



March 6, 2020

**VIA EMAIL AND FIRST CLASS MAIL**

Timothy J. Kincaid, Esq.  
Kincaid Law Office  
6151 Wilson Mills Road, Suite 310  
Highland Heights, OH 44143

**Re: Review of the 2020 Loan Documents  
for the Little Traverse Bay Bands of Odawa Indians**

Dear Mr. Kincaid:

This letter responds to your January 29, 2020 request, on behalf of the Little Traverse Bay Bands of Odawa Indians for the National Indian Gaming Commission, Office of General Counsel, to review certain loan documents and to provide an opinion as to whether or not these loan documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act of 1988. You have also asked for my opinion as to whether or not the loan documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the 2020 Loan Documents"):

- *Loan Agreement Dated as of [ ], 2020, between Little Traverse Bay Bands of Odawa Indians, as the Borrower, and PNC Bank, National Association, as the Lender* (marked at bottom left as "4828-8713-2330\5" and at top right as "DW Draft 1/28/20");
- *Term Note (Closing Date)* (marked at bottom left as "4815-7705-0034\1");
- *Term Note (Working Capital)* (marked at bottom left as "4845-1489-7842\1");
- *Term Note (Construction)* (marked at bottom left as "4843-5426-9106\1"); and
- *Security Agreement* (marked at bottom left as "4844-7283-6529\3").

The 2020 Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Some of these opinion letters may be found on the NIGC's website located at <[www.nigc.gov](http://www.nigc.gov)>. Applying the same analysis here, it is my opinion that, collectively, the 2020 Loan Documents are not management contracts and do not require the

Mr. Timothy J. Kincaid

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It is my understanding that the 2020 Loan Documents are represented to be in substantially final form, and any further changes will not be material to OGC's analysis. This opinion shall not apply if the 2020 Loan Documents change in any material way prior to closing or are inconsistent with the assumptions made herein. Further, this opinion is limited to the aforementioned 2020 Loan Documents and does not include or extend to any other agreements not submitted for review.

Please note that it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld. *See* 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." *See* 25 C.F.R. § 517.7(d). Please submit any written objection to <FOIASubmitterReply@nigc.gov> **within thirty (30) days of the date of this letter**. After this time elapses, the letter will be made public and objections will no longer be considered. *Id.*

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

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is fluid and cursive, with a horizontal line extending to the right.

Michael Hoenig  
General Counsel