National Indian Gaming Commission

SETTLEMENT AGREEMENT

SA-06-11

This Settlement Agreement ("Agreement") is entered into by and between the Puyallup Tribe of Indians ("Puyallup Tribe" or "Tribe"), a federally-recognized Indian tribe, and the Chairman of the National Indian Gaming Commission ("NIGC Chairman") relating to matters contained in Notice of Violation # 06-11 ("NOV-06-11") and an accompanying letter of concern from the NIGC Chairman to the Chairman of the Puyallup Tribe.

CONSENT FINDINGS

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. The Puyallup Tribe adopted a Revenue Allocation Plan ("RAP") in November 1997 to allow the Tribe to make per capita payments to its Tribal members from the net revenues of its gaming activities; and the RAP was approved by the Department of the Interior on April 10, 1998.

3. The Puyallup Tribe repealed its original 1998 RAP and adopted its current RAP in July 2002, which was approved by the Department of the Interior on April 28, 2003.

4. The Puyallup Tribe's current RAP allows the Tribe to allocate its net gaming revenues as follows:

   27.6% to Tribal Government Operations and Programs;
   35.4% to General Welfare of the Tribe and its Members;
   1.6% to Promote Tribal Economic Development; and
   35.4% for Monthly Per Capita Payments to Tribal Members.

5. The Puyallup Tribe's current RAP further provides that: "[a] disbursement of net revenues made to minors and legal incompetents shall be deposited in individual trust accounts established by the Tribe . . . ."

6. The Puyallup Tribe's current RAP further provides that: "a maximum of Three-Hundred Dollars ($300.00) of each monthly per capita payment will be disbursed to the parent(s) [of minors] or legal guardian(s) [of legal incompetents] to be used for the day-to-day health, education, and welfare of the minor or legal incompetent."

7. The NIGC Chairman issued NOV-06-11 to the Puyallup Tribe on June 12, 2006, which contained three separate counts, as follows:

> Count 1 of NOV-06-11 alleged that the Tribe has made monthly per capita payments of $2,000 to each tribal member since on or about May 2002, together with certain periodic "supplemental" or "bonus" distributions to all tribal members, which payments and distributions have exceeded 35.4% of the Tribe's annual net gaming revenues for fiscal years 2003-2005, in deviation from the Tribe's approved RAP.
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> Count 2 of NOV-06-11 alleged that through fiscal years 2003-2005, the Tribe has made deferred distributions of net gaming revenues to minors and legal incompetents into a single holding account owned and controlled by the Tribe, rather than into individual trust accounts as required by the Tribe's approved RAP.
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> Count 3 of NOV-06-11 alleged that from on or about September 2004, the Tribe has disbursed $685 (less a federal tax withholding) of the $2,000/month per capita payments for minors and legal incompetents directly to the parents/guardians of the minors or legal incompetents, in deviation from the Tribe's approved RAP.

8. The NIGC Chairman issued NOV-06-11 with an accompanying cover letter to the Chairman of the Puyallup Tribe, which expressed concern regarding evidence of several other potential problems with the Tribe's use of net gaming revenues, including the NIGC Chairman's concern that the Tribe may have been making non-interest bearing loans to tribal members that were not being repaid; that the Tribe may have been issuing payroll advances to tribal officials and employees that did not comply with the Tribe's payroll advance policy; and that the Tribe may have been cashing out unused annual leave for tribal officials and employees in violation of the Tribe's annual leave policy.

9. The Puyallup Tribe initiated an administrative appeal of NOV-06-11 by timely filing a Notice of Appeal and Supplemental Statement, which set forth the Tribe's position on each count of the NOV as follows:

> The Tribe's position with regard to Count 1 of NOV-06-11 is that the Tribe's $2,000 monthly payments to each tribal member are authorized by both the "per capita" and "general welfare" provisions of its approved RAP, thus allowing a total allocation for these payments of 70.8% of the Tribe's net gaming revenues.

The Tribe's position with regard to Count 2 of NOV-06-11 is that the individual trust accounts for minors and legal incompetents were established in November 2005, and that the deferred payment funds that had accumulated in the Tribe's single holding account were completely distributed to the individual trust accounts by July 19, 2006.

The Tribe's position with regard to Count 3 of NOV-06-11 is that the $685 (gross) payments to the parents and guardians of minors and legal incompetents derive from a combination of the Tribe's gaming and non-gaming revenue, and that non-gaming revenue is used to pay the portion of the direct payments between $300 and $685.

10. The Tribe's administrative appeal was assigned to the undersigned Presiding Official to conduct a hearing and issue a recommended decision, but upon joint motion by the Puyallup Tribe and the NIGC Chairman, the administrative appeal was stayed in order to allow the Tribe and the NIGC Chairman to pursue settlement negotiations.

11. The Puyallup Tribe and the NIGC Chairman wish to enter this Agreement in order to preserve their longstanding relationship; avoid the expense, time and risk associated with litigation; and achieve an amicable resolution of the three counts contained in NOV-06-11, as well as the additional concerns referenced in the NIGC Chairman's cover letter to the Puyallup Tribe.

12. Now, therefore, the Puyallup Tribe and the NIGC Chairman have agreed to enter into this Agreement and perform in accordance with the following covenants, acknowledgments, representations, and conditions:

TERMS OF SETTLEMENT

13. The terms of this Agreement shall be effective on the date that it is certified by the Presiding Official, after it is signed by both parties ("Effective Date").

14. Except as specifically provided below, the terms of this Agreement shall continue in force after the Effective Date until this Agreement may be terminated by written agreement, signed by both parties. Notwithstanding the preceding sentence, the Tribe's notification covenants, set forth in Paragraphs 23-25, will last for ten (10) years after the Effective Date; and the Tribe's reporting covenants, set forth in Paragraphs 26-27, will last for five (5) years after the Effective Date. With regard to the Tribe's per capita payment covenants in Paragraph 18, the NIGC Chairman acknowledges that the Puyallup Tribe may seek approval from the Department of the Interior of an amended RAP, and the NIGC Chairman agrees that, if and when the Department of the Interior approves an amended RAP that changes the percentages of Net Revenue that the Tribe may allocate to per capita payments, then the terms of the amended RAP will control the Tribe's per capita payments as set forth in Paragraph 18 of this Agreement.

15. By entering this Agreement, the NIGC Chairman agrees to waive his right to issue another NOV, impose civil fines, or issue a temporary closure order regarding the issues covered under this Agreement, as long as the Tribe complies with the terms of this Agreement. The Tribe acknowledges and agrees that if the Tribe fails 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 for the violations that have caused a breach of the Agreement.

16. The Puyallup Tribe acknowledges and agrees that the NIGC Chairman's waiver in Paragraph 15 above covers only those issues covered under this Agreement, and does not preclude or otherwise affect any new NOVs that the NIGC Chairman may issue regarding any other enforcement matter under the NIGC's jurisdiction, including, but not limited to, any NOV that the NIGC Chairman may issue with regard to any tribally-licensed business enterprise.

17. For purposes of this Agreement, the term "Net Revenue" or "Net Revenues" shall mean a fiscal year total of: (i) gaming and related revenue received by the Tribe's gaming operations from customers, which includes amounts wagered, plus food, bar and entertainment revenue; (ii) less amounts paid out as, or paid for, prizes; (iii) less total gaming-related operational expenses, as defined by Generally Accepted Accounting Principles (GAAP), including food, bar and entertainment expenses; (iv) plus gaming funds received by the Tribe from any tribally-licensed gaming operation. For purposes of this Agreement, the term "fiscal year" shall mean the period of time from October 1st through the following September 30th, except that for such period of time that includes the Effective Date, the term "fiscal year" shall mean the beginning of the first month that begins after the Effective Date through the following September 30th. Notwithstanding anything in this Agreement to the contrary, the Puyallup Tribe and the NIGC agree to deem the definition of "Net Revenue," for purposes of this Agreement, to be modified by the provisions of any definition of net revenue or net gaming revenue that the NIGC may adopt as a final rule in the future. In agreeing to this provision, the Tribe retains the rights that any affected party would have when the NIGC proposes a new or amended regulation, including the right to comment and to contest a regulation through available administrative and judicial procedures.

18. Beginning with the first month that begins after the Effective Date, the Tribe agrees to make per capita payments in a manner that uses no more than 35.4% of Net Revenue for each fiscal year. After the Effective Date, the Tribe may continue to make no more than two (2) monthly per capita payments of $2,000 (gross) to each tribal member, and must thereafter reduce its monthly per capita payments to such level that the total per capita payments for the fiscal year will not exceed 35.4% of Net Revenue. Notwithstanding the preceding sentences in this Paragraph, if and when the Department of the Interior approves any amendment to the Tribe's RAP that changes the percentage of net gaming revenue that the Tribe may devote to per capita payments, the Tribe may then follow the percentage limitations in the newly-approved RAP amendment. For the fiscal year in which the Department of the Interior approves any such RAP amendment,

the total amount of Net Revenue available for per capita payments shall be calculated as follows:

(i) Take the total Net Revenue for the fiscal year and divide it by the number of months in the fiscal year.

(ii) Multiply the figure in (i) by the number of months in the fiscal year before the Department of the Interior approved the RAP amendment.

(iii) Multiply the figure in (ii) by 35.4%.

(iv) Multiply the figure in (i) by the number of months in the fiscal year including and after the Department of the Interior approved the RAP amendment.

(v) Multiply the figure in (iv) by the maximum percentage allowed for per capita payments in the amended RAP.

(vi) Add the figures from (iii) and (v) to determine the total Net Revenue available for per capita payments in that fiscal year.

19. The NIGC Chairman acknowledges that the Tribe may supplement its per capita payments with non-gaming revenue distributions at the Tribe's discretion, and nothing in this Agreement shall prohibit the Tribe from using non-gaming revenue to make such distributions.

20. The Puyallup Tribe agrees either to: (i) treat any and all supplemental or bonus distributions to tribal members as per capita payments that must fall under the Tribe's percent-based limits to per capita payments found in this Agreement or in any approved RAP amendment; or (ii) document that any such distributions are made from non-gaming revenue. The Tribe further agrees that any such supplemental or bonus payments are subject to federal income tax, and agrees to take the supplemental and bonus payments into account when the Tribe sets withholding rates on per capita payments in general. The NIGC Chairman acknowledges that the terms of this Paragraph do not apply to the Tribe's distribution of bona fide welfare payments to any individual tribal member or category of tribal members, as long as the welfare payments are made pursuant to a tribal welfare program that: (i) was created in response to a recognized need within the tribal community; (ii) has eligibility criteria, including something more than tribal membership, to determine which members qualify to participate in the program; and (iii) does not discriminate by including some members and excluding others without reasonable justification.

21. The Puyallup Tribe represents to the NIGC Chairman that, as of the Effective Date, the Tribe is in full compliance with those provisions of its RAP that require the Tribe to make deferred per capita payments for minors and legal incompetents into individual trust accounts. The Puyallup Tribe agrees to maintain its compliance with such provisions of its RAP, until such provisions may be

modified or terminated by a RAP amendment approved by the Department of the Interior.

22. The Puyallup Tribe represents to the NIGC Chairman that, as of the Effective Date, the Tribe makes monthly direct disbursements to parents and legal guardians of no more than three-hundred dollars ($300) of the per capita payments made to minors or legal incompetents from gaming Net Revenue, in accordance with the Tribe's approved RAP. The Tribe agrees to maintain its compliance with this provision of its RAP, until such provision may be modified or terminated by a RAP amendment approved by the Department of the Interior. For purposes of this Agreement, the NIGC Chairman acknowledges that the Tribe may use non-gaming revenue to supplement its per capita payments to minors and legal incompetents, and that any portion of such non-gaming supplements may be directly disbursed to the parents or guardians of the minors or legal incompetents, at the Tribe's discretion.

23. The Puyallup Tribe represents that, as of the Effective Date and for quite some time before that, the Tribe has not made loans other than payroll advances governed by the policy outlined in Paragraph 24, below. The Tribe agrees that in the future it will not make loans, other than payroll advances, unless and until it first adopts and applies a written policy with rules governing, at a minimum, eligibility, interest to be charged, and repayment terms.

For a period of ten (10) years after the Effective Date, the Tribe shall provide to NIGC any such policy that the Tribe adopts, and shall notify the NIGC of any material changes to such loan policy within thirty (30) days after making any such change. The Puyallup Tribe agrees to follow its loan policy, as it may be revised, and agrees that it will not make loans using gaming Net Revenue that are not in conformance with its loan policy, as in effect at the time. The Tribe further agrees to make a good faith effort to obtain repayment of all loans currently outstanding as of the Effective Date, and to document such efforts for purposes of being summarized in the agreed-upon-procedures report required under Paragraph 27.

24. The Puyallup Tribe represents that as of the Effective Date, the Tribe has established a payroll advance policy as follows:

> A payroll advance is available to an employee of the Tribal government in the amount of one bi-weekly paycheck and must be repaid within one year. That advance must be repaid before the employee is eligible for another advance. An advance will not be granted to pay off an existing payroll advance. If an advance is approved, the employee must sign a promissory note in favor of the Tribe. The Tribe will give an employee an early payroll check only if, on the employee's regular payday, s/he will be: on vacation; away on Tribal business; sick; attending a funeral; on birthday leave; receiving medical treatment; or away from work for reasons related to housing, car repairs, car insurance, or other emergent

need. An early paycheck is available only for one two-week pay period, unless an employee is on extended leave, in which case a maximum of two pay period paychecks will be paid early. An employee's supervisor will verify eligibility.

For a period of ten (10) years after the Effective Date, the Tribe shall notify the NIGC of any material changes to this payroll advance policy within thirty (30) days after making any such change. The Puyallup Tribe agrees to follow its payroll advance policy, as it may be revised, and agrees that it will not make payroll advances that are not in conformance with its payroll advance policy, as in effect at the time. The Tribe further agrees to make a good faith effort to obtain repayment of all payroll advances currently outstanding as of the Effective Date, and to document such efforts for purposes of being summarized in the agreed-upon-procedures report required under Paragraph 27.

25. The Puyallup Tribe represents that, as of the Effective Date, the Tribe has established an annual leave cash-out policy as follows:

> Annual leave cash-outs are restricted to emergency situations. They are available only when an employee has experienced loss of a member of his/her family causing financial hardship, recent involuntary reduction in employment hours, marital separation or divorce causing financial hardship, recent tragedy (e.g., house fire, flooding, crime), threat of foreclosure or eviction from primary residence, significant unpaid tax bill, or emergency repair of employee's primary vehicle, or when an employee or family member has a medical crisis.
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> The employee must submit an application along with documentation in support of the request. Tribal Administration will check the eligibility of the employee under the criteria noted above and will determine whether the employee has accrued the leave requested for cash-out.

For a period of ten (10) years after the Effective Date, the Tribe shall notify the NIGC of any material changes to this annual leave cash-out policy within thirty (30) days after making any such change. The Puyallup Tribe agrees to follow its annual leave cash-out policy, as it may be revised, and agrees that it will not make annual leave cash-outs that are not in conformance with its annual leave cash-out policy, as in effect at the time. All annual leave cash-outs will be documented for purposes of being summarized in the agreed-upon-procedures report required under Paragraph 27.

26. Beginning with the end of the second quarter of fiscal year 2007 (March 31, 2007), the Tribe will at the end of each quarter, for a period of five (5) years after the Effective Date, provide the NIGC with a report detailing, for that quarter, its Net Revenue and the total amount used for per capita payments. The report will also provide a projection of Net Revenue and per capita payments for the full fiscal year, demonstrating how the Tribe plans to meet its per capita limitations by

making any necessary adjustment to the size of the per capita payments for the following quarter, either upward if the Tribe chooses to spend any unused gaming revenue under its per capita limitations, or downward if the data indicates that maintaining the current payments would exceed its per capita limitations.

27. Starting upon the Effective Date, the Puyallup Tribe agrees to send to the NIGC annually for five (5) years, as each becomes available:

    a. The Tribe's audited financial statement.

    b. An internal tribal accounting analysis of the per capita and non-gaming distribution payments to all members or groups of members during the preceding fiscal year, including parent/guarding disbursements and their funding sources, which demonstrates compliance with the terms of this Agreement and, if applicable, any approved RAP amendment.

    c. Proposed agreed-upon procedures for an independent Certified Public Accountant ("CPA") to audit the Tribe's accounting analysis described above and certify compliance or noncompliance with all of the terms of this Agreement and, if applicable, any approved RAP amendment. The NIGC must approve these proposed agreed-upon procedures before implementation. The Tribe must provide these proposed agreed-upon procedures to the NIGC near the end of the first fiscal year which includes the Effective Date, but only thereafter if the Tribe wishes to amend the agreed-upon procedures previously approved by the NIGC.

    d. An agreed-upon-procedures report from an independent CPA that certifies the Tribe's compliance or noncompliance with all of the terms of this Agreement and, if applicable, any approved RAP amendment. This agreed-upon procedures report may be prepared and delivered in conjunction with the Tribe's audited financial statements.

    e. A list of all tribal government welfare programs and the eligibility criteria for each program.

    f. An annual trust account report from the Tribe's trustee summarizing the continued existence, status of, and activity in the minors' trusts that have been created to hold the deferred portion of the minors' per capita payments.

28. The Puyallup Tribe agrees that the NIGC has the authority to monitor and inspect the Tribe's activities for the purpose of verifying the Tribe's compliance with the terms of this Agreement, and the Tribe agrees to provide under this Agreement

any other documents that the NIGC Chairman or his designee may request that are reasonably relevant to the Tribe's representations, covenants and duties under this Agreement. The Tribe stipulates 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 15, thus subjecting the Tribe to the exercise of the NIGC Chairman's enforcement authority as provided by law with respect to the alleged violations and subjects of concern covered in this Agreement. In addition, the NIGC Chairman reserves the right to request other documents from the Tribe under IGRA's monitoring/oversight authority.

ADDITIONAL COVENANTS

29. This Agreement is the entire agreement. Any amendments must be in writing and signed by both parties.

30. The Puyallup Tribe agrees to waive its right to further review of NOV-06-11 as per 25 C.F.R. § 577.9(b)(1), and the Tribe stipulates that NOV-06-11 shall be deemed to be the subject of a final order of the National Indian Gaming Commission under 25 C.F.R. § 575.4(c)(1).

31. The NIGC Chairman and the Puyallup Tribe agree to file a joint motion seeking the Presiding Official's certification of this Agreement, and stipulate that such certification shall constitute dismissal of the appeal and final agency action pursuant to 25 C.F.R. § 577.9(b)(3).

32. The Puyallup Tribe agrees to waive its right to challenge or contest the validity of the order of the Presiding Official dismissing the Tribe's appeal pursuant to 25 C.F.R. § 577.9(b)(2).

33. 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.

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SIGNATURES

Philip N. Hogen, Chairman
National Indian Gaming Commission

Dated: 9/29/06.

HENRY JOHN, VICE-CHAIRMAN

Henry John FOR
Herman Dillon, Sr., Chairman
Puyallup Tribe of Indians

Dated: 10-3-06.

With the authority vested in me by 25 C.F.R. § 577.9, I hereby accept and certify this Agreement as a full settlement of this action and hereby dismiss the action subject to the terms of the Agreement.

Bruce A. Johnson
Bruce A. Johnson, Presiding Official

Dated: 10-6-06.