

## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this "Agreement") dated as of [\_\_\_\_\_, 202\_], by [\_\_\_\_\_] whose address is [\_\_\_\_\_] (together with its successors and assigns, the "Recipient") and Mashpee Wampanoag Tribe, a federally recognized Indian tribe (the "Tribe," and together with the Recipient, the "Parties").

The Tribe and Recipient have a mutual interest in exploring and/or discussing one or more business arrangements (a "Potential Transaction") and in connection therewith the Tribe or its instrumentality, the Mashpee Wampanoag Tribal Gaming Authority (the "Authority") may offer to deliver to Recipient or Recipient may request to receive or be offered access to Confidential Information as defined below.

NOW THEREFORE, in consideration for the Tribe's disclosures, Recipient agrees to be bound by all of the following terms and conditions:

1. Additional Defined Terms.

"Affiliate" means, with respect to any person, any other person who controls, is controlled by or is under common control with that person, together with the successors or assigns of each.

"Confidential Information" includes, without limitation, any information of any nature and in any form, whether financial or otherwise, concerning a Tribal Party, the Tribe's government or its members, and any business arrangement or activity of any nature concerning a Tribal Party, including the development or construction of any facilities or properties, whether or not marked as "confidential" or "proprietary," which is disclosed to or obtained by a Recipient Party by or from a Tribal Party, because of the existence of this Agreement, but excluding information that (a) is now in the public domain, (b) after the date of this Agreement enters the public domain through no action by a Recipient Party in violation of this Agreement; (c) is now or later in the possession of a Recipient Party through no action by a Recipient Party in violation of this Agreement, (d) after the date of this Agreement comes into a Recipient Party's possession on a non-confidential basis and not, to the reasonable knowledge of a Recipient Party, received in connection with a violation of a confidentiality obligation owed by another to a Tribal Party, (e) is independently developed by a Recipient Party without reference to, or the use of, any other Confidential Information; or (f) is approved for disclosure or release by written authorization from an authorized Representative of the Tribe or the Authority.

"Recipient Party" means Recipient, its Affiliates and Representatives.

"Representative" means, as to any person, such person's officers, directors, members, employees, attorneys or authorized agents, and in the case of the Tribe, includes any member of the Tribe's Tribal Council and in the case of the Authority, includes any member of the Authority's board of directors.

"Tribal Party" means the Tribe and any department, division, board, committee, agency, instrumentality, component, subsidiary, enterprise, including the Authority, and any Representative of the Tribe or the Authority.

2. Non-Disclosure. Except as otherwise expressly permitted in this Agreement, each Recipient Party shall keep all Confidential Information confidential and shall not disclose, reveal or discuss it to or with any person other than a Tribal Party or Recipient's Affiliates and Representatives who are involved in evaluating the Potential Transaction or approving, preparing, participating in or providing the Potential Transaction, and who agree or are subject to an authorized direction from another Recipient Party to maintain the Confidential Information as confidential in accordance with the terms and conditions of this Agreement.

3. Permitted Disclosure. If a Recipient Party is required to disclose Confidential Information because of a law, rule, regulation or legal process, Recipient shall to the extent reasonably practical provide reasonably prompt notice (unless such notice is prohibited by law, rule or regulation (collectively, "Law")) to the Tribe of any such requirement so that the Tribe may, at its option and expense, commence any proceeding to seek a protective order or other appropriate remedy to prevent or keep confidential the Confidential Information. Recipient agrees that each

Recipient Party shall reasonably cooperate with the Tribe in any such proceeding, at the Tribe's expense; provided that the foregoing shall not be construed to require a Recipient Party to undertake litigation or other legal proceedings on its own behalf. In the absence of a protective order, nothing in this Agreement shall limit or otherwise affect a Recipient Party's right to disclose Confidential Information as required by Law. Regardless of whether or not such protective order or other appropriate remedy is obtained, a Recipient agrees that a Recipient Party shall only furnish that portion of the Confidential Information that the Recipient Party is required to furnish because of such Law. In addition, without notice to any Tribal Party, any Recipient Party may disclose, to the extent reasonably required, Confidential Information if required by state or federal bank, securities, tax, gaming or other regulatory or self-regulatory authority having jurisdiction over a Recipient Party.

4. Ownership, Return or Destruction of Confidential Information. The Tribe does not grant to any Recipient Party any right, title or interest of any kind in any intellectual property contained in or relating to Confidential Information. At any time upon the written request of the Tribe, Recipient shall cause all Recipient Parties to return to the Tribe or destroy (at each Recipient Party's sole option) all physical forms of Confidential Information in the possession of a Recipient Party, provided, however, that (a) a Recipient Party may retain copies of any analyses, compilations, forecasts, studies, memoranda, notes or other working papers prepared by a Recipient Party ("Recipient Work Product") that contain or reflect Confidential Information so long as such Recipient Work Product is kept confidential as Confidential Information in accordance with the other provisions set forth in other provisions of this agreement, (b) a Recipient Party may retain copies of the Confidential Information to the extent required by Law or internal documentation retention or audit policies so long as such copies and the Related Confidential Information are kept confidential as Confidential Information in accordance with the other provisions set forth in this agreement and (c) a Recipient Party shall in no event be required to erase or return any information from computer hard drives, tapes or memory or other electronic forms of information retention processes, materials or equipment.

5. Remedies. **Recipient acknowledges that monetary damages for breach of any obligation under this Agreement may not be adequate and that the Tribe shall be entitled to injunctive relief in addition to any and all other remedies available at law or in equity without the necessity of having to post bond in any court of competent jurisdiction. Recipient shall be responsible for any breach of this Agreement by a Recipient Party who has not executed and delivered to Recipient an agreement of substantially the same substance as this Agreement. In the event of a breach of this Agreement, the non-breaching party shall be entitled to recover from the breaching party all of the non-breaching party's damages, including its attorneys' fees and litigation costs.**

6. Miscellaneous. This Agreement shall be binding on, and shall inure to the benefit of, the Parties, provided that no person other than the Parties hereto may enforce the provisions of this Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect to the subject matter hereof.

7. Governing Law; Consent to Jurisdiction; Jury Trial Waiver. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to principals of conflicts of law.

8. Term. This Agreement shall automatically terminate on the earlier of (a) three (3) years from the date of this Agreement and (b) the execution by the Parties of any other agreement which addresses the disclosure or non-disclosure of Confidential Information (unless such future agreement specifically provides that this Agreement shall nevertheless remain in effect).

9. Effectiveness. This Agreement will be deemed effective and a valid and binding agreement as between the Parties (without the requirement that the Tribe sign this Agreement) as of the date first written above, when a PDF (portable documents format) copy of this Agreement, signed on behalf of the Recipient, is e-mailed to:

Brian Weeden, Chairman  
Mashpee Wampanoag Tribe  
483 Great Neck Road South  
Mashpee, MA  
Brian.weeden@mwtribe-nsn.gov

with copies to:

Rebekah Salguero, Esquire  
Ocotillo Law & Policy Partners  
6650 Gunpark Drive, Suite 100  
Boulder, CO 80301  
rsalguero@olp-partners.com

and to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. No Obligation. It is acknowledged by the parties hereto that this Agreement does not (i) obligate any Tribal Party to enter into any further agreement with and Recipient Party or any Recipient Party to enter into any further agreement with any Tribal Party, or (ii) restrict any Recipient Party or any Tribal Party from entering into any agreement with any other person to the extent the performance thereof does not cause a violation of this Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the Recipient caused this Agreement to be executed and delivered by its duly authorized officer as of the day and year and at the place set forth above.

RECIPIENT: \_\_\_\_\_

\_\_\_\_\_

By

\_\_\_\_\_

[Name, Title]  
(Authorized Signatory for Recipient)