



December 18, 2019

Matt Wesaw
Tribal Chairman
Pokagon Band of Potawatomi Indians
P.O. Box 180
58620 Sink Road
Dowagiac, MI 49047

Re: Review of Loan Documents for the Pokagon Band of Potawatomi Indians

Dear Chairman Wesaw:

This letter responds to your November 21, 2019 request for the National Indian Gaming Commission's Office of General Counsel to review Transaction Documents between the Pokagon Gaming Authority and Bank of America. Specifically, you have asked for my opinion whether the Transaction Documents constitute a management contract or collateral agreement to a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act, and whether they violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submission (collectively referred to as "the Loan Documents"):

- (1) the Credit Agreement among the Authority as Borrower, the Tribe, each lender from time to time party thereto, and Bank of America, N.A. as Administrative Agent, Swing Line Lender and L/C Issuer and BofA Securities, Inc. as sole arranger and bookrunner, marked as "SMRH Draft 11/20/19" on the first page;
- (2) Exhibits to the Credit Agreement, marked as "SMRH Draft 11/20/19" on the first page;
- (3) the Security Agreement made by the Authority as grantor in favor of Bank of America, N.A., as Administrative Agent for the Secured Parties, marked as "SMRH Draft 11/20/19" on the first page;
- (4) Amendment No. 4 to the Deposit Account Control Agreement dated June 30, 2011 (the "DACA"), as amended on May 31, 2013, and further amended on February 28, 2017 and January 12, 2018, by and among the Authority, Bank of America, N.A., as Administrative Agent for the Secured Parties and Fifth Third Bank as depository bank, marked as "SMRH Draft 11/20/19" on the first page, along with a conformed copy of the DACA marked as "SMRH Draft 11/20/19" on the first page;

- (5) the Securities Account Control Agreement by and among the Authority as pledgor, U.S. Bank National Association as intermediary and Bank of America, N.A., as Administrative Agent for the Secured Parties, marked as "SMRH Draft 11/20/19" on the first page;
- (6) (6) the Patent, Trademark and Copyright Security Agreement made by the Authority as grantor in favor of Bank of America, N.A., as Administrative Agent for the Secured Parties (the "IP Security Agreement") marked as "SMRH Draft 11/20/19" on the first page (items (1) through (6), collectively, the "Loan Documents").

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

It is my understanding that the Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion. If they change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements or documents 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 me at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel