

TABLED

JAN 14 2021

Cherokee Council House
Cherokee, North Carolina

JAN 14 2021

Date

Ordinance No. 367 (2021)

**ORDINANCE APPROVING TRIBAL CASINO GAMING ENTERPRISE
AMENDED AND RESTATED LOAN DOCUMENTS**

WHEREAS, The Eastern Band of Cherokee Indians (the "Tribe") is a federally recognized Indian tribe; and

WHEREAS, the Charter and Governing Document of the Tribe provides that the Tribal Council of the Tribe (the "Tribal Council") has the power to promulgate ordinances and resolutions for the economic advancement of the Tribe; and

WHEREAS, the Tribal Casino Gaming Enterprise (the "TCGE") is authorized by ordinance of the Tribal Council as an instrumentality of the Tribe to own and operate the Class III gaming activities and any facilities related thereto of the Tribe at the casino site at 777 Casino Drive, Cherokee, NC and any facilities related thereto (the "Cherokee Casino") and the valley river casino site at 777 Casino Parkway, Murphy, NC and any facilities related thereto (the "Valley River Casino") and together with the Cherokee Casino, the "Casinos") and/or any other Class III casinos or facilities related thereto as approved by Tribal Council from time to time; and

WHEREAS, the TCGE entered into the Fifth Amended and Restated Loan Agreement dated October 6, 2017, with Wells Fargo Bank, National Association, as Administrative Agent and the lenders party thereto which provided for the following loan facilities: (i) \$526,562,000 Reducing Revolving Credit Facility with the option to increase the revolving credit facility with Tribal Council approval by up to \$100,000,000; (ii) \$85,000,000 term loan facility to refinance the balance of the Valley River Casino and Hotel construction term loan facility; and (iii) \$250,000,000 delayed draw term loan facility for the development and construction of a new hotel tower and convention center at the Cherokee Casino (as amended through the date hereof, the "Existing Loan Agreement"); and

WHEREAS, the Principal Chief and Tribal Council recognize that the TCGE must continually upgrade, renew, and expand its facilities and offerings to remain profitable and gain market share in a competitive environment and pursuant to Resolution No. 296 (2020) approved the completion of the construction of a fourth hotel tower with expanded convention space and parking garage with related amenities at the Cherokee Casino site (the "Hotel and Convention Center Project") and directed the TCGE to negotiate a Sixth Amended and Restated Loan Agreement to add additional loan capacity under the Existing Loan Agreement to fund the

completion of the development, construction and operation of the Hotel and Convention Center Project; and

WHEREAS, the TCGE has negotiated a Sixth Amended and Restated Loan Agreement among the TCGE, Wells Fargo Bank, National Association, as Administrative Agent (the “Administrative Agent”) and the lenders party thereto from time to time (the “Lenders”) to provide the following loans: (i) a reducing revolving credit facility of \$526,600,000 to refinance the existing reducing revolving credit facility and extend the maturity date to five (5) years from the date of closing (“Closing”) of the Sixth Amended and Restated Loan Agreement, with an option to increase the revolving credit facility by up to \$250,000,000 with Tribal Council approval; and (ii) a \$330,000,000 delayed term loan facility to refinance the current balance of the delayed term loan facility for the development and construction of the Hotel and Convention Center Project and to complete the development and construction of the Hotel and Convention Center Project and modify the date the loan will convert to an amortizing term loan to December 31, 2021 and the Maturity date to five (5) years from the date of Closing; and

WHEREAS, the Sixth Amended and Restated Loan Agreement allows the TCGE to enter into Interest Rate Protection Agreements to hedge or mitigate risk to effectively cap, collar or exchange (fixed to floating rates, floating to fixed rates, from one floating rate to another, floating rate or otherwise) interest rates with respect to any of the obligations under the Loan Agreement and the Tribal Council has determined that the TCGE upon approval of its Board of Advisors may enter into such Interest Rate Protection Agreements on such terms as it determines to be in the best interest of the TCGE and operation of the Casinos without further approval of the Tribal Council; and

WHEREAS, the Tribal Council has reviewed the terms for the Sixth Amended and Restated Loan Agreement, the Sixth Amended and Restated Tribal Agreement, the Third Amended and Restated Tribal Subordination Agreement and the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement and has determined that in order to obtain the necessary financing for the completion of the development and construction of the Hotel and Convention Center Project and continue the operation of the Casinos and related facilities, it is necessary to authorize the borrowing of loans by the TCGE and issuance of letters of credit requested by the TCGE under the Sixth Amended and Restated Loan Agreement and confirm the continuation of the security interest in personal property assets of the TCGE (including those related to both Casinos) to the Lenders and to approve and adopt, by this Ordinance, the Sixth Amended and Restated Loan Agreement, the Sixth Amended and Restated Tribal Agreement, the Third Amended and Restated Tribal Subordination Agreement and the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement and any other documents or agreements that are appropriate or required to implement these documents (together with the Fourth Amended and Restated Security Agreement referred to below, collectively the “2021 Transaction Documents”) and authorize the TCGE to proceed to finalize the 2021 Transaction Documents as required to consummate the amendments to the Existing Loan Agreement as contemplated by the Sixth Amended and Restated Loan Agreement.

NOW THEREFORE BE IT ORDAINED by the Tribal Council in council assembled in which a quorum is present, that:

A. The 2021 Transaction Documents are hereby approved and the Principal Chief is hereby authorized and directed to execute and deliver the Sixth Amended and Restated Tribal Agreement and any other 2021 Transaction Document to which the Tribe is a party, on behalf of the Tribe, and to take such other steps and to execute and deliver such other documents that may be appropriate or required to implement the 2021 Transaction Documents, and/or to accomplish, complete and provide for the continued development, financing, refinancing and operation of the Casinos and the development and construction of the Hotel and Convention Center Project.

B. The Principal Chief is hereby further authorized and directed to take such additional steps on behalf of the Tribe as may be required to perform, implement, give effect to and administer the Sixth Amended and Restated Tribal Agreement and the other 2021 Transaction Documents to which the Tribe is a party, including without limitation, executing such Interest Rate Protection Agreements (as defined in the 2021 Transaction Documents) as authorized by this Ordinance and approved by the TCGE Board of Advisors and the forwarding of such of the 2021 Transaction Documents (as legal counsel for the Tribe or other parties to the 2021 Transaction Documents may request) to the Bureau of Indian Affairs ("BIA"), the National Indian Gaming Commission ("NIGC") or to other regulatory authorities for regulatory review or approval and/or for confirmation that any regulatory approval is not required.

C. The TCGE Board of Advisors is hereby authorized and directed (a) to execute and deliver the Sixth Amended and Restated Loan Agreement and all other 2021 Transaction Documents to which the TCGE is a party on behalf of the TCGE, with such changes as are deemed advisable and approved by the TCGE Board of Advisors, the execution by the TCGE being conclusive evidence of the necessity and approval of such changes [except prior approval of Tribal Council is required to (i) increase the maximum principal amount of the loan facilities under the Sixth Amended and Restated Loan Agreement above \$856,600,000, (ii) to extend the maturity date of the loan facilities beyond five years from the date of Closing, (iii) to modify the pricing grid for the calculation of interest which increases the effective interest rate for the loan facilities under the 2021 Transaction Documents (provided that without further Tribal Council approval the TCGE may consult with respect to or approve a replacement rate to replace the LIBOR rate and related amendments on the terms set forth in the Sixth Amended and Restated Loan Agreement and the TCGE shall have the right as provided in this Ordinance, to enter into Interest Rate Protection Agreements as allowed by the 2021 Transaction Documents), (iv) to pledge additional assets, other than those as provided in the 2021 Transaction Documents, to secure the obligations under the 2021 Transaction Documents, or (v) expand the limited waiver of sovereign immunity or expand the recourse rights of the Lenders], (b) to borrow the loans and request letters of credit under the Sixth Amended and Restated Loan Agreement and reconfirm the grant of security interest in the personal property assets of the TCGE under the Third Amended and Restated Security Agreement dated as of October 6, 2017 (the "Existing Security Agreement"), as amended by the Fourth Amended and Restated Security Agreement (the "Fourth Amended and Restated Security Agreement"), and (c) to take such other steps and to execute and deliver such other documents that may be appropriate or required to implement the 2021 Transaction Documents, and/or to accomplish, complete and finance the development and construction of the Hotel and Convention Center Project and such other capital projects as are provided in the budget for the Casinos from time to time. Without limiting the foregoing, the Board of Advisors of the TCGE is hereby authorized and directed in connection with the execution and delivery of the 2021 Transaction Documents to the Lenders to make, on behalf of

the TCGE, as an instrumentality of the Tribe, the representations, warranties and agreements set forth in the 2021 Transaction Documents.

D. WHEREAS, the TCGE Board of Advisors is hereby authorized, without further Tribal Council approval, to enter into Interest Rate Protection Agreements as allowed by the 2021 Transaction Documents on such terms as the TCGE Board of Advisors determines to be in the best interest of the TCGE and operations of the Casinos which will hedge or mitigate risk to effectively cap, collar, or exchange (fixed to floating rates, floating to fixed rates, from one floating rate to another floating rate or otherwise) interest rates with respect to any obligations under the 2021 Transaction Documents.

E. The TCGE Board of Advisors is hereby further authorized and directed (i) to take such additional steps as an instrumentality of the Tribe as may be required to perform, implement, give effect to and administer the 2021 Transaction Documents to which the TCGE is a party including, without limitation, the execution and delivery of any necessary amendments or waivers to the 2021 Transaction Documents as deemed advisable and approved by the TCGE Board of Advisors [except that the maximum principal amount of the loan facilities under the Loan Agreement shall not be increased above \$856,600,000, the maturity of the loan facilities shall not be extended beyond five (5) years from the Closing date, the pricing grid for the calculation of interest shall not be modified to increase the effective interest rate for the loan facilities under the 2021 Transaction Documents (provided that without further Tribal Council approval the TCGE may consult with respect to or approve a replacement rate to replace the LIBOR rate and related amendments on the terms set forth in the Sixth Amended and Restated Loan Agreement and the TCGE shall have the right, as provided in this Ordinance, to enter into Interest Rate Protection Agreements as allowed by the 2021 Transaction Documents), no additional assets, other than those as provided in the 2021 Transaction Documents, shall be pledged to secure the obligations under the 2021 Transaction Documents, the limited waiver of sovereign immunity shall not be expanded or recourse rights of the Lenders expanded without the prior approval of the Tribal Council]; and (ii) to complete the development and construction of the Hotel and Convention Center Project and such other capital projects as are provided in the budget for the Casinos from time to time, including, without limitation, the execution and/or delivery of such agreements (as legal counsel for the TCGE or other parties to the agreements may request) to the BIA, NIGC or to other regulatory authorities for regulatory review or approval and/or for confirmation that any regulatory approval is not required.

F. Without limiting the foregoing, the Tribe reconfirms the Existing Security Agreement and the collateral pledged thereby which shall continue to secure the obligations under the 2021 Transaction Documents and the TCGE Board of Advisors is hereby authorized and directed to reconfirm the Existing Security Agreement by execution of the Fourth Amended and Restated Security Agreement and to execute and deliver, as an instrumentality of the Tribe, such control agreements for the pledge of all deposits or other accounts of the TCGE and such other documents (collectively the “Security Documents”) as necessary or advisable to create a perfected first priority security interest and first priority lien on the collateral described in the Fourth Amended and Restated Security Agreement and Sixth Amended and Restated Loan Agreement. It is acknowledged that the ownership and title to all personal property, whether now existing or hereafter acquired (including cash and revenues) of the Casinos is in the name of, and owned by, the TCGE, as an instrumentality of the Tribe; provided, however, that nothing

herein shall affect the title to the real property, which includes all land, buildings, improvements or fixtures (the "Real Property") related to the Casinos or any Real Property related to other facilities that the Tribe authorizes to be a part of the Casinos, which shall continue to be owned in the name of the Tribe with restrictions upon alienation imposed by the United States or in the name of the United States in trust for the Tribe and title to such Real Property shall always remain in trust status.

BE IT FURTHER ORDAINED THAT:

1. Upon the execution and delivery of the 2021 Transaction Documents as authorized by this Ordinance, the Sixth Amended and Restated Loan Agreement, the Sixth Amended and Restated Tribal Agreement and the other 2021 Transaction Documents including any Interest Rate Protection Agreement are under the laws of the Tribe, legal, valid and binding obligations of the TCGE and/or the Tribe (collectively, the "Tribal Parties") who are parties thereto, enforceable against the Tribal Parties in accordance with their terms including the waiver of sovereign immunity, consent to jurisdiction and arbitration provisions in Section 10.25 of the Sixth Amended and Restated Loan Agreement as set forth in Attachment 1 hereto and incorporated herein, Section 5.7 of the Sixth Amended and Restated Tribal Agreement as set forth in Attachment 2 hereto and incorporated herein, Section 11.17 of the Fourth Amended and Restated Security Agreement as set forth in Attachment 3 hereto and incorporated herein, Section 24 of the Third Amended and Restated Tribal Subordination Agreement as set forth in Attachment 4 hereto and incorporated herein, and Section 2 of the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement as set forth in Attachment 5 hereto and incorporated herein, and the limited recourse provision as set forth in Section 10.33 of the Sixth Amended and Restated Loan Agreement, Section 5.19 of the Sixth Amended and Restated Tribal Agreement, Section 11.13 of the Fourth Amended and Restated Security Agreement, Section 28 of the Third Amended and Restated Tribal Subordination Agreement and Section 3 of the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement as set forth in Attachments 1, 2, 3, 4 and 5 hereto, respectively, and incorporated herein, notwithstanding any contrary provision of Tribal law, except as otherwise expressly provided in paragraph 6 below.

2. Upon the execution and delivery of the 2021 Transaction Documents as authorized by this Ordinance, the Administrative Agent, for the benefit of the Lenders under the Fourth Amended and Restated Security Agreement shall have, under the laws of the Tribe, a valid and perfected first priority security interest in and lien on all collateral described in the Fourth Amended and Restated Security Agreement superior to the claim of any other creditor of the TCGE, or of the Tribe, whether such creditor is the Tribe itself, the TCGE, any other instrumentality or agency of the Tribe, or anyone else.

3. No permits, licenses or other governmental approvals, or renewals thereof, are required to be issued by the Tribe or any agency of the Tribe for or in connection with the 2021 Transaction Documents.

4. No Indian Traders License is required to be issued under Tribal law or under the Indian Trader's Licensing Act, 25 U.S.C. 261-254 and accompanying regulations, for any party in connection with the closing and performance of the transactions contemplated by the 2021 Transaction Documents.

5. As to the specific transaction approved in this Ordinance, the provisions of this Ordinance and the 2021 Transaction Documents shall control and take precedence over any contrary provisions of any ordinance, resolution or other law of the Tribe or adopted on behalf of the Tribe, or by any agent, corporation, enterprise or instrumentality of the Tribe.

6. Except to the extent any 2021 Transaction Document is deemed void as a “management contract,” “management agreement” or “collateral agreement” within the meaning of IGRA and related regulations or otherwise, (a) nothing contained herein shall have the effect of making any term contained in the 2021 Transaction Documents enforceable if such term is otherwise unenforceable under the laws of the state whose laws are designated as governing pursuant to the terms of such 2021 Transaction Documents and (b) this Ordinance shall not have the effect of waiving nor shall it be construed as waiving any defense to the enforceability of any term of the 2021 Transaction Documents which, absent this Ordinance, would be available to the parties to the 2021 Transaction Documents under the laws of the state whose laws are designated as governing pursuant to the terms of such 2021 Transaction Documents (any such defense is hereby specifically retained).

7. Subject to the terms and limitations set forth in each of the applicable 2021 Transaction Documents (other than the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement), and with respect to each such 2021 Transaction Document (other than the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement) (regardless of whether such agreement or document is determined to be a management contract under the Indian Gaming Regulatory Act):

(A) The Tribe hereby irrevocably grants to the Administrative Agent and the Lender Parties (as defined in the Sixth Amended and Restated Loan Agreement) a limited waiver of sovereign immunity with respect to all of the contractual obligations, duties and liabilities of the TCGE and the Tribe under, arising out of, or in connection with, the 2021 Transaction Documents, the enforcement against the TCGE or the Tribe of any such contractual obligations, duties or liabilities (whether at law or in equity) or any of the transactions contemplated hereby or thereby. The waiver of sovereign immunity pursuant to this Section 7 shall only be with respect to claims arising out of the TCGE’s or the Tribe’s contractual obligations, duties and liabilities pursuant to the 2021 Transaction Documents (and any disputes or controversies relating thereto) and the enforcement against the TCGE and the Tribe of such contractual obligations, duties and claims (including after resolution of such disputes and controversies). The waiver of sovereign immunity pursuant to this Section 7 shall commence as of the Original Closing Date (as defined in the Sixth Amended and Restated Loan Agreement) and shall continue only until the date on which all Obligations (as defined in the Sixth Amended and Restated Loan Agreement) have been irrevocably paid in full in cash and all commitments have been terminated; provided, however, that if for any reason any payment by or on behalf of the Tribe, the TCGE or any other person or any other application of funds (including the proceeds of any collateral for all or any part of the Obligations) in respect of all or any part of the Obligations is rescinded or must be otherwise restored by any holder of such Obligations, whether as a result of any proceedings in bankruptcy, reorganization or otherwise, such limited waiver of sovereign immunity shall be reinstated until such time as the Obligations have been irrevocably paid in full in cash and all commitments have been terminated. In addition to the waivers and consents set forth in this Section 7, the Tribe expressly waives its immunity from suit and consents to be sued

in any of the following courts for the purpose of any matter relating to the contractual obligations, duties and liabilities of the Tribe under, arising out of, or in connection with, the 2021 Transaction Documents, the enforcement against the TCGE or the Tribe of any such contractual obligations, duties or liabilities (whether at law or in equity) or any of the transactions contemplated hereby or thereby, including, without limitation, if arbitration is demanded by the Administrative Agent or the Tribe pursuant to clause (B) of this Section 7, for the purpose of compelling arbitration or enforcing any arbitration award or judgment thereon: The Cherokee Court or any successor Cherokee Tribal Court (collectively, the “Cherokee Court”), the United States District Court for the Western District of North Carolina, the United States Court of Appeals for the Fourth Circuit, the United States Supreme Court and the courts of the State of North Carolina. Without in any way limiting the generality of the foregoing, the Tribe expressly authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any such court, including, without limitation, entering the Cherokee Indian Reservation and the Casino (as defined in the Sixth Amended and Restated Loan Agreement) for the purpose of executing against any property subject to a security interest or otherwise giving effect to any judgment entered.

(B) If demanded by the Administrative Agent or the Tribe, any action, dispute, controversy or claim of any kind between the TCGE and/or the Tribe on the one hand, and the Administrative Agent or any other Lender Party on the other hand, and in each case arising out of or relating to any of the 2021 Transaction Documents to which the Tribe is a party or any of the transactions covered hereby or thereby, shall be settled by binding arbitration conducted before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect when the demand for arbitration is made and the Federal Arbitration Act. Any party to any of the 2021 Transaction Documents who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any action, dispute, controversy or claim. Any decision by the arbitrators shall be accompanied by a written opinion of the arbitrators giving the reasons for their decision. Each of the arbitrators shall be bound by each of the provisions set forth in the respective 2021 Transaction Documents and by the substantive laws of the state and courts of North Carolina (and the UCC Ordinance (as defined in the Sixth Amended and Restated Loan Agreement) as it controls the Uniform Commercial Code in effect) that relate to any dispute, controversy or claim arising out of or relating to any 2021 Transaction Document. Each of the arbitrators shall be a practicing attorney in the United States recognized in his or her community as having a least 10 years practice experience devoted primarily to financial lending transactions and each of the arbitrators shall be independent and impartial and none of whom shall be employed by or have a material financial interest in, or be a member of, the Tribe or any instrumentality or subsidiary of the Tribe (including the TCGE) or employed by or have a material financial interest in any Lender Party. Subject to the requirements set forth above in this Section 7(B), (i) the Administrative Agent, with the consent of the Required Lenders (as defined in the Sixth Amended and Restated Loan Agreement), shall select one arbitrator, (ii) the Tribe shall select a second arbitrator and (iii) the arbitrators selected by the Administrative Agent and the Tribe shall select the third arbitrator; provided, that if such arbitrators fail to agree on the third arbitrator within 15 business days, the third arbitrator shall be selected by the American Arbitration Association. A controversy concerning whether an issue is arbitrable shall be determined by the arbitrators.

(C) In determining any matter, the arbitrators shall apply the terms of any of the 2021 Transaction Documents, without adding to, modifying or changing the terms in any respect. All arbitration hearings shall be held at a place designated by the arbitrators in Charlotte, North Carolina or such other place agreed to by the parties. The arbitrators may grant any remedy or relief that a court of the State of North Carolina could order or grant within the scope hereof and shall have the power to award recovery of all costs and fees to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the North Carolina rules of civil procedure or other applicable law. Judgment upon the arbitration award may be entered in any court having jurisdiction (including the Cherokee Court); provided, however, that nothing contained herein shall be deemed to be a waiver by any person that is a bank of the protections afforded to it under 12 U.S.C. Section 91 or any similar applicable state law. The parties and the arbitrators shall maintain strict confidentiality with respect to the arbitration except (x) to the extent that disclosure may be required in connection with the enforceability of any award of the arbitrators and (y) as provided in Section 10.14 of the Sixth Amended and Restated Loan Agreement. No provision hereof shall limit the right of any party to the Sixth Amended and Restated Loan Agreement to exercise self-help remedies such as setoff, foreclosure against or sale of any personal property collateral or security, or to obtain provisional or ancillary remedies, including injunctive relief, sequestration, attachment or garnishment, from a court in which the Tribe has consented to be sued as provided in Section 7(A) before, after or during the pendency of any arbitration or other proceeding; provided, that the remedies referred to herein shall be available only to the parties to the Sixth Amended and Restated Loan Agreement and no other parties. The exercise of any such remedy shall not waive the right of any party to compel arbitration or reference hereunder. Arbitrators will not have any power to issue any award that would result in any Lender Party exercising control over either Casino in violation of IGRA. Furthermore, arbitrators shall not have any power to issue any award which would “encumber” “Indian lands” or “tribal lands” for a period that is more than six years and 364 days (as provided and defined in 25 U.S.C. §81 and the implementing regulations found at 25 C.F.R. §84 et seq.).

(D) The Tribe expressly waives the defense that the Tribe may otherwise assert (and agrees that the court should not consider) that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against the Tribe in a state or federal court in which the Tribe has consented to be sued as provided in Section 7(A) and which otherwise has jurisdiction over the subject matter and the parties. The Tribe shall not plead or raise as a defense the requirement of exhaustion of tribal court remedies.

(E) In the event a suit is commenced on any 2021 Transaction Document regarding the subject matter of any 2021 Transaction Document or for the enforcement of an arbitration award, the Tribe will not dispute the jurisdiction of the courts referred to in clause (A) of this Section 7 over any such action and over the Tribe.

(F) The waivers and consents described in this Section 7 shall inure to the benefit of the Administrative Agent, the other Lender Parties and each other person who is entitled to the benefits of the 2021 Transaction Documents (including the indemnified persons referred to in Section 10.11 of the Sixth Amended and Restated Loan Agreement). The Administrative Agent, the other Lender Parties and such other persons shall have and be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief. The waivers of sovereign immunity and of

exhaustion of tribal court remedies and consents to jurisdiction contained in this Section 7 are irrevocable.

(G) The provisions of this Section 7 are subject to the applicable limited recourse provisions as set forth in Section 10.33 of the Sixth Amended and Restated Loan Agreement, Section 5.19 of the Sixth Amended and Restated Tribal Agreement, Section 11.13 of the Fourth Amended and Restated Security Agreement and Section 28 of the Third Amended and Restated Tribal Subordination Agreement.

8. Subject to the terms and limitations set forth in the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement, and with respect to the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement and the Specified Subject Matter as defined in the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement (regardless of whether such agreement is determined to be a management contract under the Indian Gaming Regulatory Act):

(A) The Tribe and TCGE each hereby expressly and irrevocably waives each of the Tribe's and TCGE's sovereign immunity with respect to all of the obligations, duties and liabilities of TCGE or the Tribe under, arising from, or in connection with, the Specified Subject Matter (as defined in the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement) and the enforcement against the Tribe or TCGE of any such obligations, duties or liabilities with respect to the Specified Subject Matter (whether at law or in equity). The waiver of sovereign immunity pursuant to this Section 8(A) shall only be with respect to claims arising from the Tribe's or TCGE's obligations, duties and liabilities under, arising from, or in connection with, the Specified Subject Matter (and any disputes or controversies relating hereto) (including but not limited to any claims referred to in Section 1 of the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement) and the enforcement against TCGE or the Tribe of such obligations, duties and claims (including after resolution of such disputes and controversies). In addition to the waivers and consents set forth in this Section 8(A), each of the Tribe and TCGE expressly waives its immunity from suit and consents to be sued in any of the following courts for the purpose of any matter relating to the obligations, duties and liabilities of TCGE or the Tribe under, arising from, or in connection with, the Specified Subject Matter and the enforcement against the Tribe or TCGE of any such obligations, duties or liabilities with respect to the Specified Subject Matter (whether at law or in equity), including, without limitation, if arbitration is demanded by the Agent (as defined in the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement), the Tribe or TCGE pursuant to clause (B) of this Section 8, for the purpose of compelling arbitration or enforcing any arbitration award or judgment thereon: The Cherokee Court or any successor Cherokee Tribal Court (collectively, the "Cherokee Court"), the United States District Court for the Western District of North Carolina, the United States Court of Appeals for the Fourth Circuit, the United States Supreme Court and the courts of the State of North Carolina. Without in any way limiting the generality of the foregoing, each of the Tribe and TCGE expressly authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any such court, including, without limitation, entering the Tribe's reservation and the casino property currently known as Harrah's Cherokee Casino & Hotel and the casino property currently known as the Harrah's River Valley Casino and Hotel in Murphy, NC for the purpose of executing against any property for which recourse is allowed with respect

to the Specified Subject Matter as provided in Section 3 of the Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement or otherwise giving effect to any judgment entered.

(B) If demanded by the Agent, the Tribe or TCGE, any action, dispute, controversy or claim of any kind between the Tribe and/or TCGE on the one hand, and the Agent and/or any benefits provider on the other hand, and in each case arising from or relating to the Specified Subject Matter (including but not limited to the claims referred to in Section 1 of the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement) (a “Relevant Action”), shall be settled by binding arbitration conducted before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect when the demand for arbitration is made and the Federal Arbitration Act. Any party who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any action, dispute, controversy or claim. Any decision by the arbitrators shall be accompanied by a written opinion of the arbitrators giving the reasons for their decision. Each of the arbitrators shall be bound by each of the provisions set forth herein and by the substantive laws of the state and courts of North Carolina that relate to any dispute, controversy or claim arising from or relating to the Specified Subject Matter (including but not limited to the claims referred to in Section 1 of the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement). Each of the arbitrators shall be a practicing attorney in the United States recognized in his or her community as having a least 10 years practice experience devoted primarily to financial lending transactions and each of the arbitrators shall be independent and impartial and none of whom shall be employed by or have a material financial interest in, or be a member of, the Tribe or any instrumentality or subsidiary of the Tribe (including TCGE) or employed by or have a material financial interest in any benefits provider. Subject to the requirements set forth above in this Section 8(B), (i) the Agent shall select one arbitrator, (ii) TCGE shall select a second arbitrator and (iii) the arbitrators selected by the Agent and TCGE shall select the third arbitrator; provided, that if such arbitrators fail to agree on the third arbitrator within 15 business days, the third arbitrator shall be selected by the American Arbitration Association. A controversy concerning whether an issue is arbitrable shall be determined by the arbitrators. In the event the Tribe, TCGE or any affiliate of the Tribe or TCGE institutes a Relevant Action (which shall include any action, dispute, controversy or claim of any kind involving the Tribe) in the Cherokee Court, the Agent may demand arbitration under this Section 8(B).

(C) In determining any matter, the arbitrators shall, to the extent applicable, apply the terms of the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement without adding to, modifying or changing the terms in any respect. All arbitration hearings shall be held at a place designated by the arbitrators in Charlotte, North Carolina or such other place agreed to by the parties. The arbitrators may grant any remedy or relief that a court of the State of North Carolina could order or grant within the scope hereof and shall have the power to award recovery of all costs and fees to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the North Carolina rules of civil procedure or other applicable law. Judgment upon the arbitration award may be entered in any court having jurisdiction (including the Cherokee Court); provided, however, that nothing contained herein shall be deemed to be a waiver by any person that is a bank of the protections afforded to it under 12 U.S.C. Section 91 or any similar applicable state law. The parties and the arbitrators shall

maintain strict confidentiality with respect to the arbitration except (x) to the extent that disclosure may be required in connection with the enforceability of any award of the arbitrators and (y) pursuant to confidentiality provisions agreed to among the parties and the arbitrators. Arbitrators will not have any power to issue any award that would result in any benefits provider exercising control over the Casino in violation of the federal Indian Gaming Regulatory Act of 1988. Furthermore, arbitrators shall not have any power to issue any award which would “encumber” “Indian lands” or “tribal lands” for a period that is more than six years and 364 days (as provided and defined in 25 U.S.C. §81 and the implementing regulations found at 25 C.F.R. §84 et seq.).

(D) Each of the Tribe and TCGE expressly waives the defense that the Tribe or TCGE, as applicable, may otherwise assert (and agrees that the court should not consider) that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against the Tribe or TCGE in a state or federal court in which the Tribe or TCGE has consented to be sued as provided in Section 8(A) above and which otherwise has jurisdiction over the subject matter and the parties. Each of the Tribe and TCGE shall not plead or raise as a defense the requirement of exhaustion of tribal court remedies.

(E) In the event a suit is commenced on or in connection with the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement regarding the subject matter of the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement or for the enforcement of an arbitration award, each of the Tribe and TCGE shall not dispute the jurisdiction of the courts referred to in Section 8(A) above over any such action and over the Tribe and TCGE.

(F) The waivers and consents described in this Section 8 shall inure to the benefit of the Agent and the other Benefits Providers (as defined in the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement). The Agent and the Benefits Providers shall have and be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief. The waivers of sovereign immunity and of exhaustion of tribal court remedies and consents to jurisdiction contained in this Section 8 are irrevocable.

(G) The provisions of this Section 8 are subject to the applicable limited recourse provisions as set forth in Section 3 of the Third Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement.

9. This Ordinance shall be effective upon ratification by the Principal Chief, and the Principal Chief and TCGE Board of Advisors are authorized to carry out the intent of this Ordinance.

Submitted by: Tribal Casino Gaming Enterprise