

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

**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**

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.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (this “Motion”) for entry of an order (the “Cash Collateral Order”), substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to use Cash Collateral (as defined in 11 U.S.C. § 363(a)); (b) providing adequate protection to the Prepetition Secured Parties (as defined in the Cash Collateral Order) with respect to, *inter alia*, such use of Cash Collateral and diminution in value the Prepetition Collateral (as defined in the Cash Collateral Order), including Cash Collateral; and (c) granting related relief. In support of this Motion, the Debtors respectfully state as follows.²

Introduction

The Debtors have made substantial progress to date in these chapter 11 cases. They have stabilized the Debtors’ operations and taken necessary measures to ensure that Resort asset performance continues to improve year-over-year; they have identified targeted restructuring initiatives aimed at maximizing the value of the estates and have set forth a roadmap to implement the initiatives in a timely and controlled manner; and they have worked with all major stakeholders toward a fully consensual plan to emergence, including, most notably, the recent agreements with the Government of Singapore and MetLife, which will facilitate the completion of the Debtors’ restructuring initiatives without costly and destructive litigation over control of these chapter 11 cases. The Debtors’ progress in these chapter 11 cases has been possible only through continued use of the Debtors’ Cash Collateral to fund operations on a going forward basis.

² The facts and circumstances supporting this Motion are set forth in the *Declaration of Saul Burian in Support of 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* (the “Burian Declaration”), filed contemporaneously herewith.

As the Court is well aware, the Debtors worked very hard with the Prepetition Secured Parties at the outset of these chapter 11 cases to secure continued use of Cash Collateral on a consensual basis. Indeed, final use of Cash Collateral on a consensual basis was secured by the Debtors only following four interim cash collateral orders and more than two months of hard-fought negotiations.

With the maturity date on the existing cash collateral order approaching, the Debtors are continuing to negotiate with the Servicer regarding the Debtors' continued use of Cash Collateral on a consensual basis. Although the Debtors are hopeful that an amicable agreement can be reached, the parties have not reached any such agreement as of the date of this filing, necessitating this Motion to utilize cash collateral on a nonconsensual basis.

As set forth in this Motion, the facts and circumstances of these chapter 11 cases clearly demonstrate that the Prepetition Secured Parties will continue to be adequately protected pursuant to the terms of the proposed cash collateral order, which largely mirror those existing under the current order. Moreover, the Debtors' continued use of Cash Collateral will preserve the value of the Prepetition Secured Parties' collateral, and the additional adequate protection package offered by the Debtors will ensure that the Prepetition Secured Parties are able to effectively monitor the status of the Debtors during the proposed period of continued use.

In short, granting the relief requested herein will protect the status quo of these chapter 11 cases, which, to date, has adequately protected the Prepetition Secured Parties. Through the Debtors' progress on the restructuring initiatives thus far, they already have generated substantial asset value above and beyond that which existed at the time the existing cash collateral order was entered; granting continued use of Cash Collateral will enable the Debtors to make additional

progress on the remaining restructuring initiatives, further increasing the value of the collateral upon which the Prepetition Secured Parties are secured.³

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 361, 362, 363, 503(b), and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 4001 (the “Bankruptcy Rules”), and Rules 2002-1(b), 4001-2, and 9013-1(m) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”).

Concise Statement of the Material Terms of the Fourth Interim Cash Collateral Order

4. Pursuant to and in accordance with Bankruptcy Rule 4001(b)(1)(B) and Local Bankruptcy Rule 4001-2(a), the material provisions of the Interim Cash Collateral Order, and the location of such provisions therein, are as follows:⁴

Summary of Material Terms		Location
Parties with Interest in Cash Collateral [Fed. R. Bankr. P. 4001(b)(1)(B)(i)]	<p><u>Mortgage Lender</u>: Bank of America, National Association</p> <p><u>Special Servicer</u>: Midland Loan Services, Inc.</p> <p><u>Depositor</u>: Deutsche Mortgage & Asset Receiving Corporation</p>	¶ D

³ A full summary of the Debtors’ progress toward completion of the restructuring initiatives is set forth in the *Motion of MSR Resort Golf Course LLC, et al., for Entry of an Order Further Extending the Exclusive Periods During Which Only the Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof*, filed on September 20, 2011 [Docket No. 638].

⁴ This summary is qualified in its entirety by the provisions of the Cash Collateral Order. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Cash Collateral Order. To the extent there are any conflicts between this summary and the Cash Collateral Order, the terms of the Cash Collateral Order shall govern.

Summary of Material Terms		Location
<p>Use of Cash Collateral [Fed. R. Bankr. P. 4001(b)(1)(B)(ii)]</p>	<p>The Debtors require use of Cash Collateral to permit, among other things, the orderly continuation of the operation of their businesses. The Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the Debtors’ continued ability to use Cash Collateral. Among other things, entry of this Order will minimize disruption of the Debtors’ businesses and operations and permit them to pay operating expenses, including, without limitation, to honor certain of their obligations under their agreements with the management companies for their hotels, maintain business relationships with their vendors, and retain customer and vendor confidence by demonstrating an ability to maintain operations.</p>	<p>¶ E(v), 4(b)</p>
<p>Termination Date and Events of Default [Fed. R. Bankr. P. 4001(b)(1)(B)(iii); S.D.N.Y. Bankr. L.R. 4001-2(a)(10) & (c)]</p>	<p><u>Termination Provisions:</u> Use of Cash Collateral pursuant to the Fourth Interim Cash Collateral Order shall immediately and automatically terminate (except as the Servicer may otherwise agree in writing in its sole discretion), without further order of the Court and without necessity of further action by any party, upon the earliest to occur of the following:</p> <ul style="list-style-type: none"> • June 30, 2012; • the date on which Debtors fail to timely make payments required to be made by them pursuant to the terms of the Cash Collateral Order; • the last date of the period covered by the most recently delivered Budgets as to which the Servicer has not timely objected; • the date on which the Court enters an order on any request for modification or extension of the Cash Collateral Order without the prior written consent of the Servicer or six weeks following such a request; and • the date that is five business days following the date that Servicer, in accordance with the provisions of the Cash Collateral Order, serves upon any Debtor a Termination Notice after the occurrence and continuance of any Termination Notice Event. <p><u>Events of Default:</u> Usual and customary for relief of this type, including, without limitation: failure to comply with the Cash Collateral Order; misrepresentations; obtaining postpetition financing senior in priority to or <i>pari passu</i> with the Mortgage Loan without consent of the Servicer or granting any superpriority claim or any lien in any of the Chapter 11 Cases which is <i>pari passu</i> with or senior to the Adequate Protection Liens (as defined herein); commencement of an action by any Debtor against any Prepetition Secured Party with respect to the Mortgage Loan Documents; payment of a prepetition claim without Court authorization; termination of any franchise or management agreement of a Mortgage Borrower to the extent that such terminated agreement is not replaced by a comparable agreement within 30 days; entry of an order granting relief from the automatic stay that is reasonably likely to result in a material adverse effect on the Debtors’ business; failure by any Debtor to timely deliver to any Prepetition Secured Party any of the documents or other information required to be delivered; the filing of a plan of reorganization, the terms of which do not pay the Prepetition Secured</p>	<p>¶ 11, 12</p>

Summary of Material Terms	Location
	Obligations in full; seeking to dismiss any of these chapter 11 cases or convert any case to a case under chapter 7 of the Bankruptcy Code; or the occurrence of a change that has a material adverse effect on the use, value, or condition of the Debtors.
<p>Adequate Protection: [Fed. R. Bankr. P. 4001(b)(1)(B)(iv); S.D.N.Y. Bankr. L.R. 4001-2(a)(3), (4)]</p>	<p>The Debtors propose the following adequate protection (collectively, the “<u>Adequate Protection Obligations</u>”) to protect against diminution in the value of the Prepetition Collateral occasioned by the Debtors’ use of Cash Collateral, if any:</p> <ul style="list-style-type: none"> • <u>Adequate Protection Liens.</u> The Debtors shall grant replacement liens (the “<u>Adequate Protection Liens</u>”) on all of the Mortgage Borrowers’ postpetition rights in, to, and under all present and after-acquired property and assets, including the proceeds of any Avoidance Actions, subject only to (i) the Carve Out and (ii) Prior Liens. Under no circumstance shall the Adequate Protection Liens be made subordinate to the lien of any other party. The Debtors also shall not grant any liens on the assets of Mortgage RE Entities, but the proceeds of any Collateral transferred from one Debtor to any other Debtor shall remain subject to the Mortgage Lender’s liens and security interests irrespective of such transfer. • <u>Superpriority Claims.</u> The Prepetition Secured Parties shall have an allowed superpriority administrative expense claim against the Mortgage Borrowers and the Mortgage RE Entities (jointly and severally) under sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the “<u>Superpriority Claims</u>”), subject to the Carve Out. Other than the Carve Out and claims arising under section 506(c) of the Bankruptcy Code, no claims shall be senior or equal to the Superpriority Claims. Except with respect to Superpriority Claims granted by the DIP Borrowers, which are junior to the Superiority Claims, the Debtors shall not grant or seek to grant any Superpriority Claims against any Debtors in favor of any other party. • <u>Payment of Interest.</u> The Debtors shall pay to the Mortgage Lender, for the benefit of the Prepetition Secured Parties, on an ongoing basis, the current cash payment of interest on the Prepetition Secured Obligations at the non-default contract rate of interest set forth in (and at the times provided for in) the Mortgage Loan Documents (the “<u>Interest Payments</u>”), except that that the rights of the Debtors, of the Mortgage Lender, and of any Committee are reserved with respect to whether interest should be paid at the default rate. • <u>Expense Reimbursement.</u> Within seven business days after receipt of a reasonably detailed invoice, the Debtors shall pay all reasonable and documented fees and expenses of the Servicer, and its counsel and financial advisor, and the Mortgage Lender and its counsel incurred in connection with the Mortgage Loan and Servicing Documents and the chapter 11 cases, in each case to the extent such payment would be required by the express terms of the applicable Mortgage Loan and Servicing Documents; <i>provided</i> that, nothing herein shall be construed
	¶¶ 5, 6

	Summary of Material Terms	Location
	<p>as a waiver by the Debtors, the U.S. Trustee, the Committee, or the DIP Lenders, of their right to later challenge the amount, extent, type, or characterization of any of the Servicer’s Fee and Expense Reimbursement.</p> <ul style="list-style-type: none"> • <u>Reporting Obligations.</u> The Mortgage Borrowers shall during these chapter 11 cases comply with certain reporting obligations set forth in the Cash Collateral Order (the “<u>Reporting Obligations</u>”). 	
<p>Amount of Cash Collateral to be Used: [S.D.N.Y. Bankr. L.R. 4001-2(a)(1)]</p>	<p>The Debtors are authorized, subject to the terms and conditions of the Cash Collateral Order, to use all Cash Collateral.</p>	<p>¶ 4(b)</p>
<p>Conditions Precedent: [S.D.N.Y. Bankr. L.R. 4001-2(a)(2)]</p>	<p>During the Cash Collateral Period, the Debtors are authorized under the Cash Collateral Order to use Cash Collateral for working capital and general corporate purposes, including with respect to the payment of costs and expenses related to these chapter 11 cases of the Debtors in accordance with such purposes as set forth in a cash budget and an accrual budget, the forms of which are attached to the Cash Collateral Order as <u>Exhibit A</u> (as the same may be amended from time to time, the “<u>Budgets</u>”), subject to any variances permitted in the Cash Collateral Order.</p>	<p>¶¶ 3(b), 4(b)-(1)</p>
<p>Carve Out: [S.D.N.Y. Bankr. L.R. 4001-2(a)(5) & (d)]</p>	<p>All liens, claims, and interests granted pursuant to the Cash Collateral Order or any other related document, as well as any claims or liens arising from any prepetition secured obligation shall be subject in all respects to the Carve Out.</p> <p>The “<u>Carve Out</u>” means: (i) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (ii) in the event of a conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, fees and expenses incurred by any trustee and any professionals retained by such trustee, in an aggregate amount not exceeding \$100,000; (iii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid costs, fees and expenses (the “<u>Professional Fees</u>”), incurred by persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code and any official committee (“<u>Committee</u>”) appointed pursuant to section 1103 of the Bankruptcy Code (collectively, the “<u>Professional Persons</u>”), at any time before or on the first business day following delivery of a Carve Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) after the first business day following delivery of the Carve Out Trigger Notice, to the extent allowed at any time, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed \$5,000,000 (the “<u>Post Default Carve Out Cap Amount</u>”). The Carve Out shall be senior to the Adequate Protection Liens, the Superpriority Claims, and any other adequate protection, any liens or claims securing the obligations arising under or in connection with the Loan Documents and this Fourth Interim Order. For purposes of calculating the amount of Professional Fees permitted to be paid to a Professional Person as part of the Carve Out under subsection (iii) of this Paragraph 7, such amount shall be net of all prepetition retainers held by such</p>	<p>¶ 7</p>

Summary of Material Terms		Location
	Professional Person. The “Carve Out Trigger Notice” means a Termination Notice, which includes a statement to the effect that such notice also constitutes a Carve Out Trigger Notice.	
Non-Debtor Affiliates: [S.D.N.Y. Bankr. L.R. 4001-2(a)(15)]	Before the Petition Date, certain sales taxes and other property level expenses of the Mortgage Debtors were paid by MSR Hotels & Resorts Inc. and MS Resort Purchaser LLC, neither of which is a Debtor. With the entry of the Cash Collateral Order, any cash of the Mortgage Borrowers that is to be designated in the Budgets for the payment of sales taxes and other property level expenses of the Mortgage Borrowers shall be deposited into one disbursement account, which shall be approved by the Servicer and that shall be subject to the liens of the Mortgage Lender granted under the Mortgage Loan and Servicing Documents and granted herein in the name of one or more of the Mortgage Borrowers. All such budgeted sales taxes and property level expenses shall be paid directly from such account. The Mortgage Borrowers may open new bank accounts only with the written consent of the Servicer and such accounts shall be subject to the requirements set forth in this Paragraph 4(h) and the liens granted pursuant to Paragraph 5.a(i).	¶ 4(h)

Relief Requested

5. By this Motion, the Debtors seek entry of the Cash Collateral Order granting the following relief:
- a. authorizing the Debtors to continue to use Cash Collateral of the Prepetition Secured Parties in accordance with sections 361 and 363 of the Bankruptcy Code, and in accordance with the proposed budgets attached to the Cash Collateral Order as **Exhibit A** (the “Budgets”), subject to the variances permitted in the Cash Collateral Order;
 - b. directing the Prepetition Secured Parties to relinquish control over all Cash Collateral to the Debtors and to not interfere with any effort by the Debtors or their banks to redirect Cash Collateral to any other account of the Debtors;
 - c. approving the Adequate Protection Obligations (as defined herein) provided to the Prepetition Secured Parties pursuant to sections 361, 362, 363, 503(b), and 507 of the Bankruptcy Code; and
 - d. granting related relief.

Background

I. General Background.

6. On February 1, 2011 (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. The Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) has appointed a statutory committee of unsecured creditors in these chapter 11 cases.

7. The Debtors invest in and own five iconic luxury resort properties and amenities, specifically (a) the Grand Wailea Resort Hotel & Spa (“Grand Wailea”) in Wailea, Hawaii, (b) the La Quinta Resort & Club PGA West (“La Quinta”) in La Quinta, California, (c) the Arizona Biltmore Resort & Spa (“Arizona Biltmore”) in Phoenix, Arizona, (d) the Doral Golf Resort & Spa (“Doral”) in Miami, Florida, and (e) the Claremont Resort & Spa (“Claremont”) in Berkeley, California (collectively, the “Resorts”). 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”).

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 Petition and First Day Motions and (B) Pursuant to Local Bankruptcy Rule 1007-2* [Docket No. 3] (the “First Day Declaration”), filed on the Petition Date.

9. On February 2, 2011, the Court entered the Interim Order Authorizing Cash Collateral Use, Granting Related Relief, and Scheduling a Second Interim Hearing [Docket No. 22] (the “Interim Cash Collateral Order”) authorizing the Debtors to use Cash Collateral as set forth therein through and including February 14, 2011. On February 16, 2011, the Court entered the *Second Interim Order Authorizing Cash Collateral Use, Granting Related Relief, and Scheduling a Third Interim Hearing* [Docket No. 57] (the “Second Interim Cash Collateral Order”) authorizing the Debtors to use Cash Collateral as set forth therein through and including February 28, 2011. On February 28, 2011, the Court entered the *Third Interim Order Authorizing Cash Collateral Use, Granting Related Relief, and Scheduling the Fourth Interim Hearing* [Docket No. 89] (the “Third Interim Cash Collateral Order”). On March 16, 2011, the Court entered the *Fourth Order (A) Authorizing Debtors to (I) Use the Prepetition Secured Parties’ Cash Collateral and (II) Provide Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, and 363 and (B) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b)* [Docket No. 141] (the “Fourth Interim Cash Collateral Order”). On April 15, 2011, the Court entered the *Final Order Authorizing Debtors to (I) Use the Prepetition Secured Parties’ Cash Collateral and (II) Provide Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 363, 503, and 507* [Docket No. 255] (the “Final Cash Collateral Order”). The Debtors currently are utilizing Cash Collateral pursuant to the terms of the Final Cash Collateral Order.

II. Summary of the Debtors Prepetition Indebtedness.

10. In accordance with the transactions described below, as of the Petition Date, the Debtors had secured debt in the aggregate amount of approximately \$1.525 billion, consisting of (a) the \$1 billion mortgage loan (the “Mortgage Loan”) and (b) four tranches of mezzanine loans (each, a “Mezzanine Loan,” and, collectively, the “Mezzanine Loans”) in the aggregate principal

amount of \$525 million. The Mortgage Loan is secured in part by the Debtors' Cash Collateral. The subordinate prepetition Mezzanine Loans do not have a security interest in Cash Collateral.⁵

The Debtors' Cash Collateral and Proposed Form of Adequate Protection

11. The Debtors generate and receive funds primarily from payments by guests for stays at the Debtors' resort properties and for ancillary goods and services provided by such resorts. The Debtors use the cash generated to fund each property's day-to-day operations and to service other business obligations, including those obligations discussed herein and in more detail in the First Day Declaration.

12. The Debtors intend to use the Cash Collateral to continue to preserve the value of the Prepetition Secured Parties' other collateral, ensuring adequate protection for the Prepetition Secured Parties' interest. Nonetheless, the Debtors have agreed to provide additional adequate protection as follows (in each case, subject to certain exceptions as set forth in the Fourth Interim Cash Collateral Order, including the Carve Out):

- a. Adequate Protection Liens, subject to the Carve Out and to Prior Liens (*see* Cash Collateral Order, ¶ 4(a));
- b. Superpriority Claims, subject to the Carve Out and to Prior Liens (*see* Cash Collateral Order, ¶ 4(b));
- c. Interest Payments, subject to the Carve Out (*see* Cash Collateral Order, ¶ 5(a));
- d. Non-Mortgage Borrower Liens, subject to the Carve Out (*see* Cash Collateral Order, ¶ 5(b));
- e. Expense Reimbursement, subject to the Carve Out (*see* Cash Collateral Order, ¶ 5(c)); and

⁵ The instruments evidencing the Debtors' indebtedness and certain intercompany obligations are described in more detail in the First Day Declaration and in the *Motion of MSR Resort Golf Course, LLC, et al., for the Entry of an Interim Order Authorizing Cash Collateral Use, Granting Related Relief, and Scheduling a Second Interim Hearing*, filed on the Petition Date [Docket No. 13].

f. Reporting Obligations (*see* Cash Collateral Order, ¶ 5(d)).

13. The Debtors are continuing to negotiate with the Servicer regarding the Debtors' continued use of Cash Collateral on a consensual basis. Although the Debtors are hopeful that an amicable agreement can be reached, the parties have not reached any such agreement as of the date of this filing. Accordingly, the proposed Cash Collateral Order is subject to further negotiation and revision. The Debtors will file an agreed form of order prior to the hearing on the Motion if a consensual arrangement on an agreed order is reached.

14. Importantly, although the parties have not yet reached agreement on consensual Cash Collateral use, the Debtors submit they can provide adequate protection against any diminution in value of the Prepetition Secured Parties' interest in the Prepetition Collateral (including the Cash Collateral), as required by section 363(c) of the Bankruptcy Code. As further set forth herein and in the Cash Collateral Order, the Debtors have agreed to provide the Prepetition Secured Parties with the Adequate Protection Obligations.

Basis for Relief

15. The Debtors require the continued use of Cash Collateral, wherever located, to continue operations and preserve the value of the Debtors' assets. Specifically, the Debtors seek continued use Cash Collateral in a manner consistent with their use of such Cash Collateral to date.

I. The Proposed Continued Use of Cash Collateral Should Be Approved.

16. The Debtors' use of property of their estates, including Cash Collateral,⁶ is governed by section 363 of the Bankruptcy Code. Pursuant to section 363(c)(2) of the

⁶ The Bankruptcy Code defines "cash collateral" as follows:

(continued on next page)

Bankruptcy Code, a debtor may use cash collateral as long as “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

17. Section 363(e) of the Bankruptcy Code requires that the debtor “adequately protect” secured creditors’ interests in property against any diminution in value of such interests resulting from the debtor’s use of the property during the chapter 11 case. 11 U.S.C. § 363(e). “The concept of ‘adequate protection’ is not defined in the [Bankruptcy] Code.” *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986). Section 361 of the Bankruptcy Code, however, contains a non-exhaustive list of acceptable forms of adequate protection, including a cash payment or periodic cash payments, additional liens, replacement liens, or the “indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361.

18. Moreover, the mere fact that a debtor has “good prospects for a successful reorganization” may provide a creditor adequate protection to enable the use of cash collateral. *In re Armenakis*, 406 B.R. 589, 621 (Bankr. S.D.N.Y. 2009) (enumerating sources of “adequate protection” in lift stay context). Here, use of Cash Collateral is critical to the Debtors’ reorganization efforts and will aid them in their attempt to maximize value for constituents. Accordingly, the Debtors respectfully request that the Court grant them approval to use Cash Collateral on an interim basis.

Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

A. The Prepetition Secured Parties Are Protected by an Equity Cushion.

19. Courts frequently find that oversecured creditors are not entitled to additional adequate protection because the existence of an equity cushion alone can constitute adequate protection.⁷ *See, e.g., In re Zeoli*, 249 B.R. 61, 63 (Bankr. S.D.N.Y. 2000) (“the equity cushion in the collateral may provide the secured creditor with adequate protection”); *In re Elmira Litho, Inc.*, 174 B.R. 892, 904 (Bankr. S.D.N.Y. 1994) (“It is beyond cavil that an equity cushion can, under certain circumstances, serve as a form of adequate protection.”); *In re New Era Co.*, 125 B.R. 725, 728 (S.D.N.Y. 1991) (stating that “it is clear that one way to assure [adequate] protection is to have an ‘equity cushion’”) (citing 2 L. King, COLLIER ON BANKR. § 362.07, at 362-60 (1991)); *In re Worldcom, Inc.*, Case No. 02-13533 (AJG), No. 02-13533, 2003 WL 22025051, at *5-7 (Bankr. S.D.N.Y. Jan. 30, 2003) (finding equity cushion sufficient to shield secured creditor’s interest and stating that “courts have recognized that an equity cushion can provide adequate protection”); *In re Tucker*, 5 B.R. 180, 182 (Bankr. S.D.N.Y. 1980) (“An adequate ‘cushion’ can itself constitute adequate protection with nothing more.”) (internal citations omitted). Indeed, any value in collateral in excess of the secured creditor’s claim “forms the estate of the bankrupt and must be preserved for the benefit of all remaining junior creditors pro rata.” *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984) (stating that the “purpose

⁷ An “equity cushion” has been defined as “the value in the property above the amount owed to the creditor with a secured claim that will protect that creditor’s secured interest from decreasing in value during the period that the automatic stay remains in effect.” *In re Jug End in the Berkshires, Inc.*, 46 B.R. 892, 899 (Bankr. D. Mass. 1985). It also has been defined as “the surplus of value remaining after the amount of indebtedness is subtracted from the fair market value of the collateral.” *Commonwealth of Pa. State Emp. Retirement Fund v. Roane*, 14 B.R. 542, 545 (E.D. Pa. 1981). Courts in the Second Circuit generally hold that an “equity cushion” exists “where the value of the collateral substantially exceeds the secured creditor’s claim.” *In re Schuessler*, 365 B.R. 458, 480 (Bankr. S.D.N.Y. 2008); *see also In re Oligbo*, 328 B.R. 619, 651 (Bankr. E.D.N.Y. 2005) (same).

of adequate protection under § 361 is to insure that the secured creditor receives in value essentially what he bargained for, not a windfall”).

20. It is well-settled that an equity cushion of twenty percent generally constitutes adequate protection. See *In re Fortune Smooth (U.S.) Ltd.*, No. 93-40907, 1993 WL 261478, at *6 (Bankr. S.D.N.Y. July 6, 1993) (“It is generally agreed that an equity cushion of twenty percent (20%) or more constitutes adequate protection, and an equity cushion of less than eleven percent (11%) is not sufficient with courts splitting as to whether an equity cushion between those two figures constitutes adequate protection.”); see also *In re Mendoza*, 111 F.3d 1264, 1272 (5th Cir. 1997) (stating that courts generally hold that an equity cushion of 20% constitutes adequate protection); *In re Snead*, Case No. 08-00070 (JRL), 2008 WL 934389, at *1 (Bankr. E.D.N.C. Apr. 1, 2008) (same); *In re Helionetics*, 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (stating that a 20.4% equity cushion constitutes adequate protection).

21. To determine whether an equity cushion exists, courts consider the facts and circumstances of each case. See *Worldcom, Inc.*, 2003 WL 22025051, at *7 (finding that an equity cushion of \$2.5 million was adequate protection and stating that “[w]hether an equity cushion provides adequate protection to a creditor is determined on a case-by-case basis rather than by a mechanical application of a formula”); *Elmira Litho, Inc.*, 174 B.R. at 904 (“An equity cushion, therefore, provides adequate protection if it is sufficiently large to ensure that the secured creditor will be able to recover its entire debt from the security at the completion of the case.”). Courts in reorganization cases generally use the fair market value or going concern value of the collateral rather than liquidation value. See, e.g., *In re Automatic Voting Mach. Corp.*, 26 B.R. 970, 972 (Bankr. W.D.N.Y. 1983) (“[T]he appropriate method of valuation to gauge whether the objecting party is adequately protected in a reorganization case is ‘going

concern' or fair market value"); *Beker Indus. Corp.*, 58 B.R. at 738 (stating that use of the fair market value rather than the liquidation value was appropriate gauge to adequate protection determination); *see also Mellor*, 734 F.2d at 1401 (using "market value" of the collateral to determine that the creditor was adequately protected); *In re Utah 7000, L.L.C.*, No. 08-21869, 2008 WL 2654919, at *3 (Bankr. D. Utah Jul. 3, 2008) (using market value of debtor assets to calculate equity cushion where debtors planned to reorganize); *In re Equa-Chlor LLC*, No. 08-40599, 2008 WL 1927066, at *3, slip op. (Bankr. W.D. Wash. Apr. 29, 2008) (using fair market value to determine whether creditor had sufficient adequate protection). Indeed, use of the fair market value method in reorganization cases is consistent with section 506(a) of the Bankruptcy Code, which provides that collateral should be valued "in light of the . . . proposed disposition or use of such" collateral. 11 U.S.C. § 506(a); *see also In re Winthrop Old Farm Nurseries, Inc.*, 50 F.3d 72, 73-74 (1st Cir. 1995) ("Congress apparently did *not* intend that courts would use either a liquidation or fair standard exclusively, envisioning instead a flexible approach by which courts would choose a standard to fit the circumstances.") (emphasis in original).

22. As set forth in the Burian Declaration, the fair market value of the collateral securing the Prepetition Mortgages substantially exceeds the amount of the Mortgage Loan and provides the Prepetition Secured Parties with a sufficient equity cushion, which alone suffices to adequately protect its secured interest, and no one can credibly assert otherwise.

B. Continued Use of Cash Collateral Preserves Going Concern Value.

23. In addition to the adequate protection package described herein, the Debtors' secured creditors also are adequately protected because the Debtors propose to continue to use Cash Collateral to preserve the value of all Prepetition Collateral.

24. As set forth herein, the Debtors' ability to continue to fund their business operations and the restructuring is critical to the outcome of these chapter 11 cases. Absent the use of Cash Collateral, the Debtors' businesses could suffer a liquidity shortfall which could have disastrous consequences for the Debtors' reputation, their business, their ability to attract future customers, and their estates and creditors. Use of the Cash Collateral, therefore, is of the utmost importance to the preservation and maintenance of the value of the Debtors and essential to the continued operations of the Debtors and the restructuring.

25. Importantly, value preservation through Cash Collateral use will benefit the Prepetition Secured Parties. The nature of the Debtors' business demands continued funding of operations to preserve goodwill, customer loyalty, and continued operating revenues. Failure to fund operations through use of Cash Collateral could lead to irreparable damage and a substantial decrease in the value of the Prepetition Collateral. Accordingly, the Debtors submit that their ability to use the Prepetition Collateral, including Cash Collateral, will enhance not only the Debtors' going concern value, but also the ultimate value of the Prepetition Collateral itself.

26. Courts generally have found that secured creditors are adequately protected and have authorized the use of cash collateral where the proposed continued use of the cash collateral will preserve the value of the secured creditors' other collateral, providing further adequate protection. *See, e.g., In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that debtor's use of cash collateral from shopping center to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor); *In re Constable Plaza Assocs., L.P.*, 125 B.R. 98, 104-05 (Bankr. S.D.N.Y. 1991) (finding equity cushion alone was adequate protection when cash collateral was used to preserve value of a building pledged as collateral and noting such use would "preserve or

enhance the value of the building which, in turn, will protect the collateral covered by [the mortgage]).⁸

27. Indeed, courts have considered the preservation and enhancement of collateral to be a critical component of adequate protection. For example, in determining the sufficiency of adequate protection, courts have considered “whether the value of the debtor’s property will increase as a result of the” use of the collateral. *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992).

28. Courts also have held that where a debtor seeks to use rents constituting a secured party’s cash collateral, adequate protection is available if the debtor will use the rents for maintaining the property. *See Fed. Nat. Mortg. Ass’n v. Dacon Bolingbrook Assocs. Ltd. P’ship*, 153 B.R. 204, 214 (N.D. Ill. 1993) (“[T]he required adequate protection of [r]ents is satisfied to the extent the Debtor reinvests the rents in the operation and maintenance of the property because the value of the secured creditor’s interest in its collateral will thereby be increased.”); *In re Constable Plaza Assocs.*, 125 B.R. at 105 (“debtor’s plowing back rents solely for the purpose of maintaining and operating its office building will serve to preserve or enhance the value of the building which, in turn, will protect the collateral covered by [the] mortgage”); *In re Prichard Plaza Assocs. Ltd. P’ship*, 84 B.R. 289, 302 (Bankr. D. Mass. 1988) (stating that adequate protection, if required, would be satisfied if the debtor applied rents entirely to the operation and maintenance of the property); *In re McCombs Props. VI, Ltd.*, 88 B.R. 261, 267

⁸ Moreover, as a general matter, continued operations are far more likely to maintain, or even increase, the value of the underlying collateral as compared with the liquidation that could result from denial of this Motion. *See In re Jim Kelly Ford of Dundee, Ltd.*, 14 B.R. 812 (N.D. Ill. 1980) (lender was adequately protected and debtor was authorized to use cash collateral to fund operations because the lender benefited from the difference between the average sale price of car sold at retail and the average sale price if the same vehicle was sold at a wholesale auction).

(Bankr. C. D. Cal. 1988) (holding that rents could be spent to make repairs or renovations that would increase rent flow even without equity cushion); *In re Western Real Estate Fund, Inc.*, 83 B.R. 52, 54 (Bankr. W. D. Okla. 1988) (allowing expenditures of postpetition rent revenues for upkeep).

29. Here, the Prepetition Secured Parties will be adequately protected because the Debtor's continued use of Cash Collateral will ensure that the value of the Mortgaged Properties is preserved for the benefit of not only the Debtors but the Prepetition Secured Parties as well by facilitating the Debtors' financial rehabilitation. Given the nature of the Debtors' business, it cannot be disputed that the Debtors' ability to maximize the value of their assets is inextricably tied to maintaining operations on an uninterrupted basis. If the Debtors do not have access to cash, they may be forced to shut down operations and the Debtors' assets would be liquidated for less than fair value. With the use of Cash Collateral to conduct the Debtors' business, however, the Debtors will be able to preserve and protect the value of their assets, including the Prepetition Collateral. Therefore, there will be no diminution in value of any Prepetition Collateral, and the Prepetition Secured Parties will be adequately protected.

C. The Additional Adequate Protection Protects Against Any Diminution in Value of the Prepetition Secured Parties' Collateral.

30. In addition to the equity cushion and the preservation of going concern value described above, the Debtors propose to provide the Prepetition Secured Parties with the following forms of adequate protection:

- a. *First*, subject to the Carve Out and to Prior Liens, as further protection against diminution in the value of its interest in the Prepetition Collateral, the Prepetition Secured Parties shall be granted a Superpriority Claim in accordance with sections 503(b), 507(a), and 507(b) of the Bankruptcy Code with priority over all other administrative expense claims and unsecured claims, with recourse to the collateral securing the Mortgage Loan.

- b. **Second**, the Prepetition Secured Parties shall receive (a) Interest Payment, under the Mortgage Loan Agreement (*i.e.*, the current payment of interest at the non-default contract rate) and (b) the Expense Reimbursement.
- c. **Third**, subject to the Carve Out and to Prior Liens, to the extent of diminution in the value of the Prepetition Secured Parties' interest in the Prepetition Collateral, the Debtors propose to provide the Prepetition Secured Parties with Adequate Protection Liens to the extent limited by the Bankruptcy Code on all of the applicable Debtor's rights in, to, and under the Postpetition Collateral; *provided* that the Adequate Protection Liens are granted only to the extent that they would not trigger liability under the 5-Pack Guarantee.
- d. **Fourth**, as further set forth in Section II, below, the Prepetition Secured Parties shall be granted postpetition security interests in the Non-Mortgage Borrower Liens, subject to the Carve Out; *provided* that the Non-Mortgage Borrower Liens are granted only to the extent that they would not trigger liability under the 5-Pack Guarantee.
- e. **Fifth**, the Debtors will continue to comply with the Reporting Obligations during the course of these chapter 11 cases.

31. As set forth in section 361(2) of the Bankruptcy Code, "replacement liens to the extent" of diminution in value of prepetition collateral is an accepted form of "adequate protection." 11 U.S.C. § 361(2). By requiring debtors to provide adequate protection, the Bankruptcy Code seeks only to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See 495 Cent. Park Ave. Corp.*, 136 B.R. at 631; *Beker Indus. Corp.*, 58 B.R. at 736-37; *In re Hubbard Power & Light*, 202 B.R. 680, 684-85 (Bankr. E.D.N.Y. 1996). Accordingly, replacement liens on property of the estate equal to the amount of the diminution in value, if any, resulting to the Prepetition Collateral as a result of the automatic stay, will compensate the Prepetition Secured Parties for the Debtors' use of Cash Collateral.

32. In light of the foregoing, the Debtors submit that the Adequate Protection Obligations are necessary and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using Cash Collateral. The adequate protection proposed

herein and in the Cash Collateral Order is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) of the Bankruptcy Code.

33. Indeed, the adequate protection package proposed herein and by the Cash Collateral Order is substantially identical to that previously approved by the Court in connection with the Final Cash Collateral Order. Moreover, courts in this jurisdiction have granted similar relief in other recent chapter 11 cases. *See, e.g., In re Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Dec. 13, 2010); *In re Innkeepers USA Trust*, Case No. 10-13800 (SCC) (Bankr. S.D.N.Y. July 20, 2010); *In re Citadel Broad. Corp.*, Case No. 09-17442 (BRL) (Bankr. S.D.N.Y. Dec. 21, 2009) (approving adequate protection liens, 507(b) claims, and fees and expenses of the prepetition agent, among other things, as sufficient adequate protection); *In re Reader's Digest Ass'n, Inc.*, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Aug. 26, 2009) (same); *In re Extended Stay Inc.*, Case No. 09-13764 (JMP) (Bankr. S.D.N.Y. June 29, 2009) (approving adequate protection liens and 507(b) claims, among other things, as sufficient adequate protection); *In re ION Media Networks, Inc.*, Case No. 09-13125 (JMP) (Bankr. S.D.N.Y. June 2, 2009) (approving adequate protection liens, 507(b) claims, reimbursement of fees and expenses of the prepetition agent, and financial reporting, among other things, as sufficient adequate protection); *In re General Growth Props., Inc.*, Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. Apr. 16, 2009) (approving adequate protection liens and 507(b) claims, among other things, as sufficient adequate protection).⁹

⁹ Because of the voluminous nature of the orders cited herein and in paragraph 3535, such orders are not attached to the Motion. Copies of these orders are available upon request of the Debtors' counsel.

II. Non-Mortgage Borrower Liens and Administrative Expense Status Provides Adequate Protection.

34. In the ordinary course of business and throughout these chapter 11 cases to date, the Debtors may use Cash Collateral to directly reimburse certain non-Mortgage Borrower affiliates for the payment of certain expenses, including taxes and asset management fees, necessary for the operation of the Debtors businesses (collectively, the “Non-Mortgage Borrower Payments”). To account for these payments (if any), the Debtors engage in intercompany financial transactions pursuant to which transfers of cash from the Debtors main concentration account are made to the relevant non-Mortgage Borrower affiliate. Consequently, at any point in time, there may be outstanding amounts due and owing among various Mortgage Borrowers and non-Mortgage Borrowers with respect to the Non-Mortgage Borrower Payments (collectively, the “Intercompany Claims”). Thus, to adequately protect the Prepetition Secured Parties for their interest in Cash Collateral used to pay Intercompany Claims (if any), the Debtors request continued authority to grant the Prepetition Secured Parties liens on the Intercompany Claims against a non-Mortgage Borrower arising from the transfer of such Cash Collateral of a Mortgage Borrower to a non-Mortgage Borrower.

35. The Court previously granted liens on Intercompany Claims pursuant to the Final Cash Collateral Order, and granting liens on Intercompany Claims is consistent with the law and has been granted in other large chapter 11 cases in this jurisdiction. *See, e.g., In re Innkeepers USA Trust*, Case No. 10-13800 (SCC) (Bankr. S.D.N.Y. July 20 2010); *In re Gen. Growth Props. Inc.*, Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. Apr. 16, 2009); *In re Chemtura Corp.*, Case No. 09-11233 (REG) (Bankr. S.D.N.Y. Apr. 23, 2009); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Jan. 13, 2009); *In re Lyondell*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 8, 2009).

36. The Debtors submit that granting the Non-Mortgage Borrower Liens, as part of the adequate protection package discussed above, more than adequately protects the Prepetition Secured Parties in accordance with the Bankruptcy Code. Accordingly, the Debtors respectfully request that the Court approve the adequate protection package and authorize the Debtors to utilize Cash Collateral wherever located.

Certification of the Budget Pursuant to Local Bankruptcy Rule 4001-2(h)

37. As set forth in the Devine Declaration, the Debtors' access to Cash Collateral will be subject to the Budgets. The Debtors believe that the Budgets will be adequate, considering all available assets and the proceeds provided by the DIP Facility, to pay all administrative expenses due or accruing during the period in which the Debtors are proposing use of the Cash Collateral.

Motion Practice

38. 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).

Waiver of Bankruptcy Rule 6004(1) and 6004(h)

39. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of a property under Bankruptcy Rule 6004(h).

The Debtors' Reservation of Rights

40. 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

41. 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

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WHEREFORE, the Debtors respectfully request that the Court (a) enter the Cash Collateral Order, substantially in the form attached hereto as **Exhibit A** and (b) grant such other relief as is just and proper.

New York, New York
Dated: October 11, 2011

/s/ Paul M. Basta

James H.M. Sprayregen, P.C.
Paul M. Basta
Edward O. Sassower
Chad J. Husnick
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Cash Collateral Order

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 AUTHORIZING (I) CONTINUED USE OF CASH
COLLATERAL, (II) APPROVING ADEQUATE PROTECTION,
AND (III) GRANTING RELATED RELIEF**

Pursuant to the *Motion of MSR Resort Golf Course LLC, et al., for the Entry of an Order Authorizing the Continued Use of Cash Collateral, Approving Adequate Protection, and Granting Related Relief* (the “**Motion**”),² MSR Resort Golf Course LLC and its affiliated debtors (collectively, the “**Debtors**”) seek entry of an order (this “**Cash Collateral Order**”) authorizing (i) the Debtors to continue to use Cash Collateral (as defined below) of the Prepetition Secured Parties (as defined below) pursuant to sections 361 and 363 of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “**Bankruptcy Code**”) and Rules 2002, 4001, 6004, 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and (ii) the Debtors to

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 and not otherwise defined herein shall have the meanings set forth in the Motion.

continue to provide adequate protection to the Prepetition Secured Parties with respect to (A) diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (as defined below), whether from the use of Cash Collateral, the use, sale, lease, or other diminution in value of the Prepetition Collateral other than Cash Collateral, or the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, pursuant to sections 361, 362, 363, 503(b), and 507 of the Bankruptcy Code (B) the use by the Debtors of the Prepetition Collateral and (C) the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the relief requested pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of this Cash Collateral Order having complied with the requirements set forth in the Final Order; and all objections, if any, to the entry of this Cash Collateral Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND THAT:

A. Commencement. On February 1, 2011 (the "**Commencement Date**"), each of the Debtors filed a voluntary petition with the Court under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On May 11, 2011, the United States Trustee for the Office of the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors [Docket No. 328] (the "Creditors' Committee").

B. Current Cash Collateral Order. On April 15, 2011, this Court entered the *Final Order Authorizing Debtors to (I) Use the Prepetition Secured Parties' Cash Collateral and (II) Provide Adequate Protection to the Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 503 and 507* [Docket No. 255] (the "Final Cash Collateral Order"), which, by its terms, expires on October 31, 2011.

C. Jurisdiction; Core Proceeding. 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). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Mortgage Loan.

(1) Each Mortgage Borrower (as defined below) is a borrower under that certain mortgage loan in the original principal amount of \$1,000,000,000 (the "**Mortgage Loan**") advanced pursuant to that certain Loan and Security Agreement dated as of January 9, 2006 (as amended, restated, replaced, supplemented or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "**Mortgage Loan Agreement**") by and among MSR Resort Hotel, LP (f/k/a CNL Resort Hotel, LP), MSR Resort Silver Properties, LP (f/k/a CNL Resort Silver Properties, LP), MSR Grand Wailea Resort, LP (f/k/a CNL Grand Wailea Resort, LP), MSR Biltmore Resort, LP (f/k/a CNL Biltmore Resort, LP), MSR Desert Resort, LP (f/k/a CNL Desert Resort, LP), MSR Claremont Resort, LP (f/k/a CNL Claremont Resort, LP), each a Delaware limited partnership, and MSR Resort Golf Course LLC, a Delaware limited liability company (collectively, the "**Mortgage Borrowers**"), as borrowers, and Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as trustee for the Certificate Holders of Deutsche Mortgage & Asset Receiving Corporation, COMM 2006-CNL2 Commercial Mortgage Backed Certificates (as

successor in interest to German American Capital Corporation, and together with its successors and assigns, the “**Mortgage Lender**”).

(2) The Mortgage Loan is evidenced by, among other documents, the Mortgage Loan Agreement, that certain Renewal, Amended, Restated and Consolidated Note in the principal amount of \$1,000,000,000, dated as of January 9, 2006, made by the Mortgage Borrowers in favor of the Mortgage Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, “**Mortgage Note**”), and that certain Multi-State Amended, Restated and Consolidated Fee and Leasehold Mortgage, Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenues and Security Deposits, dated as of January 9, 2006, executed and delivered by the Mortgage Borrowers to Mortgage Lender and encumbering the property described therein (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**” and, together with the Mortgage Loan Agreement, the Mortgage Note, and all other loan documents executed in connection therewith prior to the Commencement Date, collectively, the “**Mortgage Loan Documents**”). The Mortgage Loan was sold, assigned and transferred to the COMM 2006-CNL2 Trust pursuant to that certain Trust Agreement, dated February 1, 2006 (the “**Trust Agreement**”).

(3) The Mortgage Loan is administered pursuant to that certain Servicing Agreement, dated as of February 1, 2006 (as amended, restated, replaced, supplemented or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the “**Servicing Agreement**” and, collectively with the Mortgage Loan Documents, the “**Mortgage Loan and Servicing Documents**”) by and among Deutsche Mortgage & Asset Receiving Corporation (the “**Depositor**”), Midland Loan Services, Inc.

(“**Midland**”), as master servicer (in such capacity, the “**Master Servicer**”), LNR Partners, Inc., as special servicer, the Mortgage Lender and each holder of a certificate issued by COMM 2006-CNL2 Trust (collectively the “**Certificate Holders**”). Midland has been appointed as the successor special servicer under the Servicing Agreement (in such capacity, the “**Special Servicer**”, collectively with “Master Servicer, the “**Servicer**”, and, collectively with the Depositor, the Mortgage Lender and the Certificate Holders, the “**Prepetition Secured Parties**”).

(4) The Mortgage Loan is guaranteed for the benefit of the Mortgage Lender by each of (a) MSR Hotels & Resorts, Inc. (f/k.a CNL Hotels & Resorts, Inc.) (the “**REIT**”), under that certain Guaranty of Recourse Obligations, dated as of January 9, 2006, and (b) MS Resort Purchaser LLC, under that certain Guaranty of Recourse Obligations (Mortgage MSR), dated as of January 9, 2006 (“**Resort Purchaser**” and collectively with the REIT, the “**Guarantors**”).

(5) In addition to the foregoing, in connection with the Mortgage Loan: (A) Debtors MSR Resort Lodging Tenant, LLC and MSR Resort Ancillary Tenant LLC (collectively, the “**Debtor Operating Lessees**”) became parties to (i) the operating lease subordination agreements (collectively, the “**Subordination Agreements**”), pursuant to which the Debtor Operating Lessees subordinated all of the Debtor Operating Lessees’ rights under the operating leases for the Mortgaged Properties to Mortgage Lender’s rights under the Mortgage Loan Documents and (ii) that certain Assignment of Leases, Rents, Hotel Revenues and Security Deposits, dated as of January 9, 2006 (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Assignment**”) pursuant to which all right, title and interest of the Debtor Operating Lessees (and the Mortgage Borrowers) in and to all leases, rents, hotel

revenues and security deposits in connection with the Mortgaged Properties were assigned to Mortgage Lender; (B) Debtors MSR Resort Biltmore Real Estate, Inc. and MSR Resort Desert Real Estate, Inc. (collectively, the “**Debtor Subsidiaries**” and, together with the Debtor Operating Lessees, the “**Mortgage RE Entities**”) became parties to those certain subsidiary managers consent and subordination of management agreements (collectively, the “**Debtor Subsidiary Agreements**”) pursuant to which certain Mortgage Borrowers assigned a security interest to Mortgage Lender with respect to all of their right, title and interest in and to the management agreements with the Debtor Subsidiaries, the Debtor Subsidiaries subordinated all of their liens, rights and interests pursuant to the management agreements to Mortgage Lender’s rights under the Mortgage Loan Documents and the Debtor Subsidiaries assigned all of their right, title and interest in and to the management agreements and the proceeds thereof to Mortgage Lender; and (C) Debtor MSR Resort REP, LLC (together with the Mortgage Borrowers, the Debtor Operating Lessees and the Debtor Subsidiaries, the “**Debtor Credit Parties**”) became a party to the pledge and security agreements (the “**Debtor MSR Resort REP Documents**”, and collectively with the Subordination Agreements, the Assignment, the Debtor Subsidiary Agreements and any other documents to which the Debtor Credit Parties became party in connection with the Mortgaged Properties, the “**Debtor Credit Party Documents**”) pursuant to which the Debtor MSR Resort REP, LLC pledged (among other things) all of its interests in and to the Debtor Subsidiaries to the Mortgage Lenders.

E. Stipulations of Debtors. The Debtors have acknowledged and stipulated that:

(i) The Debtor Credit Parties have granted to the Prepetition Secured Parties valid, first priority liens, mortgages, deeds of trust and security interests in and to substantially all of the Debtor Credit Parties’ interests in and to substantially all tangible

and intangible assets relating to the ownership, occupancy rights, use, operations and management of five (5) luxury hotel and resort properties (the “**Mortgaged Properties**”) and in certain of their other assets and property, including, but not limited to, all rents and other cash generated by the Mortgage Borrowers’ hotel and business operations with respect to the Mortgaged Properties, whether generated before or after the Commencement Date (all such property, including without limitation the Mortgaged Properties, as the same existed on or at any time prior to the Commencement Date being hereinafter referred to as, the “**Prepetition Collateral**” and such security interests thereon and liens thereon shall be referred to as the “**Prepetition Encumbrances**”) as collateral security for payment and performance when due of the Prepetition Secured Obligations (as defined below).

(ii) The Prepetition Encumbrances are legal, valid, and enforceable security interests in and liens upon the Prepetition Collateral, not subject to avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under the Bankruptcy Code or any other applicable law or regulation by any person or entity, and, as of the Commencement Date, and without giving effect to this Cash Collateral Order or the Final Cash Collateral Order, there are no liens or security interests having priority over the Prepetition Encumbrances, except certain Prior Liens (as defined below). The Prepetition Encumbrances on the Prepetition Collateral were granted to the Prepetition Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with or in consideration of the making of the loan secured thereby.

(iii) The Prepetition Collateral includes, among other things, cash collateral within the meaning of section 363 (a) of the Bankruptcy Code (the “**Cash Collateral**”).

(iv) As of the Commencement Date, (i) the Mortgage Borrowers are indebted and liable to the Prepetition Secured Parties, without objection, defense, counterclaim, cross-claim or offset of any kind under the Mortgage Loan and Servicing Documents in the aggregate principal amount of not less than \$1 billion (plus accrued and unpaid interest thereon), (ii) the Mortgage Borrowers are indebted and liable to the Prepetition Secured Parties for all fees, expenses and other obligations incurred under the Mortgage Loan and Servicing Documents (including any attorneys’, accountants’, appraisers’ and financial advisors’ fees that are chargeable or reimbursable under the Loan and Servicing Documents) and not paid prior to the Commencement Date ((i) and (ii) together, the “**Prepetition Secured Obligations**”), (iii) the Debtors do not have any claims, counterclaims, cross-claims, defenses, offsets or causes of action against the Prepetition Secured Parties under any legal or equitable theory, including Avoidance Actions (as defined below), and (iv) each Guarantor party to a guaranty described in Paragraph C(4) of the findings herein was jointly and severally liable to the Prepetition Secured Parties on account of such guaranty; provided, however, that the foregoing is not for the benefit of any Certificate Holder other than in its capacity as a Certificate Holder.

(v) Cause Shown. Good cause has been shown for the entry of this Cash Collateral Order. The Debtors have an immediate need to continue to use Cash Collateral to permit, among other things, the orderly continuation of the operation of their businesses. The Debtors do not have sufficient available sources of working capital to

carry on the operation of their businesses without the Debtors' continued ability to use Cash Collateral. The expenditures provided for in the Budgets (as defined below) are necessary and appropriate to the Debtors' estates. Among other things, entry of this Cash Collateral Order will minimize disruption of the Debtors' businesses and operations and permit them to continue to pay operating expenses, including, without limitation, to honor their obligations under their agreements with the management companies for their hotels, maintain business relationships with their vendors, and retain customer and vendor confidence by demonstrating an ability to maintain operations. The use of Cash Collateral will, therefore, help preserve and maintain the going concern value of the Debtors and their estates, and will enhance the prospects for a successful reorganization of the Debtors under chapter 11 of the Bankruptcy Code.

F. Adequate Protection of Interests. The Prepetition Secured Parties are entitled to adequate protection for (x) the use of its Cash Collateral, (y) the use, sale, lease, or other diminution in value of its Prepetition Collateral (other than the Cash Collateral), and (z) the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code.

G. Notice. Notice of the cash collateral hearing (the "**Cash Collateral Hearing**") has been given to and the proposed form of this Cash Collateral Order has been served upon: (i) the U.S. Trustee; (ii) counsel to the Creditors' Committee; (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; (vii) any applicable state public utilities commissions required to receive notice under the Bankruptcy Rules or Local Rules; and (viii) any persons who have filed a request for notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Such notice of the Cash Collateral Hearing complies

sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and Local Bankruptcy Rule 4001-2, as modified by this Cash Collateral Order.

H. Fair and Reasonable. Based on the contents of the Motion, the Burian Declaration, and the record presented to the Court at the Cash Collateral Hearing, the terms of the Debtors' use of Cash Collateral are fair and reasonable, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Cash Collateral Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED that:

1. Disposition. The Debtors' use of Cash Collateral is authorized on a final basis, subject to the terms and conditions set forth herein. All objections to the relief sought herein or the entry of this Cash Collateral Order that have not been withdrawn or resolved are overruled on their merits.

2. Effect. This Cash Collateral Order shall take effect immediately upon entry and shall remain in effect as to all of the Debtors during the period prior to the occurrence of a Termination Date (as defined below) (such period, the "**Cash Collateral Period**"), at which point the Debtors' right to use Cash Collateral shall terminate automatically (subject to the terms of this Cash Collateral Order), without further order of the Court or other action taken;

3. [Intentionally omitted.]

4. Use of Cash Collateral.

(a) The Debtors shall not use any Cash Collateral except as permitted herein or as otherwise approved by this Court.

(b) During the Cash Collateral Period, the Debtors are hereby authorized, subject to the terms and conditions of this Cash Collateral Order, to use Cash Collateral, for

working capital and general corporate purposes, including with respect to the payment of costs and expenses related to the Chapter 11 Cases of the Debtors in accordance with such purposes as set forth in cash and accrual budgets (the forms of which are attached as Exhibit A to this Cash Collateral Order) (as the same may be amended and extended from time to time in accordance with the terms hereof, the “**Budgets**”), subject to any variances permitted in this Cash Collateral Order.

(c) The Debtors shall deliver to the Servicer a cash budget covering the subsequent thirteen-week period (a “**Cash Budget**”) by no later than the first calendar day of each month (unless such day is not a business day in which case the required delivery date shall be the next succeeding business day). Each Cash Budget shall set forth a thirteen-week reasonably detailed forecast of cash receipts and disbursements starting from the last Saturday of the prior calendar month. Such Cash Budget shall include, among other things, receipts, disbursements and capital expenditures separately listed for each of the Mortgaged Properties, and asset management fees, and other portfolio-level expenses applicable to all of the Mortgaged Properties and Mortgage Borrowers combined.

(d) The Debtors shall deliver to the Servicer a accrual budget covering the subsequent three month period (a “**Accrual Budget**”) by no later than the tenth calendar day of each month (unless such day is not a business day in which case the required delivery date shall be the next succeeding business day). Each Accrual Budget shall set forth a three month reasonably detailed forecast of accrued revenues and expenses starting from the first day of the current calendar month. Such Accrual Budget shall include, among other things, revenues, expenses, and capital expenditures separately listed for each of the Mortgaged Properties, and

asset management fees, and other portfolio-level expenses applicable to all of the Mortgaged Properties and Mortgage.

(e) [Intentionally Omitted].

(f) Notwithstanding anything in the Budgets or in this Cash Collateral Order to the contrary, the Prepetition Secured Parties reserve all rights to object to any motion, application or other request for relief that relates to the items referred to or covered by the Budgets, including, but not limited to the engagement, and the terms thereof, of any professional proposed to be engaged at the expense of the Debtors' estates.

(g) Subject to the provisions of this Cash Collateral Order and of any separate order of the Court on the Debtors' motion for authority to maintain their existing cash management system, including all contractual arrangements with hotel management companies concerning the handling of cash proceeds of operations under the control of such management companies and the rights of interested parties including the Mortgage Lender therein (the "**Manager Cash Procedures**"), the Debtors shall maintain and utilize their pre-petition cash management system in a manner consistent with their practices in effect prior to the Commencement Date. The Special Servicer is prohibited from seizing Cash Collateral maintained by the Debtors in accordance with the Manager Cash Procedures.

(h) During the period prior to the Commencement Date, certain sales taxes and other expenses of the Debtors were paid by MSR Hotels & Resorts Inc. and MS Resort Purchaser LLC, neither of which is a Debtor. On and after the Commencement Date, except with respect to sales taxes and other expenses of the Doral that are being paid directly by Marriott, from the Marriott centralized cash management system or at the property level at the Doral, any cash that is to be designated in the Budgets for the payment of sales taxes (including

sales taxes associated with the lease structure) and other expenses of the Debtors that are not being paid at the property level shall be deposited into the existing disbursement account approved by the Servicer and shall be subject to the liens of the Mortgage Lender granted under the Mortgage Loan and Servicing Documents and granted herein in the name of one or more of the Mortgage Borrowers. All such budgeted sales taxes and expenses shall be paid directly from such account. The Mortgage Borrowers may open new bank accounts provided such accounts shall be subject to the requirements set forth in this Paragraph 4(h) and the liens granted pursuant to Paragraph 5.a(i).

(i) All other current and future cash of the Debtors shall be maintained and/or deposited by the Debtors or their representatives into accounts in existence under the Debtors' Manager Cash Procedures or other accounts approved in writing by the Servicer or its representatives and subject to the lien of the Prepetition Secured Parties.

(j) Cumulative Cash Budget Variance. The Debtors agree that, as reported in any Variance Report delivered pursuant to Paragraph 6(d) of this Cash Collateral Order, (x) during each 4-week cumulative period and 13-week cumulative period, as tested retroactively from the last Friday of each such period, the Debtors shall not use Cash Collateral to the extent such use would exceed, for such respective period, 115% of each of Consolidated Operating Department Expenses, Consolidated Overhead Department Expenses, and Consolidated Fixed Expense (highlighted as (A), (B) and (C), respectively, in the Cash Budget) (collectively, the "**5-Pack Expenses**"), (y) during each 4-week cumulative period and 13-week cumulative period, as tested retroactively from the last Friday of such respective period, the Debtors shall not use Cash Collateral to the extent such use would exceed, for such respective period, 115% of each of Consolidated Critical CapEx in Excess of FF&E Reserves and Other Portfolio Level Expenses

(excluding expenses incurred on behalf of professionals) (highlighted as (D) and (E), respectively, in the Cash Budget) (together with the Consolidated Critical CapEx in Excess of FF&E Reserves, the “**Corporate Expenses**,” and, collectively with the 5-Pack Expenses, the “**Portfolio Operating Expenses**”), and (z) during each 4-week cumulative period and 13-week cumulative period, as tested retroactively from the last Friday of each such period, the Debtors shall not use Cash Collateral to the extent such use would exceed (on a cumulative basis), for such respective period, 110% of the Portfolio Operating Expenses. To the extent that there is a positive variance (expressed as a percentage), of actual revenues (not including net membership cash flow) in any one month period as compared to the revenues (not including net membership cash flow) for the same period forecasted in the applicable Accrual Budget, then, with respect to the Consolidated Operating Department Expenses, the variance from budgeted amount permitted pursuant to this Paragraph on account of such Consolidated Operating Department Expenses shall be adjusted by such percentage.

(k) Under no circumstance shall any cash of the Debtors be used, either directly or indirectly, to pay any cost or expense incurred by or attributable or allocated to any affiliate or insider (as such terms are defined in the Bankruptcy Code), of any of the Debtors or any property manager or asset manager performing services for any of the Debtors or the Mortgaged Properties, except to the extent that such expenses are expressly set forth in the Budgets.

(l) Solely for purposes of Budgets and reporting requirements under this Cash Collateral Order and not for any other purpose in the Chapter 11 Cases, (i) the operations of MSR Desert Resort, LP, MSR Resort Golf Course LLC and MSR Resort Desert Real Estate, Inc. shall be treated as a single Mortgaged Property; (ii) the operations of MSR Resort Hotel, LP and

MSR Resort Silver Properties, LP shall be treated as a single Mortgaged Property; and (iii) MSR Biltmore Resort, LP, and MSR Resort Biltmore Real Estate, Inc. shall be treated as a single Mortgaged Property.

5. Adequate Protection for Use of Cash Collateral. As adequate protection for the use of Cash Collateral, or to the extent of any diminution in value of the Prepetition Collateral securing each Mortgage Borrower's obligations under the Mortgage Loan and Servicing Documents, the Prepetition Secured Parties are hereby granted the following:

a. Adequate Protection Liens.

(i) The Prepetition Secured Parties shall receive a perfected replacement lien and security interest in and valid, binding, enforceable and perfected liens (the "**Adequate Protection Liens**") on each of the Mortgage Borrower's rights in, to, and under all present and after-acquired property and assets of any kind or nature whatsoever, whether real or personal, tangible or intangible, wherever located, including, without limitation, all cash and Cash Collateral and any investment of such cash and Cash Collateral, goods, cash-in-advance deposits, deposit accounts, contracts, causes of action, general intangibles, accounts receivable, and other rights to payment, whether arising before or after the Commencement Date, chattel paper, documents, instruments, interests in leaseholds, real properties, plants, machinery, equipment, patents, copyrights, trademarks, trade names or other intellectual property, licenses, insurance proceeds, and tort claims, and any and all of the proceeds, products, offspring, rents and profits thereof, rights under letters of credit, capital stock and other equity or ownership interests, including equity interests in subsidiaries and all other investment property, and the proceeds of all of the foregoing, whether in existence on the Commencement Date or thereafter created, acquired, or arising and wherever located (all such property, other than the Prepetition Collateral in existence immediately prior to the Commencement Date, being collectively referred to as, the "**Postpetition Collateral**" and collectively with the Prepetition Collateral, the "**Collateral**"), which liens and security interests shall be senior to any and all others liens and security interest, but subject to (A) the Carve Out and (B) all valid, enforceable and non-avoidable Permitted Encumbrances (as defined in the Mortgage Loan Agreement) in the applicable Prepetition Collateral that were perfected prior to the Commencement Date (or perfected thereafter to the extent permitted by section 546(c) of the Bankruptcy Code), which are not subject to avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges pursuant to the Bankruptcy Code or applicable non-bankruptcy law and which are senior to the applicable Prepetition Secured Party's liens in such Prepetition Collateral as

of the Commencement Date (the “**Prior Liens**”). The Postpetition Collateral in favor of any Adequate Protection Party shall include (among other things), subject to entry of this Cash Collateral Order, the proceeds of any claims and causes of action under section 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code (collectively, the “**Avoidance Actions**”). For the avoidance of doubt, such Adequate Protection Liens granted hereunder shall be deemed to be effective and perfected as of the Commencement Date and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, or other agreements. For the duration of these chapter 11 cases, the Debtors shall not grant any liens upon the assets of the Mortgage RE Entities. The proceeds of any Collateral transferred from one Debtor to any other Debtor, however, shall remain subject to the Mortgage Lender’s liens and security interests irrespective of such transfer. Under no circumstance shall the Adequate Protection Liens be made subordinate to the lien of any other party, no matter when arising. Nothing in this Cash Collateral Order creates any lien or interest in the Separate Collateral (as such term is defined in that mezzanine lender Intercreditor Agreement).³

b. Superpriority Claims. An allowed superpriority administrative expense claim as provided and to the full extent allowed by sections 503(b), 507(a) and 507(b) of the Bankruptcy Code and otherwise (the “**Superpriority Claim**”). The Superpriority Claim shall be subject to the Carve-Out, and shall be an allowed claim against each of the Mortgage Borrowers and the Mortgage RE Entities (jointly and severally) with priority over any and all administrative expenses and all other claims against the Mortgage Borrowers and the Mortgage RE Entities, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all other administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The Superpriority Claim, subject to entry of this Cash Collateral Order to the extent provided therein, shall be payable from and have recourse to the proceeds of any Avoidance Actions. The allowed Superpriority Claim also shall be payable from and have recourse to all unencumbered pre- and post-petition property of the Mortgage Borrowers and the Mortgage RE Entities. Other than the Carve-Out and except as provided under Paragraph 18 hereof, no cost or expense of administration under sections 105, 503 or 507 of the Bankruptcy Code or otherwise, including any such cost or expense resulting from or arising after the conversion of the any of the Chapter 11 Cases

³ That certain Intercreditor Agreement dated as of January 9, 2006, by and among German American Capital Corporation, a Maryland corporation, in its capacity as Senior Lender, First Mezzanine Lender, Second Mezzanine Lender, Third Mezzanine Lender, Fourth Mezzanine Lender and Fifth Mezzanine Lender (as the same may have been amended or assigned from time to time).

under section 1112 of the Bankruptcy Code, shall be senior to, or *pari passu* with, the Superpriority Claim granted hereunder. Except to the extent set forth in this Paragraph 5.b., under no circumstance shall the Superpriority Claim be made subordinate to the claim of any other party, no matter when arising. Except with respect to Superpriority Claims granted by the DIP Borrowers pursuant to an order by the Court, which such Superpriority Claims shall be junior in all regards to Superpriority Claims granted pursuant to this Cash Collateral Order, the Debtors shall not grant or seek to grant any Superpriority Claims against any Debtors in favor of any other party.

6. Additional Adequate Protection. In addition to the Adequate Protection Liens and Superpriority Claims set forth in Paragraph 5 above, as further adequate protection the use of the Collateral (including Cash Collateral), and in accordance with sections 361 and 363(e), of the Bankruptcy Code, the Debtors shall provide the Prepetition Secured Parties, with the following:

a. Payment of Interest.

The Debtors shall pay to the Mortgage Lender, for the benefit of the Prepetition Secured Parties, on an ongoing basis, the current cash payment of interest on the Prepetition Secured Obligations at the non-default contract rate of interest set forth in (and at the times provided for in) the Mortgage Loan Documents; provided, however, that the rights of the Debtors, of the Mortgage Lender, and of any Committee are reserved with respect to whether interest should be paid at the default rate.

b. [Intentionally omitted.]

c. Expense Reimbursement of Servicer and Mortgage Lender.

(i) Within seven business days after receipt of an invoice, the Debtors shall pay all reasonable and documented fees and expenses of the Servicer (including, without limitation, servicing fees), its counsel, Milbank, Tweed, Hadley & McCloy, LLP (“**Milbank**”), and its financial advisor, FTI Consulting, Inc. (“**FTI**”), and all reasonable and documented fees and expenses of the Mortgage Lender and its counsel (including, without limitation, trustee’s fees), in connection with the Mortgage Loan and Servicing Documents and the Chapter 11 Cases, in each case to the extent such payment would be required by the express terms of the applicable Mortgage Loan and Servicing Documents (such fees and expenses, collectively, the “**Servicer’s Fee and Expense Reimbursement**”); provided that, nothing herein shall be construed as a waiver by the Debtors of their right to later challenge the amount, extent, type, or characterization of any of the Servicer’s Fee and Expense Reimbursement or any other costs, fees, and expenses paid or purported to be payable. The Servicer and the Mortgage Lender

shall be required to serve the U.S. Trustee, counsel to any Committee, and counsel to the DIP Lenders with copies of any invoices submitted to the Debtors.

(ii) None of the fees, costs and expenses payable pursuant to this Paragraph 6.c. shall be subject to separate approval by this Court, and no recipient of any such payment shall be required to file or serve upon any party an interim or final fee application with respect thereto. Furthermore, the fee, cost and expense documentation to be submitted to the Debtors, the U.S. Trustee, counsel to any Committee, and counsel to the DIP Lenders (as defined herein) by the Servicer and Mortgage Lender, or their respective professionals, need not contain detailed descriptions of the services provided, but may consist of a general description of the services provided during the period covered by the invoice (unless a reasonably detailed invoice is reasonably requested by the Debtors in order to ascertain the nature and scope of the services for which reimbursement is being sought). In the event that the Debtors, the U.S. Trustee, counsel to any Committee, or the DIP Lenders notify counsel for the Servicer and Mortgage Lender, in writing, of an objection to a particular invoice, and the parties are unable to resolve any dispute regarding the reasonableness of fees, costs and expenses, the Debtors, U.S. Trustee, counsel to any Committee, or counsel to the DIP Lenders may file with the Court and serve upon the Servicer and Mortgage Lender a written objection to the reasonableness of such fees, costs and expenses. The filing of any such objection shall not relieve the Debtors of the obligation to timely make all payments required under Paragraph 6(c)(i) above until the Court grants the relief requested in such objection.

d. Reporting.

(i) The Mortgage Borrowers shall deliver to the Servicer, by no later than the tenth day of each calendar month (unless such day is not a business day in which case the required delivery date shall be the next succeeding business day), a report for each Mortgaged Property and for all Mortgage Borrowers combined showing in reasonable detail, including an identification of the property generating such receipts, incurring such expenditures or the method of allocating a joint expenditure among the properties, a comparison of actual receipts and disbursements (including capital expenditures and excess cash available for distribution under the terms of the hotel management agreements) for the prior calendar month (presented on a weekly basis and as a total) against the receipts and disbursements projected in the Cash Budget for such period (the “**Cash Variance Report**”). The Cash Variance Report shall include, among other things, explanation of any items where actual amounts exceed or fall below the projections in the Cash Budget by more than the greater of 5% and \$50,000. Together with each Cash Budget and Cash Variance Report delivered to the Servicer, the Debtors also shall deliver to the Servicer reasonable back-up details relative to the components of such Cash Budget and/or Cash Variance Report. Thereafter, promptly following request, the Debtors shall make themselves reasonably available to discuss such Cash Budget, and the Cash Variance Report and the details thereof.

(ii) The Mortgage Borrowers shall deliver to the Servicer, by no later than the fifteenth day of each calendar month (unless such day is not a business day in which case the required delivery date shall be the next succeeding business day), a report for each Mortgaged Property and for all Mortgage Borrowers combined and including allocated portfolio-level expenses showing in reasonable detail, including an identification of the property incurring such expense or the method of allocating a joint expense among the properties, a comparison of actual accruals of revenues and expenses for the prior calendar month against accruals of revenues and expenses projected in the Accrual Budget for such period (the “**Accrual Variance Report**”). The Accrual Variance Report shall include, among other things, explanation of any items where actual amounts exceed or fall below the projections in the Accrual Budget by the greater of 5% and \$50,000. Together with each Accrual Budget and Accrual Variance Report delivered to the Servicer, the Debtors also shall deliver to the Servicer material back-up details relative to the components of such Accrual Budget and/or Accrual Variance Report. Thereafter, promptly following request, the Debtors shall make themselves reasonably available to discuss such Accrual Budget, and the Accrual Variance Report and the details thereof.

(iii) The Mortgage Borrowers also shall provide to Servicer within 30 days of the end of the month (or, if the 30th day is not a business day, the next succeeding business day), and, with respect to the Mortgaged Property commonly known as the Doral Golf Resort and Spa (“**Doral**”), the end of a four-week reporting period, accrual based (a) month-end profit and loss statements for each individual Mortgaged Property and for each Mortgage Borrower, which shall include (among other things) year-to-year results, comparisons with same period in the immediately preceding year, comparisons to budget and key operating metrics consisting of occupancy, ADR and RevPAR; and (b) balance sheet statements for each individual Mortgaged Property and for each Mortgage Borrower, which shall include (among other things) comparisons with the same period in the immediately preceding year, and sufficient detail for each listed line item, including an indication of restricted and unrestricted cash. Profit and loss statements and balance sheet statements shall use consistent format and accounting principles for all of the individual hotel properties and Mortgage Borrower. The Debtors also shall provide on a monthly basis, at the same time as they provide the month-end statements referred to previously in this Paragraph 6.d(iii), the STR report for each property and the PACE report for each property.

(iv) The Mortgage Borrowers also shall provide to Servicer within 30 days of the end of the month (or, if the 30th day is not a business day, the next succeeding business day), and, with respect to Doral, the end of a four-week reporting period, information related to the FF&E reserve account and capital expenditure account related to each individual Mortgaged Property and Mortgage Borrowers. Such information shall include but not be limited to the month-end account balance, account activity, and detail of expenditures incurred in the reported period and their funding sources (including but not limited to the detail

of any reimbursement paid to the Debtors, Pyramid Resort Asset Management LLC. (together with any affiliates thereof, the “**Asset Manager**”), or the Debtors’ affiliates in connection with a prior advance of funds or vendor payment).

(v) The Mortgage Borrowers also shall provide to Servicer within 30 days of the end of the month (or, if the 30th day is not a business day, the next succeeding business day) and, with respect to Doral, the end of a four-week reporting period, information related to any asset management fees, project management fees, and any other fees and related reimbursements paid to the Asset Manager during the reported period.

(vi) The Mortgage Borrowers shall notify Servicer of any discussions with hotel managers related to any proposed changes to working capital cash targets for each individual Mortgaged Property to the extent such discussions are likely to result in material changes to the working capital cash targets. Any changes required to be reported pursuant to this clause (vi) shall require Servicer’s prior consent.

(vii) The Mortgage Borrowers shall provide the Servicer with (a) such other financial reports and information as are required by the U.S. Trustee or the Local Bankruptcy Rules and (b) any other information that may be reasonably requested by the Servicer.

(viii) Within 90 days after the end of each fiscal year, the Mortgage Borrowers shall provide the Servicer with an audit report and audited consolidated financial statements for MS Resort Senior Holdings LLC or MS Resorts I, LLC, as applicable, including consolidating schedules for each Mortgaged Property, as well as unaudited financial statements for each Mortgage Borrower, tenant entities (MSR Resort Lodging Tenant LLC and MSR Resort Ancillary Tenant LLC), and real estate brokerage entities (MSR Resort Biltmore Real Estate Inc. and MSR Resort Desert Real Estate Inc.) certified by an authorized individual and a management report, in both cases in form and substance reasonably satisfactory to Mortgage Lender, discussing the reconciliation between the financial statements for such fiscal year and the most recent Budgets for the same fiscal year.

(ix) Within 90 days after the end of each fiscal year, the Mortgage Borrowers shall provide the Servicer with an annual report, for the most recently completed fiscal year containing: (A) capital expenditures (including for this purpose any and all additions to, and replacements of, FF&E,) made in respect of the Mortgaged Properties, including separate line items with respect to any project costing in excess of \$500,000; (B) occupancy levels for the Mortgaged Properties for such period; and (C) average daily room rates at the Mortgaged Properties for such period.

(x) The Mortgage Borrowers shall provide the Servicer, within two (2) weeks after the entry of this Cash Collateral Order, with a schedule to the extent

that there have been material changes to the information previously provided of tenant leases at each of the Mortgaged Properties that are leased by third parties.

(xi) The Mortgage Borrowers shall provide the Servicer with a budget setting forth revenues and expenses for each resort for the fiscal year in which such delivery date falls by February 15, 2012. If Mortgage Borrower subsequently amends the Budgets, Mortgage Borrower shall promptly deliver the amended Budgets to Mortgage Lender.

(xii) The Mortgage Borrowers shall provide the Servicer, within thirty (30) days after month end, with occupancy reports and ADR reports for each Mortgaged Property and a list of Low DSCR GW Membership Deposits (if applicable).

(xiii) Within 10 business days of receipt, the Mortgage Borrowers shall provide the Servicer with a copy of all material written reports or notices prepared by hotel managers as required under any management agreement, including, without limitation, the completed final hotel budget and any inspection reports.

(xiv) The Mortgage Borrowers shall provide the information set forth above in this Paragraph 6.d to the Servicer and its counsel and financial advisors; provided, however, that neither the Servicer nor its counsel nor its financial advisors shall disclose the information set forth above in this Paragraph 6.d to any other party except in accordance with and subject to a form of confidentiality agreement to be negotiated among the Mortgage Borrowers and the Servicer; provided, further, however that the Servicer may share the information set forth above in this Paragraph 6.d with the Servicer's operating advisor, Lexington Investments, Ltd. (the "Operating Advisor"), but only to the extent the Operating Advisor has executed a confidentiality agreement that is substantially similar to the confidentiality agreement already agreed to by the Mortgage Borrowers and the Operating Advisor attached to the Fourth Interim Order as Exhibit B; provided, further, however that the Servicer may share the information set forth above in this Paragraph 6.d with a certificate holder (other than the Operating Advisor) but only to the extent required by any agreements governing the Servicer's obligations as special servicer and master servicer under the Mortgage Loan and only to the extent such certificate holder has executed a confidentiality agreement that is in the form attached to the Fourth Interim Order as Exhibit C; provided, further, however that the Mortgage Borrowers shall provide the information set forth above in this Paragraph 6.d to the Debtors' mezzanine lenders but only to the extent such mezzanine lenders have executed a confidentiality agreement that is substantially similar to the confidentiality agreement already agreed to by the Mortgage Borrowers and 450 Lex Private Limited, C Hotel Mezz Private Limited, and GIC Real Estate, Inc. attached to the Fourth Interim Order as Exhibit D and to the Debtors' other mezzanine lenders but only to the extent such mezzanine lenders have executed a confidentiality agreement that is substantially in the form attached to the Fourth Interim Order as Exhibit E; provided, further, however, that (A) no party may share with (1) the

Operating Advisor or (2) any competitor of the Mortgage Borrowers the PACE reports referenced in Paragraph 6.d(iii) for each property, but the Servicer may share with the Operating Advisor a version of the PACE reports that is redacted consistent with the form of PACE report agreed to by the Mortgage Borrowers, the Servicer, and the Operating Advisor, and (B) with respect to the information referenced in Paragraph 6.d(vii)(b) and (xiii), to the extent the Mortgage Borrowers in their reasonable discretion determine that such information delivered pursuant to those paragraphs constitutes commercially sensitive, competitive, and/or proprietary information (the redacted information referred to in this Paragraph 6.d(xiv)(A) and the commercially sensitive, competitive, and/or proprietary information referred to in this Paragraph 6.d(xiv)(B), the “Restricted Information”), no party may share the Restricted Information with (1) the Operating Advisor or (2) any competitor of the Mortgage Borrowers unless and until otherwise ordered by the Court, subject to the right of the Servicer to inform the Operating Advisor that it has received Restricted Information and to identify for the Operating Advisor the general nature of the Restricted Information so received. If any party objects to the designation of information as Restricted Information, the objecting party shall identify in writing in reasonable detail the reasons for the objection and the intended use of the information. Within three business days of the receipt of such notice, the Mortgage Borrowers and the objecting party shall meet and confer in an effort to resolve their differences. If such differences are not resolved following the meet and confer, the objecting party may file a motion with the Court regarding a determination of the propriety of the designation as Restricted Information.

All obligations of the Debtors and their estates and any other party in interest in favor of the Prepetition Secured Parties contained in Paragraph 5 above, and in this Paragraph 6, or otherwise provided for in this Cash Collateral Order are hereinafter referred to as the “**Adequate Protection Obligations.**” The Debtors shall maintain the right to modify the terms of the Adequate Protection Obligations by Court order or seek other Court orders related thereto.

7. Carve Out.

a. As used in this Cash Collateral Order, “**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); (ii) in the event of a conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, fees and expenses incurred by any trustee and any professionals retained by such trustee, in an aggregate amount not exceeding \$100,000; (iii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid costs, fees and expenses (the “**Professional Fees**”), incurred by persons or firms retained by the Debtors pursuant to

section 327, 328 or 363 of the Bankruptcy Code and any official committee (“**Committee**”) appointed pursuant to section 1103 of the Bankruptcy Code (collectively, the “**Professional Persons**”), at any time before or on the first business day following delivery of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) to the extent incurred after the first business day following delivery of the Carve Out Trigger Notice, to the extent allowed at any time, Professional Fees of Professional Persons in an aggregate amount not to exceed \$5,000,000 (the “**Post Default Carve Out Cap Amount**”). The Carve Out shall be senior to the Adequate Protection Liens, the Superpriority Claims, and any other adequate protection, any liens or claims securing the obligations arising under or in connection with the Loan Documents and this Cash Collateral Order. For purposes of calculating the amount of Professional Fees permitted to be paid to a Professional Person as part of the Carve Out under subsection (iv) of this Paragraph 7, such amount shall be net of all prepetition retainers held by such Professional Person.

b. As used herein, “**Carve Out Trigger Notice**” means a Termination Notice (as defined below), which includes a statement to the effect that such notice also constitutes a Carve Out Trigger Notice.

8. Limitations on Cash Collateral and the Carve Out. Except as expressly set forth in the last sentence of this Paragraph 8, no proceeds of the Prepetition Collateral, Cash Collateral, the Postpetition Collateral or the Carve-Out shall be used for the purpose of: (a) investigating, objecting to, challenging or contesting in any manner, or in raising any defenses to, the amount, validity, extent, perfection, priority or enforceability of the Prepetition Secured Obligations, or any liens or security interests with respect thereto, or any other rights or interests of the Servicer or any other Prepetition Secured Party, whether in their capacity as such

or otherwise, including with respect to the Postpetition Liens, or in asserting any claims or causes of action against the Servicer (whether in its capacity as such or otherwise), the Mortgage Lender (whether in its capacity as such or otherwise), or any Certificate Holder (in its capacity as such), including, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) seeking to have confirmed any plan of reorganization, plan of liquidation, or asset sale, that, if confirmed or approved, would materially impair the claims of the Prepetition Secured Parties (unless consented to, in writing, by the Servicer); or (c) paying any amount on account of any claims arising before the Commencement Date unless such payments are approved by an order of this Court. Notwithstanding the foregoing provisions of this Paragraph 8, up to \$100,000 of Cash Collateral (the "Investigation Carve-Out") may be used to pay the allowed fees and expenses of Professional Persons incurred directly in connection with investigating (but not initiating and prosecuting), any claims or causes of action against any Prepetition Secured Party (including, without limitation, investigating the validity and priority of the Prepetition Encumbrances), whether in their capacity as a lender or otherwise; provided, however, that the Investigation Carve-Out may only be used through May 13, 2011; provided further, however, that the Investigation Carve-out may only be used by, and is only available to, the Committee (if any).

9. Modification of Automatic Stay. Subject to any applicable provision set forth in Paragraph 12 below, the automatic stay under section 362(a) of the Bankruptcy Code is hereby vacated and modified as necessary to effectuate all of the terms and provisions of this Cash Collateral Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and the Superpriority Claims; (b) permit the Debtors to perform such acts as the

Servicer may reasonably request the Debtors to take to assure the perfection and priority of the liens granted herein; (c) authorize the Debtors to make, and the applicable Prepetition Secured Parties to receive and retain in accordance with the terms of the applicable Mortgage Loan and Servicing Documents, payments on account of interest, fees and expenses in accordance with the terms of this Cash Collateral Order; and (d) permit the Servicer and/or the Mortgage Lender (subject to their respective rights under the Mortgage Loan and Servicing Documents), to exercise, upon the occurrence of a Termination Date, all rights and remedies provided for hereunder, and to take any or all of the following actions without further order of or application to this Court: (i) terminate the Debtors' use of Cash Collateral; (ii) declare all Prepetition Secured Obligations and all amounts due under this Cash Collateral Order to be immediately due and payable; (iii) offset and apply immediately any and all amounts in accounts maintained by the Debtors with any of the Servicer or Mortgage Lender against and any amounts owed under Mortgage Loan and Servicing Documents and/or this Cash Collateral Order, and (iv) take any other actions or exercise any other rights or remedies permitted under this Cash Collateral Order, the Mortgage Loan and Servicing Documents and/or applicable law to effect the repayment and satisfaction of the amounts due under same, including, without limitation, foreclosing upon and selling all or a portion of the Prepetition Collateral or Postpetition Collateral.

10. Perfection of Adequate Protection Liens. This Cash Collateral Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens, without the necessity of filing or recording any mortgage, deed of trust, financing statement, or other instrument or document that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect

(in accordance with applicable non- bankruptcy law) the Adequate Protection Liens, or to entitle the Prepetition Secured Parties to the priorities granted herein. If the Servicer, in its sole discretion, elects to file any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise to confirm perfection of such Adequate Protection Liens, the Debtors shall cooperate with and assist in such process, the stay imposed under section 362 of the Bankruptcy Code is hereby modified to permit the filing and recording of a certified copy of this Cash Collateral Order or any such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, and all such documents shall be deemed to have been filed and recorded at the time of and on the date of this Cash Collateral Order. A certified copy of this Cash Collateral Order may, in the discretion of the Servicer, be filed with or recorded in any filing or recording offices or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all such offices are hereby authorized to accept such certified copy of this Cash Collateral Order for filing, recording or registration.

11. Termination Date; Termination of Cash Collateral Use. Use of Cash Collateral pursuant to this Cash Collateral Order , and the consent of the Servicer to the use of Cash Collateral, shall immediately and automatically terminate (except as the Servicer may otherwise agree in writing in its sole discretion), without further order of the Court and without necessity of further action by any party (except to the extent required in clause 10(e) below), upon the earliest to occur of the following (each, a “**Termination Date**”):

- a. [Intentionally omitted.]
- b. 11:59 p.m. (prevailing Eastern time) on June 30, 2012, unless extended with the consent of the Servicer;

c. the date on which Debtors fail to timely make payments required to be made by them pursuant to the terms of this Cash Collateral Order (after taking into account any applicable grace or waiting period provided herein);

d. [Intentionally Omitted]

e. [Intentionally Omitted]

f. the date that is five (5) business days following the date that Servicer, in accordance with the provisions set forth in paragraph 12 below, serves upon any Debtor a Termination Notice (as defined in Paragraph 12 below) after the occurrence and continuance of any of the following events (each a “**Termination Notice Event**”):

(i) the failure of any Debtor to (A) comply with any term or condition of this Cash Collateral Order, (B) observe or perform any of the terms or provisions contained herein, and/or (C) subject to the provisions of this Cash Collateral Order, observe or perform any of the covenants or provisions of the Mortgage Loan Documents expressly set forth in Exhibit F to the Fourth Interim Order; *provided, however*, that the omission of any covenant or provision from Exhibit F is without prejudice to and does not constitute a waiver of any right or remedy available to any Prepetition Secured Party under the Mortgage Loan Documents;

(ii) any material misrepresentation of a material fact by any Debtor about the financial conditions of the Debtors, the nature, extent, or location of the applicable Prepetition Collateral, or the disposition or use of any of the Postpetition Collateral, including Cash Collateral;

(iii) without the consent of the Servicer, (i) the entry of an order of the Court approving the terms of any debtor-in-possession financing for the Debtors with a payment priority senior to the Prepetition Secured Obligations or Adequate Protection Obligations unless the Prepetition Secured Obligations are indefeasibly paid in full or (ii) the filing of an application by any Debtor for the approval of any Superpriority Claim (as hereinafter defined) or any lien in any of the Chapter 11 Cases which is *pari passu* with or senior to the Adequate Protection Liens granted to the Prepetition Secured Parties in this Cash Collateral Order, or the granting of any such *pari passu* or senior Superpriority Claim or lien in each case, except any such Superpriority Claim or lien arising hereunder, except in connection with any financing used to pay in full the Prepetition Secured Obligations;

(iv) the commencement of any action by any Debtor against any Prepetition Secured Party with respect to the Mortgage Loan Documents or the Prepetition Secured Obligations, including, without limitation, any action to avoid or subordinate any of the Prepetition Secured Obligations or any liens securing any of the Prepetition Secured Obligations, or, in the case of any such action

commenced by any person other than a Debtor on any grounds, the Court enters an order granting any such relief and any such order is not subject to a stay;

(v) except as may be specifically permitted by any “first day” or subsequent order of this Court (as reviewed and approved by the Servicer and included in the Budgets), any payment in respect of a prepetition claim is made by any Debtor;

(vi) the termination of any franchise or management agreement of a Mortgage Borrower to the extent that such terminated agreement is not replaced within 30 days from the date of such termination where (i) the terms of which replacement agreement are, in all material respects, no less favorable to the Mortgage Borrower; and (ii) the counterparty to which replacement agreement is comparable to the counterparty to the terminated agreement;

(vii) this Cash Collateral Order ceases to be in full force and effect, is replaced or superseded (except as contemplated in section (a) of this Paragraph), or shall have been vacated, reversed or stayed, or modified or amended in a manner that is materially adverse to the Prepetition Secured Parties without the Servicer’s consent;

(viii) without the consent of the Servicer, the entry of any order granting relief from the automatic stay under section 362 of the Bankruptcy Code to the holder or holders, other than the Servicer or Mortgage Lender, of any security interest, lien or right of setoff to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like), possession, set-off or any similar remedy with respect to any Collateral with a value in excess of \$10,000,000 or such affected Collateral is integral to operating the Mortgage Borrowers’ businesses, the Mortgage Borrowers’ operation, or the Mortgage Borrowers’ financial condition;

(ix) the failure by any Debtor to timely deliver to any Prepetition Secured Party any of the documents or other information required to be delivered, or to provide to the Servicer or its representatives access to any Collateral of the Prepetition Secured Parties pursuant to this Cash Collateral Order ;

(x) the Debtors filing a plan of reorganization (and a disclosure statement in support thereof), the terms of which (a) do not allow the Prepetition Secured Obligations in full, without avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, or any other challenges, and (b) propose to satisfy the Prepetition Secured Obligations other than in full on the effective date of such plan;

(xi) without the prior written consent of the Servicer, the filing of any plan of reorganization or liquidation (and/or disclosure statement in support thereof) by any of the Debtors, their insiders or affiliates, or, following termination of the period during which the Debtors hold the exclusive right to file

a plan pursuant to section 1121(d) of the Bankruptcy Code, by any other party, that is not consistent with the Plan described in Paragraph 11.f.(x) above;

(xii) the filing by any Debtor of any motion or other request for relief seeking to (a) dismiss any of the Chapter 11 Cases, (b) convert any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (c) appoint a trustee or an examiner with expanded powers pursuant to section 1104 of the Bankruptcy Code in any of the Chapter 11 Cases; or (d) sell, transfer or otherwise dispose of any of the Collateral pursuant to section 363 of the Bankruptcy Code to the extent that (1) such sale, transfer or disposal does not have the Servicer's prior written consent, or (2) the proceeds of such sale will not be used to pay the Mortgage Loan in full;

(xiii) the entry by the Bankruptcy Court of an order of (a) dismissing any of the Chapter 11 Cases, (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (c) appointing a trustee or an examiner with expanded powers pursuant to section 1104 of the Bankruptcy Code in any of the Chapter 11 Cases, or (d) making a finding of fraud, dishonesty or misconduct by any officer or director of any Debtor, regarding or relating to any of the Debtors;

(xiv) the occurrence, after the entry of this Cash Collateral Order, of a change that has a material adverse effect on the use, value or condition of the Debtors, their assets or the legal or financial status or business operations, in each case taken as a whole; or

(xv) the termination of any agreement for DIP Financing.

12. Rights and Remedies Following Termination Notice Event; Termination Date.

(a) Immediately upon the occurrence and during the continuation of a Termination Notice Event (described in Paragraph 11(f) above, unless waived by a writing signed by the Servicer, the Servicer may declare a termination, reduction, or restriction of the ability of the Debtors to use Cash Collateral on the consensual basis provided in this Cash Collateral Order (any such declaration, shall be referred to herein as a "**Termination Notice**"). The Termination Notice shall be given by facsimile (or other electronic means) to lead counsel to the Debtors, the U.S. Trustee, and counsel to the DIP Lenders (the date such Termination Notice is given pursuant to this Paragraph 12 shall be referred to herein as the "**Termination Notice Date**"). Upon the occurrence of the Termination Notice Date, the Debtors shall have five

(5) business days (the “**Remedies Notice Period**”) to seek and obtain an emergency hearing with the Court in connection with the Termination Notice. Unless the Court determines within the Remedies Notice Period that a Termination Date has not, in fact, occurred, the Debtors’ right to use Cash Collateral hereunder shall cease immediately upon the passage of the Remedies Notice Period. During the Remedies Notice Period, the Debtors may continue to utilize Cash Collateral, but only in accordance with the Budgets.

(b) From and after the Termination Date, all accrued interest and fees and all other Prepetition Secured Obligations and any Adequate Protection Obligations shall, in each instance, be immediately due and payable and the Prepetition Secured Parties may exercise any and all rights and remedies granted to them herein, including, without limitation, those rights and remedies described in Paragraph 9(d) above.

(c) Notwithstanding anything herein or the occurrence of a Termination Date, all of the rights, remedies, benefits, and protections provided to the Prepetition Secured Parties under this Cash Collateral Order shall survive such Termination Date.

13. Challenge to Prepetition Claims. (i) All of the terms and conditions hereof shall be immediately and irrevocably binding on all persons and entities, including any trustee subsequently appointed in any of the Chapter 11 Cases, or, following conversion of any Chapter 11 Case to a case under chapter 7, in any chapter 7 cases; (ii) the Prepetition Obligations of the Prepetition Secured Parties shall constitute valid, binding and enforceable secured claims against the Debtor Credit Parties (as applicable) and, together with any payments on account thereof, shall not be subject to avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges by the Debtors or any party as to

validity, enforceability or priority, and (iii) the liens and security interests of the Prepetition Secured Parties shall be deemed to be valid, perfected, enforceable, and not subject to avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges by the Debtors or any party as to validity, enforceability, or priority.

14. Prepetition Subordination Agreements. All parties' rights with respect to any subordination or intercreditor agreements (if applicable) with respect to any Debtors are not affected by the entry of this Cash Collateral Order.

15. Modification of Claremont Hotel Management Agreement. Pursuant to Section 3.1.9.4(D) of that certain Hotel Management Agreement in respect of the management of the Mortgaged Property commonly known as the "Claremont Resort" (the "**Claremont Agreement**") between Debtor MSR Resort Lodging Tenant, LLC, as owner, and Pyramid Acquisition II Management L.P. ("**Pyramid Management**"), as manager, the Servicer, Lender and the Debtors agree that the Claremont Agreement is hereby modified for all purposes to add the following new Section 3.1.9.4(E):

(E) Manager hereby acknowledges and consents to the grant of a security interest in favor of first mortgage lender in the "Bank Accounts" (as defined above). first mortgage lender hereby acknowledges and agrees that such Bank Accounts may be transferred or assigned, without any other parties' consent, by the then current Manager to any successor Manager permitted hereunder, and agrees to amend any security agreement or financing statement to reflect any such transfer or assignment. Owner and first mortgage lender hereby consents to the provisions of this section and agrees that Manager may, without breach of any of its duties or obligations under the Agreement, comply with the provisions hereof:

(1) Owner hereby directs Manager, and Manager hereby agrees that it shall (until receipt of contrary directions from first mortgage lender), make all payments or remittances otherwise required to be made, or which Manager might otherwise actually make, to Owner in accordance with the Agreement, directly to first mortgage lender, Account # 1014253505 at PNC Bank, National Association, ABA# 043000096, or otherwise in accordance with

remittance instructions delivered from time to time to Manager by first mortgage lender. Manager shall not be bound by, and shall give no regard to, any notice to the contrary received by Manager from Owner or any other Person; provided, however, the obligation of Manager hereunder shall be subject to any order of court or other governmental agency or authority which Manager, in good faith, believes to be genuine. In no event shall Manager have liability or responsibility of any kind (i) to Owner for any distributions or remittances made by Manager to, or at the direction of, first mortgage lender following receipt by Manager of any written notice as herein contemplated, or (ii) to either Owner or first mortgage lender for reliance upon any written notice purportedly from first mortgage lender which Manager in good faith believes to be genuine and authorized on behalf of first mortgage lender, or (iii) to Owner for the proper application by first mortgage lender of funds delivered to first mortgage lender by Manager hereunder.

(2) first mortgage lender agrees that Manager may continue to maintain the Bank Accounts as contemplated by the Agreement, and may continue to make disbursements therefrom for the purposes and in accordance with the provisions of the Agreement and in order to ensure the uninterrupted and continuous operation of the Property, and the payment of all costs and expenses of its operation (including, without limitation, payment of any amounts required to be paid to Manager), without interference from first mortgage lender or any other Person. Without limiting the generality of the preceding sentence, first mortgage lender agrees that it shall not exercise any rights or remedies under the first mortgage documents or otherwise (including, without limitation, the exercise of any rights of set off or counterclaim) in a manner inconsistent with its obligations under the preceding sentence, nor shall first mortgage lender obtain or seek to obtain any order of court or other governmental agency or authority having jurisdiction seeking or directing deposits to, or withdrawals from, any of the Bank Accounts in a manner inconsistent with the provisions of this Agreement.

16. Right to Inspect and Audit. In accordance with the applicable Mortgage Loan and Servicing Documents, the Debtors shall (i) permit the Servicer and its representatives to visit and inspect any of the Collateral during business hours upon reasonable advance notice, (ii) allow the Servicer and its representative(s) to inspect and audit the books, records and account statements of the Debtors (including, without limitation, discussing the affairs, finances, and accounts of the Debtors with their officers, financial advisors, the Asset Manager, and independent public accountants)—as well as, through the Debtors' financial advisors, reasonable access to the

Debtors' property managers—in order to confirm the applicable Debtors' compliance with this Cash Collateral Order, and (iii) cooperate, consult with and provide to the Servicer and its representative(s) such information as such persons may reasonably request.

17. Right to Credit Bid. The Servicer and/or the Mortgage Lender shall have the unqualified right, subject to applicable law, to credit bid up to the full amount of the Prepetition Secured Obligations plus any accrued but unpaid interest on such obligations plus the Adequate Protection Obligations (to the extent such obligation, as determined by the Court, is for the payment of money) in connection with any sale, auction or other disposition, of some or all of the Debtors' assets pursuant to 11 U.S.C. § 363(k).

18. Section 506(c) Claims. During the period that the Debtors use Cash Collateral pursuant to the terms and provisions of this Final Order, as such period may be extended from time to time pursuant to the provisions hereof or further order of the Court, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against any of the Prepetition Secured Parties or any of their respective claims or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the Servicer, and no such consent shall be implied from any other action, inaction, or acquiescence by the Servicer or its agents.

19. [Intentionally Omitted]

20. No Marshaling/Application of Proceeds. The Prepetition Secured Parties shall be entitled to apply the payments or proceeds of the Prepetition Collateral and Postpetition Collateral in accordance with the provisions of the Mortgage Loan and Servicing Documents and this Cash Collateral Order, and in no event shall the Prepetition Secured Parties be subject to the

equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral, the Postpetition Collateral or otherwise.

21. Section 552(b). The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code. The “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of, or any of the items enumerated in section 552(b)(2) of the Bankruptcy Code (including, without limitation, rents, fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels) with respect to, any of the Prepetition Collateral.

22. Preservation of Rights. Notwithstanding anything herein to the contrary, the entry of this Cash Collateral Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) a Prepetition Secured Party’s right to seek any other or supplemental relief relating to the matters set forth in this Cash Collateral Order, including the right to seek additional adequate protection; (b) any rights of a Prepetition Secured Party with respect to any plan of reorganization or liquidation filed in these Chapter 11 Cases; or (c) any of the rights of a Prepetition Secured Party under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request termination, lifting or modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans (iv) request additional restrictions upon the Debtors' business activities or use of Cash Collateral, (v) request termination or modification of this Cash Collateral Order or any Final Order, (vi) request

additional adequate protection, (vii) exercise or assert any other rights, claims or privileges (whether legal, equitable or otherwise) held by such Prepetition Secured Party, or (viii) oppose entry of any Final Order. Furthermore, nothing contained in this Cash Collateral Order shall be treated as an admission by any Prepetition Secured Party regarding the truth, accuracy or completeness of any fact or the applicability or strength of any legal or equitable claim, theory or defense and the Servicer shall have standing to assert, and shall not be precluded or estopped from asserting, any challenge to any factual representation set forth herein or from asserting any legal or equitable claim, theory or defense against the Debtors or their estates including that rents are not property of the estates and do not constitute Cash Collateral.

23. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate the Prepetition Secured Parties for any Diminution in Value during the Chapter 11 Cases or, if any of the Chapter 11 Cases are converted to chapter 7, during any such chapter 7 cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgement by any of Prepetition Secured Parties, that the adequate protection granted herein does in fact adequately protect the Prepetition Secured Parties against any Diminution in Value.

24. [Intentionally omitted.]

25. [Intentionally omitted.]

26. [Intentionally omitted.]

27. [Intentionally omitted.]

28. Insurance/Notice. The Debtors shall maintain insurance in a manner materially consistent with the requirements set forth in the Loan and Security Agreement to the extent any

related expenditure necessary to maintain such insurance are expenditures permitted by the Servicer to be made. The Debtors shall provide the Servicer with notice before (to the extent practicable) taking any action, or upon the occurrence of any event (as applicable) set forth in sections 5.1.3, 5.1.7, 5.1.13(ii), 5.1.22, 5.2.15, 6.2.1, 6.2.5 and 13.4.10 of the Loan and Security Agreement.

29. Modifications. Based on the findings set forth in this Cash Collateral Order, if any or all of the provisions of this Cash Collateral Order are hereafter modified, vacated, amended, or stayed by subsequent order of this Court or any other court: (a) such modification, vacatur, amendment, or stay shall not affect (1) the validity of any obligation of any Debtors to the Prepetition Secured Parties pursuant to this Cash Collateral Order that is or was incurred prior to such party receiving written notice of the effective date of such modification, vacatur, amendment, or stay (the “**Effective Date**”), or (2) the validity, enforceability or priority of the Prepetition Secured Obligations, Prepetition Encumbrances, Superpriority Claims, Adequate Protection Liens or other grants authorized or created by this Cash Collateral Order that are or were incurred prior to such party receiving written notice of the Effective Date; (b) the adequate protection given pursuant to this Cash Collateral Order arising prior to the Effective Date shall be governed in all respects by the provisions of this Cash Collateral Order in effect immediately prior to the Effective Date; and (c) the use of Cash Collateral and the validity of any liens, claims, or other protections granted to the Prepetition Secured Parties pursuant to this Cash Collateral Order is and shall be protected by section 364(e) of the Bankruptcy Code.

30. Binding Effect. The provisions of this Cash Collateral Order shall be binding upon and inure to the benefit of the Prepetition Secured Parties, the Debtors, and their respective

successors and assigns, including, without limitation, any chapter 11 or chapter 7 trustee hereinafter appointed or elected for the estate of any of the Debtors.

31. Survival. The Debtors' stipulations set forth in this Cash Collateral Order shall survive the Termination Date and/or entry of any order: (a) confirming any plan of reorganization in any of the Chapter 11 Cases unless and to the extent that the applicable confirmation order or confirmed plan of reorganization expressly provides otherwise and such confirmation order has become a final order and the effective date has occurred under such confirmed plan of reorganization; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. Notwithstanding the conversion of any of the Chapter 11 Cases to one or more cases under chapter 7, the claims, liens, security interest, and other protections granted to the Prepetition Secured Parties pursuant to this Cash Collateral Order and in any subsequent order to or for the benefit of any of the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priority, validity and perfection as provided in this Cash Collateral Order and any subsequent orders until all obligations in respect thereof shall have been indefeasibly paid in full in cash and satisfied in the manner provided in this Cash Collateral Order.

32. Immediate Effect. This Cash Collateral Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon execution hereof. The fourteen (14) day stay provisions of Bankruptcy Rule 6004(h) are waived and shall not apply to this Cash Collateral Order .

33. Notice. The Debtors shall, within three (3) business days of entry of this Cash Collateral Order , mail copies of a notice of the entry of this Cash Collateral Order, together with

a copy of this Cash Collateral Order, to the parties having been given notice of the Cash Collateral Hearing, to any party which has filed prior to such date a request for notices with this Court and to counsel for any statutory committee appointed pursuant to section 1102 of the Bankruptcy Code.

Dated:
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Form of Budgets

Corporate Level Summary		Week Ending													Total
		3/4/11	3/11/11	3/18/11	3/25/11	4/1/11	4/8/11	4/15/11	4/22/11	4/29/11	5/6/11	5/13/11	5/20/11	5/27/11	
	Week in Chapter 11	5	6	7	8	9	10	11	12	13	14	15	16	17	
	Week of Current 13-Week Cash Budget	1	2	3	4	5	6	7	8	9	10	11	12	13	
5-Pack Cash Distribution															
Less: 5-Pack Mortgage Interest & Fees (Non-Default)															
Less: Midland Professional Fees															
Less: Restructuring Professional Fees															
Less: Consolidated Critical CapEx in Excess of FF&E Reserves (D)															
Less: Other Portfolio Level Expenses (E)															
Less: DIP Interest and Fees															
Net Cash Flow															
Beginning Operating Account															
Plus: Net Cash Flow															
Plus: DIP Draw															
Less: Contributions to Properties															
Ending Operating Account															
<i>Memo: DIP Balance</i>															
Property Level Summary															
Week Number:															
Total Receipts															
Total Disbursements															
Net Cash Flow															
Beginning Cash Balance															
Add: Net Cash Flow															
Less: Distributions from Property Accounts															
Ending Cash Balance															
Ending Cash Balance Reconciliation															
Operating Cash															
Restricted Cash															
Ending Cash Balance															
FF&E Reserve															
Beginning Reserve Balance															
FF&E Deposits															
FF&E Reimbursements															
Ending FF&E Account															

MS Resorts "5 Pack"

Exhibit A
Form of Cash Budget

Cash Flow Forecast as of:
(Amounts in 000's)

Week Ending:	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week in Chapter 11	3/4	3/11	3/18	3/25	4/1	4/8	4/15	4/22	4/29	5/6	5/13	5/20	5/27	TOTAL
Week of Current 13-Week Cash Budget	5	6	7	8	9	10	11	12	13	14	15	16	17	13 WEEK
	1	2	3	4	5	6	7	8	9	10	11	12	13	

Receipts - Property Level

Resort Operating Receipts
Resort Membership Dues & Initiations
Less: Rental Pool Share of Cash
Brokerage Company Receipts

Membership - Refundable Deposits

Membership Deposits (Refundable)
Less: Membership Refunds

Total Receipts

Disbursements - Property Level

Consolidated Operating Department Expenses

Cost of Sales
Payroll, Taxes, & Benefits
Brokerage Company - Commissions
Operating Expenses

Total Consolidated Operating Department Expenses (A)

Consolidated Overhead Department Expenses

Payroll, Taxes, & Benefits
Administrative & General
Sales & Marketing
Repairs & Maintenance
Utilities

Total Consolidated Overhead Department Expenses (B)

Consolidated Fixed Expenses

Real Estate Taxes
Personal Property Taxes
General Liability Insurance
Building and Fire Insurance
Management Fees
Other Fixed Expenses

Total Consolidated Fixed Expenses (C)

FF&E Reserves

FF&E Deposits
FF&E Expenditures
Add: Reimbursement of FF&E Expenditures

Total FF&E Reserves

Other Disbursements

Occupancy Tax
Meals and Sales Tax

Total Other Disbursements

Total Disbursements

Net Cash Flow

Beginning Cash Balance

Add: Net Cash Flow

Less: Distribution to Owner

Ending Cash Balance

Ending Cash Balance Reconciliation

Operating Cash
Restricted Cash

Summary Property Level Accrual Budget Roll-Up

(Amounts in 000s)

	<u>Mar-11</u>	<u>Apr-11</u>	<u>May-11</u>
Total Revenue			
Less: Operating Costs			
Less: Undistributed Expense			
Less: Fixed Expenses			
Less: Reserves and Other			
NOI			
Less: Net Membership Cashflow			
Adjusted NOI			

Other Portfolio Level Expenses

(Amounts in 000s)

	<u>Mar-11</u>	<u>Apr-11</u>	<u>May-11</u>
Other Portfolio Level (Expenses) / Income			

Capital Expenditures in Excess of FF&E Reserves

(Amounts in 000s)

	Mar-11	Apr-11	May-11
Doral Total			
Claremont Total			
Arizona Biltmore Total			
Grand Wailea Total			
La Quinta Total			
Total Critical Capital Expenditures			

Accrued CapEx from FF&E Reserves

(Amounts in 000s)

	Mar-11	Apr-11	May-11
Doral			
Claremont			
Arizona Biltmore			
Grand Wailea			
La Quinta			
Total			

MS Resorts 5-Pack

ACCUAL BUDGET MARCH / APRIL / MAY

EXHIBIT A
Form of Accrual Budget

	Budget	Budget	Budget
	Mar	Apr	May
	Period 3	Period 4	Period 5
STATISTICS			
TOTAL AVAILABLE ROOM NIGHTS			
TOTAL ROOMS RENTED			
% OF OCCUPANCY			
REVPAR			
AVG RATE PAID			
REVENUE			
ROOM REVENUE			
FOOD & BEVERAGE REVENUE			
TELEPHONE REVENUE			
GOLF OPERATIONS			
SPA OPERATIONS			
OTHER OPERATING REVENUES			
TOTAL HOTEL REVENUE			
OPERATING COSTS			
ROOMS EXPENSE			
FOOD & BEVERAGE EXPENSE			
TELEPHONE EXPENSE			
GOLF OPERATION			
SPA OPERATIONS			
OTHER OPERATING EXPENSES			
TOTAL OPERATING COSTS			
OPERATING PROFIT			
UNDISTRIBUTED EXPENSE			
A&G			
SALES & MARKETING			
REPAIRS & MAINTENANCE			
ENERGY			
MANAGEMENT FEES			
TOTAL UNDISTRIBUTED EXPENSE			
GROSS OPERATING PROFIT			
FIXED EXPENSE			
RENTS, TAXES & INSURANCE			
OTHER FIXED EXPENSES			
TOTAL FIXED EXPENSES			
NET INCOME / (LOSS)			
LESS: RESERVES			
LESS: INTEREST INCOME ON			
NET OPERATING INCOME			
ADD: NET MEMBERSHIP CASHFLOWS			
ADJUSTED NOI			