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

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: **Chapter 11 Case No.**  
: **In re**  
: **EXTENDED STAY INC., et al.,**  
: **09-\_\_\_\_( )**  
: **Debtors.**  
: **(Joint Administration Requested)**  
: **X**

**DEBTORS' MOTION FOR ORDER (A) (i) AUTHORIZING USE OF  
CASH COLLATERAL, (ii) GRANTING ADEQUATE PROTECTION,  
AND (iii) MODIFYING THE AUTOMATIC STAY, AND (B) SCHEDULING  
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Extended Stay Inc. and its debtor affiliates, as debtors and debtors in possession  
(collectively, "Extended Stay" or the "Debtors"),<sup>1</sup> respectfully represent:

**PRELIMINARY STATEMENT**

1. As is described in more detail in the Declaration of Joseph Teichman filed  
concurrently herewith, Extended Stay is the largest owner and operator of mid-price extended  
stay hotels in the United States, holding one of the most geographically diverse portfolios in the  
lodging sector with properties located across 44 states (including 11 hotels located in New York)

<sup>1</sup> A list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax  
identification number, is attached hereto as "Exhibit A."



and two provinces in Canada. Extended Stay's portfolio currently encompasses over 680 properties, consisting of hotels directly owned or leased by Extended Stay or one of its affiliates. Extended Stay's hotels are managed by HVM L.L.C. ("HVM"), an entity that is affiliated with, but not directly owned by, the Extended Stay family of companies.

2. As further detailed in this Motion, HVM, a non-Debtor, is the responsible entity that pays substantially all of the obligations incurred in operating the Extended Stay hotels, and HVM must continue to be reimbursed for those payments by the Debtors so that they can continue to operate their business and preserve value for creditors during their chapter 11 cases. Accordingly, the Debtors are seeking the use of Cash Collateral to ensure uninterrupted payments of expenses for the operation of their properties and to continue the range of services provided to Extended Stay's customer base, all as set forth more fully in the proposed interim order with respect to the use of Cash Collateral annexed hereto as "Exhibit C" (the "Proposed Interim Order").

3. By this motion, the Debtors request an order (a) pursuant to sections 105, 361, 362, 363, and 507 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), (i) authorizing them to use Cash Collateral,<sup>2</sup> (ii) granting adequate protection to the Mortgage Debt Parties (as defined below), and (iii) modifying the automatic stay for the limited purposes provided in the Proposed Interim Order, and (b) scheduling a final hearing (the "Final Hearing") thereon.

#### **BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-2 CONCISE STATEMENT**

4. In accordance with Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-(2) of the Local Rules of Bankruptcy

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<sup>2</sup> Unless stated otherwise, all capitalized terms not defined in this summary shall have the meaning ascribed to such term in the Proposed Interim Order.

Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), below is a summary<sup>3</sup> of the terms of the proposed use of Cash Collateral (as such term is defined in section 363(a) of the Bankruptcy Code):

- (i) Parties with Interest in Cash Collateral. The parties with an interest in the Cash Collateral are the holders of the certificates (collectively, the “Certificate Holders”) representing beneficial interests in the collateral vehicle holding the Mortgage Debt (as defined herein) and other assets (the “Trust Fund”), governed by that certain Trust and Servicing Agreement, dated as of August 1, 2007 (the “Trust and Servicing Agreement”), between Wachovia Large Loan, Inc., as depositor, Wachovia Bank, National Association, as servicer and special servicer (in such capacity, the “Servicer”), and Wells Fargo Bank, N.A., as “Trustee”(the Trustee, together with the Mortgage Lenders, each of the Certificate Holders, and the Servicer, the “Mortgage Debt Parties”). Motion, ¶¶ 13-16; Proposed Interim Order ¶ E(a), E(d).
- (ii) Use of Cash Collateral. The Debtors shall use Cash Collateral to pay expenses of operating their business in accordance with the Budget (as defined below). Proposed Interim Order, ¶ 3.
- (iii) Termination Date. In the absence of further order of the Court, the Debtors shall no longer be authorized pursuant to the Interim Order to use Cash Collateral without consent of the Supporting Certificate Holders, after the earliest to occur of (i) January 31, 2010, or (ii) three (3) business days after the Termination Declaration Date, provided that if the Final Order is not entered by July 13, 2009, then the Debtors shall no longer be authorized to use Cash Collateral after July 17, 2009. Proposed Interim Order ¶ 3 & 16.
- (iv) Events of Default. The occurrence of any of the following events, unless waived by the Certificate Holders, shall constitute an event of default:
  - (1) the failure by the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under the Proposed Interim Order;
  - (2) the obtaining of credit or the incurring of indebtedness that is (i) secured by a security interest, mortgage or other lien on all or any portion of the Collateral which is equal or senior to any security interest, mortgage or other lien of the Mortgage Debt Parties, or

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<sup>3</sup> To the extent anything in this summary is inconsistent with the Proposed Interim Order annexed hereto, the Proposed Interim Order shall control.

- (ii) entitled to priority administrative status which is equal or senior to that granted to the Mortgage Debt Parties;
- (3) any lien or security interest purported to be created under the Mortgage Loan Documents shall cease to be, or shall be asserted by any Debtor not to be, a valid and perfected lien on or security interest in any Collateral, with the priority required by the Mortgage Loan Documents or in the Proposed Interim Order;
  - (4) the entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral having a value in excess of \$7.5 million, or (ii) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtors;
  - (5) reversal, vacatur, or modification (other than a modification acceptable to the Supporting Certificate Holders in accordance with the Final Order or a modification with the express prior written consent of the Supporting Certificate Holders) of the Proposed Interim Order;
  - (6) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner with enlarged powers or other responsible person;
  - (7) any misrepresentation of a material fact made after the Commencement Date by any of the Debtors or their agents to the Certificate Holders about the financial conditions of the Debtors, or any of them, the nature, extent, location or quality of any Collateral, or the disposition or use of any Collateral, including Cash Collateral;
  - (8) a default by any of the Debtors in reporting financial information as and when required under this Interim Order;
  - (9) the sale of any material portion of any of the Debtors' assets outside the ordinary course of business without the prior written consent of the Supporting Certificate Holders, in their sole discretion;
  - (10) thirty days following the Commencement Date if the Final Order has not been entered by the Court by such date;

- (11) unless otherwise agreed to in writing by the Supporting Certificate Holders, 60 days following the Commencement if a disclosure statement supporting a chapter 11 plan has not yet been filed with the Court;
- (12) unless otherwise agreed to in writing by the Supporting Certificate Holders, 90 days after the Commencement Date if an order has not been entered by the Court approving a disclosure statement supporting a chapter 11 plan that has been consented to by the Supporting Certificate Holders;
- (13) unless otherwise agreed to in writing by the Supporting Certificate Holders, 150 days after the Commencement Date if an order has not been entered by the Court confirming a chapter 11 plan that has been consented to by the Supporting Certificate Holders;
- (14) unless otherwise agreed to in writing by the Supporting Certificate Holders, 180 days after the Commencement Date if the effective date of a chapter 11 plan that has been consented to by the Supporting Certificate Holders has not occurred;
- (15) unless otherwise agreed to in writing by the Supporting Certificate Holders, the filing of a chapter 11 plan in any of the Chapter 11 Cases that deviates or is inconsistent in any material respect with that certain Restructuring Term Sheet dated as of June 12, 2009, agreed to by and among the Debtors and the Supporting Certificate Holders;
- (16) the filing of a chapter 11 plan in any of the Chapter 11 cases that has not been consented to by the Supporting Certificate Holders or which fails to provide for the payment in full, in cash, of the Mortgage Debt, on the effective date of such plan;
- (17) the failure to make Adequate Protection Payments or other payments to the Certificate Holders as set forth in the Budget;
- (18) the failure to comply with the Budget for any period, measured weekly as of the close of business on Wednesday of each following work week; or
- (19) the granting of any motion providing for reversal or modification of the Proposed Interim Order.

Proposed Interim Order ¶ 15.

- (v) Adequate Protection. The Mortgage Debt Parties (as the beneficial holders of the Mortgage Debt) shall receive (i) adequate protection payments (the “Adequate Protection Payments”) from the Debtors,

payable monthly on the same date as provided in the Mortgage Loan Agreement, in an amount equal to the interest at the non-default contract rate that is payable to such class of Certificates under the Mortgage Debt and the Trust and Servicing Agreement, ongoing payment of the reasonable fees, costs and expenses of Fried Frank Harris Shriver & Jacobson LLP and Houlihan Lokey Howard & Zukin and, with respect to the fees incurred subsequent to the Commencement Date, the reasonable fees, costs and expenses of Schulte Roth & Zabel LLP, and continued maintenance and insurance of the Collateral in the amounts and for the risks, and by the entities, required under the Mortgage Loan Documents, (ii) additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically perfected security interests and liens (the “Adequate Protection Liens”), on all of the right, title and interest of the Debtors in, to and under all present and after-acquired property and assets of the Debtors of any nature whatsoever, and the proceeds of all of the foregoing, whether now existing or hereafter acquired (collectively, the “Collateral”); provided, however, that the Postpetition Collateral shall not include the Debtors’ claims and causes of action under section 544, 545, 547, 548, 549 or 550 of the Bankruptcy Code (collectively, the “Avoidance Actions”) but, subject to entry of the Final Order, the Collateral shall include the proceeds of the Avoidance Actions, and (iii) to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative claim in the chapter 11 cases and any Successor Cases in the amount of the Adequate Protection Obligations (the “Adequate Protection Superpriority Claim”). Proposed Interim Order, ¶¶ F, 6-8.

- (vi) Carve Out. Carve Out means the following amounts: (i) statutory fees payable to the United States Trustee, (ii) fees payable to the clerk of the Bankruptcy Court and any agent thereof, (iii) reasonable fees and expenses of a trustee that are incurred after the conversion of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, in an amount not to exceed \$50,000, (iv) reasonable and documented expenses payable to members of the Creditors’ Committee; and (v) professional fees and expenses incurred by professionals retained pursuant to §§ 327(a) and 1103 of the Bankruptcy Code by the Debtors and the Creditors’ Committee (collectively, the “Professional Fees”) subsequent to the delivery of a Carve-Out Trigger Notice, in an aggregate amount not in excess of \$10 million. Proposed Interim Order, ¶ 17. The Adequate Protection Liens are junior to the Carve Out. Proposed Interim Order, ¶¶ 17(a).
- (vii) Determination of the Validity, Enforceability and Amount of the Prepetition Mortgages. Subject to the right of any other party to challenge within a specified time period, *inter alia*, the amount and the validity of mortgages securing the Prepetition Mortgages, the Proposed Interim Order

contains acknowledgments by the Debtors as to the validity, enforceability and amount of the Prepetition Mortgages. Proposed Interim Order, ¶ E(c).

- (viii) Section 506(c) Waiver. Upon entry of the Final Order, 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 Mortgage Debt Parties or any of their respective claims or the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the applicable Mortgage Debt Parties, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders. Proposed Interim Order ¶ 21.
- (ix) Liens on Avoidance Actions. Initially, the Collateral shall not include the Debtors' claims and causes of action under section 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code (collectively, the "Avoidance Actions") but, subject to entry of the Final Order, the Collateral shall include the proceeds of the Avoidance Actions. Proposed Interim Order ¶ 6.
- (x) Waivers and concessions as to validity of prepetition debt. The Creditors' Committee, a successor trustee and, solely if no Creditors' Committee is appointed, any other party in interest granted standing by the Court (other than the Debtors), may object to or challenge the Debtors' Stipulations, including, but not limited to those in relation to: (a) the validity, extent, priority, or perfection of the mortgage, security interests, and liens of any Mortgage Debt Party; or (b) the validity, allowability, priority, or amount of the Prepetition Obligations, within the time periods specified in the Interim Order. A party, including any Creditors' Committee, if appointed, must commence, as appropriate, a contested matter or adversary proceeding raising such objection or challenge, including, without limitation, any claim against any of the Mortgage Debt Parties in the nature of a setoff, counterclaim or defense to the applicable Mortgage Debt (each, a "Challenge") within (i) with respect to the Creditors' Committee, sixty (60) calendar days from the effective date of retention of counsel to any Creditors' Committee, and (ii) with respect to other parties in interest with requisite standing other than the Debtors or any Creditors' Committee, sixty (60) calendar days following the date of entry of the Final Order or any subsequent date that may be ordered by the Court for cause shown before the expiration of such period. Proposed Interim Order, ¶ 19.

### **Background**

5. On the date hereof (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States

Code (the “Bankruptcy Code”). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

#### **Extended Stay’s Business**

7. Extended Stay is the largest owner and operator of mid-price extended stay hotels in the United States, holding one of the most geographically diverse portfolios in the lodging sector, and with a portfolio encompassing over 680 properties, consisting of hotels directly owned or leased by Extended Stay or one of its affiliates. Extended Stay currently operates five hotel brands: (i) Crossland Economy Studios, (ii) Extended Stay America, (iii) Extended Stay Deluxe, (iv) Homestead Studio Suites, and (v) StudioPLUS Deluxe Studios, each designed to appeal to value-conscious customers at different price points in their respective markets, and offering Extended Stay guests a range of amenities and services.

8. Extended Stay’s business model is a hybrid between a hotel and an apartment, as it provides value-conscious guests seeking longer-term accommodations with an affordable, attractive alternative to traditional hotels and apartments. Extended Stay achieves lower operating costs than traditional hotels, which provide higher service levels such as room service and daily maid service, by eliminating these services and other amenities in exchange for a lower per night price and a fully equipped kitchen, cable TV, and wireless internet access in each of its available rooms, in addition to on site laundry facilities. Typical Extended Stay guests include government and business travelers, people on temporary work assignments or



training programs, individuals relocating or purchasing a home and individuals with other short-term housing needs.

9. For the year ending December 31, 2008, Extended Stay's audited financial statements show consolidated assets (including nondebtor affiliates) totaling approximately \$7.1 billion and consolidated liabilities totaling approximately \$7.6 billion. Consolidated revenues for the 12 months ending December 31, 2008 were approximately \$1 billion.

10. All Extended Stay hotels are managed by HVM, an entity that is affiliated with, but not directly owned by, the Extended Stay family of companies. HVM, on behalf of Extended Stay, pays all property level expenses of the hotels, contracts with service providers and purchases all goods and materials utilized in the operation of the business. HVM employs approximately 10,000 employees in connection with the operation of the Debtors' hotels at any given point in time.

#### **Jurisdiction and Venue**

11. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **Relief Requested**

12. By this Motion, Debtors request (a) pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, (i) authority to use Cash Collateral, (ii) authority to grant adequate protection to the Mortgage Debt Parties, and (iii) modification of the automatic stay for the limited purposes provided for in the proposed Interim Order, and (b) scheduling of the Final Hearing pursuant to Bankruptcy Rule 4001.

## Prepetition Mortgages

### A. Mortgage Loan Agreement

13. Certain of the Debtors are borrowers (the “Mortgage Borrowers”)<sup>4</sup> under that certain Loan Agreement, dated as of June 11, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Mortgage Loan Agreement”), by and among the Mortgage Borrowers, ESA P Portfolio MD Trust and ESA MD Properties Business Trust (collectively, the “Maryland Owner”), ESA Canada Trustee, Inc. (the “Signatory Trustee”), ESA Canada Properties Trust (the “Canadian Trust”), ESA P Portfolio Operating Lessee Inc., ESA 2005 Operating Lessee Inc., ESA Canada Operating Lessee Inc., and ESA Operating Lessee Inc. (collectively, “Operating Lessee”) and Wachovia Bank, N.A. (“Wachovia”), Bear Stearns Commercial Mortgage, Inc. (“Bear”), and Bank of America, N.A. (“BofA,” and together with Wachovia and Bear, and their respective successors and assigns, the “Mortgage Lenders”). Wachovia also acts as “Agent” under that certain agreement between the Mortgage Borrowers, the Maryland Owner, the Canadian Owner, the Operating Lessee, HVM, Homestead, and the Mortgage Lenders, dated as of June 11, 2007, as may be amended, restated, replaced, supplemented or otherwise modified from time to time (the “Cash Management Agreement”), relating to funds deposited in the Cash Management Account (as defined herein).

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<sup>4</sup> The Mortgage Borrowers are as follows: ESA 2005 Portfolio L.L.C., ESA 2005- San Jose L.L.C., ESA 2005- Waltham L.L.C., ESA Acquisition Properties L.L.C., ESA Alaska L.L.C., ESA Canada Properties Borrower L.L.C., ESA FL Properties L.L.C., ESA MD Borrower L.L.C., ESA MN Properties L.L.C., ESA P Portfolio L.L.C., ESA P Portfolio MD Borrower L.L.C., ESA P Portfolio PA Properties L.L.C., ESA P Portfolio TXNC Properties L.P., ESA PA Properties L.L.C., ESA Properties L.L.C., ESA TX Properties L.P., ESH/Homestead Portfolio L.L.C., ESH/HV Properties L.L.C., ESH/MSTX Property L.P., ESH/TN Properties L.L.C., ESH/TX Properties L.P.

14. Pursuant to the Mortgage Loan Agreement, and the other documents executed in connection therewith (the “Loan Documents,”<sup>5</sup> and together with the Mortgage Loan Agreement, the “Mortgage Loan Documents”), the Mortgage Lenders extended financing in the aggregate principal amount of \$4.1 billion to the Mortgage Borrowers (the “Mortgage Debt”). As of the Commencement Date, the principal amount of approximately \$4.1 billion was outstanding under the Mortgage Loan Agreement.

15. The Mortgage Debt is secured by cross-collateralized and cross-defaulted first priority mortgages (the “Prepetition Mortgages”) on 666 properties (collectively, the “Mortgaged Properties”) and the products and proceeds thereof, including the Cash Collateral. All of the Debtors’ cash generated from the Mortgaged Properties, wherever located, whether as original collateral or profits or proceeds of the Mortgaged Properties or other Prepetition Collateral, constitutes Cash Collateral.

## **B. Securitization**

16. Subsequent to the closing date of the Mortgage Loan Agreement, the Mortgage Lenders sold their interests in the Mortgage Debt to Wachovia Large Loan, Inc, which in turn, deposited the Mortgage Debt into a trust. Wachovia, Bank of America, and Merrill Lynch were the initial purchasers of the interests in the trust, and in turn, the Certificate Holders bought the interests held by those initial purchasers. The Certificate Holders were then issued

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<sup>5</sup> “Loan Documents” shall mean, collectively, the Note, the Security Instruments, the Environmental Indemnity, the Assignment of Management Agreement, the Assignment of Franchise Agreement, the Subordination of ESA Note, the Guaranty, the Cash Management Agreement, the Interest Rate Cap Agreement, the Assignments of Interest Rate Cap Agreement, the Contribution Agreement, the Canadian Indemnity Guaranty, the Maryland Indemnity Guaranty, the Assignment of ESA Note, Subordination of Aristocrat Notes, the Maryland Beneficiary Pledge Agreement, the Canadian Beneficiary Pledge Agreement, the Security Account Control Agreement, the Trademark Security Agreement (all as defined in the Mortgage Loan Agreement) and all other documents executed and/or delivered in connection with the Loan, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

certificates (the “Certificates”) representing beneficial interests in the collateral vehicle holding the Mortgage Debt and other assets (the “Trust Fund”). The rights of the Certificate Holders are governed by the Trust and Servicing Agreement. Although nominally they have indirect interests in the Mortgage Debt, the Certificate Holders are the real parties in interest with respect to the Mortgage Debt.

### **The Debtors’ Prepetition Cash Management System**

17. The Debtors utilize a centralized cash management system (the “Cash Management System”) to collect and transfer the funds generated by the collective operations of the Debtors and to disburse funds to satisfy their obligations. At present, all cash, checks, and credit card receivables generated from the Extended Stay hotels are deposited into Property Accounts (as defined in the Cash Management Motion).<sup>6</sup> In accordance with the terms of blocked account agreements among the Debtors, the Mortgage Lenders and the Banks (as defined in the Cash Management Motion), funds collected into the Property Accounts (collectively, “Collection Account Funds”) are consolidated by each Bank and automatically swept, usually on a daily basis, into a concentration account entitled “ESA P Portfolio L.L.C. for the benefit of Wachovia Bank, National Association, Bear Stearns Commercial Mortgage, Inc. and Bank of America, N.A., collectively as lender,” maintained at Wachovia, as Agent for the Mortgage Lenders (the “Cash Management Account”).

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<sup>6</sup> Contemporaneously herewith the Debtors filed the Debtors’ Motion Pursuant to Sections 105(a), 345(b), 363(b), 363(c) and 364(a) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 (A) for Authorization to (i) Continue Using Existing Centralized Cash Management System, as Modified, (ii) Honor Certain Prepetition Obligations Related to the Use of the Cash Management System, and (iii) Maintain Existing Bank Accounts and Business Forms; (B) For An Extension of Time to Comply With Section 345(B) of the Bankruptcy Code, and (C) To Schedule a Final Hearing (the “Cash Management Motion”).

18. Pursuant to the Cash Management Agreement, the parties agreed on a priority of payments for the Debtors' obligations and established a number of separate subaccounts, the funds in which would be available to satisfy certain categories of the Debtors' obligations. On each business day, the Agent allocates the funds in the Cash Management Account to each of the subaccounts as provided in the Cash Management Agreement (the "Waterfall"). Disbursements through the Waterfall are allocated for the payment of debt service on the Mortgage Loan and the Mezzanine Loans,<sup>7</sup> and payment of HVM's management fees, taxes and insurance, among other things.

19. The Debtors seek relief in the Cash Management Motion to continue using their Cash Management System, subject to the modification requested herein, so that the Debtors may use Cash Collateral. Accordingly, in the Cash Management Motion, the Debtors have requested that all available funds in the Property Accounts on or after the Commencement Date continue to be transferred to the Cash Management Account on a daily basis and that all funds in the Cash Management Account, whether deposited prior or subsequent to the Commencement Date, be automatically transferred on a daily basis (or as often as practicable) into a new bank account at Wachovia (the "Extended Stay DIP Lockbox"), to be used in accordance with the order granting this Motion. See Proposed Interim Order ¶4.

#### **The Proposed Use of Cash Collateral**

20. Currently, the Debtors lack sufficient unencumbered funds with which to operate their business on an ongoing basis, although the Debtors' hotels continue to generate

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<sup>7</sup> Certain of the Debtors are party to a series of Mezzanine Loan Agreements (the "Mezzanine Loan Agreements"), with Wachovia Bank, N.A., Bear Stearns Commercial Mortgage, Inc., and Bank of America, N.A., as lenders (the "Mezzanine Lenders"), dated June 11, 2007, pursuant to which the Mezzanine Lenders extended financing to the Mezzanine Borrowers in the aggregate amount of approximately \$3.3 billion (the "Mezzanine Loans").

cash revenue. The Debtors have reached an agreement in principle on the terms of a restructuring with a group of the Certificate Holders (the “Supporting Certificate Holders”). However, pending finalization of the documentation and confirmation of a reorganization plan or plans, the Debtors have an urgent and immediate need for cash to continue to operate the Extended Stay hotels.

21. HVM serves as the manager of the portfolio of Extended Stay hotels, and provides other administrative functions as well. Accordingly, HVM, a non-Debtor, is the responsible entity that pays substantially all of the obligations incurred in operating the Extended Stay hotels. Under the management agreements and other similar agreements between the respective Debtors and HVM, HVM is entitled to be reimbursed for all expenses associated with managing the Extended Stay hotels. Absent authorization from the Court to use the Cash Collateral, the Debtors will not be able to reimburse HVM for the day to day expenses associated with operating the business. HVM, in turn, would have to curtail the services offered at the hotels, and in all likelihood, would have to cease the hotels operations immediately. If that were to occur, the Debtors and their creditors would be immediately and irreparably harmed.<sup>8</sup>

22. For the above reasons, the Debtors have determined, in the exercise of their sound business judgment, that they require the use of Cash Collateral to, among other things, continue to maintain and preserve the value of their properties, the operation of their business, the payment of expenses attendant thereto, and the costs and expenses of administering these chapter 11 cases. The Debtors hereby request authority to use Cash Collateral to fund their

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<sup>8</sup> Contemporaneously herewith the Debtors filed the Debtors’ Motion for Authorization Pursuant to Sections 105 and 363(b) of the Bankruptcy Code to Continue to Reimburse HVM L.L.C. For Critical Operating Expenses Incurred on the Debtors’ Behalf Prior to the Commencement Date (the “HVM Motion”). Approval of this Motion, the Cash Management Motion and the HVM Motion are all required in order to allow the Debtors to operate on a normalized basis.

operating expenses (through HVM or otherwise), and to pay the costs and expenses of administering these chapter 11 cases, all in compliance with a cash collateral budget (the “Budget”), which is annexed hereto as “Exhibit B.”

23. After an extensive negotiation, the Supporting Certificate Holders have consented to the use of the Cash Collateral pursuant to the terms and conditions outlined in the Proposed Interim Order including for the continued funding of HVM, even to the extent such payments may reduce HVM’s prepetition claim, because absent such payment, HVM would not be able to pay the necessary expenses of ongoing operations.

#### **Proposed Adequate Protection**

24. In order to protect the Certificate Holders from any diminution in value of their respective interests in the Cash Collateral, the Debtors propose to provide adequate protection to the Certificate Holders (the “Proposed Adequate Protection”), as follows:

- adequate protection payments (the “Adequate Protection Payments”) from the Debtors, in the form of: (i) payable monthly on the same date as provided in the Mortgage Loan Agreements, in an amount equal to the interest at the non-default contract rate that is payable to such class of Certificates under the Mortgage Debt and the Trust and Servicing Agreement; (ii) ongoing payment of the reasonable fees, costs and expenses of Fried Frank Harris Shriver & Jacobson LLP and Houlihan Lokey Howard & Zukin and reasonable costs, fees, and expenses incurred subsequent to the Commencement Date, by Schulte Roth & Zabel LLP; and (iii) continued maintenance and insurance of the Collateral in the amounts and for the risks, and by the entities, required under the Mortgage Loan Documents;
- additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically perfected security interests and liens on any and all Collateral (the “Adequate Protection Liens”); and
- to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative claim in the chapter 11 cases (the “Adequate Protection Superpriority Claim”).

25. The other material terms of the use of Cash Collateral are summarized in paragraph 1 of this Motion.

**The Proposed Use of Cash Collateral Should Be Approved**

**A. The Use of Cash Collateral is Warranted and Should Be Approved**

26. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless “(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).

27. As set forth above, the Debtors’ ability to continue to adequately fund their operations is critical to the outcome of these Chapter 11 Cases. Absent the use of the Cash Collateral, the Debtors’ hotel business would be brought to an immediate halt, with disastrous consequences for the Debtors’ reputation, their business, their ability to attract future customers, and their estates and creditors. Use of the Cash Collateral is, therefore, of the utmost importance to the preservation and maintenance of the value of the Debtors and essential to the continued operations of the Extended Stay hotels. Moreover, a significant percentage of the Certificate Holders have consented to the use of their Cash Collateral upon the terms set forth in the proposed Interim Order and outlined in this Motion.

**B. The Proposed Adequate Protection Should Be Approved**

28. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). “The concept of ‘adequate protection’ is not defined in the [Bankruptcy] Code except by the implications of the examples of adequate



protection listed in § 361.” In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986). Section 361 of the Bankruptcy Code contains a non-exhaustive list of acceptable forms of adequate protection, including a cash payment or periodic cash payments, additional liens, replacement liens, and the “indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361.

29. The determination of adequate protection is a “fact-specific inquiry.” In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“Its application is left to the vagaries of each case....”) (citation omitted). The focus of the adequate protection requirement is to preserve the secured creditor’s position at the time of the bankruptcy filing and protect the secured creditor from diminution in the value of its collateral during the reorganization process. Id. at 288 (citation omitted); Beker, 58 B.R. at 736. See In re WorldCom, Inc., 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004) (“The legislative history for section 361 of the Bankruptcy Code, which sets forth how adequate protection may be provided under section 363, makes clear that the purpose is to insure that the secured creditor receives the value for which the creditor bargained for prior to the debtor’s bankruptcy.”). “However, neither the legislative history nor the Bankruptcy Code require the Court to protect a creditor beyond what was bargained for by the parties.” Id. at 619. See Beker, 58 B.R. at 741 (“Adequate protection, not absolute protection, is the statutory standard.”).

30. The Debtors believe that it is cost effective and in the best interests of their estates and creditors that they reach a consensual rather than a litigated resolution with the Certificate Holders regarding the use of Cash Collateral and provide the Certificate Holders with the Proposed Adequate Protection. The Proposed Adequate Protection will sufficiently protect the Certificate Holders’ interests in the Cash Collateral. A significant percentage of the

Certificate Holders have consented to the use of their Cash Collateral upon the terms set forth in the Proposed Interim Order and outlined in this Motion and it is expected that additional Certificate Holders may provide their consent. Accordingly, the Proposed Adequate Protection is fair and reasonable and sufficient to satisfy the requirement of section 363(c)(2) of the Bankruptcy Code.

**The Interim Approval Should Be Granted**

31. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral may not be commenced earlier than 15 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

32. Absent authorization from the Court to use Cash Collateral on an interim basis pending a Final Hearing, the Debtors will be immediately and irreparably harmed. As set forth above, the Debtors' ability to use Cash Collateral is critical to the orderly resolution of these chapter 11 cases. Without the immediate liquidity provided by the use of Cash Collateral, the Debtors will simply be unable to conduct normal business operations, and their estates and creditors will be immediately and irreparably harmed.

33. Pursuant to Bankruptcy Rules 4001(b), the Debtors request that the Court conduct an expedited preliminary hearing on the Motion and (a) authorize the Debtors to use the Cash Collateral of the Certificate Holders in order to (i) maintain and finance the ongoing operations of the Debtors, which requires that the Debtors provide adequate funding to HVM, and (ii) avoid immediate and irreparable harm and prejudice to the Debtors' estates and all parties in interest, and (b) schedule a Final Hearing on the relief requested herein.

**Notice**

34. No trustee, examiner, or creditors' committee has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on the parties listed on "Exhibit A" attached to the Proposed Interim Order, and those creditors holding the five largest unsecured claims against the Debtors' estates (on a consolidated basis). The Debtors submit that no other or further notice need be provided.

35. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully requests that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: June 15, 2009  
New York, New York

/s/ Jacqueline Marcus  
Marcia L. Goldstein  
Jacqueline Marcus  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

Proposed Attorneys for Debtors  
and Debtors in Possession

**EXHIBIT A**

Debtor	Last Four Digits of Federal Tax I.D. Number
Extended Stay Inc.	7401
ESA P Portfolio L.L.C. f/k/a BRE/ESA P Portfolio L.L.C.	7190
ESA 2005 Portfolio L.L.C. f/k/a BRE/ESA 2005 Portfolio L.L.C.	8617
ESA 2005-San Jose L.L.C. f/k/a BRE/ESA 2005-San Jose L.L.C.	1317
ESA 2005-Waltham L.L.C. f/k/a BRE/ESA 2005-Waltham L.L.C.	1418
ESA Acquisition Properties L.L.C. f/k/a BRE/ESA Acquisition Properties L.L.C.	8149
ESA Alaska L.L.C. f/k/a BRE/ESA Alaska L.L.C.	8213
ESA Canada Properties Borrower L.L.C. f/k/a BRE/ESA Canada Properties Borrower L.L.C.	7476
ESA FL Properties L.L.C. f/k/a BRE/ESA FL Properties L.L.C.	7687
ESA MD Borrower L.L.C. f/k/a BRE/ESA MD Borrower L.L.C.	8839
ESA MN Properties L.L.C. f/k/a BRE/ESA MN Properties L.L.C.	0648
ESA P Portfolio MD Borrower L.L.C. f/k/a BRE/ESA P Portfolio MD Borrower L.L.C.	7448
ESA P Portfolio PA Properties L.L.C. f/k/a BRE/ESA P Portfolio PA Properties L.L.C.	6306
ESA P Portfolio TXNC Properties L.P. f/k/a BRE/ESA P Portfolio TXNC Properties L.P.	7378
ESA PA Properties L.L.C. f/k/a BRE/ESA PA Properties L.L.C.	7652
ESA Properties L.L.C. f/k/a BRE/ESA Properties L.L.C.	1249
ESA TX Properties L.P. f/k/a BRE/ESA TX Properties L.P.	1295
ESH/Homestead Portfolio L.L.C. f/k/a BRE/Homestead Portfolio L.L.C.	9049
ESH/HV Properties L.L.C. f/k/a BRE/HV Properties L.L.C.	8927
ESH/MSTX Property L.P. f/k/a BRE/MSTX Property L.P.	5862
ESH/TN Properties L.L.C. f/k/a BRE/TN Properties L.L.C.	5781
ESH/TX Properties L.P. f/k/a BRE/TX Properties L.P.	6964
ESH/Homestead Mezz L.L.C. f/k/a BRE/Homestead Mezz L.L.C.	9883

Debtor	Last Four Digits of Federal Tax I.D. Number
ESA P Mezz L.L.C. f/k/a BRE/ESA P Mezz L.L.C.	7467
ESA Mezz L.L.C. f/k/a BRE/ESA Mezz L.L.C.	0767
ESH/Homestead Mezz 2 L.L.C. f/k/a BRE/Homestead Mezz 2 L.L.C.	9903
ESA P Mezz 2 L.L.C. f/k/a BRE/ESA P Mezz 2 L.L.C.	7480
ESA Mezz 2 L.L.C. f/k/a BRE/ESA Mezz 2 L.L.C.	0866
ESH/Homestead Mezz 3 L.L.C. f/k/a BRE/Homestead Mezz 3 L.L.C.	9936
ESA P Mezz 3 L.L.C. f/k/a BRE/ESA P Mezz 3 L.L.C.	8977
ESA Mezz 3 L.L.C. f/k/a BRE/ESA Mezz 3 L.L.C.	0929
ESH/Homestead Mezz 4 L.L.C. f/k/a BRE/Homestead Mezz 4 L.L.C.	9953
ESA P Mezz 4 L.L.C. f/k/a BRE/ESA P Mezz 4 L.L.C.	8997
ESA Mezz 4 L.L.C. f/k/a BRE/ESA Mezz 4 L.L.C.	0964
ESH/Homestead Mezz 5 L.L.C. f/k/a BRE/Homestead Mezz 5 L.L.C.	9613
ESA P Mezz 5 L.L.C. f/k/a BRE/ESA P Mezz 5 L.L.C.	9186
ESA Mezz 5 L.L.C. f/k/a BRE/ESA Mezz 5 L.L.C.	1006
ESH/Homestead Mezz 6 L.L.C. f/k/a BRE/Homestead Mezz 6 L.L.C.	9667
ESA P Mezz 6 L.L.C. f/k/a BRE/ESA P Mezz 6 L.L.C.	9247
ESA Mezz 6 L.L.C. f/k/a BRE/ESA Mezz 6 L.L.C.	8995
ESH/Homestead Mezz 7 L.L.C. f/k/a BRE/Homestead Mezz 7 L.L.C.	9722
ESA P Mezz 7 L.L.C. f/k/a BRE/ESA P Mezz 7 L.L.C.	9349
ESA Mezz 7 L.L.C. f/k/a BRE/ESA Mezz 7 L.L.C.	9065
ESH/Homestead Mezz 8 L.L.C. f/k/a BRE/Homestead Mezz 8 L.L.C.	9779
ESA P Mezz 8 L.L.C.	9402
ESA Mezz 8 L.L.C. f/k/a BRE/ESA Mezz 8 L.L.C.	9117
ESH/Homestead Mezz 9 L.L.C. f/k/a BRE/Homestead Mezz 9 L.L.C.	1011
ESA P Mezz 9 L.L.C.	0281

Debtor	Last Four Digits of Federal Tax I.D. Number
ESA Mezz 9 L.L.C.	0923
ESH/Homestead Mezz 10 L.L.C. f/k/a BRE/Homestead Mezz 10 L.L.C.	1063
ESA P Mezz 10 L.L.C.	0224
ESA Mezz 10 L.L.C.	0175
Homestead Village L.L.C. f/k/a BRE/Homestead Village L.L.C.	8930
ESA MD Beneficiary L.L.C. f/k/a BRE/ESA MD Beneficiary L.L.C.	7038
ESA P Portfolio MD Trust f/k/a BRE/ESA P Portfolio MD Trust	8258
ESA MD Properties Business Trust f/k/a BRE/ESA MD Properties Business Trust	6992
ESA P Portfolio MD Beneficiary L.L.C. f/k/a BRE/ESA P Portfolio MD Beneficiary L.L.C.	8432
ESA Canada Properties Trust f/k/a BRE/ESA Canada Properties Trust	2314
ESA Canada Trustee Inc. f/k/a BRE/ESA Canada Trustee Inc.	2861
ESA Canada Beneficiary Inc. f/k/a BRE/ESA Canada Beneficiary Inc.	7543
ESA UD Properties L.L.C.	7075
ESA 2007 Operating Lessee Inc. f/k/a BRE/ESA 2007 Operating Lessee Inc.	9408
ESA 2005 Operating Lessee Inc. f/k/a BRE/ESA 2005 Operating Lessee Inc.	8471
ESA Operating Lessee Inc. f/k/a BRE/ESA Operating Lessee Inc.	4369
ESA P Portfolio Operating Lessee Inc. f/k/a BRE/ESA P Portfolio Operating Lessee Inc.	7433
ESA Business Trust f/k/a BRE/ESA Business Trust	8078
ESA Management L.L.C.	9101
ESA P Portfolio Holdings L.L.C. f/k/a BRE/ESA P Portfolio Holdings L.L.C.	8432
ESA Canada Operating Lessee Inc. f/k/a BRE/ESA Canada Operating Lessee Inc.	8838
Extended Stay Hotels L.L.C.	7438

**EXHIBIT B**

**Budget**

Cash Collateral Budget

Extended Stay Hotels  
Cash Flow Forecast as of: Jun 14, 2009  
(\$ in 000s)

	Forecast													Forecast Total 13 Weeks	
	6/19	6/26	7/3	7/10	7/17	7/24	7/31	8/7	8/14	8/21	8/28	9/4	9/11		
<b>Extended Stay Hotels</b>															
Financed Properties Revenues (665)	\$ 17,450	\$ 17,450	\$ 17,785	\$ 18,033	\$ 18,033	\$ 18,033	\$ 18,033	\$ 19,158	\$ 19,158	\$ 19,158	\$ 19,158	\$ 17,752	\$ 17,532	\$ 236,733	
Mortgage Debt Service	(6,781)	(9,872)	(17,139)	(19,257)	(18,349)	(12,889)	(17,475)	(16,667)	(19,000)	(8,612)	(18,089)	(11,883)	(19,682)	(56,890)	
HVM Disbursements	\$ 10,669	\$ 7,578	\$ 646	\$ (1,225)	\$ (17,823)	\$ 5,144	\$ 558	\$ 2,492	\$ (19,543)	\$ 10,546	\$ 1,069	\$ 5,869	\$ (22,628)	\$ (16,648)	
Net Cash Flow	\$ 23,113	\$ 33,783	\$ 41,361	\$ 42,006	\$ 40,781	\$ 22,958	\$ 28,102	\$ 28,660	\$ 31,152	\$ 11,609	\$ 22,155	\$ 23,224	\$ 29,093	\$ 23,113	
Beginning Cash Balance (a)	10,669	7,578	646	(1,225)	(17,823)	5,144	558	2,492	(19,543)	10,546	1,069	5,869	(22,628)	(16,648)	
Ending Cash Balance (b)	\$ 33,783	\$ 41,361	\$ 42,006	\$ 40,781	\$ 22,958	\$ 28,102	\$ 28,660	\$ 31,152	\$ 11,609	\$ 22,155	\$ 23,224	\$ 29,093	\$ 6,465	\$ 6,465	
<b>HVM LLC</b>															
Nonfinanced & Other Property Revenues	\$ 587	\$ 587	\$ 587	\$ 555	\$ 555	\$ 555	\$ 555	\$ 555	\$ 616	\$ 616	\$ 616	\$ 616	\$ 612	\$ 7,626	
<b>Disbursements</b>															
<b>Property Level</b>															
Payroll and Related	\$ 7,261	\$ 300	\$ 7,261	\$ 300	\$ 7,528	\$ 300	\$ 7,528	\$ 300	\$ 7,528	\$ 300	\$ 7,528	\$ 300	\$ 7,602	\$ 54,036	
Utilities	1,213	1,213	1,310	1,375	1,375	1,375	1,617	1,617	1,617	1,617	1,617	1,381	1,322	18,406	
Repairs & Maintenance	580	580	578	577	577	577	577	571	571	571	571	558	555	8,043	
All Other Controllable Expenses	1,269	1,269	1,335	1,379	1,379	1,379	1,469	1,469	1,469	1,469	1,411	1,396	1,396	18,069	
Non-Controllable Expenses	141	141	163	178	178	178	178	195	195	195	195	225	232	2,395	
<b>Total Property Level</b>	\$ 10,462	\$ 3,502	\$ 10,647	\$ 3,809	\$ 11,038	\$ 3,809	\$ 4,251	\$ 11,479	\$ 4,251	\$ 11,479	\$ 3,975	\$ 11,208	\$ 11,208	\$ 100,948	
<b>Other Property Level</b>															
Ground Rent	\$ -	\$ 105	\$ -	\$ -	\$ 114	\$ -	\$ -	\$ -	\$ -	\$ 54	\$ -	\$ -	\$ -	\$ 272	
Property Taxes	146	234	2,220	1,133	68	311	259	2,587	1,313	508	477	-	3,593	12,848	
Insurance Payments	868	-	-	-	-	-	-	-	-	868	-	-	-	2,603	
<b>Total Other Property Level</b>	\$ 146	\$ 1,206	\$ 2,220	\$ 1,133	\$ 68	\$ 311	\$ 1,240	\$ 2,587	\$ 1,313	\$ 508	\$ 1,398	\$ -	\$ 3,593	\$ 15,723	
<b>Corporate Overhead</b>															
Payroll and Related	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ 9,235	
Reservation & Travel Agent Fees	428	-	698	428	698	428	698	432	432	704	582	582	582	3,368	
All Other Overhead	575	575	562	562	562	562	605	605	605	605	605	582	582	7,549	
<b>Total Corporate Overhead</b>	\$ 2,322	\$ 575	\$ 2,585	\$ 562	\$ 2,579	\$ 562	\$ 2,579	\$ 605	\$ 2,356	\$ 605	\$ 2,629	\$ 582	\$ 1,901	\$ 20,172	
<b>Capital Expenditures and Initiatives</b>															
Recurring Capex	\$ 1,355	\$ 955	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 9,809	
ESA Welcome Package	66	66	66	66	66	66	66	66	66	66	66	66	66	931	
Other Misc. Capex	400	400	50	50	50	50	50	50	50	50	50	50	50	289	
IT Projects	1,881	1,481	926	926	926	800	800	800	800	800	800	800	800	1,350	
<b>Total Capital Expenditures and Initiatives</b>	\$ 1,881	\$ 1,481	\$ 926	\$ 926	\$ 926	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 11,789	
<b>Other Disbursements</b>															
Other Debt Service and Leases	\$ -	\$ -	\$ 1,332	\$ -	\$ -	\$ 5,090	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,334	\$ -	\$ 3,999	
Professional Fees	1,214	3,678	-	2,380	1,547	2,856	957	2,537	1,649	3,045	381	1,951	2,073	14,020	
Occupancy Tax	-	-	-	-	-	500	250	18	18	18	18	17	17	750	
Windows Litigation	17	17	17	16	16	16	16	16	18	18	18	17	17	222	
Office Building Expense	-	-	-	6,000	-	-	-	-	-	-	-	-	-	-	6,000
Utility Deposits	-	-	-	-	1,000	-	1,000	-	1,000	-	1,000	-	500	4,500	
Capex "Catchup"	-	-	-	-	1,500	-	1,500	-	1,000	-	1,000	-	1,000	6,000	
Litigation Reserve Funding	-	-	-	5,000	-	-	-	-	-	-	-	-	-	5,000	
<b>Total Other Disbursements</b>	\$ 1,231	\$ 3,695	\$ 1,349	\$ 13,396	\$ 4,563	\$ 7,962	\$ 3,123	\$ 8,979	\$ 3,667	\$ 3,062	\$ 2,398	\$ 7,142	\$ 3,590	\$ 64,158	
<b>Total Disbursements</b>	\$ 16,042	\$ 10,459	\$ 17,726	\$ 19,826	\$ 18,904	\$ 13,444	\$ 18,030	\$ 17,222	\$ 19,615	\$ 9,227	\$ 18,705	\$ 12,499	\$ 21,091	\$ 212,791	
<b>Net Cash Flow</b>	\$ (15,455)	\$ (9,872)	\$ (17,139)	\$ (19,257)	\$ (18,349)	\$ (12,889)	\$ (17,475)	\$ (16,667)	\$ (19,000)	\$ (8,612)	\$ (18,089)	\$ (11,883)	\$ (20,479)	\$ (205,165)	
Beginning Cash Balance	\$ 13,675	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 13,675	
Net Cash Flow	(15,455)	(9,872)	(17,139)	(19,257)	(18,349)	(12,889)	(17,475)	(16,667)	(19,000)	(8,612)	(18,089)	(11,883)	(20,479)	(205,165)	
Cash from ESH	6,781	9,872	17,139	19,257	18,349	12,889	17,475	16,667	19,000	8,612	18,089	11,883	20,479	196,491	
<b>Ending Cash Balance (c)</b>	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	

Notes:

- (a) Pro forma cash balance for 6/15/2009 assuming payment of Mortgage Certificates interest
- (b) Ending cash balance does not include preferred equity reserve cash of \$5 mm, Insurance LOC collateral cash of \$18 mm and litigation reserve cash of \$5 mm (beginning week ending 7/10/2009)
- (c) Assumes minimum cash balance of \$5 mm



**EXHIBIT C**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
: **Chapter 11 Case No.**  
: **In re** :  
: **EXTENDED STAY INC., et al.,** : **09-\_\_\_\_( )**  
: **Debtors.** : **(Joint Administration Requested)**  
: **-----X**

**INTERIM ORDER (A) AUTHORIZING USE OF CASH COLLATERAL,  
(B) GRANTING ADEQUATE PROTECTION, (C) MODIFYING  
THE AUTOMATIC STAY, AND (D) SCHEDULING A FINAL HEARING**

Upon the Motion, dated June 15, 2009 (the "Motion") of Extended Stay Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001 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 Rules"), seeking entry of an interim order (this "Interim Order") providing for the following relief:

- (a) authorizing the Debtors' use of "cash collateral" (the "Cash Collateral"), as such term is defined in section 363(a) of the Bankruptcy Code, of the Mortgage Debt Parties (as defined herein);
- (b) providing adequate protection to the Certificate Holders (as defined herein) for any diminution in value of their interests in the proceeds of the Prepetition Collateral (as defined herein), including the Cash Collateral;
- (c) 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 this Interim Order; and
- (d) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the Motion and the entry of a Final Order (as defined herein), and approving the form of notice with respect to the Final Hearing;

all as more fully described in the Motion; and the Court having reviewed the Motion and the Declaration of Joseph Teichman Pursuant to Rule 1007-2 of the Local Rules of Bankruptcy Procedure for the Southern District of New York in Support of First Day Motions and Applications, filed contemporaneously with the Motion, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on June \_\_, 2009 (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rule 2002, 4001(b) and (d), and 9014 and it appearing that no other or further notice need be provided; and the relief requested being within the guidelines for requests for the use of cash collateral set forth Local Rule 4001-2; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion; and based on the evidence adduced at the Interim Hearing in support of the Motion; and the appearances of all interested parties having been noted in the record of the Interim Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF  
FACT AND CONCLUSIONS OF LAW:**

A. Commencement Date. On June 15, 2009 (the “Commencement Date”), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. The Debtors have filed a motion requesting joint administration of the chapter 11 cases (the “Chapter 11 Cases”).

B. Debtors in Possession. The Debtors are continuing in the management and operation of their business and properties as debtors in possession pursuant to sections 1107 and

1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

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

D. Statutory Committee. As of the date hereof, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) has not yet appointed an official committee of unsecured creditors (the “Creditors’ Committee”) in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

E. Debtors’ Stipulations. Without prejudice to the rights of parties in interest (but subject to the limitations thereon contained in paragraph 19 of this Interim Order), the Debtors admit, stipulate and agree that (collectively, paragraphs E(a) through E(f) below are referred to herein as the “Debtors’ Stipulations”):

a. Mortgage Loan Agreement. Certain of the Debtors are borrowers<sup>1</sup> (the “Mortgage Borrowers”) under that certain Loan Agreement, dated as of June 11, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Mortgage Loan Agreement”), by and among the Mortgage Borrowers, ESA P Portfolio MD Trust and ESA MD Properties Business Trust (collectively, the “Maryland Owner”), ESA

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<sup>1</sup> The Mortgage Borrowers are as follows: ESA 2005 Portfolio L.L.C., ESA 2005- San Jose L.L.C., ESA 2005- Waltham L.L.C., ESA Acquisition Properties L.L.C., ESA Alaska L.L.C., ESA Canada Properties Borrower L.L.C., ESA FL Properties L.L.C., ESA MD Borrower L.L.C., ESA MN Properties L.L.C., ESA P Portfolio L.L.C., ESA P Portfolio MD Borrower L.L.C., ESA P Portfolio PA Properties L.L.C., ESA P Portfolio TXNC Properties L.P., ESA PA Properties L.L.C., ESA Properties L.L.C., ESA TX Properties L.P., ESH/Homestead Portfolio L.L.C., ESH/HV Properties L.L.C., ESH/MSTX Property L.P., ESH/TN Properties L.L.C., ESH/TX Properties L.P..

Canada Trustee, Inc. (the “Signatory Trustee”), ESA Canada Properties Trust (the “Canadian Trust”), ESA P Portfolio Operating Lessee Inc., ESA 2005 Operating Lessee Inc., ESA Canada Operating Lessee Inc., and ESA Operating Lessee Inc. (collectively, “Operating Lessee”) and Wachovia Bank, N.A. (“Wachovia”),<sup>2</sup> Bear Stearns Commercial Mortgage, Inc. (“Bear”), and Bank of America, N.A. (“BofA,” and together with Wachovia and Bear, and their respective successors and assigns, the “Mortgage Lenders”). Pursuant to the Mortgage Loan Agreement, and the other documents executed in connection therewith (the “Loan Documents,”<sup>3</sup> and together with the Mortgage Loan Agreement, the “Mortgage Loan Documents”), the Mortgage Lenders extended financing in the principal aggregate amount of \$4.1 billion to the Mortgage Borrowers (the “Mortgage Debt”). As of the Commencement Date, the principal amount of approximately \$4.1 billion was outstanding under the Mortgage Loan Agreement. Extended Stay Inc. (“ESI”), Homestead Village L.L.C. (“Homestead”), Lightstone Holdings L.L.C. and David Lichtenstein are the guarantors (collectively, the “Guarantor”) of certain non-recourse carve-out provisions of the Mortgage Loan Documents.

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<sup>2</sup> Wachovia also acts as “Agent” under that certain agreement between the Mortgage Borrowers, the Maryland Owner, the Canadian Owner, the Operating Lessee, HVM L.L.C. Homestead, and the Mortgage Lenders, dated as of June 11, 2007, as may be amended, restated, replaced, supplemented or otherwise modified from time to time (the “Cash Management Agreement”), relating to funds deposited in the Cash Management Account (as defined in the Cash Management Agreement).

<sup>3</sup> “Loan Documents” shall mean, collectively, the Note, the Security Instruments, the Environmental Indemnity, the Assignment of Management Agreement, the Assignment of Franchise Agreement, the Subordination of ESA Note, the Guaranty, the Cash Management Agreement, the Interest Rate Cap Agreement, the Assignments of Interest Rate Cap Agreement, the Contribution Agreement, the Canadian Indemnity Guaranty, the Maryland Indemnity Guaranty, the Assignment of ESA Note, Subordination of Aristocrat Notes, the Maryland Beneficiary Pledge Agreement, the Canadian Beneficiary Pledge Agreement, the Security Account Control Agreement, the Trademark Security Agreement (all as defined in the Mortgage Loan Agreement) and all other documents executed and/or delivered in connection with the Loan, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

b. Prepetition Mortgages and Prepetition Collateral. The Mortgage Debt is secured by cross-collateralized and cross-defaulted first priority mortgages (the “Prepetition Mortgages”) on 666 properties (collectively, the “Mortgaged Properties”) and the other collateral, as set forth in the Mortgage Loan Documents (the “Prepetition Collateral”), including all cash generated by the Debtors’ hotel operations.

c. Validity and Perfection of Prepetition Mortgages and Mortgage Debt. Subject to the provisions of paragraph 18 of this Interim Order, the Debtors and Debtors in Possession acknowledge and agree that: (i) as of the Commencement Date, the Prepetition Mortgages on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected; (ii) the Mortgage Debt constitutes a legal, valid, binding, and non-avoidable obligation of the Debtors; (iii) no portion of the Prepetition Mortgages or the Mortgage Debt are subject to avoidance, recharacterization, disallowance, disgorgement, recovery or subordination under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against the Mortgage Debt Parties (as defined below) or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, managers, members, directors and employees arising out of, based upon or related to the Mortgage Debt.

d. Securitization. Subsequent to the closing date of the Mortgage Loan Agreement, the Mortgage Lenders sold their interests in the Mortgage Debt to Wachovia Large Loan, Inc, which in turn, deposited the Mortgage Debt into a trust. Wachovia, Bank of America, and Merrill Lynch were the initial purchasers (the “Initial Purchasers”) of the interests in the trust. In turn, certain investors bought the interests held by those Initial Purchasers (the

“Certificate Holders”), who were then issued certificates (the “Certificates”) representing beneficial interests in the collateral vehicle holding the Mortgage Debt and other assets (the “Trust Fund”). The rights of the Certificate Holders are governed by the Trust and Servicing Agreement., dated as of August 1, 2007 (the “Trust and Servicing Agreement”), between Wachovia Large Loan, Inc., as depositor, Wachovia, as servicer and special servicer (in such capacity, the “Servicer”), and Wells Fargo Bank, N.A., as “Trustee” ( the Trustee, together with the Mortgage Lenders, each of the Certificate Holders, and the Servicer, the “Mortgage Debt Parties”). Although, nominally, they have indirect interests in the Mortgage Debt, the Certificate Holders are the real parties in interest with respect to the Mortgage Debt and own 100% of the beneficial interest in the Mortgage Debt.

e. Cash Collateral. The Debtors represent that all of the Debtors’ cash generated from the Mortgaged Properties, wherever located, whether as original collateral or profits or proceeds of the Mortgaged Properties or other Prepetition Collateral, constitutes Cash Collateral.

f. Default by the Debtors. The Debtors acknowledge and stipulate that the Debtors are in default of their debts and obligations under the Mortgage Loan Documents.

F. Adequate Protection. The Mortgage Debt Parties are entitled to receive adequate protection in respect of the Debtors’ use of the Prepetition Collateral and any decline in the value thereof, resulting from the (a) use of the Cash Collateral, (b) use, sale, lease, or depreciation or other diminution in value of the Prepetition Collateral, or (c) as a result of the imposition of the automatic stay under Section 362(a) of the Bankruptcy Code (the amount of any such diminution being referred to hereinafter as the “Adequate Protection Obligations”). Pursuant to sections

361, 363, and 507(b), as adequate protection for the Adequate Protection Obligations, the Debtors have agreed to provide the Mortgage Debt Parties with: (a) the Adequate Protection Liens; (b) the Adequate Protection Superpriority Claims; and (c) the Adequate Protection Payments (each as defined below). The Certificate Holders have objected to the use by the Debtors of the Cash Collateral, except on the terms and conditions set forth in this Interim Order.

G. The Supporting Certificate Holders' Consent. Subject to the adequate protection arrangements provided herein being approved by the Court, a group of significant Certificate Holders (the "Supporting Certificate Holders") has consented to the use of the Cash Collateral and agreed to the adequate protection arrangements contemplated by this Interim Order, all subject to and in accordance with the terms and conditions of this Interim Order. The adequate protection and other treatment proposed to be provided by the Debtors to the Certificate Holders (as beneficial holders of the Mortgage Debt), pursuant to the terms set forth in this Interim Order, will minimize disputes and litigation over use of the Cash Collateral and facilitate the Debtors' ability to continue their business operations. While the Trustee and the Servicer have not consented to the proposed use of Cash Collateral, they have advised the Debtors that they do not object to the relief requested herein.

H. Section 506(c) and 552(b). In light of the agreement and consent of the Supporting Certificate Holders with respect to the use of their Cash Collateral for payments solely made in accordance with the Budget and the terms of this Interim order, each of the Certificate Holders is entitled upon entry of a Final Order (as defined herein) to: (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code.



I. Necessity of Relief Requested. The Debtors require the use of Cash Collateral in order to finance their operations, absent which immediate and irreparable harm will result to the Debtors, their estates and creditors, and the prospects for a successful conclusion of the Chapter 11 Cases. In the absence of the use of Cash Collateral, it would be impossible for the Debtors to continue to operate their business, even for a limited period of time, and serious and irreparable harm to the Debtors, their estates and their creditors would occur. The Debtors do not have sufficient available sources of working capital and financing to operate their business in the ordinary course of business or to maintain their properties without the use of Cash Collateral. The relief requested in the Motion is, therefore, of the utmost significance and importance to the preservation and maintenance of the going concern value of the Debtors. The Supporting Certificate Holders and the Debtors have negotiated at arms' length and in good faith regarding the Debtors' use of Cash Collateral to fund the continued operations of the Debtors for the period through the Termination Date (as defined below), all subject to the terms and conditions set forth in this Interim Order, including the protection afforded an entity acting in "good faith" under section 363(m) of the Bankruptcy Code. Based on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and the use of the Cash Collateral are fair and reasonable 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. Entry of this Interim Order is in the best interests of the Debtors and their estates.

J. Final Hearing. At the Final Hearing, the Debtors will seek final approval of the relief requested in the Motion for the proposed use of Cash Collateral on a final basis pursuant to

a final order (the "Final Order"), notice of which Final Hearing will be provided in accordance with this Interim Order.

J. Notice. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including the parties listed on "Exhibit A" attached hereto, and those creditors holding the thirty largest unsecured claims against the Debtors' estates (on a consolidated basis). The parties have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the interim relief set forth in this Interim Order, and no other or further notice is or shall be required.

Based upon the foregoing findings and conclusions, the Motion and the record before this Court with respect the Motion, and good and sufficient cause appearing therefor, NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Motion Granted. The Motion is granted, and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order.
2. [Objections Overruled. All objections to the Motion to the extent not withdrawn or resolved are hereby overruled.]
3. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, pursuant to sections 363(c)(2) of the Bankruptcy Code, the Debtors are authorized to use Cash Collateral for the period (the "Specified Period") from the Commencement Date through the date which is the earliest to occur of (a) the date of expiration of the Remedies Notice Period (as defined hereafter) or (b) 11:59 p.m. (Eastern time) on January 31, 2010 (the "Termination Date"). Except as otherwise expressly provided herein, Cash

Collateral may be used during the Specified Period strictly in accordance with the 13 week budget, attached hereto as “Exhibit B” (as may be amended, the “Budget”), and with budgeted expenses not to exceed 120% of the amounts set forth in the Budget measured weekly for the actual trailing five week period on a cumulative basis; provided, that the first measurement will not be made until thirty (30) days after the Commencement Date. In any case, Professional Fees will not be included in those Budget expenses which are measured weekly; provided, that during the Remedies Notice Period, the Debtors may use Cash Collateral in accordance with the terms and provisions of the Budget solely to meet payroll obligations and to pay expenses critical to the preservation of the Debtors and their estates as agreed by the Supporting Certificate Holders, in their sole discretion. The Debtors shall provide the Certificate Holders with an updated Budget for the next succeeding thirteen (13) week period within ten (10) business days prior to the end of each calendar month. Absent further order of the Court, the Debtors shall no longer be authorized pursuant to the Interim Order to use Cash Collateral without consent of the Supporting Certificate Holders, at the expiration of the Specified Period; provided, however, if the Final Order is not entered by July 13, 2009, then the Debtors shall no longer be authorized to use Cash Collateral after July 17, 2009. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor’s use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order or other “First Day” order of the Court (in each case consistent with this Interim Order and the Budget), with the prior written consent of the Supporting Certificate Holders, and in accordance with the Budget.

4. Upon entry of an order by the Court on or about the date hereof approving the Debtors’ motion to use, as modified, the Debtors’ centralized cash management system (the

“Cash Management Order”), the Banks (as defined in the Cash Management Order) shall, subject to the terms of the Cash Management Order, continue the automatic transfer on a daily basis of all available funds currently in or received in the Debtors’ local bank accounts (the “Local Bank Accounts”) to the Cash Management Account (as defined in the Cash Management Order) and Wachovia shall transfer all funds in the Cash Management Account, whether deposited prior or subsequent to the Commencement Date, automatically, on a daily basis (or as often as practicable) into a new bank account at Wachovia, without any setoff or counterclaim (the “Extended Stay DIP Lockbox”), without the necessity to comply with any lockbox or blocked account agreement or any preexisting transfer arrangement concerning such accounts; provided, however, that the Extended Stay DIP Lockbox, along with all other bank accounts, deposit accounts and securities accounts established on or in existence on or after the Commencement Date, shall be subject to any and all security interests and liens granted hereunder.

5. Budget Maintenance. The Budget and any modifications to, or extensions, amendments or updates of, the Budget shall be in form and substance acceptable to and approved in writing by the Supporting Certificate Holders, in their sole discretion. The Budget may be amended or modified in writing from time to time only with the written consent of the Supporting Certificate Holders, which consent shall not be unreasonably withheld.

6. Adequate Protection Liens. The Mortgage Debt Parties are hereby granted (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) a valid and perfected replacement security interest in, and lien on (the “Adequate Protection Liens”), all of the right, title and interest of the Debtors in, to and

under all present and after-acquired property and assets of the Debtors of any nature whatsoever, whether real or personal, tangible or intangible, wherever located, including, without limitation, all cash and Cash Collateral of the Debtors (whether maintained with the Mortgage Lenders or any other financial institution) and any investment of such cash and Cash Collateral, goods, cash-in-advance deposits, 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 held by the Debtors, including equity interests in subsidiaries and all other investment property, and the proceeds of all of the foregoing, whether now existing or hereafter acquired (collectively, the “Collateral”), provided, however, that the Collateral shall not include the Debtors’ claims and causes of action under section 544, 545, 547, 548, 549 or 550 of the Bankruptcy Code (collectively, the “Avoidance Actions”) but, subject to entry of the Final Order, the Collateral shall include the proceeds of the Avoidance Actions. Subject to the Carve-Out (as defined below), the Adequate Protection Liens shall be (i) first priority perfected liens on all of the Collateral that is not otherwise encumbered by validly perfected, non-avoidable security interests or liens as of the Commencement Date, (ii) first priority perfected liens on all of the Collateral as to which the Mortgage Lenders’ had a valid and perfected first priority lien as of the Commencement Date, even if such Collateral is subject to a validly perfected lien that is junior to the lien of the Mortgage Lenders, and (iii) junior perfected liens on all Collateral that is

subject to a validly perfected lien with priority over the Mortgage Lenders' liens as of the Commencement Date.

a. The Adequate Protection Liens shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in the Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 506(c) (effective upon entry of the Final Order), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Adequate Protection Liens.

7. Adequate Protection Superpriority Claims. As further adequate protection against any diminution in value of the interests of the Mortgage Debt Parties in the Prepetition Collateral, the Mortgage Debt Parties are each hereby granted as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code allowed superpriority administrative expenses claims in the Chapter 11 Cases and any Successor Cases in the amount of the Adequate Protection Obligations (the "Adequate Protection Superpriority Claim").

a. Priority of Adequate Protection Superiority Claims. The Adequate Protection Superpriority Claims shall be junior only to the Carve Out ( as defined herein). Except for the Carve Out, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code.

8. Adequate Protection Payments. As additional adequate protection to the Mortgage Debt Parties, the Mortgage Debt Parties shall receive adequate protection payments (the "Adequate Protection Payments") from the Debtors, in the form of: (i) payments payable monthly on the same date as provided in the Mortgage Loan Agreements, in an amount equal to the interest at the non-default contract rate that is payable to such class of Certificates under the Mortgage Debt and the Trust and Servicing Agreement; (ii) ongoing payment of the reasonable fees, costs and expenses of Fried Frank Harris Shriver & Jacobson LLP ("Fried Frank") and Houlihan Lokey Howard & Zukin ("Houlihan Lokey") and payment of the reasonable fees, costs and expenses Schulte Roth & Zabel LLP ("Schulte Roth") incurred subsequent to the Commencement Date; and (iii) continued maintenance and insurance of the Collateral in the amounts and for the risks, and by the entities, required under the Mortgage Loan Documents. Notwithstanding that the monthly amounts to be paid pursuant to clause (i) of the preceding sentence will be based on the non-default contract rate of interest, interest shall accrue on the Mortgage Loan for the period subsequent to the Commencement Date at the default rate of interest set forth in the Mortgage Loan Agreement. The difference between the amount of the

accrued interest and the amount paid as adequate protection payments shall be added to the amount owed by the Debtors in respect of the Mortgage Debt. The Debtors are authorized and directed, within five (5) business days of the submission of invoices from Fried Frank and Houlihan Lokey, to pay all reasonable fees, costs and charges incurred prepetition or postpetition, in each case, in connection with matters relating to the Mortgage Loan Documents and the rights and interests of the Certificate Holders in connection with the Chapter 11 Cases. None of the fees, costs and expenses payable to Fried Frank and Houlihan Lokey pursuant to this paragraph shall be subject to separate approval by this Court, and neither Fried Frank nor Houlihan Lokey shall be required to file any interim or final fee application with respect thereto.

9. Modification of Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Certificate Holders may request in their sole discretion to assure the perfection and priority of the liens granted herein; and (c) authorize the Debtors to pay, and the Certificate Holders to retain and apply, payments made in accordance with the terms of this Interim Order, provided, however, any stay relief with respect to the exercise of remedies shall be in accordance with Paragraph 16 below or as otherwise ordered by the Court.

10. Perfection of Adequate Protection Liens. This Interim 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, financing statement or other instrument or document which 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 Mortgage Debt Parties to the priorities granted herein. The Debtors are authorized and directed to execute and deliver promptly to the Servicer, on behalf of the Certificate Holders, all such financing statements, mortgages, notices and other documents as any of the Certificate Holders may reasonably request. The Servicer, on behalf of the Supporting Certificate Holders, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statement, notices of lien or similar instrument.

11. Notwithstanding anything to the contrary contained in this Interim Order, the Budget shall make provision for a litigation reserve in the amount of \$5 million (the “Litigation Reserve”) to be provided to David Lichtenstein for use in defending claims arising out of his authorizing the filing of these Chapter 11 Cases that may be brought against him under certain Guaranties he issued to the Mortgage Lenders and the lenders who made certain mezzanine loans to the Debtors (the “Mezzanine Lenders”); provided that in no event shall Mr. Lichtenstein be authorized to use the funds from the Litigation Reserve for any purpose other than to defend such claims brought against him under the Guaranties (including, without limitation, to assert any claims against any of the Mortgage Debt Parties). Upon entry of the Final Order, the full amount of the Litigation Reserve shall be advanced by the Debtors to an escrow account to be established for the benefit of Mr. Lichtenstein with an independent escrow agent, which account will be held subject to the terms of an escrow agreement (the “Escrow Agreement”) to be entered into between Mr. Lichtenstein and the Debtors, subject to the approval of the Supporting Certificate Holders, which consent shall not be unreasonably

withheld. The Escrow Agreement shall provide, *inter alia*, that Mr. Lichtenstein shall have access to the Litigation Reserve only at such time as a claim has been asserted against him under the Guaranties as provided herein and there is no stay or injunction in place which protects Mr. Lichtenstein from being subject to litigation under the Guaranties. Notwithstanding anything to the contrary contained in this Interim Order or the Final Order (when entered), the Litigation Reserve shall remain in place, subject to the terms of the Escrow Agreement, whether or not the Debtors' authorization to utilize cash collateral under the Final Order (when entered) is terminated.

12. Debtors' Obligations. The Debtors shall:

a. Cause all revenue from the Mortgaged Properties, as and when received, including, without limitation, all available funds in the Local Bank Accounts to the Cash Management Account and Wachovia shall transfer all funds into the Cash Management Account, on a daily basis (or as often as practicable) to the Extended Stay DIP Lockbox to be used in accordance with this Interim Order and the Budget;

b. Utilize Cash Collateral to pay the expenses of the operation of their business as provided in the Budget;

c. Deliver to the Certificate Holders on or before the close of business on Tuesday of each week (and if such day is not a business day, then the next succeeding business day) a (i) comparison for the prior week of actual results of all items contained in the Budget to the amounts originally contained in the Budget and (ii) cumulative comparison for the period from the Commencement Date through the end of the prior week of the actual results of all items contained in the Budget to the amounts originally contained in the Budget, in each case along with such supporting information as the Certificate Holders may request;

d. Provide the Certificate Holders with monthly, quarterly and annual financial reports, including cash expenditures in relation to the Budget; and

e. Serve the Certificate Holders and their respective counsel with a copy of each monthly report filed by the Debtors in these Cases as required by the Court, the U.S. Trustee or applicable law.

Delivery and service of the information contained in this paragraph 12 shall be made to (i) the Supporting Certificate Holders and (ii) the Servicer, which shall distribute such information to the Certificate Holders in the same manner as other financial information and reports to be provided to the Certificate Holders pursuant to the Trust and Servicing Agreement.

13. Cash Management. Until the indefeasible payment in full in cash of all Mortgage Debt Obligations and the cancellation of the Mortgage Debt, the Debtors shall maintain the cash management system set forth in the Cash Management Order.

14. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any material portion of the Collateral without the prior written consent of the Supporting Certificate Holders.

15. Events of Default. The occurrence of any of the following events, unless waived by the Certificate Holders, shall constitute an event of default (collectively, the "Events of Default"):

a. the failure by the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order;

b. the Debtors' obtaining of credit or the incurring of indebtedness that is (i) secured by a security interest, mortgage or other lien on all or any portion of the Collateral which is equal or senior to any security interest, mortgage or other lien of the

Mortgage Debt Parties, or (ii) entitled to priority administrative status which is equal or senior to that granted to the Mortgage Debt Parties;

c. any lien or security interest purported to be created under the Mortgage Loan Documents shall cease to be, or shall be asserted by any Debtor not to be, a valid and perfected lien on or security interest in any Collateral, with the priority required by the Mortgage Loan Documents or herein;

d. the entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral having a value in excess of \$7.5 million, or (ii) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtors;

e. reversal, vacatur, or modification (other than a modification acceptable to the Supporting Certificate Holders in accordance with the Final Order or a modification with the express prior written consent of the Supporting Certificate Holders) of this Interim Order;

f. dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner with enlarged powers or other responsible person;

g. any misrepresentation of a material fact made after the Commencement Date by any of the Debtors or their agents to the Supporting Certificate Holders

about the financial conditions of the Debtors, or any of them, the nature, extent, location or quality of any Collateral, or the disposition or use of any Collateral, including Cash Collateral;

h. a default by any of the Debtors in reporting financial information as and when required under this Interim Order;

i. the sale of any material portion of any of the Debtors' assets outside the ordinary course of business without the prior written consent of the Supporting Certificate Holders, in their sole discretion;

j. thirty (30) days following the Commencement Date if the Final Order has not been entered by the Court by such date;

k. unless otherwise agreed to in writing by the Supporting Certificate Holders, sixty (60) days following the Commencement Date if a disclosure statement supporting a chapter 11 plan has not been filed with the Court;

l. unless otherwise agreed to in writing by the Supporting Certificate Holders, ninety (90) days after the Commencement Date if an order has not been entered by the Court approving a disclosure statement supporting a chapter 11 plan that has been consented to by the Supporting Certificate Holders;

m. unless otherwise agreed to in writing by the Supporting Certificate Holders, one hundred fifty (150) days after the Commencement Date if an order has not been entered by the Court confirming a chapter 11 plan that has been consented to by the Supporting Certificate Holders;

n. unless otherwise agreed to in writing by the Supporting Certificate Holders, one hundred eighty (180) days after the Commencement Date if the effective date of a

chapter 11 plan that has been consented to by the Supporting Certificate Holders has not occurred;

o. unless otherwise agreed to in writing by the Supporting Certificate Holders, the filing of a chapter 11 plan in any of the Chapter 11 Cases that deviates or is inconsistent in any material respect with that certain Restructuring Term Sheet dated as of June 12, 2009, agreed to by and among the Debtors and the Supporting Certificate Holders;

p. the filing of a chapter 11 plan in any of the Chapter 11 cases that has not been consented to by the Supporting Certificate Holders or which fails to provide for the payment in full, in cash, of the Mortgage Debt, on the effective date of such plan;

q. the failure to make Adequate Protection Payments or other payments to the Certificate Holders as set forth in the Budget;

r. the failure to comply with the Budget for any period, measured weekly as of the close of business on Wednesday of each following work week; or

s. the granting of any motion providing for reversal or modification of this Interim Order.

16. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, the Supporting Certificate Holders may declare a termination, reduction or restriction of the ability of the Debtors to use any Cash Collateral, except for the limited use of Cash Collateral provided in Paragraph 3 (any such declaration, shall be referred to herein as a “Termination Declaration”). The Termination Declaration shall be given by facsimile (or other electronic means) to counsel to the Debtors, counsel to the Supporting Certificate Holders, counsel to the Mortgage Lenders, counsel to any Creditors’ Committee, and the U.S. Trustee (the earliest date any such Termination Declaration

is made shall be referred to herein as the “Termination Declaration Date”). On the Termination Declaration Date, the Debtors’ right to use Cash Collateral shall automatically cease, except as provided in Paragraph 3. Within five (5) business days after the Termination Declaration Date (the “Remedies Notice Period”) the Debtors shall be entitled to seek an emergency hearing with the Court. Unless the Court determines otherwise during the Remedies Notice Period, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the Debtors shall no longer have the right to use or seek to use Cash Collateral and the Mortgage Debt Parties shall be permitted to exercise all remedies set forth herein, in the Mortgage Loan Documents, as applicable, and as otherwise available at law against the Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the Collateral or any other rights and remedies granted to the Mortgage Debt Parties with respect thereto pursuant to the Mortgage Loan Documents, the Trust and Servicing Agreement, or this Interim Order, as applicable.

17. Carve Out.

a. Carve Out. Subject to the terms and conditions contained in this paragraph, the Adequate Protection Liens and the Adequate Protection Superpriority Claims shall be subordinate to the following (collectively, the “Carve-Out”): (i) fees pursuant to 28 U.S.C. § 1930(a)(6); (ii) fees payable to the clerk of the Bankruptcy Court and any agent thereof; (iii) pursuant to section 726(b) of the Bankruptcy Code, reasonable fees and expenses of a trustee that are incurred after the conversion of these Chapter 11 Cases to a case or cases under chapter 7 of the Bankruptcy Code, in an amount not to exceed \$50,000; (iv) reasonable and documented expenses payable to members of the Creditors’ Committee; and (v) professional fees and

expenses incurred by professionals retained pursuant to §§ 327(a) and 1103 of the Bankruptcy Code by the Debtors and the Creditors' Committee (collectively, the "Professional Fees") subsequent to the delivery of a Carve-Out Trigger Notice (as defined below), in an aggregate amount under this paragraph 17(a) not in excess of \$10 million. Nothing in this paragraph 17(a) alters the requirements for Court approval and allowance of Professional Fees or reimbursement of the expenses incurred by the members of the Creditors' Committee or the right of the Debtors, the Certificate Holders or any other party-in-interest to object to the award of Professional Fees or allowance of the expenses of the members of the Creditors' Committee in accordance with any applicable Bankruptcy Rule or, if applicable, order of the Court relating to the approval of Professional Fees and objections thereto. The Certificate Holders shall not be responsible for the direct payment or reimbursement of any Professional Fees incurred in connection with the Cases or any Successor Cases.

b. As used herein, "Carve-Out Trigger Notice" means, upon the occurrence of an Event of Default a written notice delivered by the Supporting Certificate Holders to counsel for the Debtors expressly stating that the Carve-Out has been invoked, thereby terminating the right of the Debtors to pay Professional Fees incurred after such date outside of the Carve-Out. Upon receipt of the Carve-Out Trigger Notice, the Debtors shall provide immediate notice by facsimile (or other electronic means) to all professionals informing them that a Carve-Out Trigger Notice has been received and further advising them that the Debtors' ability to pay Professional Fees incurred subsequent to the date thereof is subject to the Carve-Out.

c. Any payments or reimbursements made on or after delivery of the Carve-Out Trigger Notice in respect of any Professional Fees incurred subsequent to delivery of



the Carve-Out Trigger Notice shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any payments or reimbursements made in respect of Professional Fees incurred at any time prior to delivery of the Carve-Out Trigger Notice shall not reduce the Carve-Out.

d. Payment of any obligations within the Carve-Out shall not and shall not be deemed to reduce the Mortgage Debt or the Adequate Protection Obligations and shall not and shall not be deemed to subordinate the Adequate Protection Liens or the Adequate Protection Superpriority Claims to any junior prepetition or postpetition lien, interest, or claim in favor of any other party. Upon any liquidation of the Mortgaged Properties following a Carve-Out Trigger Notice, net liquidation proceeds shall be set aside in a reserve account to fund the Carve-Out.

18. Limitations on the Cash Collateral and the Carve Out. The Cash Collateral and the Carve Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) against the Mortgage Debt Parties or seeking relief that would impair their rights and remedies under the Mortgage Loan Documents, the Trust and Servicing Agreement or this Interim Order, including, without limitation, (A) to assert, commence, or prosecute any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any the Mortgage Debt Parties, (B) to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the rights and obligations of the Mortgage Debt Parties or seeking affirmative relief against them, or (C) for the payment of any services rendered by the professionals retained by the Debtors or any Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceedings, application, motion,

objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief that would impair the ability of the Mortgage Debt Parties to recover on the Mortgage Debt, (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Prepetition Mortgages, (iii) for monetary, injunctive or other affirmative relief against any of the Mortgage Debt Parties or its respective collateral that would impair the ability of the Mortgage Debt Parties to recover on the Mortgage Debt or seeking affirmative relief against such Mortgage Debt Party, or (iv) preventing, hindering or otherwise delaying the exercise by the Mortgage Debt Parties of any rights and/or remedies under this Interim Order, the Mortgage Loan Documents, or applicable law, or the enforcement of realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the Mortgage Debt Parties upon any of the Collateral; (b) to make any distribution under a plan of reorganization in any of the Cases other than a distribution in respect of the Professional Fees included therein; (c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without prior written consent of the Supporting Certificate Holders, unless otherwise ordered by the Court; (d) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests in any of the Debtors without the prior written consent of the Supporting Certificate Holders, (e) subject to the limited use of Cash Collateral set forth in Paragraph 3 and 16 above, to object, contest, or interfere with in any way the enforcement or realization upon any of the Collateral by the Mortgage Debt Parties once an Event of Default has occurred; (f) to sell or otherwise dispose of Collateral without the prior consent of the Supporting Certificate Holders; (g) to the extent such Cash Collateral represents insurance proceeds constituting Collateral, without the prior consent of the Supporting Certificate Holders; (h) to pay

indebtedness outside the ordinary course of business without the prior consent of the Supporting Certificate Holders; or (i) to object to or challenge in any way the claims, liens, or interests (including interests in the Collateral) held by or on behalf of any of the Mortgage Debt Parties. Notwithstanding the foregoing, the Cash Collateral and the Carve Out may be used by any Creditors' Committee to investigate the Prepetition Mortgages, and/or a potential Challenge (as that term is defined herein), provided that no more than \$150,000 in the aggregate may be spent from the aforementioned sources on such investigations.

19. Reservation of Certain Third Party Rights and Bar of Challenges and Claims. Nothing in this Interim Order shall prejudice the rights of a Creditors' Committee, a successor trustee and, solely if no Creditors' Committee is appointed, any other party in interest granted standing by the Court (other than the Debtors), to seek to object to or to challenge the Debtors' Stipulations, including, but not limited to those in relation to: (a) the validity, extent, priority, or perfection of the mortgage, security interests, and liens of any of the Mortgage Debt Parties; or (b) the validity, allowability, priority, or amount of the Prepetition Mortgages. A party, including any Creditors' Committee, if appointed, must commence, as appropriate, a contested matter or adversary proceeding raising such objection or challenge, including, without limitation, any claim against any of the Mortgage Debt Parties in the nature of a setoff, counterclaim or defense to the applicable Mortgage Debt (each, a "Challenge") within (i) with respect to the Creditors' Committee, sixty (60) calendar days from the effective date of retention of counsel to any Creditors' Committee, and (ii) with respect to other parties in interest with requisite standing other than the Debtors or any Creditors' Committee, sixty (60) calendar days following the date of entry of the Final Order or any subsequent date that may be ordered by the Court for cause shown before the expiration of such period (together, the "Challenge Period").

The applicable Challenge Period may only be extended for cause shown on motion and hearing brought prior to its expiration or by written consent of the Supporting Certificate Holders. Upon the expiration of the Challenge Period (the “Challenge Period Termination Date”), without the filing of a Challenge: (A) any and all such Challenges by any party (including, without limitation, any Creditors’ Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed in these Chapter 11 Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred, and (B) all of the Debtors’ Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Mortgage Debt Parties’ claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors’ bankruptcy estates and all creditors, interest holders, and other parties in interest in these Chapter 11 Cases and any Successor Cases. Upon entry of a final nonappealable order determining any of the Mortgage Debt Parties to be undersecured, payment of interest or fees to such Mortgage Debt Parties under this Interim Order shall be reapplied to principal. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Creditors’ Committee or any other statutory committee appointed in the Chapter 11 Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including any Challenge with respect to the Mortgage Loan Agreement or the Mortgage Debt.

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

21. Section 506(c) Claims. Upon entry of the Final Order, 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 Mortgage Debt Parties or any of their respective claims or the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the applicable Mortgage Debt Parties, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

22. No Liability to Third Parties. In making decisions to permit the use of Cash Collateral or in taking any other actions related to this Interim Order, the Supporting Certificate Holders (i) shall have no liability to any third party and shall not be deemed to be in control of the operations of any Debtors or to be acting as a “controlling person,” “responsible person” or “owner or operator” with respect to the operation or management of any Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute), and (ii) shall not owe any fiduciary duty to the Debtors, their creditors or their estates or to any Certificate Holder. The Certificate Holders’ relationship with any Debtor shall not constitute or be deemed to constitute a joint venture or partnership with any Debtor.

23. No Marshaling/Application of Proceeds. Upon entry of the Final Order, the Mortgage Debt Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral, as the case may be, and proceeds shall be received and applied in accordance with this Interim Order notwithstanding any other agreement or provision to the contrary.

24. Section 552(b). Upon entry of the Final Order, the Mortgage Debt Parties shall each 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 any of the Mortgage Debt Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

25. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the Mortgage Debt Parties’ right to seek any other or supplemental relief in respect of any Debtor, including the right to seek additional adequate protection (without prejudice to any other person’s right to object to or otherwise oppose such additional adequate protection); (b) any of the rights of any of the Mortgage Debt Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or a Successor Case, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans.

26. 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 to any of the Mortgage Debt Parties hereunder is insufficient to compensate for any diminution in value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgement by the Mortgage Debt Parties, that the adequate protection

granted herein does in fact adequately protect the Mortgage Debt Parties against any diminution in value of their respective interest in the Prepetition Collateral (including Cash Collateral).

27. No Waiver by Failure to Seek Relief. The failure of any of the Mortgage Debt Parties to seek relief or otherwise exercise its rights and remedies under this Interim Order or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise of the applicable Mortgage Debt Parties.

28. Proofs of Claim. The Certificate Holders are hereby deemed to be the beneficial holders of claims against the Debtors in respect of the Mortgage Debt. The Certificate Holders will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for their claims to be allowed, and the Debtors' stipulations shall be deemed to constitute a timely filed proof of claim. Any order entered by the Court in relation to the establishment of a bar date for any claim (including, without limitation) administrative claims) in any Chapter 11 cases or Successor Cases shall not apply to the Certificate Holders.

29. Good Faith. The Certificate Holders each have acted in good faith in connection with this Interim Order and their reliance on this Interim Order is in good faith.

30. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the Agent, the Mortgage Lenders, the Certificate Holders, the Servicer, the Trustee, all other creditors of any of the Debtors, any committee appointed in the Chapter 11 Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case. In the event of any inconsistency between

the provisions of this Interim Order and any other order (including any “First Day” order), the provisions of this Interim Order shall govern and control. Any payments to be made under any order (including any “First Day” order) shall be made in accordance with this Interim Order and the Budget.

31. No Modification of Interim Order. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim Order without the prior written consent of the Supporting Certificate Holders, and no such consent shall be implied by any other action, inaction or acquiescence of the Supporting Certificate Holders. In the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, such modification, amendment or vacatur shall not affect the validity, perfection, priority, allowability, enforceability or non-availability of any advances, payments or use of cash whether previously or hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the Mortgage Debt Parties hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

32. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in 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) 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. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the Mortgage Debt Parties pursuant to



this Interim Order, notwithstanding the entry of any such order, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until the Mortgage Debt has been indefeasibly paid in full in cash.

33. Final Hearing. The Final Hearing to consider entry of the Final Order is scheduled for [\_\_\_\_], 2009 at [\_\_\_\_] a.m. (Eastern Time) before the Honorable [\_\_\_\_], United States Bankruptcy Judge, Courtroom [\_\_\_\_], at One Bowling Green, New York, the United States Bankruptcy Court for the Southern District of New York. On or before [\_\_\_\_], 2009, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with a copy of this Interim Order and the Motion on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; and (c) counsel for any Creditors' Committee. The Final Hearing Notice shall state that any party in interest objecting to the relief requested in the Motion on a final basis shall file written objections with the Clerk of the Court no later than on [\_\_\_\_], 2009 at [\_\_\_\_] p.m. (Eastern Time), which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Marcia L. Goldstein, Esq. and Jacqueline Marcus, Esq.; (ii) counsel to Wachovia, N.A., the Servicer under the Trust & Servicing Agreement, Seyfarth Shaw LLP, 620 Eighth Avenue, New York, NY, 10018, Attn: Mitchell Kaplan, Esq.; (iii) Fried Frank Harris Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, Attn: Brad Eric Scheler, Esq. and Jennifer Rodburg, Esq.; (iv) Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, Attn: Adam Harris, Esq.; (v) counsel to any Creditors' Committee; and (vi) the Office of the U.S. Trustee for the

Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004, Attn:  
Paul Schwartzberg, Esq.

34. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Commencement Date immediately upon execution thereof.

35. Consent of Supporting Certificate Holders. For purposes of this Interim Order, the requirement for consent of the Supporting Certificate Holders shall be satisfied if the Debtors are advised in writing by the Supporting Certificate Holders' professionals that the necessary consent has been obtained.

36. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: June \_\_, 2009  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

<p>The Office of the United States Trustee for the Southern District of New York</p> <p>33 Whitehall Street, 21st Floor, New York New York 10004 Attn: Paul Schwartzburg, Esq.</p>	<p>Counsel to the Supporting Certificate Holders</p> <p>Fried Frank Harris Shriver &amp; Jacobson LLP One New York Plaza, New York, New York 10004 Attn: Brad Eric Scheler, Esq. Jennifer Rodburg, Esq.</p>
<p>Counsel to the Ad Hoc Mezzanine Lender Group</p> <p>Cleary, Gottlieb, Steen &amp; Hamilton One Liberty Plaza 37th Floor New York, NY 10006 Attn: Michael Weinberger, Esq.</p>	<p>- and-</p> <p>Counsel to Cerberus Capital Management, L.P.</p> <p>Schulte Roth &amp; Zabel LLP 919 Third Avenue New York, NY 10022 Attn: Adam Harris, Esq.</p>
<p>Counsel to Wachovia Bank National Association, the Agent under the Mortgage Loan Agreement and the Mezzanine Loan Agreements</p> <p>Morrison &amp; Foerster L.L.P. 1290 Avenue of the Americas New York, N.Y. 10104-0050 Attn: Jeffrey Temple, Esq.</p>	<p>Counsel to the Ad Hoc Mezzanine Lender Group</p> <p>Kaye Scholer LLP 425 Park Avenue, New York, New York 10022 Attn: Jeannie Bionda, Esq. and Louis Hait, Esq.</p>
<p>Trustee under the Trust and Servicing Agreement</p> <p>Wells Fargo Corporate Trust Services MAC N2702-011 9062 Old Annapolis Road Columbia, MD 21045 Attn: Elizabeth A. Brewster, Vice President</p>	<p>Counsel to Fortress Investment Group L.L.C.</p> <p>Sidley Austin L.L.P. 787 Seventh Avenue New York, New York 10019 Attn: Robert L. Golub, Esq.</p>
<p>Servicer under the Trust and Servicing Agreement</p> <p>Wachovia Securities 201 South College Street NC1075 Charlotte, NC 28288 Attn: Mike Benner</p>	<p>Counsel to the Servicer under the Trust and Servicing Agreement</p> <p>Seyfarth Shaw LLP 620 Eighth Avenue, New York, NY 10018 Attn: Mitchell Kaplan, Esq.</p>

**EXHIBIT B**

**Budget**

Extended Stay Hotels

Cash Flow Forecast as of: Jun 14, 2009  
(\$ in 000s)

Cash Collateral Budget

Week Ending:	6/19	6/26	7/3	7/10	7/17	7/24	7/31	8/7	8/14	8/21	8/28	9/4	9/11	Forecast Total 13 Weeks
<b>Extended Stay Hotels</b>														
Financed Properties Revenues (665)	\$ 17,450	\$ 17,450	\$ 17,785	\$ 18,033	\$ 18,033	\$ 18,033	\$ 18,033	\$ 19,158	\$ 19,158	\$ 19,158	\$ 19,158	\$ 17,752	\$ 17,532	\$ 236,733
Mortgage Debt Service	(6,781)	(9,872)	(17,139)	(19,257)	(18,349)	(12,889)	(17,475)	(16,667)	(19,000)	(8,612)	(18,089)	(11,883)	(20,479)	(56,890)
HVM Disbursements	\$ 10,669	\$ 7,578	\$ 646	\$ (1,225)	\$ (17,823)	\$ 5,144	\$ 558	\$ 2,492	\$ (19,543)	\$ 10,546	\$ 1,069	\$ 5,869	\$ (22,628)	\$ (196,491)
Net Cash Flow	\$ 23,113	\$ 33,783	\$ 41,361	\$ 42,006	\$ 40,781	\$ 22,958	\$ 28,102	\$ 28,660	\$ 31,152	\$ 11,609	\$ 22,155	\$ 23,224	\$ 29,093	\$ 23,113
Beginning Cash Balance (a)	10,669	7,578	646	(1,225)	(17,823)	5,144	558	2,492	(19,543)	10,546	1,069	5,869	(22,628)	(16,648)
Ending Cash Balance (b)	\$ 33,783	\$ 41,361	\$ 42,006	\$ 40,781	\$ 22,958	\$ 28,102	\$ 28,660	\$ 31,152	\$ 11,609	\$ 22,155	\$ 23,224	\$ 29,093	\$ 6,465	\$ 6,465
<b>HVM LLC</b>														
Nonfinanced & Other Property Revenues	\$ 587	\$ 587	\$ 587	\$ 555	\$ 555	\$ 555	\$ 555	\$ 555	\$ 616	\$ 616	\$ 616	\$ 616	\$ 612	\$ 7,626
<b>Disbursements</b>														
<b>Property Level</b>														
Payroll and Related	\$ 7,261	\$ 300	\$ 7,261	\$ 300	\$ 7,528	\$ 300	\$ 7,528	\$ 300	\$ 7,528	\$ 300	\$ 7,528	\$ 300	\$ 7,602	\$ 54,036
Utilities	1,213	1,213	1,310	1,375	1,375	1,375	1,617	1,617	1,617	1,617	1,617	1,381	1,322	18,406
Repairs & Maintenance	580	580	578	577	577	577	577	671	671	671	671	658	655	8,043
All Other Controllable Expenses	1,269	1,269	1,335	1,379	1,379	1,379	1,469	1,469	1,469	1,469	1,469	1,411	1,396	18,069
Non-Controllable Expenses	141	141	163	178	178	178	195	195	195	195	195	225	232	2,395
Total Property Level	\$ 10,462	\$ 3,502	\$ 10,647	\$ 3,809	\$ 11,038	\$ 3,809	\$ 11,038	\$ 4,251	\$ 11,479	\$ 4,251	\$ 11,479	\$ 3,975	\$ 11,208	\$ 100,948
<b>Other Property Level</b>														
Ground Rent	\$ -	\$ 105	\$ -	\$ -	\$ -	\$ -	\$ 114	\$ -	\$ -	\$ -	\$ -	\$ 54	\$ -	\$ 272
Property Taxes	146	234	2,220	1,133	68	311	259	2,587	1,313	508	477	-	3,593	12,848
Insurance Payments	868	-	-	-	-	-	868	-	-	-	868	-	-	2,603
Total Other Property Level	\$ 146	\$ 1,206	\$ 2,220	\$ 1,133	\$ 68	\$ 311	\$ 1,240	\$ 2,587	\$ 1,313	\$ 508	\$ 1,398	\$ -	\$ 3,593	\$ 15,723
<b>Corporate Overhead</b>														
Payroll and Related	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ -	\$ 1,319	\$ 9,235
Reservation & Travel Agent Fees	428	-	698	428	428	562	698	432	432	704	432	704	582	3,888
All Other Overhead	575	575	562	562	562	562	605	605	605	605	605	582	582	7,549
Total Corporate Overhead	\$ 2,322	\$ 575	\$ 2,585	\$ 562	\$ 2,309	\$ 562	\$ 2,579	\$ 605	\$ 2,356	\$ 605	\$ 2,629	\$ 582	\$ 1,901	\$ 20,172
<b>Capital Expenditures and Initiatives</b>														
Recurring Capex	\$ 1,355	\$ 955	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 9,809
ESA Welcome Package	66	66	66	66	66	66	66	66	66	66	66	66	66	331
Other Misc. Capex	60	60	60	60	60	60	60	60	60	60	60	60	60	299
IT Projects	400	400	50	50	50	50	50	50	50	50	50	50	50	1,350
Total Capital Expenditures and Initiatives	\$ 1,881	\$ 1,481	\$ 926	\$ 926	\$ 926	\$ 926	\$ 926	\$ 926	\$ 926	\$ 926	\$ 926	\$ 926	\$ 926	\$ 11,789
<b>Other Disbursements</b>														
Other Debt Service and Leases	\$ -	\$ -	\$ 1,332	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,334	\$ -	\$ 3,999
Professional Fees	1,214	3,678	-	2,380	1,547	2,856	357	5,090	2,537	3,045	381	3,840	2,073	14,020
Occupancy Tax	17	17	17	16	16	16	16	16	16	16	16	16	16	232
Office Building Expense	-	-	-	-	-	-	-	-	-	-	-	-	-	6,000
Utility Deposits	-	-	-	-	-	-	-	-	-	-	-	-	-	4,500
A/P "Catchup"	-	-	-	-	-	-	-	-	-	-	-	-	-	6,000
Capex "Catchup"	-	-	-	-	-	-	-	-	-	-	-	-	-	5,000
Litigation Reserve Funding	-	-	-	-	-	-	-	-	-	-	-	-	-	64,158
Total Other Disbursements	\$ 1,231	\$ 3,695	\$ 1,349	\$ 13,396	\$ 4,563	\$ 7,962	\$ 3,123	\$ 8,979	\$ 3,667	\$ 3,082	\$ 2,398	\$ 7,142	\$ 3,590	\$ 64,158
<b>Total Disbursements</b>	\$ 16,042	\$ 10,459	\$ 17,726	\$ 19,826	\$ 18,904	\$ 13,444	\$ 18,030	\$ 17,222	\$ 19,615	\$ 9,227	\$ 18,705	\$ 12,499	\$ 21,091	\$ 212,791
Net Cash Flow	\$ (15,455)	\$ (9,872)	\$ (17,139)	\$ (19,257)	\$ (18,349)	\$ (12,889)	\$ (17,475)	\$ (16,667)	\$ (19,000)	\$ (8,612)	\$ (18,089)	\$ (11,883)	\$ (20,479)	\$ (205,165)
Beginning Cash Balance	\$ 13,675	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 13,675
Net Cash Flow	(15,455)	(9,872)	(17,139)	(19,257)	(18,349)	(12,889)	(17,475)	(16,667)	(19,000)	(8,612)	(18,089)	(11,883)	(20,479)	(205,165)
Cash from ESH	6,781	9,872	17,139	19,257	18,349	12,889	17,475	16,667	19,000	8,612	18,089	11,883	20,479	196,491
Ending Cash Balance (c)	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000

Notes:

- (a) Pro forma cash balance for 6/15/2009 assuming payment of Mortgage Certificates interest
- (b) Ending cash balance does not include preferred equity reserve cash of \$5 mm, Insurance LOC collateral cash of \$18 mm and litigation reserve cash of \$5 mm (beginning week ending 7/10/2009)
- (c) Assumes minimum cash balance of \$5 mm