

AGREEMENT BETWEEN  
THE WASHINGTON STATE LIQUOR CONTROL BOARD  
AND THE PORT GAMBLE BAND OF S'KLALLAM INDIANS  
FOR PURCHASE AND RESALE OF LIQUOR  
IN INDIAN COUNTRY

WHEREAS, the Port Gamble Band of S'Klallam Indians and the Washington State Liquor Control Board desire to continue a government-to-government agreement for the sale and purchase of liquor in order that liquor sales may take place in Indian country in accordance with the requirements of federal law (18 U.S.C. §1161), Port Gamble Tribal Ordinance, and State law to the mutual benefit of both the Tribe and the Board, and

WHEREAS, it is recognized by all parties to this agreement that, in conformity with the Centennial Accord of August 4, 1989 between federally recognized Washington State Indian Tribes and the State of Washington, the governmental authority of the Tribe over its own affairs and its sovereignty under law is not altered, dismissed, or abdicated in any way by entering into this agreement, and

WHEREAS, the governmental authority and sovereignty of the State of Washington as declared by the Twenty-First amendment to the United States Constitution and applicable acts of Congress is not altered, dismissed, or abdicated in any way by entering into this agreement, and

WHEREAS, it being the sole intention of the parties to this agreement to maintain the government-to-government arrangement whereby liquor may be sold by the Tribe on its reservation within Indian country as defined by 18 U.S.C. § 1151 and § 1154, in conformity with federal law, tribal ordinance, and State law;

NOW, THEREFORE, pursuant to authority of federal law, tribal ordinance, and State law, it is hereby agreed between the Port Gamble Band of S'Klallam Indians, acting by and through its governing tribal council, and the Washington State Liquor Control Board as follows:

1. The Board agrees to sell distilled spirits as well as wine and beer that it handles to the Tribe, and the Tribe agrees to purchase all distilled spirits for resale in Indian country from the Board. Should the Tribe be desirous of selling beer and wine not available from the Board, the Tribe agrees to obtain the appropriate State beer and/or wine license and purchase that beer and wine from a State licensed beer and/or wine wholesaler.
2. The Board shall use its best efforts to supply all liquor products ordered by the Tribe. The Tribe shall have its orders filled on the same basis as the orders of the State liquor stores and State liquor agencies. In the event that the Board's supplies of an allocated item (i.e. one in short supply) are insufficient to satisfy all orders by all of the Board's customers, available supplies will be equitably available among all customers.
3. The purchase price of the distilled spirits shall be the standard case cost to the Board plus a handling charge of 10 percent plus the tax imposed by RCW 82.08.150, or any future

applicable tax, except that the standard case cost will be reduced by a like amount when the Board matches a special promotional allowance received from a supplier. PROVIDED, that each year of this agreement, the Tribe may purchase a number of gallons of spirituous liquor free of the tax imposed by RCW 82.08.150 or any future applicable tax. The number of gallons will be determined annually by multiplying the number of tribal members twenty-one years old and over times 3.0 gallons. The Tribe will furnish an annually updated number of tribal members twenty-one years old and over to the Board thirty (30) days prior to the end of each year of this agreement for this purpose.

4. The purchase price of wine and beer handled by the Board shall be the standard case cost to the Board plus a handling charge of 10 percent plus, in case of wine, an amount equal to, and in lieu of, the taxes imposed by RCW 66.24.210, or any future applicable tax of wine and beer.

5. The Board shall invoice the Tribe for the cost of the liquor and the FOB point shall be the tribal store. Provided, that the Tribe shall have a right to change the FOB point to the Board's warehouse, whereby the handling charge in #3 and #4, above, will be reduced to 8%. The Tribe agrees to provide 30-day notification to the Board if electing to pursue this option.

6. Purchase of liquor by the Tribe shall be consummated upon payment by money order, certified check, or tribal check. The payment shall be placed in the United States mail the same day the liquor is delivered. The Tribe must provide a bond or a letter of credit from a bank protecting the Board from non-sufficient funds or non-mailing of payment, equal to one (1) approximate month purchase to insure payment.

7. Sales of liquor to the Tribe by the Board include return privileges for mechanical ordering and shipment errors. Claims for stock damaged in transit, missing items, dry breaks, and defective products or containers will be allowed as they occur.

8. The Tribe agrees to resell all distilled spirits, beer, and wine purchased from the Board, at a per unit total retail price equal to that of the Board's total retail price in effect at that time, including all applicable taxes. PROVIDED, that the Tribe may, at its option, reduce prices on twenty (20) items each contract year, and each reduction shall be limited to one month, with the retail price of those items being no less than 90 percent of the Board's total retail price including taxes of that item in effect at that time.

9. The Tribe may advertise its retail outlet's location and services in any medium which serves the reservation community and people who reside in close proximity to the Tribe's reservation. PROVIDED, that advertisements of spirituous liquor may only be placed in print media and that the Tribe shall limit any media advertising to newspapers which are primarily distributed in the market area served by the tribal store. Any such advertising will not contain direct comparisons between Tribal prices and State prices.

10. In recognition of the fact that this agreement is a government-to-government agreement, it is agreed that the Tribe shall not be considered part of, or under the control and supervision of, the Board's stores and agencies division. A representative of the Board shall have the right to visit the Tribe's retail outlet at any time during regular business hours to review the administration of this agreement.

11. The Board's enforcement division exists to supplement the liquor enforcement efforts of local police authority under RCW 66.44.010. Any Board enforcement activities on the Port Gamble Reservation will be coordinated with, and at the request of, the Port Gamble Band of S'Klallam Indian's tribal law enforcement authority.

12. The Tribe agrees that all liquor sold by the Tribe shall be sold from a tribal store located within the exterior boundaries of the Port Gamble S'Klallam Reservation. Said store shall be located at S.E. 1/4, Section 9, Township 27 N. Range 2 E., W.M. Relocation of the tribal outlet shall be subject to prior agreement between the Tribe and the Board.

13. The Board agrees that it will not locate any State liquor stores or State liquor agencies within 5.2 miles of the Tribe's store. PROVIDED, that the Board may operate a State liquor store or liquor agency at any location within Sections 25 and 26, Township 27 N. Range 2 E., W.M., known as the community of Kingston, Washington.

14. The Tribe agrees that all external signing shall meet applicable zoning ordinances.

15. The hours of sale of distilled spirits, beer and wine, by the Tribe shall be set by the Tribe but shall not include the hours between 2 a.m. and 6 a.m. on weekdays. There shall be no sale or delivery of distilled spirits on Sunday. If sale of distilled spirits is ever allowed on Sundays for State liquor stores or agencies, the same shall apply to the Tribe.

16. The Tribe agrees with the Board that all sales of liquor on the Port Gamble Reservation will conform to the requirements of federal law, the Tribe's federally approved tribal liquor ordinance, and State law relating to liquor transactions.

17. The Tribe agrees not to import any distilled spirits, beer or wine, into the Port Gamble Reservation except as provided in this agreement.

18. The Tribe agrees not to solicit, or accept, money or monies' worth from liquor manufacturers, importers or wholesalers. PROVIDED, that it is agreed that the Tribe may accept such items as are permitted to be accepted by licensees of the Board under applicable State law.

19. The term of this agreement shall be for a period of ten (10) years and shall include an option to renew subject to satisfactory renegotiation of the conditions hereof. The term shall commence January 1, 1994. If at the expiration of this agreement a new replacement has not been negotiated, the terms and conditions of this agreement shall continue to be in force until such time as a new agreement is negotiated or until either party wishes to cancel the agreement, which either party may do.

20. The Tribe may terminate this agreement at any time if in the judgment of the Tribe it is in the best interest of the Tribe to cease the sale of liquor. If the Tribe elects to discontinue its retail sales of liquor, the Board shall buy back from the Tribe the entire inventory, purchased from the Board, remaining in the Tribe's possession by paying the current sale price to the Port Gamble Band of S'Klallam Indians, subject to adjustment for a pro-rata share of the tax exemption quota for the period.

21. Should the Tribe's retail liquor outlet fail to comply with this agreement, federal law, tribal ordinance, or provisions of Washington State law relating to liquor transactions (including WAC 314-37-010 as amended by the Board on November 30, 1983), this

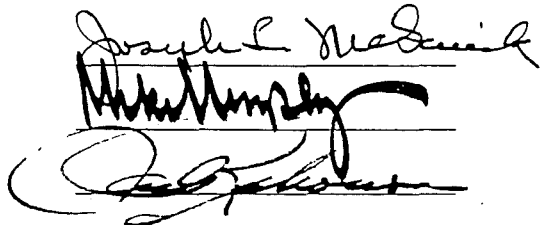
agreement shall be null and void. PROVIDED, that no subsequent amendment to WAC 314-37-010 shall affect in any way the terms of this contract.

22. Time of performance under this agreement is of the essence.


23. This agreement shall inure to the benefit of and be binding upon the parties named herein and upon their successors in interest. This agreement may not be assigned by either party.

IN WITNESS WHEREOF, the parties have signed this agreement to commence on the 1 day of January, 1994.

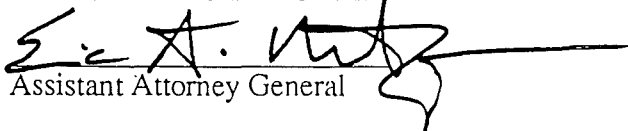
WASHINGTON STATE LIQUOR CONTROL BOARD BY:

  
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PORT GAMBLE BAND OF S'KIALLAM INDIANS BY:

  
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Gerald J. Jones  
Tribal Chairman

APPROVED AS TO FORM:

  
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Assistant Attorney General