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PROVIDING TRIBES INDEPENDENT, TRUSTWORTHY AND RELIABLE ADVICE

McDOWELL MOUNTAIN, NEAR THE FORT McDOWELL YAVAPAI NATION, ARIZONA

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Credit Agreements 101—Part 2 of 5

by David Howard

This article is the second in our five part series discussing the key attributes and provisions in the primary document that governs typical bank loans.

Part one addressed the definitions section, which is very important in understanding all sections of a credit agreement. This article addresses the description of loan facilities, LIBOR options and mandatory loan prepayments.

Typically, when a tribal council is reviewing the loan terms presented by a bank, they are looking at a Summary of Terms and Conditions (a Term Sheet). These can range from a very detailed 10 page term sheet to simply a 1 page highlight. The important items of the interest rate, loan term and principal payment requirements are included in the summary. Many terms are simply noted to be "usual and customary for a transaction of this type". Below we explain what is "usual and customary" to help you navigate these agreements a bit better.

DESCRIPTION OF LOAN FACILITIES

The two most common types of facilities in Indian Country bank financings are the Revolving Credit Facility and the Term Loan. The Revolver is like a credit card and can be drawn and repaid and then redrawn again, whereas the Term Loan is funded at closing and repayments on the Term Loan cannot be re-borrowed. Most loans have one or the other and often both. This section of the credit agreement describes when the facility can be drawn and how much is the minimum amount that can be drawn. Banks often set this minimum amount between $500,000 and $1,000,000. It's important to review these amounts and ensure they work with the tribe's needs. Obviously, a

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IN THE NEWS

Above: Tribal Board of Advisors Chairman, Rick Hill, being interviewed during G2E in October.

With Stroke of Obama's Pen, Threat of Closure at Gun Lake Casino Finally Ends

10/2/14 – MLive.com

River Spirit Casino Receives Corps Approval; Resort Development to Proceed

10/17/14 – NativeTimes.com

New Mexico Federal Court Limits Tribe's, Secretary's Options when State Balks at Gaming Compact

10/22/14 – NatLawReview.com

Feds: Tribe Could Get Casino Land as Soon as January

10/23/14 – Columbian.com

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Revolver provides much more flexibility for the borrower – it is important to make sure the facilities are set appropriately for your borrowing needs and repayment plans.

LIBOR AND BASE RATE OPTIONS The credit agreement offers alternatives for loan funding options depending on when and how a borrower needs to draw and repay the loan. Most often, a Tribe's treasurer or finance officer will not have a single loan funding making up their entire loan balance but instead several individual loans to provide flexibility. Borrowers have two interest rate choices for the loan's floating index - LIBOR and Base Rate. LIBOR is the London Inter-Bank Offered Rate and is a published daily rate meant to represent the cost of funds for banks. There are 30-, 60-, 90-, 180- and 360-day LIBORs published each day whereas Base Rate is essentially the same as a bank's Prime Rate. This section also deals with the notification requirements that a borrower has to meet when requesting its floating index. LIBOR is almost always lower than the Base Rate; however, the LIBOR borrowings must be requested several days in advance of the need and are longer-term in nature (minimum of 30 days). Alternatively, Base Rate borrowings can be requested and received the same day. Often, borrowers choose a Base Rate alternative for its quick availability and then repay it with a LIBOR loan funding when they are able to.

MANDATORY PREPAYMENTS Typically bank boilerplate language will require any loans or even unfunded Revolver commitments be repaid or reduced by the amount of net proceeds from (a) the sale of assets; (b) casualty insurance; (c) and eminent domain events. This provision needs to be reviewed very carefully to make sure it fits with on-going business of the tribe or its business operations. If you sell a van, do you have to use the proceeds to repay the loan? If you have a kitchen fire and collect insurance, do you have to use the proceeds to repay the loan versus rebuild your kitchen? Unless you negotiate differently, the answer might be yes. Banks are usually open to discussing and customizing these provisions. You just need to know to ask.

Our third part of the credit agreement series will discuss Representations and Warranties.

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