



January 29, 2016

Anthony Scott Canty, Esq.
Attorney General
Office of the Attorney General
Yavapai-Apache Nation
2400 West Datsi Street
Camp Verde, AZ 86322

Re: Review of Loan Agreement and related documents between the Yavapai-Apache Nation and BOKF, NA d/b/a Bank of Arizona, and response to request for declination letter

Dear Attorney General Canty:

This letter responds to your letter, dated November 20, 2015, and received November 23, 2015, on behalf of the Yavapai-Apache Nation to the National Indian Gaming Commission for review of a draft Loan Agreement, Security Agreement, and other related documents between the Yavapai-Apache Nation and the Cliff Castle Casino, and the Bank of Arizona, as primary lender and administrative agent. Specifically, you asked for an opinion from the NIGC's Office of General Counsel as to whether the documents constitute management contracts, or collateral agreements to a management contract, requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act ("IGRA"). You also asked for an opinion as to whether the documents violate IGRA's requirement that a tribe have the sole proprietary interest in, and responsibility for, its gaming operation.

From January 19-28, 2016, you provided the NIGC with an updated draft of the above-referenced Loan Agreement, along with revised versions of many of the previously submitted documents and some new documents.

In response to your request, I reviewed and considered the following submissions (collectively, the "Loan Documents"):

- (1) Draft Loan Agreement (#22243588.18, received 1-28-16), with the following exhibits and schedule:
 - o Ex. A Legal Description;
 - o Ex. B Site Plan;
 - o Ex. C Construction Budget;
 - o Ex. D Borrower Compliance Certificate;

- Ex. E Construction Loan Advance Request Form;
 - Ex. F RLOC Facility Advance Request Form;
 - Ex. G Assignment;
 - Ex. H Form of Term Loan Note/Promissory Note;
 - Ex. I Form of Construction Note/Promissory Note;
 - Ex. J Form of RLOC Note/Promissory Note (RLOC Facility); and
 - Sch. 5.9 Insurance Amounts, Deductibles and Appraiser List.
- (2) Promissory Note (Term Loan) with Bank of Arizona (#23078239, received 1-19-16);
- (3) Promissory Note (Term Loan) with U.S. Bank Nat'l Assn. (#23078270, received 1-19-16);
- (4) Promissory Note (Construction Facility) with Bank of Arizona (#23078310, received 1-19-16);
- (5) Promissory Note (Construction Facility) with U.S. Bank Nat'l Assn. (#23078376, received 1-20-16);
- (6) Promissory Note (RLOC Facility) with Bank of Arizona (#23078407, received 1-19-16);
- (7) Promissory Note (RLOC Facility) with U.S. Bank Nat'l Assn. (#23078475, received 1-19-16);
- (8) Security Agreement (#18265261.3, received 1-19-16), with the following schedule:
- Schedule I;
- (9) Nation Fee Letter, dated December 9, 2015 (#22667366.2, received 1-19-16);
- (10) UCC Financing Statement (Form UCC-1), with Exhibit A (#22382864, received 1-20-16);
- (11) Closing Certificate of Borrower (#22361298.4, received 1-19-16), with the following exhibits and schedule:
- Ex. A Constitution;
 - Ex. B Tribal Council Resolution No. 107-15, Approving Loan;
 - Ex. C Tribal-State Gaming Compact;
 - Ex. D Secretary of Interior Approval of Compact;
 - Ex. E Gaming Ordinance;
 - Ex. F National Indian Gaming Commission Approval of Gaming Ordinance;
 - Ex. G Council Resolution Approving Amendment to Title 36, Cliff Castle Casino Business Code;

- Ex. H Gaming License;
 - Ex. I Arbitration Code; and
 - Sch. 17 Fee Arrangement;
- (12) Certificate of Hazardous Waste, signed on 1-15-16 (#22378038.4, received 1-19-16);
- (13) Tribal Council Resolution No. 188-15, Approving Treasury Documents between Nation and Bank of Arizona, (#22593024.4, received 1-19-16); and
- (14) Addendum to Master Agreement for Treasury Services (#22592995.3, received 1-19-16).

The Loan Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed in the past.¹ Applying the same analysis here, it is my opinion that the Loan Documents are not management contracts, or collateral agreements to a management contract, and, therefore, do not require the approval of the NIGC's Chairman. It is also my opinion that they do not violate IGRA's sole proprietary interest mandate.

I note that the Loan Agreement has been submitted to us as an unexecuted draft in what has been represented to be substantially final form. To the extent that this document or any of the Loan Documents change in any material way, this opinion shall not apply. Additionally, this opinion applies only to the existing Loan Documents, and does not apply to any missing documents or future documents incorporating extensions, modifications, supplements or other changes to the Loan Documents.

I anticipate that this letter will be posted to the NIGC's website. Prior to the letter's posting, the NIGC Freedom of Information Act ("FOIA") Officer will notify you to give you an opportunity to identify and request that any information, which may be exempted under FOIA, be redacted or withheld. A list of the FOIA exemptions may be found at 5 U.S.C. § 552(b).

If you have any questions, please contact Attorney Katherine Zebell at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Mark D. Ohre, Esq.
Counsel for GOKF, NA d/b/a
Bank of Arizona

¹ See the NIGC website for previously issued advisory opinion letters issued by NIGC General Counsel as to whether specific agreements between tribes and third parties constitute management contracts under IGRA and/or violate IGRA's sole proprietary interest mandate.