



March 21, 2025

***VIA EMAIL***

Townsend Hyatt  
Orrick, Herrington & Sutcliffe LLP  
1140 SW Washington Street  
Suite 500  
Portland, OR 97205

**Re: Review of the Loan Documents for the Catawba Indian Nation**

Dear Mr. Hyatt:

This letter responds to your January 6, 2025 request on behalf of the Catawba Indian Nation for the Office of the General Counsel (OGC), National Indian Gaming Commission (NIGC), to review certain loan documents. The request asks for my opinion as to whether the submitted loan documents are management contracts requiring the NIGC Chair's approval pursuant to the Indian Gaming Regulatory Act (IGRA). 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"):

- Credit Agreement, marked "US-DOCS\155415893.14" at bottom left of each page;
- Exhibit A-1 – Form of Revolving Note, marked "US-DOCS\156113625.4";
- Exhibit A-2 – Form of Term A Loan Note, marked "US-DOCS\156114278.4";
- Exhibit A-3 – Form of Term B Loan Note, marked "US-DOCS\156114425.4";
- Exhibit B-1 – Form of Funding Notice, marked "US-DOCS\156135576.3";
- Exhibit B-2 – Form of Issuance/Amendment Notice, marked "US-DOCS\156135578.3";
- Exhibit B-3 – Form of Conversion/Continuation Notice, marked "US-DOCS\156135581.3";
- Exhibit B-4 – Form of Notice of Account Designation, marked "US-DOCS\156135583.3";
- Exhibit C-1 – Form of Guaranty, marked "US-DOCS\155879528.5";

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- Exhibit C-2 – Form of Security Agreement, marked “US-DOCS\155884278.9”;
- Exhibit D – Form of Solvency Certificate, marked “US-DOCS\156138661.4”;
- Exhibit E – Form of Compliance Certificate, marked “US-DOCS\156394298.4”;
- Exhibit F – Form of Assignment and Acceptance, marked “US-DOCS\156138662.6”;
- Exhibit G – Nation Agreement, marked “US-DOCS\155879655.8”;
- Exhibit H – Form of Non-Bank Certificate, marked “US-DOCS\156143535.4”;
- Exhibit I – Form of Closing Certificate, marked “US-DOCS\156143536.3”;
- Exhibit J – Insurance Requirements, marked “US-DOCS\156663080.11”;
- Exhibit K – Form of Intercompany Subordinated Demand Promissory Note, marked “US-DOCS\156143537.5”;
- Exhibit L – Form of Disbursement Agreement, marked “US-DOCS\155399725.12”;
- Disbursement Agreement Exhibits, marked “US-DOCS\155830692.8”;
- Exhibit M – Administrative Questionnaire, marked “US-DOCS\156611826.1”;
- Exhibit N – Form of Joinder Agreement, marked “US-DOCS\156143538.7”;
- Exhibit O – Form of Subordination Agreement, marked “US-DOCS\156240380.13”;
- Form of Deposit Account Control Agreement (Citizens Bank), marked “US-DOCS\156766197.2”;
- Form of Blocked Account Control Agreement (Citizens Bank), marked “US-DOCS\156793221.2”;
- Form of Deposit Account Control Agreement (KeyBank), marked “US-DOCS\156766204.5”;
- Form of Master Consent to Assignment, marked “US-DOCS\157302197.3”.

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 Chair. It is also my opinion that they do not violate IGRA’s sole proprietary interest requirement.

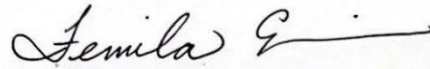
It is my understanding that the Loan Documents are represented to be in substantially final form, and any further changes will not be material to OGC’s analysis. This opinion shall not apply if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements. I also understand that the Tribe submitted a management contract for review and approval by the NIGC Chair. The Division of Finance may have additional questions or require amendments to financing materials within the context of the management contract review.

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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 foia@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,



Femila Ervin  
Associate General Counsel (Acting)

cc: Lydia Locklear, Esq.  
Dioné Carroll, Esq.  
Sony Ben-Moshe, Esq.  
Kenneth Askin, Esq.  
Steven McSloy, Esq.

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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> 588 U.S. 427 (2019).

<sup>4</sup> See 25 C.F.R. § 517.7(d).

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