



July 17, 2024

***VIA EMAIL***

Lori M. Stinson  
Attorney General  
Poarch Band of Creek Indians  
5811 Jack Springs Road  
Atmore, AL 36502

**Re: PCI Gaming Authority financing documents**

Dear Ms. Stinson:

This letter responds to your June 17, 2024 request for the National Indian Gaming Commission's Office of General Counsel to review a collection of financing documents among PCI Gaming Authority, each guarantor party thereto, various lenders, Banco Santander, S.A., New York Branch as the administrative agent, and Wilmington Trust, MA as collateral agent.. Specifically, you have asked for my opinion whether the documents are a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the documents violate IGRA's requirement that the Tribe and its instrumentality, PCI Gaming, have the sole proprietary interest in its gaming activity.

As part of this review, I analyzed the following undated documents (collectively, the Loan Documents):

- Fourth Amendment to Credit Agreement (NIGC Submission Draft 6/14/24, marked US-DOCS\150434314.14)
- Credit Agreement with proposed changes (NIGC Submission Draft 6/14/24, marked US-DOCS\149435191.11)
- Security Agreement with proposed changes (NIGC Submission Draft 6/14/2024, marked US-DOCS\151366026.5)
- Lender Notice Memorandum, including Lender Consent (NIGC Submission Draft 6/14/24, marked US-DOCS\150730296.9)
- First Amendment to Mortgage made by Gretna Racing, LLC to Wilmington Trust, NA (NIGC Submission Draft 6/18/2024, marked US-DOCS\151448917.5)

- First Amendment to Open-End Fee and Leasehold Mortgage by and between Wind Creek Bethlehem LLC and Wilmington Trust, NA (NIGC Submission Draft 6/18/2024, marked US-DOCS\151448910.3)
- First Amendment to Open-End Fee and Leasehold Mortgage by and between Wind Creek Bethlehem LLC and Wilmington Trust, NA (NIGC Submission Draft 6/18/2024, marked US-DOCS\151448893.3)
- First Amendment to Open-End Fee Mortgage by and between Wind Creek Bethlehem Retail LLC and Wilmington Trust, NA (NIGC Submission Draft 6/18/2024, marked US-DOCS\151448911.3)
- First Amendment to Open-End Fee Mortgage by and between Wind Creek Bethlehem Retail LLC and Wilmington Trust, NA (NIGC Submission Draft 6/18/2024, marked US-DOCS\151448899.3)

The Loan Documents you have submitted contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. Copies of declination letters can be found on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Documents are not a management contract and do not require the approval of the NIGC Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the drafts are represented to be in substantially final form, and if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan Documents. This opinion 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.<sup>1</sup> If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption four of the Freedom of Information Act (FOIA),<sup>2</sup> please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> Please submit any written objection to **FOIASubmitterReply@nigc.gov** within thirty (30) days of the date of this letter. After this time

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<sup>1</sup> See 25 C.F.R. § 517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 139 S. Ct. 2356, 2366 (2019).

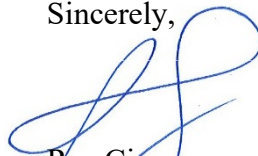
<sup>4</sup> See 25 C.F.R. § 517.7(d).

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elapses, the letter will be made public and objections will no longer be considered.<sup>5</sup> 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: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Senior Attorney Jennifer Lawson at [jennifer.lawson@nigc.gov](mailto:jennifer.lawson@nigc.gov).

Sincerely,



Rea Cisneros  
Acting General Counsel

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<sup>5</sup> *Id.*