



July 27, 2017

Via email: [gjacobson@joneswalker.com](mailto:gjacobs@joneswalker.com)  
and First Class Mail

Gina M. Jacobs, Esq.  
Jones Walker LLP  
190 E Capitol Street, Ste. 800  
Jackson, MS 39201

**Re: Review of the 2017 Loan Documents for the Eastern Band of Cherokee Indians**

Dear Ms. Jacobs:

This letter responds to your May 12, 2017 request, on behalf of the Eastern Band of Cherokee Indians, for the National Indian Gaming Commission, Office of the General Counsel, to review certain loan documents and to provide an opinion as to whether or not the submitted 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 loan 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 2017 Loan Documents"):

- *Fifth Amended and Restated Loan Agreement Dated as of [ ]*, 2017 among Tribal Casino Gaming Enterprise, as the Borrower, the Lenders party hereto from time to time, and Wells Fargo Bank, National Association, as Administrative Agent, L/C Issuer and Swing Line Lender, Wells Fargo Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and U.S. Bank National Association, as Joint Lead Arrangers and Joint Bookrunners, Bank of America, N.A., and U.S. Bank National Association, as Co-Syndication Agents (marked at bottom left as "OHSUSA:766658865.8" and at top right as "OHS Draft 7-18-17 Published CUSIP Number [ ]");
- Exhibit A *Notice of Loan Borrowing* (marked at bottom left as "OHSUSA:766796293.3");
- Exhibit B *Notice of Loan Conversion* (marked at bottom left as "OHSUSA:766796293.3");
- Exhibit C *Notice of Loan Interest Period Selection* (marked at bottom left as "OHSUSA:766796293.3");
- Exhibit D *TLA Loan Note* (marked at bottom left as "OHSUSA:766796293.3");
- Exhibit E *Pricing Certificate* (marked at bottom left as "OHSUSA:766796293.3");

- Exhibit F *Assignment of Construction Contract* (marked at bottom left as “OHSUSA:766796521.3”);
- Exhibit G *Notice of Swing Line Borrowing* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit H *[Second, Etc.] [Amended and Restated] Revolving Loan Note* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit I *DD Term Loan Note* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit J *[Sixth, Etc.] [Amended and Restated] Swing Line Note* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit K *Assignment Agreement* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit L *Compliance Certificate* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit M *Form of Subordinated Note* (marked at bottom left as “OHSUSA:766796523”);
- Exhibit N *Request to Increase the Total Revolving Loan Commitment (Section 2.5(c))* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit O *Distribution Certificate* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit P-1 *Form of U.S. Tax Compliance Certificate (Owner)* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit P-2 *Form of U.S. Tax Compliance Certificate (Participant)* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit P-3 *Form of U.S. Tax Compliance Certificate (Participant)* (marked at bottom left as “OHSUSA:766796293.3”);
- Exhibit P-4 *Form of U.S. Tax Compliance Certificate (Owner)* (marked at bottom left as “OHSUSA:766796293.3”);
- Schedule 4.3 *Insurance Gaming Insurance Requirements* (marked at bottom left as “OHSUSA:766673669.6”);
- *Third Amended and Restated Security Agreement* (marked at bottom left as “OHSUSA:766796550.3”);
- *Third Amended and Restated Demand Deposit Account Control Agreement* (marked at bottom left as “OHSUSA:763682150.5”);
- *Fifth Amended and Restated Tribal Agreement Dated as of [ ], 2017 between Eastern Band of Cherokee Indians and Wells Fargo Bank, National Association, as Administrative Agent* (marked at bottom left as “OHSUSA:766796530.3”);
- *Second Amended and Restated Tribal Subordination Agreement* (marked at bottom left as “OHSUSA:766796559.3”);
- *Second Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement* (marked at bottom left as “OHSUSA:766796549.3”); and
- Amendment Engagement Letter dated March 2, 2017.

The 2017 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](http://www.nigc.gov)>. Applying the same analysis here, it is my opinion that, collectively, the 2017 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 2017 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 2017 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 2017 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. 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 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, any request to withhold will be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to <[FOIASubmitterReply@nigc.gov](mailto:FOIASubmitterReply@nigc.gov)> within thirty (30) calendar 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 need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's *Guide to the Freedom of Information Act* at <<http://www.justice.gov/oip/doj-guide-freedom-information-act-0>>.

If you have any questions, please contact Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Michael Hoenig  
General Counsel