

Date: AUG 03 2010

ORDINANCE NO. 400(2010)

1 WHEREAS the Cherokee Tribal Council has established a gaming revenue allocation  
2 plan that provides for per capita distribution of distributable net revenue, as well  
3 as funding for Tribal government operations, enterprises, or programs; and  
4

5 WHEREAS adjustments to some of the Tribal government funds are needed to fund  
6 programs and provided for needs of Tribal members effective at the beginning of  
7 FY2010; and  
8

9 WHEREAS additional technical amendments are included to facilitate the administration  
10 of funds created in the Tribe's revenue allocation plan; and  
11

12 WHEREAS Cherokee Code Chapter 16C (the revenue allocation plan) is restated in its  
13 entirety to facilitate review by the Bureau of Indian Affairs.  
14

15 NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of  
16 Cherokee Indians assembled, at which a quorum is present, that Chapter 16C of  
17 the Cherokee Code is amended and restated as follows:  
18

19 **Chapter 16C**  
20 **Gaming Revenue Allocation Plan**  
21

22 **Sec. 16C-1. Statement of policy.**  
23

24 (a) This chapter is enacted in order to promote the general welfare of the  
25 Eastern Band of Cherokee Indians and its members, to provide for fair and equitable per  
26 capita distribution to eligible enrolled members from Class II and Class III gaming  
27 activities conducted by and on behalf of the Eastern Band of Cherokee Indians; and  
28

29 (b) In order to have consistent terms and definitions throughout Tribal law as  
30 recently recommended by the National Indian Gaming Commission, the Tribe has  
31 decided to use the term "distributable net revenue," as defined in Section 16C-2 below, to  
32 establish the net gaming revenues that must be distributed to the Tribe by all Tribal  
33 gaming operations and then further distributed by the Tribe in accordance with this  
34 revenue allocation plan; and  
35

36 (c) In order to provide for long-term investment of distributable net revenue  
37 derived from tribal gaming activities, to be invested in a manner which will provide for

1 the general welfare of the Tribe over a period of time longer than is presently provided in  
2 the Tribe's Gaming Compact with the State of North Carolina; and

3  
4 (d) In order to provide for an allocation of specified amounts to the Tribe's  
5 general fund, to be used in the current operating budget of the Tribe in each fiscal year;  
6 and

7  
8 (e) To provide funding for retirement of debt associated with Tribal gaming  
9 facilities, schools, and other facilities, the development of housing and infrastructure of  
10 the Tribe, and for the other purposes supporting the general welfare of the Tribe and its  
11 members as set forth in this chapter.

## 12 13 **Sec. 16C-2. Definitions.**

14  
15 For purposes of this chapter:

16  
17 *Act* shall mean the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C.  
18 2701 et seq.

19  
20 *BIA* shall mean the Bureau of Indian Affairs, or the official of such agency with  
21 the duty or assigned authority to act in behalf of the agency.

22  
23 *Capital improvement program (CIP)* shall mean the program established to  
24 provide funding for ongoing capital improvements of Tribal operations and programs.

25  
26 *Cherokee Central Schools Assistance Fund* shall mean that fund established to  
27 provide funding to implement the Cherokee Central Schools Strategic Plan and the  
28 Facility Master Plan.

29  
30 *Cherokee Central School Board* shall mean those officials elected to carry out the  
31 policies and procedures for the Cherokee Central School System.

32  
33 *Debt service sinking fund* shall mean the fund established for the purposes set  
34 forth in Section 16C-14.

35  
36 *Distributable net revenue* shall mean all revenue distributed to the Tribe by a  
37 gaming operation, which shall be calculated as follows: gross revenue of the gaming  
38 operation less (1) prizes and operating expenses, (2) payments owed to a management  
39 contractor, (3) debt service payments (including without limitation principal, interest, and  
40 related fees, costs, and expenses), and (4) contributions to duly authorized  
41 capital/expansion reserve funds. Distributable net revenue shall include surplus  
42 regulatory funds distributed to the Tribe by the Tribal Gaming Commission.

43  
44 *Eligibility for disbursement* shall apply to any person who is enrolled as of  
45 September 30, 1997, March 31, 1998, and each subsequent disbursement date thereafter

1 with the Tribe, provided that person is enrolled no less than 60 days preceding a  
2 scheduled disbursement and meets all requirements of this chapter.

3  
4 *Endowment and Investment Funds* shall mean the trust funds established pursuant  
5 to this chapter to administer funds allocated for investment and appreciation for the long-  
6 term benefit of the Tribe and its members.

7  
8 *External investments* shall mean investments that may be made by the Minors  
9 Trust Fund, Debt Service Sinking Fund and the Endowment and Investment Funds which  
10 must be made under the Prudent Investor Rule, in accordance with the investments  
11 permitted to be made by such funds in this chapter, as amended or supplemented from  
12 time to time.

13  
14 *Equivalent degree* shall mean a high school diploma, GED, degree from a  
15 vocational or technical college, or other appropriate educational institution as determined  
16 by the Tribe.

17  
18 *Higher education* shall mean college, graduate, or professional school. Higher  
19 education shall not mean secondary school.

20  
21 *Higher education funding program* shall mean those funds established to provide  
22 funds to benefit enrolled members who attend institutions of higher education.

23  
24 *Housing Fund* shall mean the fund created for the purpose of providing funds to  
25 assist in housing development as permitted to be made by this chapter, as amended or  
26 supplemented from time to time.

27  
28 *Interim Distribution Fund* shall mean a fund into which 50 percent of  
29 distributable net revenue is deposited monthly by Tribal Management and from which  
30 funds are distributed as per capita payments to competent adult members on a semi-  
31 annual basis and into the Minors Trust Fund semi-annually for minor and other legally  
32 incompetent members. This Fund shall be invested only in U.S. Treasury bills, other U.S.  
33 Government obligations or collateralized bank certificates of deposits. Only one type of  
34 instrument shall be used during the accrual period and the type of investment used will be  
35 determined by interest rate predictions within the accrual period. The obligations shall  
36 have a maturity date of no later than November 15<sup>th</sup> and May 15<sup>th</sup>. The instrument used  
37 during each period shall be approved by the Investment Committee and the Tribal Budget  
38 and Finance Office by September 1<sup>st</sup> and March 1<sup>st</sup>.

39  
40 *Internal investments* shall mean investments that are made by allocation or  
41 distribution of funds through the Tribal budget process.

42  
43 *Manager* shall mean that person or institution retained by the Tribe to manage and  
44 oversee the investments of the Minors Trust Fund.

1       *Members* shall mean those persons who are duly recognized as enrolled members  
2 of the Eastern Band of Cherokee Indians by the Tribe.

3  
4       *Minor* shall mean a member who has not yet reached the age of 18 years.

5  
6       *Minors Trust Fund* shall mean a fund created by the Tribe pursuant to Section  
7 16C-6 to receive a portion of the distributable net revenue for and on behalf of enrolled  
8 minor and incompetent members of the Tribe.

9  
10       *Revenue allocation plan* shall mean this Chapter 16C of the Cherokee Code.

11  
12       *State* shall mean the State of North Carolina.

13  
14       *Tribal Council* shall mean the legislative body of the Eastern Band of Cherokee  
15 Indians.

16  
17       *Tribal Court* shall mean the Cherokee Court established pursuant to Article 7 of  
18 the Cherokee Code.

19  
20       *Tribal Entity* shall mean only Qualla Housing Authority, Cherokee Boys Club, the  
21 Tribal Casino Gaming Enterprise, the Tribal Bingo Enterprise, the Cherokee Indian  
22 Hospital Authority and the Eastern Band of Cherokee Indians Community Development  
23 Corporation (Sequoyah Fund).

24  
25       *Tribal management* shall mean the Executive Committee and the Tribal Finance  
26 Officer, who shall be jointly responsible for verifying the calculation of distributable net  
27 revenue on a monthly basis for purposes of this chapter and for making monthly deposits  
28 of such distributable net revenue into the appropriate accounts or funds under this  
29 chapter.

30  
31       *Tribal shares* is defined as: Total Shares = 12 months/12 shares of the competent  
32 adult + 12 months/12 shares minors + x months per deceased members (as defined in  
33 section 16C-5(b))/12 shares).

34  
35       *Tribe* shall mean the Eastern Band of Cherokee Indians. It does not mean  
36 individual members of the Tribe.

37  
38       **Sec. 16C-3. Allocations and applications of distributable net revenues.**

39  
40       In order to provide for the general welfare of the Tribe and its members, the  
41 Tribal Council shall review the income and expenses of Tribal gaming operations each  
42 year and after due consideration of the need to fund Tribal government operations and  
43 programs, shall determine the overall needs of the Tribe and its members as well as the  
44 need to promote Tribal economic development and shall then adopt a budget which will  
45 include the amount provided for allocation of available gaming funds. This budget shall  
46 include a determination of what amount shall be provided for Tribal purposes pursuant to



1 the Indian Gaming Regulatory Act (Act). The budget shall first provide for distribution of  
2 50 percent of distributable net revenue to Tribal members under this chapter. The  
3 remaining 50 percent of distributable net revenue shall be allocated for distribution to  
4 support Tribal government operations, enterprises or programs; provide for general  
5 welfare of the Tribe and its members; promote Tribal economic development; donate to  
6 charitable organizations; or fund operations of local government agencies; all as the  
7 Tribal Council may deem necessary or appropriate, subject to the provisions of the  
8 various funds established in this chapter.

9  
10 **Sec. 16C-4. Membership and eligibility.**

11  
12 (a) *Membership requirements.* Those members, including minors and other  
13 legal incompetents, who are recognized by the Tribe as duly enrolled, and who do not fall  
14 within the specific exemptions listed in paragraph (b) below, shall be eligible for semi-  
15 annual allocations in the Minors Trust Fund and/or per capita payments.

16  
17 (b) *Ineligible members.* The following are not eligible to receive per capita  
18 distributions:

- 19  
20 (1) A former member of the Eastern Band of Cherokee Indians who has been  
21 formally and officially disenrolled by the Eastern Band of Cherokee  
22 Indians. Any person, who has been disenrolled by the Eastern Band of  
23 Cherokee Indians based on false or misleading representations in the  
24 enrollment application process, or on the knowing acceptance of financial  
25 benefits of membership in any other Indian Tribe, shall be liable in Tribal  
26 Court for repayment of all funds received from the Eastern Band of  
27 Cherokee Indians.
- 28  
29 (2) A member of the Eastern Band of Cherokee Indians who has been  
30 convicted of theft, embezzlement, or any other crime involving unlawful  
31 taking of money or property from any gaming operation of the Eastern  
32 Band of Cherokee Indians shall be subject to a civil penalty to be  
33 established by the Cherokee Gaming Commission under its hearing  
34 procedures set forth in Article VI of the Tribal Gaming Ordinance. That  
35 civil penalty shall not be less than 100 percent, or more than 200 percent,  
36 of the amount determined by the Gaming Commission to have been taken  
37 by the member. The amount of the civil penalty shall be collected by  
38 garnishment from each per capita check as a debt to the Tribe until the  
39 amount is paid in full. The member shall not receive any per capita  
40 payment until the full amount of the penalty has been collected.
- 41  
42  
43 (3) An enrolled member of the Eastern Band who for religious or other  
44 reasons has voluntarily signed a waiver of his or her per capita distribution  
45 shall not be eligible to receive any per capita payment during the period  
46 such a waiver remains on file with the Tribal Enrollment Office. Such a

1 waiver may be revoked, but the revocation shall only be effective as to  
2 future per capita payments distributed 60 days or more after written  
3 revocation of the waiver is received by the Tribal Enrollment Office.  
4

5 (c) *Applications, written determination of eligibility.* Applications for a  
6 finding of eligibility may be made at any time and shall be submitted in such form and  
7 manner as the Enrollment Office may reasonably require. In order to provide for the  
8 orderly review and consideration, applications submitted within less than 60 days of a  
9 scheduled distribution date shall not be eligible for distribution until the next scheduled  
10 distribution. Only names of the newly enrolled members for the current year shall be  
11 published in the Cherokee One Feather no later than 15 days following the  
12 aforementioned dates. Any applicant found not to be eligible shall be provided with a  
13 written determination of the basis for the denial by the Enrollment Office.  
14

15 (d) *Appeal of findings.* Any person who believes that the Enrollment Office  
16 has made an erroneous determination regarding their own membership may appeal that  
17 finding in accordance with the Tribal Enrollment Ordinance, Chapter 49 of this Code.  
18 The Enrollment Officer shall offer such evidence and testimony as may be appropriate to  
19 justify the finding of ineligibility.  
20

21 (e) *Time limit for claiming distribution or requesting reissuance of a*  
22 *distributed per capita check.*  
23

24 (1) A member who is eligible for, but did not receive, any distribution made  
25 before December 31, 1998, shall file a written request with the Finance  
26 Office on or before December 31, 1999.  
27

28 (2) Except as otherwise provided in this Section, a member who is eligible  
29 for, but does not receive, a per capita distribution, or who received a  
30 distribution but for any reason required the per capita check to be re-issued  
31 must make a written request to the Budget and Finance Office within 60  
32 days of the distribution. The date of distribution is the date on which the  
33 Budget and Finance Office makes its bulk mailing of per capita checks to  
34 members of the Tribe.  
35

36 (3) In circumstances where a deceased member is eligible for but does not  
37 receive a per capita distribution, the authorized representative of the  
38 deceased member's estate must make a written request to the Budget and  
39 Finance Office for the distribution within one year of the deceased  
40 member's death. This Subsection does not apply to funds held for the  
41 benefit of a minor or incompetent enrolled member in the Minors Trust  
42 Fund (see §16C-6(e)).  
43

44 (4) Upon failure to make a request in writing within the time provided in this  
45 Section, the member's entitlement to the missed distribution shall expire.

1 Any unclaimed funds held in reserve for such claims shall be distributed to  
2 all eligible members at the next per capita distribution.

3  
4 (5) *Infant payments missed.* The 60 day time limit expressed in this  
5 Subsection does not apply to certain persons who were enrolled as  
6 members of the Tribe as infants but who were legally adopted as infants.  
7 To claim missed per capita distributions, these persons must submit a  
8 resolution to Tribal Council requesting a hearing on the matter and must:

9  
10 (A) Have been enrolled as a member while an infant.

11  
12 (B) Be living and eligible to receive per capita distributions;

13  
14 (C) Provide the same personal information to the Tribe that is required of  
15 all other recipients of per capita distributions;

16  
17 (D) Prove that they were adopted as infants;

18  
19 (E) Prove that they have lived their entire lives until they made the claim  
20 in a place sufficiently removed from the Qualla Boundary to preclude  
21 their contact with or knowledge of the Tribe; and

22  
23 (F) Prove that they were unaware of their membership in the Tribe, of  
24 their eligibility to receive distributions, and the time limit for claiming  
25 them.

26  
27 If an adopted member satisfies these requirements to Council's  
28 satisfaction at the hearing, the Tribal Council may declare the person  
29 eligible to receive per capita distributions and may direct payment to that  
30 person. In these cases, the person may receive their share of distributions  
31 made since the person attained 18 years of age. However, the person shall  
32 not receive more than \$50,000 in unclaimed distributions. The Tribe shall  
33 not pay any more than the principal amount determined by the Tribe to be  
34 due and is not liable to pay interest or any other enhancements to the  
35 principal amount.

36  
37 (f) *Member must provide accurate information.* Distributions are made based  
38 on the official Tribal membership roll provided by the Enrollment Office to the Budget  
39 and Finance Office. Each enrolled member is responsible for providing to the Enrollment  
40 Office complete and accurate personal information including, but not limited to, name,  
41 mailing address and social security number, in a writing they have prepared. The member  
42 must keep that information current. The Tribe is not liable for a member's failure to  
43 provide the information in the manner required.

44  
45 **Sec. 16C-5. Distribution to members.**  
46

1 (a) *Semi-annual distribution.* Per capita payments shall be made two times  
2 each year to all competent adult members eligible for the distribution as set forth in  
3 section 16C-4. Likewise, an appropriate share shall be set aside twice each year in the  
4 Minors Trust Fund on behalf of minor and incompetent members.

5  
6 (b) *Distribution for deceased members.* Eligible members as defined under  
7 section 16C-4 who have passed away prior to the date of any scheduled disbursement  
8 shall be eligible to receive a pro rata share of the proposed disbursement for each and  
9 every month during the calculation period that they were alive. The Tribal Finance Office  
10 shall disburse any and all funds of the deceased Tribal member to the authorized, or court  
11 appointed, administrator for the deceased's estate.

12  
13 (c) *Distribution to handicapped members.* Eligible minors who have a severe  
14 handicap or terminal illness may request early distribution of per capita payments through  
15 their parent or guardian in accordance with section 16C-6(c)(3).

16  
17 (d) *Garnishment.* Except as specifically set forth in this section, the per capita  
18 disbursements to which each Tribal member is entitled are absolutely exempt from  
19 creditors and shall not be garnished, attached, or paid to any other person or entity,  
20 including the Tribal Court. Per capita payments may be garnished only as follows:

21  
22 (1) *Garnishment for child support.* A parent, guardian, court-appointed  
23 trustee, or other individual or entity, who has provided for the support of  
24 any minor Tribal member, may request the court-ordered garnishment of  
25 any responsible enrolled member's per capita distribution for the support  
26 of the minor child. Such a garnishment shall only be effective if it is  
27 ordered in compliance with subparagraph (d)(3), below.

28  
29 (2) *Garnishment for debts owed to the Eastern Band of Cherokee Indians.* The  
30 Tribe, or a Tribal entity as defined in this chapter, may administratively  
31 garnish a member's per capita payment to reimburse the Tribe or the  
32 Tribal entity for any outstanding fees, costs, rent, judgments, user fees, or  
33 other charges owed to the Tribe or the Tribal entity. This subsection shall  
34 not apply to fees, costs, rent, judgments, user fees, or other charges owed  
35 to individual Tribal members. Such a garnishment shall only be effective  
36 if it is ordered in compliance with subparagraph (d)(3), below.

37  
38 (3) *Procedure.* Garnishment orders may only be entered if the following  
39 minimum due process requirements have been met:

40  
41 (A) Garnishment of per capita is only permitted to enforce a valid, final,  
42 and enforceable court order or judgment entered after the defendant  
43 was personally served with a summons and complaint, and given an  
44 opportunity to be heard in compliance with the law of the jurisdiction  
45 granting the judgment.  
46

1 (B) The defendant must be given notice of the request for garnishment,  
2 either in the complaint originally served on the defendant or by a  
3 motion served on the defendant by first class mail at least ten days  
4 prior to hearing on the garnishment motion.

5  
6 (C) A list of garnishments must be received by the Tribal finance office no  
7 less than 30 days before a scheduled disbursement.

8  
9 (D) The garnished funds shall be deposited with the Tribal Court for  
10 disbursement in accordance with the court order after the time for legal  
11 review under subparagraph (d)(4) has passed.

12  
13 (E) After these procedures have been followed once, the garnishment  
14 order shall remain in effect for subsequent distributions until the debt  
15 is paid in full.

16  
17 (4) *Legal review.* Funds garnished pursuant to Tribal court order shall be held  
18 by the Tribal finance office for a period of ten working days after the per  
19 capita disbursement. Upon a request within those ten days by a member  
20 whose per capita has been garnished, the office of the attorney general will  
21 review the court records to ensure there was compliance with the  
22 procedures set forth in this section. Upon discovery of a failure to comply  
23 with these procedures, the office of the attorney general will notify the  
24 court and the funds shall be held by the court in escrow until the tribal  
25 member can be given notice and an opportunity to be heard.

26  
27 (e) *Voluntary assignment.* This subsection shall apply only to debts owed to  
28 the Tribe or to a Tribal entity listed in section 16C-2. A member who owes an obligation  
29 to the Tribe or a Tribal entity may enter into a voluntary assignment agreement for all or  
30 part of the amount of the scheduled disbursement, subject to the following limitations:

31  
32 (1) The Office of the Attorney General shall develop a voluntary assignment  
33 agreement form. Voluntary assignments shall not be enforced unless they  
34 are completed on the proper form, notarized, and filed with the Tribal  
35 Finance Office at least 30 days prior to a scheduled per capita  
36 disbursement.

37  
38 (2) A Tribal entity requesting a voluntary assignment shall first pay a fee of  
39 \$35.00 to the Tribal Finance Office to defer the costs of administering the  
40 voluntary assignment, which fee will be charged to the member.

41  
42 (3) A voluntary assignment may cover past and/or future obligations owed by  
43 the member to the Tribe or Tribal Entity. A single assignment may  
44 obligate multiple per capita distributions, such as to ensure repayment on a  
45 monthly basis of a tribally guaranteed home mortgage loan, however a  
46 separate fee shall be administered for each per capita distribution.



(4) Voluntary assignments, unless they expressly state otherwise, convey to the Tribe all present and future right, title and interest in per capita distributions; they shall remain in effect and are irrevocable until the debt for which the assignment is made is paid in full.

(5) A Tribal member who receives a Tribal guarantee of a loan to purchase, refinance, construct or improve a home under a loan guarantee program approved by the Tribal Council may assign his or her per capita in advance to the Tribal division, program or entity chartered with administering the guarantee program, or have his/her per capita garnished by the Tribe or Tribal Entity under subsection (d), for repayment of the debt owed to the Tribe or the lender, maker, holder, successor or assign of the mortgage.

(f) *Priorities.* In the event there are multiple garnishments or assignments against a member, priority for disbursement of funds shall be as follows:

(1) Garnishment under subsection (d) for child support;

(2) Garnishment under subsection (d) for debts to the Tribe or a Tribal Entity; and

(3) Assignments under subsection (e) for debts to the Tribe or a Tribal Entity.

Within each category above, priority shall be determined by the date of the garnishment order or the grant of the assignment.

(g) *Limitation on garnishment.* Except as specifically set forth in subsections (d) and (e) of this section, the per capita disbursements to which each Tribal member is entitled are absolutely exempt from creditors and shall not be garnished, attached, or paid to any other person or entity, including the Tribal Court. Any resolution, ordinance, or code provision which states or implies otherwise is hereby rescinded and shall have no further force or effect.

(h) *Timing for distribution.* Distribution to members shall be made within 75 days of the following:

March 31st and September 30th of each year.

Any scheduled disbursements made in accordance with this chapter shall be made within 75 days of the above referenced dates. The Finance Office shall calculate and disburse per capita to eligible members no later than 75 days following the first disbursement closure date and again at the close of the fiscal year. In calculating disbursement, the Finance Office shall use financial data provided by the TBE and TCGE operations for the first semi-annual disbursement and the second semi-annual disbursement, which shall be

1 reconciled to a certified audit. Tribal Management shall make appropriate allocations and  
2 transfers and insure that per capita distributions are made no later than 75 days after the  
3 end of the first disbursement closure date and again at the end of the fiscal year.  
4

5 (i) *Certified roll of eligible members.* The Tribal Enrollment Office shall  
6 deliver to Tribal Management a current certified roll of all members eligible under this  
7 chapter, and in accordance with the Tribal Enrollment Ordinance, as of March 31 and a  
8 second certified roll as of September 30 of each disbursement year. Said certification  
9 shall be submitted to the Finance Office no later than 15 days following the  
10 aforementioned dates. Only names of the newly enrolled members for the current year  
11 shall be published in the Cherokee One Feather no later than 15 days following the  
12 aforementioned dates.  
13

14 (j) *Percentage of distributable net revenue.* The percentage of the  
15 distributable net revenue available for distribution to each competent adult member under  
16 this chapter shall be determined by applying the following formula: An amount shall be  
17 added which is the sum of Total Shares. Total Shares is defined as:  $\text{Total Shares} = 12$   
18  $\text{months}/12 \text{ shares of the competent adult} + 12 \text{ months}/12 \text{ shares minors} + x \text{ months per}$   
19  $\text{deceased members (as defined in section 16C-5(b))}/12 \text{ shares. Total shares shall then be}$   
20  $\text{divided into 50 percent of distributable net revenue to equal the distribution per share.}$   
21 The distribution per share shall be multiplied by the total shares distributable to  
22 competent adult members, minors, and deceased members which shall equal no more  
23 than the Minors Trust Fund and/or per capita distribution which is required pursuant to  
24 this chapter. Anyone not on the certified roll for the semi-annual distribution shall have  
25 no right to any past Minors Trust Fund and/or per capita distributions. This requirement  
26 shall become effective on the date of ratification of the ordinance from which this article  
27 derives.  
28

29 (k) *Balance of funds.* The balance of the funds after calculation of the amount  
30 to be distributed to competent adult members as set forth in section 16C-5 shall be  
31 transferred to the fund for the benefit of enrolled minor and incompetent adult members,  
32 to be allocated as set forth in section 16C-6.  
33

34 (l) *Improper assignments and garnishments.* No per capita assignment or  
35 garnishment, except for child support or debts to the Tribe, should have been accepted by  
36 the Cherokee Court of Indian Offenses after the ratification of Ordinance No. 528 (1999)  
37 on April 14, 1999. The court improperly accepted assignments and garnishments after  
38 that date, and those assignments and garnishments are void and unenforceable by  
39 operation of law. Because members of the Tribe and the public have relied in good faith  
40 on the court's improper action, however, the Tribal Council has determined that those  
41 improper assignments and garnishments will be partially honored on a one-time basis  
42 using the following procedure:  
43

- 44 (1) The remedy provided in this subsection shall apply only to garnishments  
45 ordered by the court after April 14, 1999, and filed with the court on or  
46 before November 29, 1999. Valid garnishments or assignments of per



capita ordered by the court before April 14, 1999 shall remain enforceable until paid in full. No garnishment or assignment of per capita filed after November 29, 1999 shall be valid or enforceable in any way, unless it is for child support or a debt to the Tribal government or a Tribal Entity.

(2) Garnishments for child support or tribal debts, and other garnishments ordered prior to April 14, 1999, shall be released to the court after the ten-day legal review period provided in subsection (d)(4) of this section. The Tribal finance office shall freeze all other funds subject to court garnishments or assignments pending hearing.

(3) The garnishments or assignments subject to a hearing under this subsection shall be paid only in the amount of the principal loan or debt, plus interest at a rate of 24 percent per annum (two percent per month) from the date of the loan through November 30, 1999.

(4) The Tribal Court shall conduct a hearing on each garnishment or assignment. The clerk of court shall give the debtor and creditor notice by personal service or mail at least 30 days prior to the hearing. The hearing shall be held before a judge or magistrate whose name does not appear on the original garnishment order.

(5) At the hearing, the creditor shall have the burden of proving, by clear and convincing evidence, the principal amount of the loan or debt on which the garnishment or assignment was based. The debtor shall have the right to raise defenses at the hearing. If the creditor fails to meet that burden of proof, then the judge or magistrate shall enter an order that the creditor receive nothing.

(6) At the conclusion of each hearing, the judge or magistrate shall enter an order, signed in person by that judge or magistrate, stating:

(A) The principal amount of the loan or debt, if proven; and

(B) The amount of interest accrued at two percent per month from the date of the loan through November 30, 1999.

In no event shall the amount ordered by the court exceed the amount of the original assignment or garnishment order.

(7) Upon receipt of the order described in subparagraph (l)(6) from the court, the finance office shall release the funds so ordered to the clerk of court for distribution to the creditor. Any balance remaining, after hearings and orders on all garnishments allegedly executed by a tribal member, shall be released to the tribal member.

1 (8) Orders entered pursuant to this section shall remain in effect until the  
2 allowed amount is paid in full.

3  
4 (9) This subsection shall not affect the validity of garnishments for child  
5 support or Tribal debts, the validity of garnishments ordered by the court  
6 before April 14, 1999, or the validity of voluntary assignments properly  
7 filed with the finance office under former subsection (e). All such  
8 garnishments and assignments have priority over the orders entered under  
9 this subsection.

10  
11 (10) This subsection is not intended to affect the contractual rights of any  
12 creditor. It is intended to provide a partial remedy for creditors whose  
13 garnishments or assignments are otherwise void and unenforceable by  
14 operation of law. For any alleged claim that remains unsatisfied after the  
15 hearing, the creditor may file a separate civil action against the debtor in  
16 the Tribal Court and pursue the judgment collection procedures provided  
17 by Chapter 25, which do not include garnishment or assignment of per  
18 capita.

19  
20 (11) The clerk of court shall prepare a budget amendment providing for the  
21 return of all filing fees charged to creditors for garnishments or  
22 assignments ordered after April 14, 1999 and covered by the hearing  
23 procedures of this subsection. Upon approval of that budget, the clerk  
24 shall return all such filing fees to the respective creditors. Debtors shall  
25 not be required to pay those filing fees.

26  
27 (12) The Tribal Court is directed to post the following notice in a prominent  
28 location easily visible to the public in the clerk's office at all times:

29  
30 NO VOLUNTARY ASSIGNMENTS OR GARNISHMENTS OF PER CAPITA  
31 PAYMENTS WILL BE ACCEPTED BY THIS COURT. PER CAPITA PAYMENTS  
32 CAN ONLY BE GARNISHED AFTER A JUDGMENT IS ENTERED BY THIS  
33 COURT FOR CHILD SUPPORT OR DEBTS OWED TO THE EASTERN BAND OF  
34 CHEROKEE INDIANS OR ITS ENTERPRISES.

35  
36 (13) Nothing in this chapter shall be deemed a waiver of the sovereign  
37 immunity of the Eastern Band of Cherokee Indians, or its officers, agents,  
38 or employees acting in their official capacities. To the extent that any  
39 other tribal law may be interpreted as such a waiver of sovereign  
40 immunity for any claim or action related to distribution of per capita  
41 payments, it is hereby rescinded.

42  
43 (m) In connection with a loan transaction or an agreement to repay a debt, the  
44 Tribe or a Tribal Entity may create a secured interest in an enrolled member's present and  
45 future per capita distributions by having the enrolled member execute a security  
46 agreement and financing statement, which may be combined into a single document. The

1 financing statement or combined document is deemed to be properly filed and the  
2 security interest perfected when the statement or combined document is maintained in the  
3 files of the Budget and Finance Office or the Tribal program or Tribal Entity obtaining  
4 the security interest, and the per capita distribution is possessed by the Tribe. A per capita  
5 distribution is possessed by the Tribe from the time the funds are received by the Tribe  
6 until they have been distributed by check or electronic transfer to the enrolled member.

7  
8 **Sec. 16C-6. Minors and other legal incompetents.**  
9

10 The interests of minor and legally incompetent members otherwise entitled to  
11 receive per capita payments shall be protected as follows:  
12

13 (a) *Trust Fund for enrolled minor and incompetent members.*  
14

- 15 (1) Within 60 days after approval of this section by the Secretary of Interior,  
16 the Tribe shall establish a legal trust (hereinafter "the Minors Trust Fund")  
17 for the benefit of all minor members and legally incompetent members  
18 who shall be eligible for per capita payments.  
19
- 20 (2) Members of the Investment Committee shall serve as the Trustees of the  
21 Minors Trust Fund, provided that there shall be no fewer than three  
22 Trustees. The Trustees shall select an institutional Manager and such other  
23 advisors as they deem necessary, with suitable expertise and discretion to  
24 administer the Minors Trust Fund and invest its assets. The Minors Trust  
25 Fund shall be invested in a reasonable and prudent manner so as to protect  
26 the principal and seek a reasonable return.  
27
- 28 (3) The Minors Trust Fund shall be established as a "grantor" trust, under  
29 which the Tribe is the grantor and owner of the trust for the benefit of its  
30 enrolled minor and incompetent members.  
31
- 32 (4) The Minors Trust Fund shall comply with all applicable Internal Revenue  
33 Code provisions and Internal Revenue Service (IRS) regulations, revenue  
34 procedures, revenue rulings, or other guidance in force from time to time,  
35 to ensure that amounts contributed to and held in the fund shall not be  
36 taxable to the individual enrolled member until they are actually  
37 distributed, or made available for distribution pursuant to this section, to  
38 the individual enrolled member. The necessary provisions to achieve these  
39 goals shall be included in the trust documents.  
40
- 41 (5) *Contingent Provisions.* To the extent that applicable law and IRS guidance  
42 allows the following trust provisions to be included without triggering  
43 adverse tax consequences to the individual trust beneficiaries (*e.g.*,  
44 taxation prior to actual distribution of the trust funds), the following shall  
45 be included in, or later added by amendment to, the trust documents. To  
46 the extent that the tax consequences of including these provisions is

1 unclear or uncertain under applicable law or IRS guidance, the Trustees of  
2 the Minors Trust Fund are authorized to request an IRS private letter  
3 ruling and to act in accordance with any IRS guidance received pursuant  
4 to such a request.  
5

6 (A) Prior to receiving a distribution, an enrolled member who reaches the  
7 age of 18 years must submit the following documentation: (1) the  
8 original or a certified copy of their high school diploma or GED; (2) if  
9 the member has been home schooled, a writing from the state agency  
10 in the state in which the member was home schooled indicating that  
11 the member has successfully passed the state-wide test accepted by the  
12 state for such students. The enrolled member must submit the  
13 documentation to the Trustees prior to receiving any funds from the  
14 Minors Trust Fund. If the Tribe determines that the diploma, GED or  
15 other writing is questionable, the Tribe may require other proof. Proof  
16 of completion of a course of studies from a correspondence school is  
17 not acceptable; a student or graduate of a correspondence school must  
18 also prove that they have successfully passed the same or a similar  
19 state-wide test as required in this subsection of home school graduates.  
20 Any minor member, who fails to submit the appropriate information as  
21 described above shall not be entitled to any monies held on their behalf  
22 in the Minors Trust fund until (1) the minor member has provided  
23 evidence of attaining such a degree or (2) the minor member reaches  
24 the age of 21 years, whichever occurs first. Minor members with  
25 learning disabilities or other disabilities may present a certificate of  
26 attendance showing that the student has attended a full 12 years of  
27 school and that certificate shall be deemed to be an equivalent degree  
28 for purposes of this section.  
29

30 (b) *Advance distributions for education.*  
31

32 (1) It is the policy of the Tribe to provide the best possible education for  
33 enrolled members. It is the Tribe's specific goal in establishing the Minors  
34 Trust Fund to help each student fund a college education. It is recognized  
35 that some members may encounter extraordinary educational problems  
36 preventing them from being able to attend or benefit from college. In those  
37 situations, a minor may request an advance distribution to fund other  
38 urgent educational needs that cannot be funded by other sources.  
39

40 (2) In general, an advance distribution for educational purposes shall be  
41 requested only for attendance at a secondary school, college, graduate or  
42 professional school. However, incompetent and minor members with  
43 learning or other disabilities shall be eligible to request a distribution for  
44 special training or education in academic or non-academic programs or  
45 schools for disabled or handicapped students. For purposes of this section,

1 "secondary school" shall mean a private school or boarding school that is a  
2 member of the National Association of Independent Schools.  
3

4 (3) In order to request an advance distribution from the Minors Trust Fund for  
5 educational purposes, a written request must be submitted by the parent or  
6 legal guardian, or in the case of a member who has attained age 18 without  
7 graduating from high school, by the member, to the Trustees. The funds  
8 requested may not exceed the cost of tuition, program fees, miscellaneous  
9 fees, room, board, books and equipment.  
10

11 (4) Any advance distribution for education shall be disbursed jointly to the  
12 parent/legal guardian (or member, age 18-21) and the school, program or  
13 other institution providing the educational services.  
14

15 (5) If such a request is granted, the amount disbursed shall not exceed the  
16 proportional share of the Minors Trust Fund allocated to the requesting  
17 beneficiary at the time of the request. The Tribe may require that the  
18 amount disbursed be paid directly from the Tribe to the educational  
19 institution or vendor and/or that a receipt be provided from the educational  
20 institution or vendor after payment.  
21

22 (c) *Advance distributions to minors and incompetents for health care.*  
23

24 (1) It is the policy of the Tribe to make funds in the Minors Trust Fund  
25 available for the benefit of minor members' unmet health care needs. In  
26 the event of unmet health care needs, a minor may request an advance  
27 distribution of his share of the trust to fund actions and services that fulfill  
28 urgent medical needs, but only when such needs cannot be met from other  
29 available personal, Tribal or other public sources.  
30

31 (2) In order to request an advance distribution for unmet health needs, a  
32 written request must be submitted by the parent or legal guardian to the  
33 Trustees. The request must include sufficient, current written information  
34 about the specific treatment or unmet health need for which the advance  
35 distribution will be used. Whether the documentation is sufficient and  
36 current shall be determined by the Trustees. The funds requested may not  
37 exceed the cost of necessary medical or dental treatment that cannot be  
38 met from other available personal, Tribal or other public sources.  
39

40 (3) In addition, a parent or legal guardian may request early disbursement of  
41 trust funds for a severely handicapped or terminally ill minor who is not  
42 likely to reach the age of 18 years. Such a request must be supported by  
43 specific documentation by both educational and medical personnel to  
44 support the representation of either the severity of the handicap or the  
45 terminal illness.  
46

1 (4) Any advance distributions for health care will be disbursed jointly to the  
2 member's parent/legal guardian or member (age 18-21) and the hospital or  
3 other health care institution providing the specific medical services.  
4

5 (5) If such a request is granted, the amount disbursed shall not exceed the  
6 proportional share of the Minors Trust Fund allocated to the requesting  
7 beneficiary at the time of the request. The Tribe may require that the  
8 amount disbursed be paid directly from the Tribe to the health care  
9 provider or vendor and/or that a receipt be provided from the health care  
10 provider or vendor after payment.  
11

12 (d) *Decision Process for Advance Distributions.*  
13

14 (1) Any advance distribution for educational or health needs shall be made  
15 only in the Trustees' sole discretion. If an advance distribution is made, the  
16 beneficiary's account is thereby reduced by the amount of the advance  
17 distribution.  
18

19 (2) The Trustees are authorized to establish a screening committee of health  
20 and educational professionals to review and make recommendations  
21 regarding advance distribution requests. The committee is authorized to  
22 create policies and procedures by which to discharge its responsibilities.  
23 The policies and procedures must be approved by the Trustees before  
24 implementation. The ultimate decision to distribute funds, however, shall  
25 remain in the sole discretion of the Trustees.  
26

27 (e) *Distributions for deceased persons.*  
28

29 (1) Any person for whose benefit funds are held in the Minors Trust Fund  
30 who passes away shall have any funds held for their benefit disbursed in  
31 the following in order of priority:  
32

33 (A) If the deceased minor has a surviving spouse and/or child(ren),  
34 then the funds shall be divided and distributed equally to all such  
35 persons.  
36

37 (B) If the deceased minor has no surviving spouse or children, then the  
38 funds shall be divided and distributed equally to the minor's  
39 surviving parent(s), if any.  
40

41 (C) If the deceased minor has no surviving spouse, children or parents,  
42 then the funds shall be divided and distributed equally to the  
43 minor's surviving sibling(s), if any.  
44



1 (D) If no spouse, children, parents, or siblings survive the deceased  
2 minor, then the deceased minor's share shall revert to the Grantor  
3 (the Tribe).  
4

5 (E) In no event shall the funds of a deceased minor be distributed to  
6 the minor's estate.  
7

8 (2) A recipient of funds disbursed pursuant to subsection (e)(1) above does  
9 not have to be an enrolled member.  
10

11 (3) A potential recipient identified in subsection (e)(1) does not have to  
12 submit a claim or a request for a disbursement. The death of the minor  
13 member is the event which shall cause the Tribe to disburse the money.  
14 However, before the Tribe may make a disbursement, a potential recipient  
15 must provide to the Tribe information including, but not limited to, their  
16 name, address, age, relationship to the deceased, and social security  
17 number, so that the Tribe may conduct a proper disbursement. The Tribe  
18 shall make the disbursement only after it is satisfied that it has made  
19 reasonable efforts to properly identify the recipients and it has received  
20 necessary information from identified recipients.  
21

22 (4) If there are multiple recipients, the Tribe shall disburse the money in equal  
23 shares to them.  
24

25 (5) If a recipient is a minor, his or her share shall be disbursed to the parent(s)  
26 or legal guardian(s), who the Tribe has determined provides the primary  
27 care for the minor recipient and is legally responsible for him or her.  
28

29 (f) *Disbursements prior to attaining 18 years of age.* Except as provided in  
30 subsections (b) or (c) or (e) of this section, no disbursements from the Minors Trust Fund  
31 shall occur until the minor has at least obtained the age of 18 years. No court order  
32 evidencing emancipation prior to attaining majority shall be accepted or acted upon to  
33 authorize a disbursement from the Minors Trust Fund.  
34

35 (g) *Voluntary disenrollment.* No distributions whatsoever from the Trust Fund  
36 shall be made to any minor or, in the alternative to any guardian or parent of a minor or  
37 legally incompetent member, when that minor, or that minor's guardian or parent  
38 voluntarily chooses to renounce and abandon their enrollment with the Tribe. Any  
39 monies held for the minor prior to disenrollment shall be distributed equally among the  
40 other beneficiaries of the Trust Fund.  
41

42 (h) *Timing of disbursements.* For purposes of this chapter, disbursements  
43 made from the Minors Trust Fund shall only occur at the end of each calendar quarter.  
44 The Tribe shall withhold 25% from each distribution to be distributed from each  
45 individual's trust account when it makes a disbursement to ensure proper payment of  
46 mandatory federal income taxes.



1  
2 (i) *Effective date.* This amended section shall be effective upon the date it is  
3 approved by the Secretary of the Interior. Upon approval, all funds held in the Minors  
4 Reserve Fund established under prior law for enrolled minors and incompetents shall be  
5 transferred to the Minors Trust Fund.  
6

7 (j) *No implied waiver.* Nothing in this section or in the related trust  
8 documents shall be deemed to be a waiver of the sovereign immunity of the Eastern Band  
9 of Cherokee Indians for purpose of any access by creditors to assets in the Minors Trust  
10 Fund.  
11

12 (k) *Alternative provision.* To the extent that applicable IRS guidance does not  
13 allow implementation of subsection (a)(5)(A), above, on a tax deferred basis, then the  
14 Trustees shall implement that subsection by establishing a taxable trust account or  
15 accounts to hold such funds as are remaining after payment of taxes until the enrolled  
16 member provides evidence of a high school diploma or equivalent degree or attains the  
17 age of 21 years.  
18

19 (l) *Special supplement.* Beginning in fiscal year 2004 and each year  
20 thereafter, the Tribe shall set aside from non-Reserve and non-Trust Fund monies, and in  
21 a separate budget line item, an amount not to exceed \$250,000. This amount shall be  
22 calculated to make up for reasonably foreseeable losses in the Minors Trust Fund  
23 principal caused by investment volatility. The set-aside monies shall be used only as  
24 follows: any person entitled to a distribution from the Minors Trust Fund who would, at  
25 the time of distribution, receive less than their full share of Minors Trust Fund principal  
26 due to losses to principal since fiscal year 2002 caused by market volatility, will be paid  
27 an amount from the set-aside funds sufficient to make up for the loss of principal. Any  
28 person who received a Reserve Fund distribution in fiscal year 2003 but who did not  
29 receive their full share of principal shall be paid the difference retroactively.  
30

#### 31 **Sec. 16C-7. Taxation.**

32

33 All payments made to individual members are subject to federal taxation, and  
34 members receiving per capita payments shall be subject to the withholding of appropriate  
35 amounts for such tax payment in the manner and to the extent provided by applicable  
36 law.  
37

#### 38 **Sec. 16C-8. Technical amendments.**

39

40 Technical amendments to this chapter are herewith authorized whenever and  
41 wherever necessary in order to comply with language and terms established or required  
42 by the U.S. Tax Code that would affect the intent and purpose of this chapter in order to  
43 preserve and limit taxation of per capita distributions until such distributions are received  
44 by the individual members or by their parent or legal guardian. The Tribal Council  
45 herewith approves and confirms technical language amendments proposed by tax counsel  
46 in connection with the establishment of the various funds set forth in this chapter,

1 together with subsequent proposed technical amendments from tax counsel for the Tribe  
2 or the funds resulting from changes to the U.S. Tax Code, federal tax regulations, court  
3 decisions or interpretations thereof.

4  
5 **Sec. 16C-9. Revenue allocation percentages.**

6  
7 (a) Effective October 1, 2009, distributable net revenue shall be distributed to  
8 fund per capita distributions, Tribal government operations, and the general welfare funds  
9 established under this Chapter as follows:

10

11	Per Capita Distributions (§§16C-5, -6).....	50.00%
12	Tribal General Fund .....	<del>\$52,700,000</del> 21.50%
13	Endowment and Investment Funds (§16C-10) .....	<del>\$10,500,000</del> 4.50%
14	Debt Service Sinking Fund (§16C-14) .....	<del>\$14,600,000</del> 6.25%
15	Housing Fund (§16C-15).....	<del>\$9,300,000</del> 5.00%
16	Higher Education Fund (§16C-16).....	<del>\$6,000,000</del> 2.50%
17	Capital Improvement Program (§16C-17).....	<del>\$5,800,000</del> 2.50%
18	Cherokee Central Schools Assistance Fund (§16C-18).....	<del>\$4,800,000</del> 2.00%
19	Health Program Supplement Fund (§16C-19) .....	<del>\$6,000,000</del> 4.50%
20	<u>Cherokee Indian Hospital Authority ((§16C-19).....</u>	<u>\$8,400,000</u>
21	Police and Corrections Fund (§16C-20) .....	<del>\$3,000,000</del> 1.25%
22	<u>Kituwah Language Immersion (§16C-21).....</u>	<u>\$1,400,000</u>
23		
24	TOTAL	<u>\$122,500,000 for tribal operations plus 50% of gaming allocation for Per</u>
25	<u>Capita Distributions</u>	<u>100.00%</u>

26

27 (b)At all times, 50% of the gaming revenues received will be deposited into the  
28 Per Capita Distribution fund listed above. For all funds other than the Per Capita  
29 Distribution, if the gaming revenue received for the fiscal year exceeds the amount listed  
30 in 16C-9(a), that excess shall be distributed to the Budget Stabilization Reserve Line item  
31 in the General Fund to provide stability for future fluctuations in revenue and budgets.  
32

33  
34 (b) Amendments to the foregoing allocations shall be subject to the following  
35 limitations:

- 36
- 37 (1) ~~No more than twenty-one and one-half percent of distributable net revenue~~  
38 ~~shall be distributed to the General Fund to fund governmental operations~~  
39 ~~as determined in the annual budget process;(reserved)~~
- 40
- 41 (2) ~~No less than six and one-quarter percent of distributable net revenue shall~~  
42 ~~be distributed to the Debt Service Sinking Fund;(reserved)~~
- 43
- 44 ~~(3) No less than four and one-half percent of distributable net revenue~~  
45 ~~shall be distributed to the Endowment and Investment Funds; (reserved)~~  
46

(c) A fund balance of at least 10 percent and not to exceed 50 percent of the ~~A annual General Fund Tribal B~~ budget shall be maintained in the General Fund to ensure cash flow continuity. Any balance in excess of that amount at the end of each fiscal year shall be distributed to the Endowment and Investment Funds. There are no fund balance limitations for the other governmental operations and general welfare funds established in this Chapter.

(d) A fund balance for Budget Stabilization Reserve shall be established as outlined in 16C-9(b). The fund shall only be utilized when revenue realized is significantly less than projected revenue and shall require a Tribal Council resolution defining how much will be utilized and why it is needed to be utilized. The Budget Stabilization Reserve Fund shall be managed by the Finance Office and reported to Tribal Council annually.

#### **Sec. 16C-10. Cherokee Endowment and Investment Funds.**

(a) The Tribal Council shall create and fund separate Endowment and Investment Funds with distributable net revenue as set forth in Section 16C-9. The purpose of these Funds shall be to provide a long-term investment and capital appreciation vehicle for the Tribe. Tribal management shall make monthly deposits from distributable net revenue into these Funds.

(b) The first Endowment and Investment Fund ("Endowment Fund No. 1") shall be maintained with a value of not less than 100 million dollars as of October 1, 2003, which shall be maintained for the long-term success of the Tribe and not spent. Earnings of the Endowment of Endowment Fund No. 1 shall be added to the principal of the Endowment Fund No.1. The goal for the first Endowment and Investment Fund shall be to accumulate and grow capital for the long-term economic growth and security of the Tribe and its members.

(c) There is hereby created an Endowment Fund No. 2. Distributions from distributable net revenue, shall be deposited in Endowment Fund No. 2 and shall be used as follows:

(1) The annual allocation in Endowment Fund No. 2 may be spent for the purposes in Section 16C-11;

(2) All earnings in Endowment Fund No. 2 may be used for the purposes in Section 16C-11; and

*provided*, however, that the principal of Endowment Fund No. 2 may be used to purchase additional lands for the Tribe and make other investments, so long as other funds are not available for that purpose and in any fiscal year the amount expended does not exceed the amount deposited into the Fund under subparagraph (1) of this subsection; *provided further* that when the purchase or investment is for a specific economic development purpose and will generate revenue for the Tribe within five years, the principal of



1 Endowment Fund No. 2 may be used so long as no individual land purchase or  
2 investment reduces the principal by more than \$10 million.

3  
4 (d) The first and second Endowment and Investment Funds shall be used only  
5 for the purposes expressed in Sec. 16C-11. They shall not be used as supplements to the  
6 General Fund. The Principal Chief and Tribal Council shall review the requirements for  
7 the second Endowment and Investment Fund every two years to evaluate the need for,  
8 and adequacy of, that fund.

9  
10 **Sec. 16C-11. Investment of Endowment and Investment Funds.**

11  
12 a) Except as restricted in Sec. 16C-10, money deposited in the Endowment and  
13 Investment Funds shall be invested in a balanced investment portfolio seeking  
14 long-term gain and capital appreciation, with investments not subject to  
15 investment limitations of GASB.

16  
17 1) The first Endowment and Investment Fund shall be maintained with a  
18 value of not less than 100 million as of October 1, 2003, which shall  
19 be maintained for the long-term success of the Tribe and not spent.

20  
21 2) The second Endowment and Investment Fund may also be used to  
22 purchase additional lands for the Tribe; to acquire or make loans or  
23 investments in new or ongoing business enterprises for the Tribe; to  
24 acquire or make loans or investments in additional business enterprises  
25 and/or to supplement or loan funds to existing Tribal business  
26 enterprises; to fund, or provide a tribal match for funds obtained from  
27 other sources for, major infrastructure projects; and to pay off existing  
28 indebtedness of the Tribe or Tribal enterprises, but such funds shall be  
29 limited to External Investments as defined in this chapter. Any  
30 additional land purchases or any loans made to ongoing business  
31 enterprises, or loans made to additional business enterprises shall be  
32 approved by Tribal Council.

33  
34 **Sec. 16C-12. Limitations on investment of Endowment and Investment Funds.**

35  
36 No more than ten percent of the Funds may be invested in any single stock, bond,  
37 instrument, entity, company, fund or project or cumulatively.

38  
39 **Sec. 16C-13. Management of Endowment and Investment Funds.**

40  
41 The Investment Committee shall manage the investment of the principal and  
42 earnings of the Endowment and Investment Funds and shall work with not less than three  
43 institutional managers to establish a balanced portfolio for the Funds.

44  
45 **Sec. 16C-14. Debt Service Sinking Fund.**

1 The Tribal Council shall create and fund a separate Debt Service Sinking Fund  
2 with distributable net revenue as set forth in section 16C-9. The original purpose of this  
3 Fund was to provide a long-term investment vehicle for the Tribe to retire the long-term  
4 debt. Funds in the Debt Service Sinking Fund may be used to secure, minimize, reduce,  
5 and/or retire other Tribal debts, first for school construction and subsequently for other  
6 projects as prioritized by resolution of the Tribal Council. The investment goal for the  
7 Fund shall be to accumulate and grow capital for the retirement of the Tribe's debts.

8  
9 (1) *Investment of Debt Service Sinking Fund.* Money deposited in this Fund shall  
10 be invested in a balanced investment portfolio seeking long-term gain and  
11 capital appreciation, with investments not subject to investment limitations of  
12 GASB.

13  
14 (2) *Limitations on investment of Debt Service Sinking Fund.* No more than ten  
15 percent of the Fund may be invested in any single stock, bond, instrument, entity,  
16 company, fund or project. Additionally, no more than ten percent of the Fund shall be  
17 cumulatively invested in any single stock, bond, company or project.

18  
19 (3) The Investment Committee shall manage the investment of the principal and  
20 earnings of the Debt Service Sinking Fund and shall work with not less than  
21 three institutional managers to establish a balanced portfolio for the Fund.

#### 22 23 **Sec. 16C-15. Housing Fund.**

24  
25 (a) The Tribal Council shall create and fund a separate Housing Fund with  
26 distributable net revenue as set forth in section 16C-9. The purposes of this Fund shall be:

- 27  
28 (1) To provide special mortgage lending including down payment assistance;  
29 interest rate reduction assistance and mortgage loans;  
30  
31 (2) To provide long term lease/ purchase options for tribally controlled housing;  
32  
33 (3) To provide funding to assist Tribal members in obtaining adequate housing  
34 infrastructure;  
35  
36 (4) To provide surveying services;  
37  
38 (5) To provide road construction into new housing and redevelopment areas;  
39  
40 (6) To provide utilities and site improvement construction into new housing areas;  
41  
42 (7) To alleviate the backlog, if any, in the Home Improvement Program (HIP);  
43  
44 (8) (reserved)  
45  
46 (9) To provide housing rehabilitation and weatherization services;

(10) To service existing revolving loans; rehabilitation loans and down payment assistance loans;

(11) To pay administrative, operational and management expenses related to the programs established under this section; and

(12) For such other housing-related functions as may be established by Tribal Council resolution.

(b) The Principal Chief and Tribal Council shall (1) develop a long-term strategic housing plan, updated annually, establishing priorities for expenditure and other relevant details; and (2) create and approve an annual budget addressing how the available funds will be expended consistent with that strategic plan.

#### **Sec. 16C-16. Higher Education Fund.**

The Tribal Council shall create and fund a separate Higher Education Funding Program with distributable net revenue as set forth in section 16C-9. The purpose of this Program shall be to provide funding to assist enrolled members with their higher education needs. The Higher Education Funding Program may be used to fund the Summer College Internship Program and special preparatory classes that assist applicants in gaining entrance to college, graduate or professional school. The Higher Education Funding Program shall not fund secondary school expenses or extra curricular activities. In each fiscal year the program will seek to fund, a minimum of ten percent of the distributable net revenue that is distributed to the Higher Education Fund shall then be distributed to a Higher Education Endowment Fund, if funds are available. The Higher Education Committee, in conjunction with the Finance Department, shall establish the criteria for distributions from the Higher Education Endowment Fund.

#### **Sec. 16C-17. Capital Improvement Program (CIP).**

The Tribal Council shall create and fund a separate Capital Improvement Program with distributable net revenue as set forth in section 16C-9. The purpose of this Fund shall be to provide for ongoing capital improvement of Tribal operations and programs.

#### **Sec. 16C-18. Cherokee Central School Assistance Fund.**

The Tribal Council shall create and fund a Cherokee Central School Assistance Fund with distributable net revenue as set forth in section 16C-9. The purpose of this Fund shall be to implement the Cherokee Central Schools Strategic Plan and Facility Master Plan. These plans shall address academic, facilities operations and maintenance, and capital needs. The Cherokee Central Schools shall on an annual basis submit their overall budget outlining major revenue sources and expenditures, and provide justification to support the annual gaming allocation to the Tribe. At least 50 percent of this Fund shall be allocated toward implementing the Facility Master Plan. This Fund

1 | shall be administered by the Cherokee Central School Administration under the budget  
2 | approved by the Cherokee Central School Board.

3  
4 **Sec. 16C-19. Health Program Supplemental Fund.**

5  
6 (a) The Tribal Council shall create and fund a Health Program Supplemental  
7 Fund with distributable net revenue as set forth in section 16C-9. The purposes of this  
8 fund shall be:

- 9  
10 (1) To purchase Medicare Part B insurance for eligible enrolled members;  
11  
12 (2) To assist enrolled members needing Priority 1 medical procedures not  
13 otherwise covered by the contract health services program at Cherokee  
14 Indian Hospital;  
15  
16 (3) To supplement funding for a wound care center to serve enrolled  
17 members;  
18  
19 (4) To supplement necessary dental services for enrolled members who are  
20 children;  
21  
22 (5) To purchase pharmaceuticals for enrolled members pursuant to guidelines  
23 to be established by the Health Board and Tribal Council as described  
24 below;  
25  
26 (6) To supplement funding shortfalls at the Cherokee Indian Hospital;  
27  
28 (7) To supplement funding for Tsali Care nursing home;  
29  
30 (8) To supplement funding for Womens Wellness Center;  
31  
32 (9) To pay administrative expenses related to the programs established under  
33 this section; and  
34  
35 (10) For such other health-related purposes as the Tribal Council may  
36 determine by resolution.

37  
38 | (b) With respect to ~~1.00% of~~ distributable net revenue allocated through this  
39 fund, the Tribal health programs, in consultation with the Tribal health board, shall  
40 conduct needs assessments and develop plans for eligibility and other requirements for  
41 such programs, subject to final approval by the Tribal Council. Based on those plans,  
42 funds will be allocated to the various programs through the annual budget approval  
43 process. The Eastern Band shall be payer of last resort for all programs established to  
44 purchase medical services, and shall not be responsible for coverage except to the extent  
45 that funds are specifically appropriated by the Tribal Council.  
46



(c) ~~Three and one-half percent (3.50%) of d~~Distributable net revenue allocated through this fund shall be distributed to the Cherokee Indian Hospital Authority for services to enrolled members of the Tribe and for CIHA capital needs. This funding is provided in lieu of the authority to bill the Tribal health insurance program for direct services provided by CIHA. The Cherokee Indian Hospital Authority shall on an annual basis submit their overall budget outlining major revenue sources and expenditures, and provide justification to support the annual gaming allocation to the Tribe. The CIHA Governing Board shall allocate that funding for the purposes specified in this subsection through its operational and capital budgeting process.

**Sec. 16C-20. Police and Corrections Fund.**

The Tribal Council shall create and fund a Police and Corrections Fund with distributable net revenue as set forth in section 16C-9. The purpose of this Fund shall be to provide funding for personnel, training, equipment and other services and resources that serve the Tribe's goals of investigating, arresting, prosecuting and enhancing corrections efforts for violations of the Tribe's laws governing controlled substances.

**Sec. 16C-21. ~~{Reserved.}~~ Kituwah Language Immersion Fund.**

The Tribal Council shall create and fund a Kituwah Language Immersion Fund with distributable net revenue as set forth in section 16C-9. The purpose of this Fund shall be to provide funding for personnel, training, equipment and other services and resources that serve to maintain and enhance the tribe's Cherokee Language Immersion Program.

**Sec. 16C-22. Amendments.**

Except for technical amendments provided in section 16C-8, this chapter may be amended by action of the Tribal Council in a meeting at which a quorum is present by a majority vote of the Council membership.

BE IT FINALLY ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief, subject to approval by the Bureau of Indian Affairs, and all ordinances and resolutions that are inconsistent with this ordinance are hereby superseded.

*Submitted by the Finance Office and the Office of the Attorney General*