

RESOLUTION NO. 31-08

COUNCIL OF THE CHEROKEE NATION

A RESOLUTION AUTHORIZING CERTAIN LENDING TRANSACTIONS INVOLVING CHEROKEE NATION BUSINESSES, A CHEROKEE NATION TRIBAL LIMITED LIABILITY COMPANY AND AUTHORIZING A LIMITED WAIVER OF SOVEREIGN IMMUNITY

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

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; and

WHEREAS, Cherokee Nation Businesses, L.L.C. ("CNB") 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; and

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 CNB and enjoys sovereign immunity from suit under federal law; and

WHEREAS, pledges or loans of credit and indebtedness of Cherokee Nation-owned entities, including CNB and CNE, require approval by the Tribal Council in accordance with Legislative Act 2-03; and

WHEREAS, Resolution 97-07 was passed by the Tribal Council on October 15, 2007, and signed by the Principal Chief on October 24, 2007, approving CNB's and CNE's entering into proposed loan or financing transactions with Bank of America, N.A. ("Bank of America"); and

WHEREAS, negotiations have advanced to the extent that changes to the proposed terms require approval by the Cherokee Nation; and

WHEREAS, the Cherokee Nation has determined it is both appropriate and necessary that CNB and CNE be permitted to (i) enter into and perform under certain proposed loan or financing transactions with Bank of America, and any other lenders, participants or indemnified parties in the syndication or transaction, consisting of senior secured credit facilities that consist of a Line A credit facility in the approximate amount of \$49,135,000 and a Line B credit facility in the approximate amount of \$125,000,000 with an increase option of \$50,000,000, as such credit facilities may from time to time be supplemented, modified, amended, restated or extended (the "Senior Credit Facilities"), on the general terms and conditions set forth in the Summary of Terms and Conditions dated March 11, 2008, attached to this Resolution (the "Term Sheet"), (ii) pledge their respective assets and those of their subsidiaries as contemplated in the Term Sheet to secure CNB's and CNE's obligations, and (iii) enter into a related Fee Letter and Commitment Letter (all of the matters in the foregoing clauses (i), (ii) and (iii) are hereinafter collectively referred to as the "Loan Transactions," and all documents related to the Loan Transactions, including without limitation loan, guaranty and security

agreements, to be executed by CNB or CNE are referred to herein as the “Loan Transaction Documents”) to be used for one or more of the following purposes: (i) the primary purposes will be for one or more of the following: (a) refinance existing senior credit facilities with Bank of America; (b) refinance CNE’s casino expansion projects at Catoosa, Roland, West Siloam Springs, Sallisaw and Tahlequah and other capital projects of CNE; (c) pay transaction and closing costs related to the Loan Transactions; and (d) for capital projects, working capital and general business purposes of CNB, its majority-owned subsidiaries and its affiliates that are majority-owned by the Cherokee Nation; (ii) the secondary purposes will be to finance acquisitions of existing businesses and fund investments in existing businesses, either directly by CNB or indirectly through its majority-owned subsidiaries or its affiliates that are majority-owned by the Cherokee Nation, provided that pro-forma covenant compliance is retained, and (iii) in addition, CNB may use amounts drawn under Line B to refinance amounts outstanding under Line A; and

WHEREAS, the Cherokee Nation has determined it is both appropriate and necessary that the Cherokee Nation enter into and perform a Non-Interference Agreement requested by Bank of America and as generally described in the Term Sheet wherein the Cherokee Nation agrees that it will not take any action that would have a material adverse effect on the economic interests of Bank of America and the Lenders (defined in the Term Sheet) (the “Non-Interference Agreement”); and

WHEREAS, Bank of America has requested that the Cherokee Nation grant an irrevocable limited waiver of the sovereign immunity from suit and consent to be sued by Bank of America, and any other lenders, participants or indemnified parties in the Loan Transactions, with respect to CNB and CNE to enforce the obligations of CNB and CNE under the Loan Transaction Documents (including without limitation the Fee Letter and Commitment Letter), and with respect to the Cherokee Nation to enforce the Cherokee Nation’s obligations with respect to the Non-Interference Agreement, including the obligation of CNB, CNE and the Cherokee Nation to submit a claim to arbitration or to enforce any resulting arbitration award, or to seek damages for any breach of the Loan Transaction Documents by CNB or CNE, or any breach of the Non-Interference Agreement by the Nation, in certain courts as set forth below; and

WHEREAS, Bank of America has requested that, at the request of CNB, CNE, the Cherokee Nation or Bank of America, certain claims be resolved by arbitration as set forth below, and that such parties waive any right to a jury trial as set forth below; and

WHEREAS, Bank of America has further requested (i) the Loan Transaction Documents (excluding the Fee Letter and Commitment Letter) and the Non-Interference Agreement be governed by and construed in accordance with the laws of the State of Oklahoma, and (ii) the Fee Letter and Commitment Letter be governed by and construed in accordance with the laws of the State of New York.

BE IT RESOLVED BY THE CHEROKEE NATION, that the Tribal Council, pursuant to Legislative Act 2-03, authorizes CNB and CNE to pledge their assets and enter into and perform under the Loan Transactions and Loan Transaction Documents as defined above for the purposes set forth above; and

BE IT FURTHER RESOLVED BY THE CHEROKEE NATION, that the Chief Executive Officers of CNB and CNE are hereby authorized and directed to execute all Loan Transaction Documents as may be authorized by their respective Boards of Directors, and the Principal Chief is hereby authorized and directed to execute the Non-Interference Agreement; and

BE IT FURTHER RESOLVED BY THE CHEROKEE NATION, that the Council recognizes that, in order to obtain the most advantageous borrowing costs and most favorable terms in the Loan Transactions, it is necessary to grant a limited waiver of sovereign immunity with respect to CNB, CNE and the Cherokee Nation so that Bank of America and any other lenders, participants or indemnified parties in the Loan Transactions may maintain causes of action against CNB or CNE in the event of default by CNB or CNE pursuant to the terms of the Loan Transaction Documents, the Fee Letter or Commitment Letter, or maintain causes of action against the Cherokee Nation in the event of a default by the Cherokee Nation pursuant to the terms of the Non-Interference Agreement; and

BE IT FURTHER RESOLVED BY THE CHEROKEE NATION, that the Council further recognizes that the remedy available as a result of a waiver of sovereign immunity must be carefully and strictly defined, and therefore desires to establish herein the provisions that must be expressly set forth in the loan and financing documents and the Non-Interference Agreement; and

BE IT FURTHER RESOLVED BY THE CHEROKEE NATION, that the Council hereby authorizes the Principal Chief to expressly waive the sovereign immunity of CNB and CNE as it applies to the Loan Transactions, the Fee Letter and the Commitment Letter, hereby authorizes the Principal Chief to expressly waive the sovereign immunity of the Cherokee Nation as it applies to the Non-Interference Agreement, and hereby authorizes the Principal Chief to execute limited waivers of sovereign immunity, waivers of jurisdiction and additional waivers and agreements as part of the Loan Transaction Documents and the Non-Interference Agreement, as further set forth below:

(a) The Cherokee Nation hereby agrees and consents that (i) CNB and CNE may expressly and irrevocably waive any and all of their respective defenses based upon sovereign immunity from suit and may consent to be sued by Bank of America, and any other lenders, participants or indemnified parties in the Loan Transaction Documents to enforce the obligations of CNB and CNE with respect to the Senior Credit Facilities and the Loan Transaction Documents (including the Fee Letter and Commitment Letter), and (ii) the Cherokee Nation may expressly and irrevocably waive any and all of its defenses based upon sovereign immunity from suit and may be sued by Bank of America, and any other lenders, participants or indemnified parties in the Loan Transactions to enforce the obligations of the Cherokee Nation with respect to the Non-Interference Agreement, in each case in a court of competent jurisdiction as follows: first, in the United States District Court for the Eastern District of Oklahoma, including all rights of appeal under federal law; second, in the event the federal court determines that it does not have jurisdiction over such person or action, then in a state court of the State of Oklahoma; and third, in the event the state court determines that it does not have jurisdiction over such person or action, then in the tribal courts of the Cherokee Nation.

(b) At the request of CNB, CNE, or the Cherokee Nation as applicable, or Bank of America, any disputes arising out of the Loan Transactions or the Non-Interference Agreement shall be resolved by binding arbitration, rather than the procedure set forth in the immediately preceding paragraph (a). Such arbitration proceedings shall be in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Act") and shall be determined in accordance with the Act and the Commercial Arbitration Rules of the American Arbitration Association and by terms set forth in the Loan Transaction Documents or the Non-Interference Agreement, as applicable. The Cherokee Nation agrees and consents that the courts in the order listed in the immediately preceding paragraph

(a) shall have the authority to compel CNB, CNE or the Cherokee Nation to submit to such binding arbitration or to enforce the awards of such binding arbitration against CNB, CNE or the Cherokee Nation, as applicable. Additionally, without intending in any way to limit any agreement to arbitrate, to the extent any claim is not arbitrated, each of Bank of America, CNB, CNE and the Cherokee Nation will irrevocably and voluntarily waive any right it may have to a trial by jury in respect of such claim.

(c) The Loan Transaction Documents (excluding the Fee Letter and Commitment Letter) and the Non-Interference Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, and (ii) the Fee Letter and Commitment Letter be governed by and construed in accordance with the laws of the State of New York.


(d) The Cherokee Nation agrees that the waivers 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 Transaction Documents (including the Fee Letter and Commitment Letter) and Non-Interference Agreement are fully satisfied. Except as specifically set forth above, the limited waivers of sovereign immunity described herein shall not be construed, and are not intended by the Cherokee Nation to include or authorize any action against the Cherokee Nation itself, or to include or authorize any action other than actions by Bank of America and any other lenders, participants or indemnified parties in the Loan Transaction Documents against CNB and CNE to enforce their rights or remedies against CNB and CNE under the Loan Transaction Documents or actions by Bank of America and any other lenders, participants or indemnified parties in the Loan Transactions against the Cherokee Nation to enforce their rights or remedies against the Cherokee Nation under the Non-Interference Agreement. Further, this waiver shall not be deemed to authorize the recovery of incidental, consequential, exemplary or punitive damages, or lost profits against any of the Cherokee Nation, CNB or CNE, or to authorize any action against any officers or employees of the Cherokee Nation; and

BE IT FURTHER RESOLVED BY THE CHEROKEE NATION, that this Resolution shall in no manner or in any respect operate or be construed to operate to waive or otherwise diminish the sovereign immunity of the Cherokee Nation, except as to allow certain actions against CNB, CNE and the Cherokee Nation as provided herein; and


BE IT FINALLY RESOLVED BY THE CHEROKEE NATION, that this Resolution supersedes and replaces Resolution 97-07 previously enacted.

CERTIFICATION

The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 14th day of April, 2008, having 17 members present, constituting a quorum, by the vote of 16 yea; 1 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 18th day of APRIL, 2008.



Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:



Melanie Knight, Secretary of State
Cherokee Nation

Cherokee Nation Act/Resolution Proposal Form

Act Resolution

A Resolution Authorizing Certain Lending Transactions Involving Cherokee Nation Businesses, a Cherokee Nation Tribal Limited Liability Company and Authorizing a Limited Waiver of Sovereign Immunity

DEPARTMENT CONTACT: Brad Carson

RESOLUTION PRESENTER: Brad Carson

COUNCIL SPONSOR: Meredith Frailey

NARRATIVE:

The purpose of this resolution is to increase the amount from \$125,000,000 to \$174,135,000 (\$49,135,000 increase). This resolution, if approved, will supersede and replace Resolutions #13-07 and #97-07.

<u>ADMINISTRATIVE CLEARANCE</u>	
Program/Project Manager:	
Signature/Initial	Date
Department Director:	
Signature/Initial	Date
Executive Director:	
Signature/Initial	Date
Government Resources:	
<u>Rita May</u>	<u>3/24/08</u>
Signature/Initial	Date
Administration Approval:	
<u>Melanly</u>	<u>3/25/08</u>
Signature/Initial	Date
<u>LEGISLATIVE CLEARANCE:</u>	
Legal & Legislative Coordinator:	
<u>Brittain</u>	<u>3/25/08</u>
Signature/Initial	Date
Standing Committee & Date:	
<u>E+7</u>	<u>3/27/08</u>
Chairperson:	
<u>J. Baker</u>	
Signature/Initial	Date
Returned to Presenter:	
	Date

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