



June 1, 2021

***VIA EMAIL***

Ashley Duffy, General Counsel  
St. Croix Tribe of Chippewa Indians  
24663 Angeline Ave.  
Webster, WI 54893

**Re: Review of Loan Documents for the St. Croix Tribe of Chippewa Indians of Wisconsin and CIT Bank, N.A.**

Dear Ms. Duffy:

This letter responds to your February 15, 2021 request for the National Indian Gaming Commission's Office of General Counsel to review a collection of loan documents among the St. Croix Tribe of Chippewa Indians of Wisconsin, various lenders, guarantors, and CIT Bank, N.A.. Specifically, you have asked for my opinion whether the documents are a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the documents violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

As part of this review, I analyzed the following undated documents (collectively, the Loan Documents):

1. Waiver and Amendment No. 2 to Credit Agreement (Guaranteed) (NIGC Draft 2/15/2021)
2. Exhibit B to Amendment No. 2 to Credit Agreement (Guaranteed) – Amendments to Credit Agreement (NIGC Draft 2/15/2021)
3. Exhibit C to Amendment No. 2 to Credit Agreement (Guaranteed) – Amended and Restated Depository Waterfall Agreement (NIGC Draft 2/15/2021)
4. Annex 1 to Amendment No. 2 to Credit Agreement (Guaranteed) – Form of Compliance Certificate (NIGC Draft 2/15/2021)
5. Waiver and Amendment No. 3 to Credit Agreement (Non-Guaranteed) (NIGC Draft 2/15/2021)
6. Exhibit B to Amendment No. 3 to Credit Agreement (Non-Guaranteed) Amendments to Credit Agreement (NIGC Draft 2/15/2021)
7. Exhibit C to Amendment No. 3 to Credit Agreement (Non-Guaranteed) – Amended and Restated Depository Waterfall Agreement (NIGC Draft 2/15/2021)

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8. Annex 1 to Amendment No. 2 to Credit Agreement (Non-Guaranteed) – Form of Compliance Certificate (NIGC Draft 2/15/2021)

The Loan Documents you have submitted contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. Copies of declination letters can be found on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Documents are not a management contract 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. 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. *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, 2366 (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 NIGC Senior Attorney Jennifer Lawson at (202) 632-7003.

Sincerely,



Michael Hoenig  
General Counsel

cc: Aaron Harkins, Member, Hogen Adams (via email)  
Shane Noworatzky, Sheppard Mullin Richter & Hampton LLP (via email)