United South and Eastern Tribes, Inc.

**Nashville, TN Office: Washington, DC Office:**

711 Stewarts Ferry Pike, Suite 100 400 North Capitol Street, Suite 585

Nashville, TN 37214 Washington, D.C., 20001

Phone: (615) 872-7900 Phone: (202) 624-3550

Fax: (615) 872-7417 Fax: (202) 393-5218

# USET Resolution No. 2017:\_\_\_\_

**SUPPORT FOR THE ASSERTION OF TRIBAL SOVEREIGNTY AND SELF-DETERMINATION**

**IN ECONOMIC DEVELOPMENT MATTERS**

**WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribes; and

**WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes’ leadership; and

**WHEREAS,** Tribal sovereignty is an inherent authority exercised by all federally-recognized Tribal Nations and has existed continuously since before European contact; and,

**WHEREAS**, the United States Constitution, U.S. Supreme Court decisions, and hundreds of treaties, federal statutes, and regulations all recognize that Tribal Nations are distinct governments with inherent rights, powers, privileges, and authorities; and

**WHEREAS**, Tribal Nations have a unique government-to-government and trust relationship with the United States; and,

**WHEREAS,** each Tribal Nation who is a member of USET provides essential services to its citizens including education, housing, health care, and public safety, and raises governmental revenue, much as do state governments, through the operation of enterprises and the provision of goods and services in the marketplace; and,

**WHEREAS,** sovereign immunity from suit is the right of all governments in the United States, including federal, state and tribal governments.  The purpose is to provide protection against loss of assets held in common for many people for the performance of vital government functions.  The federal government has a longstanding obligation under the Constitution, treaties, and hundreds of court cases to protect tribal self-government. Any federal abrogation of tribal immunity runs sharply counter to this obligation, and would substantially interfere with tribal self-governance, and place tribal assets and funds at risk; and

**WHEREAS,** In 2014, the United States Supreme Court reaffirmed the continuing validity of the broad and sweeping doctrine of tribal sovereign immunity from suit (*Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014)).

**WHEREAS,** Tribal Nations Indian tribes also have the inherent right to conduct economic development activities in order to raise revenues for the benefit of the Tribal Nation and its citizens, in order to achieve the dual goals of self-determination and self-governance; and

**WHEREAS,** in furtherance of these goals,USET memberthe Saint Regis Mohawk Tribe (“SRMT” or the “Tribe”), recently entered into a transaction pursuant to which the Tribe has gained ownership of certain patents in exchange for a lump sum and annual royalty payments that will be used for essential governmental purposes; and

**WHEREAS,** the SRMT has asserted its sovereign immunity from suit in a pending action regarding the validity of the acquired patents in *inter partes review* (“IPR”) proceedings before the United States Patent Trial and Appeal Board; and

**WHEREAS,** unlike recent successful assertions of sovereign immunity by state entities in the IPR proceedings, there has been considerable press coverage and reaction by Members of Congress to the Tribe’s transaction and use of sovereign immunity as a defense to IPR proceedings; including requests for an investigation, scheduling of a hearing, and introduction of legislation that would partially abrogate tribal sovereign immunity; and

**WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United States Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

**RESOLVED,**thatUSET strongly opposes any legislative attempt to abrogate tribal sovereign immunity in any proceeding or forum; and

**RESOLVED,** that USET urges Congress, as part of its review of the AIA and issues surrounding sovereign immunity from IPR or other Patent Trial and Appeal Board proceedings, to preserve tribal sovereign immunity in parity with state sovereign immunity in any future amendments of AIA; and

**RESOLVED,** that USET will take all steps necessary and appropriate to oppose any legislation or effort to modify or abrogate tribal sovereign immunity.

# CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present, in Cherokee, North Caroline, October 12, 2017.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Chief Kirk Francis, Sr., President Chief Lynn Malerba, Secretary

United South and Eastern Tribes, Inc. United South and Eastern Tribes, Inc.

*“Because there is strength in Unity”*