

Downstream Development Authority of the Quapaw Tribe of Oklahoma
Supplement to Minutes dated 7/3/19
Email Poll

Roll Call:	John Berrey, Chairman	Present
	Larry Ramsey, Secretary	Present
	Marilyn Rogers, Member	Present
	Tamara Reeves, Treasurer	Present
	Jack Brill, Member	Present

An email poll was conducted on Wednesday August 7, 2019

All,

Attached is the updated Second Supplemental Indenture for the financing.

Additional information from Steve Ward

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION—DO NOT DISCLOSE

I am attaching, for consideration and approval by the Downstream Development Authority, the final draft of the Second Supplemental Indenture.

This document amends the existing Indenture governing the Downstream Authority's bonds in order to permit a financing of the Saracen Casino Resort through the new subsidiary, Saracen Development, LLC, directly instead of through the Authority. This document had not been completed last night when the resolution was sent out.

The Authority's approval of the attached resolution approving the Second Supplemental Indenture is requested, as soon as possible. The resolution has not been changed since it was distributed last night. Should you have any questions or comments please do not hesitate to contact me.

Stephen R. Ward

Please let me know your vote

Vote:

John Berrey	Yes	Marilyn Rogers	Yes
Larry Ramsey	Yes	Tamara Reeves	Yes
Jack Brill	Yes		

5 yes, 0 no, 0 abstaining, 0 absent

Motion Carries.

SECOND SUPPLEMENTAL INDENTURE

This Second Supplemental Indenture (this “*Supplemental Indenture*”), dated as of August [●], 2019, among the Downstream Development Authority (the “*Authority*”) of the Quapaw Nation (also known as the Quapaw Tribe of Oklahoma (O-Gah-Pah)) (the “*Tribe*”), the Tribe, Downstream Q Store, LLC (the “*Guarantor*”), Saracen Development, LLC (“*Saracen*”) and BOKF, NA, as trustee under the Indenture referred to below (the “*Trustee*”). Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture referred to below.

WITNESSETH

WHEREAS, the Authority and the Tribe have heretofore executed and delivered to the Trustee an indenture, dated as of February 1, 2018 (as amended, supplemental or otherwise modified from time to time, the “*Indenture*”) providing for the issuance of 10.500% Senior Notes due 2023 (the “*Notes*”);

WHEREAS, the Authority, the Tribe, the Guarantor party thereto and the Trustee entered into that certain First Supplemental Indenture dated June 19, 2019 (the “*First Supplemental Indenture*”), relating to the Notes;

WHEREAS, under Section 9.02 of the Indenture, the Authority and the Trustee may amend the Indenture with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes voting as a single class pursuant to the terms set forth therein;

WHEREAS, the Authority and the Tribe desire by this Supplemental Indenture to amend certain provisions of the Indenture as set forth in this Supplemental Indenture;

WHEREAS, in connection with the consent solicitation of the Authority commencing on August 7, 2019, with respect to the Notes (the “*Consent Solicitation*”), consents to the amendments set forth in Article I and Article II herein have been received from the Holders of at least a majority in aggregate principal amount of the outstanding Notes;

WHEREAS, this Supplemental Indenture has been duly authorized by all necessary corporate or other action on the parts of the Authority and the Tribe, as the case may be;

WHEREAS, the Authority and the Tribe, as applicable, have requested that the Trustee execute and deliver this Supplemental Indenture;

WHEREAS, pursuant to Section 9.02 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture;

WHEREAS, the amendments set forth herein do not trigger subsections (1) through (8) of Section 9.02 of the Indenture; and

WHEREAS, all other conditions and requirements necessary to make this Supplemental Indenture a valid, binding and legal instrument enforceable in accordance with its terms have been performed and fulfilled by the parties hereto, and the execution and delivery thereof have been in all respects duly authorized by the parties hereto.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Authority, the Tribe and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

ARTICLE I AMENDMENTS

Section 1.01 of the Indenture shall be amended by inserting each of the following definitions in its correct alphabetical position:

“*Restricted Subsidiary*” means any Subsidiary of the Authority that is not an Unrestricted Subsidiary.

“*Saracen*” means Saracen Development, LLC, an Arkansas limited liability company.

“*Saracen Casino Annex*” means the annex owned by Saracen in fee adjacent to the Saracen Casino and located on the Saracen Resort.

“*Saracen Casino*” means the gaming facilities (and related support facilities) located on the Saracen Resort and any restaurants, parking areas and other facilities ancillary thereto other than the Saracen Hotel.

“*Saracen Hotel*” means the hotel to be constructed on the Saracen Resort and operating in connection with construction and operation of the Saracen Casino.

“*Saracen Property*” means the multi-amenity gaming and resort complex, including the Saracen Casino, the Saracen Casino Annex and the Saracen Hotel, located on the Saracen Resort.

“*Saracen Resort*” means the land on which Gaming operations of the Saracen Property are located in the State of Arkansas.

“*Services Agreement*” means any agreement to entered into between the Authority and Saracen in connection with certain services to be provided by the Authority. Such Services Agreement shall comply with Section 4.13 hereof.

“*Unrestricted Subsidiary*” means Saracen and its subsidiaries.

Section 1.01 of the Indenture shall be amended to delete the definition of Asset Sale in its entirety and replace it with the following:

““*Asset Sale*” means:

(1) the sale, lease, conveyance or other disposition of any assets or rights of the Authority or any of ~~its~~the Restricted Subsidiaries to any party that is not the Authority or any such Restricted Subsidiary; provided that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Authority and ~~its~~the Restricted Subsidiaries taken as a whole will be governed by the provisions of this Indenture described under Sections 4.12 and 4.20 hereof and not by the provisions of Section 4.09 hereof, and

(2) the issuance of Equity Interests by any Restricted Subsidiary or the sale by the Authority or any of its Restricted Subsidiaries of Equity Interests in any of the Subsidiaries to any party that is not the Authority or any such Restricted Subsidiary; provided that neither the Authority nor any of its wholly owned Subsidiaries, excluding Saracen, shall sell any Equity Interests in Saracen to any party that is not the Authority or any such wholly owned Subsidiary of the Authority.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions that involves assets having a Fair Market Value of less than \$2.0 million;

(2) the sale or lease of products, services or accounts receivable in the ordinary course of business and any sale or other disposition of damaged, worn-out, non-performing or obsolete assets in the ordinary course of business and dispositions of F&E in the ordinary course of business pursuant to an established program for the maintenance and upgrading of such F&E;

(3) the sale or other disposition of cash or Cash Equivalents;

(4) a Restricted Payment that does not violate the covenant described under Section 4.07 or a Permitted Investment;

(5) the exchange of F&E (including slot machines and other gaming devices) for other similar F&E which is useful in the Permitted Business;

(6) licenses and sublicenses granted by the Authority or any of its Restricted Subsidiaries of any software or intellectual property;

(7) the granting of Permitted Liens;

(8) the sale or discount, in each case without recourse, of accounts receivable;

(9) an Event of Loss;

(10) any sale or transfer of land by the Authority or any of its Subsidiaries to the United States to hold in trust for the Tribe;

(11) the voluntary termination of any Hedging Obligations;

(12) the transfer of the Arkansas gaming license from the Authority to Saracen;
or

(13) an issuance of Equity Interests by a Restricted Subsidiary to the Authority or to a Restricted Subsidiary, or the issuance, sale or disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary.”

Section 1.01 of the Indenture shall be amended to delete the definition of Business in its entirety and replace it with the following:

““*Business*” means with respect to the Tribe or any Component of the Tribe (a) all Gaming operations of the Tribe or any Component of the Tribe, wherever located, other than Gaming operations conducted at the Existing Casino and the Saracen Resort, and (b) any other commercial operations conducted by the Authority or any of its Restricted Subsidiaries.”

Section 1.01 of the Indenture shall be amended to delete the subclause (3) in the definition of Change of Control in its entirety and replace it with the following:

“(3) the direct or indirect sale, lease, transfer, conveyance or other disposition in one or a series of related transactions, of all or substantially all of the properties or assets of the Authority and its Restricted Subsidiaries taken as a whole; or”

Section 1.01 of the Indenture shall be amended to delete the definition of Collateral Documents in its entirety and replace it with the following:

““*Collateral Documents*” means, collectively, the Security Agreement and all financing statements related to the security interests granted by the Security Agreement and any other document or instrument providing for a Lien on or a security interest in any personal tangible or intangible property as security for any or all of the Obligations of the Authority or any Restricted Subsidiary of the Authority under this Indenture and the Notes or any of the foregoing documents.”

Section 1.01 of the Indenture shall be amended to delete the definition of Consolidated Net Income in its entirety and replace it with the following:

““*Consolidated Net Income*” means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Subsidiaries which are Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that the following shall be excluded: (i) the cumulative effect of a change in accounting principles; (ii) non-cash losses relating to the impairment or write-down in the carrying value of assets; (iii) any losses or write-offs of deferred financing charges and/or original issue discount in connection with the repayment of Indebtedness by the Authority or any of its Restricted Subsidiaries; and (iv) any non-cash gains or losses attributable to movement in the mark-to-market valuation of Hedging Obligations.”

Section 1.01 of the Indenture shall be amended to delete the subclause (3) in the definition of Excess Cash Flow its entirety and replace it with the following:

“(3) the sum, without duplication, of (i) the aggregate amount of capital expenditures made in cash (other than any such capital expenditures made with Asset Sale proceeds (without giving effect to the threshold set forth in clause (1) of the definition thereof)) by such Person during such period up to \$7.0 million (which shall be prorated for any period shorter than a fiscal year), (ii) the cash portion of consolidated interest expense paid by such Person during such period, (iii) the aggregate amount (without duplication) of all taxes paid in cash during such period by such Person based on income or profits or capital, including, without limitation, state, franchise and similar taxes and foreign withholding taxes of such Person on a consolidated basis, including any penalties and interest relating to any tax examinations, (iv) ~~cash expenditures actually made in connection with the acquisition of assets that are used or useful in the Business permitted under the Indenture to the extent funded with internally generated cash flow of such Person, by such Person during such period,~~ (v) any reduction in the principal amount of Indebtedness (other than the notes or any Indebtedness that is subordinated to the notes or any note guarantee) of such Person resulting from mandatory principal payments made thereon during such period (provided that (A) such Indebtedness has been incurred in accordance with the Indenture and (B) to the extent such Indebtedness is revolving in nature, such payment shall have been accompanied by a concurrent corresponding permanent reduction in the revolving commitment relating thereto), ~~(vi)~~ all amounts added back pursuant to clause (4) of the definition of Consolidated Cash Flow, in each case to the extent paid in cash by such Person during such period, ~~(vii)~~ cash payments by such Person during such period in respect of long-term liabilities of such Person other than Indebtedness to the extent such payments were funded with internally generated cash flow of such Person and were not deducted in calculating net income of such Person, ~~(viii)~~ the aggregate amount of any premium (including tender premium), make-whole or penalty payments actually paid in cash by such Person during such period that are required to be made in connection with any prepayment of Indebtedness as described in (iv) above or made in connection with any tender

offer to repurchase debt securities, ~~and (ixviii)~~ other cash expenses and charges that are ~~either~~ added to net income ~~or otherwise increase Consolidated Cash Flow~~ pursuant to the definition of Consolidated Net Income ~~or Consolidated Cash Flow~~; ~~(xix)~~ any net increase in cash required to be restricted to cash collateralize letters of credit under Credit Facilities for such period; and ~~(xix)~~ the absolute value of any negative Excess Cash Flow from prior periods to the extent not previously deducted in a subsequent calculation of Excess Cash Flow; *plus*”

Section 1.01 of the Indenture shall be amended to delete the definition of Excluded Assets in its entirety and replace it with the following:

““*Excluded Assets*” means:

(1) assets that secure Indebtedness permitted under Section 4.08(b)(2) (other than pursuant to an issuance of Additional Notes) in accordance with the terms of this Indenture or Permitted Refinancing Indebtedness incurred pursuant to Section 4.08(b)(4) to renew, refund, refinance, replace, defease or discharge such Indebtedness;

(2) any real property held in trust in the name of the United States for the benefit of the Tribe or the Tribe’s title to any other real property owned in fee by the Tribe wherever located;

(3) any leases, permits, licenses (including without limitation Gaming Licenses), other contracts or agreements or other assets or property to the extent that a grant of a Lien thereon (i) is prohibited by law or would constitute or result in the abandonment, invalidation or unenforceability of any right, title or interest of the grantor therein pursuant to the applicable law or (ii) would require the consent of third parties and such consent has not been obtained after the Authority or the applicable Guarantor has used commercially reasonable efforts to obtain such consent or (iii) other than as a result of requiring a consent of third parties that has not been obtained, would result in a breach of the provisions thereof, or constitute a default under or result in a termination of, such lease, permit, license, contract or agreement (other than to the extent that any such provision thereof would be rendered ineffective pursuant to Section 9-406, 9-407 or 9-408 of the Uniform Commercial Code, any section of the Tribal UCC or any other applicable law); *provided* that, immediately upon the ineffectiveness, lapse or termination of such prohibition, the provisions that would be so breached or such breach, default or termination or immediately upon the obtaining of any such consent, the Excluded Assets shall not include, and the Authority or its Restricted Subsidiaries, as applicable, shall be deemed to have granted a security interest in, all such leases, permits, licenses, other contracts and agreements and such other assets and property as if such prohibition, the provisions that would be so breached or such breach, default or termination had never been in effect and as if such consent had not been required;

(4) Payroll Accounts and Fiduciary Accounts;

(5) deposit and securities accounts that are funded solely from the proceeds of Indebtedness permitted under Section 4.08(b)(3) and secure such Indebtedness;

(6) deposit and securities accounts that the Authority designates as Excluded Assets by written notice to the Trustee and in the aggregate have a Fair Market Value of less than \$250,000;

(7) any assets sold or transferred by the Authority or any of its Subsidiaries to a Person other than the Authority or a Subsidiary of the Authority in transactions which are in compliance with this Indenture;

(8) all personal property constituting assets of the Tribal Gaming Agency and reasonably required to be owned or otherwise in the possession of the Tribal Gaming Agency for the proper discharge of the Tribal Gaming Agency's responsibilities under the Tribal Gaming Ordinance;

(9) all personal property benefiting the Authority or any of its Subsidiaries primarily because of its use in connection with the Tribe's provision of customary essential governmental services, such as those related to health, safety and welfare; **and**

(10) any "intent-to-use" application for registration of a mark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law; **and**

(11) any property or assets, including any leases, permits, licenses (including without limitation Gaming licenses), other contracts or arrangements of Saracen and any of its subsidiaries."

Section 1.01 of the Indenture shall be amended to delete the definition of F&E in its entirety and replace it with the following:

““F&E” means furniture or equipment used in the ordinary course of the business of the Authority or any of its **Restricted** Subsidiaries.”

Section 1.01 of the Indenture shall be amended to delete the definition of Fixed Charge Coverage Ratio in its entirety and replace it with the following:

““Fixed Charge Coverage Ratio” means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Subsidiaries **which are Restricted Subsidiaries** incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “Calculation Date”), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions that have been made by the specified Person or any of its Subsidiaries **which are Restricted Subsidiaries**, including through mergers or consolidations, or any Person or any of its Subsidiaries **which are Restricted Subsidiaries** acquired by the specified Person or any of its Subsidiaries **which are Restricted Subsidiaries**, and including any related financing transactions, during the four-quarter reference period or subsequent to such reference period and

on or prior to the Calculation Date will be given pro forma effect (in accordance with Regulation S-X under the Securities Act) as if they had occurred on the first day of the four-quarter reference period;

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Subsidiaries which are Restricted Subsidiaries following the Calculation Date; ~~and~~

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period; and

(46) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months).”

Section 1.01 of the Indenture shall be amended to delete the definition of Fixed Charges in its entirety and replace it with the following:

““Fixed Charges” means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Subsidiaries which are Restricted Subsidiaries for for such period, whether paid or accrued, including, without limitation, original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers’ acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates, but excluding amortization of debt issuance costs; *plus*

(2) the consolidated interest expense of such Person and its Subsidiaries which are Restricted Subsidiaries that was capitalized during such period; *plus*

(3) any interest on Indebtedness of another Person that is guaranteed by such Person or one of its Subsidiaries which are Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Subsidiaries which are Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon;

provided, however, that amounts attributable to any Federal Funding Indebtedness shall be excluded. “

Section 1.01 of the Indenture shall be amended to delete the definition of Gaming in its entirety and replace it with the following:

““Gaming” means (i) any and all activities defined as class II or class III gaming under IGRA or any other gaming activity authorized under the Compact and (ii) any and all gaming activities authorized under Arkansas law.”

Section 1.01 of the Indenture shall be amended to delete the definition of Gaming Authority in its entirety and replace it with the following:

““Gaming Authority” means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of the Tribe, the federal government or any state, city or other political subdivision, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, the NIGC, the BIA, the Oklahoma Office of State Finance Gaming Compliance Unit, the Arkansas Racing Commission, the Tribal Gaming Agency, and any division of the Tribe or any other agency, but only to the extent that such agency, authority, board, bureau, commission, department, office or instrumentality possesses authority to regulate any Gaming operation owned, managed or operated, or proposed to be owned, managed or operated, by the Authority, any of its Subsidiaries or the Tribe.”

Section 1.01 of the Indenture shall be amended to delete the definition of Gaming Authority in its entirety and replace it with the following:

““Intercreditor Agreement” means the Intercreditor Agreement substantially in the form attached as an exhibit to this Indenture, to be executed by the Trustee, the Collateral Agent, any providers or lenders of Indebtedness incurred pursuant to Sections 4.08(a) or 4.08(b)(3) hereof (or their representatives), the Authority and any Restricted Subsidiary of the Authority.”

Section 1.01 of the Indenture shall be amended to delete the definition of Investments in its entirety and replace it with the following:

““Investments” means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances, payments to or for the benefit of such other Person, provision of services or goods to such other Person, or capital contributions (excluding payments and provisions to Restricted Subsidiaries or Persons that are not Affiliates, commission, travel and similar advances to directors, officers and employees made in the ordinary course of business and payments and provisions to Affiliates other than Restricted Subsidiaries on an arms’ length basis in connection with the provision of goods or services to the Authority or any Restricted Subsidiary, purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with ~~all~~any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. The acquisition by the Authority or any ~~of its Subsidiaries~~Restricted Subsidiary of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Authority or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in Section 4.07(c). Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.”

Section 1.01 of the Indenture shall be amended to delete the definition of Net Loss Proceeds in its entirety and replace it with the following:

““*Net Loss Proceeds*” means the aggregate proceeds in the form of cash or Cash Equivalents received by the Authority or any of its Restricted Subsidiaries in respect of any Event of Loss, net of:

- (1) the direct costs of recovery of such proceeds (including, without limitation, legal, accounting and investment banking fees, appraisal fees and insurance adjuster fees); and
- (2) taxes paid or payable directly as a result thereof.”

Section 1.01 of the Indenture shall be amended to delete the definition of Net Proceeds in its entirety and replace it with the following:

““*Net Proceeds*” means the aggregate cash proceeds received by the Authority or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, taxes paid or payable directly as a result of the Asset Sale, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.”

Section 1.01 of the Indenture shall be amended to delete the definition of Non-Recourse Indebtedness in its entirety and replace it with the following:

““*Non-Recourse Indebtedness*” means Indebtedness:

- (1) as to which the Authority and its Restricted Subsidiaries (a) provide no credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or (b) are neither directly or indirectly liable (as a Guarantor or otherwise);
- (2) no default with respect to which would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Authority or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its Stated Maturity; and
- (3) as to which such Indebtedness specifies that the lenders thereunder will not have any recourse to the equity or assets of the Authority or any of its Restricted Subsidiaries.”

Section 1.01 of the Indenture shall be amended to delete the definition of Permitted Business in its entirety and replace it with the following:

““*Permitted Business*” means (1) Gaming, (2) any other business or activity that in management’s judgment is incidental, related or complementary thereto and/or that supports or tends to increase customer traffic to the Casino and Hotel, including, without limitation, any related hotel, hospitality, food, beverage, entertainment, daycare, golf and other resort sports, auto and truck travel plaza or transportation activities and (3) services provided by the Authority pursuant to a Services Agreement.”

Section 1.01 of the Indenture shall be amended to delete the definition of Permitted Investments in its entirety and replace it with the following:

““Permitted Investments” means:

- (1) any Investment in the Authority or any of its Restricted Subsidiaries;
- (2) any Investment in Cash Equivalents;
- (3) any Investment by the Authority or any of its Restricted Subsidiaries in a Person, if as a result of that Investment, the Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Authority or any of its Restricted Subsidiaries;
- (4) any Investment by the Authority or any of its Restricted Subsidiaries in a Person or property owned by the Tribe or located on real estate owned by the Tribe whose business is (A) owned, controlled and ~~operated~~operating by the Authority or any of its Subsidiaries, (B) either consolidated in the financial ~~statements~~statement of the Authority or any of its Subsidiaries or obligated to pay 100% of its free cash flow to the Authority or any of its Subsidiaries and (C) ~~a Permitted Business;~~in connection with the operation and maintenance of the golf course leased by the Authority for use by the Property; provided that any such Investment permitted under this clause (4) is made on an arms' length basis and in the ordinary course of business of the Authority or any of its Restricted Subsidiaries;
- (5) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.09;
- (6) loans or advances to employees made in the ordinary course of business of the Authority or any of its Restricted Subsidiaries in an aggregate principal amount not to exceed \$1.0 million at any one time outstanding;
- (7) any Investment made in gaming debts incurred by patrons of any casino owned or operated by the Authority or any of its Restricted Subsidiaries in the ordinary course of business or Investments received in settlements made with respect thereto;
- (8) guarantee of Indebtedness permitted to be incurred under Section 4.08;
- (9) Investments in prepaid expenses, prepaid assets, negotiable instruments held for collection or deposit and lease, utility and workers' compensation, performance or other similar deposits made in the ordinary course of business of the Authority or any Restricted Subsidiary and excluding the business of any Unrestricted Subsidiary;
- (10) Investments acquired after the date of this Indenture as a result of the acquisition by the Authority or any of its Restricted Subsidiaries, including by way of a merger, amalgamation or consolidation with or into the Authority, ~~the~~ or a Restricted Subsidiary of the Authority ~~or affiliate entity~~ in a transaction that is not prohibited by Section 4.12 after the date of this Indenture to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;
- (11) any Investment received in compromise or resolution of (A) obligations of trade creditors or customers other than any affiliate that is not a Restricted Subsidiary that were incurred in the ordinary course of business of the Authority or any of its Restricted Subsidiaries,

including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer, or (B) litigation, arbitration or other disputes with Persons who are not Affiliates of the Authority or its Restricted Subsidiaries;

(12) Investments represented by Hedging Obligations, so long as such Hedging Obligations are not used for speculative purposes;

(13) repurchases of the Notes; ~~and~~

(14) other Investments in any Person, excluding Saracen, other than an Affiliate of the Authority that is not a Restricted Subsidiary of the Authority having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (14) that are at the time outstanding not to exceed \$5.0 million; ~~and~~

(15) any Investment in Saracen not to exceed \$17.0 million as of the date hereof.”

Section 1.01 of the Indenture shall be amended to delete the definition of Permitted Lease Transaction in its entirety and replace it with the following:

““*Permitted Lease Transaction*” means a Lease Transaction of the Authority or any of its Restricted Subsidiaries:

(a) with respect to any space with any Person that:

(1) will not materially interfere with, impair or detract from the operations of Gaming on the Resort;

(2) contains rent and such other terms such that the Lease Transaction, taken as a whole, is commercially reasonable in light of the prevailing or comparable transactions in other casinos, hotels, attractions or shopping venues; and

(3) complies with all applicable law, including obtaining any consent of the BIA, if required; or

(b) that is a management or operating agreement permitted under Section 4.20 hereof;

provided, however, that no Permitted Lease Transaction may provide that (x) the Authority or Restricted Subsidiary subordinate its leasehold or fee interest to any lessee or any financing party of any lessee or (y) any Person other than the Authority or a manager or operator on behalf of the Authority acting pursuant to an agreement permitted under Section 4.20 hereof conduct gaming or casino operations subject to IGRA on any property which is the subject thereof.”

Section 1.01 of the Indenture shall be amended to delete the definition of Permitted Liens in its entirety and replace it with the following:

““*Permitted Liens*” means:

(1) Liens securing the Notes and the obligations of the Authority or any of its Restricted Subsidiaries arising under this Indenture and the Collateral Documents;

(2) Liens in favor of the Authority;

(3) Liens on property (including Capital Stock) of a Person existing at the time ~~of acquisition of the property by such Person becomes a Restricted Subsidiary or is merged with or into or consolidated with~~ the Authority or any Restricted Subsidiary ~~of the Authority~~; *provided* that such Liens were in existence prior to, ~~such acquisition, and the contemplation of such Person becoming a Restricted Subsidiary or such merger or consolidation, were~~ not incurred in contemplation ~~of, such acquisition~~ thereof and do not extend to any assets other than those of the Person that becomes a Restricted Subsidiary or is merged with or into or consolidated with the Authority or an Restricted Subsidiary;

(4) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature (including, without limitation, pledges or deposits made in connection with obligatory workers' compensation laws, unemployment insurance or similar laws) incurred in the ordinary course of business;

~~(5) Liens to secure Indebtedness (including Capital Lease Obligations) incurred under Section 4.08(b)(2); provided that such Liens do not extend to or cover any property or assets other than the property or assets acquired, leased, improved or constructed solely with the proceeds of such Indebtedness and the proceeds of such property or assets;~~

~~(6)~~ Liens to secure Indebtedness ~~permitted by~~ (including Capital Lease Obligations) incurred under Section 4.08 ~~(a) and (b)(32)~~; *provided* that the lender(s) or provider(s), or the trustee, agent or representative of the lenders or providers, of any such Indebtedness has become a party to the Intercreditor Agreement;

(6) [Reserved.];

(7) Liens (other than liens in favor of the Tribe) for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(8) Liens arising by operation of law in favor of carriers, warehousemen, landlords, mechanics, materialmen, laborers, employees or suppliers, incurred in the ordinary course of business for sums which are not yet delinquent or are being contested in good faith by negotiations or by appropriate proceedings which suspend the collection thereof;

(9) Liens arising as a result of survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(10) Liens arising by reward of any judgment, decree or order of any court but not giving rise to an Event of Default so long as such Liens are adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree or order shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

(11) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(12) Liens incurred as a result of any interest or title of a lessor or lessee under any operating lease of property;

(13) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Indenture; *provided, however*, that:

(a) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Permitted Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;

(14) Liens on construction accounts (including related investments, governmental securities, etc., thereunder) for expansion projects related to Indebtedness permitted to be incurred under this Indenture;

(15) Liens existing on the date of this Indenture;

(16) pledges incurred or deposits made to secure obligations from contractual requirements relating to the acquisition of licenses for software, purchases of assets, insurance, environmental remediation or similar matters in the ordinary course of business of the Authority; **and**

(17) other Liens to secure obligations that are *pari passu* in right of payment or subordinated to the Notes, in an aggregate amount at any time outstanding not to exceed \$10.0 million, determined at the time of such incurrence; **and**

(18) Liens on Capital Stock of Saracen.”

Section 1.01 of the Indenture shall be amended to delete the definition of Permitted Payments in its entirety and replace it with the following:

““*Permitted Payments*” means:

(1) payments of allocated costs for utilities or other governmental services supplied by the Tribe and used by the Authority or its **Restricted** Subsidiaries, including, without limitation, police, fire, sewage and other municipal or similar services, such allocation to be determined in good faith by the Board of Directors of the Authority;

(2) payments to the Tribe for actual services, products or benefits rendered, performed or delivered **to the Authority or its Restricted Subsidiaries** in the ordinary course of business of

the Authority or its Restricted Subsidiaries, which are reasonably necessary or desirable in the operation of the Authority or such Restricted Subsidiaries, not to exceed the amount that would otherwise be paid for such services, products or benefits to a third-party in an arm's length transaction;

(3) payments of costs and expenses incurred by the Tribal Gaming Agency in the performance of its obligations relating to the Property under the Tribal Gaming Ordinance;

(4) payments of any sales, use, hotel occupancy, admissions or other tax (other than income tax), imposed by the Tribe on the Authority or any of its Restricted Subsidiaries, Recourse Assets or patrons of the Property pursuant to the Tax Agreement or any Tribal ordinance, statute or resolution; *provided, however*, that for any taxes imposed by Tribal ordinance, statute or resolution and not otherwise required by the Tax Agreement, in each case as in effect on the date hereof, the rate of such taxes shall not be more onerous than comparable taxes imposed by the State of Oklahoma, the City of Tulsa or the City of Oklahoma City, from time to time;

(5) payments of any *pro rata* allocation of the Authority's portion of actual third-party costs paid by the Tribe (or any Component of the Tribe) for the direct benefit of the Authority;

(6) payment of allocated costs of employee benefits for employees of the Authority and its Restricted Subsidiaries paid by the Tribe (or any Component of the Tribe), including allocated costs of third-party administration, *provided* that such allocation does not include payments or fees for any government overhead of the Tribe (or any Component of the Tribe);

(7) payments required to be made by the Tribe under the Compact; and

(8) payments required to be made by the Tribe to the NIGC under IGRA."

Section 1.01 of the Indenture shall be amended to add the word "Restricted" immediately before the word "Subsidiaries" in the definition of the definition of Permitted Refinancing Indebtedness.

Section 1.01 of the Indenture shall be amended to delete the definition of Protected Assets in its entirety and replace it with the following:

"*Protected Assets*" means (a) all real property and interests therein, including fixtures constituting real property, excluding the Saracen Property, (b) any assets against which it would be a violation of federal law, state law or the Compact to enforce remedies, (c) any assets belonging to individual members of the Tribe and (d) any assets used solely for the provision of governmental services by the Tribe."

Section 1.01 of the Indenture shall be amended to add the word "Restricted" immediately before the word "Subsidiary" in the definition of Recourse Assets.

Section 1.01 of the Indenture shall be amended to delete the definition of Subsidiary in its entirety and replace it with the following:

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the

corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof);

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof); and

(3) any instrumentality or subdivision or subunit of the Authority or any of its Subsidiaries that has a separate legal existence or status or whose property and assets would not otherwise be bound by the terms of the Indenture.

Unless as the context may require or as otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Authority.

Section 1.01 of the Indenture shall be amended to delete the word “Tribal” and replace such word with the word “Nation” in the definition of Tribal Business Committee.

Section 1.01 of the Indenture shall be amended to delete the definition of Tribe in its entirety and replace it with the following:

“Tribe” means the Quapaw Nation, also known as the Quapaw Tribe of Oklahoma (O-Gah-Pah), a federally recognized Indian tribe.

Section 4.03 of the Indenture shall be amended to add the following immediately after clause (2):

So long as Saracen is an Unrestricted Subsidiary, then the quarterly and annual financial information required by the first paragraph of this Section 4.03 will include consolidated financial statements of Saracen for the same periods prepared in accordance with GAAP, together with an audit report with respect to the annual financial statements.

Section 4.07 of the Indenture shall be deleted in its entirety and replaced with the following:

“Section 4.07 *Restricted Payments.*

(b) The Authority will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) make any payment or distribution ~~to~~ or provide any good or service to or for the benefit of the Tribe, any agency, instrumentality or political subunit of the Tribe, any member of the Tribe or any Relative of any member of the Tribe (other than, with respect to any such member or Relative of such member, salaries, benefits, expense reimbursements and travel and other advances, in each case, made on customary terms in the ordinary course of business and with respect to goods and services provided to the Authority), any Affiliate of the Tribe, including any Subsidiary that is not a Restricted Subsidiary, or any Affiliate of a member of the Tribe or any Affiliate of any Relative of any member of the Tribe (other than the provision of goods and services pursuant to the Services Agreement, so long as such Services Agreement is in compliance with Section 4.13 hereof, and payments made in the ordinary course of business at customary rates with respect to goods and services provided to the Authority);

(2) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, (a) any Indebtedness of any Person other than the Authority or any Guarantor or (b) any Indebtedness of the Authority or any Guarantor that is contractually subordinated to the Notes or the Guarantee, as applicable (excluding any intercompany Indebtedness between or among the Authority and any of its Restricted Subsidiaries), except a payment of interest or principal at the Stated Maturity ~~thereof; or of Indebtedness of the Authority or any Guarantor;~~

(3) make any Restricted Investment; or

(4) make any payment or distribution to or for the benefit of an Unrestricted Subsidiary without a reimbursement agreement between the Authority and such Unrestricted Subsidiary for such payment or distribution;

(all such payments and other actions set forth in these clauses (1) through ~~(3)~~ (4) above being collectively referred to as “*Restricted Payments*”), ~~unless, at the time of and after giving effect to such Restricted Payment:~~

~~(A) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;~~

~~(B) the Authority would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.08(a); and~~

~~(C) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Authority and its Subsidiaries since the date of this Indenture (excluding Restricted Payments permitted by Section 4.07(b)(1), (2), (3), (5) and (6)) is less than the sum, without duplication, of:~~

~~(i) 50% of the Consolidated Net Income of the Authority for the period (taken as one accounting period) for the period beginning on the first day of the first full fiscal quarter following the closing of the sale of the Notes at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); provided, that to the extent Monthly Service Payments are not deducted from gross income in the calculation of Consolidated Net Income, Monthly Service Payments shall be deducted from the calculation of Consolidated Net Income for purposes of this Section 4.07(a)(C)(i), plus~~

~~(ii) 100% of the aggregate net cash proceeds or Fair Market Value (as determined in good faith by the Board of Directors and evidenced by a resolution set forth in an Officers’ Certificate delivered to the Trustee) of assets or property (other than cash) received by the Authority after the date of this Indenture from capital contributions from the Tribe that bear no mandatory obligation to repay the Tribe, plus~~

~~(iii) to the extent that any Restricted Investment that was made after the date of this Indenture is sold, liquidated, repaid or otherwise disposed of~~

~~for cash or Cash Equivalents (or in the case of a Restricted Investment that is a Guarantee, if such Guarantee is released, the initial amount of such Restricted Investment), the lesser of (a) the cash or Cash Equivalents return of capital or Fair Market Value amount of consideration received, as the case may be, with respect to such Restricted Investment (less the cost of disposition, if any) and (b) the initial amount of such Restricted Investment.~~

(c) So long as no Default or Event of Default has occurred and is continuing or would be caused thereby (other than with respect to Sections 4.07(b)(1), (5) and (6) below), the preceding provisions will not prohibit:

(1) the transfer by the Authority (or by any Subsidiary of the Authority) to the United States of any real property to be held in trust for the benefit of the Tribe; provided that any such transfer shall comply with Article 5 hereof;

(2) the making of any Restricted Payment with the net cash proceeds of a substantially concurrent contribution (other than to a Subsidiary of the Authority) by the Tribe to the capital account of the Authority, *provided* that the amount of any such net cash proceeds that are utilized for any such Restricted Payment will be excluded from Section 4.07(a)(3)(C)(ii);

(3) the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Authority or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(4) the redemption or repurchase of any Indebtedness of the Authority (or of any Restricted Subsidiary of the Authority) required by, and in accordance with, any order of any Gaming Authority; *provided, however*, that the Authority has used its reasonable best efforts to effect a disposition of such Indebtedness to a third party and has been unable to do so;

(5) the making of any Monthly Service Payment; and

(6) the making of any Permitted Payment.

(d) The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Authority or such Restricted Subsidiary of the Authority, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 4.07 will be determined by the Board of Directors of the Authority, whose resolution with respect thereto will be delivered to the Trustee.

(e) ~~Notwithstanding any of the foregoing, if:~~ Reserved.

~~(1) no Default or Event of Default has occurred and is continuing;~~

~~(2) the ratio of the outstanding Indebtedness of the Authority and the Subsidiaries of the Authority as of the date of determination, net of cash and Cash Equivalents, to the Authority's Consolidated Cash Flow for the most recently ended four fiscal quarters (taken as one accounting period) for which internal financial statements are available is no greater than 2.0 to 1.0; and~~

~~(3) the ratings of the Notes by each of Moody's and S&P are equal to or higher than the respective ratings of the Notes by each of such rating agencies on the date of this Indenture;~~

~~then, upon written notice by the Authority to the Trustee, the provisions of Section 4.07(a) or (b) (the "Suspended Covenant") will no longer be applicable to the Notes from and after such time; provided, however, that if at any time thereafter any of the criteria set forth in this Section 4.07(d) ceases to be satisfied, the Suspended Covenant shall be automatically reinstated (the "Reinstated Covenant") and all transactions by the Authority and its Subsidiaries that occurred during the time that such covenant was suspended and that would have violated such covenant had such covenant been in effect at the time shall be deemed not to constitute a Default or an Event of Default, as the case may be, and shall be deemed to have been in compliance with such covenant for all purposes; provided, further, that thereafter all transactions by the Authority and its Subsidiaries occurring on or after the date on which the Suspended Covenant has been reinstated shall be required to be in compliance with the Reinstated Covenant and the amount available for Restricted Payments pursuant to Section 4.07(a)(C) of the Reinstated Covenant on or after the date on which the Suspended Covenant has been reinstated shall be equal to the greater of (x) the amount that would have been available for Restricted Payments pursuant to Section 4.07(a)(C) on such date had the Suspended Covenant never been suspended and after giving effect to all Restricted Payments made through such date and (y) zero. Any reinstatement of the Suspended Covenant as described in the foregoing sentence shall not preclude the subsequent suspension of the Reinstated Covenant and reinstatement of the Suspended Covenant in accordance with the terms of this Section 4.07(e)."~~

Section 4.08 of the Indenture shall be deleted in its entirety and replaced with the following:

"Section 4.08 Incurrence of Indebtedness.

(a) The Authority will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness; ~~provided, however, that the Authority may incur Indebtedness that is contractually subordinated in right of payment to the Notes and the Note Guarantees, if the Fixed Charge Coverage Ratio for the Authority's most recently ended four full fiscal quarters for which internal consolidated financial statements are available immediately preceding the date on which such additional Indebtedness is incurred would have been at least 2.0 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred at the beginning of such four quarter period.~~

(b) Section 4.08(a) hereof will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

(1) the incurrence by the Authority and its Restricted Subsidiaries of (a) Indebtedness represented by this Indenture, the Notes and the related Note Guarantees issued on the date of this Indenture and (b) each of their Obligations arising under the Collateral Documents to the extent such Obligations constitute Indebtedness;

(2) Indebtedness of the Authority and its Restricted Subsidiaries to the extent outstanding on the date of the Indenture ~~(after giving effect to the intended use of proceeds of the Notes), which, for the avoidance of doubt, shall exclude the new senior secured term loan facility entered into by the Authority on the date of this Indenture;~~

~~(3) the incurrence by the Authority and its Subsidiaries of Indebtedness, and reimbursement obligations with respect to letters of credit and term loan, under the Credit Facilities in an aggregate principal amount at any one time outstanding under this Section 4.08(b)(3) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Authority and its Subsidiaries thereunder), including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this Section 4.08(b)(3), not to exceed \$50.0 million; [Reserved.];~~

(4) the incurrence by the Authority or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness that was permitted by this Indenture to be incurred under Section 4.08(a) or clauses (1), (2), ~~(3), (4)~~ or (6) of this Section 4.08(b);

(5) the incurrence by the Authority or any of its Restricted Subsidiaries of Hedging Obligations in the ordinary course of business;

(6) the incurrence by the Authority or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding under this Section 4.08(b)(6), including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this Section 4.08(b)(6), not to exceed \$10.0 million;

(7) the incurrence by the Authority or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances and performance and surety bonds in the ordinary course of business; and

(8) the incurrence by the Authority or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days.

(c) The Authority will not incur, and will not permit any Guarantor to incur, any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Authority or such Guarantor, unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Note Guarantee on substantially identical terms; *provided, however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Authority solely by virtue of the provisions of the Intercreditor Agreement or by virtue of being unsecured or by virtue of being secured on a senior, parity or junior Lien basis.

(d) For purposes of determining compliance with this Section 4.08, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (9) of Section 4.08(b), or is entitled to be incurred pursuant to Section 4.08(a), the Authority will be permitted to classify such item of Indebtedness on the date of its incurrence, in any manner that complies with this Section 4.08. The accrual of interest, the accretion or amortization of original issue discount and the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms will not be deemed to be an incurrence of Indebtedness for purposes of this Section 4.08; *provided*, in each such case, that the amount of any such accrual, accretion or payment is included in Fixed Charges of the Authority as accrued. Notwithstanding any other provision of this Section 4.08, the maximum amount of Indebtedness that the Authority or any of its Restricted Subsidiaries may incur

pursuant to this Section 4.08 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

- (e) The amount of any Indebtedness outstanding as of any date will be:
 - (1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;
 - (2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and
 - (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of (a) the Fair Market Value of such assets at the date of determination and (b) the amount of the Indebtedness of the other Person.”

Section 4.09 of the Indenture shall be deleted in its entirety and replaced with the following:

“Section 4.09 *Asset Sales*.

(f) The Authority shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Authority (or the Authority’s Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets sold or otherwise disposed of; ~~and~~

(2) at least 75% of the consideration received in the Asset Sale by the Authority or such Restricted Subsidiary of the Authority is in the form of cash. For purposes of this provision, each of the following will be deemed to be cash:

(a) any liabilities (as shown on the Authority’s most recent consolidated balance sheet prepared in accordance with GAAP) of the Authority or any of the Authority’s Restricted Subsidiaries (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Guarantee thereof) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that unconditionally releases the Authority or such Restricted Subsidiary of the Authority from further liability;

(b) any securities, notes or other obligations received by the Authority or any such Restricted Subsidiary of the Authority from such transferee that are contemporaneously, subject to ordinary settlement periods, converted by the Authority or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion; and

(c) any assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business;

provided, however, that the Authority ~~may not~~ shall not and shall not permit any Restricted Subsidiary to consummate an Asset Sale with respect to Key Property Assets.

(g) Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Authority (or the applicable Restricted Subsidiary of the Authority, as the case may be) may apply such Net Proceeds:

(1) to repay Indebtedness (other than Notes) incurred pursuant to Section 4.08(b)(2) that is secured by the asset that was the subject of the Asset Sale;

(2) to repay Permitted Credit Facility Indebtedness that is secured by the asset that was the subject of the Asset Sale;

(3) to make capital expenditures; or

(4) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business (excluding clause (3) of the definition of “Permitted Business”); *provided*, however, that the Authority (or the applicable Restricted Subsidiary of the Authority, as the case may be) shall be deemed to have complied with this provision if, within the 365-day period, it has entered into an agreement to acquire other assets in accordance with this provision and that acquisition is completed within 180 days after the end of such 365-day period.

(h) Pending the final application of any Net Proceeds, the Authority (or the applicable Restricted Subsidiary of the Authority) will temporarily invest such Net Proceeds (other than Net Proceeds attributable to F&E subject to a Lien described in clause (5) of the definition of “Permitted Liens”) in Cash Equivalents which will be held in an account in which the Collateral Agent will have (i) a first priority perfected security interest, subject to Permitted Liens, for the benefit of the Holders of Notes and the holders of any Permitted Parity Indebtedness or, if any Permitted Credit Facility Indebtedness is outstanding, for the benefit of the holders of any Permitted Credit Facility Indebtedness and (ii) if any Permitted Credit Facility Indebtedness is outstanding, a second priority perfected security interest, subject to Permitted Liens, for the benefit of the Holders of the Notes and the holders of any Permitted Parity Indebtedness, in accordance with this Indenture, the Collateral Documents, any First Lien Documents and the Intercreditor Agreement.

(i) Any Net Proceeds from Asset Sales that are not applied or invested as provided in Section 4.09(b) will constitute “*Excess Proceeds*.” Within 10 days after the date that the aggregate amount of Excess Proceeds exceeds \$10.0 million, the Authority will make an offer (an “*Asset Sale Offer*”) to all Holders of Notes and all holders of Permitted Parity Indebtedness containing provisions similar to those set forth in this Indenture with respect to offers to purchase or redeem such other Indebtedness with the proceeds of sales of assets to purchase the maximum principal amount of Notes and such other Permitted Parity Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and unpaid interest, if any, to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Authority may use those Excess Proceeds for any purpose not otherwise prohibited by this Indenture, the Collateral Documents or the Intercreditor Agreement. If the aggregate principal amount of Notes and Permitted Parity Indebtedness tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Authority will purchase the Notes and such other Permitted Parity Indebtedness on a *pro rata* basis. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

(a) The Authority will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of Section 3.10 hereof or this Section 4.09, the Authority will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 3.10 hereof or this Section 4.09 by virtue of such compliance.”

Section 4.10 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiary” in sub-clauses (a), (a)(1), (a)(2), (b) and (c).

Section 4.13 of the Indenture shall be deleted in its entirety and replaced with the following:

“Section 4.13 *Transactions with Affiliates.*

(a) The Authority will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or 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, modify, waive, amend or otherwise change any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, the Tribe, any agency, instrumentality or political subunit of the Tribe, including any Subsidiary that is not a Restricted Subsidiary, any member of the Tribe or any Affiliate of the Tribe or any Affiliate of any member of the Tribe, or any Relative of any member of the Tribe (each, an “Affiliate Transaction”), unless:

(1) the Affiliate Transaction is on terms that are no less favorable to the Authority or the relevant Restricted Subsidiary of the Authority, as the case may be, than those that would have been obtained in a comparable transaction by the Authority or such Restricted Subsidiary with an unrelated Person; and

(2) the Authority delivers to the Trustee:

(a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$2.5 million, a resolution of the Board of Directors of the Authority set forth in an Officers’ Certificate certifying that such Affiliate Transaction complies with this Section 4.13 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors or, if there are no disinterested members of the Board of Directors of the Authority, such Affiliate Transaction has been approved unanimously by the members of the Board of Directors of the Authority; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of ~~\$10.0~~5.0 million, an opinion as to the fairness to the Authority or such Restricted Subsidiary of the Authority, as the case may be, of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.13(a) hereof:

(1) any employment agreement or arrangement entered into by the Authority or by any Subsidiary of the Authority that has been approved by a majority of disinterested members of the Board of Directors of the Authority or, if there are no disinterested members of the Board of Directors of the Authority, such compensation arrangement has been approved unanimously by the members of the Board of Directors of the Authority;

(2) reasonable and customary fees and compensation paid to, and indemnities and similar arrangements provided on behalf of, the Board of Directors and officers, directors or employees of the Authority, any Subsidiary of the Authority or the Tribal Gaming Agency;

(3) Restricted Payments permitted to be made pursuant to Section 4.07 hereof;

(4) contractual arrangements existing on the date of this Indenture and any extensions, renewals and modifications thereof that are not adverse to the Holders of the Notes;

(5) reasonable and customary employment and bid preferences to members of the Tribe and their businesses in accordance with Tribal law or policy; ~~and~~

(6) loans or advances to employees in the ordinary course of business not to exceed \$1.0 million in the aggregate at any one time outstanding;

(1) transactions between or among the Authority and/or its Restricted Subsidiaries; and

(7) the transfer of the Arkansas gaming license from the Authority to Saracen.”

Section 4.14 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiaries.”

Section 4.15 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiaries” in the first and second sentences.

Section 4.16 of the Indenture shall be amended to add the word “Restricted” immediately before the words “Subsidiaries” and “Subsidiary” in the first sentence and to add the word “Restricted” immediately before the word “Subsidiary” in clause (1).

Section 4.18 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiaries” in the clause (a); sub-clause (5) to clause (a); and clause (c).

Section 4.19 of the Indenture shall be deleted in its entirety and replaced with the following:

“Section 4.19 *Authority Rights.*

The Authority and each Subsidiary of the Authority shall do or cause to be done all things necessary to preserve and keep in full force and effect all material rights, licenses and franchises of the Authority and each such Subsidiary, respectively. Other than as may be required by applicable federal law, laws of the State of Arkansas or the Compact, the Authority shall not, and will not permit any of its Subsidiaries to, take any action that would cause any Holder or Beneficial Owner of the Notes to be required to obtain a Gaming License or to be required to be licensed, qualified or found suitable under the law of any jurisdiction.”

Section 4.23 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiary” in the first sentence.

Section 4.24 of the Indenture shall be deleted in its entirety and replaced with the following:

“Section 4.23 *Further Assurances.*

(a) The Authority and each of its Restricted Subsidiaries shall do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, as applicable, any and all such further acts, deeds, conveyances, security agreements, mortgages, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as may be required from time to time in order to:

- (2) carry out more effectively the purposes of the Collateral Documents;
- (3) subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests required to be encumbered thereby;
- (4) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby; and
- (5) better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Trustee any of the rights granted now or hereafter intended by the parties thereto to be granted to the Collateral Agent under the Collateral Documents or under any other instrument executed in connection therewith.

(j) Upon the exercise by the Trustee or any holder of any power, right, privileges or remedy under this Indenture, any of the Collateral Documents or the Intercreditor Agreement which requires any consent, approval, recording, qualification or authorization of any governmental authority (including any Gaming Authority), the Authority (or, if applicable, any of its Restricted Subsidiaries) will execute and deliver all applications, certifications, instruments and other documents and papers that may be required from the Authority (or any such Restricted Subsidiary) for such governmental consent, approval, recording, qualification or authorization.

(c) For so long as there is no event of default under any indenture or credit agreement pursuant to which Saracen is the issuer or borrower thereunder, respectively, (i) the Authority or any of its wholly owned Subsidiaries (or a combination thereof), shall hold at least 50.1% of Saracen's (x) total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors or managers or trustees, as the case may be, of Saracen and (y) Capital Stock.

(d) The Authority must keep at least \$8.0 million in cash and cash equivalents at the Property."

Section 4.26 of the Indenture shall be amended to add the word "Restricted" immediately before the word "Subsidiaries" in the first sentence.

Section 4.27 of the Indenture shall be amended to add the words ", except Saracen," immediately before the words ",unless such Subsidiary" in the first sentence.

Section 4.28 of the Indenture shall be amended to add the word "Restricted" immediately before the words "Subsidiary," "Subsidiaries" and "Subsidiary's."

Article 4 of the Indenture shall be amended by inserting the following provision as Section 4.29:

"Section 4.29 Designation of Restricted Subsidiaries and Unrestricted Subsidiaries.

(a) Saracen shall be Unrestricted Subsidiary.

(b) The Authority may designate any Unrestricted Subsidiary to be a Restricted Subsidiary if that designation would not cause a Default."

Section 5.01 of the Indenture shall be amended to:

(a) delete sub-clause (4) of clause (a) in its entirety and replace it with the following:

“(c) conduct or permit any other entity to conduct Gaming operations other than through the Authority, a wholly-owned Subsidiary of the Authority, Saracen or the Existing Casino;”

(b) delete clause (c) in its entirety and replace it with the following:

“(c) To the extent within its lawful power, the Tribe will take all such action, and will refrain from taking such action, as is necessary to cause the Authority at all times to be a wholly controlled Component of the Tribe, permitted under all other applicable laws, including IGRA, to have access to the Property and the Saracen Property and to operate the business of the Authority and its Subsidiaries (including such gaming as is permitted under IGRA ~~and~~, the Compact and Arkansas law) and to timely perform all of the obligations of the Authority and its Subsidiaries, as the case may be, under this Indenture, the Notes, the Intercreditor Agreement and the Collateral Documents. The Tribe agrees that, subject to the terms of the Authority Ordinance, the Authority and its Subsidiaries will have sole and exclusive jurisdiction to conduct all aspects of the Business on behalf of the Tribe or any political subunit thereof and the Tribe shall not permit any Person other than the Tribe to acquire any right to elect or appoint any members of the Board of Directors of the Authority.”

Section 6.01 of the Indenture shall be amended to (a) add the word “Restricted” immediately before the word “Subsidiaries” in clauses (3), (4), (5), (6), (7), (9), (11), (17), sub-clause (a) of clause (12) and sub-clause (b) of clause (12) and (b) add the word “Restricted” immediately before the word “Subsidiary” in clauses (8) and (17).

Section 9.01 of the Indenture shall be amended to delete clause (10) in its entirety and replace it with the following:

“(10) to allow any Guarantor, including a Subsidiary being added as a Guarantor pursuant to the terms of this Indenture, to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes,”

Section 10.01 of the Indenture shall be amended to add the word “Restricted” immediately before the words “Subsidiary” and “Subsidiaries.”

Section 10.02 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiaries.”

Section 10.04(a) of the Indenture shall be deleted in its entirety and replaced with the following:

“Section 10.04 *Release of Collateral*.

(a) The Collateral Agent’s Liens upon the Collateral will no longer secure the Notes outstanding under this Indenture or any other Obligations under this Indenture, and the right of the Holders of the Notes and such Obligations to the benefits and proceeds of the Collateral Agent’s Liens on the Collateral will terminate and be discharged:

(1) upon the satisfaction and discharge of this Indenture, in accordance with Article 13 hereof;

(2) upon a Legal Defeasance or Covenant Defeasance of the Notes in accordance with Article 8 hereof;

(3) upon payment in full and discharge of all Notes outstanding under this Indenture and all Obligations that are outstanding, due and payable under this Indenture at the time the Notes are paid in full and discharged;

(4) in whole or in part, with the consent of the Holders of the requisite percentage of Notes in accordance with Article 9 hereof; ~~or~~

(5) with respect to the assets of a Guarantor, upon the release of such Guarantor from its Notes Guarantee as provided in Section 11.05 hereof; or

(6) as provided in Section 9.1 of the Intercreditor Agreement.”

Section 10.09 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiary” in sub-clause (7) of clause (a).

Section 10.10 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiary” in sub-clause (7) of clause (a).

Section 10.11 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiaries.”

Section 10.12 of the Indenture shall be amended to add the word “Restricted” immediately before the words “Subsidiary” and “Subsidiaries.”

Section 10.13 of the Indenture shall be amended to add the word “Restricted” immediately before the word “Subsidiary” in clause (b).

Section 11.05 of the Indenture shall be deleted in its entirety and replaced with the following:

“Section 11.05 *Releases*.

(a) In the event of any sale, assignment, transfer, conveyance, or other disposition of all or substantially all of the assets of any Guarantor, by way of merger, consolidation or otherwise, to a Person that is not (either before or after giving effect to such transaction) the Authority or a Restricted Subsidiary of the Authority, then the corporation acquiring the property will be released and relieved of any obligations under the Note Guarantee;

(b) In the event of any sale, assignment, transfer, conveyance, or other disposition of Capital Stock of any Guarantor to a Person that is not (either before or after giving effect to such transaction) the Authority or a Restricted Subsidiary of the Authority and such Guarantor ceases to be a Restricted Subsidiary of the Authority as a result of the sale or other disposition, then such Guarantor will be released and relieved of any obligations under its Note Guarantee;

provided, in ~~both cases~~ the case of (a) or (b), that the Net Proceeds of such sale, assignment, transfer, conveyance, or other disposition are applied in accordance with the applicable provisions of this Indenture, including without limitation Section 3.10 and 4.09 hereof. ~~Upon~~ In the case of (a) or (b), upon delivery by the Authority to the Trustee of an Officers’ Certificate and an Opinion of Counsel to the effect that such sale, assignment, transfer, conveyance, or other disposition was made by the Authority in accordance with the provisions of this Indenture, including without limitation Section 3.10 and 4.09 hereof,, the Trustee will execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

(c) Upon Legal Defeasance or Covenant Defeasance in accordance with Article 8 hereof or satisfaction and discharge of this Indenture in accordance with Article 8 hereof, each Guarantor will be released and relieved of any obligations under its Note Guarantee.

(d) Saracen shall be an Unrestricted Subsidiary and shall be released and relieved of any obligations under its Note Guarantee.

Any Guarantor not released from its obligations under its Note Guarantee as provided in this Section 11.05 will remain liable for the full amount of principal of, premium on, if any, and interest, if any, on, the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 11.”

Section 12.01 of the Indenture shall be amended to:

(a) delete clause (b) in its entirety and replace it with the following:

“(b) Subject to the limitations in Section 12.01(a) on each Tribal Party’s waiver of sovereign immunity, each Tribal Party, the Trustee and the Collateral Agent hereby agree to irrevocably and unconditionally submit, for itself and its property, to the exclusive jurisdiction of the United States District Court, Southern District of New York, Borough of Manhattan, and any appellate court from which any appeals therefrom are available (“*New York Federal Courts*”) and/or and the courts of the State of New York sitting in the City of New York, County of New York, and any appellate court from which any appeals therefrom are available (“*New York State Courts*”), in any action or proceeding arising out of or relating to any Transaction Document, or for recognition or enforcement of any judgment, or in the event that the foregoing courts decline or lack jurisdiction, any state or federal court of the State of Oklahoma (and any appellate court from which any appeals therefrom are available), or in the event that the foregoing courts decline or lack jurisdiction, any state or federal court in the State of Arkansas (and any appellate court from which any appeals therefrom are available), or to any Tribal court with jurisdiction (or, if the Tribal courts cease operation, the Court of Indian Offenses), for the limited purpose of an action to compel arbitration or enforce an arbitration award. Notwithstanding the foregoing, each Loan Party acknowledges and agrees that any Grantee may enforce any decree, judgment, award, order, warrant, subpoena or other judicial action taken or issued by any of the foregoing courts, enforce any award resulting from any arbitration proceeding authorized herein and seek any provisional or ancillary remedies in any other jurisdiction where collateral is located or is otherwise necessary for the enforcement of remedies. Each Tribal Party, the Trustee and the Collateral Agent hereby irrevocably and unconditionally agree that all claims in respect of any such action or proceeding may be heard and determined in the courts described herein to the extent described herein. Each Tribal Party and the Trustee agree that a final judgment in any such action or proceeding may be enforced by any of the foregoing courts or other jurisdictions necessary for enforcement.”

(b) delete clause (d) in its entirety and replace it with the following

“(d) Each Tribal Party and the Trustee hereby irrevocably and unconditionally waive, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Transaction Document in any New York Federal Court, New York State Court or Oklahoma or Arkansas State Court. Each of the Tribal Parties and the Trustee hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.”

Section 14.09 of the Indenture shall be deleted in its entirety and replaced with the following:

“Section 14.09 *No Personal Liability of Directors, Officers, Employees and Stockholders.*

No member of the Authority, member of the Tribal Business Committee, tribal member, council member, official, agent, director, manager, member, officer or employee, incorporator or stockholder of the Authority, any Guarantor or the Tribe, as such, or adviser to the Authority, any Subsidiary or the Tribe, as such, shall have any liability for any obligations of the Authority or the Guarantors under the Notes, the Note Guarantees, this Indenture or the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws. Other than as specifically set forth in this Indenture, nothing contained herein shall constitute a waiver of sovereign immunity of the Authority or the Tribe.”

ARTICLE II MISCELLANEOUS

Section 2.01. Effectiveness of Supplemental Indenture. This Supplemental Indenture shall become effective as of the date hereof; *provided* that the provisions of Article of this Supplemental Indenture shall not become operative until the date and time (such date and time, the “*Operational Time*”) at which (1) Saracen pays the applicable consideration for the Notes accepted by the Authority for such purchase on the Consent Payment Date, as defined in the Consent Solicitation Statement dated August 6, 2019 with respect to the Consent Solicitation, and (2) Saracen pays Downstream for any amount Invested in Saracen in excess of the amount specified in clause (15) of the definition of Permitted Investments in this Supplemental Indenture. In the event the Authority notifies (in writing) the Depository that it has withdrawn or terminated the Consent Solicitation prior to the Operational Time, this Supplemental Indenture shall be terminated and be of no force or effect and the Indenture shall not be modified hereby.

Section 2.02. Effect of Supplemental Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. Upon the execution and delivery of this Supplemental Indenture by the Authority, the Tribe, the Guarantors and the Trustee, this Supplemental Indenture shall form a part of the Indenture for all purposes, and every holder of Securities heretofore or hereafter authenticated and delivered shall be bound hereby. Any and all references to the Indenture, whether within the Indenture or in any notice, certificate or other instrument or document, shall be deemed to include a reference to this Supplemental Indenture (whether or not made), unless the context shall otherwise require.

Section 2.03. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or electronic transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.

Section 2.04. NEW YORK LAW TO GOVERN. THE LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE.

Section 2.05. Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

Section 2.06. Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Authority and the Tribe and not by the Trustee.

Section 2.07. Successors and Assigns. All covenants and agreements in this Supplemental Indenture by the Authority and by the Tribe shall bind each of their respective successors and assigns, whether so expressed or not.

Section 2.08. Severability. In case any provision in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 2.09. Trust Indenture Act Controls. If any provision of this Supplemental Indenture limits, qualifies or conflicts with another provision of this Supplemental Indenture or the Indenture that is required to be included by the Trust Indenture Act of 1939, as amended (the “Act”), as in force at the date this Supplemental Indenture is executed, the provision required by the Act shall control.

Section 2.10. Limitations on Management Activities. Notwithstanding any provision in this Supplemental Indenture, the Notes or the other Transaction Documents (as defined in the Indenture), none of the rights and powers of the Trustee, the Holders or any beneficial owner of the Notes (collectively, the “*Lending Parties*,” and each, a “*Lending Party*”) under this Supplemental Indenture, the Notes or any other Transaction Document (as defined in the Indenture) shall give any Lending Party the power to engage in any of the following: planning, organizing, directing managing, coordinating or controlling all or any portion of the Authority’s or the Tribe’s gaming operations (collectively, “*Management Activities*”), including, but not limited to:

- (a) the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;
- (b) any employment policies or practices;
- (c) the hours or days of operation;
- (d) any accounting systems or procedures;
- (e) any advertising, promotions or other marketing activities;
- (f) the purchase, lease or substitution of any gaming device or related equipment or software, including player tracking equipment;
- (g) the vendor, type, theme, percentage of pay-out, display or placement of any gaming device or equipment; or
- (h) budgeting, allocating or conditioning payments of the Authority’s, Guarantors’ (as defined in the Indenture) or the Tribe’s operating expenses;

provided, however, that the foregoing provisions shall not be construed to prevent a Lending Party from:

- (a) enforcing compliance with any provision in this Supplemental Indenture, the Notes or any other Transaction Document (as defined in the Indenture) that does not require the gaming operations to be subject to any third party decision making as to any Management Activities;
- (b) requiring that all or any portion of the revenues of the gaming operations be applied to satisfy valid terms of this Supplemental Indenture, the Notes or any Collateral Document (as defined in the Indenture); or
- (c) otherwise foreclosing on all or any portion of any property securing the Notes.

Section 2.11. Encumbrances of Indian Land. Notwithstanding any right of the Trustee, the Holders or any beneficial owner of the Notes in this Supplemental Indenture, the Notes or any other Transaction Document (as defined in the Indenture), or any requirements or restrictions imposed on the Authority or the Tribe in this Supplemental Indenture, the Notes or any other Transaction Document (as defined in the Indenture), any right, requirement or restriction that “encumbers Indian land” within the meaning of 25 U.S.C. Sec. 81, shall not be effective for longer than six years and 364 days.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year written above.

Dated as of August [●], 2019

Downstream Development Authority of the Quapaw
Tribe of Oklahoma (O-Gah-Pah)

By: _____
Name: John L. Berrey
Title: Chairman, Board of Members

Quapaw Tribe of Oklahoma (O-Gah-Pah)

By: _____
Name: John L. Berrey
Title: Chairman, Quapaw Tribal Business
Committee

Downstream Q Store, LLC

By: _____
Name: John L. Berrey
Title: Manager

Saracen Development, LLC

By: Downstream Development Authority of the Quapaw
Tribe of Oklahoma (O-Gah-Pah), its sole member

By: _____
Name: John L. Berrey
Title: Chairman, Board of Members

BOKF, NA,
as Trustee

By: _____
Name:
Title: