

FINANCING TRANSACTIONS ON THE NAVAJO NATION

Prepared for

NAVAJO NATION LAW 2016 CLE CONFERENCE

SANDRA DAY O'CONNOR COLLEGE OF LAW AT ARIZONA STATE UNIVERSITY

OCTOBER 28, 2016

By

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DUE DILIGENCE/LOAN CLOSING CHECKLIST [_____, 20__]

Project: [_____]

Loan Structure: [Term/Revolver/Converting/Lease/Bond]

Purpose: [New Money/Construction/Refinance]

Security: [Revenues/Real Estate/Equipment/Cash]

Closing Date: [_____]

Responsible Parties:

Borrower = [_____]

Borrower's Counsel = [_____]

Nation = Navajo Nation

Lender = [_____]

Lender's Counsel = [_____]

Bond Counsel = [_____]

#	Primary Documents	Responsibility	Comments
	Term sheet and all amendments thereto with signed acceptance	Lender	
	Loan Agreement/Lease Agreement	Lender's Counsel	
	Promissory note(s)	Lender's Counsel	
	Guaranty	Lender's Counsel	
	Mortgage/Deed of Trust/Collateral Assignment of Lease	Lender's Counsel	
	Security Agreement(s)/Pledge Agreement	Lender's Counsel	
	Assignment of Contract Documents	Lender's Counsel	
	Deposit Account Control Agreement	Lender's Counsel	
	Environmental Indemnity Agreement	Lender's Counsel	
	UCC-1 financing statement(s)	Lender's Counsel	
	UCC-3 termination statements	Lender's Counsel	
	Subordination Agreement	Lender's Counsel	
	ISDA Swap Documents	Lender's Counsel	
	Non-Foreign Affidavit	Lender's Counsel	
	Estoppels/SNDAs	Lender's Counsel	
	Closing Certificates <ul style="list-style-type: none"> • Borrower • Nation • Lender 	Lender's Counsel	
	Opinions of Counsel <ul style="list-style-type: none"> • Borrower In-house Counsel • Borrower Outside Counsel 		

TRIBAL ORGANIZATION, GOVERNANCE, LAWS

#	Item	Responsibility	Comments
	Nation's Constitution/Code or other authorizing legislation	Borrower	
	Charter/bylaws/etc.	Borrower	
	Tribal court rules	Borrower	
	Borrower organizational chart	Borrower	
	Index of Nation's Code/Resolutions	Borrower	
	Copies of all laws and other documents relating to any of the following: <ul style="list-style-type: none"> • Referendum or initiatives • Taxes affecting the Project • Collateral securing the financing • Uniform Commercial Code or other secured transactions ordinance • Business or lending licenses • Pledges or security interests • Real estate and secured financing matters • Usury • Contract claims • Arbitration or other dispute resolution • Per capital distributions • Sovereign immunity (or its waiver) • Assets and liabilities of Nation/Borrower • Investment guidelines/policy 	Borrower	
	<ul style="list-style-type: none"> • Establishment, jurisdiction and operation of the tribal court • Adoption of corporation code • Tribal utilities • Zoning codes • Tribal building codes • Certificates of occupancy 		
	Resolution authorizing the Loan and related documents	Borrower	

DUE DILIGENCE/CLOSING REQUIREMENTS

#	Item	Responsibility	Comments
	Certificate of Good Standing	Borrower	
	Employer ID No.	Borrower	
	UCC lien and tax lien searches	Borrower	
	Litigation search	Borrower	

	(pending/threatened/settlements)		
	BIA Title Status Report	Borrower	
	List of collateral (inventory, equipment, accounts)	Borrower	
	Release of any prohibited encumbrances with pay-off letters	Borrower	
	Current certified financial statements of Borrower/Guarantor	Borrower	
	Other financial/budget information, including:	Borrower	
	• Pro forma budgets		
	• Revenue forecasts		
	• Balance sheets		
	• Cash flow projections		
	• Schedule of any contingent liabilities-unaudited interim statements		
	• Schedule of any contingent liabilities and obligations not appearing on the balance sheets, including all asserted and/or threatened claims and such items as leases, guarantees, letters of credit, unfunded pension, deferred payments, etc.		
	Detailed description of all restricted funds	Borrower	
	Copies of all “audited letters” for past three years	Borrower	
	Legal description of Project site	Borrower	
	Survey	Borrower	
	• Surveyor’s certificate		
	• Flood plain certificate		
.	Environmental reports (Phase I, clearance letters, etc.)	Borrower	
	FONSI (pursuant to NEPA, if applicable)	Borrower	
	Insurance information (binder of all policies on Project reflecting Lender’s interests)	Borrower	
	Any feasibility studies previously conducted relating to same	Borrower	
	ALTA Lender’s policy of title insurance	Lender’s counsel	
	Disbursement authorization, including wiring instructions	Borrower	
	Conditional commitment letter (DOI or USDA)	Lender’s counsel	
	Governmental approvals (including DOJ, Controller, BIA, NIGC)	Borrower	

MATERIAL AGREEMENTS

#	Item	Responsibility	Comments
	Real property leases	Borrower	
	All loan, security and financing documents permitting (directly or indirectly) recourse against Borrower's assets that could include the Project or the collateral	Borrower	
	All agreements or contracts of Borrower or its affiliates that may materially affect the conduct of the Project and related facilities (including service and sales agreements, equipment leasing and participation agreements, franchise, management, or consulting agreements, joint venture or partnership agreements)	Borrower	
	Explanation of any default or default waiver under any borrowing or credit agreements	Borrower	
	Any guarantees or other contingent liabilities of the Borrower or any affiliate relating to the Project or the collateral	Borrower	
	Any license or business permit applications	Borrower	

CONSTRUCTION LOAN DOCUMENTS

#	Item	Responsibility	Comments
	All permits, license, approvals, consents, and authorization required for construction and development of Project	Borrower	
	All Borrower's agreements with all parties providing architectural, design or engineering services for Project	Borrower	
	Plans and Specification, including site plan	Borrower	
	General construction contract (Guaranteed Maximum Price) including such financials and profit and loss statements as Lender may require evidence of Builder's risk insurance	Borrower	
	Architect's Agreement, together with errors and omissions insurance Certificate	Borrower	
	Copy of standard form of Subcontract, copies of all Major Subcontracts and list of proposed subcontractors	Borrower	
	Lien waivers (if any)	Borrower	
	Confirmation of availability of all utilities and governmental services to existing and proposed improvements and parking and access availability	Borrower	
	All inspection and test reports, including soil and boring tests	Borrower	
	Budget	Borrower	

	Information concerning off-site improvements required for construction and development	Borrower	
	Construction schedule	Borrower	
	Approval of all construction documents by inspecting architect	Borrower	
	Payment and performance bond designating Lender as dual obligee, together with copies of all construction bonds for Project	Borrower	
	Draw schedule	Borrower	
	List of guarantees and warranties for Project	Borrower	
	Notice of commencement	Borrower	

BOND DOCUMENTS

#	Item	Responsibility	Comments
	Loan Agreement	Bond Counsel	
	Trust Indenture	Bond Counsel	
	Specimen Bond	Bond Counsel	
	Deed of Trust/Security Agreement	Bond Counsel	
	Official Statement	Bond Counsel	
	Bond Purchase Agreement	Bond Counsel	
	Investor Letter	Bond Counsel	
	Tax Certificate	Bond Counsel	
	Letter of Credit (Variable Rate)	Bond Counsel	
	Remarketing Agreement (Variable Rate)	Bond Counsel	
	Reimbursement Agreement (Variable Rate)	Bond Counsel	
	Depository Trust Agreement (Advanced Refunding)	Bond Counsel	
	Closing Certificates <ul style="list-style-type: none"> • Borrower • Nation • Underwriter/Placement Agent • Bond Purchaser • Trustee(s) 	Bond Counsel	
	Opinions of Counsel <ul style="list-style-type: none"> • Borrower In-house Counsel • Borrower Outside Counsel • Bond Counsel 	Bond Counsel	
	8038-G Report of Bond	Bond Counsel	