



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Text

File #: 11-020, Version: 3

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.