



February 26, 2021

VIA EMAIL

Glenda Nelson, Tribal Chairwoman
Estom Yumeka Maidu of the Enterprise Rancheria
2133 Monte Vista Ave.
Oroville, CA 95966

Re: Review of Financing Documents between the Enterprise Development Authority of the Estom Yumeka Maidu of the Enterprise Rancheria and Wells Fargo, N.A.

Dear Chairwoman Nelson:

This letter is a response to the Financing Documents submitted by the Enterprise Development Authority of the Estom Yumeka Maidu of the Enterprise Rancheria (Tribe) and Wells Fargo, N.A. (Lender) to the National Indian Gaming Commission's (NIGC) Office of General Counsel for review (collectively, the "Financing Documents").

You have asked for my opinion whether the Financing Documents constitute a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act (IGRA). Also included in this letter is my opinion whether the Financing Documents violate IGRA's requirement that the Tribe maintain the sole proprietary interest in its gaming activities.

In my review, I considered the below Financing Documents, which are unexecuted but were represented to be in substantially complete form:

1. **Revolving Credit and Term Loan Agreement**, drafted February 19, 2021 (US-DOCS\120044072.16);
2. **Exhibit A-1 to Credit Agreement: Form of Term B Note**, drafted February 3, 2021 (US-DOCS\84909632.3);
3. **Exhibit A-2 to Credit Agreement: Form of Revolving Note**, drafted February 3, 2021 (US-DOCS\84909632.3);
4. **Exhibit A-3 to Credit Agreement: Form of Incremental Term Loan**, drafted February 3, 2021 (US-DOCS\84909632.3);
5. **Exhibit C-1 to Credit Agreement: Form of Guaranty**, drafted February 3, 2021 (US-DOCS\120781694.1);

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6. **Exhibit C-2 to Credit Agreement: Form of Security Agreement**, drafted February 19, 2021 (US-DOCS\121226828.2);
7. **Intellectual Property Security Agreement**; drafted February 3, 2021 (US-DOCS\120677281.3);
8. **Hard Rock Subordination Agreement**, drafted February 19, 2021 (US-DOCS\120796712.2);
9. **Hard Rock Consent**, drafted February 19, 2021 (US-DOCS\120795884.4);
10. **Exhibit J to Credit Agreement: Form of Intercompany Subordinated Demand Promissory Note**, drafted February 11, 2021 (US-DOCS\120998094.4);
11. **Exhibit M to Credit Agreement: Form of Joinder Agreement**, drafted February 11, 2021 (US-DOCS\121019137.5);
12. **Deposit Account Control Agreement**, drafted February 11, 2021 (US-DOCS\120935524.16); and
13. **Securities Account Control – Consent Agreement**, drafted February 11, 2021 (US-DOCS\120933398.9).

The Financing Documents contain terms similar to other agreements the Office of General Counsel has previously reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion the Financing 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 Financing Documents are in substantially final form, and if the Financing Documents are amended in any material way and/or inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Documents mentioned *supra*. This opinion does not include or extend to any other agreements not submitted or before me 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 such 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, that 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**

¹ 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 139 S.Ct. 2356 (2019).

⁴ 25 C.F.R. § 517.7(d).

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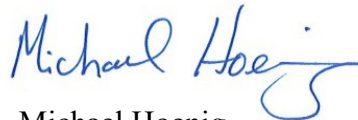
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date of this letter. After this time elapses, this letter will be made public and objections will no longer be considered.⁵ If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact Staff Attorney James A. Lewis at (202) 632-7013 or by email at James_Lewis@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: John Maier, Esq.<jmaier@jmandmplaw.com>

⁵ *Id.*