

Hearing Date and Time: June 27, 2012, at 10:00 a.m. (prevailing Eastern Time)

Objection Deadline: June 20, 2012, at 4:00 p.m. (prevailing Eastern Time)

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**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
)	

**NOTICE OF THE MOTION OF MSR RESORT GOLF
 COURSE LLC, *ET AL.*, FOR ENTRY OF AN ORDER AUTHORIZING
 THE DEBTORS TO OBTAIN FURTHER EXPANDED POSTPETITION FINANCING**

PLEASE TAKE NOTICE that a hearing on the *Motion of MSR Resort Golf Course LLC, et al., for Entry of an Order Authorizing the Debtors to Obtain Further Expanded*

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.



Postpetition Financing (the “Motion”) will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the “Court”), One Bowling Green, Courtroom No. 701, New York, New York 10004-1408, on **June 27, 2012, at 10:00 a.m., prevailing Eastern Time.**

PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), all General Orders, Local Bankruptcy Rules, and the *Amended Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Docket No. 514] (the “Case Management Order”) approved by the Court; (c) be filed electronically with the Court on the docket of *In re MSR Resort Golf Course LLC*, Case 11-10372 (SHL) by registered users of the Court’s electronic filing system and in accordance with the General Order M-399 (which is available on the Court’s website at www.nysb.uscourts.gov); and (d) be served so as to be actually received by **June 20, 2012, at 4:00 p.m., prevailing Eastern Time**, by (i) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors’ case website at www.kccllc.net/msresort) and (ii) any person or entity with a particularized interest in the subject matter of the Motion.

PLEASE TAKE FURTHER NOTICE that only those responses that are timely filed, served, and received will be considered at the hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

Dated: June 12, 2012
New York, New York

/s/ Paul M. Basta

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
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MSR RESORT GOLF COURSE LLC, <i>et al.</i> , ¹)	Case No. 11-10372 (SHL)
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Debtors.)	Jointly Administered
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**MOTION OF MSR RESORT GOLF
COURSE LLC, *ET AL.*, FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO OBTAIN FURTHER EXPANDED POSTPETITION FINANCING**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (this “Motion”) for entry of an order, substantially in the form attached hereto as

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.

Exhibit A (the “Expanded DIP Order”), authorizing certain of the Debtors to, among other things, expand and extend the maturity of their existing debtor-in-possession facility pursuant to the amendment attached to the Expanded DIP Order as **Exhibit C** (the “Third DIP Amendment”). In support of this Motion, the Debtors submit the declaration of Derek Pitts (attached hereto as **Exhibit B**). In further support of this Motion, the Debtors respectfully state as follows.

Preliminary Statement

The Debtors file this Motion to enter into an expanded and extended debtor-in-possession financing facility (the “Expanded DIP Facility”) on the same favorable terms as the debtor-in-possession facility that the Court approved at the beginning of these chapter 11 cases and again in January 2012.² The Debtors require an additional \$20 million of debtor-in-possession financing at this time. The Debtors’ needs for debtor-in-possession financing will exceed the existing facility’s \$45 million commitment and extend beyond its June 30, 2012 maturity date. Thus, expanding the existing debtor-in-possession facility by \$20 million (*i.e.*, from \$45 million to \$65 million) and extending its maturity from June 30, 2012, to December 31, 2012, will allow the Debtors to continue to satisfy certain obligations (including the payment of the Marriott rejection damages), undertake capital expenditures, and satisfy the costs of administering these chapter 11 cases (including professional fees) and certain other portfolio-level expenses that arise over the next few months.

² See *Final Order (I) Authorizing Debtors to Obtain Secured, Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), (II) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and (III) Providing for Related Relief* [Docket No. 254] (the “First Final DIP Order”); *Second Final Order (I) Authorizing Debtors to Obtain Secured, Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), (II) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and (III) Providing for Related Relief* [Docket No. 974] (the “Second Final DIP Order”). The Expanded DIP Facility is memorialized in, among other documents, the “Credit Agreement” (as defined in the Third DIP Amendment), as amended by the Third DIP Amendment (the Credit Agreement, as so amended, is referred to herein as the “Expanded DIP Agreement.”)

Other than the size and maturity date, the terms of the Expanded DIP Facility remain the same favorable terms that the Court already approved for the Debtors' existing debtor-in-possession financing. For example, the Debtors do not seek the Court's authority to grant any priming liens to the debtor-in-possession lenders on account of the Expanded DIP Facility. Instead, the Expanded DIP Facility obligations will be junior to valid, perfected, and non-avoidable prepetition existing liens on the property of the seven Debtor-borrowers under the Expanded DIP Facility, including the obligations under the Debtors' \$1 billion secured mortgage loan. In addition, the Expanded DIP Facility is "covenant-lite" in that it does not impose significantly restrictive financial covenants or other "case controls" that would have the potential to hinder the Debtors' ability to pursue a value-maximizing process. Given this level of priority and the other attractive terms of the Expanded DIP Facility, including its interest rate and fees, it is unsurprising that the Expanded DIP Facility remains the most advantageous financing available to the Debtors.

The Expanded DIP Facility is necessary to permit the Debtors to continue these chapter 11 cases as they move toward their successful emergence from chapter 11. Accordingly, the Debtors respectfully request that the Court grant the relief requested herein and permit the Debtors to enter into the \$65 million Expanded DIP Facility with maturity extended to December 31, 2012.

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 364(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “Local Bankruptcy Rules”).

Concise Summary of the DIP Terms

4. In accordance with Bankruptcy Rules 4001(b) and (d), the following summarizes the significant terms of the Expanded DIP Agreement and the Expanded DIP Order. Included in this summary is a description of each of the provisions required to be highlighted by Local Bankruptcy Rule 4001-2.³

MATERIAL TERMS OF THE EXPANDED POSTPETITION FINANCING	
<u>DIP Debtors and DIP Lenders</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<p><u>DIP Facility Debtors:</u> MSR Biltmore Resort, LP; MSR Grand Wailea Resort, LP; MSR Desert Resort, LP; MSR Resort Hotel, LP; MSR Resort Silver Properties, LP; MSR Claremont Resort, LP; and MSR Resort Golf Course LLC (collectively, the “<u>DIP Facility Debtors</u>”).</p> <p><u>DIP Facility Lenders:</u> CNL DIP Recovery Acquisition, LLC and Five Mile Capital II Equity Pooling LLC (collectively, the “<u>DIP Lenders</u>”).</p> <p><u>Co-Agents:</u> CNL DIP Recovery Acquisition, LLC and Five Mile Capital II CNL DIP Administrative Agent LLC (collectively, the “<u>DIP Agent</u>”).</p> <p><i>See Third DIP Amendment Preamble; Expanded DIP Order Intro.</i></p>

³ This concise statement is qualified in its entirety by reference to the applicable provisions of the Expanded DIP Agreement and the other DIP Documents (as defined in the Expanded DIP Order) or the Expanded DIP Order, as applicable. To the extent there exists any inconsistency between this concise statement and the provisions of the DIP Documents, the provisions of the DIP Documents shall control and the Expanded DIP Order shall control over the Expanded DIP Agreement. Any capitalized terms used but not defined in the chart shall have the meanings ascribed to such terms in the Expanded DIP Agreement.

<p><u>Use of Proceeds</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>The proceeds of the Expanded DIP Facility shall be used, in each case in a manner consistent with the provisions of the First Final DIP Order, the Second Final DIP Order and the Expanded DIP Order and the terms and conditions of the DIP Documents solely for (i) working capital and general corporate purposes, and (ii) payment of fees, costs, administration expenses and other expenses associated with the Expanded DIP Facility and the Cases (including professional fees and expenses); <u>provided, however</u>, that the use of such proceeds shall be subject to certain exceptions set forth in the Expanded DIP Agreement and the Expanded DIP Order. See Expanded DIP Agmt. § 2.4; Expanded DIP Order § I, ¶ 2(d).</p>
<p><u>DIP Facility</u> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(1)</i></p>	<p>The Expanded DIP Facility expands the existing debtor-in-possession facility by \$20 million (the “<u>Additional Financing</u>”) for a secured aggregate committed amount of \$65 million. See Expanded DIP Agmt. § 2.1; Expanded DIP Order Intro., ¶ 2(c); Third DIP Amendment § 2(a).</p>
<p><u>Termination Date</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>Without the need for further application or motion to, or further order of, this Court, all DIP Obligations (including the Additional Financing) shall be immediately due and payable on the date (the “<u>Termination Date</u>”) that is the earliest to occur of: (i) December 31, 2012, (ii) the occurrence of the maturity of the DIP Obligations upon acceleration of the DIP Obligations and termination of the Commitment in accordance with the DIP Agreement, (iii) the closing date of a sale of all or substantially all of the assets or businesses of the Debtors following entry by this Court of an order authorizing and approving such sale pursuant to section 363 of the Bankruptcy Code, (iv) the effective date of a plan of reorganization or liquidation in the Cases confirmed by this Court, (v) the date on which an order is entered pursuant to section 1112 of the Bankruptcy Code converting any one or more of the Cases to a case under chapter 7 of the Bankruptcy Code, and (vi) the date on which a trustee or examiner with expanded powers under section 1104(c) of the Bankruptcy Code is appointed in any of the Cases. See Expanded DIP Agmt. § 1.1; Expanded DIP Order ¶ 9; Third DIP Amendment § 2.</p>
<p><u>Fees</u> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(3)</i></p>	<p><u>Commitment Fee:</u> The DIP Facility Debtors agree to pay to the DIP Agent, for the pro rata account of each DIP Lender, a commitment fee in an amount equal to 1.00% of such DIP Lender’s Commitment Amount for the \$20 million expanded portion of the facility in excess of the existing \$45 million commitment. See Expanded DIP Agmt. § 2.9; Expanded DIP Order ¶ 2(a); Third DIP Amendment § 4(d).</p>
<p><u>Interest Rates</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><u>Interest Rate.</u> Subject to the Default Rate, the Alternate Rate of Interest, and the Maximum Lawful Rate of Interest, the Loans shall accrue interest at a rate per annum equal to the LIBO Rate plus 3.00%. See Expanded DIP Agmt. § 3.2.1.</p> <p><u>Default Interest Rate.</u> 1.00% <i>per annum</i> above the then-applicable interest rate. See Expanded DIP Agmt. § 3.2.2.</p>
<p><u>Prepayments</u> <i>Local Rule 4001-2(a)(13)</i></p>	<p>Prepayments of the Expanded DIP Facility shall or may be made as set forth below, subject, in each case, to the rights of the Mortgage Lender: (a) on not less than five Business Days’ prior written notice to the DIP Agent, the DIP Facility Debtors may make a voluntary prepayment at any time, in whole or in part, of the outstanding principal amount of the Expanded DIP Facility; <u>provided</u> that each such prepayment shall be in a minimum amount of \$1,000,000 or, if greater, an increment of \$1,000,000; (b) without limiting the obligation of the DIP Facility Debtors to obtain the consent of the Requisite Lenders to any Disposition not otherwise permitted under the Expanded DIP Agreement or under the Expanded DIP Order, as applicable, the DIP Facility Debtors shall, on or prior to the occurrence of any Disposition, deliver to the DIP Agent a statement certified by a financial or other appropriate officer of the DIP Facility Debtors, in form and detail reasonably satisfactory to the DIP Agent, setting forth the estimated amount of the Net Cash Proceeds of such Disposition that will, on the date of such Disposition, be received by or paid at the direction of any DIP Facility Debtor or any of their respective</p>

	<p>Subsidiaries in cash, and the DIP Facility Debtors shall, to the extent the DIP Facility Debtors are not required to prepay the loan evidenced by the Mortgage Loan Agreement as a result of the receipt of such Net Cash Proceeds, prepay the Loans in such amount.; (c) not later than the date three Business Days following the date that the DIP Facility Debtors or any of their respective Subsidiaries receive (or may direct) the proceeds of insurance (other than business interruption insurance), condemnation award or other compensation in respect of one or more Casualty Events affecting any property of the DIP Facility Debtors or any of their respective Subsidiaries in an aggregate amount exceeding \$500,000, the DIP Facility Debtors shall, at their option, either (x) notify the DIP Agent of their intention to apply the Net Cash Proceeds from such Casualty Event to the repair, restoration or replacement of the affected property or (y) prepay the Loans in an amount equal to 100% of the Net Cash Proceeds of such Casualty Event (it being understood that if and to the extent that Net Cash Proceeds intended to be applied to such repair, restoration or replacement are not in fact applied to effect such repair, restoration or replacement as soon as practicable, but in any event within ninety (90) days after the date of the receipt of such Net Cash Proceeds (or such longer period as may be reasonably agreed to by the DIP Agent and the Requisite Lenders acting in good faith considering the scope of such repair, restoration or replacement), then the DIP Facility Debtors shall prepay the Expanded DIP Facility in an amount equal to such unapplied portion of Net Cash Proceeds at the expiration of such period, as the case may be); (d) the DIP Facility Debtors shall pay to the DIP Agent for the benefit of the DIP Lenders as a prepayment of the principal of the Expanded DIP Facility 100% of the proceeds from any incurrence or issuance of Indebtedness by any DIP Facility Debtor in connection with any refinancing of the Expanded DIP Facility and related Obligations thereunder; and (e) subject to the Expanded DIP Order, immediately upon any acceleration of the Maturity Date pursuant to <u>Section 8.2</u> of the Expanded DIP Agreement, the DIP Facility Debtors shall repay the Expanded DIP Facility. See Expanded DIP Agmt. § 3.1.</p>
<p><u>Collateral and Priority</u> <i>Bankruptcy Rule 4001(c)(1)(B)(ii); Local Rule 4001-2(a)(4)</i></p>	<p>As security for the DIP Obligations, in respect of the Additional Financing and all other obligations of the Borrowers under the Third DIP Amendment, the DIP Agent is hereby granted, for its own benefit and the benefit of the DIP Lenders, without the necessity of the execution by the DIP Facility Debtors of mortgages, security agreements, pledge agreements, financing statements or other similar documents and instruments, the following liens and security interests pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code (collectively, the “<u>DIP Liens</u>”) (all property and interests in property identified in the two bullet points below, subject to the proviso in this sentence, being collectively referred to as the “<u>DIP Collateral</u>”), which DIP Liens shall rank <i>pari passu</i> with the DIP Liens (as defined in the First Final DIP Order) granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders, under the First Final DIP Order and the Second Final DIP Order; provided, however, that the DIP Collateral shall not include any asset, property or interest in property the granting of a lien on which would trigger liability under the 5-Pack Guarantee:</p> <ul style="list-style-type: none"> • (a) <u>Liens on Unencumbered Property</u>. To the extent set forth in the Expanded DIP Order, the DIP Agent shall be granted (for its own benefit and for the benefit of the DIP Lenders) a perfected, first-priority security interest in and lien upon all pre- and post-petition property of the DIP Facility Debtors, whether existing on the Petition Date or thereafter created, acquired or arising, whether real or personal, tangible or intangible, wherever located, that, on or as of the Petition Date, was not subject to valid, perfected and non-avoidable liens or was not subject to valid, non-avoidable liens perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and, to the extent applicable, Section 362(b)(18) of the Bankruptcy Code, including, without limitation, (a) all cash and Cash Collateral of the DIP Facility Debtors, (b) all personal property of the DIP Facility Debtors, whether tangible or intangible, including, without limitation, all accounts receivable, books and records, contract rights, inventory, deposit accounts, equipment, fixtures, patents, copyrights, trademarks, trade names and other intellectual property, good, general

	<p>intangibles, chattel paper, instruments, promissory notes, drafts and documents, investments, investment property, the DIP Facility Debtors' equity interest in any other entities (including, without limitation, subsidiaries and/or affiliates), securities, commercial tort claims, instruments, letters of credit and rights under letters of credit, and life insurance policies, together with the income, products and proceeds thereof, and (c) all of the DIP Facility Debtors' interest in any real property, including, without limitation, the buildings, improvements, fixtures and structures thereon, leasehold interests and the income, products and proceeds of the foregoing. For the avoidance of doubt, the DIP Collateral shall not include any Avoidance Actions (as defined in the Expanded DIP Agreement) or the proceeds therefrom unless permitted in accordance with the First Final DIP Order and the Second Final DIP Order; and</p> <ul style="list-style-type: none"> • (b) <u>Liens Junior to Certain Other Liens on Encumbered Property.</u> To the extent set forth in the Expanded DIP Order, the DIP Agent shall be granted (for its own benefit and for the benefit of the DIP Lenders) a perfected security interest in and lien upon all pre- and post-petition property of the DIP Facility Debtors (other than the unencumbered property described in clause (i) of paragraph 2(f) of the Expanded DIP Order, as to which property the liens and security interests granted to the DIP Agent are as described in such clause (i)), together with the income, products and proceeds thereof, whether existing on the Petition Date or thereafter, created, acquired or arising, that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable liens in existence immediately prior to the Petition Date or to valid and non-avoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and, to the extent applicable, Section 362(b)(18) of the Bankruptcy Code, including, without limitation, (a) all cash and Cash Collateral of the DIP Facility Debtors, (b) all personal property of the DIP Facility Debtors, whether tangible or intangible, including, without limitation, all accounts receivable, books and records, contract rights, inventory, deposit accounts, equipment, fixtures, patents, copyrights, trademarks, trade names and other intellectual property, good, general intangibles, chattel paper, instruments, promissory notes, drafts and documents, investments, investment property, the DIP Facility Debtors' equity interest in any other entities (including, without limitation, subsidiaries and/or affiliates), securities, commercial tort claims, instruments, letters of credit and rights under letters of credit, and life insurance policies, together with the income, products and proceeds thereof, and (c) all of the DIP Facility Debtors' interest in any real property, including, without limitation, the buildings, improvements, fixtures and structures thereon, leasehold interests and the income, products and proceeds of the foregoing, which security interests and liens granted to the DIP Agent pursuant to this subparagraph (ii) shall be junior in priority to such valid, perfected and non-avoidable liens. <p>See Expanded DIP Agmt. §§ 1.1, 2.7; Expanded DIP Order ¶ 2(f).</p>
<p><u>Carve Out</u> <i>Local Rule 4001-2(a)(5)</i></p>	<p>“Carve Out” has the meaning set forth in the First Final DIP Order. See Expanded DIP Agmt. § 1.1; First Final DIP Order ¶ 4.</p>

<p><u>Conditions to Borrowing</u> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(2), 2(h)</i></p>	<p>The effectiveness of the Third DIP Amendment is subject to the satisfaction of the following conditions precedent: (a) delivery to the Agent of the Third DIP Amendment executed by each Borrower, the DIP Agent and the DIP Lenders; (b) the Expanded DIP 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 DIP Loans nor the performance by any Borrower of its respective obligations hereunder or under the other DIP Documents shall be the subject of a presently effective stay pending appeal; (c) delivery to each DIP Lender of an amended and restated Note in an amount equal to such Lender's Commitment Amount in the form attached to the Third DIP Amendment; (d) receipt by DIP Agent on the Third Amendment Effective Date (as defined in the Third DIP Amendment) of a commitment fee in the amount of \$200,000 (representing 1.00% of the increase of \$20,000,000 in the Commitment Amount pursuant to this Amendment), which fee is due and payable in full on the Third Amendment Effective Date and shall be distributed by Agent to the Lenders promptly after the Third Amendment Effective Date in accordance with such Lenders' pro rata share of the Commitment Amount; (e) 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 <i>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</i> [Docket No. 709], as extended pursuant to the Court's orders [Docket Nos. 826, 904 and 1178], shall be (i) in full force and effect and (ii) acceptable in all respects to the Lenders in their sole discretion; (f) no Default or Event of Default under the Expanded DIP Agreement shall have occurred and be continuing or would result from the consummation of the transactions contemplated hereby; (g) the DIP Agent and the DIP Lenders shall have received payment of all fees, expenses and other amounts, including, without limitation, attorneys' fees, associated with or relating to the Third DIP Amendment and the transactions contemplated hereby and the preparation, negotiation, execution, delivery and consummation of the Third DIP Amendment, the Expanded DIP Order and any transactions and court proceedings related thereto; <i>provided, however</i>, that the fees of counsel to Five Mile Capital II Equity Pooling LLC, as DIP Lender, and Five Mile Capital II CNL DIP Administrative Agent LLC, as co-DIP Agent, respectively, that constitute fees associated with or relating to the Third DIP Amendment shall be subject to a cap of \$50,000, and the fees of counsel to CNL DIP Recovery Acquisition, LLC, as DIP Lender, and CNL DIP Recovery Acquisition, LLC, as co-DIP Agent, respectively, that constitute fees associated with or relating to the Third DIP Amendment shall be subject to a cap of \$50,000; and (h) the representations and warranties contained in Section 5 of the Third DIP Amendment shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein). See Expanded DIP Order ¶ 2(e); Third DIP Amendment § 4.</p>
<p><u>Covenants</u> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(8)</i></p>	<p><u>Negative Covenants.</u> Usual and customary for financings of this type, including, without limitation, restrictions on liens, investments, indebtedness (including guarantees), fundamental changes, changes to the nature of the business, dispositions, dividends and distributions, affiliate transactions, sale and leaseback transactions, swap contracts, prepayment of indebtedness, and amendment of certain material documents. See Expanded DIP Agmt. § 7.2.</p>
<p><u>Events of Default</u> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(10)</i></p>	<p><u>Events of Default.</u> The occurrence of any Event of Default (as defined in the First Final DIP Order) shall constitute an Event of Default under the Expanded DIP Order. See Expanded DIP Agmt. § 8.1; Expanded DIP Order ¶ 12.</p> <p><u>Remedies Upon an Event of Default.</u> The rights and remedies and related provisions set forth in paragraph 14 in the First Final DIP Order shall apply under the Expanded DIP Order. See Expanded DIP Agmt. § 8.2; Expanded DIP Order ¶ 13.</p>

<p><u>Joint Liability</u> <i>LBR</i> <i>4001-2(a)(14);</i> <i>LBR 4001-2(e)</i></p>	<p>All Obligations of the DIP Facility Debtors under the DIP Documents shall be the joint and several Obligations of each Borrower. The Obligations of and the Liens granted by any such Borrower under the DIP Documents shall not be impaired or released by any action or inaction on the part of the DIP Agent or any DIP Lender with respect to any other Borrower, including any action or inaction which would otherwise release a surety. See Expanded DIP Agmt. § 2.6; Expanded DIP Order, ¶ 2(i).</p>
<p><u>Automatic Stay</u> <i>Fed. R. Bankr. P.</i> <i>4001(c)(1)(B)(iv)</i></p>	<p>The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified to the extent necessary to permit (a) the DIP Facility Debtors to grant the Expanded DIP Liens and to perform such acts as the DIP Agent may request to assure the perfection and priority of the Expanded DIP Liens, (b) the DIP Facility Debtors to incur the Additional Financing and all other liabilities and obligations to the DIP Agent and the DIP Lenders under the DIP Documents and the Expanded DIP Order, (c) the DIP Facility Debtors to pay, and the DIP Agent and the DIP Lenders to receive and apply, the amounts referred to in paragraphs 2(a)(ii) and (iii) and paragraph 17(a) of the Expanded DIP Order, and (d) the DIP Agent to exercise and enforce its rights and remedies as provided in the Expanded DIP Order. Expanded DIP Order, ¶ 14.</p>

Relief Requested

5. The Debtors respectfully request that the Court grant the following relief as provided in the Expanded DIP Order:

- **Expanded DIP Facility:** authority for the DIP Facility Debtors to enter into the Expanded DIP Facility, which provides for a debtor-in-possession financing facility in a principal amount not to exceed \$65 million (an increase of \$20 million over \$45 million existing DIP facility (the “Existing DIP Facility”) previously approved by orders of this Court);
- **DIP Facility Documents:** authority to execute and deliver the Third DIP Amendment, along with any other necessary DIP Facility Documents, and to take all actions necessary, appropriate, or required to comply with the Debtors’ obligations thereunder and under the Expanded DIP Order;
- **DIP Liens under the Expanded DIP Facility:** authority to grant the following liens; provided, however, that the collateral under the Expanded DIP Agreement shall not include any asset, property, or interest in property the granting of a lien on which would trigger liability under the 5-Pack Guarantee:
 - a perfected, first-priority security interest and lien upon all pre- and post-petition property of the DIP Facility Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date was not subject to valid, perfected, and non-avoidable liens or was not subject to liens perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date under the Bankruptcy Code; and

- a perfected security interest in and lien upon all pre- and post-petition property of the DIP Facility Debtors that is subject to valid, perfected, and non-avoidable liens in existence immediately prior to the Petition Date or to valid and non-avoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted by the Bankruptcy Code, which security interests and liens granted to the DIP Agent shall be junior in priority to such valid, perfected, and non-avoidable liens;
- **DIP Claims under the Expanded DIP Facility:** authority to grant, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative claim with respect to all loans made and obligations incurred by the Debtors on or after the Petition Date pursuant to the Expanded DIP Agreement, which superpriority claim shall be subject only to the Carve Out set forth in the First Final DIP Order and the adequate protection Mortgage Lender Superpriority Claim of the Mortgage Lender, if any, (each as defined herein) and will otherwise be accorded superpriority status having priority over any and all other claims and administrative expenses in the Cases, in any other proceedings superseding the Cases or, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code, in such chapter 7 cases; and
- **Automatic Stay:** authority to modify the automatic stay to the extent necessary to effectuate the provisions of the Expanded DIP Order.

Background

I. These Chapter 11 Cases.

6. On the Petition Date, MSR Resort Golf Course LLC and 29 of its affiliates each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. A statutory committee of unsecured creditors (the “Creditors’ Committee”) has been appointed by the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”).

7. The Debtors invest in and own four iconic luxury resort properties and amenities, specifically (a) the Grand Wailea Resort Hotel & Spa (the “Grand Wailea”) in Maui, Hawaii; (b) the La Quinta Resort & Club PGA West (the “La Quinta”) in La Quinta, California; (c) the Arizona Biltmore Resort & Spa (the “Arizona Biltmore”) in Phoenix, Arizona; and (d) the

Claremont Resort & Spa (the “Claremont”) in Berkeley, California (collectively, the “Resorts”). On June 11, 2012, the Debtors completed a sale of the Doral Golf Resort & Spa in Miami, Florida to an affiliate of the Trump Organization. The Resorts are managed by third-party managers (the “Resort Managers”) and operate as independent resorts. The Debtors’ business is managed by Pyramid Resort Asset Management LLC (the “Asset Manager”). Each of the Debtor fee owners of the Resorts (the “Owner Entities”)⁴ are parties to certain operating leases with the Debtor operating lessees.

8. The approximately 3,800 Resort employees are provided by the Resort Managers, and most of the Debtors’ corporate functions are provided by the Asset Manager. Consequently, the Debtors themselves do not have any employees. Additional information regarding the Debtors’ business, their capital structure, and the circumstances leading to these chapter 11 filings is contained in the *Declaration of Daniel Kamensky of MSR Resort Golf Course LLC (A) in Support of Debtors’ Chapter 11 Petitions and First Day Motions and (B) Pursuant to Local Bankruptcy Rule 1007-2*, filed on the Petition Date [Docket No. 3].

9. Descriptions of the Debtors’ prepetition debt facilities and the collateral securing those facilities is provided in paragraphs 11–17 of the *Motion of MSR Resort Golf Course LLC, et al., for the Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing and (II) Scheduling a Final Hearing* [Docket No. 107].

II. Existing DIP Facility.

10. In April 2011, the Court entered the First Final DIP Order which granted the Debtors final authority to enter into a \$30 million secured postpetition credit facility pursuant to

⁴ The Owner Entities are the following seven Debtors: MSR Biltmore Resort, LP; MSR Grand Wailea Resort, LP; MSR Desert Resort, LP; MSR Resort Hotel, LP; MSR Resort Silver Properties, LP; MSR Claremont Resort, LP; and MSR Resort Golf Course LLC.

that certain DIP Credit Agreement, dated as of March 17, 2011, by and among certain of the Debtors (*i.e.*, the same Owner Entities that comprise the proposed DIP Facility Debtors), as borrowers, CNL DIP Recovery Acquisition, LLC, successor to Paulson Real Estate Recovery Fund LP, and Five Mile Capital II CNL DIP Administrative Agent LLC, as the co-agents, and the lenders thereto (the “Original DIP Credit Agreement”).

11. On January 25, 2012, the Court entered the Second Final DIP Order approving on a final basis an amendment to the Original DIP Credit Agreement whereby the DIP Lenders agreed to extend the DIP facility’s maturity from March 2012 until June 30, 2012 and expand the DIP Facility by \$15 million, increasing the total size to \$45 million. Currently, the Debtors have fully drawn the \$45 million Existing DIP Facility.

The Debtors’ Need for the Expanded DIP Facility

12. The \$45 million Existing DIP Facility will be insufficient to support the Debtors’ financing needs for the duration of these chapter 11 cases. At this time, the Debtors require an additional \$20 million—bringing the total Expanded DIP Facility commitment to \$65 million—to continue the operation of their business without disruption and maximize the value of their estates. To reach the conclusion of these chapter 11 cases, the Debtors anticipate that they will require additional debtor-in-possession financing beyond the \$65 million Expanded DIP Facility. The Debtors, however, expect to seek approval of such additional financing at a later date after the Debtors file a plan of reorganization.

13. Importantly, the Debtors will use the proceeds from the Expanded DIP Facility to continue satisfying obligations under their asset management agreement and other portfolio-level expenses, undertaking capital expenditures, administering these chapter 11 cases, and otherwise satisfying their working capital and operational needs, all of which are required to preserve and

maintain the Debtors' enterprise value for the benefit of all parties in interest. Absent the proceeds contemplated by the Expanded DIP Facility, the Debtors' net operating income during the term of the Expanded DIP Facility will be insufficient to satisfy remaining obligations such as critical capital expenditures projects, restructuring costs (including the payment of the Marriott rejection damages), and certain other portfolio-related expenses.

14. The Debtors and their advisors, in the exercise of their business judgment, have determined that the Debtors' projected financing needs for the coming months support the size and term of the proposed Expanded DIP Facility. The Debtors, in fulfillment of their fiduciary duties, are committed to pursuing a value-maximizing process. As part of this process, the Debtors and their advisors have analyzed the complicated assets that comprise the Debtors' multiplicity of businesses (including the Debtors' resorts, golf clubs, retail, land holdings, real estate brokerage and asset management businesses) to ensure that the value of the Debtors' assets is being maximized. To that end, the Debtors have continued to advance their remaining restructuring initiatives toward completion. Access to the funds from the Expanded DIP Facility is appropriate given the Debtors' need to satisfy important obligations and continue progress toward the development and filing of a plan of reorganization. In light of the duration of these chapter 11 cases extending beyond the current maturity date of June 30, 2012, more debtor-in-possession financing is necessary under any set of circumstances. And, because the summer season constitutes the Resorts' regular seasonal decline in operating revenue, the Debtors require a substantial portion of the Expanded DIP Facility to supply liquidity in the near-term. Accordingly, to permit the Debtors to continue to maintain business operations without disruptions, their pursuit of a value-maximizing process, and, ultimately, emergence from chapter 11, the Expanded DIP Facility should be approved.

Basis for Relief

I. The Debtors Should Be Authorized to Obtain the Expanded DIP Facility.

A. Entry into the Expanded DIP Facility is an Exercise of the Debtors' Sound and Reasonable Business Judgment.

15. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances as described in greater detail below. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its sound business judgment in obtaining such credit. *See, e.g., In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[c]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, *inter alia*, an exercise of "sound and reasonable business judgment.").

B. The Debtors Should Be Authorized to Obtain the Expanded DIP Facility on a Secured and Superpriority Basis.

16. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and

a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

17. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.*; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

18. As described in the motions requesting approval of the Existing DIP Facility, the Debtors identified and solicited offers from more than 20 potential lenders of the Debtors' postpetition debtor-in-possession financing. Notwithstanding these efforts, the Debtors were simply unable to obtain sufficient, or any, postpetition financing in the form of unsecured credit or as an administrative expense. Not surprisingly, given the Debtors' significant secured debt and lack of material unencumbered assets, potential lenders were and remain unwilling to offer postpetition financing on any terms other than on a secured and superpriority basis. Therefore, once again, with respect to the Expanded DIP Facility, the Court should authorize the Debtors to provide the DIP Agent, on behalf of itself and the other DIP Lenders, (a) perfected, first-priority security interest and lien upon all unencumbered pre- and postpetition property of the DIP Facility Debtors, (b) a perfected security interest in and lien upon all encumbered pre- and post-petition property of the DIP Facility Debtors which shall be junior in priority to valid, perfected, and non-avoidable liens, and (c) an allowed superpriority administrative claim with respect to all loans made and obligations incurred by the Debtors on or after the Petition Date pursuant to the DIP Agreement, subject only to the Carve Out and any super-priority adequate protection claims granted to the Mortgage Lender pursuant to an order⁵ granting the Debtors authority to use the Mortgage Lender's cash collateral during these chapter 11 cases (the "Mortgage Lender Superpriority Claim").

⁵ See cash collateral order entered by the Court on April 15, 2011 [Docket No. 255], 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], and as further extended pursuant to the Court's order entered on May 18, 2012 [Docket No. 1178].

II. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Agent and DIP Lenders and Honor Obligations Under the Commitment Letter.

19. The Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent, on behalf of the DIP Lenders, in exchange for providing the Expanded DIP Facility. The Commitment Fees that the Debtors have agreed to pay to the DIP Lenders and other obligations under the Expanded DIP Facility represent the most favorable terms to the Debtors on which the DIP Lenders would agree to make the Expanded DIP Facility available. Indeed, the Commitment Fees of 1% on the Expanded DIP Facility are below-market, particularly for a debtor-in-possession loan with junior security. With respect to the Expanded DIP Facility, the 1% commitment fee applies only to the \$20 million expanded portion of the facility in excess of the existing \$45 million commitment.

20. In addition, the Expanded DIP Facility does not include provisions requiring the payment of a fee upon repayment or termination even though such fees are typical for facilities of this type. Outstanding amounts on the Expanded DIP Facility accrue at an interest rate of LIBOR plus 300 basis points, which is also well below the prevailing market rate for these types of debtor-in-possession loans. The Debtors considered the fees described above when determining in their sound business judgment that the Expanded DIP Facility constituted the best terms on which the Debtors could obtain the postpetition financing necessary to continue the operation of their business without disruption, satisfy obligations under their asset management agreement, undertake capital expenditures, administer these chapter 11 cases, and otherwise satisfy their working capital and operational needs. The Debtors concluded that paying these fees to obtain the Expanded DIP Facility is in the best interests of the Debtors' estates, creditors, and other parties in interest.

21. Courts routinely authorize debtors to pay fees similar to those the Debtors propose to pay, where the associated financing is, in the debtor's business judgment, beneficial to the debtors' estates. Notably, courts often authorize the payment of fees significantly higher than those required for the Expanded DIP Facility. *See, e.g., In re MSR Resort Golf Course LLC*, No. 11-10372 (Bankr. S.D.N.Y. Jan. 25, 2012) [Docket No. 974] (approving commitment fees equal to 1.00% of the total commitment amount as proposed in this Motion); *In re MSR Resort Golf Course LLC*, No. 11-10372 (Bankr. S.D.N.Y. Apr. 15, 2011) [Docket No. 254] (same); *In re Lear Corp.*, No. 09-14326 (Bankr. S.D.N.Y. Aug. 4, 2009) [Docket No. 282] (approving 5.0% up front fee and a 1.0% exit/conversion fee); *In re Gen. Growth Props., Inc.*, No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009) [Docket No. 527] (approving 3.75% exit fee); *In re Aleris Int'l. Inc.*, No. 09-10478 (Bankr. D. Del. March 18, 2009) [Docket No. 299] (approving 3.5% exit fee and 3.5% front-end net adjustment against each lender's initial commitment); *In re Tronox Inc.*, No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009) [Docket No. 146] (approving an up-front 3% facility fee); *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Mar. 1, 2009) [Docket No. 1002] (approving exit fee of 3%); *In re Dura Auto. Sys., Inc.*, No. 06-11202 (Bankr. D. Del. Feb. 21, 2008) [Docket No. 2826] (approving a 2.5% fees related to refinancing and extending a postpetition financing facility); *In re DJK Residential, Inc.*, No. 08-10375 (Bankr. S.D.N.Y. Feb. 29, 2008) [Docket No. 188] (approving 3% fee in connection with postpetition financing).⁶ In comparison to the fees recently authorized by this Court and others, the Expanded DIP Facility only proposes commitment fees equal to just 1.00% of the new

⁶ Because of the voluminous nature of the orders cited herein, they are not attached to this Motion. Copies of these orders are available upon request of the Debtors' counsel.

commitment amount. Accordingly, the Court should authorize the Debtors to pay the fees in connection with entering into the Expanded DIP Facility.

III. The Scope of the Carve Out is Appropriate.

22. The proposed Expanded DIP Facility subjects the security interests and administrative expense claims of the DIP Lenders to the Carve Out. Such carve outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel. *See Ames Dep't Stores*, 115 B.R. at 40. The Expanded DIP Facility does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. *Id.* at 38 (observing that courts insist on carve outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). In addition, the Carve Out protects against administrative insolvency during the course of the case by ensuring that assets remain for the payment of U.S. Trustee fees and professional fees of the Debtors, the Creditors' Committee, and any future committees appointed in these chapter 11 cases notwithstanding the grant of superpriority and administrative liens and claims under the Expanded DIP Facility.

IV. The DIP Lenders Should Be Deemed Good Faith Lenders under Section 364(e) of the Bankruptcy Code.

23. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

24. The DIP Documents, including the proposed Third DIP Amendment, are the result of (a) the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain needed postpetition financing and (b) extended good faith negotiations between the Debtors and the DIP Lenders. The terms and conditions of the DIP Documents are fair and reasonable, and the proceeds of the Expanded DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by that section.

V. Modification of the Automatic Stay is Warranted.

25. The DIP Documents and the proposed orders contemplate that the automatic stay imposed under section 362(a) of the Bankruptcy Code is modified to the extent necessary to

permit: (a) the DIP Facility Debtors to grant the DIP Liens and to perform such acts as the DIP Agent may request to assure the perfection and priority of the DIP Liens, (b) the DIP Facility Debtors to incur the Additional Financing and all other liabilities and obligations to the DIP Agent and the DIP Lenders under the DIP Documents and the Expanded DIP Order and (c) the DIP Agent to exercise and enforce its rights and remedies as provided in the Expanded DIP Order. The DIP Documents provide, however, that the DIP Lenders must provide the Debtors and various other parties, including the U.S. Trustee and counsel to any committee appointed in these chapter 11 cases, with five business days prior written notice before exercising any enforcement rights or remedies, which will allow the Debtors and other interested parties to seek an expedited hearing before the Court for the purpose of determining whether, in fact, an Event of Default has occurred and is continuing.

26. Stay modification provisions of this sort are ordinary features of postpetition financing arrangements and, in the Debtors' business judgment, are reasonable under the circumstances. *See, e.g., In re MSR Resort Golf Course LLC*, No. 11-10372 (Bankr. S.D.N.Y. Jan. 25, 2012) [Docket No. 974]; *In re MSR Resort Golf Course LLC*, No. 11-10372 (Bankr. S.D.N.Y. Apr. 15, 2011) [Docket No. 254]; *In re Great Atl. & Pac. Tea Co.*, No. 10-24549 (Bankr. S.D.N.Y. Jan. 11, 2011) [Docket No. 479]; *In re Reader's Digest Ass'n*, No. 09-23529 (Bankr. S.D.N.Y. Oct. 6, 2009) [Docket No. 152], *In re Lear Corp.*, No. 14326 (Bankr. S.D.N.Y. Aug. 4, 2009) [Docket No. 282]; *In re Gen. Growth Props. Inc.*, No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009) [Docket No. 527]; *In re Tronox Inc.*, No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009) [Docket No. 146]; *In re Chemtura Corp.*, No. 09-11233 (Bankr. S.D.N.Y. April 29, 2009) [Docket No. 281]; *In re Wellman, Inc.*, No. 08-10595 (Bankr. S.D.N.Y. April 7, 2008) [Docket No. 181].

Provisions Disclosed Pursuant to Local Bankruptcy Rule 4001-2

27. As a condition to obtaining the proposed financing, the DIP Lenders have required and the Debtors have agreed to certain provisions that may be considered key provisions to be disclosed to the Court pursuant to Local Bankruptcy Rule 4001-2. These provisions include the following:⁷

- **Carve Out.** “Carve Out” means: (i) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) and 11 U.S.C. § 726(b); (ii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid fees and expenses (the “Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327 or 328 of the Bankruptcy Code and incurred by persons or firms retained by the Creditors’ Committee, if any, pursuant to section 1103 of the Bankruptcy Code (such persons and firms, collectively, the “Professional Persons”) for services performed at any time on or before the first Business Day (as defined in the Expanded DIP Agreement) following the date of delivery of a Carve Out Trigger Notice (as defined in the Expanded DIP Order), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (such fees and expenses, collectively, the “Pre-Carve-Out Trigger Notice Fees”); (iii) to the extent allowed at any time, the reasonable expenses of the members of the Creditors’ Committee, if any, incurred on or before the date of delivery of the Carve-Out Trigger Notice in connection with their service on the Creditors’ Committee, whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (the “Pre-Carve-Out Trigger Notice Committee Expenses”) and (iv) after the date of delivery of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order or otherwise, the payment of Professional Fees incurred by Professional Persons, in an aggregate amount not to exceed \$5,000,000 (the “Post-Trigger Notice Carve-Out Amount”), in respect of services performed after the first Business Day following the date of delivery of the Carve-Out Trigger Notice. The Carve Out shall be senior to the DIP Liens, the Mortgage Lender Prepetition Liens, the Mortgage Lender A/P Liens, the Mortgage Lender Superpriority Claim and the DIP Superpriority Claim, and any other adequate protection, pre-petition or post-petition liens or claims.
- **Relief from the Automatic Stay.** The automatic stay imposed under Bankruptcy Code section 362(a) is modified to the extent necessary to permit (a) the DIP Facility Debtors to grant the DIP Liens and to perform such acts as the DIP Agent may request to assure the perfection and priority of the DIP Liens, (b) the DIP Facility Debtors to incur the Additional Financing and all other liabilities and obligations to the DIP

⁷ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Expanded DIP Agreement.

Agent and the DIP Lenders under the DIP Documents and the Expanded DIP Order, (c) the DIP Facility Debtors to pay, and the DIP Agent and the DIP Lenders to receive and apply, the amounts referred to in paragraphs 2(a)(ii) and (iii) and paragraph 17(a) of the Expanded DIP Order, and (d) the DIP Agent to exercise and enforce its rights and remedies as provided in the Expanded DIP Order.

- **Waiver of 506(c) Claims.** Except to the extent of the Carve-Out, nothing contained in the requested Expanded DIP Order shall be deemed to constitute consent by the DIP Agent or the DIP Lenders to any charge, lien, assessment, or claim against, or recovery from, the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise on account of any expenses of administration incurred in the Cases or in any Successor Cases, nor shall any such consent be implied from any action, inaction or acquiescence by the DIP Agent or the DIP Lenders. The DIP Lenders are requesting a waiver of the provisions of section 506(c) of the Bankruptcy Code as part of the Expanded DIP Order.
- **Fees.** The Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lenders in exchange for their providing the Expanded DIP Facility. Specifically, the Debtors agree to pay to the DIP Agent, for the pro rata account of each DIP Lender, a commitment fee in an amount equal to 1.00% of such DIP Lender's Commitment Amount for the \$20 million expanded portion of the facility in excess of the existing \$45 million commitment. In addition, the Debtors have agreed to pay certain costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by the DIP Agent and the DIP Lenders in connection with the Third DIP Amendment and certain other activities, including, without limitation, the DIP Financing Amendment Fees and other costs, fees and expenses described in paragraph 17(a) of the Expanded DIP Order, payment of which costs, fees and expenses by the Debtors shall not be subject to allowance by the Court.

Motion Practice

28. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Bankruptcy Rule 9013-1(a).

The Debtors' Reservation of Rights

29. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the

Bankruptcy Code. The Debtors expressly reserve their right to contest any invoice or claim related to the relief requested herein in accordance with applicable non-bankruptcy law.

Notice

30. The Debtors have provided notice of this Motion to: (a) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at www.kccllc.net/msresort) and (b) any person or entity with a particularized interest in the subject matter of this Motion. In light of the nature of the relief requested herein, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

31. Other than the relief sought in the motions requesting approval of the Existing DIP Facility, no prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Expanded DIP Order granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: June 12, 2012
New York, New York

/s/ Paul M. Basta

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EXHIBIT A

Expanded DIP Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
In re: : Chapter 11
:
MSR RESORT GOLF COURSE LLC, *et al.*, : Case No. 11-10372 (SHL)
:
Debtors. : Jointly Administered
:
-----X

**THIRD FINAL ORDER (I) AUTHORIZING DEBTORS TO OBTAIN SECURED,
SUPERPRIORITY POST-PETITION FINANCING PURSUANT TO
11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) AND 364(e), (II) MODIFYING
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362
AND (III) PROVIDING FOR RELATED RELIEF**

Upon the motion (the "**Motion**")¹ of MSR Resort Golf Course LLC and each of its affiliated debtors, each as debtor and debtor-in-possession (collectively, the "**Debtors**") in the above captioned chapter 11 cases (collectively, the "**Cases**") pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e) of title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Bankruptcy Rules**"), seeking entry of an order (this "**Third Final Order**"), among other things:

(a) authorizing the Debtors identified on **Exhibit B** annexed hereto (the "**DIP Facility Debtors**") to obtain additional secured, postpetition financing (the "**Additional Financing**" and, together with the secured, postpetition financing approved pursuant to the First Final Order (as defined herein) and the Second Final Order (as defined herein), the "**Financing**") and incur additional debt on a superpriority basis, pursuant to sections 364(c)(1), 364(c)(2) and 364(c)(3) of

¹ A list of the Debtors submitting the Motion, along with the last four digits of such Debtor's federal tax identification number, is attached hereto as **Exhibit A**.

the Bankruptcy Code, up to the aggregate principal amount of \$20 million (such amount, together with the amount approved pursuant to the First Final Order and the Second Final Order, the "**DIP Facility**") pursuant to (i) the Secured, Superpriority Debtor-in-Possession Credit Agreement, dated as of March 21, 2011 (together with the exhibits and schedules annexed thereto, the "**Original DIP Credit Agreement**"), among the DIP Facility Debtors, as Borrowers, MSR Resort Golf Course, LLC, as Administrative Borrower (the "**Administrative Borrower**"), CNL DIP Recovery Acquisition, LLC, successor to Paulson Real Estate Recovery Fund LP ("**Paulson**"), and Five Mile Capital II CNL DIP Administrative Agent LLC ("**Five Mile**"), as co-Agents (together, the "**DIP Agent**"), and the lenders thereunder (the "**DIP Lenders**") substantially in the form attached as Exhibit C to the First Final Order (as defined herein and together with the First Interim Order (as defined herein), the Second Interim Order (as defined herein), the Second Final Order, and this Third Final Order, collectively, the "**Borrowing Orders**"), as amended by (x) that certain First Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement, dated as of April 15, 2011 (the "**First DIP Amendment**"), among the DIP Agent, the DIP Lenders, the DIP Facility Debtors, as Borrowers, and the Administrative Borrower, (y) that certain Second Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement, dated as of December 15, 2011 (the "**Second DIP Amendment**"), among the DIP Agent, the DIP Lenders, the DIP Facility Debtors, as Borrowers, and the Administrative Borrower, and (z) that certain Third Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement, dated as of June __, 2012 (the "**Third DIP Amendment**"), among the DIP Agent, the DIP Lenders, the DIP Facility Debtors, as Borrowers, and the Administrative Borrower, (ii) all other agreements, documents and instruments executed and/or delivered with, to or in favor of the DIP Agent and/or

the DIP Lenders (as may be amended, modified or supplemented and in effect from time to time, collectively with the DIP Credit Agreement (as defined herein), the "**DIP Documents**");

(b) granting, pursuant to section 364(c)(1) of the Bankruptcy Code, the Additional Financing component of the DIP Facility, and all obligations owing under the DIP Facility with respect to the Additional Financing and under the DIP Documents to the DIP Agent and the DIP Lenders (collectively, the DIP Facility, all obligations owing under the DIP Facility and under the DIP Documents to the DIP Agent and the DIP Lenders, including all "Obligations," as defined in the DIP Credit Agreement, the "**DIP Obligations**") an allowed superpriority administrative expense claim in each of the DIP Facility Debtors' respective Cases, which superpriority claim shall be subject only to the Carve-Out (as such term is defined in the First Final Order) and the Adequate Protection Obligations (as defined herein), if any, and will otherwise be accorded superpriority status having priority over any and all other claims and administrative expenses in the Cases or any Successor Cases (as defined below);

(c) granting to the DIP Agent, for the benefit of itself and the DIP Lenders with respect to the Additional Financing, pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, automatically perfected security interests and liens in and on all of the DIP Collateral (as defined and limited herein), including, without limitation, all property constituting "**Cash Collateral**," as defined in section 363(a) of the Bankruptcy Code, senior and superior in priority to all other liens on the DIP Facility Debtors' assets except as otherwise provided in this Third Final Order;

(d) authorizing the use of the proceeds of the Additional Financing in each case in a manner consistent with the terms and conditions of this Third Final Order, the First Final Order, the Second Final Order, and the DIP Documents, solely for (i) working capital and general

corporate purposes, and (ii) payment of fees, costs, administrative expenses and other expenses associated with the DIP Facility and the Cases (including professional fees and expenses); and

(e) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Third Final Order.

The Bankruptcy Court having considered the Motion, the exhibits thereto, the *Declaration of Derek Pitts in Support of Motion of MSR Resort Golf Course LLC, et al., for Entry of an Order Authorizing the Debtors to Obtain Further Expanded Postpetition Financing*, filed contemporaneously with the Motion, the Third DIP Amendment implementing the Additional Financing attached as **Exhibit C** hereto, and the evidence submitted and the record made at the hearing on the First Interim Order (the "**First Interim Hearing**"), the hearing on the First Final Order (the "**First Final Hearing**"), the hearing on the Second Interim Order (the "**Second Interim Hearing**"), the hearing on the Second Final Order (the "**Second Final Hearing**"), and the hearing to consider entry of this Third Final Order (the "**Third Final Hearing**"), respectively; and the Third Final Hearing having been held and concluded on June __, 2012; and it appearing that approval of the final relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and their equity holders, and is essential for the continued operation of the Debtors' businesses; and all objections, if any, to the entry of this Third Final Order having been withdrawn, resolved or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE SUBMISSIONS OF THE PARTIES AND THE RECORD ESTABLISHED AT THE SECOND FINAL HEARING, THE COURT HEREBY FINDS THAT:

A. **Petition Date.** On February 1, 2011 (the "**Petition Date**"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code with the United States Bankruptcy

Court for the Southern District of New York. The Debtors have continued in the management and operation of their business and property as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. §§ 157(b) and 1334, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** On May 11, 2011, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed a statutory committee of unsecured creditors (the “**Committee**”) in the Cases pursuant to section 1102(a) of the Bankruptcy Code.

D. **First Interim Hearing, Entry of First Interim Order, First Final Hearing, Entry of First Final Order, Second Interim Hearing, Entry of Second Interim Order, Second Final Hearing, Entry of Second Final Order, and Execution of and Draw Under DIP Credit Agreement.** This Court conducted the First Interim Hearing on March 15, 2011 and entered its *Interim Order (I) Authorizing Debtors to Obtain Secured, Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), (II) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c)* [Docket No. 140] (the “**Interim Order**”) on March 16, 2011. The Court conducted the First Final Hearing on April 13, 2011 and entered its *Final Order (I) Authorizing Debtors to Obtain Secured, Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), (II) Modifying the*

Automatic Stay Pursuant to 11 U.S.C. § 362 and (III) Providing for Related Relief [Docket No. 254] (the “**First Final Order**”) on April 15, 2011. This Court conducted the Second Interim Hearing on December 15, 2011 and entered its *Second Interim Order (I) Authorizing Debtors to Obtain Secured, Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), (II) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and (III) Providing for Related Relief* [Docket No. 905] (the “**Second Interim Order**”) on December 15, 2011. The Court conducted the Second Final Hearing on January 24, 2012 and entered its *Second Final Order (I) Authorizing Debtors to Obtain Secured, Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), (II) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and (III) Providing for Related Relief* [Docket No. 974] (the “**Second Final Order**”) on January 25, 2012. Pursuant to the First Interim Order, the First Final Order and the Original DIP Credit Agreement, as amended by the First DIP Amendment, the Administrative Borrower requested, and the DIP Lenders funded, from time to time, Loans (as defined in the DIP Credit Agreement) in the aggregate principal amount of \$30,000,000. Pursuant to the Second Interim Order and the Second Final Order and the Original DIP Credit Agreement, as amended by the First DIP Amendment and the Second DIP Amendment (as so amended and as amended by the Third DIP Amendment, the “**DIP Credit Agreement**”), the Administrative Borrower requested, and the DIP Lenders funded, additional Loans in the aggregate principal amount of \$15,000,000.

E. **Notice.** The Third Final Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001(c)(2) and Local Bankruptcy Rule 4001-2. Notice of the scheduling of the Third Final Hearing, as well as a copy of the Motion, were served timely upon all parties entitled thereto. In addition, notice of the proposed form of this Third Final Order has been served upon:

(i) the U.S. Trustee; (ii) the creditors holding the 30 largest unsecured claims against the Debtors (on a consolidated basis); (iii) counsel to the Servicer; (iv) the Internal Revenue Service; (v) the Securities and Exchange Commission; (vi) the Office of the Attorney General in each of the states in which the Debtors operate; and (vii) any applicable state public utilities commissions required to receive notice under the Bankruptcy Rules or Local Rules. Under the circumstances, such notice of the Third Final Hearing and the relief requested in the Motion constitutes due, proper and sufficient notice.

F. **Debtors' Acknowledgements and Stipulations.** The Debtors reaffirm each of the stipulations set forth in recital F of the First Final Order, which stipulations are incorporated herein by reference.

G. **Expiration of the Challenge Periods.** The Committee Challenge Period and the Challenge Standing Motion Period (each as defined in paragraph 19(a) of the First Final Order) have expired without the commencement of any Challenge (as defined in paragraph 19(a) of the First Final Order) and without the filing of any Challenge Standing Motion (as defined in paragraph 19(a) of the First Final Order).

H. **Findings Regarding the Post-Petition Financing.**

(i) **Good Cause.** Good cause has been shown for the entry of this Third Final Order.

(ii) **Need for Additional Post-Petition Financing.** An immediate need exists for the DIP Facility Debtors to obtain the Additional Financing to continue the orderly operation of their and certain of the other Debtors' businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and satisfy other working capital needs, and administer and preserve the value of their estates. The ability of the DIP Facility

Debtors to finance their operations, to preserve and maintain the value of their assets and maximize value for all parties in interest requires the availability of working capital from the DIP Facility, in the amount authorized by the First Final Order, the Second Final Order, and this Third Final Order, the absence of which would cause significant harm to the Debtors, their estates, and other parties in interest and would undermine and impair the Debtors' prospects for a successful reorganization.

(iii) **No Credit Available on More Favorable Terms.** The Debtors have not been able to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also have been unable to obtain credit having priority over that of administrative expenses of the kind specified in sections 503(b) and 507(a) and (b) of the Bankruptcy Code. The Debtors also have been unable to obtain secured credit, allowable only under Bankruptcy Code sections 364(c)(2), 364(c)(3), and 364(d), on more favorable terms and conditions than those provided in the Original DIP Credit Agreement, as amended by the First DIP Amendment, the Second DIP Amendment, the Third DIP Amendment, the First Final Order, the Second Final Order and this Third Final Order. Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain the Additional Financing on more favorable terms without granting to the DIP Lenders the DIP Protections (as defined below).

(iv) **DIP Facility Is Fair and Reasonable.** The terms of the Third DIP Amendment are fair and reasonable, reflect the DIP Facility Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(v) **Business Judgment.** The terms and provisions of the Third DIP Amendment, the First Final Order, the Second Final Order, and this Third Final Order are fair,

reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

(vi) **Good Faith Pursuant to Section 364(e)**. The DIP Facility and the extension of credit contemplated by the Third DIP Amendment and under this Third Final Order were negotiated in good faith and at arms'-length between the DIP Facility Debtors and the DIP Lenders, and the use of the proceeds to be extended under the Third DIP Amendment and the DIP Facility will be so extended in good faith and for valid business purposes and uses. The DIP Lenders have acted fairly, reasonably and in good faith in connection with all aspects of the DIP Facility and the Third DIP Amendment. Any credit extended, loans made or funds advanced to the DIP Facility Debtors pursuant to the DIP Credit Agreement, the First Final Order, the Second Final Order, this Third Final Order, and the other DIP Documents, including, without limitation, all DIP Obligations incurred as a result thereof, shall be deemed to have been extended in "good faith," as such term is used in section 364(e) of the Bankruptcy Code, and the DIP Lenders are entitled to all of the protection and benefits of section 364(e) of the Bankruptcy Code.

I. **Use of Proceeds of the DIP Facility**. Proceeds of the extension of credit contemplated by the Third DIP Amendment, together with the proceeds of the DIP Facility as a whole, shall be used, in each case in a manner consistent with the terms and conditions of the DIP Credit Agreement, the First Final Order, the Second Final Order, and this Third Final Order solely for (a) working capital and general corporate purposes, (b) payment of fees, costs, administration expenses and other expenses associated with the DIP Facility and the Cases (including professional fees and expenses), and (c) the interest payments to the Mortgage Lender (as defined in the DIP Credit Agreement) provided for in paragraph 6(a) of the final cash collateral order

entered by this Court on April 15, 2011 [Docket No. 255] (as extended pursuant to this Court's orders, the "**Cash Collateral Order**") and the "Servicer's Fees and Expense Reimbursement" provided for (and defined in) paragraph 6(c) of the Cash Collateral Order.

J. **Extension of Financing.** The DIP Lenders have indicated a willingness to provide additional financing to the DIP Facility Debtors in accordance with the Third DIP Amendment, the DIP Credit Agreement and the other DIP Documents and subject to (a) the entry of this Third Final Order, (b) approval of the terms of the Third DIP Amendment and (c) findings by the Bankruptcy Court that, among other things, such financing is essential to the Debtors' estates, that the DIP Lenders are good faith financiers, and that the DIP Lenders' claims, the DIP Obligations, the DIP Superpriority Claim, the DIP Liens and the other DIP Protections granted pursuant to the First Interim Order, the First Final Order, the Second Interim Order, the Second Final Order, and this Third Final Order, respectively, and the DIP Documents will not be affected by any subsequent reversal, modification, vacatur or amendment of this Third Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

K. **Relief Essential; Best Interest.** The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and personal property and, is in the best interests of the Debtors, their respective estates and their respective creditors.

NOW, THEREFORE, on the Motion and the record before this Court with respect to the Motion, and with the consent of the Debtors to the form and entry of this Third Final Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. Motion Granted. The Motion is granted in accordance with the terms and conditions set forth in this Third Final Order.

2. DIP Facility.

(a) **Approval of Entry Into DIP Amendment.** The form and substance of the Third DIP Amendment is approved and, notwithstanding the provisions of paragraph 18(i) of the First Final Order and paragraph 17(i) of the Second Final Order, is effective upon entry hereof. 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 (including promissory notes, security agreements, mortgages and financing statements), and to pay all fees and expenses, that reasonably may be necessary or required for the DIP Facility Debtors' performance of the Third DIP Amendment and the DIP Facility and the creation, perfection and continuation (as applicable) of the DIP Liens (as defined herein), including, without limitation:

(i) the execution, delivery and performance of the Third DIP Amendment;

(ii) subject to the prior payment in full in cash of the allowed "**Prepetition Secured Obligations**" (as defined in the Cash Collateral Order) and the Adequate Protection Obligations, if any, the repayment of the principal described in the First Final Order, the Second Final Order, this Third Final Order, and the DIP Documents when due;

(iii) the payment of the interest, fees, expenses, and other amounts other than principal, described in the First Final Order, the Second Final Order, this Third Final Order, and the DIP Documents, as such become due, including, without limitation, (x) the DIP Agent's fees, costs and expenses, including, without limitation reasonable attorneys' fees, associated with or relating to the Third DIP Amendment and the transactions contemplated thereby and the

preparation, negotiation, execution, delivery and consummation of the Third DIP Amendment, this Third Final Order, and any transactions and court proceedings related thereto and (y) the fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred and to be incurred by the DIP Agent and the DIP Lenders, as described more particularly in paragraph 17(a) hereof and as provided in the DIP Credit Agreement, which fees, costs and expenses shall not be subject to allowance by this Court and may be paid without the submission or filing of fee applications with this Court; provided, however, that unresolved disputes concerning the reasonableness of any such fees, costs and expenses may be determined by this Court; provided further, however, that such interest, fees, costs, expenses, and other amounts, other than principal, 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; and

(iv) the performance of any and all other acts required under or in connection with the DIP Documents (including the Third DIP Amendment).

(b) **Validity of DIP Documents**. The DIP Documents, including the Third 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 First Final Order, the Second Final Order, and this Third Final Order.

(c) **Authorization to Borrow**. To enable them to continue to operate their businesses during the term of the DIP Facility and subject to the terms and provisions of the First Final Order, the Second Final Order, this Third Final Order, and the DIP Credit Agreement, the

DIP Facility Debtors are hereby authorized to enter into and perform under the Third DIP Amendment and the DIP Credit Agreement, and the DIP Facility Debtors are authorized to draw up to an additional aggregate amount of \$20 million under the DIP Facility in accordance with the terms of the Third DIP Amendment.

(d) **Application of DIP Proceeds.** The proceeds of the Additional Financing shall be used, in each case in a manner consistent with, and shall be subject to the restrictions set forth in, the provisions of the First Final Order (including, without limitation, Paragraph 2(d) thereof), the Second Final Order, this Third Final Order, and the terms and conditions of the DIP Documents, as amended by the Third DIP Amendment.

(e) **Conditions Precedent.** The DIP Lenders shall have no obligation to provide the Additional Financing, or any portion thereof, unless the conditions precedent to make such loan or advance under the Third DIP Amendment have been satisfied in full or waived by the DIP Lenders in their sole discretion.

(f) **Post-Petition Liens.** As security for the DIP Obligations in respect of the Additional Financing and all other obligations of the "Borrowers" (as defined in the Third DIP Amendment) under the Third DIP Amendment, the DIP Agent is hereby granted, for its own benefit and the benefit of the DIP Lenders, without the necessity of the execution by the DIP Facility Debtors of mortgages, security agreements, pledge agreements, financing statements or other similar documents and instruments, the following liens and security interests pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code (collectively, the "**DIP Liens**") (all property and interests in property identified in clauses (i) and (ii) of this subparagraph (f), subject to the proviso in this sentence, being collectively referred to as the "**DIP Collateral**"), which DIP Liens shall rank *pari passu* with the DIP Liens (as defined in the First Final Order and the Second

Final Order) granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders, under the First Final Order and the Second Final Order; provided, however, that the DIP Collateral shall not include any asset, property or interest in property the granting of a lien on which would trigger liability under the 5-Pack Guarantee (as defined in the DIP Credit Agreement); and, provided, further, however, that nothing herein shall impair or otherwise affect the validity, priority or perfection of the DIP Liens granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders, under the First Interim Order, the First Final Order, the Second Interim Order, and the Second Final Order, respectively.

(i) **Liens on Unencumbered Property.** Pursuant to section 364(c)(2) of the Bankruptcy Code, and subject to paragraph 2(g) of this Third Final Order, the DIP Agent is hereby granted (for its own benefit and for the benefit of the DIP Lenders) a perfected, first-priority security interest in and lien upon all pre- and post-petition property of the DIP Facility Debtors, whether existing on the Petition Date or thereafter created, acquired or arising, whether real or personal, tangible or intangible, wherever located, that, on or as of the Petition Date, was not subject to valid, perfected and non-avoidable liens or was not subject to valid, non-avoidable liens perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and, to the extent applicable, Section 362(b)(18) of the Bankruptcy Code, including, without limitation, (a) all cash and Cash Collateral of the DIP Facility Debtors, (b) all personal property of the DIP Facility Debtors, whether tangible or intangible, including, without limitation, all accounts receivable, books and records, contract rights, inventory, deposit accounts, equipment, fixtures, patents, copyrights, trademarks, trade names and other intellectual property, good, general intangibles, chattel paper, instruments, promissory notes, drafts and documents, investments,

investment property, the DIP Facility Debtors' equity interest in any other entities (including, without limitation, subsidiaries and/or affiliates), securities, commercial tort claims, instruments, letters of credit and rights under letters of credit, and life insurance policies, together with the income, products and proceeds thereof, and (c) all of the DIP Facility Debtors' interest in any real property, including, without limitation, the buildings, improvements, fixtures and structures thereon, leasehold interests and the income, products and proceeds of the foregoing. For the avoidance of doubt, the DIP Collateral shall not include any Avoidance Actions (as defined in the DIP Credit Agreement) or the proceeds therefrom unless permitted in accordance with the First Final Order and the Second Final Order; and

(ii) **Liens Junior to Certain Other Liens.** Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject to paragraph 2(g) of this Third Final Order, the DIP Agent is hereby granted (for its own benefit and for the benefit of the DIP Lenders) a perfected security interest in and lien upon all pre- and post-petition property of the DIP Facility Debtors (other than the unencumbered property described in clause (i) of this paragraph 2(f), as to which property the liens and security interests granted to the DIP Agent are as described in such clause (i)), together with the income, products and proceeds thereof, whether existing on the Petition Date or thereafter, created, acquired or arising, that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable liens in existence immediately prior to the Petition Date or to valid and non-avoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and, to the extent applicable, Section 362(b)(18) of the Bankruptcy Code, including, without limitation, (a) all cash and Cash Collateral of the DIP Facility Debtors, (b) all personal property of the DIP Facility

Debtors, whether tangible or intangible, including, without limitation, all accounts receivable, books and records, contract rights, inventory, deposit accounts, equipment, fixtures, patents, copyrights, trademarks, trade names and other intellectual property, good, general intangibles, chattel paper, instruments, promissory notes, drafts and documents, investments, investment property, the DIP Facility Debtors' equity interest in any other entities (including, without limitation, subsidiaries and/or affiliates), securities, commercial tort claims, instruments, letters of credit and rights under letters of credit, and life insurance policies, together with the income, products and proceeds thereof, and (c) all of the DIP Facility Debtors' interest in any real property, including, without limitation, the buildings, improvements, fixtures and structures thereon, leasehold interests and the income, products and proceeds of the foregoing, which security interests and liens granted to the DIP Agent pursuant to this subparagraph (ii) shall be junior in priority to such valid, perfected and non-avoidable liens.

(g) **DIP Lien Priority**. Notwithstanding anything to the contrary set forth in this Third Final Order or the DIP Documents, the DIP Liens shall rank *pari passu* with the DIP Liens (as defined in the First Final Order and the Second Final Order) granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders, under the First Final Order and the Second Final Order and shall be junior, subject and subordinate in all respects only to the following: (i) the valid, perfected and non-avoidable liens, security interests and mortgages securing the Mortgage Loan (as defined in the First Final Order) (the "**Mortgage Lender Prepetition Liens**"), (ii) the liens granted to the Mortgage Lender, pursuant to the Cash Collateral Order, as adequate protection of the Mortgage Lender's interest in its Cash Collateral (the "**Mortgage Lender A/P Liens**"), (iii) the Prior Liens (as defined in the DIP Credit Agreement) (the "**Prior Liens**") and (iv) the Carve-Out. Subject to the foregoing priorities, the DIP Liens shall secure all DIP Obligations.

Except as expressly set forth herein, the DIP Liens shall not be subordinated or made subject to or *pari passu* with any lien or security interest by any order of this Court heretofore or hereafter entered in the Cases, whether pursuant to sections 105, 364(d) or 510 of the Bankruptcy Code, or otherwise, and shall be valid, perfected and enforceable against the DIP Facility Debtors, their estates, the DIP Collateral, any trustee appointed in the Cases, and any trustee appointed upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings superseding the Cases or such chapter 7 cases (any such chapter 7 cases or superseding proceedings, "**Successor Cases**"), and/or upon the dismissal of any of the Cases. The DIP Facility Debtors agree, on behalf of themselves and their respective bankruptcy estates, that, for so long as any DIP Obligations shall be outstanding, other than as expressly set forth in this Third Final Order or the DIP Credit Agreement, they shall not, and they irrevocably waive any right (whether pursuant to sections 105, 364(c) or 364(d) of the Bankruptcy Code or otherwise) to, (i) grant or confer, or request the Court to grant or confer, any Lien on all or any portion of the DIP Collateral that is *pari passu* with or senior in priority to the DIP Liens securing the Obligations or (ii) grant or confer, or request the Court to grant or confer, any claim that is *pari passu* with or senior in priority to the DIP Superpriority Claim. The DIP Facility Debtors agree that, except as expressly set forth in this Third Final Order, they shall take no action in the Cases to cause the DIP Liens or the DIP Superpriority Claim to be subordinated or made subject to or *pari passu* with any Lien, security interest or claim by any order of the Court heretofore or hereafter entered in the Cases, whether pursuant to sections 105, 364(c), 364(d) or 510 of the Bankruptcy Code, or otherwise.

(h) **Section 551 Protection**. The DIP Liens shall not be subject or junior to any lien or security interest that is avoided under section 522, 544, 545, 547, 548, 549 or 724(a) of

the Bankruptcy Code, or any lien void under section 506(d) of the Bankruptcy Code, that is preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code.

(i) **Enforceable Obligations.** The DIP Obligations shall be valid and binding obligations of the DIP Facility Debtors, jointly and severally, enforceable against the DIP Facility Debtors in accordance with the terms of the First Final Order, the Second Final Order, this Third Final Order, and the DIP Documents.

(j) **Superpriority Administrative Claim Status.** Pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Obligations, including all DIP Obligations in respect of the Additional Financing, shall constitute an allowed superpriority administrative expense claim (the "**DIP Superpriority Claim**" and, together with the DIP Liens and all other benefits, protections, privileges, claims and liens granted or provided hereunder to or for the benefit of the DIP Agent and/or the DIP Lenders, the "**DIP Protections**") against each of the DIP Facility Debtors with priority in the DIP Facility Debtors' respective Cases or any Successor Cases over any and all administrative expense claims and unsecured claims against the DIP Facility Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in, arising under, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c), 546(d), 726(b), 1113, 1114 and section 506(c), respectively, subject only to (x) the Carve-Out, (y) the superpriority administrative expense claim granted to the Mortgage Lender, pursuant to the Cash Collateral Order, as adequate protection of the Mortgage Lender's interest in its Cash Collateral (the "**Adequate Protection Obligations**"), and (z) the allowed claim of the Mortgage Lenders arising under the Mortgage Loan Agreement (as defined in the DIP Credit Agreement). Other than the Carve-Out and the Adequate Protection Obligations, if any, all claims or costs or expenses of

administration under sections 105, 503, 364(c) or 507 of the Bankruptcy Code or otherwise, including any such cost or expense resulting from or arising after the conversion of any one or more of the Cases to a case under chapter 7 of the Bankruptcy Code, shall be subordinate to the DIP Superpriority Claim hereunder, and no order of this Court granting any such claim, cost or expense shall be entered, while any portion of the DIP Obligations or any Commitment (as defined in the DIP Credit Agreement) under the DIP Credit Agreement remains outstanding. The DIP Superpriority Claim shall be deemed a legal, valid, binding, enforceable, and perfected claim, not subject to subordination (except as expressly described in this Third Final Order), impairment or avoidance for all purposes in the Cases and any Successor Cases.

3. Authorization to Use Proceeds of DIP Facility. Pursuant to the terms and conditions of this Third Final Order and the Third DIP Amendment, the Debtors are authorized to use the advances constituting Additional Financing under the DIP Facility during the period commencing immediately after the entry of this Third Final Order and terminating on the Termination Date (as defined in the DIP Credit Agreement).

4. Reservation Concerning Allowance of Compensation. Nothing herein (a) shall be construed as a consent by the DIP Agent or the DIP Lenders to the allowance of any professional fees or expenses of any of the DIP Facility Debtors, the Committee or of any person or entity or (b) shall impair or affect the right of the DIP Agent or the DIP Lenders to object to the allowance and payment of such fees and expenses.

5. Perfection of DIP Liens. The First Final Order, the Second Final Order, and this Third Final Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens, without the necessity of filing or recording any mortgage, financing statement or other instrument or document, or the taking of any other act that otherwise may be

required under federal, state or local law, rule or regulation to validate or perfect the DIP Liens or to entitle any of the DIP Agent or the DIP Lenders to the priorities granted herein. The DIP Facility Debtors may execute, and the DIP Agent is authorized to file or record, mortgages, financing statements or other instruments to evidence the DIP Liens, and the DIP Facility Debtors are hereby authorized and directed, promptly upon demand by the DIP Agent, to execute and file or record any such mortgages, financing statements or instruments as the DIP Agent may request. However, no such execution, filing or recordation shall be necessary or required in order to create or perfect the DIP Liens. If the DIP Agent, in its sole discretion, shall choose to file such mortgages, financing statements or instruments or otherwise confirm perfection of the DIP Liens, all such documents and instruments shall be deemed to have been filed or recorded as of March 16, 2011, the date on which the First Interim Order was entered. The DIP Agent, in its sole discretion, may file or record a true and complete copy of the First Final Order, the Second Final Order, and this Third Final Order in the filing or recording offices of the relevant jurisdictions in addition to, or in lieu of, such mortgages, financing statements or instruments, and all filing and recording offices, and the officials responsible for administering such offices, are hereby directed to accept such copy of the First Final Order, the Second Final Order, and this Third Final Order for filing or recording.

6. Section 506(c) Claims. Except to the extent of the Carve-Out, no expenses of administration incurred in any of the Cases or any Successor Cases shall be charged against or recovered from the DIP Collateral, the DIP Lenders or the DIP Agent pursuant to section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of the DIP Lenders and the DIP Agent, and nothing contained in the First Final Order, the Second Final Order, or this Third Final Order shall be deemed to constitute consent by the DIP Agent or the DIP Lenders to any

charge, lien, assessment, or claim against, or recovery from, the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise on account of any expenses of administration incurred in the Cases or in any Successor Cases, nor shall any such consent be implied from any action, inaction or acquiescence by the DIP Agent or the DIP Lenders.

7. Preservation of Rights Granted under this Second Final Order. Except as otherwise permitted by the DIP Documents, the First Final Order, the Second Final Order, or this Third Final Order, unless the DIP Agent has provided its prior written consent, which consent may be withheld or denied in the DIP Agent's sole discretion, or all DIP Obligations have been indefeasibly paid in full in cash (or will be indefeasibly paid in full in cash upon entry of an order approving indebtedness described in subparagraph (a) below or upon entry of an order approving any sale or other disposition of all or substantially all of the DIP Collateral described in subparagraph (b) below) and all Commitments have terminated (or will be terminated upon the indefeasible payment in full in cash of all DIP Obligations, as described above in this paragraph 7), the DIP Facility Debtors shall not seek the entry of, and there shall not be entered, in the Cases, or in any Successor Case, any order that authorizes or provides for any of the following:

(a) the obtaining of credit or the incurring of indebtedness by the DIP Facility Debtors that is (i) secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or is entitled to priority status that is senior or junior to or *pari passu* with the priority of the DIP Liens (ii) granted priority status that is senior to or *pari passu* with the priority of the DIP Superpriority Claim, in each instance, except to the extent such indebtedness is used to repay all or any portion of the Prepetition Secured Obligations and Adequate Protection Obligations, if any;

(b) any sale or other disposition of all or substantially all of the DIP Collateral; provided, however, until such time as all allowed Prepetition Secured Obligations and Adequate Protection Obligations, if any, have been indefeasibly paid in full in cash, the prohibition against the sale or disposition of assets set forth in this paragraph 7(b) shall have no effect, except to the extent that the Special Servicer (as defined in the Cash Collateral Order) agrees in writing otherwise; provided further, however, that nothing in the First Final Order, the Second Final Order, or this Third Final Order is intended to preclude the Debtors from electing in accordance with their business judgment to market the DIP Collateral for sale; or

(c) dismissal of any of the DIP Facility Debtors' Cases; provided, however, that, if an order dismissing any of the DIP Facility Debtors' Cases under section 1112 of the Bankruptcy Code or otherwise is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the DIP Superpriority Claims and the DIP Liens granted to the DIP Agent pursuant to the Borrowing Orders shall continue in full force and effect and shall maintain their priorities as provided in such Borrowing Orders until all DIP Obligations shall have been paid and satisfied in full (and that such DIP Superpriority Claim and DIP Liens shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim and the DIP Liens.

8. Proceeds of Subsequent Financing. Without limiting or impairing the provisions and protections of paragraph 7 of this Third Final Order, if, notwithstanding such provisions and protections, at any time prior to the repayment in full in cash of all DIP Obligations and the termination of the Commitment, the DIP Facility Debtors, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed shall obtain credit or incur debt

pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Credit Agreement, the First Final Order, the Second Final Order, or this Third Final Order, then, subject to the prior indefeasible repayment in full in cash of the allowed Prepetition Secured Obligations and Adequate Protection Obligations, if any, all of the cash proceeds derived from such financial accommodations shall immediately be turned over to the DIP Agent and applied to satisfy *pro tanto* the DIP Obligations.

9. Termination Date. Without the need for further application or motion to, or further order of, this Court, all DIP Obligations (including the Additional Financing) shall be immediately due and payable on Termination Date (as defined in paragraph 10 of the First Final Order); provided, however, that the term “Calendar Maturity Date” as defined and used therein shall be December 31, 2012, and such revised date shall be applicable as to all DIP Obligations, including those incurred pursuant to the First Final Order and the Second Final Order; provided further, however, that, for purposes of paragraph 10 of the First Final Order, paragraph 9 of the Second Final Order, and this paragraph 9 of this Third Final Order, the terms “DIP Obligations” and “DIP Documents” shall have the respective meanings assigned to them in this Third Final Order; provided further, however, that, pursuant to the Second Final Order, for purposes of paragraph 10 of the First Final Order and this paragraph 9, clause “(vii)” of paragraph 10 of the First Final Order was deemed to be amended in its entirety to read as follows: “(vii) the sixth (6th) Business Day following (a) the termination by the Mortgage Lender and/or the Special Servicer of the Debtors’ right to use Cash Collateral under the Cash Collateral Order pursuant to paragraphs 11(f) and 12 of the Cash Collateral Order or (b) the automatic termination of the Debtors’ right to use Cash Collateral under the Cash Collateral Order (upon the occurrence of the Termination Date (as defined in the Cash Collateral Order) pursuant to paragraphs 11(b), (c), (d) or (e) of the Cash

Collateral Order) if, as a result of such termination, (x) the DIP Facility Debtors did not have the right to use Cash Collateral during the immediately preceding five (5) Business Days or (y) if the DIP Facility Debtors did have the right to use Cash Collateral during such five (5) Business Days, the DIP Facility Debtors did not have the right to use Cash Collateral on the sixth (6th) Business Day following such termination.”

10. Disposition of DIP Collateral. The provisions set forth in paragraph 12 of the First Final Order shall apply herein; provided, however, that, for purposes of the First Final Order, the Second Final Order, and this Third Final Order, the term “DIP Credit Agreement” shall have the meaning assigned to such term in this Third Final Order.

11. Post-Termination Reserve. In the event of a termination of the Commitment (other than (x) upon the Calendar Maturity Date (as amended by the Second DIP Amendment and this Second Final Order), (y) due to the conversion of any of the Cases to cases under chapter 7 of the Bankruptcy Code, or (z) due to the effective date of a sale of all or substantially all of the assets or businesses of the DIP Facility Debtors in accordance with section 363 of the Bankruptcy Code or otherwise (including a sale resulting from a credit bid of any claim or claims against the DIP Facility Debtors), the DIP Lenders shall deposit into a segregated account (the “**Reserve Account**”) the lesser of (i) \$5 million and (ii) the remaining undrawn Commitment under the DIP Facility as of the time of such termination. Until the Maturity Date (as defined in the DIP Credit Agreement), the DIP Facility Debtors may draw from time to time on the Reserve Account to pay monthly interest at the non-default rate due under the Mortgage Loan and Servicing Documents and the Servicer’s Fees and Expense Reimbursement as such amounts become due, to the extent that the DIP Facility Debtors lack sufficient Cash and Cash Equivalents to pay such amounts. All amounts drawn under the preceding sentence shall become part of the

DIP Obligations to the same extent as if they were loaned prior to such termination of the Commitment. Funds in the Reserve Account shall remain the sole property of the DIP Lenders, and not property of the DIP Facility Debtors, their estates or any party claiming by or through any of them. Upon the Maturity Date, any amounts remaining in the Reserve Account shall be released to the DIP Agent for the benefit of the DIP Lenders. The requirements of this paragraph 11 are the preservation, without duplication, of the Reserve Account requirements set forth in paragraph 10.1 of the First Final Order and paragraph 11 of the Second Final Order.

12. Events of Default. The occurrence of any Event of Default (as defined in the First Final Order, including, without limitation, the Event of Default described in Paragraph 12 of the First Final Order) shall constitute an "Event of Default" under this Third Final Order.

13. Rights and Remedies Upon Event of Default. The provisions set forth in paragraph 14 in the First Final Order shall apply herein; provided, however, that, for purposes of the First Final Order, the Second Final Order, and this Third Final Order, the terms "DIP Obligations," "DIP Documents," "DIP Liens," "DIP Facility," "DIP Collateral" and "DIP Credit Agreement" shall have the respective meanings assigned to such terms in this Third Final Order. Notwithstanding anything to the contrary in the First Final Order, the Second Final Order, or this Third Final Order, until the allowed claim of the Mortgage Lender under the Mortgage Loan Agreement has been indefeasibly repaid in full in cash, the DIP Agent and DIP Lenders shall not exercise any remedies with respect to DIP Collateral absent the written consent of the Special Servicer.

14. Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified to the extent necessary to permit (a) the DIP Facility Debtors to grant the DIP Liens and to perform such acts as the DIP Agent may request to assure the perfection

and priority of the DIP Liens, (b) the DIP Facility Debtors to incur the Additional Financing and all other liabilities and obligations to the DIP Agent and the DIP Lenders under the DIP Documents and this Third Final Order, (c) the DIP Facility Debtors to pay, and the DIP Agent and the DIP Lenders to receive and apply, the amounts referred to in paragraphs 2(a)(ii) and (iii) and paragraph 17(a) of this Third Final Order, and (d) the DIP Agent to exercise and enforce its rights and remedies as provided herein.

15. Proof of Claim. The DIP Lenders will not be required to file a proof of claim or a request for payment of an administrative expense claim in any of the Cases in respect of the DIP Obligations, including the Additional Financing.

16. Good Faith Under Section 364(e). If any or all of the provisions of this Third Final Order are hereafter reversed, modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Agent and the DIP Lenders are entitled to the protections provided in section 364(e) of the Bankruptcy Code, and, accordingly, no such reversal, modification, amendment or vacation shall impair, limit or otherwise affect (a) the validity or enforceability of any debt or indebtedness, including, without limitation, the DIP Obligations, incurred hereunder or under the DIP Documents prior to the actual receipt of written notice by the DIP Agent of the effective date of such reversal, modification, amendment or vacation or (b) the validity or enforceability of any lien or claim or the priority of such lien or claim authorized or created hereby, including, without limitation, the DIP Liens and the DIP Superpriority Claim. Notwithstanding any such reversal, modification, amendment or vacation, any debt or indebtedness, including, without limitation, the DIP Obligations, incurred hereunder or under the DIP Documents prior to the actual receipt of such notice by the DIP Agent, and any lien or priority authorized or created hereby, including, without limitation, the DIP Liens and the DIP

Superpriority Claim, shall be governed in all respects by the original provisions of this Third Final Order, and the DIP Agent and the DIP Lenders shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections, granted herein or pursuant to the DIP Documents, with respect to any such debt, indebtedness, priority or lien.

17. Other Rights and Obligations.

(a) **Fees and Expenses.** As provided in the DIP Credit Agreement, all reasonable and documented out-of-pocket fees, costs and expenses of the DIP Agent and the DIP Lenders (solely in such capacities), including, without limitation, reasonable attorneys' fees, associated with or relating to (i) the Third DIP Amendment and the transactions contemplated thereby and the preparation, negotiation, execution, delivery and consummation of the Third DIP Amendment, the Motion, this Third Final Order and the transactions and court proceedings related thereto (the foregoing fees and expenses, including, without limitation, reasonable fees of the Lenders' and the Agent's respective counsel, the "**DIP Financing Amendment Fees**"); provided, however, that the DIP Financing Amendment Fees of counsel to Five Mile Capital II Equity Pooling LLC, as DIP Lender, and Five Mile Capital II CNL DIP Administrative Agent LLC, as co-DIP Agent, respectively, shall be subject to a cap of \$50,000, and the DIP Financing Amendment Fees of counsel to CNL DIP Recovery Acquisition, LLC, as DIP Lender, and CNL DIP Recovery Acquisition, LLC, as co-DIP Agent, respectively, shall be subject to a cap of \$50,000, (ii) any further amendment, waiver, modification or restatement with respect to the DIP Credit Agreement and the other DIP Documents (including the reasonable fees, disbursements and other charges of the DIP Agent's and the DIP Lenders' respective counsel), (iii) (x) the protection, exercise and enforcement of the rights and remedies of the DIP Agent and/or the DIP Lenders under the DIP Credit Agreement and the other DIP Documents, this Third Final Order

and applicable law, and (y) the assertion, prosecution, protection, exercise and enforcement of the rights and remedies of the DIP Agent and the DIP Lenders in the Cases, and (iv) accounting, collateral examination, monitoring, inspection, appraisal and financial advisory functions relating to the Borrowing Orders, the DIP Documents, the DIP Collateral and the assertion, prosecution, protection, exercise and enforcement of the rights and remedies of the DIP Agent and the DIP Lenders relating thereto shall be paid by the DIP Facility Debtors, whether or not the transactions contemplated hereby are consummated, within ten (10) Business Days of the DIP Facility Debtors' receipt of a written invoice therefor (which may be redacted to preserve privilege and work product protections) provided, however, that the payment or reimbursement by the DIP Facility Debtors of the fees, costs and expenses of any accounting, collateral examination, monitoring, inspection, appraisal and financial advisor of any Agent pursuant to the preceding clause (iv) (excluding legal counsel to each DIP Agent, but including any such advisors retained by such legal counsel), shall not be required unless the hiring of such advisor has been consented to by both DIP Agents or by the Requisite Lenders (as defined in the DIP Credit Agreement). The provisions of the final five (5) sentences of paragraph 18(a) of the First Final Order shall continue to apply to the fees, costs and expenses described in this paragraph 17(a), the respective invoices of the DIP Lenders and the co-DIP Agents and any objections thereto; provided, however, that for purposes of this paragraph 17(a) the term "Final Order," as used in the final sentence of paragraph 18(a) of the First Final Order, shall be deemed to mean this "Third Final Order."

(b) **Indemnification**. The DIP Facility Debtors and their respective estates shall indemnify and hold harmless the DIP Agent and the DIP Lenders (and their respective affiliates and each of their respective officers, directors, partners, managers, trustees, employees, shareholders, advisors, agents, attorneys and controlling persons and each of their

respective successors and assigns (collectively, the “**Indemnified Parties**”) from and against, and the Indemnified Parties shall have no liability for, any loss, judgment, liability, fees (including attorneys’ fees), costs or expenses of every nature and character (an “**Indemnified Claim**”) incurred or suffered by the Indemnified Parties in respect of the financing contemplated by this Third Final Order and the Third DIP Amendment or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence or willful misconduct of the Indemnified Parties, or any of them, as determined by final non-appealable judgment of a court of competent jurisdiction; provided, however, that, for the avoidance of doubt, the foregoing indemnity shall not encompass claims and losses relating to the obligations and liens evidenced by the Fourth Mezz Transaction Documents (as defined in the First Final Order); and provided further, however, that any payments to the DIP Agent and the DIP Lenders in respect of an Indemnified Claim shall be subject to the indefeasible repayment in cash in full of the allowed claim of the Mortgage Lender under the Mortgage Loan Agreement. Any and all Indemnified Claims shall constitute a DIP Obligation and shall be entitled to the full benefit of the DIP Protections hereunder and under the First Final Order, the Second Final Order, and this Third Final Order.

(c) **Waiver and Release.** Each DIP Facility Debtor shall be deemed fully, forever and irrevocably to have waived and released any and all "claims" (as such term is defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff rights and recoupment rights against each of the DIP Agents and each of the DIP Lenders (solely in such capacities), whether arising at law or in equity, including, without limitation, any recharacterization, subordination, avoidance or other claim or defense arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of

applicable state or federal law, except to the extent any such claims, counterclaims, causes of action, defenses, setoff rights or recoupment rights relate to the DIP Agent's and DIP Lenders' failure to comply with the terms of the DIP Documents.

(d) **Binding Effect.** The provisions of this Third Final Order shall be binding upon all parties in interest in the Cases, including, without limitation, the DIP Agent, the DIP Lenders, the DIP Facility Debtors and the Committee, and their respective successors and assigns (including any trustee, estate representative or other fiduciary hereinafter appointed as a legal representative of the DIP Facility Debtors or with respect to the property of the estate of the DIP Facility Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of the Cases or any Successor Cases, and shall inure to the benefit of the DIP Agent, the DIP Lenders and their respective successors and assigns.

(e) **No Waiver.** The failure of the DIP Agent or the DIP Lenders to seek relief or otherwise exercise their rights and remedies under the DIP Documents, this Third Final Order or applicable law shall not constitute a waiver of any of such rights and remedies hereunder, thereunder or under applicable law. Notwithstanding anything contained herein to the contrary, the entry of this Third Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the respective rights and remedies of the DIP Agent, the DIP Lenders or Five Mile SPE (as defined in the First Final Order) under the Bankruptcy Code or under non-bankruptcy law.

(f) **No Third Party Rights.** Except as explicitly provided for herein, this Third Final Order does not create any rights for the benefit of any third party, creditor, equity holder, party in interest or any direct, indirect, or incidental beneficiary.

(g) **No Marshaling.** The DIP Lenders shall be entitled to apply the payments received pursuant to the DIP Credit Agreement and the proceeds of the DIP Collateral in accordance with the provisions of the DIP Documents, the First Final Order, the Second Final Order, and this Third Final Order, and in no event shall the DIP Lenders be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of such payments, proceeds or the DIP Collateral.

(h) **Section 552.** The DIP Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lenders with respect to proceeds, product, offspring or profits of any of the DIP Collateral.

(i) **Amendment.** The DIP Facility Debtors and the DIP Agent may amend, modify or waive, from time to time, any provision of the DIP Documents without notice or a hearing, provided that (x) such amendment, modification or waiver, in the judgment of the DIP Facility Debtors and the DIP Agent, is either not prejudicial to the rights of third parties in any material respect or is not material, (y) a copy of such amendment, modification or waiver is provided to the Committee and the U.S. Trustee and (z) a copy of the amendment, modification or waiver is filed with the Court. Except as otherwise provided herein, no amendment, modification or waiver of any of the provisions of the DIP Documents shall be effective unless set forth in writing, signed by or on behalf of all the DIP Facility Debtors and the DIP Agent and approved by this Court (as set forth in paragraph 17(i) of the Second Final Order, the provisions of this sentence supersedes the provisions of the last sentence of paragraph 18(i) of the First Final Order).

(j) **Survival of Third Final Order.** Unless and until the DIP Obligations are irrevocably and indefeasibly repaid in full in cash and the Commitment irrevocably has been terminated, the rights, benefits and protections afforded to the DIP Agent and the DIP Lenders pursuant to the First Final Order, the Second Final Order, this Third Final Order, and under the DIP Documents, including, without limitation, the DIP Protections, and any actions taken pursuant thereto, shall survive the entry of any order that may be entered (i) confirming any plan of reorganization or liquidation in the Cases, (ii) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, (iii) dismissing any of the Cases, (iv) withdrawing the reference of the Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of the Cases in this Court, and the terms and provisions of the First Final Order, the Second Final Order, this Third Final Order, and the DIP Documents shall continue in full force and effect notwithstanding the entry of such order, and the DIP Liens and the DIP Superpriority Claim shall maintain their respective priority as provided in the First Final Order, the Second Final Order, and this Third Final Order.

(k) **No Discharge of DIP Obligations; Payment Under Plan.** The DIP Obligations shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation in the Cases, the Debtors being deemed hereby to have waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. The Debtors shall not propose, sponsor, file, solicit acceptances of, seek confirmation of, support, endorse or consent to any plan of reorganization or liquidation in the Cases that is not conditioned upon the irrevocable and indefeasible payment in full in cash of all of the DIP Obligations on the effective date of such plan.

(l) **Inconsistency and Applicability.** In the event of any inconsistency between the terms and conditions of the DIP Documents and this Third Final Order, the provisions of this Third Final Order shall govern and control. The Debtors, the DIP Agent, the DIP Lenders, the Mortgage Lender and the Special Servicer intend for this Third Final Order to be consistent in all respects with the Cash Collateral Order. Any dispute that arises as a result of any inconsistency between the terms and conditions of this Third Final Order and the Cash Collateral Order shall be resolved by the Court pursuant to its inherent jurisdiction to interpret its own orders. Subject to the immediately preceding sentence, unless otherwise expressly provided for herein, the terms and provisions of the First Final Order shall govern and apply to the DIP Obligations, including the Additional Financing.

(m) **Enforceability.** This Third Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon entry hereof.

(n) **Objections Overruled.** All objections to the Motion, to the extent not withdrawn or resolved, are hereby overruled.

18. Subordination of the DIP Loan. For the avoidance of doubt, notwithstanding anything in this Third Final Order or the DIP Credit Agreement to the contrary, other than paragraph 2(h) of this Third Final Order, the rights, claims and liens granted to the DIP Lenders pursuant to this Third Final Order are and shall remain junior and subordinate to the allowed claims and the valid, perfected and non-avoidable rights and liens of the Prepetition Secured Parties (as defined in the Cash Collateral Order) under the Mortgage Loan and Servicing Documents and under the Cash Collateral Order. The DIP Lenders and the co-DIP Agents waive their rights to challenge the validity, extent and priority of the Mortgage Lender Prepetition Liens

and the validity, amount and priority of the claims of the Mortgage Lender under the Mortgage Loan and Servicing Documents, and will not take any direct or indirect action to cause or induce any person or entity to raise such challenge.

19. Waiver of Bankruptcy Rule 6006(h) Stay. This Third Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry, notwithstanding the provisions of Bankruptcy Rule 6004(h), which, to the extent applicable, are waived and shall not apply to this Third Final Order.

20. Retention of Jurisdiction. The Bankruptcy Court has and will retain jurisdiction to hear and adjudicate any dispute, action or proceeding with respect to the DIP Facility, the Third DIP Amendment and this Third Final Order.

Dated: June __, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Debtors

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).

EXHIBIT B

DIP Facility Debtors under DIP Credit Agreement

MSR RESORT HOTEL, LP, a Delaware limited partnership

MSR RESORT SILVER PROPERTIES, LP, a Delaware limited partnership

MSR GRAND WAILEA RESORT, LP, a Delaware limited partnership

MSR BILTMORE RESORT, LP, a Delaware limited partnership

MSR DESERT RESORT, LP, a Delaware limited partnership

MSR CLAREMONT RESORT, LP, a Delaware limited partnership

MSR RESORT GOLF COURSE LLC, a Delaware limited liability company

EXHIBIT C

Third DIP Amendment

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

This THIRD AMENDMENT TO SECURED, SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of _____, 2012 (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 ("Paulson") and FIVE MILE CAPITAL II CNL DIP ADMINISTRATIVE AGENT LLC ("Five Mile"), as co-agents for the Lenders (Paulson 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, as co-Agents for the Lenders entered into that certain Secured, Superpriority Debtor-in-Possession Credit Agreement (the "Original Credit Agreement");

WHEREAS, Paulson succeeded Paulson Real Estate Recovery Fund, LP 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"), and that certain Second Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of December 15, 2011 (the "Second Amendment"; the Original Credit Agreement, as amended by the First Amendment and the Second Amendment, the "Credit Agreement");

WHEREAS, the Borrowers have requested, among other things, that the Lenders (a) amend the Maturity Date to December 31, 2012, (b) increase the aggregate Commitment Amount by \$20,000,000 and (c) amend the Credit Agreement in certain other respects; and

WHEREAS, the Agent and the Lenders are willing to accommodate such requests 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.

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. Amendments to Credit Agreement. Effective as of the Third Amendment Effective Date (as defined herein), 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 parties hereto hereby agree that the outstanding principal balance of the Loan on the date hereof is \$45,000,000 (the “Existing Loan”). Each Lender severally and not jointly agrees, on the terms and subject to the conditions set forth herein, to increase its respective Commitment on the Third Amendment Effective Date to the amount set forth opposite such Lender’s name in Schedule 2 hereto. Each future borrowing under the Credit Agreement shall constitute a Loan for all purposes under the Credit Agreement and each other Loan Document. Without limiting the generality of the foregoing, any such Loans shall (i) constitute Obligations under the Loan Documents and have all of the benefits thereof, (ii) have all of the rights, remedies, benefits, privileges and protections applicable to the Loan under the Credit Agreement and the other Loan Documents, (iii) be secured by the Liens granted to the Agent for the benefit of the Lenders under any Loan Document, (iv) be evidenced by Notes and (v) bear interest at rates and have all other terms otherwise applicable to the Loan under the 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.

(b) Schedule 2 is hereby deleted in its entirety and replaced with the attached Schedule 2.

(c) The defined term “Maturity Date” set forth in Section 1.1 is hereby amended by deleting “June 30, 2012” therefrom and inserting “December 31, 2012” in place thereof.

(d) The defined term “Commitment Amount” set forth in Section 1.1 is hereby amended by deleting “\$45,000,000” therefrom and inserting “\$65,000,000” in place thereof.

(e) The defined term “Final Borrowing Order” set forth in Section 1.1 is hereby amended by deleting “\$45,000,000” therefrom and inserting “\$65,000,000” in place thereof.

(f) Section 8.2.2 is hereby amended by deleting “June 30, 2012” therefrom and inserting “December 31, 2012” in place thereof.

(g) The cover page to the Credit Agreement is hereby deleted in its entirety and the cover page attached hereto as Exhibit A shall be substituted in lieu thereof.

(h) Section 5.1(d) is hereby deleted in its entirety and replaced by the following:

Cash Collateral Order. The Cash Collateral Order entered by the Court on April 15, 2011 [Docket No. 255], 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], and as further extended pursuant to the Court's order entered on May 18, 2012 [Docket No. 1178], shall be (i) in full force and effect and (ii) acceptable in all respects to the Lenders in their sole discretion.

(i) Section 5.2(b) is hereby deleted in its entirety and replaced by the following:

Cash Collateral Order. The Cash Collateral Order entered by the Court on April 15, 2011 [Docket No. 255], 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], and as further extended pursuant to the Court's order entered on May 18, 2012 [Docket No. 1178], shall be in full force and effect, or another Cash Collateral Order (i) shall have been entered by the Court, (ii) shall be in full force and effect and (iii) shall be acceptable in all respects to the Lenders in their sole discretion.

(j) Section 10.4 is hereby amended by deleting "c/o Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY, 10020, Attn: Thomas Abbondante, E-mail: Thomas.Abbondante@allenoverly.com" therefrom in each instance it appears in Section 10.4 and inserting the following in place thereof:

"c/o Latham & Watkins LLP

885 Third Avenue

New York, NY 10022

Attn: David Broderick

E-mail: david.broderick@lw.com"

(k) Exhibit A to the Credit Agreement is hereby amended by deleting "c/o Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY, 10020, Attn: Thomas Abbondante, E-mail: Thomas.Abbondante@allenoverly.com" therefrom and inserting the following in place thereof:

"c/o Latham & Watkins LLP

885 Third Avenue

New York, NY 10022

Attn: David Broderick

E-mail: david.broderick@lw.com

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 in the form of Exhibit B 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) delivery to each Lender of an amended and restated Note in an amount equal to such Lender’s Commitment Amount in the form of Exhibit C hereto;

(d) receipt by Agent on the Third Amendment Effective Date of a commitment fee in the amount of \$200,000 (representing 1.00% of the increase of \$20,000,000 in the Commitment Amount pursuant to this Amendment), which fee is due and payable in full on the Third Amendment Effective Date and shall be distributed by Agent to the Lenders promptly after the Third Amendment Effective Date in accordance with such Lenders’ pro rata share of the Commitment Amount;

(e) 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], and as further extended pursuant to the Court’s order entered

on May 18, 2012 [Docket No. 1178] , shall be (i) in full force and effect and (ii) acceptable in all respects to the Lenders in their sole discretion;

(f) 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;

(g) 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 (the foregoing fees and expenses, collectively, the "DIP Financing Amendment Fees"); *provided, however*, that the fees of counsel to Five Mile Capital II Equity Pooling LLC, as Lender, and Five Mile Capital II CNL DIP Administrative Agent LLC, as co-Agent, respectively, that constitute DIP Financing Amendment Fees shall be subject to a cap of \$50,000, and the fees of counsel to CNL DIP Recovery Acquisition, LLC, as Lender, and CNL DIP Recovery Acquisition, LLC, as co-Agent, respectively, that constitute DIP Financing Amendment Fees shall be subject to a cap of \$50,000; and

(h) 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 "Third Amendment Effective Date" shall mean the first date on which each of the conditions set forth in this Section 4 have been satisfied.

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.

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:

[Signature page to Third Amendment to Credit Agreement]

SCHEDULE 2

COMMITMENTS

Lender	Commitment Amount	Percentage
CNL DIP Recovery Acquisition, LLC	\$32,500,000	50%
Five Mile Capital II Equity Pooling LLC	\$32,500,000	50%
Total:	\$65,000,000	100%

Exhibit A

SECURED, SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of March 21, 2011

\$65,000,000

among

THE BORROWERS LISTED ON SCHEDULE 1 HERETO,
as the Borrowers,

CERTAIN PARTIES LISTED HEREIN,
as the Lenders,

and

CNL DIP RECOVERY ACQUISITION, LLC and FIVE MILE CAPITAL II CNL DIP
ADMINISTRATIVE AGENT LLC,
as the Agent

Exhibit B

Form of Amendment Approval Order

[see attached]

Exhibit C

Form of Amended and Restated Notes

[see attached]

EXHIBIT B

Pitts Declaration

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

Counsel to the Debtors and Debtors in Possession

**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
)	

**DECLARATION OF DEREK PITTS
IN SUPPORT OF THE MOTION OF MSR RESORT
GOLF COURSE LLC, ET AL., FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO OBTAIN FURTHER EXPANDED POSTPETITION FINANCING**

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.

I, Derek Pitts, declare as follows:

1. I am a Managing Director of Houlihan Lokey Capital, Inc. (“Houlihan”), a financial advisory and investment banking firm with offices around the world and financial advisor and investment banker to the above-captioned debtors and debtors in possession (collectively, the “Debtors”). I submit this declaration (this “Declaration”) in support of the *Motion of MSR Resort Golf Course LLC, et al., for Entry of an Order Authorizing the Debtors to Obtain Further Expanded Postpetition Financing* (the “Motion”).²

2. Except where specifically noted, the statements in this Declaration are based on either my personal knowledge, information supplied or verified by the Houlihan financial team that I supervise, or the Debtors’ personnel and third-party advisors, my review of relevant documents, or my opinion based upon my experience and knowledge of the Debtors’ operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Declaration on behalf of the Debtors.

Qualifications

3. Houlihan is a financial advisory and investment banking firm with its principal office located at 10250 Constellation Boulevard, Los Angeles, CA 90067. Houlihan is a registered broker-dealer with the United States Securities and Exchange Commission and is a member of the Financial Industry Regulatory Authority and the Securities Investor Protection Corporation. Houlihan was founded in 1970 and, together with its subsidiaries, has approximately 800 employees located in 14 offices worldwide. Houlihan has one of the largest worldwide financial restructuring practices of any investment bank. Houlihan’s Financial Restructuring Group, which has more than 150 professionals, is one of the leading advisors and

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

investment bankers to debtors, secured and unsecured creditors, acquirers, and other parties-in-interest involved in financially troubled companies both in and outside of bankruptcy. In particular, Houlihan has extensive experience in providing advisory services to debtors and creditors in complex real estate related restructurings.

4. I have extensive experience in financial restructurings and distressed mergers and acquisitions, raising capital for troubled businesses, and representing debtors and creditor constituencies in bankruptcy proceedings. Before joining Houlihan Lokey, I was Director of Finance at Marcam Solutions, Inc. and Marcam Corporation, and served as an Associate Consultant at New England Mutual Life Insurance. I received a B.S. in Finance and Management from Northeastern University and an MBA from the Darden School of Business at the University of Virginia. I am Series 7 and 63 NASD/FINRA certified.

I. The Existing DIP Facility.

5. In March 2011, the Debtors obtained authority to enter into a \$30 million secured postpetition credit facility. In January 2012, the Court approved an amendment to the DIP Credit Agreement whereby the DIP Lenders agreed to extend the DIP facility's maturity from March 2012 until June 30, 2012 and expand the DIP Facility by \$15 million, increasing the total size to \$45 million. Currently, the Debtors have fully drawn the \$45 million Existing DIP Facility.

II. The Debtors' Need for the Expanded DIP Facility.

6. I believe that the \$45 million Existing DIP Facility will be insufficient to support the Debtors' financing needs for the duration of these chapter 11 cases. I further believe that, at this time, the Debtors require an additional \$20 million—bringing the total Expanded DIP Facility commitment to \$65 million—to continue the operation of their business without disruption and maximize the value of their estates. I believe that, to reach the conclusion of

these chapter 11 cases, the Debtors will require additional debtor-in-possession financing beyond the \$65 million Expanded DIP Facility. I understand, however, that the Debtors expect to seek approval of such additional financing at a later date after the Debtors file a plan of reorganization.

7. I understand that the Debtors will use the proceeds from the Expanded DIP Facility to continue satisfying obligations under their asset management agreement and other portfolio-level expenses, undertaking capital expenditures, administering these chapter 11 cases, and otherwise satisfying their working capital and operational needs, all of which are required to preserve and maintain the Debtors' enterprise value for the benefit of all parties in interest. I believe that, absent the proceeds contemplated by the Expanded DIP Facility, the Debtors' net operating income during the term of the Expanded DIP Facility will be insufficient to satisfy remaining obligations such as critical capital expenditures projects, restructuring costs (including the payment of the Marriott rejection damages), and certain other portfolio-related expenses.

8. The Debtors, together with Houlihan and their other advisors, have determined that the Debtors' projected financing needs for the coming months support the size and term of the proposed Expanded DIP Facility. The Debtors and their advisors have analyzed the complicated assets that comprise the Debtors' multiplicity of businesses (including the Debtors' resorts, golf clubs, retail, land holdings, real estate brokerage and asset management businesses) to ensure that the value of the Debtors' assets is being maximized. To that end, the Debtors have continued to advance their remaining restructuring initiatives toward completion. I believe that access to the funds from the Expanded DIP Facility is appropriate given the Debtors' need to satisfy important obligations and continue progress toward the development and filing of a plan of reorganization. I believe that, in light of the duration of these chapter 11 cases extending

beyond the current maturity date of June 30, 2012, more debtor-in-possession financing is necessary under any set of circumstances. And, I understand that because the summer season constitutes the Resorts' regular seasonal decline in operating revenue, the Debtors require a substantial portion of the Expanded DIP Facility to supply liquidity in the near-term.

9. As described in the motions requesting approval of the Existing DIP Facility, the Debtors identified and solicited offers from more than 20 potential lenders of the Debtors' postpetition debtor-in-possession financing. Notwithstanding these efforts, the Debtors were simply unable to obtain sufficient, or any, postpetition financing in the form of unsecured credit or as an administrative expense. Given the Debtors' significant secured debt and lack of material unencumbered assets, potential lenders were and remain unwilling to offer postpetition financing on any terms other than on a secured and superpriority basis.

10. I believe that the Commitment Fees that the Debtors have agreed to pay to the DIP Lenders and other obligations under the Expanded DIP Facility represent the most favorable terms to the Debtors on which the DIP Lenders would agree to make the Expanded DIP Facility available. I understand that the Commitment Fees of 1% on the Expanded DIP Facility are below-market, particularly for a debtor-in-possession loan with junior security. With respect to the Expanded DIP Facility, the 1% commitment fee applies only to the \$20 million expanded portion of the facility in excess of the existing \$45 million commitment.

11. In addition, I understand that the Expanded DIP Facility does not include provisions requiring the payment of a fee upon repayment or termination even though such fees are typical for facilities of this type. Outstanding amounts on the Expanded DIP Facility accrue at an interest rate of LIBOR plus 300 basis points, which I understand to be well below the prevailing market rate for these types of debtor-in-possession loans. I believe that, considering

the fees, the Expanded DIP Facility constitutes the best terms on which the Debtors may obtain the postpetition financing necessary to continue the operation of their business without disruption, satisfy obligations under their asset management agreement, undertake capital expenditures, administer these chapter 11 cases, and otherwise satisfy their working capital and operational needs. I believe that paying these fees to obtain the Expanded DIP Facility is in the best interests of the Debtors' estates, creditors, and other parties in interest.

[Remainder of page intentionally left blank.]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 12, 2012

Respectfully submitted,

/s/ Derek Pitts

Derek Pitts
Managing Director
Houlihan Lokey Capital, Inc.