



December 27, 2019

**Via email: <jcoutant@cwlaw.com>
and First Class Mail**

Jason B. Coutant, Esq.
Conner & Winters, LLP
4000 One Williams Center
Tulsa, OK 74172-0148

Re: Review of the 2019 Loan Documents for the Cherokee Nation

Dear Mr. Coutant:

On July 15, 2013, the National Indian Gaming Commission, Office of General Counsel, issued a declination letter to the Cherokee Nation in regard to certain loan documents ("2013 Loan Documents"), including the original Credit Agreement dated July 19, 2013. On October 18, 2017, OGC issued a declination letter to the Cherokee Nation in regard to Amendment No. 1 to the original Credit Agreement.

This letter responds to your December 11, 2019 request for OGC to review certain loan documents involving the Cherokee Nation Businesses, L.L.C., a tribal limited liability company wholly-owned by the Cherokee Nation, and to provide an opinion as to whether or not these loan documents, individually, collectively, and/or as they amend the 2013 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 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"):

- *Amendment No. 2 dated as of ___ to Credit Agreement dated as of July 19, 2013, among Cherokee Nation Businesses, L.L.C. as the Borrower, the Lenders Party hereto, and BOKF, NA dba Bank of Oklahoma, as Administrative Agent, Joint Lead Arranger and L/C Issuer, KeyBank National Association, as Joint Lead Arranger and Co-Syndication Agent, U.S. Bank National Association, as Joint Lead Arranger and Co-Syndication Agent, Wells Fargo Bank, N.A., as Documentation Agent (marked at top right as "C&W draft 12/10/19");*
- *Amended and Restated Security Agreement;*

- *Limited Recourse Promissory Note*;
- *Joinder Agreement*; and
- *Reaffirmation of and Amendment to Non-Interference Agreement*.

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, individually, collectively, and/or as they amend the 2013 Loan Documents, 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 Hoenig
General Counsel