



June 22, 2023

**VIA EMAIL**

Rob Roy Smith, Esq.  
Kilpatrick, Townsend & Stockton LLP  
1420 Fifth Avenue, Suite 3700  
Seattle, WA 98101

**Re: Review of the 2023 Credit Documents for the Shawnee Tribe**

Dear Mr. Smith:

This letter responds to your February 8, 2023 request, on behalf of the Shawnee Development LLC, a tribal limited liability company wholly owned by the Shawnee Tribe, a federally recognized Indian tribe, for the National Indian Gaming Commission, Office of General Counsel, to review certain transaction documents and to provide an opinion as to whether or not these transaction documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act of 1988. You have also asked for my opinion as to whether or not the transaction documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the 2023 Credit Documents"):

- *Credit Agreement Dated as of [ ], 2023 among Shawnee Development, LLC, as the Borrower, Shawnee Tribe, a federally recognized Indian tribe, and BOKF, NA dba Bank of Oklahoma, as Lender* (marked at top right as "NIGC Submission Draft 4.5.2023," and at bottom left as "US2008 21785693 2");
- *Exhibit A [Form of] Assignment of Construction Documents* (marked at top right as "NIGC Submission Draft 2.8.2023");
- *Exhibit D Form of Draw Term Note* (marked at top right as "NIGC Submission Draft 2.8.2023");
- *Security Agreement among Shawnee Development, LLC, as Borrower and a Grantor and Each of the Other Grantors Party Hereto From Time to Time, as Grantors, and BOKF, NA dba Bank of Oklahoma, as Secured Party, Dated as of [ ], 2023* (marked at top right as "NIGC Submission Draft 2.8.2023");
- *Intellectual Property Security Agreement* (marked at top right as "NIGC Submission Draft 2.8.2023");

Rob Roy Smith, Esq.

Re: Review of the 2023 Credit Documents for the Shawnee Tribe

Date: June 22, 2023

Page 2 of 3

- *Lease Consent, Estoppel and Agreement* (marked at top right as “NIGC Submission Draft 2.8.2023”);
- *Subordination, Non-Disturbance and Attornment Agreement by Shawnee Development, LLC, a tribal limited liability company formed under the Shawnee Tribe Limited Liability Company Act, as Tenant, Global Gaming GM Development, LLC, an Oklahoma limited liability company, as Landlord and BOKF, NA, dba Bank of Oklahoma, a national banking association, as Lender* (marked at top right as “NIGC Submission Draft 2.8.2023”);
- *Leasehold Mortgage, Assignment of Rents, Security Agreement, Financing Statement and Fixture Filing With Power of Sale by Shawnee Development, LLC, Mortgagor, to BOKF, NA dba Bank of Oklahoma, Mortgagee, \_\_, 2023* (marked at top right as “NIGC Submission Draft 2.8.2023”);
- *Subordination of Management Agreement* (marked at top right as “NIGC Submission Draft 2.8.2023 Revised 3.28.2023”);
- *Subordination of Hotel Management Agreement* (marked at top right as “NIGC Submission Draft 2.8.2023 Revised 3.28.2023”); and
- *Assignment of Development Agreement and Subordination of Development Agreement and Fees* (marked at top right as “NIGC Submission Draft 2.8.2023”).

The 2023 Credit Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Applying the same analysis here, it is my opinion that the 2023 Credit 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 2023 Credit Documents are represented to be in substantially final form, and any further changes will not be material to OGC’s analysis. This opinion shall not apply if the 2023 Credit Documents change in any material manner prior to closing or are inconsistent with the assumptions made herein. Further, this opinion is limited to the aforementioned 2023 Credit Documents and 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 the information was voluntarily submitted and, as such, 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

---

<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).

Rob Roy Smith, Esq.  
Re: Review of the 2023 Credit Documents for the Shawnee Tribe  
Date: June 22, 2023  
Page 3 of 3

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>>.

If you have any questions, please contact Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Rea Cisneros  
General Counsel (Acting)

cc: Robert Shaw, Esq.

---

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

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