



February 28, 2012

*Via U.S. Mail*

Bruce "Two Dogs" Bozsum, Chairman  
Mohegan Tribe of Indians of Connecticut  
One Mohegan Sun Boulevard  
Uncasville, CT 06382

Re: Review of loan documents for the Mohegan Tribe of Indians of Connecticut

Dear Chairman:

This letter responds to the request on behalf of the Mohegan Tribe of Indians of Connecticut (Tribe) and the Mohegan Tribal Gaming Authority (MTGA) for the National Indian Gaming Commission's Office of General Counsel to review several agreements and documents related to loans refinancing existing debt. Specifically, you have asked for an opinion whether these loan agreements and documents are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the loan agreements and 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 Loan Documents") most of which are unexecuted, but were represented to be in substantially final form:

- Fourth amended and restated loan agreement between MTGA, the Tribe, Bank of America, N.A. (BoFA) as the Administrative Agent, marked at top right as "NIGC SUBMISSION" and "*MB Draft of 2/24/12*" and at bottom left as "700401307.4" (BoFA Loan Agreement);
- Form of revolving note for the BoFA Loan Agreement marked at top right as "*NIGC SUBMISSION EXHIBIT F 2-8-12 Draft*" and at bottom left corner of every page as "701010184.1" (Revolving Note);
- Form of term A loan note for the BoFA Loan Agreement marked at the top right as "*NIGC SUBMISSION EXHIBIT H 2-8-12 Draft*" and at bottom left corner of every page as "700402804.2" (Term A Loan Note);

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- Amended and restated guaranty marked on top right as “NIGC SUBMISSION DRAFT 2/25/12” and at bottom left corner of every page as “70113501.3”(Amended and Restated Guaranty);
- Amended and restated security agreement marked on top right as “NIGC SUBMISSION DRAFT 2/13/12” and at bottom left corner of every page as “701103450.2”(Amended and Restated Security Agreement);
- Amended and restated pledge agreement marked on top right as “NIGC SUBMISSION DRAFT 2/25/12” and at bottom left corner of every page as “700412943.3” (Amended and Restated Pledge Agreement);
- Third amended and restated open-end leasehold mortgage deed, assignment of leases and rents and security agreement between the MTGA, Mortgagor, and BofA, Administrative Agent and Mortgagee, marked at top right as “DRAFT TO NIGC 2/24/12” and at bottom left of every page as “700652005”(Third Amended and Restated Leasehold Mortgage);
- Amended and restated open-end mortgage deed, assignment of leases and rents and security agreement related to fee land owned by Mohegan Golf, LLC, Mortgagor, in favor of BofA, Administrative Agent and Mortgagee, and marked at top right as “NIGC DRAFT 2/16/12” and at bottom left of every page as “701142229” (BofA Golf Course Mortgage);
- Amended and restated collateral agency and intercreditor agreement marked at the top right as “DRAFT TO NIGC 2/17/12” and “(Account – With Activation, Multi-Lender)” and at bottom left of every page as “700401950.9 11038050” (Collateral Agency and Intercreditor Agreement);
- First lien intercreditor agreement marked at top right as “NIGC SUBMISSION DRAFT 2/25/12” and at bottom left as “700401018.11” (First Lien Intercreditor Agreement);
- Amended and restated deposit account control agreement with BofA as depository, marked at top right as “NIGC SUBMISSION Draft 2/26/12 (Account – With Activation, Multi-Lender)” and at bottom left as “701145030.7 11038050” (BofA Deposit Account Control Agreement);
- Amended and restated deposit account control agreement with First National Community Bank as depository bank marked at top right as “DRAFT TO NIGC 2/16/12” and at bottom left of every page as

“701056531.5 11038050” (First National Deposit Account Control Agreement);

- Amended and restated open-end mortgage and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, dated as of March 6, 2007, but effective as of March 9, 2007, marked at bottom left as “W02-WEST:1CFL1\400123505.3” (2007 Pocono Downs Mortgage);
- Executed modification to amended and restated open-end mortgage and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, dated December 9, 2008, but effective as of December 10, 2008, marked at bottom left as “W02-WEST:1CMW1\401162324.2” (1st Modification to 2007 Pocono Downs Mortgage);
- Second modification to amended and restated open-end mortgage and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, marked at top right as “NIGC DRAFT 2/16/12” and bottom left as “701141312” (2<sup>nd</sup> Modification to 2007 Pocono Downs Mortgage);
- Amended and restated open-end mortgage and security agreement related to certain fee property located in Lackawanna County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, dated as of March 6, 2007, but effective as of March 9, 2007, marked at bottom left as “W02-WEST:1CFL1\400123898.3” (2007 Lackawanna Mortgage);
- Executed modification to amended and restated open-end mortgage and security agreement related to certain fee property located in Lackawanna County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, dated December 9, 2008, but effective as of December 10, 2008, marked at bottom left as “W02-WEST:1CMW1\401162307.1” (1st Modification to 2007 Lackawanna Mortgage);
- Second modification to amended and restated open-end mortgage and security agreement related to certain fee property located in Lackawanna County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, marked at top right as “NIGC DRAFT 2/16/12” and bottom left as “701166363” (2<sup>nd</sup> Modification to 2007 Lackawanna Mortgage);
- Amended and restated open-end mortgage and security agreement related to certain fee property located in Lehigh County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, dated as of March 6, 2007, but

effective as of March 9, 2007, and marked at bottom left as “W02-WEST:1CFL1\400123958.3” (2007 Lehigh Mortgage);

- Executed modification to amended and restated open-end mortgage and security agreement related to certain fee property located in Lehigh County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, dated December 9, 2008, but effective as of December 10, 2008, marked at bottom left as “W02:WEST:1CMW1\401161841.1” (1st Modification to 2007 Lehigh Mortgage);
- Second modification to amended and restated open-end mortgage and security agreement related to certain fee property located in Lehigh County, Pennsylvania, owned by Downs Racing, L.P., in favor of BofA, marked at top right as “NIGC DRAFT 2/16/12” and bottom left as “701166327” (2<sup>nd</sup> Modification to 2007 Lehigh Mortgage);
- Amended and restated open-end mortgage and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Mill Creek Land, L.P., in favor of BofA, dated as of March 6, 2007, but effective as of March 9, 2007, and marked at bottom left as “W02-WEST:1CFL1\400123546.3” (2007 Mill Creek Mortgage);
- Executed modification to amended and restated open-end mortgage and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Mill Creek Land, L.P., in favor of BofA, dated December 9, 2008, but effective as of December 10, 2008, marked at bottom left as “W02-WEST:1CMW1\401162348.1” (1st Modification to 2007 Mill Creek Mortgage);
- Second modification to amended and restated open-end mortgage and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Mill Creek Land, L.P., in favor of BofA, marked at top right as “NIGC DRAFT 2/16/12” and bottom left as “701166146” (2<sup>nd</sup> Modification to 2007 Mill Creek Mortgage);
- Loan agreement between the MTGA, the Tribe, and Wells Fargo Gaming Capital, LLC as Administrative Agent, marked at top right as “**NIGC Submission Draft 2-17**” and at bottom left as “OHSUSA:261529385.7” (Wells Fargo Loan Agreement);
- Term loan note marked at top right as “**EXHIBIT E**” and at bottom left as “OHSUSA:750000336.3” (Wells Fargo Term Note);

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- Guaranty marked at top right as “NIGC SUBMISSION DRAFT 2/25/12” and bottom left as “OHSWEST:261506827.4” (Wells Fargo Guaranty);
- Security agreement marked at top right as “NIGC SUBMISSION DRAFT 2/13/12” and bottom left as “OHSUSA:261506560.5” (Wells Fargo Security Agreement);
- Pledge agreement marked at top right as “NIGC SUBMISSION DRAFT 2/25/12” and at bottom left as “OHSUSA:261535524.5” (Wells Fargo Pledge Agreement);
- Open-end leasehold mortgage deed, assignment of leases and rents and security agreement between the MTGA as Mortgagor, and Wells Fargo Gaming Capital, LLC, as Administrative Agent and Mortgagee, marked at top right as “NIGC Draft 2/24” and bottom right as “OHSUSA:261531027.5” (Wells Fargo Leasehold Mortgage);
- Open-end mortgage deed, assignment of leases and rents and security agreement related to fee land owned by Mohegan Golf, LLC, Mortgagor, in favor of Wells Fargo Gaming Capital, LLC, as Administrative Agent and Mortgagee, and marked at top right as “NIGC DRAFT 2/16/12” and at bottom left of every page as “OHSUSA:26153411.5” (Wells Fargo Golf Course Mortgage);
- Open-end mortgage and security agreement related to certain fee lands located in Luzerne County, Pennsylvania and owned by Downs Racing, L.P. as Mortgagor, and Wells Fargo Gaming Capital, LLC, as Administrative Agent and Mortgagee, marked at top right as “NIGC Draft 2/16/12” and bottom left as “OHSUSA:750000428.6” (Wells Fargo Pocono Downs Mortgage);
- Open-end mortgage and security agreement related to certain fee lands located in Lehigh County, Pennsylvania and owned by Downs Racing, L.P. as Mortgagor, and Wells Fargo Gaming Capital, LLC, as Administrative Agent and Mortgagee, marked at top right as “NIGC Draft 2/17/12” and bottom left as “OHSUSA:750009411.4” (Wells Fargo Lehigh Mortgage);
- Open-end mortgage and security agreement related to certain fee lands located in Lackawanna County, Pennsylvania and owned by Downs Racing, L.P. as Mortgagor, and Wells Fargo Gaming Capital, LLC, as Administrative Agent and Mortgagee, marked at top right as “NIGC Draft 2/17/12” and bottom left as “OHSUSA:750009364.4” (Wells Fargo Lackawanna Mortgage);

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- Open-end mortgage and security agreement related to certain fee lands located in Luzerne County, Pennsylvania and owned by Mill Creek Land, L.P. as Mortgagor, and Wells Fargo Gaming Capital, LLC, as Administrative Agent and Mortgagee, marked at top right as "NIGC Draft 2/17/12" and bottom left as "OHSUSA:750009457.4" (Wells Fargo Mill Creek Mortgage).

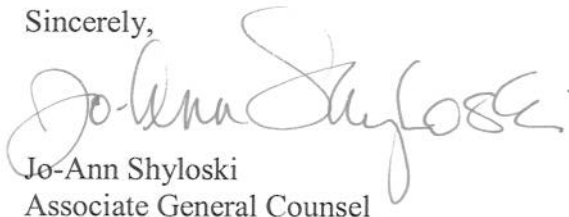
Collectively, the Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See* [www.nigc.gov/Reading\\_Room/Management\\_Review\\_Letters.aspx](http://www.nigc.gov/Reading_Room/Management_Review_Letters.aspx). Applying the same analysis here, it is my opinion that collectively the Loan Documents are not management contracts and do not require the approval of the Chairwoman. It is also my opinion that they 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, and if such terms change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above. This opinion 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, 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 25 U.S.C. § 552(b).

I am also sending a copy of the Loan Documents to the Department of the Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Senior Attorney Melissa Schlichting at (202) 632-7003.

Sincerely,



Jo-Ann Shyloski  
Associate General Counsel

cc: Paula Hart, Director  
Office of Indian Gaming  
(via US Mail w/ incoming)

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cc: Helga Woods, Attorney General  
Mohegan Tribe of Indians of Connecticut  
(via e-mail: [hwoods@moheganmail.com](mailto:hwoods@moheganmail.com))

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