OGC

NOV 15 2005

VIA FACSIMILE

Jereldine Redcorn
Caddo Nation Tribal Council
Oklahoma City Representative
Fax: (405) 573-2912

Re: Letter of Intent between the Caddo Nation and Power Plant Entertainment Oklahoma, LLC

Dear Ms. Redcorn:

On November 9, 2005, you submitted a Letter of Intent between the Caddo Nation of Oklahoma ("the Nation") and Power Plant Entertainment Oklahoma, L.L.C. ("Power Plant") and requested our review.

The Letter of Intent states that Power Plant will provide development, financing, advisory and management services, as well as a license for the use of a national brand as a theme, to the Nation in connection with the development and opening of a Class II and/or Class III casino, hotel, and an entertainment facility on certain trust land in or near Hydro, Oklahoma. *See* Letter of Intent, at 1. To provide such services, Power Plant proposes that the Nation enter into a Development Agreement, a Management Agreement and a License Agreement with it. *Id.*

In this instance, if the Nation decides to enter into Development and License agreements with Power Plant, we recommend that it submit such agreements to the National Indian Gaming Commission (NIGC) Office of General Counsel for a determination of whether the agreements constitute a management contract or collateral agreements to a management contract that are subject to the NIGC Chairman's review and approval under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq.* *See* NIGC Bulletin 93-3, Submission of Gaming-Related Contracts and Agreements for Review. Of course, any management agreement entered into between the parties must be submitted to the NIGC for the Chairman's review and approval. *See* 25 U.S.C. § 2711(a)(1). Further, the management agreement must be submitted to the NIGC upon its execution. *See* 25 C.F.R. § 533.2(b).

Without reviewing the actual proposed Development and License agreements, we cannot make a determination about whether such agreements constitute management

agreements requiring the NIGC Chairman's approval or contravene the sole proprietary interest mandate of IGRA. [1]

Nonetheless, the Letter of Intent does raise some concerns. First, Power Plant shall receive [ ] 64 *See* Letter of Intent, ¶ 2(e). This is a very long time for the Nation to provide [ ] to Power Plant. If the facilities are in fact part of the gaming operation, such a provision would violate IGRA, because management contracts are confined to terms of five to seven years, *see* 25 U.S.C. § 2711(b)(5), and such a term may provide Power Plant an ownership interest in the operation.

Further, Power Plant's license fee of [ ] may also indicate that Power Plant has an ownership interest in the Nation's gaming operation. As noted above, such an ownership interest would violate IGRA's mandate that tribes possess the sole ownership interest in their gaming activity. Moreover, such a lengthy term is an indication of a management contract, *see NIGC Bulletin No. 94-5*, and even management contracts cannot exceed five (5) years unless the capital investment and income projections require additional time. *See* 25 U.S.C. § 2711 (b)(5); *First American Kickapoo Operations, L.L.C. v. Multimedia Games, Inc.*, 412 F.3d 1116, 1173 (10th Cir. 2005). 64

If you have any questions, please contact me at (202) 632-7003.

Sincerely,

Jo-Ann M. Shyloski
Senior Attorney

[1] IGRA requires that "the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity." 25 U.S.C. § 2710(b)(2)(A); *see also* 25 C.F.R. § 522.4(b)(1). Under this section, if any entity other than a tribe possesses a proprietary interest in the gaming activity, gaming may not take place.