



November 29, 2021

***VIA EMAIL***

Gina M. Jacobs, Esq.  
Jones Walker LLP  
190 E Capitol Street, Suite 800  
Jackson, MS 39201

**Re: Review of the Loan Documents for the Eastern Band of Cherokee Indians**

Dear Ms. Jacobs:

This letter responds to your October 22, 2021 request on behalf of the Eastern Band of Cherokee Indians for the Office of the General Counsel, National Indian Gaming Commission, to review certain loan documents. The request asks for my opinion as to whether the submitted loan documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act. The request also asks for my opinion as to whether the loan documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Loan Documents"):

- Seventh Amended and Restated Loan Agreement, marked as "4152-2867-2049.5";
- Exhibits A, B, C, D, E, G, H, I, J, K, L, N, O, P-1, P-2, P-3, and P-4 to the Loan Agreement, marked as "4130-3900-0369.4";
- Exhibit F to the Loan Agreement, marked as "4135-6125-2913.2";
- Exhibit M to the Loan Agreement, marked as "4150-7120-2353.2";
- Schedule 4.3 to Loan Agreement, marked as "4126-5129-9634.3";
- Fifth Amended and Restated Security Agreement, marked as "4160-0935-0193.2";
- Seventh Amended and Restated Tribal Agreement, marked as "4162-0209-1313.2";
- Fourth Amended and Restated Tribal Subordination Agreement, marked as "4155-4024-3505.2"; and
- Fourth Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement, marked as "4162-4554-1937.2".

Gina M. Jacobs, Esq.

Re: Review of the Loan Documents for the Eastern Band of Cherokee Indians

November 29, 2021

Page 2 of 2

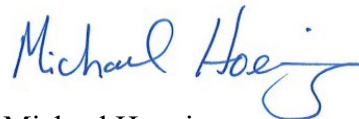
The Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Some of these opinion letters may be found on the NIGC's website. Applying the same analysis here, it is my opinion that, collectively, the Loan Documents are not management contracts and do not 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 Loan Documents are represented to be in substantially final form, and any further changes will not be material to OGC's analysis. This opinion shall not apply if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements.

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 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 Senior Attorney Austin Badger at (202) 632-7003.

Sincerely,



Michael Hoenig  
General Counsel

---

<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.*