
National Indian Gaming Commission

NOTICE OF VIOLATION

Ref: NOV-22-03

Service via First class Certified mail

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NOTICE OF VIOLATION

1. Notice

The National Indian Gaming Commission Chair notifies the Catawba Indian Nation and Kings Mountain Sky Boat Partners, LLC (Sky Boat) and its principals that the Nation and Sky Boat have violated the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2710(d)(9), and NIGC regulations, 25 C.F.R. § 573.4(a)(7). The Nation allowed Sky Boat, including its owners, managers, officials, and consultant, to manage in part the expansion of Catawba Two Kings Casino without an approved management contract. In turn, Sky Boat, its owners,¹ managers, officials, and consultant—Alan Ginsburg, Wallace Cheves, Joseph Giordano, Gene Harris, Aaron Gorovitz, and Alan Wilson—in their official and individual capacities, violated IGRA and NIGC regulations by managing, in

¹ These include both the entities and the individuals who own the company.

specific ways, the expansion of the gaming facility in the absence of an approved management contract. They did so as both *de facto* and *de jure* managers.

Additionally, the Nation, Sky Boat, and their respective officials (and in the case of Sky Boat, its owners and managers) failed to submit the Ground Lease, which is a management contract, within 60 days of its execution, as required by NIGC regulations, 25 C.F.R. § 533.2. On several occasions, the NIGC Compliance Division and Office of General Counsel notified the Nation, its representatives, and Sky Boat's representatives of their view that the Ground Lease is a management contract and the reasons therefor. Despite such notice, the Nation and Sky Boat neither terminated the Ground Lease nor submitted it to the Chair for review and approval.

2. Authority

Under IGRA and NIGC regulations, the Chair may issue a Notice of Violation (NOV) to any person for violation of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chair.² A NOV must contain a "citation to the federal or tribal requirement that has been or is being violated."³

3. Applicable Federal laws and regulations:

- A. Failure to comply with any provision of IGRA, NIGC regulations, or an approved tribal gaming ordinance is grounds for issuance of a notice of violation.⁴
- B. A management contract is "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor . . . if such contract or agreement provides for the management of all or part of a gaming operation."⁵
- C. "Primary management officials" are:
 - (a) The person having management responsibility for a management contract;
 - (b) Any person who has authority:
 - (1) To hire and fire employees; or
 - (2) To set up working policy for the gaming operation; or
 - (c) The chief financial officer or other person who has financial management responsibility.
 - (d) Any other person designated by the tribe as a primary management official.⁶

² See 25 U.S.C. § 2713(a)(3); 25 C.F.R. § 573.3(a).

³ 25 C.F.R. § 573.3(b)(1).

⁴ 25 U.S.C. § 2713(a)(3); 25 C.F.R. § 573.3(a).

⁵ 25 C.F.R. § 502.15.

⁶ 25 C.F.R. § 502.19.

- D. IGRA requires that tribes obtain the approval of the NIGC Chair to enter into a management contract for the operation and management of a gaming operation.⁷
- E. NIGC regulations reiterate this requirement, mandating “Subject to the Chairman’s approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity.”⁸
- F. Management contracts require submission to the Chair for review and approval or disapproval within 60 days of their execution by the parties.⁹
- G. Management contracts become effective upon approval by the Chair.¹⁰ Unapproved management contracts are void.¹¹
- H. It is a substantial violation of IGRA for a management contractor to operate a gaming operation without an approved management contract.¹²
- I. The Chair has the authority to levy and collect appropriate civil fines, not to exceed \$25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of IGRA and NIGC regulations.¹³
- J. NIGC regulations reiterate the authority of the Chair to levy and collect civil fines, taking into account the current day value of the statutory fine amount. Specifically, the regulation states “[t]he Chairman may assess a civil fine, not to exceed \$57,527 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued.”¹⁴ Moreover, “[i]f noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.”¹⁵

4. Applicable Caselaw, NIGC Enforcement Actions and Guidance

- A. The NIGC has issued guidance on management. Management encompasses activities such as planning, organizing, directing, coordinating, and controlling.¹⁶ In the NIGC’s view, the performance of any one of these activities with respect to all or part of a functioning gaming operation constitutes management for the purposes of determining whether an agreement for

⁷ 25 U.S.C. § 2710(d)(9); 2711(a).

⁸ 25 C.F.R. § 533.1.

⁹ 25 C.F.R. § 533.2.

¹⁰ 25 C.F.R. § 533.1(a).

¹¹ 25 C.F.R. § 533.7.

¹² See 25 C.F.R. § 573.4(a)(7).

¹³ 25 U.S.C. § 2713(a)(1).

¹⁴ 25 C.F.R. § 575.4.

¹⁵ *Id.* (a)(2).

¹⁶ NIGC Bulletin, No. 2021-3, *Submission of Agreements for Review* at 2 (Oct. 5, 2021).

- the performance of such activities is a management contract requiring NIGC approval.¹⁷ Courts have accepted the agency's interpretation.¹⁸
- B. Management may be partial.¹⁹ To constitute management, a tribe need not relinquish all of its decision-making authority to a third party.²⁰ And a third party need not be involved in the overall management of the casino as long as it is given "the right to manage, or the opportunity to manage" parts of it.²¹
- C. "[N]either [IGRA] nor the [NIGC] regulations contain a definition of manager or management that would suggest that management is only management when the manager's decisions are not subject to tribal oversight. Nor does the ordinary definition of management suggest that a manager is not a manager if an owner, board, or other manager is capable of overriding particular management decisions. [NIGC's] Bulletin 94-5 agrees that 'the exercise of ultimate decision-making authority by the tribal council or the board of directors does not mean that an entity or individual reporting to such a body is not 'managing' all or part of the operation.'"²²
- D. U.S. Supreme Court precedent establishes that management employees are "those who formulate and effectuate management policies by expressing and making operative the decision of their employer."²³ A specific job title of the position held by the employee does not control whether the employee is "managerial."²⁴ Rather, employee's actual job responsibilities, authority, and relationship to management govern the employee's management status.²⁵ In essence, an employee can qualify as management if they possess actual authority to take discretionary actions—thus being a *de jure* manager—or they *recommend* discretionary actions, which are implemented by others possessing actual authority to control employer policy—thus being a *de facto* manager.²⁶
- E. Permitting others to manage operations of a casino or part thereof transfers management responsibility to a third party in violation of the IGRA.²⁷

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3 (citing 25 C.F.R. § 502.15 ("Management contract means any contract [that] provides for the management of all or part of a gaming operation.") and *Sharp Image Gaming, Inc. v. Shingle Springs Band of Miwok Indians*, 15 Cal. App. 5th 391, 436 (Ct. App. 2017), *reh'g denied* (Oct. 16, 2017), *review denied* (Dec. 20, 2017), *petition for certiorari denied*; *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 172 Wash. App. 799, 824, *aff'd on other grounds*, 181 Wash. 2d 272 (2014); *First Am. Kickapoo Operations, L.L.C. v. Multimedia Games, Inc.*, 412 F.3d 1166, 1175 (10th Cir. 2005); *New Gaming Sys., Inc. v. Nat'l Indian Gaming Comm'n*, 896 F. Supp. 2d 1093, 1102-03 (W.D. Okla. 2012).

¹⁹ *Id.* at 3.

²⁰ *Id.* at 3 (citing *Sharp Image Gaming*, *supra* at 438-39; *New Gaming Sys.*, *supra* at 1105).

²¹ *New Gaming Sys.*, *supra* at 1103.

²² *First Am. Kickapoo*, 412 F.3d at 1175.

²³ *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974).

²⁴ *Waldau v. M.S.P.B.*, 19 F.3d 1395 (Fed. Cir. 1994).

²⁵ *Id.* at 1399.

²⁶ *Id.* at 1399 (citing *N.L.R.B. v. Yeshiva*, 444 U.S. 672, 683 (1980)).

²⁷ *See Wells Fargo Bank v. Lake of the Torches Economic Development Corp.*, 658 F.3d 684, 698 (7th Cir. 2011).

- F. A contract that affords a third-party company the opportunity to “set up working policy” for an operating tribal gaming operation constitutes a management contract under IGRA.²⁸
- G. A lease that allows a third party to supervise the completion of construction and improvements of gaming facilities when the facility or part thereof is operating qualifies as a management contract for that reason among others.²⁹
- H. Previously, the NIGC Chair issued an NOV to a third party for managing without an approved contract on the grounds that the party entered into contracts with contractors for purposes of maintaining the gaming facility as well as for other management actions.³⁰
- I. Similarly, the Chair issued an NOV against a third-party because the party was “instrumental in financing, renovating and expanding” the functioning gaming operation, paid for the cost of constructing two new gaming facilities, and was involved in the design for the expansion.³¹

5. Role of Approval of Management Contracts

The failure by the Nation and Sky Boat to submit the Ground Lease as a management contract for the Chair’s review and approval as well as Sky Boat’s control over discrete aspects of the expansion of the temporary facility in the absence of an approved management contract threatens the NIGC’s ability to achieve the goals mandated by Congress. These goals are shielding the Nation from organized crime and other corrupting influences; ensuring that the Nation is the primary beneficiary of the gaming operation; and ensuring fair and honest conduct in gaming by both the operator and players.³²

6. The Circumstances of the Violations are:

A. The Parties

The Catawba Indian Nation (Nation) is a federally recognized Indian tribe with tribal headquarters in Rock Hill, South Carolina.³³ The Nation owns a gaming operation known as the Catawba Two Kings Casino in Kings Mountain, North Carolina, which has been open and operating since July 1, 2021.

²⁸ See *First Am. Kickapoo*, 412 F.3d at 1172.

²⁹ *Id.* at 1174 (noting that NIGC OGC’s legal opinion relied in part on the third-party’s supervision of construction and improvements to opine that the contract was a management contract. The contract permitted the third party to “develop procedures, supervise completion of construction and improvements, and train and supervise employees for the first three months of operation.”).

³⁰ See NIGC Notice of Violation, NOV-06-08 at 8 (2006).

³¹ See NIGC Notice of Violation, NOV-07-02 at 5-6 (2007).

³² See 25 U.S.C. § 2702(2).

³³ Dep’t of Interior, Bureau of Indian Affairs, *Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 87 Fed. Reg. 4636-4641 (Jan. 28, 2022).

In 2019, Sky Boat was created as a Delaware limited-liability company. Three members own the company: CSV Investors, LLC; Sky Boat Development, LLC; and KML Investors, LLC, each of which holds one-third of the outstanding membership interests.³⁴ CSV Investors, LLC and KML Investors, LLC possess the same manager: AHG Manager, LLC, which is in turn managed by Alan Ginsburg, Gene Harris, and Aaron Gorovitz.³⁵

A board of three managers directs Sky Boat, and each member appoints a manager.³⁶ Wallace Cheves, Joseph Giordano, and Gene Harris are the managers, who were appointed by Sky Boat Development, LLC; KML Investors, LLC; and CSV Investors, LLC, respectively.³⁷ Wallace Cheves owns Sky Boat Development LLC.³⁸ AHG Group Holdings, LLC owns CSV Investors, LLC and Ginsburg, Harris, and Gorovitz manage it.³⁹ Family trusts and partnerships for Ginsburg, Harris, and Gorovitz ultimately own KML Investors, LLC.⁴⁰ Ginsburg, Harris, and Gorovitz also own and manage AHG Group LLC.⁴¹ Alan Wilson is a “construction finance executive” for Sky Boat, “responsible for reviewing budgets, loan costs, and project job cost accounting.”⁴² Previously, Alan Wilson was a paid consultant for AHG entities.⁴³

B. Request for a Legal Advisory Opinion that the Amendment to Ground Lease is not a Management Contract

On December 24, 2020, the Nation’s attorney requested an advisory legal opinion (called a declination letter⁴⁴) from the NIGC Office of General Counsel (OGC) for an Amendment to Ground Lease that the Nation intended to enter into with Sky Boat.⁴⁵ Along with the Amendment, the Nation’s attorney conveyed three other agreements between the Nation and Sky Boat: a Ground Lease, a Development Agreement, and a Developer Security Agreement.⁴⁶ Because the three agreements were final, they were not part of the declination letter request, but to show “how the Nation’s gaming-facility agreements fit together.”⁴⁷ All of the agreements involve the Nation’s trust parcel in Kings Mountain, North Carolina and the gaming facilities planned on it, as the plan was

³⁴ Letter to Michael Hoening, NIGC General Counsel, from Gregory A. Smith, Hobbs Straus Dean & Walker re: Declination Letter Request—Catawba Indian Nation at 4 (Dec. 24, 2020) (hereinafter Declination Letter Request).

³⁵ Secretary of State filings for CSV Investors, LLC, KML Investors, LLC, AHG Group LLC, and AHG Manager LLC (2021).

³⁶ See note 34, *supra*.

³⁷ *Id.*

³⁸ Email to Tom Cunningham, NIGC Chief Compliance Officer, from Gregory A. Smith, Hobbs Straus Dean & Walker re: Ownership Information (July 14, 2021, 7:15:21 AM).

³⁹ See Warren Hill, LLC v. Neptune Invs., LLC, No. CV 20-452, 2020 WL 7353306, at *4 (E.D. Pa. Dec. 15, 2020), *motion for relief from judgment denied*, No. CV 20-452, 2021 WL 2711479 (E.D. Pa. June 30, 2021).

⁴⁰ KML Investors, LLC Ownership Chart.

⁴¹ See note 35, *supra*.

⁴² Letter to NIGC Region Director Shawwna Castellano from Aaron J. Harkins, Attorney for Sky Boat and Sky Boat individuals (Sept. 13, 2022).

⁴³ See note 39, *supra* *4-*5.

⁴⁴ See Helpful Hints for Submitting Requests for a Legal Opinion to the NIGC Office of General Counsel (Dec. 2013), <https://www.nigc.gov/images/uploads/game-opinions/SubmittingRequestforLegalOpinionDec112013.pdf>; NIGC website, *Declination Letters*, <https://www.nigc.gov/general-counsel/management-review-letters>.

⁴⁵ Declination Letter Request at 1.

⁴⁶ *Id.*

⁴⁷ *Id.*

for Sky Boat to “develop, finance, and construct the [gaming facilities] on a turn-key lease basis for the Nation.”⁴⁸

Earlier, on July 6, 2020, the Nation and Sky Boat entered into the Development Agreement, retaining Sky Boat as the “exclusive agent for the design, construction, equipping, financing and development of the casino facilities[, including temporary facilities,] on a turn-key basis during the term of the [agreement].”⁴⁹ The agreement “prohibits Sky Boat from performing any management activities or acting as the Nation’s agent to perform any management activities.”⁵⁰

Also on July 6, 2020, the Nation and Sky Boat agreed to the Ground Lease, where the Nation leases its 16.57-acre trust parcel along with all improvements, including permanent and temporary gaming facilities, to Sky Boat for a term of 25 years, with a 25-year renewal option for \$10 annual rent.⁵¹ The lease began on July 10, 2020, the date the parcel gained trust status.⁵² Pursuant to the lease, Sky Boat may make any additions, alterations, expansions or replacements to the parcel and its improvements, such as the gaming facilities.⁵³

On March 29, 2021, the Nation’s Gaming Authority and Sky Boat agreed to a modular facility lease agreement, principally a leaseback arrangement.⁵⁴ By this agreement, Sky Boat rented a portion of the Nation’s trust land and the temporary gaming facility back to the Nation’s Gaming Authority for \$1 of rent for the lease’s term along with additional rent for Sky Boat’s expenses to “repair, replace or maintain the modular facility.”⁵⁵ Essentially, the modular facility lease constitutes a sublet under the Ground Lease.⁵⁶ As such, it did not modify Sky Boat’s rights under the Ground Lease, which Sky Boat retains.⁵⁷

On May 10, 2021, OGC advised the Nation’s outside counsel that the executed agreements were referred to the NIGC Compliance Division (Compliance) to determine whether they violate IGRA’s management contract and sole proprietary interest requirements. In light of the referral, the General Counsel declined to issue a legal

⁴⁸ *Id.* at 3.

⁴⁹ *Id.* at 5; Development Agreement § 2.1; *see also id.* § 3.3 (“If the Developer and Tribe elect to develop and operate a Temporary Facility, the Parties will enter into such additional agreements as may be necessary”).

⁵⁰ Declination Letter Request at 5; Development Agreement § 3.1.

⁵¹ Ground Lease §§ 2.1, 3.1 & 3.2.

⁵² *Id.* §§ 1.1(f) & 3.1; Land into Trust, Acceptance of Conveyance, U.S. Dep’t of Interior, Bureau of Indian Affairs (July 10, 2020).

⁵³ *Id.* § 6.1.

⁵⁴ *See* Email to NIGC Chief Compliance Officer Tom Cunningham from Greg Smith, Hobbs Straus Dean & Walker, re: Catawba - Kings Mountain Sky Boat Agreements - Request for Call (May 13, 2021, 12:56 PM).

⁵⁵ *See* Lease Agreement §§ 1.1 & 1.4 (Mar. 29, 2021) (herein Modular Facility Lease).

⁵⁶ *See* Letter to Tom Cunningham, NIGC Chief Compliance Officer, from William Harris, Chief, Catawba Indian Nation at 2 (Jan. 20, 2022).

⁵⁷ *See* Memorandum to Tom Cunningham, NIGC Chief Compliance Officer, from Jo-Ann Shyloski and Michael Hoenig, NIGC Office of General Counsel re: *Legal analysis of Catawba Nation’s January 20, 2022 letter* (Feb. 14, 2022).

advisory opinion⁵⁸ as to the Amendment to Ground Lease until Compliance finished its review.⁵⁹

C. Letter of Concern Issued by NIGC Compliance Division

On July 1, 2021, Compliance issued a Letter of Concern (LOC) to the Nation regarding the executed agreements. The LOC conveyed Compliance's finding that the Development Agreement, Ground Lease, and Security Agreement, collectively, gave Sky Boat a proprietary interest in the Nation's gaming activity, in violation of IGRA, NIGC regulations, and the Nation's gaming ordinance.⁶⁰ Importantly, the LOC concluded that the Development Agreement and the modular facility lease agreement were management agreements that required the NIGC Chair's review and approval. Of note was Sky Boat's "ability to determine when repairs or alterations are made to the gaming operation."⁶¹ Additionally, given the agreement and lease's lack of submission to the Chair, both were out of compliance with NIGC regulations.⁶² Also on July 1, 2021, the Two Kings Casino, the Nation's temporary gaming facility, opened to the public.⁶³

On October 7, 2021, Compliance issued a document request to the Nation "[i]n order to fully understand the Nation's relationship with the various entities involved in this transaction."⁶⁴ A week later, the Washington D.C. Region Director gave on-site training to the Nation; its Gaming Authority; its consultant, Delaware North; and Sky Boat. The Nation's Chief, Assistant Chief, GA President, GA Vice President, and Sky Boat Member Wallace Cheves attended.⁶⁵ Courses given included Basic IGRA and NIGC regulations and NIGC Enforcement Actions, covering managing without an approved contract violations.⁶⁶

In late October 2021, the Nation and Sky Boat terminated the Development Agreement and Developer Security Agreement, advising the NIGC of the termination on October 25, 2021. Also on that date, the parties modified the modular facility lease

⁵⁸ Or declination letter.

⁵⁹ Letter to Greg Smith, Hobbs Straus Dean & Walker, from Michael Hoenig, NIGC General Counsel re: Review of Agreements between the Catawba Indian Nation and Kings Mountain Sky Boat Partners, LLC at 2 (May 10, 2021).

⁶⁰ Letter of Concern to William Harris, Chief, Catawba Indian Nation, from Tom Cunningham, NIGC Chief Compliance Officer re: Catawba Indian Nation's Agreements at 3 & 7 (July 1, 2021) (hereinafter LOC).

⁶¹ *Id.*

⁶² *Id.* at 3-6, 10 & 23.

⁶³ Two Kings Casino SAS 135 Letter for the period of July 1, 2021 through Dec. 31, 2021 (Apr. 26, 2022); Audited Financial Statements for the period of July 1, 2021 through Dec. 31, 2021 (Apr. 26, 2022); MICS AUP Report for the period of July 1, 2021 through Dec. 31, 2021 (Apr. 27, 2022); WCNC Charlotte, *New Kings Mountain casino opens Thursday* by Brandon Goldner (July 1, 2021, 3:49 PM & 7:33 PM), <https://www.wcnc.com/article/news/local/catawba-two-kings-casino-kings-mountain-nc-opens/275-64afa47b-a8cf-435f-8e66-25ba156b0513>; Facility License issuance notification documents (July 14, 2021); Declaration of Shawna Castellano, NIGC Washington D.C. Region Director (October 28, 2022).

⁶⁴ Letter to Chief Harris, Catawba Indian Nation, from Chief Compliance Officer Cunningham re: 2nd Status Update for July 1, 2021 Letter of Concern at 13-14 (Oct. 7, 2021). Additional document requests were issued to: the Nation on January 4, 2022; the Nation and Sky Boat on March 25, 2022; and to the Nation, Sky Boat, DNC Gaming in Kings Mountain LLC, AHG Group LLC, AHG Group Holdings LLC, Alan Ginsburg, Wallace Cheves, Gene Harris, and Alan Wilson on August 24, 2022.

⁶⁵ Catawba Sign-in Sheet, On-site Training (Oct. 13-14, 2021).

⁶⁶ See 2021 NIGC Training Catalog at 11 & 50, <https://www.nigc.gov/images/uploads/2021NIGCTrainingCatalog.pdf>

removing three provisions but not Section 14—forbidding the Nation’s Gaming Authority from altering the temporary gaming facility and the portion of the land it is on.⁶⁷ The parties, however, did not enter into the planned amendment to the Ground Lease, nor was the Ground Lease terminated.

As mentioned before, under the Ground Lease, Sky Boat may make any additions, alterations, expansions or replacements to the temporary gaming facility.⁶⁸ Underscoring this right is Section 14 of the modular facility lease and amended modular facility lease, which prohibits the Nation’s Gaming Authority from altering the temporary gaming facility.⁶⁹ This power—“to determine when . . . alterations are made to the gaming operation,” among others in the modular facility lease, formed the bases for Compliance’s LOC finding that it is management contract.⁷⁰ In the LOC, Compliance also warned the Nation that operating under the modular facility lease “puts the Nation and related parties at risk of violating IGRA, NIGC’s regulations, and the Nation’s gaming ordinance and could lead to a Notice of Violation, a Civil Fine Assessment, and/or an Order of Temporary Closure.”⁷¹

D. Managing without an approved Management Contract

The Nation’s temporary casino opened on July 1, 2021 and continues operating to this day. Despite being on notice as of July 1, 2021 that acting under the modular facility lease may result in an enforcement action and receiving NIGC training on such actions, Sky Boat exercised its rights under that lease, its amendment, and the Ground Lease between July 1, 2021 and November 4, 2021, and the Nation allowed them to do so. Specifically, Sky Boat acted under these leases by:

- handling the modular expansion acquisition and expedition,
- negotiating the contract for the modular expansion acquisition and expedition,
- controlling the contract’s finalization, execution, and the issuance of consideration to make it operative,
- serving as the point of contact for the invoices associated with the expansion modular buildings, and
- coordinating payments for them.

Two individuals performed under these leases and the amended modular facility lease on behalf of Sky Boat: Alan Ginsburg of AHG Group Holdings, LLC—the entity that owns CSV Investors, LLC, one of three entity-owners of Sky Boat, and Alan Wilson, a Sky Boat executive or paid consultant for AHG entities.⁷² But even if Sky Boat, Alan Ginsburg, and Alan Wilson were not acting under the Ground Lease, modular facility lease, or the amended modular facility lease from July 1, 2021 through November 4,

⁶⁷ See First Amendment to Lease Agreement § 14 (Oct. 2021) (herein amended modular facility lease). As an aside the amended modular facility lease expired by its own terms on July 29, 2022.

⁶⁸ Ground Lease § 6.1.

⁶⁹ See Modular Facility Lease and Amended Modular Facility Lease § 14.

⁷⁰ See note 60, *supra*, LOC at 10.

⁷¹ *Id.* at 25.

⁷² See note 39, *supra* at *4-*5, and note 42, *supra*. As an aside, the letterhead used by Alan Ginsburg simply reads “AHG Group.”

2021, they still managed aspects of the Nation's temporary facility expansion without an approved management contract by taking these actions.

E. Ground Lease constitutes an unapproved Management Contract

On December 21, 2021, Compliance informed the Nation and Sky Boat's attorney that the Ground Lease constitutes an unapproved management contract, because it "grants management control over aspects of the Nation's current temporary gaming facility and of the future permanent facility . . ." ⁷³ One basis for Compliance's conclusion was that, under the Ground Lease, Sky Boat "may make any additions, alterations, expansions or replacements in and to" the temporary gaming facility and the permanent facility. ⁷⁴ This allows Sky Boat to set up the working policy for the gaming facility's additions, expansions, and modifications. The letter also cautioned: "[o]perating under this agreement puts the Nation and parties at risk of violating IGRA, NIGC regulations, and the Nation's gaming ordinance, and could lead to [an enforcement action, fine, and/or closure order]." ⁷⁵ In closing, Compliance requested that the parties provide proof of how they addressed this issue within 30 days of the letter's date. ⁷⁶

On January 20, 2022, the Nation responded, asking Compliance to reconsider its position that the Ground Lease is an unapproved management contract. ⁷⁷ On March 7, 2022, Compliance advised the Nation and Sky Boat's attorney that the Division "stands by its conclusion that the [Ground Lease] contains terms that grant Sky Boat management authority over the operation, and is thus a management contract that was not submitted within the required time and has not been approved by the NIGC Chairman." ⁷⁸ Compliance further explained:

failure to submit a management contract within sixty (60) days of its execution violates NIGC regulations. And exercising management authority pursuant to an unapproved management contract violates IGRA, NIGC regulations and the Nation's gaming ordinance, which may result in the issuance of [an enforcement action, fine, and/or closure order] to the Nation and Sky Boat as the manager of the Tribe's gaming.

The NIGC Compliance Division is aware of the negotiations the Nation and Sky Boat have undertaken. Unfortunately, these negotiations have yet to address the violation related to the [Ground Lease]. To date, the NIGC Compliance Division has not received any information of how the parties intend to deal with this violation. The [Ground Lease] has not been terminated and remains in effect. As a result, it is the Division's recommendation to the NIGC Chairman that the

⁷³ Letter to Chief Harris, Catawba Indian Nation, from NIGC Chief Compliance Officer Cunningham re: 3rd Status Update—Ground Lease and Recent Incomplete Submission (Catawba Indian Nation's Agreements) at 3 (Dec. 21, 2021) (copy to Aaron Harkins, Hogen Adams PLLC, attorney for Sky Boat).

⁷⁴ *Id.* at 3-4 (citing Ground Lease § 6.1).

⁷⁵ *Id.* at 5.

⁷⁶ *Id.*

⁷⁷ Letter to Tom Cunningham, NIGC, from Chief William Harris, Catawba Nation re: Response to 3rd Status Update—Ground Lease and Recent Incomplete Submission (Catawba Indian Nation's Agreements) (Jan. 20, 2022).

⁷⁸ Letter to Chief William Harris, Catawba Indian Nation, from NIGC Chief Compliance Officer Cunningham, re: 4th Status Update—Ground Lease at 1-2 (Mar. 7, 2022).

contract is void and the exercise of any management activity under it is a substantial violation of IGRA.⁷⁹

To date, neither the Nation or Sky Boat have submitted the Ground Lease to the NIGC as a management contract for the NIGC Chair's review, approval, or disapproval.

On May 16, 2022, the Nation requested that OGC issue an advisory legal opinion⁸⁰ for a \$350 million Purchase and Payment Agreement to terminate the Ground Lease, among other things. The OGC declined to do so for several reasons, among them that the Ground Lease is an unapproved management contract and, therefore, void and of no legal effect or value.⁸¹

Despite the failure to submit the Ground Lease to the NIGC for review and approval as a management contract and the absence of its approval by the NIGC Chair, Sky Boat managed and controlled the Nation's expansion of its temporary gaming facility in the specific ways listed in Section 6(D) and the Violations section below. For this purpose, Sky Boat includes its owners, managers, officials, and consultant, in their official and individual capacities. The Nation permitted this conduct. Accordingly, Sky Boat, CSV Investors, LLC; Sky Boat Development, LLC; and KML Investors, LLC; Alan Ginsburg; Wallace Cheves; Joseph Giordano; Gene Harris; Alan Gorowitz, and Alan Wilson unlawfully managed, in part, the Nation's expansion of its temporary gaming facility on Indian lands, in a *de facto* and *de jure* manner.

The Nation, Sky Boat, and Sky Boat's owners, officials, and managers also violated IGRA and NIGC regulations by failing to timely submit the Ground Lease to the NIGC as a management contract for the Chair's review and approval. This violation is ongoing.

Violations

1. **Sky Boat, its owners, officials, managers, and consultant managed in discrete ways the expansion of the Nation's temporary gaming facility without an approved management contract in accordance with the parties' Ground and Modular Facility Leases. The Nation allowed them to do so.**
 - A. The Nation and Sky Boat entered into a Development Agreement (DA) on July 6, 2020, retaining Sky Boat as the exclusive developer of all the Nation's gaming activities in North Carolina, including temporary gaming facilities and "any additions to, or expansions of, the Casino Facilities"⁸²
 - B. On July 1, 2021, the Nation opened its Two Kings Casino, a temporary gaming facility and continued operating it through November 4, 2021 and beyond.
 - C. Also on July 1, 2021, Compliance issued Letter of Concern to the Nation, concluding the DA was a management contract that should have been submitted

⁷⁹ *Id.* at 2.

⁸⁰ Or declination letter.

⁸¹ Letter to Chief William Harris, Catawba Indian Nation, from NIGC General Counsel Michael C. Hoening, re: Advisory legal opinion request—Purchase and Payment Agreement at 1-2 (July 6, 2022). As an aside, IGRA does not require declination letters / advisory legal opinions, but OGC issues them as a courtesy.

⁸² Development Agreement §§ 2.1 & 3.3.

to the Chair for review. Supporting Compliance's conclusion was the contract term of almost 7 years "plus Sky Boat's exclusivity to provide its services beyond the initial opening of the temporary or permanent casino [establishes] an on-going relationship."⁸³ Compliance further explained:

[T]he Nation can only use Sky Boat for those services. If the Nation wants to expand or remodel its casino, the Nation is required to use Sky Boat to create a budget, hire contractors and architects, and secure additional financing during the term of the agreement. If the Nation wants to use a different developer, Sky Boat must first consent. Essentially, Sky Boat will not make recommendations to the Nation; Sky Boat will perform the services at Sky Boat's discretion and the Nation is bound by Sky Boat's decisions.⁸⁴

- D. The DA was terminated on October 21, 2021; nonetheless, it was in effect through most of the period at issue: July 1, 2021 through November 4, 2021.
- E. Also operative during this timeframe was the Ground Lease (GL) between the Nation and Sky Boat. Under it, the Nation leases its trust parcel along with all buildings on it, including the temporary gaming facility, to Sky Boat. Pursuant to the GL, Sky Boat may make any additions, alterations, expansions or replacements to the temporary gaming facility.⁸⁵ And as Compliance explained "No provision in the lease indicates that the Nation formulates plans for the additions, alterations, expansions or replacements to the gaming facility or approves or disapproves Sky Boat's proposed plans. Essentially, Sky Boat may set up the working policy for the gaming facility's additions, expansions, and modifications."⁸⁶
- F. Twice, Compliance cautioned the Nation and Sky Boat not to act pursuant to the GL, as it is an unapproved management contract and doing so constitutes a substantial violation of IGRA.⁸⁷
- G. Nevertheless, the Ground Lease remains in effect. The parties have not terminated it, despite Compliance's warnings.
- H. Lastly, the Modular Facility Lease (MFL) between Sky Boat and the Nation's Gaming Authority (GA) was effective through October 24, 2021. Its amendment was operational the following day until July 29, 2022. Under the MFL and Amended MFL, Sky Boat rented a portion of the Nation's trust land and the temporary gaming facility back to the Nation's GA for \$1 of rent. Additional rent was required under the MFL for Sky Boat's expenses to "repair, replace or

⁸³ See note 60, *supra*, LOC at 4.

⁸⁴ *Id.* 4-5.

⁸⁵ Ground Lease § 6.1.

⁸⁶ See note 73, *supra*, Compliance's 3rd Status Update at 3.

⁸⁷ *Id.*; See note 78, *supra*, Compliance's 4th Status Update.

maintain the modular facility.”⁸⁸ Section 14 of the MFL and Amended MFL prohibit the GA from altering the temporary gaming facility.⁸⁹

- I. Compliance’s July 1, 2021 Letter of Concern advised the Nation that the MFL was a management contract that should have been submitted to the Chair for review. Compliance’s finding was supported, in part, by Sky Boat’s ability to determine when alterations are made to the temporary gaming facility.⁹⁰
- J. The MFL and Amended MFL are sublets under the GL, which the Nation admits.⁹¹ As such, they do not modify Sky Boat’s rights under the GL, which it retains.⁹²
- K. During the time period at issue—on October 13 and 14, 2021, NIGC’s Washington D.C. Region Director provided on-site managing without an approved contract training to the Nation; its Gaming Authority; its consultant, Delaware North; and Sky Boat. The Nation’s Chief, Assistant Chief, GA President, GA Vice President, and Sky Boat Member Wallace Cheves attended this training.⁹³
- L. Nevertheless, from July 1, 2021 through November 4, 2021, when the temporary casino was operational, Sky Boat exercised its rights under the MFL (or amended MFL) and GL—expanding the gaming facility. Specifically, Sky Boat, its owners, officials, managers and consultant:
 - i. handled the modular expansion acquisition and expedition,
 - ii. negotiated the contract for the expansion’s modular buildings and their expedition,
 - iii. controlled the contract’s finalization, execution, and the issuance of consideration necessary to make it operative;
 - iv. served as the point of contact for the invoices associated with the modular buildings, and
 - v. coordinated payments for the invoices for the casino and expansion’s modular buildings.

Modular Building Acquisition & Negotiation of Contract: de jure management

- M. Sky Boat, specifically, partial owner Alan Ginsburg, coordinated the expansion’s modular acquisition and expedition and negotiated the contract for them.
- N. By letter, dated August 12, 2021, entitled “Catawba Nation Order Revised Clarification and Understanding,” Mr. Ginsburg outlined the agreement with

⁸⁸ See Modular Facility Lease §§ 1.1 & 1.4.

⁸⁹ Amended MFL §14.

⁹⁰ See note 60, *supra*, LOC at 10.

⁹¹ See Letter to Thomas Cunningham, NIGC, from William Harris, Catawba Indian Nation Chief re: Response to 3rd Status Update – Ground Lease and Recent Incomplete Submission (Catawba Indian Nation’s Agreements) at 2.

⁹² See Memo to Compliance Division, from Jo-Ann Shyloski, Of Counsel, and Michael Hoenig, General Counsel re: Legal Analysis of Catawba Nation’s January 20, 2022 Letter (Feb. 14, 2022).

⁹³ Catawba Sign-in Sheet, On-site Training (Oct. 13-14, 2021).

Carolina Modular Buildings, Inc. for the expansion's modular buildings.⁹⁴ The letter set forth the parties' agreement of an additional payment of \$150,000 for expedited delivery of the modular buildings.⁹⁵ The letter explicitly states "Trusting this is a clarification and outlines our agreement, I am Yours very truly, Alan H. Ginsburg."⁹⁶ Copied on the letter were Wallace Cheves, Sky Boat partial owner and Member, as well as Alan Wilson, Sky Boat executive or paid consultant for AHG entities.

- O. Handwritten notes, dated September 2021, taken by Kris Irwin of Delaware North, the Nation's consultant, note "in[s]tall sheer wall by Carolina Modular[.] Questions came in from Carolina to Alan Ginsburg."⁹⁷
- P. Thus, when the temporary gaming facility was operating, the Nation and Sky Boat, including its owners, officials, members, and consultant, acted in accordance with the Ground Lease, which gave Sky Boat the right to make "any . . . expansions . . . to the temporary gaming facility,"⁹⁸ and the Modular Facility Lease, which prohibited the Nation's Gaming Authority from altering the temporary gaming facility.⁹⁹
- Q. Sky Boat, including its owners, officials, members, and consultant, managed the acquisition of modular buildings for the expansion of the Nation's operational temporary gaming facility without an approved management contract. In acquiring the modular buildings for the expansion and negotiating the contract for them, they acted as *de jure* managers.
- R. The Nation allowed Sky Boat and its owners, officials, members, and consultant to undertake such actions in the absence of an approved management contract.

Contract Execution & Effectiveness: de facto management

- S. On the same day as Mr. Ginsburg's letter contract to Carolina Modular Buildings, Inc., Alan Wilson, consultant for AHG entities, presented the lease package for the expansion's modular buildings to the Nation's attorneys via email at 1:57 PM, copying Wallace Cheves, Sky Boat Member, stating:

⁹⁴ Letter to Russell Edwards, Carolina Modular Buildings, Inc., from Alan H. Ginsburg, AHG Group re: Catawba Nation Order, Revised Clarification and Understanding (Aug. 12, 2021); *see also* Email to Kris Irwin, Delaware North, from Alan Wilson, AHG Group, re: Letter agreement and Invoice (attaching letter agreement, dated Aug. 12, 2021, and Invoice 2996). As an aside, the Nation's General Council had authorized its Executive Committee to negotiate gaming-related agreements. *See* Resolution of the General Counsel of the Catawba Indian Nation, No. 20191116 (Nov. 16, 2019) ("A Nation Resolution explains "the Executive Committee is responsible for the Nation's gaming proposals . . . and has engaged in extensive discussions with . . . private parties regarding necessary agreements in furtherance of this responsibility[.] . . . Therefore . . . the General Council hereby expressly authorizes the Executive Committee, acting through the Chief, to negotiate and sign agreements with other entities on behalf of the Nation including but not limited to financing, leasing, inter-governmental and other gaming related agreements . . .").

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Kris Irwin's Handwritten notes (Sept. 2021).

⁹⁸ Ground Lease § 6.1.

⁹⁹ MFL § 14.

I've attached the Carolina Modular lease package for the Modular expansion. This includes 24 12x60 Modular Units and 4 12x36 restroom trailers. The invoice will be generated after lease signing and will be for: Monthly Rent Deposit \$107,567[,] Delivery \$83,396[,] Assembly and blocking \$138,500[,] Install Skirting \$26,250[,] Total due Monday 8/16/21 \$355,710[.] Like the last time the following documents should be signed by the CINGA [Catawba Indian Nation Gaming Authority]: Lease Agreement[,] Rider to Lease Agreement[,] Scope of Work[,] Contract Clarifications[.] Please let me know if you have any questions. I'm looking to get these signed and returned tomorrow 8/13/21. Please confirm you will handle getting this approved and signed by CINGA. Regards, Alan Wilson¹⁰⁰

- T. Responding fifteen minutes later, at 12:12 PM, the Nation's outside attorney said: "This advance decision making is all new to me. I don't know if the tribe is ready to sign anything tomorrow or not. Likely there were discussions that I was not involved in. I will look into this."¹⁰¹
- U. Shortly thereafter, at 3:13 PM, the Nation's outside attorney sent another response to Alan Wilson asking: "How is it to be paid for?"¹⁰²
- V. On August 17, 2021, Alan Wilson followed up with the Nation's attorneys, inquiring: "I'm checking in on the Carolina Modular lease. Is the gaming authority ready to execute the lease and the ancillary documents? Let me know if you need anything from me. Regards"¹⁰³
- W. On August 20, 2021, the Nation's outside attorney provided Alan Wilson three comments on the lease documents, indicating that the comments "don't seem too problematic, but I would appreciate any response you may have."¹⁰⁴ Alan Wilson responded via email to the comments on August 23, 2021, again copying Wallace Cheves; Kris Irwin of Delaware North, the Nation's consultant; and the Nation's in-house attorney:

Please see my comments following yours. The lease and addendums are ok as submitted. Please have them signed and the invoice paid. . . .

¹⁰⁰ Email to Gregory A. Smith, Hobbs Straus, and Jeff Harris, Catawba Nation, from Alan Wilson, AHG Group re: Carolina Modular Lease for Expansion (Aug. 12, 2021, 1:57 PM) with attachments 1 – 3: Carolina Modular Rental Lease Agreement_#1101.pdf; 2012.08.12 Riderto Modular Lease Agreement.pdf, Scope of Work.pdf (75.14 KB)

¹⁰¹ Email to Alan Wilson, AHG Group, from Gregory A. Smith, Hobbs Straus, re: Carolina Modular Lease for Expansion (Aug. 12, 2021, 12:12 PM).

¹⁰² Email to Alan Wilson, AHG Group, from Gregory A. Smith, Hobbs Straus, copying Jeff Harris, Catawba Nation, and Wallace Cheves, Sky Boat re: Carolina Modular Lease for Expansion (Aug. 12, 2021, 3:13 PM).

¹⁰³ Email to Gregory A. Smith, Hobbs Straus, and Jeff Harris, Catawba Nation, from Alan Wilson, AHG Group re: Carolina Modular Lease for Expansion (Aug. 17, 2021 2:32 PM).

¹⁰⁴ Email to Alan Wilson, AHG Group, from Gregory A. Smith, Hobbs Straus, copying Wallace Cheves, Sky Boat; Kris Irwin, Delaware North; and Jeff Harris, Catawba Nation re: Carolina Modular Lease for Expansion (Aug. 20, 2021 4:29:42 PM).

Alan Wilson¹⁰⁵

Alan Wilson's comments in the August 23, 2021 10:58 AM email include his response to the attorney's "Scope of Work" comment questioning significant changes and recommending further review: "**ASW – KMSBP and Keith Kabearny have signed off on the Contract Clarification and Scope of Work. These are approved.**"¹⁰⁶ KMSBP means Kings Mountain Sky Boat Partners, LLC. In short, Mr. Wilson was conveying that Sky Boat had approved the modular buildings' contract clarification and scope of work and no further review or discussion was necessary.¹⁰⁷ The Nation's attorney replied to all within approximately 20 minutes: "Thank you for your responses. I believe these contracts are now good to go."¹⁰⁸

- X. Two days later, on August 25, 2021 at 8:15 AM, Alan Wilson queried the Nation's attorneys via email, copying Wallace Cheves and Kris Irwin, asking for an update "on the status of the signed lease documents and the payment of the deposit."¹⁰⁹ Additionally, Mr. Wilson advised: "Please let me know if you need me to do anything to help get the lease signed and the deposit made. We are a week past due on this."¹¹⁰ About 30 minutes later, the Nation's in-house attorney informed Mr. Wilson that the lease documents "are on the agenda for the Executive Committee's approval during their meeting tomorrow afternoon. They cannot be signed or payment issued until that approval takes place."¹¹¹ Minutes later, Mr. Wilson responded, asking the attorney "Once approved, can you ensure that the lease gets signed, and the deposit gets paid Friday morning?"¹¹² Less than 30 minutes after that, the attorney confirmed that "I can make sure the documents are signed and retu[r]ned."¹¹³ Additionally, the attorney indicated that Mike Ulizio, the Nation's GA President, was copied for purposes of making the deposit, asking "Mike- can you have your team prepare to make the payment for the new

¹⁰⁵ Email to Gregory A. Smith, Hobbs Straus, and Jeff Harris, Catawba Nation, from Alan Wilson, AHG Group, copying Wallace Cheves, Sky Boat and Kris Irwin, Delaware North re: Carolina Modular Lease for Expansion (Aug. 23, 2021 10:58 AM).

¹⁰⁶ *Id.*; Keith Kabearny, an ARC Building Partners employee, held the title of Project Executive during this time. *See* Email to Tommy Register, TGS Engineers, from Keith Kabearny, ARC Building Partners, copying Alan Wilson, AHG Group re: KM Casino Landscape Bond (Sept. 7, 2021, 8:48 AM).

¹⁰⁷ *See* note 105, *supra*.

¹⁰⁸ Email to Alan Wilson, AHG Group, and Jeff Harris, Catawba Nation, from Gregory A. Smith, Hobbs Straus, copying Wallace Cheves, Sky Boat and Kris Irwin, Delaware North re: Carolina Modular Lease for Expansion (Aug. 23, 2021 11:17 AM).

¹⁰⁹ Email to Gregory A. Smith, Hobbs Straus, and Jeff Harris, Catawba Nation, from Alan Wilson, AHG Group, copying Wallace Cheves, Sky Boat and Kris Irwin, Delaware North re: Carolina Modular Lease for Expansion (Aug. 25, 2021 8:15 AM).

¹¹⁰ *Id.*

¹¹¹ Email to Alan Wilson, AHG Group, and Gregory A. Smith, Hobbs Straus, from Jeff Harris, Catawba Nation, copying Wallace Cheves, Sky Boat and Kris Irwin, Delaware North re: Carolina Modular Lease for Expansion (Aug. 25, 2021 8:50 AM).

¹¹² Email to Jeff Harris, Catawba Nation, and Gregory A. Smith, Hobbs Straus, from Alan Wilson, AHG Group, copying Wallace Cheves, Sky Boat and Kris Irwin, Delaware North re: Carolina Modular Lease for Expansion (Aug. 25, 2021 9:03 AM).

¹¹³ Email to Alan Wilson, AHG Group, and Gregory A. Smith, Hobbs Straus, from Jeff Harris, Catawba Nation, copying Wallace Cheves, Sky Boat and Kris Irwin, Delaware North re: Carolina Modular Lease for Expansion (Aug. 25, 2021 9:29 AM).

modular units on Friday morning? I'd say you can plan to go ahead and make payment then unless I contact you since we expect the EC will approve."¹¹⁴ Two-plus hours later, Alan Wilson sent the GA President the invoice and wire instructions.¹¹⁵

- Y. The next day, August 26, 2021 at 8:39 PM, the Nation's in-house attorney provided via email the agreement for the expansion modular buildings to the Nation's GA President, copying Alan Wilson. The attorney noted that the Executive Committee and GA Board had approved them that day. The email requested the GA President sign the agreements, return them to the attorney and Alan Wilson the next morning, and send the payment to Carolina Modular.¹¹⁶
- Z. On Friday, August 27, 2021 at 9:07 AM, the GA President sent payment instructions via email to the Controller of the Nation's Two Kings Casino. At 10:56 AM, the Controller verified the payment was processed and sent. One minute later, the GA President sent Alan Wilson the Controller's email, stating "Please see below confirmation for wire."¹¹⁷
- AA. The same day at 9:27 AM, the GA President sent an email to the Nation's in-house attorney, copying Alan Wilson, questioning which lease agreement to sign and asking for confirmation that three described documents were the ones for execution.¹¹⁸ Alan Wilson responded seven minutes later: "You are correct. I've attached the contract clarification and Scope of work that pertain to lease 1101. Also included are the other documents you described."¹¹⁹
- BB. Later the same day at 2:44 PM, Alan Wilson emailed the GA President, copying the Nation's in-house attorney, the GA Vice President, and the owner of Carolina Modular Buildings, Inc., providing the fully executed contract signed by Carolina Modular's owner. Mr. Wilson instructed the President to sign the back of the lease, as it set forth the terms and conditions, and ended the email with "Please sign the bottom of page 2 and 3 and I will forward it to [Carolina Modular's owner]."¹²⁰

¹¹⁴ *Id.*

¹¹⁵ Email to Jeff Harris, Catawba Nation, and Michael Ulizio, Two Kings Casino, from Alan Wilson, AHG Group, copying Gregory A. Smith, Hobbs Straus; Wallace Cheves, Sky Boat; and Kris Irwin, Delaware North re: Carolina Modular Lease for Expansion (Aug. 25, 2021 12:08 PM).

¹¹⁶ Email to Michael Ulizio, Two Kings Casino, and Trent Troxel, Catawba Nation, from Jeff Harris, Catawba Nation, copying Alan Wilson, AHG Group re: Carolina Modular Lease for Expansion (Aug. 26, 2021 8:39 PM); *see also* Resolution of the Catawba Indian Nation Gaming Authority, *Resolution Approving the Lease/Rental Agreement between the Catawba Indian Nation Gaming Authority and Carolina Modular*, Resolution Number: GA 20210826 (Aug. 26, 2021).

¹¹⁷ Email to Alan Wilson, AHG Group, and Jeff Harris, Catawba Nation, from Mike Ulizio, Two Kings Casino re: Carolina Modular Lease for Expansion (Aug. 27, 2021 10:57 AM).

¹¹⁸ Email to Jeff Harris and Trent Troxel, Catawba Nation from Mike Ulizio, Two Kings Casino, copying Alan Wilson, AHG Group re: Carolina Modular Lease for Expansion (Aug. 27, 2021 9:27 AM).

¹¹⁹ Email to Mike Ulizio, Two Kings Casino, and Jeff Harris and Trent Troxel, Catawba Nation from Alan Wilson, AHG Group re: Carolina Modular Lease for Expansion (Aug. 27, 2021 9:34 AM).

¹²⁰ Email to Mike Ulizio, Two Kings Casino, from Alan Wilson, AHG Group, copying Jeff Harris and Trent Troxel, Catawba Nation and Russel Edwards up re: Carolina Modular Lease for Expansion (Aug. 27, 2021 2:44 PM).

CC. The Nation admits that Sky Boat handled the modular expansion's acquisition, explaining of Alan Wilson: "The Nation and Gaming Authority's interactions with him were limited to discussions about his independent tracking of construction budget items and receiving the contract from Carolina Modular for the procurement of the modular facilities as discussed above."¹²¹ The discussion above represents: "The only recommendation, suggestion or report we have identified coming from Sky Boat / AHG Group is the email that included contract documents from Alan Wilson for the modular facilities used for the expansion."¹²²

DD. As demonstrated above, when the Nation's temporary facility was operating, Sky Boat, including its owners, officials, managers, and consultant, acted as a *de facto* manager in their handling of the expansion's modular buildings contract execution and initial payment. *De facto* managers recommend discretionary actions implemented by others with actual authority. Such *de facto* management occurred here, taking the totality of circumstances into consideration, particularly:

- i. The Nation's temporary casino was operating throughout the period of time at issue here;
- ii. The Nation admits that it received the "contract documents from Alan Wilson for the modular facilities used for the expansion." In fact, Alan Wilson, Sky Boat's executive or consultant, gave the Nation's attorneys a day to execute the modular buildings' contract and make the initial payment for it.;
- iii. The Nation's outside attorney responded within fifteen minutes to Mr. Wilson's conveyance of the contract, characterizing it as "advance decision making.";
- iv. When the Nation's outside attorney provided comments on the contract documents, Mr. Wilson informed the attorney that "[t]he lease and addendums are ok as submitted. Please have them signed and the invoice paid . . ." And, in responding to a specific comment requesting an explanation for significant changes in the scope of work, Mr. Wilson said simply that Sky Boat had "signed off" on the contract clarification and scope of work and "[t]hese are approved.";
- v. Subsequently, when inquiring about the status of the contract execution and payment, Alan Wilson was told the Nation's Executive Committee approval was needed and on the agenda for the next day. Nevertheless, within less than hour of the email exchange, the Nation's attorney made a

¹²¹ Letter to Shawna Castellano, NIGC Regional Director, from Jeff Harris, Catawba Nation Tribal Attorney re: Catawba Indian Nation and Catawba Gaming Authority's Responses to NIGC Third Document Request at 3 (Sept. 23, 2022).

¹²² *Id.*

plan for the contract's execution and issuance of its initial payment, advising the GA President to "go ahead and make payment . . . unless I contact you since we expect the EC will approve.";

- vi. That same day, Alan Wilson sent the GA President the invoice and wire instructions.;
- vii. The following day, Alan Wilson was copied on the Nation's in-house attorney's email to the GA President, advising of the Executive Committee's approval and requesting execution of the contract and payment issuance as well as the provision of the executed contract to both the attorney and Mr. Wilson. The Nation's GA President did so.¹²³; and
- viii. Apparently, the owner of Carolina Modular Buildings, Inc. provided the fully executed contract to Alan Wilson, as Mr. Wilson conveyed it to the Nation's GA, directing them to sign the back of the contract (as requested by Carolina Modular's owner) and send it back to him so that he could send it to Carolina Modular's owner.

The Nation allowed this *de facto* management to occur in the absence of an approved management contract.

Coordinating Payment for Expediting the Modular Buildings: de facto management

EE. On October 21, 2021, Kris Irwin of Delaware North, the Nation's consultant, sent an email to the Nation's GA President and Vice President with the subject line "Two Kings Expansion – Caroline Modular: Inv_2966_from Titan_Modular_Systems_Inc_24736.pdf." The email said "Alan Wilson from Sky Boat forwarded on the attached invoice which he has reviewed and indicated aligns with the agreement. He asked that I submit this to CNGA for payment."¹²⁴

FF. The following day, the Nation's GA President sent an email to Alan Wilson, copying the GA Vice President, advising "Alan—previous payments were made to Carolina. This invoice is to Titan which is not the contracted party. Please have them correct the invoice to match. Thanks."¹²⁵ Eight minutes later, Mr. Wilson responded, explaining:

The payment is due the manufacturer, Titan Modular Systems, Inc. They are the company that earned the incentive of delivering the units ahead of

¹²³ Email to Trent Troxel and Jeff Harris, Catawba Nation, and Alan Wilson, AHG Group, from Mike Ulizio, Two Kings Casino, re: CINGA - Carolina Modular executed (Aug. 27, 2021 8:43 AM) (including signed and dated attachments: (1) Lease / Rental Agreement No. 1101, November 1, 2021 start of lease term; (2) Rider to Lease Agreement No. 1101 Carolina Modular (Lessor) and the Catawba Indian Nation Gaming Authority (Lessee); (3) Scope of Work; (4) Contract Clarifications).

¹²⁴ Email to Mike Ulizio and Trent Troxel, Two Kings Casino, from Kris Irwin, Delaware North re: Two Kings Expansion – Caroline Modular: Inv_2966_from Titan_Modular_Systems_Inc_24736.pdf. (Oct. 21, 2021, 4:45 PM).

¹²⁵ Email to Alan Wilson, AHG Group, and Trent Troxel, Two Kings Casino, from Mike Ulizio, Two Kings Casino re: Two Kings Expansion – Caroline Modular: Inv_2966_from Titan_Modular_Systems_Inc_24736.pdf. (Oct. 22, 2021, 10:12 AM).

schedule. We don't want Carolina Modular to benefit from Titan's performance. Let me know what additional information you need to process the payment to Titan. If necessary, I could get you a letter from Carolina Modular stating Titan is due the incentive. I've attached the incentive letter.¹²⁶

Thirty minutes later, the GA President asked a follow-up question of Mr. Wilson: "Thank you for the clarification with regards to the expediting. That makes sense. My follow up to that is does this replace the delivery and blocking charges in the Carolina contract then?"¹²⁷

Minutes later, Alan Wilson further clarified: "Unfortunately, this doesn't replace the delivery and blocking charges. This is an add to get the factory to prioritize the order and meet the earlier delivery dates."¹²⁸

GG. On November 3, 2021, the owner of Carolina Modular sent Alan Wilson an email, inquiring:

[D]id you receive the \$150,000 invoice that I sent you for Titan Modular to deliver the 24 sectional Casino modular by October 9th as agreed upon. I assumed that you would forward that invoice to [Nation's GA Vice President] for payment? We have several past due invoices for the tribe and I wanted to confirm that Trent is still the accounts payable person? Thank You¹²⁹

HH. The next day, Alan Wilson forwarded the email to the Nation's GA President and Vice President, stating "I'll respond to [Carolina Modular's owner] that he has [the GA Vice President's] email and let him know that the Titan invoice was paid."¹³⁰

II. Additionally, on October 26, Kris Irwin of Delaware North, the Nation's consultant, emailed Wallace Cheves, Sky Boat Member, passing a Yates-Metcon email about a delay in the restroom trailer delivery, and advising "I wanted to make sure you were aware of this since I believe Sky Boat incentive monies were

¹²⁶ Email to Mike Ulizio and Trent Troxel, Two Kings Casino, from Alan Wilson, AHG Group, re: Two Kings Expansion – Caroline Modular: Inv_2966_from Titan_Modular_Systems_Inc_24736.pdf. (Oct. 22, 2021, 10:20 AM).

¹²⁷ Email to Alan Wilson, AHG Group, and Trent Troxel, Two Kings Casino, from Mike Ulizio, Two Kings Casino re: Two Kings Expansion – Caroline Modular: Inv_2966_from Titan_Modular_Systems_Inc_24736.pdf. (Oct. 22, 2021, 10:56 AM).

¹²⁸ Email to Mike Ulizio and Trent Troxel, Two Kings Casino, from Alan Wilson, AHG Group, re: Two Kings Expansion – Caroline Modular: Inv_2966_from Titan_Modular_Systems_Inc_24736.pdf. (Oct. 22, 2021, 10:59 AM).

¹²⁹ Email to Alan Wilson, AHG Group, from Russel Edwards re: Titan Invoice (Nov. 3, 2021, 12:11 PM).

¹³⁰ Email to Mike Ulizio and Trent Troxel from Alan Wilson, AHG Group re: Titan Invoice (Nov. 4, 2021, 10:09 AM).

added to ensure delivery.”¹³¹ Prior to that, on October 11, 2021, the Nation’s Chief forwarded an email of the same date from Kris Irwin, concerning the same delay issue, to Wallace Cheves. Mr. Cheves responded ten minutes later with “Thanks Chief I didn’t see this and calling my folks now. Thanks for forwarding.”*

JJ. The Nation admits that Sky Boat via Alan Wilson, its executive or consultant, controlled construction budget items: “The Nation and Gaming Authority’s interactions with [Alan Wilson] were limited to discussions about his independent tracking of construction budget items and receiving the contract from Carolina Modular for the procurement of the modular facilities as discussed above.”¹³²

KK. As demonstrated above, during the operation of the Nation’s temporary gaming facility, Sky Boat, its owners, officials, managers, and its consultant acted as a *de facto* manager in coordinating the payment for expediting the delivery of the expansion’s modular buildings. Alan Wilson recommended certain actions and positions that were taken by those with actual authority. This is shown by:

- i. The Nation’s temporary gaming facility was operating from July 1, 2021, through the time period at issue;
- ii. The Nation admits that Alan Wilson, Sky Boat executive or consultant, independently tracked construction budget items;
- iii. Alan Wilson receipt of the expediting invoice from Carolina Modular, who apparently viewed him as the point of contact for it, and Mr. Wilson’s forwarding the invoice to the Nation’s consultant with the direction that it be sent to the Nation’s GA for payment;
- iv. The Nation’s GA President accepting Alan Wilson’s view of the contracting parties for expediting the modular buildings and the correct party for payment. Specifically, despite the fact that the GA President correctly noted that the expediting contract letter was with Carolina Modular Buildings, Inc. and questioned the payment for the service to Titan Modular, after receiving Alan Wilson’s explanation, the GA President accepted that the payment should go to Titan Modular;¹³³
- v. The GA President questioning whether the payment to Titan Modular negated specific charges from Carolina Modular and deferring to Alan Wilson’s interpretation of the contract that it did not;

¹³¹ Sky Boat response to NIGC August 24, 2022 Document Request, Wallace Cheves folder (Sept. 14, 2022), Email to Wallace Cheves, Sky Boat Gaming, from Kris Irwin, Delaware North re: FW: Delay In Schedule (Oct. 11, 2021, 11:27:24 AM).

*Email to Bill Harris from Wallace Cheves re: Two Kings Expansion – Schedule Impact (Oct. 11, 2021, 11:36 AM).

¹³² Letter to Shawna Castellano, NIGC Regional Director, from Jeff Harris, Catawba Nation Tribal Attorney re: Catawba Indian Nation and Catawba Gaming Authority’s Responses to NIGC Third Document Request at 3 (Sept. 23, 2022).

¹³³ Moreover, the November 3, 2021 email from Carolina Modular’s owner to Alan Wilson demonstrates that Carolina Modular sent the invoice for the expediting cost, not Titan Modular.

- vi. The Carolina Modular owner's acknowledgment in his November 3, 2021 email of Alan Wilson as the point of contact for payment of the expediting invoice.; and
- vii. Alan Wilson's conveyance of the November 3, 2021 email to the Nation's GA President and Vice President, advising that he would let the Carolina Modular owner know that the expediting invoice was paid. Plus, Mr. Wilson's execution of this representation.

The Nation permitted this *de facto* management to occur, in the absence of an approved management contract.

Coordinating the Casino and modular expansion's invoices & payments

- LL. On July 1, 2021, Kris Irwin of Delaware North, the Nation's consultant, emailed the Nation's GA President, Vice President and Controller, copying Alan Wilson. The email's subject heading was "Invoice_9249_from_Carolina_Modular_Buildings_Inc.pdf." Her email advised "Please see attached invoice for the monthly rental costs of the trailers. I have added Alan Wilson to this email chain as he is the person who is the contact for Carolina Modular for invoicing purposes."¹³⁴ Invoice 9242 was from Carolina Modular Buildings, Inc. to the Nation's GA for the month of July 2021, specifically "252 ft x 60 ft Casino & 2 12 x 36 Bathrooms" and "Monthly Rental of 2 36 x 60 Triple wide modular."¹³⁵
- MM. On August 1, 2021, Carolina Modular Buildings, Inc. sent via email that month's invoice for the same exact items—the Casino, Bathroom, and Triple-wide modulares—to Alan Wilson. Over an hour later, Mr. Wilson forwarded the invoice to the GA President, copying the Vice President and Controller, instructing "Please process this payment."¹³⁶ This invoice, Invoice 9346, was the same as the prior month with exception of the dates of service.¹³⁷
- NN. On August 30, 2021, Carolina Modular Buildings, Inc. sent an overdue notice to Alan Wilson for Invoice 9346, which Mr. Wilson forwarded to the GA President and Vice President, noting "New invoice from Carolina Modular."¹³⁸
- OO. On September 1, 2021, Kris Irwin of Delaware North, the Nation's consultant, sent an email to Alan Wilson, asking "Any way Carolina Modular can

¹³⁴ Email to Mike Ulizio, Trent Troxel, and Rick Home, from Kris Irwin re: Two Kings - Trailer Rental Invoice: Invoice_9242_from_Carolina_Modular_Buildings_Inc.pdf (July 1, 2021, 11:23 AM).

¹³⁵ *Id.*; Attachment, Invoice_9242_from_Carolina_Modular_Buildings_Inc.pdf

¹³⁶ Email to Mike Ulizio from Alan Wilson, AHG Group, copying Trent Troxel and Rick Home re: Fw: Invoice 9346 from Carolina Modular Buildings, Inc. (Aug. 1, 2021, 6:13 AM).

¹³⁷ *Id.*; Attachment: Invoice_9346_from_Carolina_Modular_Buildings_Inc.pdf

¹³⁸ Email to Alan Wilson, AHG Group, from Carolina Modular Buildings, Inc. re: Invoice 9346 is overdue (Aug. 30, 2021, 12:15 PM); Email to Mike Ulizio and Trent Troxel from Alan Wilson, AHG Group re: Invoice 9346 is overdue (Aug. 30, 2021, 11:38 AM).

submit their invoices directly to CNGA? It would help to ensure all payments are made in a timely manner. Thank you.” Mr. Wilson responded “I’ve requested that the invoices be sent to Mike and Trent.”¹³⁹

PP. On September 30, 2021, Carolina Modular Buildings, Inc. sent an overdue notice to Alan Wilson for Invoice 9463, September’s invoice. The next day, Mr. Wilson forwarded the notice to the GA Vice President, noting “I received this past due notice.”¹⁴⁰

QQ. On October 1, 2021, Carolina Modular Buildings, Inc. sent its October monthly invoice directly to the Nation’s GA Vice President, copying Alan Wilson.¹⁴¹ Its November 2021 invoice was conveyed in the same manner.¹⁴²

RR. On November 4, 2021, a Two Kings Casino Accounts Payable Representative emailed Alan Wilson about duplicate invoices for September 2021 and future invoice submissions, instructing the use of a new Accounts Payable email address for them.¹⁴³ In response, Mr. Wilson directed that the Representative send the request to the owner of Carolina Modular.¹⁴⁴

SS. As demonstrated above, while the Nation’s temporary gaming facility was operating, from July 1, 2021 through approximately September 1, 2021, Sky Boat, its owners, officials, managers, and its consultant acted as the *de facto* manager of the invoicing and payments for the casino’s modular buildings and the expansion’s modular buildings. In particular:

- i. The Nation’s temporary gaming facility was operating during this time period;
- ii. Alan Wilson was denoted as the point of contact for such invoicing by the Nation’s consultant, Delaware North;

¹³⁹ Email to Alan Wilson, AHG Group, from Kris Irwin, Delaware North, re: Invoice 9461 from Carolina Modular Buildings, Inc. (Sept. 1, 2021, 7:48 AM); Email to Kris Irwin, Delaware North, from Alan Wilson, AHG Group re: Invoice 9461 from Carolina Modular Buildings, Inc. (Sept. 1, 2021, 10:03 AM).

¹⁴⁰ Email to Alan Wilson, AHG Group, from Carolina Modular Buildings, Inc. (Sept. 30, 2021, 1:03 PM); Email to Trent Troxel from Alan Wilson, AHG Group, re: Fw: Invoice 9463 is overdue (Oct. 1, 2021, 4:17 AM).

¹⁴¹ Email to Trent Troxel, Catawba, from Carolina Modular Buildings, Inc. re: Invoice 9612 from Carolina Modular Buildings, Inc. (Oct. 1, 2021, 4:00 AM).

¹⁴² Email to Trent Troxel, Catawba, from Carolina Modular Buildings, Inc. re: Invoice 9711 from Carolina Modular Buildings, Inc. (Nov. 1, 2021, 5:07 AM).

¹⁴³ Email to Alan Wilson, AHG Group, from Tammy Chapman, Two Kings Casino, copying Trent Troxel, Rick Home, and Mike Ulizio, Two Kings Casino re: Two Kings Casino Invoices for Sept 2021 (Nov. 4, 2021, 10:40 AM).

¹⁴⁴ Email to Tammy Chapman, Two Kings Casino, from Alan Wilson, AHG Group, copying Trent Troxel, Rick Home, and Mike Ulizio, Two Kings Casino, re: Two Kings Casino Invoices for Sept 2021 (Nov. 4, 2021, 10:16 AM).

- iii. From August 1, 2021 through November 1, 2021, invoices and overdue notices for the modular buildings were either sent directly to Alan Wilson or he was copied on their conveyance; and
- iv. On November 4, 2021, the Nation's Casino Accounts Payable representative reached out to Alan Wilson regarding duplicate invoices for the modular buildings and directed him to submit future invoices to an Accounts Payable email address.

The Nation allowed this *de facto* management to occur in the absence of an approved contract.

2. Even if Sky Boat's actions were not taken pursuant to the Ground Lease and/or the Modular Facility leases, it, its owners, officials, managers, and consultant still managed the expansion of the Nation's temporary gaming facility without an approved contract as set forth in violation #1.

- A. All averments in Violation 1 are included here with the exception of paragraphs E through J, L, and P.
- B. Through the actions outlined herein that occurred when the Nation's Two Kings Casino was operating, Sky Boat, its owners, officials, managers, and consultant, managed specific aspects of the expansion of the casino without an approved management contract in violation of IGRA and NIGC regulations.
- C. The Nation allowed this management to occur in the absence of an approved management contract, violating the same laws.

3. The Ground Lease is a management contract. The parties violated NIGC regulations by failing to submit it to the Chair within the time period required.

- A. NIGC regulation, 25 C.F.R. § 533.2, governs the time-period for submitting management contracts, mandating a tribe or a management contractor to submit a management contract to the Chair for review within sixty (60) days of execution by the parties.
- B. On July 20, 2020, the Nation and Sky Boat executed the Ground Lease.¹⁴⁵
- C. Three times—on December 21, 2021, March 7, 2022, and July 7, 2022, Compliance and OGC advised the parties that the Ground Lease was an unapproved management contract that was void without the Chair's approval.¹⁴⁶ And in the March 7, 2022 letter, Compliance explicitly informed the parties that failing to submit the Ground Lease, an executed management contract, within 60 days violates NIGC regulations.

¹⁴⁵ See note 51, *supra*.

¹⁴⁶ See notes 73, 78, and 81, *supra*.

- D. The Ground Lease, a management contract, should have been submitted to the NIGC for the Chair's review by September 18, 2020. As of today, it has not been submitted.
- E. In late November 2021, NIGC became aware of the parties' efforts to negotiate a termination of the Ground Lease. Since that time, NIGC understands as a general matter that those negotiations have stopped and started and currently are underway again. No matter, such negotiations do not exempt parties from the regulatory deadline of § 533.2.
- F. The Nation and Sky Boat, its owners, officials, and managers, violated NIGC regulations by failing to timely submit the Ground Lease to the Chair as a management contract.

7. Letters of Concern were issued for the violations and, even if they are found wanting, the Chair has reasonable grounds for moving directly to a NOV.

NIGC regulations, § 573.2(d), require a Chair to set forth reasons for issuing an enforcement action without Compliance first sending a Letter of Concern.

- a. As for violation 3—failing to timely submit the Ground Lease, a management contract, to the Chair for review, the parties received several notifications that the lease was unapproved and, therefore, void. On March 7, 2022, Compliance explicitly advised the parties that they failed to submit the lease timely, violating NIGC regulations, 25 C.F.R. § 533.2, and their negotiations to terminate the Ground Lease did not address the violation.
- b. Regarding violations 1 and 2, managing the casino's expansion in part without an approved management contract, on July 1, 2021—the day the Nation opened its casino, Compliance provided the Nation a Letter of Concern, detailing why the modular facility lease constituted a management contract. Further, Compliance warned that acting under it “puts the Nation and related parties at risk of violating IGRA, NIGC's regulations and the Nation's gaming ordinance, and could lead to a Notice of Violation, a Civil Fine Assessment, and/or an Order of Temporary Closure.” In sum, as of July 1, 2021, the Nation was well aware of the consequences of managing without an approved contract, which Compliance clearly spelled out in its Letter of Concern. Compliance also gave the Nation and Sky Boat in-person training on October 13-14, 2021, which included managing without an approved contract training.
- c. Even if the LOC is found to be insufficient as to managing without an unapproved management contract, the Chair moves directly to the notice of violation here because for over a year Compliance and OGC have been working with the parties (via training, site visits, letters, and phone calls) providing technical advice and assistance on management issues.

8. To Correct the Violations

- a. There is no cure for these violations. The parties cannot correct or undo Sky Boat's managing in the absence of an approved management contract or the Nation's allowance of it. Nor can the parties fix their failure to timely submit the Ground Lease, an executed management contract, as the time to do so lapsed over two years ago.
- b. Nevertheless, from this date forward, the Nation and Sky Boat, its associated entities, owners, officials, managers, and consultant must not act under the Ground Lease because it is void as an unapproved management contract. The same directive applies to the modular facility lease and its amendment: despite the fact that the amended MFL expired upon its own terms in late July 2022, the parties and their associated entities must not to act pursuant to it or its holdover provision. Specifically, the parties and their associated entities shall not make nor accept payments under the amended MFL's holdover provision.
- c. Lastly, the Nation and its tribal entities shall ensure that Sky Boat, its owners, officials, managers, and its consultant do not exercise control or authority over the Nation's gaming facilities, in whole or in part. This directive includes any entity owned in whole or part by them; any entity in which they or an entity owned by them is a shareholder or partial owner; and any entity associated with them. All control, authority, and *de jure* or *de facto* management in the Nation's gaming facilities by the above listed entities and individuals must cease.

9. Appeal

The parties may appeal this Notice of Violation within 30 days of service by:
1) requesting a hearing before a Presiding Official under 25 C.F.R. part 584; or
2) waiving their right to an oral hearing and instead electing to have the matter determined by the Commission solely on the basis of written submissions pursuant to 25 C.F.R. part 585. **Failure to file an appeal within the time provided shall result in a waiver of the right to appeal.**

Any appeal of this Notice of Violation should be submitted to the NIGC at the following address: NIGC Attn: Office of General Counsel 1849 C Street NW Mail Stop # 1621 Washington, DC 20240. A notice of appeal must reference this Notice of Violation.

If a party elects a hearing under part 584, it must file a notice of appeal within 30 days after the service of this Notice of Violation, referencing the notice. Within 10 days after filing a notice of appeal, the party must file an appeal brief, stating with particularity the relief desired and the grounds in support, including supporting documentation and evidence in the form of affidavits. If a party prefers a closed hearing, the brief should include such a request and the reasons therefor. And if a party desires to present oral testimony at the hearing, the brief must list the specific names of proposed witnesses and the general nature of their expected testimony.

Pursuant to part 585, a party may waive their right to an oral hearing and instead elect to have the appeal determined by the Commission solely on the bases of written submissions. Within 30 days after service of this Notice of Violation, the party must file a

notice of appeal, referencing the notice; waiving, in writing, its right to an oral hearing before a Presiding Official; and electing, in writing, to have the appeal determined by the Commission solely on the written submissions. Within 30 days of the service of the record, the party must file an appeal brief with the Commission, succinctly stating the relief sought and the supporting grounds therefor. The brief may include supporting documentation.

10. Fine – Submission of Information

The violations in this Notice of Violation may result in the assessment of a civil fine against the Nation, Sky Boat, their owners, managers, officials, and consultant in their official or individual capacities in an amount not to exceed \$57,527 per violation per day.

Under 25 C.F.R. § 575.5(a), each party may submit written information about the violations to the Chair within 15 days after service of the Notice of Violation (or such longer period as the Chair may grant for good cause). The Chair shall consider any information submitted in determining the facts surrounding the violations and the amount of the proposed civil fine.

Dated: December 6, 2022.



E. Sequoyal Simermeyer
Chairman

Certificate of Service

I certify that this Notice of Violation was sent by first class mail and certified mail, return receipt requested on December 6, 2022 to:

William Harris, Chief & Agent for Service of Process
Catawba Indian Nation
996 Avenue of the Nations
Rock Hill, SC 29730

Kathy George, President
Catawba Nation Gaming Authority
538 Kings Mountain Blvd.
Kings Mountain, NC 28086

Matt Stewart, Chair
Catawba Nation Gaming Commission
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CS SUNBIZ, LLC
Agent for service for CSV Investors, LLC; AHG Group Holdings, LLC; AHG Group LLC; &
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Shakira Ferguson
Legal Staff Executive Administrator