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"); and the Nisqually Indian Tribe, a federally-recognized Indian tribe ("Nisqually Tribe" or "Tribe"). This Agreement resolves all of the issues identified in a warning notice dated May 1, 2007, from the NIGC Region I Director to the Nisqually Tribe (Exh. A).

RECITALS

1. The Nisqually Tribe owns and operates a gaming facility known as the Red Wind Casino ("the Casino") in the State of Washington.

2. In a warning notice dated May 1, 2007 (Exh. A), the NIGC Region I Director identified three issues of concern:

   A. The first issue concerned the degree of control over the Casino being exercised by the Nisqually Tribal Council and individual members thereof, together with the fact that the Tribe did not license its Tribal Council members as primary management officials pursuant to the Indian Gaming Regulatory Act ("IGRA") and NIGC regulations. *See* IGRA, 25 U.S.C. § 2710(b)(2)(F); 25 C.F.R. Parts 556, 558.

   B. The second issue concerned sporting and entertainment tickets purchased by the Casino as an operating expense, but which were being used in a manner that did not advance the goal of generating gaming operation revenue.

   C. The third issue concerned the fact that certain members of the Nisqually Tribal Council received, free-of-charge, custom-ordered jackets from the Casino, which treated the charges as an operating expense even though the expense was not incurred to generate sales.

3. The NIGC Chairman and the Nisqually Tribe 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 May 1, 2007.

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4. Now, therefore, the NIGC Chairman and the Nisqually Tribe have agreed to enter into this Agreement and perform in accordance with the following terms.

TERMS OF SETTLEMENT

5. 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 the Nisqually Tribe conducts Indian gaming, or until this Agreement is terminated or amended by written agreement, signed by both parties.

6. The Tribe admits that members of its Tribal Council have not been subject to background investigations and have not been licensed by the Tribal Gaming Commission as primary management officials of the Casino. *See* 25 C.F.R. Parts 556, 558. The Tribe admits that prior to the Tribe's receipt of the May 1, 2007, NIGC warning notice, its Tribal Council gave direction and final approval for Casino policies such as budget, personnel, marketing, travel, security and jackpot winner policies, and made or approved specific decisions such as which games were offered at the Casino and whether the Casino would enter into certain contracts with vendors and sporting venues. The Tribe understands and acknowledges the NIGC's position that the members of a tribal body that exercises such control over a gaming operation are primary management officials, and must be subjected to background investigations and licensed pursuant to 25 U.S.C. § 2710(b)(F); 25 C.F.R. Parts 556, 558.

   A. The Tribe agrees that it will correct this violation by establishing an independent enterprise board to develop operating policies and oversee management decisions for the Casino. Each member of the enterprise board shall be subject to a background investigation and shall be licensed by the Nisqually Tribal Gaming Commission pursuant to the NIGC's regulations and the Tribe's approved tribal gaming ordinance.

   B. Upon the Effective Date of this Agreement, and only until the enterprise board has been established, the Nisqually Tribal Council's authority over Casino operations shall be limited to the following: (1) General Manager hiring and firing; (2) check signing; and (3) emergency situations. Until the enterprise board is established, all other operational decisions shall be made by the appropriate Casino management personnel.

   C. Within sixty (60) days after the Effective Date, the Tribe shall establish the enterprise board referenced in subparagraph A of this paragraph. The Tribe shall deliver a copy of the documents establishing and governing the enterprise board to the NIGC immediately after the documents have been finalized. The Tribe shall follow NIGC regulations with regard to licensing the members of the enterprise board, including the procedures and deadlines for forwarding each application and investigative report to

the NIGC. See 25 C.F.R. § 558.3. As with other primary management officials, members of the enterprise board may begin their service before they receive a tribal gaming license, but the Tribe must forward to the NIGC its investigative report for each member of the board within sixty (60) days after the member begins to serve on the board, and no board member may continue to serve on the board if the board member has not been granted a license within ninety (90) days after beginning his or her service.

7. The Tribe admits that prior to the Tribe's receipt of the May 1, 2007, NIGC warning notice, the Casino purchased and distributed sporting and entertainment tickets in a manner that was not limited to the purpose of generating Casino revenue. The Tribe admits that according to generally-accepted accounting principles ("GAAP"), the cost of tickets that were not purchased to generate Casino revenue should not have been recorded as an operating expense of the Casino.

A. The Tribe represents that after receipt of the May 1, 2007, NIGC warning notice, the Casino adopted an interim action plan (Exh. B) to address the Casino's distribution of sporting and entertainment tickets pending the development of a final ticket policy. The Tribe represents that since adoption of this action plan on May 23, 2007, the Casino has ceased distributing sporting and entertainment tickets to Tribal Council members. The Tribe agrees that it shall continue to operate under this action plan until a final ticket policy is adopted.

B. The Tribe makes the following representations and covenants regarding the Casino's purchase of a Super Bowl travel package for the Tribe's former Chairman, as noted in the NIGC's warning notice. The Tribe represents that it conducted an independent audit and determined that the former Chairman used, without Tribal Council authorization, Red Wind Casino funds in the amounts of $4,798.00 to pay for a Super Bowl travel package; $4,962.00 for August 2005 personal travel expenses; and $4,861.02 in duplicate per diem stipends. The Tribe represents that on May 24, 2007, it sent a letter to the former Chairman demanding repayment of the unauthorized personal charges totaling $14,621.02. On August 7, 2007, the Tribal Council authorized the Office of the Tribal Attorney to commence legal proceedings in the Nisqually Tribal Court to collect that amount from the former Chairman. The Tribe covenants and agrees that it shall make good-faith efforts to pursue this action in tribal court and recover the misappropriated Casino funds.

C. The Tribe agrees to correct this underlying violation by adopting and enforcing a ticket use policy that will limit tickets purchased with Casino funds to those uses that generate Casino revenue. This ticket policy and any amendments thereto will be approved by the Nisqually Tribal Gaming Commission and the NIGC prior to final adoption. The Tribe agrees that

on an annual basis, it shall require the Casino's independent auditor to review compliance with this ticket policy and include a statement in the Casino's annual independent audit report regarding the auditor's findings.

8. The Tribe admits that in 2006, five of its seven Tribal Council members accepted free Pendleton jackets from the former General Manager of the Casino, which were purchased by the Casino as an operating expense. The Tribe admits that such charges were not properly incurred as an operating expense of the Casino, because the jackets were not connected to a Casino marketing promotion. The Tribe agrees that it will no longer allow the Casino to give away jackets or any other items that are not associated with a legitimate business purpose to generate Casino revenue. In addition, the Tribe agrees that each of the five Tribal Council members who accepted a jacket will reimburse the Casino for the cost of each jacket. Such reimbursement will take place within sixty (60) days after the Effective Date of this Agreement. The Tribe shall notify the NIGC after all such reimbursements have been made.

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 issue in this Agreement, as long as the Tribe complies with the terms of this Agreement. The Tribe 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 regarding the issues covered in this Agreement. The Nisqually Tribe acknowledges and agrees 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. The 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 IGRA's restrictions on the use of class II and III gaming revenue, and the Tribe agrees to provide under this Agreement any documents that the NIGC Chairman or his designee may request that are reasonably relevant to such obligations and restrictions. 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 9, thus subjecting the Tribe to the exercise of the NIGC Chairman's enforcement authority as provided by law with respect to the issues covered in this Agreement.

ADDITIONAL COVENANTS

11. This Agreement is the entire agreement, 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 amendments to this Agreement must be in writing and signed by both parties.

12. The Nisqually Tribe stipulates 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 agrees to waive any right to appeal the terms of this Agreement.

13. The parties expressly agree and acknowledge that time is of the essence in this Agreement. This Agreement shall be binding on the parties, their agents, heirs, representatives, successors and assigns.

14. The parties agree that after the Effective Date, this Agreement shall be a public document and may be published or disclosed by either party.

15. 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: 8/17/07

Cynthia Iyall, Chairperson
Nisqually Indian Tribe

Dated: 8-7-07

Exhibit A

May 1, 2007

Cynthia Iyall
Chairperson
Nisqually Indian Tribe
4820 She-Nah-Num Rd. SE
Olympia, WA 98513

RE: Warning Notice

Dear Chairperson Iyall:

As you know, Region I of the National Indian Gaming Commission (NIGC) conducted site visit investigations at the Red Wind Casino in September 2006 and January 2007. As a result of those investigations, we have identified three issues that the Nisqually Indian Tribe (the Tribe) and the NIGC must resolve. The purpose of this letter is to give the Tribe an explanation of these issues and provide an opportunity to resolve the issues through settlement agreement rather than an enforcement action.

Issue #1: Failure to License Primary Management Officials

We are concerned that a pervasive issue facing the Tribe is the degree of control exercised by the Tribal Council over the Casino, together with the fact that the members of the Tribal Council have not been backgrounded and licensed by the Nisqually Tribal Gaming Commission as Primary Management Officials (PMOs). See IGRA, 25 U.S.C. § 2710(b)(2)(F); 25 C.F.R. Parts 556 & 558.

We are aware that after the former Chairman's term expired, the Tribal Council adopted legislation titled "Open Meetings and Conduct of Officials" and also instructed the Casino's General Manager that no individual Tribal Council member may direct, order or otherwise influence any Casino employee. However, it appears that Tribal Council members continue to exercise control over Casino management, presumably because the Tribal Council has the authority to hire and fire Casino management, as well as set the salaries for those positions. Moreover, the Tribal Council as a whole gives direction and final approval regarding casino policies such as budget, personnel, marketing, travel, security and jackpot winner payment policies, as well as specific decisions such as which games are offered at the Casino and whether to enter certain contracts with Casino vendors and sporting venues. Therefore, we are concerned that the Nisqually Tribal Council may be exercising the type of management decisions that would make each Council member a Casino PMO and thereby require a gaming license in accordance with IGRA, NIGC regulations and the Tribe's approved tribal gaming ordinance.

The Tribe can resolve this issue by agreeing either to license its Tribal Council members or to create a licensed board of directors to handle these types of management decisions.

Issue #2: Tickets to Sporting and Entertainment Events

From the information we have reviewed, there seems to be a continuing problem at the Tribe regarding the proper use of sporting and entertainment tickets purchased by the Casino as an operating expense. This is an issue of concern to the NIGC because under IGRA and the NIGC's regulations, tribes may use gaming net revenues only in accordance with certain prescribed uses. 25 U.S.C. § 2710(b)(2)(B); 25 C.F.R. § 522.4(b)(2). The term "net revenues" is defined 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. Because NIGC regulations do not currently contain a definition of the term "operating expenses," tribes must use the term as defined by Generally Accepted Accounting Principles ("GAAP"). According to GAAP:[1]

> **Operating expenses** are primary recurring costs associated with central operations (other than cost of goods sold) that are incurred in order to generate sales. Operating expenses are normally reported in the following two categories:
>
> a. Selling expenses
> b. General and administrative expenses
>
> Selling expenses are those expenses directly related to the company's efforts to generate sales (e.g., sales salaries, commissions, advertising, delivery expenses, depreciation of store furniture and equipment, and store supplies). General and administrative expenses are expenses related to the general administration of the company's operations (e.g., officers and office salaries, office supplies, depreciation of office furniture and fixtures, telephone, postage, accounting and legal services, and business licenses and fees).

Therefore, Indian gaming operations may treat their purchase of tickets as an operational expense only if the tickets are used to generate sales (i.e., gaming operation revenue). Otherwise, the purchase is not an operational expense, and the value of the tickets must be recorded as a distribution of net revenues to the Tribe. If the Casino records the value as a distribution to the Tribe, then the Tribe must ensure that the Tribe's use of the tickets is allowed under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(b)(2)(B). Whether the tickets are treated as an operating expense of the Casino or as a distribution to the Tribe, we recommend that the Tribe consult a tax advisor to ensure that it is complying with federal tax reporting requirements, and that the individuals who receive such tickets are aware of their own federal tax obligations.

In the fall of 2006, the NIGC informed the Tribe that the former Tribal Chairman's use of Casino funds to purchase a Super Bowl trip package for his own personal use did not qualify as an allowable use of gaming revenue under IGRA. In January 2007, the Tribe responded with a letter stating that the Tribe was actively addressing the issue by

[1] Wiley GAAP 2005: Interpretation and Application of Generally Accepted Accounting Principles, Barry J. Epstein, Ervin L. Black, Ralph Nach and Patrick R. Delaney, at 72-73 (2005).

demanding reimbursement of the $4,798 expense from the former Chairman. To date, we have not been informed or received documentation confirming that the Tribe has received such reimbursement or initiated a legal proceeding for nonpayment.

During our January 2007 site visit, it came to our attention that under the Tribal Council's direction, the Casino regularly gives sporting and entertainment tickets to Tribal Council members. Most of these tickets are purchased by the Casino and distributed in accordance with a written ticket policy adopted by the Tribal Council, but tickets to the Seattle Seahawks playoff game were distributed to individual Tribal Council members outside of that written policy. From the NIGC's perspective, the central issue is whether each ticket transaction serves a legitimate business purpose of the Casino by directly or indirectly generating revenue. These home-game ticket transactions are not distinguished from the Super Bowl package discussed above simply because there is no out-of-state travel involved. Nor is the issue resolved simply by authorizing the ticket transactions under a written policy. While a good written policy may certainly help maintain compliance with IGRA, the policy must not authorize ticket transactions that are used for any purpose other than to generate sales.

The Tribe can resolve this issue by ensuring that the Casino limits the use of sporting and entertainment tickets purchased by the Casino to those uses that generate casino revenue.

Issue #3: Pendleton Jackets

In late 2006, after an inquiry from the Nisqually Tribal Council, the Casino's General Manager instructed Casino gift shop personnel to give, free-of-charge, one Pendleton jacket to each member of the Tribal Council. According to our understanding, five of the seven Tribal Council members accepted such jackets from the Casino, which were special-ordered at a total cost to the Casino of $1,329.80. This transaction was treated as an operating expense of the Casino, but it appears that the expense was not incurred in order to generate sales. See discussion under Issue #2, above.

The Tribe can resolve this issue by ensuring that the Casino is reimbursed by the subject Tribal Council members.

Our Office of General Counsel will contact your legal counsel to discuss whether these issues may be resolved through settlement agreement. In the meantime, if you have any questions, you may contact me at (503) 326-5009.

Sincerely,

R.J. Sitton

R.J. Sitton
Regional Director

cc: Lorna Kalama, Nisqually Tribal Gaming Commission Chair
Fabio Apolito, Nisqually Tribal Attorney
Lance Vallo, NIGC Acting Director of Enforcement
Jeffrey Nelson, NIGC Staff Attorney

Exhibit B

Nisqually RED WIND CASINO • 12819 Yelm Highway • Olympia, Washington 98513 • Ph. 360-412-5000 • Fax 360-412-8275

May 23, 2007

On the date of May 10, 2007, the Casino received notice by the Chairman of the Nisqually Tribal Council, Cynthia Iyall, that an NICG letter pertaining to Casino Operation had been received. Upon review of this letter, it was determined that immediate action is necessary by ceasing all tickets issued specifically to Tribal Council.

On the date of May 15, 2007, during the Casino report to Tribal Council, all council members were informed that the Suite Ticket program has been suspended pending Tribal Council final directive with Tribal Gaming Commission concurrence on response to the NICG letter of recommendations and corrective action to follow.

On the date of May 17, 2007, the Casino Marketing Department was informed that Tribal Council ticket allocation was no longer a part of promotional allocations and should not be associated with any drawings or allocation lists that are submitted for approval by the Marketing Department.

Upon further review, those tickets that are drawn for tribal member entries and employee recognition purposes have also been re-evaluated.

On the date of May 17, 2007, it was determined that further drawings for Tribal Members were also in question and that the casino would have to take the necessary steps to ensure that only Tribal Members who are gaming patrons would be eligible if the casino does continue this type of drawing. Secondly, drawings for Employee tickets were discussed with the Employee Recognition Committee and Marketing. They were requested to estimate a cost on the suite tickets that are awarded to employees and properly expense that amount to the Employee Recognition account.

On the date of May 21, 2007, Casino Management determined to suspend the Employee Ticket Drawings and Tribal Member Drawings until it can be re-evaluated and redesigned into the Marketing Strategy. This will be in effect until further notice after we get a fulltime, permanent General Manager on board.

Immediate determination is that no tickets will be issued to Tribal Council, that all Tribal Member drawings will be changed to ensure that they meet the requirements to be determined as marketing purposes, and that any further Employee Recognition allocations be expensed properly.

Subsequent steps will include that a suite allocation policy will be drafted which incorporates recommendations by the NIGC. This policy will be approved by Tribal Council and submitted to the NTGC for final approval prior to implementation.

Chaabo Frazier, Interim GM — Date: 5/23/07

Clan Cult, Interim GM — Date: 5/23/07