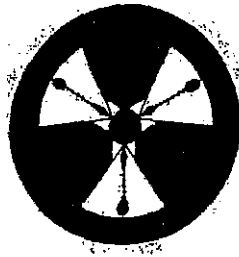


# Crow Creek Sioux Tribe

A United States of America Federally Recognized Sovereign Indian Nation



## CERTIFICATE OF ORGANIZATION

**CROW CREEK TELECOM, LLC**

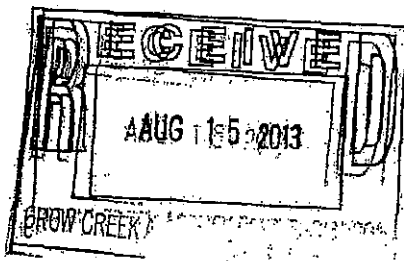
**A LIMITED LIABILITY COMPANY FORMED AS A  
PROJECT COMPANY OF THE CROW CREEK SIOUX TRIBE**

ORGANIZATIONAL ID# 13-002

I, Terry Abernathy, Secretary of the Crow Creek Sioux Tribe, hereby certify that the Articles of Organization of Crow Creek Telecom, LLC, duly signed and verified pursuant to the Crow Creek Sioux Tribe Limited Liability Company Ordinance, have been received in the Office of the Secretary of the Tribal Council and are found to conform to law.

Accordingly and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization on this 29<sup>th</sup> day of July, 2013.

  
Terry Abernathy  
Secretary of the Crow Creek Sioux Tribe



000578

# **OPERATING AGREEMENT OF CROW CREEK TELCOM, LLC**

## **ARTICLE I. OFFICES**

### **Section 1.1     Principal Office.**

The principal office of the company shall be located on the reservation of the Crow Creek Sioux Tribe. The mailing address of the principal office shall be 253 Ree Circle, Fort Thompson, South Dakota, 57339. The company may have such other offices, as the Board of Directors or the General Manager may designate, or as the business of the company may require from time to time.

### **Section 1.2     Registered Office.**

The registered office of the company may, but need not, be identical with its principal office. The address of the registered office of the company may be changed from time to time by the General Manager with the consent of a majority of the Board of Directors including the General Manager.

## **ARTICLE II. MEMBERS**

### **Section 2.1     Regular Meetings.**

The Board of Directors may, but need not, cause regular meetings of the members to be held on an annual or less frequent periodic basis. Such regular meetings of the members shall be for the purpose of electing qualified successors for directors whose terms have expired or whose terms are indefinite or will expire within 6 months of such meeting, and for the transaction of any other business as may come before the meeting. Such regular meetings shall be held on the date and at the time fixed by the General Manager, or the General Manager and the Board of Directors, and shall be at the principal office of the company or at such place as is designated by the Board of Directors, the General Manager or by written consent of all of the members entitled to vote at the meeting.

### **Section 2.2     Special Meetings.**

(a) Call. Special meetings of the members may be called for any purpose or purposes at any time by the General Manager, the Treasurer, two (2) or more directors or any member or members holding ten percent (10%) or more of the voting power of all membership interests entitled to vote at the meeting.

(b) Date and Place. Special meetings shall be held telephonically on the date and at the time fixed by the General Manager or the General Manager and the Board of Directors.

(c) Business. The business transacted at any special meeting shall be limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes shall not be void ab initio, but shall be voidable by or on behalf of the company unless all of the members entitled to vote thereat have waived notice of the meeting or consented to such action in accordance with this Operating Agreement.

### **Section 2.3      Demand by Members.**

If a regular meeting of the members has not been held during the immediately preceding fifteen (15) months, any member or members holding at least twenty-four percent (24%) or more of all voting membership interests of the company may demand a regular meeting of the members. Any member or members holding at least a majority or more of all voting membership interests of the company may demand a special meeting of the members. The demand for a regular or a special meeting by the members shall be given in writing to the General Manager or the Treasurer or Chair of the Board of Directors of the company. Within ten (10) business days after receipt of such demand, the Board of Directors shall cause a meeting of the members to be called and held on notice no later than thirty (30) days after receipt of the demand, all at the expense of the company. If the Board of Directors fails to cause a meeting to be called and held as required by this Section, the member or members making the demand may call the meeting by giving notice as required by Section 2.4 of this Operating Agreement, all at the expense of the company.

### **Section 2.4      Notice.**

Notice of all meetings of the members shall be given to every holder of voting membership interests at his or her address as shown in the required records of the company or email address, except where (a) the meeting is an adjourned meeting and the date, time and place of the meeting were announced at the time of adjournment; or (b) the following have been mailed by first class mail to a member at the address in the limited liability company required records and returned undeliverable:

- (i) two consecutive annual meeting notices and notice of any special meetings held during the period between the two annual meetings; and
- (ii) all payments of distributions, provided there are at least two sent during a 12-month period; and
- (iii) written notice of the Member's current address has not been received by the Company.

The notice of a meeting of the members shall be given at least five (5) business days before the date of the meeting, and not more than sixty (60) days before the date of the meeting. The notice shall contain the date, time and place of the meeting, and any other information required by this Article II. In the case of a special meeting, the notice shall contain a statement of the purposes of the meeting. The notice may also contain any other information deemed necessary or desirable by the Board of Directors or by any other person or persons calling the meeting.

**Section 2.5     Waiver of Notice.**

A member may waive notice of a meeting of the members. A waiver of notice by a member entitled to notice shall be effective whether given before, at or after the meeting, and whether given in writing, orally or by attendance. Attendance by a member at a meeting shall be a waiver of notice of that meeting except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

**Section 2.6     Quorum.**

Except as otherwise required by the Articles of Organization, the holders of not less than 49% of the voting power of the membership interests entitled to vote at a meeting, and the General Manager, present in person or by proxy, shall constitute a quorum for the transaction of business. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of a number of members originally present leaves less than the proportion or number otherwise required for a quorum.

**Section 2.7     Voting Record Date.**

The Board of Directors may fix a date not more than sixty (60) days before the date of a meeting of the members as the date for the determination of the holders of voting membership interests entitled to notice of and to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of members, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

**Section 2.8     Vote by Ballot.**

Upon the demand of any member, the vote for director, the vote upon any question before the vote for director, or the vote upon any question before the meeting shall be by ballot.

**Section 2.9     Act of Members.**

(a) General. In general, the members shall take action by the affirmative vote of the owners of the greater of:

- (i) Not less than a majority plus one vote of the membership interests present and entitled to vote on that item of business (proxies without authority on a matter not being considered for purposes of such matter); or
- (ii) Not less than the voting power that would constitute a quorum for the transaction of business at the meeting; or
- (iii) if the Articles of Organization or any member control agreement requires a larger proportion than is required by this Operating Agreement

for a particular action, the Articles of Organization or such member control agreement shall control.

(b) Voting by Class. In any case where a class or series of membership interests is entitled to vote as a class or series, unless the Articles of Organization or a member control agreement requires a larger proportion, the matter being voted upon must receive:

(i) the affirmative vote of the owners of the required proportion of the membership interests of each class or series present at such meeting, as set forth in Section 2.9(a) above; or

(ii) the affirmative vote of the owners of the required proportion of the total outstanding membership interests of all classes or series entitled to vote, as set forth in Section 2.9(a), above;

(c) Quorum for Voting by Class. Unless otherwise stated in the Articles of Organization, a member control agreement or in this Operating Agreement, in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present to constitute a quorum for such vote shall be equal to the minimum percentage of all membership interests entitled to vote required to be present under Section 2.6 hereof.

#### **Section 2.10 Statement of Membership Interest.**

At the request of any member, the company shall state in writing the particular membership interest owned by that member as of the moment the company makes the statement. The statement must describe the member's rights to vote, to share in profits and losses, and to share in distributions, as well as any assignment of the member's financial or governance rights then in effect.

#### **Section 2.11 Voting Power.**

Except as otherwise set forth in the Articles of Organization or in a member voting agreement or member control agreement, members have voting power in proportion to their respective number of Directors. No assignee of the financial rights of any member shall have any vote or governance rights unless such assignee is a member with other governance rights or complies with the requirements hereof.

#### **Section 2.12 Voting Rights.**

(a) Jointly Owned Interests. Membership interests owned by two or more individuals or entities may be voted by any one of them unless the company receives written notice from any one of them denying the authority of that co-owner to vote the membership interests.

(b) Entities. Membership interests of the company reflected in the required records as being held by another domestic or foreign organization may be voted by the General Manager, General Executive Officer, or another legal

representative of that organization. Membership interests under the control of a person in a capacity as a personal representative, administrator, executor, guardian, conservator, attorney-in-fact, trustee in bankruptcy or receiver may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person (provided there is court authority for such bankruptcy trustee or receiver). Membership interests registered in the name of a trust or any other organization not described herein may be voted either in person or by proxy by the trustee or legal representative thereof.

(c) Company and Subsidiaries. Membership interests of the company reflected in the required records as being held by the company or a subsidiary of the company shall not be entitled to vote on any matter. Membership interests held in the name of or under the control of the company or a subsidiary in a fiduciary capacity shall also not be entitled to vote on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the company binding instructions on how to vote the membership interests.

(d) Security Interests. The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote or to exercise any governance right relating thereto.

#### **Section 2.13 Proxies.**

A member may not grant any proxy to any person who is an assignee of any member's financial rights and who is not also a member. A member may otherwise cast or authorize the casting of a vote by filing a written appointment of a proxy with a manager of the company at or before the meeting at which the appointment is to be effective. An appointment of a proxy shall be valid if signed by any representative or other party authorized to vote such membership interest hereunder, and may be authorized by any form of electronic transmission. Any one of two or more authorized proxies are allowed to vote with respect to specific instructions and a majority shall be necessary to vote with respect to any particular item of business where there are no specific instructions; provided that if the proxies are equally divided, the membership interests must not be voted on that matter. The appointment of a proxy shall be valid for eleven (11) months unless a longer period is expressly provided in the appointment; provided that no proxy shall be irrevocable and any purported irrevocable proxy shall be void, and the member revoking such proxy shall not be liable for damages. Proxies may be terminated at will, effective upon filing a revocation thereof or filing a new proxy with the company. Proxies shall be valid until notice of the death or incapacity of the member is received by a manager of the company.

#### **Section 2.14 Electronic Communications.**

A conference among members by any means of communication through which the members may simultaneously hear each other during the conference shall constitute a meeting of the members, if the same notice is given of the conference as would be required by this Article for a meeting, and if the number of members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a

meeting by such means shall constitute presence in person at the meeting, except as provided in Section 2.5 hereof.

**Section 2.15 Action Without a Meeting.**

Except as provided in the Articles of Organization or any member control agreement, an action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. The written action shall be effective when it has been signed by all of those members, unless a different effective time is provided in the written action.

**Section 2.16 Voting and Control Agreements.**

The members may enter into member voting agreements and/or member control agreements in accordance with the Articles of Organization and applicable law. To the extent the terms of any such member voting agreement or member control agreement may be in contradiction of any terms of this Operating Agreement, the terms of such member voting agreement or member control agreement shall be controlling, and the conflicting terms of this Operating Agreement shall be null and void.

**ARTICLE III.  
BOARD OF DIRECTORS**

**Section 3.1 Directors.**

Except as otherwise provided in the Articles of Organization or a member control agreement or as otherwise set forth herein, there shall be one class of directors, each elected by their respective ownership group as such group is set forth in Section 3.3 without cumulative voting who shall act upon the affirmative vote of a majority of all Directors regardless of the number present at the meeting of the Board of Directors.

**Section 3.2 Board to Manage.**

The business and affairs of the company shall be managed by or under the direction of the Board of Directors, subject to the rights of the members of the company as provided in the Articles of Organization, this Operating Agreement or any outstanding member voting agreement and/or member control agreement or otherwise pursuant to the Crow Creek Tribal law. The owners of membership interests entitled to vote for directors may, by unanimous affirmative vote, take any action required or permitted to be taken by the Board of Directors, in which situation the actions shall be deemed accepted by the Board of Directors, but without liability of the directors therefor.

**Section 3.3 Number.**

The number of directors shall be set from time to time by resolution of the members. The members hereby establish the number of directors at nine (9) all of which shall be appointed by its members as provided by this Section. There shall be three (3) directors appointed by the Crow Creek Holdings, LLC, a tribally chartered LLC wholly owned by the Tribe, three (3) directors appointed by WideVoice Communications, Inc, and three (3) directors appointed by Native American Telecom Enterprise, LLC. The initial director's are listed on Exhibit A.

**Section 3.4      Qualifications.**

Directors shall be natural persons. Directors need not be members of the Tribe nor need they be residents of the reservation for the Crow Creek Sioux Tribe or members of the company.

**Section 3.5      Term.**

Each director shall hold office until his or her successor is elected and has qualified, or until his or her earlier death, resignation, removal or disqualification.

**Section 3.6      Regular Meetings.**

A regular meeting of the Board of Directors shall be held without notice other than this Section immediately after and at the same place as each regular meeting of the members at which directors are elected. The Board of Directors and the General Manager, may provide, by resolution at a meeting of the Board or Directors, the time and place, either within or outside the reservation of the Crow Creek Sioux Tribe, for the holding of additional regular meetings of the Board of Directors without notice other than such resolution. Regular meetings may occur telephonically.

**Section 3.7      Special Meetings.**

Special meetings of the Board of Directors may be called from time to time by or at the request of the General Manager or any three (3) directors. The person or persons calling a meeting of the Board of Directors may fix the date, time and place of the meeting. If the place fixed for the meeting is other than the principal office of the Crow Creek Tribe, the General Manager or any three (3) members of the Board of Directors may by twenty-four (24) hours notice change the place of the meeting to another location.

**Section 3.8      Notice.**

Notice of any special meeting shall be given at least five (5) business days prior thereto by written notice mailed to each director at his or her business address, or at least two (2) business days prior thereto if emailed, or delivered personally or by telegram or overnight delivery service. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is given by email, telegram or similar personal overnight delivery such notice shall be deemed to be delivered when delivered to the forwarding company. A director may waive notice of a meeting of the Board of Directors. The notice need not state the purpose of the meeting.

**Section 3.9      Waiver of Notice.**

A waiver of notice by a director entitled to notice shall be effective whether given before, at or after the meeting, and whether given in writing, orally or by attendance. Attendance by a director at a meeting shall be a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting thereafter.



**Section 3.10 Quorum.**

At least five (5) of nine (9) of the directors currently holding office present at a duly called meeting shall constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the number otherwise required for a quorum.

**Section 3.11 Electronic Communications.**

A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference shall constitute a meeting of the directors, if the same notice is given of the conference as would be required by this Article for a meeting, and if the number of members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by such means shall constitute presence in person at the meeting.

**Section 3.12 Presumption of Assent.**

A director who is present at a meeting of the Board of Directors when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, or votes against the action at the meeting or is prohibited from voting on the action due to a conflict of interest.

**Section 3.13 Absent Directors.**

A director may give advance written consent or opposition to a proposal to be acted on at a Board of Directors meeting. If the director is not present at the meeting, consent or opposition to a proposal shall not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as a vote in favor of or against the proposal and shall be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

**Section 3.14 Action Without a Meeting.**

(a) Written Action Permitted. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken by written action signed by all of the directors. If the Articles of Organization or member control agreement so provides, an action which need not be approved by the members may be taken by written action signed by the number of directors that would be required to take such action at a meeting of the Board of Directors at which all directors were present. Any written action may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

(b) Effective Date. The written action shall be effective when signed by the required number of directors, unless a different effective time is provided in the written action.

(c) Notice to Directors. When written action is permitted to be taken by less than all directors, all directors shall be notified immediately of its text and effective date. Failure to provide the notice shall not invalidate the written action. A director who does not sign or consent to the written action shall have no liability for the action or actions taken thereby.

### **Section 3.15 Resignation.**

A director may resign at any time by giving written notice to the company. The resignation shall be effective without acceptance when the notice is given to the company, unless a later effective time is specified in the notice.

### **Section 3.16 Removal.**

Except as otherwise provided in the Articles of Organization or a member control agreement, any one or all of the directors, other than the General Manager, may be removed at any time, with or without cause, by the affirmative vote of the holders of power sufficient to elect such director; provided, however, that if the company has cumulative voting, unless the entire Board of Directors is removed simultaneously, a director shall not be removed from the Board of Directors if there are cast against removal of the director the votes sufficient to elect the director at an election of the entire Board of Directors under cumulative voting. A director, other than the General Manager, may be removed at any time, with or without cause, by the affirmative vote of a majority of the remaining directors present if the director was named by the Board of Directors to fill a vacancy, and the members have not elected directors in the interval between the time of appointment to fill the vacancy and the time of removal. Removal of the General Manager as a Director shall require a unanimous consent of the remaining Directors. Removal of a director, whether by members or directors, shall be subject to the provisions of any member control agreement.

### **Section 3.17 Vacancies.**

Except as otherwise provided in the Articles of Organization or a member control agreement, any vacancy occurring on the Board of Directors resulting from the death, resignation, removal or disqualification of a director may be filled by appointment to the seat or seats by the respective members set forth in Section 3.3. A director elected to fill a vacancy shall hold office until a qualified successor is appointed by the members at the next regular or special meeting of the members, or until his or her earlier death, resignation, removal or disqualification.

### **Section 3.18 Compensation.**

Directors and any member of any committee of the company, whether contemplated by this Operating Agreement or otherwise provided for by resolution of the Board of Directors, shall receive such compensation as may be determined from time to time by resolution of the Board of Directors. No such payment shall preclude any director from serving the company in any other capacity and receiving compensation therefor. Nothing

in this agreement shall create any right to compensation.

## **ARTICLE IV. COMMITTEES**

### **Section 4.1     Generally.**

By resolution approved by the affirmative vote of the General Manager and a majority of the directors holding office may establish committees having the authority of the Board of Directors in the management of the business of the company to the extent provided in the resolution; provided that no committee may exercise any function of the Board of Directors requiring the approval of more than a majority of the directors unless such committee is established and appointed by the required percentage of directors and its actions are approved by such required percentage. Committees other than special litigation committees shall be subject at all times to the direction and control of the Board of Directors.

### **Section 4.2     Membership.**

A committee shall consist of one (1) or more natural persons, who need not be directors, appointed by affirmative vote necessary for the establishment of the committee under Section 4.1 hereof.

### **Section 4.3     Quorum.**

A majority of the members of the committee present at a meeting shall constitute a quorum for the transaction of business, unless a larger or smaller proportion or number is required or provided in a resolution establishing the committee.

### **Section 4.4     Procedure.**

The provisions of Error! Reference source not found. Section 3.6 through Section 3.18 of this Operating Agreement shall apply to committees and members of committees to the same extent as those Sections apply to the Board of Directors and directors. Any action required or permitted to be taken at a committee meeting may be taken by a written action signed collectively, or individually in counterparts, by all members of such committee.

### **Section 4.5     Minutes.**

Minutes, if any, of committee meetings shall be made available upon request to members of the committee and to any director.

## **ARTICLE V. MANAGERS**

### **Section 5.1     Number.**

The managers of the company shall include at least one person or entity who shall be designated General Manager and Treasurer. The name of the officers of the company can be found at Exhibit B. All other senior management positions shall be elected by the Board of Directors. None of the managers need be Directors of the company. The Board of Directors also may, in its discretion, elect one or more other managers who may be

designated as secretary or any other office (the number thereof to be determined by the Board of Directors). Any two or more offices may be held by the same person. Except as otherwise prohibited, any manager may delegate any or all of the powers or duties of such manager to other persons.

**Section 5.2     Election and Term of Office.**

The General Manager and Treasurer shall serve for a minimum of two (2) years. All other senior officers shall be selected by the Board of Directors. Following the initial appointments, the person or persons exercising the principal functions of the Treasurer and other officers shall be deemed to have been elected to those positions. The Treasurer and each officer, other than the General Manager, shall hold his or her position until his or her successor is elected and has qualified, or until his or her earlier death, resignation, removal or disqualification. The election or appointment of a person as a senior officer shall not, of itself, create or vest any contract rights in any such officer or officers outside any separately negotiated contract.

**Section 5.3     Resignation.**

A manager or officer may resign at any time by giving written notice to the company. The resignation shall be effective without acceptance when the notice is given to the company, unless a later effective date is specified in the notice.

**Section 5.4     Removal.**

A manager or officer may be removed at any time, with or without cause, by an affirmative vote of a majority of the directors, subject to the provisions of any member control agreements. The removal of the General Manager, with or without cause, shall require a vote of two-thirds of the Board of Directors.

**Section 5.5     Vacancy.**

A vacancy in any position because of death, resignation, removal, disqualification or other cause of an officer or director shall be filled by appointment pursuant to Section 3.3 for the unexpired portion of the term.

**Section 5.6     General Manager.**

The General Manager of the company shall serve as President and shall:

- (a) Have general active management of the day to day business of the company;
- (b) When present, and in the absence of a Chair of the Board, preside at all meetings of the Board of Directors and of the members;
- (c) See that all orders and resolutions of the Board of Directors are carried into effect;
- (d) Be an ex officio member of all standing committees;
- (e) Sign and deliver in the name of the company any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the company, except in cases in which the authority to sign and deliver is required by law to be exercised

by another person or is expressly delegated by the Articles of Organization or this Operating Agreement or by the Board of Directors to some other manager or agent of the company; and

(f) Perform other duties prescribed by the Board of Directors.

**Section 5.7     Treasurer.**

The Treasurer shall be the general financial manager of the company.

**Section 5.8     Secretary.**

The Secretary, if any, shall:

(a) Maintain records of and, whenever necessary, certify all proceedings of the Board of Directors and the members;

(b) See that all notices are duly given in accordance with the provisions of this Operating Agreement or as required by law;

(c) Maintain and be custodian of the required records of the company and of the seal of the company, if any; and

(d) Perform other duties prescribed by the Board of Directors or by the General Manager.

**Section 5.9     Other Managers.**

In the absence of the General Manager or in the event of his or her death, or inability to act, any other manager designated by five (5) of the nine (9) Directors shall perform the duties of the General Manager, and when so acting, shall have all the powers of and be subject to all the restrictions upon the General Manager.

**Section 5.10    Assistant Managers.**

In the event of the absence or disability of any designated manager, secretary, or treasurer, the assistants to such positions shall succeed to the powers and duties of the absent manager in the order in which they are elected or as otherwise prescribed by the Board of Directors until the principal manager shall resume his or her duties or a replacement is elected by the Board of Directors. The assistant managers shall exercise such other powers and duties as may be delegated to them from time to time by the Board of Directors, but they shall be subordinate to the principal manager they are designated to assist. If requested by the Board of Directors, the assistant treasurers shall give bonds for the faithful discharge of their duties in such sums and with sureties as the Board of Directors shall determine.

**Section 5.11    Chair of the Board.**

The General Manager or such other person or entity as may be elected by the Board of Directors, shall serve as the Chair of the Board of Directors. He or she shall, when present, preside at all meetings of the Board of Directors and of the members, and shall perform such duties as shall be prescribed by the Board of Directors.

**Section 5.12 Compensation.**

The compensation of the managers shall be fixed from time to time by contracts approved by either the members or the Board of Directors and no manager shall be prevented from receiving such compensation by reason of the fact that he or she is also a director of the company. The Board of Directors may authorize and empower the General Manager or any manager of the company to fix the salaries of all managers of the company who are not directors of the company.

**ARTICLE VI.  
INDEMNIFICATION**

The company shall indemnify any person who is or was a director, manager, committee member or employee of the company, in accordance with and to the fullest extent provided by law. In consideration of such right of indemnification, the company shall have the right to appoint counsel of its choosing in any action brought against any such director, manager, committee member or employee to protect the interest of the company.

**ARTICLE VII.  
MEMBERSHIP INTERESTS AND THEIR TRANSFER**

**Section 7.1 Limitations by Other Agreements.**

The provisions of this Article are limited in their entirety by the provisions of the Articles of Organization, any member control agreement or member voting agreement, or the mandatory provisions of the laws of the Crow Creek Sioux Tribe, and any provision of this Article in contradiction with any such article, agreement or law shall be null and void.

**Section 7.2 Transfer of Membership Interests Restricted.**

A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with a simultaneous assignment to the same assignee of all of the member's financial rights. A member's financial rights and governance rights are assignable, in whole or in part, only as provided in this Article and after compliance with the provisions hereof. Any member may assign his or her Membership Interests freely to any member or non-member, except as otherwise provided in this Operating Agreement, the Articles of Organization or any member control agreement.

**Section 7.3 Transfer of Membership Interests.**

Transfer of membership interests of the company shall be made only in the required records of the company by the record holder thereof or by his or her legal representative who shall furnish proper evidence of authority to transfer and compliance with the provisions of this Article. The person in whose name membership interests stand in the required records of the company shall be deemed by the company to be the owner thereof for all purposes unless a different beneficial owner shall have been designated pursuant to this Operating Agreement.

**Section 7.4     Indebtedness of Members.**

The company shall have a first lien on all membership interests and upon all distributions declared upon the same for any indebtedness of the respective holders thereof to the company. No membership interest or the financial or governance rights therein shall be considered a certified security, uncertified security, chattel paper, instrument or account under the laws of the Crow Creek Sioux Tribe; but each membership interest, financial right and governance right shall be deemed a general intangible.

**Section 7.5     Transfer Agent and Registrar.**

The Board of Directors may appoint one or more transfer agents, transfer clerks, or registrars to maintain the required records of the company and may require any statements which may be used to describe any membership interests to bear the signature or signatures of any of them; provided that no such statement shall be a negotiable instrument and no such statement may serve as a vehicle by which the transfer of any membership interest may be effected.

**Section 7.6     Assignment of Financial Rights Permitted.**

Except as provided in this Section, a member's financial rights are transferable in whole or in part.

(a) Restrictions of Assignment of Membership Interests. A restriction on the assignment of membership interests or any part thereof may be imposed in the Articles of Organization or by an agreement among or other written action by members or among them and the company. A restriction is not binding with respect to membership interests reflected in the required records before the adoption of the restriction, unless the owners of those membership interests are parties to the agreement or voted in favor of the restriction.

(b) Notice in Required Records. A written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this Section, is ineffective against a person without knowledge of the restriction.

**Section 7.7     Effect of Assignment of Financial Rights.**

An authorized assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the company, or to cause dissolution. The assignment of financial rights may not allow the assignee to control the assignor member's exercise of governance rights.

## **ARTICLE VIII. CONTRIBUTIONS AND DISTRIBUTIONS**

### **Section 8.1     Power to Make Distributions.**

Except as specifically provided in the Articles of Organization, any member control agreement or this Operating Agreement to the contrary, the Board of Directors may authorize, and cause the company to make, a distribution only if the Board of Directors determines, in accordance with Crow Creek Sioux Tribal law, that the company will be able to pay its debts in the ordinary course of business after making the distribution and the Board of Directors does not know before the distribution is made that the determination was or has become erroneous. Such determination shall be made as of the earlier of the date of cessation of membership or due date of payment (including the date debt is incurred) for a redemption, or the authorization (if paid within 120 days) or the date of payment (if after 120 days). For purposes of this Section, "distribution" means a direct or indirect transfer of money or other property, other than membership interests of the company, with or without consideration, or an incurrence or issuance of indebtedness by the company to or for the benefit of its members in respect of its membership interests. A distribution may be in the form of an operating distribution or a distribution in liquidation, or as consideration for the purchase, redemption or other acquisition of the company's membership interests or otherwise.

### **Section 8.2     Reliance.**

For purposes of Section 8.1 and all other provisions of this Agreement, a director, in good faith, is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more managers or employees of the company whom the director reasonably believes to be reliable and competent in the matters presented; or
- (b) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or
- (c) A committee of the Board of Directors upon which the director does not serve, duly established in accordance with Article IV hereof, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence; provided
- (d) If the determination is made on the basis of financial information, it is prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances.

### **Section 8.3     Allocations and Distributions in Kind.**

Except as authorized in the Articles of Organization or any member control agreement, distributions must be allocated in proportion to the percent of ownership of the members as reflected in the required records. Except as provided in the Articles of Organization or any member control agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution in any form other than



cash. Except as provided in the Articles of Organization or any member control agreement, a member may not be compelled to accept a distribution of any asset in kind from the company to an extent greater than the percentage in which the member shares in distributions from the company.

#### **Section 8.4     Liability for Illegal Distributions.**

(a) Members. A member who receives a distribution made in violation of the Articles of Organization, this Operating Agreement or any member control agreement is liable (if timely action is brought within two (2) years of the date of distribution) to the company, its receiver or other person winding up its affairs, or a director as provided by law, but only to the extent that the distribution received by the member exceeded the amount that properly could have been paid pursuant to Crow Creek Sioux Tribal law.

(b) Directors. A director shall only be liable for an improper distribution if:

- (i) the director is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of law or a restriction contained in the Articles of Organization, this Operating Agreement or a member control agreement;
- (ii) the director fails to comply with the standard of conduct provided by law; and
- (iii) action relating to such liability is commenced within two (2) years of the date of distribution.

Under such circumstances, the director is liable to the company jointly and severally with all other directors so liable and to other directors, but only to the extent that the distribution exceeded the amount that properly could have been paid. In any such situation, a director shall be entitled to pro-rata contribution from similarly situated directors and pro rata contribution from each member receiving such distribution.

### **ARTICLE IX. FINANCIAL AND PROPERTY MANAGEMENT**

#### **Section 9.1     Fiscal Year.**

The fiscal year of the company shall be determined from time to time by the Board of Directors.

#### **Section 9.2     Audit of Books and Accounts.**

The books and accounts of the company may, but need not, be audited at such times as may be ordered by the General Manager or Board of Directors.

#### **Section 9.3     Contracts.**

The Board of Directors by resolution or the General Manager may, except as otherwise

provided in any agreement, authorize any manager, agent or employee, either by name or by designation of their respective offices, positions or classes, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the company, and such authority may be general or confined to specific instances, and unless so authorized, no manager, agent or employee shall have any power or authority to bind the company by any contract or engagement, or to pledge its credit, or to render it liable pecuniarily for any purpose or in any amount.

#### **Section 9.4     Checks.**

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the company shall be signed by the General Manager and/or such other manager or managers, agent or agents of the company and in such manner as shall from time to time be determined by the General Manager or by resolution of the Board of Directors.

#### **Section 9.5     Deposits.**

All funds of the company not otherwise employed may be deposited from time to time to the credit of the company in such banks, trust companies, market funds or other depositories as the Board of Directors may select.

#### **Section 9.6     Voting Securities Held by Company.**

The General Manager, or other agent designated by the Board of Directors or General Manager, shall have full power and authority on behalf of the company to attend, act and vote at any meeting of security holders of other companies in which this company may hold securities. At such meeting, the General Manager, or such other agent, shall possess and exercise any and all rights and powers incident to the ownership of such securities which the company might possess and exercise.

#### **Section 9.7     Loans.**

No loans shall be contracted on behalf of this company, and no negotiable papers shall be issued in its name, unless and except as authorized by the General Manager or vote of the Board of Directors.

#### **Section 9.8     Required Records.**

The company shall keep at its principal executive office, or at another place or places within the United States determined by the Board of Directors, by any storage technique deemed reasonable, the following, which shall be the required records of the company:

- (a) a current list of the full name and last-known business, residence or mailing address of each member, director, and manager;
- (b) a current list of the full name and last-known business, residence or mailing address of each assignee of financial rights and a description of the rights assigned;
- (c) a copy of the Articles of Organization and all amendments to the Articles;
- (d) copies of any currently effective written Operating Agreement;

(e) copies of the company's federal, state and local income tax returns and reports, if any, for the three most recent years;

(f) financial statements;

(g) records of all proceedings of members for the last three years;

(h) records of all proceedings of the Board of Directors for the last three years;

(i) reports made to members generally within the last three years;

(j) copies of any and all currently effective member control agreements;

(k) a statement of all contributions accepted, including for each contribution:

(i) the identity of the member to whom the contribution relates;

(ii) the class or series of membership interest to which the contribution pertains;

(iii) the amount of cash accepted by the company or promised to be paid to the company;

(iv) a description of any services rendered to or for the benefit of the company or promised to be rendered to or for the benefit of the company; and

(v) the value accorded to:

(1) any other property transferred or promised to be transferred to the company; and

(2) any services rendered to or for the benefit of the company or promised to be rendered to or for the benefit of the company;

(l) a statement of all contribution agreements, including for each contribution agreement:

(i) the identity of the would-be contributor;

(ii) the class or series to which the future contribution pertains; and

(iii) as to each future contribution to be made, the same information as outlined above;

(m) a statement of all contribution allowance agreements, including for each contribution allowance agreement, the information listed in (12) above.

(n) an explanation of any restatement of value relating to capital contributions or

capital accounts.

(o) any written consents obtained from members relating to the items set forth herein;

(p) a copy of agreements, contracts, or other arrangements or portions of them relating to the establishment of classes or series of membership interests.

**Section 9.9     Right to Inspect.**

Each member of the company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, all documents referred to in Section 9.8 and all other documents upon showing a proper purpose. For purposes of this Section, a "proper purpose" is one reasonably related to the person's interest as a member of the company.

**ARTICLE X.  
LIMITED LIABILITY COMPANY SEAL**

The company shall have no seal unless otherwise authorized by resolution of the Board of Directors.

**ARTICLE XI.  
AMENDMENT**

Except as specifically provided in the Articles of Organization or a member control agreement to the contrary, this Operating Agreement may be amended or repealed, and a new Operating Agreement may be adopted by all of the members.

**ARTICLE XII.  
GOVERNING LAW**

The company has been formed under and pursuant to the provisions of Crow Creek Sioux Tribal law. All references in this Operating Agreement to Crow Creek Sioux Tribal law shall mean and include such provisions as currently enacted or hereafter amended, and any corresponding provision hereafter in effect.

**CERTIFICATION OF OPERATING AGREEMENT**

The undersigned hereby certify that the foregoing Operating Agreement was adopted pursuant to a Written Action of the Board of Directors effective as of the \_\_\_\_<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_, Director

  
\_\_\_\_\_, Director

EXHIBIT A

BOARD OF DIRECTORS

Jeff Holoubek  
David Erickson  
Gene DeJordy  
Tom Reiman  
Eric Big Eagle  
Roland Hawk  
Leonard Pease, Jr.  
Pat Chicas  
Cole Reiman

**EXHIBIT B**  
**OFFICERS**

Jeff Holoubeck, General Manager & Treasurer