



December 18, 2015

Mr. Edward D. Manuel, Chairman  
Tohono O'odham Nation  
Desert Diamond Casinos & Entertainment  
P.O. Box 22230  
Tucson, Arizona 85734

Re: Review of financing documents for the Tohono O'odham Nation

Dear Chairman Manuel:

This letter responds to the Tohono O'odham Nation's request, for the National Indian Gaming Commission's Office of General Counsel to review several agreements for the refinancing of existing debt related to the Tribe's gaming enterprise. The Tribe has asked for an opinion whether these agreements are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. The Tribe also has asked for an opinion whether the agreements 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 Financing Documents") all unexecuted, but represented to be in substantially final form:

- **Credit Agreement** among the Tohono O'odham Gaming Enterprise, Bank of America, N.A., the Other Lenders Party Hereto, PNC Bank, National Association, and Wells Fargo Bank, National Association, marked at the top right "SMRH Draft (12/04/15)", marked at the bottom left "SMRH:209038607.12";
- **Security Agreement** among the Tohono O'odham Gaming Enterprise, each of the subsidiaries of the Borrower that become party as an additional Grantor, in favor of the Bank of America, N.A., marked at the top right "SMRH DRAFT 10/14/15 EXHIBIT K", marked at the bottom left "SMRH:224166576.6";
- **Deposit Account Control Agreement** among Tohono O'odham Gaming Enterprise, and Bank of America, N.A., marked "EXHIBIT N", marked at the bottom left "SMRH:224164782.5";
- **Form of Joinder Agreement** among the New Lenders, the Tohono O'odham Nation, and the Bank of America, N.A., marked at the top right "EXHIBIT G", marked at the bottom left "SMRH:224164151.5";
- **Non-Impairment and Estoppel Agreement** made and given by the Tohono O'odham Nation, in favor of Bank of America, N.A., for the benefit of each

Chairman Manuel

Re: Review of financing documents for the Tohono O'odham Nation

December 18, 2015

Page 2 of 3

lender party to the Credit Agreement, and each Secured Party marked at the top right "SMRH Draft 10-12-15", marked at the bottom left "SMRH:223052264.4";

- **Exhibits to Credit Agreement:**

- **Form of Administrative Questionnaire**, marked at the top right "EXHIBIT A-B", marked at the bottom left "SMRH:209500706.5";
- **Assignment of Leases and Rent**, marked at the top right "EXHIBIT C", marked at the bottom left "SMRH:209500706.5";
- **Committed Loan Notice Form**, marked at the top right "EXHIBIT D", marked at the bottom left, "SMRH:209500706.5";
- **Compliance Certificate Form**, marked at the top right "EXHIBIT E", marked at the bottom left "SMRH:209500706.5";
- **Guaranty Form**, marked top right "EXHIBIT F", marked bottom left "SMRH:209500706.5";
- **Form of Increase Joinder**, marked top right "SMRH:209500706.4 EXHIBIT G", marked bottom left "SMRH:209500706.5";
- **Revolving Credit Note Form**, marked top right "Exhibit H", marked bottom left "SMRH:209500706.5";
- **Term Note Form**, marked top right "EXHIBIT I", marked bottom left "SMRH:209500706.5";
- **U.S. Tax Compliance Certificate Form**, marked top right "EXHIBIT J-1, J-2, J-3, J-4" marked bottom left "SMRH:209500706.5";
- **Subordination Agreement Form**, marked top right "EXHIBIT M", marked bottom left "SMRH:209500706.5";
- **Form of Account Control Agreement**, marked top right "EXHIBIT N", marked bottom left "SMRH:209500706.5";
- **Fee Letter**, Dated November 20, 2015, marked bottom left "SMRH:224368473.1", marked bottom right "0BN1-201630".

The Financing Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See*, generally [www.nigc.gov](http://www.nigc.gov). Applying the same analysis here, it is my opinion that the Financing Documents are not management contracts and do not require the approval of the Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

I understand that the Financing Documents are in substantially final form with respect to terms affecting this opinion. If such terms change in any material way or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Documents listed above. This opinion does not include or extend to any other agreements.

I anticipate this letter will be posted to the NIGC's website. Prior to posting, NIGC will notify you and give you an opportunity to identify and request that information subject to the

Chairman Manuel

Re: Review of financing documents for the Tohono O'odham Nation

December 18, 2015

Page 3 of 3

exemptions under FOIA be redacted or withheld. A list of the FOIA exemptions may be found at 5 U.S.C. § 552(b).

If you have any questions, please contact NIGC Staff Attorney Rea Cisneros at (202) 632-7024.

Sincerely,



Michael Hoenig  
General Counsel

cc: Britt E. Clapham II, General Counsel, Tohono O'odham Nation (via e-mail)  
Christine L. Swanick, Esq., Sheppard Mullin Richter & Hampton (via e-mail)