



October 22, 2020

VIA EMAIL

Zeke Fletcher
General Counsel
Gun Lake Tribal Gaming Authority
1123 129th Avenue
Bradley, MI 49323

Terence O'Farrell
Managing Director
KeyBank National Association
100 South Main Street, 6th Floor
Ann Arbor, MI 48104

Re: Review of financing agreements between KeyBank National Association & the Gun Lake Tribal Gaming Authority

Dear Mr. Fletcher:

This letter responds to the request for the National Indian Gaming Commission's Office of General Counsel to review financing documents between the Gun Lake Tribal Gaming Authority and KeyBank. Specifically, you asked for an opinion whether these agreements are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreements violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents (collectively "the Financing Agreements") submitted, all of which are unexecuted but represented to be in substantial final form:

- Credit Agreement – Marked as: 4844-8973-5112\6 & DW Draft 9/18/20
- Security Agreement – Marked as: 4847-3573-5753\2 & DW Draft 9/18/2020
- Revolving Note – Marked as: 4842-0305-9145\2
- Tribal Payment Support Agreement –
Marked as: 4847-9555-7065\4 & DW Draft 9/18/20
- Fee Letter – Undated – Only signed by the Tribe; not KeyBank
- Deposit Account Control Agreement –
Marked as: 4843-6509-4452\3 [Executed Version] Dated November 2, 2016.
- Reaffirmation of Deposit Account Control Agreement –

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Marked as: 4835-1588-7817\2

The Financing Agreements contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed; please refer to the agency's website. Applying the same analysis here, it is my opinion that collectively the Financing Agreements are not management contracts and do not require the approval of the Chairman. It is also my opinion they do not violate IGRA's sole proprietary interest requirement.

It is my understanding the Financing Agreements 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 the assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Agreements listed above. This opinion does not include or extend to any other agreements or documents not submitted for review.

Please note it is my intent 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, highlighting the information you believe should be withheld.¹ 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 Act (FOIA),² please be advised that the information was voluntarily submitted and, as such, any withholding should be analyzed in accordance with the standard set forth in *Food Marketing Institute v. Argus Leader Media*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter.** After this time elapses, this letter will be made public and objections will no longer be considered.⁵ 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 NIGC Staff Attorney Mary Modrich-Alvarado at (202) 632-7003.

Sincerely,



Michael Hoenic
General Counsel

¹ 25 C.F.R. § 517.7(c).

² Freedom of Information Act, 5 U.S.C. § 552(b)(4) (1966).

³ 139 S.Ct. 2356 (2019).

⁴ 25 C.F.R. § 517.7(c).

⁵ *Id.*