



July 2, 2019

**Via email: [sward@cwlaw.com](mailto:sward@cwlaw.com)  
and First Class Mail**

Stephen R. Ward, Esq.  
Conner & Winters, LLP  
4000 One Williams Center  
Tulsa, OK 74172-0148

**Re: Review of the 2019 Transaction Documents  
for the Quapaw Tribe of Oklahoma (O-Gah-Pah)**

Dear Mr. Ward:

This letter responds to your May 28, 2019 request, on behalf of the Quapaw Tribe of Oklahoma (O-Gah-Pah), for the National Indian Gaming Commission, Office of the General Counsel, to review certain transaction documents and to provide an opinion as to whether or not these transaction 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 the transaction 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 2019 Transaction Documents"):

1. *Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), \$[585,000,000] [ ]% Senior Secured Notes due [2024], Purchase Agreement dated [ ], 2019* (marked at top right as "Confidential Draft May 28, 2019");
2. *Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) and Each of the Guarantors Party Hereto, [ ]% Senior Secured Notes Due 2024, Indenture Dated as of [ ], 2019, BOKF, NA, as Trustee* (marked at bottom left as "US-DOCS\92966247.2" and at top right as "Confidential Draft May 28, 2019");
3. *Intercreditor Agreement dated as of [ ], 2019 among BOKF, NA, as Senior Secured Notes Indenture Trustee, the other Secured Obligations Representatives from time to time party hereto, International Bank of Commerce, as Collateral Agent, Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), as Issuer, Downstream Q Store, LLC, as a Grantor, Saracen Development, LLC, as a Grantor, and*

- the other Grantors from time to time party hereto* (marked at bottom left as “US-DOCS\107539883.8” and at top right as “Confidential Draft May 28, 2019”);
4. *Security Agreement among Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), as Assignor, Downstream Q Store, LLC, as Assignor, Saracen Development, LLC, as Assignor, International Bank of Commerce, as Collateral Agent and BOKF, NA, as Indenture Trustee, Dated as of [\_\_], 2019* (marked at bottom left as “US-DOCS\107369530.6” and at top right as “Confidential Draft May 28, 2019”);
  5. *Deposit Account Control Agreement* (marked at bottom left as “US-DOCS\107559139.12” and at top right as “Confidential Draft May 28, 2019”);
  6. *Deposit Account Control Agreement* (marked at bottom left as “US-DOCS\107983383.1” and at top right as “Confidential Draft May 28, 2019”);
  7. *Deposit Account Control Agreement* (marked at bottom left as “US-DOCS\107925161.5” and at top right as “Confidential Draft May 28, 2019”);
  8. *Deposit Account Control Agreement* (marked at bottom left as “US-DOCS\107908400.4” and at top right as “Confidential Draft May 28, 2019”);
  9. *Securities Account Control Agreement* (marked at bottom left as “US-DOCS\107913429.5” and at top right as “Confidential Draft May 28, 2019”);
  10. *Cash Collateral and Disbursement Agreement Among Simmons Bank, as Disbursement Agent, BOKF, NA, as Trustee, International Bank of Commerce, as Collateral Agent, Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), as Authority, Saracen Development, LLC, as Project Owner, and Professional Associates Construction Services, Inc., as Independent Construction Consultant, dated as of [\_\_], 2019* (marked at bottom left as “US-DOCS\107361601.10” and at top right as “Confidential Draft May 28, 2019”);
    - Exhibits to Cash Collateral and Disbursement Agreement;
  11. *Grant of Security Interest in United States Trademarks, [\_\_], 2019* (marked at bottom left as “US-DOCS\107391666.6” and at top right as “Confidential Draft May 28, 2019”);
  12. *First Supplemental Indenture* (marked at top right as “Confidential Draft May 28, 2019”);
  13. *Dealer Manager and Solicitation Agent Agreement* (marked at top right as “Confidential Draft May 28, 2019”);
  14. *Credit Agreement Dated as of [\_\_], 2019, Saracen Development, LLC, an Arkansas limited liability company, as Borrower, Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), a wholly-owned unincorporated instrumentality of the Quapaw Nation also known as the Quapaw Tribe of Oklahoma (O-Gah-Pah), as the Parent, and International Bank of Commerce, as Lender* (marked at bottom left as “{1971381;5}” and at top right as “Confidential Draft 5/28/19”);
  15. *Promissory Note \$40,000,000.00, \_\_, 2019* (marked at bottom left as “{1967071;4}” and at top right as “Confidential Draft 5/28/19”);

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16. *Security Agreement Dated as of \_\_, 2019 among each of the Grantors party hereto, and International Bank of Commerce, as Collateral Agent* (marked at bottom left as “{1967074;9}” and at top right as “Confidential Draft 5/28/19”);
17. *Guaranty Dated as of \_\_, 2019, By Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), a wholly-owned unincorporated instrumentality of the Quapaw Nation, a federally recognized Indian tribe, also known as the Quapaw Tribe of Oklahoma (O-Gah-Pah), In favor of International Bank of Commerce, an Oklahoma state banking corporation, Lender* (marked at bottom left as “{1967146;5}” and at top right as “Confidential Draft 5/28/19”);
18. *Grant of Security Interest in United States Trademarks* (marked at bottom left as “{1968966;}” and at top right as “Confidential Draft 5/28/19”);
19. *Joinder Agreement – Additional Secured Obligations* (marked at bottom left as “{1969062;2}” and at top right as “Confidential Draft 5/28/19”);
20. *Joinder Agreement – Additional Secured Obligations* (marked at bottom left as “{1968960;3}” and at top right as “Confidential Draft 5/28/19”);
21. *Additional Secured Obligations Designation* (marked at bottom left as “{1968958;}” and at top right as “Confidential Draft 5/28/19”);
22. *Additional Secured Obligations Designation* (marked at bottom left as “{1969063;}” and at top right as “Confidential Draft 5/28/19”);
23. *Reaffirmation Agreement* (marked at bottom left as “{1969065;2}” and at top right as “Confidential Draft 5/28/19”); and
24. *Reaffirmation Agreement* (marked at bottom left as “{1968959;2}” and at top right as “Confidential Draft 5/28/19”).

The 2019 Transaction 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](http://www.nigc.gov)>. Applying the same analysis here, it is my opinion that, collectively, the 2019 Transaction 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 Transaction 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 Transaction Documents change in any material way prior to closing or are inconsistent with the assumptions made herein. Further, this opinion is limited to the aforementioned 2019 Transaction 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

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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 that reads "Michael Hoenig". The signature is fluid and cursive, with a long horizontal line extending to the right.

Michael Hoenig  
General Counsel