



## SQUAXIN ISLAND TRIBE

### RESOLUTION NO. 02-26 of the SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe ("Tribe"), its members, its lands, its enterprises and its agencies by 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 with protecting and managing the lands and treaty resources and rights of the Tribe including those expressed in Section 1 (b) and (i) of the Constitution; **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 treaty land and treaty resources of the Tribe; **and**

**WHEREAS**, the Tribe and Bank of America, N.A. ("Bank") have entered into a Loan Agreement in the approximate amount of Three Hundred Thousand Dollars (\$300,000) the repayment of which is partially guaranteed by the Bureau of Indian Affairs ("BIA") under the BIA's Loan Guaranty Program, 25 C.F.R. § 103.1 et. al, and the purpose of which is to refinance the purchase of two properties that were recently purchased with cash, as evidenced by the following documents:

1. Promissory Note dated as of April 23, 2002, in the original principal amount of \$300,000.00 (Three Hundred Thousand Dollars) made by Tribe and payable to Bank ("Note");
2. Term Loan Agreement between Bank and the Tribe dated as of April 23, 2002 ("Loan Agreement"); **and**
3. BIA Loan Guaranty number G022D1P0666 between Bank and the BIA dated as of March 29, 2002 collectively ("Principal Loan Documents"); **and**

**WHEREAS**, in order to induce Bank to complete this loan and execute the Principal Loan Documents and perform the same it is necessary for the Council to ratify and approve the terms of the Note and to authorize the Tribe to negotiate and execute a final version of the Loan Agreement; to issue a limited waiver of sovereign immunity; to authorize arbitration of certain controversies that could arise regarding the transaction; to consent that the Tribe be sued in state, federal and tribal courts pertaining to the transaction; to consent to the application of the substantive laws of the State of Washington – all in order that the Bank may be induced to make the loan as evidenced by the Note and in order that Bank may be assured it may enforce the Note against the Tribe; **and**

**WHEREAS**, it has been determined that Resolution 02 – 19 is superceded by Resolution 02 – 26.

**NOW, THEREFORE, BE IT RESOLVED AND ENACTED** by the Squaxin Island Tribal Council as follows:

Section 1. Principal Loan Documents. The terms and conditions of the above-described drafts of the Principal Loan Documents are hereby authorized and ratified. The Chairman, or in his absence the Vice-chairman, is hereby authorized to execute and deliver on behalf of the Tribe the Note and the Loan Agreement, as well as any revisions of the same prior to their execution as they shall determine, together with any and all other documents, financing statements, certificates, consents, representations and warranties required by Bank or its representatives in order to effect the transactions and the making of the loan.

Section 2. Choice of Law Authorization.

A. The parties to any contract, agreement, or other like document, including the Tribe and any department, program, or corporation of the Tribe, are hereby permitted and authorized to include in the document a stipulation providing that a designated body of laws will govern the interpretation and enforcement of the document(s), and

B. The Tribal Court shall, in cases brought before the Court over which it has jurisdiction and involving the document, use the designated body of laws for the interpretation and enforcement of the document.

Section 3. Choice of Law. The Note and the Loan Agreement shall create the rights and remedies that would apply and shall be governed by and construed in accordance with the laws of the state of Washington (without regard to principles of conflict of laws), including the Washington Uniform Commercial Code.

Section 4. Waiver of Exhaustion of Tribe Remedies; Tribal Court Jurisdiction. The Council for itself and on behalf of the Tribe consents and agrees that it shall not be necessary in any litigation or arbitration or dispute resolution proceedings pertaining to the transactions described in Section 1 of this Resolution or other transactions relating thereto, that there first be any deferral to or exhaustion of remedies in the Tribal Court of the Tribe, any other tribal court or dispute resolution tribunal, or the Council. The Council agrees for itself and on behalf of the Tribe not to assert that the Tribal Court of the Tribe or any other courts or dispute resolution tribunals created by the Tribe, including but not limited to the Council itself, shall have jurisdiction as an adjudicative tribunal over any case or controversy or proceeding pertaining to said transaction or the Principal Loan Documents unless the same is initiated by or consented to in writing by Bank.

Section 5. Waiver of Sovereign Immunity; Consent to be Sued; Arbitration. The Council, for itself and on behalf of the Tribe, waives and shall not have tribal and/or sovereign immunity from (a) suit or action (including judicial review proceedings regarding agency action); (b) compulsory arbitration and judicial enforcement of the arbitration award or awards; and (c) administrative proceedings. As to such subject matters, each consents to be sued; to be required to arbitrate; to have the arbitration award or awards judicially enforced; and to be made a party to administrative proceedings and judicial review proceedings. Such subject matters are as follows: (d) any of the above listed Principal Loan Documents and (e) any and all proceedings to enforce, construe, perform, levy, collect, rescind or determine any disputes regarding the Principal Loan Documents or the terms provided in this Resolution, or which arise out of the transactions described in this Resolution. Such waiver and consent (f) apply to all proceedings in whatever court, agency or arbitration has or is exercising or is preparing or required to exercise jurisdiction; (g) extend to all enterprises, instrumentalities, agencies, officers, agents, attorneys (including both general and special counsel), accountants, and auditors of the Tribe; and (h) are irrevocable and may not be rescinded, revoked or amended without the prior written consent of Bank.

Provided, the waiver of sovereign immunity expressed herein is limited to the Bank and its successor and assigns as lender under the Principal Loan Documents.

Section 6. Court Jurisdiction. The Council, for itself and on behalf of the Tribe, consents and agrees to be sued in the courts of the state of Washington to compel or enforce arbitration. If it is determined that the foregoing court does not enjoy proper jurisdiction, then the Tribe consents to suit to compel or enforce arbitration in any federal or tribal court of competent jurisdiction, including the Squaxin Island Tribal Court. This consent and agreement will not extend to any other transactions or subjects.

**BE IT FURTHER RESOLVED**, that the Squaxin Island Tribal Council does hereby repeal Resolution 02 - 19.

**CERTIFICATION**

The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 23<sup>rd</sup> day of April, 2002 at which time a quorum was present and was passed by a vote of 6 for and 0 against with 0 abstentions.

  
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Dave Lopeman, Chairman

  
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Andy Whitener, Vice Chairman

Attested by:   
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Pete Kruger, Sr., Secretary