



NOV - 8 2013

Michelle Hicks, Principal Chief  
Eastern Band of Cherokee Indians  
561 Sequoyah Trail  
P.O. Box 455  
Cherokee, NC 28719

Re: Supplemental Review of amended and restated financing agreements on behalf of the Eastern Band of Cherokee Indians

Dear Chief Hicks:

On October 24, 2013, the National Indian Gaming Commission Office of General Counsel sent a letter responding to your request on behalf of the Eastern Band of Cherokee Indians and the Tribal Casino Gaming Enterprise for a review of certain amended and restated loan agreements. In that letter, I concluded that the agreements specified are not management contracts and do not require the approval of the NIGC Chair. I also opined that the agreements do not violate the Indian Gaming Regulatory Act's sole proprietary interest requirement.

Subsequent to that letter being issued, on November 5, 2013, we received an e-mail requesting clarification of the documents reviewed by the NIGC OGC that formed the basis of our opinion, and submitting a new document and additional changes to Schedule 4.3 (Insurance) for review.

To be clear, I considered the following documents prior to issuing the October 24, 2013 letter, and the October 24, 2013 letter applies to:

- Fourth Amended and Restated Loan Agreement among the Enterprise, the lenders party thereto, and Wells Fargo, marked at bottom left OHSUSA: 754079438.9;
- Exhibits A-Q to Loan Agreement, marked at bottom left OHSUSA: 754341422.3;

- Schedule 4.3 (Insurance) to Loan Agreement, marked at bottom left OHSUSA:754362491.3;
- Draft Subordinated Promissory Note, marked at bottom left OHSUSA:754459530.2;
- Second Amended and Restated Security Agreement from Enterprise in favor of Wells Fargo as agent, marked at bottom left OHSUSA:754159305.3;
- Second Amended and Restated Demand Deposit Account Contract Agreement among Wells Fargo, TCGE and First-Citizens Bank & Trust Company, Marked in the bottom left OHSUSA: 754426840.3;
- Fourth Amended and Restated Tribal Agreement, by and between the Tribe and Wells Fargo, as agency, marked on the bottom left as OHSUSA:75495539.4;
- Amended and Restated Tribal Subordination Agreement, by and among the Tribe, the Enterprise and Wells Fargo, as agent, marked on the bottom left as OHSUSA:754457710.2; and
- Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement from Tribe in favor of Wells Fargo, as agent, marked on the bottom left as OHSUSA:754290740.2.

I have also reviewed the documents that were submitted on November 5, 2013:

- Exhibit F, Assignment of Construction Contract, marked at bottom left OHSUSA:754457642.2
- Schedule 4.3 (Insurance), marked at bottom left OHSUSA:754362491.4.

These newly submitted documents do not change the nature of the Agreements. They do not implicate management and it is my opinion that they do not require the approval of the Chairwoman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

As stated in my October 24, 2013 letter, it is my understanding that all of the submitted agreements are represented to be in substantially final form with respect to terms affecting this opinion. 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

agreements 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 exceptions may be found at 25 U.S.C. § 552(b).

If you have any questions, please contact NIGC Acting Associate General Counsel Michael Hoenig at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Shepard", with a long horizontal flourish extending to the right.

Eric Shepard  
Acting General Counsel

cc: Gina Jacobs, Jones Walker LLP