

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Case No. 08-53104

GREEKTOWN HOLDINGS, L.L.C., et al.¹

In Proceedings Under
Chapter 11
Jointly Administered

Debtors.

Hon. Walter Shapero

**FIRST DAY MOTION FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING POST-PETITION SECURED FINANCING
PURSUANT TO SECTIONS 105, 361, 362, 364(c)(1), 364(c)(2),
364(c)(3), 364(e) AND 503(B) OF THE BANKRUPTCY CODE;
(II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL;
(III) PROVIDING ADEQUATE PROTECTION TO THE PRE-PETITION
SECURED PARTIES PURSUANT TO SECTIONS 361, 362, 363 AND 364
OF THE BANKRUPTCY CODE; (IV) MODIFYING THE
AUTOMATIC STAY PURSUANT TO SECTION 362(d) OF THE
BANKRUPTCY CODE; AND (V) SCHEDULING A FINAL HEARING**

The above-captioned debtors (collectively the “Debtors”), by their proposed counsel, Schafer & Weiner PLLC, for their First Day Motion for Interim and Final Orders (I) Authorizing Post-Petition Secured Financing Pursuant to Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 503(B) of the Bankruptcy Code; (II) Authorizing the Debtors to Use Cash Collateral; (III) Providing Adequate Protection to the Pre-Petition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code; (IV) Modifying the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code; and (V) Scheduling a Final Hearing (the “Motion”), and brief in support, state as follows:

¹ The Debtors in the proposed jointly administered cases include Greektown Holdings, L.L.C. (“Holdings”), Greektown Casino, L.L.C. (“Greektown Casino”); Kewadin Greektown Casino, L.L.C. (“Kewadin”); Monroe Partners, L.L.C. (“Monroe”); Greektown Holdings II, Inc. (“Holdings II”); Contract Builders Corporation (“Builders”); Realty Equity Company Inc. (“Realty”); and Trappers GC Partner, LLC (“Trappers”).

CONCISE STATEMENT OF RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of interim and final orders (i) authorizing the Debtors to obtain postpetition financing pursuant to the DIP Facility, (ii) granting the claims of the DIP Lenders superpriority claim status, (iii) granting the DIP Lenders security interests in and liens on the DIP Collateral, (iv) authorizing the Debtors to use Cash Collateral and to provide adequate protection to the Pre-petition Secured Parties in connection therewith, (iv) authorizing the Debtors to use the proceeds of the DIP Facility, (v) modifying the automatic stay as set forth in the DIP Loan Documents and the Interim Order, and (vi) scheduling a Final Hearing on this Motion and establishing notice procedures in respect thereof.

2. The salient terms of the DIP Facility are as follows:²

Borrowers:	Holdings and Holdings II
Guarantors:	Greektown Casino, Builders and Trappers
Administrative Agent:	Merrill Lynch Capital Corporation
Co-Lead Arrangers:	Merrill Lynch, Pierce, Fenner and Smith Incorporated and Wachovia Capital Markets, LLC
Syndication Agent:	Wachovia Capital Markets, LLC
Joint Book Runners:	Merrill Lynch, Pierce, Fenner and Smith Incorporated and Wachovia Capital Markets, LLC
Lenders:	A syndicate of lenders consisting of the lenders under the DIP Facility
Facility Use and Proceeds:	A delayed-draw term loan to fund construction in an amount up to \$135,000,000 and a revolving loan in the amount of \$15,000,000, which shall include a letter of credit sub-facility in the amount of \$1,000,000, for construction or operating costs.

² This summary is based on a term sheet, attached as Exhibit A. The Debtors and DIP Lenders are finalizing negotiation and documentation of the DIP Facility, and will file the same as soon as it is available, and supplement this Motion and provide any information required by Bankruptcy Rule 4001(C)(1)(B) not provided herein. Further, this summary is qualified in its entirety by reference to the provisions of the DIP Facility and the Interim Order and the Final Order. The DIP Facility will control in the event of any inconsistency between this Motion and the DIP Facility.

Application of Proceeds:	In addition to payments of interest, fees and costs required by the DIP Loan Documents, Debtors are only permitted to make payments consistent with a Budget and required to make certain payment of excess cash to be applied to the Tranche B Loan or to permanently reduce the Pre-petition Obligations.
Maturity Date:	The Scheduled Termination Date or the Final Termination Date, each as defined in the DIP Facility.
Interest Rate	Variable rates of interest equal to the Agent's base rate plus 5.25% or a LIBO rate plus 6.25%.
Priority and Liens:	Subject to the Carve-Out (as defined below), superpriority administrative claim status pursuant to 11 U.S.C. § 364(c)(1), 503(b) and 507(b). Secured by a perfected security interest pursuant to 11 U.S.C. §§ 364(c)(2) and (c)(3) and 364(d) in the DIP Collateral, which, subject to the conditions set forth in the DIP Facility, shall not include (i) avoidance actions under 11 U.S.C. §§ 502(d), 544, 545, 547, 548, 549, 550, 551 or 553 (collectively, the "Avoidance Actions"); and (ii) the proceeds of any Avoidance Actions.
Adequate Protection for Prepetition Lenders:	(i) replacement liens on all Pre-petition Collateral, (ii) superpriority administrative expense claims, (iii) the Debtors' satisfaction of certain Exit Milestones, and (iv) adequate protection payments in the amount of interest, fees and other amounts (including principal) due under the Pre-petition Transaction Documents. Representatives of the DIP Lenders shall be authorized to visit the Debtors' business premises to monitor the DIP Collateral.
Carve-out	Carve-out from the DIP Lenders' superpriority liens and claims in an amount equal to (a) unpaid fees of the Clerk of the Bankruptcy Court and U.S. Trustee, (b) reasonable professional fees and expenses incurred by Debtors prior to delivery of a Carve-out Trigger Notice, and (c) after delivery of a Carve-out Trigger Notice, \$1,500,000.
Stipulation as to Pre-petition Obligations:	Debtors stipulate to the validity, priority and enforceability of the Pre-petition Obligations and the Pre-petition Lenders' liens in the Pre-petition Collateral.

Events of Default:	The DIP Facility contains usual and customary events of default for facilities of this type. In addition, the failure of the Debtors to meet various milestones towards obtaining exit financing or a sale shall constitute an event of default.
Remedies on Event of Default:	In addition to other customary remedies, upon the occurrence and during the continuance of an Event of Default and following the giving of 5 business days' notice to counsel for the Debtors, counsel for the Committee, and the United States Trustee, the Agent shall have relief from the automatic stay and may foreclose on all or any portion of the Collateral and apply the proceeds thereof to the obligations, or otherwise exercise remedies against the Collateral permitted by applicable nonbankruptcy law, subject to the Debtors' right to seek continuation of the automatic stay during such 5 day period solely on the basis that no Event of Default has occurred.
Waiver of Perfection Requirements	Interim and Final Order provide for automatic perfection of DIP Lenders' liens in DIP Collateral.

JURISDICTION

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
4. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).
5. Venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

6. On May 29, 2008 (the "Petition Date"), each of the Debtors filed Voluntary Petitions for relief (the "Chapter 11 Cases") under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Each of the Debtors continues to operate its business and

manage its financial affairs and properties as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

7. The Debtors have filed a First Day Motion for Entry of an Order Directing Joint Administration of the Debtors' Chapter 11 Cases (the "Joint Administration Motion") pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and E.D. Mich. LBR 1015-1. The Debtors have filed the Declaration of Clifford J. Vallier, Chief Financial Officer, of Greektown Holdings L.L.C. and Certain of the Other Debtors in Support of Chapter 11 Petitions and First Day Pleadings (the "Vallier Declaration").

8. The Debtors file this Motion in conjunction with the Motion Authorizing Payment of Prepetition Claims of Certain Construction Contractors (the "Contractor Claim Motion"). The financing contemplated by this Motion will be used to fund the payments requested to be authorized in the Contractor Claim Motion. Approval of the Contractor Claim Motion so that the funds advanced pursuant to the relief requested in this Motion can be used to pay the Contractor Claims (as defined in the Contractor Claim Motion) is a condition to the financing requested in this Motion.

THE DEBTORS' BUSINESSES AND OWNERSHIP STRUCTURE

9. In November 1996, 51.5% of Michigan voters approved "Proposal E" which effectively authorized the licensing and operation of three casinos within the City of Detroit. On November 8, 2000, the third and final license authorized by Proposal E was issued by the Michigan Gaming Control Board ("MGCB") to Greektown Casino, L.L.C. ("Greektown Casino"), doing business as Greektown Casino. Greektown Casino opened its doors on November 10, 2000.

10. Greektown Casino is a world-class casino gaming facility located in Detroit's historic Greektown district featuring over 75,000 square feet of casino gaming space with more than 2,400 slot machines, over 70 table games, a 12,500 square-foot salon dedicated to high-limit gaming and the largest live poker room in the metropolitan Detroit gaming market. Greektown Casino includes two restaurants and several food outlets, a nightclub, several bars and cocktail lounges, an entertainment facility, meeting rooms, banquet facilities, approximately 2,400 attached and 1,750 unattached parking spaces (including 600 parking spaces for valet services), and retail shopping. As of May 5, 2008, Greektown Casino employed approximately 1,976 employees, including 1,817 full-time employees and 159 part-time employees.

11. Greektown Casino estimates that it attracts over 15,800 patrons each day, many of whom make regular visits to its casino complex and related properties. In 2007, Greektown Casino achieved a 25.6% market share of the metropolitan Detroit gaming market. Greektown Casino has been rated as the "Best Casino in Michigan" and "Best Casino in Detroit" numerous times in annual readers' polls in Detroit's two largest newspapers, the Detroit News and the Detroit Free Press, respectively.

12. Greektown Holdings, L.L.C. ("Holdings") was formed in September 2005 and currently holds 100% of the membership interests in Greektown Casino and Greektown Holdings II, Inc. ("Holdings II"). Holdings has no substantial assets other than its membership interest in Greektown and Holdings II. Holdings II is a non-operating subsidiary which holds no assets.

13. Holdings is owned 50% by Kewadin Greektown Casino, L.L.C. ("Kewadin") and 50% by Monroe Partners, L.L.C. ("Monroe"). Kewadin is owned 100% by the Kewadin Casinos Gaming Authority (the "Authority") which, in turn, is owned 100% by the Sault Ste. Marie Tribe of Chippewa Indians (the "Tribe"). Monroe is owned 97.1875% by Kewadin, 2% by Ted

Gatzaros, .5% by Marvin Beatty, .0625% by Dr. Anthony F. Harris, and .250% by Hills Howard.

14. Holdings owns, operates and manages Greektown Casino and its wholly-owned subsidiaries, and holds substantially all of the assets of the Debtors' businesses. These wholly-owned subsidiaries of Greektown Casino include:

- (a) Contract Builders Corporation ("Builders");
- (b) Realty Equity Company Inc. ("Realty"); and
- (c) Trappers GC Partner, LLC ("Trappers").

15. Holdings is also engaged in the ongoing development of an expanded hotel and casino resort complex (the "Expanded Complex") containing a 1,200 seat live theatre, a 400-room hotel, 10 banquet/meeting rooms, two new restaurants, expanded parking, an additional 25,000 square feet of gaming space and other amenities at its current site under the terms of a development agreement (the "Development Agreement") among Greektown Casino, the City of Detroit and the Economic Development Corporation of the City of Detroit (the "EDC"). As of December 31, 2007, Holdings had expended approximately \$184 million on the Expanded Complex. The Expanded Complex is expected to cost approximately \$350 million.

THE DEBTORS' SECURED FINANCING STRUCTURE

16. Holdings and Holdings II borrowed money and obtained letters of credit from the Pre-petition Secured Parties pursuant to that certain Credit Agreement dated as of December 2, 2005, as amended by the First Amendment to Credit Agreement dated as of April 13, 2007 and the Limited Duration Waiver Agreement dated as of March 28, 2008 (as amended, the "Pre-petition Credit Agreement") and the other Loan Documents (as defined in the Pre-petition Credit Agreement) (the Pre-petition Credit Agreement and the Loan Documents are collectively referred to as the "Pre-petition Transaction Documents").

17. The agents for the Pre-petition Secured Parties are Merrill Lynch, Pierce, Fenner

and Smith Incorporated, Merrill Lynch Capital Corporation, Wachovia Securities, National City Bank of the Midwest, Wells Fargo Bank, National Association, and Fifth Third Bank. As of May 12, 2008, the Pre-petition Secured Parties were: The Bank of New York; Bear Stearns Securities Corp.; BNP Paribas Securities Corp./Fixed Income; Brown Brothers Harriman & Co.; Citibank, N.A.; Dresdner Kleinwort Wasserstein Securities LLC; Jefferies & Company, Inc., JPMorgan Chase Bank, National Association; Mellon Trust of New England, National Association; Merrill Lynch, Pierce, Fenner & Smith Incorporated; The Northern Trust Company; PNC Bank, National Association; State Street Bank and Trust Company; Investors Bank and Trust Company; U.S. Bank, N.A.; and Wells Fargo Bank, National Association (collectively, the “Pre-petition Secured Parties”).

18. As of the Petition Date, Debtors’ books and records showed that the outstanding principal balance of the obligations owing to the Pre-petition Secured Parties under the Pre-petition Transaction Documents was at least \$44,626,000, plus accrued but unpaid interest, amounts owing with respect to hedging or swap arrangements, and all costs, expenses, attorneys’ and consultants’ fees of the Pre-petition Secured Parties owing in accordance with the terms of the Pre-petition Transaction Documents and any contingent claims (the “Pre-petition Obligations”). Debtors have used this financing to fund Greektown Casino’s day-to-day operations and to support Holdings’ ongoing development of the Expanded Complex.

19. The Pre-petition Obligations are guaranteed by Greektown Casino, Builders, Realty and Trappers.

20. The Pre-petition Obligations are secured by a lien and security interest in substantially all of the personal property assets of Holdings, Holdings II, Greektown Casino,

Builders, Realty and Trappers, as well as mortgages on substantially all of their real estate interests (the “Pre-petition Collateral”).

21. Greektown Casino additionally obtained financing pursuant to the Taxable Economic Development Revenue Bonds and the Tax-Exempt Economic Development Revenue Bonds issued by the EDC (the “Bonds”) pursuant to various related documents and agreements (the “Bond Documents”). The Bonds are backed by a \$49,360,000 letter of credit issued under the Prepetition Loan Agreement (the “Bond Letter of Credit”). The Bonds are not secured by any collateral other than the right to draw under the Bond Letter of Credit if the conditions set forth therein are met.

22. As of the Petition Date, the Debtors’ books and records showed that the outstanding principal balance owing with respect to the Bonds was \$49,350,000, plus accrued but unpaid interest and all costs, expenses and attorneys’ fees owing in accordance with the terms of the Bond Documents.

23. Debtors contend that cash in any Debtor’s possession as of the Petition Date which had not been deposited into a deposit account does not constitute Cash Collateral (as defined below).

24. Upon information and belief, no other parties assert any interest in Cash Collateral.

THE DEBTORS’ IMMEDIATE NEED FOR LIQUIDITY

25. As set forth in detail in the Vallier Declarations, Greektown Casino generates sufficient cash on a day-to-day basis to fund its general operations, but this cash flow is insufficient to service all debt obligations and continue the construction of the Expanded Complex. Completion of the Expanded Complex will allow the Debtors to be more competitive on a local, regional and national basis in attracting customers to their casino and hotel resort

facility. Any interruption in the construction of the Expanded Complex, even if temporary, will significantly increase the overall cost of the Expanded Complex and jeopardize both Greektown Casino's long-term position within the Detroit gaming market and various tax rollbacks and other incentives to be provided by the City of Detroit which are integral to its longer term business plan.

26. As of the Petition Date, the Debtors owed approximately \$24 million to Jenkins/Skanska Venture LLC, the general contractor for the Expanded Complex construction project ("Jenkins/Skanska") for work performed, goods supplied and services rendered during the months of March and April 2008. On May 27, 2008, Jenkins/Skanska filed a construction lien against the Expanded Complex in the amount of \$43,357,096. Additionally, assuming Jenkins/Skanska continues to perform under its contract with the Debtors, another approximately \$12 million will be due to Jenkins/Skanska on June 30, 2008, for which Jenkins/Skanska could file an additional lien if it is not paid.

27. As of the Petition Date, the Debtors owed approximately \$600,328.60 to Hnedek Bobo, the architect for the Expanded Complex ("Hnedek"), for which Hnedek could file a lien if it is not paid, and approximately \$3,229,288.31 to certain other contractors, consultants, architects and suppliers (the "Other Contractors" and together with Jenkins/Skanska and Hnedek, collectively the "Contractors") who have contracted directly with the Debtors for goods or services related to the Expanded Complex, for which those Other Contractors could file liens if they are not paid.

28. Under the terms of the various contracts between the Debtors and the Contractors, absent the Bankruptcy Cases, some or all of the Contractors could stop work on the Expanded Complex due to nonpayment. Jenkins/Skanska notified the Debtors of its right to suspend

construction activities; Hnedek notified the Debtors of its intention to terminate its services for the Expanded Complex due to failure of payment of amounts due. Other of the Contractors have either threatened to stop work altogether or have taken actions which slowed down progress on the construction.

29. Additionally, in order to procure the furniture, fixtures and equipment required for the opening and operation of the Expanded Complex, a deposit of approximately \$1,600,000 is required to be paid.

30. Despite good faith efforts, the Debtors are unable to obtain (i) adequate unsecured credit allowable under 11 U.S.C. §§ 503(b)(1) or 364(c)(1) as an ordinary administrative expense, (ii) unsecured credit allowable under 11 U.S.C. §§ 364(a) or (b), or (iii) secured credit under 11 U.S.C. § 364(c)(1) from any source sufficient to enable Debtors to continue their business operations and ongoing work on the Expanded Complex. Therefore, Debtors have requested that a group of postpetition lenders (collectively, the “DIP Lenders”) led by Merrill Lynch Capital Corporation, as Agent (“Agent”), provide the post-petition financing set forth in the DIP Loan Documents and the Interim Order.

31. The Debtors are also unable to obtain financing without (i) granting the DIP Lenders’ claims priority over administrative expenses of the kind specified in 11 U.S.C. §§ 503(b) and 507(b) (subject to the Carve-Out) in accordance with 11 U.S.C. § 364(c)(1) of the Code, (ii) securing the Post-petition Obligations (as defined below) with liens on all Debtors’ postpetition assets in accordance with 11 U.S.C. § 364(c)(2), and (iii) securing the Postpetition Indebtedness with junior liens on Debtors’ prepetition assets in accordance with 11 U.S.C. §364(c)(3).

32. DIP Lenders are willing to provide Debtors with postpetition financing pursuant to the terms of the Interim Order. The proposed DIP Loans (defined below) are in the best interests of Debtors and all other parties in interest.

33. In summary, the DIP Lenders' financing under the Interim Order will consist of the following (collectively, the "DIP Loans"): a delayed-draw, term loan to fund ongoing construction of the Construction Project up to the maximum amount of \$135,000,000 (the "Tranche A Loan") and an additional revolving loan of \$15,000,000 (which shall include a letter of credit sub-facility in the amount of \$1,000,000) to fund construction or operating costs (the "Tranche B Loan," and collectively with the Tranche A Loan, the "DIP Facility").

34. The Debtors and DIP Lenders have exchanged fair consideration for the rights each obtain in the Interim Order and each acted in good faith in their negotiations over the terms of the Interim Order.

35. The terms and conditions of the Interim Order are: (i) fair and reasonable; (ii) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties; (iii) supported by reasonably equivalent value and fair consideration; (iv) negotiated by the parties at arms' length and entered into by the parties in good faith; and (v) the best available to Debtors under current market conditions and financial circumstances of Debtors. DIP Lenders' extensions of credit to Debtors under the Interim Order are and will be made in good faith. Any credit extended to the Debtors by the DIP Lenders pursuant to the Interim Order or the Final Order will be deemed to have been extended and made in good faith, as that term is used in 11 U.S.C. § 364(e).

36. To avoid immediate and irreparable harm, the Debtors need to borrow up to \$5,633,000 from the DIP Lenders with respect to the Tranche A Loan and up to \$39,993,000

with respect to the Tranche B Loan on an interim basis in accordance with the terms of the Interim Order prior to the time the Court can hold a final hearing on the Final Order; in connection with entry of the Final Order, Debtors will seek authority to borrow up to a maximum amount of \$145,000,000 from the DIP Lenders.

THE DEBTORS' DECISION TO ENTER INTO THE DIP LOAN AGREEMENT

37. Before determining to enter into the DIP Facility, the Debtors, with the assistance of their financial advisors, Conway, MacKenzie & Dunleavy ("CM&D"), conducted vigorous, arm's-length and good-faith negotiations with the DIP Lenders and with multiple, potential new lenders. CM&D contacted eight potential lenders, four of which signed confidentiality agreements, and began investigating a potential transaction. Unfortunately, none of the other potential new lenders could perform due diligence fast enough to commit to post-petition financing in time to satisfy the Debtors' urgent and emergency need for post-petition financing for, among other things, the continued construction of the Expanded Complex.

38. In deciding to seek financing from the DIP Lenders, the Debtors considered many factors. First, the DIP Lenders already held secured first priority liens on the Debtors' Pre-petition Collateral. Second, the DIP Lenders' preexisting knowledge of the Debtors' business and the existing Pre-petition Collateral provided significant benefits, including, but not limited to, the speed with which the DIP Lenders are able to close. Third, the DIP Lenders had been previously approved as the lenders to the Debtors by the MGCB.

39. The Debtors, therefore, decided, in the exercise of their sound business judgment, that the proposal for the DIP Facility provided by the DIP Lenders was the most favorable under the circumstances and addressed the Debtors' urgent construction financing needs.

40. As set forth in the Vallier Declarations, entry into the DIP Facility will give the Debtors the ability to continue the construction of the Expanded Complex and will allow the Debtors valuable additional time to pursue their restructuring options while maintaining the going concern value of their business. Thus, the Debtors determined that entry into the DIP Facility was in the best interests of their estates, creditors and other parties in interest.

APPLICABLE AUTHORITY

41. If a debtor is unable to obtain unsecured credit allowable as an administrative expense under 11 U.S.C. § 503(b)(1), then the Court, after notice and a hearing, may authorize the debtor to obtain credit or incur debt (a) with priority over any or all administrative expenses of the kind specified in 11 U.S.C. § 503(b) or § 507(b); or (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien. See 11 U.S.C. § 364(c).

42. Further, if a debtor is unable to obtain credit under the provisions of 11 U.S.C. § 364(c), the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly called a “priming lien.” 11 U.S.C. § 364(d).

43. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2). As set forth below, the Debtors’ request for postpetition financing should be approved.

THE DIP FACILITY SHOULD BE APPROVED

44. In order to approve a Debtors' request for postpetition credit under 11 U.S.C. § 364(c) this Court must find that Debtors are "unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense." See In re Garland Corp., 6 B.R. 456, 461 (1st Cir. BAP 1980) (secured credit under 11 U.S.C. § 364(c)(2) is authorized, after notice and a hearing, upon showing that unsecured credit cannot be obtained); In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking unsecured credit under 11 U.S.C. § 364(c) must prove that it was unable to obtain unsecured credit pursuant to 11 U.S.C. § 364(b)); In re Ames Dept. Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under 11 U.S.C. §§ 364(a) and (b)).

45. In addition, 11 U.S.C. § 364(d)(1), which governs the incurrence of postpetition debt secured by senior or "priming" liens, provides that the Court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if –

(A) the trustee is unable to obtain credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

46. As set forth in the Vallier Declarations, and as the evidence at the Final Hearing will demonstrate, the Debtors could not have obtained postpetition financing on the terms and of the type and magnitude required in these bankruptcy cases on an unsecured basis, or, indeed, without offering terms largely similar to those for which approval is sought herein. Moreover, a

potential lender's ability to close the loan in a short amount of time and to thereby quickly provide the Debtors financing necessary to continue the construction of the Expanded Complex without interruption was also a significant consideration for the Debtors. The Debtors could not have obtained postpetition financing quickly enough from any other third parties, therefore, after carefully evaluating the foregoing factors, the Debtors determined to move forward with the postpetition financing proposed by the DIP Lenders.

47. The Debtors negotiated the DIP Facility with the DIP Lenders at arm's length and pursuant to their business judgment. Provided that this judgment does not run afoul of the provisions of and policies underlying the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its business judgment. See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) (approving debtor in possession financing necessary to sustain seasonal business); In re Ames Department Stores, 115 B.R. 34, 40 (S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest").

48. To show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate "by a good faith effort that credit was not available" without the protections afforded to potential lenders by 11 U.S.C. § 364(c) or § 364(d). Bray v. Shenandoah Federal Savings & Loan Assn. (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986). Thus, "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." Id.; see also Ames, 115 B.R. at 40 (holding that the debtor made

a reasonable effort to secure financing when it selected the least onerous financing option from the remaining two lenders).

49. The Debtors' efforts to obtain necessary postpetition financing from other sophisticated lending institutions satisfy the statutory requirements of 11 U.S.C. § 364(c). See, e.g., Ames, 115 B.R. at 40 (approving section 364(c) financing facility and holding that the debtor made reasonable efforts to obtain less onerous terms where it approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); In re 495 Cent., Park Ave. Corp., 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992) (debtor "must make an effort to obtain credit without priming a senior lien").

50. The terms and conditions of the DIP Facility are fair and reasonable and were negotiated by the parties in good faith and at arms' length. Accordingly, the DIP Lenders should be accorded the benefits of 11 U.S.C. § 364(e) in respect of the DIP Facility.

51. Based upon the foregoing, and for the additional reasons set forth below, the Debtors respectfully request that the Court approve the DIP Facility in accordance with the terms set forth in the Interim Order, attached hereto as Exhibit 1, and the DIP Facility.

**THE COURT SHOULD AUTHORIZE THE USE OF
CASH COLLATERAL REQUESTED HEREIN**

52. In addition to the need for debtor in possession financing, the Debtors' other pressing concern is the need for immediate use of Cash Collateral pending a final hearing on this Motion. The Debtors require use of Cash Collateral to supplement its cash on hand in order to pay operating expenses, including payroll, and to pay vendors to ensure a continued supply of goods essential to the Debtors' continued viability.

53. In this case, although the Debtors have cash on hand which is not Cash Collateral, and which constitutes the vast majority of cash to be used by the Debtors, they also have deposit

accounts and other assets which constitute Cash Collateral under the Bankruptcy Code. Under the terms of the DIP Facility, the Debtors propose to use Cash Collateral that is subject to the lien of the Prepetition Lenders. The Debtors believe that there are no other parties with liens on Cash Collateral.

54. The Bankruptcy Code further provides that a debtor in possession may not use, sell or lease cash collateral unless:

(A) Each entity that has an interest in such cash collateral consents,
or

(B) The court, after notice and a hearing, authorizes such use, sale,
or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2)(A),(B).

55. In this instance, the Prepetition Lenders have consented to the use of the Cash Collateral on the terms and subject to the conditions set forth in the DIP Facility and the Interim Order. Because the only parties with liens on Cash Collateral have consented to its use, the Debtors should be permitted to use Cash Collateral, as provided in the DIP Facility and the Interim Order.

**THE ADEQUATE PROTECTION GRANTED TO THE
PREPETITION LENDERS SHOULD BE APPROVED.**

56. In exchange for the Debtors' use of Cash Collateral and the DIP Facility, the Debtors have agreed to provide certain adequate protection to the Prepetition Lenders. To that end, the Debtors request that the Court approve, as of the Petition Date, certain protections of the Prepetition Lenders' interests in Cash Collateral from any diminution in value, as well as from the implementation of the DIP Facility and the imposition of the automatic stay pursuant to 11 U.S.C. § 362.

57. As noted above, the Prepetition Lenders have agreed to the use of Cash Collateral by the Debtors, but such agreement is contingent on, among other things, their receipt of the adequate protection provided in the DIP Facility. Such protections include, among other things, (a) granting replacement liens upon all assets of the Debtors (subject to certain interests and the Carve-Out, as set forth in the Interim Order); (b) granting superpriority status to the adequate protection obligations (subject to the payment of the Carve-Out); and (c) satisfaction of the Exit Milestones; (d) periodic cash payments to the Pre-petition Secured Parties. Without such adequate protection, the Pre-petition Secured Parties will not agree to the use of Cash Collateral. In such instance, the Debtors believe that they would be unable to find suitable financing and would be compelled to cease their business operations.

58. The Bankruptcy Code does not explicitly define “adequate protection,” but does provide a nonexclusive list of the means by which a debtor-in-possession may provide adequate protection, including (i) periodic cash payments, (ii) additional or replacement liens, or (iii) other relief resulting in the “indubitable equivalent” of the secured creditor's interest in such property. 11 U.S.C. § 361.

59. What constitutes adequate protection must, therefore, be decided on a case-by-case basis. See, e.g., In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); see also, In re O'Connor, 808 F.2d 1393, 1396 (10th Cir. 1987); In re Martin, 761 F.2d 472 (8th Cir. 1985). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in that particular collateral during the period of use. See In re 494 Central Park Avenue Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); In re Beker Indus. Corp., 58 B.R. at 736; In re Hubbard Power & Light, 202 B.R. 680 (Bankr. E.D.N.Y. 1996).

60. The Debtors have an urgent need for the immediate use of Cash Collateral

pending the final hearing on this Motion. The Debtors require use of Cash Collateral to, among other things, continue the construction of the Expanded Complex, pay present operating expenses, including payroll, and pay their vendors. In addition, it is an explicit condition of the DIP Facility that the Court grant the Debtors use of Cash Collateral.

61. The proposed adequate protection is intended to protect the Pre-petition Secured Parties from diminution in the value of their interest in the Prepetition Collateral during the period it is used by the Debtors. Accord In re Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

62. The Debtors believe that the proposed adequate protection is fair and reasonable. Accord, e.g., 11 U.S.C. § 361(1) and (2).

63. Accordingly, based upon the foregoing, the Debtors respectfully request that the Court authorize the Debtors to provide adequate protection to the Prepetition Secured Parties in accordance with the terms set forth in the Interim Order and the DIP Facility.

INTERIM APPROVAL OF THE DIP FACILITY SHOULD BE GRANTED

64. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral pursuant to 11 U.S.C. § 363 and to obtain credit under 11 U.S.C. § 364 may not be commenced earlier than 15 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable to the debtor's estate.

65. The Debtors request that the Court schedule and conduct a preliminary hearing on the Motion and authorize the Debtors from and after the entry of the Interim Order until the Final Hearing to obtain credit under the terms contained in the DIP Facility and utilize Cash Collateral.

The Pre-petition Secured Parties have consented to the Debtors' use of Cash Collateral as set forth herein and in the Interim Order. The interim availability allowed pursuant to the terms of the DIP Facility will avoid a disruption in the construction of the Expanded Complex and the Debtors' operations pending the Final Hearing.

66. Accordingly, based upon the foregoing, the Debtors respectfully request that the Court grant interim approval of the DIP Facility in accordance with the terms set forth in the Interim Order and DIP Facility.

ESTABLISHING NOTICE PROCEDURES AND SCHEDULING FINAL HEARING

67. Notice of this Motion will be given to (a) the United States Trustee for the Eastern District of Michigan, (b) identified secured creditors, (c) the Debtors' consolidated top forty unsecured creditors, (d) counsel to the agent for the DIP Lenders, and (e) counsel to Jenkins/Skanska. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

68. The Debtors further respectfully request that the Court schedule the Final Hearing and authorize them to serve copies of the signed Interim Order, which fixes the time, date and manner for the filing of objections, to (i) the United States Trustee for the Eastern District of Michigan; (ii) counsel for official committee(s), if any; (iii) the Internal Revenue Service; and (iv) secured creditors or their counsel; (v) counsel to the proposed Post-petition Agent; (vi) the parties included on the Debtors' list of forty (40) largest unsecured creditors; and (vii) any party that has filed, prior to such date, a request for notices with this Court. The Debtors request that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001.

69. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached as Exhibit A, granting the relief requested in this Motion and granting such further relief as the Court deems appropriate.

Respectfully submitted:

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