



August 28, 2019

By U.S. mail and email

Randolph DelFranco
Holland & Knight
31 West 52nd St.
New York, NY 10019
randy.delfranco@hklaw.com

Re: Review of Loan Documents for the Ponca Tribe of Nebraska

Dear Mr. DelFranco:

This letter responds to your October 19, 2018 request for the National Indian Gaming Commission's Office of General Counsel to review a collection of financing documents between the Ponca Tribe of Nebraska and Shakopee Mdewakanton Sioux Community. Specifically, you have asked for my opinion whether the documents are a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the documents violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

As part of this review, I analyzed the following documents (collectively, the Loan Documents):

- Credit Agreement between Ponca Tribe of Nebraska and Shakopee Mdewakanton Sioux Community (NIGC Draft 10/19/18)
- Depository Agreement (NIGC Draft 10/19/18, Doc. No. US.119954349.03)
- Security Agreement (NIGC Draft 10/19/18, Doc. No. US.119952431.04)

The Loan Documents you have submitted contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. Copies of declination letters can be found on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Documents are not a management contract 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. This opinion does not include or extend to any other agreements not submitted for review.

Letter to Randolph DeFranco

August 27, 2019

Re: Review of Loan documents for Ponca Tribe of Nebraska

Page 2 of 2

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*, No. 18-481, 2019 WL 2570624, at *7 (U.S., June 24, 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 NIGC Senior Attorney Jennifer Lawson at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Miko Hernandez, counsel for Lender (miko.hernandez@FaegreBD.com)