



May 14, 2020

VIA EMAIL

Vanya S. Hogen
Hogen Adams, PLLC
1935 W County Road B2, Suite 460
St. Paul, MN 55113

Re: Review of loan documents for Saginaw Chippewa Indian Tribe of Michigan

Dear Ms. Hogen:

This letter responds to your January 29, 2020 request for the National Indian Gaming Commission's Office of General Counsel to review loan agreements between the Saginaw Chippewa Indian Tribe and the U.S. Bank National Association. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chair'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:

- Credit Agreement among the Saginaw Chippewa Indian Tribe of Michigan, as the Borrower, and U.S. Bank National Association, as the Lender (NIGC Review Draft 1-28-2020, doc. no. 4825-1459-5477\12)
 - Exhibit A – Form of Compliance Certificate
 - Exhibit B – Form of Revolving Note
 - Exhibit C – Form of Borrowing Notice
 - Exhibit D – Form of Tax Exempt Note
- Security Agreement (NIGC Review Draft 1-28-202, doc. no. 4813-6269-2243\6)
 - Exhibit A – Grantor Information; Location of Collateral
 - Exhibit B – Intellectual Property
 - Exhibit C – List of Pledged Collateral
 - Exhibit D – Commercial Tort Claims.
- Guaranty (NIGC Review Draft 1-28-2020, doc. no. 4814-8831-8614\5)

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Re: Review of loan documents for Saginaw Chippewa Indian Tribe of Michigan
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Page 2 of 2

The Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, 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 Documents listed above. This opinion 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.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 Rea Cisneros, Associate General Counsel, at (202) 632-7003 or by email at rea_cisneros@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

¹ See 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ No. 18-481, 2019 WL 2570624, at *7 (U.S. June 24, 2019).

⁴ See 25 C.F.R. § 517.7(d).

⁵ *Id.*