**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF WISCONSIN**

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WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE,

Plaintiff,

vs. Case No. 09-CV-768

LAKE OF THE TORCHES ECONOMIC DEVELOPMENT CORPORATION,

Defendant.

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**DECLARATION OF WILLIAM N. NEWBY**

I, William Newby, declare as follows:

1. I am currently a Managing Director at UBS Investment Bank and Head of Gaming and Leisure, Americas at UBS. Prior to joining UBS in 2009, from 1989 to 2008 I ran Bank of America Securities' Gaming and Leisure Group. While at Bank of America, I was responsible for setting up and building Bank of America's gaming banking franchise into the leading gaming industry financing group. Prior to joining Bank of America, I was a Vice President with the National Westminster Bank USA in Los Angeles.

2. While at Bank of America, I also served for eight years, from approximately 2000 to 2008, on the board of directors for the American Gaming Association, the gaming industry's senior peer council. I sat on the board with 15 CEOs from the most prominent gaming and gaming supply companies in the sector.

3. I graduated magna cum laude with a Bachelor of Arts degree from the University of California at Los Angeles; I received an MBA from UCLA's Graduate School of Management. My current business bio is attached hereto as Exhibit A.

4. While at Bank of America, I oversaw approximately 30 transactions involving both bank and bond underwriting to Indian tribes involving loans to tribal governments either for the development of casinos and related projects or for general governmental purposes, always with casino revenues as security. Collectively, these transactions involved approximately $13 billion in Indian gaming financing. In addition to my work in Indian Country, I have also been involving in gaming financing transactions across the globe involving a total of approximately $155 billion in financing.

5. I have been asked by Plaintiff in this action to provide testimony regarding the customs and practices in the Indian gaming finance industry, to opine on the bond transaction at issue, the Trust Indenture at issue, and to respond to certain assertions in the affidavit of Kevin Washburn. I have never given expert deposition or trial testimony. I have not published any articles in the last 10 years. I am not being compensated for my testimony.

6. In forming my opinions I have relied on my 15 years in the Indian gaming finance industry and my involvement with the American Gaming Association. I have also reviewed the following documents and materials:

- January 4, 2010 Affidavit of Kevin K. Washburn
- Decision and Order in *Wells Fargo Bank, N.A., v. Lake of the Torches Economic Development Corp.*, Case No. 09-CV-768
- Limited Offering Memorandum
- Bond
- Trust Indenture
- January 18, 2008 Godfrey & Kahn Opinion Letter
- Corporation Closing Certificate and attachments
- Tribe Closing Certificate and attachments

7. The Saybrook/Lake of Torches bond transaction at issue is a standard Indian bond financing transaction. Indian bond financing transactions are transactions where, at bottom, a tribe or tribal entity is borrowing money for tribal governmental purposes, or to fund some business venture of interest to the tribe. The primary source of security for these loans is revenues from an Indian casino.

8. In such Indian bond financing transactions, it is common practice not to have the loan or bond documents, including trust indentures like the one at issue here, reviewed by the NIGC. There are billions of dollars that have been loaned in deals like the one at issue in this case, and the NIGC has never issued a declination letter related to any of them to my knowledge.

9. If provisions like those in sections 6.18-6.20 and sections 8.02 and 8.04 of the Trust Indenture converted loan agreements into management contracts requiring NIGC review and approval, it would exorbitantly increase the cost of capital to Indian tribes and also have a chilling effect on lending to tribes.

10. Based on my industry experience, I expect that approximately two-dozen financing transactions include provisions with characteristics like the ones at issue in this case. If provisions like those in sections 6.18-6.20 and sections 8.02 and 8.04 converted loan agreements into management contracts, many of those two-dozen agreements could be deemed to be management contracts.

11. When lending to an Indian tribe or tribal entity, a key issue, when casino revenues are security for the loan, is the stability of the tribe and the stability and effectiveness of the casino management. If the casino is poorly managed, then the lender is at risk of not getting repaid. So, while lenders do not want to manage or run casinos themselves, and are not in the business of doing so, management of casinos is always a concern when lending to a Indian tribe where casino revenues are collateral for a loan.

12. It is the lender's interest that the casino be effectively managed that drives provisions like 6.18-6.20. Such provisions ensure that the lender is involved in discussions regarding who is actually managing the casino. The structure of the provisions is intentional. The lender is able to have a voice, through consenting to decisions made by the tribe or tribal entity, but the lender is not selecting management, hiring or firing management, or running the casino itself, activities that the lender is not equipped to perform. The tribe continues to make all decisions regarding management.

13. Once a tribe or tribal entity is in default under an indenture, the lender typically has the ability, as it did here, to accelerate the outstanding debt and foreclose on the collateral, which usually includes the revenues of the casino itself. The impact from a loan default can be onerous, on both the lender and the tribe or tribal entity, to say the least. The default provisions in any lending agreement have to be viewed in light of the alternative, that is acceleration of the debt and foreclosure on the collateral.

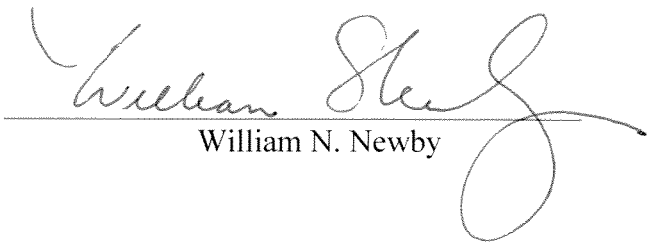
14. While Mr. Washburn finds section 8.04, the receivership provision, "particularly troubling," such provisions that allow a non-tribal third party to monitor or control collateral in a default situation are common in lending and bond agreements in the Indian gaming finance industry. The non-tribal third party can typically only be installed when something has gone very wrong (for example, the casino is substantially under performing or a party is siphoning funds from the casino business) and is a milder remedy than foreclosure on the collateral.

15. Likewise, provision 8.02 in the Trust Indenture (that allows the lender, upon default, to request that new management be hired and allows the lender to consent to new management), while less commonly seen in a contract than some of the other provisions discussed, reflects normal lender desire that the facility be adequately managed. Any time a borrower is in default, particularly as a result of a casino underperforming, any reasonable lender

will seek to ensure that the casino is being reasonably and professionally managed. Again, the lending industry motivation behind such actions is not to itself manage the casino, but to ensure that the security for the loan is performing, and invocation of such a provision upon default still does not result in the lender managing; the tribe or tribal entity continues to select management and the lender has no control over any management activities. It goes without saying that a healthy and performing casino is to the benefit of both the lender and the tribe or tribal entity.

I DECLARE UNDER PENALTY OF PERJURY PURSUANT TO 28 U.S.C. § 1746 THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED on February 8, 2010, in Los Angeles, California



William N. Newby