



July 23, 2021

VIA EMAIL

Lisa Koop Gunn
Attorney, Tulalip Tribes
6406 Marine Dr.
Tulalip, WA 98271

**Re: Review of financing agreement between KeyBank, N. A.
& Tulalip Tribes of Washington**

Dear Ms. Koop Gunn:

This letter responds to your request on behalf of Tulalip Tribes of Washington for the National Indian Gaming Commission's Office of General Counsel to review financing documents between Tulalip Tribes of Washington and KeyBank, N.A. Specifically, you asked for an opinion whether the agreement is a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreement violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

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

- Credit Agreement – Marked as: NIGC Submission Draft March 30, 2021 in upper right-hand corner; "US. 131581851.06" in lower left-hand corner.
- Security Agreement – Marked as: NIGC Submission Draft March 30, 2021 in upper right-hand corner; US. 131498489.03 in lower left-hand corner.
- Deposit Account Control Agreement – Agent & KeyBank National Assoc – Marked as: NIGC Submission Draft Dated April 28, 2021 in upper right-hand corner; Springing DACA, Tulalip Gaming Organization in lower left-hand corner; NH2021-2106082335-763239_0.1 in lower right-hand corner.
- Deposit Account Control Agreement – Agent & Wells Fargo Bank – Marked as: NIGC Submission Draft Dated April 28, 2021 in upper right-hand corner; DACA-STD-ARAN (Revised 03-15-10) #83480684_v6 in lower left-hand corner.
- Securities Account Control Agreement - Agent & KeyBank National Assoc – Marked as: NIGC Submission Draft Dated April 28, 2021 in upper right-hand corner.
- Securities Account Control – Consent Agreement - Agent & Wells Fargo Securities, Wells Fargo Bank, N. A. – Marked as: NIGC Submission Draft Dated April 28, 2021 in upper right-hand corner.

Letter to Lisa Koop Gunn

Re: Review of financing agreement between KeyBank, N. A. & Tulalip Tribes of Washington

July 23, 2021

Page 2 of 2

- Securities Account Control Agreement – U.S. Bank National Assoc. – Marked as: NIGC Submission Draft Dated April 28, 2021 in upper right-hand corner.
- Fee Letter – Marked as: DocuSign Envelope ID: C2294AAA-E0C2-4043-8015-63A6A03ECA1D in upper left-hand corner, Dated February 16, 2021.

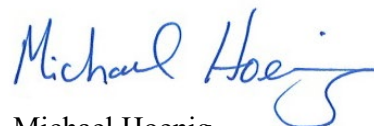
The Financing Agreement contains terms similar to other agreements the Office of General Counsel has reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the Financing Agreement is not a management contract and does not require the approval of the Chairman. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

It is my understanding the Financing Agreement is represented to be in substantially final form with respect to terms affecting this opinion. If such terms change in any material way prior to closing or are inconsistent with the assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Agreement listed above. This opinion does not include or extend to any other agreements or documents not submitted for review.

Please note it is my intent 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, 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, 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 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 NIGC Staff Attorney Mary Modrich-Alvarado at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Townsend Hyatt (email: thyatt@orrick.com)