



September 11, 2020

VIA EMAIL

Vanya S. Hogen
Hogen Adams, PLLC
1935 W County Road B2, Suite 460
St. Paul, MN 55113

**Re: Review of Revised Loan Documents for Saginaw Chippewa
Indian Tribe of Michigan**

Dear Ms. Hogen:

This letter responds to your August 7, 2020 request for the National Indian Gaming Commission's Office of General Counsel to review a Revised Credit Agreement between the Saginaw Chippewa Indian Tribe and the U.S. Bank National Association. Specifically, you have asked for my opinion whether the Revised Credit Agreement, together with two related financing documents (Security Agreement and Guaranty) is a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act.¹ You also asked for my opinion whether the loan documents violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following documents, all of which are unexecuted, but represented to be in substantially final form:

- Revised Credit Agreement (marked in upper right-hand corner with NIGC Review Draft 8-7-20):
 - Exhibit A-Form of Compliance Certificate;
 - Exhibit B-Form of Revolving Note;
 - Exhibit C-Form of Borrowing Notice;
 - Exhibit D-Form of Tax Exempt Note;
- Security Agreement (marked in upper right-hand corner with NIGC Review Draft 1-28-20); and
- Guaranty (marked in upper right-hand corner with NIGC Review Draft 1-28-20).

¹ 25 U.S.C. § 2701, *et. seq.*

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I previously reviewed the Security Agreement, the Guaranty and the original Credit Agreement when you submitted them to the NIGC earlier this year. By letter to you dated May 14, 2020, I declined jurisdiction over those agreements. It is my understanding that the parties did not then execute those documents.

You recently submitted a Revised Credit Agreement, together with the aforementioned Security Agreement and Guaranty, and indicated that these documents will execute later this month. The Security Agreement and Guaranty remain unchanged, as does my opinion of them from May. The Revised Credit Agreement incorporates changes to the original Credit Agreement similar to other agreements the Office of General Counsel has already reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion that neither the Revised Credit Agreement, nor the Security Agreement and Guaranty, are management contracts and do not require the NIGC Chairman's approval. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the drafts are represented to be in substantially final form. If they 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 documents listed above. This opinion does not include or extend to any other agreements not submitted for review.

Please note that it is my intent to release this letter 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.² 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,³ please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.⁴ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁵ Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter**. After this time elapses, I will make the letter public and will no longer consider objections.⁶ For additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions about this letter, please contact Maria Getoff, Senior Attorney, at (202) 632-1594 or by email at maria_getoff@nigc.gov.

² See 25 C.F.R. § 517.7(c).

³ 5 U.S.C. § 552(b)(4).

⁴ 139 S. Ct. 2356 (2019).

⁵ See 25 C.F.R. § 517.7(d).

⁶ *Id.*

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Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is written in a cursive style with a prominent flourish at the end.

Michael Hoenig
General Counsel