



February 25, 2014

*By U.S. mail and email*

Myrna Warrington, Chairwoman  
Menominee Indian Gaming Authority  
P.O. Box 760  
Keshena, WI 54135

Re: Review of financing documents for the Menominee Indian Gaming Authority

Dear Ms. Warrington:

This letter responds to a November 5, 2013<sup>1</sup> request on behalf of the Menominee Indian Gaming Authority and Wisconsin Bank and Trust for the National Indian Gaming Commission's Office of General Counsel to review financing agreements between the parties. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the financing documents violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions (collectively, "the Financing Documents") all of which are unexecuted, but were represented to be in substantially final form:

- Construction Loan Agreement, (Draft 1/28/2014. Doc. No. dms.us.52945982.08)
- Promissory Note (Draft 11/05/2013)
- Amended and Restated Security Agreement (Draft 11/05/2013)
- Amended and Restated Springing Depository Agreement (Draft 11/05/2013. Doc. No. dms.us.52959361.03.)
- Consent and Non-Impairment Agreement (Draft 11/05/2013. Doc. No. dms.us.52959280.03)

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<sup>1</sup> Supplemented with additional documents on November 20, 2013 and January 28, 2014.

- Construction Disbursing Agreement (Draft 1/28/2014. Doc. No. dms.us.53117341.04)
- Control Agreement Regarding Deposit Accounts (Draft 1/28/2014. Doc. No. dms.us.53111764.06)
- Intercreditor Agreement (Draft 11/20/13. Doc. No. dms.us.53085663.04)
- Amended and Restated Construction Loan Agreement (Draft 1/28/2014. Doc. No. dms.us.53078806.07)

The Financing Documents submitted by the Tribe contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. See [www.nigc.gov/Reading\\_Room/Management\\_Review\\_Letters.aspx](http://www.nigc.gov/Reading_Room/Management_Review_Letters.aspx). Applying the same analysis here, it is my opinion that the Financing Documents are not management contracts and do not require the approval of the NIGC Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the drafts are represented to be in substantially final form, and if the Financing Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Documents listed above. This opinion does not include or extend to any other agreements not submitted for review.

I anticipate that this letter will be the subject of Freedom of Information Act (FOIA) requests. Since we believe that some of the information in this letter may fall within FOIA exemption 4 (25 U.S.C. § 552(b)(4)), which applies to commercial or financial information that is privileged or confidential, the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

If you have any questions, please contact NIGC Staff Attorney Jennifer Lawson at (202) 632-7003.

Sincerely,



Eric Shepard  
Acting General Counsel

cc: John Wilhelmi, Counsel to MIGA and the Tribe  
Aaron Harkins, Counsel to Wisconsin Bank and Trust