

RESOLUTION NO. 13-07

## COUNCIL OF THE CHEROKEE NATION

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

**WHEREAS**, the Cherokee Nation (the "Cherokee Nation") since time immemorial has exercised its sovereign power of self-government on behalf of the Cherokee people;

**WHEREAS**, the Cherokee Nation is a federally recognized Indian tribe with a historic and continual government to government relationship with the United States of America, and, as such, the Cherokee Nation enjoys sovereign immunity from suit under federal law;

**WHEREAS**, Cherokee Nation Enterprises, LLC ("CNE") is a for-profit limited liability company organized under the laws of the Cherokee Nation, which is wholly owned by Cherokee Nation Businesses, LLC, a for-profit limited liability company organized under the laws of the Cherokee Nation, which is wholly owned by the Cherokee Nation; which companies enjoy sovereign immunity from suit under federal law;

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

**WHEREAS**, the Cherokee Nation has determined it is both appropriate and necessary that CNE be permitted to enter into and perform under certain proposed loan or financing transactions with Bank of America, N.A., a National Banking Institution ("Bank of America"), to be used for one or more of the following purposes: (i) refinance existing senior credit facilities with Bank of America; (ii) finance CNE capital projects; (iii) pay transaction and closing costs related to the loan or financing transactions; (iv) for general business purposes of CNE; and (v) for working capital for CNE, its majority owned subsidiaries, and its affiliates that are majority-owned by the Cherokee Nation, including Cherokee Nation Industries, Inc.;

**WHEREAS**, the Cherokee Nation has determined it is both appropriate and necessary that CNB be permitted to enter into and perform an Agreement requested by Bank of America to the effect that CNB will not cause CNE to default under the proposed loan or financing transactions (the "CNB Agreement");

**WHEREAS**, the proposed loan or financing transactions with Bank of America, including the CNB Agreement, are described in general on Exhibit A attached to this Resolution and made a part hereof by reference, and are hereinafter referred to as the "Bank of America Transactions";

**WHEREAS**, Bank of America has requested that the Cherokee Nation grant a limited waiver of the sovereign immunity of CNE for the sole purpose of enforcing Bank of America's rights and remedies under the proposed Bank of America Transactions, and grant a limited waiver of sovereign immunity of CNB for the sole purpose of enforcing Bank of America's rights and remedies under the CNB Agreement;

**WHEREAS**, Bank of America has further requested (i) that the laws of Oklahoma govern any action by Bank of America against CNE or CNB to enforce its rights as lender under the proposed Bank of America Transactions or as a party to the CNB Agreement, (ii) that, in connection with any action by Bank of America against CNE or CNB to enforce its rights as lender under the proposed Bank of America Transactions [or by participants in the line of credit evidenced in the loan documents], or as a party to the CNB Agreement, CNE and CNB submit to the jurisdiction of certain courts as set forth more fully below.

**BE IT RESOLVED BY THE CHEROKEE NATION**, that the Tribal Council, pursuant to Legislative Act 2-03, authorizes CNE and CNB to enter into and perform under the "Bank of America Transactions" as described in Exhibit A for the purposes set forth above;

**BE IT FURTHER RESOLVED BY THE CHEROKEE NATION**, that the Chief Executive Officer of CNE is hereby authorized and directed to execute all documents relating to the Bank of America Transactions as may be authorized by the Board of Directors of CNE, and the Chief Executive Officer of CNB is hereby authorized and directed to execute the CNB Agreement and such related documents as may be authorized by the Board of Directors of CNB;

**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 Bank of America Transactions, it is necessary to grant a limited waiver of the sovereign immunity of CNE and CNB so that Bank of America [and any participants in the line of credit] may maintain a cause of action against CNE or CNB in the event of default by CNE pursuant to the terms of the Bank of America Transactions or by CNB pursuant to the CNB Agreement;

**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 CNB Agreement;

**BE IT FURTHER RESOLVED BY THE CHEROKEE NATION**, that the Council elects to expressly waive the sovereign immunity of CNE and CNB as it applies to the Bank of America Transactions and CNB Agreement and hereby authorizes the Principal Chief to execute a limited waiver of sovereign immunity and a waiver of jurisdiction as part of the Bank of America Transactions and CNB Agreement, as further set forth below:

(a) The Cherokee Nation hereby agrees and consents that CNE and CNB may expressly waive any and all of their respective defenses based upon sovereign immunity from suit and may consent to be sued by the Bank of America, [or by any participant in the line of credit evidenced in the loan documents] solely with respect to the obligations and indebtedness evidenced by the Bank of America Transactions or with respect to the CNB Agreement 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 option of either CNE or CNB, as applicable, or Bank of America, any disputes arising out of the Bank of America Transactions or CNB Agreement shall be settled by binding arbitration, rather than the procedure set forth in the immediately preceding paragraph (a). Such arbitration 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 Bank of America Transactions or CNB 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 CNE or CNB to submit to such binding arbitration or to enforce the awards of such binding arbitration against CNE or CNB, as applicable.

(c) The Bank of America Transactions and CNB Agreement shall be governed by and in accordance with the laws of the State of Oklahoma.

(d) The Cherokee Nation agrees that 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 Bank of America Transactions and CNB Agreement are fully satisfied. 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 the Bank of America against CNE to enforce its rights or remedies against CNE under the Bank of America Transactions or against CNB to enforce its rights under the CNB Agreement. Further, this waiver shall not be deemed to authorize the recovery of incidental, consequential, exemplary or punitive damages, or lost profits against either the Cherokee Nation, CNB or CNE;

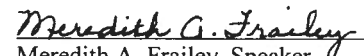
**BE IT FURTHER RESOLVED BY THE CHEROKEE NATION**, that the Council authorizes the Principal Chief to execute a consent to the waiver of CNE's and CNB's sovereign immunity in which the Cherokee Nation (i) shall not object to the Bank of America Transactions and the CNE/Bank of America Agreements and CNB Agreement being governed by and in accordance with the Laws of State of Oklahoma; and (ii) shall not object to the jurisdiction of applicable courts of competent jurisdiction as set forth above in this Resolution in connection with (a) any action by Bank of America against CNE or CNB to enforce its rights as lender under the Bank of America Transactions [or by any participant in the line of credit evidenced in the loan documents against CNE] or as a party to the CNB Agreement; or (b) any action by Bank of America to enforce the CNE Bank of America Agreements against CNE or enforce the CNB Agreement against CNB;

**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 CNE and CNB as provided herein;


**BE IT FINALLY RESOLVED BY THE CHEROKEE NATION**, that this Resolution supersedes and replaces Resolutions 47-03 and 90-03 previously enacted.

#### CERTIFICATION


The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 12<sup>th</sup> day of February, 2007, having 16 members present, constituting a quorum, by the vote of 15 yea; 1 nay; 0 abstaining.

  
Meredith A. Frailey, Speaker  
Council of the Cherokee Nation

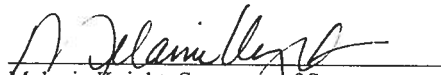
ATTEST:

  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and this 19th day of February, 2007.

  
Chadwick Smith, Principal Chief  
Cherokee Nation

ATTEST:

  
Melanie Knight, Secretary of State  
Cherokee Nation

**Cherokee Nation  
Act/Resolution Proposal Form**

**ADMINISTRATIVE CLEARANCE:**

Program/Project Manager:

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

Department Director:

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

Group Leader:

Callie Catcher 1/17/07  
Signature Date

Finance Approval (if needed):

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

Government Resources Group:

Rita Maybin 1/17/07  
Signature Date

Administration Approval:

Melani Knight 1/17/07  
Signature Date

Act

Resolution

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

Department Contact: David Stewart/Callie Catcher

Resolution Presenter: David Stewart/Callie Catcher

Council Sponsor: Bill John Baker

**NARRATIVE:**  
(See Attached Outline for Information Needed)

This resolution authorizes a line of credit for CNE with Bank of America not to exceed \$50,000,000 and further authorizes a limited waiver of sovereign immunity.

**LEGISLATIVE CLEARANCE**

Legislative Aide:

D. Pittman 1-17-07  
Signature/Initial Date

Standing Committee:

Executive & Finance

1/25/07  
Next Meeting Date

Chairperson:

O'Leary & Baker  
Signature/Initial Date

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