

**RESOLUTION NO. 20-11**

**COUNCIL OF THE CHEROKEE NATION**

**A RESOLUTION REPLACING RESOLUTION #129-09 EXPRESSLY WAIVING THE SOVEREIGN IMMUNITY OF THE CHEROKEE NATION AND OF CHEROKEE NATION HOME HEALTH SERVICES, INC., TO THE EXTENT IT MAY EXIST, AS IT APPLIES TO THE BANK OF CHEROKEE COUNTY AND CHEROKEE NATION HOME HEALTH SERVICES, INC. LOAN AGREEMENTS AND PROVIDING FOR A GUARANTEE BY CHEROKEE NATION OF THE LOAN AGREEMENTS UP TO \$786,000**

**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, Inc., its wholly owned and tribally operated corporation. 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 Bank of Cherokee County, 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, Bank of Cherokee County, 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, Inc., except that Bank of Cherokee County expressly agrees not to invoke any rights, remedies, or collection actions against the Cherokee Nation unless and until Cherokee Nation Home Health Services, Inc. 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, Inc., to the extent it may exist, as it applies to the Bank of Cherokee County and Cherokee Nation Home Health Services, Inc. loan agreements and that Bank of Cherokee County 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 FUTHER RESOLVED BY THE COUNCIL OF THE CHEROKEE NATION**, that this resolution authorizes a guarantee of the loan agreement between Cherokee Nation Home Health Services, Inc. and the Bank of Cherokee County.


**BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CHEROKEE NATION**, that this resolution hereby supersedes Resolution #129-09, passed by the Council of the Cherokee Nation on November 16, 2009.

**CERTIFICATION**

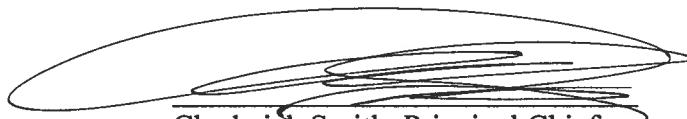
The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 14<sup>th</sup> day of March, 2011, having 17 members present, constituting a quorum, by the vote of 16 yea; 0 nay; 1 abstaining.

  
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 21st day of March, 2011.

  
Chadwick Smith, Principal Chief  
Cherokee Nation

**ATTEST:**

  
Melanie Knight, Secretary of State  
Cherokee Nation

## COMMERCIAL GUARANTY

**BORROWER:**

Cherokee Nation Home Health Services, Inc.

**LENDER:**

Bank of Cherokee County  
P.O. Box 660  
Hulbert, OK 74441

**GUARANTOR:**

Cherokee Nation of Oklahoma

**CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE.** For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Provided, however, in the event of default, Lender, at its sole and exclusive option, may elect to pursue remedies directly against the Guarantor, without first exhausting its potential remedies against Borrower, except that Lender expressly agrees not to invoke any rights, remedies, or collection actions against the Guarantor unless and until Borrower is at least three months in arrears on any payment due.

Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are continuing.

**INDEBTEDNESS.** The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorney's fees, arising from any and all debts, liabilities and obligations of every nature or form, now existing or hereafter arising or acquired, that Borrower individually or collectively or interchangeably with others, owes or will owe Lender. "Indebtedness" includes, without limitation, loans, advances, debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, and any present or future judgments against Borrower, future advances, loans or transactions that renew, extend, modify, refinance, consolidate, or substitute these debts, liabilities and obligations whether: voluntarily or involuntarily incurred; due or to become due by their terms or acceleration; absolute or contingent; liquidated or unliquidated; determined or

undetermined; direct or indirect; primary or secondary in nature or arising from a guaranty or surety; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; originated by Lender or another or others; barred or unenforceable against Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated then reduced or extinguished and then afterwards increased or reinstated.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be the Guarantor's aggregate liability under the terms of this Guaranty and any such other untermiated guaranties.

**CONTINUING GUARANTY.** This is a "Continuing Guaranty" under which Guarantor agrees to guarantee the full and punctual payment, performance and satisfaction of the indebtedness of borrower to lender, now existing or hereafter arising or acquired, on an open and continuing basis. Accordingly, any payments made on the indebtedness will not discharge or diminish guarantor's obligations and liability under this guaranty for any remaining and succeeding indebtedness even when all or part of the outstanding indebtedness may be a zero balance from time to time.

**DURATION OF GUARANTY.** This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to new indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new indebtedness" does not include the Indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. For this purpose and without limitation, "new indebtedness" does not include all or part of the Indebtedness that is: incurred by Borrower prior to revocation; incurred under a commitment that became binding before revocation; any renewals, extensions, substitutions, and modifications of the Indebtedness. This Guaranty shall bind Guarantor's estate as to the Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guarantor or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated

that fluctuations may occur in the aggregate amount of the Indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of the Indebtedness, even to zero dollars (\$0.00), shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the Indebtedness remains unpaid and even though the Indebtedness may from time to time be zero dollars (\$0.00).

**GUARANTOR'S AUTHORIZATION TO LENDER.** Guarantor authorizes Lender, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make one or more additional secured and unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; (H) to assign or transfer this Guaranty in whole or in part; (I) to exercise or refrain from exercising any rights against Borrower or others, or otherwise act or refrain from acting; (J) to settle or compromise any Indebtedness; and (K) to subordinate the payment of all or any part of any Indebtedness of Borrower to Lender to the payment of any liabilities which may be due Lender or others.

**GUARANTOR'S REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no

material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial conditions. (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

The signature of the officer(s) of the Cherokee Nation appearing on this Commercial Guaranty, and other agreements, documents, closing papers and certificates executed and delivered pursuant to this transaction, shall be conclusive evidence of their authority to execute and deliver such agreement and documents on behalf of the Cherokee Nation.

**GUARANTOR'S FINANCIAL STATEMENTS.** Guarantor agrees to furnish Lender with the following:

**Annual Statements.** As soon as available, but in no event later than one-hundred and eighty (180) days after the end of each fiscal year, Guarantor's balance sheet and income statement for the year ended, prepared by Guarantor.

All financial reports required to be provided under this Guaranty shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Guarantor as being true and correct.

**GUARANTOR'S WAIVER OF SOVEREIGN IMMUNITY.**

The Council of the Cherokee Nation, by Resolution No. 20 - 11, which is hereby incorporated by reference, authorized 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, Inc., its wholly owned and tribally chartered corporation. 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 Bank of Cherokee County, 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.

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.

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.

**GUARANTOR'S OTHER WAIVERS.** Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or non-action on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy with Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely



affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the Indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the Indebtedness; (D) any right to claim discharge of the Indebtedness on the basis of impairment of any collateral for the Indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor if commenced, there is outstanding Indebtedness which is not barred by any applicable statute of limitations; (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness; or (G) by any failure, neglect, or omission by Lender to perfect in any manner the collection of the Indebtedness or the security given therefore, including the failure or omission to seek a deficiency judgment against Borrower. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law of the relief of debtors, the Indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

**GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS.** Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

**COLLATERAL.** This Guaranty is secured by the full faith and credit of the Cherokee Nation.

**SUBORDINATION OF BORROWER'S DEBT TO GUARANTOR.** Guarantor agrees that the Indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the Indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignees or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full

payment in legal tender of indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect; preserve and enforce its rights under this Guaranty.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Guaranty:

**Amendments.** This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. All prior and contemporaneous representations and discussions concerning such matters either are included in this document or do not constitute an aspect of the agreement of the parties. Except as may be specifically set forth in this Guaranty, no conditions precedent or subsequent, of any kind whatsoever, exist with respect to Guarantor's obligations under this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration of the amendment.

**Attorneys' Fees; Expenses.** Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the Court.

**Caption Headings.** Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

**Governing Law.** This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Oklahoma without regard to its conflicts of law provisions.

**Integration.** Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this

paragraph.

**Interpretation.** In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

**Notices.** To the extent permitted by applicable law, any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. To the extent permitted by applicable law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, not any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent

instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of the Lender.

**Successors and Assigns.** Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**Waive Jury.** Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim by either Lender or Guarantor against the other.

**GUARANTOR'S ADDITIONAL WAIVERS.** Guarantor also expressly waives (1) any right, statutory or otherwise, including but not limited to any rights which Guarantor may have under Oklahoma Statute, Title 12, Section 686, to require Lender to seek satisfaction of any Indebtedness of Borrower to Lender by enforcement of Lender's rights against any collateral given for payment of Indebtedness as a condition precedent or concurrent to the enforcement of Lender's rights under this Guaranty and Guarantor, by these presents, waives any right, statutory or otherwise, to require Lender to proceed against any other collateral for payment of Indebtedness as a condition to proceed to foreclose or otherwise enforce its rights under this guaranty; and (2) any right, statutory or otherwise, including but not limited to any rights which Guarantor might have under Oklahoma Statute, Title 12, Section 686 to require Lender under any circumstances to set-off against Guarantor's obligations, the fair market value of any collateral held by Lender. In the event that Lender shall elect to foreclose any lien created by the loan agreement, whether pursuant to judicial foreclosure, pursuant to the Oklahoma "Power of Sale Mortgage Foreclosure Act" or otherwise, Lender is authorized to purchase for the account of Lender, all or any part of the collateral including without limitation, the property covered by such lien, at public or private sale and, regardless of whether Lender is the purchaser at such sale, Lender shall only be required to credit the sale proceeds therefrom (and not the fair market value of such collateral) to the Indebtedness which is guaranteed hereby. In the event that said proceeds as aforesaid are insufficient to satisfy all of the Indebtedness herein guaranteed, Lender shall be entitled to recover from Guarantor any such deficiency, Guarantor hereby agreeing that any right of set-off as aforesaid shall be based on the amount of the sale proceeds resulting from the sale and not upon the fair market value.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all referenced to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code.

**Borrower.** The word "Borrower" means CHEROKEE NATION HOME HEALTH SERVICES, INC. and includes all co-signors and co-makers signing the Note and all

their successors and assigns.

**GAAP.** The work “GAAP” means generally accepted accounting principles.

**Guarantor.** The word “Guarantor” means everyone signing this Guaranty, including without limitation CHEROKEE NATION, and in each case, any signer’s successors and assigns.

**Guaranty.** The word “Guaranty” means this guaranty from Guarantor to Lender.

**Indebtedness.** The word “Indebtedness” means Borrower’s indebtedness to Lender as more particularly described in this Guaranty.

**Lender.** The word “Lender” means BANK OF CHEROKEE COUNTY, its successors and assigns.

**Note.** The word “Note” means and includes without limitation all of Borrower’s promissory notes and/or credit agreements evidencing Borrower’s loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for promissory notes or credit agreements.

**Related Documents.** The words “Related Documents” mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS, IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR’S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED “DURATION OF GUARANTY”. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED \_\_\_\_\_, 2011.**

GUARANTOR:

By: \_\_\_\_\_  
Chadwick Smith, Principal Chief  
Cherokee Nation

ATTEST:

By: \_\_\_\_\_

# Cherokee Nation Act/Resolution Proposal Form

Act       Resolution

## A RESOLUTION AUTHORIZING FINANCIAL DEPOSITORIES FOR CHEROKEE NATION

**TITLE:**

**DEPARTMENT CONTACT:** Callie Catcher

**RESOLUTION PRESENTER:** Callie Catcher/Rick Richards

**SPONSOR:** \_\_\_\_\_

**NARRATIVE:** (See Attached Outline for Information if Outline is Required)

This resolution authorizes a loan guarantee for Cherokee Nation Home Health Services' line of credit and building mortgage with ~~Bank~~FirstBank of Cheorkee County and a limited waiver of sovereign immunity for Cherokee Nation Home Health Services and Cherokee Nation.

<b><u>ADMINISTRATIVE CLEARANCE</u></b>	
<b>Program/Project Manager:</b>	
Signature/Initial	Date
<b>Department Director:</b>	
Signature/Initial	Date
<b>Group Leader:</b>	
Signature/Initial	Date
<b>Controller: (if needed)</b>	
Signature/Initial	Date
<b>Government Resources:</b>	
Signature/Initial	Date
<b>Administration Approval:</b>	
Signature/Initial	Date

<b><u>LEGISLATIVE CLEARANCE:</u></b>	
<b>Legislative Aide:</b>	
Signature/Initial	Date
<b>Standing Committee &amp; Date:</b>	
Hules 2/24/11	
<b>Chairperson:</b>	
Frailer	
Signature/Initial	Date
<b>Returned to Presenter:</b>	
_____	
Date	