



March 30, 2022

VIA EMAIL

Jerome L. Levine, Esq.
Mayer Brown LLP
350 South Grand Avenue, 25th Floor
Los Angeles, CA 90071

Re: Review of Muckleshoot Indian Tribe's Financing Documents

Dear Mr. Levine:

This letter responds to your request of March 3, 2022, for the National Indian Gaming Commission's Office of General Counsel to review a financing documents between the Muckleshoot Indian Tribe (Tribe) and U.S. Bank National Association, as Administrative Agent. Specifically, you have asked for my opinion whether the documents constitute a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act (IGRA). You have also asked for my opinion whether the 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 (the Loan Documents) which are unexecuted, but represented to be in substantially final form:

- Credit Agreement, marked at the top right corner as "NIGC Submission Version 3/3/2022";
 - Schedule 1 – Commitments;
 - Exhibit A – Form of Assignment and Assumption;
 - Annex 1 – Terms and Conditions for Assigned and Assumption;
 - Exhibit B – [Reserved];
 - Exhibit C – Form of Compliance Certification;
 - Schedule I to Compliance Certificate [blank];
 - Schedule II to Compliance Certificate [blank];
 - Exhibit D – Form of Notice of Obligations;
 - Exhibit E-1 – Form of Borrowing Notice;
 - Exhibit E-2 – Form of Conversion Notice;
 - Exhibit E-3 – Form of Prepayment Notice;
 - Exhibit F – [Reserved];
 - Exhibit G-1 – Form of Revolving Note;
 - Exhibit G-2 - Form of Term Note;
 - Exhibit H-1 – Form of U.S. Tax Compliance Certificate (For Foreign

- Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes);
- Exhibit H-2 – Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes);
- Exhibit H-3 – Form of U.S. Tax Compliance Certification (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes);
- Exhibit H-4 – Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes);
- Security Agreement, marked at the top right corner as “NIGC Submission Version 3/3/2022”;
 - Exhibit A – Grantor Information; Location of Collateral;
 - Exhibit B – Intellectual Property;
 - Exhibit B – List of Pledged Collateral; and
 - Exhibit D – Commercial Tort Claims.

The Loan 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'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 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.¹ 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), please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.² Any claim of confidentiality should also be supported with “a statement or certification by an officer or authorized representative of the submitter.”³ 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.⁴ If you

¹ 25 C.F.R. § 517.7(c).

² 139 S. Ct. 2356 (2019).

³ 25 C.F.R. § 517.7(d).

⁴ *Id.*

Letter to Jerome L. Levine, Esq.
Re: Review of Muckleshoot Indian Tribe's Financing Documents
March 30, 2022
Page 3 of 3

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 NIGC Senior Attorney Esther Dittler at (202) 853-7511 or by email at Esther.Dittler@nigc.gov.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is written in a cursive style with a large, stylized initial "M" and a long, sweeping underline.

Michael Hoenig
General Counsel