



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 11- 38

of the

### SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, the Squaxin Island Tribal Council is the controlling shareholder in Skookum Creek Tobacco Co., Inc., a corporation chartered under Squaxin Island Tribal Law; and

**WHEREAS**, Skookum Creek Tobacco Co., Inc. manufactures cigarettes, and desires to qualify its cigarettes for sale throughout the United States; and

**WHEREAS**, several states have indicated that in addition to a waiver of sovereign immunity by the corporation with respect to its assets, a limited waiver of sovereign immunity by the Tribe itself is a condition precedent to state certification of Skookum Creek brands; and

**WHEREAS**, an ad hoc working group of the National Association of Attorney General's ("NAAG"), including representatives from Oklahoma, Ohio, Pennsylvania, South Dakota, Nebraska, West Virginia, Tennessee, South Carolina, and Arizona, has prepared a waiver of sovereign immunity, and indicated its use will be acceptable for this purpose; and

**WHEREAS**, the draft waiver obligates the Tribe to accept shareholder liability for the actions of Skookum Creek with respect to Skookum Creek's liability to a state government under its state qualifying and complimentary legislation, which compel the payment of a per cigarette amount into escrow for Skookum cigarettes sold within the state, to the full extent shareholder liability is applicable to the Tribe under the "piercing the veil" doctrine.

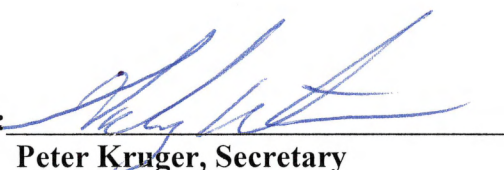
**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby grants its consent to the substantive terms of the attached draft Waiver of Sovereign Immunity by the Squaxin Island Tribe.


**NOW THEREFORE BE IT FINALLY RESOLVED**, that the Tribal Council hereby authorizes its Chairman, David Lopeman, to sign waivers of sovereign immunity by the Squaxin Island Tribe, in substantially the same form as the attached draft NAAG waiver, completed with specific state references, for those states that require such a waiver as condition for certification of Skookum brands under state law.

**CERTIFICATION**

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 28 day of May, 2011, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.

  
\_\_\_\_\_  
David Lopeman, Chairman

Attested by:   
\_\_\_\_\_  
Peter Kruger, Secretary

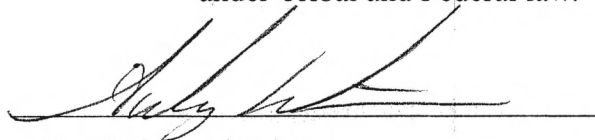
  
\_\_\_\_\_  
Arnold Cooper, Vice Chairman

**Waiver of Sovereign Immunity by the Skookum Creek Tobacco Co. Inc.**

Skookum Creek Tobacco Co., Inc. (Corporation), an entity incorporated under the Squaxin Island Tribe Business Corporation Ordinance, hereby provides the following waiver of its sovereign immunity. It expressly, totally waives its immunity from suit, liability, judgment and collection with respect to the obligations of the Corporation to fully comply with requirements imposed upon the Corporation as a manufacturer of cigarettes sold in the State of South Dakota by chapter 10-50B SDCL, and sections 10-50-72 to 10-50-92, inclusive, and rules promulgated pursuant to those statutes. In waiving its immunity, the Corporation agrees that any action or proceeding against it arising from the enforcement of the provisions of chapter 10-50B SDCL, and sections 10-50-72 to 10-50-92, inclusive, and any rules promulgated pursuant to these statutes may be commenced against the Corporation in any state court within South Dakota, and that the laws of the State of South Dakota will govern such proceedings.

This waiver is evidenced by:

1. Attachment 1, a copy of a resolution of the Corporation's Board of Directors authorizing this waiver of immunity,
2. Attachment 2, a copy of a resolution (statute or motion) enacted by Skookum Creek Tobacco Co., Inc., the tribal entity authorized to waive the immunity of the Skookum Creek Tobacco Co., Inc., and
3. Attachment 3, a letter of counsel addressed to the State of South Dakota c/o the South Dakota Attorney General from the Tribe's Legal Counsel evidencing Counsel's written legal opinion that the Corporate and Tribal entities waiving Skookum Creek Tobacco Co., Inc.'s immunity by enacting the above referenced Corporate Resolution and Tribal Resolution (statute or motion) are authorized to waive the Corporation's immunity under tribal law, have the ability to bind the Tribe and the Corporation and that all procedures required by Tribal and Federal law were followed and that the waivers of immunity are binding and enforceable under Tribal and Federal law.




Andy Whitener, President  
Skookum Creek Tobacco Co., Inc.

## Waiver of Sovereign Immunity by the Squaxin Island Tribe

The Squaxin Island Tribe, a federally-recognized Indian tribe (Tribe) and the controlling shareholder in Skookum Creek Tobacco Co., Inc. (Corporation), an entity incorporated under the Squaxin Island Tribe Business Corporation Ordinance, hereby provides the following limited waiver of its sovereign immunity. It expressly, totally waives its immunity from suit, liability, judgment and collection with respect to the obligations of the Corporation to fully comply with requirements imposed upon the Corporation as a manufacturer of cigarettes sold in the State of South Dakota by chapter 10-50B SDCL, and sections 10-50-72 to 10-50-92, inclusive, to the full extent that the Tribe would be liable for the Corporation's duties and obligations under the piercing of the corporate veil doctrine. In waiving its immunity, the Tribe agrees that any action or proceeding against it arising from the enforcement of the provisions of chapter 10-50B SDCL, and sections 10-50-72 to 10-50-92, inclusive, and any rules promulgated pursuant to these statutes may be commenced against the Tribe in any state court within South Dakota, and that the laws of the State of South Dakota will govern such proceedings.

This waiver is evidenced by Attachment 1, which is a copy of a resolution (statute or motion) enacted by the Squaxin Island Tribal Council, the tribal entity authorized to waive immunity on behalf of the Squaxin Island Tribe. The resolution (statute or motion) is accompanied by Attachment 2, a letter of counsel addressed to the State of South Dakota c/o the South Dakota Attorney General from the Tribe's legal counsel evidencing counsel's written legal opinion that the Tribal entity waiving immunity by enacting the above referenced resolution (statute or motion) is authorized to waive the Tribe's immunity under tribal law, has the ability to bind the Tribe and that all procedures required by Tribal and Federal law were followed and that the waiver of immunity is binding and enforceable under Tribal and Federal law.



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David Lopeman, Chairman  
Squaxin Island Tribe