

**RESOLUTION NO. 34-09**

**COUNCIL OF THE CHEROKEE NATION**

**A RESOLUTION EXPRESSLY WAIVING THE SOVEREIGN IMMUNITY OF THE CHEROKEE NATION AND OF CHEROKEE NATION HOME HEALTH SERVICES TO THE EXTENT IT MAY EXIST, AS IT APPLIES TO THE BANCFIRST AND CHEROKEE NATION HOME HEALTH SERVICES LOAN AGREEMENTS**

**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 Council of the Cherokee Nation hereby authorizes the Principal Chief of the Cherokee Nation to expressly waive its sovereign immunity from suit, as articulated below, with respect to any breach of contract, action for indebtedness, foreclosure and execution, deficiency, action for damages or action in mandamus or other proceedings in law or in equity, including rights of appeal, to compel the Cherokee Nation to perform the obligations, covenants and agreements undertaken in the Loan Documents, or any other document executed and delivered by the Cherokee Nation in connection with consummating the loan transactions contemplated in the Loan Documents, with respect to any action against the Cherokee Nation and/or Cherokee Nation Home Health Services. The Nation hereby expressly and irrevocably waives its sovereign immunity (and any defenses based thereon) for only the following remedies as provided by the Nation's Uniform Commercial Code or the Oklahoma Commercial Code if the Nation has no applicable provision: specific performance, money damages for breach not exceeding the face amount of the contract, attorney fees and costs as provided by the Loan Documents and/or replevin or attachment in aid of execution. The Nation expressly consents to the exercise of jurisdiction over such actions and over the Nation by the federal courts located in Oklahoma, Oklahoma district courts where venue is proper, and/or the Nation's district and/or appellate courts. Provided, however that such waiver shall not include any other damages, causes of action not directly related to the Loan Documents, on sequential damages, nor attorney fees and costs, except for those authorized herein. Original actions authorized under this limited waiver of sovereign immunity may be adjudicated in, at the sole and exclusive election of BancFirst, and with each party hereby consenting to the jurisdiction and venue of, any federal district court located within the State of Oklahoma where venue is proper, and any appellate courts therefrom; arbitration conducted in accordance with the procedural rules of the federal arbitration Act (Title 9, U. S. Code) and the regulations promulgated thereunder, and under the commercial rules of the American Arbitration Association, and in any federal district court located within the State of Oklahoma where venue is proper for enforcement of any resulting arbitration award, and any appellate courts therefrom;

**WHEREAS**, the Loan Documents shall be governed by general contract law principles and commercial law as adopted in the State of Oklahoma;

**WHEREAS**, it is understood that, in the unlikely event of default, BancFirst, at its sole and exclusive option, may elect to pursue remedies directly against the Cherokee Nation, without

first exhausting its potential remedies against Cherokee Nation Home Health Services, except that BancFirst expressly agrees not to invoke any rights, remedies, or collection actions against the Cherokee Nation unless and until Cherokee Nation Home Health Services is three months in arrears on any payment due. This waiver shall not be deemed to authorize the recovery of incidental, consequential, exemplary or punitive damages, lost profits, or any action against any elected officials, officers or employees of the Cherokee Nation;

**WHEREAS**, the provisions of this waiver are severable and shall not be merged into any termination or expiration of any agreement, judgment or award entered in connection with any dispute without the obligations, covenants and agreements contained in the Loan Documents being fully satisfied. If any part of this waiver is held to be unenforceable, it shall be severed and shall not affect any other part of this waiver;

**WHEREAS**, 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 Loan Documents are fully satisfied;

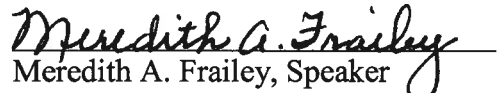
**WHEREAS**, The signature of the officers of the Cherokee Nation appearing on the Loan Documents, and other agreements, documents, closing papers and certificates executed and delivered pursuant to this Resolution, shall be conclusive evidence of their authority to execute and deliver such agreement and documents on behalf of the Cherokee Nation.

**BE IT RESOLVED BY THE COUNCIL OF THE CHEROKEE NATION**, that the Principal Chief is authorized to waive the sovereign immunity of the Cherokee Nation and of Cherokee Nation Home Health Services, to the extent it may exist, as it applies to the BancFirst and Cherokee Nation Home Health Services loan agreements and that Bancfirst shall not seek recovery of incidental, consequential, exemplary or punitive damages, lost profits or any action against any Cherokee Nation elected officials, officers or employees;


**BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CHEROKEE NATION**, that this resolution hereby supersedes Resolution #13-09, passed by the Council of the Cherokee Nation on February 17, 2009.

#### CERTIFICATION

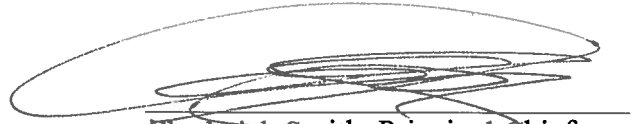
The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 13<sup>th</sup> day of April, 2009, having 17 members present, constituting a quorum, by the vote of 17 yea; 0 nay; 0 abstaining.

  
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 14 day of APR, 2009.



Chadwick Smith, Principal Chief  
Cherokee Nation

**ATTEST:**

  
Melanie Knight, Secretary of State  
Cherokee Nation

**ADMINISTRATIVE CLEARANCE:**

Program/Project Manager:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Department Director:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Group Leader:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Finance Approval (if needed):

Signature \_\_\_\_\_ Date \_\_\_\_\_

Government Resources Group:

*Kita Mays* 3/14/09  
Signature \_\_\_\_\_ Date \_\_\_\_\_

Administration Approval:

*Melinda* 03/16/09  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**Cherokee Nation  
Act/Resolution Proposal Form**

Act

Resolution

**TITLE:** A Resolution Expressly Waiving the Sovereign Immunity of the Cherokee Nation and of Cherokee Nation Home Health Services to the Extent It May Exist, as it Applies to the BancFirst and Cherokee Nation Home Health Services Loan Agreements

Department Contact: Rick Richards

Resolution Presenter: Rick Richards

Council Sponsor: Harley Buzzard & Curtis Snell

**NARRATIVE:**

*(See Attached Outline for Information Needed)*

**LEGISLATIVE CLEARANCE**

Legislative Aide:

*Wittain* 3/16/09  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Standing Committee:

*Rules*

*3/26/09*

Next Meeting Date

Chairperson:

*Triley*  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Returned to Presenter: \_\_\_\_\_  
Date

03-16-09P02:45 RCVE