he complains or his status as a member shall have devolved upon him by operation of law or pursuant to the terms of the articles of organization or an operating agreement from a person who was a member at the time of the transaction.

Section 25-16-35. Expenses and Attorney's Fees in Successful Derivative Action. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of those proceeds received by him.

Section 25-16-36. Member as Proper Party to Proceedings By or Against Company. A member of a limited liability company is not a proper party to proceedings by or against a limited liability company except that a Tribal Court may enforce an operating agreement as between members by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances including but not limited to ordering dissolution of the limited liability company.

Section 25-16-37. Waiver of Notice Equivalent to Notice. If, under the provisions of this chapter or under the provisions of the articles of organization or operating agreement of a limited liability company, notice is required to be given to a member or to a manager of a limited liability company having a manager or managers, a waiver in writing by the

person or persons entitled to the notice, whether before or after the time stated in it, is equivalent to the giving of notice.

Section 25-16-38. Merger or Consolidation of Limited Liability Companies. Any one or more limited liability companies may merge or consolidate with or into any one or more limited liability companies, limited partnerships or corporations. Any one or more limited partnerships or corporations may merge or consolidate with or into any one or more limited liability companies.

Section 25-16-39. Written Plan of Merger or Consolidation - Contents. Each constituent entity shall enter into a written plan of merger or consolidation, which shall be approved in accordance with §25-16-41. The plan of merger or consolidation shall set forth:

- (1) The name of each limited liability company, corporation and limited partnership which is a constituent entity in the merger or consolidation and the name of the surviving entity into which each other constituent entity proposes to merge or the new entity into which each constituent entity proposes to consolidate;
- (2) The terms and conditions of the proposed merger or consolidation;
- (3) The manner and basis of converting the interests in each limited liability company, the shares of stock or other interests in each corporation and the interests in each limited partnership that is a constituent entity in the merger or consolidation into interest, shares or other securities or obligations, as the case may be, of the surviving entity or the new entity, or of any other limited liability company, corporation, limited partnership or other entity, or, in whole or in part, into cash or other property;
- (4) In the case of a merger, such amendments to the articles of organization of a limited liability company, articles or certificate of incorporation of a corporation or certificate of limited partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired;
- (5) In the case of a consolidation, all of the statements required to be set forth in articles of organization of any new entity that is limited liability company, articles of certificate of incorporation of any new entity that is a corporation, or certificate of limited partnership of any new entity that is a limited partnership, as the case may be; and
- (6) Such other provisions relating to the proposed merger or consolidation as are deemed necessary or desirable.

Section 25-16-40. Approval of Plan of Merger or Consolidation – Abandonment of Plan. A proposed plan of merger or consolidation complying with the requirements of § 25-16- 39 shall be approved in the manner provided by this Section:

- (1) A limited liability company party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved by the unanimous consent of the members, unless the operating;
- (2) A corporation party to a proposed merger or consolidation shall have the plan of merger authorized and approved in the manner and by the vote required by its articles of incorporation and in accordance with the corporate Ordinance of this Tribe.

After a merger or consolidation is authorized, unless the plan of merger or consolidation provides otherwise, and at any time before articles of merger or consolidation as provided for in § 25-16-41 are filed, the plan of merger or consolidation may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or consolidation or, if none is set forth, as follows:

- (1) By the unanimous consent of the members of each limited liability company that is a constituent entity, unless the operating agreement of any such limited liability company provides otherwise;
- (2) By the vote of the board of directors of any corporation that is a constituent entity;
- (3) By the partners of any limited partnership that is a constituent entity in accordance with its partnership agreement and applicable partnership law.

Section 25-16-41. Filing Articles of Merger or Consolidation – Effective Date. After a plan of merger or consolidation is approved as provided in § 25-16-40, the surviving entity or the new entity shall deliver to the Secretary of Flandreau Santee Sioux Tribe for filing, articles of merger or consolidation duly executed by each constituent entity setting forth:

- (1) The name of each constituent entity;
- (2) The plan of merger or consolidation;
- (3) The effective date of the merger or consolidation if later than the date of filing of the articles of merger or consolidation;
- (4) The name of the surviving entity or the new entity; and
- (5) A statement that the plan of merger was duly authorized and approved by each constituent entity in accordance with § 25-16-40. A merger or consolidation takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or the date set forth in the plan of merger or consolidation. The original and one or more signed, photocopies or conformed copies of the articles of merger or consolidation shall be delivered to the department, who, after determining that such documents appear in all respects conform to the requirements of this article, shall file the original articles of merger or consolidation and endorse on each additional copy delivered the word “Filed” with the applicable date and return such additional copies to the surviving entity or the new entity or their representative.

Section 25-16-42. Effect of Merger or Consolidation. Consummation of a merger or consolidation has the effects provided in this Section;

- (1) The constituent entities party to the plan of merger or consolidation shall be a single entity, which, in the case of a merger, shall be the entity designated in the plan of merger as the surviving entity, and, in the case of a consolidation, shall be the new entity provided for in the plan of consolidation;
- (2) The separate existence of each constituent entity party to the plan of merger or consolidation, except the surviving entity or the new entity, shall cease;

- (3) The surviving or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities, powers and franchises of a public as well as private nature of each constituent entity and is subject to all the restrictions, disabilities and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities and duties are applicable to the form of existence of the surviving entity or the new entity;
- (4) All property, real, personal and mixed, and all debts due on whatever account, including promises to make capital contribution and subscriptions for shares, and all other choices in action, and all other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity or the new entity without further act or deed;
- (5) The title to all real estate and any interest therein, vested in any such constituent entity may not revert or be in any way impaired by reason of such merger or consolidation;
- (6) The surviving entity or the new entity shall thenceforth be responsible and liable for all liabilities and obligations of each of the constituent entities so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger or consolidation had not taken place, or the surviving entity or the new entity may be substituted in the action;
- (7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation;
- (8) In the case of a merger, depending upon whether the surviving entity or the new entity is a limited liability company, a corporation or a limited partnership, the articles of organization of the limited liability company, articles or certificate of incorporation of the corporation, or certificate of limited partnership of the limited partnership, as the case may be, shall be amended to the extent provided in the articles of merger;
- (9) In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of organization, articles or certificate of incorporation, or certificate of limited partnership, as the case may be, of the new entity, shall be deemed to be the original articles organization, articles or certificate of incorporation, or certificate of limited partnership of the new entity;
- (10) The membership or other interests in a limited liability company, shares or other interests in a corporation, partnership or other interests in a limited partnership that is a constituent entity, as the case may be, that are to be converted or exchanged into interest, shares or other securities, cash, obligation or other property under the terms of the articles of merger or consolidation are so converted, and the former holders thereof are entitled only to the rights provided in the articles of merger or consolidation or the rights otherwise provided by law; and
- (11) Nothing in this Chapter abridges or impairs any dissenter's or appraisal rights that may otherwise be available to the members or shareholders or other holders of an interest in any constituent entity.

Section 25-16-43. Merger with Foreign Entity. Any one or more limited liability companies of this Tribe may merge or consolidate with or into one or more foreign limited liability companies, foreign corporations or foreign limited partnerships, or any one or more foreign limited liability companies, foreign corporations or foreign limited partnerships may merge or consolidate with or into any one or more limited liability companies of this Reservation, if:

- (1) The merger or consolidation is permitted by the law of the state or jurisdiction under whose laws each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger or consolidation;
- (2) The foreign constituent entity complies with § 25-16-42 if it is the surviving entity or the new entity; and
- (3) Each domestic constituent entity complies with the applicable provisions of this Chapter, and, if it is the surviving entity or the new entity, with § 25-16-42.

Section 25-16-44. Service of Process Once Merger Takes Effect. Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity or the new entity is to be governed by the laws of any state other than the Ordinances of this Reservation or by the laws of the District of Columbia or of any foreign country, then the surviving entity or the new entity shall agree 25:

- (1) That it may be served with process on this Reservation in any proceeding for enforcement of any obligation of any constituent entity party to the merger or consolidation that was organized under the Ordinances of this Tribe, as well as for enforcement of any obligation of the surviving entity or the new entity arising from the merger or consolidation;
- (2) To irrevocably appoint the department as its agent for service of process in any such proceeding, and the surviving entity or the new entity shall specify the address to which a copy of the process shall be mailed to it by the department. The effect of such merger or consolidation shall be as provided in § 25-16-42, except insofar as the laws of such other jurisdiction provide otherwise.

Section 25-16-45. Subjection to Laws of Jurisdiction Under Which Organized.

Subject to the Constitution of this Tribe, the laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members, and a foreign limited liability company may not be denied a certificate of authority to transact business in this Tribe by reason of any difference between those laws and the Ordinances of this Tribe.

Section 25-16-46. Name of Foreign Company. A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic

limited liability company, whether or not such name is the name under which it is authorized in its jurisdiction of organization.

Section 25-16-47. Registration of Foreign Company Name. Any limited liability company organized and existing under laws other than the Ordinances of this Tribe may register its company name pursuant to the provisions of the Chapter, if such name would be available to a domestic limited liability company pursuant to this Chapter. Such registration shall be made by delivering to the Secretary of Flandreau Santee Sioux Tribe an application for registration executed by an officer of the limited liability company, setting forth:

- (1) The name of such limited liability company;
- (2) The jurisdiction under which the laws of which it is organized;
- (3) The date of its organization;
- (4) A statement that it is carrying on or doing business and a brief statement of the business in which it is engaged; and
- (5) A certificate stating that the company is in good standing under the laws of the jurisdiction wherein it is organized, executed by the Secretary of Flandreau Santee Sioux Tribe of such jurisdiction or by such other official as may have custody of the records pertaining to limited liability companies.

Section 25-16-48. Certificate of Authority for Foreign Company – Content of Application. Before transacting business on this Reservation, a foreign limited liability company obtain a certificate of authority. An applicant for such a certificate shall pay a filing fee in an amount determined by the Secretary of Flandreau Santee Sioux Tribe, and shall submit to the Secretary of Flandreau Santee Sioux Tribe, one original and one exact or conforming copy of an application executed by a manager, member or other authorized agent and setting forth:

- (1) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business on this Reservation;
- (2) The jurisdiction and date of its formation;
- (3) The name and business address of the proposed registered agent on this Reservation, which agent shall be an individual resident on this Reservation, a domestic corporation or a foreign corporation having a place of business in and authorized to do business on this Reservation;
- (4) The address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal place of business of the foreign limited liability company;
- (5) Such additional information as may be necessary or appropriate in order to enable the Secretary of Flandreau Santee Sioux Tribe to determine whether such limited liability company is entitled to transact business on this Reservation.

Section 25-16-49. Acceptance of Application. If the Secretary of Flandreau Santee Sioux Tribe finds that an application or amended application for a certificate of authority conforms to law and all requisite fees have been paid, he shall:

- (1) Endorse on the application or the amended application the work “Fled’ and the date of the filing thereof
- (2) File in his office the original of the application or the amended application ;
and
- (3) Return the exact or conforming copy of the application or the amended application to the person who filed it or to his representative with a certificate of authority issued by the Secretary of Flandreau Santee Sioux Tribe.

Section 25-16-50. Amending Foreign Company’s Application. If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, including, but not limited to, a change in the name or address of the registered agent required to be maintained by section, the foreign limited liability company shall promptly submit to the office of the Secretary of Flandreau Santee Sioux Tribe, in duplicate, an amended application for a certificate of authority, executed by a manager, member or other authorized agent correcting such statement.

Section 25-16-51. Responsibility of Foreign Company. A foreign limited liability company authorized to transact business on this Reservation shall:

- (1) Appoint and continuously maintain a registered agent in the same manner as provided for domestic companies in this Chapter; and
- (2) File amendments to its certificate of authority in the same manner as required of domestic companies for filing amendments to articles of organization and report upon any change in the name or business address of its registered agent in the same manner as provided in this Chapter.

Section 25-16-52. Foreign Company – Revocation of Certificate – Requirements – Notice. The certificate of authority of a foreign limited liability company to transact business on this Reservation may be revoked by the Secretary of Flandreau Santee Sioux Tribe upon the failure of the foreign limited company to:

- (1) Appoint and maintain a registered agent as required by this Chapter;
- (2) File a report upon any change in the name or business address of the registered agent;
- (3) File in the office of the Secretary of Flandreau Santee Sioux Tribe any amendment to its application for a certificate of authority as specified by this Chapter;
- (4) File amendments to its certificate of authority as provided in this Chapter. The Secretary of Flandreau Santee Sioux Tribe shall mail by certified or registered mail a notice of the foreign limited liability company’s failure to comply with these provisions. Unless compliance is made within thirty days of the date of mailing of notice, the foreign limited company shall be deemed defunct and to have forfeited its certificate of authority and registration to do business on this Reservation acquired under the laws.

Section 25-16-53. Foreign Company – Withdrawal – Requirements. A foreign limited liability company authorize to transact business on this Reservation may withdraw from this Reservation upon procuring from the Secretary of Flandreau Santee Sioux Tribe a certificate of withdrawal. In order to procure such certificate, the foreign limited liability company shall deliver to the Secretary of Flandreau Santee Sioux Tribe an application for withdrawal, which shall set forth:

- (1) The name of the limited liability company and the state or country under the laws of which it is incorporated;
- (2) That the limited liability company is not transacting business on this Reservation;
- (3) That the limited liability company surrenders its authority to transact business on this Reservation;
- (4) That the limited liability company revokes the authority of its registered agent on this Reservation to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising on this Reservation during the time the limited liability company was authorized to transact business on this Reservation may thereafter be made on such limited liability company by service thereof upon the Secretary of Flandreau Santee Sioux Tribe;
- (5) A post office address to which a person may mail a copy of any process against the limited liability company as prescribed in this Chapter;
- (6) Such additional information as is necessary or appropriate in order to enable the Secretary of Flandreau Santee Sioux Tribe to determine and assess any unpaid fees payable by such limited liability company as prescribed in this Chapter. The application for withdrawal shall be in the form and manner designated by the Secretary of Flandreau Santee Sioux Tribe and shall be executed by the limited liability company by one of its managers, or, if the limited liability company is in the hands of a receiver or trustee, by such receiver or trustee on behalf of the limited liability company. This report shall be accompanied by a written declaration that it is made under the penalties of perjury.

Section 25-16-54. Fees Charged and Collected by Secretary of Flandreau Santee Sioux Tribe. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect for:

- (1) Filing the original articles of organization and issuing certificates of organization, in the case of a domestic limited liability company or filing, registering and issuing a certificate of authority in the case of a foreign liability company; if the total agreed contributions of the limited liability company are:

\$25,000 or less	\$100
Over \$25,000 and not exceeding 100,000	125
Over \$100,000 and not exceeding 500,00	200
Over \$500,000 and not exceeding 1,000,000	300
Over \$1,000,000 and not exceeding 1,500,00	400

Over \$1,500,000 and not exceeding 2,000,000	500
Over \$2,000,000 and not exceeding 2,500, 000	600
Over \$2,500,000 and not exceeding 3,000,000	700
Over \$3,000,000 and not exceeding 3,500,000	800
Over \$3,500,000 and not exceeding 4,000,000	900
Over \$4,000,000 and not exceeding 4,500,000	1,000
Over \$4,500,000 and not exceeding 5,000,000	1,100

For each additional 500,000, \$250 in addition to 1,100.

- (2) For amending the articles of organization in the case of a domestic limited liability company or amending the registration in the case of a foreign limited liability company, a filing fee of fifty dollars; together with the appropriate fee set out in subdivision (1) of this Section if the amendment is to increase the amount of capital;
- (3) For filing articles of dissolution, issuing a certificate of dissolution and canceling the certificate of organization, ten dollars;
- (4) For filing a statement of change of address of registered office or change of registered agent, or both, ten dollars;
- (5) For filing articles of merger or consolidation, fifty dollars;
- (6) An annual tax of fifty dollars, due and payable January second of each year. This tax is delinquent if not paid by February first and a penalty of fifty dollars shall also be assessed. Provided fees for Tribal Charter Companies shall be waived.

Section 25-16-55. Participation of Foreign Company in Court Action – Necessity of Certificate of Authority – Transacting Business – Liability of Foreign Company. A foreign limited liability company transacting business on this Reservation may not maintain any action, suit or proceeding in Tribal Court until it possesses a certificate of authority. The failure limited liability company to obtain a certificate of authority does not impair the validity of any contract or act of the foreign limited company or prevent the foreign limited company from defending any action, suit or proceeding in Tribal Court. A foreign limited liability company which transacts business on this Reservation without a valid certificate of authority shall be liable to the Tribe for the years or parts thereof during which it transacted business on this Reservation without such certificate in an amount equal to all fees which would have been imposed by this article upon the limited liability company had it duly obtained such certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The Tribal Prosecutor shall bring proceedings to recover all amounts due this Tribe under the provisions of this section. A foreign limited liability company which transacts business on this Reservation without a valid certificate of authority shall be subject to a civil penalty, payable to the Tribe, not exceed five thousand dollars. Each manager, or in the absence of managers, each member or agent who authorizes, directs or participates in the transaction of business on this Reservation on behalf of a foreign limited liability company which does not have such certificate shall be subject to a civil penalty, payable to the Tribe, not to exceed one thousand dollars. The civil penalties set forth in this section may be recovered in an action brought in the Tribal Court by the Tribal Prosecutor. Upon a finding by the court that a foreign limited liability company or any of its members, managers or agents

have in addition to the imposition of a civil penalty, and injunction restraining the further transaction of the business of the foreign limited liability company and the further exercise of any limited liability company's right and privileges on this Reservation. The foreign limited liability company shall be enjoined from transacting business on this Reservation until all civil penalties plus any interest and court costs which the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this Chapter. A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of such company's transaction of business on this Reservation without a valid certificate of authority.

Section 25-16-56. Charge for Service on Secretary of Flandreau Santee Sioux Tribe as Company's Agent. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect at the time of any service of process on him as resident agent of a limited liability company, five dollars which may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

Section 25-16-57. Service on Foreign Company. Service of process on a foreign limited liability company shall be as provided in 25-16- 10.

Section 25-16-58. Affirmation of Truthfulness of Certificate of Authority. The execution of an application constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

Section 25-16-59. Action by Tribal Prosecutor Against Foreign Company. The Tribal Prosecutor may bring an action to restrain a foreign limited liability company from transacting business on this Reservation in violation of this chapter.

Chapter 25-17 Limited Liability Companies

Part 1 General Provisions Section

25-17-101. Definitions. Terms used in this Chapter:

1 "Articles of organization" means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the Office of the Secretary of Flandreau Santee Sioux Tribe or other official having custody of company records;

2 "Business" includes every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit;

3 "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency;

4 “Distribution” means a transfer of money, property, or other benefit from a limited liability company to a member in the members’ capacity as a member or to a transferee of the member’s distributional interest;

5 “Distributional interest” means all of a members’ interest in distributions by the limited liability company;

6 “Entity” means a person other than an individual;

7 “Foreign limited liability company” means an unincorporated entity organized under laws other than the Ordinances of this Tribe which afford limited liability to its owners comparable to the liability under 25-17-303 and is not required to obtain a certificate of authority to transact business under any Ordinance of this Tribe other than this chapter;

8 “Limited liability company” means a limited liability company organized under this chapter;

9 “Manager” means a person, whether or not a member of a manager-managed company, who is vested with authority under 25-17-301;

10 “Manger-managed company” means a limited liability company which is so designated in it articles of organization;

11 “Member-managed company” means a limited liability company other than a manager-managed company;

12 “Operating agreement” means any valid agreement, either written or oral, under 25-17-301 concerning the relations among the members, managers, and limited liability company. The term includes amendments to the agreement. It shall be styled a “Declaration” if the company has a single member;

13 “Person” means an individual, corporation, business trust, cooperative corporation, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

14 “Principle office” means the office, whether or not on this Reservation, where the principal executive office of a domestic or foreign limited liability company is located;

15 “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

16 “Sign” means to identify a record by means of a signature, mark, or other symbol, with intent to authenticate it;

17 “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;

18 “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift.

19 “Tribe” means the Flandreau Santee Sioux Tribe.

Section 25-17-102. Effect of Operating Agreement; Nonwaivable Provisions. A

Except as otherwise provided in subsection b, all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company. B The operating agreement may not:

- 1 Unreasonably restrict a right to information or access to records under 25-17-408;
- 2 Eliminate the duty of loyalty under 25-17-409 b or 25-17-603b 3, but the agreement may: I Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and II Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- 3 Unreasonably reduce the duty of care under 25-17-409c or 25-17-603 b 3;
- 4 Eliminate the obligation of good faith and fair dealing under 25-17-409 d, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- 5 Vary the right to expel a member in an event specified in 25-17-601 6
- 6 Vary the requirement to wind up the limited liability company's business in a case specified in 25-17-701 3 or 4; or
- 7 Restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest, under this chapter.

Section 25-17-103. Supplement Principles of Law. A Unless displaced by particular provisions of this chapter the principles of law and equity supplement this chapter. B If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is four and one-half percent per year.

Section 25-17-104. Name.

- (a) The name of a limited liability company must contain, limited liability company, or limited company, or the abbreviation, L.L.C., LLC, L.C., or LC. Limited may be abbreviated as Ltd. And company may be abbreviated as Co.
- (b) Except as authorized by subsections c and d, the name of a limited liability company must be distinguishable upon the records of the Secretary of Flandreau Santee Sioux Tribe from;
 - (1) The name of any corporation, limited partnership, or company incorporated, organized or authorized to transact business, on this Reservation;
 - (2) A name reserved or registered under 25-17-105 or 25-17-106;
 - (3) A fictitious name approved under 25-17-905 for a foreign company authorized to transact business on this Reservation because its real name is unavailable.
- (c) A limited liability company may apply to the Secretary of Flandreau Santee Sioux Tribe for authorization to use a name that is not distinguishable upon the records of the Secretary of Flandreau Santee Sioux Tribe from one or more of the names described in subsection b. The Secretary of Flandreau Santee Sioux Tribe shall authorize use of the name applied for if:
 - (1) The present user, registrant, or owner of a reserved name contents to the use in a record and submits an undertaking in form satisfactory to the Secretary of Flandreau Santee Sioux Tribe to change the name to a name that is distinguishable upon the records of the Flandreau Santee Sioux Tribe from the name applied for, or

- (2) The applicant delivers to the Secretary of Flandreau Santee Sioux Tribe a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied on this Reservation.
- (d) A limited liability company may use the name, including a fictitious name, of another domestic or foreign company which is used on this Reservation if the other company is organized or authorized to transact business on this Reservation and the company proposing to use the name has:
 - (1) Merged with the other company;
 - (2) Been formed by reorganization with the other company; or
 - (3) Acquired substantially all of the assets, including the name, of the other company.

Section 25-17 105. Reserved Name. The exclusive right to the use of a name may be reserved by:

- (1) Any person intending to organize a limited liability company under this chapter and to adopt that name;
- (2) Any domestic limited liability company intending to register on this Reservation which, in either case, intends to adopt that name;
- (3) Any foreign limited liability company intending to register on this Reservation and adopt that name; and
- (4) Any person intending to organize a foreign limited liability company and intending to have it registered on this Reservation and adopt that name. The reservation shall be made by filing with the Secretary of Flandreau Santee Sioux Tribe and application, executed by the applicant, to reserve a specified name. If the Secretary of Flandreau Santee Sioux Tribe finds that name is available for use by a domestic or foreign limited liability company, the Secretary of Flandreau Santee Sioux Tribe shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty days after the expiration of the last one hundred twenty day period for which the applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of Flandreau Santee Sioux Tribe a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Section 25-17-106. Designated Office and Agent for Service of Process.

- (a) A foreign limited liability company may register its name subject to the requirements of 25-17-905, if the name is distinguishable upon the records of the Secretary of Flandreau Santee Sioux Tribe from names that are not available under 25-17-104 b.
- (b) A foreign limited liability company registers its name, or its name with any addition required by 25-17-905, by delivering to the Secretary of Flandreau Santee Sioux Tribe for filing an application;

- (1) Setting forth its name, or its name with any addition required by 25-17-905, the state or country and date of its organization, and a brief description of the nature of the business in which it is engaged; and
 - (2) Accompanied by a certificate of existence, or a record of similar import, from the state or country of organization.
- (c) A foreign limited liability company whose registration is effective may renew it for successive years by delivering for filing in the office of the Secretary of Flandreau Santee Sioux Tribe a renewal application complying with subsection b between October first and December thirty-first of the preceding year. The renewal application renews the registration for the following calendar year.
- (d) A foreign limited liability company whose registration is effective may qualify as a foreign company under its name or consent in writing to the use of its name by a limited liability company later organized under this chapter or by another foreign company later authorized to transact business on this Reservation. The registered name terminates when the limited liability company is organized or the foreign company qualifies or consents to the qualification of another foreign company under the registered name.

Section 25-17-107. Change of Designated Office or Agent for Service of Process.

Each limited liability company shall have, and continuously maintain on this Reservation, a registered office which may be, but need not be, the same as its place of business, and a registered agent, which agent may be either an individual resident on this Reservation whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business on the Reservation, having a business office identical with such registered office.

Section 25-17-108. Registration of Agent for Service of Process. A limited liability company may change its registered office or agent, or both, upon filing in the Office of the Secretary of Flandreau Santee Sioux Tribe a statement setting forth:

- (1) The name of the limited liability company;
- (2) The current address of its registered office;
- (3) If there is a change of address of its registered office, the now address of the registered office;
- (4) The name of its registered agent;
- (5) If there is a change of its registered agent, the name of its successor registered agent;
- (6) That the address of its registered office and the address of the business office if its registered agent, as changed, will be identical;
- (7) That the name change was authorized by affirmative vote of a majority of the members of the limited liability company. The statement shall be verified by one or more of its managers if management of the limited liability company has been vested by the members in a manager or managers or if management of the limited liability company is retained by the members, then by any member and delivered to the Secretary of Flandreau Santee Sioux Tribe. If the Secretary of Flandreau Santee Sioux Tribe find that the statement conforms to

the provisions of this chapter, the Secretary of Flandreau Santee Sioux Tribe shall file the statement, and upon filing, the change of address of the registered office or the appointment of a new registered agent, or both, is effective.

Section 25-17-109. Service of Process. Any registered agent of a limited liability company may resign as agent upon filing a written notice of resignation, executed with the Secretary of Flandreau Santee Sioux Tribe, who shall forthwith mail a copy of the resignation to the limited liability company at its registered office by certified mail, return receipt requested. The appointment of the agent shall terminate upon the expiration of the thirty days after receipt of notice by the Secretary of Flandreau Santee Sioux Tribe.

Section 25-17-110. Nature of Business and Powers.

- (a) The registered agent appointed by a limited liability company or a foreign limited liability company shall be an agent of the limited liability company upon whom any process, notice, or demand required or permitted by law to be served upon the limited liability company may be served.
- (b) If a limited liability company fails to appoint or maintain a registered agent on this reservation, or if its registered agent cannot be found at its registered office, the Secretary of Flandreau Santee Sioux Tribe shall be an agent of the company upon whom any process, notice or demand may be served. Service on the Secretary of Flandreau Santee Sioux Tribe of any process, notice or demand shall be made by delivering to the Secretary of Flandreau Santee Sioux Tribe or any clerk having charge of the limited liability department an original and one exact or conforming copy of the process, notice, or demand.
- (c) If any process, notice, or demand is served on the Secretary of Flandreau Santee Sioux Tribe, the Secretary of Flandreau Santee Sioux Tribe shall send the copy by certified or registered mail to the company at its registered office. The Secretary of Flandreau Santee Sioux Tribe shall keep a record of all processes, notices and demands served upon the Secretary of Flandreau Santee Sioux Tribe under this section and shall record the time of service and the response.
- (d) Nothing contained in this section shall 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 law.

Section 25-17-111. Nature of Business and Powers.

- (a) A limited liability company may be organized under this chapter for any lawful purpose, subject to any Ordinance of this Tribe governing or regulating business including regulation of professional service firms. Limited liability companies may not engage in activities proscribed by chapter 25-8A unless the ownership restrictions are met by the membership of the limited liability company by substitution of members for shareholders in that chapter.

- (b) Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including power to:
- (1) Sue and be sued, and defend in its name;
 - (2) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
 - (3) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
 - (4) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
 - (5) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which maybe convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
 - (6) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
 - (7) Be a promoter, partner member, associate, or manager of any partnership, joint venture, trust, or other entity including but not limited to limited partnerships and limited liability companies;
 - (8) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this Reservation;
 - (9) Elect managers and appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit, or otherwise assist its members;
 - (10) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former members, managers, officers, employees, and agents;
 - (11) Make donations for the public welfare or for charitable, scientific, or educational purposes; and
 - (12) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.

Part 2 Organization

Section 25-17-201. Limited Liability Company as Legal Entity. A limited liability is a legal entity distinct from its members. A member of a limited liability company is not a proper party to proceedings by or against a limited liability company.

Section 25-17-202. Organization.

- (a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the Office of the Secretary of Flandreau Santee Sioux Tribe for filing.
- (b) Unless a delayed effective date is specified in accordance with 25-17-206 d, the existence of a limited liability company begins when the articles of organization and the first annual report as required in 25-17-201 c are filed.
- (c) The original and one exact or conforming copy of the articles of organization and the first annual report shall be delivered to the Secretary of Flandreau Santee Sioux Tribe. If the Secretary of Flandreau Santee Sioux Tribe finds that the articles of organization and the annual report conform to law, the Secretary of Flandreau Santee Sioux Tribe shall, when all fees have been paid as prescribed:
- (1) Endorse both the original and the exact or conforming copy with the word, Filed, and the month, date, and year of the filing;
 - (2) File the original;
 - (3) Issue a certificate of organization and affix to the certificate, the exact or conforming copy. The certificate of organization, together with the exact or conforming copy of the articles of organization affixed to it by the Secretary of Flandreau Santee Sioux Tribe, shall be returned to the principal office of the limited liability company or to its representative.

Section 25-17-202.1. Certificate of Organization. Upon the issuance of the certificate of organization, the limited liability company shall be considered organized, and such certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized under this chapter, except as against this Tribe in a proceeding to cancel or revoke the certificate of organization or for involuntary dissolution of the limited liability company. No limited liability company may transact business or incur indebtedness, except that which is incidental to its organization, or except for obtaining subscriptions for or payment of contributions, until the Secretary of Flandreau Santee Sioux Tribe has issued a certificate of organization.

Section 25-17-203. Articles of Organization.

- (a) Articles of organization of a limited liability company must set forth:
- (1) The name of the company;
 - (2) The address of the initial designated office;
 - (3) The name and street address of the initial agent for service of process;
 - (4) The name and address of each organizer;
 - (5) The duration of the company if other than perpetual;
 - (6) Whether the company is to be manager-managed, and, if so, the name and address for each initial manager; and
 - (7) Whether one or more of the members of the company are to be liable for its debts and obligations under 25-17-303c.
- (b) Articles of organization of a limited liability company may set forth:
- (1) Provisions permitted to be set forth in an operating agreement; or
 - (2) Other matters not inconsistent with law.

- (c) Articles of organization of a limited liability company may not vary the nonwaivable provision of an operating agreement is inconsistent with the articles of organization:
 - (1) The operating agreement controls as to managers, members, and members' transferees; and
 - (2) The articles of organization control as to persons, other than managers, members and their transferees, who reasonably rely on the articles to their detriment.

25-17-204. Amendment or Restatement of Articles of Organizations.

- (a) Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the Secretary of Flandreau Santee Sioux Tribe for filing. The articles of amendment must set forth the:
 - (1) Name of the limited liability company;
 - (2) Date of filing of the articles of organization; and
 - (3) Amendment of the articles.
- (b) A limited liability company may restate its articles of organization at any time. Restated articles of organization must be signed and filed in the same manner as articles of amendment. Restated articles of organization must be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its initial articles of organization.

Section 25-17-206. Signing or Records.

- (a) Except as otherwise provided in this chapter a record be filed by or on behalf of a limited liability company in the Office of the Secretary of Flandreau Santee Sioux Tribe must be signed in the name of the company by a:
 - (1) Manager of a manager-managed company;
 - (2) Member of a member-managed company;
 - (3) Person organizing the company, if the company has not been formed; or
 - (4) Fiduciary, if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.
- (b) A record signed under subsection a must state adjacent to the signature the name and capacity of the signer.
- (c) Any person may sign a record to be filed under subsection a by an attorney in-fact. Powers of attorney relating to the signing of records to be filed under subsection a by an attorney-in-fact need not be filed in the Office of the Secretary of Flandreau Santee Sioux Tribe as evidence of authority by the person filing but must be retained by the company.

Section 25-17-207. Filing in Office of Director.

- (a) Articles of organization or any other record authorized to be filed under this chapter must be in a medium permitted by the Secretary of Flandreau Santee Sioux Tribe and must be delivered to the Office of the Secretary of Flandreau Santee Sioux Tribe. Unless the Secretary of Flandreau Santee Sioux Tribe determines that a record fails to comply as to form with the filing requirements of

this chapter, and if all filing fees have been paid, the Secretary of Flandreau Santee Sioux Tribe shall file the record and send a receipt for the record and the fees to the limited liability company and its representatives.

- (b) Upon request and payment of a fee, the Secretary of Flandreau Santee Sioux Tribe shall send to the requester a certified copy of the requested record.
- (c) A record accepted for filing by the Secretary of Flandreau Santee Sioux Tribe is effective:
 - (1) At the time of filing on the date it is filed, as evidenced by the Secretary of Flandreau Santee Sioux Tribe's date and time endorsement on the original record; or
 - (2) At the time specified in the record as its effective time on the date it is filed.
- (d) A record, including the articles of organization, may specify a delayed effective time and date, and if it does so the record becomes effective at the time and date specified subject to the other requirements of this chapter. If a delayed effective date but no time is specified, the record is effective at the close of business on that date. If a delayed effective date is later than the ninetieth day after the record is filed, the record is effective on the ninetieth day.

Section 25-17-207. Correcting File Record.

- (a) A limited liability company or foreign limited liability company may correct a record filed by the Secretary of Flandreau Santee Sioux Tribe if the record contains a false or erroneous statement or was defectively signed.
- (b) A record is corrected:
 - (1) By preparing articles of correction that:
 - (i) Describe the record, including its filing date, or attach a copy of it to the articles of correction;
 - (ii) Specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective; and
 - (iii) Correct the incorrect statement or defective signing; and
 - (3) By delivering the correct record to the Secretary of Flandreau Santee Sioux Tribe for filing.
- (c) Articles of correction are effective retroactively on the effective date of the record they correct except as to person relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correct are effective when filed.

Section 25-17-208. Liability for False Statement in Filed Record.

- (a) Any person may request the Secretary of Flandreau Santee Sioux Tribe to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.
- (b) A certificate of existence for a limited liability company must set forth:
 - (1) The company's name;
 - (2) That it is duly organized under the Ordinances of this Tribe, the date of organization, whether its duration is at-will or for a specified term, and, if the latter, the period specified;

- (3) If payment is reflected in the records of the Secretary of Flandreau Santee Sioux Tribe and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this Tribe have been paid;
 - (4) Whether its most recent annual report required by 25-17-210 has been filed with the Secretary of Flandreau Santee Sioux Tribe;
 - (5) That articles of termination have not been filed; and
 - (6) Other facts of record in the Office of the Secretary of Flandreau Santee Sioux Tribe which may be requested by the applicant.
- (c) A certificate of authorization for a foreign limited liability company must set forth:
- (1) The company's name used on this Reservation;
 - (2) That it is authorized to transact business on this Reservation;
 - (3) If payment is reflected in the records of the Secretary of Flandreau Santee Sioux Tribe and if nonpayment affects the authorization of the company, that all fees, taxes, and penalties owed to this Tribe have been paid;
 - (4) Whether its most recent annual report required by 25-17-210 has been filed with the Secretary of Flandreau Santee Sioux Tribe;
 - (5) That a certificate of cancellation has not been filed; and
 - (6) Other facts of record in the Office of the Secretary of Flandreau Santee Sioux Tribe which may be requested by the applicant.
- (d) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of Flandreau Santee Sioux Tribe may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business on this Reservation.

Section 25-17-209. Limited Liability Companies - Filing of Annual Report. If a person required by 25-17-205 to sign any records fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the signing of the record. If the court finds that it is proper for the record to be signed and that a person so designated has failed or refused to sign the record, it shall order the Secretary of Flandreau Santee Sioux Tribe to sign and file an appropriate record.

Section 25-17-210. Annual Report for Secretary of Flandreau Santee Sioux Tribe.

- (a) A limited liability company, and a foreign limited liability company authorized to transact business on this Reservation, shall deliver to the Secretary of Flandreau Santee Sioux Tribe for filing an annual report that sets forth:
- (1) The name of the company and the state or country under whose law it is organized;
 - (2) The address of its registered office and the name and address of its registered agent for service of process on this Reservation;
 - (3) The address of its principal office;
 - (4) The names and business addresses of any managers;
 - (5) The dollar amount of the total agreed contributions to the limited liability company.

- (b) Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.
- (c) The first annual report must be delivered to the Secretary of Flandreau Santee Sioux Tribe concurrent with the filing of the articles of organization. Subsequent annual reports must be delivered to the Secretary of Flandreau Santee Sioux Tribe before the first day of the second month following the anniversary month of the filing dates.
- (d) If an annual report does not contain the information required in subsection a or the fees required by 25-17-211, the Secretary of Flandreau Santee Sioux Tribe shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection a or the fees required by 25-17-211 and delivered to the Secretary of Flandreau Santee Sioux Tribe within thirty days after the effective date of the notice, it is timely filed.

Section 25-17-211. Fees Charged in Conjunction With Annual Report. The Secretary of Flandreau Santee Sioux Tribe shall charge and collect for:

(a) Filing the first annual report if the total agreed contribution of the limited liability company are:

- \$25,000 or less \$100
- Over \$25,000 and not exceeding 100,000 125
- Over \$100,000 and not exceeding 500,000 200
- Over \$500,000 and not exceeding 1,000,000 300
- Over \$1,000,000 and not exceeding 1,500,000 400
- Over \$1,500,000 and not exceeding 2,000,000 500
- Over \$2,000,000 and not exceeding 2,500,000 600
- Over \$2,500,000 and not exceeding 3,000,000 700
- Over \$3,000,000 and not exceeding 3,500,000 800
- Over \$3,500,000 and not exceeding 4,000,000 900
- Over \$4,000,000 and not exceeding 4,500,000 1,000
- Over \$4,500,000 and not exceeding 5,000,000 1,100
- For each additional \$500,000, \$250 in addition to \$1,100.

The maximum amount charged under this subsection together with any subsequent payments under subsection b may not exceed sixteen thousand dollars. The filing fee required pursuant to this subsection is not applicable if the limited liability company has previously paid the fee required pursuant to subdivision 25-16-54 1.

- (b) Filing any subsequent annual report that reflects additional contribution in excess of those stated in the last prior report, any additional fee necessary to make the cumulative fee match the cumulative agreed contributions as provided in subsection a; above the agreed contributions as set forth in the last previous annual report consistent with subsection a.
- (c) A reporting fee of fifty dollars, due and payable with the filing of all annual report, after the first annual report required in 25-17-210 c.

Part 3
Relations of Members and Managers to Persons Dealing with the Limited Liability Company

Section 25-17-301. Agency of Members and Managers.

- (a) Subject to subsections b and c:
- (1) Each member is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.
 - (2) An act of a member which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized by the other members.
- (b) Subject to subsection c, in a manager-managed company:
- (1) A member is not an agent of the company for the purpose of its business solely by reason of being a member. Each manager is an agent of the company for the purpose of its business, and an act of a manager, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kinds carried on by the company binds the company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.
 - (2) An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized under 25-17-404.
- (c) Unless the articles of organization limit their authority, any members of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

Section 25-17-302. Company Liable for Member's or Manager's Actionable Conduct. A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the company or with authority of the company.

Section 25-17-303. Liability of Members and Managers.

- (a) Except as otherwise provided in subsection c, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation or liability of the company solely by reason of being or acting as a member or manager.
- (b) The failure of a limited liability company to observe the unusual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.
- (c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:
 - (1) A provision to that effect is contained in the articles of organization; and
 - (2) A member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

Part 4

Relations of Members to One Another and to the Limited Liability Company

Section 25-17-401. Form of Contribution. A contribution of a member of a limited liability company may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other agreements to contribute cash or property, or contracts for services to be performed.

Section 25-17-402. Member's Liability for Contributions.

- (a) A member's obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company is not excused by the member's death, disability, or other inability to perform personally. If a member does not make the required contribution of property or services, the member is obligated at the option of the company to contribute money equal to the value of that portion of the stated contribution which has not been made.
- (b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection a, and without notice of any compromise under 25-17-404 c 5, may enforce the original obligation.

Section 25-17-403. Member's and Manager's Rights to Payment and Reimbursement.

- (a) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of its business or property.
- (b) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution the member agreed to make. (c) A payment or advance made by a member which gives rise to an obligation of a limited liability company under subsection a or b constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

- (d) A member is not entitled to remuneration for services performed for a limited liability company, except for reasonable compensation for services rendered in winding up the business of the company.

Section 25-17-404. Management of Company.

- (a) In a member-managed company:
 - (1) Each member has equal rights in the management and conduct of the company's business; and
 - (2) Except as otherwise provided in subsection c, any matter relating to the business of the company may be decided by a majority of the members.
- (b) In a manager-managed company:
 - (1) Each manager has equal rights in the management and conduct of the company's business;
 - (2) Except as otherwise provided in subsection c, any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and
 - (3) A manager:
 - (i) Must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and
 - (ii) Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.
- (c) The only matters of a member- or manager-managed company's business requiring the consent of all of the members are:
 - (1) The amendment of the operating agreement under 24-17-102;
 - (2) The authorization or ratification of acts or transactions under 25-17-404 (b) (2) (ii) which would otherwise violate the duty of loyalty;
 - (3) An amendment to the articles of organization under 25-17-204;
 - (4) The compromise of an obligation to make a contribution under 25-17-402 (b);
 - (5) The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;
 - (6) The making of interim distributions under 25-17-405 (a), including the redemption of an interest;
 - (7) The admission of a new member;
 - (8) The use of the company's property to redeem an interest subject to a charging order;
 - (9) The consent to dissolve the company under 25-17-701 (a) (2);
 - (10) A waiver of the right to have the company's business wound up and the company terminated under 25-17-702 (b);
 - (11) The consent of members to merge with another entity under 25-17-804 (c) (1); and
 - (12) The sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.
- (d) Action requiring the consent of members or managers under this chapter may be taken without a meeting.

- (e) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

Section 25-17-404.1. Classes and Voting. Nothing in this chapter prohibits the articles of organization from establishing classes or groups of one or more members having certain expressed relative rights, powers, or duties, including voting rights and the articles of organization may provide for the future creation, in the manner provided in the articles of organization, of additional classes or groups of members having certain relative rights, powers, or duties, including voting rights, expressed either in the regulations or at the time of creation. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of members.

Section 25-405. Sharing of and Right to Distributions.

- (a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares.
- (b) A member has no right to receive, and may not be required to accept, a distribution of any kind.
- (c) If a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

Section 25-17-406. Limitations on Distributions.

- (a) A distribution may not be made if:
 - (1) The limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or
 - (2) The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, would up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those receiving the distribution.
- (b) A limited liability company may base a determination that a distribution is not prohibited under subsection a on financial statements prepared on the bases of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
- (c) Except as otherwise provided in subsection e, the effect of a distribution under subsection a is measured:
 - (1) In the case of distribution by purchase, redemption, or other acquisition of a distributional interest in a limited liability company, as of the date money or other property is transferred or debt incurred by the company; and
 - (2) In all other cases, as of the date the:
 - (i) Distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization; or

- (ii) Payment is made if it occurs more than one hundred twenty days after the date of authorization.
- (d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.
- (e) Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection a if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measure on the date the payment was made.

Section 25-17-407. Liability for Unlawful Distributions.

- (a) Any member of a member-managed company or a member or manager of a - managed company who votes for or assents to a distribution made in violation of 25-17-406, the articles of organization, or the operating agreement is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating 25-17-406, the articles of organization, or the operating agreement if it is established that the member or manager did not perform the member's or manger's duties in compliance with 25-17-409.
- (b) A member of a manager-managed company who knew distribution was in violation of 25-17-406, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by the member exceeded the amount that could have been properly paid under 25-17-406.
- (c) A member or manager against whom an action is brought under this section may implead in the action all:
 - (1) Other members or managers who voted for or assented to the distribution in violation of subsection a and may compel contribution from them; and
 - (2) Members who received a distribution in violation of subsection b and may compel contribution from the member in the amount received in violation of subsection b.
- (d) A proceeding under this section is barred unless it is commenced within two years after the distribution.

Section 25-17-408. Member's Right to Information.

- (a) A limited liability company shall provide members and their agents and attorneys access for proper purposes to its records, if any, at the company's principal office or other reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy records during

ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

- (b) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:
 - (1) Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and
 - (2) On demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.
- (c) A member has the right upon written demand given to the limited liability company to obtain at the company's expense a copy of any written operating agreement.

Section 25-17-409. General Standards of Member's and Manager's Conduct.

- (a) The only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c).
- (b) A member's duty of loyalty to a member-managed company and its other members is limited to the following:
 - (1) To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;
 - (2) To refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and
 - (3) To refrain from competing with the company with the company in the conduct of the company's business before the dissolution of the company.
- (c) A member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
- (d) A member shall discharge the duties to a member-managed company and its other members under this chapter or under the operating agreement and exercise any rights and consistently with the obligation of good faith and fair dealing.
- (e) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.
- (f) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

- (g) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.
- (h) In a manager-managed company:
 - (1) A member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;
 - (2) A manager is held to the same standards of conduct prescribed for members in subsections (b) through (f);
 - (3) A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct in subsections (b) through (f) to the extent that the member exercises the managerial authority vested in a manager by this chapter; and
 - (4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections b through f to the extent of the managerial authority delegated to the members by the operating agreement.

Section 25-17-410. Actions by Members.

- (a) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:
 - (1) The member's right under the operating agreement;
 - (2) The member's rights under this chapter; and
 - (3) The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.
- (b) The accrual, and any time limited for the assertion, of a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Part 5
Transferees and Creditors of Members

Section 25-17-501. Member's Distributional Interest.

- (a) A member is not a co-owner of, and has no transferable interest in, property of a limited liability company.
- (b) A distributional interest in a limited liability company is personal property and, subject to 25-17-502 and 503, may be transferred in whole or in part.
- (c) An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to 25-17-503, may also provide for the transfer of any interest represented by the certificate.

Section 25-17-502. Transfer of Distributional Interest. A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member. A

transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

Section 25-17-503. Rights of Transferee.

- (a) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in the operating agreement or all other members consent.
- (b) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under 15-17-402 and for obligations under 15-17-407 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time the transferee becomes a member.
- (c) Whether or not a transferee of a distributional interest becomes a member under subsection a, the transferor is not released from liability to the limited liability company under the operating agreement or this chapter.
- (d) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, require access to information concerning the company's transactions, or inspect or copy any of the company's records.
- (e) A transferee who does not become a member is entitled to:
 - (1) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
 - (2) Receive, upon dissolution and winding up of the limited liability company's business:
 - (i) In accordance with the transfer, the net amount otherwise distributable to the transferor;
 - (ii) A statement of account only from the date of the latest statement of account agreed to by all the members;
 - (3) Seek under 25-17-701 (a) (5) a judicial determination that is equitable to dissolve and wind up the company's business.
- (f) A limited liability company need not give effect to a transfer until it has notice of the transfer.

Section 25-17-504. Rights of Creditors.

- (a) On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, account and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.

- (b) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser at the foreclosure sale has the rights of a transferee.
- (c) At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:
 - (1) By the judgment debtor;
 - (2) With property other than the company's property, by one or more of the other member's; or
 - (3) With the company's property, but only if permitted by the operating agreement.
- (d) This chapter does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.
- (e) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

Part 6

Members Dissociation

Section 25-17-601. Events Causing Member's Dissociation. A member is dissociated from a limited liability company upon the occurrence of any of the following events:

- (1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later specified by the member;
- (2) An event agreed to in the operating agreement as causing the member's dissociation;
- (3) Upon transfer of all of a member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed;
- (4) The member's expulsion pursuant to the operating agreement;
- (5) The member's expulsion by unanimous vote of the other members if:
 - (i) It is unlawful to carry on the company's business with the member;
 - (ii) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed;
 - (iii) Within ninety days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or
 - (iv) A partnership or a limited liability company that is a member has dissolved and its business is being wound up;
- (6) On application by the company or another member, the member's expulsion by judicial determination because the member:

- (i) Engaged in wrongful conduct that adversely and materially affected the company's business;
 - (ii) Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under § 25-17-409; or
 - (iii) Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member;
- (7) The member's:
- (i) Becoming a debtor in bankruptcy;
 - (ii) Executing an assignment for the benefit of creditors;
 - (iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- (8) In the case of a member who is an individual:
- (i) The member's death;
 - (ii) The appointment of a guardian or general conservator for the member; or
 - (iii) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;
- (9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;
- (10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or
- (11) Termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust. § 25-17-601 (6)

Section 25-17-602. Member's Power to Dissociate; Wrongful Dissociation.

- (a) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, by express will pursuant to § 25-17-601 (1).
- (b) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:
 - (1) It is in breach of an express provision of the agreement; or
 - (2) If the expiration of the term specified in the articles of organization from a limited liability company is wrongful only if:
 - (i) The member withdraws by express will;
 - (ii) The member is expelled by judicial determination under § 25-17-601 (6);
 - (iii) The member is dissociated by becoming a debtor in bankruptcy; or
 - (iv) In the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise

dissociated because it willfully dissolved or terminated its existence.

- (c) A member who wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

Section 25-17-603. Effect of Member's Dissociation.

- (a) A limited liability company does not dissolve and wind up its business as result of a member's dissociation.
- (b) Upon a member's dissociation from a limited liability company:
 - (1) The member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in § 25-17-703, and the member ceases to be a member and is treated the same as a transferee of a member;
 - (2) The member's duty of loyalty under § 25-17-409 (b) (3) terminates; and
 - (3) The member's duty of loyalty under § 25-17-409 (b) (1) and (2) and duty of care under § 25-17-409
- (c) continue only with regard to matters arising and events occurring before the member's dissociation.

Section 25-17-604. Dissociated Member's Power to Bind Company. For two years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under Article 9, is bound by an act of the dissociated member which would have bound the company under § 25-17-301 before dissociation only if at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated member was then a member;
- (2) Did not have notice of the member's dissociation; and
- (3) Is not deemed to have had notice under §25-17-605.

Section 25-17-605. State of Dissociation.

- (a) A dissociated member or limited liability company may file in the office of the Secretary of Flandreau Santee Sioux Tribe a statement of dissociation stating the name of the company and that the member is dissociated from the company. If the statement is filed by a dissociated member a copy of the statement must also be delivered to the company by the dissociated member.
- (b) For the purposes of §§ 25-17-301 and 604, a person not a member is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

Part 7

Winding Up the Company's Business

Section 25-17-701. Events Causing Dissolution and Winging up of Company's Business.

- (a) A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:
- (1) An event specified in the operating agreement;
 - (2) Consent of the number or percentage of members specified in the operating agreement;
 - (3) An event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within ninety days after notice to the company of the event is effective retroactively to the date of the event for purposes of this Section;
 - (4) On application by a member or a dissociated member, upon entry of a judicial decree that:
 - (i) The economic purpose of the company is likely to be unreasonably frustrated;
 - (ii) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;
 - (iii) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; or
 - (iv) The managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner; or
 - (5) On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business after the expiration of a specified duration or event, if the company was for a specified duration at the time the applicant became a transferee by member dissociation, transfer, or entry of charging order that gave rise to the transfer.

Section 25-17-702. Company Continues After Dissolution.

- (a) Subject to subsection (b), a limited liability company continues after dissolution only for the purpose of winding up its business
- (b) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members may unanimously waive the right to have the company's business wound up and the company terminated. In the case:
- (1) The limited liability company resumes carrying on its business as if dissolution had never occurred and may liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and
 - (2) The rights of a third party accruing as a result of the dissolution, under § 25-17-704 (a), or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

Section 25-17-703. Right to Wind Up Company's Business.

- (a) After dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company's business, but on application of any member, member's legal representative, or transferee, the Tribal Court, for good cause shown, may order judicial supervision of the winding up.
- (b) A legal representative of the last surviving member may wind up a limited liability company's business.
- (c) A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to § 25-17-706, settle disputes by mediation or arbitration, and perform other necessary acts.

Section 25-17-704. Member's or Manager's Power and Liability as Agent After Dissolution.

- (a) A limited liability company is bound by a member's or manager's act after dissolution that:
 - (1) Is appropriate for winding up the company's business; or
 - (2) Would have bound the company under § 25-27-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.
- (b) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

Section 25-17-705. Articles of Termination.

- (a) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Secretary of Flandreau Santee Sioux Tribe articles of termination stating:
 - (1) The name of the company;
 - (2) The date of the dissolution; and
 - (3) That the company's business has been wound up and the legal existence of the company has been terminated.
- (b) The existence of a limited liability company is terminated upon the filing of the articles of termination, or upon a later effect date, if specified in the articles of termination.

Section 25-17-706. Distribution of Assets in Winding Up Company's Business.

- (a) In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distribution under subsection (b).

- (b) Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in equal shares.

Section 25-17-707.

- (a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this Section.
- (b) A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice must:
 - (1) Specify the information required to be included in a claim;
 - (2) Provide a mailing address where the claim is to be sent;
 - (3) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the written notice is received by the claimant; and
 - (4) State that the claim will be barred if not received by the deadline. (c) A claim against a dissolved limited liability company is barred if the if the requirements of subsection (b) are met, and: (1) The claim is not received by the specified deadline; or (2) In the case of a claim that is timely received but rejected by the dissolved company, the claimant does not commence a proceeding to enforce the claim within ninety days after the receipt of the notice of the rejection.
- (d) For purposes of this Section, claim does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Section 25-17-708. Notice; Other Claims Against Dissolved Company.

- (a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.
- (b) The notice must:
 - (1) Be published at least once in a newspaper of general circulation in the county in which the dissolve limited liability company's principal office is located or, if none on this Reservation, in which its registered office is or was last located;
 - (2) Describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and
 - (3) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within five years after the publication date of the notice:
- (c) If a dissolved limited liability company publishes a notice in accordance with Subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within five years after publication date of the notice:
 - (1) A claimant who did not receive written notice under § 35-17-707;
 - (2) A claimant whose claim was timely sent to the dissolved company but not acted on; and

- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim not barred under this Section may be enforce:
 - (1) Against the dissolved limited liability company, to the extent of its undistributed assets; or
 - (2) If the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this Section may not exceed the total amount of assets distributed to the member.

Section 25-17-709. Ground for Administrative Termination. The Secretary of Flandreau Santee Sioux Tribe may commence a proceeding to dissolve a limited liability company administratively if the company does not:

- (1) Pay any fees, taxes, or penalties imposed by this Chapter or other law within sixty days after they are due; or
- (2) Deliver its annual report to the Secretary of Flandreau Santee Sioux Tribe within sixty days after it is due.

Section 25-17-710. Procedure for and Effect of Administrative Termination.

- (a) If the Secretary of Flandreau Santee Sioux Tribe determines that a ground exists for administratively dissolving a limited liability company, the Secretary of Flandreau Santee Sioux Tribe shall enter a record of the determination and serve the company with a copy of the record.
- (b) If the company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of Flandreau Santee Sioux Tribe that each ground determined by the Secretary of Flandreau Santee Sioux Tribe does not exist within sixty days after service of the notice, the Secretary of Flandreau Santee Sioux Tribe shall administratively dissolve the company by signing a certification of the dissolution that recited the ground for dissolution and its effective date. The Secretary of Flandreau Santee Sioux Tribe shall file the original of the certificate and serve the company with a copy of the certificate.
- (c) A company administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under § 25-17-702 and to notify claimants under §§ 25-17-707 and 708.
- (d) The administrative dissolution of a company does not terminate the authority of its agent for service of process.

Section 25-17-711. Reinstatement Following Administrative Termination.

- (a) A limited liability company administratively dissolved may apply to the Secretary of Flandreau Santee Sioux Tribe for reinstatement after the effective date of dissolution. The applicant shall submit with the application the appropriate filing fee. The Secretary of Flandreau Santee Sioux Tribe shall base filing fees on the total agreed contribution of the limited liability company as provided in § 25-17-

- 211, plus any delinquent annual reports and fees for the period prior to the reinstatement application. The application must:
- (1) Recite the name of the company and the effective date of its administrative dissolution;
 - (2) State that the ground for dissolution either did not exist or have been eliminated;
 - (3) State that the company's name satisfies the requirements of § 25-17-104; and
 - (4) Contain a certificate from the appropriate state authority reciting that all taxes owed by the company have been paid.
- (b) If the Secretary of Flandreau Santee Sioux Tribe determines that the application contains the information required by Subsection (a) and that the information is correct, the Secretary of Flandreau Santee Sioux Tribe shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate, and serve the company with a copy of the certificate.
- (c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the company may resume its business as if the administrative dissolution had never occurred.

Section 25-17-712. Appeal From Denial of Reinstatement.

- (a) If the Secretary of Flandreau Santee Sioux Tribe denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of Flandreau Santee Sioux Tribe shall serve the company with a record that explains the reason or reasons for denial.
- (b) The company may appeal the denial of reinstatement to the Tribal Court within thirty days after service of the notice of denial is perfected. The company appeals by petitioning the Court to set aside the dissolution and attaching to the petition copies of the Secretary of the Flandreau Santee Sioux Tribe's certificate of dissolution, the company's application for reinstatement, and the Secretary of Flandreau Santee Sioux Tribe's notice of denial.
- (c) The Court may summarily order the Secretary of Flandreau Santee Sioux Tribe to reinstate the dissolved company or may take other action the Court considers appropriate.
- (d) The Court's final decision may not be appealed as in other civil proceedings.

Part 8
Conversions and Mergers

Section 25-17-801. Definitions. Terms used in this Article:

- (1) "Corporation" means a corporation under the Flandreau Santee Sioux Tribal Business Act, a predecessor law, or comparable law of another jurisdiction;
- (2) "General partner" means a partner in a partnership and general partner in a limited partnership;

- (3) "Limited partner" means a limited partner in a limited partnership;
- (4) "Limited partnership" means a limited partnership created under Chapter 25-18, a predecessor law, or comparable law of another jurisdiction;
- (5) "Partner" includes a general partner and a limited partner;
- (6) "Partnership" means a general partnership under Chapter 25-18, inclusive, a predecessor law, or comparable law of another jurisdiction ;
- (7) "Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership;
- (8) "Shareholder" means a shareholder in a corporation.

Section 25-17-802. Conversion of Partnerships or Limited Partnerships to Limited Liability Companies.

- (a) A partnership or limited partnership may be converted to a limited liability company pursuant to this Section.
- (b) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.
- (c) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.
- (d) After a conversion is approved under Subsection (b), the partnership or limited partnership shall file articles of organization in the Office of the Secretary of Flandreau Santee Sioux Tribe which satisfy the requirements of § 25-17-203 and contain:
 - (1) A statement that the partnership or limited partnership was converted to a limited liability company form a partnership or limited partnership, as the case may be;
 - (2) Its former name;
 - (3) A statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under Subsection (b); and
 - (4) In the case of a limited partnership, a statement that the certificate of partnership is to be canceled as of the date the conversion took effect.
- (e) In the case of a limited partnership, the filing of articles of organization under Subsection (d) cancels its certificate of limited partnership as of the date the conversion took effect.
- (f) A conversion takes effect when the articles of organization are filed in the Office the Secretary of Flandreau Santee Sioux Tribe or at any later date specified in the articles of organization.
- (g) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

- (h) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect

Section 25-17-803. Effect of Conversion; Entity Unchanged.

- (a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.
- (b) When a conversion takes effect:
 - (1) All property owned by the converting partnership or limited partnership vests in the limited liability company;
 - (2) All debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;
 - (3) An action or proceeding pending before or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;
 - (4) Except as prohibited by other law, all other rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and
 - (5) Except as otherwise provide in the agreement of conversion under § 25-17-802 (c), all of the partners of the converting partnership continue as members of the limited liability company.

Section 25-17-804. Merger.

- (a) Pursuant to a plan of merger approved under Subsection (c), a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities.
- (b) A plan of merger must set forth:
 - (1) The name of each entity that is a party to the merger;
 - (2) The name of the surviving entity into which the other entities will merge;
 - (3) The type of organization of the surviving entity;
 - (4) The terms and conditions of the merger;
 - (5) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part; and
 - (6) The street address of the surviving entity's principal place of business.
- (c) A plan of merger must be approved:
 - (1) In the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operation agreement;

- (2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
 - (3) In the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under § 25-17-802 (b); and
 - (4) In the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the Ordinances of this Tribe or of the state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.
- (d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan; The merger is effective upon the filing of the articles of merger with the Secretary of Flandreau Santee Sioux Tribe, or at such later date as the articles may provide.

Section 25-17-805. Articles of Merger.

- (a) After approval of the plan of merger under § 25-17-804 (c), unless the merger is abandoned under § 25-17-804 (d), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the Secretary of Flandreau Santee Sioux Tribe for filing. The Articles must set forth:
- (1) The name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;
 - (2) For each limited liability company that is to merge, the date its articles of organization were filed with the Secretary of Flandreau Santee Sioux Tribe;
 - (3) That a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;
 - (4) The name and address of the surviving limited liability company or other surviving entity;
 - (5) The effective date of the merger;
 - (6) If a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;
 - (7) If a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the Secretary of Flandreau Santee Sioux Tribe or, if an application has not been filed, a statement to that effect; and
 - (8) If the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process on this Reservation and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit on this Reservation which is to merge, and for the enforcement, as provided in this Chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

- (b) If a foreign limited liability company is the surviving entity of a merger, it may not do business on this Reservation until an application for that authority is filed with the Secretary of Flandreau Santee Sioux Tribe.
- (c) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.
- (d) Articles of merger operate as an amendment to the limited liability company's articles of organization.

Section 25-17-806. Effect of Merger.

- (a) When a merger takes effect:
 - (1) The separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;
 - (2) All property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;
 - (3) All debts, liabilities, and other obligations of each limited liability company or other entity that is party to the merger become the obligations of the surviving entity;
 - (4) An action or proceeding pending by or against a limited liability company or other party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and
 - (5) Except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that is a party to a merger vest in the surviving entity.
- (b) The Secretary of Flandreau Santee Sioux Tribe is an agent for service of process in an action or proceeding against the surviving foreign entity fails to appoint or maintain a registered agent designated for service of process on this Reservation or the agent for service of process cannot with reasonable diligence be found at the registered office. Upon receipt of process the Secretary of Flandreau Santee Sioux Tribe shall send a copy of the process by registered or certified mail, return requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of :
 - (1) The date the company receives the process, notice, or demand;
 - (2) The date shown on the return receipt, if signed on behalf of the company; and
 - (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.
- (c) A member of the surviving limited liability company is liable for all obligations of a party of the merger for which the member was personally liable before the merger.
- (d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this Chapter or pay its liabilities and distribute its assets pursuant to this Chapter.

- (e) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

Section 25-17-807. Dissenter's Rights. This article does not preclude an entity from being converted or merged under other law.

Part 9 Foreign Limited Liability Companies

Section 25-17-901. Law Governing Foreign Limited Liability Companies.

- (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members, and their transferees.
- (b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the Ordinances of this Tribe.
- (c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise on this Reservation.

Section 25-17-902. Application for Certificate of Authority.

- (a) A foreign limited liability company may apply for a certificate of authority to transact business on this Reservation by delivering an application to the Secretary of Flandreau Santee Sioux Tribe for filing. The application must set forth:
 - (1) The name of the foreign company or, its name is unavailable for use on this Reservation, a name that satisfies the requirements of § 25-17-905;
 - (2) The name of the Tribe, state or country under whose law it is organized;
 - (3) The street address of its principal office;
 - (4) The address of its initial designated office on this Reservation;
 - (5) The name and street address of its initial agent for service of process on this Reservation;
 - (6) Whether the duration of the company is for a specified term and if so, the period specified;
 - (7) Whether the company is manger-managed, and, if so, the name and address of each initial manager; and
 - (8) Whether the members of the company are to be liable for its debts and obligations under a provision similar to § 25-17-303 (c).
- (b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the Secretary of Flandreau Santee Sioux Tribe or other official having custody of company records in the Tribe, state or country under whose law it is organized together with the annual report required by § 25-17-210, the fees required by § 25-17-211, and all other fees.

Section 25-17-903. Activities Not Constituting Transacting Business.

- (a) Activities of a foreign limited liability company that do not constitute transacting business on this Reservation within the meaning of this article include:
- (1) Maintaining, defending, or settling an action or proceeding;
 - (2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;
 - (3) Maintaining bank accounts;
 - (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;
 - (5) Selling through independent contractors;
 - (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Reservation before they become contracts;
 - (7) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
 - (8) Securing or collecting debts or enforcing mortgages or other security interest in property securing the debts, and holding, protecting, and maintaining property so acquired;
 - (9) Conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and
 - (10) Transacting business in interstate commerce.
- (b) For purposes of this article, the ownership on this Reservation of income-producing real property or tangible personal property, other than property excluded under Subsection (a), constitutes transacting business on this Reservation.
- (c) This Section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under any other Ordinance of this Tribe.

Section 25-17-904. Issuance of Certificate of Authority. Unless the Secretary of Flandreau Santee Sioux Tribe determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this Chapter, the Secretary of Flandreau Santee Sioux Tribe, upon payment of all filing fees, shall file the application and send a receipt for it and the fees to the limited liability company or its representative.

Section 25-17-905. Name of Foreign Limited Liability Company.

- (a) If the name of a foreign limited liability company does not satisfy the requirements of § 25-17-104, the company, to obtain or maintain a certificate of authority to transact business on this Reservation, must use a fictitious name to transact business on this Reservation if its real name is unavailable and it delivers to the Secretary of Flandreau Santee Sioux Tribe a resolution of its managers, in the case of a manager-managed company, or of its members, in the case of a member-managed company, adopting the fictitious name.
- (b) Except as authorized by Subsection (c) and (d), the name, including a fictitious name to be used to transact business on this Reservation, of a foreign limited

liability company must be distinguishable upon the records of the Secretary of Flandreau Santee Sioux Tribe from:

- (1) The name of any corporation, limited partnership, or company incorporated, organized, or authorized to transact business on this Reservation;
 - (2) A name reserved or registered under § 25-17-105 or 106; and
 - (3) The fictitious name of another foreign limited liability company authorized to transact business on this Reservation.
- (c) A foreign limited liability company may apply to the Secretary of Flandreau Santee Sioux Tribe for authority to use on this Reservation a name that is not distinguishable upon the records of the Secretary of Flandreau Santee Sioux Tribe from a name described in Subsection (b). The Secretary of Flandreau Santee Sioux Tribe shall authorize use of the name applied for if:
- (1) The present user, registrant, or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the Secretary of Flandreau Santee Sioux Tribe from the name of the foreign applying limited liability company; or
 - (2) The applicant delivers to the Secretary of Flandreau Santee Sioux Tribe a certified copy of a final judgment of a Court establishing the applicant's right to use the name applied for on this Reservation.
- (d) A foreign limited liability company may use on this Reservation the name, including the fictitious name, of another domestic or foreign entity that is used on this Reservation if the other entity is incorporated, organized, or authorized to transact business on this Reservation and the foreign limited liability company"
- (1) Has merged with the other entity;
 - (2) Has been formed by reorganization of the other entity; or
 - (3) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (e) If a foreign limited liability company authorized to transact business on this Reservation changes its name to one that does not satisfy the requirements of § 25-17-104, it may not transact business on this Reservation under the name as changed until it adopts a name satisfying the requirements of § 25-17-104 and obtains an amended certificate of authority.

Section 25-17-907. Revocation of Certificate of Authority. A foreign limited liability company may cancel its authority to transact business on this Reservation by filing in the Office of the Secretary of Flandreau Santee Sioux Tribe a certificate of cancellation. Cancellation does not terminate the authority of the Secretary of Flandreau Santee Sioux Tribe to accept service of process on the company for claims for relief arising out of the transactions of business on this Reservation.

Section 25-17-908. Effect of Failure to Obtain Certificate of Authority.

- (a) A foreign limited liability company transacting business on this Reservation may not maintain an action or proceeding on this Reservation unless it has a certificate of authority to transact business on this Reservation.

- (b) The failure of a foreign limited liability company to have a certificate of authority to transact business on this Reservation does not impair the validity of a contract or act of the company or prevent the foreign limited liability company from defending an action or proceeding on this Reservation.
- (c) Limitations on personal liability of managers, members, and their transferees are not waived solely by transacting business on this Reservation without a certificate of authority.
- (d) If a foreign limited liability company transacts business on this Reservation without a certificate of authority, it appoints the Secretary of Flandreau Santee Sioux Tribe as its agent for service of process for claims for relief arising out of the transaction of business on the Reservation in violation of this articles.

Section 25-17-909. Action by Tribal Prosecutor. The Tribal Prosecutor may maintain an action to restrain a foreign limited liability company from transacting business on this Reservation in violation of this article.

Part 10 Derivative Actions

Section 25-17-1001. Right of Action. A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

Section 25-17-1002. Proper Plaintiff. In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced; and

- (1) Must have been a member at the time of the transaction of which the plaintiff complains; or
- (2) The plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

Section 25-17-1003. Pleading. In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reason for not making the effort.

Section 25-17-1004. Expenses. If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the Court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

Part 11
Miscellaneous Provisions

Section 25-17-1101. Uniformity of Application and Construction. This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among Tribes or states enacting it.

Section 25-17-1102. Short Name. This Chapter may be cited as the Flandreau Santee Sioux Tribe Limited Liability Company Chapter.

Section 25-17-1103. Fees for Filing. The Secretary of Flandreau Santee Sioux Tribe may charge the following fees:

- (a) For amending or restating the articles of organization in the case of a domestic limited liability company or amending the registration in the case of a foreign limited liability company, a filing fee of fifty dollars;
- (b) For filing articles of termination, ten dollars;
- (c) For filing articles of merger, fifty dollars;
- (d) For filing a statement of dissociation, ten dollars;
- (e) For filing an application to reserve a name, twenty dollars;
- (f) For issuing a certificate of existence. Fifteen dollars;
- (g) For filing an application for registration of name, one dollar for each month, or fraction thereof, between the date of filing such application and December thirty-first of the calendar year in which such application is filed;
- (h) For filing an annual renewal of registration, a limited liability company which has in effect a registration of its name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars. A renewal application maybe filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following year.
- (i) For acting as agent for services of process the Secretary of Flandreau Santee Sioux Tribe shall charge and collect at the time of such service twenty-five dollars which may be recoverable as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action. Each limited liability company, domestic or foreign, that fails or refused to file its annual report for any year within the time prescribed is subject to a penalty of fifty dollars to be assessed by the Secretary of Flandreau Santee Sioux Tribe.

Section 25-17-1104. Saving Clause. This Chapter does not affect an action or proceeding commenced or right accrued before the effective date of this Chapter.

Chapter 25-18
Uniform Partnership Act

Section 25-18-101. Definitions. In this Act:

- (1) “Business” includes every trade, occupation, and profession.
- (2) “Debtor in bankruptcy” means a person who is the subject of:
 - (i) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (ii) A comparable order under federal, state, or foreign law governing insolvency.
- (3) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.
- (4) “Foreign limited liability partnership” means a partnership that:
 - (I) Is formed under laws other than the Ordinances of this Tribe; and
 - (ii) Has the status of a limited liability partnership under those laws.
- (5) “Limited liability partnership” means a partnership that has filed a statement of qualification under 25-18-1001 and does not have a similar statement in effect in any other jurisdiction.
- (6) “Partnership” means an association of two or more persons to carry on as co-owners in a business for profit formed under 25-18-202, predecessor law, or comparable law of another jurisdiction.
- (7) “Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
- (8) “Partnership at will” means a partnership in which the partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.
- (9) “Partnership interest” or “partner’s interest in the partnership” means all of a partner’s interests in the partnership, including the partner’s transferable interest and all management and other rights.
- (10) “Person” means an individual, corporation, Federally recognized Indian Tribe, business trust, estate, trust partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (11) “Property” means all property, real, personal, or mixed, tangible or intangible, or any interest therein.
- (12) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the United State.
- (13) “Statement” means a statement of partnership authority under 25-18-303, a statement of denial under 25-18-304, a statement of dissociation under 25-18-704, a statement of dissolution under Section 805, a statement of merger under 25-18-907, a statement of qualification under 25-18-1001, a statement of foreign qualification under 25-18-1102, or an amendment or cancellation of any of the forgoing.

- (14) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.
- (15) "Tribe" shall mean a Federally recognized Indian Tribe.

Section 25-18-102. Knowledge and Notice.

- (a) A person knows a fact if the person has actual knowledge of it.
- (b) A person has notice of a fact if the person:
 - (1) Knows of it;
 - (2) Has received a notification of it; or
 - (3) Has reason to know it exists from all of the facts known to the person at the time in question.
- (c) Except as otherwise provided in subsection (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
- (d) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Section 25-18-103. Effect of Partnership Agreement, Nonwaivable Provisions.

- (a) Except as otherwise provided in Subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this Act governs relations among the partners and between the partners and the partnership.
- (b) The partnership agreement may not:
 - (1) Vary the rights and duties under 25-18-105 except to eliminate the duty to provide copies of statements to all of the partners;
 - (2) Unreasonably restrict the right of access to books and records under 25-18-403(b);
 - (3) Eliminate the duty of loyalty under 25-18-404(b) or 25-18-603(b)(3), but:
 - (i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
 - (ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure

of all material facts, a specific act or transaction that otherwise would violate the duty of loyalties;

- (4) Unreasonably reduce the duty of care under 25-18-404(c) or 25-18-603(b)(3);
- (5) Eliminate the obligation of good faith and fair dealing under 25-18-404(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (6) Vary the power to dissociate as a partner under 25-18-603(a), except to require the notice under 25-18-601(1) to be in writing;
- (7) Vary the right of a Court to expel a partner in the events specified in 25-18-601(5);
- (8) Vary the requirement to wind up the partnership business in cases specified in 25-18-801(4),(5), or (6);
- (9) Vary the law applicable to a limited liability partnership under 25-18-106(b); or
- (10) Restrict rights of third parties under this Act.

Section 25-18-104. Supplemental Principal of Law.

- (a) Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.
- (b) If an obligation to pay interest arises under this Act and the rate is not specified, the rate shall be 10% per annum.

Section 25-18-105. Execution, Filing, and Recording of Statements.

- (a) A statement may be filed in the Office of the Secretary of Flandreau Santee Sioux Tribe. A certified copy of a statement that is filed in an office in another state may be filed in the Office of the Secretary of Flandreau Santee Sioux Tribe. Either filing has the effect provided in this Act with respect to partnership property located in or transactions that occur on this Reservation.
- (b) A certified copy of a statement that has been filed in the Office of the Secretary of Flandreau Santee Sioux Tribe and recorded in the office of the Clerk of Courts has the effect provided for recorded statements in this Act. A recorded statement that is not a certified copy of a statement filed in the Office of the Secretary of Flandreau Santee Sioux Tribe does not have the effect provided for recorded statement in this Act.
- (c) A statement filed by a partnership must be executed by a partner or other person authorized by this Act. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.
- (d) A person authorized by this Act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.
- (e) A person who files a statement pursuant to this Section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as

a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner. The Secretary of Flandreau Santee Sioux Tribe may collect a fee for filing or providing a certified copy of a statement. The Clerk of Courts may collect a fee, not to exceed ten dollars, for recording a statement.

Section 25-18-106. Governing Law.

- (a) Except as otherwise provided in Subsection (b), the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.
- (b) The Ordinances of this Tribe govern relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

Section 25-18-107. Partnership Subject to Amendment or Repeal of Act. A partnership governed by this Act is subject to any amendment to or repeal of this Act.

**Article II.
Nature of Partnership**

Section 25-18-201. Partnership as Entity.

- (a) A partnership is an entity distinct from its partners.
- (b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under 25-18-1001.

Section 25-18-202. Formation of Partnership.

- (a) Except as otherwise provided in Subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.
- (b) An association formed under a statute other than this Act, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this Act.
- (c) In determining whether a partnership is formed, the following rules apply:
 - (1) Joint tenancy in common. Tenancy by the entities, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
 - (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
 - (3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
 - (i) Of a debt by installments or otherwise;
 - (ii) For services as an independent contractor or of wages or other compensation to an employee;
 - (iii) Of rent;

- (iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
- (v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
- (vi) For the sale of the goodwill of a business or other property by installments or otherwise.

Section 25-18-203. Partnership Property. Property acquired by a partnership is property of the partnership and not of the partners individually.

Section 25-18-204. When Property is Partnership Property.

- (a) Property is partnership property if acquired in the name of:
 - (1) The partnership; or
 - (2) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the partnership.
- (b) Property is acquired in the name of the partnership by a transfer to:
 - (1) The partnership in its name; or
 - (2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
- (c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
- (d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes. Subject to the effect of a statement of partnership authority under 25-18-303:
 - (1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
 - (2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

Article III
Relations of Partners to Persons Dealing with Partnership

Section 25-18-301. Partner Agent of Partnership. Subject to the effect of a statement of partnership authority under 25-18-303:

- (1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had receive a notification that the partner lacked authority.
- (2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

Section 25-18-302. Transfer of Partnership Property.

- (a) Partnership property may be transferred as follows:
 - (1) Subject to the effect of a statement of partnership authority under 25-18-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.
 - (2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
 - (3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
- (b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under 25-18-301 and :
 - (1) As to a subsequent transferee who gave value for property transferred under subsection (a) (1) and (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or
 - (2) As to a transferee who gave value for property transferred under Subsection (a)(3)m proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

- (c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under Subsection (b), from any earlier transferee of the property.
- (d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Section 25-18-303. Statement of Partnership Authority.

- (a) A partnership may file a statement of partnership authority in the Office of the Secretary of Flandreau Santee Sioux Tribe, which:
 - (1) Must include:
 - (i) The name of the partnership;
 - (ii) The street address of its chief executive office and of one office on this Reservation, if there is one;
 - (iii) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of Subsection (b); and
 - (iv) The names of the partners authorized to execute an instrument transferring real property, held in the name of the partnership; and
 - (2) May state the authority, or limitations on the authority, or some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.
- (b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.
- (c) If a filed statement of partnership authority is executed pursuant to 25-18-105(c) and states the name of the partnership but does not contain all other information required by Subsection (a), the statement nevertheless operates with respect to a person not a partner as provided in Subsections (d) and (e).
- (d) Except as otherwise provided in Subsection (g), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:
 - (1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.
 - (2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then recorded in the office for recording transfers of that real property. The recording in the

office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

- (e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.
- (f) Except as otherwise provided in Subsections (d) and (e) and 25-18-704 and 25-18-805, a person not a partner is not deemed to know of a limitation on authority of a partner merely because the limitation is contained in a filed statement.
- (g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Secretary of Flandreau Santee Sioux Tribe.

Section 25-18-304. Statement of Denial. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to 25-18-303(b) may file a statement of denial in the Office of the Secretary of Flandreau Santee Sioux Tribe stating the name of the partnership and the fact that is being denied, which may include denial of authority as provided in 25-18-303(d) and(e).

Section 25-18-305. Partnership Liable for Partner's Actionable Conduct.

- (a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.
- (b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

Section 25-18-306. Partner's Liability.

- (a) Except as otherwise provided in Subsection (b) and (c), all partners are liable jointly and severally for all obligations of the Partnership unless otherwise agreed by the claimant or provide by law.
- (b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.
- (c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under 25-18-1001(b).

Section 25-18-307. Actions By and Against Partnership and Partners.

- (a) A partnership may sue and be sued in the name of the partnership.
- (b) An action may be brought against the partnership and, to the extent not inconsistent with 25-18-306, any or all of the partners in the same action or in separate actions.
- (c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.
- (d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under 25-18-306 and;
 - (1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
 - (2) The partnership is a debtor in bankruptcy;
 - (3) The partner has agreed that the creditor need not exhaust partnership assets;
 - (4) A Court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the Court's equitable powers; or
 - (5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.
- (e) This Section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under 25-18-308.

Section 28-18-308. Liability of Purported Partner.

- (a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner is liable with respect to that liability jointly and severally with any other person consenting to be representation.
- (b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or

obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

- (c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.
- (d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.
- (e) Except as otherwise provided in Subsection (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

Article IV.

Relations of Partners to Each Other and to Partnership

Section 25-18-401. Partner's Rights and Duties.

- (a) Each partner is deemed to have an account that is:
 - (1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
 - (2) Charged with an amount equal to the money plus the value of any other property, net amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.
- (b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.
- (c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.
- (d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.
- (e) A payment or advance made by a partner which gives rise to a partnership obligation under Subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.
- (f) Each partner has equal rights in the management and conduct of the partnership business.
- (g) Each partner may use or possess partnership property only on behalf of the partnership.
- (h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.
- (i) A person may become a partner only with the consent of all of the partners.
- (j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

- (k) This Section does not affect the obligations of a partnership to other persons under 25-18-301.

Section 25-18-402. Distributions in Kind. A partner has no right to receive, and may not be required to accept, a distribution in kind.

Section 25-18-403. Partner's Rights and Duties with Respect, to Information.

- (a) A partnership shall keep its books and records, if any, at its chief executive office.
- (b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.
- (c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:
 - (1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this Act; and
 - (2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

Section 25-18-404. General Standards of Partner's Conduct.

- (a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in Subsections (b) and (c). (b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:
 - (1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
 - (2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
 - (3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.
- (c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
- (d) A partner shall discharge the duties to the partnership and the other partners under this Act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

- (e) A partner may does not violate a duty or obligation under this Act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.
- (f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.
- (g) This Section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Section 25-18-405. Actions by Partnership and Partners.

- (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of duty to the partnership, causing harm to the partnership.
- (b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:
 - (1) Enforce the partner's rights under the partnership agreement;
 - (2) Enforce the partner's rights under this Act, including:
 - (i) The partner's rights under 25-18-401, 25-18-403, or 25-18-404;
 - (ii) The partner's rights on dissociation to have the partner's interest in the partnership purchased pursuant to 25-18-701 or enforce any other right under Article 6 or 7; or
 - (iii) The partner's right to compel a dissolution and winding up of the partnership business under 25-18-801 or enforce any other right under Article 8; or
 - (3) Enforce the rights and otherwise protect the interests of the partner, including right and interests arising independently of the partnership relationship.
- (c) The accrual of, and any time limitation on, a right of action for a remedy under this Section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 25-18-406. Continuation of Partnership Beyond Definite Term or Particular Undertaking.

- (a) I a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.
- (b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Article V.
Transferees and Creditors of Partner

Section 25-18-501. Partner Not Co-Owner of Partnership Property. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

Section 25-18-502. Partner's Transferable Interest in Partnership. The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

Section 25-18-503. Transfer of Partner's Transferable Interest.

- (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:
 - (1) Is permissible;
 - (2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
 - (3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to required access to information concerning partnership transactions, or to inspect or copy the partnership books or records.
- (b) A transferee of a partner's transferable interest in the partnership has a right:
 - (1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
 - (2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
 - (3) To seek under 25-18-801(6) a judicial determination that it is equitable to wind up the partnership business.
- (c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.
- (d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.
- (e) A partnership need not give effect to a transferee's rights under this Section until it has notice of the transfer.
- (f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Section 25-18-504. Partner's Transferable Interest Subject to Charging Order.

- (a) On application by a judgment creditor of a partner or of a partner's transferee, a Court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The Court may appoint a receiver of the share of

the distributions due or to become due to the judgment debtor in respect of the judgment debtor might have made or which the circumstances of the case may require.

- (b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The Court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the right of a transferee.
- (c) At any time before foreclosure, an interest charged may be redeemed:
 - (1) By the judgment debtor;
 - (2) With property other than partnership property, by one or more of the other partners; or
 - (3) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.
- (d) This Act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.
- (e) This Section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

Article VI. Partner's Disassociation

Section 25-18-601. Events Causing Partner's Dissociation. A partner is dissociated from a partnership upon the occurrence of any of the following events:

- (1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;
- (2) An event agreed to in the partnership agreement as causing the partner's dissociation;
- (3) The partner's expulsion pursuant to the partnership agreement;
- (4) The partner's expulsion by the unanimous vote of the other partner;
 - (i) It is unlawful to carry on the partnership business with that partner;
 - (ii) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
 - (iii) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or
 - (iv) A partnership that is a partner has been dissolved and its business is being wound up;
- (5) On application by the partnership or another partner, the partner's expulsion by judicial determination because;

- (i) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - (ii) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under 25-18-404; or
 - (iii) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- (6) The partner's:
- (i) Becoming a debtor in bankruptcy;
 - (ii) Executing an assignment for the benefit of creditors;
 - (iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
 - (iv) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a partner who is an individual:
- (i) The partner's death;
 - (ii) The appointment of a guardian or general conservator for the partner; or
 - (iii) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
- (8) In case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
- (9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or
- (10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

Section 25-18-602. Partner's Power to Dissociate; Wrongful Dissociation.

- (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to 25-18-601(1).
- (b) A partner's dissociation is wrongful only if:
 - (1) It is in breach of an express provision of the partnership agreement; or
 - (2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
 - (i) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under 25-18-601(6) to (10), inclusive, or wrongful dissociation under this Subsection;

- (ii) The partner is expelled by judicial determination under 25-18-601(5);
 - (iii) The partner is dissociated by becoming a debtor in bankruptcy; or
 - (iv) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.
- (c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

Section 25-18-603. Effect of Partner's Dissociation.

- (a) If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 applies; otherwise, Article 7 applies.
- (b) Upon a partner's dissociation:
 - (1) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in 25-18-803;
 - (2) The partner's duty of loyalty under 25-18-404(b)(3) terminates; and
 - (3) The partner's duty of loyalty under 25-18-404(b)(1) and (2) duty of care under 25-18-404(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to 25-18-803.

Article VII.

Partner's Disassociation When Business Not Wound Up.

Section 25-18-701. Purchase of Dissociated Partner's Interest.

- (a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under 25-18-801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to Subsection (b).
- (b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under 25-18-807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.
- (c) Damages for wrongful dissociation under 25-18-602(b), and all other amounts owing, whether or not presently due, form the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.
- (d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under 25-18-702.

- (e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest, reduced by any offsets under Subsection (c).
- (f) If a deferred payment is authorized under Subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under Subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.
- (g) The payment or tender required by Subsection (e) or (f) must be accompanied by the following:
 - (1) A statement of a partnership assets and liabilities as of the date of dissociation;
 - (2) The latest available partnership balance sheet and income statement, if any;
 - (3) An explanation of how the estimated amount of the payment was calculated; and
 - (4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under Subsection (c), or other terms of the obligation to purchase.
- (h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the partnership. A deferred payment must be adequately secured and bear interest.
- (i) A dissociated partner may maintain an action against the partnership, pursuant to 25-18-405(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets under Subsection (c), or other terms of the obligations to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The Court shall determine the buyout price of the dissociated partner's interest, any offset due under Subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under Subsection (h), the Court shall also determine the security for payment and other terms of the fees and expenses of appraisers or other experts for a party to the action, in amounts the Court finds equitable, against a party that the Court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with Subsection (g).

Section 25-18-702. Dissociated Partner's Power to Bind and Liability to Partnership.

- (a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner which would have bound the partnership under 25-18-301 before dissociation only if at the time of entering into the transaction the other party:
 - (1) Reasonably believed that the dissociated partner was then a partner;
 - (2) Did not have notice of the partner's dissociation; and
 - (3) Is not deemed to have had knowledge under 25-18-303(e) or notice under 25-18-704(c).
- (b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under Subsection (a).

Section 25-18-703. Dissociated Partner's Liability to Other Persons.

- (a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in Subsection (b).
- (b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9, within two years after the partner's dissociation, only if the partner is liable for the obligation under 25-18-306 and at the time of entering into the transaction the other party:
 - (1) Reasonably believed that the dissociated partner was then a partner;
 - (2) Did not have notice of the partners dissociation; and
 - (3) Is not deemed to have had knowledge under 25-18-303(e) or notice under 25-18-704(c).
- (c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.
- (d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

Section 25-18-704. Statement of Dissociation.

- (a) A dissociated partner or the partnership may file a statement of dissociation in the Office of the Secretary of Flandreau Santee Sioux Tribe stating the name of the partnership and that the partner is dissociated from the partnership.
- (b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of 25-18-303(d) and (e).
- (c) For the purposes of 25-18-702(a)(3) and 25-18-703(b)(3), a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

Section 25-18-705. Continued Use of Partnership Name. Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

**Article VIII.
Winding Up Partnership Business.**

Section 25-18-801. Events Causing Dissolution and Winding Up of Partnership Business. A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

- (1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under 25-18-601(2) to (10), inclusive, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;
- (2) In a partnership for a definite term or particular undertaking:
 - (i) Within ninety days after a partner's dissociation by death or otherwise under 25-18-601(6) to (10), inclusive, or wrongful dissociation under 25-18-602(b), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to 25-18-602(b)(2)(i) constitutes the expression of that partner's will to wind up the partnership business;
 - (ii) The express will of all of the partners to wind up the partnership business;
or
 - (iii) The expiration of the term or the completion of the undertaking;
- (3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;
- (4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this Section;
- (5) On application by a partner, a judicial determination that:
 - (i) The economic purpose of the partnership is likely to be unreasonably frustrated;
 - (ii) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or
 - (iii) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or
- (6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:
 - (i) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

- (ii) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

Section 25-18-802. Partnership Continues After Dissolution.

- (a) Subject to Subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.
- (b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:
 - (1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and
 - (2) The rights of a third party accruing under 25-18-804(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

Section 25-18-803. Right to Wind Up Partnership Business.

- (a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the Tribal Court, for good cause shown, may order judicial supervision of the winding up.
- (b) The legal representative of the last surviving partner may wind up a partnership's business;
- (c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 807, settle disputes by mediation or arbitration, and perform other necessary acts.

Section 25-18-804. Partner's Power to Bind Partnership After Dissolution. Subject to § 25-18-805, a partnership is bound by a partner's act after dissolution that:

- (1) Is appropriate for winding up the partnership business; or
- (2) Would have bound the partnership under 25-18-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

Section 25-18-805. Statement of Dissolution.

- (a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution in the Office of the Secretary of Flandreau Santee Sioux Tribe stating the name of the partnership and that the partnership has dissolved and is winding up its business'

- (b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of 25-18-303(d) and is a limitation on authority for the purposes of 25-18-303(e).
- (c) For the purposes of 25-18-301 and 25-18-804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partner's authority as a result of the statement of dissolution ninety days after it is filed.
- (d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in 25-18-303(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

Section 25-18-806. Partner's Liability to Other Partners After Dissolution.

- (a) Except as otherwise provided in Subsection (b) and 25-18-306, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under 25-18-804.
- (b) A partner who, with knowledge of the dissolution, incurs a partnership liability under 25-18-804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

Section 25-18-807. Settlement of Accounts and Contributions Among Partners.

- (a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this Section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (b).
- (b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under 25-18-306.
- (c) If a partner fails to contribute the full amount required under Subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under 25-18-306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under 25-18-306.

- (d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under 25-18-306.
- (e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.
- (f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a Court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

Article IX
Conversions and Mergers Section 25-18-901.

Definitions. In this Articles:

- (1) "General Partner" means a partner in a partnership and a general partner in a limited partnership
- (2) "Limited Partner" means a limited partner in a limited partnership.
- (3) "Limited Partnership" means a limited partnership created under the Chapter 25-18, the Uniform Limited Partnership Act, predecessor law, or comparable law of another jurisdiction.
- (4) "Partner" includes both a general partner and a limited partner.

Section 25-18-902. Conversion of Partnership to Limited Partnership.

- (a) A partnership may be converted to a limited partnership pursuant to this Section.
- (b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.
- (c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:
 - (1) A statement that the partnership was converted to a limited partnership from a partnership;
 - (2) Its former name; and
 - (3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.
- (d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.
- (e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction that the limited partner is general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited

partnership incurred after the conversion takes effect is that of a limited partner as provided in the Chapter 25-18, the Uniform Limited Partnership Act.

Section 25-18-903. Conversion of Limited Partnership to Partnership.

- (a) A limited partnership may be converted to a partnership pursuant to this Section.
- (b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.
- (c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.
- (d) The conversion takes effect when the certificate of limited partnership is canceled.
- (e) A partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in 25-18-306, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

Section 25-18-904. Effect of Conversion; Entity Unchanged.

- (a) A partnership or limited partnership that has been converted pursuant to this Article is for all purposes the same entity that existed before the conversion.
- (b) When a conversion takes effect:
 - (1) All property owned by the converting partnership or limited partnership remains vested in the converted entity;
 - (2) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and
 - (3) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

Section 25-18-905. Merger of Partnerships.

- (a) Pursuant to a plan of merger approved as provided in Subsection (c), a partnership may be merged with one or more partnerships or limited partnerships.
- (b) The plan of merger must set forth:
 - (1) The name of each partnership or limited partnership that is a party to the merger;
 - (2) The name of the surviving entity into which the other partnerships or limited partnerships will merge;
 - (3) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;
 - (4) The terms and conditions of the merger;
 - (5) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and
 - (6) The street address of the surviving entity's chief executive office.
- (c) The plan of merger must be approved:

- (1) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
 - (2) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.
- (d) After a plan of merger is approved and before the merger takes effect, the plan may be amended as provided in the plan.
- (e) The merger takes effect on the later of:
- (1) The approval of the plan of merger by all parties to the merger, as provided in Subsection (c);
 - (2) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or
 - (3) Any effective date specified in the plan of merger.

Section 25-18-906. Effect of Merger.

- (a) When a merger takes effect:
- (1) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;
 - (2) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;
 - (3) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and
 - (4) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.
- (b) The Secretary of Flandreau Santee Sioux Tribe is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of Flandreau Santee Sioux Tribe of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of Flandreau Santee Sioux Tribe shall mail a copy of the process to the surviving foreign partnership or limited partnership.
- (c) A partner of the surviving partnership or limited partnership is liable for:
- (1) All obligations of a party to the merger for which the partner was personally liable before the merger;
 - (2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and
 - (3) Except as otherwise provided in 25-18-306, all obligations of the surviving entity incurred after the merger takes effect, but those

obligations may be satisfied only out of property of the entity if the partner is a limited partner.

- (d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in 25-18-807 or in the Limited Partnership Act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.
- (e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 701 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under 25-18-702 by an act of a general partner dissociated under this subsection, and the partner is liable under 25-18-703 for transactions entered into by the surviving entity after the merger takes effect.

Section 25-18-907. Statement of Merger.

- (a) After a merger, the surviving partnership or limited partnership may file in the Office of the Secretary of Flandreau Santee Sioux Tribe a statement that one or more partnerships or limited partnerships have merged into the surviving entity.
- (b) A statement of merger must contain:
 - (1) The name of each partnership or limited partnership that is a party to the merger;
 - (2) The name of the surviving entity into which the other partnerships or limited partnership were merged;
 - (3) The street address of the surviving entity's chief executive office and of an office on this Reservation, if any; and
 - (4) Whether the surviving entity is a partnership or a limited partnership.
- (c) Except as otherwise provided in Subsection (d), for the purposes of 25-18-302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.
- (d) For the purposes of 25-18-302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.
- (e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to 25-18-105(c), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by Subsection (b), operates with respect to the

partnerships or limited partnerships named to the extent provided in Subsections (c) and (d).

Section 25-18-908. Nonexclusive. This Article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

Article X. Limited Liability Partnership.

Section 25-18-1001. Statement of Qualification.

- (a) A partnership may become a limited liability partnership pursuant to this Section.
- (b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.
- (c) After the approval required by Subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification in the Office of the Secretary of Flandreau Santee Sioux Tribe. The statement must contain:
 - (1) The name of the partnership;
 - (2) The street address of the partnership's chief executive office and, if different, the street address of an office on this Reservation, if any;
 - (3) If the partnership does not have an office on this Reservation, the name and street address of the partnership's agent for service of process;
 - (4) A statement that the partnership elects to be a limited liability partnership; and
 - (5) A deferred effective date, if any.
- (d) The agent of a limited liability partnership for service of process must be an individual who is a member of this Reservation or other person authorized to do business on this Reservation.
 - (1) Any registered agent of a limited liability partnership may resign upon written notice to the limited liability partnership. The registered agent shall file a copy of the resignation with the Secretary of Flandreau Santee Sioux Tribe;
 - (2) Upon an agent's resignation, the Secretary of Flandreau Santee Sioux Tribe is appointed the agent of the limited liability partnership for service of process until a new agent is appointed.
- (e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to 25-18-105(d) or revoked pursuant to 25-18-1003.
- (f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under Subsection (c).
- (g) The filing of a statement of qualification under this Act or, registering as a registered limited liability partnership under prior law establishes that a

partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

- (h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Section 25-18-1001.1 Amendment of Statement of Qualifications – Contents. A statement of qualification of a limited liability partnership is amended by filing a statement of amendment in the Office of the Secretary of Flandreau Santee Sioux Tribe. The statement of amendment shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the statement of qualification of limited liability partnership;
and
- (3) The amendment to the statement of qualification.

Section 25-18-1001.2 Cancellation of Statement of Qualification – Contents. A statement of qualification of limited liability partnership shall be cancelled upon the filing of a statement of cancellation of the limited liability partnership. The statement of cancellation shall be filed in the Office of the Secretary of Flandreau Santee Sioux Tribe and shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the statement of qualification of limited liability partnership;
and
- (3) The reason for filing the statement of cancellation.

Section 25-18-1002. Name.

- (a) The name of a limited liability partnership, and a foreign limited liability partnership authorized to transact business on this Reservation, shall file an annual report in the Office of the Secretary of Flandreau Santee Sioux Tribe which contains:
 - (1) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;
 - (2) The street address of the partnership's chief executive office and, if different, the street address of the partnership on this Reservation, if any;
and
 - (3) If the partnership does not have an office on this Reservation, the name and street address of the partnership's current agent for service of process.
- (b) An annual report must be filed with the Secretary of Flandreau Santee Sioux Tribe by the date specified by the Secretary of Flandreau Santee Sioux Tribe in each year following the calendar year in which a partnership files a statement of qualification or foreign partnership becomes authorized to transact business on this Reservation.
- (c) The Secretary of Flandreau Santee Sioux Tribe may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the Secretary of Flandreau Santee Sioux Tribe shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive

office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

- (d) A revocation under Subsection (c) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.
- (e) A partnership whose statement of qualification has been revoked may apply to the Secretary of Flandreau Santee Sioux Tribe for reinstatement within two years after the effective date of the revocation. The applicant shall submit with the application the filing fee of one hundred dollars, plus any delinquent annual reports and fees for the period prior to the reinstatement application. The application must state: (1) The name of the partnership and the effective date of the revocation; and (2) That the ground for revocation either did not exist or has been corrected.
- (f) A reinstatement under Subsection (e) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

Article XI.

Foreign Limited Liability Partnership.

Section 25-18-1101. Law Governing Foreign Limited Liability Partnership.

- (a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.
- (b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the Ordinances of this Tribe.
- (c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise on this Reservation as a limited liability partnership.

Section 25-18-1102. Statement of Foreign Qualification.

- (a) Before transacting business on this Reservation, a foreign limited liability partnership must file a statement of foreign qualification in the Office of the Secretary of Flandreau Santee Sioux Tribe. The statement must contain:
 - (1) The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," or "LLP";
 - (2) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership on this Reservation, if any;

- (3) If there is no office of the partnership on this Reservation, the name and street address of the partnership's agent for service of process; and
- (4) A deferred effective date, if any.
- (b) The agent of a foreign limited liability company for service of process must be an individual who is a member of this Tribe or other person authorized to do business on this Reservation.
- (c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to 25-18-105(d) or revoked pursuant to 25-18-1003.
- (d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Section 25-18-1102.1. Amendment of Statement of Foreign Qualification – Contents.

A statement of foreign limited liability partnership is amended by filing a statement of amendment in the Office of the Secretary of Flandreau Santee Sioux Tribe. The statement of amendment shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the statement of foreign qualification of limited liability partnership; and
- (3) The amendment to the statement of qualification.

Section 25-18-1102.2. Cancellation of Statement of Foreign Qualification – Contents.

A statement of foreign qualification of limited liability partnership shall be cancelled by filing a statement of cancellation. The statement of cancellation shall be filed in the Office of the Secretary of Flandreau Santee Sioux Tribe and shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the statement of foreign qualification of limited liability partnership; and
- (3) The reason for filing the statement of cancellation.

Section 25-18-1103. Effect of Failure to Qualify.

- (a) A foreign limited liability partnership transacting business on this Reservation may not maintain an action or proceeding on this Reservation unless it has in effect a statement of foreign qualification.
- (b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding on this Reservation.
- (c) A limitation on personal liability of a partner is not waived solely by transacting business on this Reservation without a statement of foreign qualification.
- (d) If a foreign limited liability partnership transacts business on this Reservation without a statement of foreign qualification, the Secretary of Flandreau Santee

Sioux Tribe is its agent for service of process with respect to a right of action arising out of the transaction of business on this Reservation.

Section 25-18-1104. Activities Not Constituting Transacting Business.

- (a) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this Article include:
- (1) Maintaining, defending, or settling an action or proceeding;
 - (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
 - (3) Maintaining bank accounts;
 - (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
 - (5) Selling through independent contractors;
 - (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this depositories with respect to those securities;
 - (7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
 - (8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
 - (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and
 - (10) Transacting business in interstate commerce.
- (b) For purpose of this Article, the ownership on this Reservation of income-producing real property or tangible personal property, other than property excluded under Subsection (a), constitutes transacting business on this Reservation.
- (c) This Section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other Ordinance of the Tribe.

Section 25-18-1105. Action by Tribal Prosecutor. The Tribal Prosecutor may maintain an action to restrain a foreign limited liability partnership from transacting business on this Reservation in violation of this Article. **Article XII. Miscellaneous Provisions.**

Section 25-18-1201. Uniformity of Application and Construction. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states and Tribe enacting it.

Section 25-18-1202. Short Title. This Act may be cited as the Uniform Partnership Act.

Section 25-18-1203. Severability Clause. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other

provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 25-18-1204. Effective Date. This Act takes effect November 28, 2003.

Section 25-18-1205. Savings Clause. This Act does not affect an action or proceeding commenced or right accrued before this Act takes effect.

Section 25-18-1206. Filing Fees. The fee for filing the statements and reports provided for in the following Sections with the Secretary of Flandreau Santee Sioux Tribe is as follows:

- (1) Section 25-18-303, Statement of Authority, one hundred dollars;
- (2) Section 25-18-304, Statement of Denial, ten dollars;
- (3) Section 25-18-704, Statement of Dissociation, ten dollars;
- (4) Section 25-18-805, Statement of Dissolution, ten dollars;
- (5) Section 25-18-907, Statement of Merger, fifty dollars;
- (6) Section 25-18-1001, Statement of Qualification, one hundred dollars;
- (7) Section 25-18-1003, Annual Report, thirty dollars;
- (8) Section 25-18-1001.1, Statement of Amendment, ten dollars;
- (9) Section 25-18-1001.2, Statement of Cancellation, ten dollars;
- (10) Section 25-18-1102, Statement of Foreign Qualification, one hundred dollars;
- (11) Section 25-18-1102.1, Statement of Amendment, ten dollars;
- (12) Section 25-18-1102.2, Statement of Cancellation, ten dollars; and
- (13) Filing any other statement, ten dollars Each limited liability partnership, domestic or foreign, that fails or refused to file its annually report for any year within the time prescribed is subject to a penalty of fifty dollars to be assessed by the Secretary of Flandreau Santee Sioux Tribe.

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REAL PROPERTY**

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CHAPTER 1

RESERVED

CHAPTER 2

TRIBAL REAL PROPERTY LEASES

Section 26-2-1 **Scope.**

Sections 26-2-1 through 26-2-25 apply to all Tribal real property leases between the Flandreau Santee Sioux Tribe and any other person or entity. This includes all residential, commercial, and agricultural leases of real property validly executed by the Flandreau Santee Sioux Tribe. Any federal provisions preempting this title will control. If jurisdiction requires that the state laws of South Dakota should be applied, then those state laws will control.

Section 26-2-2 **Purpose.**

The purpose of this Ordinance is to establish uniform policies and procedures for the leasing of Tribal lands to non-members and members of the Flandreau Santee Sioux Tribe. This ordinance will provide a framework founded on fair principles that give each potential lessee an equal stance when applying for, and receiving, a lease with the Tribe. This ordinance will also provide the minimum required terms, conditions, and covenants of a lease with the Tribe, as well as the process for termination of a lease for non-compliance.

Section 26-2-3 **Definitions.**

- (a) “Agricultural Use” shall mean the act or practice of enjoying the benefits of property through the utilization of that property for an agricultural purpose.
- (b) “Breach” shall refer to failure, without legal excuse, to perform any promise which forms the whole or part of the agreement.
- (c) “Commercial Use” shall mean the act or practice of enjoying the benefits of property through the utilization of that property for business purposes dealing with trade or commerce.
- (d) “Department” shall mean the Flandreau Santee Sioux Tribe Buffalo Land Management Department.
- (e) “Eviction” is the process of dispossession of a lessee by process of law.
- (f) “Executive Committee” shall mean the governing body of the Flandreau Santee Sioux Tribe as provided in Article III, Section 1 of the Flandreau Santee Sioux Tribe Constitution.
- (g) “Federal Government” shall refer to the United States Government, and its agents, including the Department of Interior, Bureau of Indian Affairs, and the United States Attorney.

- (h) “Land Committee” shall mean the Land Management Committee created by the Flandreau Santee Sioux Tribe Executive Committee on March 8, 2012 pursuant to Tribal Resolution 12-20.
- (i) “Lease” shall mean a contract by which one person (the lessor) gives to another (the lessee) temporary possession and use of real property and the lessee agrees to return such property to the lessor at a future time.
- (j) “Leasor” shall mean the party who conveys the land to the lessee. In the instance of land owned by the Tribe, the Tribe is the Leasor.
- (k) “Lessee” shall mean the party that land is conveyed to.
- (l) “Non-Member” shall mean any individual who does not meet the definition of “Tribal Member” in Section 26-2-3(m).
- (m) “Residential Use” shall mean the act or practice of enjoying the benefits of property through the utilization of that property as a primary dwelling.
- (n) “State” shall mean the State of South Dakota, its agencies, and other agents.
- (o) “Tribal Member” refers to an individual who is enrolled as a member by the Flandreau Santee Sioux Tribe.
- (p) “Tribe” in this ordinance shall refer to the Flandreau Santee Sioux Tribe.
- (q) “Trust Land” refers to land which is owned by the Flandreau Santee Sioux Tribe and held in trust by the United States Government for the Tribe’s benefit.

Section 26-2-4 Applicability to Leases.

This ordinance will apply to all leases entered into after the effective date of this ordinance, and all properly executed existing leases. If a previously executed lease contradicts a portion of this ordinance, that portion of the lease agreement will control.

Section 26-2-5 Preferences.

Because it is beneficial to achieve the best market price when leasing, the Tribe will not offer membership preferences in the assigning of agricultural or commercial leases. There also will be no priority given to elders or any other group or classification.

Section 26-2-6 Approval Requirement.

All leases of real property must be presented to, and approved by, the Flandreau Santee Sioux Tribe Executive Committee through a duly-passed resolution. The President of the Flandreau Santee Sioux Tribe must sign the lease on behalf of the Tribe. Leases that are not approved through resolution will not be valid.

Section 26-2-7 Notice of Lease Availability.

Land parcels that the Executive Committee and the Land Management Committee have deemed appropriate to lease to individuals, must be posted on the Tribe's website, at the Tribal Office, in the local newspaper, and anywhere else that the Department determines will reach potential lessees. This notification must be posted fourteen (14) calendar days before bids may be accepted for the parcel.

Section 26-2-8 Bidding for Agricultural or Commercial Leases.

- (a) Bid Requirements. Bids must be filled out on the Bid Form (FSST § 26-2-22(a)) provided by the Department to the bidder. The bid form will have, at a minimum, the following:
 - 1. a description of the land to be lease,
 - 2. the terms of the lease,
 - 3. the length of the lease,
 - 4. the name of the bidder;
 - 5. the amount of money bid per acre (or in another form as otherwise directed by the Department or Land Management Committee);
 - 6. the date of the bid;
 - 7. the date when the bids will be opened; and
 - 8. the signature of the bidder.
- (b) Time Period. Bidding will take place for a period determined by the Land Management Committee, not to exceed 14 calendar days.
- (c) Delivery. Bids must be sealed, and delivered to the Executive Assistant of the Executive Committee. The Executive Assistant will collect, but not open, these sealed bids, and must record the number of bids submitted. The Executive Assistant will sign, concurrently, the "Receipt of Bid Form" (FSST § 26-2-22(b)) with the bidder. If the Executive Assistant is not available, the bids may be received by the Finance Specialist of the Tribe.
- (d) Incomplete Bids. Incomplete bids will not be accepted. Bids will be considered as incomplete if the bid form is not properly filled out or if the bids are not submitted within the allotted time frame of bidding.

Section 26-2-9 Reviewing Bids.

- (a) Time and place of meeting. Within five (5) business days after the final day of bid submissions, the Land Committee will meet to open bids. This meeting must be held open to the public. The bid opening date must be scheduled before the bid period to insure that it can be included in the bid form. This provides bidders with adequate notice of when the meeting will be held if they desire to attend the opening process.

- (b) Process. The Committee chair will open, and read the bids aloud. Another member of the Committee will then record the bid. Once all of the bids have been recorded, the Land Committee will certify the bids by making a written resolution of bids, including the highest bidder for the parcel. The Land Committee will then inform the Tribal Attorney of the results, who will then draft the legal documents that are necessary to satisfy the lease. The final lease documents will be reviewed by the Land Committee, the Executive Committee, the Land Department, and the potential Lessee. When the parties have reviewed, and approved the documents, they will sign the documents, approve the lease through a resolution, and the lessee will take possession of the land as specified in the lease.

Section 26-2-10 Eligibility for Residential Leases.

To be eligible for residential lease with the Flandreau Santee Sioux Tribe, the applicant must be a member of the Tribe who is enrolled and who has attained the age of 18. It is of the utmost importance that the Tribe provides residential opportunities for its membership, and therefore residential leases may not be offered to non-members, unless it is obtained through a lease under Section 26-2-25.

Section 26-2-11 Application for Residential Leases.

- (a) Application Requirements. Applications must be filled out on the Application Form (FSST § 26-2-22(c)) provided by the Department to the applicant. The application form will have, at a minimum, the following:
1. A description of the land to be lease,
 2. The terms of the lease,
 3. The length of the lease,
 4. The name of the applicant;
 5. The names of individuals who will be living with the applicant at the residence;
 6. A statement regarding the need of the a residential lease for the applicant;
 7. Description of the applicant’s current living situation;
 8. Three references:
 - i. Two must be community members whom the applicant has not lived with in the past year, and who are not related to the applicant;
 - ii. One must be a previous landlord;
 9. The date of the application; and
 10. The signature of the applicant.
- (b) Delivery. Applications must be delivered to the Executive Assistant of the Executive Committee. The Executive Assistant will sign, concurrently, the “Receipt of Application Form” (FSST § 26-2-22(d)) with the bidder.
- (c) Review. The Executive Committee will then review the application. They may then either deny or accept the application by resolution. The applicant will be notified of the

Executive Committee's decision via first class mail. If the application is accepted, the Tribal Attorney will be notified, and will draft the appropriate lease documents for the parcel. When these lease documents are prepared, they will be made available to the applicant, Land Committee, Land Department, and Executive Committee for review. When the documents are approved, the Executive Committee representative will sign the document concurrently with the applicant, and applicant may take possession of the land in accordance with the lease terms.

Section 26-2-12 No Assignments.

A lessee may not rent, lease, assign, sublease, or transfer their lease or any portion thereof without the written approval of the Executive Committee. A violation of this provision will result in an involuntary termination of the lease.

Section 26-2-13 Collateral.

Leases may not be used as collateral, be pledged, or used in any manner that implies that the tenant has the ability to alienate the land. The lessee only has the rights as laid out in the lease agreement, and is not vested with a personal interest to assign or pledge. If the land is subsequently foreclosed on, or if any lien is placed on the property, the lessee will be responsible for all damages including attorney's fees.

Section 26-2-14 Inspection of Premises.

To ensure the leased premises are being utilized as specified within the lease, periodic checks of the leased premises will be done by the Buffalo Land Management Department. The Department will be required to visit the property at least monthly, and if it has reason to expect that the lease not been complied with it may do so on a more regular basis. An inspection of lease property may be done by the Department without notice if it is deemed appropriate. The Department may not enter on residential structure on the premises without 24-hour notice to the lessee. Any inspections done from a public road or other access will not require notification. A log of each inspection must be created, and given to the Land Management Committee and the Tribal Secretary.

Section 26-2-15 Non-Compliance with Lease Agreement.

If the lessee is determined to be noncompliant with any of the provisions of the lease agreement, there will be a presumption that the lessee has breached the lease. Any material breach will be considered grounds for termination of the lease, as determined by the Executive Committee.

Section 26-2-16 Notification of Non-Compliance.

If an inspection by the Department has deemed that the Lessee is no longer in compliance with the lease, the Department will notify the lessee in writing, by certified mail, within ten (10) business days.

Section 26-2-17 Hearing with Executive Committee.

Within ten (10) business days of the receipt of the notification letter, the Lessee must request a meeting with Executive Committee and Land Management Committee to discuss his non-compliance. If a hearing is not requested, the Committee may initiate eviction procedures. At the end of the hearing, the Executive Committee will determine whether to allow the Lessee to cure the breach, or whether to evict the Lessee.

Section 26-2-18 Termination of Lease.

A validly executed lease between the Tribe and the Lessee may not be terminated unless of the following events has occurred:

- (a) the lease agreement expires;
- (b) the Tribe and the Lessee mutually agree to terminate the lease in writing;
- (c) the lessee breaches the lease;
- (d) the Tribe breaches the lease.

The lease may end for any one of, or any combination of, these events. The Flandreau Santee Sioux Tribe Tribal Court must issue a judicial decree to determine that the lease has been terminated, and must state the grounds for such termination. If the lease has been terminated, the Tribal Court must issue an Eviction notice to the lessee. If a lease has been terminated because of the lessee's breach, the lessee may not apply for another lease for a period of two (2) years from the date of lease's termination.

Section 26-2-19 Eviction.

Eviction is the process of dispossessing the lessee of the leased premises by the process of law. An eviction may only take place in the Flandreau Santee Sioux Tribe Tribal Court, or a different court that has valid jurisdiction over the land if the Tribal Court lacks jurisdiction over the parcel. Eviction will be authorized after the termination of a lease, and will be enforced by the Flandreau Santee Sioux Tribe Police Department, or any other like agency that has jurisdiction.

Section 26-2-20 Damages.

Damages for the early termination of a lease may be assessed by the Tribal Court. These damages will be limited to actual damages and other damages authorized by the Flandreau Santee Sioux Tribe Law and Order Code. If the land use by the lessee has exceeded the scope of the lease, and profits derived from the use will be disgorged from the Lessee, and given to the Tribe.

Section 26-2-21 Annual Reporting.

The lessee shall file with the land department an annual report which identifies improvements made to the property, the uses of the property, and type of crops grown, and the quantities or volumes yielded from the agricultural or commercial assignment. At the Department's request, this report may be subsidized with receipts from elevators or other markets.

Section 26-2-22 Conflicts of Interest.

If any person on the Land Management Committee or in the Buffalo Land Management Department has an apparent or real conflict of interest with the prospective lessee, it is the obligation of that person to recuse themselves from any decision regarding the lease.

Section 26-2-23 Sovereign Immunity.

This ordinance does not waive the Tribe's sovereign immunity rights in any State or Federal Court. The Tribe does waive its sovereign immunity rights in the Flandreau Santee Sioux Tribe Tribal Court for the purpose of damages for breach of the agreement, or for specific performance of an agreement, as deemed necessary by the Court. The Tribe waives its sovereign immunity for no other purpose.

Section 26-2-24 Forms.

The following forms must be used with bidding on agricultural and commercial leases, as well as for the application for residential leases. Forms that are incomplete will be held invalid, and that bid or application will be void.

Section 26-2-24 Holdover Lessees.

A "holdover lessee" is a lessee that remains in possession of the land after termination of the lease agreement. When a lessee holds over, the Flandreau Santee Sioux Tribe Land Committee may evict the tenant, as provided in 26-2-19, or they may consent to the holdover tenancy, and create a new lease. A holdover lease that is consented to must be approved by the Executive Committee, and it may continue under the same agreement with a mandatory increase in price per acre of 15% of the original lease agreement. The 15% increase in price will take effect immediately after the original lease has expired.

Section 26-2-25 Death of the Residential Lessee.

If the lessee of a valid residential lease deceases during the period of the lease, the other occupants of leased premises will have six (6) months to submit an application to the Executive Committee, or one (1) year to vacate the premises. If the person in possession is also listed as a lessee on the residential lease with the lessee, they will automatically assume the entire lease. The lease application will be awarded at the Executive Committee's discretion, and can be awarded to the original applicant's significant other, family member, or devisee in a testamentary document and these individuals can be Tribal Members, or non-Tribal Members. Multiple lease

applications for this property can be submitted by anyone living with the lessee, and it is wholly within the Executive Committees discretion as to who to award the lease to. The residential property will not be opened up to other applications during the period where occupants are applying for the lease. If the other occupants vacate the property, applications may then be submitted.

This Ordinance was approved through a motion by the Land Management Committee on the 10th day of September, 2012.

This Ordinance was passed by the Executive Committee on the 18th day of September, 2012, by Resolution No. 12-77.

AGRICULTURAL/COMMERCIAL BID FORM - FSST § 26-2-22(a)

The following must be typed by the Buffalo Land Management Department:			
(1) Legal Description of Land			
(2) Bidding Period			
(3) Type of Lease			
(4) Terms of the Lease			
(5) Lease Period			
The following must be written, or typed in by the Bidder (INCOMPLETE BIDS WILL NOT BE ACCEPTED. PLEASE ENSURE THAT YOUR BID HAS BEEN FILLED OUT PROPERLY).			
First Name	Middle Name	Last Name	
Current Street Address/ P.O. Box			
City	State	Zip Code	
E-mail Address		Phone Number	
Yes ___ No ___			
Have you ever been awarded a lease?	Former Lease Year	Type of Former Lease	Former Property Description
Yes ___ No ___	<hr/> <hr/> <hr/>		
Have you ever been denied a lease, or had a lease terminated?	Reason for denial/termination?		
Amount Bid on Land (\$###.## per acre)			
<p>By signing this bid form I acknowledge that I am willing and able to lease this property at the above listed bid. I realize that after submitting my bid, I can revoke the bid up to the day that bids are opened. I also understand that if my bid is accepted by the Flandreau Santee Sioux Tribe, we will enter into the lease the terms specified on this bid form, and in the lease agreement.</p>			
Signature of Bidder			Date

BID RECEIPT FORM - FSST § 26-2-22(b)

I, _____, certify that I accepted a sealed bid from _____, on this _____ day of _____, _____.	
Signature of Person Collecting Bid	
Date	
Signature of Bidder	
Date	

RESIDENTIAL APPLICATION FORM - FSST § 26-2-22(c)

The following must be typed by the Buffalo Land Management Department:

(1) Legal Description of Land	
(2) Application Period	
(3) Type of Lease	
(4) Terms of the Lease	
(5) Lease Period	

The following must be written, or typed in by the applicant. Each applicant 18 years of older must submit a separate application. (INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED. PLEASE ENSURE THAT YOUR BID HAS BEEN FILLED OUT PROPERLY).

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First Name	Middle Name	Last Name
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Name of all other persons who will occupy the Property:

Name: _____	Relationship: _____	Age _____
Name: _____	Relationship: _____	Age _____
Name: _____	Relationship: _____	Age _____
Name: _____	Relationship: _____	Age _____

--

--

Current Street Address/ P.O. Box

City	State	Zip Code

--

E-mail Address	Phone Number
----------------	--------------

Yes ___ No ___			
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Have you ever been awarded a lease?	Former Lease Year	Type of Former Lease	Former Property Description
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Yes ___ No ___	_____	_____	_____
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Have you ever been denied a lease, or had a lease terminated?	Reason for denial/termination?
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Continued on next page

What is your current living situation? (*attach additional pages if needed*)



Why do are you submitting this application for residential housing? (*attach additional pages if needed*)



By signing this bid form I acknowledge that I am willing and able to lease this property at the above listed bid. I realize that after submitting my bid, I can revoke the bid up to the day that bids are opened. I also understand that if my bid is accepted by the Flandreau Santee Sioux Tribe, we will enter into the lease the terms specified on this bid form, and in the lease agreement.

Signature of Bidder	Date

APPLICATION RECEIPT FORM - FSST § 26-2-22(d)

**I, _____, certify that I accepted an application from
_____, on this _____ day of _____, _____.**

Signature of Person Collecting Application	Date
Signature of Bidder	Date

**FLANDREAU SANTEE SIOUX TRIBE
LAW AND ORDER CODE
TITLE 27**

LIMITED LIABILITY COMPANY CODE

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**FLANDREAU SANTEE SIOUX TRIBE
LIMITED LIABILITY COMPANY CODE**

CHAPTER 1 GENERAL PROVISIONS

Section 1.1 Short Title.

This Code shall be known as the “Flandreau Santee Sioux Tribe Limited Liability Company Code.”

Section 1.2 Authority; Purposes; Sovereign Immunity.

- (A) The Executive Committee enacts the Flandreau Santee Sioux Tribe Limited Liability Company Code pursuant to the legislative powers of the Executive Committee as enumerated in Article VIII, subsections 1(f), 1(g), and of the Constitution of the Flandreau Santee Sioux Tribe.
- (B) The purpose of this Code is to provide for economic development of the Flandreau Santee Sioux Tribe (the “Tribe”) and Tribal Members by:
 - (1) Providing the legal framework for organizing individually-owned business entities in order to expand the private business sector on the Reservation; and
 - (2) Authorizing the formation of wholly-owned Tribal business entities for managing the Tribe’s non-gaming economic activities separate from the general affairs of its Executive Committee, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Executive Committee action.
- (C) By the adoption of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal, or state, and neither the adoption of this Code, nor the incorporation of any limited liability company hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

Section 1.3 Scope.

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

Section 1.4 Applicable Law.

The companies organized and created under this Code shall be subject to this Code, and all other laws of the Tribe. By organizing and creating a company under this Code, the company and its Members shall be considered to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe’s legislative, regulatory and adjudicatory

jurisdiction. To the extent not inconsistent with this Code, in its interpretation and application this Code may be supplemented by principles of law and equity.

Section 1.5 Definitions.

Terms used in this Code have the following meaning:

- (A) “Articles of Organization” means the articles filed under Section 2.1 and those articles as amended or restated.
- (B) “Corporation” means a domestic corporation for profit organized under the laws of the Tribe or a foreign corporation formed under the laws of any other jurisdiction.
- (C) “Distribution” means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its Members in respect of their interests.
- (D) “Entity” includes an individual, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.
- (E) “Foreign” refers to limited liability companies, corporations and limited partnerships organized under the laws of a jurisdiction other than the Tribe.
- (F) “Limited Liability Company”, “Domestic Limited Liability Company”, or “Domestic LLC” means an organization formed under this Code, except as provided for in Section 8.1(A).
- (G) “Limited Liability Company Interest” or “Interest in the Limited Liability Company” or “Member’s Interest” means a Member’s rights in the limited liability company, including rights to distributions, profits and losses, and to participate in management, as specified in the Operating Agreement.
- (H) “LLC” means a limited liability company.
- (I) “Majority in Interest” means a Member or Members holding more than fifty percent (50%) of the total voting interests in the limited liability company excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Code.
- (J) “Manager” or “Managers” means the person(s) or entity(ies) designated to manage the LLC pursuant to the Articles of Organization and Operating Agreement.
- (K) “Office of the Secretary” and “Secretary” mean the Office of the Secretary of the Executive Committee as provided by the Tribal Constitution, notwithstanding any delegation by the Secretary to other officials, employees, or agents of specific duties and responsibilities assigned to the Secretary under this Code.

- (L) “Operating Agreement” means an agreement in writing among all of the Members as to the conduct of the business of a limited liability company and its relationships with its Members.
- (M) “Organizer(s)” means the person(s) or entity(ies) which signs and delivers the Articles of Organization for filing to the Office of the Secretary.
- (N) “Member” means a Person that is a member of a limited liability company or has membership interest in a limited liability company. The term does not include a person that has dissociated as a member under Section 3.7.
- (O) “Person” includes a natural person, Tribal Entity and an organization such as a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, or a corporation.
- (P) “Reservation” means pursuant to 25 U.S.C. § 1300j-5 or other applicable federal law, (i) all lands, the title to which is held in trust by the United States for the benefit of the Flandreau Santee Sioux Tribe; and (ii) all lands proclaimed by the Secretary of the U.S. Department of the Interior to be part of the Tribe’s reservation. The term Reservation includes any rights-of-way running through the Reservation.
- (Q) “Section 17 Corporation” means a federally-chartered corporation pursuant to Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477 *et seq.*
- (R) “State” includes a state, territory, or possession of the United States and the District of Columbia.
- (S) “Tribal Constitution” means the Constitution of the Flandreau Santee Sioux Tribe.
- (T) “Tribal Corporation” means a corporation wholly-owned by the Tribe and duly formed pursuant to the laws or actions of the Tribe, and a Section 17 Corporation wholly owned by the Tribe.
- (U) “Executive Committee” means the Executive Committee as established by the Tribal Constitution as the governing body of the Tribe.
- (V) “Tribal Court” means the Tribal Court as established by Article IX of the Tribal Constitution.
- (W) “Tribal Entity” includes the Tribe, the Executive Committee, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, including a Section 17 corporation, a program, a department, an administrative agency or any other legal, commercial or governmental entity of the Tribe.
- (X) “Tribal Member” means an enrolled member of the Flandreau Santee Sioux Tribe.

- (Y) “Tribally-Owned LLC” means a limited liability company wholly owned by the Tribe with the Tribe as its sole Member.
- (Z) “Tribally-Owned Second Tier Subsidiary LLC” means a limited liability company wholly owned by a Tribally-Owned Subsidiary LLC.
- (AA) “Tribally-Owned Subsidiary LLC” means a limited liability company wholly owned by a Tribally-owned LLC.
- (BB) “Tribe” means the Flandreau Santee Sioux Tribe.
- (CC) “Trust Land” means land held in trust by the United States for the benefit of the Tribe or the Tribe’s Members.

Section 1.6 Name.

- (A) The name of a limited liability company as set forth in its Articles of Organization must contain the words “limited liability company” or end with the abbreviation “L.L.C.” or “LLC.” The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under Section 1.9 below.
- (B) The name of a domestic LLC shall be distinguishable from any LLC or corporation previously organized under the laws of the Tribe.

Section 1.7 Registered Office and Registered Agent.

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

Section 1.8 Tribe as Member.

- (A) The Tribe may form a Tribally-Owned LLC under this Code only upon approval of such action by the Executive Committee.
- (B) If the Tribe or a Tribal Entity is a Member of an LLC formed under this Code, any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as specified in Section 9.4(A) of this Code or, as to actions related to the managers of a manager-managed LLC, as stated in the LLC's Operating Agreement.
- (C) If the Tribe is the sole Member of an LLC formed under this Code, such Tribally-owned LLC shall be deemed to possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit, except to the extent otherwise provided in its Operating Agreement.
- (D) If a Tribally-owned LLC, in which the Tribe or a Tribal Entity is the sole Member, forms a Tribally-Owned Subsidiary LLC, to which the Tribally-Owned LLC is the sole Member, such Tribally-Owned Subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.
- (E) If a Subsidiary Tribally-Owned LLC, to which the Tribally-Owned LLC is the sole Member, forms a Tribally-Owned Second Tier Subsidiary LLC, such Tribally-Owned Second Tier Subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit, except to the extent otherwise provided in its Operating Agreement.
- (F) If the Tribe or a Tribal Entity is a Member with a Majority in Interest in an LLC formed under this Code, such LLC shall be deemed to possess the privileges and immunities of the Tribe, including sovereign immunity from suit, to the extent allowed by federal law, this Code or its Operating Agreement, except to the extent otherwise provided in its Operating Agreement.
- (G) In no event shall any Manager of an LLC in which the Tribe is a Member, bind the Tribe's interest as a Member in any manner; provided that the Tribe's interest as a Member may be bound by Manager or Member actions as stated in this Code and the Operating Agreement of the LLC.
- (H) Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe as Member concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as a Member of the LLC.
- (I) For all Tribally-owned limited liability companies and Tribally-owned Subsidiary limited liability companies, the additional provisions of Part 9 of this Code shall apply.

Section 1.9 Nature of Business.

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

- (A) Consent to be sued, complain and defend in its name; provided, however, that if an LLC is Tribally-owned, or wholly-owned by another entity which itself is wholly-owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the Operating Agreement otherwise provides.
- (B) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.
- (C) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.
- (D) Lend money, property, and services to, and otherwise assist its Members and Managers, if any.
- (E) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.
- (F) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
- (G) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- (H) Conduct its business, locate offices, and exercise the powers granted by this Code inside or outside of the Reservation.
- (I) Be a promoter, incorporator, partner, Member, associate, or Manager of any enterprise or entity.
- (J) Elect or appoint Managers, agents, and employees, define their duties, and fix their compensation.
- (K) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former Members, Managers, employees, and agents.
- (L) Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.

- (M) Indemnify a Member, Manager, employee, officer or agent, or any other person.
- (N) Provide benefits or payments to Members, Managers, employees, and agents of the LLC, and to their estates, families, dependents or beneficiaries in recognition of the past services of the Members, Managers, employees, and agents of the LLC.
- (O) Make payments, or do any other act not prohibited by law, that furthers the business of the LLC.
- (P) Transact any lawful business that the Members or the Managers find to be appropriate to promote and further the business and affairs of the limited liability company.

Section 1.10 Execution of Documents.

- (A) Except as otherwise provided in this Code, any document required or permitted by this Code to be delivered for filing in accordance with Section 1.11 shall be executed by any of the following:
 - (1) Any Manager, if management of the LLC is vested in a Manager or Managers, or by a Member, if management of the LLC is reserved to the Members.
 - (2) All Organizers of the LLC if the LLC has not been organized. The name and address of each Organizer shall be provided.
 - (3) The name of the drafter of the document.
- (B) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.
- (C) The person executing the document may do so as an attorney-in-fact. Powers-of-attorney relating to the executing of the document need not be shown to nor filed with the Office of the Secretary.

Section 1.11 Filing.

- (A) The Office of the Secretary shall receive all filings required under this Code and maintain the records of such filings pursuant to this Section, including but not limited to the Articles of Organization, amended or restated articles, annual reports, names and addresses of registered offices and agents, and, in the case of Tribally-owned LLC's, the Operating Agreement and amendments thereto, and other reports required by this Code.
- (B) Upon receipt of a document for filing under this Code, the Office of the Secretary shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.

- (C) If the Office of the Secretary refuses to file a request, the Office shall return it to the person tendering the document for filing within five (5) business days after the date on which the document is received by the Office for filing, together with a specific written explanation of the reason for refusal.
- (D) Any document accepted by the Office of the Secretary shall be effective at the time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Office of the Secretary is specified in the document.
- (E) Fees. The Office of the Secretary shall impose a reasonable filing fee for each document filed, initially not to exceed the sum of \$100.00, and an annual renewal fee initially not to exceed the sum of \$25.00 during the life of the LLC, subject to any uniform schedule of fees as may hereafter be adopted by the Office of the Secretary from time to time.

Section 1.12 Certificate of Status.

Any person may obtain from the Office of the Secretary, upon request, a certificate of status for either a domestic or a foreign LLC.

Section 1.13 Execution by Judicial Act.

Any person who is adversely affected by the failure or refusal of any person to execute and file any Articles or other document to be filed under this Code may petition the Tribal Court to direct the execution and filing of the Articles or other document. Nothing in this Code, however, serves to waive any aspect of the Tribe's sovereign immunity.

Section 1.14 Interstate Application.

An LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Code, in any sovereign Native Nation, any state, territory, district or possession of the United States, or in any foreign jurisdiction.

CHAPTER 2 OPERATING AGREEMENT AND DEALING WITH LLC

Section 2.1 Articles of Organization.

- (A) One or more Tribal Members may organize a limited liability company by signing and delivering the Articles of Organization to the Office of the Secretary for filing. The Organizer(s) need not be Members of the LLC at the time of organization or thereafter.
- (B) A limited liability company shall have one or more Members.
- (C) The Articles of Organization shall contain all of the following information:
 - (1) A statement that the LLC is organized under this Code.
 - (2) A name for the LLC that satisfies the provisions of this Code.
 - (3) The street address of the registered office and the name of the registered agent at that office. For all LLC's formed pursuant to this Code such office and agent shall be located within the exterior boundaries of the Reservation or other trust lands.
 - (4) If management of the LLC is vested in one or more Managers, a statement to that effect.
 - (5) The name and address of each person organizing the LLC.
 - (6) Whether the LLC is Tribally-owned.
 - (7) If Tribally-owned, whether the LLC is to enjoy Tribal sovereign immunity and the scope of any waiver of that immunity.
- (D) The Office of the Secretary shall assign each Article of Organization an identification number.
- (E) Amendment. An LLC may amend its Articles of Organization at any time by delivering an amendment, with filing fee, for filing to the Office of the Secretary.
- (F) Effect of Delivery or Filing.
 - (1) An LLC is formed when the Articles of Organization become effective under Section 1.11(D).
 - (2) The Office of the Secretary's filing of the Articles of Organization is conclusive proof that the LLC is organized and formed under this Code.

Section 2.2 Agency Power of Members and Managers.

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

- (1) Each Member is an agent of the LLC, but not of any of the other Members, for the purpose of its business.
 - (2) The act of any Member, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business of the LLC, binds the LLC in the particular matter, unless the person with whom the Member is dealing has knowledge that the Member has no authority to act in this matter.
 - (3) If the Tribe is a Member, the Tribe's authority shall be exercised pursuant to Section 9.4(A).
- (B) If management of the LLC is vested in one or more Managers:
- (1) No Member, solely by being a Member, is an agent of the LLC or of the other Members.
 - (2) Each Manager is an agent of the LLC, but not for the other Members, for the purpose of its business. The act of any Manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the Manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the Manager is dealing has knowledge that the Manager has no authority to act in the matter.
- (C) No act of a Member or, if management of the LLC is vested in one or more Managers, of a Manager that is not apparently authorized for the carrying on in the ordinary course of business the business of the LLC, shall bind the LLC unless in fact authorized at the time of the transaction or at any other time.

Section 2.3 Admissions of Members and Managers.

- (A) Except as provided in Section 2.3(B)(2) an admission or representation made by any Member concerning the business of an LLC within the scope of the Member's actual authority may be used as evidence against the LLC in any legal proceeding.
- (B) If management of the LLC is vested in one or more Managers:
 - (1) An admission or representation made by a Manager concerning the business of an LLC within the scope of the Manager's authority may be used as evidence against the LLC in any legal proceeding.
 - (2) The admission or representation of any Member, acting solely in the Member's capacity as a Member, is not evidence against the LLC in any legal proceeding.

Section 2.4 Knowledge of or Notice to Member or Manager.

- (A) Except as provided in Section 2.4(B)(2) notice to any Member of any matter relating to the business of an LLC, and the knowledge of a Member acting in the particular matter, acquired while a Member or known by the person at the time of becoming a Member, and the knowledge of any Member who reasonably could and should have communicated it to the acting Member, operate as notice to or knowledge of the LLC.
- (B) If management of the LLC is vested in one or more Managers:
 - (1) Notice to any Manager of any matter relating to the business of the LLC, and the knowledge of the Manager acting in the particular matter acquired while a Manager or known by the person at the time of becoming a Manager and the knowledge of any other Manager who reasonably could and should have communicated it to the acting Manager, operate as notice to or knowledge of the LLC.
 - (2) Notice to or knowledge of any Member while the Member is acting solely in the capacity of a Member is not notice to or knowledge of the LLC.

Section 2.5 Liability of Members to Third Parties.

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

Section 2.6 Parties to Action.

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

- (A) The object of the proceeding is to enforce a Member's right against or liability to the LLC.
- (B) The action is brought by a Member under Section 2.7.

Section 2.7 Authority to Sue.

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

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

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

CHAPTER 3 MEMBERS AND MANAGERS

Section 3.1 Management.

- (A) Unless the Articles of Organization vest management in one or more Managers, management of the LLC shall be vested in the Members subject to any provision in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Member or group of Members.

In a Member-managed limited liability company, the following rules shall apply, unless otherwise provided in the Operating Agreement or this Code:

- (1) A difference arising among Members as to a matter in the ordinary course of the activities of the LLC may be decided by a majority in membership interests.
 - (2) An act outside the ordinary course of activities of a limited liability company may be undertaken only with the consent of all the Members.
- (B) If the Articles of Organization vest management in one or more Managers, management of the business or affairs of the LLC shall be vested in the Manager or Managers subject to any provisions in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Manager or group of Managers. Unless otherwise provided in the Operating Agreement, the Manager or Managers:
- (1) Shall be designated, appointed, elected, removed, or replaced by a vote of a Majority in Interest of the Members.
 - (2) Need not be Members of the LLC nor individuals.
 - (3) Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified.

Section 3.2 Duties.

Unless otherwise provided in the Operating Agreement:

- (A) No Member or Manager shall act or fail to act in a manner that constitutes any of the following:
- (1) A willful failure to deal fairly with the LLC or its Members in connection with a matter in which the Member or Manager has a material conflict of interest.
 - (2) A violation of criminal law involving moral turpitude or affecting the interests of the LLC.
 - (3) A transaction from which the Member or Manager derived an improper personal profit.

- (4) Willful misconduct.
- (B) Every Member and Manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that Member or Manager without the consent of a Majority in Interest of the disinterested Members or Managers, or other persons participating in the management of the LLC, from any of the following:
 - (1) A transaction connected with the organization, conduct, or winding up of the LLC.
 - (2) A use by a Member or Manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as Member or Manager.
 - (3) The Operating Agreement may impose duties on its Members and Managers that are in addition to, but not in abrogation of, those provided in subsection (A) above.

Section 3.3 Limitation of Liability and Indemnification.

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

Section 3.4 Voting.

- (A) Unless otherwise provided in the Operating Agreement or this Section, and subject to subsection (B) below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of an LLC.
 - (1) If management of an LLC is reserved to the Members, an affirmative vote, approval, or consent by a Majority in Interest of Members.
 - (2) If the management of an LLC is vested in one or more Managers, the affirmative vote, consent, or approval of more than fifty percent (50%) of the Managers.
- (B) Unless otherwise provided in the Operating Agreement or this Code, the affirmative vote, approval, or consent of all Members shall be required to do any of the following:
 - (1) Amend the Articles of Organization.
 - (2) Issue an interest in an LLC to any person.
 - (3) Adopt, amend, or revoke Operating Agreement.
 - (4) Allow an LLC to accept any additional contribution from a Member.
 - (5) Allow a partial redemption of an interest in an LLC under Section 5.3.
 - (6) Value contributions of Members under Section 4.1.
 - (7) Authorize a Manager, Member, or other person to do any act on behalf of the LLC that contravenes the Operating Agreement.
- (C) Unless otherwise provided in the Operating Agreement, if any Member is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the Member would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under Section 1.5(I) for that matter.
- (D) Unless otherwise provided in Operating Agreement or this Section, if all or part of an interest in the LLC is assigned under Section 6.4, the assigning Member shall be considered the Member of the assigned interest for purposes of determining the 50% threshold under Section 1.5(I) until the assignee of the interest in the LLC becomes a Member under Section 6.6.

Section 3.5 Records and Information.

- (A) An LLC shall keep at its principal place of business all of the following:
 - (1) A list, in alphabetical order, of each past and present Member and, if applicable, Manager.

- (2) A copy of the executed Articles of Organization and all amendments to the Articles, together with executed copies of any powers-of-attorney under which any Articles were executed.
 - (3) A copy of the executed Operating Agreement and all amendments thereto; together with executed copies of any powers-of-attorney under which any Operating Agreement was executed.
 - (4) A record of all matters referred to in this Code as maintained in such records which are not otherwise specified in the Operating Agreement.
- (B) Upon reasonable request, a Member may, at the Member's own expense, inspect and copy any LLC record during ordinary business hours unless otherwise provided in the Operating Agreement.
 - (C) Members or, if the management of the LLC is vested in one or more Managers, Managers shall provide true and full information of all things affecting the Members to any Member or to the legal representative of any Member upon reasonable request of the Member or the legal representative.
 - (D) Failure of an LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the LLC.

Section 3.6 Admission of Members.

- (A) In connection with the formation of an LLC, a person acquiring an LLC interest is admitted as a Member upon formation unless the Operating Agreement otherwise provides.
- (B) After the formation of an LLC, a person acquiring an LLC interest is admitted as a Member of the LLC as specified in the Operating Agreement or, if not so specified, by consent of all the other Members, or, if the person is an assignee of another person's LLC interest, only pursuant to Section 6.6.

Section 3.7 Dissociation.

- (A) A person ceases to be a Member of an LLC upon the simultaneous occurrence of and at the same time of any of the following events:
 - (1) The Member withdraws by voluntary act.
 - (2) The Member is removed as a Member in accordance with the Operating Agreement or this Code.
 - (3) Unless otherwise provided in the Operating Agreement or by the written consent of all Members at the time of the event, the Member does any of the following:

- (a) Makes an assignment for the benefit of the creditors.
 - (b) Files a petition in bankruptcy.
 - (c) Becomes the subject of an order for relief under the federal bankruptcy laws or state or Tribal insolvency laws.
 - (d) Fails to gain dismissal of any federal bankruptcy or state or Tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.
- (4) Unless provided in the Operating Agreement or by the written consent of all Members, if the Member is an individual, either of the following occurs:
- (a) The Member's death.
 - (b) The entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate.
- (5) Unless otherwise provided in the Operating Agreement or by written agreement or by the written consent of all Members at the time, if the Member is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.
-
- (B) The Members may provide in the Operating Agreement for other events the occurrence of which result in a person ceasing to be a Member of the LLC.
- (C) Unless the Operating Agreement provides that a Member does not have the power to withdraw by voluntary act from an LLC, the Member may do so at any time by giving written notice to the other Members or as provided in the Operating Agreement. If the Member has the power to withdraw but the withdrawal is a breach of the Operating Agreement, the LLC may offset the damages against the amount otherwise distributable to the Member, in addition to pursuing any remedies provided for in the Operating Agreement or otherwise available under applicable law.

CHAPTER 4 FINANCE

Section 4.1 Contributions.

- (A) A Member's contributions to an LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.
- (B) The value of a Member's contribution shall be determined in the manner provided in the Operating Agreement. If the Operating Agreement does not fix a value to a contribution, the value of a contribution shall be approved by a Majority in Interest of the Members, shall be properly reflected in the records and information kept by the LLC under Section 3.5(A). The value of contributions so determined shall be binding and conclusive on the LLC and its Members.

Section 4.2 Liability for Contribution.

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

Section 4.3 Allocation of Profits and Losses.

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

CHAPTER 5 NON-LIQUIDATING DISTRIBUTIONS

Section 5.1 Interim Distributions.

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

Section 5.2 Allocation of Distributions.

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

Section 5.3 Distribution Upon Partial Redemption.

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

Section 5.4 Distribution Upon Dissociation.

Except as otherwise provided in this Part, upon an event of dissociation under Section 3.7 that does not cause dissolution of the LLC, a dissociating Member is entitled to receive any distribution to which Member is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair market value of the Member's interest in the LLC based on the Member's rights to share in distributions from the LLC.

Section 5.5 Distribution in Kind.

Unless otherwise provided in the Operating Agreement:

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

Section 5.6 Right to Distribution.

At the time that a Member becomes entitled to receive a distribution from an LLC, the Member has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution; provided, however, that such right shall not in any way limit any other remedy

available to such Member under any other provision of applicable law of the Operating Agreement.

Section 5.7 Limitations of Distributions.

- (A) An LLC may not declare or make a distribution to any of its Members, if after giving effect to the distribution, any of the following would occur:
 - (1) The LLC would be unable to pay its debts as they become due in the usual course of business.
 - (2) The fair market value of the LLC's total assets would be less than the sum of its total liabilities plus, unless the Operating Agreement provides otherwise, the amount that would be needed for the preferential rights upon dissolution of Members, if any.
- (B) An LLC may base a determination that a distribution is not prohibited by subsection (A), above, on any of the following:
 - (1) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
 - (2) A fair market valuation or other method that is reasonable under the circumstances.
- (C) An LLC's indebtedness to a Member incurred by reason of a distribution made in accordance with this Section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in an LLC's property that is created to secure the indebtedness to the Member.

Section 5.8 Liability for Wrongful Distribution.

- (A) Except as provided in subsection (B) below, a Member (other than the Tribe or Tribal Entity) or Manager who votes or assents to a distribution in violation of Section 5.7 or of the Operating Agreement is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other Managers or Members participating in such action.
- (B) An action to recover under this Section may be brought in the Tribal Court; however, a proceeding under this Section is barred unless it is brought within two (2) years after the date of the distribution.
- (C) Nothing in this Code serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement.

CHAPTER 6 MEMBERSHIP AND TRANSFER OF PROPERTY

Section 6.1 Membership of LLC Property.

- (A) All property originally transferred to or acquired by an LLC is property of the LLC and not the Members individually.
- (B) Property acquired with LLC funds is presumed to be LLC property.
- (C) Property may be acquired, held, and conveyed in the name of the LLC.

Section 6.2 Transfer of Property.

The property of an LLC may be transferred by an instrument of transfer executed by any Member in the name of the LLC, unless management is vested in Managers, in which case the document of transfer shall be executed by a Manager, subject to any limitation that may be imposed by the Operating Agreement.

Section 6.3 Nature of Interest.

An LLC interest is personal property.

Section 6.4 Assignment of LLC Interest.

- (A) Unless otherwise provided in the Operating Agreement:
 - (1) An LLC interest is assignable in whole or in part.
 - (2) An assignment of an LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.
 - (3) An assignment of an LLC interest does not dissolve the LLC.
 - (4) Unless and until the assignee becomes a Member of the LLC under Section 6.6, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of a Member.
 - (5) Unless and until the assignee of an LLC interest becomes a Member of the LLC under Section 6.6, the assignor continues to be a Member.
 - (6) The assignor of an LLC interest is not released from any personal liability arising under this Code as a Member of the LLC solely as a result of the assignment.
- (B) Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of a Member's LLC interest is not assignable and shall not cause the Member to cease to have the power to exercise any rights or powers of a Member.

Section 6.5 Rights of Judgment Creditor.

Upon application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over a Member, by any judgment creditor of the Member, the court may charge the LLC interest of any Member (other than the Tribe) with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the Member's LLC interest in distributions made by the LLC to Members and other assigned interest holders in the usual course of business. This Section does not deprive any of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's interest be attachable in abrogation of its sovereign immunity, except as expressly waived in accordance with applicable law.

Section 6.6 Right of Assignee to Become a Member.

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

Section 6.7 Powers of Legal Representative.

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

CHAPTER 7 DISSOLUTION

Section 7.1 Dissolution.

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

- (A) The occurrence of events specified in the Operating Agreement.
- (B) The written consent of all Members.
- (C) An event of dissociation of a Member, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining Members.
- (D) Entry of a decree of judicial dissolution under Section 7.2.

Section 7.2 Judicial Dissolution.

- (A) In a proceeding by or for a Member, the Tribal Court or court of competent jurisdiction may order dissolution of an LLC if any of the following is established:
 - (1) That it is not reasonably practicable to carry on the business of the LLC.
 - (2) That the LLC is not acting in conformity with its Operating Agreement.
 - (3) That one or more Managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
 - (4) That one or more Members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.
 - (5) That LLC assets are being misapplied or wasted.
- (B) If the Tribe is a Member of the LLC, any action under this Section must be brought in the Tribal Court, unless explicitly otherwise provided in the Operating Agreement. Nothing in this Section may be construed as a waiver of the Tribe's sovereign immunity from suit, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement.

Section 7.3 Winding Up.

- (A) A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.
- (B) Unless otherwise provided in its Operating Agreement:
 - (1) The business of the LLC may be wound up by any of the following:

- (a) The Members or Managers who have authority to manage the LLC before dissolution.
 - (b) In a judicial dissolution, the person(s) designated by the Tribal Court or court of competent jurisdiction.
- (2) The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:
- (a) Collect its assets.
 - (b) Prosecute and defend suits.
 - (c) Take any action necessary to settle and close the business of the LLC.
 - (d) Dispose of and transfer the property of the LLC.
 - (e) Discharge or make provision for discharging the liabilities of the LLC.
 - (f) Distribute to the Members any remaining assets of the LLC.
- (C) Dissolution of an LLC does not do any of the following:
- (1) Transfer title to the LLC's property.
 - (2) Prevent transfer of all or part of a Member's interest.
 - (3) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.
 - (4) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
 - (5) Terminate the authority of the registered agent of the LLC.
 - (6) Alter the limited liability of a Member.

Section 7.4 Distribution of Assets.

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

- (A) To creditors, including to the extent permitted by law, Members, and former Members in satisfaction of liabilities of the LLC.
- (B) Unless otherwise provided in the Operating Agreement, to Members and former Members in satisfaction of liabilities for distributions under Sections 5.1, 5.3, and 5.4.
- (C) Unless otherwise provided in the Operating Agreement, to Members and former Members first for the return of their contributions in proportion to their respective

values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

Section 7.5 Articles of Dissolution.

After the dissolution of an LLC under Section 7.1, the LLC may file Articles of Dissolution with the Office of the Secretary that include the following:

- (A) The name of the LLC.
- (B) The date of filing of its Articles of Organization.
- (C) The statutory grounds under Section 7.1 for dissolution.
- (D) The delayed effective date of the Articles of Dissolution under Section 1.11(C), if applicable.

Section 7.6 Known Claims Against Dissolved LLC.

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

Section 7.7 Unknown or Contingent Claims.

A claim not barred under Section 7.6 may be enforced:

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

CHAPTER 8 MERGER AND CONVERSION

Section 8.1 Definitions.

- (A) “Business Entity” in this Part means a Domestic business entity and a foreign business entity.
- (B) “Domestic business entity” means a Corporation, incorporated under the laws of the Flandreau Santee Sioux Tribe; a Domestic LLC, organized under this Code; a tribally-chartered entity of the Tribe, an unincorporated cooperative of the Tribe; a Section 17 Corporation owned by the Tribe; or other tribally-formed entity, that is party to the merger.
- (C) “Foreign business entity” means a Foreign Limited Liability Company, a Foreign limited partnership, or a Foreign Corporation.
- (D) Unless the context requires otherwise, in this Article “LLC” includes a Domestic LLC and a Foreign LLC.
- (E) “Organizational Documents” include Articles of Organization, Operating Agreements, Articles of Incorporation, Bylaws, partnership agreements, agreements of trust and declarations of trust, and any other basic records that create a Business Entity’s organization and determine its internal governance and relations among persons that own it, have an interest in it, or are Members of it.

Section 8.2 Merger.

- (A) Unless otherwise provided in its Operating Agreement, one or more LLCs may merge with or into one or more other Business Entities if the action of merger is a process permitted under the applicable laws of the jurisdiction that governs each such other Business Entity and each such Business Entity approves the plan of merger in accordance with its Organizational Documents.
- (B) Interests or shares in an LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving Business Entity.

Section 8.3 Approval of Merger.

- (A) Unless otherwise provided in the Operating Agreement, a Domestic LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by all of the Members.
- (B) Unless otherwise provided in the Operating Agreement, the manager or managers of a Domestic LLC may not approve a merger without also obtaining the approval of the LLC’s Members under subsection (1), above.
- (C) Each Business Entity, other than a Domestic LLC, that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable

to the Business Entity and in accordance with their respective Organizational Documents.

- (D) Each Business Organization that is a party to the merger shall have any rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the Business Entity or in accordance with its Organizational Documents.
- (E) Upon approval of a merger, the LLC shall notify its Members of the approval and of the effective date of the merger.
- (F) After a merger is authorized, and at any time before the Articles of Merger are filed with the Office of the Secretary, the planned merger may be abandoned, subject to any contractual rights, without further action on the part of the shareholders or other Members, in accordance with the procedures set forth in the plan of merger or, if none is set forth, in the manner determined by the governing body of any Business Entity that is a party to the merger.

Section 8.4 Plan of Merger.

The plan of merger shall include all of the following:

- (A) The name, form of Business Entity, and identity of the jurisdiction governing each Business Entity that is a party to the merger and the name, form of business entity, and identity of the jurisdiction of the surviving business entity with, or into, which each other business entity proposes to merge.
- (B) The terms and conditions of the proposed merger.
- (C) The manner and basis of converting the interests in each business entity that is a party to the merger into shares, interests, obligations, or other securities of the surviving Business Entity or into cash or other property in whole or in part.
- (D) Amendments to the Articles of Organization or other similar governing document of the surviving Business Entity.
- (E) Other necessary or desirable provisions relating to the proposed merger.

Section 8.5 Articles of Merger.

- (A) The surviving Business Entity shall deliver to the Office of the Secretary Articles of Merger, executed by each party to the plan of merger, that include all of the following:
 - (1) The plan of merger.
 - (2) The name of the surviving or resulting LLC.
 - (3) The effective date and time of the merger.
 - (4) A statement as to whether the surviving Business Entity is Tribally-Owned.

(5) If Tribally-Owned, a statement as to whether the surviving Business Entity enjoys the Tribe's sovereign immunity.

(6) A statement that the plan of merger was approved by each Domestic LLC that is a party to the merger in accordance with Section 8.3.

(B) A merger takes effect upon the effective date of the Articles of Merger.

Section 8.6 Effects of Merger.

A merger has the following effects:

- (A) The Business Organization must become a single Entity, which shall be the Entity designated in the plan of merger as the surviving LLC.
- (B) Each Business Organization, except the surviving LLC, ceases to exist.
- (C) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged Business Organization and is subject to all of the restrictions, disabilities, and duties of each merged Business Organization.
- (D) All property and all debts, including contributions, and each interest belonging to or owed to each of the Business Organizations are vested in the surviving LLC without further act.
- (E) Title to all real estate and any interest in real estate, vested in any Business Organization, does not revert, and is not in any way impaired because of the merger.
- (F) The surviving LLC has all the liabilities and obligations of each of the Business Organizations and any claim existing or action or proceedings pending by or against any merged Business Organization may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
- (G) The rights of creditors and any liens on the property of any Business Organization survive the merger.
- (H) The interests in a Business Organization that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.
- (I) The Articles of Organization of the surviving LLC is amended to the extent provided in the Articles of Merger.

Section 8.7 Right to Object.

Unless otherwise provided in the Operating Agreement, upon receipt of the notice required by Section 8.3(E), a Member who did not vote in favor of the merger may, within twenty (20) days

after the date of the notice, voluntarily dissociate from the LLC under Section 3.7(C) and receive fair value for the Member's LLC interest under Section 5.4.

Section 8.8 Conversion.

- (A) Unless otherwise provided in its Organizational Documents, a Domestic LLC may convert to another form of Business Entity if it:
 - (1) Satisfies the requirements under this Chapter relating to conversions; and
 - (2) If the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the Business Entity into which the Domestic LLC is converting.
- (B) Unless otherwise provided in its Organizational Documents, a Business Entity other than a Domestic LLC may convert into a Domestic LLC if it:
 - (1) Satisfies the requirements under this Chapter relating to conversions; and
 - (2) If the conversion is permitted under the applicable law of the jurisdiction that governs the Business Entity.
- (C) The filing requirements of Section 1.11 apply to conversions under this Chapter.
- (D) Notwithstanding its prior approval, a plan of conversion under this Chapter may be amended before the conversion takes effect if the amendment is approved by the members of the converting Domestic LLC or Business Entity in the same manner as was required for the approval of the original plan of conversion.

Section 8.9 Conversion of Domestic LLC into Another Business Entity.

A Domestic LLC may convert into another Business Entity if all of the requirements of Section 8.10 and Section 8.11 are satisfied.

Section 8.10 Plan of Conversion for Domestic LLC into Another Business Entity.

- (A) Unless subsection (3) applies, the Domestic LLC proposing to convert shall adopt a plan of conversion that includes all of the following:
 - (1) The name of the Domestic LLC, the name of the Business Entity into which the Domestic LLC is converting, the type of Business Entity into which the Domestic LLC is converting, identification of the statute that will govern the internal affairs of the surviving Business Entity, the street address of the surviving Business Entity, the street address of the Domestic LLC if different from the street address of the surviving Business Entity, and the principal place of business of the surviving Business Entity.

- (2) The terms and conditions of the proposed conversion, including the manner and basis of converting the membership interest of the Domestic LLC into Membership interests or obligations of the surviving Business Entity, into cash, into other consideration that may include Membership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.
 - (3) The terms and conditions of the Organizational Documents that are to govern the surviving Business Entity.
 - (4) Any other provisions with respect to the proposed conversion that the Domestic LLC considers as necessary or desirable.
- (B) A vote of the members of the Domestic LLC is required to adopt a plan of conversion under subsection (A). A unanimous vote of the members entitled to vote is required to approve a plan of conversion unless its Organizational Documents provide otherwise.
- (C) If the Domestic LLC has not commenced business; has not issued any membership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests, subsections (A) and (B) do not apply and the Members of the Domestic LLC, may approve of the conversion of the Domestic LLC into another Business Entity by majority vote. To effect the conversion, a majority of the Members must execute and file a certificate of conversion under Section 8.11.

Section 8.11 Filing of Certificate of Conversion for Domestic LLC.

- (A) If the plan of conversion is approved under Section 8.10(B), the Domestic LLC shall file any formation documents required to be filed under the laws governing the internal affairs of the surviving Business Entity, in the manner prescribed by those laws, and shall file a certificate of conversion with the Office of the Secretary. The certificate of conversion shall include all of the following:
- (1) Unless Section 8.10(C) applies a copy of the plan of conversion.
 - (2) The name of the Domestic LLC that is converting into another business entity.
 - (3) The type of business entity the Domestic LLC is converting into and the jurisdiction under which the surviving Business Entity shall be governed.
 - (4) A statement that the members of the Domestic LLC have adopted the plan of conversion under Section 8.10(B), or that the Members of the Domestic LLC have approved of the conversion under Section 8.10(C), as applicable.
 - (5) A statement that the surviving Business Entity will furnish a copy of the plan of conversion, on request and without cost, to any Member of the Domestic LLC.

(6) The registered agent and registered office, of the Domestic LLC before and after conversion.

(7) A Statement whether the Domestic LLC is Tribally-Owned.

Section 8.12 Effect of Conversion of Domestic LLC into Another Business Entity.

When a conversion under this Section takes effect, all of the following apply:

- (A) The Domestic LLC converts into the surviving Business Entity, and the Organizational Documents of the Domestic LLC are canceled.
- (B) Except as otherwise provided in this Code, the surviving Business Entity is organized under and subject to the organizational laws of the jurisdiction of the surviving Business Entity as stated in the Certificate of Conversion.
- (C) The surviving Business Entity has all of the liabilities of the Domestic LLC. The conversion of the Domestic LLC into a Business Entity under this Section shall not be considered to affect any obligations or liabilities of the Domestic LLC incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the Domestic LLC with respect to matters arising before the conversion.
- (D) The title to all real estate and other property and rights owned by the Domestic LLC remain vested in the surviving Business Entity without reversion or impairment.
- (E) The surviving Business Entity is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Domestic LLC was originally organized.
- (F) The membership interests of the Domestic LLC that were to be converted into Membership interest or obligations of the surviving Business Entity or into cash or other property are converted.
- (G) Unless otherwise provided in the plan of conversion, the Domestic LLC is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the Domestic LLC.
- (H) The Organizational Documents of the surviving Business Entity are as provided in the plan of conversion.
- (I) All other provisions of the plan of conversion apply.

Section 8.13 Conversion of Business Entity into Domestic LLC.

A Business Entity may convert into a Domestic LLC if all of the requirements of Section 8.14 and 8.15 are satisfied.

Section 8.14 Plan of Conversion Business Entity into a Domestic LLC.

- (A) The Business Entity proposing to convert into a Domestic LLC adopts a plan of conversion that includes all of the following:
 - (1) The name of the Business Entity, the type of Business Entity that is converting, identification of the statute that governs the internal affairs of the Business Entity, the name of the surviving Domestic LLC into which the Business Entity is converting, the street address of the surviving Domestic LLC company, the street address of the Business Entity if different from the street address of the surviving Domestic LLC, and the principal place of business of the surviving Domestic LLC.
 - (2) The terms and conditions of the proposed conversion, including the manner and basis of converting the Membership interests of the Business Entity into membership interests of the surviving Domestic LLC, into cash, into other consideration that may include Membership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.
 - (3) The terms and conditions of the Organizational Documents that are to govern the surviving Domestic LLC.
 - (4) Any other provisions with respect to the proposed conversion that the Business Entity considers necessary or desirable.
- (B) If a plan of conversion is adopted by the Business Entity under subsection (A), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that Business Entity.
- (C) If the plan of conversion is approved under subsections (A) and (B), the Business Entity shall file a Certificate of Conversion with the Office of the Secretary. The Certificate of Conversion shall include all of the following:
 - (1) A copy of the plan of conversion.
 - (2) A statement that the Business Entity has obtained approval of the plan of conversion under subsection (B).
 - (3) A statement that the surviving Domestic LLC will furnish a copy of the plan of conversion, on request and without cost, to any Member of the Business Entity.
 - (4) The registered agent and registered office, record agent and record office, or other similar agent and office of the surviving Domestic LLC before and after conversion.
 - (5) The type of Business Entity and the date and location of jurisdiction where the Business Entity was formed prior to converting into a Domestic LLC.

- (6) A statement whether the surviving Domestic LLC is Tribally-Owned.
- (7) Submission of Articles of Organization for the surviving Domestic LLC that meet all of the requirements of this Code.

Section 8.15 Effect of Conversion of Business Entity into Domestic LLC.

When a conversion under this Article takes effect, all of the following apply:

- (A) The Business Entity converts into the surviving Domestic LLC. Except as otherwise provided in this Section, the surviving Domestic LLC is organized under and subject to this Code.
- (B) The surviving Domestic LLC has all of the liabilities of the Business Entity. The conversion of the Business Entity into a Domestic LLC under this Section shall not be considered to affect any obligations or liabilities of the Business Entity incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the Business Entity with respect to matters arising before conversion.
- (C) The title to all real estate and other property and rights owned by the Business Entity remains vested in the surviving Domestic LLC without reversion or impairment.
- (D) A proceeding pending against the Business Entity may be continued as if the conversion had not occurred, or the surviving Domestic LLC may be substituted in the pending proceeding for the Business Entity.
- (E) The surviving Domestic LLC is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Business Entity was originally organized.
- (F) The Membership interests of the Business Entity that were to be converted into membership interests or obligations of the surviving Domestic LLC or into cash or other property are converted.
- (G) Unless otherwise provided in a plan of conversion, the Business Entity is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the Business Entity.
- (H) The Organizational Documents of the Domestic LLC are as provided in the plan of conversion.
- (I) All other provisions of the plan of conversion apply.

CHAPTER 9 LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

Section 9.1 General Provisions for Tribally-Owned LLC's

- (A) Tribally-Owned Companies. There are hereby authorized to be created Limited Liability Companies wholly-owned by the Tribe, with the Tribe as the sole Member. Tribally-Owned Limited Liability Companies shall be created by a duly adopted resolution of the Executive Committee. The organizer shall file in accordance with Section 1.11. When the organizer files the Articles of Organization and the Operating Agreement of a Tribally-Owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the articles shall be included. Tribally-Owned LLC's shall be considered to be instrumentalities of the Tribe.
- (B) Tribally-Owned Subsidiary Companies. There are hereby authorized to be created by resolution of the Board of Directors of a Tribally-Owned LLC or of a Tribal Corporation or of a tribally-chartered unincorporated instrumentality of the Tribe, or of a wholly-owned subsidiary of such a Tribally-Owned LLC or Tribal Corporation or tribally chartered unincorporated instrumentality of the Tribe, subsidiary LLC's to be wholly-owned by the parent Tribally-Owned LLC or parent Tribal Corporation or parent tribally-chartered unincorporated instrumentality of the Tribe, which shall be instrumentalities of the Tribe. The organizer of such a Tribally-Owned Subsidiary LLC shall file in accordance with Section 1.11. When the organizer files the Articles of Organization and the Operating Agreement of the Tribally-Owned Subsidiary LLC, a certified copy of a resolution of the Board of Directors of the parent Tribally-owned LLC or parent Tribal Corporation or tribally-chartered unincorporated instrumentality of the Tribe authorizing the formation of the subsidiary LLC and approving the articles shall be included.
- (C) Privileges and Immunities. The Limited Liability Companies established under Sections 9.1(A) and 9.1(B) shall be considered to be instrumentalities of the Tribe, and their officers and employees considered officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Executive Committee for economic development of the Tribe and the advancement of its Tribal Members. Such LLC's, their directors, officers, managers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in Federal, State and Tribal courts and from Federal, State, and local taxation or regulation.
- (D) Membership.
 - (1) No Membership interest in any LLC in which the Tribe is a Member may be alienated unless approved by the Executive Committee. Further, no Membership interest in any Tribally-Owned Subsidiary LLC may be alienated unless approved by a duly adopted resolution of the Board of Directors of the parent Tribally-Owned LLC or parent Tribal Corporation.

- (2) All interests in any Tribally-Owned LLC shall be held by and for the Tribe, or in the case of a wholly-owned subsidiary LLC, by the parent Tribally-Owned LLC or parent Tribal Corporation or parent tribally chartered unincorporated instrumentality of the Tribe. No individual member of the Tribe shall have any personal ownership interest in any LLC organized under this Part, whether by virtue of such person's status as a member of the Tribe, as an officer of a Tribe's Government, or otherwise.
- (E) Project Companies with Non-Tribal members. Any LLC created pursuant to this Article, including subsidiary LLC's, may form or own interests or shares in partnerships, Corporations, or other Limited Liability Companies with other governmental or non-governmental entities or persons under the laws of the Tribe or any other jurisdiction ("Project Companies"); provided, however, that the partial Membership interest in such Project Companies shall not diminish or affect the privileges and immunities of the Tribally-Owned LLC's or Tribally-Owned Subsidiary LLC's created pursuant to this Article.
- (F) Purpose of Tribally-Owned LLC's. All Tribally-Owned LLC's, whether directly or indirectly owned, shall state in their Operating Agreement the purpose of the LLC that relates to the overall needs, priorities, goals, and objectives of the Tribe's government, including how the LLC will contribute to tribal economic policy and further the goals of self-determination and economic self-sufficiency.
- (G) Waiver of Sovereign Immunity. The Limited Liability Companies established under Sections 9.1(A) and 9.1(B) may only waive the privileges and immunities granted under Section 9.1(C) in the following manner:
- (1) The LLC may specifically grant limited waivers of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction or consent to arbitration pursuant to the procedures and authorities set forth in the LLC's Operating Agreement; provided, however, that:
- (a) Any such waiver or consent to suit granted pursuant to the LLC's Operating Agreement shall include written language in any contract or agreement explicitly limiting said waiver to the specific dollar amount of the agreement;
- (b) Any contract or agreement with such waiver or consent to suit language shall be submitted for review to an attorney representing the Tribe or the Tribally-Owned LLC prior to contract execution;
- (c) Any such waiver or consent to suit granted pursuant to the LLC's Operating Agreement shall in no way extend to any action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe;
- (d) Any recovery against the LLC shall be limited to the assets of the LLC (or such portion of the LLC's assets as further limited by the waiver or

consent) and the Tribe shall not be liable for the payment or performance of any of the obligations of the LLC, and no recourse shall be had against any assets or revenues of the Tribe in order to satisfy the obligations of the LLC; including assets of the Tribe leased, loaned, or assigned to the LLC for its use, without transfer of title, and

- (e) Any waiver of the LLC's immunities granted pursuant to the LLC's Operating Agreement shall be further limited or conditioned by the terms of such waiver.
- (2) The sovereign immunity of the LLC shall not extend to actions against the LLC by the Tribe acting as Member, or, in the case of a subsidiary LLC created pursuant to this Article, by the parent LLC acting as Member, pursuant to Section 9.1(A).
- (3) The LLC must follow the method mandated by Section 9.2(B).
- (4) Notwithstanding subsection (G)(1) above, the LLC may also specifically grant a limited waiver of its immunity from suit for participation in the United States Small Business Administration ("SBA") 8a Program in the manner required by federal regulations governing the program.

Section 9.2 Special Requirements for Tribally Owned LLC's

(A) Formation.

- (1) Tribally-Owned LLC's. Except as may be provided otherwise in the resolution authorizing the creation of the Tribally-Owned LLC, the President of the Executive Committee shall be the organizer of any Tribally-Owned Limited Liability Company.
- (2) Subsidiaries of Tribally-Owned LLC's. A Board Member of the parent Tribally-Owned LLC or parent Tribal Corporation shall be the organizer of any Tribally-Owned Subsidiary LLC. If practicable, such Board Member shall also be a member of the Tribe. The C.E.O. of the parent Tribally-Owned LLC or Manager of a Tribally-Owned Subsidiary LLC shall be the organizer of any Tribally-Owned Second Tier Subsidiary LLC.
- (3) Unless a delayed effective date is specified:
 - (a) The existence of a Tribally-owned LLC begins when the Articles of Organization have been approved by resolution of the Executive Committee in accordance with Section 9.1(A) and have been filed with the Office of the Secretary in accordance with Section 1.11.
 - (b) The existence of a subsidiary LLC owned by a Tribally-Owned LLC or Tribal Corporation begins when the Articles of Organization have been approved by a resolution of the Directors of the parent Tribally-Owned

LLC or Tribal Corporation and have been filed with the Office of the Secretary in accordance with Section 1.11.

- (c) The existence of a Tribally-Owned Second Tier Subsidiary LLC owned by a Tribally-Owned Subsidiary begins when the Articles of Organization have been approved by the Chief Executive Officer or Manager of the Tribally-Owned Subsidiary or Chief Executive Officer of the parent Tribally-Owned LLC.
 - (d) The Articles of Organization of any Tribally-owned LLC or subsidiary thereof, and any amendments thereto, shall be filed with the Office of the Secretary in accordance with Section 1.11, and shall state at a minimum the items set forth in Section 9.2(B) below.
- (B) Additional Requirements for the Articles of Organization. As set forth in Section 9.1(G), Tribally-Owned LLC's established under Sections 9.1(A) and 9.1(B) may grant a limited waiver of sovereign immunity in order to promote economic development through commercial transactions for which such a waiver is necessary and beneficial to the Tribe. The method for granting a limited waiver of sovereign immunity through the above mentioned entities is as follows:
- (1) The sovereign immunity of a Tribally-Owned LLC may be waived only by:
 - (a) A resolution adopted by the Board of Directors of the Tribally-Owned LLC for the specific purpose of granting a waiver, or in the case of Member-managed Tribally-Owned Subsidiary LLC, by the Member's Board of Directors; and
 - (b) The language of the waiver must be explicit and state that said waiver be specifically limited to the dollar amount of the agreement; and
 - (c) The waiver must be contained in a written contract or commercial document to which the LLC is a party.
 - (2) Waivers of the sovereign immunity of a Tribally-Owned LLC granted by resolution of the Executive Committee may be granted only when necessary to secure a substantial advantage or benefit to the Tribally-Owned LLC. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property, court having jurisdiction, applicable law, and shall be specifically limited to the dollar amount of the agreement.

Section 9.3 Management of Tribally-Owned LLC's.

(A) Management.

- (1) All Tribally-Owned LLC's formed pursuant to Section 9.1(A) of this Code shall be managed by a Board of Directors in the manner described in the Company's

Operating Agreement. The qualifications, number, terms and method for selecting and removing Directors of any Tribally-Owned LLC shall be specified in the LLC's Operating Agreement.

- (2) All Tribally-Owned Subsidiary LLC's formed pursuant to Section 9.2(B) of this Code, including Tribally-Owned Second Tier Subsidiary LLC's, may be Member managed or Manager managed. If Manager managed, the Company's Operating Agreement shall set forth the qualifications, number, terms, and method for selecting and removing such managers. If Member managed, the LLC shall have one or more persons exercising the functions of Chief Executive Officer.

(B) Board of Directors

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

Section 9.4 Decisions and Voting for Tribally-Owned and Tribally-Owned Subsidiary LLC's.

(A) Voting.

- (1) The Membership interests in all Tribally-Owned LLC's shall be voted in the accordance with the Executive Committee's procedures for voting and passing Tribal resolutions.
- (2) The Membership interests in a Tribally-Owned Subsidiary LLC, including Tribally-Owned Second Tier Subsidiary LLC's, shall be voted as provided in the Company's Operating Agreement.

Section 9.5 Distributions for Tribally-Owned LLC's

(A) Distributions of Income.

- (1) Subject to the Tribe's ultimate ownership right to all income generated by its Tribally-Owned LLC's, a Tribally-Owned LLC shall distribute the net income of the LLC to the Tribe as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by the Executive Committee, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 5.7 and in the Operating Agreement.
- (2) Subject to the parent Tribally-Owned LLC's or parent Tribal Corporation's ultimate ownership right to all income generated by its subsidiary LLCs, a subsidiary LLC created pursuant to Section 9.1(B) shall distribute the net income of the LLC to the parent Tribally-owned LLC or parent Tribal Corporation as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by its Board of Directors, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 5.7 and in the Operating Agreement.

Section 9.6 Additional Reports and Audits.

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

Section 9.7 Actions Against Tribally-Owned LLC's

- (A) Court Actions By the Tribe Authorized. The Tribe, as Member of any Tribally-Owned Limited Liability Company organized pursuant to this Code, or in the case of a subsidiary LLC created pursuant to this Article, the parent Tribally-Owned LLC or Tribal Corporation acting as Member, may bring a civil action against the LLC to:
- (1) Enjoin temporarily or permanently any action of the LLC that is an ultra vires act outside the authority of the LLC and that is either:
 - (a) Unlawful; or
 - (b) Has or could cause material harm to the assets of the LLC or the Tribe if no immediate action is taken.
 - (2) Require the distribution of the LLC's surplus net income, to the extent permitted by Section 5.7.
 - (3) An action against an LLC pursuant to this Section by the Tribe or by a parent LLC or Corporation, acting as Member, shall not act as a waiver of the Tribe's, or the parent LLC or parent Corporation's, sovereign immunity from suit of any kind, including a countersuit by the Tribally-Owned LLC, its Board of Directors or its officers.
 - (4) In accordance with Section 9.1(C), the sovereign immunity of the LLC shall not extend to actions against the LLC by the Tribe acting as Member, or, in the case of a subsidiary LLC created pursuant to this Article, by the parent LLC acting as Member.
 - (5) Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe.
- (B) Tribal Approval Required. The filing of any court action against a Tribally-Owned LLC pursuant to this Article must be authorized by the Tribe as Member in the same manner as required in Section 9.4(A) for voting on any item properly coming before the Tribe as Member. The request for consideration of the proposed court action may be made by any member of the Executive Committee.
- (C) Relief Available. In any action brought under this Article, the Tribal Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law:
- (1) Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond need be posted for any preliminary injunctive relief; or
 - (2) Order that funds of the LLC be distributed to the Tribe to the extent permitted by the Operating Agreement and Section 5.7 of this Code.

CHAPTER 10 [RESERVED]

CHAPTER 11 EFFECTIVE DATE AND AUTHORITY

Section 11.1 Severability; Effect of Invalidity of Part of this Code

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

Section 11.2 Effective Date.

This Code shall be in full force and effect according to its terms upon enactment by the Executive Committee.

Section 11.3 Fees for Filing Documents and Issuing Certificates.

The Office of the Secretary is authorized to establish reasonable fees for services consistent with the requirements of this Code.

Section 11.4 Certificates and Certified Copies to be Received into Evidence.

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

Section 11.5 Forms to be Furnished by the Tribal Secretary.

The Tribal Secretary shall have the authority to prescribe certain forms for documents required by this Chapter to be filed in the office of the Tribal Secretary; such forms shall be furnished by the Tribal Secretary and used by the public for such filing.

Legislative History

The "Flandreau Santee Sioux Tribe Limited Liability Company Code" was enacted by the Executive Committee on 3-21-2013 by adoption of Resolution No. 13-11.



Flandreau Santee Sioux Tribe

P.O. Box 283 Flandreau, SD 57028

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RESOLUTION NO. 13-11

WHEREAS, the Flandreau Santee Sioux Tribe is a federally-recognized Indian Tribe organized pursuant to the Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, further amended November 16, 1967, further amended November 14, 1984, and further amended May 17, 1997; and

WHEREAS, Article III, Section 1 of the Tribe's Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and

WHEREAS, Article VIII, Section 1(e) of the Constitution vests the Executive Committee with the power to acquire, lease, or otherwise manage all lands or other assets, either real or personal, for the benefit of the Tribe as authorized by law except that where lands or assets are under the jurisdiction of the Federal government; and

WHEREAS, Article VIII, Section 1(f) of the Constitution vests the Executive Committee with the power to promulgate and enforce ordinances governing and regulating the conduct of all persons on the reservation; and

WHEREAS, Article VIII, Section 1(h) of the Constitution vests the Executive Committee with the power to shall have the power to adopt resolutions consistent with such Constitution and By-laws, regulating the procedure of the Executive Committee itself and of other tribal agencies, tribal officials or tribal organizations of the Tribe; and

WHEREAS, the Executive Committee finds that the attached Limited Liability Company Code will further economic development by the Tribe and its members by: providing the legal framework for organizing individually-owned business entities under the Tribe's law in order to expand the private business sector on the reservation, and authorizing the formation of Tribally-owned business entities for managing the Tribe's business activities separate from the affairs of Tribal Government, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Government action.

NOW THEREFORE BE IT RESOLVED that the Flandreau Santee Sioux Tribe Executive Committee approves the attached Volume VII, Title 27 Ordinance entitled "Limited Liability Company Code"; and

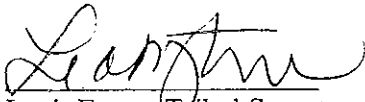
BE IT FURTHER RESOLVED that the adoption of this Code does not waive the Tribe's sovereign immunity or consent to suit in any court, federal, tribal, or state, and neither the adoption of this Code, nor the incorporation of a business entity thereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court; and

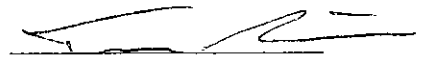
BE IT FINALLY RESOLVED that a business entity with the Tribe as its owner that is formed under this title will retain the sovereign immunity, taxation, and other rights that are enjoyed by the Flandreau Santee Sioux Tribe.

CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 21 day of ^{March}~~February~~, 2013 by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 6 In Favor, 0 Opposed, 0 Abstaining, and 1 Not Voting, as follows:

Vice President, Cynthia J. Weddell:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Secretary, Leah Fyten:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Trustee I, Marsha Schlueter:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Trustee II, Roxee Johnson:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Trustee III, Andrew Weston:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
Trustee IV, Kenny Weston:	<input checked="" type="radio"/> YES	NO	ABSTAIN	NOT PRESENT
President, Anthony Reider (<i>If Required</i>):	YES	NO	ABSTAIN	NOT PRESENT


Leah Fyten, Tribal Secretary


Anthony Reider, Tribal President