



January 12, 2021

***VIA EMAIL***

Helga M. Woods  
13 Crow Hill Road  
Uncasville, CT 06382

**Re: Review of loan documents for the Mohegan Tribe**

Dear Ms. Woods:

This letter responds to your December 18, 2020 request for the National Indian Gaming Commission's Office of General Counsel to review loan documents involving the Mohegan Tribal Gaming Authority. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the loan 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 Loan Documents") all of which are unexecuted, but were represented to be in substantially final form:

- Purchase Agreement (LW Draft 12/11/2020; NIGC Submission Draft; W/3912409v2)
- Indenture (WLRK Draft 12/18/2020; NIGC Submission Draft 12/18/2020; W/3915517v7)
  - Exhibit A – Form of Note
  - Exhibit B – Form of Certificate Transfer
  - Exhibit C – Form of Certificate of Exchange
  - Exhibit D – Form of Certificate from Acquiring Institutional Accredited Investor
  - Exhibit E – Form of Supplemental Indenture to be delivered by Subsequent Guarantors
- Collateral Trust Agreement (LW Draft 12/28/20; NIGC Submission Draft; US-DOCS\120181233.3)
- Guaranty (First Lien Credit Agreement) (WLRK Draft: 12/30/2020; NIGC Submission Draft; W/3923344v9)
- First Lien Pledge Agreement (WLRK Draft: 12/30/2020; NIGC Submission Draft; W/3923346v13)
- First Lien Security Agreement (WLRK Draft: 12/30/2020; NIGC Submission Draft; W/3923348v15)

- Second Lien Pledge Agreement (WLRK Draft: 12/30/2020; NIGC Submission Draft; W/3924113v4)
- Second Lien Security Agreement (WLRK Draft: 12/30/2020; NIGC Submission Draft; W/3924130v4)
- First Lien Open-End Leasehold Mortgage Deed, Assignment of Leases and Rents and Security Agreement (WLRK Draft: 12/30/2020; W/3924348v7)
- Second Lien Open-End Leasehold Mortgage Deed, Assignment of Leases and Rents and Security Agreement (WLRK Draft: 12/30/2020; W/3924359v6)
- Deposit Account Control Agreement (WLRK Draft: 12/31/2020; W/3924753v5)
- Credit Agreement (WLRK Draft: 1/4/2021; W/3921677v15)

The Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, opinion letters for which are available on the NIGC's website. Applying the same analysis here, it is my opinion that 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 drafts are represented to be in substantially final form, and if the Loan 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 Loan Documents listed above. This opinion 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.<sup>1</sup> 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),<sup>2</sup> please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter**. After this time elapses, the letter will be made public and objections will no longer be considered.<sup>5</sup> 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>.

---

<sup>1</sup> See 25 C.F.R. § 517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 139 S. Ct. 2356 (2019).

<sup>4</sup> See 25 C.F.R. § 517.7(d).

<sup>5</sup> *Id.*

Letter to Helga M. Woods  
Re: Review of loan documents for the Mohegan Tribe  
January 12, 2021  
Page 3 of 3

If you have any questions, please contact NIGC Staff Attorney Steve Iverson at (202) 632-7003 or by email at [steven\\_iverson@nigc.gov](mailto:steven_iverson@nigc.gov).

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is written in a cursive style with a large, stylized "H" and a long, sweeping underline.

Michael Hoenig  
General Counsel