

NON-DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT (the “Agreement”) is made as of (the “Effective Date”), by and between **NISQUALLY RED WIND CASINO**, an entity owned and operated by Medicine Creek Enterprise Corporation, a wholly owned entity of the Nisqually Indian Tribe, located at 12819 Yelm Hwy SE, Olympia, WA, (together with its affiliates, the “Casino”), and , a with a principal place of business at (together with its affiliates, if any the “Company”).

WHEREAS, the Casino desires to enter into discussions with the Company for the purpose of the Casino’s RFP for Owner’s Representative services (the “Stated Purpose”).

WHEREAS, in the course of such discussions, the Casino will disclose to Company certain information that the Casino considers confidential or proprietary; and

WHEREAS, the use of the Confidential Information by, or its disclosure to, any person, organization, or entity other than the Company would be highly detrimental and damaging to the Casino.

NOW, THEREFORE, with the foregoing recitals being incorporated hereby by reference and deemed an essential part hereof and in consideration of the mutual promises contained herein, including the willingness of the Casino to disclose Confidential Information to Company, the parties hereto agree as follows:

1. **Confidential Information.**

(a) This Agreement applies to all information disclosed by the Casino to the Company, whether prior to or after the Effective Date, in whatever format and whether as delivered materials, or as written or oral information, or information acquired by Company by observation as a result of access given by the Casino, and, without limiting the generality of the foregoing, any other information that by its nature is confidential or proprietary, if such disclosure is initially in written form, or, if non-written (orally, visually or other sensory disclosures), then as so identified at the meeting at which such information is disclosed (collectively and individually “Confidential Information”). The Confidential Information shall include, but is not limited to, methods, business plans, product development and strategies, know-how, trade secrets, services, business and marketing data and plans, and product development results and plans, any propriety financial information, payroll and salary data, policies and procedures, processes and structures, traditional or cultural knowledge, any other technical, scientific, environmental, and/or business information, and any product expressly stamped or marked confidential. Confidential Information shall also include the Stated Purpose and the fact that the parties are discussing the Stated Purpose.

(b) Confidential Information shall not include information which: (i) the Company can show was previously known to it prior to receipt from the Casino, without

breach of an obligation of confidence to any third party; (ii) is now, or hereafter becomes, through no act or failure to act on the part of Company, generally known or available to the public; (iii) is hereafter rightfully furnished to or acquired by Company from a third party, without restriction as to use or disclosure; (iv) is information which Company can document was independently developed or acquired by Company without breach of any obligation of confidentiality or use of or access to any of the Casino's Confidential Information; or (v) the Company is obligated to produce as a result of a court order or other valid and legally enforceable mandate, provided that the Casino has been given notice thereof and an opportunity to waive its rights or to seek a protective order or other appropriate remedy.

2. **Nondisclosure of Confidential Information.** Company agrees that it shall (a) hold the Casino's Confidential Information in strict confidence, (b) take all reasonable steps (which shall include at least those taken by a reasonable person desirous of protecting its most valuable proprietary and confidential information) as may be necessary to prevent the disclosure of Confidential Information to others and to insure that any officer, director, employee or agent of Company who receives any Confidential Information are bound by the confidentiality and limitation of use obligations set forth herein, and (c) not use any Confidential Information of the Casino for any purpose except for the discussions between the parties related to, and in furtherance of, the Stated Purpose. Subject to clause (b) above, Company may disclose the Casino's Confidential Information to Company's responsible employees, attorneys, accountants and agents who have a bona fide need to know (the "Representatives"), but only to the extent necessary to carry out the Stated Purpose and to the extent that the Representatives are subject to confidentiality obligations at least as restrictive as those set forth herein. Company will be responsible for any disclosure by its Representatives.

3. **Compelled Disclosure.** In the event Company or any of Company's officers, directors, employees or agents is requested or required (including, without limitation, by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand or similar process) to disclose any Confidential Information, Company or its employees or agents, as the case may be, shall notify the Casino promptly in writing so that the Casino may seek a protective order or other appropriate remedy. Company agrees not to oppose any action by the Casino to obtain such protective order or other remedy. Whether or not such protective order or other remedy is obtained, the Company agrees that it will furnish only that portion of the Confidential Information that it reasonably believes is legally required, after consultation with counsel, and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the information so disclosed. Any waiver by the Casino in accordance with this Section 3 shall not be deemed continuing or a waiver of any other term or condition of this Agreement.

4. **Return of Documents.** All Confidential Information, together with all copies, notes, extracts, or summaries thereof or with respect thereto, shall remain the exclusive property of the Casino. Upon the expiration of this Agreement or at the Casino's request, whichever is earlier, Company shall promptly return to the Casino all tangible

items containing or consisting of the Casino's Confidential Information, together with all copies thereof and all notes, summaries, analyses, compilations or other similar documents prepared by Company relating thereto, or, at the request of the Casino, destroy the same and confirm the destruction thereof to the Casino in writing. The obligation to return or destroy does not apply to any Confidential Information that the Company is required to retain by applicable law or to satisfy the requirements of any regulatory authority or similar legal purpose, or that is generated through automated back-up copies; provided, however, that any retained Confidential Information shall be subject to the terms of this Agreement for so long as it is retained notwithstanding anything to the contrary herein.

5. **No License Granted.** Nothing contained in this Agreement will be construed as granting any rights to Company, by license or otherwise, to any of the Casino's Confidential Information. Specifically, and without limitation, the Company shall have no license or right to use any secret information in developing any invention, discovery, know-how, trade secret, patent, trademark, or copyright. This Agreement shall not obligate the parties to enter into any subsequent agreement or business arrangement.

6. **Enforcement.** Company acknowledges and agrees that any breach or threatened breach of the terms of this Agreement regarding the disclosure, treatment or use of Confidential Information may result in irreparable damage to the Casino for which there may be no adequate remedy at law. Therefore, the parties agree that in the event of any breach or threatened breach of this Agreement by Company, the Casino shall be entitled, in addition to any other rights and remedies available to it, to injunctive relief without the posting of a bond requiring the immediate return of all Confidential Information in the possession of Company or any such third party, and enjoining Company and any parties to which they have made Confidential Information available from using Confidential Information in violation of this Agreement, all without showing or proving any actual damages have been sustained. Company agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by the Casino in enforcing the terms hereof or arising from a breach hereof by Company if the Casino is awarded any injunctive relief or otherwise prevails in any action for breach of the terms hereof by Company.

7. **Disclaimer.** Company understands and acknowledges that neither the Casino nor any of its affiliates is making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information disclosed to Company, and the Casino and its councilmembers, officers, directors, employees, advisors, agents or affiliates expressly disclaim any and all liability to the Company or any other person that may be based upon or relate to (a) the use of the Confidential Information disclosed to Company by Company or any of the Representatives or (b) any errors therein or omissions therefrom.

8. **Survival.** This Agreement shall survive the termination of any business relationship between the parties for a period of two (2) years.

9. **No Assignment.** This Agreement shall not be assigned by Company without the express written consent of the Casino, except in the event of any reorganization,

merger, or acquisition of the Company whereby the Company's obligations set forth herein are transferred or assigned to the Company's legal successor.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Nisqually Indian Tribe and applicable federal law without giving effect to any conflict of laws provisions that would require the application of another jurisdiction's laws. The sole and exclusive venue for any dispute arising from this Agreement shall be the Nisqually Tribal Court.

10. **Entire Agreement; Successors and Assigns.** This Agreement is the complete and exclusive agreement of the parties hereto regarding the specific subject matter of this Agreement and supersedes in their entirety all prior agreements, understandings and communications, oral or written, between the parties regarding the specific subject matter of this Agreement, and will be binding upon and inure to the parties' respective successors and assigns, and, as applicable, heirs and representatives, and may only be amended by a writing signed by the parties or their respective successors, assigns or authorized representatives.

11. **Severability.** Should any provision of this Agreement be held by a court of competent jurisdiction to be invalid, unlawful, or void, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though contained in this original Agreement. The parties further agree that any such court is expressly authorized to modify any such invalid, unlawful, or void provision of this Agreement in lieu of severing such provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modification that the court deems warranted to carry out to the maximum extent permitted by law the original agreement of the parties.

12. **Counterparts.** This Agreement may be executed in any number of counterparts (delivery of which may occur via facsimile or electronically scanned copy), each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective at such time as counterparts thereof have been executed by each of the parties and it shall not be a condition to its effectiveness that each of the parties has executed the same counterpart.

(The signature page follows.)

NISQUALLY RED WIND CASINO

By:_____

Name:

Its:

By:_____

Name:

Its: