



October 31, 2019

**Via email: <jcdiracles@bestlaw.com>
and First Class Mail**

James C. Diracles, Esq.
Best & Flanagan LLP
60 South Sixth Street, Suite 2700
Minneapolis, Minnesota 55402

**Re: Review of the 2019 Loan Documents
for the Forest County Potawatomi Community, Wisconsin**

Dear Mr. Diracles:

This letter responds to your October 9, 2019 request, on behalf of the Forest County Potawatomi Community, Wisconsin, for the National Indian Gaming Commission, Office of the General Counsel, to review certain transaction documents and to provide an opinion as to whether or not these transaction 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 transaction 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 2019 Loan Documents"):

- *Fifth Amendment to Amended and Restated Loan Agreement* (marked at bottom left as "4155-0891-7788.5");
- *Amended and Restated Loan Agreement Dated as of October 1, 2012¹ among Forest County Potawatomi Community, Wisconsin, as the Borrower, PNC Bank, National Association, as Administrative Agent, PNC Capital Markets LLC, JPMorgan Chase Bank, N.A. and BOFA Securities, Inc., as Joint Lead Arrangers, PNC Capital Markets LLC, as Sole Bookrunner, JPMorgan Chase Bank, N.A. and BOFA Securities, Inc., as Co-Syndication Agents, U.S. Bank National Association, as a Co-Documentation Agent, and The Banks Party Hereto* (marked at bottom left as "4137-0869-9932.4" and at top right as "OHS Draft 10-8-19");
 - Exhibit A *Applicable Margin* (marked at bottom left as "4123-8534-0956.5" and at top right as "OHS Draft 10-8-19");
 - Exhibit H to Amended and Restated Loan Agreement *Continuation/Conversion Notice* (marked at bottom left as "4123-8534-0956.5" and at top right as "OHS Draft 10-8-19");
 - Exhibit L to Amended and Restated Loan Agreement *Form of Tax Exempt Note* (marked at bottom left as "4123-8534-0956.5" and at top right as "OHS Draft 10-8-19");

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- Exhibit M to Amended and Restated Loan Agreement *Tax Exempt Loan Notice/Blocked Account Request* (marked at bottom left as “4123-8534-0956.5” and at top right as “OHS Draft 10-8-19”); and
- *Third Amended and Restated Security Agreement Dated as of [___], 2019 by Forest County Potawatomi Community, Wisconsin, as the Debtor, in favor of PNC Bank, National Association, as Secured Party* (marked at bottom left as “4131-7773-6732.2” and at top right as “OHS Draft 10-8-19”).

The 2019 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>. Applying the same analysis here, it is my opinion that, collectively, the 2019 Loan Documents are not management contracts and do not require the approval of the NIGC Chairman. It is also my opinion that they do not violate IGRA’s sole proprietary interest requirement.

It is my understanding that the 2019 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 2019 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 2019 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*, 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 Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Michael Hoenic
General Counsel

cc: Ross Formell, Esq. (via email only <rformell@bestlaw.com>)