



200 SW Market Street, Suite 1777
Portland, Oregon 97201-5771

T 503.225.0777
F 503.225.1257

www.hk-law.com

Michael E. Haglund
Michael K. Kelley
Michael G. Nelf
Julie A. Weis
Christopher Lundberg
Matt Malmshelmer
Joshua Stellmon
Eric J. Brickenstein
Christopher T. Griffith

LeRoy W. Wilder
Retired

September 8, 2017

VIA EMAIL

Erika McConnell
Director
Alcohol & Marijuana Control Office
550 West 7th Avenue, Ste. 1600
Anchorage, AK 99501
erika.mcconnell@alaska.gov

Re: The Metlakatla Indian Community

Dear Ms. McConnell:

On behalf of the Metlakatla Indian Community (the "Community"), thank you and the members of the Alcohol Board (the "Board") for providing the opportunity to meet with the Board on September 13, 2017. The Community is looking forward to this consultation as a first step toward establishing a strong government-to-government relationship and collaboration with the Board regarding alcohol sales on the Annette Island Reserve.

In that regard, the Community is the only federally recognized tribe in Alaska that has a reserved land base – the Annette Island Reserve. As such, the Community is a sovereign nation, with all the related powers to govern its members within the boundaries of the Reserve. Given the unique, sovereign status of Indian tribes, the federal government and many state governments have undertaken substantial efforts to strengthen their respective government-to-government relationships with Indian tribes, using a robust consultation and collaboration process to do so.

As related to alcohol sales on Indian lands, the State of Washington's approach is a useful guide. Please note that by highlighting Washington's approach, we recognize that Washington's alcohol laws are different than Alaska's and in that regard, are not suggesting that the State of Alaska follow Washington's model in a strict, technical sense. Rather, we point to it simply as a good example of the measure of respect Washington has given to tribal sovereignty and the related consultation process – and hope that the Board will approach its dealings with the Community in the same spirit.

In 1989, the State of Washington and the federally recognized tribes in Washington entered into the Centennial Accord to establish a sincere government-to-government relationship between Washington and the Washington based tribes. It established a commitment by the parties to build confidence in the government-to-government relationship, and to provide a framework for the development of future

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agreements concerning specific issues. In 1999, the same parties entered a New Millennium Agreement, which was designed to institutionalize their government-to-government relationship. That agreement reflected the importance of a strong government-to-government relationship and that a collaborative consultation process was necessary to strengthening that relationship.

In furtherance of those agreements, on December 16, 2009, the Washington Liquor Control Board adopted a "Government-to-Government Consultation Board Policy #11-2009." For your reference, I attach a copy of that policy to this letter. As you will note, the Board expressed its "commitment to work cooperatively with Tribes and Tribal entities on licensing, enforcement and taxation issues in a manner that respects the sovereignty of each party." The Board also expressed its full commitment to the principals of consultation and cooperation and recognized that the complex jurisdictional issues regarding Indian Country required a sound working relationship between the Board and the tribes. The Board established regular meetings with tribes to discuss issues and concerns about the regulation of alcohol within Washington. From there, the Board's Tribal Advisory Council (TAC) was born, which had its first meeting on September 21, 2010.

The TAC developed a Memorandum of Agreement template, which "outlined how the [Board] and the Tribes share an interest in how liquor is sold with emphasis on public safety." Also for your reference, I attach that template to this letter. As you will note, that template does not require the state to cede control to the tribe. Rather, it simply creates a mutual understanding of common goals, how liquor sales and enforcement will occur, and addresses sovereignty issues, such as the applicability and characterization of state taxes and fees, access by state regulators to tribal lands and the provision of limited waivers of sovereign immunity.

That is our hope here.

At this stage, the Community is only laying the foundation for on-Reserve alcohol sales. Internally, it has passed an Alcohol Ordinance, which I attach here. However, other than a general sentiment to start slow and in a limited way, the Community does not yet have a specific plan to sell alcohol, and recognizes that more work needs to be done before any such plan is formulated and ultimately adopted by the Community's Council. Notwithstanding, the Community's working relationship with the Board, and establishing a reasonable and understandable licensing process that respects both parties' sovereignty, is a necessary and important component to any alcohol sales on the Reserve.

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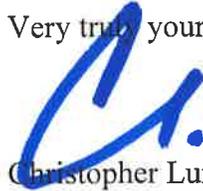
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Again, the Community appreciates the Board's willingness to begin this collaborative process. Please let me know if you have any questions or comments before our meeting on September 13, 2017.

Very truly yours,



Christopher Lundberg

CGL:lsl
Cc: Client
Harriet Dinegar



Washington State Liquor Control Board

Government-to-Government Consultation Board Policy #11-2009

PURPOSE

The Centennial Accord and New Millennium Agreement establish a framework to support the development of strong government-to-government relationships between state agencies and federally recognized Indian Tribes. A key element of both the Centennial Accord and the New Millennium Agreement is the parties' commitment to develop clear policies to ensure cooperation and communication on issues of mutual concern and interest. The optimal goal of government-to-government consultation is to create a framework under which individual Tribes and Tribal entities and the Liquor Control Board (LCB) can actively engage in identifying, consulting, and addressing issues of mutual concern.

The LCB is committed to work cooperatively with Tribes and Tribal entities on licensing, enforcement, and taxation issues in a manner that respects the sovereignty of each party. Further, the LCB will make every effort to allow any Tribe interested in owning and operating a tribal liquor store to do so, and where appropriate to public safety, the LCB will make every effort to allow an interested Tribe to operate multiple stores. For any Tribe not owning or operating its own store, the LCB will make every effort to provide an alternative agreement to allow the Tribe to supply its own tribal licensees and capture its tribal member tax exemption. The LCB will make every effort to negotiate in good faith a Tribal Vendor Agreement and/or Tribal Alcohol Agreement with an interested Tribe, and to consult and resolve in good faith taxation issues within the Board's jurisdiction.

This policy is meant to encourage early and/or informal information sharing and other communications on topics that facilitate intergovernmental relationships. Ideally, regular ongoing communications will simply evolve into more formal consultation as necessary, shifting back to a less formal style once consultation on a particular action or topic is complete.

BACKGROUND

The Liquor Control Board (LCB) is an executive agency under the Governor which was formed in 1933 by the Steele Act to regulate the importation, manufacture, distribution, and sale of alcohol. The 21st Amendment to the U.S. Constitution, which repealed Prohibition, gave states the right to regulate alcohol as they saw fit. Many states, including Washington, adopted control systems creating a state monopoly on the sale of some, or all, alcoholic beverages in an attempt to ensure higher levels of public safety and controlled distribution. The LCB uses the following control state principles when making decisions about licensing and allocating liquor stores:

- Limited number of stores
- Limited store hours
- Higher prices produce lower consumption
- Enforcement and licensing are coordinated
- No employee incentive to sell
- Advertising is prohibited
- More revenue returned to state

The Liquor Control Board's mission is to *"contribute to the safety and financial stability of our communities by ensuring the responsible sale, and preventing the misuse of, alcohol and tobacco."* The LCB's programs include licensing; enforcement and education; product and retail sales.

There are 29 federally recognized Indian Tribes within the State of Washington. Each Tribe has inherent sovereign authority as a government and each has interests and responsibilities related to preventing the misuse of alcohol in Indian Country, controlling the use and sales of these products in Indian Country, coordinating regulatory oversight, and ensuring the safety of its tribal citizens and others in Indian Country. Each Tribe has its sovereign authority to adopt tribal laws and regulations to regulate the use and sale of alcohol on tribal lands.

In 2009, the LCB and representatives for 14 Tribes held several meetings to discuss tribal issues such as licensing; liquor store siting and allocation; and cost models for state, contract, and tribal liquor stores. The meetings were used to identify core tribal concerns and build a foundation for how the LCB would collaborate with the Tribes on future issues. This government-to-government consultation policy is a result of the meetings and sets the framework for how the LCB will consult with the Tribes on liquor and licensing related issues.

COMMITMENT TO CENTENNIAL ACCORD PRINCIPLES

The LCB is fully committed to the principals of consultation and cooperation memorialized in the 1989 State/Tribal Centennial Accord. The sovereign status of Tribes and the complex nature of jurisdictional issues regarding Indian Country require a sound working relationship between Tribes and the State. The LCB acknowledges that implementation of the Centennial Accord is an on going process and pledges to work on a day-to-day basis to foster our government-to-government relationship with individual Tribes.

In order to continue the dialogue created through the Centennial Accord and the New Millennium Agreement on issues of mutual concern related to the sale and regulation of alcohol in Washington, the LCB will work with Tribes to establish a calendar of regular consultation meetings in order to establish opportunities to meet and consult on issues of mutual concern affecting the use and sales of alcohol.

DEFINITIONS

Collaboration: To work together, in an intellectual effort.

Consultation: An enhanced form of communication which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and informed decision-making.

Government-to-Government Relationship: The relationship that exists between federally recognized tribes and the state government. Implicit in the relationship is a recognition of tribal sovereignty as individual nations within the United States and the United States government's obligation to protect tribal lands.

License Issuance or Renewal: The process by which the LCB issues, renews, or denies a liquor license. The process includes "notice to local authorities including tribal governments," prompting them to comment on, or object to, the issuance or renewal of a liquor license.

Indian Country: As defined by federal law, Indian Country includes all land within the limits of any Indian reservation or trust lands under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. In addition, Indian Country also includes all dependent Indian communities as well as all Indian allotments to which Indian titles have not been extinguished and lands held in trust for the benefit of a Tribe by the United States.

Tribal Alcohol Agreement: A signed government-to-government agreement entered into by a Tribe and the LCB that provides tax exemptions based on tribal membership for the purchase and sale of spirituous liquor in accordance with tribal, state and federal laws.

Tribal Vendor Agreement: A signed government-to-government agreement entered into by a Tribe and the LCB to provide for off-premise retail purchase and sale of spirituous liquor on tribal lands in accordance with tribal, state, and federal laws.

Sovereignty: The historical and legal status, dominion, rule or power of a sovereign. Tribes have the power to make and enforce laws for their Tribe and within their jurisdiction and to establish courts and other forums for resolution of disputes.

CONSULTATION

The LCB is committed to consulting with Tribes on licensing, enforcement, and taxation policy issues within the jurisdiction of the Board that affect our respective governments. The agency's goal is to provide early notification regarding issues pertaining to licensing or store siting and an open invitation for consultation on all decisions that may affect tribal rights and interests. Consultation with Tribal governments will occur independent of any public participation process but representatives of Tribal governments and tribal members have equal access to the agency's public participation process.

The LCB will work with Tribes to establish regular meetings held preferably on a quarterly basis to discuss issues and concerns about the alcohol regulation and policy within Washington. The agenda for the meeting will be set by agreement between the LCB and interested Tribes. LCB staff will facilitate the setting of agendas.

TRIBAL VENDOR AGREEMENTS

A Tribal Vendor Agreement (TVA) is the mechanism utilized for the retail sale of spirituous liquor on Tribal lands for off-premises consumption. A TVA is a negotiated agreement between a Tribe with the LCB staff that is particular to conditions and circumstances of the Tribe, its members, lands, and community.

The LCB will negotiate in good faith towards a TVA when a Tribe contacts the LCB's Business Enterprise Division. The scope of a TVA may include all topics relevant to the purchasing and retail sales of spirituous liquor for off-premises consumption. The TVA may also include tax sharing provisions as agreed by the parties.

TRIBAL ALCOHOL AGREEMENTS

A Tribal Alcohol Agreement (TAA) is the mechanism utilized for retail sale of spirituous liquor on tribal lands by the Tribe to a tribal licensee and to provide a Tribe without a liquor store to capture the tribal member tax exemption. A TAA is a negotiated agreement between a Tribe with the LCB that is particular to conditions and circumstances of the Tribe, its members, lands, and community.

The LCB will negotiate in a good faith towards a TAA when a Tribe contacts the LCB's Business Enterprise Division.

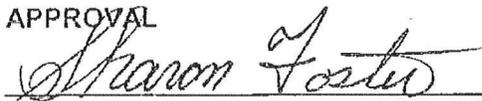
LICENSING OF TRIBAL ON/OFF-PREMISES SALES IN INDIAN COUNTRY

The LCB will negotiate with interested Tribes for a memorandum of agreement that will be utilized for regulating the sale and service of alcohol in Indian Country.

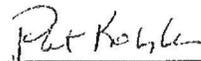
DISPUTE RESOLUTION PROCESS

The LCB and its staff shall immediately bring Tribal disputes to the attention of the Administrative Director. Specific issues are routinely routed to the Tribal Liaison for mediation, coordination, and facilitation as necessary. The LCB is committed to resolving disputes in a manner that is respectful of the sovereign authority of Tribes.

APPROVAL



Sharon Foster, LCB Chairman of Board



Pat Kohler, LCB Administrative Director



Ruthann Kurose, LCB Board Member

**MEMORANDUM OF AGREEMENT
BETWEEN
XXXX TRIBE
AND
THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD
CONCERNING AUTHORIZATION OF LIQUOR SALES**

I. Parties

The Parties to this Memorandum of Agreement ("MOA") are XXXXXX TRIBE, and the Washington State Liquor and Cannabis Board (the "Board") (each a "Party," collectively "the Parties").

The XXXX Tribe is a federally recognized Indian tribe possessed of the full sovereign powers of a government. The Tribe and its wholly-owned enterprises operate on the Tribe's reservation and trust lands (hereafter "Indian Country").

The Tribe has the power to communicate and negotiate with representatives of other governments, to enter into contracts, to operate the various tribal enterprises, and to engage in activities and take such actions necessary for carrying out these and other powers.

The Washington State Liquor and Cannabis Board is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to liquor regulation under Title 66 R.C.W.

II. Purpose

The introduction, possession and sale of liquor in Indian Country have, since treaty time, been clearly recognized as matters of special concern to Indian tribes and to the United States federal government. Federal law currently prohibits the introduction of liquor into Indian Country, leaving tribes the decision regarding when and to what extent liquor transactions will be permitted. After serious deliberation, the Tribe has determined that present day circumstances make a complete ban of liquor within Indian Country ineffective and unrealistic. At the same time, the need still exists for strict regulation and control over liquor distribution.

The Parties share a strong interest in ensuring that liquor sales in Indian Country are well-regulated to protect public safety and community interests. The Parties have entered into this MOA in order to strengthen their ability to meet these mutual interests.

The Parties acknowledge that pursuant to federal law, 18 U.S.C. § 1161, the federal prohibition on sale of liquor in Indian Country does not apply to any act or transaction within any area of Indian Country provided such act or transaction is in conformity both

with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian Country, certified by the Secretary of the Interior, and published in the Federal Register. The Tribe adopted a liquor ordinance which was certified by the Secretary of Interior and published in the Federal Register, as amended, on April 14, 1981.

The Parties further acknowledge that within the framework of federal Indian law, tribal law and state law, there are uncertainties and unsettled issues regarding jurisdiction, licensing, taxation, enforcement and other matters essential to the proper regulation of liquor sales in Indian Country.

The Parties therefore agree that it is in the best interests of the Tribe, and the Board, on behalf of the State of Washington, to enter into an agreement to provide certainty and cooperation in this area of mutual concern.

This MOA is intended to provide a general framework for government-to-government cooperation and coordination regarding the sale of liquor by the Tribe in Indian Country.

III. Definitions

- A. "Board" means the Washington State Liquor and Cannabis Board and its staff.
- B. "Indian Country" means the lands of the Indian Tribe as defined by , including the and all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal Members.
- C. "MOA" means this Memorandum of Agreement.
- D. "Parties" means the Board and xxx Tribe.
- E. "Tribal Member" means an enrolled member of the xxxx Tribe.
- F. "Tribal Member - Owned Business" means a liquor business owned by a Tribal member and licensed by the Board
- G. "Tribe" means the xxxxx Tribe.

IV. Terms of Agreement

- A. Liquor Licensing.
 - 1. Tribe and Tribal Enterprises. The Parties agree that the State's licensing process does not sufficiently address unique jurisdictional and other matters that arise in

Indian Country under federal and tribal law and that the Parties have a longstanding disagreement with respect to the application of state law to Tribal liquor sales. Therefore, the Parties agree that in lieu of obtaining and/or maintaining one or more state licenses for the sale of liquor in Indian Country, PME and its Tribal Enterprises will hereafter make liquor sales in Indian Country pursuant to the terms of this MOA.

2. Tribal Members and Tribally-Licensed Businesses. Tribal Members and Tribally-Licensed Businesses located in Indian Country will comply with all applicable State licensure requirements and State law, and prior to issuance of any State license, will obtain approval from the Tribe to sell liquor in Indian Country pursuant to STC. No enterprise owned and operated by a Tribal Member or Tribally-Licensed Business will be considered a "location" for purposes of this MOA.

B. Location of Sales.

1. Current Locations. The xxxx Tribe currently make liquor sales in Indian Country at the following locations under the state licenses specified below:

- a) Tradename
License Number: xxxxxx
License Type: Spirits/Beer/Wine Restaurant/Lounge with Catering
Endorsement
Address:

The Parties agree that liquor sales currently allowed pursuant to the licenses specified above, as well as additional liquor sales not currently authorized under such licenses that the Tribe may wish to add or modify at these or other locations in the future, will hereafter be governed by the terms of this MOA in lieu of otherwise applicable state law.

2. New or Expansion of Current Locations. The Tribe may amend or expand the locations where liquor is sold and/or served as listed in subsection (IV)(B)(1) in accordance with the terms set forth in this MOA. The Tribe will notify the Board in writing of the addition of a new location for sale or service of alcohol and/or the addition of privileges at an existing location. For new locations within the footprint of an existing facility or for the addition of privileges at an existing

location, said notification will be provided at least 30 days prior to the effective date of said change. For new locations outside the footprint of an existing facility, said notification will be provided at least 60 days prior to the effective date of said change. The information to be provided will include:

- a) The identity of the entity which is operating the facility;
- b) Location of the premises;
- c) Certification that the premises is located in Indian Country;
- d) Certification to the Board by the Tribe that the Tribe has adequately addressed the issues necessary to prevent the misuse of alcohol and prevent minor access to alcohol at the locations pursuant to subsection (C)(2) and (3) below; and
- e) An update to the Operating Plan referenced in subsection (C)(2) and (3) below.
- f) If new location is outside the original footprint, identify how the location will be policed, i.e., tribal police or other law enforcement agency for service calls or regular patrols.
- g) If the new location has off-premises sales and there is a drive through window, the Tribe will provide written verification that no liquor sales will take place through said drive through window.

The Board will then do the following:

- a) Determine if the additional location necessitates fee re-negotiation.
 - b) Identify if there are any trade area issues related to the sale of packaged spirits, and
 - c) Notify the appropriate parties in Enforcement to determine impact.
3. Without resolving jurisdictional questions that may arise, the Board and the Tribe agree that it is in the best interests of both Parties that notice be provided to neighboring jurisdictions prior to the opening of a new location where liquor sales will be made.
- a) When the Tribe proposes to open an additional location at a new and unique address in Indian Country, the Board will provide written notice

to the city, or if outside city limits, the county in which the sales will occur. The Tribe agrees to make contact with the city or county about the new location. The Board and the Tribe agree that the primary purpose of the contact/notice is to facilitate an exchange of information that may be helpful to all parties concerned in addressing unanticipated impacts with the understanding that such notice related to Indian Country is primarily a matter of intergovernmental courtesy.

- b) When any other business operating in Indian Country applies for a liquor license, the Board agrees that such license will not be granted without the business first obtaining express written consent of and licensure by the Tribe, as required by the STC.

C. Tribal Authority and Jurisdiction

1. Conditions. Without determining the scope of the legal authority of either Party to regulate the sale of liquor by the Tribe in Indian Country, the Parties agree that it is in the mutual interest of the Tribe and the Board that the Tribe be authorized to sell liquor under the terms of this MOA. Therefore, when the following conditions are met, the Board agrees that for the purposes of Title 66 RCW, and related provisions of state law, the Tribe will be treated as holding the necessary authority to make liquor sales. To the extent necessary, the Board agrees to work with the Tribe and with any third party distributors to assure such distributors that the Tribe is legally authorized to purchase liquor pursuant to the terms of this MOA.
2. Liquor Sales Authority. The Board agrees the Tribe is authorized to sell and serve liquor in Indian Country provided they have submitted an approved Operating Plan containing the following elements:
 - a) The location, nature, and times of liquor sales (see Exhibit A);
 - b) The training of staff involved in liquor sales. It is required that persons responsible for serving alcohol for on-premises consumption possess a Mandatory Alcohol Server Training (MAST) permit (see Exhibit B);
 - c) A regulatory enforcement and compliance plan (see Exhibit C); and

- d) Consideration of proximity of alcohol sales to a school, church, or non-tribal public institution;
 - e) Confirmation that the land on which alcohol sales are to occur is either reservation or trust land held by the Tribe (see Exhibit D);
 - f) Any lease, purchase, partnership or franchise agreement with a non-tribal entity which directly relates to the location where alcohol is sold or served;
 - g) A copy of the Tribe's ordinance permitting the sale of liquor in Indian Country (see Exhibit E);
 - h) Other information as deemed necessary by agreement between the Board and the Tribe.
3. On-Premise Consumption. In addition, for locations providing liquor service by the drink for on-premises consumption, the Tribe will include in its Operating Plan the following factors, as applicable to each particular location:
- a) The location, nature, and times of liquor sales (see Exhibit A);
 - b) A description of how the Tribe will prevent the sale of alcohol to persons under 21 years of age and those who appear to be intoxicated (see Exhibit B);
 - c) A security plan. Those serving alcohol must at minimum possess a valid Mandatory Alcohol Server Training permit (see Exhibit B);
 - d) The nature of any special events or entertainment events hosted on the premises including security and alcohol service plans for these events (see Exhibit B); and
 - e) Any other special conditions considered necessary to protect public safety based on the type of events to be held at the Tribe's facilities.
4. Consultation and Agreement on the Operating Plan. In consultation with the Tribe, the Board will then determine if the Tribe has met the public safety requirements consistent with Title 66 RCW and Title 314 WAC, together with the provisions of this MOA. The Board acknowledges that no one license type under Title 66 RCW is applicable to the Tribe's operations and that one purpose of this

MOA is to allow flexibility with respect to the Tribe's operations. The Tribe and the Board agree that consultation with respect to the Operating Plan will occur in good faith and the Board's approval will not be unreasonably withheld. The Board will make every effort to accommodate the Tribe's interests as reflected in the Tribe's proposed Operating Plan and any disapproval will include a clear explanation of the decision, its necessity in order to prevent misuse of alcohol and service to minors, and proposed alternatives. If the Tribe objects to the disapproval or to approval of any conditions imposed by the Board, it may invoke the dispute resolution provisions of subsection (F). The Board hereby approves the initial Operating Plan as attached as Exhibit A and the Safety and Training Provisions as attached as Exhibit B.

5. Annual Payment to the Board. The Tribe agrees to pay the Board \$XXXX annually in lieu of any license fees. This annual fee will be due [date] of each year this MOA is in effect. For the payment due [date], the Board will credit the Tribe, on a pro rata basis, all payments already made for its existing licenses that cover any period on or after [date]. Either Party may invoke a renegotiation of this fee based on substantial changes to the Operating Plan (Exhibit A) or the Enforcement/Compliance Plan (Exhibit C) where said changes substantially modify the regulatory effort required by the Board. Notice by the Party requesting renegotiation of this annual fee will include a written reason for the request.
6. Spirits Retailer Fees. The Board agrees that in lieu of the spirits retailer license fees imposed by RCW 66.24.630, the Board will accept payment as under subsection IV(C)(5) of the MOA and will not impose nor pursue collection of such licensing fees/taxes on sales by the Tribe and the Tribal Enterprises. In the event that new licensing fees or taxes on Spirits Retailers are added, or the existing licensing fees/taxes are modified, repealed, or replaced, as the result of legislation, initiative, referendum, court decision or otherwise, the Parties agree that the fee for services as outlined herein and in the MOA shall remain in effect pending agreement of the Parties to a revised fee for regulatory services as the Parties agree is appropriate under the circumstances and that the Board shall not impose nor pursue collection of the new fees and taxes on sales by the Tribe. The Parties agree to meet and pursue discussions of the applicability of any new fees or taxes on an expedited basis.

7. DOR Suspension Requests. The Parties acknowledge that Chapter 39 of the 2012 Washington Session Laws (HB 2758) provides that the Department of Revenue ("Department") may request that the Board suspend a taxpayer's spirits license if the Department determines that a taxpayer is more than thirty days delinquent in reporting or remitting spirits taxes. The Board asserts that a failure by the Tribe to pay a spirits tax alleged to be due and owing by the Department would constitute a breach of this MOA. However, the Tribe disagrees that such a result would necessarily ensue and preserves its right to dispute any tax assessment by the Department without penalty under this MOA and to prove in dispute resolution proceedings under this MOA that the Board's licensing authority under 18 U.S.C. § 1161 does not allow the Board to prohibit Tribal liquor sales or purchases by reason of asserted state tax noncompliance. In the event that the Board believes that the Tribe has failed to remit a spirits tax that the Department asserts to be validly and legally due and owing, the Board will notify the Tribe in accordance with Part V of this MOA. Within 90 days following the date of the notice, the Parties agree to meet and confer in an effort to resolve the issue consistent with any related settlement between the Tribe and the Department or determination by a court of competent jurisdiction regarding the underlying tax assessment. If the Parties are unable to resolve the issue within six months after the date of the notice, either Party may involve the dispute resolution provisions of Section IV(F) of this MOA. This Section C.6 does not apply to sales where the Tribe is the retail customer.
8. Reporting Requirements. In the event the Board's audit of a distributor or other supplier to the Tribe reveals a discrepancy that can best be reconciled through comparison to the Tribe's spirits retail sales records, the Tribe agrees, on the Board's reasonable request, to provide a detailed summary of its purchases as a spirits retail licensee from that supplier for the relevant time period, including date, amount, brand, and price. This summary will serve in lieu of submission of any reporting form(s) required of other spirits retail license holders.
9. Sponsorships/Advertising. The Board acknowledges and agrees that in lieu of holding any specific licenses under state law, the Tribe will be subject to the terms of this MOA. However, should the Tribe wish to enter into arrangements with a manufacturer, importer, or distributor for brand advertising and/or promotion of events at the Tribe's outdoor concert venue or events center that, absent this MOA, would typically be regulated as part of a specific license, the Tribe may to enter into such arrangements upon the prior approval of the Board. This MOA grants the Tribe the privileges afforded Sports Entertainment venues of 5,000 seats or more under R.C.W. § 66.24.570(6).

D. Enforcement. The Parties will handle enforcement issues in accordance with Exhibit C.

E. Conditions and Limitations. The Board and the Tribe agree to the following conditions and limitations:

The tribe agrees that sales of liquor by the Tribe and its wholly-owned enterprises will conform to Title 66 RCW and Title 314 WAC to the extent required by 18 U.S.C. § 1161. To the extent any terms in this MOA conflict with Title 66 RCW or Title 314 WAC, the terms of this MOA will control. The Parties agree that RCW § 66.24.010(2), which provides for criminal background checks of applicants, is inapplicable to the Tribe. Any other express exemptions from statute must be negotiated individually between the Tribe and the Board.

F. Dispute Resolution.

1. Neither the Tribe, nor the Board, nor officers acting on either government agency's behalf, may petition any court to enforce this MOA unless (a) the dispute resolution process described in subsections (a) through (d) below has been followed in good faith to completion without successful resolution or (b) the other Party fails to enter into the dispute resolution process. Should a dispute arise between the Tribe and the Board upon an issue of compliance with the MOA by either government agency, or by their officers, employees or agents, the Tribe and the Board will attempt to resolve the dispute through the following dispute resolution process:

- a) Notice. Either Party may invoke the dispute resolution process by notifying the other, in writing, of its intent to do so. The notice must set out the issues in dispute and the notifying Party's position on each issue.
- b) Meet and Confer. The first stage of the process will include a face-to-face meeting between representatives of the two government agencies to attempt to resolve the dispute by negotiation. The meeting must be convened within 30 days after the receiving Party's receipt of the written notice described in subsection (a). The representatives of each government agency will come to the meeting with the authority to settle the dispute. If the dispute is resolved, the resolution will be memorialized in a writing signed by the Parties.

- c) Mediation. The second stage of the process will be that if the Parties are unable to resolve the dispute within sixty (60) days after the receiving Party's receipt of the written notice sent under subsection (a) above, the Parties will engage the services of a mutually agreed upon qualified mediator to assist them in attempting to negotiate the dispute. Costs for the mediator will be borne equally by the Parties. The Parties will pursue the mediation process in good faith until the dispute is resolved or until the mediator determines that the Parties are not able to resolve the dispute. If the Parties cannot agree on a format for the mediation process, the format will be that directed by the mediator. If the dispute is resolved, the resolution will be memorialized by the mediator in a writing signed by the Parties, which will bind the Parties.
2. If, at any time after the effective date of this MOA, the Board enters into an agreement, compact, or consent decree with any other federally recognized Indian tribe or governmental agency thereof, of or relating to the regulation of liquor in Indian Country which includes a "most favored nation" provision, then, upon the Tribe's written request, this MOA will be amended to include such provision. A "most favored nation" provision is defined as language by which the Board agrees to accord a tribe or tribal government agency the same favorable terms that are offered in later agreements with any other tribe or tribal government agency. This will not be construed to require that the Board offer the Tribe the option to receive the same terms offered to every tribe or tribal government agency, in the absence of a most favored nation provision in the MOA.
3. In any action filed by a third party challenging either the Tribe's or the Board's authority to enter into or enforce this MOA, the Tribe and the Board each agree to support the MOA and defend each of their authority to enter into and implement this MOA; provided, however, that this provision does not waive, and must not be construed as a waiver of, the sovereign immunity of the Tribe.
- G. Sovereign Immunity. The Board agrees that the signing of this MOA by the Tribe does not imply a waiver of sovereign immunity by the Tribe and is not intended by the Tribe as a waiver of sovereign immunity, and that any action by the Board in regard to liquor sales by the Tribe will be in accord with this MOA.

- H. No Limitation. The Parties agree that the signing of this MOA and the resultant benefits and obligations will not be construed as limiting any otherwise lawful activity of the Tribe and will not subject the Tribe to any state jurisdiction not agreed to in this MOA.
- I. Updated Information. The Tribe will review any Operating Plan on an annual basis and notify the Board of any substantial changes in the plan or procedures. This review is in addition to the notification of changes in the service of alcohol referenced in subsection (B)(2).

V. Communication and Notice

- A. Designated Contacts. The Parties agree to maintain regular and open communication regarding the administration and implementation of this MOA. The Parties agree that the following individuals will be designated primary contacts regarding administration of this MOA:

For the Liquor and Cannabis Board:

For the Tribe:

The Parties agree that if either Party believes that the goals and objectives of this MOA are not being met, that they will meet promptly to discuss any issues and concerns.

- B. Notice. Any notice that may be or is required to be sent under this MOA must be sent as follows:

If to the Liquor and Cannabis Board:	Compliance & Policy Manager Liquor and Cannabis Board 3000 Pacific Avenue SE Olympia, WA 98504-3080
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With a copy to:	LCB Enforcement Captain
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If to the Tribe:

With a copy to:

VI. Effect, Duration, and Amendment

- A. While the Parties intend to reach a perpetual agreement related to licensing of tribal liquor sales, this MOA will remain in effect for an initial term of five (5) years unless the Parties mutually agree in writing that the MOA should be vacated or terminated and superseded by a new MOA between the Parties within that time frame. Should the Parties fail to negotiate a perpetual agreement during the initial term of this MOA, the MOA will automatically renew for additional one-year periods unless either Party provides written notice to the other, no later than 120 days before the expiration of the then-current one-year period, that it wishes to modify the terms of the MOA.
- B. Amendment. No amendment or alteration of this MOA may arise by implication or course of conduct. This MOA may be altered only by a subsequent written document, approved by the Parties and signed by their duly authorized representatives, expressly stating the Parties' intention to amend this MOA.

This MOA is hereby made this _____ day of _____, 2014.

Jane Rushford, Board Chair
Washington State Liquor and Cannabis Board

Tribal Name/Title

Ollie Garret, Board Member
Washington State Liquor and Cannabis Board

Russ Hauge, Board Member
Washington State Liquor and Cannabis Board

Rick Garza, Agency Director
Washington State Liquor and Cannabis Board

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EXHIBIT A
OPERATING PLAN:

Locations where alcohol is or will be served on XXXXX Tribal Lands.

A. Name of location and address

#	Location	Type of Establishment	Hours alcohol is typically sold ¹	Nature of alcohol service
1.	Hotel rooms	Hotel	10am-10pm	Beer/wine/spirits by the drink or bottle with room service; complimentary bottle of beer/wine/spirits in select guest rooms upon check-in; locked honor-bars (beer/wine/spirits) with access limited to those 21 and over
2.				
3.				
4.				
5.				
6.				
7.				
8.				

¹ The tribe reserves the right to change the hours of service of each location as business dictates without notice to the Board, provided that the Tribe does not sell, serve, or allow public consumption between 2am-6am. Any change in hours of service will not be an "additional privilege" requiring notice to the Board under the MOA.

Copies of the relevant Name site plans are included as attachment (#). All numbers in the first column correspond with those numbers on the site plans. Food is available for purchase at Name 24/7.

B. Gas Station and Convenience Stores (Addresses Listed Below)

Name	Location	Hours alcohol is sold	Nature of alcohol service	Food Service (when is food available? Full/partial menu?)
Name	Address	6am-2am 7 days a week	Packaged beer/wine/spirits for off-premises consumption; tastings; sales to on-premises licensees with and without delivery	Packaged food available 24 hours
Name	Address	6am-10:30pm M-Sa; 6am-10pm Su	Packaged beer/wine for off-premises consumption; tastings; sales to on-premises licensees with and without delivery	Packaged food available during all hours alcohol is sold; deli 6am-8pm M-F and 7am-7pm Sa & Su

B. Name of Location and address

Location	Type of Establishment	Hours alcohol is typically sold	Nature of alcohol service
Name	Bar for special events	Noon-Midnight, depends on events	Beer/wine/spirits Bar/table service catered by staff; bar may be hosted or non-hosted, payment by cash or drink ticket; tastings; sale of bottled wine for off-premises

			consumption

Name is a facility for special events only. Food and beverage services are available only when events are scheduled. Events consist mostly of private events (weddings, conventions, etc.) and occasionally of special themed events organized by the Tribe (e.g., Easter Brunch, Deadliest Catch Crab Dinner, etc.). All events include catered food, and events may or may not include alcohol service. The exact menu of food and beverages, and which bar(s) are set up, depends on the event. The Tribe will notify the Board's Enforcement division of the times and dates of these events at least one month in advance.

C. Name of Location and address

Location	Type of Establishment	Hours alcohol is typically sold	Nature of alcohol service	Food Service (when is food available? Full/ partial menu?)

EXHIBIT B
OPERATING PLAN:
Safety/Training Provisions

Because the introduction, possession, and sale of liquor in Indian Country have, since treaty time, been clearly recognized as matters of special concern to Indian tribes, the Tribe takes liquor regulation and safety extremely seriously. As a result, the Tribe has imposed strict policies and practices on its Tribal Enterprises that go above and beyond the State's requirements. Safe liquor consumption by its patrons is a top priority of the Tribe, and makes a great effort to protect the public safety and community interest and trains its staff accordingly. The Tribe also evaluates events, utilizes its resources, and evaluates risk to best address, monitor, and appropriately control the sale and service of liquor at each of its locations and venues to preserve the public's safety.

A. Training.

1. In-House Trainer. The Tribe employs a full-time, In-House Trainer, who trains employees on a variety of subjects. Among other things, the In-House Trainer is a certified MAST trainer.
2. Mandatory Alcohol Server Training. The following Tribal Enterprise employees must obtain and maintain a valid MAST permit through the Tribe's in-house training program:
 - a. Managers and supervisors who supervise the sale and/or service of alcohol at all venues.
 - b. Servers and bartenders at all venues.
 - c. Security staff (does not include Tribal police or Tribal Gaming Commission agents).

In addition, the Tribe typically provides in-house MAST training to an array of other employees whose job duties do not directly relate to alcohol sales or service, including without limitation, executive staff, marketing employees, gaming employees, facilities employees, hotel housekeeping employees, and more.

3. Responsible Vendor Training. Name is a certified Responsible Vendor under RCW § 66.24.630(8)(a). All Name employees who sell or supervise the selling of spirits for off-premises consumption are therefore MAST certified and receive ongoing training approved by the

Liquor and Cannabis Board as sufficient to meet Responsible Vendor Program standards.

4. Additional training by the Tribe. The Tribe also provides ongoing training of all food and beverage service teams to heighten awareness related to public safety, including avoiding service to minors and intoxicated persons.
5. Additional training by the Board. Upon The Tribe's request, Board staff members will work with the Tribe to provide any requested training and technical assistance for the prevention of violations of alcohol laws. Board staff members will meet with the Tribe and with Tribal Police as the Parties may deem appropriate for further training, collaboration, and communication on liquor issues.

B. Safety and Security Measures.

1. Minors in General. To ensure that alcoholic beverages are not sold to or consumed by persons under age 21, the Tribe has implemented the following measures:
 - a. Staff request ID from any guest appearing to be age 30 or under who is requesting to purchase an alcoholic beverage.
 - b. Staff request ID from any guest in possession of an alcoholic beverage who appears to be of questionable age, and if guest cannot produce valid ID, the beverage is confiscated and Security is notified if necessary.
 - c. Staff accept only Board-approved forms of ID, including:
 - i. Driver's license, ID card, or Instruction Permit issued by any U.S. state or Canadian province.
 - ii. Washington temporary driver's license.
 - iii. Tribal enrollment card.
 - iv. Passport from any nation.

v. U.S. Military ID.

vi. Merchant Marine card issued by U.S. Coast Guard.

2. Minors in the Casino. In addition to the above measures for Minors in General, the Tribe has implemented the following measures specifically to ensure that alcoholic beverages are not sold to or consumed by persons under age 21 at the Name Casino:

a. The Casino has only 3 public entrances. One or more trained and MAST-certified Security Officers are posted at or near each entrance at all times. In addition, one or more Security Officers are posted at a raised Security podium at all times. Security also maintains video surveillance of the premises. And, there are roving Security Officers as well.

b. In addition, the name Tribal Gaming Commission maintains very extensive and sophisticated video surveillance of the premises. With advanced pan, tilt, and zoom capabilities, Surveillance agents are able to clearly view virtually any activity that occurs on the Casino premises. They monitor live footage 24 hours a day, and the footage is also recorded.

c. Security Officers and Tribal Gaming agents are in close contact with one another at all times.

d. Both Security Officers and Tribal Gaming agents are vigilant for any signs of possible alcohol sales to or consumption by persons under age 21.

e. When persons under age 21 enter the Casino, Security gives them a wristband which they must wear at all times they are on the premises.

f. If Security or Tribal Gaming sees that a person under age 21 has removed his or her wristband, Security makes contact with that individual to enforce the wristband requirement.

- g. If a person under age 21 attempts to purchase an alcoholic beverage, MAST-certified bartenders and servers notify Security, who take appropriate action as described below.
- h. If Security or Tribal Gaming observes a person under age 21 to be in possession of alcohol or to be exhibiting possible signs of intoxication, Security makes contact with the individual and takes appropriate action as described below.
- i. If Security determines a person under age 21 is in possession or under the influence of alcohol (even if the alcohol was not consumed on premises), Security contacts law enforcement. Security also prepares a written incident report which is circulated to the Tribe's Executive and Legal personnel, as well as to Tribal Gaming personnel.
- j. In addition, individuals under age 21 who are found to be in possession or under the influence of alcohol are refused service from the Casino until their 21st birthdays. A formal, written refusal of service is processed through Security, the Tribe's Executive staff, and the Legal Department; and is sent to the individual by certified mail. If an individual who has been refused service for this reason attempts to return to the Casino before his or her 21st birthday, the individual may be arrested for trespass.

3. Intoxicated persons. To ensure that alcoholic beverages are not consumed by persons who appear to be intoxicated, the Tribe has implemented the following measures:

- a. All staff involved in the sale and service of alcoholic beverages are trained how to recognize the signs of intoxication.
- b. Staff refuse to sell alcoholic beverages to any person who appears to be intoxicated.

- c. Sales for off-premises consumption. If a guest who appears to be intoxicated attempts to purchase packaged alcoholic beverages for off-premises consumption, staff will politely but firmly decline to make the sale. Staff request assistance from the manager on duty when necessary. In the event the guest becomes aggressive or belligerent after being refused service, staff or the manager will contact Security immediately. Security will contact law enforcement if necessary. Staff and managers (and Security, if applicable) will appropriately report and document the incident in accordance with PME policy.

- d. Sales for on-premises consumption.
 - i. If a guest who appears to be intoxicated is seen in possession of or consuming an alcoholic beverage, or attempting to order an alcoholic beverage for on-premises consumption, staff notify the appropriate supervisor or manager for the location (and, for the Casino, staff will notify Security). The guest is then assessed using MAST procedures and a determination is made if the guest is to surrender the drink if in possession of one, in which case the guest is notified (by Security at the Casino, and by staff at other locations) that due to staff's observations, the guest will not be served any additional alcoholic beverages. Guests who are cut off from alcohol service at the Casino are required to wear an alcohol cut-off sticker, and/or their photos are displayed on a monitor visible to staff in the bar areas. If not staying the night at Name the guest will be offered non-alcoholic beverages and food if desired while waiting for a ride home or to another location where he or she will be spending the night by a non-intoxicated personal acquaintance, a cab service, or transportation provided by the Tribe when necessary.

ii. Security is called to assist with guests who are apparently intoxicated and non-cooperative. Security determines the level of response based on the circumstances, which may include removal from the property. In that event, Security staff will first try to locate a sober driver or call a taxi for the guest. If the guest refuses a sober driver or taxi, and attempts to drive away, he or she will be notified that local police will be contacted that he has refused alternative transportation. In the event the guest does drive away, Security will promptly call 911, notify police of a suspected intoxicated driver, and provide a description of the vehicle and its direction of travel. Security will also fill out an Incident Report in accordance with standard procedures. The Incident Report will subsequently be distributed to the regular recipients of Incident Reports, which include the Tribe's General Counsel, and the Director of the Security Department.

e. Any team member who is suspected of overserving will be investigated through surveillance tapes and reports filed by either the appropriate manager or Security. The investigation may lead to disciplinary action up to and including termination.

4. Additional security measures. The tribe also has the following measures in place that will further ensure alcohol is safely served and consumed on site:

a. The Tribe has certified MAST trainer(s) on staff.

b. Name is under 24-hour surveillance. Tribal Gaming Commission Surveillance agents view the live footage around the clock, and the footage is also recorded.

- c. The Name(s) are all under 24-hour surveillance. The footage is recorded, and can also be viewed live by managers and/or Security when necessary.
- d. Surveillance footage is typically retained for 30 days. Footage of specific incidents may be retained longer upon the direction of the Tribal Gaming Commission or the request of an authorized tribal official.
- e. The ratio of service staff to patrons is scheduled to be adequate to maintain the public safety for each event and is increased based on level of risk, depending on the event.
- f. The Tribe's Security staff is highly trained and experienced. Reasonable levels of Security staff are present at Name at all times. They also make regular rounds of the Tribe's other facilities, most of which are located within 5 minutes of the Name. They are available to report to the Tribe's other facilities upon request as well.
- g. Tribal Gaming Commission agents are on site at the Casino 24/7.
- h. The Tribe works closely with the Tribal Police. Tribal Police are either on site at the Name, or on call 24/7. The Tribal Police station is located within approximately 5-10 minutes of all tribal facilities.
- i. The Tribe also enjoys cooperative relationships with other local law enforcement agencies, including the County Sheriff's Office, Police, and Police, any or all of whom will respond to police calls at the Tribe's facilities.
- j. Fire & Rescue and other local emergency medical personnel will also respond to the Tribe's facilities as necessary.

- k. The Tribe understands that it, and not the Board, is responsible for all security and enforcement within a “darkened house.”
- C. Special events. For certain special events at the Name (as identified in Exhibit A, Part A, Footnotes 3-7), the Tribe will take the extra precautions described below. For the avoidance of doubt, these extra precautions will apply only to the special event itself, not to the rest of the Tribe’s normal business operations.
- 1. For the special events identified in Exhibit A, Part A, Footnotes 3-7, the Tribe will provide a quarterly schedule of events to the Regional Captain. The Tribe will update the schedule monthly as necessary. If the Regional Captain has any concerns about the schedule or any plan for the events, the Parties will meet and confer in good faith to resolve those concerns.
 - 2. Unless prior notice is provided to Board staff of an alternate plan, alcohol sales will occur as follows for the special events identified in Exhibit A, Part A, Footnotes 3-5 only:
 - a. At point of sale locations with proper lighting and where ID may be adequately checked;
 - b. With a maximum of two (2) drinks or one bottle of wine sold to an individual patron during one transaction;
 - c. With adequate service staff to patron ratios;
 - d. With adequate security staff to patron ratios;
 - e. With staff stationed at entrances; and
 - f. With posted signs at entrances and dispensing areas as appropriate (e.g., signs at dispensing areas stating that customers must be 21 years of age or older to purchase alcohol, and/or signs at exits stating that customers may not remove alcohol from the area).

3. Should the Tribe wish to deviate from this standard plan for any given event, the Tribe will notify the Board in writing at least 14 days prior to the event. The Parties will meet and confer in good faith to resolve any concerns with the Tribe's alternate plan.

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EXHIBIT C
OPERATING PLAN:
Enforcement/Compliance Plan

1. Licensing.

- A. Tribal Enterprises. The Tribe's liquor enterprises were made a component of .
- B. Other Business Enterprises. All Tribally-Licensed Businesses must be licensed in accordance with State law and Chapter 11.2 of the STC. However, the Parties acknowledge that the Tribally-Licensed Businesses, not the Tribe, are responsible for obtaining and maintaining the appropriate licenses.
- C. Employees. All Tribal Enterprise employees who perform duties specified under State-issued Class 12 or 13 permits must hold such State-issued permits in order to perform such duties for the Tribe.

2. Enforcement.

A. Premises Checks.

- 1. By the Tribe. The Tribal Police or other authorized agency may conduct its own premises checks in Indian Country to observe compliance with applicable liquor laws and this MOA and to provide support and education to Tribal Enterprises and staff. To the extent it is informed of the results of such premises checks, the Tribe will share the results of the premises checks with the Board.
- 2. By the Board. The Board, through its staff, may also conduct premises checks. Prior to conducting any such check, the Board will provide reasonable notice to the Tribal Police Chief of such premises check, and Tribal Police may observe the premises check. If the premises check is on the Casino premises, the Board will also check in at the Security podium upon arrival. The Board will share the results of such premises checks with the Tribe.

3. Cooperation. Should either Party have any concerns arising out of a premises check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols of the premises checks themselves or of liquor service by the Tribal Enterprise that was checked.

B. Compliance Checks-Minors.

1. By the Tribe. The Tribe may conduct its own compliance checks in Indian Country using minors ages 18, 19, or 20 through the Tribal Police Department or other authorized agency in accordance with Tribal regulations and policies. To the extent it is informed of the results of such checks, the Tribe will provide the results of the checks to the Board. No criminal action may be taken against any minor who purchases alcohol as part of such a compliance check.
2. By the Board. Board staff may also conduct compliance checks. Prior to conducting any such check, the Board will provide reasonable notice to the Tribal Police Chief of such compliance check, and Tribal Police may observe the check. If the compliance check is on the Casino premises, the Board will also check in at the Security podium upon arrival. The Board will share the results of such compliance checks with the Tribe.
3. Cooperation. Should either Party have any concerns arising out of a compliance check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols of the compliance checks themselves or of liquor service by the Tribal Enterprise that was checked.

3. Complaints.

- A. Tribal Enterprises. When a complaint regarding liquor service at any Tribal Enterprise is received by either the Tribe or the Board, or when the Tribe or the Board otherwise have reason to suspect a violation either through a premises check or compliance check, the following steps will occur:

1. Receipt of Complaint.

- a. By the Tribe. If the complaint is received by the tribe, it will be communicated to the Tribe's General Counsel. The General Counsel will then document the complaint and provide a copy to the Board staff within seven (7) days.
 - b. By Board. If the complaint is received by the Board, it will be communicated to The Tribe's General Counsel in writing within seven (7) days.
2. Investigation. The Board will investigate the complaint in its discretion and in accordance with its policies and procedures.
 3. Alleged Violation.
 - a. Employee. If the investigation is of an alleged violation by a Tribal employee holding a MAST permit, the Board will provide a copy of any written report to the Tribe's General Counsel. The Board may take any action against the employee in accordance with its laws and regulations. Notice of any additional action taken against that employee by the Tribe will be provided to the Board. If the employee is a Tribal Member, the Tribe will investigate and take such enforcement action as is consistent with Tribal laws and procedures.
 - b. Tribal Enterprise.
 - i. If the investigation is of an alleged violation by the Tribe, the Board will provide a copy of any written report to the Tribe's General Counsel. The Board may take any action against the Tribal Enterprise consistent with applicable laws and regulations, specifically to the extent applicable WAC 314-29-020, which addresses Group 1 violations against public safety. Group 1 violations include: (1) violations involving minors (sale or service to a minor/minor frequenting); (2) sale or service to apparently intoxicated person; (3) conduct violations (disorderly

conduct, licensee or employee intoxicated, criminal conduct); (4) lewd conduct; (5) refusal to allow inspection/obstructing law enforcement officer from performing duties; and (6) condition of suspension violation (failure to follow any suspension restriction while liquor license is suspended). If the Tribe disagrees with the action taken by the Board, the Tribe may proceed under the dispute resolution provisions contained in Section IV(F)(1)(d)(B) of this MOA. Notice of any additional action taken against any employee of the Tribe will be provided to the Board.

ii. If the Board alleges that the Tribe is not complying with any of the provisions of Exhibits A or B of this MOA, the Board and the Tribe will seek resolution in accordance with the dispute resolution process outlined in Section IV(F) of this MOA.

iii. For purposes of this Section only, each "location" in Exhibit A will be deemed a separate location and violations against one location will not affect other locations.

B. Amendment. Should the Tribe desire in the future to take over more of the enforcement responsibilities, the Parties agree to meet in good faith to amend this MOA to provide as such.

EXHIBIT D

PROPERTY INFORMATION DEMONSTRATING RESERVATION/TRUST STATUS OF LAND

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EXHIBIT E

NAME TRIBAL LIQUOR ORDINANCE

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TITLE FOUR CIVIL CODE

CHAPTER 12

ALCOHOL CONTROL ORDINANCE

SECTION FOUR.12.1 TITLE.

This Ordinance shall be known as the Metlakatla Indian Community Alcohol Control Ordinance. This Ordinance may be referred to as the "Alcohol Control Ordinance."

SECTION FOUR.12.2 PURPOSE AND AUTHORITY.

A. The purpose of this Ordinance is to regulate and control the possession and sale of alcohol within the Community's territory, as specifically authorized and approved by Tribal Council resolution under Article VI, Section 1 of the Metlakatla Indian Community's Constitution. The authority for enactment of this Ordinance is as follows:

1. The Act of August 15, 1953, (Public Law 83-277, 67 Stat. 586, codified at 18 USC § 1161), which provides a federal statutory basis for the Community to regulate the activities of the manufacture, distribution, sale and consumption of alcohol on Indian lands under the jurisdiction of the Community, so long as such ordinance is in conformance with the laws of the State of Alaska; and
2. Article V, Section 1 of the Constitution of the Metlakatla Indian Community, which vests the Tribal Council with legislative and administrative authority, and otherwise empowers the Tribal Council to act for the Community.

SECTION FOUR.12.3 DEFINITIONS.

A. As used in this Ordinance, the following words or phrases shall have the following meaning unless the context clearly requires otherwise:

1. **"Alcohol"** means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.
2. **"Alcoholic Beverage"** means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by the person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially.
3. **"Bar"** means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of alcohol, as herein defined.

4. **"Bottling"** means to put into a bottle, can, or other container.
5. **"Committee"** for the purposes of this Ordinance shall mean the Tribal Council of Metlakatla.
6. **"Community"** means Metlakatla Indian Community.
7. **"Liquor"** is synonymous with the term **"Alcoholic Beverage."**
8. **"Liquor Store"** means any store at which liquor is sold, and for the purposes of this Ordinance, includes a store at which only a portion of which is devoted to the sale of liquor, wine or beer.
9. **"Package"** means any container or receptacle used for holding alcoholic beverages.
10. **"Public Place"** includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has right of access, and which are generally used by the public. For the purposes of this Ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.
11. **"Reserve"** means the Annette Islands Reserve, which is held in trust by the United States Government for the benefit of the Community; any land located within the exterior boundaries of said reserve; and any lands held in trust by the United States for the benefit of the Community or held in trust for the benefit of an individual member of the Community.
12. **"Sale"** and **"Sell"** include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of alcohol, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.
13. **"Tribal Council"** means the Metlakatla Indian Community Tribal Council.

B. So long as the definitions are consistent with tribal or federal law, the terms used in this ordinance shall have the same meaning as defined in Title 4, Alaska Statutes, Chapter 21, and as defined in Title 3, Alaska Administrative Code, Chapter 304.

C. References in this Ordinance to federal and Alaska state law shall be those laws and regulations in effect as of March 7, 2017. Subsequent changes in those laws and regulations

shall be considered incorporated into this Ordinance and effective unless the Community or the Tribal Council amends this Ordinance.

SECTION FOUR.12.4 CONFORMITY TO STATE LAW.

A. **Statement of Objection.** The Community does not agree with the alleged authority of the United States or the State of Alaska to interfere with the Community's sovereign authority to regulate and control of alcohol sales and possession within the Community's sovereign boundaries. Accordingly, nothing in this Ordinance shall be interpreted as waiving the Community's right and power to challenge such authority in any judicial forum of competent jurisdiction, or by use of the political process. This Ordinance shall conform with the laws of the State of Alaska as required by 18 U.S.C. §1161, and *Rice v. Rehner*, 463 U.S. 713 (1983).

B. **Conformity to State Law.** The Metlakatla Indian Community agrees to perform in the sale and possession of alcohol in the same manner as any other Alaska business entity for the purpose of alcohol licensing and regulations, including but not limited to licensing, compliance with the regulations of the Alaska State Alcoholic Beverage control Board, and other applicable subjects as the State may address by statute or regulation from time to time.

C. **Jurisdiction and Dispute Resolution.** Jurisdiction for enforcement of the provisions of this Ordinance by the State of Alaska shall be set forth in an appropriate inter-governmental agreement between the Community and the State of Alaska. No consent to jurisdiction in the courts of the State of Alaska and no consent to a limited waiver of the Community's sovereign immunity shall be implied or inferred except through negotiation and express consent to jurisdiction and limited waiver of sovereign immunity in a valid inter-governmental agreement. Such agreement shall not supersede or conflict with any of the terms of this Ordinance, and shall not have force of law, unless and until this Ordinance has been validly amended according to Section Four.12.39 of this Ordinance and such amendment has been approved by the appropriate officials of the United States Department of the Interior, as required by federal law.

D. **Future Changes in the Law.** Amendment or modification of regulation by the Community of the sale and possession of alcohol shall not be effective until this Ordinance has been validly amended by according to Section Four.12.39 of this Ordinance, and such amendment has been approved by appropriate officials of the United States Department of the Interior, as required by federal law.

SECTION FOUR.12.5 POWERS.

A. The Committee, in furtherance of the Ordinance, shall have the following powers and duties, or may delegate such duties by resolution:

1. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Reserve;
2. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Committee to perform its functions. Such employees shall be tribal employees;
3. To issue licenses permitting the sale, manufacture or distribution of alcohol on the Community's Reserve;
4. To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;
5. To bring suit in the appropriate court to enforce this Ordinance as necessary;
6. To determine and seek damages for violation of this Ordinance;
7. To make such reports as may be required;
8. To collect taxes and fees levied or set by the Committee, and to keep accurate records, books and accounts; and
9. To exercise such other powers as are necessary and appropriate to fulfill the purposes of this Ordinance.

B. The Committee shall have the authority to authorize the sale of alcohol only on those areas of the Community's Reserve that have been specifically approved by the Tribal Council, by resolution, and under such conditions as may be included in said resolution.

SECTION FOUR.12.6 LIMITATION ON POWERS.

In the exercise of its powers and duties under this Ordinance, the Committee and its individual members shall not accept any gratuity, compensation or other thing of value from any alcohol wholesaler, retailer, or distributor or from any licensee.

SECTION FOUR.12.7 INSPECTION RIGHTS.

The premises on which alcohol is sold or distributed shall be open for inspection by the Committee at all reasonable times for the purposes of ascertaining whether the rules and regulations of this Ordinance are being complied with.

SECTION FOUR.12.8 LICENSE REQUIRED.

Sales of alcohol and alcoholic beverages on lands within the Community's jurisdiction may only be made at businesses which hold a Tribal Alcohol License.

SECTION FOUR.12.9 SALES FOR CASH.

All alcohol sales within the Reserve boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards.

SECTION FOUR.12.10 SALES FOR PERSONAL CONSUMPTION.

All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Reserve is prohibited. Any person who is not licensed according to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reserve and sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to paying damages to the Community as set forth herein.

SECTION FOUR.12.11 REQUIREMENTS FOR APPLICATION FOR TRIBAL ALCOHOL LICENSE.

A. No individual tribal license shall issue under this Ordinance except upon a sworn application filed with the Committee containing a full and complete showing of the following:

1. Satisfactory proof that the applicant is or will be duly licensed by the State of Alaska.
2. Satisfactory proof that the applicant is of good character and reputation among the people of the Reserve and that the applicant is financially responsible.
3. The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license.
4. Agreement by the applicant to accept and abide by all conditions of the tribal license.
5. Payment of a license fee as prescribed by the Committee.
6. Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.
7. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least thirty (30) days prior to consideration by the Committee and has been published at least twice in such local newspaper serving the community that may be affected by the license. The notice shall state the date, time, and place when the application shall be considered by the

Committee according to Section Four.12.12 of this Ordinance.

SECTION FOUR.12.12 HEARING ON APPLICATION FOR TRIBAL ALCOHOL LICENSE.

A. All applications for a tribal alcohol license shall be considered by the Committee in open session at which the applicant, his/her attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Committee, by secret ballot, shall determine whether to grant or deny the application based on:

1. Whether the requirements of SECTION FOUR.12.11 have been met; and
2. Whether the Committee, in its discretion, determines that granting the license is in the best interest of the Community.

In the event that the applicant is a member of the Tribal Council, or a member of the immediate family of a Tribal Council member, such member shall not vote on the application or participate in the hearings as a Committee member.

SECTION FOUR.12.13 TEMPORARY PERMITS.

The Committee or its designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed three (3) days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in SECTION FOUR.12.13 of this Ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee, as set by the Committee, will be assessed on temporary permits.

SECTION FOUR.12.14 CONDITIONS OF TRIBAL LICENSE.

- A. Any tribal license issued under this Ordinance shall be subject to such reasonable conditions as the Committee shall fix, including, but not limited to the following:
1. The license shall be for a term not to exceed 2 years;
 2. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises;
 3. The licensed premises shall be subject to patrol by the tribal police department, and such other law enforcement officials as may be authorized under applicable law;
 4. The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours;

5. Subject to the provisions of subsection (7) to this section, no intoxicating beverages shall be sold, served, disposed of, delivered or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of Alaska, and in accordance with the hours fixed by the Committee, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of Alaska.

6. No alcohol shall be sold within 200 feet of a polling place on tribal election days, when a referendum is held of the people of the Community, and including special days of observance as designated by the Committee.

7. All acts and transactions under authority of the tribal alcohol license shall be in conformity with the laws of the State of Alaska, as required by federal law, and shall be in accordance with this ordinance and any tribal license issued according to this Ordinance.

8. No person under the age permitted under the laws of the State of Alaska shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.

9. There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

SECTION FOUR.12.15 LICENSE NOT A PROPERTY RIGHT.

Notwithstanding any other provision of this ordinance, a tribal alcohol license is a mere permit for a fixed duration of time. A tribal alcohol license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal alcohol license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

SECTION FOUR.12.16 ASSIGNMENT OR TRANSFER.

No tribal license issued under this Ordinance shall be assigned or transferred without the written approval of the Committee expressed by formal resolution.

SECTION FOUR.12.17 SALE OR POSSESSION WITH INTENT TO SELL WITHOUT A LICENSE.

Any person who shall sell or offer for sale or distribute or transport in any manner any alcohol in violation of this Ordinance, or who shall operate or shall have alcohol in his/her possession with intent to sell or distribute without a permit, shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.18 PURCHASE FROM OTHER THAN LICENSED FACILITIES.

Any person within the boundaries of the Reserve who buys alcohol from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.19 SALES TO PERSONS UNDER THE INFLUENCE OF ALCOHOL.

Any person who sells alcohol to a person apparently under the influence of alcohol shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.20 CONSUMING ALCOHOL IN PUBLIC CONVEYANCE.

Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person who shall knowingly permit any person to drink any alcoholic beverages in any public conveyance shall be guilty of a violation of this Ordinance. Any person who shall drink any alcoholic beverage in a public conveyance shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.21 CONSUMPTION OR POSSESSION OF ALCOHOL BY PERSONS UNDER 21 YEARS OF AGE.

No person under the age of 21 years shall consume, acquire or have in his/her possession any alcoholic beverage. No person shall permit any other person under the age of 21 to consume alcohol on his/her premises or any premises under his/her control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

SECTION FOUR.12.22 SALE OF ALCOHOL TO PERSONS UNDER 21 YEARS OF AGE.

Any person who shall sell or provide alcohol to any person under the age of 21 years shall be guilty of a violation of this Ordinance for each sale or drink provided.

SECTION FOUR.12.23 TRANSFER OF IDENTIFICATION TO MINOR.

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcohol shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.

SECTION FOUR.12.24 USE OF FALSE OR ALTERED IDENTIFICATION.

Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this Ordinance.

SECTION FOUR.12.25 VIOLATION OF THIS ORDINANCE.

Any person guilty of a violation of this Ordinance shall be liable to pay the Community a penalty not to exceed \$500 per violation as civil damages to defray the Community's cost of enforcement of this Ordinance. In addition to any penalties so imposed, any license issued hereunder may be suspended or canceled by the Committee for the violation of any of the provisions of this Ordinance, or of the tribal license, upon hearing before the Committee after 10 days' notice to the licensee. The decision of the Committee shall be final.

SECTION FOUR.12.26 ACCEPTABLE IDENTIFICATION.

A. Where there may be a question of a person's right to purchase alcohol by reason of his/her age, such person shall be required to present any one of the following issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

1. Driver's license of any state or identification card issued by any State Department of Motor Vehicles;
2. United States Active Duty Military Identification;
3. Passport.

SECTION FOUR.12.27 POSSESSION OF ALCOHOL CONTRARY TO THIS ORDINANCE.

Alcoholic beverages which are possessed contrary to the terms of this Ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Committee to enforce this section shall have the authority to and shall seize, all contraband.

SECTION FOUR.12.28 DISPOSITION OF SEIZED CONTRABAND.

Any officer seizing contraband shall preserve the contraband in accordance with applicable law. Upon being found in violation of the Ordinance by the Committee, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Community.

SECTION FOUR.12.29 SALES TAX.

The Committee shall have the authority, by regulation, to levy and collect a sales tax on each sale of alcoholic beverages on the Reserve. The amount of such tax shall be set by resolution, shall include credit card payments, and shall include all retail sales of alcohol on the Reserve.

SECTION FOUR.12.30 PAYMENT OF TAXES TO COMMUNITY.

All taxes from the sale of alcoholic beverages on the Reserve shall be paid over to the agent of the Community.

SECTION FOUR.12.31 TAXES DUE.

All taxes for the sale of alcoholic beverages on the Reserve are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

SECTION FOUR.12.32 REPORTS.

Along with payment of the taxes imposed herein, the taxpayers shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

SECTION FOUR.12.33 AUDIT.

As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reserve. Said review or audit may be done annually by the Community through its agents or employees whenever, in the opinion of the Committee, such a review or audit is necessary to verify the accuracy of reports.

SECTION FOUR.12.34 DISPOSITION OF PROCEEDS.

- A. The gross proceeds collected by the Committee from all licensing and provided from the taxation of the sales of alcoholic beverages on the Reserve shall be distributed as follows:
1. For the payment of all necessary personnel, administrative costs, and legal fees for the operation of the Committee and its activities.
 2. The remainder shall be turned over the account of the Community.

SECTION FOUR.12.35 SEVERABILITY.

If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

SECTION FOUR.12.36 PRIOR ENACTMENTS.

All prior enactments of the Tribal Council that are inconsistent with the provisions of this Ordinance are hereby rescinded.

SECTION FOUR.12.37 CONFORMANCE WITH STATE OF ALASKA LAWS.

All acts and transactions under this Ordinance shall be in conformity with the laws of the State of Alaska as that term is used in 18 U.S.C. §1161.

SECTION FOUR.12.38 EFFECTIVE DATE.

This Ordinance shall be effective on the date of publication in the Federal Register.

SECTION FOUR.12.39 AMENDMENT.

This Ordinance may only be amended or repealed by a majority vote of the Tribal Council. The authorized areas of the Community's Reserve where alcohol may be sold may only be amended or repealed by the Tribal Council.

SECTION FOUR.12.40 SUNSET PROVISION.

This Ordinance will expire three (3) years after its effective date, unless extended by Tribal Council, through a written resolution.

SECTION FOUR.12.41 SOVEREIGN IMMUNITY.

This Ordinance in no way limits, alters, restricts, or waives the Community's sovereign immunity from unconsented suit.