



June 27, 2019

**Via email: <erika.weiss@btlaw.com>
And First Class Mail**

Erika Weiss, Esq.
Barnes & Thornburg LLP
171 Monroe Avenue NW, Suite 1000
Grand Rapids, MI 49503-2694

Re: Review of the 2019 Loan Documents for the Keweenaw Bay Indian Community

Dear Ms. Weiss:

This letter responds to your May 24, 2019 request, on behalf of the Keweenaw Bay Indian Community, for the National Indian Gaming Commission, Office of the General Counsel, to review certain loan documents and to provide an opinion as to whether or not these loan documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act of 1988. You have also asked for my opinion as to whether or not these 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 ("2019 Loan Documents"):

- *Credit Agreement, Keweenaw Bay Indian Community and Fifth Third Bank dated as of ___, 2019, Ojibwa Casino Project* (marked at bottom left as "DMS 13609518.13" and at top right as "B&T Draft 6/18/19");
- *Draw/Term Note-A (Credit Agreement) \$5,000,000.00;*
- *Draw/Term Note-B (Credit Agreement) \$9,300,000.00;*
- *Revolving Note (Credit Agreement) \$5,000,000.00;*
- *Fifth Third Bank Security Agreement;*
- *Pledge Agreement;* and
- *Participation Agreement* (marked at bottom left as "DMS 13669418_6" and at top right as "BT Draft 6/18/19").

Ms. Erika Weiss

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The 2019 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 located at <www.nigc.gov>. Applying the same analysis here, it is my opinion that, collectively, the 2019 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 2019 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 2019 Loan Documents change in any material way prior to their execution or are inconsistent with assumptions made herein. Further, this opinion is limited to the aforementioned 2019 Loan Documents and 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. 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, any request to withhold will be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to <FOIASubmitterReply@nigc.gov> within thirty (30) calendar days of the date of this letter. After this time elapses, the letter will be made public and objections will no longer be considered. *Id.* 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 <<http://www.justice.gov/oip/doj-guide-freedom-information-act-0>>.

If you have any questions, please contact Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Hoenig".

Michael Hoenig
General Counsel