

**RESOLUTION NO. 82-08**

**COUNCIL OF THE CHEROKEE NATION**

**A RESOLUTION AUTHORIZING A LIMITED WAIVER OF THE SOVEREIGN IMMUNITY OF CHEROKEE NATION ENTERPRISES, L.L.C. AND THE CHEROKEE NATION**

**WHEREAS**, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government on behalf of the Cherokee people;

**WHEREAS**, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America;

**WHEREAS**, the Cherokee Nation enjoys sovereign immunity from suit under federal law;

**WHEREAS**, Cherokee Nation Enterprises, L.L.C. ("CNE") is a for-profit limited liability company organized under the laws of the Cherokee Nation, is wholly owned by the Cherokee Nation, and enjoys sovereign immunity from suit under federal law;

**WHEREAS**, CNE has determined it is both appropriate and necessary that CNE enter into and perform under a certain Licensing Agreement ("Agreement") with Hard Rock Hotel Holdings, LLC, and HRHH IP, LLC, each a Delaware Limited Liability Company (collectively "Hard Rock");

**WHEREAS**, Hard Rock has requested that the Cherokee Nation grant a limited waiver of the sovereign immunity of CNE and the Cherokee Nation for the sole purpose of allowing Hard Rock to enforce its rights and remedies under the Agreement, and has agreed to the following terms:

1. Express, Limited Waiver of Sovereign Immunity. By this Resolution, CNE and the Cherokee Nation do not waive, limit or modify their sovereign immunity from unconsented suit except under the express, limited circumstances set forth below:

(a) CNE expressly grants a limited waiver of its sovereign immunity as to any claim only if all of the following three conditions are met:

(i) The claim is made by Hard Rock or by a successor in interest of Hard Rock and not by any other person, corporation, partnership or entity whatsoever; and

(ii) The claim alleges an event of default or breach under the Agreement; and,

(iii) The claim seeks one or more of the following: Some specific action, or discontinuance of some action, by CNE or a successor in interest of CNE, to bring CNE into full compliance with the duties and obligations expressly assumed by CNE in the Agreement; or payment of a monetary obligation arising from such noncompliance; or enforcement of any of Hard Rock's rights under the Agreement.

(b) All claims sought or asserted under the Agreement will be limited to those that meet each and every one of the three conditions enumerated in Section 1 (a) above.

(c) Except as provided in subsection (d) of this section and as otherwise stated in this waiver, the prevailing party in any claim sought or asserted under the Agreement shall be entitled to recover from the losing party all reasonable fees, costs and expenses incurred by the prevailing party in connection with such claim (including any appeals and actions to enforce any court judgments), pursuant to the Agreement.

(d) The limited waiver does not allow recovery of consequential, incidental, punitive or exemplary damages, or lost profits against CNE or the Cherokee Nation, nor does it allow recovery from any appointed or elected officials, officers or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs or attorneys fees.

2. Governing Law. The Agreement shall be governed by general contract law principles and commercial law as adopted in the State of Oklahoma. In the event of a conflict between the provisions of general contract law and enacted statutes of the State of Oklahoma, the latter shall prevail in all instances. Any claims permitted to be asserted under the limited waiver of sovereignty provisions of the Agreement shall be adjudicated in, and each party hereby consents to jurisdiction and venue of, any federal court located within the State of Oklahoma and any Oklahoma state court where venue is proper.

3. Claims for Debts and De-Identification of Hotel and Cessation of Use of Licensed Marks. It is the intent of Hard Rock, CNE, and the Cherokee Nation that any of the following claims or enforcement proceedings regarding CNE's post-termination obligations be subject to immediate review by a federal or state court located within the State of Oklahoma:

(a) Amounts owed to Hard Rock arising or accruing prior to the expiration or termination of the Agreement ("Debts"); or

(b) The de-identification of all the Hotel and cessation of the use of the Licensed Marks ("De-Identification").

CNE and the Cherokee Nation expressly acknowledge this intent and expressly and irrevocably waives any defense, claim, or the application of any law, rule, regulation or

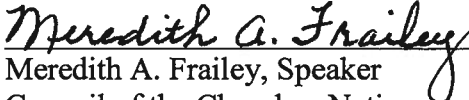
interpretation that would affect the jurisdiction of said federal or state court over such dispute, or the enforcement of any judgment, decree or award of any foregoing court. CNE and the Cherokee Nation expressly and irrevocably waive any application of the exhaustion of tribal remedies or abstention doctrine and any other law, rule, regulation or interpretation that might otherwise require, as a matter of law or comity, that a suit relating to Debts or De-Identification be heard first in a tribal court.

4. Arbitration. At the request of either CNE or Hard Rock, any disputes arising out of the Agreement, except disputes relating to Debts or De-Identification, shall be resolved by binding arbitration, rather than the procedure set forth in the preceding paragraph (2). Such arbitration proceedings shall be conducted pursuant to rules set out by the arbitrators and shall be similar to those found in the Federal Arbitration Act (Title 9, U.S. Code) (the "Act") and the Commercial Arbitration Rules of the American Arbitration Association and by terms set forth in the Agreement. The courts listed in paragraph (2) above shall have the authority to compel CNE to submit to such binding arbitration or to enforce the awards of such binding arbitration against CNE, but only to the extent such awards are allowed by paragraph (1) above. Nothing in this paragraph shall be deemed as consent to suit in any court except as otherwise specifically provided in this waiver.
5. Severability. The provisions of this waiver are severable and shall not be merged into any termination or expiration of the Agreement or any judgment or award entered in connection with any dispute, regardless of whether such dispute arises before or after termination or expiration of the Agreement, and regardless of whether the related arbitration or litigation proceedings occur before or after termination or expiration of the Agreement. If any part of this waiver is held to be unenforceable, it shall be severed and shall not affect either the duty to arbitrate or any other part of this waiver.
6. Other Limitations. The waiver of sovereign immunity contained herein shall not be repealed, rescinded or modified in any manner until the obligations, covenants and agreements contained in the Agreement are fully satisfied.


**BE IT RESOLVED BY THE CHEROKEE NATION**, that the Council does hereby authorize the Principal Chief of the Cherokee Nation to negotiate and execute a limited waiver of sovereign immunity of CNE and the Cherokee Nation as it applies to the Hard Rock Agreement within the parameters set forth above. Except as specifically set forth above, the limited waiver of sovereign immunity described herein shall not be construed, and is not intended by the Cherokee Nation to include or authorize any action against the Cherokee Nation itself, any officers or employees of the Cherokee Nation, any real property or interest in real property held in fee by or in trust for the Cherokee Nation, or against any entity or assets held in the name of or owned by Cherokee Nation, or to include or authorize any action other than an action by Hard Rock or a successor in interest against CNE or a successor in interest to enforce its rights or remedies against CNE under the Agreement. Further, this waiver shall not be deemed to authorize the recovery of incidental, consequential, exemplary or punitive damages, or lost profits against CNE or the Cherokee Nation.

## CERTIFICATION


The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 13th day of October, 2008, having 17 members present, constituting a quorum, by the vote of 17 yea; 0 nay; 0 abstaining.

  
Meredith A. Frailey, Speaker  
Council of the Cherokee Nation

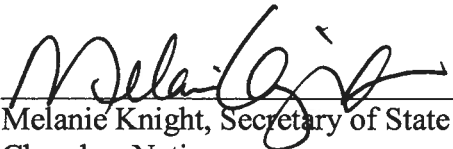
ATTEST:

  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 15th day of October, 2008.

  
Chadwick Smith, Principal Chief  
Cherokee Nation

ATTEST:

  
Melanie Knight, Secretary of State  
Cherokee Nation