

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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: **Chapter 11 Case No.**
: **09-13764 (JMP)**
: **(Jointly Administered)**
: **Debtors.**
: **(Jointly Administered)**
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**FINAL ORDER PURSUANT TO SECTIONS 105(a), 362(d), 363(b), AND 503(b) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULES 4001, 6003, AND 6004 (A) (i)
AUTHORIZING THE DEBTORS TO CONTINUE THEIR WORKERS'
COMPENSATION PROGRAMS AND LIABILITY, PROPERTY, AND OTHER
INSURANCE PROGRAMS AND (ii) AUTHORIZING DEBTORS TO PAY ALL
PREPETITION OBLIGATIONS IN RESPECT THEREOF AND (B) AUTHORIZING
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND
ELECTRONIC FUNDS TRANSFERS RELATED TO SUCH OBLIGATIONS**

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(a), 362(d), 363(b), and 503(b) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 4001, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure, for an order (A) authorizing the Debtors to (i) continue and/or renew their existing insurance programs uninterrupted, including without limitation those insurance programs listed on "Exhibit 1" attached hereto (the "Insurance Programs"); (ii) pay, in the Debtors' discretion, the undisputed prepetition obligations, as well as, on an ongoing basis, any postpetition obligations thereunder (the "Insurance Obligations"); and (iii) modify the automatic stay solely and for the limited purpose of permitting employees with claims under the Workers' Compensation Program to proceed with their claims in accordance with such program in the appropriate judicial or administrative forum; (B) authorizing and directing certain banks and financial institutions (the "Banks") to honor and process checks and electronic funds



transfers related to the Insurance Obligations; and (C) scheduling a hearing to consider the relief requested on a permanent basis, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and the order entered on June 16, 2009 granting the relief requested in the Motion on an interim basis [Docket No. 37] having been provided to (i) the parties listed on “Exhibit 2” attached hereto and (ii) those creditors holding the five largest unsecured claims against the Debtors’ estates (on a consolidated basis); and due and proper notice of the Final Hearing (as defined below) having been provided in accordance with the procedures set forth in the order entered on June 16, 2009 governing case management and administrative procedures for these cases [Docket No. 43] on (i) the U.S. Trustee;¹ (ii) counsel to the official committee of unsecured creditors appointed in these chapter 11 cases; and (iii) all parties who have requested notice in these chapter 11 cases, and the Court having found that no other or further notice need be provided; and an interim hearing having been held to consider the relief requested in the Motion on June 16, 2009 (the “Interim Hearing”); and a final hearing having been held to consider the relief requested in the Motion on July 17, 2009 (the “Final Hearing” and, together with the Interim Hearing, the “Hearings”); and the appearances of all interested parties having been noted in the record of the Hearings; and upon the Declaration of Joseph Teichman Pursuant to Local Bankruptcy Rule 1007-2 in Support

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of First-Day Motions and Applications, filed contemporaneously with the Motion, and upon the record of the Hearings, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted on a final basis; and it is further

ORDERED that the Debtors are authorized and empowered to maintain their existing Insurance Programs without interruption, on the same basis, and in accordance with the same practices and procedures that were in effect prior to the commencement of the Debtors' chapter 11 cases; and it is further

ORDERED that the Debtors, in their sole discretion, are authorized, but not required, to enter, revise, extend, renew, supplement, change or enter into new Insurance Programs in the ordinary course of their business; and it is further

ORDERED that the Debtors, in their sole discretion, are authorized, but not required, to pay all Insurance Obligations, including, without limitation, all premiums, claims, deductibles, excess, retrospective adjustments, administrative and brokers' fees, and all other obligations arising under the Insurance Programs, including those Insurance Obligations that (i) are due and payable and are related to the period before the commencement of these chapter 11 cases, and (ii) are or become due and payable and are related to the period after the commencement of these chapter 11 cases, without further Order of the Court; and it is further

ORDERED that, pursuant to section 362(d) of the Bankruptcy Code, to the extent any of the Debtors' employees hold claims under the Debtors' Workers' Compensation

Programs, these employees are authorized to proceed with their workers' compensation claims through and including the collection of any judgment in the appropriate judicial or administrative forum under the Workers' Compensation Programs; provided that the prosecution of such claims is in accordance with the applicable Workers' Compensation Program and the recoveries are limited to the proceeds available under the Workers' Compensation Program; and it is further

ORDERED that the Banks are authorized and directed to receive, honor, process, and pay, to the extent of funds on deposit, any and all prepetition checks issued and electronic funds transfers requested by the Debtors in respect of any Insurance Obligation, whether pre or postpetition; and it is further

ORDERED that any Bank may rely on the representations of the Debtors with respect to whether any check or electronic funds transfer drawn or issued by the Debtors prior to the Commencement Date should be honored pursuant to this Order, and such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein; and it is further

ORDERED that the Debtors are authorized to issue new postpetition checks or effect postpetition electronic funds transfer requests in replacement of any prepetition check issued or electronic funds transfer requested in respect of the Insurance Obligations that are dishonored or rejected; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims

against the Debtors in connection with or relating to the Debtors' Insurance Programs; and it is further

ORDERED that, to the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Order nor any payments made in accordance with this Order shall constitute the postpetition assumption of any such Insurance Program, contract, or related agreement pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that Bankruptcy Rule 6003(b) has been satisfied; and it is further

ORDERED that notwithstanding any applicability of Rules 6004(h), 7062, or 9014 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York
July 22, 2009

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Insurance Programs

Insurance Programs

Type of Coverage	Insurer	Policy Number(s)	Policy Term	Annual Premium	Deductible
General Liability	Zurich American Insurance Company	GLO9373922-04	October 1, 2008 - October 1, 2009	\$654,289.00	\$250,000.00
General Liability (Loss Reserve)	Zurich American Insurance Company	GLO9373922-04	October 1, 2008 - October 1, 2009	\$3,800,000.00	None.
Automobile Liability	Zurich American Insurance Company	BAP5085640-04	October 1, 2008 – October 1, 2009	\$188,449.00	None
Workers' Compensation	Zurich American Insurance Company	WC93017585-08	October 1, 2008 – October 1, 2009	\$6,800,158.00	None
Commercial Property	Lloyds	B080111384U09	April 30, 2009 – April 30, 2010	\$6,188,777.67 (Property Program Total)	\$100,000.00 except: <u>Flood:</u> - Special Flood Hazard Area – 5% per unit/\$500k min - Named Storm Florida – 5% per unit/\$250k min - Named Storm Tier 1 – 2% per unit/\$250k min
Commercial Property	Lexington	084143844	April 30, 2009 – April 30, 2010		
Commercial Property	Federal Insurance Company	3589-12-97	April 30, 2009 – April 30, 2010		
Commercial Property	Starr Specialty Lines	09SSP4264110001 / CPP9192738	April 30, 2009 – April 30, 2010		
Commercial Property	Liberty Mutual	MQ2-L9L-451863-019	April 30, 2009 – April 30, 2010		
Commercial Property	Arch	PRP0033207-00	April 30, 2009 – April 30, 2010		
Commercial Property	Max Bermuda	26790-2974-PRMAN-2009	April 30, 2009 – April 30, 2010		
Commercial Property	Westchester Surplus Lines	D37364071001	April 30, 2009 – April 30, 2010		<u>Earthquake</u> - California and Puerto Rico –
Commercial Property	Empire Indemnity	900168UX-1	April 30, 2009 – April 30, 2010		

Type of Coverage	Insurer	Policy Number(s)	Policy Term	Annual Premium	Deductible
Commercial Property	Industrial Risk Insurers	31-3-72524	April 30, 2009 – April 30, 2010		5% per unit/\$250k min
Commercial Property	Axis US	MGB717098-09	April 30, 2009 – April 30, 2010		Named Windstorm
Commercial Property	Landmark American	LHD362324	April 30, 2009 – April 30, 2010		- Florida – 5% per unit/\$250k min
Commercial Property	Lancashire	B28817DIXB09	April 30, 2009 – April 30, 2010		- Tier 1 – 2% per unit/\$250k min
California Earthquake	Western Re	AXS100857 / LLB13744	April 30, 2009 – April 30, 2010		
California Earthquake	Endurance	CPN10001366500	April 30, 2009 – April 30, 2010		
California Earthquake	Shelter Re (Northshore Management)	SHR0174	April 30, 2009 – April 30, 2010		
Premises Pollution Liability	Greenwich Insurance Company	PEC000585603	October 2, 2008 – October 2, 2011	\$260,226.00	\$250,000.00
Umbrella - Primary	XI Insurance America, Inc.	US00009098LI08A	October 1, 2008 – October 1, 2009	\$308,000.00	\$10,000.00
Excess – 2nd Layer	Marine Insurance Company	QI03800665	October 1, 2008 – October 1, 2009	\$110,000.00	None
Excess – 3rd Layer	American Guarantee & Liability Insurance	ACE5967161-00	October 1, 2008 – October 1, 2009	\$42,016.00	None
Excess – 4th Layer	The North River Insurance Co. (Crum)	552-745967-7	October 1, 2008 – October 1, 2009	\$30,000.00	None
Flood - Extended Stay	Fidelity National Property & Casualty	347701191864	September 21, 2008 – September 21, 2009	\$1,650.00	\$500.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700623539	September 23, 2008 – September 23, 2009	\$954.00	\$5,000.00

Type of Coverage	Insurer	Policy Number(s)	Policy Term	Annual Premium	Deductible
Flood - Extended Stay	Fidelity National Property & Casualty	097700623843	September 23, 2008 – September 23, 2009	\$1,117.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	097700623536	September 23, 2008 – September 23, 2009	\$954.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	427700625198	October 1, 2008 – October 1, 2009	\$1,182.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	177700626589	October 11, 2008 – October 11, 2009	\$1,182.00	\$5,000.00
Flood – Extended Stay	Fidelity National Property & Casualty	FLD1265271	December 1, 2008 – December 1, 2009	\$2,530.00	\$500.00
Flood – Extended Stay	Fidelity National Property & Casualty	FLD1265272	December 1, 2008 – December 1, 2009	\$2,530.00	\$500.00
Flood – Extended Stay	Fidelity National Property & Casualty	FLD265273	December 1, 2008 – December 1, 2009	\$2,530.00	\$500.00
Flood – Extended Stay	Fidelity National Property & Casualty	FLD265274	December 1, 2008 – December 1, 2009	\$2,530.00	\$500.00
Flood - Studio Plus	Fidelity National Property & Casualty	97700631203	January 27, 2009 – January 27, 2010	\$3,368.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700937507	February 9, 2009 – February 9, 2010	\$1,076.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700937512	February 9, 2009 – February 9, 2010	\$1,076.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	47700937525	February 9, 2009 – February 9, 2010	\$3,739.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700937509	February 9, 2009 – February 9, 2010	\$1,076.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	47700937514	February 9, 2009 – February 9, 2010	\$1,076.00	\$5,000.00

Type of Coverage	Insurer	Policy Number(s)	Policy Term	Annual Premium	Deductible
Flood - ESA - Wellesley	Fidelity National Property & Casualty	97700647157	March 20, 2009 – March 20, 2010	\$893.00	\$5,000.00
Flood - ESA - Wellesley	Fidelity National Property & Casualty	97700643673	March 20, 2009 – March 20, 2010	\$1,139.00	\$5,000.00
Flood - Homestead	Fidelity National Property & Casualty	040009598907	April 10, 2009 – April 10, 2010	\$658.00	\$500.00
Flood - Homestead	Fidelity National Property & Casualty	97700513828	April 13, 2009 – April 13, 2010	\$585.00	\$500.00
Flood - Homestead	Fidelity National Property & Casualty	097700513830	April 13, 2009 – April 13, 2010	\$561.00	\$500.00
Flood - Homestead	Fidelity National Property & Casualty	427700505117	April 13, 2009 – April 13, 2010	\$531.00	\$500.00
Flood - Extended Stay	Fidelity National Property & Casualty	047701163607	May 1, 2009 – May 1, 2010	\$1,349.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700599541	June 4, 2009 – June 4, 2010	\$2,636.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700599534	June 4, 2009 – June 4, 2010	\$1,076.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700599550	June 4, 2009 – June 4, 2010	\$1,007.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700599545	June 4, 2009 – June 4, 2010	\$950.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700599553	June 4, 2009 – June 4, 2010	\$1,076.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	97700599557	June 4, 2009 – June 4, 2010	\$1,139.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	47700599519	June 4, 2009 – June 4, 2010	\$1,007.00	\$5,000.00

Type of Coverage	Insurer	Policy Number(s)	Policy Term	Annual Premium	Deductible
Flood - Extended Stay	Fidelity National Property & Casualty	47700599529	June 4, 2009 – June 4, 2010	\$1,179.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	177700599514	June 4, 2009 – June 4, 2010	\$1,007.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	177700599511	June 4, 2009 – June 4, 2010	\$1,117.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	177700599503	June 4, 2009 – June 4, 2010	\$1,117.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	297700599493	June 4, 2009 – June 4, 2010	\$1,007.00	\$5,000.00
Flood - Studio Plus	Fidelity National Property & Casualty	377700599497	June 4, 2009 – June 4, 2010	\$1,179.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	377700599590	June 8, 2009 – June 8, 2010	\$1,179.00	\$5,000.00
Flood - Homestead	Fidelity National Property & Casualty	40009598906	June 13, 2008 – June 13, 2009	\$658.00	\$500.00
Flood - Homestead	Fidelity National Property & Casualty	97700769093	July 22, 2008 – July 22, 2009	\$954.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	317700769060	July 22, 2008 – July 22, 2009	\$1,179.00	\$5,000.00
Flood - Extended Stay	Fidelity National Property & Casualty	127700769058	July 22, 2008 – July 22, 2009	\$3,368.00	\$5,000.00
Flood - Homestead	Fidelity National Property & Casualty	97700769051	July 22, 2008 – July 22, 2009	\$1,076.00	\$5,000.00
Flood - Studio Plus	Fidelity National Property & Casualty	467700769084	July 22, 2008 – July 22, 2009	\$3,554.00	\$5,000.00
Flood - Homestead	Fidelity National Property & Casualty	047700513834	July 25, 2008 – July 25, 2009	\$539.00	\$500.00

Exhibit 2

<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 & 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 & 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 & 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 & 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>