

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: MAR 14 2019

ORDINANCE NO.: 516 (2019)

WHEREAS, Resolution 337 (2018) authorized the formation of Sequoyah National Golf Club II, LLC to be organized under the laws of the Tribe; and

WHEREAS, it has been determined that the best way to accomplish this goal is for there to be a conversion of the North Carolina LLC to an EBCI LLC.

WHEREAS, it is necessary for Chapter 55B of the Cherokee Code to provide for a conversion of a North Carolina LLC to an EBCI LLC.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Section 55B-8 - Mergers and Conversions is added to Cherokee Code Chapter 55B to read as follows:

Sec. 55B-8. - Mergers and Conversions

55B-8.1 - Definitions.

As used in this section, the following definitions apply unless the context otherwise requires:

- (A) "Business entity" means both a domestic business entity and a foreign business entity.
- (B) "Domestic business entity" means a company, incorporated under the laws of the Eastern Band of Cherokee Indians; a domestic limited liability company organized under this Code; a tribally-chartered entity of the Tribe, an unincorporated cooperative of the Tribe; or other tribally-formed entity that is party to the merger.
- (C) "Foreign business entity" means a foreign limited liability company, a foreign limited partnership, or a foreign corporation.
- (D) "LLC" means both a domestic limited liability company and a foreign limited liability company.
- (E) "Organizational Documents" include articles of organization, operating agreements, articles of incorporation, bylaws, partnership agreements, agreements of trust and declarations of trust, and any other basic records that create a Business entity's organization and determine its internal governance and relations among persons that own it, have an interest in it, or are members of it.

47 **55B- 8.2 - Merger.**

- 48 (A) Unless otherwise provided in its operating agreement, one or more LLCs may
49 merge with or into one or more other business entities if the action of merger is a
50 process permitted under the applicable laws of the jurisdiction that governs each
51 such other business entity and each such business entity approves the plan of
52 merger in accordance with its organizational documents.
53 (B) Interests or shares in an LLC that is a party to a merger may be exchanged for or
54 converted into cash, property, obligations, or interest in the surviving business
55 entity.

56
57 **55 B- 8.3 - Approval of Merger.**

- 58 (A) Unless otherwise provided in the operating agreement, a domestic LLC that is a
59 party to a proposed merger shall approve the plan of merger by an affirmative
60 vote by all of the members.
61 (B) Unless otherwise provided in the operating agreement, the manager or managers
62 of a domestic LLC may not approve a merger without also obtaining the approval
63 of the LLC's members under subsection above.
64 (C) Each business entity, other than a domestic LLC, that is a party to a proposed
65 merger shall approve the merger in the manner and by the vote required by the
66 laws applicable to the business entity and in accordance with their respective
67 organizational documents.
68 (D) Each business entity that is a party to the merger shall have any rights to abandon
69 the merger as provided for in the plan of merger or in the laws applicable to the
70 business entity or in accordance with its organizational documents.
71 (E) Upon approval of a merger, the LLC shall notify its members of the approval and
72 of the effective date of the merger.
73 (F) After a merger is authorized, and at any time before the articles of merger are
74 filed with the Office of the Attorney General, the planned merger may be
75 abandoned, subject to any contractual rights, without further action on the part of
76 the shareholders or other members, in accordance with the procedures set forth in
77 the plan of merger or, if none is set forth, in the manner determined by the
78 governing body of any business entity that is a party to the merger.

79
80 **55B-8.4 - Plan of Merger.**

81 Each business entity must enter into a written plan of merger, which must include all of
82 the following:

- 83 (A) The name, form of business entity, and identity of the jurisdiction governing each
84 business entity that is a party to the merger and the name, form of business entity,
85 and identity of the jurisdiction of the surviving business entity with, or into, which
86 each other business entity proposes to merge;
87 (B) The terms and conditions of the proposed merger;
88 (C) The manner and basis of converting the interests in each business entity that is a
89 party to the merger into shares, interests, obligations, or other securities of the
90 surviving business entity or into cash or other property in whole or in part;
91 (D) Amendments to the articles of organization or other similar governing document
92 of the surviving business entity; and

(E) Other necessary or desirable provisions relating to the proposed merger.

55B- 8.5 - Articles of Merger.

(A) The surviving business entity shall file with the Office of the Attorney General the articles of merger executed by each party to the plan of merger, which shall include all of the following:

- (1) The name and jurisdiction of organization for each business entity;
- (2) The plan of merger;
- (3) The name of the surviving or resulting LLC;
- (4) The effective date and time of the merger;
- (5) A statement as to whether the surviving business entity is Tribally-owned;
- (6) If Tribally-owned, a statement as to whether the surviving business entity enjoys the Tribe's sovereign immunity; and
- (7) A statement that the plan of merger was approved by each domestic LLC that is a party to the merger in accordance with Section 8.3.

(B) Once filed, a merger takes effect upon the effective date of the articles of merger.

55B- 8.6 - Effects of Merger.

A merger has the following effects:

- (A) The business entity must become a single entity, which shall be the entity designated in the plan of merger as the surviving LLC.
- (B) Each business entity, except the surviving LLC, ceases to exist.
- (C) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged business entity and is subject to all of the restrictions, disabilities, and duties of each merged business entity.
- (D) All property and all debts, including contributions, and each interest belonging to or owed to each of the business entities are vested in the surviving LLC without further act.
- (E) Title to all real estate and any interest in real estate vested in any business entity does not revert and is not in any way impaired because of the merger.
- (F) The surviving LLC has all the liabilities and obligations of each of the business entity and any claim existing or action or proceedings pending by or against any merged business entity may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
- (G) The rights of creditors and any liens on the property of any business entity survive the merger.
- (H) The interests in a business entity that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.
- (I) The articles of organization of the surviving LLC is amended to the extent provided in the articles of merger.

55B-8.7 - Right to Object.

Unless otherwise provided in the operating agreement, upon receipt of the notice required by Section 8.3(E), a member who did not vote in favor of the merger may, within twenty

(20) days after the date of the notice, voluntarily dissociate from the LLC and receive fair value for the member's LLC interest under Section 55B-5.4.

55B- 8.8 - Conversion.

(A) Unless otherwise provided in its organizational documents, a domestic LLC may convert to another form of business entity if it:

- (1) Satisfies the requirements under this Chapter relating to conversions; and
- (2) If the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the business entity into which the domestic LLC is converting.

(B) Unless otherwise provided in its organizational documents, a business entity other than a domestic LLC may convert into a domestic LLC if it:

- (1) Satisfies the requirements under this Chapter relating to conversions; and
- (2) If the conversion is permitted under the applicable law of the jurisdiction that governs the business entity.

(C) The filing requirements of Section 55B-1.9 apply to conversions.

(D) Notwithstanding its prior approval, a plan of conversion under this section may be amended before the conversion takes effect if the amendment is approved by the members of the converting domestic LLC or business entity in the same manner as was required for the approval of the original plan of conversion.

55B-8.9 - Plan of Conversion for a Domestic LLC into Another Business Entity.

(A) Unless subsection (C) applies, the domestic LLC proposing to convert shall adopt a plan of conversion that includes all of the following:

- (1) The name of the domestic LLC, the name of the business entity into which the domestic LLC is converting, the type of business entity into which the domestic LLC is converting, identification of the law that will govern the internal affairs of the surviving business entity, the street address of the surviving business entity, the street address of the domestic LLC, if different from the street address of the surviving Business entity, and the principal place of business of the surviving business entity;
- (2) The terms and conditions of the proposed conversion, including the manner and basis of converting the membership interest of the domestic LLC into membership interests or obligations of the surviving business entity into cash, other consideration that may include membership interests or obligations of an entity that is not a party to the conversion, or a combination of cash and other consideration;
- (3) The terms and conditions of the organizational documents that are to govern the surviving business entity; and
- (4) Any other provisions with respect to the proposed conversion that the domestic LLC considers as necessary or desirable.

(B) A vote of the members of the domestic LLC is required to adopt a plan of conversion under subsection (A). A unanimous vote of the members entitled to vote is required to approve a plan of conversion, unless its organizational documents provide otherwise.

(C) Subsections (A) and (B) do not apply if:

- 185 (1) the Domestic LLC has not commenced business;
186 (2) has not issued any membership interests;
187 (3) has no debts or other liabilities; and
188 (4) and has not received any payments or has returned any payments it has
189 received after deducting any amount disbursed for payment of expenses,
190 for subscriptions for its membership interests.

191 In the event that all of these conditions apply, the members of the domestic LLC may
192 approve of the conversion of the domestic LLC into another business entity by majority
193 vote.

- 194 (D) To effect the conversion, a majority of the members must execute and file a
195 certificate of conversion under Section 8.10.

196
197 **55B-8.10 - Filing of Certificate of Conversion for a Domestic LLC.**

- 198 (A) If the plan of conversion is approved under Section 8.10(B), the domestic LLC
199 shall file any formation documents required to be filed under the laws governing
200 the internal affairs of the surviving business entity, in the manner prescribed by
201 those company documents, and shall file a certificate of conversion with the
202 Office of the Attorney General.

- 203 (B) The certificate of conversion shall include all of the following:

- 204 (1) A copy of the plan of conversion, unless Section 8.9(C) applies;
205 (2) The name of the domestic LLC that is converting into another business
206 entity;
207 (3) The type of business entity the domestic LLC is converting into and the
208 jurisdiction under which the surviving business entity shall be governed;
209 (4) A statement that the members of the domestic LLC have adopted the plan
210 of conversion under Section 8.9(B), or that the members of the domestic
211 LLC have approved of the conversion under Section 8.9(C), as applicable;
212 (5) A statement that the surviving business entity will furnish a copy of the
213 plan of conversion on request and without cost to any member of the
214 domestic LLC;
215 (6) The registered agent and registered office of the domestic LLC before and
216 after conversion; and
217 (7) A statement whether the domestic LLC is Tribally-owned.

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219 **55B-8.11 - Effect of Conversion of a Domestic LLC into Another Business Entity.**

220 All of the following apply when a domestic LLC's conversion into another business
221 entity takes effect:

- 222 (A) The domestic LLC converts into the surviving business entity and the
223 organizational documents of the domestic LLC are canceled.
224 (B) Except as otherwise provided in this Code, the surviving business entity is
225 organized under and subject to the organizational laws of the jurisdiction of the
226 surviving business entity as stated in the certificate of conversion.
227 (C) The surviving business entity has all of the liabilities of the domestic LLC. The
228 conversion of the domestic LLC into a business entity under this Section shall not
229 be considered to affect any obligations or liabilities of the domestic LLC incurred
230 before the conversion or the personal liability of any person incurred before the

- 231 conversion, and the conversion shall not be considered to affect the choice of law
232 applicable to the domestic LLC with respect to matters arising before the
233 conversion.
- 234 (D) The title to all real estate and other property and rights owned by the domestic
235 LLC remain vested in the surviving business entity without reversion or
236 impairment.
- 237 (E) The surviving business entity is considered to be the same entity that existed
238 before the conversion and is considered to be organized on the date that the
239 domestic LLC was originally organized.
- 240 (F) The membership interests of the domestic LLC that were to be converted into
241 membership interest or obligations of the surviving Business entity or into cash or
242 other property are converted.
- 243 (G) Unless otherwise provided in the plan of conversion, the domestic LLC is not
244 required to wind up its affairs or pay its liabilities and distribute its assets on
245 account of the conversion and the conversion does not constitute a dissolution of
246 the domestic LLC.
- 247 (H) The organizational documents of the surviving business entity are as provided in
248 the plan of conversion.
- 249 (I) All other provisions of the plan of conversion apply.
- 250

251 **55B-8.12 - Plan of Conversion for a Business Entity into a Domestic LLC.**

- 252 (A) A business entity proposing to convert into a domestic LLC must adopt a plan of
253 conversion that includes all of the following:
- 254 (1) The name of the business entity, the type of business entity that is
255 converting, identification of the statute that governs the internal affairs of
256 the business entity, the name of the surviving domestic LLC into which
257 the business entity is converting, the street address of the surviving
258 domestic LLC, the street address of the business entity if different from
259 the street address of the surviving domestic LLC, and the principal place
260 of business of the surviving domestic LLC;
- 261 (2) The terms and conditions of the proposed conversion, including the
262 manner and basis of converting the membership interests of the business
263 entity into membership interests of the surviving domestic LLC, cash,
264 other consideration that may include membership interests or obligations
265 of an entity that is not a party to the conversion, or a combination of cash
266 and other consideration;
- 267 (3) The terms and conditions of the organizational documents that are to
268 govern the surviving domestic LLC; and
- 269 (4) Any other provisions with respect to the proposed conversion that the
270 business entity considers necessary or desirable.
- 271 (B) If a plan of conversion is adopted by the business entity under subsection (A), the
272 plan of conversion is submitted for approval in the manner required by the law
273 governing the internal affairs of that business entity.
- 274 (C) If the plan of conversion is approved under subsections (A) and (B), the business
275 entity shall file a certificate of conversion with the Office of the Attorney General.
276 The certificate of conversion shall include all of the following:

- 277 (1) A copy of the plan of conversion;
278 (2) A statement that the business entity has obtained approval of the plan of
279 conversion under subsection (B);
280 (3) A statement that the surviving domestic LLC will furnish a copy of the
281 plan of conversion on request and without cost to any member of the
282 business entity;
283 (4) The registered agent and registered office, record agent and record office,
284 or other similar agent and office of the surviving domestic LLC before and
285 after conversion;
286 (5) The type of business entity, as well as the date and location of jurisdiction
287 where the business entity was formed prior to converting into a domestic
288 LLC;
289 (6) A statement whether the surviving domestic LLC is Tribally- owned; and
290 (7) Submission of articles of organization for the surviving domestic LLC that
291 meet all of the requirements of this Code.
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293 **55B-8.13 - Effect of Conversion of a Business Entity into a Domestic LLC.**

294 (A) All of the following apply when a business entity's conversion into a domestic
295 LLC takes effect:

- 296 (1) The Business entity converts into the surviving domestic LLC. Except as
297 otherwise provided in this Section, the surviving domestic LLC is
298 organized under and subject to this Code.
299 (2) The surviving domestic LLC has all of the liabilities of the business entity.
300 The conversion of the business entity into a domestic LLC under this
301 Section shall not be considered to affect any obligations or liabilities that
302 the business entity incurred before the conversion or the personal liability
303 of any person incurred before the conversion; and, the conversion shall not
304 be considered to affect the choice of law applicable to the business entity
305 with respect to matters arising before conversion.
306 (3) The title to all real estate and other property and rights owned by the
307 business entity remains vested in the surviving domestic LLC without
308 reversion or impairment.
309 (4) A proceeding pending against the business entity may be continued as if
310 the conversion had not occurred, or the surviving domestic LLC may be
311 substituted in the pending proceeding for the business entity.
312 (5) The surviving domestic LLC is considered to be the same entity that
313 existed before the conversion and is considered to be organized on the date
314 that the business entity was originally organized.
315 (6) The membership interests of the business entity that were to be converted
316 into membership interests or obligations of the surviving domestic LLC or
317 into cash or other property are converted.
318 (7) Unless otherwise provided in a plan of conversion, the business entity is
319 not required to wind up its affairs or pay its liabilities and distribute its
320 assets on account of the conversion and the conversion does not constitute
321 a dissolution of the business entity.

322 (8) The organizational documents of the domestic LLC are as provided in the
323 plan of conversion.

324 (9) All other provisions of the plan of conversion apply.”
325

326
327 BE IT FURTHER ORDAINED that this amendment shall be effective upon ratification
328 by the Principal Chief, and all prior ordinances and resolutions that are
329 inconsistent with this ordinance are rescinded.
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331
332 *Submitted by the Office of the Attorney General*