

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11

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MSR RESORT GOLF COURSE LLC, *et al.*, : Case No. 11-10372 (SHL)

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Debtors. : Jointly Administered

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

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

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

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



aggregate principal amount of \$15 million (such amount, together with the amount approved pursuant to the Final Order, the "**DIP Facility**"), of which the DIP Facility Debtors seek authority on an interim basis, for a period (the "**Interim Period**") from the entry of this Second Interim Order through and including the date of the Final Hearing (as defined below), to borrow up to the aggregate committed amount of \$10 million (the "**Interim DIP Facility**"), pursuant to (i) the Secured, Superpriority Debtor-in-Possession Credit Agreement, dated as of March 21, 2011 (together with the exhibits and schedules annexed thereto, the "**Original DIP Credit Agreement**"), among the DIP Facility Debtors, as Borrowers, MSR Resort Golf Course, LLC, as Administrative Borrower (the "**Administrative Borrower**"), CNL DIP Recovery Acquisition, LLC, successor to Paulson Real Estate Recovery Fund LP ("**Paulson**"), and Five Mile Capital II CNL DIP Administrative Agent LLC ("**Five Mile**"), as co-Agents (together, the "**DIP Agent**"), and the lenders thereunder (the "**DIP Lenders**") substantially in the form attached as Exhibit C to the Final Order (the Interim Order (as defined herein), the Final Order, this Second Interim Order and the Second Final Order (as defined herein), collectively, the "**Borrowing Orders**"), as amended by that certain First Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement, dated as of April 15, 2011 (the "**First DIP Amendment**"), among the DIP Agent, the DIP Lenders, the DIP Facility Debtors, as Borrowers, and the Administrative Borrower, and (ii) all other agreements, documents and instruments executed and/or delivered with, to or in favor of the DIP Agent and/or the DIP Lenders (including, without limitation, the DIP Amendment (as defined herein)), and as may be amended, modified or supplemented and in effect from time to time, collectively with the DIP Credit Agreement (as defined herein), the "**DIP Documents**");

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

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

(d) authorizing the use of the proceeds of the Additional Financing in each case in a manner consistent with the terms and conditions of this Second Interim Order or the Second Final Order, the Final Order and the DIP Documents, solely for (i) working capital and general corporate purposes, and (ii) payment of fees, costs, administrative expenses and other expenses associated with the DIP Facility and the Cases (including professional fees and expenses);

(e) scheduling a final hearing (the "**Second Final Hearing**") to be held within 45 days of the entry of this Second Interim Order to consider entry of a final order (the "**Second Final Order**" and together with the Second Interim Order, the "**Borrowing Orders**") authorizing, on a final basis, the balance of the Additional Financing in an aggregate total amount of \$15 million on a final basis, as set forth in the Motion and in accordance with the provisions of the DIP Documents filed with this Court; and

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

The Bankruptcy Court having considered the Motion, the exhibits thereto, the *Declaration of Derek Pitts in Support of Motion of MSR Resort Golf Course LLC, et al., for Entry of an Order Authorizing the Debtors to Obtain Expanded Postpetition Financing*, filed contemporaneously with the Motion, the amendment to the Original DIP Credit Agreement (as amended by the First DIP Amendment) implementing the Additional Financing attached as **Exhibit C** hereto (the "**DIP Amendment**"), and the evidence submitted and the record made at the hearing on the Interim Order (the "**Interim Hearing**"), the hearing on the Final Order (the "**Final Hearing**") and the hearing on this Second Interim Order (the "**Second Interim Hearing**"), respectively; and the Second Interim Hearing having been held and concluded on December 13, 2011; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Second Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and their equity holders, and is essential for the continued operation of the Debtors' businesses; and all objections, if any, to the entry of this Second Interim Order having been

withdrawn, resolved or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. **Petition Date.** On February 1, 2011 (the "**Petition Date**"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York. The Debtors have continued in the management and operation of their business and property as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

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

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

D. **Interim Hearing, Entry of Interim Order, Final Hearing, Entry of Final Order and Execution of and Draw Under DIP Credit Agreement.** This Court conducted the Interim Hearing on March 15, 2011 and entered its *Interim Order (I) Authorizing Debtors to Obtain Secured, Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), (II) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and*

4001(c) [Docket No. 140] (the "**Interim Order**") on March 16, 2011. The Court conducted the Final Hearing on April 13, 2011 and entered its *Final Order (I) Authorizing Debtors to Obtain Secured, Superpriority Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(e), (II) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and (III) Providing for Related Relief* [Docket No. 254] (the "**Final Order**") on April 15, 2011. Pursuant to the Interim Order, the Final Order and the Original DIP Credit Agreement, as amended by the First DIP Amendment, the Administrative Borrower requested, and the DIP Lenders funded, from time to time, Loans (as defined in the DIP Credit Agreement) in aggregate principal amount of \$30,000,000 (the "**Original Loan**").

E. **Notice.** The Second Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001(c)(2) and Local Bankruptcy Rule 4001-2. Notice of the scheduling of the Second Interim Hearing, as well as a copy of the Motion, were served timely upon all required parties. In addition, notice of the proposed form of this Second Interim Order has been served upon: (i) the U.S. Trustee; (ii) the creditors holding the 30 largest unsecured claims against the Debtors (on a consolidated basis); (iii) counsel to the Servicer; (iv) the Internal Revenue Service; (v) the Securities and Exchange Commission; (vi) the Office of the Attorney General in each of the states in which the Debtors operate; and (vii) any applicable state public utilities commissions required to receive notice under the Bankruptcy Rules or Local Rules. Under the circumstances, such notice of the Second Interim Hearing and the relief requested in the Motion constitutes due, proper and sufficient notice.

F. **Debtors' Acknowledgements and Stipulations.** The Debtors reaffirm each of the stipulations set forth in recital F of the Final Order.

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

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

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

(ii) **Need for Additional Post-Petition Financing.** An immediate need exists for the DIP Facility Debtors to obtain the Additional Financing to continue the orderly operation of their and certain of the other Debtors' businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and satisfy other working capital needs, and administer and preserve the value of their estates. The ability of the DIP Facility Debtors to finance their operations, to preserve and maintain the value of their assets and maximize value for all parties in interest requires the availability of working capital from the DIP Facility, in the amount authorized by the Final Order and this Second Interim Order, the absence of which would immediately and irreparably harm the Debtors, their estates, and other parties in interest and the possibility for a successful reorganization.

(iii) **No Credit Available on More Favorable Terms.** The Debtors have not been able to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also have been unable to obtain credit having priority

over that of administrative expenses of the kind specified in sections 503(b) and 507(a) and (b) of the Bankruptcy Code. The Debtors also have been unable to obtain secured credit, allowable only under Bankruptcy Code sections 364(c)(2), 364(c)(3), and 364(d), on more favorable terms and conditions than those provided in the Original DIP Credit Agreement, as amended by the First DIP Amendment and the DIP Amendment (as so amended, the "**DIP Credit Agreement**"), the Final Order and this Second Interim Order. Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain the Additional Financing on more favorable terms without granting to the DIP Lenders the DIP Protections (as defined below).

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

(v) **Business Judgment.** The terms and provisions of the DIP Amendment, the Final Order and this Second Interim Order are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

(vi) **Good Faith Pursuant to Section 364(e).** The DIP Facility and the extension of credit contemplated by the DIP Amendment and under this Second Interim Order were negotiated in good faith and at arms'-length between the DIP Facility Debtors and the DIP Lenders, and the use of the proceeds to be extended under the DIP Amendment and the DIP Facility will be so extended in good faith and for valid business purposes and uses. The DIP Lenders have acted fairly, reasonably and in good faith in connection with all aspects of the

DIP Facility and the DIP Amendment. Any credit extended, loans made or funds advanced to the DIP Facility Debtors pursuant to the DIP Credit Agreement, the Final Order, this Second Interim Order and the other DIP Documents, including, without limitation, all DIP Obligations incurred as a result thereof, shall be deemed to have been extended in "good faith," as such term is used in section 364(e) of the Bankruptcy Code, and the DIP Lenders are entitled to all of the protection and benefits of section 364(e) of the Bankruptcy Code.

I. **Use of Proceeds of the DIP Facility.** Proceeds of the extension of credit contemplated by the DIP Amendment, together with the proceeds of the DIP Facility as a whole, shall be used, in each case in a manner consistent with the terms and conditions of the DIP Credit Agreement, the Final Order and this Second Interim Order, solely for (a) working capital and general corporate purposes, (b) payment of fees, costs, administration expenses and other expenses associated with the DIP Facility and the Cases (including professional fees and expenses), and (c) the interest payments to the Mortgage Lender (as defined in the DIP Credit Agreement) provided for in paragraph 6(a) of the final cash collateral order entered by this Court on April 15, 2011 [Docket No. 255] (as extended pursuant to this Court's order(s), the "**Cash Collateral Order**") and the "Servicer's Fees and Expense Reimbursement" provided for (and defined in) paragraph 6(c) of the Cash Collateral Order.

J. **Extension of Financing.** The DIP Lenders have indicated a willingness to provide additional financing to the DIP Facility Debtors in accordance with the DIP Amendment, the DIP Credit Agreement and the other DIP Documents and subject to (a) the entry of this Second Interim Order, (b) approval of the terms of the DIP Amendment and (c) findings by the Bankruptcy Court that, among other things, such financing is essential to the Debtors' estates, that the DIP Lenders are good faith financiers, and that the DIP Lenders' claims, the DIP

Obligations, the DIP Superpriority Claim, the DIP Liens and the other DIP Protections granted pursuant to the Interim Order, the Final Order and this Second Interim Order, respectively, and the DIP Documents will not be affected by any subsequent reversal, modification, vacatur or amendment of this Second Interim Order or the Second Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

K. **Relief Essential; Best Interest.** The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and personal property and, is in the best interests of the Debtors, their respective estates and their respective creditors and, consistent with Bankruptcy Rule 4001(c)(2), is necessary to avoid immediate and irreparable harm to the Debtors' estates pending the Second Final Hearing.

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

IT IS ORDERED that:

1. **Motion Granted.** The Motion is granted in accordance with the terms and conditions set forth in this Second Interim Order.

2. **DIP Facility.**

(a) **Approval of Entry Into DIP Amendment.** The form and substance of the DIP Amendment is approved and, notwithstanding the provisions of paragraph 18(i) of the Final Order, is effective upon entry hereof. The DIP Facility Debtors are hereby authorized and empowered to do and perform all acts, to make, execute and deliver all instruments, documents and agreements (including promissory notes, security agreements, mortgages and

financing statements), and to pay all fees and expenses, that reasonably may be necessary or required for the DIP Facility Debtors' performance of the DIP Amendment and the DIP Facility and the creation, perfection and continuation (as applicable) of the DIP Liens (as defined herein), including, without limitation:

- (i) the execution, delivery and performance of the DIP Amendment;
- (ii) subject to the prior payment in full in cash of the allowed

"Prepetition Secured Obligations" (as defined in the Cash Collateral Order) and the Adequate Protection Obligations, if any, the repayment of the principal described in the Final Order, this Second Interim Order and the DIP Documents when due;

- (iii) the payment of the interest, fees, expenses, and other amounts other than principal, described in the Final Order, this Second Interim Order and the DIP Documents, as such become due, including, without limitation, (x) the DIP Agent's fees, costs and expenses, including, without limitation reasonable attorneys' fees, associated with or relating to the DIP Amendment and the transactions contemplated thereby and the preparation, negotiation, execution, delivery and consummation of the DIP Amendment, this Second Interim Order, the Second Final Order and any transactions and court proceedings related thereto and (y) the fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred and to be incurred by the DIP Agent and the DIP Lenders, as described more particularly in paragraph 18(a) of the Final Order and as provided in the DIP Credit Agreement, which fees, costs and expenses shall not be subject to allowance by this Court and may be paid without the submission or filing of fee applications with this Court; provided, however, that unresolved disputes concerning the reasonableness of any such fees, costs and expenses may be determined by this Court; provided further, however, that such interest, fees, costs, expenses, and

other amounts, other than principal, shall be paid for any given period, only after any interest payments to the Mortgage Lender, as provided for in paragraph 6(a) of the Cash Collateral Order, and the Servicer's Fees and Expense Reimbursement then due and payable have been paid; and

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

(b) **Validity of DIP Documents.** The DIP Documents, including the DIP Amendment, shall constitute and evidence, or continue to constitute and evidence, as applicable, the valid and binding obligations of the DIP Facility Debtors, which obligations shall be enforceable against the DIP Facility Debtors, their estates and any successors thereto, and their creditors, in accordance with their terms and the terms of the Final Order and this Second Interim Order.

(c) **Authorization to Borrow.** To enable them to continue to operate their businesses during the term of the Interim Period and subject to the terms and provisions of the Final Order, this Second Interim Order and the DIP Credit Agreement, the DIP Facility Debtors are hereby authorized to enter into and perform under the DIP Amendment and the DIP Credit Agreement, and the DIP Facility Debtors are authorized to draw up to an additional amount of \$10 million under the Interim DIP Facility during the Interim Period.

(d) **Application of DIP Proceeds.** The proceeds of the Interim DIP Facility, including the Additional Financing, shall be used, in each case in a manner consistent with, and shall be subject to the restrictions set forth in, the provisions of the Final Order, this Second Interim Order and the terms and conditions of the DIP Documents, as amended by the DIP Amendment.

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

(f) **Post-Petition Liens.** As security for the DIP Obligations in respect of the Additional Financing and all other obligations of the "Borrowers" (as defined in the DIP Amendment) under the DIP Amendment, the DIP Agent is hereby granted, for its own benefit and the benefit of the DIP Lenders, without the necessity of the execution by the DIP Facility Debtors of mortgages, security agreements, pledge agreements, financing statements or other similar documents and instruments, the following liens and security interests pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code (collectively, the "**DIP Liens**") (all property and interests in property identified in clauses (i) and (ii) of this subparagraph (f), subject to the proviso in this sentence, being collectively referred to as the "**DIP Collateral**"), which DIP Liens shall rank *pari passu* with the DIP Liens (as defined in the Final Order) granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders, under the Final Order; provided, however, that the DIP Collateral shall not include any asset, property or interest in property the granting of a lien on which would trigger liability under the 5-Pack Guarantee (as defined in the DIP Credit Agreement); and, provided, further, however, that nothing herein shall impair or otherwise affect the validity, priority or perfection of the DIP Liens granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders, under the Interim DIP Order and the Final Order, respectively.

(i) **Liens on Unencumbered Property.** Pursuant to section 364(c)(2) of the Bankruptcy Code, and subject to paragraph 2(g) of this Second Interim Order,

the DIP Agent is hereby granted (for its own benefit and for the benefit of the DIP Lenders) a perfected, first-priority security interest in and lien upon all pre- and post-petition property of the DIP Facility Debtors, whether existing on the Petition Date or thereafter created, acquired or arising, whether real or personal, tangible or intangible, wherever located, that, on or as of the Petition Date, was not subject to valid, perfected and non-avoidable liens or was not subject to valid, non-avoidable liens perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and, to the extent applicable, Section 362(b)(18) of the Bankruptcy Code, including, without limitation, (a) all cash and Cash Collateral of the DIP Facility Debtors, (b) all personal property of the DIP Facility Debtors, whether tangible or intangible, including, without limitation, all accounts receivable, books and records, contract rights, inventory, deposit accounts, equipment, fixtures, patents, copyrights, trademarks, trade names and other intellectual property, good, general intangibles, chattel paper, instruments, promissory notes, drafts and documents, investments, investment property, the DIP Facility Debtors' equity interest in any other entities (including, without limitation, subsidiaries and/or affiliates), securities, commercial tort claims, instruments, letters of credit and rights under letters of credit, and life insurance policies, together with the income, products and proceeds thereof, and (c) all of the DIP Facility Debtors' interest in any real property, including, without limitation, the buildings, improvements, fixtures and structures thereon, leasehold interests and the income, products and proceeds of the foregoing. For the avoidance of doubt, the DIP Collateral shall not include any Avoidance Actions (as defined in the DIP Credit Agreement) or the proceeds therefrom unless permitted in accordance with the Final Order; and

(ii) **Liens Junior to Certain Other Liens.** Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject to paragraph 2(g) of this Second Interim Order, the DIP Agent is hereby granted (for its own benefit and for the benefit of the DIP Lenders) a perfected security interest in and lien upon all pre- and post-petition property of the DIP Facility Debtors (other than the unencumbered property described in clause (i) of this paragraph 2(f), as to which property the liens and security interests granted to the DIP Agent are as described in such clause (i)), together with the income, products and proceeds thereof, whether existing on the Petition Date or thereafter, created, acquired or arising, that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable liens in existence immediately prior to the Petition Date or to valid and non-avoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code and, to the extent applicable, Section 362(b)(18) of the Bankruptcy Code, including, without limitation, (a) all cash and Cash Collateral of the DIP Facility Debtors, (b) all personal property of the DIP Facility Debtors, whether tangible or intangible, including, without limitation, all accounts receivable, books and records, contract rights, inventory, deposit accounts, equipment, fixtures, patents, copyrights, trademarks, trade names and other intellectual property, good, general intangibles, chattel paper, instruments, promissory notes, drafts and documents, investments, investment property, the DIP Facility Debtors' equity interest in any other entities (including, without limitation, subsidiaries and/or affiliates), securities, commercial tort claims, instruments, letters of credit and rights under letters of credit, and life insurance policies, together with the income, products and proceeds thereof, and (c) all of the DIP Facility Debtors' interest in any real property, including, without limitation, the buildings, improvements, fixtures

and structures thereon, leasehold interests and the income, products and proceeds of the foregoing, which security interests and liens granted to the DIP Agent pursuant to this subparagraph (ii) shall be junior in priority to such valid, perfected and non-avoidable liens.

(g) **DIP Lien Priority**. Notwithstanding anything to the contrary set forth in this Second Interim Order or the DIP Documents, the DIP Liens shall rank *pari passu* with the DIP Liens (as defined in the Final Order) granted to the DIP Agent, for its own benefit and the benefit of the DIP Lenders, under the Final Order and shall be junior, subject and subordinate in all respects only to the following: (i) the valid, perfected and non-avoidable liens, security interests and mortgages securing the Mortgage Loan (as defined in the Final Order) (the "**Mortgage Lender Prepetition Liens**"), (ii) the liens granted to the Mortgage Lender, pursuant to the Cash Collateral Order, as adequate protection of the Mortgage Lender's interest in its Cash Collateral (the "**Mortgage Lender A/P Liens**"), (iii) the Prior Liens (as defined in the DIP Credit Agreement) (the "**Prior Liens**") and (iv) the Carve-Out. Subject to the foregoing priorities, the DIP Liens shall secure all DIP Obligations. Except as expressly set forth herein, the DIP Liens shall not be subordinated or made subject to or *pari passu* with any lien or security interest by any order of this Court heretofore or hereafter entered in the Cases, whether pursuant to sections 105, 364(d) or 510 of the Bankruptcy Code, or otherwise, and shall be valid, perfected and enforceable against the DIP Facility Debtors, their estates, the DIP Collateral, any trustee appointed in the Cases, and any trustee appointed upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings superseding the Cases or such chapter 7 cases (any such chapter 7 cases or superseding proceedings, "**Successor Cases**"), and/or upon the dismissal of any of the Cases. The DIP Facility Debtors agree, on behalf of themselves and their respective bankruptcy estates,

that, for so long as any DIP Obligations shall be outstanding, other than as expressly set forth in this Second Interim Order, or the Second Final Order, as applicable, or the DIP Credit Agreement, they shall not, and they irrevocably waive any right (whether pursuant to sections 105, 364(c) or 364(d) of the Bankruptcy Code or otherwise) to, (i) grant or confer, or request the Court to grant or confer, any Lien on all or any portion of the DIP Collateral that is *pari passu* with or senior in priority to the DIP Liens securing the Obligations or (ii) grant or confer, or request the Court to grant or confer, any claim that is *pari passu* with or senior in priority to the DIP Superpriority Claim. The DIP Facility Debtors agree that, except as expressly set forth in this Second Interim Order, or the Second Final Order, as applicable, they shall take no action in the Cases to cause the DIP Liens or the DIP Superpriority Claim to be subordinated or made subject to or *pari passu* with any Lien, security interest or claim by any order of the Court heretofore or hereafter entered in the Cases, whether pursuant to sections 105, 364(c), 364(d) or 510 of the Bankruptcy Code, or otherwise.

(h) **Section 551 Protection.** The DIP Liens shall not be subject or junior to any lien or security interest that is avoided under section 522, 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, or any lien void under section 506(d) of the Bankruptcy Code, that is preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code.

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

(j) **Superpriority Administrative Claim Status.** Pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Obligations, including all DIP Obligations in respect

of the Additional Financing, shall constitute an allowed superpriority administrative expense claim (the "**DIP Superpriority Claim**" and, together with the DIP Liens and all other benefits, protections, privileges, claims and liens granted or provided hereunder to or for the benefit of the DIP Agent and/or the DIP Lenders, the "**DIP Protections**") against each of the DIP Facility Debtors with priority in the DIP Facility Debtors' respective Cases over any and all administrative expense claims and unsecured claims against the DIP Facility Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in, arising under, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c), 546(d), 726(b), 1113, 1114 and section 506(c), respectively, subject only to (x) the Carve-Out, (y) the superpriority administrative expense claim granted to the Mortgage Lender, pursuant to the Cash Collateral Order, as adequate protection of the Mortgage Lender's interest in its Cash Collateral (the "**Adequate Protection Obligations**"), and (z) the allowed claim of the Mortgage Lenders arising under the Mortgage Loan Agreement (as defined in the DIP Credit Agreement). Other than the Carve-Out and the Adequate Protection Obligations, if any, no claim or cost or expense of administration under sections 105, 503, 364(c) or 507 of the Bankruptcy Code or otherwise, including any such cost or expense resulting from or arising after the conversion of any one or more of the Cases to a case under chapter 7 of the Bankruptcy Code, shall have a priority senior to or *pari passu* with the priority granted to the DIP Superpriority Claim hereunder, and no order of this Court granting any such claim, cost or expense shall be entered, while any portion of the DIP Obligations or any Commitment (as defined in the DIP Credit Agreement) under the DIP Credit Agreement remains outstanding.

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

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

5. Perfection of DIP Liens. The Final Order and this Second Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens, without the necessity of filing or recording any mortgage, financing statement or other instrument or document, or the taking of any other act that otherwise may be required under federal, state or local law, rule or regulation to validate or perfect the DIP Liens or to entitle any of the DIP Agent or the DIP Lenders to the priorities granted herein. The DIP Facility Debtors may execute, and the DIP Agent is authorized to file or record, mortgages, financing statements or other instruments to evidence the DIP Liens, and the DIP Facility Debtors are hereby authorized and directed, promptly upon demand by the DIP Agent, to execute and file or record any such mortgages, financing statements or instruments as the DIP Agent may request. However, no such execution, filing or recordation shall be necessary or required in order to create or perfect the DIP Liens. If the DIP Agent, in its sole discretion, shall choose to file such mortgages, financing statements or instruments or otherwise confirm perfection of the

DIP Liens, all such documents and instruments shall be deemed to have been filed or recorded as of March 16, 2011, the date on which the Interim Order was entered. The DIP Agent, in its sole discretion, may file or record a true and complete copy of the Final Order and this Second Interim Order in the filing or recording offices of the relevant jurisdictions in addition to, or in lieu of, such mortgages, financing statements or instruments, and all filing and recording offices, and the officials responsible for administering such offices, are hereby directed to accept such copy of the Final Order and this Second Interim Order for filing or recording.

6. Section 506(c) Claims. Except to the extent of the Carve-Out, no expenses of administration incurred in any of the Cases or any Successor Cases shall be charged against or recovered from the DIP Collateral, the DIP Lenders or the DIP Agent pursuant to section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of the DIP Lenders and the DIP Agent, and nothing contained in the Final Order or this Second Interim Order shall be deemed to constitute consent by the DIP Agent or the DIP Lenders to any charge, lien, assessment, or claim against, or recovery from, the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise on account of any expenses of administration incurred in the Cases or in any Successor Cases, nor shall any such consent be implied from any action, inaction or acquiescence by the DIP Agent or the DIP Lenders.

7. Preservation of Rights Granted under this Second Interim Order. Except as otherwise permitted by the DIP Documents, the Final Order or this Second Interim Order, unless the DIP Agent has provided its prior written consent, which consent may be withheld or denied in the DIP Agent's sole discretion, or all DIP Obligations have been indefeasibly paid in full in cash (or will be indefeasibly paid in full in cash upon entry of an order approving indebtedness described in subparagraph (a) below or upon entry of an order

approving any sale or other disposition of all or substantially all of the DIP Collateral described in subparagraph (b) below) and all Commitments have terminated (or will be terminated upon the indefeasible payment in full in cash of all DIP Obligations, as described above in this paragraph 7), the DIP Facility Debtors shall not seek the entry of, and there shall not be entered, in the Cases, or in any Successor Case, any order that authorizes or provides for any of the following:

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

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

(c) dismissal of any of the DIP Facility Debtors' Cases; provided, however, that, if an order dismissing any of the DIP Facility Debtors' Cases under section 1112

of the Bankruptcy Code or otherwise is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the DIP Superpriority Claims and the DIP Liens granted to the DIP Agent pursuant to the Interim Order, the Final Order, this Second Interim Order and the Second Final Order shall continue in full force and effect and shall maintain their priorities as provided in the Interim Order, the Final Order and this Second Interim Order and the Second Final Order, as applicable, until all DIP Obligations shall have been paid and satisfied in full (and that such DIP Superpriority Claim and DIP Liens shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim and the DIP Liens.

8. Proceeds of Subsequent Financing. Without limiting or impairing the provisions and protections of paragraph 7 of this Second Interim Order, if, notwithstanding such provisions and protections, at any time prior to the repayment in full in cash of all DIP Obligations and the termination of the Commitment, the DIP Facility Debtors, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) in violation of the DIP Credit Agreement, the Final Order, this Second Interim Order or the Second Final Order, then, subject to the prior indefeasible repayment in full in cash of the allowed Prepetition Secured Obligations and Adequate Protection Obligations, if any, all of the cash proceeds derived from such financial accommodations shall immediately be turned over to the DIP Agent and applied to satisfy *pro tanto* the DIP Obligations.

9. Termination Date. Without the need for further application or motion to, or further order of, this Court, all DIP Obligations (including the Additional Financing) shall

be immediately due and payable on Termination Date (as defined in paragraph 10 of the Final Order); provided, however, that the term “Calendar Maturity Date” as defined and used therein shall be June 30, 2012, and such revised date shall be applicable as to all DIP Obligations, including those incurred pursuant to the Final Order; provided further, however, that, for purposes of paragraph 10 of the Final Order and this paragraph 9 of this Second Interim Order, the terms “DIP Obligations” and “DIP Documents” shall have the respective meanings assigned to them in this Second Interim Order; provided further, however, that for purposes of paragraph 10 of the Final Order and this paragraph 9, clause “(vii)” of paragraph 10 of the Final Order shall be deemed to be amended in its entirety to read as follows: “(vii) the sixth (6th) Business Day following (a) the termination by the Mortgage Lender and/or the Special Servicer of the Debtors’ right to use Cash Collateral under the Cash Collateral Order pursuant to paragraphs 11(f) and 12 of the Cash Collateral Order or (b) the automatic termination of the Debtors’ right to use Cash Collateral under the Cash Collateral Order (upon the occurrence of the Termination Date (as defined in the Cash Collateral Order) pursuant to paragraphs 11(b), (c), (d) or (e) of the Cash Collateral Order) if, as a result of such termination, (x) the DIP Facility Debtors did not have the right to use Cash Collateral during the immediately preceding five (5) Business Days or (y) if the DIP Facility Debtors did have the right to use Cash Collateral during such five (5) Business Days, the DIP Facility Debtors did not have the right to use Cash Collateral on the sixth (6th) Business Day following such termination.”

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

11. Post-Termination Reserve. In the event of a termination of the Commitment (other than (x) upon the Calendar Maturity Date (as amended by the DIP Amendment and this Second Interim Order), (y) due to the conversion of any of the Cases to cases under chapter 7 of the Bankruptcy Code, or (z) due to the effective date of a sale of all or substantially all of the assets or businesses of the DIP Facility Debtors in accordance with section 363 of the Bankruptcy Code or otherwise (including a sale resulting from a credit bid of any claim or claims against the DIP Facility Debtors), the DIP Lenders shall deposit into a segregated account (the “**Reserve Account**”) the lesser of (i) \$5 million and (ii) the remaining undrawn Commitment under the DIP Facility as of the time of such termination. Until the Calendar Maturity Date (as amended by the DIP Amendment and this Second Interim Order), DIP Facility Debtors may draw from time to time on the Reserve Account to pay monthly interest at the non-default rate due under the Mortgage Loan and Servicing Documents and the Servicer’s Fees and Expense Reimbursement as such amounts become due, to the extent that the DIP Facility Debtors lack sufficient Cash and Cash Equivalents to pay such amounts. All amounts drawn under the preceding sentence shall become part of the DIP Obligations to the same extent as if they were loaned prior to such termination of the Commitment. Funds in the Reserve Account shall remain the sole property of the DIP Lenders, and not property of the DIP Facility Debtors, their estates or any party claiming by or through any of them. Upon the Calendar Maturity Date, any amounts remaining in the Reserve Account shall be released to the DIP Agent for the benefit of the DIP Lenders. The requirements of this paragraph 11 are the preservation, without duplication, of the Reserve Account requirements set forth in paragraph 10.1 of the Final Order.

12. Events of Default. The occurrence of any Event of Default (as defined in the Final Order) shall constitute an "Event of Default" under this Second Interim Order.

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

14. Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified to the extent necessary to permit (a) the DIP Facility Debtors to grant the DIP Liens and to perform such acts as the DIP Agent may request to assure the perfection and priority of the DIP Liens, (b) the DIP Facility Debtors to incur the Additional Financing and all other liabilities and obligations to the DIP Agent and the DIP Lenders under the DIP Documents and this Second Interim Order, (c) the DIP Facility Debtors to pay, and the DIP Agent and the DIP Lenders to receive and apply, the amounts referred to in paragraphs 2(a)(ii) and (iii) and paragraph 17(a) of this Second Interim Order, and (d) the DIP Agent to exercise and enforce its rights and remedies as provided herein.

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

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

17. Other Rights and Obligations.

(a) **Fees and Expenses.** As provided in the DIP Credit Agreement, all reasonable and documented out-of-pocket fees, costs and expenses of the DIP Agent and the DIP Lenders (solely in such capacities), including, without limitation, reasonable attorneys' fees, associated with or relating to (i) the DIP Amendment and the transactions contemplated thereby and the preparation, negotiation, execution, delivery and consummation of the DIP Amendment, the Motion, this Second Interim Order, the Second Final Order and the transactions and court proceedings related thereto (the foregoing fees and expenses, including, without limitation, reasonable fees of the Lenders' and the Agent's respective counsel, the "**DIP Financing Amendment Fees**"); provided, however, that the DIP Financing Amendment Fees of counsel to Five Mile Capital II Equity Pooling LLC, as DIP Lender, and Five Mile Capital II CNL DIP Administrative Agent LLC, as co-DIP Agent, respectively, shall be subject to a cap of \$70,000, and the DIP Financing Amendment Fees of counsel to CNL DIP Recovery Acquisition, LLC, as DIP Lender, and CNL DIP Recovery Acquisition, LLC, as co-DIP Agent, respectively, shall be subject to a cap of \$70,000, (ii) any further amendment, waiver, modification or restatement with respect thereto (including the reasonable fees, disbursements and other charges of the DIP Agent's and the DIP Lenders' respective counsel), (iii) (x) the protection, exercise and enforcement of the rights and remedies of the DIP Agent and/or the DIP Lenders under the DIP Credit Agreement and the other DIP Documents, this Second Final Order and applicable law, and (y) the assertion, prosecution, protection, exercise and enforcement of the rights and remedies of the DIP Agent and the DIP Lenders in the Cases, and (iv) accounting, collateral examination, monitoring, inspection, appraisal and financial advisory functions relating to the Borrowing Orders, the DIP Documents, the DIP Collateral and the assertion, prosecution,

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

(b) **Indemnification**. The DIP Facility Debtors and their respective estates shall indemnify and hold harmless the DIP Agent and the DIP Lenders (and their respective affiliates and each of their respective officers, directors, partners, managers, trustees, employees, shareholders, advisors, agents, attorneys and controlling persons and each of their respective successors and assigns (collectively, the "**Indemnified Parties**") from and against, and the Indemnified Parties shall have no liability for, any loss, judgment, liability, fees (including attorneys' fees), costs or expenses of every nature and character (an "**Indemnified**

Claim”) incurred or suffered by the Indemnified Parties in respect of the financing contemplated by this Second Interim Order and the DIP Amendment or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence or willful misconduct of the Indemnified Parties, or any of them, as determined by final non-appealable judgment of a court of competent jurisdiction; provided, however, that, for the avoidance of doubt, the foregoing indemnity shall not encompass claims and losses relating to the obligations and liens evidenced by the Fourth Mezz Transaction Documents (as defined in the Final Order); and provided further, however, that any payments to the DIP Agent and the DIP Lenders in respect of an Indemnified Claim shall be subject to the indefeasible repayment in cash in full of the allowed claim of the Mortgage Lender under the Mortgage Loan Agreement. Any and all Indemnified Claims shall constitute a DIP Obligation and shall be entitled to the full benefit of the DIP Protections hereunder and under the Final Order.

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

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

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

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

(g) **No Marshaling.** The DIP Lenders shall be entitled to apply the payments received pursuant to the DIP Credit Agreement and the proceeds of the DIP Collateral in accordance with the provisions of the DIP Documents, the Final Order and this Second Interim Order, and in no event shall the DIP Lenders be subject to the equitable doctrine of

"marshaling" or any other similar doctrine with respect to any of such payments, proceeds or the DIP Collateral.

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

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

(j) **Survival of Second Interim Order.** Unless and until the DIP Obligations are irrevocably and indefeasibly repaid in full in cash and the Commitment irrevocably has been terminated, the rights, benefits and protections afforded to the DIP Agent and the DIP Lenders pursuant to the Final Order, this Second Interim Order and under the DIP Documents, including, without limitation, the DIP Protections, and any actions taken pursuant thereto, shall survive the entry of any order that may be entered (i) confirming any plan of

reorganization or liquidation in the Cases, (ii) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, (iii) dismissing any of the Cases, (iv) withdrawing the reference of the Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of the Cases in this Court, and the terms and provisions of the Final Order, this Second Interim Order and the DIP Documents shall continue in full force and effect notwithstanding the entry of such order, and the DIP Liens and the DIP Superpriority Claim shall maintain their respective priority as provided in the Final Order and this Second Interim Order.

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

(l) **Inconsistency and Applicability.** In the event of any inconsistency between the terms and conditions of the DIP Documents and this Second Interim Order, the provisions of this Second Interim Order shall govern and control. The Debtors, the DIP Agent, the DIP Lenders, the Mortgage Lender and the Special Servicer intend for this Second Interim Order to be consistent in all respects with the Cash Collateral Order. Any dispute that arises as a result of any inconsistency between the terms and conditions of this Second Interim Order and the Cash Collateral Order shall be resolved by the Court pursuant to its inherent jurisdiction to

interpret its own orders. Subject to the immediately preceding sentence, unless otherwise expressly provided for herein, the terms and provisions of the Final Order shall govern and apply to the DIP Obligations, including the Additional Financing.

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

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

18. Subordination of the DIP Loan. For the avoidance of doubt, notwithstanding anything in this Second Interim Order or the DIP Credit Agreement to the contrary, other than paragraph 2(h) of this Second Interim Order, the rights, claims and liens granted to the DIP Lenders pursuant to this Second Interim Order are and shall remain junior and subordinate to the allowed claims and the valid, perfected and non-avoidable rights and liens of the Prepetition Secured Parties (as defined in the Cash Collateral Order) under the Mortgage Loan and Servicing Documents and under the Cash Collateral Order. The DIP Lenders and the co-DIP Agents waive their rights to challenge the validity, extent and priority of the Mortgage Lender Prepetition Liens and the validity, amount and priority of the claims of the Mortgage Lender under the Mortgage Loan and Servicing Documents, and will not take any direct or indirect action to cause or induce any person or entity to raise such challenge.

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

20. Notice. The Debtors shall, within three (3) Business Days of entry of this Second Interim Order, mail copies of a notice of the entry of this Second Interim Order, together with a copy of this Second Interim Order and a copy of the Motion, to the parties having been given notice of the Second Interim Hearing, to any party that has filed prior to such date a request for notices with this Court and to counsel for the Committee. The notice of entry of this Second Interim Order shall state that (a) any party in interest objecting to entry of the Second Final Order shall file its written objection in accordance with General Order M-242 of the United States Bankruptcy Court for the Southern District of New York, which order may be found at www.nysb.uscourts.gov, and filed with the Clerk of this Court no later than 5:00 p.m., prevailing Eastern Time, on the Business Day immediately following fourteen (14) days after the date of entry of this Second Interim Order, and shall serve such objections so that the same are received on or before such date by: (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022, Attn: Edward O. Sassower (edward.sassower@kirkland.com) and Leonard Klingbaum (leonard.klingbaum@kirkland.com), counsel to the Debtors; (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004; (iii) Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Daniel Guyder (daniel.guyder@allenoverly.com), counsel to Paulson, the co-DIP Agent; (iv) Kasowitz, Benson Torres & Friedman LLP, 1633 Broadway, New York, NY 10019, Attn: Richard F. Casher (rcasher@kasowitz.com) and Adam L. Shiff (ashiff@kasowitz.com), counsel to Five Mile, the co-DIP Agent; (v) Milbank, Tweed, Hadley & McCloy LLP, 601 Figueroa St., 30th Floor, Los Angeles, CA 90017, Attn.: Mark Shinderman (mshinderman@milbank.com) and David B. Zolkin (dzolkin@milbank.com), counsel for the Master Servicer and Special Servicer; (vi) Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036, Attn.: Michael J.

Sage (michael.sage@dechert.com) and Brian E. Greer (brian.greer@dechert.com), counsel to 450 Lex and C Hotel Mezz; (vii) Sidley Austin LLP, 555 West Fifth Street, Suite 4000 Los Angeles, CA 90013, Attn: Richard W. Havel (rhavel@sidley.com) and Gabriel R. MacConaill (gmacconail@sidley.com), and 787 Seventh Avenue New York, New York 10019, Attn: Lee S. Attanasio (lattanasio@sidley.com), counsel to MetLife, and (b) a Second Final Hearing to consider entry of the Second Final Order shall be held on January 24, 2012 at 11:00 a.m., prevailing Eastern Time.

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

Dated: **December 15, 2011**
New York, New York

/s/ Sean H. Lane

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Debtors

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

EXHIBIT B

DIP Facility Debtors under DIP Credit Agreement

MSR RESORT HOTEL, LP, a Delaware limited partnership

MSR RESORT SILVER PROPERTIES, LP, a Delaware limited partnership

MSR GRAND WAILEA RESORT, LP, a Delaware limited partnership

MSR BILTMORE RESORT, LP, a Delaware limited partnership

MSR DESERT RESORT, LP, a Delaware limited partnership

MSR CLAREMONT RESORT, LP, a Delaware limited partnership

MSR RESORT GOLF COURSE LLC, a Delaware limited liability company

EXHIBIT C

DIP Amendment

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

This SECOND AMENDMENT TO SECURED, SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of December [13], 2011 (this "Amendment"), is entered into among the Borrowers listed on the signature pages hereof, each as debtor and debtor-in-possession (each individually referred to herein as a "Borrower" and, collectively, as "Borrowers"), MSR RESORT GOLF COURSE, LLC, as the Administrative Borrower, the lenders listed on the signature pages hereof (together with their respective successors and assigns, each individually referred to herein as a "Lender" and collectively as "Lenders"), and CNL DIP RECOVERY ACQUISITION, LLC ("Paulson") and FIVE MILE CAPITAL II CNL DIP ADMINISTRATIVE AGENT LLC ("Five Mile"), as co-agents for the Lenders (Paulson and Five Mile, in such capacity, including their respective successors and assigns, being herein referred to together as the "Agent").

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

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

WHEREAS, Schedule 6.6 of the Original Credit Agreement was subsequently amended pursuant to that certain First Amendment to Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of April 15, 2011 (the "First Amendment"; the Original Credit Agreement, as amended by the First Amendment, the "Credit Agreement");

WHEREAS, the Borrowers have requested, among other things, that the Lenders (a) amend the Maturity Date to June 30, 2012, (b) increase the aggregate Commitment Amount by \$15,000,000 and (c) amend the Credit Agreement in certain other respects; and

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

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

1. Defined Terms. All capitalized terms used herein and not otherwise defined shall have the respective meanings given to such term in the Credit Agreement.
2. Amendments to Credit Agreement. Effective as of the Second Amendment Effective Date (as defined herein), in reliance upon the representations and

warranties of the Borrowers set forth in the Loan Documents and in this Amendment, the Credit Agreement is hereby amended as follows:

(a) The parties hereto hereby agree that the outstanding principal balance of the Loan on the date hereof is \$30,000,000 (the "Existing Loan"). Each Lender severally and not jointly agrees, on the terms and subject to the conditions set forth herein, to increase its respective Commitment on the Second Amendment Effective Date to the amount set forth opposite such Lender's name in Schedule 2 hereto. Each future borrowing under the Credit Agreement shall constitute a Loan for all purposes under the Credit Agreement and each other Loan Document. Without limiting the generality of the foregoing, any such Loans shall (i) constitute Obligations under the Loan Documents and have all of the benefits thereof, (ii) have all of the rights, remedies, benefits, privileges and protections applicable to the Loan under the Credit Agreement and the other Loan Documents, (iii) be secured by the Liens granted to the Agent for the benefit of the Lenders under any Loan Document, (iv) be evidenced by Notes and (v) bear interest at rates and have all other terms otherwise applicable to the Loan under the Credit Agreement. Each Borrower hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no objection, defense, set-off, claim or counterclaim of any kind against the Agent and the Lenders with regard to its Obligations in respect of the Loan and (y) reaffirms its obligation to repay the Loan in accordance with the terms and provisions of the Credit Agreement (as amended by this Amendment) and the other Loan Documents.

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

(c) The defined term "Maturity Date" set forth in Section 1.1 is hereby amended by deleting "March 21, 2012" therefrom and inserting "June 30, 2012" in place thereof.

(d) The defined term "Commitment Amount" set forth in Section 1.1 is hereby amended by deleting "\$30,000,000" therefrom and inserting "\$45,000,000" in place thereof.

(e) The defined term "Final Borrowing Order" set forth in Section 1.1 is hereby amended by deleting "\$30,000,000" therefrom and inserting "\$45,000,000" in place thereof.

(f) The defined term "Borrowing Orders" set forth in section 1.1 is hereby amended by deleting the definition in its entirety and inserting "means, collectively, the Interim Borrowing Order, the Final Borrowing Order and any and all further orders of the Court authorizing and approving additional debtor-in-possession financing under this Agreement, as amended from time to time" in place thereof.

(g) Section 8.2.2 is hereby amended by deleting "March 21, 2012" therefrom and inserting "June 30, 2012" in place thereof.

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

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

Cash Collateral Order. The Cash Collateral Order entered by the Court on April 15, 2011 [Docket No. 255], as extended pursuant to the Court's order entered on October 31, 2011 [Docket No. 826], shall be (i) in full force and effect and (ii) acceptable in all respects to the Lenders in their sole discretion.

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

Cash Collateral Order. The Cash Collateral Order entered by the Court on April 15, 2011 [Docket No. 255], as extended pursuant to the Court's order entered on October 31, 2011 [Docket No. 826], shall be in full force and effect, or another Cash Collateral Order (i) shall have been entered by the Court, (ii) shall be in full force and effect and (iii) shall be acceptable in all respects to the Lenders in their sole discretion.

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

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

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

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

(c) delivery to each Lender of an amended and restated Note in an

amount equal to such Lender's Commitment Amount in the form of Exhibit C hereto;

(d) receipt by Agent on the Second Amendment Effective Date of a commitment fee in the amount of \$150,000 (representing 1.00% of the increase of \$15,000,000 in the Commitment Amount pursuant to this Amendment), which fee is due and payable in full on the Second Amendment Effective Date and shall be distributed by Agent to the Lenders promptly after the Second Amendment Effective Date in accordance with such Lenders' pro rata share of the Commitment Amount;

(e) The Cash Collateral Order entered by the Court on April 15, 2011 [Docket No. 255] following the hearing before the Court in respect of the *Motion of MSR Resort Golf Course LLC, et al., for Entry of an Order (I) Authorizing Continued Use of Cash Collateral, (II) Approving Adequate Protection, and (III) Granting Related Relief* [Docket No. 709], as extended pursuant to the Court's order entered on October 31, 2011 [Docket No. 826], shall be (i) in full force and effect and (ii) acceptable in all respects to the Lenders in their sole discretion;

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

(g) the Agent and the Lenders shall have received payment of all fees, expenses and other amounts, including, without limitation, attorneys' fees, associated with or relating to this Amendment and the transactions contemplated hereby and the preparation, negotiation, execution, delivery and consummation of this Amendment, the Amendment Approval Order, any final debtor-in-possession financing order contemplated by the Amendment Approval Order and any transactions and court proceedings related thereto (the foregoing fees and expenses, collectively, the "DIP Financing Amendment Fees"); *provided, however*, that the fees of counsel to Five Mile Capital II Equity Pooling LLC, as Lender, and Five Mile Capital II CNL DIP Administrative Agent LLC, as co-Agent, respectively, that constitute DIP Financing Amendment Fees shall be subject to a cap of \$70,000, and the fees of counsel to CNL DIP Recovery Acquisition, LLC, as Lender, and CNL DIP Recovery Acquisition, LLC, as co-Agent, respectively, that constitute DIP Financing Amendment Fees shall be subject to a cap of \$70,000; and

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

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

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

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

(b) upon the entry by the Court of the Amendment Approval Order, the execution, delivery and performance by each of the Borrowers of this Amendment, and by each of the Borrowers and each of their respective Subsidiaries of the Credit Agreement (as amended by this Amendment) and any other Loan Document, have been duly authorized by all necessary action, and do not and will not:

(i) contravene the terms of any of that Person's organizational documents:

(ii) conflict with or result in any breach or contravention of, or result in the creation of any Lien under, any document evidencing any material contractual obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect; or

(iii) violate any Requirement of Law, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect.

(c) upon the entry by the Court of the Amendment Approval Order, this Amendment, the Credit Agreement (as amended by this Amendment) and each other Loan Document to which any Borrower or any Subsidiary of any Borrower is a party constitute the legal, valid and binding obligations of each such Person that is a party thereto, enforceable against such Person in accordance with their respective terms, except as enforceability may be limited by the Bankruptcy Code, the Court and/or by equitable principles regardless of whether considered in a proceeding in equity or at law; and

(d) no Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated hereby

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

7. Counterparts. This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the

same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or by electronic transmission (in PDF/Adobe Acrobat format) shall have the same force and effect as if an original, ink-signed signature page were delivered.

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

AGENTS:

CNL DIP RECOVERY ACQUISITION, LLC

By: _____

Name:

Title:

**FIVE MILE CAPITAL II CNL DIP ADMINISTRATIVE
AGENT LLC,**

a Delaware limited liability company

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

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

By: _____

Name:

Title:

[Signature page to Second Amendment to Credit Agreement]

LENDERS:

CNL DIP RECOVERY ACQUISITION, LLC

By: _____

Name:

Title:

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

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

By: _____

Name:

Title:

[Signature page to Second Amendment to Credit Agreement]

ADMINISTRATIVE BORROWER:

MSR RESORT GOLF COURSE LLC

a Delaware limited liability company

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

By: _____

Name:

Title:

BORROWERS:

MSR RESORT HOTEL, LP,

a Delaware limited partnership

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

By: _____

Name:

Title:

MSR RESORT SILVER PROPERTIES, LP,

a Delaware limited partnership

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

By: _____

Name:

Title:

[Signature page to Second Amendment to Credit Agreement]

MSR GRAND WAILEA RESORT, LP,
a Delaware limited partnership

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

By: _____
Name:
Title:

MSR BILTMORE RESORT, LP,
a Delaware limited partnership

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

By: _____
Name:
Title:

MSR DESERT RESORT, LP,
a Delaware limited partnership

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

By: _____
Name:
Title:

MSR CLAREMONT RESORT, LP,
a Delaware limited partnership

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

By: _____
Name:
Title:

[Signature page to Second Amendment to Credit Agreement]

MSR RESORT GOLF COURSE LLC,
a Delaware limited liability company

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

By: _____

Name:

Title:

[Signature page to Second Amendment to Credit Agreement]

SCHEDULE 2

COMMITMENTS

Lender	Commitment Amount	Percentage
CNL DIP Recovery Acquisition, LLC	\$22,500,000	50%
Five Mile Capital II Equity Pooling LLC	\$22,500,000	50%
Total:	\$45,000,000	100%

Exhibit A

SECURED, SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of March 21, 2011

\$45,000,000

among

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

CERTAIN PARTIES LISTED HEREIN,
as the Lenders,

and

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

Exhibit B

Form of Amendment Approval Order

[see attached]

Exhibit C

Form of Amended and Restated Notes

[see attached]