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Debtors in Possession

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

-----X  
: **Chapter 11 Case No.**  
: **09-\_\_\_\_( )**  
: **(Joint Administration Requested)**  
: **Debtors.**  
: **(Joint Administration Requested)**  
: **(Joint Administration Requested)**  
: **(Joint Administration Requested)**  
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**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363, 503(b)(1), 1107(a),  
AND 1108 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003  
AND 6004 (A) FOR AUTHORIZATION TO HONOR CERTAIN PREPETITION  
CUSTOMER PROGRAMS, AND (B) SCHEDULING A FINAL HEARING**

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:

**Background**

1. 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

<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."



manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. 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**

3. 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) and two provinces in Canada. As a result of acquisitions and mergers, Extended Stay’s portfolio has expanded to encompass 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.

4. 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.

5. 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.

6. All Extended Stay 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. 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 hotels at any given point in time.

#### **Jurisdiction and Venue**

7. 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**

8. Prior to commencement of these chapter 11 cases, both in the ordinary course of business and as is customary in the hotel industry, the Debtors engaged in certain activities to develop and sustain a positive reputation with their customers. To that end, the Debtors implemented various customer programs and policies (collectively, the "Customer Programs") designed to ensure customer satisfaction, increase sales, meet competitive pressures,

improve profitability, and generate goodwill for the Debtors, thereby retaining current customers, attracting new ones, and ultimately enhancing net income.

9. By this Motion, pursuant to sections 105(a), 363(b), 503(b)(1), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, the Debtors request that the Court (A) authorize the Debtors to (i) perform and honor, on an interim basis, their prepetition obligations related to the Customer Programs as they deem appropriate, and (ii) continue, renew, replace, implement, modify, and/or terminate one or more Customer Programs, and implement new Customer Programs, in each case, as they deem appropriate in the ordinary course of business, without further application to the Court; and (B) schedule a final hearing (the “Final Hearing”) to consider the relief requested herein on a permanent basis. A proposed order is attached hereto as “Exhibit B” (the “Proposed Order”).

#### **The Customer Programs**

10. Despite the Debtors’ current financial situation, it is well accepted among industry experts that Extended Stay is a market leader in its business segment. As with any hospitality business, satisfied customers are the most valuable assets of these estates. The filing of these chapter 11 cases may negatively affect customers’ attitudes and behavior toward the Debtors’ business and the positive reputation previously enjoyed by the Extended Stay servicemark, unless the Debtors can take the measures requested by this Motion to assuage any guests’ concerns arising from the chapter 11 cases. The Debtors operate in a service oriented industry, relying particularly on their customers’ satisfaction and willingness to return to the Debtors’ hotels, and the Customer Programs aid the Debtors’ survival in this ruthlessly competitive field. In particular, the Debtors’ goodwill and ongoing business relationships may erode if their customers perceive that the Debtors are unable or unwilling to fulfill the prepetition

promises they have made through their Customer Programs. The same would be true if customers perceived that the Debtors will no longer be offering the types of or quality of services they have come to expect from the Debtors. Further, the Debtors' competitors will likely increase their efforts during the pendency of these chapter 11 cases to lure away the Debtors' customers, particularly given the devastating effect of the economic turmoil on the hotel industry sector, as a whole.

11. The following are general descriptions of the Debtors' Customer Programs:

**A. Promotions**

12. The Debtors are involved in a number of promotions aimed at driving sales and maintaining market competitiveness. These promotions primarily consist of (a) online promotional codes that the Debtors' customers can utilize when booking hotel reservations online at the Extended Stay website, (b) exclusive promotional codes provided to customers who sign up for the "Suite Offers" email program on the Extended Stay website, (c) pop-up or banner promotions advertised on third party websites, that provide discount codes to the Extended Stay customers,<sup>2</sup> (d) 20% off last minute weekend rates through the "Suite Savings" promotion advertised on the Extended Stay website each week, (e) promotional codes distributed to Extended Stay customers who return for repeat visits, and (f) coupons provided to Extended Stay customers. No coupon or promotional discount code is redeemable for cash, but instead entitles the customer to stay at the Debtors' hotels at a discounted rate. Depending on the promotional

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<sup>2</sup> The Debtors provide a promotion to LinkShare, an online marketing and advertising provider, whereby a promotional code is available to affiliate website partners to advertise. For the LinkShare promotions, HVM pays affiliates between \$4.00 to \$7.50 per each booking realized from the online promotion. There are no other payments to third parties for any of the other promotions.

code and the length of stay, the discounts vary from \$10 savings, up to \$750 savings off a stay of 90 nights or more. Occasionally, the promotions offer a free night's stay.

13. In addition, the Debtors offer a "Lowest Internet Price Guarantee" through their website, whereby a customer can receive a 10% discount on any lower price such customer finds online for the same Extended Stay hotel. The Debtors also have a promotion in place with Hertz car rentals, and other local car rental agencies, through which customers receive a discount on car rentals when reservations for such rental agencies are booked through a link on the Debtors' website or at the Debtors' hotels.

14. Pursuant to these promotions (collectively, the "Promotional Programs"), the Debtors attract many customers to stay at one of the over 680 Extended Stay hotels. Given the nature of the Promotional Programs and the scope of the hotels in Extended Stay's portfolio, it is difficult to quantify the aggregate dollar value of the discounts provided to Extended Stay customers. However, the discounts are generally credited to the customer's bill at check out. At any point in time, there are millions of Extended Stay customers who are entitled to the relevant discount. These Promotional Programs are a key component of the Debtors' business and accordingly, the Debtors request authority to honor the Promotional Programs in the ordinary course of business even though, arguably, such promotions constitute prepetition claims against the Debtors' estates.

**B. Barter Arrangements**

15. Prior to the Commencement Date, the Debtors entered into certain barter arrangements (the "Barter Arrangements") with various media and marketing institutions. Through these Barter Arrangements, the Debtors grant the media and marketing institutions a certain dollar amount of credits towards stays in the Debtors' hotels in exchange for advertising.

For example, one holder of approximately \$200 in credits is a winning contestant on the televised game show, Wheel of Fortune. These credits are applicable towards stays in the Debtors' hotels and are valid through June 30, 2011. As of the date hereof, approximately \$485,000 in unused credits remain outstanding. The Debtors believe these Barter Arrangements are a critical and low cost manner in which they may increase their advertising circulation, promote customer goodwill, and expand their sales, especially during the postpetition period, and accordingly request the authority to honor their existing Barter Agreements in the ordinary course of business.

**C. Gift Certificates**

16. The Debtors distribute "Be Our Guest Gift Certificates" (the "Gift Certificates") as promotions to certain individuals and also to address any customer service issues that may have occurred at a hotel during a customer's stay. The Gift Certificates provide a free night's stay at an Extended Stay hotel. In 2008, there were approximately 28,000 Gift Certificates disbursed and redeemable across the Extended Stay properties. As of the Commencement Date, approximately 70% of the Gift Certificates had been redeemed. The cost to the Debtors of honoring the remaining 30% of Gift Certificates that are unused as of the date hereof is approximately \$885,000. The Debtors believe that the Gift Certificates are an important part of addressing customer satisfaction and maintaining customer confidence, and accordingly, request the authority to honor the Gift Certificates in the ordinary course of business.

**D. Customer Deposits**

17. In the ordinary course of business, some of the hotel properties collect a security deposit or an advance deposit to hold a block of rooms for a special event (the

“Deposits”). The Deposits are collected when the customer checks into the hotel, or for larger events, prior to check-in, and the customer is refunded the Deposit amount at check out, less any outstanding charges or damages to the hotel room. In the event the refundable Deposit is less than \$75, the amount is provided to the customer in cash; otherwise, HVM generates a check from its accounts payable account in the amount of the refundable Deposit. The Deposits are an integral part of the Debtors’ business, as well as a staple in the hotel industry. At any given time, the Debtors will have processed a substantial number of Deposits. Undoubtedly, certain of Extended Stay’s customers will have begun their hotel stay before the Commencement Date, but plan on checking out post-petition. As to any such guests, the Deposit would be a prepetition claim. Accordingly, the Debtors request authority to continue providing the refundable Deposits to Extended Stay customers, in the ordinary course of business.

**Ample Support Exists to Authorize the  
Debtors to Continue Their Customer Programs**

18. The Debtors submit that it is essential that they be permitted to honor their Customer Programs in accordance with their prepetition practices and customers’ expectations in order to ensure continuing customer loyalty and to maintain the public’s confidence in the Debtors’ commitment to their customers. The Debtors’ customers have come to expect a certain level of satisfaction and service from the Extended Stay servicemark and the Customer Programs ensure that this reputation can be upheld. Without the guests, the Extended Stay hotels could not survive. The Extended Stay consumer has come to expect that the hotels will offer the Customer Programs. Any interruption or discontinuation of the Customer Programs risks the alienation of these customers, which would cause immediate and irreparable harm to the Debtors’ business, possibly devastating the business if customers stop seeking out Extended Stay hotels. Moreover, any inability to honor the Customer Programs will attract significant negative publicity and result



in a dramatic reduction in revenue. In contrast, the uninterrupted continuation of the Customer Programs will enable the Debtors to retain valuable relationships which, in turn, will help strengthen the Debtors' business. Because the Debtors anticipate that Customers will immediately demand that the Debtors honor the Promotional Programs, Barter Arrangements and the Gift Certificates, and/or return the refundable Deposits for customers who are checking out of the hotels post-petition, immediate relief is required prior to the Final Hearing, in order to avoid substantial harm to the Debtors and their estates.

19. Under section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the Court, after notice and hearing, shall allow as administrative expenses, among other things, "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1). Under section 363(b) of the Bankruptcy Code, a debtor may, in the exercise of its sound business judgment and after notice and hearing, use property of the estate outside of the ordinary course of business. Although continuing to honor Promotional Programs, Gift Certificates, and Barter Arrangements, or to return Deposits under the Customer Programs are not cash obligations of the Debtors, to the extent honoring the Customer Programs imposes a cost on the estates, the Debtors believe such use of property is permitted by sections 503(b)(1) and 363(b) of the Bankruptcy Code as a necessary cost of preserving the estates. Honoring the Customer Programs will enable the Debtors to retain, maintain, and create valuable customer relationships, which will strengthen the Debtors' business and their prospects for a successful reorganization.

20. In addition, section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or a hearing. Consequently, continuing, renewing, replacing, implementing, modifying, and/or terminating

their Customer Programs, in the ordinary course of business, is permitted by sections 363(c), 1107(a), and 1108 of the Bankruptcy Code, without further application to the Court. However, out of an abundance of caution, the Debtors request the relief stated herein.

21. Furthermore, to supplement the explicit powers described above, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” In re NVR L.P., et al., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing Ionosphere Clubs, 98 B.R. at 177); see also In re Tropical Sportswear Int’l Corp., 320 B.R. 15 (Bankr. M.D. Fla. 2005) (recognizing and applying sections 105(a) and 363 of the Bankruptcy Code to justify the payment of prepetition obligations in appropriate circumstances); In re Gulf Air, Inc., 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (“While prepetition claims are normally disposed of in a plan of reorganization and in accordance with statutory priorities, there are well-established ‘necessity of payment’ and similar exceptions.”); In re Lehigh & N. England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981). The Debtors submit that the continuing support of their customers is crucial to the Debtors’ business.

22. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. See, e.g., Miltenberger v. Logansport Ry., 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to

reorganization permitted to prevent “stoppage of [crucial] business relations”); Dudley v. Mealey, 147 F.2d 268 (2d Cir. 1945), cert. denied 325 U.S. 873 (1945) (Second Circuit extends doctrine for payment of prepetition claims beyond railroad reorganization cases); Mich. Bureau of Workers’ Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 285-86 (S.D.N.Y. 1987), appeal dismissed 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

23. The “doctrine of necessity” functions in chapter 11 cases as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. See In re Boston & Me. Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation). The doctrine is frequently invoked early in chapter 11 cases, particularly in connection with payment of prepetition claims. The court in In re Structurelite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” The court stated that “a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Id. at 932. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11 — “facilitating the continued operation and rehabilitation of the debtor.” Ionosphere Clubs, 98 B.R. at 176. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

24. There is ample authority that the prepetition obligations owed by the Debtors pursuant to their Customer Programs qualify for postpetition payment because if the Debtors do not honor these obligations, the Debtors' goodwill and going concern value will be severely and irreparably harmed. See In re Coserv, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (noting that one example where the debtor-in-possession can only fulfill its fiduciary duty by preplan satisfaction of a prepetition claim are "prepetition ... claims of ... customer which, if not honored, could so harm the debtor's good will as to destroy its going concern value"); In re Equalnet Commc'ns Corp., 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (holding that "such a failure to pay and its consequent loss of customer base would impair value of the business on either a going concern or liquidation basis").

25. Where retaining loyalty and patronage of customers is critical to a debtor's business, courts in this and other districts have granted relief similar to that requested here. See e.g., In re BearingPoint, Inc., Case No. 09-10691 (REG) (Bankr. S.D.N.Y. April 14, 2009) [Docket No. 408]; In re Lenox Sales, Inc., Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. Dec. 16, 2008) [Docket No. 19]; In re Steve & Barry's Manhattan LLC, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 30, 2008) [Docket No. 287]; In re Lexington Precision Corp., Case No. 08-11153 (MG) (Bankr. S.D.N.Y. April 2, 2008) [Docket No. 28]; In re New York Racing Association, Inc., Case No. 06-12618 (JMP) (Bankr. S.D.N.Y. Nov. 3, 2006) [Docket No. 19]; In re Silicon Graphics, Inc., Case No. 06-10977 (BRL) (Bankr. S.D.N.Y. May 9, 2006) [Docket No. 44]; In re Atkins Nutritionals, Inc., Case No. 05-15913 (ALG) (Bankr. S.D.N.Y. Aug. 1, 2005) [Docket No. 35]; In re Parmalat USA Corp. et al., Case No. 04-11139 (RDD) (Bankr.

S.D.N.Y. 2004) [Docket No. 40]; In re Twinlab Corp., et al., Case No. 03-15564 (CB) (Bankr. S.D.N.Y. 2003) [Docket No. 82].<sup>3</sup>

26. Accordingly, the Debtors request that they be authorized, but not directed, in their business judgment, to (i) perform and honor their prepetition obligations related to the Customer Programs as they deem appropriate and (ii) continue, renew, replace, implement, modify, and/or terminate one or more Customer Programs and implement new Customer Programs, in each case, as they deem appropriate in the ordinary course of business, without further application to the Court. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interest of the Debtors' estates and their creditors, and therefore, should be granted.

#### **Reservation of Rights**

27. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' right to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order granting the Motion is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

#### **The Debtors Have Satisfied Bankruptcy Rule 6003**

28. Bankruptcy Rule 6003 provides that to the extent "relief is necessary to avoid immediate and irreparable harm," a Bankruptcy Court may approve a motion to "pay all or

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<sup>3</sup> Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon request of Debtors' counsel, including at the hearing to consider the Motion.

part of a claim that arose before the filing of the petition” prior to twenty days after the Commencement Date. As described herein, the Customer Programs are essential to the Debtors’ business operations and the maintenance of goodwill with their customers, which are the lifeblood of their business. The Debtors’ inability to continue their Customer Programs would adversely affect key asset of the Debtors, and would severely impair the Debtors’ ability to compete in the marketplace. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, the requirements of Bankruptcy Rule 6003 for expedited relief are satisfied.

**Waiver of Bankruptcy Rules 2002(a), 6004(a) and (h)**

29. Bankruptcy Rule 6004(a) provides that “[n]otice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (j).” Bankruptcy Rule 2002(a) provides that at least 20 days’ notice by mail shall be given to all creditors and indenture trustees of “a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice.” Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property ... is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.”

30. Based upon the foregoing and to implement the relief requested successfully, the Debtors request that the Court waive the notice requirements under Bankruptcy Rules 2002(a) and 6004(a) and the ten-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Notice**

31. 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 1" attached to the Proposed 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.

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

WHEREFORE the Debtors respectfully request 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

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Facsimile: (212) 310-8007

Proposed Attorneys for Debtors  
and Debtors in Possession

**Exhibit A**

<b>Debtor</b>	<b>Last Four Digits of Federal Tax I.D. Number</b>
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



<b>Debtor</b>	<b>Last Four Digits of Federal Tax I.D. Number</b>
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

<b>Debtor</b>	<b>Last Four Digits of Federal Tax I.D. Number</b>
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**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11 Case No.  
EXTENDED STAY INC., et al. : 09-\_\_\_\_( )  
Debtors. : (Jointly Administered)  
-----X

**INTERIM ORDER PURSUANT TO SECTIONS 105(a), 363, 503(b)(1), 1107(a),  
AND 1108 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003  
AND 6004 (A) AUTHORIZING THE DEBTORS TO HONOR CERTAIN PREPETITION  
CUSTOMER PROGRAMS, AND (B) SCHEDULING A FINAL HEARING**

Upon the motion, dated June , 2009 (the “Motion”),<sup>1</sup> of Extended Stay Inc. and its debtor affiliates, as debtors and debtors in possession in the above-referenced chapter 11 cases (collectively, the “Debtors”), pursuant to sections 105(a), 363, 503(b)(1), 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order (A) authorizing the Debtors to perform and honor, in the Debtors’ discretion, the Debtors’ prepetition obligations related to certain Promotional Programs, Barter Arrangements, Gift Certificates, and Deposits (collectively, the “Customer Programs”) and to continue their Customer Programs, as they deem advisable and appropriate, in the ordinary course of their business and without further application to this Court; and (B) scheduling a hearing to consider the relief requested on a permanent basis (the “Final Hearing”), 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

<sup>1</sup> Unless otherwise defined in this Order, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

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 having been provided to on the parties listed on “Exhibit 1” attached hereto, and those creditors holding the five largest unsecured claims against the Debtors’ estates (on a consolidated basis), and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “Interim Hearing”); and the appearances of all interested parties having been noted in the record of the Interim Hearing; and upon the Declaration of Joseph Teichman Pursuant to Local Bankruptcy Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First-Day Motions and Applications, filed contemporaneously with the Motion, the record of the Interim Hearing, 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 hereby

ORDERED that the Motion is granted on an interim basis; and it is further

ORDERED that, pursuant to sections 105(a), 363, 503(b)(1), 1107(a) and 1108 of the Bankruptcy Code, the Debtors, in their business judgment, are authorized, but not directed, to continue, renew, replace, implement, modify, and/or terminate the Customer Programs, as they deem appropriate, in the ordinary course of business and without further application to the Court; and it is further

ORDERED that, the Debtors, in their business judgment, are authorized, but not directed, to honor prepetition obligations relating to the Customer Programs, as they deem appropriate, in the ordinary course of business, in the same manner and on the same basis as the Debtors honored such obligations prior to commencement of these chapter 11 cases; provided, however, that the relief granted herein shall not constitute an approval, assumption, or rejection of any Customer Program or related agreement or policy pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any claim by a customer with respect to any Customer Program; and it is further

ORDERED that pursuant to this Order, the Debtors shall only pay Customer Program obligations that become due and payable between the Commencement Date and entry of a final order approving this Motion; and it is further

ORDERED that entry of this Order is necessary to avoid immediate and irreparable harm and to the extent the relief granted herein implicates the use of property of the estate and section 363 of the Bankruptcy Code, the requirements under Bankruptcy Rule 6003 have been satisfied; and it is further

ORDERED that notwithstanding any applicability of Bankruptcy Rules 6004(h), 7062, or 9014, 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 therein 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 the Final Hearing to consider entry of an order granting the relief requested in the Motion on a permanent basis shall be held on \_\_\_\_\_, 2009 at \_\_:00 .m., prevailing Eastern Time; and any objections to entry of such order shall be in writing, filed with the Court in accordance with General Order M-242, and served upon (i) counsel to the Debtors; (ii) the parties listed on "Exhibit 1" attached hereto; and (iii) those creditors holding the five largest unsecured claims against the Debtors' estates (on a consolidated basis), in each case so as to be received no later than 4:00 p.m., prevailing Eastern Time on \_\_\_\_\_, 2009; and it is further

ORDERED that the Debtors shall serve this Order within three business days of its entry on the parties listed on "Exhibit 1" attached hereto, and those creditors holding the five largest unsecured claims against the Debtors' estates (on a consolidated basis); and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

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

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

<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>