

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|--|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| MSR RESORT GOLF COURSE LLC, <i>et al.</i> , ¹ |) | Case No. 11-10372 (SHL) |
| |) | |
| Debtors. |) | Jointly Administered |
| |) | |

**STIPULATION AND ORDER EXTENDING
DEBTOR-IN-POSSESSION FINANCING MATURITY DATE TO FEBRUARY 28, 2013
AND AMENDING THE SIXTH FINAL DIP ORDER ACCORDINGLY**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) and the lenders and co-agents for the debtor-in-possession financing facility of certain of the Debtors, by and through their respective counsel, hereby enter into this stipulation and agreed order (this “Stipulation and Order”).

WHEREAS, pursuant to the *Sixth Final Order (I) Authorizing Debtors to Obtain Secured Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 346(c)(2), 364(c)(3) and 364(e), (II) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and*

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number include: MSR Resort Golf Course LLC (7388); MSR Biltmore Resort, LP (5736); MSR Claremont Resort, LP (5787); MSR Desert Resort, LP (5850); MSR Grand Wailea Resort, LP (5708); MSR Resort Ancillary Tenant, LLC (9698); MSR Resort Biltmore Real Estate, Inc. (8464); MSR Resort Desert Real Estate, Inc. (9265); MSR Resort Hotel, LP (5558); MSR Resort Intermediate Mezz GP, LLC (3864); MSR Resort Intermediate Mezz LLC (7342); MSR Resort Intermediate Mezz, LP (3865); MSR Resort Intermediate MREP, LLC (9703); MSR Resort Lodging Tenant, LLC (9699); MSR Resort REP, LLC (9708); MSR Resort Senior Mezz GP, LLC (9969); MSR Resort Senior Mezz LLC (7348); MSR Resort Senior Mezz, LP (9971); MSR Resort Senior MREP, LLC (9707); MSR Resort Silver Properties, LP (5674); MSR Resort SPE GP II LLC (5611); MSR Resort SPE GP LLC (7349); MSR Resort Sub Intermediate Mezz GP, LLC (1186); MSR Resort Sub Intermediate Mezz LLC (7341); MSR Resort Sub Intermediate Mezz, LP (1187); MSR Resort Sub Intermediate MREP, LLC (9701); MSR Resort Sub Senior Mezz GP, LLC (9966); MSR Resort Sub Senior Mezz LLC (7347); MSR Resort Sub Senior Mezz, LP (9968); and MSR Resort Sub Senior MREP, LLC (9705). The location of the debtors’ service address is: c/o CNL-AB LLC, 1251 Avenue of the Americas, New York, New York 10020.



(III) *Providing for Related Relief* [Docket No. 1877] (the “Sixth Final DIP Order”),² the Court has authorized the DIP Facility Debtors to enter into the DIP Documents and to access the existing \$87 million debtor-in-possession financing facility, subject to the terms of the Sixth Final DIP Order and the DIP Documents;

WHEREAS, the DIP Facility Debtors have requested, among other things, that the DIP Lenders extend the Maturity Date from January 31, 2013 to February 28, 2013; and

WHEREAS, the DIP Facility Debtors, the DIP Agent, and the DIP Lenders have agreed to such an extension and to document that agreement by an amendment to the DIP Credit Agreement (in the form attached hereto as **Exhibit 1**, the “Seventh DIP Amendment”).

Now, therefore, IT IS HEREBY STIPULATED AND AGREED by and between the DIP Facility Debtors, the DIP Agent, and the DIP Lenders, which agreement, when “so-ordered” by the Court, shall constitute an order of the Court, as follows.

1. The form and substance of the Seventh DIP Amendment is approved. The DIP Facility Debtors are hereby authorized and empowered to do and perform all acts, to make, execute and deliver all instruments, documents and agreements, and to pay all fees, costs and expenses of the DIP Agent and the DIP Lenders (solely in such capacities), including, without limitation, reasonable attorneys’ fees, that reasonably may be necessary or required in connection with the Seventh DIP Amendment, the transactions and proceedings contemplated thereby, and the preparation, negotiation, execution, delivery and consummation of the Seventh DIP Amendment, this Stipulation and Order and any transactions and court proceedings related thereto. The procedures identified in the final sentence of Paragraph 17(a) of the Sixth Final DIP

² Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Sixth Final DIP Order.

Order shall govern the fees and expenses described in this Paragraph 1 (the “DIP Agent/Lender Fees”), the respective invoices of the DIP Lenders and the co-DIP Agents and any objections thereto. The DIP Agent/Lender Fees shall not be subject to allowance by the Court and may be paid without the submission or filing of fee applications with the Court; provided, however, that unresolved disputes concerning the reasonableness of any such DIP Agent/Lender Fees may be determined by the Court; provided further that the DIP Agent/Lender Fees shall be paid for any given period only after any interest payments to the Mortgage Lender, as provided for in paragraph 6(a) of the Cash Collateral Order, and the Servicer’s Fees and Expense Reimbursement then due and payable have been paid.

2. The DIP Documents, including the Seventh DIP Amendment, shall constitute and evidence, or continue to constitute and evidence, as applicable, the valid and binding obligations of the DIP Facility Debtors, which obligations shall be enforceable against the DIP Facility Debtors, their estates and any successors thereto, and their creditors, in accordance with their terms and the terms of the Previous Final Orders and the Sixth Final Order.

3. Paragraph 9 of the Sixth Final DIP Order is hereby amended by deleting “January 31, 2013” therefrom and inserting “February 28, 2013” in place thereof.

4. Except as amended by this Stipulation and Order, the Sixth Final DIP Order remains unmodified and in full force and effect.

5. Nothing herein shall be deemed or construed to constitute consent by the DIP Agent or the DIP Lenders or any of their affiliates to any relief sought by the Debtors (or any other party) in any other motion, application, or other pleading that is now pending before the Court or that may be filed in the future. The rights of each of the parties hereto are fully reserved with respect to any such relief sought.

6. The terms and conditions of this Stipulation and Order shall be immediately effective and enforceable upon its entry.

7. The Debtors, the DIP Agent, and the DIP Lenders are authorized to take all actions necessary to effectuate the relief granted pursuant to this Stipulation and Order.

8. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Stipulation and Order.

**MSR RESORT GOLF COURSE LLC
AND ITS AFFILIATED DEBTORS AND DEBTORS IN POSSESSION**

By: /s/ Paul M. Basta

James H.M. Sprayregen, P.C.

Paul M. Basta

Edward O. Sassower

Chad J. Husnick

KIRKLAND & ELLIS LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Title: Counsel to the Debtors, including the DIP Facility Debtors

CNL DIP RECOVERY ACQUISITION, LLC, as co-DIP Agent and DIP Lender

By: /s/ Catherine Martin

David Broderick

Catherine Martin

LATHAM & WATKINS LLP

885 Third Avenue

New York, New York 10022

Telephone: (212) 906-1200

Facsimile: (212) 751-4864

Title: Counsel to CNL DIP Recovery Acquisition, LLC

**FIVE MILE CAPITAL II CNL DIP ADMINISTRATIVE AGENT LLC, as co-DIP Agent,
and FIVE MILE CAPITAL II EQUITY POOLING LLC, as DIP Lender**

By: /s/ Richard F. Casher

Richard F. Casher

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

1633 Broadway

New York, New York 10019

Telephone: (212) 506-1700

Facsimile: (212) 506-1800

Title: Counsel to Five Mile Capital II CNL DIP Administrative Agent LLC and
Five Mile Capital II Equity Pooling LLC

**Dated: January 28, 2013
New York, New York**

/s/ Sean H. Lane

**Hon. Sean H. Lane
United States Bankruptcy Judge**

**SEVENTH AMENDMENT TO SECURED, SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

This SEVENTH AMENDMENT TO SECURED, SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of January __, 2013 (this "Amendment"), is entered into among the Borrowers listed on the signature pages hereof, each as debtor and debtor-in-possession (each individually referred to herein as a "Borrower" and, collectively, as "Borrowers"), MSR RESORT GOLF COURSE, LLC, as the Administrative Borrower, the lenders listed on the signature pages hereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), and CNL DIP RECOVERY ACQUISITION, LLC ("CNL") and FIVE MILE CAPITAL II CNL DIP ADMINISTRATIVE AGENT LLC ("Five Mile"), as co-agents for the Lenders (CNL and Five Mile, in such capacity, including their respective successors and assigns, being herein referred to together as the "Agent").

WHEREAS, on March 21, 2011, the Borrowers, the Lenders, and Five Mile and Paulson Real Estate Recovery Fund, LP ("Paulson"), as co-Agents for the Lenders entered into that certain Secured, Superpriority Debtor-in-Possession Credit Agreement (the "Original Credit Agreement");

WHEREAS, CNL succeeded Paulson as co-Agent under the Original Credit Agreement pursuant to that certain Notice, Appointment and Acceptance dated March 22, 2011;

WHEREAS, the Original Credit Agreement has been amended pursuant to that certain First Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of April 15, 2011 (the "First Amendment"), that certain Second Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of December 15, 2011 (the "Second Amendment"), that certain Third Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of June 28, 2012 (the "Third Amendment"), that certain Fourth Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of August 23, 2012 (the "Fourth Amendment"), that certain Fifth Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of October 22, 2012 (the "Fifth Amendment"), and that certain Sixth Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of November 29, 2012 (the "Sixth Amendment"; the Original Credit Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, the "Credit Agreement");

WHEREAS, the Borrowers have requested, among other things, that the Lenders extend the Maturity Date to February 28, 2013; and

WHEREAS, the Agent and the Lenders are willing to accommodate such request subject to the terms, conditions and other provisions hereof and the parties to this Amendment agree to amend the Credit Agreement as set forth herein.

Execution Version

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration (each of which is hereby acknowledged and agreed) all of the parties hereto agree as follows:

1. Defined Terms. All capitalized terms used herein and not otherwise defined shall have the respective meanings given to such term in the Credit Agreement.

2. Agreement; Amendments to Credit Agreement. Each Borrower hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no objection, defense, set-off, claim or counterclaim of any kind against the Agent and the Lenders with regard to its Obligations in respect of the Loan and (y) reaffirms its obligation to repay the Loan in accordance with the terms and provisions of the Credit Agreement (as amended by this Amendment) and the other Loan Documents. Effective as of the Seventh Amendment Effective Date, in reliance upon the representations and warranties of the Borrowers set forth in the Loan Documents and in this Amendment, the Credit Agreement is hereby amended as follows:

(a) The defined term "Maturity Date" set forth in Section 1.1 is hereby amended by deleting "January 31, 2013" therefrom and inserting "February 28, 2013" in place thereof.

(b) Section 8.2.2 is hereby amended by deleting "January 31, 2013" therefrom and inserting "February 28, 2013" in place thereof.

3. No Modification. Nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Credit Agreement or any of the other Loan Documents or constitute a course of conduct or dealing among the parties. The Agent and Lenders reserve all rights, privileges and remedies under the Loan Documents. Except as amended or consented to hereby, the Credit Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Credit Agreement shall be deemed to be references to the Credit Agreement as amended hereby. This Amendment shall be deemed to be a Loan Document.

4. Conditions. The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent:

(a) Delivery to the Agent of this Amendment executed by each Borrower, the Agent and the Lenders;

(b) An order substantially in the form of Exhibit A hereto (the "Amendment Approval Order") shall have been entered by the Court, is in full force and effect, and no order amending or modifying (without the consent of the Agent, which consent may be withheld or denied in the Agent's sole discretion) or reversing, staying or vacating such order shall have been entered, and, if such order is the subject of a pending appeal in any respect, neither the making of any Loans nor the performance by any Borrower of its respective obligations hereunder or under the other Loan Documents shall be the subject of a presently effective stay pending appeal;

(c) The Cash Collateral Order entered by the Court on April 15, 2011 [Docket No. 255] following the hearing before the Court in respect of the *Motion of MSR Resort Golf Course LLC, et al., for Entry of an Order (I) Authorizing Continued Use of Cash Collateral, (II) Approving Adequate Protection, and (III) Granting Related Relief* [Docket No. 709], as extended pursuant to the Court's order entered on October 31, 2011 [Docket No. 826], as further extended pursuant to the Court's order entered on December 15, 2012 [Docket No. 904], as further extended pursuant to the Court's order entered on May 18, 2012 [Docket No. 1178], as further extended pursuant to the Court's order entered on August 16, 2012 [Docket No. 1412], as further extended pursuant to the Court's order entered on September 27, 2012 [Docket No. 1592], as further extended pursuant to the Court's order entered on October 16, 2012 [Docket No. 1665], and as further extended pursuant to the Court's order entered on December 21, 2012 [Docket No. 1882] shall be in full force and effect;

(d) No Default or Event of Default under the Credit Agreement shall have occurred and be continuing or would result from the consummation of the transactions contemplated hereby;

(e) The Agent and the Lenders shall have received payment of all fees, expenses and other amounts, including, without limitation, attorneys' fees, associated with or relating to this Amendment and the transactions contemplated hereby and the preparation, negotiation, execution, delivery and consummation of this Amendment, the Amendment Approval Order, any final debtor-in-possession financing order contemplated by the Amendment Approval Order and any transactions and court proceedings related thereto; and

(f) The representations and warranties contained in Section 5 hereof shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein).

The "Seventh Amendment Effective Date" shall mean the first date on which each of the conditions set forth in this Section 4 have been satisfied or waived.

5. Representations and Warranties. Each Borrower hereby represents and warrants to Agent and the Lenders as follows:

(a) the representations and warranties made by such Borrower contained in the Loan Documents are true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the date hereof, except to the extent such representation or warranty expressly relates to an earlier date (in which case, such representations and warranties were true and correct in all material respects as of such earlier date);

(b) upon the entry by the Court of the Amendment Approval Order, the execution, delivery and performance by each of the Borrowers of this Amendment, and by each of the Borrowers and each of their respective Subsidiaries of the Credit

Agreement (as amended by this Amendment) and any other Loan Document, have been duly authorized by all necessary action, and do not and will not:

- (i) contravene the terms of any of that Person's organizational documents;
 - (ii) conflict with or result in any breach or contravention of, or result in the creation of any Lien under, any document evidencing any material contractual obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect; or
 - (iii) violate any Requirement of Law, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect.
- (c) upon the entry by the Court of the Amendment Approval Order, this Amendment, the Credit Agreement (as amended by this Amendment) and each other Loan Document to which any Borrower or any Subsidiary of any Borrower is a party constitute the legal, valid and binding obligations of each such Person that is a party thereto, enforceable against such Person in accordance with their respective terms, except as enforceability may be limited by the Bankruptcy Code, the Court and/or by equitable principles regardless of whether considered in a proceeding in equity or at law; and
- (d) no Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated hereby

6. Governing Law. This Amendment and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of the State of New York and any applicable federal laws of the United States of America without giving regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

7. Counterparts. This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or by electronic transmission (in PDF/Adobe Acrobat format) shall have the same force and effect as if an original, ink-signed signature page were delivered.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

AGENTS:

CNL DIP RECOVERY ACQUISITION, LLC

By: _____
Name:
Title:

**FIVE MILE CAPITAL II CNL DIP
ADMINISTRATIVE AGENT LLC,**
a Delaware limited liability company

By: Five Mile Capital II Equity Pooling LLC,
a Delaware limited liability company,
its sole member

By: Five Mile Capital Partners LLC,
a Delaware limited liability company,
its manager

By: _____
Name:
Title:

LENDERS:

CNL DIP RECOVERY ACQUISITION, LLC

By: _____
Name:
Title:

FIVE MILE CAPITAL II EQUITY POOLING LLC,
a Delaware limited liability company

By: Five Mile Capital Partners LLC,
a Delaware limited liability company,
its manager

By: _____
Name:
Title:

ADMINISTRATIVE BORROWER:

MSR RESORT GOLF COURSE LLC

a Delaware limited liability company

By: MSR RESORT SPE GP, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

BORROWERS:

MSR RESORT HOTEL, LP,

a Delaware limited partnership

By: MSR RESORT SPE GP, LLC,
a Delaware limited liability company,
its sole general partner

By: _____

Name:

Title:

MSR RESORT SILVER PROPERTIES, LP,

a Delaware limited partnership

By: MSR RESORT SPE GP, LLC,
a Delaware limited liability company,
its sole general partner

By: _____

Name:

Title:

MSR GRAND WAILEA RESORT, LP,
a Delaware limited partnership

By: MSR RESORT SPE GP II, LLC,
a Delaware limited liability company,
its sole general partner

By: _____
Name:
Title:

MSR BILTMORE RESORT, LP,
a Delaware limited partnership

By: MSR RESORT SPE GP II, LLC,
a Delaware limited liability company,
its sole general partner

By: _____
Name:
Title:

MSR DESERT RESORT, LP,
a Delaware limited partnership

By: MSR RESORT SPE GP II, LLC,
a Delaware limited liability company,
its sole general partner

By: _____
Name:
Title:

MSR CLAREMONT RESORT, LP,
a Delaware limited partnership

By: MSR RESORT SPE GP, LLC,
a Delaware limited liability company,
its sole general partner

By: _____
Name:
Title:

MSR RESORT GOLF COURSE LLC,
a Delaware limited liability company

By: MSR RESORT SPE GP, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Exhibit A

Form of Amendment Approval Order

[attached above]