



March 19, 2021

VIA EMAIL

Jason B. Coutant, Esq.
Conner & Winters, LLP
4000 One Williams Center
Tulsa, OK 74172-0148

Re: Review of 2021 Loan Document for the Kickapoo Tribe of Oklahoma

Dear Mr. Coutant:

This letter responds to your January 27, 2021 request, on behalf of CrossFirst Bank, N.A., for the National Indian Gaming Commission, Office of General Counsel, to review a certain loan document related to the Kickapoo Tribe of Oklahoma, and to provide an opinion as to whether or not this loan document is a management contract 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 document violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submission:

- *Third Amendment to Loan Agreement* ("2021 Third Amendment").

In addition, your office submitted the original, executed loan documents that the 2021 Third Amendment is intended to amend. While these executed loan documents were examined in order to provide context for the review of the 2021 Third Amendment, these previously executed loan documents are not part of this opinion.

The 2021 Third Amendment contains 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>. Applying the same analysis here, it is my opinion that the 2021 Third Amendment is not a management contract and does not require the approval of the NIGC Chairman. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

It is my understanding that the 2021 Third Amendment is represented to be in substantially final form, and any further changes will not be material to OGC's analysis. This

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opinion shall not apply if the 2021 Third Amendment changes in any material way prior to closing or the changes are inconsistent with the assumptions made herein. Further, this opinion is limited to the aforementioned 2021 Third Amendment 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 highlight the information that you believe should be withheld. See 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 Four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." See 25 C.F.R. § 517.7(d). Please submit any written objection to <FOIASubmitterReply@nigc.gov> **within thirty (30) 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 have any questions, please contact Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Valerie R. Devol, Esq. (via email only: <vdevol@devollaw.com>)