National Indian Gaming Commission

SETTLEMENT AGREEMENT

SA-06-16

INTRODUCTION

This Settlement Agreement ("Agreement") is entered into by and between the Swinomish Indian Tribal Community, a federally-recognized Indian tribe (the "Tribe"), and the Chairman of the National Indian Gaming Commission (the "NIGC Chairman") relating to the matters contained in Notice of Violation No. NOV-06-16, four separate license suspension notifications signed by NIGC Region Director R.J. Sitton on October 11, 2006 (the "License Notifications"), and a letter dated October 18, 2006, from NIGC Region Director R.J. Sitton, to the Swinomish Tribal Senate and the Swinomish Gaming Commission (the "NIGC Warning Letter").

RECITALS

Whereas, the Tribe has conducted gaming on Indian lands at the Swinomish Northern Lights Casino (the "Casino") in Anacortes, Washington since approximately July, 1994;

Whereas, on August 8, 2006, the NIGC issued NOV-06-16 to the Tribe relating to the failure to submit a timely annual audit report to the NIGC;

Whereas, on October 11, 2006, the NIGC issued the License Notifications to the Swinomish Gaming Commission, requiring the Tribe to suspend the gaming licenses of four individuals who worked at the Casino;

Whereas, on October 18, 2006, the NIGC issued the Warning Letter to the Swinomish Tribal Senate and the Swinomish Gaming Commission, setting forth several problems found during an NIGC investigation into regulatory and accounting practices at the Casino, the substance of which is not agreed to by the Tribe;

Whereas, the Tribe agrees with the federal district court and court of appeals decisions issued in *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F. Supp. 2d 123 (D.D.C. 2005), *aff'd,* No. 05-5402, 2006 U.S. App. LEXIS 25980 (D.C. Cir. Oct. 20, 2006), and does not, by entering this Agreement, consent to the NIGC's assertion of authority to promulgate minimum internal control standards for class III gaming and conduct inspections to determine if Indian gaming facilities are in compliance with such class III minimum internal control standards;

Whereas, the NIGC Chairman and the Tribe desire to resolve fully the issues related to NOV-06-16, the License Notifications, the NIGC Warning Letter, and the letter of October 23, 2006, from Swinomish Tribal Chairman Cladoosby to NIGC Chairman Hogen in order to preserve their longstanding relationship; to avoid the expense, time and risk associated with litigation; and to achieve an amicable resolution of the issues between the Tribe and the NIGC.

Therefore, the NIGC Chairman and the Tribe have agreed to execute this Agreement and perform in accordance with the following:

TERMS OF SETTLEMENT

1. This Agreement is entered into pursuant to 25 C.F.R. § 575.6(b) and shall be effective upon the signature of both parties.

2. The Tribe agrees that, pursuant to the Indian Gaming Regulatory Act ("IGRA") and NIGC regulations, it was required to submit a fiscal year 2005 annual audit report of its gaming operation no later than April 24, 2006. The Tribe further agrees that it did not submit its fiscal year 2005 annual audit report by that date, and admits that the failure to submit an annual audit report in a timely fashion is a violation of IGRA and NIGC regulations. The NIGC acknowledges that the NIGC has now received the Tribe's annual audit report for the fiscal year ending December 25, 2005, and that such audit report was received on August 23, 2006. The Tribe agrees that it shall submit all of its future annual audit reports to the NIGC by the applicable deadlines established by IGRA and the NIGC regulations.

3. The Tribe represents that upon receipt of the License Notifications, the Tribe immediately suspended the gaming licenses of the four subject individuals and placed the four individuals on unpaid leave from the Casino. Regarding final resolution of whether the four individuals are eligible to hold a Swinomish gaming license, the Tribe represents and agrees that:

   a. The subject individual who was the Electronic Games Manager of the Casino has resigned from the Casino and relinquished the individual's gaming license. The Tribe will not re-hire this individual to work at the Casino or reinstate this individual's gaming license.

   b. As to the other three subject individuals, the Swinomish Gaming Commission has initiated a hearing process in which the Swinomish Tribal Court judge has agreed to act as a hearing officer. The hearing officer will rule on issues of procedure and evidence, conduct a hearing, and prepare recommended findings of fact and conclusions of law for consideration by the Swinomish Gaming Commission.

c. The Swinomish Gaming Commission shall decide whether to revoke or reinstate each of the three subject individual's gaming licenses, and shall promptly notify the NIGC of its decisions.

d. Each subject individual shall not be allowed to work at the Casino or draw a paycheck from the Casino unless and until the Swinomish Gaming Commission has reinstated the individual's gaming license.

4. The Tribe agrees to make good faith efforts to ensure that the Casino and its personnel do not make or authorize any expenditure that does not qualify as a legitimate operating expense of the Casino. Under this obligation:

a. The Tribe represents that pursuant to the Tribe's Gaming Code, § 16-08.060(B), it is a violation of tribal law for any person to "Receive, distribute, apply, or direct any property, funds, proceeds or other assets of the Gaming Enterprise to the benefit of any individual or any other person except as authorized by this Title and approved by the Business Committee in the ordinary course of business."

b. The Tribe represents that on or about June 27, 2006, the Swinomish Business Committee, on behalf of the Tribe, adopted the following policy regarding use of Casino property:

> Pursuant to Swinomish Tribal Code § 16-08.060(B) no person shall receive, distribute, apply or direct any property, funds, proceeds or other assets of the Gaming Enterprise to the benefit of any individual or any other person unless specifically authorized by the Swinomish Casino Business Committee in the ordinary course of business.
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> Non-employees are not authorized to use property, funds, proceeds or other assets of the Gaming Enterprise.
>
> The Swinomish Business Committee hereby authorizes the following uses of property, funds, proceeds or other assets of the Gaming Enterprise:
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> - Merchandise or promotional items given to guests or others as a special prize, promotion or marketing effort in the ordinary course of business;
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> - Minimal use of an isolated nature and brief duration by employees of phones, including cell phones, and computers owned by the Gaming Enterprise, provided such use does not interfere with the business operations of the Gaming Enterprise.

c. The Tribe agrees that the Swinomish Business Committee shall not authorize more liberal personal use of Casino property than stated in the policy quoted above, and that the Swinomish Gaming Commission shall enforce Swinomish Tribal Code § 16-08.060(B), as implemented through and informed by the applicable Swinomish Business Committee policies and approvals.

d. The Tribe agrees that all inventory and assets of the Casino shall be purchased, received, maintained and accounted for by appropriate Casino personnel, and that the Casino's purchase and inventory records shall specify the legitimate business purpose served by each inventory item or category of items.

5. The Tribe agrees to ensure that all revenue and expenses of the Casino are recorded in normal and appropriate operating income and expense accounts as provided by Generally Accepted Accounting Principles ("GAAP"). Under this obligation:

a. The Tribe represents that it has now closed what was known as the "Bingo Charity Account" (Account # 2515), and the Tribe agrees that it will not use this account in the future.

b. The Tribe agrees to ensure that all operating expenses of the Casino are recorded in appropriate expense accounts, as provided by GAAP.

c. The Tribe agrees to ensure that all revenues of the Casino are recorded in appropriate income accounts, as provided by GAAP.

6. The Tribe agrees to ensure that the Casino will not make charitable donations or charitable expenditures as an operating expense of the Casino. Under this obligation:

a. The Casino must calculate "net revenues" as provided under NIGC regulations and GAAP, and must distribute its net revenues to the Tribe for proper allocation among those uses authorized under IGRA and the Tribe's approved tribal gaming ordinance.

b. The NIGC acknowledges that the Tribe may make charitable contributions from the Casino's net revenues, as long as the charitable donations are accounted for as an expenditure of the Tribe rather than an expenditure of the Casino. The NIGC further acknowledges that IGRA does not prohibit the Swinomish Tribal Senate from delegating to another tribal entity its authority to allocate gaming net revenues among the uses allowed under IGRA, including the authority to make charitable contributions on behalf of the Tribe.

7. The Tribe acknowledges that the NIGC takes the position that all members of the Swinomish Business Committee are primary management officials under the NIGC's regulations and the Tribe's approved tribal gaming ordinance. Without indicating agreement to that position, the Tribe agrees to implement all applicable licensing

requirements with regard to each member of the Swinomish Business Committee. Under this obligation:

a. The Tribe agrees to begin the background application and investigation process immediately following the effective date of this Agreement with regard to all current members of the Swinomish Business Committee who are not yet licensed, and agrees that no current member of the Swinomish Business Committee who does not have a valid license issued by the Swinomish Gaming Commission within sixty (60) days after the effective date of this Agreement will be allowed to serve on the Swinomish Business Committee.

b. As to any individuals who seek to join the Swinomish Business Committee after the effective date of this Agreement, the Tribe agrees that no such person shall be permitted to serve on the Swinomish Business Committee until such person receives a valid license issued by the Swinomish Gaming Commission.

8. The Tribe agrees to make good faith efforts to ensure that the Swinomish Gaming Commission is able to fully exercise its investigative and audit authority under tribal law. Under this obligation:

a. The Tribe represents that Title 16, Chapter 4 of the Swinomish Tribal Code sets forth the Swinomish Gaming Commission's powers and duties under tribal law, and that among these powers and duties, the Swinomish Gaming Commission:

> May investigate any aspect of the operations of the Gaming Enterprise in order to protect the public interest in the integrity of such gaming activities and to prevent improper or unlawful conduct in the course of such gaming activities, and shall investigate any report of a failure of the Gaming Enterprise to comply with the provisions of the Compact or this Title and may require the Gaming Enterprise to take any corrective action deemed necessary by the Commission upon such terms and conditions as the Commission may determine appropriate; and
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> May compel any person employed by or doing business with the Gaming Enterprise to appear before it and to provide such information, documents or other materials as may be in their possession to assist in any investigation.

b. The Tribe represents that on or about June 27, 2006, the Swinomish Business Committee, on behalf of the Tribe, adopted the following amendment to the Casino's Human Resources Policy Manual (added material in italics):

INFORMATION REQUEST

A. POLICY

It is company policy that all requests for information regarding operations, procedures, policies, or personnel records be handled on a confidential basis and released only with proper authorization.

B. APPLICABILITY

1. This policy applies to all employees.

2. *This policy does not apply to investigations by Swinomish Gaming Commission agents or agents of the Washington State Gambling Commission conducted under the Tribal-State Compact or the Swinomish Gaming Code. Employees are required to cooperate with such investigations under Tribal law. Failure to cooperate could result in disciplinary action or suspension or loss of a gaming license or certification.*

c. The Tribe agrees to make good faith efforts to improve communication between the Swinomish Tribal Senate, the Swinomish Gaming Commission, and the Swinomish Business Committee.

d. The Tribe agrees that the Swinomish Gaming Commission shall be allowed to exercise its authority under tribal law without undue interference from any other tribal entity.

9. The Tribe agrees to develop, adopt, follow and enforce tribal code or regulations that provide a mandatory conflicts of interest policy for members and officials of the Swinomish Gaming Commission, and that require a similar conflicts of interest policy for members of the Swinomish Business Committee. Under this obligation:

a. The Tribe agrees to develop such code or regulations in consultation with the NIGC. The Tribe and the NIGC agree that the code or regulations must contain or require rules for recusal when members or officials of the Swinomish Gaming Commission or the Swinomish Business Committee, as applicable, have a conflict of interest, including when a member of one such tribal entity is also a member of the Tribal Senate, serves on the management staff of the Casino, or is closely related to a member of the Tribal Senate or a person on the management staff of the Casino. As long as such recusal rules are in place, the NIGC agrees that the code/regulations for members of the Swinomish Gaming Commission and the policy for members of the Swinomish Business Committee may—but need not—

prevent members of one subject tribal entity from serving on the membership of another subject tribal entity.

b. The Tribe agrees to send the NIGC its first draft of the code or regulations within thirty (30) days of the effective date of this Agreement.

c. The Tribe agrees to send the NIGC subsequent drafts of the code or regulations within fifteen (15) days after receiving comments from the NIGC on any prior draft.

d. The Tribe agrees to adopt such code or regulations within thirty (30) days after receiving notice from the NIGC that the NIGC has no comments on the last draft received.

e. The Tribe agrees to provide the NIGC with a copy of the final code or regulations and policy within five (5) days after each are adopted.

f. The Tribe agrees to follow and enforce such code/regulations and policy as adopted under this paragraph unless and until the Tribe adopts any amendment to such code/regulations and policy, which amendment(s) must be developed, adopted, followed and enforced in the same manner as the original code/regulations and policy under the terms of this paragraph.

10. The Tribe agrees to develop, adopt, follow and enforce tribal code or regulations that govern the budgeting, authorization, and issuance of complimentary goods and services ("comps") at the Casino, which shall be implemented by a policy of the Swinomish Business Committee covering how comps are authorized and issued at the Casino. Under this obligation:

a. The Tribe agrees to develop such tribal code or regulations in consultation with the NIGC. The Tribe and the NIGC agree that the code or regulations must contain rules for comps issued for gaming, food, beverages, RV park services, golf memberships, tickets to entertainment or sporting events, and any other goods or services offered by the Casino or associated businesses. Such code or regulations must also contain rules authorizing the Swinomish Gaming Commission to audit the Casino and confirm compliance with the code or regulations, investigate possible violations, and bring enforcement actions for alleged violations.

b. The Tribe agrees to send the NIGC the first draft of the code or regulations within thirty (30) days of the effective date of this Agreement.

c. The Tribe agrees to send the NIGC subsequent drafts of the code or regulations within fifteen (15) days after receiving comments from the NIGC on any prior draft.

d. The Tribe agrees to adopt such code or regulations within thirty (30) days after receiving notice from the NIGC that the NIGC has no comments on the last draft received.

e. The Tribe agrees to provide the NIGC with a copy of the final code or regulations and policy within five (5) days after each are adopted.

f. The Tribe agrees to follow and enforce such code/regulations and policy as adopted under this paragraph unless and until the Tribe adopts any amendment to such code/regulations or policy, which amendment(s) must be developed, adopted, followed and enforced in the same manner as the original code/regulations and policy under the terms of this paragraph.

11. The Tribe agrees to require the Casino to develop, adopt and follow an employee policy regarding the availability of free food and beverages for employees, employee recognition and reward programs, and personal use of Casino inventory and assets, including employee use of membership privileges and sporting/entertainment tickets purchased or supplied by the Casino. Under this obligation:

a. The Tribe agrees to require the Casino to develop such policy or policies in consultation with the Swinomish Gaming Commission, and agrees that the final policy or policies, as well as any subsequent amendments thereto, must be acceptable to the Swinomish Gaming Commission.

b. The Tribe agrees to require the Casino to adopt such policy or policies within sixty (60) days after the effective date of this Agreement.

c. The Tribe agrees to provide the NIGC with a copy of the final policy or policies, as well as any subsequent amendments thereto, as adopted, within five (5) days after the policy or policies are adopted.

12. The Tribe agrees to pay a civil fine in the amount of **Twenty-Five Thousand Dollars** ($25,000.00), to be provided to the NIGC within thirty (30) days after the effective date of this Agreement.

13. The Tribe agrees that the NIGC has the authority to monitor and inspect the Tribe's and the Casino's activities for the purpose of verifying compliance with the terms of this Agreement, and the Tribe agrees to provide to the NIGC under this Agreement any documents that the NIGC may request that are reasonably relevant to the Tribe's representations, covenants, and obligations under this Agreement. The Tribe stipulates that the withholding of any such document referenced in the preceding sentence constitutes a breach of this Agreement, and relieves the NIGC Chairman of the waiver in the subsequent paragraph of this Agreement. In addition, the NIGC reserves the right to request other documents from the Tribe under IGRA's monitoring/oversight authority.

14. As long as the Tribe complies with this Agreement, the NIGC Chairman agrees to waive the right to: (i) impose any further civil fine for NOV-06-16; and (ii) issue another notice of violation and civil fines against the Tribe and/or the Casino for issues arising out of the NIGC investigation at the Casino that preceded this Agreement, including but not limited to the issues covered in the License Notifications and the NIGC Warning Letter. If the Tribe fails to comply with this Agreement, or if the Tribe's representations in this Agreement prove to be materially false or misleading, then the NIGC Chairman reserves the right to issue further civil fines and/or pursue another enforcement action or actions against the Tribe and/or the Casino regarding the issues covered in this Agreement. The Tribe acknowledges that the waiver in this paragraph does not apply to any issue or investigation that may arise or take place subsequent to the effective date of this Agreement, and does not apply to any other agency of the federal government.

15. The Tribe agrees upon execution of this Agreement to waive its right to further review of NOV-06-16, including all rights to appeal to the full Commission as outlined in 25 C.F.R. § 577 *et seq.* and judicial review pursuant to 25 U.S.C. § 2714.

16. The Tribe stipulates that this Agreement shall be deemed a final Commission decision and final agency action pursuant to 25 C.F.R. § 577.9(d).

17. This Agreement constitutes the entire agreement between the NIGC Chairman and the Tribe and supersedes all prior verbal or written agreements and understandings between the parties related to the subject matter hereof. No warranties, representations, covenants, or agreements shall be binding upon any party except as set forth herein. Any modification or waiver of any term of this Agreement, including the modification or waiver of term, must be in writing and signed by both parties.

18. The NIGC Chairman and the Tribe expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein and above set shall be binding upon the parties, their agents, heirs, personal representatives, successors and assigns.

19. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purpose of the Agreement.

Swinomish Indian Tribal Community	National Indian Gaming Commission
By: Brian Cladoosby	By:
Brian Cladoosby, Chairman	Philip N. Hogen, Chairman
Date: November 21, 2006	Date: 11-17-2006