



December 2, 2015

Clifton Molatore, Esq.  
Miller Nash Graham & Dunn LLP  
U.S. Bancorp Tower  
111 S.W. Fifth Avenue, Suite 3400  
Portland, OR 97204

Re: Review of loan documents for the Cowlitz Indian Tribe

Dear Mr. Molatore:

This letter responds to your request of October 13, 2015 that requested on behalf of the Cowlitz Indian Tribe for the National Indian Gaming Commission's Office of General Counsel to review loan documents between the Tribe and Keybank, N.A, as Administrative Agent, and various lenders. Specifically, you have asked for my opinion whether the agreements constitute a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act and whether the agreement violates 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 Agreements") some of which are unexecuted, but were represented to be in substantially final form:

- Revolving Credit and Term Loan Agreement ("Credit Agreement"), dated 11/17/2015, marked at the bottom left corner as "SD\1609306.16";
  - Appendix A - Principal Offices; marked at the bottom left corner as "SD\1611627.3";
  - Exhibit A-1 - Form of Term B Note, marked at the bottom left corner as "SD\1611627.3";
  - Exhibit A-2 - Form of Revolving Note, marked at the bottom left corner as "SD\1611627.3";
  - Exhibit B-1 - Form of Funding Notice, marked at the bottom left corner as "SD\1611627.3";
  - Exhibit B-2 - Form of Issuance/Amendment Notice, marked at the bottom left corner as "SD\1611627.3";
  - Exhibit B-3 - Form of Conversion/Continuation Notice, marked at the bottom left corner as "SD\1611627.3";

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- Exhibit B-4 - Form of Notice of Account Designation, marked at the bottom left corner as “SD\1611627.3”;
- Exhibit C-1 - Form of Guaranty, dated 10/13/2015, marked at the bottom left corner as “SD\1609870.4”;
- Exhibit C-2 - Security Agreement, dated 10/13/2015, marked at the bottom left corner as “SD\1611594.5”;
  - Annex I - Joinder Agreement, dated 9/27/2015, marked at the bottom left corner as “SD\1639370.3”;
  - Exhibit A – Security Agreement Supplement, dated 9/23/2015, marked at the bottom left corner as “SD\1639372.2”;
  - Exhibit B- Collateral Account Control Agreement, dated 10/13/2015, marked at the bottom left corner as “SD\1645481.4”;
  - Exhibit C — Deposit Account Control Agreement (Account – with activation), dated 9/1/2015, , marked at the bottom left corner as “SD\1626016.5”;
  - Exhibit D – Form of Securities Account Control Agreement, dated 9/27/2015, marked at the bottom left corner as “SD\1639374.3”;
  - Exhibit E – Uncertified Securities Control Agreement, dated 9/23/2015, marked at the bottom left corner as “SD\1639407.2”;
- Exhibit D - Form of Solvency Certificate, marked at the bottom left corner as “SD\1611627.3”;
- Exhibit E - Form of Compliance Certificate, marked at the bottom left corner as “SD\1611632.3”;
- Exhibit F - Form of Assignment and Acceptance, marked at the bottom left corner as “SD\1611634.3”;
- Exhibit G - Form of Lender Addendum, marked at the bottom left corner as “SD\1611627.3”;
- Exhibit H - Form of Non-Bank Certificate, marked at the bottom left corner as “SD\1611627.3”;
- Exhibit I - Form of Closing Certificate, dated 9/23/2015, marked at the bottom left corner as “SD\1639366.4”;
- Exhibit J - Insurance Requirements , dated 9/18/2015, marked at the bottom left corner as “SD\1616461.5”;
- Exhibit K - Form of Intercompany Subordinated Demand Promissory Note, marked at the bottom left corner as “SD\1611638.3”;
- Exhibit L - Sal-Mo Subordination Agreement, dated 10/12/2015, marked at the bottom left corner as “SD\1615327.11”;
- Exhibit M - Form of Administrative Questionnaire, marked at the bottom left corner as “SD\1611627.3”;

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- Exhibit N - Disbursement Agreement, dated 11/19/2015, marked at the bottom left corner as "SD\1611178.27";
  - Disbursement Agreement exhibits, dated 11/19/2015, marked at the bottom left corner as "SD\1612112.11";
- Exhibit O - Form of Joinder Agreement, marked at the bottom left corner as "SD\1611639.3";
- Consent and Agreement, draft dated 11/19/2015;
- Security Agreement, dated 10/13/2015, marked at the bottom left corner as "SD\1611594.5";
  - Annex I - Joinder Agreement, dated 9/27/2015, marked at the bottom left corner as "SD\1639370.3";
  - Exhibit A – Security Agreement Supplement, dated 9/23/ 2015, marked at the bottom left corner as "SD\1639372.2";
  - Exhibit B- Collateral Account Control Agreement, dated 10/13/2015, marked at the bottom left corner as "SD\1645481.4";
  - Exhibit C — Deposit Account Control Agreement (Account – with activation), dated 9/1/2015, , marked at the bottom left corner as "SD\1626016.5";
  - Exhibit D – Form of Securities Account Control Agreement, dated 9/27/2015, marked at the bottom left corner as "SD\1639374.3";
  - Exhibit E – Uncertified Securities Control Agreement, dated 9/23/2015, marked at the bottom left corner as "SD\1639407.2";and,
- Intellectual Property Security Agreement, dated 9/4/2015, marked at the bottom left corner as "SD\1628455.2".

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

It is my understanding that the Agreements are represented to be in substantially final form with respect to terms affecting this opinion. If the Agreements change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Agreements listed above and does not include or extend to any other agreements or documents not submitted for review.

I anticipate that this letter will be posted to the NIGC's website. Prior to posting, the NIGC will notify you and give you an opportunity to identify and request that information subject to the exemptions under FOIA be redacted or withheld. A list of the FOIA exemptions may be found at 5 U.S.C. § 552(b).

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If you have any questions, please contact NIGC Staff Attorney Esther Dittler at (202) 420-9229.

Sincerely,



Michael Hoenig  
General Counsel