



April 13, 2021

***VIA EMAIL***

Miko E. Hernandez  
Faegre Drinker Biddle & Reath LLP  
2200 Wells Fargo Center, 90 South Seventh Street  
Minneapolis, Minnesota 55402

**Re: Review of Tunica-Biloxi Loan Documents**

Dear Ms. Hernandez:

This letter responds to your March 9, 2021 request, on behalf of the Tunica Biloxi Tribe, for the National Indian Gaming Commission, Office of the General Counsel, to review a draft Loan Agreement with exhibits, and a Security Agreement between the Tunica Biloxi Gaming Authority (TBGA) and First Guaranty Bank. The Loan Documents provide for a total indebtedness of (b) (4). The TBGA will use the proceeds to settle a debt with UMB Bank and bondholders pursuant to a court-ordered settlement.

You requested my opinion whether the Loan Documents constitute a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act and whether the Loan Documents violate IGRA's requirement that a tribe possess and maintain the sole proprietary interest in its gaming operation.

In my review, I considered the following documents, all of which are unexecuted, but represented to be in substantially final form (together, the "Loan Documents"):

- Loan Agreement (marked in upper right-hand corner with NIGC Draft: 4.8.2021), together with Exhibit A-1 Form of Term Loan A Note, Exhibit A-2 Form of Term Loan B Note; Exhibit B Form of Draw Request; and
- Security Agreement (marked in upper right-hand corner with NIGC Draft: 03/9/2021).

The Loan Documents are similar to other agreements the Office of General Counsel has reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Documents are not 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.

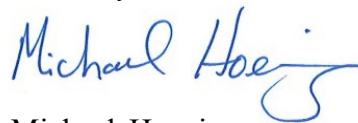
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It is my understanding that the Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion. If such terms change in any material way prior to closing, or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the above listed Loan Documents. This opinion does not include or extend to any other agreements or documents 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.<sup>1</sup> 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,<sup>2</sup> please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> Please submit any written objection to 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.<sup>5</sup> 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 Maria Getoff, Senior Attorney at (703) 338-7748 or by email at maria\_getoff@nigc.gov.

Sincerely,



Michael Hoenig  
General Counsel

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<sup>1</sup> 25 C.F.R. § 517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 139 S. Ct. 2356 (2019).

<sup>4</sup> 25 C.F.R. § 517.7(d).

<sup>5</sup> Id.