



December 17, 2018

**Via email: <kent.richey@FaegreBD.com>
And First Class Mail**

Kent E. Richey, Esq.
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Re: Review of the 2018 Loan Documents for the Seneca Nation of Indians

Dear Mr. Richey:

This letter responds to your November 6, 2018 request, on behalf of Seneca Gaming Corporation and your client, Fifth Third Bank, for the National Indian Gaming Commission, Office of the General Counsel, to review certain financial transaction documents involving the Seneca Nation of Indians, and to provide an opinion as to whether or not the submitted loan 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 loan 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 2018 Loan Documents"):

- *Credit Agreement Dated as of [], 2018 among Seneca Gaming Corporation, as the Borrower, Fifth Third Bank, as Administrative Agent and Swing Line Lender, The L/C Issuers Party Hereto, and The Other Lenders Party Hereto, Fifth Third Bank, as Joint Lead Arranger and Joint Book Runner, Keybank National Association, as Joint Lead Arranger, Joint Book Runner and Co-Syndication Agent, U.S. Bank National Association, as Joint Lead Arranger, Joint Book Runner and Co-Syndication Agent* (marked at bottom left as "US-DOCS\103032270.17" and at top right as "NIGC Submission Draft 11/5/18");
- *Appendix I to the Credit Agreement, Intercreditor Provisions* (marked at bottom left as "US-DOCS\103988971.2" and at top right as "NIGC Submission Draft 11/5/18");
- *Appendix II to the Credit Agreement, Acknowledgement Agreement* (marked at bottom left as "US-DOCS\103989658.2" and at top right as "NIGC Submission Draft 11/5/18");

- Exhibit A to Credit Agreement, *Form of Committed Loan Notice* (marked at bottom left as “US-DOCS\103441383.5” and at top right as “NIGC Submission Draft 11/5/18”);
- Exhibit B to Credit Agreement, *Form of Swing Line Loan Notice* (marked at bottom left as “US-DOCS\103441383.5”);
- Exhibit C to Credit Agreement, *Form of Note* (marked at bottom left as “US-DOCS\103441383.5”);
- Exhibit D to Credit Agreement, *Form of Compliance Certificate* (marked at bottom left as “US-DOCS\103441383.5”);
- Exhibit E to Credit Agreement, *Form of Assignment and Assumption* (marked at bottom left as “US-DOCS\103441383.5”);
- Exhibit G to Credit Agreement, *Security Agreement among Seneca Gaming Corporation as Borrower and a Grantor and Each of the Other Grantors Party Hereto, as Grantors and Fifth Third Bank as Collateral Agent, Dated as of ____, 2018* (marked at bottom left as “US-DOCS\103307874.5” and at top right as “NIGC Submission Draft 11/5/18”);
- Exhibit H to Credit Agreement, *Form of Administrative Questionnaire* (marked at bottom left as “US-DOCS\103441383.5”);
- *Guaranty* (marked at bottom left as “US-DOCS\103307897.4” and at top right as “NIGC Submission Draft 11/5/18”);
- *Intellectual Property Security Agreement* (marked at bottom left as “US-DOCS\103998668.3” and at top right as “NIGC Submission Draft 11/5/18”);
- *Fifth Third Bank Deposit Account Control Agreement* (marked at bottom left as “CHAR1\1522991v1” and at top right as “NIGC Submission Draft 11/5/18”);
- *Nation Agreement* (marked at bottom left as “US-DOCS\103684036.7” and at top right as “NIGC Submission Draft 11-28-2018”);
- *Deposit Account Control Agreement* (marked at bottom left as “US-DOCS\103422210.10” and at top right as “NIGC Submission Draft 11/28/2018”); and
- *Blocked Account Agreement* (marked at bottom left as “0184295” and at top right as “NIGC Submission Draft 12-13-2018”).

The 2018 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 2018 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 2018 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 2018 Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein. Further, this opinion is limited to the aforementioned 2018 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. 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 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, any request to withhold will be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to <FOIASubmitterReply@nigc.gov> within thirty (30) calendar 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 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 <<http://www.justice.gov/oip/doj-guide-freedom-information-act-0>>.

If you have any questions, please contact Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Miko E. Hernandez, Esq. (via email only: <miko.hernandez@FaegreBD.com>)
Townsend Hyatt, Esq. (via email only: <thyatt@orrick.com>)