



November 11, 2021

*Via E-mail*

Principal Chief Cyrus Ben  
Mississippi Band of Choctaw Indians  
101 Industrial Road  
Choctaw, MS 39350

Re: Review of financing agreements on behalf of the Mississippi Band of Choctaw Indians

Dear Chief Ben:

This letter responds to the September 28, 2021, request on behalf of the Mississippi Band of Choctaw Indians (Tribe) for the National Indian Gaming Commission Office of General Counsel to review the financing documents between the Tribe and Key Bank et. al. Specifically, you have asked for my opinion on whether the Financing Documents are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the Financing Documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents submitted on behalf of the Tribe, which were unexecuted, but were represented to be in substantially final form (Collectively "Financing Documents"):

- Amended and Restated Credit Agreement, marked as NIGC Draft 09/23/2021;
- Exhibit A Assignment and Assumption, marked as 4848-3120-9466\2;
- Exhibit B: Compliance Certificate, marked as 4819-5123-1482\4
- Exhibit D1 - Term Facility Note Form, marked as 4836-3977-9322\4;
- Exhibit D2 - Revolving Facility Note Form marked 4821-7536-4858\3;
- Exhibit E - Security Agreement, marked as 4828-7719-6890\3;
- Exhibit F - Deposit Account Agreement, marked as 4838-4871-4490\4;
- Exhibit G - Springing Depository Agreement, marked as 4827-8486-8858\4;
- Exhibit H - Request for Interest Period, marked as 4830-7566-4122\2; and
- Exhibit L - Advance Request Form, marked as 4817-0353-6890\2

The Financing Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed, opinion letters for which are available on the NIGC website.

**NATIONAL HEADQUARTERS** 1849 C Street NW, Mail Stop #1621 Washington, DC 20240 Tel: 202.632.7003 Fax: 202.632.7066 [WWW.NIGC.GOV](http://WWW.NIGC.GOV)

**REGIONAL OFFICES** Portland, OR; Sacramento, CA; Phoenix, AZ; St. Paul, MN; Tulsa, OK; Oklahoma City, OK

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Applying the same analysis here, it is my opinion that the Financing Documents are not management contracts or collateral agreements to a management contract, and do not require the approval of the Chairman.

The Financing Agreements contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See* [www.nigc.gov](http://www.nigc.gov). Applying the same analysis here, it is my opinion that collectively the Financing Agreements are not management contracts and do not require the approval of the Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

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*.<sup>1</sup> 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](mailto: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 Staff Attorney Heather McMillan Nakai at (202) 527-5577.

Sincerely,



Michael Hoenig  
General Counsel

Cc: Gina Jacobs, via e-mail at: [gjacobs@joneswalker.com](mailto:gjacobs@joneswalker.com)

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<sup>1</sup> 139 S. Ct. 2356 (2019).