



May 24, 2019

**Via email: <jtrattner@pci-nsn.gov>  
And First Class Mail**

Jeffrey B. Trattner, Esq.  
Assistant Attorney General  
Poarch Band of Creek Indians  
5811 Jack Springs Road  
Atmore, Alabama 36502

**Re: Review of the 2019 Credit Documents for the Poarch Band of Creek Indians**

Dear Mr. Trattner:

This letter responds to your April 10, 2019 request, on behalf of the Poarch Band of Creek Indians (“Tribe”) and PCI Gaming Authority, an unincorporated, chartered instrumentality of the Tribe, for the National Indian Gaming Commission, Office of the General Counsel, to review certain transaction documents and to provide an opinion as to whether or not these transaction documents are management contracts requiring the NIGC Chairman’s approval pursuant to the Indian Gaming Regulatory Act of 1988. You have also asked for my opinion as to whether or not these transaction documents violate IGRA’s requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (“2019 Credit Documents”):

- *Credit Agreement Dated as of [\_\_], 2019, among PCI Gaming Authority, as Borrower, The Subsidiaries of Borrower Party Hereto, as Guarantors, The Lenders Party Hereto, The L/C Lenders Party Hereto, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and as Collateral Agent, Credit Suisse Securities (USA) LLC, Capital One, National Association, and KeyBanc Capital Markets Inc., as Joint Lead Arrangers and Joint Bookrunners* (marked at bottom left as “US-DOCS\105110338.17” and at top right as “L&W Draft 5/20/19”);
- *Exhibit A-1 Form of Revolving Note* (marked at bottom left as “US-DOCS\105088464.6” and at top right as “L&W Draft 4/9/2019”);
- *Exhibit A-2 Form of Term B Facility Note* (marked at bottom left as “US-DOCS\105088472.5” and at top right as “L&W Draft 4/9/2019”);
- *Exhibit B Form of Notice of Borrowing* (marked at bottom left as “US-DOCS\105088480.6” and at top right as “L&W Draft 4/9/2019”);

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- Exhibit C *Form of Notice of Continuation/Conversion* (marked at bottom left as “US-DOCS\105088499.5” and at top right as “L&W Draft 4/9/2019”);
- Exhibit D *Forms of U.S. Tax Compliance Certificate* (marked at bottom left as “US-DOCS\105443550.4” and at top right as “L&W Draft 4/9/2019”);
- Exhibit E *Form of Compliance Certificate* (marked at bottom left as “US-DOCS\107146302.11” and at top right as “L&W Draft 5/20/2019”);
- Exhibit F *Form of Non-Interference Agreement* (marked at bottom left as “US-DOCS\105071661.8” and at top right as “L&W Draft 4/23/19”);
- Exhibit G *Form of Solvency Certificate* (marked at bottom left as “US-DOCS\105444132.4” and at top right as “L&W Draft 4/9/2019”);
- Exhibit H *Form of Security Agreement made by PCI Gaming Authority, and The Guarantors Party Hereto, as Pledgors, in favor of Credit Suisse AG, Cayman Islands Branch, as Collateral Agent Dated as of [\_\_], 2019* (marked at bottom left as “US-DOCS\107185124.3” and at top right as “L&W Draft 5/20/2019”);
- Exhibit I *Open-End Fee [and Leasehold] Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing Made By [\_\_], as Mortgagor, to Credit Suisse AG, Cayman Islands Branch, in its capacity as Collateral Agent for the benefit of the Secured Parties, as Mortgagee* (marked at bottom left as “US-DOCS\106283874.5” and at top right as “L&W Draft 5/20/19”);
- Exhibit J *Form of Affiliated Lender Assignment and Assumption Agreement* (marked at bottom left as “US-DOCS\106905389.2” and at top right as “L&W Draft 4/9/2019”);
- Exhibit K *Form of Assignment and Assumption Agreement* (marked at bottom left as “US-DOCS\105444400.5” and at top right as “L&W Draft 4/9/2019”);
- Exhibit L *Form of Letter of Credit Request* (marked at bottom left as “US-DOCS\105444821.5” and at top right as “L&W Draft 4/9/2019”);
- Exhibit M *Form of Joinder Agreement* (marked at bottom left as “US-DOCS\105445671.5” and at top right as “L&W Draft 4/9/2019”);
- Exhibit N *Form of Perfection Certificate* (marked at bottom left as “US-DOCS\105445734.5” and at top right as “L&W Draft 4/9/2019”);
- Exhibit O *Form of Auction Procedures* (marked at bottom left as “US-DOCS\105446449.4” and at top right as “L&W Draft 4/9/2019”);
- Exhibit P *Form of Open Market Assignment and Assumption Agreement* (marked at bottom left as “US-DOCS\105446579.4” and at top right as “L&W Draft 4/9/2019”);
- Exhibit Q *Form of Term Loan Extension Amendment* (marked at bottom left as “US-DOCS\105446622.4” and at top right as “L&W Draft 4/9/2019”);

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- Exhibit R *Form of Revolving Extension Amendment* (marked at bottom left as “US-DOCS\105446716.4” and at top right as “L&W Draft 4/9/2019”);
- Exhibit S *Form of Pari Passu Intercreditor Agreement dated as of [ ], 20[ ] Among Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent for the Credit Agreement Secured Parties, [ ], as the Initial Other Authorized Representative, [ ], as the Initial Other Collateral Agent, and each additional Authorized Representative and Collateral Agent from time to time party hereto* (marked at bottom left as “US-DOCS\105912814.6” and at top right as “L&W Draft 4/9/2019”);
- Exhibit T *Form of Second Lien Intercreditor Agreement among Credit Suisse AG, Cayman Islands Branch, as Senior Representative for the Credit Agreement Secured Parties, [ ], as the Initial Second Priority Representative and each additional Representative from time to time party hereto dated as of [ ], 20[ ]* (marked at bottom left as “US-DOCS\105912833.6” and at top right as “L&W Draft 4/9/2019”);
- *Global Intercompany Note* (marked at bottom left as “US-DOCS\106412442.2” and at top right as “L&W Draft 5/20/2019”); and
- *Confirmatory Grant of Security Interest in United States Intellectual Property* (marked at bottom left as “US-DOCS\105755698.5” and at top right as “L&W Draft 4/23/2019”).

The 2019 Credit Documents contains terms similar to other agreements that OGC has previously reviewed and analyzed. Some of these opinion letters may be found on the NIGC’s website located at <[www.nigc.gov](http://www.nigc.gov)>. Applying the same analysis here, it is my opinion that, collectively, the 2019 Credit Documents are not a management contracts and do not require the approval of the NIGC Chairman. It is also my opinion that they do not violate IGRA’s sole proprietary interest requirement.

It is my understanding that the 2019 Credit Documents are represented to be in substantially final form, and any further changes will not be material to OGC’s analysis. This opinion shall not apply if the 2019 Credit Documents change in any material way prior to their execution or are inconsistent with assumptions made herein. Further, this opinion is limited to the aforementioned 2019 Credit Documents and does not include or extend to any other agreements not submitted for review.

Please note that it is my intent that this letter be released to the public through the NIGC’s website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld. 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, any request to withhold will be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with “a statement or certification by an officer or authorized representative of the submitter.” 25 C.F.R. § 517.7(c). Please submit any written

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objection to <FOIASubmitterReply@nigc.gov> within thirty (30) calendar days of the date of this letter. After this time elapses, the letter will be made public and objections will no longer be considered. *Id.* If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's *Guide to the Freedom of Information Act* at <<http://www.justice.gov/oip/doj-guide-freedom-information-act-0>>.

If you have any questions, please contact Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is fluid and cursive, with a distinct dot over the 'i' in Hoenig.

Michael Hoenig  
General Counsel

cc: Townsend Hyatt, Esq. (via email only <[thyatt@orrick.com](mailto:thyatt@orrick.com)>)