



May 6, 2021

***VIA EMAIL***

Andrew Adams III, Esq.  
Hogen Adams PLLC  
1935 County Road B2 W., Suite 460  
St. Paul, MN 55113

**Re: Review of loan documents for Kaw Nation of Oklahoma and Kaw Gaming**

Dear Mr. Adams:

This letter responds to your February 3, 2021 request for the National Indian Gaming Commission's Office of General Counsel to review a Loan Agreement and related documents between Kaw Gaming, Inc., Kaw Nation of Oklahoma, and Western Alliance Bank. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. 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 submissions (collectively, "the Loan Documents") all of which are unexecuted, but were represented to be in substantially final form:

- Loan Agreement (April 23, 2021 draft, Document No. 4132-9666-2056.13);
- Schedule 1.1 Real Property;
- Schedule 4.11 Litigation;
- Schedule 4.20 Environmental Matters;
- Schedule 4.28 Required Approvals;
- Schedule 4.30 Subsidiaries;
- Schedule 4.31 Agreements to Sell Assets;
- Schedule 4.33 Deposit Accounts and Other Accounts;
- Schedule 5.3 Insurance Requirements;
- Schedule 6.6 Existing Liens;
- Schedule 6.7 Existing Recourse Debt;
- Exhibits to Credit Agreement:

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- Exhibit A Form of Compliance Certificate, with Annex I, Financial Covenant Calculations;
- Exhibit B-1 Form of DD Term Loan Note;
- Exhibit B-2 Form of Cash Secured Loan Note;
- Exhibit C Request for Advance;
- Exhibit A-2 Conversion Notice;
- Exhibit E Total Expansion Project Cost Statement;
- Exhibit F Expansion Project Completion Certificate;
- Security Agreement;
- Deposit Account Control Agreement;
- Consent to Enter Trust Lands;
- Tribal Agreement.

The Loan Documents contain terms 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 the Loan 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 drafts are represented to be in substantially final form, and if the Loan Documents 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 Loan 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 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 Four of the Freedom of Information Act (FOIA),<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) 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

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<sup>1</sup> See 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> See 25 C.F.R. § 517.7(d)

<sup>5</sup> *Id.*

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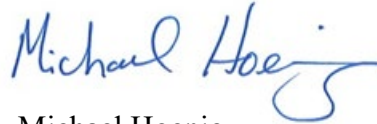
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States Department of Justice's Guide to the Freedom of Information Act at  
<https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact Staff Attorney, Barbara Marvin at (202) 302-0815 or by email at [Barbara\\_Marvin@nigc.gov](mailto:Barbara_Marvin@nigc.gov).

Sincerely,



Michael Hoenig  
General Counsel

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