

Specifications and in compliance with the Loan Documents, the Project Documents, the Construction Documents, all Legal Requirements and all Governmental Approvals, free from any Liens (other than Permitted Liens). Evidence of satisfactory compliance with the foregoing shall be furnished by the Borrowers to the Administrative Agent on the date of Final Completion.

SECTION 8.1.35     Management Consultant and Chief Executive Officer. Promptly after obtaining all required Governmental Approvals for the retention of The Fine Point Group as the management consultant covering the operations of the Operating Company, (x) the Operating Company and the Consultant shall have entered into employment agreements setting forth the terms of the Consultant's employment with the Operating Company which shall be satisfactory to the Administrative Agent in all respects (including, without limitation, the scope of the Consultant's duties and responsibilities) and (y) the Borrowers shall undertake all actions (including, without limitation, filing motions or applications with the Bankruptcy Court to modify the retention of The Fine Point Group) which are necessary or appropriate in the reasonable judgment of the Administrative Agent to appoint Randall A. Fine of The Fine Point Group as the chief executive officer of the Operating Company on terms which shall be satisfactory to the Administrative Agent in all respects (including, without limitation, the scope of the chief executive officer's duties and responsibilities).

SECTION 8.1.36     Notices of Meetings.<sup>8</sup> The Borrowers shall provide the Administrative Agent with reasonable advance notice of all official meetings that any Loan Party shall have with the MGCB or the City where the proposed topic for discussion shall include any Loan Party's compliance with the DIP Credit Agreement or the Development Agreement. For the avoidance of doubt, an official meeting shall not include any meeting which covers on-site regulatory matters.

SECTION 8.1.37     Board of Managers.

(a)     The Borrowers have agreed to reconstitute the Board of Managers of the Operating Company and Greentown Holdings with a majority of independent members such that after receiving MGCB approval, the voting members of the Board of Managers shall consist only of the following five (5) individuals: Darwin McCoy, Joseph Eitrem, Louis Glazier, Jacob Miklojcik and Wendell M. Long, or such other individuals approved by the Administrative Agent in its sole discretion. As of the Effective Date, the Borrowers shall install any such member on the Board of Managers of the Operating Company and Greentown Holdings promptly, but in any event no later than two (2) Business Days, after any such member is approved by the MGCB.

(b)     If for any reason Wendell M. Long is not approved by the MGCB, the Board of Managers of the Operating Company and Greentown Holdings shall be reduced immediately to three (3) voting members with a majority of independent members until such other independent member shall be approved by (i) the Administrative Agent in its sole discretion and (ii) the MGCB. The Borrowers shall install any such independent member on the Board of Managers of the Operating Company and Greentown Holdings promptly, but in any event no later than two (2) Business Days, after any such

---

<sup>8</sup> Section 8.1.36 added by the Second Amendment to DIP Credit Agreement.

independent member and one (1) additional member, approved by the Administrative Agent in its sole discretion, is approved by the MGCB, and the Board of Managers of the Operating Company and Greentown Holdings shall be reconstituted as a five (5) voting member Board of Managers with a majority of independent members, it being agreed that Louis Glazier, Jacob Miklojcik and Wendell M. Long are deemed independent members.

(c) Prior to the MGCB's approval of Wendell M. Long as a member of the Board of Managers of the Operating Company and Greentown Holdings and upon the direction of the Administrative Agent, the Board of Managers of the Operating Company and Greentown Holdings shall be reconstituted as a three (3) voting member Board of Managers with a majority of independent members, it being agreed that Louis Glazier, Jacob Miklojcik and Wendell M. Long are deemed independent members.

SECTION 8.1.38 Additional DIP Milestones. The Borrowers shall satisfy the following milestones as set forth below (collectively, the "Additional DIP Milestones") by the applicable Additional DIP Milestone Dates:

<u>Milestone</u>	<u>Date</u>	<u>Delayed Draw Term B-1 Loan Availability</u> (on a cumulative basis since the Effective Date)
(a) effectiveness of this Agreement pursuant to <u>Section 13.8</u> ;	Effective Date	\$12,000,000
(b) the Borrowers shall have (1) executed an asset purchase agreement with respect to the Borrowers' company assets and operations or (2) delivered a reorganization plan term sheet acceptable to the Borrowers, the MGCB, the City and the Administrative Agent;	May 1, 2009	\$12,000,000
(c) the Borrowers shall have (1) commenced an auction with respect to the sale of the Borrowers' company assets and operations or (2) filed a draft reorganization plan acceptable to the Lenders and the Prepetition Secured Parties with the Bankruptcy Court;	June 1, 2009	\$13,000,000
(d) the Borrowers shall have (1) closed on the sale of the Operating Company, subject to approval by the MGCB; <u>provided, however</u> , the Delayed Draw Term B-1 Loan availability shall not increase to \$17,000,000 until such approval by the MGCB is given, or (2) received approval of the disclosure	July 1, 2009	\$17,000,000

statement from the Bankruptcy Court; and		
(e) the Bankruptcy Court shall have confirmed the reorganization plan.	August 31, 2009	\$17,000,000

If the reorganization plan is not confirmed by August 31, 2009, and the failure to confirm the reorganization plan is not due to the fault of the Borrowers, Delayed Draw Term B-1 Loans in an aggregate amount not to exceed the Delayed Draw Term B-1 Loan Commitments may be made available to the Borrowers, in the sole discretion of the Administrative Agent. The Delayed Draw Term B-1 Loan availability amounts set forth in this Section 8.1.38 shall be reduced by the amount of net proceeds from any Permitted Asset Sales of the Surplus Parcels and the Development Parcels.

**SECTION 8.2 Negative Covenants.** Each Borrower agrees with the Administrative Agent, the Issuer and each Lender that, until all Commitments have terminated and all Obligations have been indefeasibly paid and performed in full (other than indemnification Obligations not then due and payable), Greektown Holdings and its Subsidiaries will perform the obligations set forth in this Section 8.2.

**SECTION 8.2.1 Business Activities.** Greektown Holdings will not engage in any business activity except the ownership of the Operating Company Membership Interests (with respect to Greektown Holdings), the ownership of the Equity Interests of Greektown Corporation, and, together with Greektown Corporation, the performance of the Obligations and such activities as are reasonably incidental or substantially similar thereto. The Operating Company and its Subsidiaries will not engage in any business activity, except the ownership and operation of the Temporary Casino Complex and the Permanent Casino Complex and the Development Parcels (in the case of the Operating Company), the Surplus Parcels and the Trappers Alley Parcel (in the case of its Subsidiaries) performing its obligations (in the case of the Operating Company) under the Development Agreement and such activities as are reasonably incidental or substantially similar thereto.

**SECTION 1.1.1 Indebtedness.** (a) Greektown Holdings and its Subsidiaries will not, directly or indirectly, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness or issue any shares of Preferred Stock, or be or become liable as endorser, guarantor, surety or otherwise for any Indebtedness of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein (except as allowed under Section 8.2.5 hereof) or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person, other than, without duplication, the following:

- (i) The Borrowers may incur Indebtedness in respect of the Credit Extensions;
- (ii) Existing Indebtedness;

(iii) Indebtedness of the Operating Company incurred in connection with the Participating Leases; and

(iv) Indebtedness of the Operating Company incurred in connection with the Insurance Premium Agreement<sup>9</sup>.

(b) With respect to its interest in Greektown Corporation, Greektown Holdings will not directly or indirectly, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness secured by a Lien against such interest other than Indebtedness secured by Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

(c) Accrual of interest, the accretion of the accreted value of principal and the payment of interest in the form of additional Indebtedness will not be deemed to be an incurrence of Indebtedness for purposes of this covenant.

SECTION 8.2.3 Liens. Neither Greektown Holdings nor its Subsidiaries shall create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, or any proceeds, income or profits therefrom, or assign or convey any right to receive income therefrom, excluding, however, Permitted Liens.

SECTION 8.2.4 Consolidated EBITDAR; Minimum Liquidity.

(a) Greektown Holdings and its Subsidiaries will not, as of the close of any calendar month, permit Consolidated EBITDAR (a) to be less than the amount set forth below in the second column opposite such month and (b) on a cumulative basis commencing February 1, 2009 (with the first measurement date being March 31, 2009), to be less than the amount set forth below in the third column opposite the last month in such period:

Month ending on	Consolidated EBITDAR (in \$, on a monthly basis)	Consolidated EBITDAR (in \$, on a cumulative basis since February 1, 2009)
January 31, 2009	2,000,000	N/A
February 28, 2009	1,757,000	N/A
March 31, 2009	2,700,000	4,888,000
April 30, 2009	2,652,000	7,716,000
May 31, 2009	3,303,000	11,708,000
June 30, 2009	2,389,000	14,246,000

<sup>9</sup> Item (iv) added by the proposed Sixth Amendment to DIP Credit Agreement.

July 31, 2009	2,527,000	16,931,000
August 31, 2009	2,903,000	20,016,000

(b) Greektown Holdings and its Subsidiaries will not permit, at any time after the Original Closing Date, the sum of (i) all Available Cash, (ii) all unrestricted Investments of the Loan Parties permitted under Section 8.2.5 and (iii) the aggregate unused amount of the Commitments in effect at such time, to be less than \$15,000,000 in the aggregate.

SECTION 8.2.5 Investments. Neither Greektown Holdings nor its Subsidiaries shall make, incur, assume or suffer to exist any Investment in any other Person, except the following investments by the Operating Company, as set forth in the Budget:

(a) Cash Equivalent Investments;

(b) without duplication, Investments to the extent permitted as Indebtedness pursuant to Section 8.2.2;

(c) without duplication, Investments permitted as Capital Expenditures pursuant to Section 8.2.7;

(d) Investments constituting (x) accounts receivable arising, (y) trade debt granted or (z) deposits made in connection with the purchase price of goods or services, in each case, in the ordinary course of business;

(e) Investments and contributions required under Section 3.5 of the Development Agreement;

provided, however, that

(f) any Investment which when made complied with the requirements of clauses (w), (x) or (y) of the definition of the term "**Cash Equivalent Investment**" may continue to be held, notwithstanding that such Investment, if made thereafter, would not comply with such requirements; and

(g) no Investment otherwise permitted by clauses (b), (c), or (f) shall be permitted to be made if any Default has occurred and is continuing or would result therefrom.

SECTION 8.2.6 Restricted Payments, etc. On and at all times after the date hereof:

(a) neither Greektown Holdings nor its Subsidiaries shall declare, pay or make any dividend or distribution (in cash, property or obligations) on any Equity Interest (now or hereafter outstanding) of Greektown Holdings or its Subsidiaries or on any warrants, options or other rights with respect to any Equity Interests (now or hereafter outstanding) of Greektown Holdings or its Subsidiaries (other than dividends or distributions payable in its Equity Interests or warrants to purchase its Equity Interests or

splitups or reclassifications of its Equity Interests into additional or other shares of its Equity Interests) or apply any of its funds, property or assets to the purchase, redemption, sinking fund or other retirement of any shares of any Equity Interests (now or hereafter outstanding) of Greektown Holdings or its Subsidiaries, or warrants, options or other rights with respect to any shares of any Equity Interests (now or hereafter outstanding) of Greektown Holdings or its Subsidiaries;

(b) Except as set forth in the Budget, Greektown Holdings will not and will not permit its Subsidiaries to

(i) make any payment or prepayment of principal of, or make any payment of interest on, the Senior Notes or the Indebtedness under items (ii) and (iii) of clause (a) of Section 8.2.2 or any subordinated debt; or

(ii) redeem, purchase or defease, the Senior Notes or the Indebtedness under items (ii) or (iii) of clause (a) of Section 8.2.2 or any subordinated debt or make any payment for purposes of funding any of the foregoing;

(the foregoing prohibited acts referred to in clauses (a) and (b) being herein collectively referred to as "**Restricted Payments**"); provided, however, that

(c) notwithstanding the provisions of clause (a) above, Greektown Holdings shall be permitted to cause the Operating Company to make Restricted Payments to Greektown Holdings in the amount required to make the payments due under the Loan Documents.

SECTION 8.2.7 Capital Expenditures, etc. Neither Greektown Holdings nor its Subsidiaries shall make or commit to make Capital Expenditures, other than the Capital Expenditures set forth in the Budget.

SECTION 8.2.8 Rental Obligations. Neither Greektown Holdings nor its Subsidiaries shall enter into at any time any arrangement which involves the leasing by such Person from any lessor of any real or personal property (or any interest therein), which does not create a Capitalized Lease Liability, except (x) the leases disclosed in Item 7.9 of the Disclosure Schedule, (y) the Existing Operating Leases and (z) other Operating Leases which are part of the Operating Component of the Budget, provided, however, that payments made or to be made by the Operating Company with respect to Operating Leases, including the Existing Operating Leases, shall not exceed the applicable amounts therefor set forth in the Operating Component of the Budget.

SECTION 8.2.9 Contracts; Take or Pay Contracts. The Borrowers shall not enter into or be a party to any arrangement for the purchase of materials, supplies, other property or services. Neither the Operating Company nor its Subsidiaries shall enter into or be a party to any arrangement for the purchase of materials, supplies, other property or services if such arrangement by its express terms requires (other than default remedies under Construction Documents) that payment be made by such Person regardless of whether such materials, supplies, other property or services are in fact or can be required to be delivered or furnished to it (other than with respect to remedies for defaults under the Construction Documents).

**SECTION 8.2.10      Management Agreement and Management Services Agreement.**  
The Borrowers shall not enter into or be a party to any management contract, management services agreement or advisor agreement. Except as set forth in the Budget, neither the Operating Company nor its Subsidiaries shall, enter into or be a party to any management contract, management services agreement, advisor agreement, any agreement covering FF&E or any other contract material to the operation and management of the Temporary Casino Complex, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels or, if applicable, the Permanent Casino Complex without the prior approval of the Administrative Agent in its sole discretion.

**SECTION 8.2.11      Consolidation, Merger, etc.** Neither Greentown Holdings nor its Subsidiaries shall liquidate or dissolve (other than with respect to Contract Builders, Realty Equity or TGCP), consolidate with (other than with respect to Contract Builders, Realty Equity or TGCP), or merge into or with, enter into a joint venture or other combination with, any other Person, or purchase or otherwise acquire any Person (by any means) all or substantially all of the assets of any Person (or of any division thereof).

**SECTION 8.2.12      Restrictions on Dispositions.** Neither Greentown Holdings nor its Subsidiaries shall, sell, transfer, lease, contribute or otherwise convey (including by way of merger), or grant options, warrants or other rights with respect to, any of its or their assets (including accounts receivable and Capital Stock) to any Person (each such conveyance, an “**Asset Sale**”) without the prior written consent of the Administrative Agent; provided, however, that the Operating Company and its Subsidiaries may, without the prior consent of the Administrative Agent, (x) make dispositions in the ordinary course of its business, and (y) dispose of (i) the Surplus Parcels and the Development Parcels and (ii) obsolete, worn out or surplus assets or assets no longer used or useful in the business of the Operating Company or its Subsidiaries, so long as (A) such disposition does not materially and adversely affect the ability of the Operating Company or its Subsidiaries to own and operate the Temporary Casino Complex and the Permanent Casino Complex in accordance with the Development Agreement and this Agreement, (B) the net proceeds thereof which, with respect to the property described in item (ii) of clause (y), have not otherwise been used to fund replacement assets, are to be deposited in the Cash Collateral Account in accordance with Section 3.1.3 and the proceeds of the Cash Collateral Account shall be deemed to be part of the DIP Collateral and (C) with respect to such property listed in item (ii) of clause (y), (1) the consideration received for the disposition thereof shall be in an amount at least equal to the fair market value thereof as reasonably determined by the Administrative Agent and (2) such disposed property shall be replaced with other property of substantially equal utility and a value at least substantially equal to that of the replaced property when first acquired and free from any Liens other than Permitted Liens and by such removal and replacement the Operating Company and its Subsidiaries shall be deemed to be part of the DIP Collateral. Each disposition set forth in the proviso of this Section 8.2.12 shall constitute a “**Permitted Asset Sale**”.

**SECTION 1.1.1      Modification of Project Documents and Certain Agreements.** (a) Neither Greentown Holdings nor its Subsidiaries shall, directly or indirectly, enter into, amend, modify, terminate, supplement or waive a right under or permit or consent to the amendment, modification, termination, supplement or waiver of any of the provisions of, or grant any consent under the Project Documents without the consent of the Administrative Agent; provided,

however, that no such consent shall be required with respect to any such amendment, modification or supplement that (x) is non-material or (y) does not materially affect (i) the value of the DIP Collateral, (ii) the ability of Greektown Holdings and its Subsidiaries to perform in all material respects its and their obligations under the Operative Documents and (iii) the ability of the Operating Company and its Subsidiaries to own and operate the Temporary Casino Complex and the Permanent Casino Complex in the manner owned and operated prior to any such amendment. If the Administrative Agent withholds its consent with respect to any amendment for which its consent is required hereunder, the Administrative Agent shall provide the Borrowers, the Operating Company and the City with the reasons therefore in accordance with Section 13.17.

(b) Without the prior written consent of the Administrative Agent (not to be unreasonably withheld or delayed), the Borrowers will not (and will cause each of their Subsidiaries to not) directly or indirectly, enter into, amend (by Change Order or otherwise), modify (by Change Order or otherwise), terminate, supplement or waive a right under or permit or consent to the amendment, modification, termination, supplement or waiver of any of the provisions of, or grant any consent under (v) any Construction Document, the effect of which could reasonably be expected to have a Material Adverse Effect, (w) any Permit, the effect of which could reasonably be expected to have a Material Adverse Effect, or (x) any Contract having a value in excess of Two Million (\$2,000,000) Dollars, provided that prior written consent shall not be required if such amendment, modification, termination, supplement or waiver has a value less than Five Hundred Thousand (\$500,000) Dollars.

**SECTION 8.2.14** Transactions with Affiliates. The Borrowers shall not, sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each of the foregoing, an **"Affiliate Transaction"**). Except as disclosed in Item 8.2.14 of the Disclosure Schedule, neither the Operating Company nor its Subsidiaries shall enter into, or be a party to, an Affiliate Transaction without the prior written approval of the Administrative Agent. The foregoing provisions will not apply to any payments, transfers or dispositions pursuant to the following: (i) any employment, indemnification, non-competition or confidentiality agreement entered into by the Operating Company or its Subsidiaries in the ordinary course of business on terms customary in the casino business; (ii) Restricted Payments permitted by the provisions of Sections 8.2.6; and (iii) the payment of reasonable fees and expenses to members of the Board of Managers or the Board of Directors, as the case may be, of Greektown Holdings or its Subsidiaries who are not employees of Greektown Holdings or its Subsidiaries.

**SECTION 8.2.15** Negative Pledges, Restrictive Agreements, etc. Neither Greektown Holdings nor its Subsidiaries shall, enter into any agreement (excluding, however, this Agreement and any other Loan Document, governing any Indebtedness prohibiting

(a) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired; or



(b) the ability of Greektown Holdings or its Subsidiaries to amend or otherwise modify any Operative Document.

SECTION 8.2.16 Sale and Leaseback. The Borrowers shall not enter into any agreement or arrangement with one another or any other Person providing for the leasing by it of any real or personal property. Neither the Operating Company nor its Subsidiaries shall, enter into any agreement or arrangement with each other or any other Person providing for the leasing by the Operating Company or any such Subsidiary of real or personal property which has been or is to be sold or transferred by the Operating Company or such Subsidiary, as the case may be, to such other Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of such Borrower or such Subsidiary, as applicable.

SECTION 8.2.17 Capital Stock. The Authority shall not issue, transfer or sell any Capital Stock of Kewadin or Monroe, neither Kewadin nor Monroe shall issue, transfer or sell any Capital Stock of Greektown Holdings, and neither Greektown Holdings nor its Subsidiaries shall issue, transfer or sell any Capital Stock of its Subsidiaries (whether for value or otherwise) to any Person.

SECTION 8.2.18 Hazardous Substances. Neither Greektown Holdings nor its Subsidiaries shall, release, emit or discharge into the environment any Hazardous Substances in material violation of any Environmental Law, Legal Requirement or Permit.

SECTION 8.2.19 No Other Powers of Attorney. Neither Greektown Holdings nor its Subsidiaries shall, execute or deliver any agreement creating any Lien (other than Permitted Liens), powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Project Documents or provided for in the Project Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Loan Documents.

SECTION 8.2.20 Creation of Subsidiaries. From and after the Original Closing Date, (a) neither Greektown Holdings nor its Subsidiaries shall create any Subsidiary and (b) Kewadin and Monroe shall not create any Subsidiary without the prior consent of the Administrative Agent.

SECTION 8.2.21 [Intentionally Omitted].

SECTION 8.2.22 Modification of MGCB Approval. Neither Greektown Holdings nor its Subsidiaries shall, directly or indirectly, amend, modify, terminate, supplement or waive a right under or permit or consent to the amendment, modification, termination, supplement or waiver of any of the provisions of, or grant any consent under the MGCB Approval without the prior consent of the Administrative Agent; provided, however, that no such consent shall be required with respect to any such amendment, modification or supplement if (x) such amendment, modification or supplement is non-material or (y) after giving effect thereto, the MGCB Approval, as so amended, modified or supplemented, as the case may be (i) is at least as favorable to Greektown Holdings, its Subsidiaries and all other Persons to which the MGCB Approval is applicable as it was prior to such amendment and (ii) does not materially affect (a)

the value of the DIP Collateral, (b) the ability of Greektown Holdings and its Subsidiaries to perform in all material respects its and their obligations under the Operative Documents, and (c) the ability of the Operating Company and its Subsidiaries to own and operate the Temporary Casino Complex and the Permanent Casino Complex in the manner owned and operated prior to any such amendment.

SECTION 8.2.23      Modification of Senior Notes or the Senior Notes Trust Indenture. Neither Greektown Holdings nor its Subsidiaries shall, (i) directly or indirectly, amend, modify, terminate, supplement or waive a right under or permit or consent to the amendment, modification, termination, supplement or waiver of any of the provisions of, or grant any consent under the Senior Notes, the Senior Notes Indenture or any other debt instrument subordinate to the Loans, (ii) make any payment or prepayment of principal of, or make any payment of interest on, the indebtedness thereunder regardless of when due or (iii) redeem, purchase or defease the indebtedness thereunder, in each case, without the prior consent of the Administrative Agent.

SECTION 8.2.24      Chapter 11 Claims. No Borrower shall, nor shall any Borrower permit any of the Subsidiary Guarantors to, agree to, incur, create, assume, suffer to exist or permit (a) any administrative expense, unsecured claim, or other superpriority claim or Lien which is pari passu with or senior to the claims or liens of the Secured Parties against the Loan Parties hereunder and the Prepetition Secured Parties, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out, the Post-Default Carve-Out or as otherwise provided in the Orders or (b) any payment of pre-petition claims except as authorized by order of the Bankruptcy Court.

SECTION 8.2.25      Orders. No Loan Party shall, nor shall any Loan Party permit any of its subsidiaries to, make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Loan Documents or the Orders without the prior written consent of the Administrative Agent and the Required Lenders.

SECTION 8.2.26      Scope Changes.

(a) Without obtaining the consent of the Administrative Agent, the Borrowers shall not (and will cause each of their Subsidiaries to not) direct, consent to or enter into any Scope Change if such Scope Change:

(i) will cause the Construction Component of the Budget not to be In Balance or amend the Construction Component of the Budget in accordance with Section 8.2.30 so that, after giving effect to the proposed Scope Change, the Construction Component of the Budget will be In Balance;

(ii) in the sole judgment of the Administrative Agent, is reasonably likely to materially and adversely change or affect the Project;

(iii) in the reasonable judgment of the Construction Consultant (based on its experience, familiarity and review of the Project and representations provided by the Borrowers, Jenkins Skanska, the Contractors and Subcontractors), the Project will not be Substantially Complete beyond February 24, 2009 (subject to extension of the Final Completion date to which the Borrowers or their

Subsidiaries are otherwise entitled under the Development Agreement), or could reasonably require the Jenkins Skanska or the Subcontractors to accelerate performance (except in accordance with a Scope Change) of the Work the cost of which will cause the Construction Component of the Budget not to be In Balance (nothing in this item (iii) shall affect the provisions of Section 9.3, regarding an Event of Default if remedies are exercised under the Development Agreement for failure to achieve the Final Completion Date (as defined in the Development Agreement) in accordance with the Development Agreement);

(iv) in the reasonable judgment of the Construction Consultant, could reasonably permit or result in any materially adverse modification or materially impair the enforceability of any warranty under or any material reduction in the quality standards set forth in the Jenkins Skanska Contract or any Contract;

(v) is not permitted by a Construction Document; or

(vi) could reasonably present a significant risk of the revocation or material adverse modification of any Permit.

**SECTION 8.2.27** Amendment of Construction Component of the Budget. Without the prior written consent of the Administrative Agent, the Borrowers shall not (and will cause each of their Subsidiaries to not) directly or indirectly amend (by Change Order or otherwise), modify (by Change Order or otherwise), allocate, reallocate or supplement or permit or consent to the amendment (by Change Order or otherwise), modification (by Change Order or otherwise), allocation, reallocation or supplementation of any of the Line Item Categories of the Construction Component of the Budget.

**SECTION 8.2.28** Amendment of Milestone Schedule, Construction Schedule, Contract Time and Guaranteed Maximum Price. Without the prior written consent of the Administrative Agent, the Borrowers shall not (and will cause each of their Subsidiaries to not) directly or indirectly amend (by Change Order or otherwise), modify or extend the Jenkins Skanska Contract and/or the Milestone Dates in the Milestone Schedule and/or the Construction Schedule or the Contract Time or the Guaranteed Maximum Price (following such time as the same has been approved by the Administrative Agent) under the Jenkins Skanska Contract.

**SECTION 8.2.29** Construction Documents. The Borrowers shall not (and will cause each of their Subsidiaries to not) breach or default under any term, condition, provision, covenant, representation or warranty contained in any Construction Document or any other agreement to which such Person is a party if the effect of such breach or default could reasonably be expected to have a Material Adverse Effect and such breach or default shall continue unremedied for thirty (30) days after notice from the Administrative Agent to the Borrowers.

**SECTION 8.2.30** Unallocated Contingency. Without the prior written consent of the Administrative Agent, the Borrowers shall not allocate amounts of the Unallocated Contingency Balance to other Line Items in the Construction Component of the Budget if such allocation causes the remaining Unallocated Contingency Balance to be less than the Required Minimum Contingency. The Borrowers shall submit a monthly detailed written report to the Construction

Consultant stating all uses of the Contingency by the Borrowers during the month covered by the report.

SECTION 8.2.31 No Changes in Fiscal Year. The fiscal year of the Borrowers ends on December 31 of each year; and the Borrowers shall not, nor shall it permit any of the Subsidiary Guarantors to, change its fiscal year from its present basis, unless the Administrative Agent shall have approved such change.

SECTION 8.2.32 Lien Releases.<sup>10</sup> The Borrowers shall not, nor shall it permit any of the Subsidiary Guarantors to, make payment of any proceeds of an Advance to any Contractor or Subcontractor unless such Contractor or Subcontractor has duly executed and delivered the acknowledgment of payments and unconditional releases of construction and materialmen's liens delivered by the Borrowers pursuant to clause (b) of Section 6.4.9. The Borrowers shall deliver or cause to be delivered to the Administrative Agent and the Construction Consultant such unconditional releases in accordance with clause (a) of Section 6.4.9 or otherwise at the request of the Administrative Agent.

## ARTICLE IX

### EVENTS OF DEFAULT

SECTION 9.1 Listing of Events of Default. Each of the following events or occurrences described in this Section 9.1 shall constitute an "Event of Default".

SECTION 9.1.1 Non-Payment of Obligations. The Borrowers shall default in the payment or prepayment when due of

(a) any Letter of Credit Reimbursement Obligation or any deposit of cash for collateral purposes pursuant to Section 2.6.2, Section 2.6.4 or item (ii) of clause (b) of Section 4.11, as the case may be, and such Default shall continue unremedied for a period of three (3) Business Days;

(b) any principal of or interest on any Loan, and, with respect to any Default in the payment of interest, such Default shall continue unremedied for a period of two (2) Business Days; or

(c) any fee described in Article III or any fee related to any other Obligation and such Default shall continue unremedied for a period of two (2) days.

SECTION 9.1.2 Breach of Warranty. Any representation or warranty of Greentown Holdings or any of its Subsidiaries made hereunder, in any other Loan Document executed by any such Person, the Development Agreement or the Indemnity Agreement or in any other writing or certificate furnished by or on behalf of Greentown Holdings or its Subsidiaries to the Administrative Agent, the Issuer or any Lender for the purposes of or in connection with this Agreement or any such other Loan Document (including any certificates delivered pursuant to Article V hereof) is or shall be incorrect when made or deemed to have been made in any

---

<sup>10</sup> Section 8.2.32 added by the First Amendment to DIP Credit Agreement.

material respect and, with respect to the Development Agreement, no Event of Default (as defined in the Development Agreement) would result thereunder or Material Adverse Effect could reasonably be expected to result therefrom.

SECTION 9.1.3 Non-Performance of Certain Covenants and Obligations. Either Borrower, any of their Subsidiaries or any other Person named therein shall default in the due performance and observance of any of its obligations under the proviso in Section 6.1.8 and under Sections 8.1.6, 8.1.7, 8.1.37, 8.1.38 and 8.2 herein or Section 3.10 of the Development Agreement.

SECTION 9.1.4 Non-Performance of Other Covenants and Obligations. Greentown Holdings or any of its Subsidiaries shall default in the due performance and observance of any Loan Document executed by it, and such default (i) shall continue unremedied for a period of thirty (30) days (or such other period of time during which performance is required under the applicable Loan Document) after notice thereof shall have been given to such Person and the Borrowers by the Administrative Agent, or (ii) shall continue unremedied for a period of fifteen (15) days in the case of defaults under Section 8.1.3.

SECTION 9.1.5 Default on Other Indebtedness. A post-petition default shall occur in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any Indebtedness of Greentown Holdings or any of its Subsidiaries (other than Indebtedness described in Section 9.1.1 and the Senior Notes) or unsecured Indebtedness of Greentown Holdings or any of its Subsidiaries in excess of \$1,000,000 (subject to any applicable grace period) if the effect of such Default is to accelerate the maturity of any such Indebtedness or such Default shall continue unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause or declare such Indebtedness to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or to cause an offer to purchase or redeem such Indebtedness to be required to be made, prior to its expressed maturity.

SECTION 9.1.6 Judgments. Any judgment or order entered after the Petition Date with respect to a claim arising after the Petition Date for the payment of money in excess of \$10,000,000 individually or in the aggregate (excluding, however, any amounts fully covered by insurance (less any applicable deductible) or indemnification and as to which the insurer or the indemnifying party, as the case may be, has acknowledged its responsibility to cover such judgment or order) shall be rendered against Greentown Holdings, any of its Subsidiaries, the Temporary Casino Complex, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels, or, if applicable, the Permanent Casino Complex and such judgment shall not have been vacated or discharged or stayed or bonded pending appeal within forty-five (45) days after the entry thereof. The foregoing shall not apply to any Surplus Parcel or any Development Parcel from and after the date that it is disposed of in accordance with Section 8.2.12.

SECTION 9.1.7 Pension Plans. Any of the following events shall occur with respect to any Pension Plan

- (a) termination of a Pension Plan if, as a result of such termination, Greentown Holdings, any of its Subsidiaries or any such member would reasonably be

required to make a contribution to such Pension Plan, or would reasonably expect to incur a liability or obligation to such Pension Plan, in excess of \$5,000,000; or

(b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under section 302(f) of ERISA and such failure continues for thirty (30) days or more.

SECTION 9.1.8 Change of Control. Any Change of Control shall occur.

SECTION 9.1.9 Bankruptcy Matters. Any of the following events shall occur:

(a) the entry of an order: (i) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code or not otherwise permitted pursuant to the Loan Documents except, with the consent of the Administrative Agent, in connection with any financing the proceeds of which shall be used to repay in full the Obligations; (ii) to grant any Lien on any DIP Collateral except as permitted hereunder and under the other Loan Documents; (iii) except as provided in the Interim Order or the Amended Final Order, as the case may be, to use cash collateral of the Secured Parties under Section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent or (iv) that reduces, sets-off or subordinates the Obligations; or

(b) the filing by any Debtor of any plan of reorganization that is either unsatisfactory to the Administrative Agent or that does not provide for indefeasible payment in full and satisfaction of the Obligations as required herein, on the effective date of such plan of reorganization; or

(c) either Order shall be reversed, amended, supplemented, stayed, vacated or otherwise modified (or any Debtor shall apply for authority to do so) without the prior written consent of the Administrative Agent, or shall cease to be in full force and effect or is stayed in any respect; or any Debtor fails to perform any of its obligations under any Order; or

(d) the dismissal of any Case, or the conversion of any Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal or conversion of any Case; or

(e) except the Orders, the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (i) to allow any creditor or other third party to proceed against, execute upon or enforce a Lien on, any material asset or assets of the Borrowers or Subsidiary Guarantors, or (ii) with respect to any Lien of or the granting of any Lien on any DIP Collateral to any state or local environmental or regulatory agency or authority that would have a Material Adverse Effect or priority over any Lien of the Lenders; or

(f) the Amended Final Order is not entered by the Bankruptcy Court within thirty (30) days of the date of entry of the Interim Order, or, in any event, the Amended Final Order is not entered immediately following the expiration of the Interim Order; or

- (g) failure of the Borrowers or the Subsidiary Guarantors to fulfill their obligations under the Amended Final Order; or
- (h) the entry of an order under Section 506(c) of the Bankruptcy Code surcharging the DIP Collateral or the Prepetition Collateral; or
- (i) the entry of an order in any of the Cases avoiding or requiring repayment of any portion of the payments made on account of the Obligations; or
- (j) the appointment of an interim or permanent trustee in any Case or the appointment of a receiver, responsible officer or an examiner in any Case with enlarged powers beyond the duty to investigate and report, as set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code; or the sale without the consent of the Administrative Agent, of all or substantially all of any Borrower's or any Subsidiary Guarantor's assets (either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in any Case, or otherwise, that does not provide for payment in full of the Obligations and termination of the Lenders' commitment to make Loans or other extensions of credit hereunder; or
- (k) the entry of an order in any of the Cases granting any other superpriority administrative claim or Lien equal or superior to that granted to the Administrative Agent, on behalf of itself and the Lenders (other than the Carve-Out, the Post-Default Carve-Out and as expressly provided in the Order), or any Borrower or Subsidiary Guarantor shall file any pleading requesting such relief; or
- (l) the payment of pre-petition claims without court order; or
- (m) failure of the Borrowers or the Subsidiary Guarantors to file a plan of reorganization prior to the expiration of their exclusivity periods, as they may be extended by court order; or
- (n) the bringing or supporting of a motion or the filing of any plan of reorganization or disclosure statement attendant thereto by any Borrower or Subsidiary Guarantor seeking, or otherwise consenting to, any of the foregoing in any of the Cases.

SECTION 9.1.10 Impairment of DIP Collateral, etc. Any Loan Document, or any Lien granted thereunder, shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Obligor party thereto or Greentown Holdings or any of its Subsidiaries, any other Obligor shall, directly or indirectly, repudiate any Loan Document or contest in any manner such effectiveness, validity, binding nature or enforceability or, except as permitted under any Loan Document, any Lien securing any Obligation shall, in whole or in part, cease to be a perfected first priority Lien, subject only to valid and senior construction Liens, except as otherwise permitted hereunder.

SECTION 9.1.11 Breach of Project Documents. Except for breaches and defaults that exist as of the Effective Date or as otherwise set forth in Section 9.1.3, Greentown Holdings, its Subsidiaries or any other Person shall breach or default under any term, condition, provision,

covenant, representation or warranty contained in any Project Document to which such Person is a party and such breach or default shall continue unremedied for thirty (30) days after notice from the Administrative Agent to Greentown Holdings, as applicable; provided, however, that in the case of any Project Document,

(a) the cure period shall be extended beyond such thirty (30) day period during such time as Greentown Holdings or its applicable Subsidiary is contesting or undertaking the cure of such alleged breach or default in good faith promptly and diligently conducted and (1) such reserve or appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made therefor and (2) in case of any charge or claim which has or may become a Lien against any of the DIP Collateral, such Lien is subject and subordinate in all respects to the Liens held by the Administrative Agent (unless bonded) and such contested proceedings conclusively operate to stay the sale of any portion of the DIP Collateral to satisfy such charge or claim which has or may become a Lien against any of the DIP Collateral);

(b) if the breach or default is reasonably susceptible to cure within ninety (90) days but cannot be cured within such thirty (30) day period despite Greentown Holdings (or its applicable Subsidiary) or such other Person's, as the case may be, good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such thirty (30) day period (but in no event longer than ninety (90) days) if remedial action reasonably likely to result in cure is promptly instituted within such thirty (30) day period and is thereafter diligently pursued until the breach or default is corrected; and

(c) if the breach is by a Person other than Greentown Holdings or any of its Subsidiaries, then no Event of Default shall be deemed to have occurred as a result of such breach if immediately upon such breach (but in no event more than two (2) Business Days after the Borrowers become aware of such breach) the Borrowers provide written notice thereof to the Administrative Agent and such breach has not had and would not reasonably be expected to have a Material Adverse Effect.

**SECTION 9.1.12      Termination or Invalidity of Project Documents; Abandonment of Temporary Casino.**

(a) If any Project Document shall have terminated, become invalid or illegal, or otherwise ceased to be in full force and effect; provided, however, that no Event of Default shall be deemed to have occurred as a result of such termination if Greentown Holdings provides written notice to the Administrative Agent immediately upon such termination (but in no event more than two (2) Business Days after Greentown Holdings or any of its Subsidiaries becomes aware of such termination) and such termination has not had and could not reasonably be expected to result in a Material Adverse Effect;

(b) The Operating Company shall cease to own and lease all portions of the Temporary Casino Complex, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and, if applicable, the Permanent Casino Complex and the Easements which are material and necessary for the purpose of owning, maintaining and



operating the Temporary Casino Complex, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and, if applicable, the Permanent Casino Complex in the manner contemplated by the Development Agreement and this Agreement; provided, however, that the foregoing shall not apply to any Surplus Parcel or any Development Parcel from and after the date that it is disposed of in accordance with Section 8.2.12;

(c) The Operating Company and its Subsidiaries shall cease to own the portion of the Temporary Casino Complex owned by each of them (except as expressly permitted in Section 8.2.11 and Section 8.2.12) or the Easements which are material and necessary for the purpose of owning, maintaining and operating such portion of the Temporary Casino Complex or shall abandon the Temporary Casino Complex, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels or, if applicable, the Permanent Casino Complex or otherwise cease operations of the Temporary Casino Complex or, if applicable, the Permanent Casino Complex as required under the Development Agreement and this Agreement or shall sell or otherwise dispose of its interest in the Temporary Casino Complex or, if applicable, the Permanent Casino Complex, in each case, other than Permitted Asset Sales; provided, however, that the foregoing shall not apply to any Surplus Parcel or any Development Parcel from and after the date that it is disposed of in accordance with Section 8.2.12; or

(d) Greentown Holdings, any of its Subsidiaries, Monroe, Kewadin, the Authority or the Tribe shall repudiate any of the Loan Documents or contest the validity thereof.

**SECTION 9.1.13** Government Authorizations. Any Permit necessary for the ownership, maintenance, financing or operation of the Temporary Casino or, if applicable, the Permanent Casino Complex shall be lawfully modified, refused, rejected, suspended, revoked or canceled, or allowed to lapse (including casino, gaming or gambling business) or a notice of a material violation is issued under any Permit, by the issuing agency or other Governmental Instrumentality having jurisdiction, or any proceeding is commenced by any Governmental Instrumentality for the purpose of modifying, suspending, revoking or canceling any Permit and such modification, refusal, rejection, revocation or loss of such Permit or such notice of a material violation or proceeding is reasonably likely to result in a Material Adverse Effect.

**SECTION 9.1.14** Gaming License; Liquor License. Any gaming license or approval by the MGCB covering the operation of the Temporary Casino or, if applicable, the Permanent Casino Complex and the Operating Company, including the MGCB Approval, expires without renewal, terminates without renewal or is lawfully revoked or such gaming license no longer exclusively covers the Temporary Casino or, if applicable, the Permanent Casino Complex or is transferred to another casino or the Borrowers or the Subsidiary Guarantors otherwise lose the legal authority to conduct gaming from the MGCB or the City. Any liquor license of the Borrowers or the Subsidiary Guarantors expires without renewal, terminates without renewal or is lawfully revoked.

**SECTION 9.1.15** Material Adverse Effect. The occurrence of a Material Adverse Effect.

SECTION 9.1.16 Matters Relating to the Tribe. Failure of the Tribe at all times prior to the indefeasible payment of the Obligations to be a federally recognized Indian tribe or the assertion of any claim of sovereign or other form of immunity to enforce or collect upon the Loan Documents (including, without limitation, any claim of immunity from service of process, immunity from jurisdiction of any court or tribunal, immunity from attachment of property prior to entry of judgment and from attachment in aid of execution and immunity from execution on a judgment).

SECTION 9.1.17 Breach of Approvals by the MGCB. If Greektown Holdings or any of its Subsidiaries shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any applicable approval by the MGCB, including, without limitation, the MGCB Approval, and such breach or default shall continue unremedied for any applicable grace period provided in any such approval or, if no grace period is provided, for two (2) Business Days from the date of such breach or default unless, prior to the expiration of the applicable cure period, such breach or default is irrevocably waived in writing by all of the other parties thereto.

SECTION 9.1.18 Application of Conservator Provisions under Michigan Gaming Law. If for any reason whatsoever, any of the conservator provisions of the Michigan Gaming Law are lawfully applied to Greektown Holdings, any of its Subsidiaries or any of the property owned, leased or held by any of them.

SECTION 9.1.19 Forced Sale. If the MGCB shall lawfully order a forced sale of any of the Borrowers, the Subsidiary Guarantors or the Project or any portion thereof.

SECTION 9.1.20 Failure to Retain Restructuring Advisor. If the Borrowers fail to retain the Restructuring Advisor in accordance with this Agreement.

SECTION 1.1.1 Matters Relating to the Authority. (a) With respect to its interest in Kewadin, if the Authority shall directly or indirectly, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness secured by a Lien against such interest other than Indebtedness secured by Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

(b) With respect to its interest in Kewadin, if the Authority shall create, incur, assume or suffer to exist any Lien upon such interest or any proceeds, income, distributions or profits therefrom, or assign or convey any right to receive proceeds, income distributions or profits therefrom, excluding, however, Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

SECTION 1.1.1 Matters Relating to Kewadin. (a) With respect to its interest in Monroe and Greektown Holdings, if Kewadin shall directly or indirectly, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness secured by a Lien against such interest other than (i) Indebtedness secured by Liens in favor of the Administrative Agent for the benefit of the Secured Parties or (ii) Indebtedness secured by Liens in favor of Ted Gatzaros, Maria Gatzaros, Viola Papas, Jim Papas, Arthur Blackwell, Christopher Jackson, Marvin Beatty, David Akins, Jamal Harris, Robert Smith, George Evans,

J.C. Douglas, Victoria Suane Loomis, Harris & Associates 401(k) Plan, Barden Nevada or Barden Nevada Gaming LLC.

(b) If Kewadin shall not create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, or any proceeds, income, distributions or profits therefrom, or assign or convey any right to receive any proceeds, income, distributions or profits therefrom, excluding, however, (i) Liens in favor of the Administrative Agent for the benefit of the Secured Parties and (ii) Indebtedness secured by Liens in favor of Ted Gatzaros, Maria Gatzaros, Viola Papas, Jim Papas, Arthur Blackwell, Christopher Jackson, Marvin Beatty, David Akins, Jamal Harris, Robert Smith, George Evans, J.C. Douglas, Victoria Suane Loomis, Harris & Associates 401(k) Plan, Barden Nevada or Barden Nevada Gaming LLC.

SECTION 1.1.1 Matters Relating to Monroe. (a) With respect to its interest in Greektown Holdings, if Monroe shall directly or indirectly, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness secured by a Lien against such interest other than (i) Indebtedness secured by Liens in favor of the Administrative Agent for the benefit of the Secured Parties or (ii) Indebtedness secured by Liens in favor of Ted Gatzaros, Maria Gatzaros, Viola Papas or Jim Papas.

(b) Monroe will not create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, or any proceeds, income, distributions or profits therefrom, or assign or convey any right to receive any proceeds, income, distributions or profits therefrom, excluding, however, (i) Liens in favor of the Administrative Agent for the benefit of the Secured Parties and (ii) Indebtedness secured by Liens in favor of Ted Gatzaros, Maria Gatzaros, Viola Papas or Jim Papas.

SECTION 1.2 Action if Event of Default. If any Event of Default shall occur for any reason, whether voluntary or involuntary, and be continuing, after direction by the Required Lenders, the Administrative Agent shall, by written notice to the Borrowers and the Subsidiary Guarantors, terminate the DIP Facility, declare all or any portion of the outstanding principal amount of the Loans and other Obligations (including Letter of Credit Reimbursement Obligations) to be due and payable or the Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of such Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment, or, as the case may be, the Commitments shall terminate and the Borrowers shall automatically and immediately be obligated to deposit or cause to be deposited with the Administrative Agent cash collateral in an amount equal to all Letter of Credit Outstandings in accordance with Section 2.6.4. The Bankruptcy Court shall retain exclusive jurisdiction with respect to all matters relating to the exercise of rights and remedies under the DIP Facility, the Interim Order, the Amended Final Order and with respect to the Prepetition Collateral and the DIP Collateral. In addition to the foregoing, after direction by the Required Lenders, the Administrative Agent shall, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands being waived (to the extent permitted by applicable law), exercise any or all rights and remedies at law or in equity (in any combination or order that

the Lenders may elect, subject to the foregoing), including, without prejudice to the Lenders' other rights and remedies, the following:

(a) exercise the right (after providing five (5) Business Days' prior notice to the Borrowers and Subsidiary Guarantors and any statutory committee of the occurrence of the DIP Facility Termination Date) to realize on all DIP Collateral without the necessity of obtaining any further relief or order from the Bankruptcy Court, subject to the right of the Borrowers and Subsidiary Guarantors to seek continuation of the automatic stay during such five (5) Business Days' period solely on the basis that no Event of Default has occurred;

(b) suspend or terminate the Lenders' obligation to make additional Borrowings (other than obligatory Borrowings hereunder pursuant to Section 2.6.1 and Section 2.6.4), to process requests by the Borrowers and to perform any other obligations of the Lenders which are expressly subject to there not being a Default under this Agreement shall be terminated;

(c) subject to any required approval of the MGCB and the terms and conditions of the Development Agreement, make or do the same in such manner and to such extent as the Lenders may deem necessary to protect the security hereof, the Lenders being authorized to enter upon and take possession of the portion of the Temporary Casino Complex, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and the Permanent Casino Complex for such purposes, and any sums expended for such purposes shall become part of the Indebtedness evidenced and secured by the Mortgage and the Realty Equity Mortgage, as applicable; provided, however, that the foregoing shall not apply to any Surplus Parcel or any Development Parcel from and after the date that it is disposed of in accordance with Section 8.2.12;

(d) commence, appear in and/or defend any action or proceedings purporting to affect the DIP Collateral, and/or any additional or other security therefor, the interests, rights, powers or duties of the Lenders hereunder, whether brought by or against Greentown Holdings, its Subsidiaries or the Lenders;

(e) pay, purchase, contest or compromise any claim, debt, Lien, charge or encumbrance that in the judgment of the Lenders may impair or reasonably appear to impair the security of the Mortgage, the Realty Equity Mortgage and the TGCP Mortgage, as applicable, or the other Loan Documents, the interests of the Lenders or the rights, powers and/or duties of the Lenders hereunder and any sums expended for such purposes shall become part of the Indebtedness evidenced and secured by the Loan Documents;

(f) subject to any required approval of the MGCB and the terms and conditions of the Development Agreement, the Lenders (and their nominee and/or designee) are authorized either by themselves or by their agents or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take and hold possession of any portion or all of the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and/or the Improvements thereon, both real and

personal, and exclude Greektown Holdings, its Subsidiaries and all other Persons therefrom and thereupon the Lenders (or their nominee or designee) may, (u) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and conduct business thereat, (v) take possession of all materials, supplies, tools, equipment and construction facilities and appliances located on the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and perform any and all work and labor existing at the time the Lenders (or their nominee and/or designee) enter into possession of the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and perform any and all work and labor necessary to operate and maintain the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and all sums expended in so doing, together with interest on such total amount at the rate set forth in Section 3.2.2, shall be repaid by the Borrowers to the Lenders upon demand and shall be secured by the Loan Documents, (w) employ watchmen to protect the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels, (x) make alterations, additions, renewals, replacements and improvements to the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels (y) exercise all rights and powers of Greektown Holdings and its Subsidiaries with respect to the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and pursuant to or under the Development Agreement, the Operative Documents or any agreements relating to the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels, whether in the name of Greektown Holdings, its relevant Subsidiary or otherwise, including the right to make, cancel, enforce or modify the Development Agreement or any agreements relating to the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels, obtain and evict tenants and other Persons, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income from the Temporary Casino Complex, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and, if applicable, the Permanent Casino Complex and every part thereof, the Development Agreement or any agreements relating to the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and (z) apply the receipts therefrom to the payment of the Indebtedness evidenced and secured by the Loan Documents in accordance with this Agreement, after deducting therefrom all expenses (including reasonable attorneys' fees and costs and expenses) incurred in connection with the aforesaid operations and all amounts to pay the Impositions, assessments, insurance and other charges in connection with the Site, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and, if applicable, the Permanent Casino Complex as well as just and reasonable compensation for the services of the Administrative Agent, the Lenders and their counsel, agents and employees; provided, however, that the foregoing shall not apply to any Surplus Parcel or any Development Parcel from and after the date that it is disposed of in accordance with Section 8.2.12;

(g) subject to any required approval of the MGCB and the terms and conditions of the Development Agreement, exercise all rights and remedies under the Mortgage, the Realty Equity Mortgage, the TGCP Mortgage and the other Loan Documents;

(h) institute an action, suit or proceeding in equity for the specific performance by Greektown Holdings and its Subsidiaries of any covenant, condition, or agreement contained herein or in any of the other Loan Documents;

(i) subject to the applicable requirements of the MGCB and the Development Agreement, apply, for the appointment of a custodian, receiver, liquidator or conservator of the Temporary Casino Complex, the Surplus Parcels, the Trappers Alley Parcel, the Development Parcels and, if applicable, the Permanent Casino Complex without regard for the adequacy of the security for the Indebtedness evidenced and secured by the Loan Documents;

(j) set off and apply all monies on deposit in any account or any other monies of Greektown Holdings or any of its Subsidiaries on deposit with the Administrative Agent to the satisfaction of the Obligations under all of the Loan Documents; and

(k) subject to any required approval of the MGCB and the terms and conditions of the Development Agreement, exercise any and all rights and remedies available to it under applicable law or any of the Operative Documents.

Except as otherwise set forth herein, all sums expended by the Lenders for any of the purposes described above shall be deemed to have been advanced to the Borrowers under and pursuant to the provisions of this Agreement, shall bear interest at the rate of interest set forth in Section 3.2.2 and shall be secured by the Mortgage, the Realty Equity Mortgage, the TGCP Mortgage and the other DIP Collateral; provided, however, the Borrowers shall have the right to challenge the amount of such sums. The Administrative Agent or the Lenders (or their nominee or designee) may at any time discontinue any action or remedy commenced by it or them, as the case may be, or change any course of action undertaken by it or them, and in such event, the Administrative Agent and the Lenders (or their nominee or designee) shall not be bound by any requirements or limitations of time contained in the Mortgage, the Realty Equity Mortgage, the TGCP Mortgage or the other Loan Documents. For the foregoing purposes, Greektown Holdings and its Subsidiaries, to the fullest extent permitted by law, hereby constitutes and appoints the Administrative Agent (or its nominee or designee) as the true and lawful agent and attorney-in-fact of each such Person with full power of substitution and hereby empowers the Administrative Agent (and its nominee or designee) to take such action and require such performance as it deems necessary or desirable. This agency and power of attorney shall be deemed to be coupled with an interest and shall be irrevocable.

SECTION 1.3 Development Agreement Matters. Notwithstanding anything else in this Agreement, solely in reference to Sections 2.5(a) and 6.5 of the Development Agreement, the failure to achieve Completion (as defined in the Development Agreement) by August 16, 2008 shall not constitute an Event of Default if prior to March 31, 2009, neither the EDC nor the City has exercised, or given any notice of its intent to exercise, any remedies under Section 6.2 of the Development Agreement or taken any other action with respect to the failure to achieve Completion, in which event such notice, exercise of remedies or taking of action shall be an Event of Default.

## ARTICLE II

### THE ADMINISTRATIVE AGENT

SECTION 2.1 Designation of Administrative Agent. Each Lender hereby makes the following designations:

(a) Each Lender hereby designates MLCC to act as the Administrative Agent under and for purposes of this Agreement and the other Loan Documents and authorizes MLCC, in its capacity as the Administrative Agent, to act on behalf of such Lender under this Agreement and the other Loan Documents. Subject to the terms and conditions hereof, MLCC accepts such appointment and agrees to act as the Administrative Agent on behalf of the Lenders and to perform the duties of the Administrative Agent in accordance with the provisions of this Agreement and the other Loan Documents. Each Lender agrees that the Administrative Agent, at its option, may delegate its duties, rights and powers, and that each sub-agent shall implement all such duties, rights and powers on behalf of the Administrative Agent that are required of the Administrative Agent on behalf of the Lenders. The Administrative Agent and such sub-agent may perform any and all of their duties and exercise their rights and powers through their respective Affiliates, directors, officers, employees, agents and advisors. The exculpatory provisions of Section 10.3 shall apply to such sub-agent and each such Affiliate, director, officer, employee, agent and advisor and to their respective activities. The Administrative Agent may replace such sub-agent upon consent of the Required Lenders and the exculpatory provisions of Section 10.3 shall apply to such replacement sub-agent.

(b) Each Lender authorizes the Administrative Agent to act on behalf of such Lender under this Agreement and the other Loan Documents and, in the absence of other written instructions from the Required Lenders received from time to time by the Administrative Agent (with respect to which the Administrative Agent agrees that it will comply, except as otherwise provided in this Section or as otherwise advised by counsel in order to avoid contravention of applicable law), to exercise such powers hereunder and thereunder as are specifically delegated to or required of the Administrative Agent, by the terms hereof and thereof, together with such powers as may be reasonably incidental thereto.

(c) Each Lender hereby indemnifies (which indemnity shall survive any termination of this Agreement) the Administrative Agent, pro rata according to such Lender's Percentage, from and against any and all liabilities, obligations, losses, damages, claims, costs or expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against, the Administrative Agent in any way relating to or arising out of this Agreement or the other Loan Documents, including reasonable attorneys' fees, consultants' fees and as to which the Administrative Agent is not reimbursed by or on behalf of the Borrowers; provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, claims, costs or expenses (i) which are determined by a court of competent jurisdiction in a final proceeding to have resulted solely from the gross negligence or willful misconduct of the Administrative Agent or (ii) which arise from the failure of another Lender to

make its portion of the Commitment Amount available or to advance such Lender's Percentage of any Loans to be made to the Borrowers (in which case such other Lender shall have responsibility for indemnification therefor). The Administrative Agent shall not be required to take any action hereunder or under any other Operative Document, or to prosecute or defend any suit in respect of this Agreement or any other Operative Document, unless the Administrative Agent is indemnified hereunder to its satisfaction. If any indemnity in favor of the Administrative Agent shall be or become, in the respective determination of the Administrative Agent, inadequate, the Administrative Agent may call for additional indemnification from the Lenders and cease to do the acts indemnified against hereunder until such additional indemnity is given.

SECTION 2.2 Funding Reliance, etc. Unless the Administrative Agent shall have been notified by telephone, confirmed in writing, by any Lender by 5:00 p.m., New York City time, on the Business Day prior to a Borrowing that such Lender will not make available the amount which would constitute its Percentage of such Borrowing on the date specified therefor, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent and, in reliance upon such assumption, make available to the Borrowers a corresponding amount. If and to the extent that such Lender shall not have made such amount available to the Administrative Agent, such Lender and the Borrowers severally agree to repay the Administrative Agent forthwith on demand such corresponding amount, together with interest thereon, for each day from the date the Administrative Agent made such amount available to the Borrowers to the date such amount is repaid to the Administrative Agent, at the interest rate applicable at the time to Loans comprising such Borrowing in the case of the Borrowers and at the Federal Funds Rate (in the case of a Lender) (for the first two (2) Business Days after which such amount has not been repaid) and thereafter at the interest rate applicable to Loans comprising such Borrowing. Nothing in this Section shall affect or impair the rights or remedies of the Borrowers against such Lender so long as such amount and interest, if any, has been repaid by the Borrowers to the Administrative Agent.

SECTION 2.3 Exculpation. The Administrative Agent shall have no duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing neither the Administrative Agent nor any of the Administrative Agent's directors, officers, employees or agents (i) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (ii) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other Lenders as shall be required by Section 13.1), (iii) except as expressly set forth herein, shall have any duty to disclose, and shall not be liable for failure to disclose any information relating to Greentown Holdings or any of its Subsidiaries that is communicated to or obtained by the Person serving as the Administrative Agent or any of the Administrative Agent's Affiliates, (iv) shall be liable for any action taken by the Administrative Agent with the consent or at the request of the Required Lenders (or such other number of Lenders as shall be required by Section 13.1), (v) shall be deemed to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by Greentown Holdings, any of its Subsidiaries or a Lender, (vi) shall be liable to any Lender for any action taken or omitted to be taken by it under this Agreement or any other Loan Document, or in connection herewith or therewith, except for the Administrative Agent's own bad faith,



willful misconduct or gross negligence, (vii) shall be responsible for any recitals or warranties herein or therein, nor for the effectiveness, enforceability, validity or due execution of this Agreement or any other Loan Document, (viii) shall be responsible for the creation, perfection or priority of any Liens purported to be created by any of the Loan Documents, (ix) shall be responsible for the validity, genuineness, enforceability, existence, value or sufficiency of any collateral security or (x) shall have any duty to make any inquiry respecting the performance by Greektown Holdings or any of its Subsidiaries of its obligations hereunder or under any other Loan Document. Any inquiry which may be made by the Administrative Agent shall not obligate the Administrative Agent to make any further inquiry or take any action. The Administrative Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any notice, consent, certificate, statement or writing which the Administrative Agent believes to be genuine and to have been presented by a proper Person.

SECTION 2.4 Successors. The Administrative Agent may resign as such at any time upon at least thirty (30) days' prior notice to the Borrowers and the Lenders. If the Administrative Agent at any time shall resign, the Required Lenders may, after consultation with Greektown Holdings (but only if no Default then exists hereunder) and subject to any required approval of the MGCBS and the terms and conditions of the Development Agreement, appoint another Lender as a successor to the Administrative Agent which shall thereupon become the Administrative Agent hereunder. If no successor for the Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent's giving notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and after consultation with Greektown Holdings (such consultation being required only if no Default then exists hereunder) and subject to any required approval of the MGCBS and the terms and conditions of the Development Agreement, appoint a successor to act in the capacity of such retiring Administrative Agent which shall be one of the Lenders or a commercial banking institution organized under the laws of the U.S. (or any State thereof) or a U.S. branch or agency of a commercial banking institution and having (x) a combined capital and surplus of at least \$250,000,000 and (y) a credit rating of AA or better by Moody's or a comparable rating by S&P; provided, however, that if, after expending all reasonable commercial efforts, such retiring Administrative Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth in item (y), such retiring Administrative Agent shall be permitted to appoint as its successor from all available commercial banking institutions willing to accept such appointment such institution having the highest credit rating of all such available and willing institutions. Upon the acceptance of any appointment by a successor Administrative Agent hereunder, such successor Administrative Agent shall be entitled to receive from the retiring Administrative Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request, and shall thereupon succeed to and become vested with all rights, powers, privileges and duties of such retiring Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation, the provisions of

(a) this Article X shall inure to its benefit as to any actions taken or omitted to be taken by such retiring Agent while it was the Administrative Agent under this Agreement, as applicable; and

(b) Section 13.3 and Section 13.4 shall continue to inure to its benefit.

SECTION 2.5 Loans by the Administrative Agent. The Administrative Agent shall have the same rights and powers with respect to the Credit Extensions made by it or any of its Affiliates as any other Lender and may exercise the same as if it were not the Administrative Agent hereunder. The Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with Greektown Holdings, its Subsidiaries, Kewadin, Monroe, the Authority, the Tribe or any Subsidiary or Affiliate thereof as if such Person was not the Administrative Agent hereunder.

SECTION 2.6 Credit Decisions. Each Lender acknowledges that it has, independently of the Administrative Agent and each other Lender, and based on such Lender's review of the financial information of Greektown Holdings, its Subsidiaries, this Agreement, the other Loan Documents (the terms and provisions of which being satisfactory to such Lender) and such other documents, information and investigations as such Lender has deemed appropriate, made its own credit decision to extend its Commitments. Each Lender also acknowledges that it will, independently of the Administrative Agent and each other Lender, and based on such other documents, information and investigations as it shall deem appropriate at any time, continue to make its own credit decisions as to exercising or not exercising from time to time any rights and privileges available to it under this Agreement or any other Loan Document. Notwithstanding the foregoing or anything else to the contrary herein, with respect to any Default hereunder, no Lender shall exercise any independent rights, remedies or options against Greektown Holdings or any of its Subsidiaries (other than pursuant to Section 4.9) hereunder or any other action that is not pursuant to the Loan Documents.

SECTION 2.7 Copies, etc. The Administrative Agent shall give prompt notice to each Lender of each notice or request required or permitted to be given to the Administrative Agent by or on behalf of the Borrowers pursuant to the terms of this Agreement and the other Loan Documents (unless concurrently delivered to the Lenders by or on behalf of the Borrowers). The Administrative Agent will distribute to each Lender each document or instrument received for its account and copies of all other communications received by the Administrative Agent from or on behalf of the Borrowers for distribution to the Lenders by the Administrative Agent in accordance with the terms of this Agreement or any other Loan Document.

SECTION 1.1 Consultants and Reports. (a) The Administrative Agent, in its sole discretion, may remove from time to time the Independent Consultants and appoint replacements as the Administrative Agent may choose in accordance with this Agreement. As soon as practicable, notice of any replacement Independent Consultant shall be given by the Administrative Agent to Greektown Holdings, and the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by or on behalf of the Borrowers.

(b) Each of the Independent Consultants shall be contractually obligated to the Administrative Agent to carry out the activities required of it in the Loan Documents and as otherwise requested by the Administrative Agent. Greektown Holdings and each of its Subsidiaries acknowledges that it will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken

or not taken or any advice given by such Independent Consultant in the due performance in good faith of its duties except for the gross negligence and willful misconduct of the Independent Consultant; provided, however, the foregoing standard of care shall not affect the standard of care which is required under any letter or agreement pursuant to which an Independent Consultant was engaged or the rights, remedies and options of the Lenders under any such letter or agreement.

**SECTION 2.9 The Lead Arranger and the Co-Managers.** The Lead Arranger and the Co-Managers hereunder shall not have any right, power, obligation, liability, responsibility or duty under this Agreement (or any other Loan Document) other than those applicable to it in its capacity as a Lender to the extent it is a Lender hereunder. Without limiting the foregoing, the Lender so identified as the “**Lead Arranger**” or a “**Co-Manager**” shall not have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on the Lender so identified as the “**Lead Arranger**” or a “**Co-Manager**” in deciding to enter into this Agreement and each other Loan Document to which it is a party or in taking or not taking action hereunder or thereunder.

### **ARTICLE III**

#### **DIP COLLATERAL**

##### **SECTION 3.1 Grant of Liens; Collateral.**

(a) Subject to the Carve-Out and the Post-Default Carve-Out, pursuant to Bankruptcy Code Section 364(c)(1) the Administrative Agent and the Lenders have been granted a superpriority administrative claim over any and all administrative claims of the type specified in Bankruptcy Code Section 503(b) and 507(b). As collateral for the Loans and security for the full and timely payment and performance of all Obligations when due (whether at stated maturity, by acceleration or otherwise), the Administrative Agent, for the benefit of the Lenders, is hereby granted (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, a perfected first priority Lien on all assets of the Borrowers and Subsidiary Guarantors that are unencumbered as of the commencement of the Cases, but not including avoidance actions under Sections 544-553 of the Bankruptcy Code or the proceeds therefrom; (ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, a perfected Lien on all other assets of the Borrowers and Subsidiary Guarantors (other than the assets referred to in the following clause), junior only to the valid, perfected and non-avoidable Liens on such assets as of the Petition Date and to valid Liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code; (iii) pursuant to Section 364(d)(1) of the Bankruptcy Code, a perfected senior priming Lien on all of the Borrowers’ and Subsidiary Guarantors’ assets that are subject to the Liens of the Prepetition Agent and the Prepetition Lenders under the Prepetition Credit Agreement; and (iv) subject to any valid and senior construction Liens, pursuant to Sections 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 503(b) of the Bankruptcy Code, a claim and Liens on any pre-petition and post-petition Improvements; provided, however, that the Liens and claims granted to the Additional Loan Lenders shall prime the Liens and claims granted to the Original Lenders (all of which being hereinafter collectively referred to as, the “**DIP Collateral**”);

(b) Except for the Carve-Out and the Post-Default Carve-Out, the superpriority claims of the Administrative Agent and the Lenders hereunder shall at all times be senior to the rights of the Debtors, any Chapter 11 trustee and any Chapter 7 trustee, or any creditor (including, without limitation, post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any Chapter 7 cases if any of the Cases are converted to cases under Chapter 7 of the Bankruptcy Code.

**SECTION 3.2 No Filings Required.** The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim Order and, when applicable, the Amended Final Order. The Administrative Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, any other Loan Document or the Orders.

**SECTION 3.3 Adequate Protection.** The Prepetition Agent, the Prepetition Lenders and the Prepetition Secured Parties have been granted adequate protection in accordance with the Orders to the extent of any diminution in the value of the Prepetition Collateral as of the Petition Date, including but not limited to any diminution in value resulting from (i) the use of the Prepetition Cash Collateral pursuant to Bankruptcy Code Section 363(a), (ii) the use, sale or lease of Prepetition Collateral (other than the Prepetition Cash Collateral) pursuant to Bankruptcy Code Section 363(c), (iii) the grant of the priming liens to the Lenders under Bankruptcy Code Section 364(d), or (iv) the imposition of the automatic stay pursuant to Bankruptcy Code Section 362(a), in the form of (a) the reimbursement of all reasonable and documented fees and expenses incurred by professionals for the Prepetition Agent including, without limitation, the reasonable disbursements of counsel and any financial consultant, advisor or expert advising the Prepetition Lenders, (b) the accrual and owing of interest due under the Prepetition Credit Agreement at the default rates set forth therein, which accrued interest shall be added to the outstanding principal of the Prepetition Loans on each Monthly Payment Date; provided, however, that the amounts payable by the Borrowers on December 31, 2008 and January 31, 2009 pursuant to clause (iv) of Section 15 of the Original Order (and all accrued interest thereon) shall be added to the then outstanding principal of the Prepetition Loans on the Effective Date, (c) a Lien immediately junior only to the Lien granted to the Administrative Agent and the Lenders on the DIP Collateral, (d) subject to payment of the Carve-Out and the Post-Default Carve-Out, a superpriority claim under Section 507(b) of the Bankruptcy Code and (e) completion of the Exit Milestones.

## **ARTICLE IV**

### **GUARANTY**

**SECTION 4.1 Guaranty.** To induce the Lenders to provide the credits described herein and in consideration of benefits expected to accrue to the Borrowers by reason of the Delayed Draw Term Loan Commitments, the Revolving Loan Commitments and the Letter of Credit Commitments, and for other good and valuable consideration, receipt of which is hereby acknowledged, each Subsidiary Guarantor party hereto hereby unconditionally and irrevocably ratifies and reaffirms its Obligations under the Original DIP Credit Agreement and guarantees

jointly and severally to the Administrative Agent, the Lenders, and the Issuer, the due and punctual payment of all present and future Obligations, including, but not limited to, the due and punctual payment of principal of and interest on the Loans, the Letter of Credit Reimbursement Obligations, and the due and punctual payment of all other Obligations now or hereafter owed by the Borrowers under the Loan Documents, in each case as and when the same shall become due and payable, whether at stated maturity, by acceleration, or otherwise, according to the terms hereof and thereof (including interest as set forth in the Orders). In case of failure by the Borrowers or other Obligor punctually to pay any Obligations guaranteed hereby, each Subsidiary Guarantor hereby unconditionally agrees to make such payment or to cause such payment to be made punctually as and when the same shall become due and payable, whether at stated maturity, by acceleration, or otherwise, and as if such payment were made by the Borrowers or such Obligor, it being agreed that this is a guaranty of payment as opposed to a guaranty of collection.

SECTION 4.2 Guaranty Unconditional. The obligations of each Subsidiary Guarantor under this Article XII shall be unconditional, irrevocable and absolute and, without limiting the generality of the foregoing, shall not be released, discharged, or otherwise affected by:

- (a) any extension, renewal, settlement, compromise, waiver, or release in respect of any obligation of the Borrowers or other Obligor or of any other guarantor under this Agreement or any other Loan Document or by operation of law or otherwise;
- (b) any modification or amendment of or supplement to this Agreement or any other Loan Document;
- (c) any change in the corporate existence, structure, or ownership of, any Borrower or other Obligor, any other guarantor, or any of their respective assets, or any resulting release or discharge of any obligation of the Borrowers or other Obligor or of any other guarantor contained in any Loan Document;
- (d) the existence of any claim, set-off, or other rights which any Borrower or other Obligor or any other guarantor may have at any time against the Administrative Agent, any Lender, or any other Person, whether or not arising in connection herewith;
- (e) any failure to assert, or any assertion of, any claim or demand or any exercise of, or failure to exercise, any rights or remedies against the Borrowers or other Obligor, any other guarantor, or any other Person or Property;
- (f) any application of any sums by whomsoever paid or howsoever realized to any obligation of the Borrowers or other Obligor, regardless of what obligations of the Borrowers or other Obligor remain unpaid;
- (g) any invalidity or unenforceability relating to or against the Borrowers or other Obligor or any other guarantor for any reason of this Agreement or of any other Loan Document or any provision of applicable law or regulation purporting to prohibit the payment by the Borrowers or other Obligor or any other guarantor of the principal of or interest on any Loan or any Letter of Credit Reimbursement Obligation or any other amount payable under the Loan Documents; or

(h) any other act or omission to act or delay of any kind by the Administrative Agent, any Lender, or any other Person or any other circumstance whatsoever that might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the obligations of any Subsidiary Guarantor under this Article XII.

**SECTION 4.3 Discharge Only upon Payment in Full; Reinstatement in Certain Circumstances.** Each Subsidiary Guarantor's obligations under this Article XII shall remain in full force and effect until the Delayed Draw Term Loan Commitments, the Revolving Loan Commitments and the Letter of Credit Commitments are terminated, all Letters of Credit have expired, and the principal of and interest on the Loans, all Letter of Credit Reimbursement Obligations and all other amounts payable by the Borrowers and the Subsidiary Guarantors under this Agreement and all other Loan Documents shall have been paid in full. If at any time any payment of the principal of or interest on any Loan or any Letter of Credit Reimbursement Obligation or any other amount payable by the Borrowers or other Obligor or any Subsidiary Guarantor under the Loan Documents is rescinded, or otherwise, each Subsidiary Guarantor's obligations under this Article XII with respect to such payment shall be reinstated at such time as though such payment had become due but had not been made at such time.

**SECTION 4.4 Subrogation.** Each Subsidiary Guarantor agrees it will not exercise any rights which it may acquire by way of subrogation by any payment made hereunder, or otherwise, until all the Obligations shall have been paid in full subsequent to the termination of all the Delayed Draw Term Loan Commitments, all the Revolving Loan Commitments and all the Letter of Credit Commitments and expiration of all Letters of Credit. If any amount shall be paid to a Subsidiary Guarantor on account of such subrogation rights at any time prior to the later of (x) the payment in full of the Obligations and all other amounts payable by the Borrowers hereunder and the other Loan Documents and (y) the termination of the Delayed Draw Term Loan Commitments, the Revolving Loan Commitments and the Letter of Credit Commitments and expiration of all Letters of Credit, such amount shall be held in trust for the benefit of the Administrative Agent and the Lenders and shall forthwith be paid to the Administrative Agent for the benefit of the Lenders or be credited and applied upon the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement.

**SECTION 4.5 Waivers.** Each Subsidiary Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, and any notice not provided for herein, as well as any requirement that at any time any action be taken by the Administrative Agent, any Lender, or any other Person against the Borrowers or other Obligor, another guarantor, or any other Person.

**SECTION 4.6 Limit on Recovery.** Notwithstanding any other provision hereof, the right of recovery against each Subsidiary Guarantor under this Article XII shall be limited to the maximum amount that can be guaranteed without rendering such Guarantor's obligations under this Article XII void or voidable under applicable law, including, without limitation, fraudulent conveyance law.

**SECTION 4.7 Acceleration of Guaranty.** Each Subsidiary Guarantor agrees that, in the event the DIP Facility is terminated pursuant to Section 9.2 and if such event shall occur at a time when any of the Obligations of the Borrowers and each other Obligor may not then be due and payable, such Subsidiary Guarantor will pay to the Administrative Agent for the account of