



October 21, 2008

Via U.S. Mail and facsimile

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RE: First Amendment and Exhibit A to the Loan Agreement by and between
American Gaming Systems LLC and Sac & Fox Nation Business Enterprises Inc.

Dear Ms. Noble and Messrs. Norman and Louden:

On September 30, 2008, Mr. Norman, on behalf of the Sac & Fox Nation of Oklahoma (Nation), forwarded a draft agreement entitled "First Amendment and Exhibit A to the Loan Agreement by and between American Gaming Systems LLC and Sac & Fox Nation Business Enterprises Inc." (Amendment to original loan agreement). This proposed amendment came in response to my September 24, 2008 letter regarding the parties' original loan agreement and attached security provisions. In that letter, I provided my opinion that provisions of the original loan agreement and security provisions constituted management and requested that the parties amend the agreements accordingly. *See* Letter to Ms. Noble and Messrs. Norman and Louden, from Penny J. Coleman (Sept. 24, 2008).

Specifically, original loan agreement and security provisions constituted management in two ways. First, the original loan agreement failed to exclude operating expenses from secured gaming revenues. Upon default, the receiver would have control over the gaming operation's operating expenses. *Id.* Second, the security provisions failed

to delineate between those fixtures that might constitute real property and those that would not, and thus appeared to provide AGS impermissibly with a security interest in the Nation's real property. *Id.*

The proposed amendment to the original loan agreement addresses the first concern by inserting the clause "excluding operating expenses" into the definition of casino revenue. Casino revenue is defined as:

All receipts, revenues, and rents derived from the Casino Operations or otherwise attributable to the Casino Facility, excluding operating expenses, whether now existing or hereafter existing, including all receipts from gaming, from food, beverage, restaurant and other concessions derived therefrom; and all receipts of the net proceeds of insurance obtained by the Borrower with respect to either the Casino Operations or the Casino Facility.

See First Amendment to the Loan Agreement of August 17, 2007 by and between American Gaming Systems LLC and Sac & Fox Nation Business Enterprises LLC §§ 2.1, 4.3. Because the operating expenses are excluded from the definition of casino revenues in this proposed amendment, AGS or the receiver has no security interest in operating expenses in the event of default. This change alleviates my previous concern.

Further, the proposed amendment alleviates my second concerns by clarifying which fixtures constitute real property and which do not. The proposed definition states that *Furniture, Fixtures, and Equipment* means:

Personal property including furniture, trade fixtures, and other equipment having no permanent connection to real property, or to the structure of a building or utilities.

See First Amendment to the Loan Agreement of August 17, 2007. *See* Sac & Fox Casino Security Agreement § 2.2. As such, the Amendment provides no security interest in real property.

After reviewing this proposed amendment to the original loan agreement and security provisions, I find it addresses all of my stated concerns and that nothing in the revised agreements would constitute management under IGRA. 25 U.S.C. § 2701 *et seq.* Thus, I find no reason for further review or approval by the Chairman.

Sincerely,



Penny J. Coleman
Acting General Counsel