



March 23, 2020

Kerry Patterson  
Procopio  
525 B Street, Suite 2200  
San Diego, CA 92101

**Re: Review of Loan Documents for the JIV Development Corporation**

Dear Ms. Patterson:

This letter responds to your November 6, 2019 and February 21, 2020 requests on behalf of the Jamul Indian Village Development Corporation for the Office of General Counsel, National Indian Gaming Commission, to review Loan Documents. Specifically, you have asked for my opinion whether the Loan Documents constitute a management contract or collateral agreement to a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act, and whether they violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submission (collectively referred to as "the Loan Documents"):

1. Credit Agreement (draft as of 2/20/2020) ("Credit Agreement");
2. Form of Assignment (attached as Exhibit 1.1(a) to the Credit Agreement) (draft as of 2/20/2020);
3. Form of Notice of Borrowing (attached as Exhibit 1.1(b) to the Credit Agreement) (draft as of 2/20/2020);
4. Form of Term Notes (attached as Exhibit 1.1(c) to the Credit Agreement) (draft as of 2/20/2020);
5. Form of Revolving Notes (attached as Exhibit 1.1(c) to the Credit Agreement) (draft as of 2/20/2020);
6. Form of Swingline Note (attached as Exhibit 1.1(c) to the Credit Agreement) (draft as of 2/20/2020);
7. Form of L/C Request (attached as Exhibit 2.1(c) to the Credit Agreement) (draft as of 2/20/2020);
8. Form of Swingline Request (attached as Exhibit 2.1(d) to the Credit Agreement) (draft as of 2/20/2020);

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9. Form of Notice of Conversion/Continuation (attached as Exhibit 2.6 to the Credit Agreement) (draft as of 2/20/2020);
10. Compliance Certificate (attached as Exhibit 5.2(b) to the Credit Agreement) (draft as of 2/20/2020);
11. Guaranty and Security Agreement (draft as of 2/14/2020) (the "GSA");
12. Form of Pledge Amendment (attached as Annex 1 to the GSA) (draft as of 2/14/2020);
13. Form of Joinder Agreement (attached as Annex 2 to the GSA) (draft as of 2/14/2020);
14. Form of Intellectual Property Security Agreement (attached as Annex 3 to the GSA) (draft as of 2/14/2020);
15. Depository Waterfall Agreement (draft as of 2/20/2020) (the "DWA");
16. Form of Quarterly Transfer Certificate and each of the supplements attached thereto (attached as Exhibit C to the DWA) (draft as of 2/20/2020);
17. Deposit Account Control Agreement (non-springing) (draft as of 1/21/2020);
18. Deposit Account Control Agreement (springing) (draft as of 1/21/2020);
19. Master Agreement for Documentary (Commercial) Letters of Credit (draft as of 1/21/2020);
20. Master Agreement for Standby Letters of Credit (draft as of 1/21/2020);
21. Subordination Agreement (draft as of 2/20/2020);
22. JIV Holding Company Credit Agreement (draft as of 2/20/2020);
23. Form of Assignment (attached as Exhibit 1.1(a) to the JIV Holding Company Credit Agreement) (draft as of 2/20/2020);
24. Form of Notice of Borrowing (attached as Exhibit 1.1(b) to the JIV Holding Company Credit Agreement) (draft as of 2/20/2020);
25. Form of Term Note (attached as Exhibit 1.1(c) to the JIV Holding Company Credit Agreement) (draft as of 2/20/2020);
26. Compliance Certificate (attached as Exhibit 5.2(b) to the JIV Holding Company Credit Agreement) (draft as of 2/20/2020);
27. JIV Holding Company Security Agreement (draft as of 2/06/2020);
28. Form of Pledge Amendment (attached as Annex 1 to the JIV Holding Company Security Agreement) (draft as of 2/06/2020);
29. Form of Intellectual Property Security Agreement (attached as Annex 2 to JIV Holding Company Security Agreement) (draft as of 2/06/2020).

The Loan Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed, opinion letters for which are available on the NIGC website. 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 do not require the approval of

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the Chair. It is also my opinion that the Loan Documents do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion. If they change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements or documents 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 Senior Attorney Austin Badger at (202) 632-7003.

Sincerely,



Michael Hoenig  
General Counsel