



October 22, 2021

***VIA E-MAIL***

Leander Bergen,  
Corporate Legal Counsel  
Laguna Development Corporation  
14500 Central Ave. SW, I-40  
Albuquerque, NM 87121

Re: Review of Loan Documents for the Laguna Development Corporation

Dear Mr. Bergen:

This letter responds to your September 16, 2021 request on behalf of the Laguna Development Corporation for the Office of General Counsel, National Indian Gaming Commission, to review a proposed Credit Agreement and related financing documents between Laguna Development Corporation and BOKF, NA dba Bank of Albuquerque (“Loan Documents.” Specifically, you have asked for my opinion whether the Loan Documents constitute a management contract or collateral agreement to a management contract requiring the NIGC Chair’s approval under the Indian Gaming Regulatory Act, and whether they violate IGRA’s requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following Loan Documents that you submitted:

- 1) Credit Agreement (DRAFT 10/20/21, marked at bottom left as “4819-3370-9807”), with the following exhibits <sup>1</sup>:
  - Exhibit A [Intentionally Left Blank]
  - Exhibit B [Intentionally Left Blank]
  - Exhibit C Commitments and Addresses
  - Exhibit D-1 Construction Advance Request
  - Exhibit D-2 [Intentionally Left Blank]
  - Exhibit E [Intentionally Left Blank]
  - Exhibit F Certificate of Officer as to Financial Statements
  - Exhibit G Form of Assignment and Assumption

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<sup>1</sup> As indicated above, in the October 20, 2021 draft, 4 listed exhibits to the Credit Agreement, A. B. D-2, and E, are marked “Intentionally Left Blank.” The Agreement’s index also lists 20 schedules, which were not include in the Pueblo’s submissions.

○ Exhibit H Ellis Park Property Description

- 2) Construction Facility Promissory Note (NIGC Draft 9-15-2021, marked at bottom left as “4813-3651-6347”).
- 3) Term Loan Promissory Note (NIGC Draft 9-15-2021, marked at bottom left as “4844-4062-8987”).
- 4) Security Agreement (DRAFT 10/6/21, marked at bottom left as “4847-4632-1135”)
- 5) Subordination Agreement between the Pueblo and BOKF (NIGC Draft 9-15-2021; identifying numbers at bottom left are obliterated by footer and illegible).
- 6) Bank Deposit Account Control Agreement (NIGC Draft 9-15-2021, marked at bottom left as “4831-8069-9387”).

I also considered a Fee Letter from BOKF to Laguna Development Corporation dated May 11, 2021.

The Loan Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed, opinion letters for which are available on the NIGC website. Applying the same analysis here, it is my opinion that the Loan Documents are not management contracts or collateral agreements to a management contract, and do not require the approval of the Chair. It is also my opinion that the Loan Documents do not violate IGRA’s sole proprietary interest requirement.

It is my understanding that the Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion. If they change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements or documents 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>2</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>3</sup> please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.<sup>4</sup> Any claim of confidentiality should also be supported with “a statement or certification by an officer or authorized representative of the submitter.”<sup>5</sup> Please submit any written objection to

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<sup>2</sup> See 25 C.F.R. § 517.7(c).

<sup>3</sup> 5 U.S.C. § 552(b)(4),

<sup>4</sup> 139 S. Ct. 2356 (2019)

<sup>5</sup> See 25 C.F.R. § 517.7(d).

Letter to Leander Bergen. Esq.

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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>6</sup>

If you have any questions, please contact Staff Attorney, Barbara Marvin, at (202) 302-0815.

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 horizontal stroke at the end.

Michael Hoenig  
General Counsel

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<sup>6</sup> *Id.*