National Indian Gaming Commission

Settlement Agreement

Introduction

This Settlement Agreement ("Agreement") is entered into by and between Richmond Gaming, Ltd. a Florida limited partnership ("Richmond"), and the Chairman of the National Indian Gaming Commission ("Chairman"), relating to the Management Agreement dated March 23, 2007 ("Management Agreement") between Richmond and the Scotts Valley Band of the Pomo Indians ("Scotts Valley").

Recitals

Whereas on or about August 27, 2007, Scotts Valley submitted a Management Agreement dated March 23, 2007 between Richmond and Scotts Valley to the National Indian Gaming Commission ("NIGC" or "Commission") for review and approval.

Whereas, on September 28, 2009, NIGC Chairman Philip N. Hogen issued a letter disapproving the Management Agreement.

Whereas, on October 28, 2009, Richmond timely filed an appeal of former Chairman Hogen's disapproval letter to the NIGC pursuant to 25 C.F.R. 539.2; and

Whereas, on or about November 10, 2009, the counsel for the Commission advised Richmond that Counsel for the Chairman had filed a Motion for Leave to File a Reply to the Appeal, together with a copy of the Reply. In light of this filing, the Commission asked Richmond to consider affording the Commission an additional thirty (30) days, to December 28, 2009, to issue a decision. On November 12, 2009, Richmond timely responded to the request and agreed to extend the deadline to December 28, 2009; and

Whereas, on November 30, 2009, Richmond filed a Reply to the Motion and to the Reply filed by Counsel for the Chairman; and

Whereas, as of the date of this Agreement, the Commission has not issued a decision on Richmond's appeal or the pending Motions; and

Whereas, Richmond and the Chairman desire to amicably resolve the pending appeal instead of having the Commission issue a final decision; and

Now therefore, Richmond and the Chairman have agreed to execute this Agreement and perform in accordance with the following covenants and conditions.

Terms of Settlement

1. This Agreement shall be effective upon the date that it is signed by the last party to sign this Agreement ("Effective Date"), and cannot be used for any purpose except to enforce the Agreement itself.

2. Richmond agrees that it was not in compliance with NIGC regulations related to the submission of management agreements.

3. Rather than continue to dispute the Chairman's decision to disapprove the Management Agreement, Richmond and the Chairman agree that by execution of this Agreement, Richmond's appeal is hereby withdrawn, the request for approval of the Management Agreement is hereby withdrawn, and the former Chairman's letter disapproving the Management Agreement is hereby withdrawn.

4. Within ninety (90) days from the Effective Date of this Agreement, Richmond will form a new entity ("Newco"). Richmond will transfer or assign all of its rights, duties and obligations in the Management Agreement to Newco, subject to approval by Scotts Valley. Subject to approval by Scotts Valley, may identify and select a new partner(s) and/or member(s) for Newco that has experience with the operation and management of a casino. b6 b4

5. Within 180 days from the Effective Date of this Agreement, Richmond agrees that Newco will either resubmit to the NIGC for review and approval the Management Agreement assigned to Newco by Richmond or Newco will submit a new Management Agreement entered into by and between Newco and Scotts Valley. Any management agreement submitted shall comply with the submission requirements detailed in NIGC regulations. Richmond's obligations under this paragraph shall be deemed satisfied upon submission to the NIGC of either of the Management Agreements described in this paragraph.

6. With the all of Richmond's former partners, profit participants and owners of any direct or indirect financial interest in the Management Agreement, including any economic beneficial interest, will not have any direct or indirect financial beneficial interest in Newco or the Management Agreement or any collateral agreements. It is understood that Richmond may not satisfy any financial obligations of Richmond's former partners, profit participants and owners of any direct or indirect financial interest in the Management Agreement or any collateral agreements, including any economic beneficial interest, from gaming revenues from any Scotts Valley gaming facility. The financial obligations to be satisfied are set forth in the attached Exhibit A. Richmond's obligations under this paragraph shall be deemed satisfied when Richmond submits to the NIGC written proof of payment made to the entities and individuals and in the amounts set forth above. b6

7. In the event that Richmond fails to perform its obligation(s) described above in paragraphs five (5), six (6) and seven (7), the NIGC shall provide written notice to Richmond, specifying the failure to perform and Richmond shall have thirty (30) days from the date of receipt of such notice to perform such obligation ("Cure Period"). In the event that Richmond fails to perform its obligation during any applicable Cure Period, the NIGC may issue a Notice of Failure to Cure. Upon receipt of a Notice of Failure to Cure, Richmond shall allow Scotts Valley to exercise its right to purchase the land described more fully in Exhibit B, which purchase shall be no more than the appraised value as if it had been brought into trust and is in trust for Scotts Valley in accordance with the terms and conditions set forth in the agreement between Richmond and Scotts Valley. If Scotts Valley and Richmond are not able to agree upon such fair market value within thirty (30) days, Richmond shall allow Scotts Valley to utilize the following procedure for determining fair market value of the property: Scotts Valley and Richmond would each select an MAI real estate appraiser with at least then (10) years' experience appraising commercial real estate with similar intended use, who would each give an opinion of fair market value. If the opinions are within five (5) percent of the higher, the average of the two shall establish such fair market value. If they differ by a greater amount, the two appraisers would jointly select a third similarly qualified appraiser to give an opinion and the average of the three would establish fair market value.

8. In the event that the NIGC issues a Notice of Failure to Cure pursuant to this paragraph and Richmond fails to allow Scotts Valley to exercise its right to purchase the land pursuant to this paragraph, then the Chairman's letter will become final agency action and Richmond waives all rights to appeal the decision to the Commission or any federal court.

9. Richmond agrees to cooperate fully with the Commission or its employees to verify compliance with the terms of this Agreement.

Additional Covenants

10. This Agreement constitutes the entire agreement between the Chairman and Richmond relating to the appeal pending before the Commission. Any modifications or waiver of any term in this Agreement must be in writing and signed by both parties.

11. The parties agree that after the effective date, the disclosure of this Agreement shall be subject to the Freedom of Information Act ("FOIA") and/or the Privacy Act.

12. This Agreement may be executed on one or more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purpose of this Agreement.

Richmond Gaming, Ltd.

Alan H. Ginsburg

DEC. 18, 2009
Date

National Indian Gaming Commission

George Skibine, Acting Chairman

Dec. 22nd 2009
Date

Exhibit A

Name or their designated affiliate	Amount not to exceed
[redacted]	[redacted]
[redacted]	[redacted]
Legacy Commercial Partners	
Total	[redacted]

b6
b4

346362

EXHIBIT B

The land referred to in this policy is described as follows:

Real property in the City of Richmond in the County of Contra Costa, State of California, described as follows:

SECTION 1

That parcel of land described in the Deed to Andrew Anfibolo, recorded January 23, 1922, Book 408 of Deeds, Page 179, Contra Costa County Records, described as follows:

Being a portion of Lot 210, as said Lot is so delineated and designated in that certain Map entitled "Map of the San Pablo Rancho Accompanying and Forming a Part of the Final Report of the Referees in Partition", a certified copy of which was filed in the Office of the County Recorder of said Contra Costa County on March 1, 1894 and a portion of Lot 32, Section 35, Township 2 North, Range 5 West, MDB&M, more particularly described as follows:

Beginning at the southwest corner of Section 36, Township 2 North, Range 5 West, MDB&M, thence due West 660 feet along the North line of a road 30 feet wide to a stake, thence due North 693 feet to a stake, thence due East 660 feet, thence due South, 693 feet to the point of beginning.

EXCEPTING THEREFROM:

That portion of the premises granted to the Broadline Corporation, recorded September 12, 1968, in Book 5707 of Official Records, Page 155.

ALSO EXCEPTING THEREFROM:

The interest conveyed to the City of Richmond by Deed recorded May 22, 1995, Series No. 95-80157 of Official Records, described as follows:

PARCEL 1:

Beginning at the southeast corner of Parcel One as described in the Deed from the Duncan-Harrelson Company to Broadline Corporation recorded September 12, 1968, in Book 5707 of Official Records, Page 155, Contra Costa County Records, thence from said point of beginning along the East line of Parcel One North 01° 03' 12" East 29.17 feet, thence leaving said East line South 84° 17' 55" East 235.48 feet, thence South 01° 05' 48" West 10.09 feet to the South line of said 10.5 acre parcel, thence along said South line North 88° 56' 43" West 234.70 feet to the point of beginning.

PARCEL 2:

Beginning at the northeast corner of Parcel Two as described in the Deed from the Duncan-

Harrelson Company to Broadline Corporation recorded September 12, 1968 in Book 5707 of Official Records, Page 155, Contra Costa County Records, thence from said point of beginning along the East line of Parcel Two South 01° 03' 12" West 70.22 feet, thence leaving said East line from a tangent bearing of North 36° 04' 29" East along a curve to the right with a radius of 910.00 feet, through a central angle of 1° 41' 05" for an arc length of 26.76 feet, thence North 53° 21' 12" East 68.62 feet, thence North 03° 45' 07" East 6.57 feet to the North line of said 10.5 acre parcel, thence along said North line North 88° 56' 01" West 70.28 feet to the point of beginning.

APN: 408-130-018 and 408-130-037

SECTION 2

Being a portion of that certain Parcel of land described in the Deed from Clifford Git Ng and Daisy Ng, his wife, as joint tenants, to the City of Richmond, a municipal corporation, recorded September 29, 1944, Series No. 94-244105, Official Records, and re-recorded June 23, 1995, Series No. 95-098625, Official Records, described as follows:

PARCEL ONE:

Beginning at the southeast corner of said Parcel conveyed to the City of Richmond; thence from said point of beginning, along the southerly line of said Parcel conveyed to the City of Richmond, North 89° 00' 53" West 396.35 feet; thence leaving said southerly line, North 44° 13' 28" East 558.65 feet to a point in the northerly line of said Parcel conveyed to the City of Richmond; thence along said northerly line, South 89° 00' 53" East 14.07 feet to the northeasterly corner of said Parcel conveyed to the City of Richmond; thence along the easterly line of said Parcel conveyed to the City of Richmond, South 1° 02' 37" West 406.98 feet to the point of beginning.

PARCEL TWO:

A non-exclusive easement for roadway, access and utility purposes under, upon, over and across that certain real property described as follows: Being Parcel Three as described in said Deed to the City of Richmond and described as follows: Beginning at the southeast corner of said Parcel conveyed to the City of Richmond; thence from said point of beginning, along the southerly line of said Parcel Three, South 89° 00' 53" East 1120.08 feet to the southeast corner of said Parcel Three; thence along the easterly line of said Parcel Three, North 1° 02' 37" East 20.00 feet to the northeasterly corner of said Parcel Three; thence along the northerly line of said Parcel Three, North 89° 00' 53" West 1120.06 feet to the intersection thereof with the easterly line of said Parcel conveyed to the City of Richmond; thence leaving said northerly line, along said easterly line, South 1° 02' 37" West 20.00 feet to the point of beginning.

APN 408-090-040

SECTION 3

PARCEL ONE:

Portion of Lot 201, as designated on that certain Map entitled "Map of the San Pablo Rancho, Accompanying and Forming a Part of the Final Report of the Referees in Partition", filed March 1, 1894, Contra Costa County Records, and a portion of Lot 32, Section 35, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, described as follows: The South 309 feet of the West 282 feet, right angle measurement of the parcel of land described in the Deed to the Duncanson-Harrelson Co., recorded July 8, 1964, Book 4655, Official Records, Page 318.

EXCEPTING FROM PARCEL ONE: That portion thereof condemned to the City of Richmond, a municipal corporation, in fee simple absolute, pursuant to Final Order of Condemnation of the Superior Court of the State of California, in and for the County of Contra Costa, Case No. C94-05306, a certified copy of which recorded March 26, 1998, Series No. 98-63421, Official Records.

PARCEL TWO:

Portion of Lot 201, as designated on that certain Map entitled "Map of the San Pablo Rancho, Accompanying and Forming a Part of the Final Report of the Referees in Partition", filed March 1, 1894, Contra Costa County Records, and a portion of Lot 32, Section 35, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, described as follows: The North 384 feet of the West 282 feet, right angle measurement, of the parcel of land described in the Deed to the Duncanson-Harrelson Co., recorded July 8, 1964, Book 4655, Official Records, Page 318.

EXCEPTING FROM PARCEL TWO: That portion thereof condemned to the City of Richmond, a municipal corporation, in fee simple absolute, pursuant to Final Order of Condemnation of the Superior Court of the State of California in and for the County of Contra Costa, Case No. C94-05306, a certified copy of which recorded March 26, 1998, Series No. 98-63421, Official Records.

APN 408-130-038 and 408-130-039

SECTION 4

PARCEL ONE:

A portion of Lot 201, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, and also being a portion of Swamp and Overflowed Survey No. 189, described as follows: Beginning at a point on the line between Sections 35 and 36, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, said point being North 693 feet from the southwest corner of said Section 36; thence East 660 feet to a stake; thence North 627 feet to a 3 by 3 redwood stake marked 23, 24, 25, 26; thence along the South line of a road 20 feet wide, West 660 feet to a 3 by 3 redwood stake marked 24, 17, 32, 25, being the northwest corner of the southwest 1/4 of the southwest 1/4 of said Section 36; thence South 627 feet to the point of beginning.

EXCEPTING THEREFROM: That portion of the following described parcel of land lying within the above mentioned Parcel One, described as follows: Beginning at a point on the southerly line of that certain parcel of land described in the Deed from Sanwa Bank California to Color Spot, Inc., recorded March 6, 1991 in Book 16435 of Official Records at Page 659, Contra Costa County Records, which bears along said southerly line North 88° 56' 01" West 307.82 feet from the southeast corner of said parcel conveyed to Color Spot Inc.; thence from said point of beginning leaving said southerly line North 3° 45' 07" East 18.92 feet; thence North 44° 12' 52" East 736.49 feet; thence North 53° 24' 47" East 68.88 feet; thence North 2° 24' 15" East 16.50 feet; thence North 44° 13' 28" East 17.11 feet to the northerly line of said parcel conveyed to Color Spot Inc.; thence along said northerly line North 89° 00' 53" West 763.92 feet to the northwesterly corner of said parcel conveyed to Color Spot Inc.; thence along the northwesterly and westerly lines of said parcel conveyed to Color Spot, Inc. South 65° 33' 12" West 176.90 feet and South 1° 03' 12" West 550.02 feet to the southwest corner of said parcel conveyed to Color Spot Inc.; thence along said southerly line South 88° 56' 01" East 352.26 feet to the point of beginning, as awarded in that Judgment in Condemnation, Superior Court Case No. C93-03756, Contra Costa County, recorded April 4, 2003 as Instrument No. 2003-154972. Official Records.

PARCEL TWO:

A right of way, not to be exclusive as an appurtenance to Parcel Four-A, above, for use as a roadway for vehicles of all kinds, pedestrians and animals, and as a right of way for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or underground conduits to carry said lines, over and under the following described parcel of land: Portion of Lot 201, as shown on the Map of the San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, and also a portion of Swamp Overflowed Survey No. 189, described as follows: Beginning at a point on the line between Sections 35 and 36, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, said point being due North, 1340.0 feet from the southeast corner of Section 35 and the southwest corner of Section 36; proceeding thence due West 20.0 feet; thence due South 20.0 feet; thence East 680 feet to the West line of the parcel of land described in the Deed from Giovanni Siri to Giambatista Siri, dated October 29, 1956, recorded November 1, 1956, in Book 2873, Page 440, Official Records; thence North along said West line, 2873 OR 440, 20 feet; thence West 660 feet to the point of beginning.

PARCEL THREE:

A right of way, not to be exclusive, as an appurtenance to that parcel of land described in the Deed from East Bay Water Company, a corporation, to Giovanni Siri, Giambatista Siri, Nicola Patrone and Nicolo Siri, dated January 22, 1921, and recorded January 27, 1921, in Book 376 of Deeds, Page 207, Records of Contra Costa County, State of California, for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for television service, telephone, electric light and power lines, together with the necessary poles or conduits over a strip of land 20 feet in width, described as follows: Portion of Lot 201, as shown on the Map of San Pablo Rancho filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows: Beginning at a point on the South line of a 20 feet in width road which bears North 1320 feet and East 660 feet from the southeast corner of Section 35, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, said point of beginning also being the northeast corner of the parcel of land described in the Deed from East Bay Water Company to Luigi Gallino, dated March 1, 1920, recorded March 15, 1920 in Book 354 of Deeds, Page 472; thence from said point of beginning East along said South line, 1120 feet to the West line of the County Road known as Goodrich Avenue; thence North along said West line, 20 feet to the South line of the parcel of land described in the Deed from East Bay Water Company to Michele Credolo, dated November 10, 1926, recorded November 29, 1926, in Book 49, Page 447, Official Records; thence West along said South line and along the South line of the parcel of land firstly described in the Deed from East Bay Water Company to Giovanni Siri, dated December 24, 1923, recorded January 9, 1924, in Book 462 of Deeds, Page 73, being along the North line of said 20 feet in width road, 1120 feet to the southwest corner of said Siri Parcel; thence South 20 feet to the point of beginning.

PARCEL FOUR:

A portion of Lot 201, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows: Beginning at the southwest corner of Section 36, Township 2 North, Range 5 West, Mount Diablo Base and Meridian; thence due East 660 feet along the North line of road 30 feet wide, to a stake; thence due North 693 feet to a stake; thence due West 660 feet; thence due South 693 feet into the point of beginning.

EXCEPTING FROM PARCEL FOUR: That portion of said Parcels contained in the Deed from Bio-Rad Laboratories, a California corporation, to George F. Case Company, a California corporation, dated July 14, 1966, and recorded August 11, 1966, in Book 5181, Page 99, Official Records.

PARCEL FIVE:

Portion of Lot 201, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows: Beginning at the southwestern corner of the parcel of land shown as Parcel Three in the Deed from Luigi Gallino, et ux, to Augustine J. Gallino, et ux, dated August 12, 1957, in Book 3012, Page 59, Official Records; thence North along the western line of said Parcel Three, 3012 OR 59, to and along the western line of the land shown as Parcel Two in said Deed, 3012 OR 59, a distance of 697 feet; thence East parallel with the southern line of said Parcel Two, a distance of 250 feet; thence South parallel with the western lines of said Parcels Two and Three, 3012 OR 59, 697 feet to the southern line of said Parcel Three; thence along the last named line West, 250 feet to the point of beginning.

PARCEL SIX:

A portion of Swamp and Overflowed Survey No. 189 and a portion of Lot 201, Rancho San Pablo, described as follows: Beginning at a point in the line between Sections 35 and 36, in Township 2 North, Range 5 West, Mount Diablo Base and Meridian, and point of beginning being located due North and distant 693 feet from the southeast corner of said Section 35, this said point of beginning also being the northeast corner of a certain 10.50 acre tract of land sold to Andrew Anfibolo; thence North 627 feet to a 3 by 3 inch redwood stake marked 17, 25, 25 and 32; thence West 494.34 feet; more or less, to the line of tide land survey; thence along this said survey line South 64° 30' West 117.48 feet, more or less, to the direct extension northerly of the western line of said 10.50 acre tract of land sold to Andrew Anfibolo; thence South 480.80 feet, more or less, to the northwest corner of the above mentioned 10.50 acre tract; thence East along the North line of this said 10.50 acre tract 660 feet to a point of beginning.

EXCEPTING THEREFROM: That portion of the following described parcel of land lying within the above mentioned Parcel Six, described as follows: Beginning at a point on the southerly line of that certain parcel of land described in the Deed from Sanwa Bank California to Color Spot, Inc., recorded March 6, 1991 in Book 16435 of Official Records at Page 659, Contra Costa County Records, which bears along said southerly line North 88° 56' 01" West 307.82 feet from the southeast corner of said parcel conveyed to Color Spot Inc.; thence from said point of beginning leaving said southerly line North 3° 45' 07" East 18.92 feet; thence North 44° 12' 52" East 736.49 feet; thence North 53° 24' 47" East 68.88 feet; thence North 2° 24' 15" East 16.50 feet; thence North 44° 13' 28" East 17.11 feet to the northerly line of said parcel conveyed to Color Spot Inc.; thence along said northerly line North 89° 00' 53" West 763.92 feet to the northwesterly corner of said parcel conveyed to Color Spot Inc.; thence along the northwesterly and westerly lines of said parcel conveyed to Color Spot, Inc. South 65° 33' 12" West 176.90 feet and South 1° 03' 12" West 550.02 feet to the southwest corner of said parcel conveyed to Color Spot Inc.; thence along said southerly line South 88° 56' 01" East 352.26 feet to the point of beginning, as awarded in that Judgment in Condemnation, Superior Court Case No. C93-03756, Contra Costa County, recorded April 4, 2003 as Instrument No. 2003-154972.Official Records.

APN 408-090-031

END OF DOCUMENT

SEP 28 2009

Donald Arnold, Chairman
Scotts Valley Band of Pomo Indians
81 Parr Blvd, PO Box 2008
Richmond, CA 94802
Fax (510) 234-0101

Alan H. Ginsberg
Richmond Gaming Ltd.
1551 Sandspur Rd.
Maitland, FL 32751
Fax (407) 691-5631

Dear Chairman Arnold and Mr. Ginsberg:

On September 10, 2007, the National Indian Gaming Commission ("NIGC" or "Commission") received a Class II and III gaming management contract (Contract), dated March 23, 2007, between the Scotts Valley Band of Pomo Indians (the Tribe) and Richmond Gaming Ltd. ("Richmond"). Since then, the NIGC has been reviewing the Contract and revised documents submitted by the parties and providing comments to the parties. Unfortunately, I must inform you that I disapprove the Contract for the reasons given below.

Applicable Law

The Indian Gaming Regulatory Act (IGRA) allows Indian tribes to enter into management contracts for the operation of Class II and/or Class III gaming activity if the contract has been submitted to, and approved by, the Chairman. 25 U.S.C. §§ 2710-2711. As part of the Chairman's review of a management contract, a management contractor is required to submit background information. 25 C.F.R. § 537.2.

The NIGC's requirements for submission of management contracts are outlined at 25 C.F.R. § 533.3(d). Subsection (d) requires the submission of a list of all the persons and entities with significant interests in the management contract, including in relevant part, the ten persons who have the greatest direct or indirect financial interest in a management contract and any entity with a financial interest in a management contract. NIGC regulations define *Person having a direct or indirect financial interest in a management contract* as including *when an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management*

contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract. 25 C.F.R. § 502.17(e).

After reviewing the background information the Chairman then makes a determination as to whether the information would prevent him from approving the contract. 25 C.F.R. § 537.4. NIGC regulations enumerate the criteria used by the Chairman in determining if a contract should be disapproved. 25 C.F.R. § 533.6 (b)(1)(i).

Disapproval pursuant to 25 C.F.R. § 533.6(b)(1)(iii) – providing materially false statements or information

NIGC regulations require the Chairman to disapprove a gaming management contract when any person with a direct or indirect financial interest in, or having management responsibility for, a management contract has knowingly and willfully provided materially false statements or information to the Commission or a tribe. 25 C.F.R. § 533.6(b)(1)(iii). NIGC regulations at 25 C.F.R. § 533.3(d) and § 537.1 required Richmond to submit a list of the persons and entities with a financial interest in, or management responsibility for, the Contract. During the review process, Richmond submitted five different lists. With each list, Richmond provided materially false information to the Commission.

First, on July 8, 2008, the NIGC received from Richmond list #37954.00.0001.[1] The list identified MGA Holdings I LLC (MGA I) as a [ ] limited partner in Richmond and MGA Holdings II LLC (MGA II) as a [ ] limited partner in Richmond. However, as later detailed by Richmond, MGA I and MGA II had not acquired their interests in Richmond as of the date of the list. See Letters from Terrance Dunleavy to NIGC dated October 20, 2008, May 8, 2009, May 11, 2009, and June 30, 2009. As of the date of submission, the owners of the [ ] partnership interest were in fact:

- [ ]
- [ ]
- [ ]
- Warm Winds Partners Ltd; and
- Lawhorn Corporation.

In his letter dated October 10, 2008, Terrance Dunleavy stated that Warm Winds Partners Ltd., owned a limited partnership interest in Richmond from December 2004 to January 2008. Additionally, he stated that Mr. Ginsburg through his affiliate MGA Holdings I acquired the Warm Winds interest as of January 2008. However, as Mr. Dunleavy summarized in his letter of May 8, 2009, Richmond reached an agreement in January 2008 "whereby Mr. Ginsburg would acquire [ ] Partnership Interest and [ ] Economic Beneficial Interest in Richmond." However, "due to a severe downturn in the financial markets" the parties to these transactions "could not conclude the business transactions." [ ] interest was held by Warm Winds and [ ] interest

[1] All lists submitted by Richmond were in the form of organizational charts.

through Lawhorn. As entities with an interest in Richmond, all partners and shareholders of Warm Winds and Lawhorn are deemed to be persons having a direct financial interest in the Contract. Richmond failed to list them on lists submitted to the NIGC. Accordingly, Richmond provided materially false information about more than one third of the ownership interests in the Contract when it listed MGA I and MGA II as limited partners and did not list the actual owners of the [ ] interest.

Second, on October 21, 2008, the NIGC received a second version of list #37954.00.0001. The list identified MGA I as a [ ] limited partner in Richmond and MGA II as a [ ] limited partner in Richmond. However, as later detailed by Richmond, MGA I and MGA II had not acquired their interests in Richmond as of the date of the list. See Letters from Dunleavy to NIGC dated October 20, 2008, May 8, 2009, May 11, 2009, and June 30, 2009. The [ ] interest they eventually acquired was held by different persons and entities. As of the date of submission, the owners of the [ ] were in fact:

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- [ ]
- Warm Winds Partners Ltd; and
- Lawhorn Corporation.

Accordingly, Richmond twice provided materially false information about more than one third of the ownership interests in the Contract when it listed MGA I and MGA II as being limited partners and did not list the actual partners/owners of the [ ] interest.

Third, on January 12, 2009, the NIGC received from Richmond two updated lists #1861323.2 and #1861323.3. List #1861323.2 was referenced as "a copy of the original organizational chart." However, it was not identical to the chart submitted in July 2008. The two new lists identified MGA I as a [ ] limited partner in Richmond and MGA II as a [ ] limited partner in Richmond. However, as later detailed by Richmond, MGA I and MGA II had not acquired interests in Richmond as of the date of the updated lists. See Letters from Dunleavy to NIGC dated May 8, 2009, May 11, 2009, and June 30, 2009. As of the date of submission, the owners of the [ ] were in fact:

- [ ]
- Warm Winds Partners Ltd; and
- Lawhorn Corporation.

Accordingly, Richmond provided materially false information for the third time and fourth time when it listed MGA I and MGA II as being limited partners and did not list the actual partners/owners in lists #1861323.2 and #1861323.3.

Fourth, as of the date of submission, Richmond had not bought the "Profit Participants" financial interests from [redacted] and [redacted] Therefore, with lists #1861323.2 and list #1861323.3, Richmond provided other materially false information when it did not list [redacted] and [redacted] as being two of the top ten persons with financial interests in Richmond and the Contract.

Fifth, on May 8, 2009, Dunleavy sent a letter along with various buyout agreements and other documents. The buyout agreements identified several new entities that have, or will have, an interest in Richmond. As such, the entities and all parties of each entity are deemed to be persons having a direct financial interest in the Contract. On June 30, 2009, the NIGC received from Richmond the updated list #1861323.4. Based on the various documents submitted by Richmond on May 8, 2009, relating to buyouts, or planned buy outs, of various persons and entities, Richmond failed to list the following persons and entities on list #1861323.4 as persons or entities having, or who were anticipated to have, a disclosable interest in Richmond and the Contract: b4

- NSV Development LLC;
- NG Services LLC;
- Legacy Commercial Partners LLC;
- Legacy Partners Party Commercial LLC;
- Massee Road Investors LLC;
- ADJ Investments LLC;
- Smokey Mt. Ridge LLC;
- Guardian Smoky Mountain Ridge LLC;
- Southeastern Development Lands LLC; b6
- Noram Equities Ltd.;
- CED Tropical Park Inc.;
- WKN Financial Resources LLC;
- Canton Park Financial LLC;
- JJP Holdings LLC
- [redacted]
- Warm Winds Partners Ltd.;
- [redacted]
- Lawhorn Corporation;
- [redacted] and
- RSB, a sole proprietorship.

Accordingly, and for the fifth time Richmond provided materially false information about ownership in the Contract.

The actions of Richmond are quite serious. IGRA specifically identifies protecting tribes from organized crime and corrupting influences and ensuring

that tribes are the primary beneficiary of the gaming as the objectives of IGRA. 25 U.S.C. § 2702. The provisions of 25 U.S.C. § 2711 are designed to achieve these goals. Therefore, suitability determinations on significant financial interests are necessary to keep out undesirable elements. Providing false information about financial interests makes it impossible for the Chairman to make proper suitability determinations and to enforce the law as Congress intended.

Disapproval pursuant to 25 C.F.R. § 533.6(b)(1)(iv) – refusal to respond to the Chairman's questions

NIGC regulations require the Chairman to disapprove a gaming management contract when any person with a direct or indirect financial interest in, or having management responsibility for, a management contract has refused to respond to questions asked by the Chairman in accordance with his responsibilities. 25 C.F.R. § 533.6(b)(1)(iv). Richmond was required to respond within 30 days to written or oral questions propounded by the Chairman. 25 C.F.R. § 537.1(c)(3). The NIGC Division of Contracts was delegated authority for § 537 specifically for reviewing and processing a gaming management contract and the related background investigation of a management contractor, including requesting documentation and answers from the management contractor.

On September 27, 2007, Chris White, NIGC Financial Analyst, sent a letter to the Tribe and Richmond delineating documents that the parties needed to submit pursuant to NIGC regulations at 25 C.F.R. Parts 533 and 537. Among the items requested was the list of persons and entities having a financial interest in the contract as well as applications for each person and entity and the corresponding deposit. The NIGC requested a response in 30 days.

As detailed above, Richmond failed to list all persons and entities with a financial interest in, or management responsibility for, the Contract. Richmond's failure to list all of the persons and entities does not negate Richmond's responsibility to submit all of the background information required for those persons and entities as required by 25 C.F.R. § 537.1.

To date, the NIGC has not received from Richmond background information forms from:

- [redacted]
- Warm Winds Partners Ltd; and
- Lawhorn Corporation.

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Pursuant to 25 C.F.R. § 537.2, Richmond is responsible for submitting all background information required by 25 C.F.R. § 537.1. Richmond failed to respond within the 30 days given for a response.

On February 26, 2008, Mr. White sent a letter to the Tribe and Richmond informing them the Contract could not be approved because it did not comply with certain provisions of 25 C.F.R. Parts 531 and 533. His letter listed 25 issues that parties needed to address. Among them, Richmond needed to submit a list of persons and entities having a financial interest in the contract as well as background information for each person and entity and the corresponding deposit.

On July 8, 2008, the NIGC received the parties' response to the letter. This response included certain Richmond background investigation applications and the list #37954.00.0001. As detailed above, Richmond failed to list all persons and entities with a financial interest in, or management responsibility for, the Contract. Richmond's failure to list all of the persons and entities does not negate Richmond's responsibility to submit all of the background information required in 25 C.F.R. § 537.1.

To date, the NIGC has not received form Richmond background information for:

- [redacted]
- Warm Winds Partners, Ltd; and
- Lawhorn Corporation.

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Pursuant to 25 C.F.R. § 537.2, Richmond is responsible for submitting all background information required by 25 C.F.R. § 537.1. Richmond failed to respond within the 30 days given for a response.

On August 20, 2008, Elaine Saiz, NIGC Director of Contracts, sent a letter to the Tribe and Richmond informing them that the request to exempt [redacted] and [redacted] from the NIGC background investigation process was denied. The NIGC requested that background information for the two men be submitted within 30 days. To date, the NIGC has not received the background information from Richmond for [redacted] or [redacted]

Pursuant to 25 C.F.R. § 537.2, Richmond is responsible for submitting all background information required by 25 C.F.R. § 537.1. Richmond failed to respond within the 30 days Ms. Saiz gave for a response.

On October 21, 2008, Ms. Saiz sent a letter to the Tribe and Richmond informing them the Contract could not be approved because it did not comply with certain provisions of 25 C.F.R. Parts 531 and 533. Her letter listed 12 issues that parties needed

to address within 30 days. Among the issues was a request for Richmond to provide an updated list of the person and entities that have a financial interest in the contract.

The updated lists #1861323.2 and #1861323.3 were received on January 12, 2009, outside of the 30-day deadline Ms. Saiz provided.

On June 16, 2009, Ms. Saiz sent a letter to the Tribe and Richmond delineating six issues that the parties needed to address. Among items listed was a request for Richmond to provide an updated list of the persons and entities that have a financial interest in the contract and applications for those persons and entities within 30 days. On June 30, 2009, Richmond submitted revised list #1861323.4

Although the list was submitted within 30 days, Richmond failed to submit information within 30 days, and to date still has not submitted, background information for the following persons and entities who have a financial interest in the contract:

- NSV Development LLC;
- NG Services LLC;
- Legacy Commercial Partners LLC;
- Legacy Partners Party Commercial LLC;
- Massee Road Investors LLC;
- ADJ Investments LLC;
- Smokey Mt. Ridge LLC;
- Guardian Smoky Mountain Ridge LLC;
- Southeastern Development Lands LLC;
- Noram Equities Ltd.;
- CED Tropical Park Inc.;
- WKN Financial Resources LLC;
- Canton Park Financial LLC;
- JJP Holdings LLC
- [redacted]
- Warm Winds Partners Ltd.;
- [redacted]
- Lawhorn Corporation;
- [redacted] and
- RSB, a sole proprietorship.

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Richmond's failure to list all required persons and entities does not negate Richmond's responsibility to submit all of the background information required for those persons and entities as required by 25 C.F.R. § 537.1. Pursuant to 25 C.F.R. § 537.2,

Richmond is responsible for submitting all background information required by 25 C.F.R. § 537.1.

Richmond has shown a pattern of not only responding in an untimely fashion but also failing to adequately respond to NIGC requests for information. IGRA and NIGC regulations do not give management contractors discretion in when and how they will respond to NIGC requests for information. Again, a refusal to respond impairs my ability to enforce IGRA and accomplish Congress' goals as much as providing false information does.

Disapproval pursuant to 25 C.F.R. § 533.6(b)(4) – Chairman's role as a trustee

NIGC regulations require the Chairman to disapprove a gaming management contract when a "trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract" 25 C.F.R. § 533.6(b)(4).

On August 6, 2007, at a meeting between the Tribe and NIGC staff concerning the status of the parcel the Tribe intended to use for gaming, NIGC staff was informed that [redacted] ceasing to represent Richmond and would now be representing the Tribe on matters related to the Contract. As detailed above, Richmond described [redacted] as having a [redacted] interest in Richmond in July 2008. It does not appear that Richmond brought [redacted] interest until May 2009. On September 10, 2009, a copy of a waiver signed by Alan Ginsburg on July 7, 2009, related to [redacted] representation of the Tribe was provided to the Division of Contracts. No such waiver has been provided from the Tribe.

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I find it inconceivable that such a conflict could be waived. It appears that [redacted] only increases as the Tribe's financial interest decreases. It would seem that the conflict was only waived by Richmond and not by the Tribe. While the waiver is conditioned upon the Tribe's approval, we have not received any such communication. It is also unclear if [redacted] represent Richmond or any other parties that hold a financial interest in Richmond in other matters. As a trustee, I cannot approve a contract that counsel for the Tribe held a financial interest in during his period of representation. Further, I would not do business with an entity that has concealed or misled as much as Richmond has here and therefore, as a trustee, I cannot approve of such behavior.

Disapproval pursuant to 25 C.F.R. 531 and 533

The NIGC Chairman may only approve a gaming management contract if it meets the standards of part 531 and § 533.3. The Contract does not meet all of the standards of part 531 and § 533.3. As detailed in our letter of February 26, 2008, the Contract does not contain the provisions required by: (1) 25 C.F.R. § 531.1(b), (k)(3), and (m); and (2) 25 C.F.R. § 533.3 (d)(1).

Conclusion

For the before mentioned reasons, I disapproved the Contract as required by 25 C.F.R. § 533.6(c). Because the Contract was not an approved, it is void. See 25 C.F.R. § 533.7. The parties may appeal this decision. See 25 C.F.R. Part 539.

If you have any questions regarding this disapproval, please call John Hay at (202) 632-7003.

Sincerely,

Philip N. Hogen
NIGC Chairman

cc: Ed Thomas, Esq.
(510) 836-3258

Terrence Dunleavy, Esq.
(312) 609-5005