



December 9, 2020

VIA E-MAIL

Jordan D. Joaquin, President
Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona
350 Picacho Road
Yuma, AZ 85365

**Re: Review of Transaction Documents between Fort Yuma Quechan Indian Tribe
and Bank of America**

President Joaquin:

This letter is a response to the Transaction Documents submitted by the Fort Yuma Quechan Indian Tribe (Tribe) and Bank of American (Lender) to the National Indian Gaming Commission's (NIGC) Office of General Counsel for review (collectively, the "Transaction Documents").

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

In my review, I considered the following Transaction Documents, which are unexecuted but were represented to be in substantially final form:

1. Term Note (NIGC Submission 11-11-2020) Doc No. US. 113689576.02;
2. Amended and Restated Security Agreement (NIGC Submission 11-11-2020) Doc No. US.113689576.02;
3. Main Street Term Loan Credit Agreement and included Principal Terms Agreement and Borrower's Certifications and Covenants (NIGC Submission 11-30-2020) Doc No. US.129868007.08;
4. Amended and Restated Intercreditor and Collateral Agency Agreement (NIGC Submission 11-30-2020) Doc No. US.130033342.03;
5. Second Amendment to Credit Agreement (NIGC Submission 11-30-2020) Doc No. 128757501.03;
6. As Amended Credit Agreement (Annex A to Second Amendment) (NIGC Submission 11-30-2020) Doc No. 129778896.04;

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7. Third Amendment to Credit Agreement (NIGC Submission 11-30-2020) Doc No. Us.130112530.03;
8. As Amended Credit Agreement (Annex A to Third Amendment) (NIGC Submission 11-30-2020) Doc No. 130136825.04;
9. Annex B to Credit Agreement (NIGC Submission 11-11-2020) Doc No.130071074.02; and
10. Annex C to Credit Agreement (NIGC Submission 11-11-2020) Doc No. US.130068971.02.

The Transaction 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 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. Moreover, the Office of General Counsel has already reviewed the certifications and covenants of the Main Street Lending Program and issued a declination letter to the Federal Reserve Bank, which is also available on the NIGC's website.

It is my understanding that the Transaction Documents are in substantially final form, and if the Transaction 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 Transaction 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.¹ 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),² 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*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ 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.⁵ If you need any additional guidance regarding potential grounds for

¹ 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 139 S.Ct. 2356 (2019).

⁴ 25 C.F.R. § 517.7(d).

⁵ *Id.*

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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: Robert A. Rosette, Esq. via e-mail at: rosette@rosettelaw.com;
Nicole St. Germain, Esq. via e-mail at: nstgermain@rosettelaw.com