

**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

**ORDER APPROVING RELEASE AND SETTLEMENT
AGREEMENT WITH MILLER BUCKFIRE & CO., LLC**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (a) approving the terms of the Settlement Agreement attached as **Exhibit 1** hereto and (b) authorizing the Debtors to perform any and all obligations contemplated in the Settlement Agreement, all as more fully set forth in the Motion; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court

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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



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having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to Bankruptcy Rule 9019 and sections 363 of the Bankruptcy Code, the Settlement Agreement is authorized and approved in its entirety.
3. Miller Buckfire shall be entitled to a \$4,000,000 allowed, general unsecured claim that shall be allocated amongst one or more of the Debtors that are listed on Exhibit D of the Settlement Agreement pursuant to further orders of the Bankruptcy Court entered in connection with the confirmation process for a plan of reorganization in these chapter 11 cases (collectively, the "Settlement Claim"). Except as otherwise provided for in paragraph 4 of this Order, the Settlement Claim as allocable against a Debtor shall be treated in the same manner as other allowed, general unsecured claims in that Debtor's chapter 11 case. Accordingly, the aggregate percentage recovery of Miller Buckfire on account of the Settlement Claim as allocable against a particular Debtor (calculated by dividing the sum of (i) the amount of the Settlement Payment (as defined herein) allocable against such Debtor and (ii) the amount of other distributions received by Miller Buckfire on account of its Settlement Claim as allocable against such Debtor by the amount of the Settlement Claim allocable against such Debtor) shall not exceed the percentage recovery of other holders of general unsecured claims against that Debtor. In no event shall

Miller Buckfire be entitled to receive from the Debtors (collectively) an aggregate distribution in excess of \$4,000,000 of value on account of the Settlement Claim; provided that Miller Buckfire reserves all rights with respect to its potential entitlement to postpetition interest on the Settlement Claim.

4. Notwithstanding anything contained in this order or the Settlement Agreement to the contrary, the rights of all parties in interest in these chapter 11 cases to object to the allocation of any portion of the settlement claim against any Debtor are unaffected hereby and hereby reserved.

5. As partial satisfaction of the Settlement Claim, the Debtors shall pay to Miller Buckfire, by wire transfer in immediately available funds pursuant to the wiring instructions attached to the Settlement Agreement as Exhibit E, the amount of \$2,000,000 payable within seven days of the date this Order becomes final and not subject to further appeal (the foregoing amount is referred to herein as the “Settlement Payment”).

6. The Debtors are authorized to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and perform any and all obligations contemplated in the Settlement Agreement and this Order.

7. Notwithstanding Bankruptcy Rules 6004(a) and 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: **August 17, 2011**
New York, New York

/s/ *Sean H. Lane*

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Settlement Agreement

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (this "Settlement Agreement") is made and entered into as of the 26th day of July, 2011 by and between Miller Buckfire & Co., LLC ("Miller Buckfire") and MSR Resort Golf Course LLC and certain of its affiliates listed on Exhibit A (collectively, the "Debtors").

RECITALS

A. On February 1, 2011, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United State Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and 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;

B. Miller Buckfire provided certain services under a letter agreement dated June 14, 2010 as amended and restated on September 10, 2010 and attached hereto as Exhibit B (the "Letter Agreement");

C. Miller Buckfire and MS Resorts III LLC ("MSR") and certain of MSR's non-Debtor affiliates listed on Exhibit C (the "3-Pack Entities") are currently negotiating terms of a separate Release and Settlement Agreement (the "3-Pack Settlement") pursuant to which MSR and certain of MSR's non-Debtor affiliates will be released from all liability under the Letter Agreement in exchange for the consideration specified in the 3-Pack Settlement; and

D. In connection with the foregoing, Miller Buckfire and the Debtors have agreed to enter into this Settlement Agreement pursuant to which the parties identified herein will be released (on the conditions set forth herein) from all obligations and liabilities and will surrender certain rights under the Letter Agreement, all as more particularly set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration set forth herein, Miller Buckfire and the Debtors hereby covenant and agree as follows:

1. Recitals. The recitals set forth above are true and accurate and are incorporated herein by this reference.

2. Bankruptcy Court Approval. Notwithstanding anything to the contrary herein, the Debtors' obligations with respect to this Settlement Agreement shall be subject to the approval of the Bankruptcy Court and this Settlement Agreement shall not be effective until the date that a Bankruptcy Court order approving this Settlement Agreement has become final and not subject to further appeal (the "Effective Date"). If the Effective Date does not occur, this Settlement Agreement shall be null and void in all respects and nothing contained in this Settlement Agreement shall: (a) constitute a waiver or release of any claims by or claims against the

Debtors; (b) prejudice in any manner the rights of the Debtors, Miller Buckfire, or any other entity with respect to the Letter Agreement; or (c) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, Miller Buckfire, or any other entity in any respect.

3. Settlement.

- a. Settlement Claim. Miller Buckfire shall be entitled to a \$4,000,000 allowed, general unsecured claim that shall be allocated amongst one or more of the Debtors that are listed on Exhibit D pursuant to further orders of the Bankruptcy Court entered in connection with the confirmation process for a plan of reorganization in these chapter 11 cases (collectively, the “Settlement Claim”). Except as otherwise provided for in section 3.b hereof, the Settlement Claim as allocable against a Debtor shall be treated in the same manner as other allowed, general unsecured claims in that Debtor’s chapter 11 case. Accordingly, the aggregate percentage recovery of Miller Buckfire on account of the Settlement Claim as allocable against a particular Debtor (calculated by dividing the sum of (i) the amount of the Settlement Payment allocable against such Debtor and (ii) the amount of other distributions received by Miller Buckfire on account of its Settlement Claim as allocable against such Debtor by the amount of the Settlement Claim allocable against such Debtor) shall not exceed the percentage recovery of other holders of general unsecured claims against that Debtor. In no event shall Miller Buckfire be entitled to receive from the Debtors (collectively) an aggregate distribution in excess of \$4,000,000 of value on account of the Settlement Claim; provided that Miller Buckfire reserves all rights with respect to its potential entitlement to postpetition interest on the Settlement Claim.
- b. Settlement Payment. As partial satisfaction of the Settlement Claim, the Debtors shall pay to Miller Buckfire, by wire transfer in immediately available funds pursuant to the wiring instructions attached hereto as Exhibit E, the amount of \$2,000,000 payable within seven days of the Effective Date on account of the Settlement Claim (the foregoing amount is referred to herein as the “Settlement Payment”).

4. Miller Buckfire Release and Covenant Not To Sue. Effective on the date by which the Settlement Payment has actually been paid to Miller Buckfire and the Settlement Claims have been finally allowed in favor of Miller Buckfire, Miller Buckfire hereby covenants and agrees as follows:

- a. Miller Buckfire, for itself and on behalf of all of its affiliates, heirs, beneficiaries, devisees, executors, administrators, attorneys, personal representatives, successors and assigns, members, general and limited partners, shareholders, directors, officers, employees, owners, attorneys, and other agents and representatives of such entities (collectively, the “Miller Buckfire Released Parties”), hereby fully, finally and forever releases, discharges and covenants not to sue the Debtors which are a

party to the Letter Agreement and all of the past and present directors, officers, shareholders, members, general or limited partners, employees, owners, attorneys, and other agents and representatives of any of the foregoing released entities (but not including MSR and the 3-Pack Entities) (all persons and entities who are released hereunder being hereafter referred to collectively as the “Five-Pack Released Parties”) to the maximum extent permitted by law, from or for any and all claims, demands, any violations of law, whether federal, state, local, statutory, foreign, common law, or any other law, rule or regulation, any and all other obligations, suits, judgments, damages, debts, rights, remedies, causes of action, and liabilities of any nature whatsoever (including, without limitation, attorneys’, accountants’, consultants’ and expert witness’ fees and expenses), whether liquidated or unliquidated, fixed or contingent, accrued or un-accrued, matured or unmatured, known or unknown, suspected or unsuspected (including, without limitation, any and all of the foregoing which any Miller Buckfire Released Party does not know or suspect to exist as of the date hereof, which if known by a Miller Buckfire Released Party might have affected such Miller Buckfire Released Party’s release of a Five-Pack Released Party), foreseen or unforeseen, now existing or hereafter arising, in law, equity, or otherwise that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the date hereof, which any Miller Buckfire Released Party may have or which may hereafter be asserted or accrue against any Five-Pack Released Party or Five-Pack Released Parties, in each case, directly or indirectly related to, in connection with or arising out of the Letter Agreement (collectively, the “Five-Pack Released Claims”). Miller Buckfire, on behalf of itself and each Miller Buckfire Released Party, hereby covenants that each Miller Buckfire Released Party shall not and will not assert any Five-Pack Released Claims in a court of law, governmental tribunal, regulatory proceeding or otherwise against any of the Five-Pack Released Parties or any one of them now or in the future.

- b. Miller Buckfire, on its own behalf and on behalf of all of the members, officers and managers of Miller Buckfire, agree that they may not and will not take any action or make any statements, oral or written, that would disparage, damage or defame the goodwill, reputation, image, or commercial interest of the Five-Pack Released Parties or any of their employees or affiliates, in each case with respect to the Five-Pack Released Claims.

5. Termination of Letter Agreement. The parties hereto acknowledge and agree that, effective on the date by which the Settlement Payment has actually been paid to Miller Buckfire and the Settlement Claims have been finally allowed in favor of Miller Buckfire, the Letter Agreement shall be terminated and of no further force or effect as to the Five-Pack Released Parties, and no Five-Pack Released Party shall have any obligation whatsoever with respect thereto, including, without limitation, with respect to any obligation which survives termination.

6. Limitation of Paragraphs 4 and 5. For the avoidance of doubt, nothing in paragraphs 4 or 5 shall be interpreted as limiting in any way Miller Buckfire's enforcement of its rights under the 3-Pack Settlement, and none of the provisions set forth in paragraphs 4 and 5 shall release any party to the 3-Pack Settlement from its obligations thereunder.

7. Debtors' Release and Covenant Not to Sue. Effective upon the effectiveness of the releases and termination set forth in paragraphs 3 and 4, the Debtors hereby covenant and agree as follows:

- a. the Debtors, for themselves and on behalf of all other Five-Pack Released Parties, hereby fully, finally and forever release, discharge and covenant not to sue any of the Miller Buckfire Released Parties to the maximum extent permitted by law, from or for any and all claims, demands, any violations of law, whether federal, state, local, statutory, foreign, common law, or any other law, rule or regulation, any and all other obligations, suits, judgments, damages, debts, rights, remedies, causes of action, and liabilities of any nature whatsoever (including, without limitation, attorneys', accountants', consultants' and expert witness' fees and expenses), whether liquidated or unliquidated, fixed or contingent, accrued or un-accrued, matured or unmatured, known or unknown, suspected or unsuspected (including, without limitation, any and all of the foregoing which any Five-Pack Released Party does not know or suspect to exist as of the date hereof, which if known by a Five-Pack Released Party might have affected such Five-Pack Released Party's release of a Miller Buckfire Released Party), foreseen or unforeseen, now existing or hereafter arising, in law, equity, or otherwise that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the date hereof, which any Five-Pack Released Party may have or which may hereafter be asserted or accrue against any Miller Buckfire Released Party or Miller Buckfire Released Parties, in each case, directly or indirectly related to, in connection with or arising out of the Letter Agreement (collectively "Miller Buckfire Released Claims"). The Debtors, on behalf of themselves and each Five-Pack Released Party, hereby covenant that each Five-Pack Released Party shall not and will not assert any Miller Buckfire Released Claims in a court of law, governmental tribunal, regulatory proceeding or otherwise against any of the Miller Buckfire Released Parties or any one of them now or in the future.
- b. The Debtors, on their own behalf and on behalf of each Five-Pack Released Party and all of the respective members, officers and managers of each Five-Pack Released Party, agree that the Five-Pack Released Parties may not and will not take any action or make any statements, oral or written, that would disparage, damage or defame the goodwill, reputation, image, or commercial interest of the Miller Buckfire Released Parties or any of their employees or affiliates, in each case with respect to the Miller Buckfire Released Claims.

8. Entire Agreement; Amendment. Except as set forth in the 3-Pack Settlement, this Settlement Agreement contains the entire agreement between the parties with regard to the matters herein set forth. With respect to the matters herein set forth, no promise, statement or representation, except those contained in this Settlement Agreement, has been relied upon by any of the parties. This Settlement Agreement may be amended only by an agreement in writing executed by the parties hereto and subject to the approval of the Bankruptcy Court.

9. Warranty as to Ownership of Claims and Right to Enter Agreement. Miller Buckfire and the Debtors each hereby warrant that it is the owner of the claims released by it herein and has not assigned the same to any other entity or person and is in all ways qualified to enter into this Settlement Agreement and to make the releases set and other covenants set forth herein on behalf of the parties named herein.

10. Notices. All communications, notices or demands provided for hereunder or under any other document to which Miller Buckfire is a party shall be sent by first class mail, by courier, by hand, by certified mail, or by overnight delivery by a nationally recognized courier as follows:

To Miller Buckfire:

Harold Neu, Esq.
Miller Buckfire & Co. LLC
601 Lexington Avenue
22d Floor
New York, NY 10022

With a copy to:

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attn: Michael E. Wiles

To the Debtors:

MSR Resort Golf Course LLC
c/o CNL-AB LLC,
1251 Avenue of the Americas
New York, NY 10020

With a copy to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Paul M. Basta, Edward O. Sassower, and Chad J. Husnick

Except as otherwise specifically set forth herein, each such communication, notice or demand shall be given when actually delivered to the appropriate address if sent by courier or by hand.

11. Binding Effects and Applicable Law. This Settlement Agreement shall be construed under and governed by the laws of the state of New York without regard to its choice of law rules, and shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns. Each of the parties agrees that the sole and exclusive forum and venue for any action or proceeding seeking enforcement of this Settlement Agreement shall be the federal or state courts in New York, New York, including (to the extent it retains jurisdiction) the Bankruptcy Court.

12. Severability. Should any portion or provision of this Settlement Agreement be found void or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and the court should enforce all portions and provisions of this Settlement Agreement to the maximum extent the same would have been enforceable in the original Settlement Agreement.

13. Breach. In the event of any breach of this Settlement Agreement by any party hereto, the prevailing party shall be entitled to the recovery of attorneys' fees, costs and expenses incurred in any action to enforce this Settlement Agreement, whether at trial or on appeal.

14. Counterparts. This Settlement Agreement may be executed in separate counterparts, each of which when taken together shall constitute one and the same instrument. Facsimile or electronic signatures delivered by the parties hereto shall be deemed originals.

EXECUTION VERSION

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on the date set forth above in a manner so as to be binding.

MILLER BUCKFIRE & CO., LLC

By: 

Name: Harold Neu

Title: General Counsel

MSR Resorts Golf Course, LLC (for itself and each of the other Debtors)

By: _____

Name: _____

Title: _____

EXECUTION VERSION

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on the date set forth above in a manner so as to be binding.

MILLER BUCKFIRE & CO., LLC

By: _____
Name:
Title:

MSR Resorts Golf Course, LLC (for itself and each of the other Debtors)

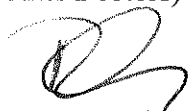
By:  _____
Name: *Dan Kamenisky*
Title: *Authorized Signatory*

EXHIBIT A

Debtors

MSR Resort Golf Course LLC
MSR Biltmore Resort, LP
MSR Claremont Resort, LP
MSR Desert Resort, LP
MSR Grand Wailea Resort, LP
MSR Resort Ancillary Tenant, LLC
MSR Resort Biltmore Real Estate, Inc.
MSR Resort Desert Real Estate, Inc.
MSR Resort Hotel, LP
MSR Resort Intermediate Mezz GP, LLC
MSR Resort Intermediate Mezz LLC
MSR Resort Intermediate Mezz, LP
MSR Resort Intermediate MREP, LLC
MSR Resort Lodging Tenant, LLC
MSR Resort REP, LLC
MSR Resort Senior Mezz GP, LLC
MSR Resort Senior Mezz LLC
MSR Resort Senior Mezz, LP
MSR Resort Senior MREP, LLC
MSR Resort Silver Properties, LP
MSR Resort SPE GP II LLC
MSR Resort SPE GP LLC
MSR Resort Sub Intermediate Mezz GP, LLC
MSR Resort Sub Intermediate Mezz LLC
MSR Resort Sub Intermediate Mezz, LP
MSR Resort Sub Intermediate MREP, LLC
MSR Resort Sub Senior Mezz GP, LLC
MSR Resort Sub Senior Mezz LLC
MSR Resort Sub Senior Mezz, LP
MSR Resort Sub Senior MREP, LLC

EXHIBIT B

Letter Agreement

Miller Buckfire & Co., LLC
153 East 53rd Street, 22nd Floor
New York, New York 10022
www.millerbuckfire.com

June 14, 2010
As amended and restated on September 10, 2010

MS Resort Holdings LLC
1585 Broadway
New York, NY 10036

Attention: Michael Franco
Richard Kelleher

Dear Messrs. Franco and Kelleher:

This letter agreement confirms the terms under which MS Resort Holdings LLC (the "Company") has engaged Miller Buckfire & Co., LLC ("Miller Buckfire") as a financial advisor and investment banker with respect to a possible Amendment, Restructuring, Financing and/or Sale (each as defined below) and with respect to such other financial matters as to which the Company and Miller Buckfire may agree in writing during the term of this engagement. For purposes hereof, the term "Company" includes subsidiaries of the Company and any entity that the Company or its affiliates may form or invest in to consummate an Amendment, Restructuring, Financing and/or Sale, and shall also include any successor to or assignee of all or a portion of the assets and/or businesses of the Company whether pursuant to a Plan (as defined below) or otherwise.¹ If appropriate in connection with performing its services for the Company hereunder, Miller Buckfire may utilize the services of one or more of its affiliates, subject to Company consent, not to be unreasonably withheld, in which case references herein to Miller Buckfire shall include such affiliates.

¹ For purposes of this agreement, the term "5-Pack" refers to the following entities: MSR Resort Hotel, LP, MSR Resort Silver Properties, LP, MSR Grand Wailea Resort, LP, MSR Claremont Resort, LP, MSR Biltmore Resort, LP and MSR Desert Resort, LP, and the term "3-Pack" shall refer to the following entities: Desert Ridge Resort, LLC, MSR GL Resort, LP, DRR Tenant Corporation and MSR GL Resort Tenant LLC.

1. Miller Buckfire, as financial advisor and investment banker to the Company, will perform the following financial advisory and investment banking services:

a. General Financial Advisory and Investment Banking Services. Miller Buckfire will:

- i. to the extent it deems necessary, appropriate and feasible, familiarize itself with the business, operations, properties, financial condition and prospects of the Company; and
 - ii. if the Company determines to undertake an Amendment, Restructuring, Financing and/or Sale advise and assist the Company in structuring and effecting the financial aspects of such a transaction or transactions, subject to the terms and conditions of this agreement.
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b. Amendment Services. If the Company pursues an Amendment, Miller Buckfire will:

- i. provide financial advice and assistance to the Company in developing, structuring and seeking approval for an Amendment; and
- ii. if requested by the Company, assist the Company and/or participate in negotiations with entities or groups affected by the Amendment.

For purposes of this agreement, the term "Amendment" shall mean any amendment and/or modification to the terms, conditions or covenants of the Company's 5-Pack mortgage debt, but excluding any amendment and/or modification of the terms, conditions or covenants of the 5-Pack mezzanine debt, any indebtedness associated with the 3-Pack, corporate level mezzanine indebtedness and/or preferred equity of the Company.

c. Restructuring Services. If the Company pursues a Restructuring, Miller Buckfire will:

- i. provide financial advice and assistance to the Company in developing and seeking approval of a Restructuring plan (as the same may be modified from time to time, a "Plan"), which may be a plan under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code");

- ii. if requested by the Company, in connection therewith, provide financial advice and assistance to the Company in structuring any new securities to be issued under the Plan;
 - iii. if requested by the Company, assist the Company and/or participate in negotiations with entities or groups affected by the Plan;
 - iv. provide financial advice and assistance to the Company in structuring and effecting a financing, identify potential investors and, at the Company's request, contact such investors;
 - v. if requested by the Company, assist the Company and/or participate in negotiations with potential investors in respect of such financing; and
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- vi. if requested by the Company, participate in hearings before the bankruptcy court with respect to the matters upon which Miller Buckfire has provided advice, including, as relevant, coordinating with the Company's counsel with respect to testimony in connection therewith.

For purposes of this agreement, the term "Restructuring" shall mean any recapitalization or restructuring (including, without limitation, through any exchange, conversion, cancellation, forgiveness, retirement, refinancing, purchase or repurchase and/or a material modification or amendment to the terms, conditions or covenants thereof) of the Company's preferred equity and/or debt obligations or securities and/or other indebtedness, obligations or liabilities (including preferred stock, unfunded pension and retiree medical liabilities, partnership interests, lease obligations, trade credit facilities and/or contract or tort obligations), including pursuant to a repurchase or an exchange transaction, a Plan or a solicitation of consents, waivers, acceptances or authorizations.

It is understood and agreed that nothing contained herein shall constitute an expressed or implied commitment by Miller Buckfire to act in any capacity or to underwrite, place or purchase any financing or securities, which commitment shall only be set forth in a separate underwriting, placement agency or other appropriate agreement relating to the Financing.

- d. Sale Services. If the Company pursues a Sale, Miller Buckfire will:

- i. provide financial advice and assistance to the Company in connection with a Sale, identify potential acquirors and, at the Company's request, contact such potential acquirors;
 - ii. at the Company's request, assist the Company in preparing a memorandum (with any amendments or supplements thereto, the "Sale Memorandum") to be used in soliciting potential acquirors, it being agreed that (A) the Sale Memorandum shall be based entirely upon information supplied by the Company, (B) the Company shall be solely responsible for the accuracy and completeness of the Sale Memorandum, and (C) other than as contemplated by this subparagraph (d)(ii), the Sale Memorandum shall not be used, reproduced, disseminated, quoted or referred to at any time in any way, except with Miller Buckfire's prior written consent; and
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- iii. if requested by the Company, assist the Company and/or participate in negotiations with potential acquirors.

For purposes of this agreement, the term "Sale" shall mean the disposition to one or more third parties in one or a series of related transactions of (x) all or a significant portion of the equity securities of the Company by the security holders of the Company or (y) all or a significant portion of the assets (including the assignment of any executory contracts) or businesses of the Company or its subsidiaries, in either case, including through a sale or exchange of capital stock, options or assets, a lease of assets with or without a purchase option, a merger, consolidation or other business combination, an exchange or tender offer, a recapitalization, the formation of a joint venture, partnership or similar entity, or any similar transaction.

Marc Puntus will personally lead and manage this engagement on behalf of Miller Buckfire. In case Marc Puntus is no longer working at Miller Buckfire or becomes incapacitated for any reason, another Miller Buckfire Managing Director will assume such role.

In rendering its services to the Company hereunder, Miller Buckfire is not assuming any responsibility for the Company's underlying business decision to pursue or not to pursue any business strategy or to effect or not to effect any Amendment, Restructuring, Financing, and/or Sale or other transaction. The Company agrees that Miller Buckfire shall not have any obligation or responsibility to provide accounting, audit, "crisis management," or business consultant services for the Company and shall have no responsibility for designing or implementing operating, organizational, administrative, cash management or liquidity improvements, or to provide any fairness or valuation

opinions or any advice or opinions with respect to solvency in connection with any transaction. The Company confirms that it will rely on its own counsel, accountants and similar expert advisors for legal, accounting, tax and other similar advice.

In order to coordinate effectively the Company's and Miller Buckfire's activities to effect an Amendment, Restructuring, Financing or Sale, the Company will promptly inform Miller Buckfire of any discussions, negotiations or inquiries regarding a possible Amendment, Restructuring, Financing or Sale (including any such discussions, negotiations or inquiries that have occurred in the six month period prior to the date of this agreement).

The Company shall make available to Miller Buckfire all information concerning the business, assets, operations, financial condition and prospects of the Company that Miller Buckfire reasonably requests in connection with the services to be performed for the Company hereunder and shall provide Miller Buckfire with reasonable access to the Company's officers, directors, employees, independent accountants and other advisors and agents as Miller Buckfire shall deem appropriate. The Company represents that all information furnished by it or on its behalf to Miller Buckfire (including information contained in any Sale Memorandum) will be accurate and complete in all material respects. The Company recognizes and confirms that in advising the Company and completing its engagement hereunder, Miller Buckfire will be using and relying on publicly available information and on data, material and other information furnished to Miller Buckfire by the Company and other parties. It is understood that in performing under this engagement Miller Buckfire may assume and rely upon the accuracy and completeness of, and is not assuming any responsibility for independent verification of, such publicly available information and the other information so furnished.

2. Miller Buckfire's compensation for services rendered under this agreement will consist of the following cash fees:

- a. A monthly financial advisory fee of \$150,000 (the "Monthly Advisory Fee"), which shall be due and paid by the Company upon execution of this agreement and thereafter on the 14th day of each month during the term of this engagement.
- b. If at any time during the term of this engagement or within the twelve (12) months following the termination of this engagement (including the term of this engagement, the "Fee Period"), the Company executes and delivers an Amendment with respect to the 5-Pack mortgage debt and/or commercial mortgage backed certificates, an amendment fee of \$1,500,000 (the "Amendment Fee") shall be due and paid by the Company

upon execution and delivery thereof, provided that any Amendment Fee paid shall be fully credited against any Transaction Fee (as defined below).

- c. If at any time during the Fee Period, a Restructuring, Sale or any combination thereof (a "Transaction") is consummated or (y)(1) an agreement in principle, definitive agreement or Plan to effect a Transaction is entered into and (2) concurrently therewith or at any time thereafter (including following the expiration of the Fee Period), any Transaction is consummated, Miller Buckfire shall be entitled to receive a transaction fee (a "Transaction Fee"), contingent upon the consummation of a Transaction and payable at the closing thereof, equal to:
- i. in the case of a Transaction involving the Sale of the 5-Pack entities or the Restructuring of the indebtedness associated with the 5-Pack, corporate level mezzanine indebtedness and/or preferred and common equity of the Company, but not involving indebtedness associated with the 3-Pack, \$8,000,000; or
 - ii. in the case of a Transaction involving the Sale of the 5-Pack entities or the Restructuring of the indebtedness associated with the 5-Pack, corporate level mezzanine indebtedness and/or preferred and common equity of the Company, and the receipt of requisite consents to waive a change of control on the 3-Pack indebtedness as a result of such a Transaction, but without other changes to the terms and conditions of the 3-Pack indebtedness, \$9,000,000; or
 - iii. in the case of a Transaction involving the Sale of substantially all of the Company or the Restructuring of the indebtedness associated with the 5-Pack and 3-Pack, corporate level mezzanine indebtedness and/or preferred and common equity of the Company, \$10,000,000.

Notwithstanding anything to the contrary in this agreement, in connection with any Transaction that is intended to be effected, in whole or in part, as a prepackaged, partial prepackaged or prearranged plan of reorganization anticipated to involve the solicitation of acceptances of such plan in compliance with the Bankruptcy Code, by or on behalf of the Company, from holders of any class of the Company's securities, indebtedness or obligations (a "Prepackaged Plan") the Transaction Fee shall be payable (x) (i) in the case of a Prepackaged Plan that takes the form of prepackaged or partial prepackaged plan or reorganization, 50% upon receipt of votes from the Company's creditors necessary to confirm such Prepackaged Plan or (ii) in the case of a Prepackaged Plan that takes the form of a prearranged plan of reorganization, 50% upon

obtaining indications of support from the Company's creditors that in the good faith judgment of the Board of Directors of the Company are sufficient to justify filing such Prepackaged Plan, and (y) the balance shall be payable upon consummation of such Transaction.

Each party hereto acknowledges and agrees that Miller Buckfire's restructuring expertise as well as its capital markets knowledge, financing skills and mergers and acquisitions capabilities, some or all of which may be required during the term of Miller Buckfire's engagement hereunder, were important factors in determining the amount of the various fees set forth herein, and that the ultimate benefit of Miller Buckfire's services hereunder could not be measured merely by reference to the number of hours to be expended by Miller Buckfire's professionals in the performance of such services. Each party hereto also acknowledges and agrees that the various fees set forth herein have been agreed upon by the parties in anticipation that a substantial commitment of professional time and effort will be required of Miller Buckfire and that the actual time and commitment required of Miller Buckfire and its professionals to perform its services hereunder may vary substantially from week to week or month to month, creating "peak load" issues for the firm. In addition, given the numerous issues with Miller Buckfire's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for Miller Buckfire's services for engagements of this nature in an out-of-court context, each party hereto agrees that the fee and expense arrangements hereunder are reasonable under all applicable legal standards.

3. In addition to any fees payable by the Company to Miller Buckfire hereunder, the Company shall, whether or not any transaction contemplated by this agreement shall be proposed or consummated, reimburse Miller Buckfire on a monthly basis for its travel and other reasonable out-of-pocket expenses incurred in connection with, or arising out of Miller Buckfire's activities under or contemplated by this engagement or in the enforcement of Miller Buckfire's rights hereunder, including all fees, disbursements and other charges of counsel to be retained by Miller Buckfire (without the requirement that the retention of such counsel be approved by the Bankruptcy Court) and of other consultants and advisors retained by Miller Buckfire with the Company's consent. The Company shall also reimburse Miller Buckfire, at such times as Miller Buckfire shall request, for any sales, use or similar taxes (including additions to such taxes, if any) arising in connection with any matter referred to or contemplated by, this engagement. Such reimbursements shall be made promptly upon submission by Miller Buckfire of statements for such expenses.
4. The Company agrees to indemnify Miller Buckfire and certain related persons in accordance with the indemnification provisions ("Indemnification Provisions")

attached to this agreement. Such Indemnification Provisions are an integral part of this agreement, and the terms thereof are incorporated by reference herein. Such Indemnification Provisions shall survive any termination or completion of Miller Buckfire's engagement hereunder.

5. The Company agrees that none of Miller Buckfire, its affiliates or their respective directors, officers, members, managers, agents, employees and controlling persons, or any of their respective successors or assigns ("Covered Persons") shall have any liability to the Company or any person asserting claims on behalf of the Company or in the Company's right for or in connection with this engagement or any transactions or conduct in connection therewith except for losses, claims, damages, liabilities or expenses incurred by the Company which are finally judicially determined to have resulted primarily from the gross negligence or willful misconduct of such Covered Person; provided, however, that in no event shall the Covered Persons' aggregate liability to the Company or any person asserting claims on behalf of the Company or in the Company's right exceed the fees Miller Buckfire actually receives from the Company pursuant to its engagement hereunder, unless there is a final judicial determination of willful misconduct specified in this sentence.
6. This agreement and Miller Buckfire's engagement hereunder may be terminated by either the Company or Miller Buckfire at any time, upon prior written notice thereof to the other party; provided, however, that (a) termination of Miller Buckfire's engagement hereunder shall not affect the Company's continuing obligation to indemnify Miller Buckfire and certain related persons as provided for in this agreement, and its continuing obligations and agreements under paragraphs 5 and 7 hereof, (b) notwithstanding any such termination, Miller Buckfire shall be entitled to the full fees in the amounts and at the times provided for in paragraph 2 hereof and (c) any termination of Miller Buckfire's engagement hereunder shall not affect the Company's obligation to reimburse expenses accruing prior to such termination to the extent provided in paragraph 3 hereof.
7. Miller Buckfire has been retained under this agreement as an independent contractor with no fiduciary or agency relationship to the Company or to any other party. The advice (oral or written) rendered by Miller Buckfire pursuant to this agreement is intended solely for the benefit and use of the management and the Board of Directors of the Company in considering the matters to which this agreement relates, and the Company agrees that such advice may not be relied upon by any other person or entity, used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner for any purpose, nor shall any public references to Miller Buckfire be made by the Company, without the prior written consent of Miller Buckfire.

8. The Company agrees that Miller Buckfire shall have the right, following consummation of any Amendment, Sale, Financing or Restructuring to place advertisements in financial and other newspapers and journals at its own expense describing its services to the Company hereunder; provided that Miller Buckfire will submit a copy of any such advertisement to the Company for its approval, which approval shall not be unreasonably withheld or delayed.
9. This agreement shall be deemed to be made in New York. This agreement and all controversies arising from or relating to performance of this agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to such state's rules concerning conflicts of laws that might provide for any other choice of law. The Company hereby irrevocably consents to personal jurisdiction in the Supreme Court of the State of New York in New York County, Commercial Part, or any Federal court sitting in the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this agreement or any of the agreements or transactions contemplated hereby, which is brought by or against the Company, hereby waives any objection to venue with respect thereto, and hereby agrees that all claims in respect of any such suit, action or proceeding shall be heard and determined in any such court, and that such courts shall have exclusive jurisdiction over any claims arising out of or relating to such agreements or transactions ; provided that in the event that the Company becomes a debtor under chapter 11 of the Bankruptcy Code, during any such case, any such claims may also be heard and determined in the Bankruptcy Court (as defined below). The Company hereby irrevocably consents to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Company at its address set forth above, such service to become effective ten (10) days after such mailing. ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM OR ACTION ARISING OUT OF THIS AGREEMENT OR CONDUCT IN CONNECTION WITH MILLER BUCKFIRE'S ENGAGEMENT IS HEREBY WAIVED.
10. This agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. This agreement shall be binding upon Miller Buckfire and the Company and their respective successors and assigns (including, in the case of the Company, any successor to all or a portion of the assets and/or the businesses of the Company under a Plan). This agreement is not intended to confer any rights upon any shareholder, creditor, owner or partner of the Company, or any other person or entity not a party hereto other than the indemnified persons referenced in the Indemnification Provisions contained herein and the Covered Persons referenced above. This agreement (including the Indemnification Provisions) embodies the entire agreement and understanding between the parties hereto and supersedes all

prior agreements and understandings relating to the subject matter hereof. If any provision of this agreement is determined to be invalid or unenforceable in any respect, such determination will not affect the agreement in any other respect, which will remain in full force and effect. No waiver, amendment or other modification of this agreement shall be effective unless in writing and signed by each party to be bound thereby.

11. The Company does not appear on the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control of the United States Department of the Treasury, nor is it a prohibited party according to other U.S. government regulatory or enforcement agencies.
12. The Company hereby acknowledges that affiliates of Miller Buckfire engage in the hedge fund and/or principal investment business, which affiliates are separated by ethical walls to prevent the improper sharing of client information. The Company hereby acknowledges and agrees that such affiliates may from time to time have a long or short position in, buy and sell or otherwise effect transactions for their own accounts or for the accounts of investment pools managed by them in the securities, loans or other obligations or instruments of the Company or those of other companies or entities so long as the personnel involved in performing such activities have not received access to the Company's confidential information from Miller Buckfire.
13. In the event that the Company becomes a debtor under chapter 11 of the Bankruptcy Code, the Company shall apply promptly to the bankruptcy court having jurisdiction over the chapter 11 case or cases (the "Bankruptcy Court") for the approval pursuant to sections 327(a) and 328(a) of the Bankruptcy Code of this agreement and Miller Buckfire's retention by the Company under the terms of this agreement, subject only to the standard of review provided for in Section 328(a) of the Bankruptcy Code, and not subject to the standard of review under section 330 of the Bankruptcy Code or any other standard of review, and shall use its best efforts to obtain Bankruptcy Court authorization thereof. The Company shall supply Miller Buckfire and its counsel with a draft of such application and the proposed order authorizing Miller Buckfire's retention that is proposed to be submitted to the Bankruptcy Court sufficiently in advance of the filing of such application or the submission of such order, as the case may be, to enable Miller Buckfire and its counsel to review and comment thereon. Miller Buckfire shall have no obligation to provide any services under this agreement in the event that the Company becomes a debtor under the Bankruptcy Code unless Miller Buckfire's retention under the terms of this agreement is approved under Section 328(a) of the Bankruptcy Code by a final order of the Bankruptcy Court no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which order is acceptable to Miller Buckfire in all respects. Miller Buckfire

acknowledges that in the event that the Bankruptcy Court approves its retention by the Company pursuant to the application process described in this paragraph 13, payment of Miller Buckfire's fees and expenses shall be subject to (i) the jurisdiction and approval of the Bankruptcy Court under Section 328(a) of the Bankruptcy Code and any order approving Miller Buckfire's retention, (ii) any applicable fee and expense guidelines and/or orders and (iii) any requirements governing interim and final fee applications. In the event that the Company becomes a debtor under the Bankruptcy Code and Miller Buckfire's engagement hereunder is approved by the Bankruptcy Court, the Company shall pay all fees and expenses of Miller Buckfire hereunder (including, without limitation, the fees and expenses of Miller Buckfire's counsel) as promptly as practicable in accordance with the terms hereof. Prior to commencing a chapter 11 case, the Company shall pay all undisputed amounts theretofore due and payable to Miller Buckfire in cash.

In any such chapter 11 case or cases, the Company agrees that Miller Buckfire's post-petition compensation as set forth herein and payments made pursuant to the expense reimbursement and indemnification provisions of this Agreement shall be entitled to priority as expenses of administration under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall further be entitled to the benefits of any "carve-outs" for professional fees and expenses (which carve-outs shall be adequate to enable the Company to pay promptly Miller Buckfire the compensation and expense reimbursement contemplated hereby taking into account the Company's obligations to other professionals entitled to the benefit of the carve-outs) in effect in such cases pursuant to one or more financing orders entered by the Bankruptcy Court. The Company shall use its best efforts to ensure that any cash collateral order, debtor-in-possession financing order and/or similar order entered in such chapter 11 case or cases (a) permits the use of cash collateral and financing proceeds for the full and prompt payment of all of Miller Buckfire's fees and expenses contemplated hereby (including, without limitation, all fees contingent upon the occurrence of transactions), and (b) contains the agreements by the lenders (or parties whose cash collateral is being used) that Miller Buckfire's fees and expenses shall be paid at the times and from the sources specified herein.

We are pleased to accept this engagement and look forward to working with the Company. Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed duplicate of this letter, which shall thereupon constitute a binding agreement between Miller Buckfire and the Company.

Very truly yours,

MILLER BUCKFIRE & CO., LLC

By:

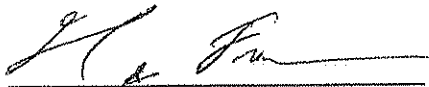


Name: Marc Puntus

Title: Managing Director

Accepted and Agreed to:

By:



Name: Michael Franco

Title:

MS Resort Holdings LLC
MS Resorts V, LLC
MS Resorts IV, LLC
MS Resorts III, LLC
MS Resorts II, LLC
MS Resorts I, LLC
MS Resort Purchaser LLC
MSR GL/DR Mezz D LLC
MSR GL/DR Mezz C LLC
MSR GL/DR Mezz B LLC
MSR GL/DR Mezz A LLC
MSR GL Resort Tenant LLC
MSR Resort Junior Mezz LLC
MSR Resort Sub Intermediate Mezz LLC
MSR Resort Intermediate Mezz LLC
MSR Resort Sub Senior Mezz LLC
MSR Resort Senior Mezz LLC
DRR Tenant Corporation
Desert Ridge Resort, LLC

MSR GL Resort GP LLC
MSR Resort SPE GP LLC
MS Resort Senior Holdings LLC
MSR Resort Ancillary Tenant, LLC
MSR Resort Holdings GP, LLC
MSR Resort Hospitality GP, LLC
MSR Resort Intermediate Mezz GP, LLC
MSR Resort Sub Intermediate MREP, LLC
MSR Resort Intermediate MREP, LLC
MSR Resort Junior Mezz GP, LLC
MSR Resort Junior MREP, LLC
MSR Resort Lodging Tenant, LLC
MSR Resort REP, LLC
MSR Resort Senior Mezz GP, LLC
MSR Resort Senior MREP, LLC

MSR Resort SPE GP II, LLC
MSR Resort Sub Intermediate Mezz GP, LLC
MSR Resort Sub Junior Mezz GP, LLC
MSR Resort Sub Senior Mezz GP, LLC
MSR Resort Sub Senior MREP, LLC
MSR Hospitality GP Corp.
MSR Hospitality LP Corp.
MSR Hospitality Services, Inc.
MSR Hotels & Resorts, Inc.
MSR Resort Biltmore Real Estate, Inc.
MSR Resort Desert Real Estate, Inc.
MSR GL Resort LP
MSR Resort Hotel, LP
MSR Claremont Resort, LP
MSR Resort Silver Properties, LP
MSR Biltmore Resort, LP
MSR Desert Resort, LP
MSR Grand Wailea Resort, LP
MSR Hospitality Partners, LP
MSR Resort Hospitality, LP
MSR Resort Intermediate Mezz, LP
MSR Resort Junior Mezz, LP
MSR Resort Recreation, LP
MSR Resort Senior Mezz, LP
MSR Resort Sub Intermediate Mezz, LP
MSR Resort Sub Junior Mezz, LP
MSR Resort Sub Senior Mezz, LP
MSR Resort Golf Course LLC

INDEMNIFICATION PROVISIONS

In connection with the engagement of Miller Buckfire & Co., LLC ("Miller Buckfire") as financial advisor to MS Resort Holdings LLC, the Company hereby agrees to indemnify and hold harmless Miller Buckfire and its affiliates, their respective directors, officers, members, managers, agents, employees and controlling persons, and each of their respective successors and assigns (collectively, the "indemnified persons"), to the full extent lawful, from and against all losses, claims, damages, liabilities and expenses incurred by them which (A) are related to or arise out of (i) actions or alleged actions taken or omitted to be taken (including any untrue statements made or any statements omitted to be made) by the Company or (ii) actions or alleged actions taken or omitted to be taken by an indemnified person with the Company's consent or in conformity with the Company's actions or omissions or (B) are otherwise related to or arise out of Miller Buckfire's activities under Miller Buckfire's engagement. The Company will not be responsible, however, for any losses, claims, damages, liabilities or expenses pursuant to clause (B) of the preceding sentence which are finally judicially determined to have resulted primarily from the gross negligence or willful misconduct of the person seeking indemnification hereunder. For purposes of these indemnification provisions, the term the "Company" has the meaning set forth in the engagement letter, dated as of June 14, 2010, between Miller Buckfire and MS Resort Holdings LLC, of which these indemnification provisions are an integral part.

After receipt by an indemnified person of notice of any complaint or the commencement of any action or proceeding with respect to which indemnification is being sought hereunder, such person will notify the Company in writing of such complaint or of the commencement of such action or proceeding, but failure so to notify the Company will relieve the Company from any liability which the Company may have hereunder only if, and to the extent that such failure results in the forfeiture by the Company of substantial rights and defenses, and will not in any event relieve the Company from any other obligation or liability that the Company may have to any indemnified person otherwise than under these indemnification provisions. If the Company so elects or is requested by such indemnified person, the Company will assume the defense of such action or proceeding, including the employment of counsel reasonably satisfactory to Miller Buckfire and the payment of the fees and disbursements of such counsel. In the event, however, such indemnified person reasonably determines in its judgment that having common counsel would present such counsel with a conflict of interest or if the defendants in, or targets of, any such action or proceeding include both an indemnified person and the Company, and such indemnified person reasonably concludes that there may be legal defenses available to it or other indemnified persons that are different from or in addition to those available to the Company, or if the Company fails to assume the defense of the action or proceeding or to employ counsel reasonably satisfactory to such indemnified person, in either case in a timely manner, then such indemnified person may employ separate counsel to represent or defend it in any such action or proceeding and the Company will pay the fees and disbursements of such counsel; provided, however, that the Company will not be required to pay the fees and disbursements of more than one separate counsel (in addition to local counsel) for all indemnified persons in any jurisdiction in any single action or proceeding. In any action or proceeding the defense of which the Company assumes, the indemnified person will have the right to participate in such litigation and to retain its own counsel at such indemnified person's own expense. The Company further agrees that it will not, without the prior written consent of Miller Buckfire, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not Miller Buckfire or any other indemnified person is an actual or potential party to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of Miller Buckfire and each other indemnified person hereunder from all liability arising out of such claim, action, suit or proceeding. Miller Buckfire agrees that it will not, without the consent of the Company, not to be unreasonably withheld or delayed, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder.

The Company agrees that if any indemnification sought by an indemnified person pursuant to these indemnification provisions is held by a court to be unavailable for any reason other than as specified in the second sentence of the first paragraph of these indemnification provisions, then (whether or not Miller Buckfire is the indemnified person), the Company and Miller Buckfire will contribute to the losses, claims, damages, liabilities and expenses for which such indemnification is held unavailable (i) in such proportion as is appropriate to reflect the relative benefits to the Company, on the one hand, and Miller Buckfire, on the other hand, in connection with Miller Buckfire's engagement referred to above, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to

reflect not only the relative benefits referred to in clause (i), but also the relative fault of the Company, on the one hand, and Miller Buckfire, on the other hand, as well as any other relevant equitable considerations; provided however, that in any event the aggregate contribution of all indemnified persons, including Miller Buckfire, to all losses, claims, damages, liabilities and expenses with respect to which contribution is available hereunder will not exceed the amount of fees actually received by Miller Buckfire from the Company pursuant to Miller Buckfire's engagement referred to above. It is hereby agreed that for purposes of this paragraph, the relative benefits to the Company, on the one hand, and Miller Buckfire, on the other hand, with respect to Miller Buckfire's engagement shall be deemed to be in the same proportion as (i) the total value paid or proposed to be paid or received by the Company or the Company's stockholders, claims holders or contract parties, as the case may be, pursuant to the transaction, whether or not consummated, for which Miller Buckfire is engaged to render financial advisory services, bears to (ii) the fee paid or proposed to be paid to Miller Buckfire in connection with such engagement. It is agreed that it would not be just and equitable if contribution pursuant to this paragraph were determined by pro rata allocation or by any other method which does not take into account the considerations referred to in this paragraph.

The Company further agrees that it will promptly reimburse Miller Buckfire and any other indemnified person hereunder for all expenses (including fees and disbursements of counsel) as they are incurred by Miller Buckfire or such other indemnified person in connection with investigating, preparing for or defending, or providing evidence in, any pending or threatened action, claim, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not Miller Buckfire or any other indemnified person is a party) and in enforcing these indemnification provisions.

The Company's indemnity, contribution, reimbursement and other obligations under these indemnification provisions shall be in addition to any liability that the Company may otherwise have, at common law or otherwise, and shall be binding on the Company's successors and assigns.

Solely for purposes of enforcing these indemnification provisions, the Company hereby consents to personal jurisdiction, service and venue in any court in which any claim or proceeding which is subject to, or which may give rise to a claim for indemnification or contribution under, these indemnification provisions is brought against Miller Buckfire or any other indemnified person.

These indemnification provisions shall apply to the above-mentioned engagement, activities relating to the engagement occurring prior to the date hereof, and any subsequent modification of or amendment to such engagement, and shall remain in full force and effect following the completion or termination of Miller Buckfire's engagement.

EXHIBIT C

3-Pack Entities

MS Resorts II, LLC
MS Resorts I, LLC
MS Resort Purchaser LLC
MSR GL/DR Mezz D LLC
MSR GL/DR Mezz C LLC
MSR GL/DR Mezz B LLC
MSR GL/DR Mezz A LLC
Desert Ridge Resort, LLC
DRR Tenant Corporation
MSR GL Resort GP LLC
MSR GL Resort LP
MSR GL Resort Tenant LLC

EXHIBIT D

Debtors to whom the Settlement Claim may be Allocated

MSR Resort Golf Course LLC
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
MSR Resort Senior Mezz GP, LLC
MSR Resort Senior Mezz LLC
MSR Resort Senior Mezz, LP
MSR Resort Sub Senior Mezz GP, LLC
MSR Resort Sub Senior Mezz LLC
MSR Resort Sub Senior Mezz, LP
MSR Resort Intermediate Mezz GP, LLC
MSR Resort Intermediate Mezz LLC
MSR Resort Intermediate Mezz, LP
MSR Resort Sub Intermediate Mezz GP, LLC
MSR Resort Sub Intermediate Mezz LLC
MSR Resort Sub Intermediate Mezz, LP
MSR Resort SPE GP II LLC
MSR Resort SPE GP LLC

EXHIBIT E

Wiring Instructions

HSBC

ABA 021001088

Account Name: Miller Buckfire & Co., LLC

Account # 134758765

Ref: MS Resorts