EXHIBIT M

BIG SANDY RANCHERIA
BAND OF WESTERN MONO INDIANS

GAMING COMMISSION

December 10, 2009

Brownstone LLC.
American Vantage Companies
ATTN: Ron Tassanari
P.O. Box 81920
Las Vegas, NV. 89180

To Whom It May Concern:

The Big Sandy Rancheria Gaming Commission has received information of your company doing business related to Gaming with Big Sandy Rancheria and therefore the Big Sandy Rancheria Gaming Commission is requiring an application for your company to be on file with the Gaming Commission.

This letter is in reference to submitting a vendor application to all vendors whom provide a service to the Big Sandy Rancheria for a finding of suitability. The Big Sandy Rancheria Gaming Commission is the regulatory body to ensure compliance with the Indian Gaming Regulatory Act (IGRA), Tribal/State Compact, Big Sandy Rancheria Tribal Ordinance and Tribal Regulations regarding vendors.

Please refer to the schedule below to determine your application fee payable to Big Sandy Rancheria Gaming Commission.

Business / Vendor Category
Management / Investment Entities[1], Gaming Contractors[2] and Non-Gaming Contractors[3].

$1	-	$4,999	Register with Big Sandy Rancheria Gaming Commission
$5,000	-	$9,999	3% annual sales with Mono Wind Casino.
$10,000	-	$24,999	4% annual sales with Mono Wind Casino
$25,000	-	$99,999	5% annual sales with Mono Wind Casino
$100,000	-	$249,999	$6,000 Flat rate
$250,000	-	$499,999	$7,000 Flat rate
$500,000	-	and over	$8,000 Flat rate

(Fee equals the total amount of annual sales within a 12-month period-actual or foreseen amount)

[1] Any individual or entity extending financing that is commercial lending institution, a tribal government, or the federal government is not required to be licensed.
[2] Individuals or entities who supply legal and accounting services are not required to be licensed.
[3] The Gaming Commission reserves the right, in its sole discretion, to waive the licensing requirements for suppliers, distributors, or manufactures providing goods or services of no more than $25,000 in value in any twelve month period.

The application consists of a two (2)-part application. Part 1- Business: This application is for the business. Please answer every question. If for any reason a question does not pertain or relate to your business, please note "Not Applicable" (to show the question was not overlooked).

Part 2- Principals: Principals are defined as, owning 10% or more of the company. A application must be completed per principal (please feel free to make additional copies for each principal).

The Big Sandy Rancheria Gaming Commission will review all applications and conduct a preliminary background on the business and individuals. The Big Sandy Rancheria Gaming Commission will then issue a Temporary Vendor License if no adverse information is found during the preliminary background. At which time, Big Sandy Rancheria Gaming Commission determines the company is in good standing and has no outside influence, the Gaming Commission may enter a finding of suitability.

Please submit the applications and fees (if applicable) to the Big Sandy Rancheria Gaming Commission no later than ten (10) consecutive days of receiving the application. Please note, if you are not cooperative in submitting information to the Big Sandy Rancheria Gaming Commission, the Big Sandy Rancheria Gaming Commission will inform the Big Sandy Rancheria, they cannot use your company for any future purchases or services.

If you have any questions, please call me at 559-855-4003 ext. 208 Monday- Friday.

Respectfully,

Mark Powless
Marlene Johnson
Big Sandy Rancheria
Gaming Commission

EXHIBIT N

BROWNSTONE LLC

A SUBSIDIARY OF AMERICAN VANTAGE COMPANIES (AVCS.PK)

Phone: (702) 227-9800 -- Fax: (702) 227-8525
P.O. Box 81920, Las Vegas, NV 89180

January 21, 2010

Big Sandy Rancheria Band of Western Mono Indians
Gaming Commission
Attention: Mark Powless and Marlene Johnson
P. O. Box 129
Auberry, CA 93602

Dear Mr. Powless and Ms. Johnson,

We received the request from the Big Sandy Rancheria Gaming Commission requesting completion of an "Application for Finding of Suitability" for Brownstone, LLC and its principals.

As discussed below, our Development Agreement does not require Brownstone, LLC to obtain a vendor license to provide services for the new development project nor do we currently or have we in the past, provided any "Gaming Resource Supplier" services (as defined per Section 2.12 of the 1999 California Compact) to the Mono Wind Casino. As such, we did not immediately respond to the request assuming that the request had been sent in error.

Per Sections 5.01 (b) and (i) the March 25, 2007 "Development Agreement" between Big Sandy Rancheria Band of Western Mono Indians, Big Sandy Entertainment Authority and Brownstone, LLC:

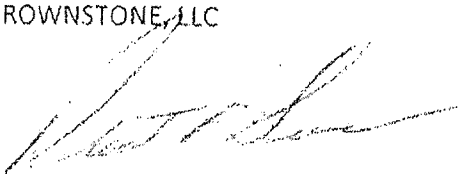
- "...no approval of any tribal Governmental Authority, including, without limitation, any tribal Gaming Authority is required for the execution, delivery and performance of this Agreement. All ordinances, resolutions and laws of the Tribe pertaining to or relating to the Tribe, the Gaming Operations, and the transactions contemplated hereby, have been duly enacted and adopted, as necessary by the Tribe, in accordance with all applicable ordinances, acts, resolutions and laws of the Tribe.

- "...it is not necessary under the Tribal Law that Developer be licensed, qualified or entitled to carry on business in any jurisdiction by reason of the execution, delivery, performance or enforcement of any of this Agreement. Neither the Tribal Parties or any Related Party of the Tribe (including any Gaming Regulatory Authority of the Tribe) have adopted any law, rule, regulation, ordinance or resolution which requires Developer to be licensed, including any law, rule, regulation, ordinance or resolution pursuant to Sections 6.4.5 or 6.4.6 of the Compact or otherwise."

If any additional questions, please contact the Tribal legal counsel regarding the Brownstone, LLC Development Agreement contractual covenants.

Sincerely,

BROWNSTONE, LLC



Robert F. Gross
Chief Executive Officer

cc: Lewis & Roca, LLP -- Brownstone, LLC gaming counsel

EXHIBIT O

BIG SANDY RANCHERIA
Band of Western Mono Indians

GAMING COMMISSION

February 9, 2010

Brownstone LLC.
American Vantage Companies (AVCS.PK)
P.O. Box 81920
Las Vegas, NV. 89180

Dear Sirs:

Please be advised that the Big Sandy Rancheria Gaming Commission (BSRGC) has received your correspondence dated January 21, 2010, along with the explanation of why you failed to respond in a timely manner to the BSRGC's request for information. It is the understanding of the BSRGC that Brownstone LLC believed that the BSRGC was in error in requiring your company to submit an "Application for Finding of Suitability," therefore your company failed to submit information within the time period provided, which was ten (10) days from when the letter was received by Brownstone, LLC. Said request for information was received by your office on December 14, 2009. Up to this point the BSRGC has not received a completed "Application of Finding of Suitability" as requested.

The BSRGC has reviewed the letter dated January 21, 2010. The BSRGC has also performed a preliminary review of the documents identifying the business relationships that Brownstone, LLC entered into with the Big Sandy Rancheria Band of Western Mono Indians (BSR) and the Big Sandy Entertainment Authority (BSEA). The documents include a Credit Agreement dated March 25, 2007 in which Brownstone, LLC is the "Lender" and a Development Agreement dated March 25, 2007 in which Brownstone, LLC is the "Developer," along with a Memorandum of Understanding (MOU) dated January 16, 2007.

Pursuant to the **BIG SANDY RANCHERIA TRIBAL GAMING ORDINANCE**, the BSRGC is authorized as follows:

ARTICLE IX: SCOPE OF GAMING COMMISSION AUTHORITY:

> "a. Subject to the review and approval of the Tribe Council, the Commission shall have the power, duty, and primary responsibility to carry out Big Sandy's regulatory

responsibilities under this Ordinance and any applicable provisions of the Compact. ..The Commission may carry out these duties under provisions to include the following:

a.1. Inspect, examine and monitor gaming activities...including... the authority to inspect, examine, photocopy and audit all papers, books and records.

a.3. Conduct or cause to be conducted, investigations in connection with any gaming activity as may be necessary to determine compliance with applicable tribal, federal, or State law... or with any contracts, agreements, goods, services, events, incident or any other matters related to the gaming activities.

a.4. Conduct, or cause to be conducted, background investigations regarding any person in any way connected with any gaming activities... investors, contractor as, or others required to be licensed under standards established by Big Sandy, IGRA, or the Compact.

a. 5. Implement and administer a system of investigating, licensing, monitoring, reviewing, and license renewal for...gaming contractors and vendors, suppliers, investors and others connected with gaming activities...including the issuance of licenses to gaming facilities, individuals, and entities as required under tribal gaming regulations, IGRA, or the Compact...

a.6. Comply with any reporting requirements established under tribal gaming regulations, the compact and other applicable law, including IGRA.

a.7. Implement and monitor regulations in order to comply with the provisions of the IGRA and Compact. Ensure their effective enforcement in areas including: enforcement of relevant laws and rules; investigations; ... prevention of illegal activity within the facility or in respect to the gaming operation...

a.8. Impose gaming license fees, sanctions, fines, and conditions established by the Tribal Council and renew gaming licenses; deny, suspend or revoke gaming licenses; and issue temporary gaming licenses as appropriate under the provisions of tribal gaming regulations, IGRA, and the Compact.

The **Big Sandy Rancheria Band of Western Mono Indians Tribal Gaming Regulations** state as follows in regard to the BSRGC's authority and responsibility:

ARTICLE III: REGULATIONS; GCR001: GENERAL REGULATIONS

METHODS OF OPERATION

1.1 The Tribal Council, having the sole proprietary interest in and responsibility for the conduct of any gaming operation and all enterprises connected with gaming mandates and requires the Commission to provide oversight to the operation of the Casino through the protection of the integrity of all gaming activities.

Pursuant to Section 1.2.1, the BSRGC is authorized to ensure compliance with all relevant laws, regulations, and internal controls; and

1.10.1 Authorizes the Commission to review "... any contracts for Casino related supplies, services or concessions of $25,000.00 or more in any one year will require the review and approval of the Commission...

The Big Sandy Rancheria Gaming Commission has determined:

1. That the above identified documents that have been entered into between the BSR and BSEA with Brownstone LLC and the language within the documents signify a serious conflict of terms and laws between the Agreements , and the Big Sandy Rancheria Tribal Gaming Ordinance and the Big Sandy Rancheria Tribal Gaming Regulations and more specifically the Compact between the State of California and the Big Sandy Rancheria;

   The "Development Agreement" at Section 5.01 (b) (iii) and (i) (similar language can be found in the "Credit Agreement" at Section 2.02 (c) and section 2.08) does state:

   "...no approval of any tribal Governmental Authority, including, without limitation, any tribal Gaming Authority is required for the execution, delivery and performance of this Agreement. All ordinances, resolutions and laws of the Tribe pertaining to or relating to the Tribe, the Gaming Operations, and the transactions contemplated hereby, have been duly enacted and adopted, as necessary by the Tribe, in accordance with all applicable ordinances, acts, resolutions and laws of the Tribe." And

   "...it is not necessary under the Tribal Law that Developer be licensed, qualified or entitled to carry on business in any jurisdiction by reason of the execution, delivery, performance or enforcement of any of this Agreement. Neither the Tribal Parties or any Related Party of the Tribe (including any Gaming Regulatory Authority of the Tribe) have adopted any law, rule, regulation, ordinance or resolution pursuant to Sections 6.4.5 or 6.4.6 of the Compact or otherwise."

2. That the validity of a Development Agreement and/or a Credit Agreement that waives and/or exempts a group working or performing services in the gaming area from complying with ordinary and usual gaming regulatory requirements is in question. The Big Sandy Rancheria Gaming Commission is of the opinion that third parties cannot waive the requirements of the Tribal/State Gaming Compact (without approval of the State) as is stated in the Development Agreement at "Section 5.01 (b) (iii) and (i) and Credit Agreement Section 2.02 (c) and Section 2.08 therefore Brownstone is required to submit and complete the "Application for Finding of Suitability" as was requested by the BSRGC in compliance with the Compact Sections as follows:

COMPACT – 6.0 LICENSING

"Section 6.1. Gaming Ordinance and Regulations. All Gaming Activities conducted under this Gaming Compact shall... comply with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA , and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency.

"Section 6.4. Licensing Requirements and Procedures.
Section 6.4.1. Summary of Licensing Principals. All persons in any way connected with the Gaming Operation or Facility who are required to be licensed.... and any others required to be licensed under this Gaming Compact, including...Gaming Resource Suppliers, and any other person having a significant influence over the Gaming Operation must be licensed by the Tribal Gaming Agency..."

"Section 6.4.5. Gaming Resource Supplier. Any Gaming Resource Supplier who, directly , or indirectly , provides, has provided, or is deemed likely to provide at least twenty-five thousand dollars ($25,000) in Gaming Resources in any 12-month period, or who has received at least twenty-five thousand dollars ($25,000) in any consecutive 12-month period within the 24-month period immediately preceding application , shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution , or further sale, lease, or distribution, of any such Gaming Resources to or in connection with the Tribe's Operation, or Facility. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such review, the Tribal Gaming Agency shall require the Supplier to update all information provided in the previous application.... "

Section 6.4.6. Financial Sources. Any person extending financing, directly or indirectly, to the Tribe's Gaming Facility or Gaming Operation shall be licensed by the Tribal Gaming Agency prior to extending that financing...These licenses shall be reviewed at least every two years for continuing compliance. In connection with such review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application...Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of suitability by the State Gaming Agency. The tribe shall not enter into, or continue to make payments pursuant to; any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal...

Thus the Compact requires that Brownstone LLC, as both a Gaming Resource Supplier and a Financial Source, must be licensed by the BSRGC.

Therefore, the Big Sandy Rancheria Gaming Commission does hereby advise you that the failure of Brownstone LLC to submit an "Application for Finding of Suitability" is deemed in noncompliance with the above sections of the Compact. In addition, based upon the above determination of non-compliance, Brownstone LLC is to refrain from further contact with the Big Sandy Tribal Council or the Big Sandy Tribal Entertainment Authority in regard to discussions concerning the above mentioned Development and Credit Agreement.

Should you disagree with BSRGC's above determination please feel free to contact Mark Powless, Big Sandy Rancheria Gaming Commission Director.

Sincerely,

Mark Powless, Gaming Commission Director

Cc: Big Sandy Rancheria Tribal Council
John Peebles, Attorney, Big Sandy Rancheria Tribal Council
S. House, Attorney, Big Sandy Rancheria Gaming Commission
Marlene Johnson, Big Sandy Rancheria Gaming Commissioner
Bill Cornelius, Big Sandy Rancheria Gaming Commissioner
File

EXHIBIT P

BIG SANDY RANCHERIA

February 11, 2010

Brownstone LLC
American Vantage Companies (AVCS.PK)
P.O. Box 81920
Las Vegas, NV 89180

RE: Brownstone LLC

Dear Brownstone:

We are in receipt of a copy of the letter from the Big Sandy Rancheria Gaming Commission ("Gaming Commission"), dated February 9, 2010, to Brownstone LLC ("Brownstone") in which the Gaming Commission informed Brownstone of its determination that Brownstone's failure to submit an Application for Finding of Suitability violates the provisions of the compact between the Big Sandy Rancheria and the State of California. The Gaming Commission ordered Brownstone "to refrain from further contact with the Big Sandy Tribal Council or the Big Sandy Tribal Entertainment Authority in regard to discussions concerning the above mentioned Development and Credit Agreement".

Based on the Gaming Commission's directive and upon the advice of our counsel, we will not discuss with Brownstone issues concerning the Development Agreement or Credit Agreement until the Gaming Commission informs us the regulatory issues are resolved. Thank you for your understanding and cooperation in this matter.

Very truly yours,

Big Sandy Rancheria Tribal Council
Elizabeth D. Kipp
Tribal Chairperson

CC: John M. Peebles, Attorney, Big Sandy Rancheria Tribal Council
CC: Sharon House, Attorney, Big Sandy Rancheria Gaming Commission

37387 Auberry Mission Road ~ P.O. Box 337~ Auberry, California 93602
Phone: 559.855.4003 ~ Fax: 559.855.4129

EXHIBIT Q

BIG SANDY RANCHERIA

Band of Western Mono Indians

GAMING COMMISSION

March 9, 2010

MS. Penny Colman
Office of General Council
National Indian Gaming Commission
1441 L. Street N.W. Suite 9100
Washington D.C. 20005

The Big Sandy Rancheria Band of Western Mono Indians Gaming Commission request the National Indian Gaming Commission (NIGC) to conduct a review and provide guidance as to the attached documents as to whether or not said documents constitute a Management Contract as defined by the Indian Gaming Regulatory Act pursuant to IGRA, USC § 2771

Please review the following documents for the reasons stated above. Memorandum of Understanding, Development Agreement and Credit Agreement entered into between the Big Sandy Rancheria Band of Western Mono Indians, Big Sandy Entertainment Authority and Brownstone LLC.

Please note the gaming commission has in its possession signed documents with regard to the attached documents.

Sincerely,

Gaming Commission Director Mark A. Powless

P.O. Box 129 • Auberry, CA 93602, California 93602
Phone: 559.855.4003 • Fax: 559.855.4408

cc: Mr. John Hay, Office of General Council NIGC
Sharon House, Gaming Commission Attorney

P.O. Box 129 • Auberry, CA 93602, California 93602
Phone: 559.855.4003 • Fax: 559.855.4408

EXHIBIT R

July 2, 2010

Via Facsimile and U.S. Mail

Mark A. Powless, Director
Gaming Commission
Big Sandy Rancheria Band
Of Western Mono Indians
P.O. Box 129
Auberry, CA 93602
(559) 855-4408

Re: Opinion regarding development documents between Big Sandy Rancheria and Brownstone LLC

Dear Director Powless:

This letter responds to your request on behalf of the Big Sandy Rancheria ("Tribe") and the Big Sandy Entertainment Authority ("Authority") for the National Indian Gaming Commission's Office of General Counsel ("OGC") to review the executed development and financing documents specified below (collectively, the "Agreements"). Specifically, you asked for our opinion regarding whether the Agreements are management contracts requiring the NIGC Chairwoman's review and approval under the Indian Gaming Regulatory Act and whether the Agreements violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming operations. After careful review, it is my opinion that the Agreements are not management contracts requiring the review and approval of the Chairwoman and do not violate IGRA's sole proprietary interest requirement.

In my review, I considered the following, which were represented to be accurate reproductions of the executed documents:

- Memorandum of understanding ("MOU") between the Tribe and Brownstone LLC, dated January 16, 2007;
- Development agreement between the Tribe, the Authority, and Brownstone, an agreement for the development, financing, and construction of a gaming operation, dated March 25, 2007 ("Development Agreement");
- Credit Agreement between the Tribe, the Authority, and Brownstone for an initial financing loan of $500,000, dated March 25, 2007 ("Credit Agreement").

I also considered a June 16, 2010 opinion of the Tribe's legal counsel.

Briefly, by way of background, I understand the Tribe is planning to build a new casino with food and beverage space, hospitality, and recreational areas on the McCabe allotment near Friant, California. Brownstone is the developer of the gaming project. The financing for this will be provided in three stages: initial financing, bridge financing, and permanent financing. Brownstone provided the initial financing of $500,000 and will assist in arranging the bridge and permanent financing. Under the Credit Agreement, the Tribe is required to repay the initial financing upon obtaining bridge financing.

I understand that the Tribe has entered into bridge financing and that the initial financing was repaid. Additionally, the OGC is reviewing the bridge financing agreements separately from the Brownstone Agreements, so this opinion is limited only to the above-mentioned Agreements.

Authority

The authority of the NIGC to review and approve gaming-related contracts is limited by IGRA to management contracts and collateral agreements to management contracts to the extent that they implicate management. *Catskill Development LLC v. Park Place Entertainment Corp.*, No. 06-5860, 2008 U.S. App. LEXIS 21839 at *38 (2nd Cir. October 21, 2008) ("a collateral agreement is subject to agency approval under 25 C.F.R. § 533.7 only if it 'provides for management of all or part of a gaming operation'"); *Machal Inc. v. Jena Band of Choctaw Indians*, 387 F. Supp. 2d 659, 666 (W.D. La. 2005) ("collateral agreements are subject to approval by the NIGC, but only if that agreement 'relate[s] to the gaming activity'"). *Accord, Jena Band of Choctaw Indians v. Tri-Millennium Corp.*, 387 F. Supp. 2d 671, 678 (W.D. La. 2005); *United States ex rel. St. Regis Mohawk Tribe v. President R.C.-St. Regis Management Co.*, No. 7:02-CV-845, 2005 U.S. Dist. LEXIS 12456, at *3-*4, *9-*10 (N.D.N.Y. June 13, 2005), *aff'd on other grounds*, 451 F.3d 44 (2nd Cir. 2006).

The NIGC has defined the term *management contract* to mean "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation." 25 C.F.R. § 502.15. *Collateral agreement* is defined as "any contract, whether or not in writing, that is related either directly or indirectly, to a management contract, or any rights, duties or obligations created between a tribe (or any of its members, entities, organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor)." 25 C.F.R. § 502.5.

Though NIGC regulations do not define *management*, the term has its ordinary meaning. Again, management encompasses activities such as planning, organizing, directing, coordinating, and controlling. *See* attached *NIGC Bulletin No. 94-5*: "Approved Management Contracts v. Consulting Agreements (Unapproved Management Contracts are Void)." Accordingly, the definition of *primary management official* is "any person who has the authority to set up working policy for the gaming operation." 25 C.F.R. § 502.19(b)(2). Further, management employees are "those who formulate and effectuate management policies by expressing and making operative the decision of their employer." *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974). Whether particular employees are "managerial" is not controlled by an employee's job title.

Waldo v. M.S.P.B., 19 F. 3d 1395 (Fed. Cir. 1994). Rather, the question must be answered in terms of the employee's actual job responsibilities, authority and relationship to management. *Id.* At 1399. In essence, an employee can qualify as management if the employee actually has authority to take discretionary actions – a *de jure* manager – or recommends discretionary actions that are implemented by others possessing actual authority to control employer policy – a *de facto* manager. *Id.* at 1399 *citing N.L.R.B. v. Yeshiva*, 444 U.S. 672, 683 (1980).

If a contract requires the performance of any management activity with respect to all or part of the gaming operation, the contract is a management contract within the meaning of 25 U.S.C. § 2711 and requires the NIGC Chairwoman's approval. Management contracts not approved by the Chairwoman are void. 25 C.F.R. § 533.7; *Wells Fargo Bank, N.A. v. Lake of the Torches Economic Dev. Corp.*, No. 09-CV-768, 2010 U.S. Dist. LEXIS 1714 at *8-*9 (W.D. Wisc. January 11, 2010).

Further, no agreement may give a proprietary interest in any Indian gaming activity to any entity other than the tribe itself, except for certain individually owned gaming operations not at issue here. 25 U.S.C. § 2710(b)(2)(A); 25 U.S.C. § 2710(b)(4). Among IGRA's requirements is that "the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity." 25 U.S.C. § 2710(b)(2)(A). Under this section, if any entity other than a tribe possesses a proprietary interest in the gaming activity, gaming may not take place. *See also* 25 C.F.R. § 522.4(b)(1).

Proprietary interest is not defined in the IGRA or the NIGC's implementing regulations. However, it is defined in Black's Law Dictionary, 7th Edition (1999), as "the interest held by a property owner together with all appurtenant rights..." *Owner* is defined as "one who has the right to possess, use and convey something." *Id. Appurtenant* is defined as "belonging to; accessory or incident to..." *Id.* Reading these definitions together, a proprietary interest is ownership, with the right to possess, use, and convey something.

Additionally, the NIGC has provided a non-exhaustive list of arrangements that would violate the sole proprietary interest clause:

- an agreement whereby a vendor pay the tribe for the right to place gambling devices that are controlled by the vendor on the gaming floor;
- a security agreement whereby a tribe grants a security interest in a gaming operation, if such an interest would give a party other than the tribe the right to control gaming in the event of default by the tribe; and
- stock ownership in a tribal gaming operation, even by tribal members.

58 FR 5802, 5804 (Jan. 22, 1993).

Analysis

I am aware of the recent decision in *Wells Fargo v. Lake of the Torches* and the court's holding that any agreement in which receivership is a possible remedy upon default is a management contract. *See Wells Fargo v. Lake of the Torches*, at *11-*12. The court there found

a bond trust indenture to be a management contract in part because it contained a specific provision allowing for the appointment of a receiver upon default. *Id.* Moreover, the court specifically rejected Wells Fargo's argument that a receiver would not exercise managerial control because its sole function would be to ensure that the gaming operation deposited its revenues and paid its liabilities. *Id.* Specifically, the court stated: "[b]y forcing the Corporation [Lake of the Torches] to deposit its revenues and pay its liabilities, the receiver would in fact be exerting a form of managerial control since those monies could not be used for other purposes related to the operation of the Casino facility." *Id.* at *12. While I generally agree with the court's analysis, I do not think the circumstances here are the same.

None of the Agreements set out the appointment of a receiver as a specific remedy upon default. However, the Development Agreement provides that the Developer and the Tribal parties upon default may "exercise any other rights and remedies available to them under applicable law..." Development Agreement §§ 7.02 and 7.03. The Agreements are governed by the laws of the State of California. Development Agreement § 8.01 and Credit Agreement § 6.01. Those rights and remedies include the appointment of a receiver. However, to say that a clause that merely reserves to a creditor the rights available under the law makes the Agreements management contracts would produce undesirable results – many, if not most, development and financing agreements for Indian casinos would be deemed management contracts. It would also seem to go well beyond the intent of the parties, who have structured straightforward agreements.

More significantly, the Agreements themselves state that their provisions are to be read so as to exclude management:

> It is not the intent of the parties hereto that this Agreement, whether considered alone, or together with any other one or more documents, constitute a Management Contract within the meaning of IGRA or to allow any party other than the Tribe to have the "sole proprietary interest" in its Gaming Operation (a "SPI Violation"). Each of the Tribal Parties and Developer covenants that it shall not at any time assert, insist upon, or plead (as a defense or otherwise) or in any manner whatsoever claim or take the benefit or advantage of, that this Agreement constitutes a Management Contract within the meaning of IGRA or that this Agreement constitutes a SPI Violation. To the extent that any Gaming Authority (other than a Tribal Gaming Authority) or any federal or state court issues a final and non-appealable order that this Agreement, or any provision hereof, constitutes a Management Contract or a SPI Violation, each and every provision hereof shall be interpreted in a manner that does not cause this Agreement to constitute a Management Contract or an SPI Violation, whether considered alone, or together with any other one or more documents. In no event shall any provision of this Agreement be applied, or deemed in effect or enforceable, to the extent such provision allows any action or influence by Developer or any other person that constitutes management of gaming in violation of IGRA or an SPI Violation. This Section shall survive as an agreement separate and apart from the remainder of this Agreement in the event of any determination that any provision of this Agreement causes the Agreement to constitute a Management Contract or an SPI Violation within the meaning of IGRA

Development Agreement § 10.08. The Credit Agreement contains a substantively identical provision, § 8.09. The Development Agreement also expressly limits the remedies available on default to exclude the exercise of management by the Developer:

> The parties hereto acknowledge and agree that this Agreement and the other agreements and instruments contemplated hereby are not intended, and shall not be interpreted or construed, to: (a) provide for a right on the part of the Developer or any Related Party to manage (including, without limitation, the right to plan, organize, direct, coordinate or control) all or any part of the Gaming Activities; (b) constitute a "management contract" or a "collateral agreement" to a management contract within the meaning of IGRA; (c) deprive the Tribe of the sole proprietary interest and responsibility for the conduct of any gaming activity within the meaning of IGRA; (d) provide for exclusive or nearly exclusive proprietary control over tribal lands, or (e) encumber tribal lands.

Development Agreement § 10.13. The Credit Agreement contains a substantively identical provision, § 8.14.

Accordingly, the Agreements are fairly read to preclude the appointment of a receiver that would exert management control over the gaming facilities. Therefore, unlike the agreement in *Lake of the Torches*, the Agreements here lack the receivership provision that was one of the bases of the court's finding management there. *Wells Fargo v. Lake of the Torches*, at *11-*12.

I note finally that the Agreements allow recourse in default to "the assets and revenues derived from the Gaming Operations or any other casino facility operated by the Tribe in Fresno County, California, if any, other than the Mono Wind Casino." Development and Credit Agreements §§ 8.02(f) and 6.03(f), respectively. The only term defined in the Agreements is "gaming assets" which means "any now owned or hereafter acquired property that is used in, intended to be used in or associated with future Gaming Operations." Development and Credit Agreements §§ 9 and 8, respectively. Therefore, I assume that revenues refer to all gross gaming revenues of the operation.

Previous OGC opinions have posited that an agreement containing a security interest in a gaming facility's future gross revenues, without further limitation, authorizes management of the gaming facility. In January 2009, we provided guidance in the form of limiting language that would prevent a pledge of gross gaming revenues from resulting in a management contract. While this limiting language was developed subsequently to the execution of these Agreements, the Agreements do contain sufficient limiting language. See Development Agreement §10.13 and Credit Agreement §8.14. As such, the security interest in all assets and revenues in the Agreements does not make them management contracts.

I also conclude that the Agreements do not violate IGRA's sole proprietary interest provision. An area of concern when analyzing whether an entity other than the Tribe has a proprietary interest in a gaming operation is the compensation paid by the Tribe. The question is whether the compensation paid to the vendor is so large that it indicates an ownership interest rather than a reasonable measure of value for services provided or risks taken.

Here, the Agreements provide for a development fee, structuring fee, performance bonus, reimbursement of expenses, and repayment of the initial financing loan in principal and interest. Development Agreement §§ 4.01 and 4.02 and Credit Agreement § 1.04.

Under the Development Agreement, the parties agreed to a development fee equal to 6.0% of project costs. Development Agreement § 4.01(a). Project costs are defined as:

> The aggregate costs of developing, constructing, equipping and opening the Project, and specifically includes all "hard" and "soft" costs, including but not limited to, the fees, costs and expenses of all materials, furniture, fixtures, equipment, contractors, architects, designers, attorneys and other professionals and consultants hired by or on behalf of the Tribe or its Affiliates in connection with the development, construction, equipping and opening of the Project.

Development Agreement § 9. Development agreements usually provide for a 4-6% fee as a percentage of project costs and this development fee is well within that range. Therefore, the development fee here does not constitute a proprietary interest in the Tribe's gaming operations.

The structuring fee in the Development Agreement is 2.5% of the gross amount of the initial, bridge and permanent financing. Development Agreement § 4.01(b). While this fee is higher than others we have reviewed, it is based on a percentage of gross financing and not on the gaming operations revenues or profitability. It is more usual to see a structuring fee of 1%; however, during the current economic conditions it is not surprising to see a negotiated higher fee rate, as is the case here.

The performance bonus is up to $2,500,000, depending on the timing between obtaining permanent financing and the opening of the gaming facility. Development Agreement § 4.01(c). This provision does not rise to the level of a proprietary interest; it merely appears to be an incentive for the Developer to move forward with the project.

Finally, reimbursement of the developer's expenses as defined in § 4.02 is reasonable. Additionally, the interest, defined as "the Effective Rate which is equal to bridge financing rate, and in all other events 13.0%" Credit Agreement §§ 1.02(a) and 8.0, is not excessive nor does it violate the sole proprietary interest of the Tribe.

More importantly, upon an event of default, the developer does not obtain a right to control the gaming operations under the Credit Agreement or any other Agreement. *See* Credit Agreement § 8.14. The Development Agreement contains a substantially similar provision at § 10.13. Nothing about the transaction indicates it is anything other than an agreement for the development, financing, and construction of a gaming operation and the proprietary interest in the gaming remains solely with the Tribe. Therefore, the fees and interest provisions in the Agreements do not provide the Developer an ownership interest and do not violate the sole proprietary interest requirements under IGRA.

Other Concerns

While the Agreements are not management contracts that require the Chairwoman's review and approval and do not violate the sole proprietary interest requirements of IGRA, I am concerned about the provisions in the Agreements pertaining to the licensing of Brownstone. These provisions assert that Brownstone is not required to be licensed by the Tribe:

> Except to the extent Sections 6.4.5 or 6.4.6 of the Compact may be deemed by a Person other then the Tribal Parties or any Related Party of the Tribe (including any Gaming Regulatory Authority of the Tribe) to require Developer to be licensed, it is not necessary under the Tribal Law that Developer be licensed, qualified or entitled to carry on business in any jurisdiction by reason of the execution, delivery, performance or enforcement of any of this Agreement. Neither the Tribal Parties or any Related Party of the Tribe (including the Gaming Regulatory Authority of the Tribe) have adopted any law, rule, regulation, ordinance or resolution which requires Developer to be licensed, including any law, rule regulation, ordinance or resolution pursuant to Sections 6.4.5 or 6.4.6 of the Compact or otherwise.

Development Agreement § 5.01(i). The Credit Agreement contains substantially the same provision, § 2.08.

First, it appears from the Tribe's gaming ordinance that Brownstone must be licensed. Under the ordinance, the gaming commission authority has a duty to:

> 4. Conduct, or cause to be conducted, background investigations regarding any person in any way connected with any gaming activities and issue licenses, at a minimum, to all key employees and primary management officials according to requirements at least as stringent as those required by 25 CFR §§ 556 and 558, as well as any employees, investors, contractors or others required to be licensed under standards established by Big Sandy, IGRA and the Compact.

Article IX(a). The ordinance was approved by the NIGC Chairman on November 27, 2002. The ordinance requires the Authority to license anyone required to be licensed by IGRA or the compact.

Under Section 6 of the Tribe's compact with California, Brownstone would be required to be licensed as it is both a "gaming resource supplier" and a "financial source" because it is providing all the necessary furnishings and equipment for the gaming facility and it provided initial financing of $500,000. Tribal-State Compact §§ 6.4.5 and 6.4.6. Additionally, under 25 U.S.C. § 2710(d)(1)(C) class III gaming must be conducted in conformance with a Tribal-State compact. Moreover, under 25 U.S.C. § 2713 the Chairman has the authority to enforce the provisions of IGRA for any violation of IGRA, NIGC regulations, or an approved tribal gaming ordinance.

The compact and, therefore, the Development Agreement, require Brownstone to be licensed to supply or finance the Tribe. *See* Tribal-State Compact §§ 6.4.5 and 6.4.6. Consequently, the Tribe's gaming ordinance also requires Brownstone to be licensed. Big Sandy Ordinance 02-10 Article IX(a). I understand that, to date, Brownstone has not undergone the necessary licensing requirements. Failure of Brownstone to become licensed is a violation of the compact and the Tribe's gaming ordinance, which must be remedied.

Conclusion

The Agreements can be fairly read to preclude management in the event of default because nothing in the provisions of the Agreements gives to the Developer the discretion or authority to manage any part of the Tribe's gaming operations. Therefore, it is my opinion that the Agreements are not management contracts requiring the approval of the NIGC Chairwoman, nor do they violate IGRA's sole proprietary interest requirement.

I anticipate that this letter will be the subject of Freedom of Information Act (FOIA) requests. Since we believe that some of the information contained herein may fall within FOIA Exemption 4(c), which applies to confidential proprietary information, the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

I am also sending a copy of the submitted agreements to the Department of Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Staff Attorney Dorinda Strmiska at (202) 632-7003.

Sincerely,

Penny J. Coleman

Penny J. Coleman
Acting General Counsel

cc: Paula Hart, Office of Indian Gaming Management, Bureau of Indian Affairs (w/ incoming)
Elizabeth D. Kipp, Chairwoman, Big Sandy Rancheria
John Peebles, Counsel for Big Sandy Rancheria
Sharon House, Counsel for Big Sandy Development Authority

EXHIBIT S

BIG SANDY RANCHERIA

Band of Western Mono Indians

GAMING COMMISSION

July 13, 2010

Big Sandy Rancheria Band of Western Mono Indians
Elizabeth Kipp Tribal Chairperson
37387 Auberry Mission Road
P O Box 337, Auberry, CA 93602

RE: Findings of Regulatory Review of Brownstone, LLC and Associated Documents with resulting Gaming Business Relationships with the Big Sandy Entertainment Authority (BSEA) and the Big Sandy Rancheria Band of Western Mono Indians (BSR)

Dear Chairwoman:

On December 4, 2009 the BSR Tribal Council requested the Big Sandy Rancheria Gaming Commission (BSRGC) to conduct a regulatory review with regard to a Memorandum of Understanding (MOU), a Development Agreement and a Credit Agreement entered into between the BSR/BSREA and Brownstone LLC, and a Senior Secured Credit Agreement (with associated documents) between BSR/BSREA (The Borrower) and Guggenheim Corporate Funding LLC. (The Lender), as Administrative Agent. This request for review was based upon concerns relating to all documents associated with the resulting business relationship entered into between BSR, the BSEA, and BSREA.

The Big Sandy Rancheria Gaming Commission (BSRGC) conducted the regulatory review of the documents and agreements entered into between the parties identified above, with regard to compliance with the Indian Gaming Regulatory Act (IGRA), the Tribal- State Compact (Compact) between the State of California and the BSR, BSR Tribal Gaming Ordinance, the BSR Tribal Gaming Regulations.

Based upon said regulatory review of the above, the BSRGC finds:

That Brownstone LLC. is not licensed by the Big Sandy Rancheria: and

P.O. Box 129 • Auberry, CA 93602, California 93602
Phone: 559.855.4003 • Fax: 559.855.4408

That Brownstone has no status as a Gaming Licensee and/or as a Gaming License Applicant and that Brownstone, LLC. was requested to comply with BSRGC requirements in regard to licensing and completing a Background Application and Brownstone failed to do so at least two times prior; and

That the BSRGC maintains its original findings that the above Agreements with Brownstone LLC. are null and void because of the fact that Brownstone LLC. requires a Big Sandy Gaming License in order to fulfill its responsibilities under the Agreements and Brownstone has not completed a Gaming License Application so no background investigation has taken place due to Brownstone's failure to submit said Application. This failure precludes the BSRGC from determining if said entity is suitable to be licensed, therefore said Agreements cannot be considered valid because Brownstone LLC. is not licensed as required.

The above findings of the BSRGC are supported by an opinion received July 2, 2010 from the National Indian Gaming Commission, NIGC, in regard to the Agreements between Big Sandy Rancheria and/or Authority, and Brownstone LLC. The NIGC Opinion states as follows:

"First it appears from the Tribe's gaming ordinance that Brownstone must be licensed. Under the ordinance, the gaming commission authority has a duty to:

4. Conduct, or cause to be conducted, background investigations regarding any person in any way connected with any gaming activities and issue licenses, at a minimum, to all key employees and primary management officials according to requirements at least as stringent as those required by 25 CFR §§ 556 AND 558, as well as any employees; investors, contractors or others required to be licensed under standards established by Big Sandy, IGRA and the Compact, Article IX (a.)".

"The ordinance was approved by the NIGC Chairman on November 27, 2002. The ordinance requires the Authority to license anyone required by IGRA or the Compact.

Under Section 6 of the Tribe's Compact with California, Brownstone would be required to be licensed as it is both a "gaming resource supplier" and a "financial source" because it is providing all necessary furnishings and equipment for the gaming facility and it provided initial financing of $500,000. Tribal-State Compact §§ 6.4.5 and 6.4.6. Additionally, under 25 U.S.C. §2710 (d) (1)© class III gaming must be conducted in conformance with a Tribal-State compact. Moreover, under 25 U.S.C. § 2713 the Chairman has authority to enforce the provisions of IGRA for any violation of IGRA, NIGC regulations, or an approved tribal gaming ordinance. The compact requires Brownstone to be licensed to supply or finance the Tribe. See Tribal-State Compact §§6.4.5. And 6.4.6. Consequently, the Tribe's gaming ordinance also requires Brownstone to be licensed. Big Sandy Ordinance 02-10 Article IX (a). I understand that, to date, Brownstone has not undergone the necessary licensing requirements. Failure of Brownstone to become licensed is a violation of the compact and the Tribe's gaming ordinance."

Based on the above findings, the BSRGC finds that the Agreements with Brownstone are null and void and cannot be considered valid because Brownstone LLC is not licensed.

Should you have any questions please feel free to contact my office. Thank you for your time and attention with regard to this matter.

Sincerely,

Mark Powless, Gaming Commission Director

Cc: Marlene Johnson, Gaming Commissioner, Geri Alec, Gaming Commissioner, Attorney Sharon House

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EXHIBIT T

BIG SANDY
RANCHERIA

June 16, 2010

Brownstone LLC
American Vantage Companies
P.O. Box 81920
Las Vegas, NV 89180
Attn: Ron Tassinari

RE: Development Agreement, Credit Agreement, and Memorandum of Understanding

Dear Sirs:

On July 13, 2010, the Big Sandy Rancheria Gaming Commission ("Gaming Commission") issued a determination in which it found that agreements entered into between Brownstone LLC and the Big Sandy Rancheria and Big Sandy Entertainment Authority are null and void. The affected agreements are the Development Agreement and Credit Agreement, each dated March 25, 2007, and the Memorandum of Understanding dated January 16, 2007. I have enclosed a copy of the Commission's findings with this letter.

The Gaming Commission found that the agreements are null and void because Brownstone is prohibited from performing its duties pursuant to the agreements without a Tribal gaming license, which Brownstone has failed and refused to obtain. Our analysis indicates that the agreements are void and unenforceable for the additional reason that they were not reviewed and approved by the Gaming Commission as required by section 10.1 of the BSR Gaming Regulations (in the "General Regulations" division). As a result, all parties are relieved of any duties and obligations arising from each of these agreements.

Very truly yours,

BIG SANDY RANCHERIA TRIBAL COUNCIL

Elizabeth D. Kipp
Tribal Chairperson

Enclosure

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Phone: 559.855.4003 ~ Fax: 559.855.4129

BIG SANDY RANCHERIA

Band of Western Mono Indians

GAMING COMMISSION

July 13, 2010

Big Sandy Rancheria Band of Western Mono Indians
Elizabeth Kipp Tribal Chairperson
37387 Auberry Mission Road
P O Box 337, Auberry, CA 93602

RE: Findings of Regulatory Review of Brownstone, LLC and Associated Documents with resulting Gaming Business Relationships with the Big Sandy Entertainment Authority (BSEA) and the Big Sandy Rancheria Band of Western Mono Indians (BSR)

Dear Chairwoman:

On December 4, 2009 the BSR Tribal Council requested the Big Sandy Rancheria Gaming Commission (BSRGC) to conduct a regulatory review with regard to a Memorandum of Understanding (MOU), a Development Agreement and a Credit Agreement entered into between the BSR/BSREA and Brownstone LLC, and a Senior Secured Credit Agreement (with associated documents) between BSR/BSREA (The Borrower) and Guggenheim Corporate Funding LLC. (The Lender), as Administrative Agent. This request for review was based upon concerns relating to all documents associated with the resulting business relationship entered into between BSR, the BSEA, and BSREA.

The Big Sandy Rancheria Gaming Commission (BSRGC) conducted the regulatory review of the documents and agreements entered into between the parties identified above, with regard to compliance with the Indian Gaming Regulatory Act (IGRA), the Tribal- State Compact (Compact) between the State of California and the BSR, BSR Tribal Gaming Ordinance, the BSR Tribal Gaming Regulations.

Based upon said regulatory review of the above, the BSRGC finds:

That Brownstone LLC. is not licensed by the Big Sandy Rancheria: and

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Phone: 559.855.4003 • Fax: 559.855.4408

That Brownstone has no status as a Gaming Licensee and/or as a Gaming License Applicant and that Brownstone, LLC. was requested to comply with BSRGC requirements in regard to licensing and completing a Background Application and Brownstone failed to do so at least two times prior; and

That the BSRGC maintains its original findings that the above Agreements with Brownstone LLC. are null and void because of the fact that Brownstone LLC. requires a Big Sandy Gaming License in order to fulfill its responsibilities under the Agreements and Brownstone has not completed a Gaming License Application so no background investigation has taken place due to Brownstone's failure to submit said Application. This failure precludes the BSRGC from determining if said entity is suitable to be licensed, therefore said Agreements cannot be considered valid because Brownstone LLC. is not licensed as required.

The above findings of the BSRGC are supported by an opinion received July 2, 2010 from the National Indian Gaming Commission, NIGC, in regard to the Agreements between Big Sandy Rancheria and/or Authority, and Brownstone LLC. The NIGC Opinion states as follows:

"First it appears from the Tribe's gaming ordinance that Brownstone must be licensed. Under the ordinance, the gaming commission authority has a duty to:

4. Conduct, or cause to be conducted, background investigations regarding any person in any way connected with any gaming activities and issue licenses, at a minimum, to all key employees and primary management officials according to requirements at least as stringent as those required by 25 CFR §§ 556 AND 558, as well as any employees; investors, contractors or others required to be licensed under standards established by Big Sandy, IGRA and the Compact, Article IX (a.)".

"The ordinance was approved by the NIGC Chairman on November 27, 2002. The ordinance requires the Authority to license anyone required by IGRA or the Compact.

Under Section 6 of the Tribe's Compact with California, Brownstone would be required to be licensed as it is both a "gaming resource supplier" and a "financial source" because it is providing all necessary furnishings and equipment for the gaming facility and it provided initial financing of $500,000. Tribal-State Compact §§ 6.4.5 and 6.4.6. Additionally, under 25 U.S.C. §2710 (d) (1)© class III gaming must be conducted in conformance with a Tribal-State compact. Moreover, under 25 U.S.C. § 2713 the Chairman has authority to enforce the provisions of IGRA for any violation of IGRA, NIGC regulations, or an approved tribal gaming ordinance. The compact requires Brownstone to be licensed to supply or finance the Tribe. See Tribal-State Compact §§6.4.5. And 6.4.6. Consequently, the Tribe's gaming ordinance also requires Brownstone to be licensed. Big Sandy Ordinance 02-10 Article IX (a). I understand that, to date, Brownstone has not undergone the necessary licensing requirements. Failure of Brownstone to become licensed is a violation of the compact and the Tribe's gaming ordinance."

Based on the above findings, the BSRGC finds that the Agreements with Brownstone are null and void and cannot be considered valid because Brownstone LLC is not licensed.

Should you have any questions please feel free to contact my office. Thank you for your time and attention with regard to this matter.

Sincerely,

Mark Powless, Gaming Commission Director

Cc: Marlene Johnson, Gaming Commissioner, Geri Alec, Gaming Commissioner, Attorney Sharon House

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EXHIBIT U

LAW OFFICES

MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A.

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OUR FILE NO. 19143-1

July 22, 2010

Sharon House, Esq.
Box 357
Oneida Indian Reservation
Oneida, Wisconsin 54155

By E-Mail

Dear Sharon:

Chairperson Kipp's letter of June (July?) 16, 2010 to Brownstone, LLC has been forwarded to me for review and response.

Brownstone is very disappointed that the Big Sandy Rancheria ("BSR") has taken this precipitous and unwarranted step. As discussed below, the Development Agreement and the Credit Agreement (the "Agreements") between the parties remain valid and enforceable agreements and cannot be unilaterally terminated by BSR. Arguments that Brownstone needed to be tribally licensed in order to fulfill its obligations under those Agreements, or that the Agreements need to be approved by the Tribal Gaming Commission in order to be effective were knowingly and expressly waived by BSR, and are completely inconsistent with the unambiguous language of the Agreements and the tribal resolutions approving those Agreements.

Moreover, we would point out that BSR is currently in default under those Agreements. Although the parties entered into a Forbearance Agreement dated August 10, 2009, that agreement has now expired and was not renewed, making BSR's defaults immediately actionable.

Although this situation has the potential to become extremely contentious very quickly, Brownstone has no immediate desire to move in that direction. Instead, and

again as discussed in more detail below, Brownstone has recently completed negotiations with two alternative funding sources that are now available to finance the new casino project. As a result, Brownstone would propose a meeting with BSR, as soon as possible, in order to discuss a global resolution of all outstanding issues between the parties, which would include moving the new casino project forward on a fast track.

Let me return to the validity and enforceability of the Credit and Development Agreements. The Chairperson's recent letter and attached Gaming Commission letter suggest that these Agreements have been deemed "null and void" because (1) Brownstone has failed to comply with the Gaming Commission's request that Brownstone apply for and obtain a tribal gaming license under the Tribal Gaming Ordinance, and (2) these Agreements were not reviewed and approved by the Tribal Gaming Commission "as required by section 10.1 of the BSR Gaming Regulations...."

In fact, both of these contentions are expressly contrary to, and were expressly disclaimed in, the Agreements and authorizing tribal resolutions. Under Section 2.08 of the Credit Agreement, the Tribal Council expressly represented that Brownstone had no licensing obligation under that Agreement and barred the Tribal Gaming Commission from attempting to impose any such obligation. That provision states:

> SECTION 2.08. Licenses. Except to the extent Sections 6.4.5 or 6.4.6 of the Compact may be deemed by a Person other than the Tribal Parties or any Related Party of the Tribe (including any Gaming Regulatory Authority) to require Lender to be licensed, it is not necessary under the Tribal Law that Lender be licensed, qualified or entitled to carry on business in any jurisdiction by reason of the execution, delivery, performance or enforcement of any of this Agreement, the Note or the other Loan Documents. Neither the Tribe nor the Borrower have adopted any law, rule, regulation, ordinance or resolution which requires Lender to be licensed, including any law, rule, regulation, ordinance or resolution pursuant to Section 6.4.5 or 6.4.6 of the Compact or otherwise.

The Development Agreement includes a comparable provision at Article V. Section 5.01 (i)). The Tribal Gaming Commission's recent demand that Brownstone be licensed under the Tribal Gaming Ordinance in order to carry out its responsibilities under these Agreements, which came more than two and one-half years after the Agreements were executed, is foreclosed by these provisions, which state exactly the opposite.

The Agreements also explicitly disclaim any requirement that they be reviewed or approved by any other tribal entity, expressly including the Tribal Gaming Commission. Section 2.02 (c) of the Credit Agreement provides as follows:

> (c) Except as provided hereunder, no approval of any tribal Governmental Authority or tribal Gaming Regulatory Authority of the Tribe is required for the execution, delivery and performance of this Agreement, the Note or the other Loan Documents by the Tribal Parties. All ordinances, resolutions and laws of the Tribe pertaining to or relating to the Borrower, the Gaming Operations, and the transactions contemplated by the Loan Documents have been duly enacted and adopted, as necessary by the Tribe, in accordance with all applicable ordinances, acts, resolutions and laws of the Tribe.

No other provision of the Agreement imposes any such obligation, and the Development Agreement includes a comparable provision at Article V, Section 5.01 (b) (iii).

Tribal Council Resolution No. 0307-06, dated March 25, 2007, approved these Agreements and authorized their execution on behalf of the Tribal Council. That Resolution further confirms that the Council knowingly and explicitly made the representations and granted the waivers (if necessary) discussed above. Section 2 of the Resolution acknowledges that the Agreements "have been presented to the Tribal Council and the Tribal Council hereby approves such agreements and terms therein ...." Under Section 4, the Tribal Council "surrenders and waives" the right of the Tribe or any tribal entity to take any action which would impair the contractual rights of third parties, and further states that "upon execution and delivery of any New Facility Agreement or any Related Document as herein authorized, such document shall become a valid and binding obligation of the Tribe, enforceable in accordance with its terms for purposes of Tribal law and the laws of all other applicable jurisdictions."

Section 5 goes on to expressly state that no additional tribal approval is required under tribal law:

> 5. Determination. The Tribal Council hereby determines that no laws, ordinances, resolutions or other actions of the Tribal Council or any Tribal Party, either written or established by custom or tradition: (a) prohibit the Tribal Council from approving the

> matters herein approved or the execution, delivery or performance of any New Facility Agreement or Related Document by any party and the consummation of the transactions therein contemplated; (b) prohibit the Authority from approving the New Facility Agreements; or (c) create any obligation of the Tribal Council to submit the New Facility Agreements or Related Documents for approval of or consent from any Tribal Party, or any vote by members of the Tribe.

And Section 8 of the Resolution expressly repeals and annuls any element of tribal law or action by any tribal entity that conflicts with the provisions of the Agreements or the Resolution:

> 8. Repealer. Any laws, ordinances, rules, regulations, decisions, orders, judgments, resolutions or other action of the Tribe, any branch, division, authority, agency, subsidiary, board, commission or other instrumentality of the Tribe, or any of the officers, employees, or agents, of the foregoing, whether written, unwritten or established by tradition that are in effect and are in conflict with or inconsistent with the terms of this Resolution, the transactions contemplated herein, or any provision set forth in the New Facility Agreements or the Related Documents, are hereby to such extent repealed and annulled, and this Resolution shall supersede the same.

Furthermore, we note that the Tribal Council was acting under express authorization from the Big Sandy General Council in approving this Resolution and the Agreements. General Council Resolution No. 0307-04 GC, adopted on March 25, 2007, provides as follows:

> NOW THEREFORE, BE IT RESOLVED THAT:
>
> In addition to those powers granted to the Tribal Council in the Constitution, the General Council hereby specifically grants the Tribal Council all power and authority to promulgate and enforce resolutions necessary or desirable to effectuate the Development Agreement, the Credit Agreement, or other agreements or documents required to ensure valid development, financing, construction and/or operation of the New Facility.

In addition, any suggestion that the Tribal Council or General Council had no authority to waive regulatory requirements that the Tribal Gaming Commission now believes were applicable to the Brownstone Agreements does not withstand scrutiny under the Tribe's Gaming Ordinance. Under that Ordinance, and unlike many other tribal gaming ordinances that establish the tribal gaming agency as an independent entity, under the "Purpose" section of the Ordinance the Big Sandy Tribal Gaming Commission is established "as an administrative branch of the Tribal Council," thereby clearly making the Gaming Commission subject to the authority of the Tribal Council. This relationship is further demonstrated by Article IX (a), which makes the Gaming Commission's regulatory activities "subject to the review and approval of the Tribal Council;" by Article IX (8), which gives the Gaming Commission authority to "impose gaming license fees, sanctions, fines and conditions established by the Tribal Council;" and by Article X (a), which authorizes the Tribal Council (and not the Gaming Commission) to draft tribal gaming regulations for the Tribe.

In summary, then, under the Tribal Gaming Ordinance, the Tribal Council has full authority over the actions of the Gaming Commission and to the extent that the Tribal Council (with the approval of the General Council) has interpreted tribal law as not imposing licensing requirements or Gaming Commission approval requirements under the Brownstone Agreements, the Tribal Council had full authority to make those determinations and the Gaming Commission has no authority now to impose obligations on Brownstone that were expressly disclaimed in the Agreements.

Finally, if BSR believes that Brownstone has a licensing obligation under the Development or Credit Agreements which Brownstone has not fulfilled, BSR cannot simply declare the agreements "null and void." Rather, BSR is obligated to follow the "Dispute Resolution" procedures outlined in those agreements, under which that dispute will be resolved by a court or an arbitrator, after presentation of all facts and legal issues.

As discussed above, we believe that BSR's rationale for seeking to declare the Credit and Development Agreements null and voice is invalid and contrary to the express terms of the Agreements, the resolutions and the Tribal Gaming Ordinance. Rather than spending the next several years in litigation, however, while the Tribe's plans for a new casino remain unfulfilled, Brownstone has a better and more productive suggestion. Over the last several weeks, months of discussions and negotiations by Brownstone with prospective lenders have come to fruition. At this time, Brownstone has commitments

from two different lending sources that would offer BSR two different financing alternatives for the new casino project. In addition, we have thoughts on how to amicably resolve the current dispute, including licensing issues.

As a result, we would propose that BSR and Brownstone meet, as soon as possible, to discuss a global resolution of outstanding issues and opportunities to get the new casino project financed and back on track. If the parties can reach agreement, we believe that both sides would benefit. If the parties cannot reach agreement, then either or both will be free to assert and protect their own legal interests as each sees fit.

We believe that such a meeting could be very beneficial. Please let me know if and when such a meeting can be arranged.

Sincerely,

MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A.

Glenn M. Feldman

GMF:mjl

cc: John Peebles, Esq.

U:\ATTORNEYS\GMF\Brownstone\lt to House - final.doc

EXHIBIT V

FREDERICKS PEEBLES & MORGAN LLP
ATTORNEYS AT LAW

JOHN M. PEEBLES
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September 7, 2010

Glenn M. Feldman, Esq.
Mariscal Weeks McIntyre & Friedlander, P.A.
2901 N. Central Avenue, Suite 200
Phoenix, AZ 85012

Re: Brownstone, LLC

Dear Mr. Feldman:

The purpose of this letter is to advise you that the Big Sandy Rancheria reiterates its decision set forth in the letter dated June 16, 2010 [*sic* July 17, 2010] wherein Brownstone, LLC was advised that the Development Agreement and Credit Agreement, each dated March 25, 2007, and the Memorandum of Understanding dated January 16, 2007, are null and void.

However, please be advised that the Big Sandy Rancheria would entertain additional proposals with regard to the development of a gaming facility from Brownstone LLC and or Alan Ginsburg. However, the provisions of the Indian Gaming Regulatory Act, the Compact between the State of California and the Big Sandy Rancheria, as well as the Tribal Gaming Ordinance and Regulations promulgated pursuant thereto must be fully complied with.

If you have any questions, please contact me.

Sincerely,

FREDERICKS PEEBLES & MORGAN LLP

John M. Peebles

JMP:jct
cc: Liz Kipp, Chairperson, Big Sandy Rancheria
Richard Johnson, Big Sandy Rancheria