



March 23, 2020

VIA FIRST CLASS MAIL AND EMAIL

Jennifer D. Miernicki
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center, 90 South Seventh Street
Minneapolis, MN 55402-3901

Re: Review of loan documents for Cheyenne & Arapaho Tribes

Dear Ms. Miernicki:

This letter responds to your January 21, 2020 and February 4, 2020 requests for the National Indian Gaming Commission's Office of General Counsel to review loan agreements between the Cheyenne and Arapaho Tribes (Borrower) and the Bank of America, NA (Lender). Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the loan documents violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions (collectively, "the Loan Documents") all of which are unexecuted, but were represented to be in substantially final form:

- Loan Agreement between Bank of America, N.A. and the Cheyenne and Arapaho Tribes (NIGC Submission Draft 2/4/2020; US.125311630.06 in lower left corner; 40 pages)
 - Exhibit A – Form of Loan Notice
 - Exhibit B – Form of Compliance Certificate
- Security Agreement (NIGC Submission Draft 4/2/2020; US.125723697.02; 12 pages)

The Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, opinion letters for which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Documents are not management contracts and do not require the approval of the NIGC Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the drafts are represented to be in substantially final form, and if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan

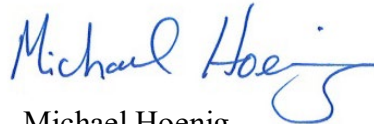
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Documents listed above. This opinion does not include or extend to any other agreements not submitted for review, including, but not limited to, any letter of credit, written assurance, agreement, document, pledge, assignment, endorsement, instrument, or financing statement.

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.¹ 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),² please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ 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.⁵ If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Staff Attorney Steve Iverson at (202) 632-7003 or by email at steven_iverson@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: Hershel Gorham, Legal Counsel to the Cheyenne & Arapaho Tribes

¹ See 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 139 S. Ct. 2356 (2019).

⁴ See 25 C.F.R. § 517.7(d).

⁵ *Id.*