National Indian Gaming Commission

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between the Chairman of the National Indian Gaming Commission ("NIGC Chairman"); the Puyallup Tribe of Indians, a federally-recognized Indian tribe ("Puyallup Tribe" or "Tribe"); and BJ's Enterprises, Inc., the owner of BJ's Bingo, an individually owned Class II gaming facility operating on the Puyallup Indian Reservation ("BJ's"). This Agreement resolves all of the issues identified in a letter dated October 13, 2006, from the NIGC Region Director to the Puyallup Tribe and BJ's regarding the proper revenue share at BJ's Bingo (Exh. A).

RECITALS

1. The Puyallup Tribe conducts and licenses various gaming activities within the boundaries of the Puyallup Indian Reservation pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2710-2721, the Puyallup Tribe of Indians Tribal Gaming Ordinance as approved by the NIGC Chairman, the NIGC's regulations, and other applicable tribal laws and regulations.

2. BJ's is an individually owned, Class II gaming operation that is licensed by the Puyallup Tribe pursuant to IGRA's grandfathering provision for such facilities that were in operation as of September 1, 1986. 25 U.S.C. § 2701(b)(4)(B)(i)(III).

3. IGRA, the NIGC's regulations, and the Puyallup Tribe's approved tribal gaming ordinance all require grandfathered, individually owned gaming facilities to provide not less than 60% of the facility's net revenues to the licensing tribe.

4. In an effort to implement the 60% of net revenue requirement, the Puyallup Gaming Commission adopted certain accounting regulations that include a worksheet formula that the Puyallup Gaming Commission, for a number of years, has required BJ's to follow in calculating its monthly payments to the Tribe.

5. In a letter dated October 13, 2006 (Exh. A), the NIGC Region Director informed the Puyallup Tribe and BJ's of the NIGC's concern that BJ's was not distributing at least 60% of its net revenues to the Puyallup Tribe. Subsequently, it was determined that the underpayments were caused primarily by implementation of the worksheet formula.

6. The NIGC Chairman, the Puyallup Tribe, and BJ's wish to enter this Agreement in order to preserve their longstanding relationships; avoid the expense, time and risk associated with a formal enforcement action; and achieve an amicable

resolution of all of the issues raised in the NIGC Region Director's letter dated October 13, 2006.

7. Now, therefore, the NIGC Chairman, the Puyallup Tribe, and BJ's have agreed to enter into this Agreement and perform in accordance with the following terms.

TERMS OF SETTLEMENT

8. This Agreement shall be effective on the date that it is signed by the last party to sign the Agreement ("Effective Date"). This Agreement shall continue in force after the Effective Date for as long as BJ's operates BJ's Bingo, or until this Agreement is terminated or amended by written agreement, signed by all three parties.

9. By entering this Agreement, the NIGC Chairman agrees to waive his right to issue a notice of violation, impose civil fines, or issue a closure order regarding any and all of the issues covered in the NIGC Region Director's letter dated October 13, 2006 (Exh. A), as long as the Tribe and BJ's comply with the terms of this Agreement. Although the NIGC did not review activity occurring during the current fiscal year, the waiver in this Paragraph applies as well to the same issues and type of activities that occurred during the current fiscal year, before the Effective Date of this Agreement. The Tribe and BJ's acknowledge and agree that if the Tribe or BJ's fail to comply with the terms of this Agreement, the NIGC Chairman retains the authority as provided by law to pursue one or more enforcement actions regarding the issues covered in this Agreement. The Puyallup Tribe and BJ's acknowledge and agree that the NIGC Chairman's waiver in this paragraph covers only those issues covered under this Agreement, and does not preclude or otherwise affect any other enforcement actions that the NIGC Chairman may pursue regarding any other enforcement matter under the NIGC's jurisdiction.

10. Within thirty (30) days after the Effective Date, the Tribe or a proper political entity of the Tribe shall adopt tribal code or regulations that reflect the same substantive content as provided under Exhibit B to this Agreement. The Tribe and BJ's shall follow such code or regulations upon their adoption. BJ's agrees that it shall not challenge such code or regulations in tribal court or any other forum. For the duration of the current fiscal year, BJ's shall pay the monthly revenue sharing fee to the Tribe, but no reconciliation report or reconciliation payment shall be due until the end of the first full fiscal year following adoption of the code or regulations.

11. In calculating "net revenues" for the reconciliation reports required by the code or regulations to be adopted under this Agreement, BJ's shall deduct from gross revenues only legitimate and market-based expenses, and shall comply with the following specific limitations:

A. **Executive Compensation** – For purposes of calculating annual net revenues under this Agreement, any salaries, bonuses and any other form of compensation to corporate shareholders shall be limited as follows. For fiscal year 2008 (April 1, 2007 through March 31, 2008), the value of such executive compensation deducted from gross revenues shall not be greater than [redacted]. Thereafter, the value of such executive compensation deducted from gross revenues shall change for each new fiscal year by the same percentage increase or decrease that occurred from the previous fiscal year in the facility's Operation Revenue, as defined in the code or regulations to be adopted under this Agreement (Exh. B). Notwithstanding the previous sentence, any such annual change in executive compensation shall not exceed a 10% decrease or a 5% increase, even if Operation Revenue decreases by more than 10% or increases by more than 5%. The NIGC acknowledges that BJ's may provide higher salary, bonus or draw payments to its corporate shareholders if allowed under applicable corporate tax laws, but for purposes of calculating net revenues under this Agreement, the amount of all such salary, bonus or draw payments deducted from gross revenues as operating expenses shall be limited as provided herein.

B. **Rent** – Any rent or lease payments made from BJ's to a corporate shareholder or a party controlled or closely related to a corporate shareholder shall be limited to the fair-market value of rent for similar properties in the area.

C. **Warehouse Expense** – Any warehouse or storage expense made from BJ's to a corporate shareholder or a party controlled or closely related to a corporate shareholder shall be limited to the fair-market value of such services in the area.

D. **Depreciation Expense** – Any depreciation expense shall be limited to GAAP presentation on an accrual basis (not tax basis) of accounting, and shall be supported by an appraisal or other documentation from an independent Certified Public Accountant.

12. If a dispute develops between the parties to this Agreement regarding implementation of the code or regulations required by this Agreement, including the content and calculations in the reconciliation reports submitted by BJ's, then the NIGC shall solicit and consider input from the Tribe and BJ's, and shall provide a written decision that resolves the dispute. The Tribe and BJ's shall abide by the decision provided by the NIGC.

13. The parties acknowledge that the intent of the code or regulations required by this Agreement is to provide a simple mechanism to ensure compliance with IGRA by mandating fees that are at least as high, or slightly higher, than the 60% of net revenues required under IGRA. Therefore, at the end of every two (2) full fiscal-years following the Effective Date of this Agreement, if BJ's can demonstrate that such revenue sharing fees have been higher than 60% of its net revenues during

the preceding two (2) fiscal years, then BJ's may request an amendment to the code or regulations required under this Agreement in order to reduce prospectively BJ's monthly fees. Upon such request, if the Tribe and the NIGC agree that BJ's revenue sharing fees have been higher than 60% of net revenues, and the Tribe determines that a revenue share reduction would be a good policy decision, then the Tribe may make an appropriate adjustment to the code or regulations in order to bring BJ's revenue sharing fees closer to, but not lower than, 60% of net revenues. In the course of this analysis, BJ's shall provide any information that may be requested by the Tribe or the NIGC to determine whether the revenue sharing fees have been higher than 60% of BJ's net revenues, including information concerning the legitimacy of operating expenses claimed by BJ's. BJ's shall abide by the decision of the NIGC and the Tribe regarding whether—and if so, how much—to adjust the revenue sharing fees, and shall not challenge such decision in tribal court, federal court, or any other forum.

14. The Tribe and BJ's agree that the NIGC has the authority to monitor and inspect the Tribe's and BJ's activities for the purpose of verifying the Tribe's and BJ's compliance with the terms of this Agreement, and the Tribe and BJ's agree to provide under this Agreement any documents that the NIGC Chairman or his designee may request that are reasonably relevant to the Tribe's or BJ's obligations under this Agreement. The Tribe and BJ's stipulate that the withholding of any such documents referenced in the preceding sentence constitutes a breach of this Agreement, and relieves the NIGC Chairman of the waiver in Paragraph 9, thus subjecting the Tribe or BJ's to the exercise of the NIGC Chairman's enforcement authority as provided by law with respect to the issues covered in this Agreement. In addition, the NIGC Chairman reserves the right to request other documents from the Tribe and BJ's under IGRA's monitoring/oversight authority.

ADDITIONAL COVENANTS

15. This Agreement is the entire agreement. Any amendments must be in writing and signed by all three parties.

16. The Puyallup Tribe and BJ's stipulate that this Agreement shall be deemed to be the subject of a final order of the NIGC under 25 C.F.R. § 575.4(c)(1), and agree to waive any right to appeal the terms of this Agreement.

17. This Agreement may be executed in one or more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for the purposes of this Agreement.

SIGNATURES

Philip N. Hogen, Chairman
National Indian Gaming Commission

Dated: 1/22/07

Herman Dillon, Sr., Chairman
Puyallup Tribe of Indians

Dated: 1/23/07

McKenzie Turnipseed
BJ's Enterprises, Inc.

Dated: 20 JAN 07

Exhibit A

October 13, 2006

Herman Dillon, Sr., Chairman
Puyallup Tribe of Indians
1850 Alexander Ave.
Tacoma, WA 98421

McKenzie Turnipseed
BJ's Enterprises, Inc.
4411 Pacific Highway East
Fife, WA 98424

RE: Revenue Share at BJ's Bingo

Dear Chairman Dillon and Mr. Turnipseed:

During a National Indian Gaming Commission ("NIGC") investigation at the Puyallup Indian Reservation, we developed a concern that BJ's Enterprises, Inc. ("BJ's") is not distributing at least 60% of its net revenues to the Puyallup Indian Tribe.

The Indian Gaming Regulatory Act ("IGRA") provides that tribal gaming ordinances may allow individually owned, grandfathered Class II operations to continue to operate, as long as certain requirements are met, including the requirement that not less than 60% of the facility's net revenues is income to the licensing Indian tribe. 25 U.S.C. § 2710(b)(4)(B)(i)(III).

In accordance with IGRA, the Puyallup Tribe's approved tribal gaming ordinance provides that grandfathered, individually owned Class II gaming operations must provide not less than 60 percent of their net revenues as income to the Puyallup Tribe. *Puyallup Tribe of Indians Tribal Gaming Ordinance*, Ordinance No. 060900, Section 4.04(b)(i)(C). Furthermore, the gaming ordinance provides that "[t]he Tribe may license and regulate Class II gaming activities owned by any person or entity other than the Tribe and conducted on Indian lands within the Tribe's jurisdiction, only if the requirements described in section (b)(i) of this Section are met . . . ." *Id.* § 4.04(a). Under this language, the Tribe may not license an individually owned gaming operation that is not providing at least 60% of its net revenues to the Tribe.

IGRA defines "net revenues" as "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees." 25 U.S.C. § 2703(9). NIGC regulations define "net revenues" as "gross gaming revenues of an Indian gaming operation less—(a) Amounts paid out as, or paid for, prizes; and (b) Total gaming-related operating expenses, excluding management fees." 25 C.F.R. § 502.16. The Puyallup Tribe's approved tribal gaming ordinance defines "net revenue" as "gross revenues of a gaming activity less amounts paid out as, or paid for, prizes, winnings, and total operating expenses, excluding management fees." *Puyallup Tribe of Indians Tribal Gaming Ordinance*, Ordinance No. 060900, Section 2.15.

Using these statutory and regulatory definitions of "net revenues," as informed by Generally Accepted Accounting Principles ("GAAP"), our investigators reviewed the last five audited financial statements from BJ's, and calculated what should have been provided to the Puyallup Tribe as 60% of net revenues. The attached spreadsheet shows the figures we used and the calculations we performed, which demonstrate that BJ's has not provided at least 60% of its net revenues to the Puyallup Tribe in any of the

REGION 1 Solomon Building, 620 SW Main Street, Suite 212, Portland, OR 97205 Tel: 503.326.5095 Fax: 503.326.5092
NATIONAL HEADQUARTERS 1441 L St. NW, Suite 9100, Washington, DC 20005 Tel: 202.632.7003 Fax: 202.632.7066 www.nigc.gov

last five years. According to our calculations, there has been a total short-fall over the past five years of almost [redacted] the exact figure is [redacted]

We are aware that in an effort to implement IGRA's individually owned gaming revenue share requirement, the Puyallup Gaming Commission adopted certain accounting regulations that include "Instructions to Tax Reporting" and a monthly worksheet that the Puyallup Gaming Commission requires BJ's to follow in calculating its monthly payments to the Tribe. The NIGC is not opposed to the concept of a formula to assist the Tribe and its licensees comply with the 60% requirement, but any such formula must result in payment to the Tribe of at least 60% of the facility's net revenues. To the extent that any tribal gaming commission adopts or approves regulations or procedures that conflict with a tribal gaming ordinance approved by the Chairman of the NIGC, those regulations or procedures are in violation of IGRA and we consider them to be void.

As demonstrated by the attached spreadsheet, the current formula—either as written or as applied—does not result in the correct payments to the Puyallup Tribe. Therefore, the current system is not permissible under IGRA, the NIGC's regulations, and the Puyallup Tribe's approved gaming ordinance, and must be corrected.

We understand that BJ's Bingo is the last individually owned, grandfathered Class II facility in operation under IGRA, and that this fact is a source of pride for BJ's and the Puyallup Tribe. Therefore, we are hopeful that we can reach a resolution to this issue that will allow BJ's to continue to operate for as long as the Tribe wishes to license its operation, and as long as interest in the tribal charter or ownership of the facility is not transferred to any other person or entity. *See* 25 U.S.C. § 2710(b)(4)(B)(ii).

Our Office of General Counsel will contact your attorneys to discuss how this matter should be resolved. In the meantime, if you have any questions, you may contact me at (503) 326-5009.

Sincerely,

R.J. Sutton
Region Director

Encl.

cc: Puyallup Tribal Gaming Commission
Carlos Delos Santos, Tribal Attorney (via email)
Frank Miller, Counsel for BJ's Enterprises, Inc. (via email)

Exhibit B

TRIBAL GAMING REGULATION NO. _____

Section _____ Revenue Sharing Fee Requirement.

A. Any gaming operation licensed pursuant to Section 4.04 of the Tribal Gaming Ordinance shall pay to the Tribe a monthly revenue sharing fee equal to twelve percent (12%) of the monthly Operation Revenue. For the purposes of this Section, "Operation Revenue" means the gross wagers and bets received, plus the gross revenues from all other activities and/or sales at the facility, less the value of complimentary sales (promotions) reflected in gross revenues, and less prizes paid.

B. Within 120 days after the end of the gaming operation's fiscal year, the gaming operation shall submit to the Tribe and the National Indian Gaming Commission (NIGC) a reconciliation report of the fees paid to the Tribe during the preceding fiscal year. This reconciliation report shall be developed by an independent Certified Public Accountant in conjunction with the gaming operation's annual audited financial statements. The reconciliation report shall calculate 60% of the gaming operation's net revenues for the subject fiscal year. If the reconciliation report demonstrates that the fees paid to the Tribe were less than 60% of the gaming operation's net revenues, then the gaming operation shall make a reconciliation payment to the Tribe within thirty (30) days after submitting the reconciliation report. This reconciliation payment shall equal the difference between 60% of the gaming operation's net revenues and the fees paid to the Tribe by the gaming operation during the subject fiscal year. If the reconciliation payment is made according to this Section, then there shall be no interest or late-payment fee charged to the gaming operation. Because the NIGC's 60% requirement is a minimum payment requirement, there shall be no refunds or credits given to the gaming operation if the reconciliation report demonstrates that the fees paid to the Tribe were more than 60% of the gaming operation's net revenues.

C. For purposes of the reconciliation reports and reconciliation payments required under this Section, the term "net revenues" shall have the same

definition as provided by the NIGC's regulations which are in effect at the time, as guided by Generally Accepted Accounting Principles (GAAP). Expenses that are paid to shareholders of the gaming operation, or to parties that are owned/controlled by or closely related to shareholders of the gaming operation ("related-party transactions") may be deducted from gross revenues only to the extent that such related-party transactions reflect legitimate business expenses and fair-market value. The reconciliation report shall identify all related-party transactions and include support for the position that each related-party transaction was a legitimate business expense and did not exceed fair-market value.

Section _____ Payment and Remittance

A. The revenue sharing fee imposed under this Regulation shall be due and payable monthly and remittance therefore shall be made on or before the last day of the month next succeeding the end of the monthly period in which the payment accrued.

B. Each monthly payment shall be accompanied by the Revenue Sharing Form provided by the Tribe's Accounting Department and prepared by the gaming operation's accounting department or independent Certified Public Accountant.

C. Fees required by this Regulation shall be remitted to the Puyallup Tribe of Indians on or before the time required by bank draft, certified check, cashier's check, personal check, money order, wire transfer, or in cash. If payment is made by a draft or check, the required payment shall not be deemed paid until the draft or check is accepted in the usual course of business. Nor shall the acceptance of any sum by the Tribe be an acquittance or discharge of the fees unless the amount paid is the full amount due.

Section _____ Failure To Pay In Full – Penalty fee.

A. If full payment of the revenue sharing fee under this Regulation is not received by the Tribe's Accounting Department on or before the due date, there shall be added as follows:

1 – 10 days late, 5% of fee is due

11-21 days late, 15% of fee is due

22-31 days late, 20% of fee is due

32-60 days late, 25% of fee is due

B. But in no event shall the penalty amount be less than $50.00. In addition to this penalty, the Tribe shall charge the licensee interest of eight percent (8%) of the revenue sharing fees due for each 30-day period or portion thereof that the amounts are past due. Failure to make payment following the day the fee amount initially became due shall be both a civil and a criminal violation of the Tribe's Gaming Ordinance.