



November 17, 2021

VIA EMAIL

Joseph Byrd, Chairman
c/o Aaron Pratt, Esq.
Quapaw Nation
69300 East Nee Road
Quapaw, Oklahoma 74363

Re: Review of Loan Documents, between the Quapaw Nation, and U.S. Bank, N.A., KeyBank National Association, Wells Fargo Bank, N.A., U.S. Bank, N.A., Western Alliance Bank, International Bank of Commerce, Comerica Bank, CIT Bank, N.A. and BOKF, NA dba Bank of Oklahoma

Dear Chairman Byrd:

This letter is a response to the Loan Documents submitted by the Quapaw Nation (Nation) and U.S. Bank, N.A., KeyBank National Association, Wells Fargo Bank, N.A., U.S. Bank, N.A., Western Alliance Bank, International Bank of Commerce, Comerica Bank, CIT Bank, N.A. (Lenders) and BOKF, NA dba Bank of Oklahoma (Administrative Agent) to the National Indian Gaming Commission's (NIGC) Office of General Counsel for review (collectively, the "Loan Documents").

You have asked for my opinion whether the Loan Documents constitute a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act (IGRA).¹ Also included in this letter is my opinion whether the Loan Documents violate IGRA's requirement that the Nation maintain the sole proprietary interest in its gaming activities.²

In my review, I considered the below Loan Documents, which are unexecuted but were represented to be in substantially complete form:

1. **Loan Agreement and Exhibits A-F** (FDL Draft October 20, 2021);
2. **Security Agreement and Exhibits A-C** (FDL Draft October 6, 2021);
3. **Guaranty Agreement** (FDL Draft October 6, 2021); and
4. **Bank Deposit Account Control Agreement** (FDL Draft October 25, 2021).

¹ 25 U.S.C. § 2711.

² 25 U.S.C. § 2710(b)(2)(A).

Letter to Joseph Byrd, Chairman of the Quapaw Nation

Re: Review of Loan Documents with U.S. Bank, N.A., KeyBank National Association, Wells Fargo Bank, N.A., U.S. Bank, N.A., Western Alliance Bank, International Bank of Commerce, Comerica Bank, CIT Bank, N.A. (Lenders) and BOKF, NA dba Bank of Oklahoma

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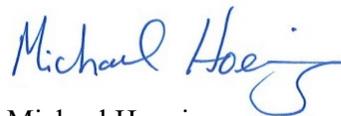
The Loan Documents contain terms similar to other agreements the Office of General Counsel has previously reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion the Loan Documents are not management contracts and do not require the approval 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 in substantially final form, and if the Loan Documents are amended in any material way and/or inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan Documents mentioned *supra*. This opinion does not include or extend to any other agreements not submitted or before me 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 such disclosure, please provide a written statement explaining the grounds for the objection, highlighting the information you believe should be withheld.³ 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),⁴ please be advised that the information was voluntarily submitted and, as such, that any withholding should be analyzed in accordance with the standard set forth in *Food Marketing Institute v. Argus Leader Media*.⁵ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁶ Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter**. After this time elapses, this letter will be made public and objections will no longer be considered.⁷ 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 Staff Attorney James A. Lewis at (202) 632-7013 or by email at James_Lewis@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: John S. Gawey, Esq., via JGawey@fdllaw.com

³ 25 C.F.R. § 517.7(d).

⁴ 5 U.S.C. § 552(b)(4).

⁵ 139 S.Ct. 2356 (2019).

⁶ 25 C.F.R. § 517.7(d).

⁷ *Id.*