



July 1, 2011

The Honorable B. Cheryl Smith, Tribal Chief
Jena Band of Choctaw Indians
P.O. Box 14
Jena, LA 71342

Re: Construction Loan and Master Lease Agreements

Dear Chief Smith:

This Letter responds to your June 7, 2011 request for the for the National Indian Gaming Commission's ("NIGC's") Office of General Counsel to review the Band's, Master Lease Agreement, and Construction Loan Agreement, including related agreements. The purpose of our review is to determine whether the submitted documents are management contracts or collateral agreements to a management contract and therefore subject to the NIGC Chairwoman's review and approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether 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 Financing Documents"), which were represented to be in substantially final form:

- Draft Construction Loan Agreement and received June 28, 2011;
- Draft Promissory Note received June 7, 2011;
- Draft Security Agreement and received June 7, 2011;
- Draft Assignment of Revenues Agreement received June 7, 2011;
- Draft Subordination Agreement received June 7, 2011;
- Draft Account Control Agreement received June 30, 2011.
- Draft Master Lease Agreement received June 27, 2011.

The Financing Documents submitted by the Band 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. 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 Chairwoman. Although the documents as submitted do not name the lender or lessor, the parties have assured the NIGC that this is simply because of structuring issues that have not been resolved and the lender/lessor is

not related to the proposed manager of the facility. It is therefore also my opinion that the Financing Documents do not violate IGRA's sole proprietary interest requirement.

Although the agreements do not implicate management, the Assignment Agreement and Subordination Agreements are agreements collateral to the Band's management contract with Machal LLC. Machal is a party to the Agreements, and they potentially affect Machal's management fees. Accordingly, the Assignment and Subordination Agreements must be submitted for the Chairwoman's review as part of the management contract approval process.

I also note that the Financing Documents have been submitted to us as unexecuted drafts in substantially final form. To the extent that they change in any material way prior to closing, this opinion shall not apply.

I anticipate that this letter will be the subject of Freedom of Information Act ("FOIA") requests. Since we believe that some of the information in this letter may fall within FOIA exemption 4(c), which applies to confidential and proprietary information the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

Sincerely,

A handwritten signature in black ink that reads "Michael Gross". The signature is written in a cursive style with a large initial "M".

Michael Gross
Associate General Counsel, General Law