

Committee: Rules

Date: 10-13-09

Committee Date: 10-29-09

Author: Rick Richards

Sponsor: Meredith A. Frailey

RESOLUTION NO. 129-09

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 EXTEND IT MAY EXIST, AS IT APPLIES TO THE ARVEST AND CHEROKEE NATION HOME HEALTH SERVICES LOAN AGREEMENT

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in 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 obligation, 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 Federal Commercial Code if the Nation has no applicable provision: specific performance, money damages for breach not exceeding the face amount of the contract, 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 District Court of the Cherokee Nation, or to the extent such jurisdiction is not applicable, by the federal courts located in Oklahoma where venue is proper, and/or appellate courts. Provided, however, that such waiver shall not include any other damages, nor attorney fees and costs. Original actions authorized under this limited waiver of sovereign immunity may be adjudicated in, at the sole and exclusive election of Arvest, and with each party hereby consenting to the jurisdiction and venue of, the District Court of the Cherokee Nation, and 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 laws principles and commercial law as adopted in, and by the laws of, the Cherokee Nation, or if the Cherokee Nation has no applicable provision, the United States of America, and to the extent required, by

the laws of the jurisdiction where the Property is located, except to the extent that state laws are not applicable;

WHEREAS, it is understood that, in the unlikely event of default, Arvest, 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 Arvest 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 the 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, covenant 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 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 Arvest and Cherokee Nation Home Health Services loan agreements and that Arvest shall not seek recovery of incidental, consequential, exemplary or punitive damages, lost profits or any action against any Cherokee Nation elected official, officer or employees.

CERTIFICATION

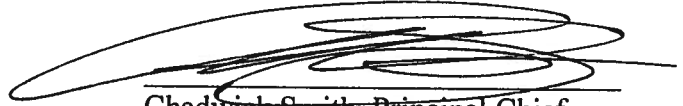
The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 16th day of November, 2009, having 16 members present, constituting a quorum, by the vote of 16 yea; 0 nay; 0 abstaining.


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 20th day of November, 2009.



Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:



Melanie Knight, Secretary of State
Cherokee Nation

GUARANTY

(Specific Debt – \$270,000.00)

DATE AND PARTIES. The date of this Guaranty is October __, 2009. The parties and their addresses are:

LENDER:

ARVEST TRAINING BANK
921 West Monroe
P.O. Box 799
Tulsa, OK 72745-0799
Telephone: (501) 750-1400

BORROWER:

CHEROKEE NATION HOME HEALTH SERVICES
P.O. Box 948
Tahlequah, OK 74465

GUARANTOR:

CHEROKEE NATION
P.O. Box 948
Tahlequah, OK 74465
Telephone: (918) 453-5000

1. **DEFINITIONS.** As used in the Guaranty, the terms have the following meanings:
 - a. **Pronouns.** The Pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
 - b. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
 - c. **Property.** "Property" means any property, real, personal, or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.
2. **SPECIFIC DEBT GUARANTY.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with the Borrower from time to time, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of the following described Debt(s) of the Borrower including all principal, accrued interest, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt with respect to the Borrower.
3. **LIABILITY.** I am liable under this Guaranty for only the following remedies as provided by the Cherokee Nation's Uniform Commercial Code or the Federal Uniform Commercial Code if the Cherokee Nation has no applicable provision: specific performance, money damages for breach not exceeding the face amount of the contract, and/or replevin or attachment in aid of execution. In the unlikely event of default, you may elect to pursue remedies directly against me, without first exhausting your potential remedies against the Borrower, except that you expressly agree not to invoke any rights, remedies, or collection actions against me unless and until Borrower is three months in arrears on any payment due. You may sue me alone, or anyone else who is obligated on this Guaranty or any number of us together, to collect the Debt. My liability is no conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.
4. **BANKRUPTCY.** If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of the Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and

paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

5. **REVOCATION.** I agree that this is an absolute guaranty. This Guaranty is conditioned on the Cherokee Nations express and irrevocable limited waiver of sovereign immunity. The limited 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.
6. **PROPERTY.** I agree that any Property may be exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For the purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.
7. **DEFAULT.** I will be in default if any of the following occur:
 - a. **Payments.** I fail to make a payment in full when due.
 - b. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
 - c. **Death or Incompetency.** I die or am declared legally incompetent.
 - d. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Guaranty.
 - e. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
 - f. **Other Agreements.** I am in default on any other debt or agreement I have with you.
 - g. **Misrepresentation.** I knowingly make any verbal or written statement or provide any financial information that is untrue, inaccurate or conceals a material fact at the time it is made or provided.
 - h. **Judgment.** I fail to satisfy or appeal any judgment against me.
 - i. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
 - j. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
 - k. **Property Transfer.** I transfer all or a substantial part of my money or property.
 - l. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
 - m. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.
8. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.
 - a. **Additional Waivers.** In addition, to the extent permitted by law, I consent to certain action you may take, and limitedly waive my sovereign immunity, and any defenses based thereon, for only the following remedies as provided in the Cherokee Nation's Uniform Commercial Code or the Federal Commercial Code if the Nation has no applicable provision: specific performance, money damages for breach not exceeding the face amount of the contract, and/or replevin or attachment in aid of execution.
 - i. You may renew or extend payments on the Debt, regardless of the number of such renewals or extensions.
 - ii. You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
 - iii. You may release, substitute, or impair any Property.
 - iv. You may invoke your right of set-off.
 - v. You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
 - vi. You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of

any such valuation, or actual amounts received by you arising from the sale of such Property.

- vii. I agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
- viii. I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider" as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

- b. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in the Debt instruments, shall not be construed as a waiver by you, unless such waiver is in writing and signed by you.
 - c. **Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.
9. **REMEDIES.** After the Borrower or I default, you may at your option do any one or more of the following, with the exception that you 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.
- a. **Acceleration.** You may make all or any part of the amount owing by the terms of the Guaranty immediately due.
 - b. **Sources.** You may use any and all remedies you have under Cherokee Nation or federal law or in any documents relating to the Debt, with the exceptions of other damages, causes of action not directly related to the Loan Documents, sequential damages and attorney fees and costs, except for those authorized herein.
 - c. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
 - d. **Payments Made on My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the Secured Debts.
 - e. **Termination.** You may terminate my right to obtain advances and may refuse to make any further extensions of credit.
 - f. **Attachment.** You may attach or garnish my wages or earnings.
 - g. **Set-Off.** You may use the right of set-off. This means you may set-off any amounts due and payable under the terms of this Guaranty against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay the Debt, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

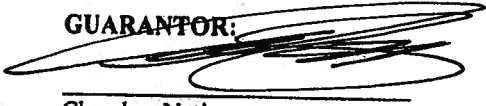
You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

- h. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy provided for herein. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies provided for herein if the default continues or occurs again.
10. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use or intended use of all Debt proceeds.

11. **RELIANCE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and I have signed this Guaranty to induce you to extend such credit. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from any loans and financial accommodations resulting in the creation of indebtedness guaranteed hereby.
12. **APPLICABLE LAW.** This Guaranty is governed by general contract law principles and commercial law as adopted in, and by the laws of, the Cherokee Nation, or if the Cherokee Nation has no applicable provision, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent that state laws are not applicable. Actions authorized under this Guaranty may be adjudicated in, at the sole and exclusive election of you, and with each party hereby consenting to the jurisdiction and venue of, the District Court of the Cherokee Nation, or to the extent such jurisdiction is not applicable, any federal district court located within the State of Oklahoma where venue is proper, and appellate courts therefrom; arbitration conducted in accordance with the procedural rules of the Federal Arbitration Act 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.
13. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provisions will be severed and the remaining provisions will still be enforceable.
14. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Guaranty.
15. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one guarantor will be deemed notice to all Guarantors. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.
16. **CREDIT INFORMATION.** I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.
17. **SIGNATURES.** By signing, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:


Cherokee Nation
Chadwick Smith, Principal Chief

Cherokee Nation Act/Resolution Proposal Form

Act Resolution

A RESOLUTION EXPRESSLY WAIVING THE SOVEREIGN IMMUNITY OF THE CHEROKEE NATION AND OF CHEROKEE NATION HOME HEALTH SERVICES TO THE EXTEND IT MAY EXIST, AS IT APPLIES TO THE ARVEST BANK AND CHEROKEE NATION HOME HEALTH SERVICES LOAN AGREEMENT

TITLE:

DEPARTMENT CONTACT: Rick Richards

RESOLUTION PRESENTER: Rick Richards

COUNCIL SPONSOR: Meredith A. Frailey

NARRATIVE:

ADMINISTRATIVE CLEARANCE

Program/Project Manager:

Signature/Initial _____ Date _____

Department Director:

Signature/Initial _____ Date _____

Group Leader:

Signature/Initial _____ Date _____

Government Resources:

Signature/Initial _____ Date _____

Administration Approval:

Meredith A. Frailey 10/13/09
 Signature/Initial _____ Date _____

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

Shelli Brittain 10/13/09
 Signature/Initial _____ Date _____

Standing Committee & Date:

Hyles 10/29/09

Chairperson:

Frailey
 Signature/Initial _____ Date _____

Returned to Presenter: _____

Date _____

10-13-09P05:01 RCVD