



April 12, 2021

VIA EMAIL

Jon Huey, Chairman
Yavapai-Apache Nation
2400 West Datsi Ave.
Camp Verde, AZ 86322

**Re: Review of Loan Documents between the Yavapai-Apache Nation and BOKF, N.A.,
d/b/a BOK Financial (formerly known as BOKF, N.A. d/b/a Bank of Arizona)
and U.S. Bank, N.A.**

Dear Chairman Huey:

This letter is a response to the Loan Documents submitted by the Yavapai-Apache Nation (Nation) and BOKF, N.A., d/b/a BOK Financial (formerly known as BOKF, N.A. d/b/a Bank of Arizona) and U.S. Bank, N.A. (Lenders) to the National Indian Gaming Commission's (NIGC) Office of General Counsel for review.

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 Tribe maintain the sole proprietary interest in its gaming activities.²

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

1. **Amended and Restated Loan Agreement**, drafted March 31, 2021 (4825-9416-7508);
2. **Amended and Restated Promissory Note Construction Facility - BOKF**, drafted March 31, 2021 (4823-6007-2916);
3. **Amended and Restated Promissory Note RLOC Facility - BOKF**, March 31, 2021 (4843-0773-7300);
4. **Amended and Restated Promissory Note Term Loan - BOKF**, drafted March 31, 2021 (4836-3822-1780);

¹ 25 U.S.C. § 2711.

² 25 U.S.C. § 2710(b)(2)(A).

Letter to Jon Huey, Chairman

Re: Review of Loan Documents between the Yavapai-Apache Nation and BOKF, N.A., d/b/a OK Financial (formerly known as BOKF, N.A. d/b/a Bank of Arizona) and U.S. Bank, N.A.

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5. **Amended and Restated Promissory Note Construction Facility - U.S. Bank** drafted March 31, 2021 (4832-6682-9012);
6. **Amended and Restated Promissory Note RLOC Facility – U.S. Bank**, drafted March 31, 2021 (4842-2463-7908);
7. **Amended and Restated Promissory Note Term Loan – U.S. Bank**; drafted March 31, 2021 (4826-8264-1364);
8. **Amended and Restated Security Agreement**, drafted March 31, 2021 (4827-1724-4372.2);
9. **Amended and Restated Certificate of No Hazardous Waste**, drafted March 31, 2021 (4821-3063-1636);
10. **Closing Certificate with Resolutions**, drafted March 31, 2021 (4831-7206-4212);
11. **ISDA Master Agreement**, drafted March 31, 2021 (4829-9816-9564.2); and
12. **Nation Fee Letter**, drafted March 31, 2021 (4848-1526-9337).

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

³ 25 C.F.R. § 517.7(c).

⁴ 5 U.S.C. § 552(b)(4).

⁵ 139 S.Ct. 2356 (2019).

⁶ 25 C.F.R. § 517.7(d).

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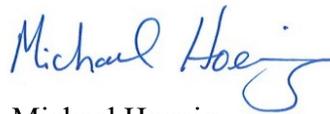
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longer be considered.⁷ If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

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: Anthony Scott Canty, Esq. <acanty@yan-tribe.org>
Lisa Estensen, Esq. <lbluelake@yan-tribe.org>

⁷ *Id.*