

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

Attorneys for Debtors and  
Debtors in Possession

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

-----X		
<b>In re</b>	:	<b>Chapter 11 Case No.</b>
	:	
<b>EXTENDED STAY INC., <u>et al.</u>,</b>	:	<b>09-13764 (JMP)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
-----X-		

**NOTICE OF FILING OF REVISED ORDER CONFIRMING  
DEBTORS' FIFTH AMENDED JOINT PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE, DATED JUNE 8, 2010, AS AMENDED**

**PLEASE TAKE NOTICE** that on July 16, 2010, the debtors in the above referenced Chapter 11 cases, filed a Notice of Filing of Proposed Order Confirming Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated June 8, 2010, as Amended [Docket No. 1155], which included the Order Confirming Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 8, 2010, as Amended, as "Exhibit A" (the "Original Confirmation Order").

**PLEASE TAKE NOTICE** that the debtors hereby file a revised Order Confirming Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 8, 2010, as Amended (the "Revised Confirmation Order"),



attached hereto as "Exhibit A". Attached hereto as "Exhibit B" is a blacklined copy of the Revised Confirmation Order, which is marked against the Original Confirmation Order.

Dated: July 18, 2010  
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

Attorneys for Debtors and Debtors in  
Possession

**EXHIBIT A**

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

-----X  
In re : Chapter 11 Case No.  
EXTENDED STAY INC., et al. : 09-13764 (JMP)  
Debtors. : (Jointly Administered)  
-----X

**ORDER CONFIRMING DEBTORS' FIFTH  
AMENDED JOINT PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE, DATED JUNE 8, 2010, AS AMENDED**

ESA Properties L.L.C. and seventy-three of its debtor affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the "Debtors"), having proposed and filed the Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 8, 2010 [Docket No. 1027, 1157] (as amended, the "Plan") with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and the Bankruptcy Court having entered, after due notice and a hearing, the Order (I) Pursuant to Sections 105 and 363(b) of the Bankruptcy Code Approving Investment Agreement with Successful Bidder, (II) Approving Disclosure Statement Reflecting the Successful Bid, (III) Establishing Solicitation and Voting Procedures, (IV) Scheduling A Confirmation Hearing, and (V) Establishing Notice and Objection Procedures for Confirmation of the Debtors' Proposed Plan of Reorganization, dated June 22, 2010 [Docket No. 1098] (the "Disclosure Statement Order"); and the Disclosure Statement for Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 8, 2010 [Docket No. 1028] (as amended, the "Disclosure Statement") having been approved by this Court and the Plan and the Solicitation Package (as defined below) having been duly transmitted to holders of

Claims<sup>1</sup> entitled to vote thereon as provided in the Disclosure Statement Order; and due notice of (i) entry of the Disclosure Statement Order, (ii) the Confirmation Hearing, and (iii) the deadline for voting on, and/or objecting to the Plan having been provided to holders of Claims against and Equity Interests in the Debtors and other parties in interest, including holders of Mortgage Certificates, in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”); and such notice being sufficient under the circumstances and no other or further notice being required; and objections (the “Objections”) to the Plan having been interposed; and the Debtors having filed the Plan Supplement (as defined below) on July 1, 2010 [Docket No. 1118], July 13, 2010 [Docket No. 1138], July 15, 2010 [Docket No. 1148] and July [ ], 2010 [Docket No. [ ]] in accordance with the provisions of the Plan and such filing and notice thereof being sufficient under the circumstances and no further notice being required; and upon consideration of the (i) Memorandum of Law in Support of Confirmation of the Debtors’ Fifth Amended Joint Plan Under Chapter 11 of the Bankruptcy Code (the “Confirmation Brief”) [Docket No. \_\_\_\_]; (ii) the Declaration of Gil Hopenstand Pursuant to Local Bankruptcy Rule 3018-1(A) Certifying the Methodology for the Tabulation of Votes and Results of Voting on the Debtors’ Fifth Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated July 13, 2010 [Docket No. 1136] (describing the methodology for the tabulation and results of voting with respect to the Plan and evidencing that the Debtors have received the requisite acceptances of the Plan in both number and amount as required by section 1126 of the Bankruptcy Code) (the “First KCC Declaration”); (iii) Supplemental Declaration of Gil Hopenstand Pursuant to Local Bankruptcy

---

<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Plan.

Rule 3018-1(A) Certifying the Methodology for the Tabulation of Votes and Results of Voting on the Debtors' Fifth Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated July 16, 2010 [Docket No. 1152] (together with the First KCC Declaration, the "KCC Declaration"); (iv) Declaration of Ari Lefkovits in Support of Confirmation of the Debtors' Fifth Amended Joint Plan Under Chapter 11 of the Bankruptcy Code (the "Lefkovits Declaration," and together with the KCC Declaration, the "Declarations"); and the hearing to consider confirmation of the Plan having been held before the Bankruptcy Court on July 20, 2010 (the "Confirmation Hearing"); and the Bankruptcy Court having reviewed and considered the Plan, the Plan Supplement, the Disclosure Statement, the Disclosure Statement Order, the Confirmation Brief, the Declarations, each of the Objections which has not been withdrawn or otherwise mooted, the Response thereto and all related documents; and the appearance of all interested parties having been duly noted in the record of the Confirmation Hearing, including the Declarations filed and testimony therein and the exhibits admitted into evidence; and upon all of the proceedings had before the Bankruptcy Court and upon the entire record of the Confirmation Hearing; and the Bankruptcy Court having determined based upon all of the foregoing that the Plan should be confirmed, as reflected by the Bankruptcy Court's rulings made herein and on the record of the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND, DETERMINED, ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

### **FINDINGS OF FACT**

A. Findings and Conclusions. The findings and conclusions set forth herein and on the record of the Confirmation Hearing constitute the Bankruptcy Court's findings of fact

and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction. The Court has jurisdiction over the Debtors' Chapter 11 Cases (as defined below), confirmation of the Plan and the Objections pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court has jurisdiction to enter a final order with respect thereto. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Commencement and Joint Administration of the Debtors' Chapter 11 Cases. On June 15, 2009 or February 18, 2010 (as applicable, the "Commencement Date") each of the above-captioned Debtors commenced a case under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). By prior order of the Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. The Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee has been appointed in these Chapter 11 Cases.

D. Official Committee of Unsecured Creditors. On June 19, 2009, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Creditors' Committee"). The Creditors' Committee was reconstituted on January 25, 2010 and March 3, 2010.

E. Appointment of Examiner. On September 24, 2009 the Bankruptcy Court ordered the U.S. Trustee to appoint an examiner to conduct an investigation regarding: (i) the structure, negotiation and closing of the acquisition of the Debtors and Extended Stay Inc. from the Blackstone Group, (ii) the financial circumstances that led to the filing of the Chapter 11 Cases of the Debtors and Extended Stay Inc., and (iii) whether the estates of the Debtors and Extended Stay Inc. have any claims against any person with respect to items (i) and (ii) of this paragraph. [Docket No. 3110 ]. On September 28, 2009, the U.S. Trustee appointed Ralph R. Mabey, Esq. as examiner. [Docket No. 312].

F. Judicial Notice. The Bankruptcy Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases.

G. Burden of Proof. The Debtors have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

H. Resolution of Objections. As presented at the Confirmation Hearing and as provided herein, the consensual resolutions of certain Objections satisfy all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules and are in the best interests of the Debtors and are hereby approved. All Objections that were not resolved by agreement at the Confirmation Hearing are hereby overruled.

I. Solicitation and Notice. On June 22, 2010, the Bankruptcy Court entered the Disclosure Statement Order, which, among other things, approved the Disclosure Statement,



finding that it contained “adequate information” within the meaning of section 1125 of the Bankruptcy Code, and established procedures for the Debtors’ solicitation and tabulation of votes on the Plan. The (a) Notice of Confirmation Hearing, (b) Disclosure Statement (with a copy of the Plan attached thereto), (c) Disclosure Statement Order (without attachments), (d) letter from the Creditors’ Committee, (e) notices of non-voting statuses, and (f) appropriate ballots for voting on the Plan (the “Ballots”) (collectively, the “Solicitation Package”) were served in compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order (the “Solicitation”). As described in the Disclosure Statement Order, and as set forth in the KCC Declaration, and the affidavits of service by Kurtzman Carson Consultants LLC (“KCC”), filed at Docket Nos. 1105 and 1110 respectively, (i) the service of the Solicitation Packages was adequate and sufficient under the circumstances of these Chapter 11 Cases, and (ii) adequate and sufficient notice of the Confirmation Hearing and other requirements, deadlines, hearings and matters described in the Disclosure Statement Order was timely provided in compliance with the Bankruptcy Rules and provided due process to all parties in interest. No other or further notice is required.

J.     Voting. Votes on the Plan were solicited after disclosure of “adequate information” as defined in section 1125 of the Bankruptcy Code. As evidenced by the KCC Declaration, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith and in a manner consistent with the Disclosure Statement Order, the Bankruptcy Code, and the Bankruptcy Rules.

K.     The Mezzanine Facilities Claim Ballot. The Debtors sent the Mezzanine Facilities Claim Ballot to the Special Servicer and to the holders of the Mezzanine Facilities Claims in Class 4B in accordance with the Disclosure Statement Order. The Special Servicer has

asserted that it has the right to vote the Mezzanine Facilities Claims pursuant to the Intercreditor Agreement. The holders of Mezzanine Facilities Claims have asserted that they have the right to vote the Mezzanine Facilities Claims. The Bankruptcy Court does not have to resolve the dispute between the Special Servicer and the holders of the Mezzanine Facilities Claims because, as reflected in the KCC Declaration, Class 4B has accepted the Plan whether the Ballots submitted by the Special Servicer or the Ballots submitted by the holders of the Mezzanine Facilities Claims are counted with respect to Class 4B.

L. Plan Supplement. On July 1, 2010, the Debtors filed that certain supplement to the Plan [Docket No. 1118], which includes the following documents: (i) Schedule of Executory Contracts and Unexpired Leases to be Assumed Pursuant to Section 11.1 of the Plan; (ii) Schedule of Executory Contracts and Unexpired Leases to be Rejected Pursuant to Section 11.2 of the Plan; and (iii) a notice indicating that the Form of Litigation Trust Agreement would be filed in the future. On July 13, 2010, the Debtors filed an update to the Plan Supplement [Docket No. 1136], which included the Litigation Trust Agreement. On July 15, 2010, the Debtors filed a third supplement to the Plan [Docket No. 1148], which included Restructuring Transaction(s). On July [redacted], 2010, the Debtors filed a fourth supplement to the Plan [Docket No. \_\_\_\_], which included a list of members of the NewCo Board of Managers as of the Effective Date (together with Docket No. 1118, Docket No. 1136, Docket No. [redacted] and Docket No. [redacted] the “Plan Supplement”). All materials included in the Plan Supplement and the amendments thereto are integral to, part of and incorporated by reference into the Plan. The Plan Supplement and the amendments thereto comply with the terms of the Plan, and the filing and notice of such documents is good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order and no other or further notice is necessary.

The Debtors reserve their right to alter, amend, update or modify the Plan Supplement before the Effective Date to be consistent with the Plan.

### **MODIFICATIONS TO THE PLAN**

M. Modification. Subsequent to Solicitation, on [\_\_\_, 2010], the Debtors filed an amendment to the Plan which includes several modifications to the Plan that address objections raised by various parties (the “Modifications”). Pursuant to section 1127(a) of the Bankruptcy Code, the Modifications are hereby made a part of the Plan.

N. Notice of Modifications. The [filing] [and the description of the Modifications on the record at the Confirmation Hearing] constitute due and sufficient notice thereof under the circumstances of these Chapter 11 Cases. The Plan, as modified by the Modifications, constitutes the “Plan.”

O. Deemed Acceptance of Plan as Modified. The modifications to the Plan reflected by the Modifications are either (i) immaterial or do not adversely affect the treatment of any Claim against or Equity Interest in the Debtors under the Plan, or (ii) the adversely affected parties have consented to the Modifications. Therefore, in accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan, as modified by the Modification. No holder of a Claim or Equity Interest that has voted to accept the Plan shall be permitted to change its acceptance to a rejection as a consequence of the Modification. The Modifications neither require additional disclosure under section 1125 of the Bankruptcy Code nor re-solicitation of votes on the Plan under section 1126 of the Bankruptcy Code.

P. Compliance with 1127. The Modifications incorporated into the Plan comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

**COMPLIANCE WITH SECTION 1129 OF THE BANKRUPTCY CODE**

Q. Plan Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)).  
The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

R. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). In addition to Administrative Expense Claims and Priority Tax Claims, which need not be classified, Article III of the Plan designates the following six Classes of Claims and ten Classes of Equity Interests: Class 1 (Priority Claims), Class 2 (Mortgage Facility Claim), Class 3 (ESA UD Mortgage Claim), Class 4A (Mortgage Facility Deficiency Claim), Class 4B (Mezzanine Facilities Claims), Class 5 (General Unsecured Claims), Class 6 (Existing Equity), Class 7 (ESA MD Properties Trust Certificate), Class 8 (ESA MD Borrower Interests), Class 9 (ESA P Portfolio MD Trust Certificate), Class 10 (ESA P Portfolio MD Borrower Interests), Class 11 (ESA Canada Properties Interests), Class 12 (ESA Canada Properties Borrower Interests), Class 13 (ESH/TN Properties L.L.C. Membership Interests), Class 14 (ESH/ESA General Partnership Interests), Class 15 (Other Existing Equity Interests), and Class 16 (Other Secured Claims). Each of the Claims or Equity Interests, as the case may be, in each particular Class is substantially similar to the other Claims or Equity Interests in such Class. Valid business, legal and factual reasons exist for separately classifying the various Claims and Equity Interests pursuant to the Plan, and such Classes do not unfairly discriminate between holders of Claims and Equity Interests. The Plan therefore satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

S. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article III of the Plan specifies that Class 1 (Priority Claims), Class 7 (ESA MD Properties Trust Certificate), Class 8 (ESA MD Borrower Interests), Class 9 (ESA P Portfolio MD Trust Certificate), Class 10 (ESA P Portfolio MD Borrower Interests), Class 11 (ESA Canada Properties Interests), Class 12 (ESA Canada Properties Borrower Interests), Class 13 (ESH/TN Properties L.L.C. Membership Interests), Class 14 (ESH/ESA General Partnership Interests) and Class 16 (Other Secured Claims) are unimpaired under the Plan, thereby complying with section 1123(a)(2) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(2) of the Bankruptcy Code.

T. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article III of the Plan designates Class 2 (Mortgage Facility Claim), Class 3 (ESA UD Mortgage Claim), Class 4A (Mortgage Facility Deficiency Claim), Class 4B (Mezzanine Facilities Claims), Class 5 (General Unsecured Claims), Class 6 (Existing Equity) and Class 15 (Other Existing Equity Interests) as impaired, and Sections 4.2, 4.3, 4.4, 4.5, 4.6, 4.7 and 4.16 of the Plan specify the treatment of Claims and Equity Interests in such Classes, thereby complying with section 1123(a)(3) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(3) of the Bankruptcy Code.

U. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment on account of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(4) of the Bankruptcy Code.

V. Implementation of the Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents set forth in the Plan Supplement provide adequate and proper means for the

implementation of the Plan as required by section 1123(a)(5) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(5) of the Bankruptcy Code.

W. Non-Voting Equity Securities/Allocation of Voting Power (11 U.S.C. § 1123(a)(6)). The Plan provides for (i) 100% of the New Debtor Equity of the surviving Tier 1 Debtors to be issued to NewCo or a subsidiary of NewCo, (ii) the Equity Interests of each of the Tier 2 Debtors and the ESH/TN Properties Membership Interests to remain outstanding and Unimpaired, and (iii) the Equity Interests of each of the Tier 3 Debtors to be cancelled, extinguished and not re-issued. The Tier 3 Debtors are deemed to be liquidated and dissolved by the Debtors as provided for in the Plan. The Plan provides that (i) the NewCo Certificate of Formation will include, and (ii) the certificates of incorporation, limited liability company operating agreements or certificates of trust (as applicable) for the surviving Tier 1 Debtors and Tier 2 Debtors shall be amended to include, a provision prohibiting the issuance of non-voting equity securities in accordance with section 1123(a)(6) of the Bankruptcy Code. As such, the Plan does not provide for the issuance of nonvoting equity securities, and the Plan satisfies section 1123(a)(6) of the Bankruptcy Code.

X. Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). The identity and affiliation of any individuals proposed to serve, after confirmation of the Plan, as a member of the NewCo Board of Managers, and a director, officer or voting trustee of the Debtors, or the Reorganized Debtors that will survive the Effective Date, or NewCo, have been disclosed in the Plan Supplement. The Plan Administrator has been selected by the Special Servicer (with the consent of the Operating Advisor). The Litigation Trustee [has been] selected by mutual agreement of the Special Servicer (with the consent of the Operating Advisor, such consent not to be unreasonably withheld) and the Creditors' Committee. Accordingly, the

selection of Directors, Officers, the Plan Administrator and the Litigation Trustee is consistent with the interests of creditors, equity security holders, and public policy. As such, the Plan satisfies Section 1123(a)(7) of the Bankruptcy Code.

Y. Additional Plan Provisions (11 U.S.C. § 1123(b)). The other provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b) of the Bankruptcy Code. The failure to specifically address a provision of the Bankruptcy Code in this Order shall not diminish or impair the effectiveness of this Order.

Z. Impairment/Unimpairment of Classes of Claims and Equity Interests (§ 1123(b)(1)). As contemplated by section 1123(b)(1) of the Bankruptcy Code, (a) Class 2 (Mortgage Facility Claim), Class 3 (ESA UD Mortgage Claim), Class 4A (Mortgage Facility Deficiency Claim), Class 4B (Mezzanine Facilities Claims), Class 5 (General Unsecured Claims), Class 6 (Existing Equity) and Class 15 (Other Existing Equity Interests) are impaired by the Plan.

AA. Assumption and Rejection of Executory Contracts (11 U.S.C. § 1123(b)(2)). In accordance with section 1123(b)(2) of the Bankruptcy Code, Sections 11.1 and 11.2 of the Plan provide that, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between the Debtors and any person or entity that is listed in the relevant Exhibit to the Plan Supplement or that have not been rejected by the Debtors with the approval of the Bankruptcy Court and that are not subject of pending motions to reject on the Confirmation Date, shall be deemed to have been assumed by the applicable Debtor and assigned to NewCo or its designee, as of the Effective Date. Any executory contracts or unexpired leases of any Debtor that are set forth in the relevant Exhibit to

the Plan Supplement shall be deemed to have been rejected by the applicable Debtor.

Accordingly, the Plan satisfies the requirements of section 1123(b)(2) of the Bankruptcy Code.

BB. Debtors Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, including having complied with section 1125 of the Bankruptcy Code with respect to the Disclosure Statement and the Plan.

CC. No Rejection Damages Associated with Rejected Executory Contracts and Unexpired Leases. Pursuant to Section 11.2 of the Plan, the Debtors rejected a number of executory contracts and unexpired leases. There are no rejection damages arising from the rejection of the executory contracts and unexpired leases.

DD. Plan Proposed in Good Faith (11 U.S.C. § 1129 (a)(3)). The Debtors are the proponents of the Plan. The Debtors have proposed the Plan (including all documents necessary to effectuate the Plan) in good faith and not by any means forbidden by law, thereby complying with section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the record of these Chapter 11 Cases, including the Declarations and the record of the hearing to approve the Disclosure Statement, the record of the Confirmation Hearing, and other proceedings held in these Chapter 11 Cases. The Plan is based upon extensive, arms'-length negotiations between and among the Debtors, the Investor, the Sponsors, the Special Servicer, the Operating Advisor, the Creditors' Committee and other parties-in-interest, and represents the culmination of months of intensive negotiations and discussions among all parties in interest and the conclusion of a successful Auction. Moreover, the Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' estates and effectuating a successful reorganization of the Debtors. The Plan accomplishes maximization of the Debtors' estates and



equitable distribution of the Debtors' assets by providing the means through which the Debtors and the Litigation Trust may effectuate distributions to the Litigation Trust Beneficiaries. The Creditors' Committee, the Special Servicer, the Operating Advisor and Manufacturers and Traders Trust Company, in its capacity as indenture trustee for the Extended Stay Inc. 9-7/8% Senior Subordinated Notes due 2011 (the "Indenture Trustee") support the Plan. Further, the indemnification, exculpation, release, and injunction provisions of the Plan have been negotiated in good faith and at arms' length with, among other persons, representatives of the Debtors, the Creditors' Committee, the Investor, the Sponsors, the Special Servicer, the Operating Advisor, the Indenture Trustee, and their respective advisors, are consistent with sections 105, 1122, 1123(b)(3)(A), 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, and are each necessary to the Debtors' successful emergence from chapter 11. Accordingly, the Plan and the related documents have been filed in good faith and the Debtors have satisfied their obligations under section 1129(a)(3) of the Bankruptcy Code.

EE. Payment for Services or Cost and Expenses (11 U.S.C. § 1129(a)(4)).

Pursuant to the interim compensation procedures previously approved by this Court and established in these Chapter 11 Cases pursuant to section 331 of the Bankruptcy Code, all payments made or to be made by the Debtors for services or for costs and expenses in connection with these Chapter 11 Cases, or in connection with the Plan and incident to the chapter 11 case, have been approved by, or are subject to the approval of, the Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

FF. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliation of any individuals proposed to serve, after confirmation of the Plan, as a member of the NewCo

Board of Managers, and a director, officer or voting trustee of the Debtors, or the Reorganized Debtors that will survive the Effective Date, or NewCo, have been disclosed in the Plan Supplement. To the extent that the appointment of the Plan Administrator or the Litigation Trustee implicates section 1129(a)(5), the appointment of the Plan Administrator will be made by the Special Servicer (with the consent of the Operating Advisor, which consent shall not be unreasonably withheld) and the Litigation Trustee has been selected by mutual agreement of the Special Servicer (with the consent of the Operating Advisor) and the Creditors' Committee. As such, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

GG. No Rate Changes (11 U.S.C. § 1129(a)(6)). No governmental regulatory commission has jurisdiction, after confirmation of the Plan, over the rates of the Debtors. Thus, section 1129(a)(6) of the Bankruptcy Code is not applicable in these Chapter 11 Cases.

HH. Best Interest of Creditors (11 U.S.C. § 1129(a)(7)). As demonstrated by the Lefkovits Declaration, the KCC Declaration, and the liquidation analysis contained in the Disclosure Statement, which employed commonly accepted methodologies and reasonable assumptions, with respect to each impaired class of Claims against or Equity Interests in the Debtors, each holder of a Claim or Equity Interest in such Class has accepted the Plan or will receive or retain pursuant to the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. Accordingly, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

II. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Class 1 (Priority Claims), Class 7 (ESA MD Properties Trust Certificate), Class 8 (ESA MD Borrower Interests), Class 9 (ESA P Portfolio MD Trust Certificate), Class 10 (ESA P Portfolio MD

Borrower Interests), Class 11 (ESA Canada Properties Interests), Class 12 (ESA Canada Properties Borrower Interests), Class 13 (ESH/TN Properties L.L.C. Membership Interests), Class 14 (ESH/ESA General Partnership Interests) and Class 16 (Other Secured Claims) are unimpaired under the Plan and are, therefore, conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 2 (Mortgage Facility Claim), Class 3 (ESA UD Mortgage Claim), Class 4A (Mortgage Facility Deficiency Claim), Class 4B (Mezzanine Facilities Claim) and Class 5 (General Unsecured Claims), which are impaired Classes of Claims eligible to vote, have affirmatively voted to accept the Plan. As such, section 1129(a)(8) is satisfied with respect to these Classes of Claims. Class 6 (Existing Equity) and Class 15 (Other Existing Equity Interests) are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code, because they will not receive or retain any property on account of their interests in the Debtors. The Plan may nevertheless be confirmed because the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Class 6 and Class 15.

JJ. Treatment of Administrative Expense Claims and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Expense Claims and Priority Tax Claims pursuant to Article II of the Plan satisfies the requirements of sections 1129(a)(9)(A), (B), (C) and (D) of the Bankruptcy Code.

KK. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Classes 2, 3, 4A, 4B and 5, each of which is impaired under the Plan and entitled to vote, voted to accept the Plan by the requisite majorities, determined without including any acceptance of the Plan by any insider, thereby satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code. Specifically, as set forth in the KCC Declaration, 100% of the Creditors in Class 2, in number and in dollar amount, voted to accept the Plan. The Creditor in Class 3 holding 100% in number

and 100% in dollar amount voted to accept the Plan. Creditors in Class 4A holding 100% in number and 100% in dollar amount voted to accept the Plan. As to Class 4B, if the vote of the Special Servicer is dispositive, the creditors holding 100% in number and in dollar amount voted to accept the Plan. If the Ballots cast by the holders of the Mezzanine Facilities Claims are dispositive, creditors holding 60.7% in number and 84.87% in dollar amount voted to accept the Plan. As to Class 5, creditors holding 100% in number and dollar amount voted to accept the Plan. Therefore, the requirements of section 1129(a)(10) of the Bankruptcy Code have been satisfied.

LL. Feasibility (11 U.S.C. § 1129 (a)(11)). The information in the Disclosure Statement and the evidence proffered or adduced at the Confirmation Hearing and in the Lefkovits Declaration: (i) is persuasive and credible; (ii) has not been controverted by other evidence; and (iii) establishes that the Plan is feasible, there is a reasonable likelihood that the Reorganized Debtors will meet their financial obligations under the Plan in the ordinary course of business, and confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Reorganized Debtors, thereby satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

MM. Payment of Fees (11 U.S.C. § 1129(a)(12)). As required pursuant to Section 13.2 of the Plan, all fees payable under section 1930 of title 28 of the United States Code have been or will be paid on the Effective Date, thereby satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

NN. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors have no obligations with respect to retiree benefits. Accordingly, section 1129(a)(13) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

OO. No Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

PP. Debtors Are Not Individuals (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals, and accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

QQ. No Applicable Nonbankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). The Debtors are moneyed, business, or commercial corporations, and/or partnerships, as the case may be, and, accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

RR. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). The Debtors have satisfied the requirements of sections 1129(b)(1) and (b)(2) of the Bankruptcy Code with respect to Class 6 (Existing Equity) and Class 15 (Other Existing Equity Interests) (the “Rejecting Classes”). Based on the evidence proffered or adduced at the Confirmation Hearing and in the Lefkovits Declaration, the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes, as required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, because the Rejecting Classes consist of certain Equity Interests in the Debtors, and no holders of similar Equity Interests are treated differently. Although the Plan preserves Equity Interests in Classes 7 through 14, such Equity Interests will be transferred, either through the transfer of the parent company holding the Equity Interest or through the transfer of an indirect parent company, to NewCo. As such, the Equity Interests in Classes 7 through 14 are not preserved for the benefit of holders of prepetition Equity Interests in any of

the Debtors, and the preservation of such Equity Interests in the Plan does not constitute unfair discrimination in favor of the holders of the Equity Interests in Classes 7 through 14, or unfair discrimination against the holders of the Equity Interests in Classes 6 and 15. Therefore, no class of Claims or Equity Interests having similar legal rights is receiving different treatment under the Plan. The Plan is “fair and equitable” as to the Rejecting Classes because no interests junior to the interests of the Rejecting Classes will receive or retain any property under the Plan on account of such junior interests. Based on the foregoing, the requirements of section 1129(b) of the Bankruptcy Code are met with respect to the Rejecting Classes, and the Plan may be confirmed notwithstanding the deemed rejection by the Rejecting Classes.

SS. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan filed in these cases, and accordingly, section 1129(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

TT. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code.

UU. Small Business Case (11 U.S.C. § 1129(e)). None of the Chapter 11 Cases are “small business case[s],” as that term is defined in the Bankruptcy Code, and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable.

### **Additional Findings**

VV. Good-Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Court in these Chapter 11 Cases and the KCC Declaration, the Debtors have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the

Bankruptcy Code, including without limitation, sections 1125(a) and (e) of the Bankruptcy Code, and any applicable non-bankruptcy law, rule or regulation governing the adequacy of disclosure in connection with such solicitation.

WW. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

XX. Implementation. All documents necessary to implement the Plan, including, without limitation, those contained in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arms' length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

YY. Good Faith of the Debtors. The Debtors, and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, partners, affiliates, and representatives (i) have acted in good faith in negotiating, formulating, and proposing the Plan and agreements, compromises, settlements, transactions and transfers contemplated thereby, and (ii) will be acting in good faith in proceeding to (a) consummate the Plan and the agreements, compromises, settlements, transactions, and transfers contemplated thereby and (b) take the actions authorized and directed or contemplated by this Order.

ZZ. Good Faith of the Investor and the Sponsors. The Investor and the Sponsors, and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, partners, affiliates, and representatives (i) have acted in good faith in negotiating, formulating, and proposing the Plan and agreements, compromises, settlements,

transactions and transfers contemplated thereby, and (ii) will be acting in good faith in proceeding to (a) consummate the Plan and the agreements, compromises, settlements, transactions, and transfers contemplated thereby and (b) take the actions authorized and directed or contemplated by this Order.

AAA. Good Faith of the Mortgage Debt Parties. The Mortgage Debt Parties, and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, partners, affiliates, and representatives (i) have acted in good faith in negotiating, formulating, and proposing the Plan and agreements, compromises, settlements, transactions and transfers contemplated thereby, and (ii) will be acting in good faith in proceeding to (a) consummate the Plan and the agreements, compromises, settlements, transactions, and transfers contemplated thereby and (b) take the actions authorized and directed or contemplated by this Order.

BBB. Executory Contracts and Unexpired Leases. The Debtors have satisfied the provisions of section 365 of the Bankruptcy Code with respect to the assumption, assignment and rejection of executory contracts and unexpired leases pursuant to Sections 11.1, 11.2, 11.4, and 11.5 of the Plan.

CCC. Transfers by Debtors. All transfers of property and assets of the Debtors' estates, including, without limitation, the transfer and assignment of the Litigation Trust Assets to the Litigation Trust, shall be free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan, the Plan Supplement or this Order.

DDD. Vesting of Assets. Except as provided in the Plan, and in paragraph 72 of this Order, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors, including the Mortgage Properties, but excluding the Litigation Trust Assets, shall vest



in the Reorganized Debtors or NewCo, as applicable, free and clear of all Claims, Liens, Liabilities, encumbrances, charges and other interests, including, without limitation, any and all claims, liens, encumbrances and any and all right, title, and interests related thereto of governmental entities relating to any tax liabilities or similar liabilities. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law.

EEE. Deemed Sale of Mortgage Properties. Notwithstanding the vesting and retention of title of the Mortgage Properties in the Reorganized Debtors, the transfer of 100% of the New Debtor Equity of the surviving Tier 1 Debtors to NewCo and the distribution of the Cash Distribution by the Reorganized Debtors to the holder of the Allowed Mortgage Facility Claim effected pursuant to this Plan shall be deemed the equivalent of a sale of the Mortgage Properties to NewCo after foreclosure or acceptance of a deed in lieu of foreclosure by the Trustee or the Special Servicer, free and clear of all Claims, Liens, Liabilities, encumbrances, charges and other interests. On the Effective Date, all of the liens and security interests, and, with respect only to any Debtor or Extended Stay Inc., guarantees that were granted or made in connection with, and to secure and evidence the Mortgage Facility shall be terminated, cancelled and annulled (of record and otherwise). The Debtors, NewCo, the Reorganized Debtors, the Special Servicer, the Operating Advisor, all holders of Allowed Mortgage Facility Claims and the Debt Financing Lenders are authorized to execute and deliver all documents, and make all filings and recordings, necessary or deemed advisable to evidence such termination, cancellation and annulment.

FFF. Good Faith Purchaser. The Investor and the Sponsors are each a good faith purchaser of NewCo, the Debtors, HVM Manager (the “Company”) and the Company’s

assets and property and are entitled to the protections afforded good faith purchasers under the Bankruptcy Code.

GGG. Debt Financing Arrangements Negotiated in Good Faith. The Debt Financing Arrangements (including, without limitation, any and all terms, conditions and covenants thereof) have been negotiated in good faith and at arm's-length among the borrowers under the Debt Financing Arrangements and the Debt Financing Lenders, and any credit extended or loans made to the borrowers under the Debt Financing Arrangements by the Debt Financing Lenders has been extended, issued and made in good faith and for legitimate business purposes and the Debt Financing Lenders have acted in good faith in negotiating, formulating, and proposing the transactions contemplated by the Plan.

HHH. Injunction, Exculpation, and Releases. The Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the injunction, exculpation, and releases set forth in Article X of the Plan, because, *inter alia*, these provisions are an integral part of the Debtors' reorganization plan. Section 105(a) of the Bankruptcy Code permits issuance of the injunction and approval of the releases set forth in Article X of the Plan if, as has been established here based upon the record in the Chapter 11 Cases, the Lefkovits Declaration, and the evidence presented at the Confirmation Hearing, such provisions (i) were integral to the agreement among the various parties in interest and are important and necessary to the formulation and implementation of the Plan, as provided in section 1123 of the Bankruptcy Code, (ii) confer substantial benefits on the Debtors' estates and creditors, (iii) are fair and reasonable and (iv) are in the best interests of the Debtors, their estates, and parties in interest. Further, the release and exculpation provisions in the Plan do not relieve any party of liability for an act or omission to the extent such act or omission is determined by a final order by a court of

competent jurisdiction to have constituted willful misconduct or gross negligence or the other exceptions set forth therein, do not release any Guaranty Claim other than a Guaranty Claim against a Debtor, and do not release any claims constituting Litigation Trust Assets, including potential claims referenced in the Examiner's Report. Based upon the record of these Chapter 11 Cases and the evidence proffered or adduced at the Confirmation Hearing, this Court finds that the injunction, exculpation, and releases set forth in Article X of the Plan are consistent with the Bankruptcy Code and applicable law.

III. Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the releases, exculpations, and injunctions set forth in Article X of the Plan and implemented by this Order are fair, equitable, reasonable, and in the best interests of the Debtors, the Reorganized Debtors and their estates, creditors and equity holders. The failure to include such provisions would seriously impair the Debtors' ability to confirm a consensual Plan in these Chapter 11 Cases. Accordingly, this Court finds that the releases, exculpations, and injunctions set forth in Article X of the Plan are consistent with the Bankruptcy Code and applicable law.

JJJ. Compromise and Settlement. Pursuant to Bankruptcy Rule 9019, in consideration of the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan. All Plan distributions made to creditors holding Allowed Claims in any Class are intended to be and shall be final.

KKK. Litigation Trust. Entry into the Litigation Trust Agreement is in the best interests of the Debtors, the Debtors' Estates and creditors and holders of Equity Interests. The establishment of the Litigation Trust, the selection of [\_\_\_\_] to serve as the Litigation Trustee, the form of the proposed Litigation Trust Agreement (as it may be modified or amended), is

appropriate and in the best interests of creditors and holders of Equity Interests. The Litigation Trust Agreement, including Exhibit A thereto, shall, upon execution, be valid, binding and enforceable in accordance with its terms. The holders of Claims in Class 4A (Mortgage Facility Deficiency Claims), Class 4B (Mezzanine Facility Claims), Class 5 (General Unsecured Claims) and the Indenture Trustee are beneficiaries of the Litigation Trust.

LLL. Exemption from Securities Law. Section 1145 of the Bankruptcy Code exempts from registration under section 5 of the Securities Act or other applicable securities laws the offer or sale, under a chapter 11 plan of reorganization, of a security of a debtor, of any affiliate participating in a joint plan with the debtor, or of a successor to a debtor under a plan, if such securities are offered or sold in exchange for a claim against, or an equity interest in, such debtor or affiliate. Such securities may be resold without registration under the Securities Act, unless the holder is an “underwriter” with respect to such securities, as that term is defined in section 1145(b) of the Bankruptcy Code.

MMM. To the extent the Litigation Trust Beneficiaries’ interest in the Litigation Trust is deemed to be a security, section 1145 of the Bankruptcy Code applies to the distribution under the Plan of interests in the Litigation Trust. In addition, to the extent persons deemed to be “underwriters” receive interests in the Litigation Trust pursuant to the Plan, which interests are otherwise exempt from registration pursuant to section 1145 of the Bankruptcy Code, resales of such interests in the Litigation Trust would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law.

NNN. Mortgage Parties Indemnification Fund. On the Effective Date, the Debtors shall transfer \$20 million to the Mortgage Facility Trust, and the Mortgage Facility Trust or its assignee or designee shall hold such funds in the Mortgage Parties Indemnification

Fund for the benefit of the Mortgage Debt Parties to satisfy any indemnification obligations of the Mortgage Facility Trust with respect to any post- Confirmation Date litigation commenced against the Mortgage Debt Parties regarding the voting on the Plan, distributions under the Plan and any other actions taken by the Mortgage Debt Parties in connection with the Plan, including the implementation of the Plan, as further set forth in Section 6.16 of the Plan. The transfer of the \$20 million to the Mortgage Parties Indemnification Fund is appropriate and in the best interests of the Debtors, their creditors, and all parties in interest.

OOO. Preservation of Causes of Action. It is in the best interests of the Debtors and their creditors and holders of Equity Interests that the Litigation Trust Assets, be transferred to the Litigation Trust, as set forth in Section 1.89 of the Plan.

PPP. The settlement reached with the Debtors, Special Servicer, the Creditors' Committee and the Indenture Trustee, as set forth on the record of the Confirmation Hearing and reflected in the Litigation Trust Agreement, including Exhibit A thereto (and the ESI Settlement Agreement) is approved. Except as expressly provided herein or in the Litigation Trust Agreement including Exhibit A thereto setting forth the priority of distributions from the Litigation Trust Agreement, nothing herein or in the Litigation Trust Agreement affects the rights and obligations of the Mortgage Facility Trust or holders of Mezzanine Facilities Claims under the Intercreditor Agreement, including, without limitation, provisions pertaining to Guaranty Claims. The Indenture Trustee shall be a Litigation Trust Beneficiary to the extent of provided in the Litigation Trust Agreement. As of the Effective Date, the Indenture Trustee shall transfer any interests or rights it has respecting the Litigation Trust Assets to the Litigation Trust.

QQQ. NewCo, Reorganized Debtors, Investors, Sponsors and Debt Financing Lenders Not Successors of the Debtors. Except with respect to administrative expense claims of

the type specified in Section 1.7(c)(i) of the Plan as expressly provided for in Section 2.1 of the Plan, (i) NewCo shall not be a successor to any of the debtors in the Chapter 11 Cases by reason of any theory of law or equity, (ii) except as provided in paragraph 72 of this Order, NewCo and the Reorganized Debtors shall not assume, incur or be responsible for any claims or liabilities of the Debtors or any of their affiliates, and (iii) neither the Reorganized Debtors, NewCo, the Investor, the Sponsors, nor the Debt Financing Lenders shall be successors or successors in interest of the Debtors or Extended Stay Inc. nor incur any successor or transferee Liability<sup>2</sup> of any kind, nature or character, including, without limitation, in relation to (a) any and all liabilities arising or resulting from or relating to the transactions contemplated by the Plan, (b) any and all Claims, Liens, Liabilities, encumbrances, charges and other interests arising from or relating to any conduct, liabilities, or obligations of the Debtors or Extended Stay Inc., and (c) except as provided in paragraph 72 of this Order, any and all Claims, Liens, Liabilities, encumbrances, charges and other interests and any and all right, title, and interests related thereto, of governmental entities relating to any tax or similar liabilities.

### **CONCLUSIONS OF LAW**

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED THAT:

1. Confirmation. All requirements for confirmation of the Plan have been satisfied. Accordingly, the Plan in its entirety is CONFIRMED pursuant to section 1129 of the Bankruptcy Code. A copy of the confirmed Plan is attached as "Exhibit A" to this Order. The

---

<sup>2</sup> The Investment Agreement defines "Liability" as "any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for taxes, including, without limitation, taxes arising as a result of the transactions contemplated by this [Investment] Agreement or the Plan."

terms of the Plan and the Plan Supplement are incorporated by reference into, and are an integral part of, this Order.

2. Objections. All parties have had a full and fair opportunity to litigate all issues raised by the Objections, or which might have been raised, and the Objections have been fully and fairly litigated. All Objections, responses, statements, and comments in opposition to the Plan, other than those withdrawn with prejudice in their entirety prior to the Confirmation Hearing or otherwise resolved on the record of the Confirmation Hearing and/or herein are overruled for the reasons stated on the record.

3. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law stated in the Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

4. Plan Supplement. The documents contained in the Plan Supplement, and any amendments, modifications, and supplements thereto, and all documents and agreements introduced into evidence by the Debtors at the Confirmation Hearing (including all exhibits and attachments thereto and documents referred to therein), and the execution, delivery, and performance thereof by the Reorganized Debtors, are authorized and approved when they are finalized, executed and delivered, and are integral to, part of and are incorporated by reference into the Plan. Without further order or authorization of this Court, the Debtors, and the Reorganized Debtors and their successors, in consultation with the Investor and each of the Sponsors and the Special Servicer (in consultation with the Operating Advisor), are authorized

and empowered to make all modifications to all documents included as part of the Plan Supplement that are consistent with the Plan. Execution versions of the documents comprising the Plan Supplement shall constitute legal, valid, binding, and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and, to the extent applicable, shall create, as of the Effective Date, all liens and security interests purported to be created thereby.

5. Solicitation and Notice. Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Order, was appropriate and satisfactory based on the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. The solicitation of votes on the Plan and the Solicitation Materials complied with the solicitation procedures in the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. Notice of the Plan Supplement, and all related documents, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

6. Omission of Reference to Particular Plan Provisions. The failure to specifically describe or include any particular provision of the Plan in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan be approved and confirmed in its entirety.

7. Plan Classification Controlling. The classifications of Claims and Equity Interests for purposes of the distributions to be made under the Plan shall be governed solely by



the terms of the Plan. The classification set forth on the Ballots tendered or returned by the Debtors' creditors in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Equity Interests under the Plan for distribution purposes; and (c) shall not be binding on the Debtors, the Reorganized Debtors, the Litigation Trust, creditors, or interest holders for purposes other than voting on the Plan.

8. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, upon entry of this Confirmation Order and subject to the occurrence of the Effective Date, the provisions of the Plan shall bind (i) any holder of a Claim against or Equity Interest in the Debtors and their respective successors and assigns, whether or not such Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan, (ii) any and all non-debtor parties to assumed executory contracts and unexpired leases with the Debtors, (iii) those parties who filed Objections to the Plan, (iv) the Mortgage Debt Parties, (v) the holders of the Mortgage Certificates, (vi) every other party in interest in these Chapter 11 Cases, and (vii) all parties receiving property under the Plan, and their respective heirs, executors, administrators, successors, or assigns.

9. Merger, Dissolution, or Consolidation of Corporate Entities. Pursuant to and in accordance with Section 6.7 of the Plan, on or as soon as practicable after the Effective Date, the Debtors and/or NewCo, as applicable, shall take such actions as may be or become necessary, without further action being required under applicable law, regulation, order or rule (including, without limitation, any action by the board of directors, stockholders, partners, members or managers of any Debtor or members of NewCo), and cause (i) 100% of the New

Debtor Equity of the surviving Tier 1 Debtors to be issued to NewCo or a subsidiary of NewCo; (ii) the Equity Interests of each of the Tier 2 Debtors and the ESH/TN Properties Membership Interests to remain outstanding and Unimpaired; (iii) the Equity Interests of each of the Tier 3 Debtors to be cancelled, extinguished and not re-issued; and (iv) the Restructuring Transactions to be implemented. Pursuant to, under and in accordance with the Plan, the Debtors, NewCo and/or the Reorganized Debtors may, without any further order of the Court, effectuate some, all or none of the Restructuring Transactions. Before, on, or as soon as practicable after the Effective Date, the Debtors, NewCo and/or the Reorganized Debtors may, without further order of the Court or the need to modify the Plan, effectuate other Restructuring Transactions not in the Plan Supplement that are similar in nature and involve Tier 1 Debtors and/or Tier 2 Debtors, all of which will be effectuated pursuant to, under and in accordance with the Plan. If additional material Restructuring Transactions not listed in the Plan Supplement are to be effectuated, a list thereof shall be filed with the Court on or before the Effective Date. All Restructuring Transactions are being taken pursuant to and in accordance with the Plan and shall be implemented pursuant to and in accordance with the Plan. The Tier 3 Debtors shall be deemed liquidated and dissolved by the Debtors for all purposes without the necessary for other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith. In addition, as of the Effective Date or as soon as practicable thereafter and without the need for any further action by this Court or any other court or governmental unit, or by the board of directors, stockholders, partners, members or managers of any Reorganized Debtors, the Reorganized Debtors may, pursuant to and in accordance with the Plan, (i) cause any or all of the Reorganized Debtors to be merged into one or more of the Reorganized Debtors, dissolved or otherwise consolidated, (ii) cause the transfer of assets between or among the Reorganized

Debtors, or (iii) engage in any other transaction in furtherance of the Plan. Any and all transfers, mergers, dissolutions or consolidations effected by the Debtors, NewCo and/or the Reorganized Debtors as contemplated by the Plan, including the Restructuring Transactions, shall be deemed transfers, mergers, dissolutions and consolidations effected under and pursuant to the Plan, and pursuant to Section 1146(a) of the Bankruptcy Code, and the making or delivery of any instrument in connection therewith shall not be taxed under any law imposing any sales and use, stamp, real estate transfer, mortgage recording, or other similar tax.

10. Surrender and Cancellation of Instruments. Pursuant to Section 6.5 of the Plan, as of the Effective Date, all notes and any obligations of the Debtors under the Mortgage Facility or the Mezzanine Facilities shall be discharged and be of no further force or effect against the Debtors or the Mortgage Properties, and the holders thereof shall have no rights against the Debtors or the Mortgage Properties, except the right to receive the Distributions provided in the Plan. As of the Effective Date, the ESA UD Mortgage Claim and the General Unsecured Claims, and the rights of the holders thereof thereunder, shall be cancelled and deemed null and void and of no further force and effect, and the holders thereof shall have no rights, and such notes, agreements, certificates and securities shall evidence no rights, except the right to receive the Distributions provided in the Plan. It is understood, however, that (i) Section 6.5 of the Plan shall not affect any Guaranty Claims, other than a Guaranty Claim against a Debtor, or the pursuit of Litigation Trust Assets, and (ii) notwithstanding Section 6.11 of the Plan, the notes or certificates in respect of the Mortgage Facility and the Mezzanine Facilities shall not be surrendered and cancelled so as not to impair the pursuit of Litigation Trust Assets or any Guaranty Claims other than a Guaranty Claim against a Debtor.

11. Subject to Section 6.5 of the Plan, each holder of an instrument evidencing a Claim shall surrender such instrument to the Reorganized Debtors. At the option of the Reorganized Debtors or NewCo, as applicable (in their reasonable discretion), no Distribution hereunder shall be made to or on behalf of any holder of such Claim unless and until such instrument is received or the unavailability of such instrument is reasonably established to the satisfaction of the Reorganized Debtors. In accordance with section 1143 of the Bankruptcy Code, any such holder of such a Claim that fails to surrender or cause to be surrendered such instrument or to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Reorganized Debtors and, in the event that the Reorganized Debtors requests, fails to furnish a bond in form and substance (including, without limitation, amount) reasonably satisfactory to the Reorganized Debtors shall be deemed to have forfeited all rights, claims, and interests and shall not participate in any Distribution hereunder.

12. Issuance of NewCo Common Interests. The Reorganized Debtors' issuance of 100% of the New Debtor Equity of the surviving Tier 1 Debtors to NewCo or a subsidiary of NewCo, to be issued pursuant to the Investment Agreement, is authorized without the need for any further corporate action and without any further action by holders of Claims or Equity Interests.

13. Transfer by NewCo. On the Effective Date, NewCo shall pay over or distribute to, or at the direction of, the Plan Administrator the Investment to the extent necessary to make all cash distributions required under the Plan, other than the payment of the Excess Cash and the funding of the Administrative/Priority Claims Reserve.

14. Substantive Consolidation for Plan Purposes Only. Entry of this Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of

the Effective Date, of the substantive consolidation of the Debtors solely for the purpose of voting, confirmation and distribution as provided in section 6.1 of the Plan. On and after the Effective Date, (i) all assets and liabilities of the Debtors shall be treated for purposes of the Plan as though they were merged, (ii) all guarantees of the Debtors of payment, performance or collection of obligations of any other of the Debtors shall be eliminated and cancelled, (iii) all joint obligations of two or more of the Debtors and all multiple Claims against such entities on account of such joint obligations, shall be considered a single Claim against the Debtors, (iv) all intercompany claims and obligations between one Debtor and any of the other Debtors, including as a result of the rejection of any executory contract or unexpired lease, shall be eliminated, extinguished and cancelled, except for such intercompany claims and obligations necessary to pursue Litigation Trust Assets, and (v) any Claim filed against any of the Debtors shall be deemed filed against the consolidated Debtors and shall be one Claim against and a single obligation of the consolidated Debtors. Except as otherwise provided in paragraph 72 of this Order, the Plan or the Restructuring Transactions, (a) all property of each Debtor shall vest in each respective Reorganized Debtor, free and clear of all Claims, Liens, Liabilities, encumbrances, charges and other interests and (b) each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents) in effect before the Effective Date. The provisions of the Intercreditor Agreement shall remain in full force and effect notwithstanding any substantive consolidation of the Debtors pursuant to the Plan.

15. The Litigation Trust. On the Effective Date, the Debtors shall transfer the Litigation Trust Funding to the Litigation Trust and the Debtors and the Litigation Trustee shall execute the Litigation Trust Agreement and shall take all steps necessary to establish the Litigation Trust in accordance with the Plan. On the Effective Date, the Debtors, and, to the extent provided in the Litigation Trust Agreement, ESI, shall be deemed to have automatically transferred to the Litigation Trust all of their right, title, and interest in and to all of the Litigation Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Litigation Trust free and clear of all Claims, Liens, Liabilities, encumbrances, charges and other interests subject only to the Allowed Claims of the Litigation Trust Beneficiaries as set forth in the Plan and the Litigation Trust Agreement, and the expenses of the Litigation Trust as provided in the Litigation Trust Agreement. Thereupon, the Debtors, and the Reorganized Debtors shall have no interest in the Litigation Trust Assets or the Litigation Trust. In connection with the vesting and transfer of the Litigation Trust Assets, including rights and causes of action, any attorney-client, work-product protection or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Litigation Trust shall vest in the Litigation Trust. The Debtors, ESI and the Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges, protections and immunities. In the event of any conflict between the terms of Section 6.17 of the Plan and the Litigation Trust Agreement, the terms of the Litigation Trust Agreement shall govern. [\_\_\_ is hereby appointed as the Litigation Trustee.]

16. Indenture Trustee and ESI Settlement. As of the Effective Date, any interests or rights the Indenture Trustee has respecting the Litigation Trust Assets and the ESI

Causes of Action (as such term is defined in the ESI Settlement Agreement) shall be deemed transferred to and vested in the Litigation Trust.

17. Distributions Under the Plan. All distributions under the Plan shall be made in accordance with Article VIII of the Plan and such methods of distribution are approved.

18. Disputed Claims. The provisions of Article VII of the Plan, including, without limitation, the provisions governing procedures for resolving Disputed Claims, are found to be fair and reasonable and are approved. In connection with distributions on account of Administrative Expense Claims, Priority Claims, General Unsecured Claims, and Mezzanine Facilities Claims, Distributions on account of such Disputed Claims shall be made in accordance with Section 7.2 of the Plan to the extent such Disputed Claims become Allowed.

19. Treatment is in Full Satisfaction. All distributions under the Plan shall be made in accordance with the Plan. The treatment set forth in the Plan is in full satisfaction of the legal, contractual and equitable rights (including any liens) that each entity holding a Claim or Equity Interest may have in or against the Debtors, the Estates, or their respective property. This treatment supersedes and replaces any agreements or rights those entities may have in or against the Debtors, the Estates, or their respective property.

20. Administrative Expense Objection Deadline. To assert an Administrative Expense Claim, other than an Administrative Expense Claim of the type specified in section 503(b)(1)(D) of the Bankruptcy Code, and other than an Administrative Expense Claim of a type specified in paragraph 70 of this Order, a claimant shall file a proof of claim (a "Proof of Claim") before 4:00 p.m. (Eastern Standard Time) on the first Business Day that is forty-five (45) days after the Confirmation Date, as such date may be extended from time to time by the Bankruptcy Court (the "Administrative Claims Bar Date"). Nothing in this Order shall extend or

otherwise modify any deadline or requirement for filing claims set forth in previous Orders of this Court. All Proofs of Claim shall comply with the following requirements:

- i. specify the name and case number of the Debtor or Debtors against which the claimant asserts its Proof of Claim;
- ii. conform to the proof of claim to Official Bankruptcy Form No. 10;
- iii. to the extent applicable, limit any claims pursuant to section 502(b)(6) of the Bankruptcy Code;
- iv. include any supporting documentation or, if voluminous, a summary or explanation as to why documentation is not available;
- v. be in the English language; and
- vi. be denominated in United States Currency.

21. Proofs of Claim asserting Administrative Expense Claims must be received on or before the Administrative Claims Bar Date by KCC, the official claims agent in the Debtors' Chapter 11 Cases, at the following address:

ESI Claims Processing  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, California 90245

22. The Debtors and KCC shall not be required to accept a Proof of Claim sent by facsimile, telecopy, or electronic mail transmission. Proofs of Claim will be deemed timely filed only if actually received by KCC on or before the Administrative Claims Bar Date. Any person or entity, other than an entity asserting a Claim of a type specified in section 503(b)(1)(D) of the Bankruptcy Code, that fails to timely file a Proof of Claim in accordance with this Order on or before the Administrative Claims Bar Date is **FOREVER BARRED**, **ESTOPPED**, and **ENJOINED** from asserting and enforcing such claim against the Debtors, the Reorganized Debtors, or any of their respective estates, assets, properties, or interests in property.



23. Assumption or Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Pursuant to Sections 11.1 and 11.2 of the Plan, as of the Effective Date all executory contracts and unexpired leases that exist between the Debtors and any person or entity that are listed in the relevant Exhibit to the Plan Supplement or that have not been rejected by the Debtors with the approval of the Bankruptcy Court and that are not subject of pending motions to reject on the Confirmation Date, shall be deemed to have been assumed by the applicable Debtor and assigned to NewCo or its designee, as of the Effective Date. Any executory contracts or unexpired leases of any Debtor that are set forth in the relevant Exhibit to the Plan Supplement shall be deemed to have been rejected by the applicable Debtor. The inclusion of an executory contract or unexpired lease in the Plan Supplement shall not constitute an admission by the Debtors that such document is an executory contract or an unexpired lease or that the Debtors have any liability thereunder.

24. Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases. Entry of the this Order shall, subject to and upon the occurrence of the Effective Date, constitute the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption, assignment, or rejection of the executory contracts and unexpired leases pursuant to sections 11.1, 11.2, 11.4 or 11.5 of the Plan. The effect of confirmation of the Plan, the results thereof, and the transactions resulting therefrom or any other effect of these Chapter 11 Cases, including specifically the changes to the Debtors' boards of directors and equity interests, shall not be and are not a "change of control" and shall not trigger any such or similar provision of any of the executory contracts and unexpired leases assumed pursuant to the Plan.

25. No Rejection Damages Associated with Rejected Executory Contracts and

Unexpired Leases. Pursuant to Section 11.2 of the Plan, the Debtors rejected a number of executory contracts and unexpired leases. There are no rejection damages arising from the rejection of the executory contracts and unexpired leases.

26. Inclusiveness. Unless otherwise specified in the Plan Supplement, each executory contract and unexpired lease listed or to be listed therein shall include any and all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed on the Plan Supplement.

27. Insurance Policies and Agreements. Notwithstanding anything contained in the Plan to the contrary, unless specifically rejected by order of the Bankruptcy Court, all of the Debtors' insurance policies and any agreements, documents or instruments relating thereto, are treated as executory contracts under the Plan and will be assumed by the applicable Reorganized Debtor and assigned to NewCo or its designee, effective as of the Effective Date. Nothing contained in Section 11.4 of the Plan shall constitute or be deemed a waiver of any cause of action that the Debtors may hold against any entity, including without limitation, the insurer, under any of the Debtors' policies of insurance.

28. Management Agreements. As of the Effective Date, (i) all existing management agreements between any Debtor that is a TRS and HVM, and the G&A Reimbursement Agreements and Services Agreements will be assumed by such Debtors (or, in the case of Extended Stay Inc. and pursuant to the ESI Settlement Agreement, assumed by Extended Stay Inc and assigned to NewCo) and (ii) all existing management agreements between any Debtor that is not a TRS and HVM will be assumed by such Debtor and assigned to a Debtor

that is a TRS (or a newly formed TRS, wholly owned either directly or indirectly by NewCo, that is designated by an existing Debtor that is a TRS). Entry of this Order, subject to and upon the occurrence of the Effective Date, shall constitute the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the assumption or assumption and assignment, as applicable, of such agreements on the terms set forth in the Plan and Plan Supplement.

29. Cure of Defaults. Upon entry of this Order, the cure costs in connection with each executory contract and unexpired lease assumed pursuant to Section 11.1 of the Plan has been fixed at \$0.00. The applicable contract or lease counterparty is **BARRED** and **PERMANENTLY ENJOINED** from asserting against the applicable Debtor any default, claim or liability existing, accrued or arising, or relating to the applicable assumed contract or assumed lease for the period prior to the entry of this Order, except any obligations arising under such contract or lease from and after the Commencement Date but not yet due and payable under the terms of the applicable contract or lease.

30. Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan. Claims created by the rejection of executory contracts or unexpired leases (including, without limitation, the rejection provided in Section 11.2 of the Plan) or the expiration or termination of any executory contract or unexpired lease prior to the Confirmation Date must be filed with the Bankruptcy Court and served on the Debtors no later than thirty (30) days after (a) in the case of an executory contract or unexpired lease that was terminated or expired by its terms prior to the Confirmation Date, the Confirmation Date, (b) in the case of an executory contract or unexpired lease rejected by the Debtors, the entry of the order of the Bankruptcy Court authorizing such rejection, or (c) in the case of an executory contract or unexpired lease that is deemed rejected pursuant to Section 11.2

of the Plan, the Confirmation Date. Any rejection claim for which a proof of claim is not filed and served within the time provided herein will be forever barred from assertion and shall not be enforceable against the Debtors, their assets, properties, or interests in property, or the Reorganized Debtors or their estates, assets, properties, or interests in property. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article VII of the Plan.

31. Vesting of Assets. Pursuant to Section 10.1 of the Plan, upon the Effective Date, all property and assets of the Debtors, including the Mortgage Properties, but excluding the Litigation Trust Assets, shall vest in the Reorganized Debtors and NewCo, as applicable, free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan or paragraph 72 this Order, including, without limitation, any and all Claims, Liens, Liabilities, encumbrances, charges and other interests and any and all right, title and interests related thereto of governmental entities relating to any tax liabilities or similar liabilities. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law. From and after the Effective Date, the Reorganized Debtors and/or NewCo may operate the Debtors' business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code.

32. Title to Assets. Except as otherwise provided in the Plan, on the Effective Date, title to all assets and properties and interests in property dealt with by the Plan shall vest in the Reorganized Debtors, NewCo, the Plan Administrator, the Administrative/Priority Claims Reserve or the Litigation Trust, as provided in the Plan, free and clear of all Claims, Equity

Interests, Encumbrances, and other interests, and this Order shall be a judicial determination of discharge of the liabilities of the Debtors arising prior to the Effective Date, except as may be otherwise provided in the Plan.

33. Indemnification Obligations. Notwithstanding anything to the contrary in the Plan, subject to the occurrence of the Effective Date, the obligations of the Debtors as provided in the Debtors' respective certificates of incorporation, bylaws, or other applicable organizational documents, other agreements or law as of the Commencement Date to indemnify, defend, reimburse, exculpate, advance fees and expenses to, or limit the liability of officers who were officers or employees of such Debtors or their respective Affiliates at any time prior to the Effective Date, provided that such officers will continue to be officers of the Debtors or NewCo from and after the Effective Date, against any claims, causes of action or obligations whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, shall survive confirmation of the Plan, remain unaffected thereby after the Effective Date and not be discharged, irrespective of whether such indemnification, defense, advancement, reimbursement, exculpation or limitation is owed in connection with an event occurring before or after the Commencement Date.

34. As of the Effective Date, each Debtor's certificate of incorporation, bylaws or similar organizational documents or other agreement shall provide for the indemnification, defense, reimbursement, exculpation and/or limitation of liability of, and advancement of fees and expenses to, officers who were officers of such Debtor or any of its respective Affiliates at any time prior to the Effective Date and who will continue to be officers or employees of the Debtors or NewCo from and after the Effective Date at least to the same

extent as the bylaws of such Debtor in effect on the Commencement Date, against any claims or causes of action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, and none of the Debtors shall amend and/or restate its certificate of incorporation, bylaws or similar organizational document or other agreement before or after the Effective Date to terminate or materially adversely affect any of the Debtors' obligations or such officers' rights under Section 10.13(b) of the Plan.

35. Any Claim based on NewCo's or the Debtors' obligations set forth in Section 10.13 of the Plan shall not be a Disputed Claim or subject to any objection in either case by reason of section 502(e)(1)(B) of the Bankruptcy Code.

36. For avoidance of doubt, nothing in Section 10.13 of the Plan or this Order shall be construed as an indemnification for any Guaranty Claim.

37. Discharge of Claims and Termination of Equity Interests. Except as provided in the Plan, in consideration of the rights afforded in the Plan and the payments and distributions to be made under the Plan, all existing debts, Claims, and Equity Interests, of any kind, nature, or description whatsoever against or in the Debtors or any of their assets or properties, shall be and hereby are discharged and terminated to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against the Debtors and Existing Equity Interests and Other Existing Equity Interests in the Debtors shall be, and shall be deemed to be, and hereby are, discharged and terminated, and all holders of Claims and Existing Equity Interests and Other Existing Equity Interests shall be precluded and enjoined from asserting against the Reorganized Debtors, NewCo, their respective successors or assignees, or any of their respective assets or properties,

any other or further Claim or Equity Interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim or proof of Equity Interest, and whether or not the facts or legal bases therefore were known or existed prior to the Effective Date. Upon the Effective Date, all such persons shall be and hereby are forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Equity Interest in the Debtors.

38. Injunction. Pursuant to Section 10.6 of the Plan, except as otherwise provided in the Plan, all Persons who have held, hold or may hold Claims or Equity Interests and all Persons who have held, hold or may hold claims or causes of action that have been released pursuant to Section 10.10 of the Plan or are subject to exculpation pursuant to Section 10.9 of the Plan, and all other parties in interest, including any participants in the Auction, along with their respective present or former employees, agents, officers, managers, directors, principals and Affiliates, are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Equity Interest, or such released or exculpated claim or cause of action, against the Debtors, the Reorganized Debtors, NewCo or the Released Parties or any of their respective property or assets or any interest therein, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors, the Reorganized Debtors, NewCo or the Released Parties or any of their respective property or assets or any interest therein, (c) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors, the Reorganized Debtors, NewCo or the Released Parties or any of their respective property or assets or any interest therein, or (d) asserting any right of setoff, subrogation or

recoupment of any kind against any obligation due from the Debtors, the Reorganized Debtors, NewCo, the Released Parties or against any of their respective property or assets, or any interest therein, with respect to any such Claim or Equity Interest, or such released or exculpated claim or cause of action. For the avoidance of doubt, nothing in Section 10.6 of the Plan or in this Order shall be construed as enjoining the prosecution of any Guaranty Claim other than a Guaranty Claim against a Debtor.

39. Notwithstanding anything to the contrary in the Plan or this Order, none of the rights or claims of TriMont Real Estate Advisors, Inc. (“TriMont”) under and pursuant to the Trust and Servicing Agreement, including without limitation, all rights or claims of TriMont with respect to compensation under the Trust and Servicing Agreement relating to its portion of any ‘Special Servicing Fees,’ ‘Work-Out Fee’ or ‘Liquidation Fee’ (all as defined in the Trust and Servicing Agreement) that is or becomes payable under the Trust and Servicing Agreement shall be affected, discharged, released, exculpated or enjoined in any respect whatsoever by the Plan or this Order and all such rights and claims shall be expressly preserved and reserved.

40. Injunction Against Interference With Plan of Reorganization. Upon the entry of this Order, all holders of Claims and Equity Interests and other parties in interest, including the holders of Mortgage Certificates, along with their respective present or former employees, agents, officers, managers, directors, principals and Affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

41. Terms of Injunction. Unless otherwise provided in this Order, all injunctions or stays arising under or entered during these Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, that are in existence on the Confirmation Date, other than injunctions issued pursuant to the Plan (including injunctions under Section 10.6 of the



Plan) shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

42. Exculpation. As provided for in Section 10.9 of the Plan, notwithstanding anything herein to the contrary, as of the Effective Date, none of (a) the Debtors or the Reorganized Debtors, (b) NewCo, (c) the Creditors' Committee and any subcommittee thereof, (d) BHAC, (e) the accountants, financial advisors, investment bankers, agents and attorneys for the Debtors, (f) HVM, (g) HVM Manager, (h) the Special Servicer, (i) the Trustee, (j) the Operating Advisor, (k) the Controlling Holder, (l) HVM Manager Owner, (m) the Investor, (n) each Sponsor, (o) the Debt Financing Lenders and (p) any present or former director, manager, officer, member, equity holder (and their respective Affiliates), employee, agent, financial advisor, partner, Affiliate, attorney, other professional advisor or representative (and their respective Affiliates) of the persons or parties described in clauses (a) through (p) of Section 10.9 or of their respective Affiliates (but solely in their capacities as such) shall have or incur any liability for any claim, cause of action or other assertion of liability for any act taken or omitted to be taken since the Commencement Date in connection with, related to, or otherwise arising out of, the Chapter 11 Cases, the Auction, the formulation, negotiation, preparation, dissemination, implementation, confirmation, consummation, or administration of the Plan, property to be distributed under the Plan, or any other act or omission in connection with the Chapter 11 Cases, the Trust and Servicing Agreement, the Mortgage Facility Trust, the Plan, the Disclosure Statement or, in each case, any contract, instrument, document or other agreement related thereto, including, without limitation, the Investment Agreement; provided, however, that the foregoing shall not affect the liability of any person that otherwise would result from any such act or omission to the extent such act or omission is determined by a final order by a court

of competent jurisdiction to have constituted willful misconduct or gross negligence; provided, further, that each Released Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, the above referenced documents, actions or inactions; provided, further, that nothing in Section 10.9 of the Plan or this Order shall be construed as a release or exculpation for any Guaranty Claim other than a Guaranty Claim against a Debtor.

43. Releases. Pursuant to Section 10.10 of the Plan, as of the Effective Date, and in consideration of (a) the services provided by the present and former directors, managers, officers, employees, Affiliates, agents, financial advisors, attorneys, and representatives of the Debtors to the Debtors who acted in such capacities after the Commencement Date; (b) the services of the Creditors' Committee and their Affiliates; (c) the services provided by HVM; (d) the services provided by HVM Manager; (e) the services of, and assets contributed by, HVM Manager Owner; (f) the provision of the Debt Financing Arrangements by the Debt Financing Lenders; (g) the substantial contribution of the Investor, each of the Sponsors and their Affiliates; and (h) the substantial contribution of the Special Servicer, the Trustee, the Operating Advisor and the Controlling Holder: (i) the Debtors, the Reorganized Debtors or NewCo; (ii) each holder of a Claim or Equity Interest that votes to accept the Plan, or is deemed to accept the Plan, or abstains from voting on the Plan; and (iii) each holder of a Mortgage Certificate, shall release unconditionally and forever each Released Party from any and all Claims, demands, causes of action and the like, relating to the Debtors or their Affiliates existing as of the Effective Date or thereafter arising from any act, omission, event or other occurrence that occurred on or prior to the Effective Date; provided, however, that nothing in Section 10.10 of the Plan or this Order shall be construed as a release of (i) any Guaranty Claim other than a Guaranty Claim

against a Debtor, (ii) any claims constituting Litigation Trust Assets, or (iii) any claims against any such Released Party resulting from an action or omission determined by a final order by a court of competent jurisdiction to have constituted willful misconduct or gross negligence, provided that each such Released Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, its actions or inactions.

44. Government Releases. Except with respect to the claims held by the United States Government or any of its agencies or any state and local authority, in their capacity as holder of either a Mortgage Certificate or a Mezzanine Facility Claim, nothing in the Plan or the Confirmation Order shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, securities laws, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties other than the Debtors, the Reorganized Debtors and NewCo, nor shall anything in the Plan or Confirmation Order enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties other than the Debtors, the Reorganized Debtors and NewCo for any liability whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, securities laws, environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in the Plan or this Order exculpate any of the Released Parties other than the Debtors, the Reorganized Debtors and NewCo from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, securities laws, environmental laws or any criminal laws of the United States or any state and local authority.

45. Mortgage Facility Trust Claims. The Mortgage Debt Parties have acted in accordance with the Trust and Servicing Agreement and the Mortgage Facility Trust throughout the Chapter 11 Cases, including, without limitation, in connection with the Auction, the Plan (including voting thereon) and the Disclosure Statement, and they have made a substantial contribution to the Estate and the Chapter 11 Cases. The rights and authority of and contributions made by the Mortgage Debt Parties under the Trust and Servicing Agreement and the Mortgage Facility Trust have been and are integral to the Plan. Accordingly, from and after the Effective Date, all Persons, including the holders of Mortgage Certificates, shall be deemed to have released, and shall be enjoined from commencing any action or proceeding or asserting or pursuing, any claim or cause of action against the Mortgage Debt Parties for any act taken or omitted since the Commencement Date in connection with, related to, or otherwise arising out of the Chapter 11 Cases, the Auction, the formulation, negotiation, preparation, dissemination, implementation, confirmation, consummation, or administration of the Plan, or property to be distributed under the Plan; provided, however, that nothing in Section 10.12 of the Plan shall be construed as a release of any claims against any Mortgage Debt Party resulting from an act or omission determined by a final order of a court of competent jurisdiction to have constituted willful misconduct or gross negligence, provided that each such Mortgage Debt Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, its actions or inactions.

46. Limitations on Exculpation and Releases of Representatives. Nothing in Sections 10.9 or 10.10 of the Plan shall (a) be construed to release or exculpate any Person from, or require indemnification of any Person against losses arising from, the fraud, malpractice, criminal conduct, intentional unauthorized misuse of confidential information that causes

damages, or ultra vires acts of such Person, or (b) limit the liability of the professionals of the Debtors, the Reorganized Debtors, NewCo or the Creditors' Committee to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility.

47. Retention of Causes of Action/Reservation of Rights. Except as provided in Section 6.17 and Section 10.10 of the Plan, nothing contained in the Plan or this Order shall be deemed to be a waiver or the relinquishment of any rights or causes of action that the Debtors, the Reorganized Debtors or NewCo may have or which NewCo or the Reorganized Debtors may choose to assert on behalf of the Debtors' estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (i) any and all Claims against any person or entity, to the extent such person or entity asserts a crossclaim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Debtors, the Reorganized Debtors, NewCo, their officers, directors, managers or representatives and (ii) the turnover of any property of the Debtors' estates.

48. Nothing contained in the Plan or this Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Commencement Date, against or with respect to any Claim left Unimpaired by the Plan. NewCo or the Reorganized Debtors, as applicable, shall have, retain, reserve, and be entitled to assert all such claims, causes of action, rights of setoff, and other legal or equitable defenses which the Debtors had immediately prior to the Commencement Date fully as if the Bankruptcy Cases had not been commenced, and all of the legal and equitable rights of NewCo or the Reorganized Debtors, as applicable, respecting any Claim left Unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Bankruptcy Cases had not been commenced.

49. Nothing in the Plan or this Order shall be construed as a release of any Guaranty Claim other than a Guaranty Claim against a Debtor, and all rights and defenses thereto are expressly reserved.

50. Nothing in the Plan shall be construed as a modification, release or waiver of the provisions of the Intercreditor Agreement, and the provisions of the Intercreditor Agreement shall remain in full force and effect, and all rights thereunder are expressly reserved.

51. The settlement reached with the Debtors, Special Servicer, the Creditors' Committee and the Indenture Trustee, as set forth on the record of the Confirmation Hearing and reflected in the Litigation Trust Agreement, including Exhibit A thereto (and the ESI Settlement Agreement) is approved. Except as expressly provided herein or in the Litigation Trust Agreement including Exhibit A thereto setting forth the priority of distributions from the Litigation Trust Agreement, nothing herein or in the Litigation Trust Agreement affects the rights and obligations of the Mortgage Facility Trust or holders of Mezzanine Facilities Claims under the Intercreditor Agreement, including, without limitation, provisions pertaining to Guaranty Claims. The Indenture Trustee shall be a Litigation Trust Beneficiary to the extent provided in the Litigation Trust Agreement. As of the Effective Date, any interests or rights the Indenture Trustee has respecting the Litigation Trust Assets and the ESI Causes of Action (as such term is defined in the ESI Settlement Agreement) shall be deemed transferred to and vested in the Litigation Trust.

52. Transfer Free and Clear of Liens. Except with respect to the Litigation Trust Assets, the Administrative/Priority Claims Reserve, the Mortgage Parties Indemnification Fund (each as defined in the Plan), any other wind down reserve or other fund established pursuant to the Plan, and any Claims of governmental entities treated in paragraph 72 of this

Order, all right, title and interest in and to any and all assets, property, unexpired leases and executory contracts of every kind and nature to be sold, assigned, transferred or otherwise disposed of under the Plan shall be sold, assigned, transferred and disposed of free and clear of any and all Claims, Liens, Liabilities, encumbrances, charges and other interests of any entity (as such term is defined in section 101(15) of the Bankruptcy Code) including, without limitation, (a) any and all claims, liens, encumbrances and any and all right, title and interests related thereto of government entities with respect to tax liabilities and (b) any and all claims, liens, encumbrances and any and all right, title and interests related thereto arising or resulting from or relating to the transactions contemplated hereby and by the Plan (including, without limitation, all Plan Documents).

53. Good Faith Purchaser. The Investor and the Sponsors are each a good faith purchaser of the Company, and the Company's assets and property and are entitled to the protections afforded good faith purchasers under the Bankruptcy Code.

54. NewCo, Reorganized Debtors, Investors, Sponsors, and Debt Financing Lenders Not Successors of the Debtors. Except with respect to administrative expense claims of the type specified in Section 1.7(c)(i) of the Plan as expressly provided for in Section 2.1 of the Plan, (i) NewCo shall not be a successor to any of the debtors in the Chapter 11 Cases by reason of any theory of law or equity, (ii) except as provided in paragraph 72 of this Order, NewCo and the Reorganized Debtors shall not assume, incur or be responsible for any claims or liabilities of the Debtors or any of their affiliates, and (iii) neither the Reorganized Debtors, NewCo, the Investor, the Sponsors, nor the Debt Financing Lenders shall be successors or successors in interest of the Debtors or Extended Stay Inc. nor incur any successor or transferee Liability of any kind, nature or character, including, without limitation, in relation to (a) any and all

liabilities arising or resulting from or relating to the transactions contemplated by the Plan, (b) any and all Claims, Liens, Liabilities, encumbrances, charges and other interests arising from or relating to any conduct, liabilities, or obligations of the Debtors or Extended Stay Inc., and (c) except as provided in paragraph 72 of this Order, any and all Claims, Liens, Liabilities, encumbrances, charges and other interests and any and all right, title, and interests related thereto, of governmental entities relating to any tax or similar liabilities.

55. Authorization to Consummate Plan Transactions. The Debtors and the Reorganized Debtors are all authorized to consummate the transactions contemplated in the Investment Agreement and in the Plan and to enter into, execute and deliver all necessary documents, including those required in connection with the Debt Financing Arrangements, including, without limitation, any such document necessary to effect the release and discharge of any mortgage, deed of trust, Lien, pledge, or other security interest on, in or against the Mortgage Properties.

56. Debt Financing Arrangements Not a Fraudulent Transfer. The guarantees, mortgages, pledges, liens and other security interests, and all other consideration granted pursuant to or in connection with the Debt Financing Arrangements are granted in good faith, for good and valuable consideration and for legitimate business purposes as an inducement to the Debt Financing Lenders to make the Debt Financing Arrangements, and do not constitute a fraudulent conveyance or fraudulent transfer and shall not otherwise be subject to avoidance or re-characterization and the borrowers under the Debt Financing Arrangements and the Debt Financing Lenders are authorized to enter into the Debt Financing Arrangements.

57. Successor or Transferee Liability and Debt Financing Arrangements. Neither the Investor, the Sponsors, the Debt Financing Lenders, nor any borrower, guarantor,



pledgor, loan party or owner, lessee or licensee of collateral under the Debt Financing Arrangements that is not a Debtor shall have any successor or transferee liability of any kind, nature or character.

58. Conditions to Effective Date. The Plan shall not become effective unless and until the conditions set forth in Section 9.1 of the Plan have been satisfied or waived pursuant to Section 9.2 of the Plan.

59. Retention of Jurisdiction. Pursuant to Article XII of the Plan, this Court shall retain and have exclusive jurisdiction over any matter arising under the Bankruptcy Code and arising in or related to these Chapter 11 Cases or the Plan, to the fullest extent as is legally permissible.

60. Effectuating Documents and Further Transactions. On or before the Effective Date, and without the need for any further order or authority, the Debtors shall file with this Court or execute, as appropriate, such agreements and other documents that are in form and substance satisfactory to the Investor and each of the Sponsors as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Each of the officers of the Debtors, the Reorganized Debtors and NewCo is authorized, without the need for any further order or authority, to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any notes or securities issued pursuant to the Plan. The Reorganized Debtors and NewCo are authorized to execute all documents and enter into all agreements as may be necessary and appropriate in connection with the Debt Financing Arrangements.

61. The Plan Administrator. The appointment of Capstone Advisory Group, LLC as the Plan Administrator is hereby approved.

62. Compliance with Tax Requirements. In connection with the Plan, the Debtors the Plan Administrator and the Litigation Trustee will comply with all withholding and reporting requirements imposed by federal, state and local taxing authorities, and all distributions under the Plan shall be subject to such withholding and reporting requirements.

63. Modifications. Pursuant to Section 13.1 of the Plan, except with respect to the Restructuring Transactions as set forth in paragraph 9 hereof, the Plan may be altered, amended or modified by the Debtors, in consultation with the Investor, each of the Sponsors and the Special Servicer (in consultation with the Operating Advisor), after the Confirmation Date, as provided in section 1127 of the Bankruptcy Code; provided, however, that no such alterations, amendments or modifications that are material shall be made without the consents of the Investor, each of the Sponsors and the Special Servicer (in consultation with the Operating Advisor), which consents shall not be unreasonably withheld. The Plan, as altered, amended or modified must satisfy the conditions of sections 1122, 1123 and 1129 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code. A holder of an Allowed Claim that has accepted the Plan shall be deemed to have accepted the Plan as altered, amended or modified if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder. Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan, without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Equity Interests.

64. Payment of Statutory Fees. All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid by the Debtors on or before the Effective Date.

65. Post-Confirmation Date Professional Fees and Expenses. From and after the Confirmation Date, the Plan Administrator and the Litigation Trustee shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of professional persons thereafter incurred by them.

66. Dissolution of Creditors' Committee. On the Effective Date, the Creditors' Committee shall be released and discharged of and from all further authority, duties, responsibilities, and obligations relating to and arising from and in connection with the Debtors' Chapter 11 Cases, and, except for the limited purpose of preparing and presenting its final applications for fees and expenses (including the final application for reimbursement of expenses of members of the Creditors' Committee) and the final resolution thereof; provided, however, (a) if the Effective Date occurs before the Confirmation Order becomes a Final Order, the Creditors' Committee may continue to exist and to serve for the purposes of any pending appeal of the Confirmation Order, and (b) the Creditors' Committee will continue to exist and to serve and have a right to be heard for the purposes of any issue relating to ESI.

67. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer, merger or consolidation under, in furtherance of, or in connection with the Plan, shall not be subject to any sales and use, stamp, real estate transfer, mortgage recording, or other similar tax.

The Reorganized Debtors are hereby authorized to deliver a notice of this Confirmation Order, with the Plan annexed, to any state or local recording officer, and such officer is hereby directed to accept for filing the above documents or instruments without charging any sales and use, stamp, real estate transfer, mortgage recording, or other similar tax. Such notice (a) shall have the effect of an Order of this Court, (b) shall constitute sufficient notice of the entry of this Confirmation Order to such filing and recording officers and (c) shall be a reasonable instrument notwithstanding any contrary provision of non-bankruptcy law. The Bankruptcy Court specifically retains jurisdiction to enforce the foregoing direction, by contempt or otherwise.

68. Governmental Approvals Not Required. This Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state or other governmental authority with respect to the implementation or consummation of the Plan and Disclosure Statement, any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement and any amendments or modifications thereto (including, without limitation, in connection with the execution and delivery of the documents evidencing and securing the Debt Financing Arrangements and the documents evidencing the termination and cancellation of the Mortgage Facility and the release of Liens on the Mortgage Properties heretofore granted thereunder).

69. Securities Laws Exemption. To the extent the Litigation Trust Beneficiaries' interest in the Litigation Trust is deemed to be a security, the distribution under the Plan of interests in the Litigation Trust, shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code, as amended.

70. Professional Compensation and Reimbursement. Pursuant to Section 2.2 of the Plan, all entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under section 330 of the Bankruptcy Code or applications for allowance of Administrative Expenses arising under section 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 503(b)(6) of the Bankruptcy Code shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred and applications for allowance of Administrative Expenses arising under section 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 503(b)(6) of the Bankruptcy Code by the first Business Day that is forty-five (45) days from and after the Effective Date. The date to hear and determine such applications for final allowances of compensation or reimbursement of expenses under section 330 of the Bankruptcy Code or applications for allowance of Administrative Expense Claims arising under section 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 503(b)(6) of the Bankruptcy Code will be set by the Bankruptcy Court and will be within a reasonable time after the deadline to file such applications.

71. The Allowed Amount of all Administrative Expense Claims arising under section 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 503(b)(6) of the Bankruptcy Code shall, in full satisfaction, settlement, discharge and release thereof, and in exchange therefore, be paid in full, in Cash, from the Administrative/Priority Claims Reserve (a) upon the later of (i) the Effective Date and (ii) the date upon which any such Administrative Expense Claim becomes Allowed or (b) at such later date or upon such other less favorable terms as may be mutually agreed upon between each such Administrative Expense Creditor and the Plan Administrator.

72. With respect to the Objections filed or asserted by (i) the County of Denton, Midway Independent School District and the County of Williamson [Docket No. 1123], (ii) the Lewisville Independent School District and Carrollton-Farmers Branch Independent School District [Docket No. 1127], (iii) the Texas Comptroller of Public Accounts [Docket No. 1129], (iv) the Richardson ISD, Fort Worth ISD, Eagle Mountain-Saginaw ISD, Arlington ISD and Dallas Country Utility and Recreation District [Docket No. 1130], (v) Arlington ISD, Bexar County, Coppell ISD, Cypress-Fairbanks ISD, Dallas County, City of El Paso, Fort Bend County, Harris County, Irving ISD, Katy ISD and McLennan County, City of Memphis [Docket No. 1137] (vi) San Bernardino County Tax Collector, County of Riverside Tax Collector, and Treasurer of Douglas County [Docket Nos. 1099, 1100] (collectively, the “Tax Objectors”), to the extent that a Tax Objector has, by operation of state law, first priority statutory liens on the real and personal property of the Debtors located in the jurisdiction of a particular tax objector, relating to ad valorem taxes on such real property of the Debtors assessed for the 2009 or 2010 tax year, each such Tax Objector shall retain its liens until the applicable taxes due and payable are paid in full. The payment in full of such taxes will include any and all applicable state law interest to the extent payable pursuant to the Bankruptcy Code (including all applicable state law interest under sections 506(b) and 511 of the Bankruptcy Code).

73. With respect to all property taxes, real estate taxes, ad valorem taxes and similar taxes that relate to the period prior to the Effective Date, regardless of when such taxes are finally determined by the applicable taxing authority as due and payable, and that have not been paid as of the Effective Date, 50% of the amount of such taxes shall be for the account of and be the obligation of the Debtors and 50% of the amount of such taxes shall be for the account of and be the obligation of the Reorganized Debtors; provided, that the Reorganized

Debtors shall pay all such property taxes, real estate taxes, ad valorem taxes and similar taxes as well as occupancy taxes, sales taxes, use taxes and similar taxes for the year 2010 (to the extent not all ready paid as of the Effective Date) payable by the Debtors or the Reorganized Debtors after the Effective Date in the ordinary course of business as and when they become due and payable, regardless of whether the tax, or portions of the tax, relate to the period prior to the Effective Date. On the Effective Date, the Debtors shall pay NewCo 50% of the amount of all property taxes, real estate taxes, ad valorem taxes and similar taxes payable by the Debtors which are accrued and unpaid and/or relate to the period prior to and as of the Effective Date, less 50% of the prepaid amount of any such taxes for periods after the Effective Date.

74. No Amendment, Modification or Waiver of Cash Collateral Order or Other Documents. Except as otherwise provided for in the Plan, nothing contained in the Plan shall be deemed to be an amendment, modification or waiver of any term or provision of the Trust and Servicing Agreement, the Mortgage Facility, or the Cash Collateral Order.

75. Nothing in the Plan, this Order, the ESI Settlement or the ESI Settlement Order [Docket No.       ] will have the effect of impairing, enhancing, or altering either (i) the rights, remedies or defenses (or the enforceability thereof) of any defendant with respect to any rights, remedies, claims, causes of action (or interests therein) that are transferred to the Litigation Trust, or (ii) the rights, remedies, claims or causes of action (or interests therein) of any Debtor or ESI that are so transferred; it being understood that the effect of the Plan, this Order, the ESI Settlement and the ESI Settlement Order is to be “litigation neutral” with respect to all such rights, remedies, defenses, claims and causes of action.

76. Notice of Entry of Confirmation Order. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c), the Reorganized Debtors or the Plan Administrator, as the case

may be, shall file and serve notice of entry of this Order in substantially the form annexed hereto as “Exhibit B” (the “Notice of Confirmation Order”) on all creditors and interest holders, the United States Trustee for the Southern District of New York, the attorneys for the Creditors’ Committee, the attorneys for the Investor, and other parties in interest, by causing the Notice of Confirmation Order to be delivered to such parties by first-Class mail, postage prepaid, within 10 business days after entry of this Order. The Notice of Confirmation Order shall also be posted on the website of the Debtors’ Court-appointed voting and tabulation agent, KCC: <http://www.kcellc.net/extendedstay>. Such notice is adequate under the particular circumstances and no other or further notice is necessary. The form of Notice of Confirmation Order substantially in the form annexed hereto as “Exhibit B” is approved.

77. Notice of Effective Date. As soon as practicable after the occurrence of the Effective Date, the Reorganized Debtors or the Plan Administrator shall file notice of the occurrence of the Effective Date and shall serve a copy of same on all parties entitled to receive notice in these Chapter 11 Cases.

78. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

79. Revocation or Withdrawal of the Plan of Reorganization. The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date, (i) with the consent of the Special Servicer and the Operating Advisor (such consent not to be unreasonably withheld), in their discretion, or at the direction of the Investor, in the event that the Investment Agreement is terminated in accordance with Section 13 thereof, and (ii) in all other circumstances with the consent of the Investor and each of the Sponsors, in their sole discretion, and the consent of the Special Servicer and the Operating Advisor (such consent not to be



unreasonably withheld). If the Debtors take such action, the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors.

80. Reversal. If any of the provisions of this Order are hereafter reversed, modified or vacated by a subsequent order of the Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under, or in connection with, the Plan prior to receipt of written notice of such order by the Debtors. Notwithstanding any such reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order, the Plan, all documents relating to the Plan and any amendments or modifications to any of the foregoing.

81. Conflicts Between Order and Plan. The provisions of the Plan and this Order shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Order that cannot be so reconciled, then solely to the extent of such inconsistency, the provisions of this Order shall govern and any provision of this Order shall be deemed a modification of the Plan and shall control and take precedence. The provisions of this Order are integrated with each other and are non-severable and mutually dependent.

82. Final Order; Waiver of Stay. This Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof. Any stay of this Order

provided by any Bankruptcy Rule (including Bankruptcy Rule 3020(e)) is hereby waived, and this Order shall be effective and enforceable immediately upon its entry by the Court.

Dated: July \_\_, 2010  
New York, New York

---

UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**The Plan**

**Docket No. 1157**

**EXHIBIT B**

**Notice of Confirmation Order**

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

Attorneys for Debtors and  
Debtors in Possession

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

-----X  
: **Chapter 11 Case No.**  
: **09-13764 (JMP)**  
: **(Jointly Administered)**  
: **Debtors.**  
: **EXTENDED STAY INC., et al.,**  
: **In re**  
-----X

**NOTICE OF ENTRY OF ORDER CONFIRMING DEBTORS' FIFTH  
AMENDED JOINT PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE, DATED JUNE 8, 2010, AS AMENDED**

**TO ALL CREDITORS, INTEREST HOLDERS, AND PARTIES IN INTEREST:**

PLEASE TAKE NOTICE that an order (the “**Confirmation Order**”) confirming the Debtors’ Fifth Amended Joint Plan Of Reorganization Under Chapter 11 of the Bankruptcy Code, as Amended, for ESA Properties LLC and seventy-three of its debtor affiliates, as debtors and debtors in possession (as amended the “**Plan**”), [**Docket No. 1027**], was entered in the above-captioned cases by the Honorable James Peck, United States Bankruptcy Judge, and docketed by the Clerk of the Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) on July \_\_, 2010. Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that the Confirmation Order and Plan establish certain deadlines by which holders of Claims must take certain actions.

PLEASE TAKE FURTHER NOTICE that copies of the Confirmation Order, the Plan, and related documents are available for inspection in the office of the Clerk of the Bankruptcy Court at the Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, or can be viewed for free at the Debtors’ claims agent’s website at [www.kcellc.net/extendedstay](http://www.kcellc.net/extendedstay) or for a fee on the Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). To access documents on the Court’s website, you will need a PACER password and login, which can be obtained at

<http://www.pacer.psc.uscourts.gov>. To obtain a hard copy of the Confirmation Order or the Plan, please contact the Debtors' claims agent, Kurtzman Carson Consultants LLC, at **(310) 823-9000**.

PLEASE TAKE FURTHER NOTICE that the Plan and its provisions are binding on the Debtors, the Reorganized Debtors, any holder of a Claim against or Equity Interest in the Debtors, including all governmental entities, and such holder's successors and assigns (whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has voted to accept the Plan), any and all non-debtor parties to assumed executory contracts and unexpired leases with the Debtors, the parties who filed objections to the Plan, the Mortgage Debt Parties, the holders of the Mortgage Certificates, all parties receiving property under the Plan, and their respective heirs, executors, administrators, successors, or assigns, and every other party in interest in the Debtors' Chapter 11 Cases.

Dated: July \_\_, 2010  
New York, New York

**WEIL, GOTSHAL & MANGES LLP**

767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

Attorneys for the Debtors  
and Debtors in Possession

**EXHIBIT B**

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

-----X  
In re : Chapter 11 Case No.  
EXTENDED STAY INC., et al., : 09-13764 (JMP)  
Debtors. : (Jointly Administered)  
-----X

**ORDER CONFIRMING DEBTORS' FIFTH  
AMENDED JOINT PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE, DATED JUNE 8, 2010, AS AMENDED**

ESA Properties ~~LLC~~LLC, and seventy-three of its debtor affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the “Debtors”), having proposed and filed the Debtors’ Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 8, 2010 [Docket No. ~~1027~~1027, 1157] (as amended, the “Plan”) with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”); and the Bankruptcy Court having entered, after due notice and a hearing, the Order (I) Pursuant to Sections 105 and 363(b) of the Bankruptcy Code Approving Investment Agreement with Successful Bidder, (II) Approving Disclosure Statement Reflecting the Successful Bid, (III) Establishing Solicitation and Voting Procedures, (IV) Scheduling A Confirmation Hearing, and (V) Establishing Notice and Objection Procedures for Confirmation of the Debtors’ Proposed Plan of Reorganization, dated June 22, 2010 [Docket No. 1098] (the “Disclosure Statement Order”); and the Disclosure Statement for Debtors’ Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 8, 2010 [Docket No. 1028] (as amended, the “Disclosure Statement”) having been approved by this Court and the Plan and the Solicitation Package (as defined below) having been duly transmitted to holders of



Claims<sup>1</sup> entitled to vote thereon as provided in the Disclosure Statement Order; and due notice of (i) entry of the Disclosure Statement Order, (ii) the Confirmation Hearing, and (iii) the deadline for voting on, and/or objecting to the Plan having been provided to holders of Claims against and Equity Interests in the Debtors and other parties in interest, including holders of Mortgage Certificates, in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”); and such notice being sufficient under the circumstances and no other or further notice being required; and objections (the “Objections”) to the Plan having been interposed; and the Debtors having filed the Plan Supplement (as defined below) on July 1, 2010 [Docket No. 1118], July 13, 2010 [Docket No. 1138], July 15, 2010 [Docket No. 1148] and July [ ], 2010 [Docket No. [ ]] in accordance with the provisions of the Plan and such filing and notice thereof being sufficient under the circumstances and no further notice being required; and upon consideration of the (i) Memorandum of Law in Support of Confirmation of the Debtors’ Fifth Amended Joint Plan Under Chapter 11 of the Bankruptcy Code (the “Confirmation Brief”) [Docket No. \_\_\_\_]; (ii) the Declaration of Gil Hopenstand Pursuant to Local Bankruptcy Rule 3018-1(A) Certifying the Methodology for the Tabulation of Votes and Results of Voting on the Debtors’ Fifth Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated July 13, 2010 [Docket No. 1136] (describing the methodology for the tabulation and results of voting with respect to the Plan and evidencing that the Debtors have received the requisite acceptances of the Plan in both number and amount as required by section 1126 of the Bankruptcy Code) (the “First KCC Declaration”); (iii) Supplemental Declaration of Gil Hopenstand Pursuant to Local Bankruptcy

---

<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Plan.

Rule 3018-1(A) Certifying the Methodology for the Tabulation of Votes and Results of Voting on the Debtors' Fifth Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated July 16, 2010 [Docket No. 1152] (together with the First KCC Declaration, the "KCC Declaration"); (iv) Declaration of Ari Lefkovits in Support of Confirmation of the Debtors' Fifth Amended Joint Plan Under Chapter 11 of the Bankruptcy Code (the "Lefkovits Declaration," and together with the KCC Declaration, the "Declarations"); and the hearing to consider confirmation of the Plan having been held before the Bankruptcy Court on July 20, 2010 (the "Confirmation Hearing"); and the Bankruptcy Court having reviewed and considered the Plan, the Plan Supplement, the Disclosure Statement, the Disclosure Statement Order, the Confirmation Brief, the Declarations, each of the Objections which has not been withdrawn or otherwise mooted, the Response thereto and all related documents; and the appearance of all interested parties having been duly noted in the record of the Confirmation Hearing, including the Declarations filed and testimony therein and the exhibits admitted into evidence; and upon all of the proceedings had before the Bankruptcy Court and upon the entire record of the Confirmation Hearing; and the Bankruptcy Court having determined based upon all of the foregoing that the Plan should be confirmed, as reflected by the Bankruptcy Court's rulings made herein and on the record of the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND, DETERMINED, ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

### **FINDINGS OF FACT**

A. Findings and Conclusions. The findings and conclusions set forth herein and on the record of the Confirmation Hearing constitute the Bankruptcy Court's findings of fact

and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction. The Court has jurisdiction over the Debtors' Chapter 11 Cases (as defined below), confirmation of the Plan and the Objections pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court has jurisdiction to enter a final order with respect thereto. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Commencement and Joint Administration of the Debtors' Chapter 11 Cases. On June 15, 2009 or February 18, 2010 (as applicable, the "Commencement Date") each of the above-captioned Debtors commenced a case under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). By prior order of the Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. The Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee has been appointed in these Chapter 11 Cases.

D. Official Committee of Unsecured Creditors. On June 19, 2009, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Creditors' Committee"). The Creditors' Committee was reconstituted on January 25, 2010 and March 3, 2010.

E. Appointment of Examiner. On September 24, 2009 the Bankruptcy Court ordered the U.S. Trustee to appoint an examiner to conduct an investigation regarding: (i) the structure, negotiation and closing of the acquisition of the Debtors and Extended Stay Inc. from the Blackstone Group, (ii) the financial circumstances that led to the filing of the Chapter 11 Cases of the Debtors and Extended Stay Inc., and (iii) whether the estates of the Debtors and Extended Stay Inc. have any claims against any person with respect to items (i) and (ii) of this paragraph. [Docket No. 3110 ]. On September 28, 2009, the U.S. Trustee appointed Ralph R. Mabey, Esq. as examiner. [Docket No. 312].

F. Judicial Notice. The Bankruptcy Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases.

G. Burden of Proof. The Debtors have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

H. Resolution of Objections. As presented at the Confirmation Hearing and as provided herein, the consensual resolutions of certain Objections satisfy all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules and are in the best interests of the Debtors and are hereby approved. All Objections that were not resolved by agreement at the Confirmation Hearing are hereby overruled.

I. Solicitation and Notice. On June 22, 2010, the Bankruptcy Court entered the Disclosure Statement Order, which, among other things, approved the Disclosure Statement,

finding that it contained “adequate information” within the meaning of section 1125 of the Bankruptcy Code, and established procedures for the Debtors’ solicitation and tabulation of votes on the Plan. The (a) Notice of Confirmation Hearing, (b) Disclosure Statement (with a copy of the Plan attached thereto), (c) Disclosure Statement Order (without attachments), (d) letter from the Creditors’ Committee, (e) notices of non-voting statuses, and (f) appropriate ballots for voting on the Plan (the “Ballots”) (collectively, the “Solicitation Package”) were served in compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order (the “Solicitation”). As described in the Disclosure Statement Order, and as set forth in the KCC Declaration, and the affidavits of service by Kurtzman Carson Consultants LLC (“KCC”), filed at Docket Nos. 1105 and 1110 respectively, (i) the service of the Solicitation Packages was adequate and sufficient under the circumstances of these Chapter 11 Cases, and (ii) adequate and sufficient notice of the Confirmation Hearing and other requirements, deadlines, hearings and matters described in the Disclosure Statement Order was timely provided in compliance with the Bankruptcy Rules and provided due process to all parties in interest. No other or further notice is required.

J. Voting. Votes on the Plan were solicited after disclosure of “adequate information” as defined in section 1125 of the Bankruptcy Code. As evidenced by the KCC Declaration, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith and in a manner consistent with the Disclosure Statement Order, the Bankruptcy Code, and the Bankruptcy Rules.

K. The Mezzanine Facilities Claim Ballot. The Debtors sent the Mezzanine Facilities Claim Ballot to the Special Servicer and to the holders of the Mezzanine Facilities Claims in Class 4B in accordance with the Disclosure Statement Order. The Special Servicer has

asserted that it has the right to vote the Mezzanine Facilities Claims pursuant to the Intercreditor Agreement. The holders of Mezzanine Facilities Claims have asserted that they have the right to vote the Mezzanine Facilities Claims. The Bankruptcy Court does not have to resolve the dispute between the Special Servicer and the holders of the Mezzanine Facilities Claims because, as reflected in the KCC Declaration, Class 4B has accepted the Plan whether the Ballots submitted by the Special Servicer or the Ballots submitted by the holders of the Mezzanine Facilities Claims are counted with respect to Class 4B.

L. Plan Supplement. On July 1, 2010, the Debtors filed that certain supplement to the Plan [Docket No. 1118], which includes the following documents: (i) Schedule of Executory Contracts and Unexpired Leases to be Assumed Pursuant to Section 11.1 of the Plan; (ii) Schedule of Executory Contracts and Unexpired Leases to be Rejected Pursuant to Section 11.2 of the Plan; and (iii) a notice indicating that the Form of Litigation Trust Agreement would be filed in the future. On July 13, 2010, the Debtors filed an update to the Plan Supplement [Docket No. 1136], which included the Litigation Trust Agreement. On July 15, 2010, the Debtors filed a third supplement to the Plan [Docket No. 1148], which included Restructuring Transaction(s). On July [redacted], 2010, the Debtors filed a fourth supplement to the Plan [Docket No. \_\_\_\_], which included a list of members of the NewCo Board of Managers as of the Effective Date (together with Docket No. 1118, Docket No. 1136, Docket No. [redacted] and Docket No. [redacted] the “Plan Supplement”). All materials included in the Plan Supplement and the amendments thereto are integral to, part of and incorporated by reference into the Plan. The Plan Supplement and the amendments thereto comply with the terms of the Plan, and the filing and notice of such documents is good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order and no other or further notice is necessary.

The Debtors reserve their right to alter, amend, update or modify the Plan Supplement before the Effective Date to be consistent with the Plan.

### **MODIFICATIONS TO THE PLAN**

M. Modification. Subsequent to Solicitation, on [\_\_\_, 2010], the Debtors filed an amendment to the Plan which includes several modifications to the Plan that address objections raised by various parties (the “Modifications”). Pursuant to section 1127(a) of the Bankruptcy Code, the Modifications are hereby made a part of the Plan.

N. Notice of Modifications. The [filing] [and the description of the Modifications on the record at the Confirmation Hearing] constitute due and sufficient notice thereof under the circumstances of these Chapter 11 Cases. The Plan, as modified by the Modifications, constitutes the “Plan.”

O. Deemed Acceptance of Plan as Modified. The modifications to the Plan reflected by the Modifications are either (i) immaterial or do not adversely affect the treatment of any Claim against or Equity Interest in the Debtors under the Plan, or (ii) the adversely affected parties have consented to the Modifications. Therefore, in accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan, as modified by the Modification. No holder of a Claim or Equity Interest that has voted to accept the Plan shall be permitted to change its acceptance to a rejection as a consequence of the Modification. The Modifications neither require additional disclosure under section 1125 of the Bankruptcy Code nor re-solicitation of votes on the Plan under section 1126 of the Bankruptcy Code.

P. Compliance with 1127. The Modifications incorporated into the Plan comply with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

**COMPLIANCE WITH SECTION 1129 OF THE BANKRUPTCY CODE**

Q. Plan Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)).  
The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

R. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). In addition to Administrative Expense Claims and Priority Tax Claims, which need not be classified, Article III of the Plan designates the following six Classes of Claims and ten Classes of Equity Interests: Class 1 (Priority Claims), Class 2 (Mortgage Facility Claim), Class 3 (ESA UD Mortgage Claim), Class 4A (Mortgage Facility Deficiency Claim), Class 4B (Mezzanine Facilities Claims), Class 5 (General Unsecured Claims), Class 6 (Existing Equity), Class 7 (ESA MD Properties Trust Certificate), Class 8 (ESA MD Borrower Interests), Class 9 (ESA P Portfolio MD Trust Certificate), Class 10 (ESA P Portfolio MD Borrower Interests), Class 11 (ESA Canada Properties Interests), Class 12 (ESA Canada Properties Borrower Interests), Class 13 (ESH/TN Properties L.L.C. Membership Interests), Class 14 (ESH/ESA General Partnership Interests), Class 15 (Other Existing Equity Interests), and Class 16 (Other Secured Claims). Each of the Claims or Equity Interests, as the case may be, in each particular Class is substantially similar to the other Claims or Equity Interests in such Class. Valid business, legal and factual reasons exist for separately classifying the various Claims and Equity Interests pursuant to the Plan, and such Classes do not unfairly discriminate between holders of Claims and Equity Interests. The Plan therefore satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.



S. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article III of the Plan specifies that Class 1 (Priority Claims), Class 7 (ESA MD Properties Trust Certificate), Class 8 (ESA MD Borrower Interests), Class 9 (ESA P Portfolio MD Trust Certificate), Class 10 (ESA P Portfolio MD Borrower Interests), Class 11 (ESA Canada Properties Interests), Class 12 (ESA Canada Properties Borrower Interests), Class 13 (ESH/TN Properties L.L.C. Membership Interests), Class 14 (ESH/ESA General Partnership Interests) and Class 16 (Other Secured Claims) are unimpaired under the Plan, thereby complying with section 1123(a)(2) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(2) of the Bankruptcy Code.

T. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article III of the Plan designates Class 2 (Mortgage Facility Claim), Class 3 (ESA UD Mortgage Claim), Class 4A (Mortgage Facility Deficiency Claim), Class 4B (Mezzanine Facilities Claims), Class 5 (General Unsecured Claims), Class 6 (Existing Equity) and Class 15 (Other Existing Equity Interests) as impaired, and Sections 4.2, 4.3, 4.4, 4.5, 4.6, 4.7 and 4.16 of the Plan specify the treatment of Claims and Equity Interests in such Classes, thereby complying with section 1123(a)(3) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(3) of the Bankruptcy Code.

U. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment on account of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(4) of the Bankruptcy Code.

V. Implementation of the Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents set forth in the Plan Supplement provide adequate and proper means for the

implementation of the Plan as required by section 1123(a)(5) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(5) of the Bankruptcy Code.

W. Non-Voting Equity Securities/Allocation of Voting Power (11 U.S.C. § 1123(a)(6)). The Plan provides for (i) 100% of the New Debtor Equity of the surviving Tier 1 Debtors to be issued to NewCo or a subsidiary of NewCo, (ii) the Equity Interests of each of the Tier 2 Debtors and the ESH/TN Properties Membership Interests to remain outstanding and Unimpaired, and (iii) the Equity Interests of each of the Tier 3 Debtors to be cancelled, extinguished and not re-issued. The Tier 3 Debtors are deemed to be liquidated and dissolved by the Debtors as provided for in the Plan. The Plan provides that (i) the NewCo Certificate of Formation will include, and (ii) the certificates of incorporation, limited liability company operating agreements or certificates of trust (as applicable) for the surviving Tier 1 Debtors and Tier 2 Debtors shall be amended to include, a provision prohibiting the issuance of non-voting equity securities in accordance with section 1123(a)(6) of the Bankruptcy Code. As such, the Plan does not provide for the issuance of nonvoting equity securities, and the Plan satisfies section 1123(a)(6) of the Bankruptcy Code.

X. Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). The identity and affiliation of any individuals proposed to serve, after confirmation of the Plan, as a member of the NewCo Board of Managers, and a director, officer or voting trustee of the Debtors, or the Reorganized Debtors that will survive the Effective Date, or NewCo, have been disclosed in the Plan Supplement. The Plan Administrator has been selected by the Special Servicer (with the consent of the Operating Advisor). The Litigation Trustee [has been] selected by mutual agreement of the Special Servicer (with the consent of the Operating Advisor, such consent not to be unreasonably withheld) and the Creditors' Committee. Accordingly, the

selection of Directors, Officers, the Plan Administrator and the Litigation Trustee is consistent with the interests of creditors, equity security holders, and public policy. As such, the Plan satisfies Section 1123(a)(7) of the Bankruptcy Code.

Y. Additional Plan Provisions (11 U.S.C. § 1123(b)). The other provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b) of the Bankruptcy Code. The failure to specifically address a provision of the Bankruptcy Code in this Order shall not diminish or impair the effectiveness of this Order.

Z. Impairment/Unimpairment of Classes of Claims and Equity Interests (§ 1123(b)(1)). As contemplated by section 1123(b)(1) of the Bankruptcy Code, (a) Class 2 (Mortgage Facility Claim), Class 3 (ESA UD Mortgage Claim), Class 4A (Mortgage Facility Deficiency Claim), Class 4B (Mezzanine Facilities Claims), Class 5 (General Unsecured Claims), Class 6 (Existing Equity) and Class 15 (Other Existing Equity Interests) are impaired by the Plan.

AA. Assumption and Rejection of Executory Contracts (11 U.S.C. § 1123(b)(2)). In accordance with section 1123(b)(2) of the Bankruptcy Code, Sections 11.1 and 11.2 of the Plan provide that, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases that exist between the Debtors and any person or entity that is listed in the relevant Exhibit to the Plan Supplement or that have not been rejected by the Debtors with the approval of the Bankruptcy Court and that are not subject of pending motions to reject on the Confirmation Date, shall be deemed to have been assumed by the applicable Debtor and assigned to NewCo or its designee, as of the Effective Date. Any executory contracts or unexpired leases of any Debtor that are set forth in the relevant Exhibit to

the Plan Supplement shall be deemed to have been rejected by the applicable Debtor.

Accordingly, the Plan satisfies the requirements of section 1123(b)(2) of the Bankruptcy Code.

BB. Debtors Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, including having complied with section 1125 of the Bankruptcy Code with respect to the Disclosure Statement and the Plan.

CC. No Rejection Damages Associated with Rejected Executory Contracts and Unexpired Leases. Pursuant to Section 11.2 of the Plan, the Debtors rejected a number of executory contracts and unexpired leases. There are no rejection damages arising from the rejection of the executory contracts and unexpired leases.

DD. Plan Proposed in Good Faith (11 U.S.C. § 1129 (a)(3)). The Debtors are the proponents of the Plan. The Debtors have proposed the Plan (including all documents necessary to effectuate the Plan) in good faith and not by any means forbidden by law, thereby complying with section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the record of these Chapter 11 Cases, including the Declarations and the record of the hearing to approve the Disclosure Statement, the record of the Confirmation Hearing, and other proceedings held in these Chapter 11 Cases. The Plan is based upon extensive, arms'-length negotiations between and among the Debtors, the Investor, the Sponsors, the Special Servicer, the Operating Advisor, the Creditors' Committee and other parties-in-interest, and represents the culmination of months of intensive negotiations and discussions among all parties in interest and the conclusion of a successful Auction. Moreover, the Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' estates and effectuating a successful reorganization of the Debtors. The Plan accomplishes maximization of the Debtors' estates and

equitable distribution of the Debtors' assets by providing the means through which the Debtors and the Litigation Trust may effectuate distributions to the Litigation Trust Beneficiaries. ¶The Creditors' Committee,<sup>2</sup> the Special Servicer, the Operating Advisor and ¶Manufacturers and Traders Trust Company] (~~“M&T, in its capacity as indenture trustee for the Extended Stay Inc. 9-7/8% Senior Subordinated Notes due 2011 (the “Indenture Trustee”)~~) support the Plan. Further, the indemnification, exculpation, release, and injunction provisions of the Plan have been negotiated in good faith and at arms' length with, among other persons, representatives of the Debtors, the Creditors' Committee, the Investor, the Sponsors, the Special Servicer, the Operating Advisor, ~~M&T~~the Indenture Trustee, and their respective advisors, are consistent with sections 105, 1122, 1123(b)(3)(A), 1123(b)(6), 1129, and 1142 of the Bankruptcy Code, and are each necessary to the Debtors' successful emergence from chapter 11. Accordingly, the Plan and the related documents have been filed in good faith and the Debtors have satisfied their obligations under section 1129(a)(3) of the Bankruptcy Code.

EE. Payment for Services or Cost and Expenses (11 U.S.C. § 1129(a)(4)).

Pursuant to the interim compensation procedures previously approved by this Court and established in these Chapter 11 Cases pursuant to section 331 of the Bankruptcy Code, all payments made or to be made by the Debtors for services or for costs and expenses in connection with these Chapter 11 Cases, or in connection with the Plan and incident to the chapter 11 case, have been approved by, or are subject to the approval of, the Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

FF. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliation of

---

~~<sup>2</sup>Language in draft form pending completion of settlement discussions.~~

any individuals proposed to serve, after confirmation of the Plan, as a member of the NewCo Board of Managers, and a director, officer or voting trustee of the Debtors, or the Reorganized Debtors that will survive the Effective Date, or NewCo, have been disclosed in the Plan Supplement. To the extent that the appointment of the Plan Administrator or the Litigation Trustee implicates section 1129(a)(5), the appointment of the Plan Administrator will be made by the Special Servicer (with the consent of the Operating Advisor, which consent shall not be unreasonably withheld) and the Litigation Trustee has been selected by mutual agreement of the Special Servicer (with the consent of the Operating Advisor) and the Creditors' Committee. As such, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

GG. No Rate Changes (11 U.S.C. § 1129(a)(6)). No governmental regulatory commission has jurisdiction, after confirmation of the Plan, over the rates of the Debtors. Thus, section 1129(a)(6) of the Bankruptcy Code is not applicable in these Chapter 11 Cases.

HH. Best Interest of Creditors (11 U.S.C. § 1129(a)(7)). As demonstrated by the Lefkovits Declaration, the KCC Declaration, and the liquidation analysis contained in the Disclosure Statement, which employed commonly accepted methodologies and reasonable assumptions, with respect to each impaired class of Claims against or Equity Interests in the Debtors, each holder of a Claim or Equity Interest in such Class has accepted the Plan or will receive or retain pursuant to the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. Accordingly, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

II. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Class 1 (Priority Claims), Class 7 (ESA MD Properties Trust Certificate), Class 8 (ESA MD Borrower

Interests), Class 9 (ESA P Portfolio MD Trust Certificate), Class 10 (ESA P Portfolio MD Borrower Interests), Class 11 (ESA Canada Properties Interests), Class 12 (ESA Canada Properties Borrower Interests), Class 13 (ESH/TN Properties L.L.C. Membership Interests), Class 14 (ESH/ESA General Partnership Interests) and Class 16 (Other Secured Claims) are unimpaired under the Plan and are, therefore, conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 2 (Mortgage Facility Claim), Class 3 (ESA UD Mortgage Claim), Class 4A (Mortgage Facility Deficiency Claim), Class 4B (Mezzanine Facilities Claim) and Class 5 (General Unsecured Claims), which are impaired Classes of Claims eligible to vote, have affirmatively voted to accept the Plan. As such, section 1129(a)(8) is satisfied with respect to these Classes of Claims. Class 6 (Existing Equity) and Class 15 (Other Existing Equity Interests) are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code, because they will not receive or retain any property on account of their interests in the Debtors. The Plan may nevertheless be confirmed because the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Class 6 and Class 15.

JJ. Treatment of Administrative Expense Claims and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Expense Claims and Priority Tax Claims pursuant to Article II of the Plan satisfies the requirements of sections 1129(a)(9)(A), (B), (C) and (D) of the Bankruptcy Code.

KK. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Classes 2, 3, 4A, 4B and 5, each of which is impaired under the Plan and entitled to vote, voted to accept the Plan by the requisite majorities, determined without including any acceptance of the Plan by any insider, thereby satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code. Specifically, as set forth in the KCC Declaration, 100% of the Creditors in Class 2, in number

and in dollar amount, voted to accept the Plan. The Creditor in Class 3 holding 100% in number and 100% in dollar amount voted to accept the Plan. Creditors in Class 4A holding 100% in number and 100% in dollar amount voted to accept the Plan. As to Class 4B, if the vote of the Special Servicer is dispositive, the creditors holding 100% in number and in dollar amount voted to accept the Plan. If the Ballots cast by the holders of the Mezzanine Facilities Claims are dispositive, creditors holding 60.7% in number and 84.87% in dollar amount voted to accept the Plan. As to Class 5, creditors holding 100% in number and dollar amount voted to accept the Plan. Therefore, the requirements of section 1129(a)(10) of the Bankruptcy Code have been satisfied.

LL. Feasibility (11 U.S.C. § 1129 (a)(11)). The information in the Disclosure Statement and the evidence proffered or adduced at the Confirmation Hearing and in the Lefkovits Declaration: (i) is persuasive and credible; (ii) has not been controverted by other evidence; and (iii) establishes that the Plan is feasible, there is a reasonable likelihood that the Reorganized Debtors will meet their financial obligations under the Plan in the ordinary course of business, and confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Reorganized Debtors, thereby satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

MM. Payment of Fees (11 U.S.C. § 1129(a)(12)). As required pursuant to Section 13.2 of the Plan, all fees payable under section 1930 of title 28 of the United States Code have been or will be paid on the Effective Date, thereby satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.



NN. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors have no obligations with respect to retiree benefits. Accordingly, section 1129(a)(13) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

OO. No Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

PP. Debtors Are Not Individuals (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals, and accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

QQ. No Applicable Nonbankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). The Debtors are moneyed, business, or commercial corporations, and/or partnerships, as the case may be, and, accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

RR. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). The Debtors have satisfied the requirements of sections 1129(b)(1) and (b)(2) of the Bankruptcy Code with respect to Class 6 (Existing Equity) and Class 15 (Other Existing Equity Interests) (the “Rejecting Classes”). Based on the evidence proffered or adduced at the Confirmation Hearing and in the Lefkovits Declaration, the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes, as required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, because the Rejecting Classes consist of certain Equity Interests in the Debtors, and no holders of similar Equity Interests are treated differently. Although the Plan preserves Equity Interests in Classes 7 through 14, such Equity Interests will be transferred,

either through the transfer of the parent company holding the Equity Interest or through the transfer of an indirect parent company, to NewCo. As such, the Equity Interests in Classes 7 through 14 are not preserved for the benefit of holders of prepetition Equity Interests in any of the Debtors, and the preservation of such Equity Interests in the Plan does not constitute unfair discrimination in favor of the holders of the Equity Interests in Classes 7 through 14, or unfair discrimination against the holders of the Equity Interests in Classes 6 and 15. Therefore, no class of Claims or Equity Interests having similar legal rights is receiving different treatment under the Plan. The Plan is “fair and equitable” as to the Rejecting Classes because no interests junior to the interests of the Rejecting Classes will receive or retain any property under the Plan on account of such junior interests. Based on the foregoing, the requirements of section 1129(b) of the Bankruptcy Code are met with respect to the Rejecting Classes, and the Plan may be confirmed notwithstanding the deemed rejection by the Rejecting Classes.

SS. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan filed in these cases, and accordingly, section 1129(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

TT. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code.

UU. Small Business Case (11 U.S.C. § 1129(e)). None of the Chapter 11 Cases are “small business case[s],” as that term is defined in the Bankruptcy Code, and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable.

### **Additional Findings**

VV. Good-Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Court in these Chapter 11 Cases and the KCC Declaration, the Debtors have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1125(a) and (e) of the Bankruptcy Code, and any applicable non-bankruptcy law, rule or regulation governing the adequacy of disclosure in connection with such solicitation.

WW. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

XX. Implementation. All documents necessary to implement the Plan, including, without limitation, those contained in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arms' length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

YY. Good Faith of the Debtors. The Debtors, and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, partners, affiliates, and representatives (i) have acted in good faith in negotiating, formulating, and proposing the Plan and agreements, compromises, settlements, transactions and transfers contemplated thereby, and (ii) will be acting in good faith in proceeding to (a) consummate the Plan and the agreements, compromises, settlements, transactions, and transfers contemplated thereby and (b) take the actions authorized and directed or contemplated by this Order.

ZZ. Good Faith of the Investor and the Sponsors. The Investor and the Sponsors, and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, partners, affiliates, and representatives (i) have acted in good faith in negotiating, formulating, and proposing the Plan and agreements, compromises, settlements, transactions and transfers contemplated thereby, and (ii) will be acting in good faith in proceeding to (a) consummate the Plan and the agreements, compromises, settlements, transactions, and transfers contemplated thereby and (b) take the actions authorized and directed or contemplated by this Order.

AAA. Good Faith of the Mortgage Debt Parties. The Mortgage Debt Parties, and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, partners, affiliates, and representatives (i) have acted in good faith in negotiating, formulating, and proposing the Plan and agreements, compromises, settlements, transactions and transfers contemplated thereby, and (ii) will be acting in good faith in proceeding to (a) consummate the Plan and the agreements, compromises, settlements, transactions, and transfers contemplated thereby and (b) take the actions authorized and directed or contemplated by this Order.

BBB. ~~AAA.~~ Executory Contracts and Unexpired Leases. The Debtors have satisfied the provisions of section 365 of the Bankruptcy Code with respect to the assumption, assignment and rejection of executory contracts and unexpired leases pursuant to Sections 11.1, 11.2, 11.4, and 11.5 of the Plan.

CCC. ~~BBB.~~ Transfers by Debtors. All transfers of property and assets of the Debtors' estates, including, without limitation, the transfer and assignment of the Litigation Trust

Assets to the Litigation Trust, shall be free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan, the Plan Supplement or this Order.

DDD. ~~CCC.~~ Vesting of Assets. Except as provided in the Plan, and in paragraph ~~71~~72 of this Order, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors, including the Mortgage Properties, but excluding the Litigation Trust Assets, shall vest in the Reorganized Debtors or NewCo, as applicable, free and clear of all Claims, Liens, Liabilities, encumbrances, charges and other interests, including, without limitation, any and all claims, liens, encumbrances and any and all right, title, and interests related thereto of governmental entities relating to any tax liabilities or similar liabilities. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law.

EEE. ~~DDD.~~ Deemed Sale of Mortgage Properties. Notwithstanding the vesting and retention of title of the Mortgage Properties in the Reorganized Debtors, the transfer of 100% of the New Debtor Equity of the surviving Tier 1 Debtors to NewCo and the distribution of the Cash Distribution by the Reorganized Debtors to the holder of the Allowed Mortgage Facility Claim effected pursuant to this Plan shall be deemed the equivalent of a sale of the Mortgage Properties to NewCo after foreclosure or acceptance of a deed in lieu of foreclosure by the Trustee or the Special Servicer, free and clear of all Claims, Liens, Liabilities, encumbrances, charges and other interests. On the Effective Date, all of the liens and security interests, and, with respect only to any Debtor or Extended Stay Inc., guarantees that were granted or made in connection with, and to secure and evidence the Mortgage Facility shall be terminated, cancelled and annulled (of record and otherwise). The Debtors, NewCo, the Reorganized Debtors, the Special Servicer, the Operating Advisor, all holders of Allowed Mortgage Facility Claims and the Debt Financing Lenders are authorized to execute and deliver all documents, and make all

filings and recordings, necessary or deemed advisable to evidence such termination, cancellation and annulment.

FFF. ~~EEE.~~ Good Faith Purchaser. The Investor and the Sponsors are each a good faith purchaser of NewCo, the Debtors, HVM Manager (the “Company”) and the Company’s assets and property and are entitled to the protections afforded good faith purchasers under the Bankruptcy Code.

GGG. ~~FFF.~~ Debt Financing Arrangements Negotiated in Good Faith. The Debt Financing Arrangements (including, without limitation, any and all terms, conditions and covenants thereof) have been negotiated in good faith and at arm’s-length among the borrowers under the Debt Financing Arrangements and the Debt Financing Lenders, and any credit extended or loans made to the borrowers under the Debt Financing Arrangements by the Debt Financing Lenders has been extended, issued and made in good faith and for legitimate business purposes and the Debt Financing Lenders have acted in good faith in negotiating, formulating, and proposing the transactions contemplated by the Plan.

HHH. ~~GGG.~~ Injunction, Exculpation, and Releases. The Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the injunction, exculpation, and releases set forth in Article X of the Plan, because, *inter alia*, these provisions are an integral part of the Debtors’ reorganization plan. Section 105(a) of the Bankruptcy Code permits issuance of the injunction and approval of the releases set forth in Article X of the Plan if, as has been established here based upon the record in the Chapter 11 Cases, the Lefkovits Declaration, and the evidence presented at the Confirmation Hearing, such provisions (i) were integral to the agreement among the various parties in interest and are important and necessary to the formulation and implementation of the Plan, as provided in section 1123 of the Bankruptcy

Code, (ii) confer substantial benefits on the Debtors' estates and creditors, (iii) are fair and reasonable and (iv) are in the best interests of the Debtors, their estates, and parties in interest. Further, the release and exculpation provisions in the Plan do not relieve any party of liability for an act or omission to the extent such act or omission is determined by a final order by a court of competent jurisdiction to have constituted willful misconduct or gross negligence or the other exceptions set forth therein, do not release any Guaranty Claim other than a Guaranty Claim against a Debtor, and do not release any claims constituting Litigation Trust Assets, including potential claims referenced in the Examiner's Report. Based upon the record of these Chapter 11 Cases and the evidence proffered or adduced at the Confirmation Hearing, this Court finds that the injunction, exculpation, and releases set forth in Article X of the Plan are consistent with the Bankruptcy Code and applicable law.

III. ~~HHH.~~ Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the releases, exculpations, and injunctions set forth in Article X of the Plan and implemented by this Order are fair, equitable, reasonable, and in the best interests of the Debtors, the Reorganized Debtors and their estates, creditors and equity holders. The failure to include such provisions would seriously impair the Debtors' ability to confirm a consensual Plan in these Chapter 11 Cases. Accordingly, this Court finds that the releases, exculpations, and injunctions set forth in Article X of the Plan are consistent with the Bankruptcy Code and applicable law.

III. ~~HH.~~ Compromise and Settlement. Pursuant to Bankruptcy Rule 9019, in consideration of the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies

resolved pursuant to the Plan. All Plan distributions made to creditors holding Allowed Claims in any Class are intended to be and shall be final.

KKK. ~~JKK~~-Litigation Trust. Entry into the Litigation Trust Agreement is in the best interests of the Debtors, the Debtors' Estates and creditors and holders of Equity Interests. The establishment of the Litigation Trust, the selection of [\_\_\_\_] to serve as the Litigation Trustee, the form of the proposed Litigation Trust Agreement (as it may be modified or amended), is appropriate and in the best interests of creditors and holders of Equity Interests. The Litigation Trust Agreement, including Exhibit A thereto, shall, upon execution, be valid, binding and enforceable in accordance with its terms. The holders of Claims in Class 4A (Mortgage Facility Deficiency Claims), Class 4B (Mezzanine Facility Claims), Class 5 (General Unsecured Claims) and ~~M&T~~the Indenture Trustee are beneficiaries of the Litigation Trust.

LLL. ~~KKK~~-Exemption from Securities Law. Section 1145 of the Bankruptcy Code exempts from registration under section 5 of the Securities Act or other applicable securities laws the offer or sale, under a chapter 11 plan of reorganization, of a security of a debtor, of any affiliate participating in a joint plan with the debtor, or of a successor to a debtor under a plan, if such securities are offered or sold in exchange for a claim against, or an equity interest in, such debtor or affiliate. Such securities may be resold without registration under the Securities Act, unless the holder is an "underwriter" with respect to such securities, as that term is defined in section 1145(b) of the Bankruptcy Code.

MMM.~~LLL~~-To the extent the Litigation Trust Beneficiaries' interest in the Litigation Trust is deemed to be a security, section 1145 of the Bankruptcy Code applies to the distribution under the Plan of interests in the Litigation Trust. In addition, to the extent persons deemed to be "underwriters" receive interests in the Litigation Trust pursuant to the Plan, which



interests are otherwise exempt from registration pursuant to section 1145 of the Bankruptcy Code, resales of such interests in the Litigation Trust would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law.

NNN. ~~MMM.~~ Mortgage Parties Indemnification Fund. On the Effective Date, the Debtors shall transfer \$20 million to the Mortgage Facility Trust, and the Mortgage Facility Trust or its assignee or designee shall hold such funds in the Mortgage Parties Indemnification Fund for the benefit of the Mortgage Debt Parties to satisfy any indemnification obligations of the Mortgage Facility Trust with respect to any post- Confirmation Date litigation commenced against the Mortgage Debt Parties regarding the voting on the Plan, distributions under the Plan and any other actions taken by the Mortgage Debt Parties in connection with the Plan, including the implementation of the Plan, as further set forth in Section 6.16 of the Plan. The transfer of the \$20 million to the Mortgage Parties Indemnification Fund is appropriate and in the best interests of the Debtors, their creditors, and all parties in interest.

OOO. ~~NNN.~~ Preservation of Causes of Action. It is in the best interests of the Debtors and their creditors and holders of Equity Interests that the Litigation Trust Assets, be transferred to the Litigation Trust, as set forth in Section 1.89 of the Plan.

PPP. ~~OOO.~~ ¶ The settlement reached with the Debtors, Special Servicer, the Creditors' Committee and ~~M&T~~ the Indenture Trustee, as set forth on the record of the Confirmation Hearing and reflected in the Litigation Trust Agreement, including Exhibit A thereto (and the ESI Settlement Agreement) is approved. Except as expressly provided herein or in the Litigation Trust Agreement including Exhibit A thereto setting forth the priority of distributions from the Litigation Trust Agreement, nothing herein or in the Litigation Trust Agreement affects the rights and obligations of the Mortgage Facility Trust or holders of

Mezzanine Facilities Claims under the Intercreditor Agreement, including, without limitation, provisions pertaining to Guaranty Claims. ~~M&T~~The Indenture Trustee shall be a Litigation Trust Beneficiary to the extent of ~~\$4.5 million~~provided in the Litigation Trust Agreement. As of the Effective Date, ~~M&T~~the Indenture Trustee shall transfer any interests or rights it has respecting the Litigation Trust Assets to the Litigation Trust.†

QQQ. PPP.NewCo, Reorganized Debtors, Investors, Sponsors and Debt Financing Lenders Not Successors of the Debtors. Except with respect to administrative expense claims of the type specified in Section 1.7(c)(i) of the Plan as expressly provided for in Section 2.1 of the Plan, (i) NewCo shall not be a successor to any of the debtors in the Chapter 11 Cases by reason of any theory of law or equity, (ii) except as provided in paragraph ~~71~~72 of this Order, NewCo and the Reorganized Debtors shall not assume, incur or be responsible for any claims or liabilities of the Debtors or any of their affiliates, and (iii) neither the Reorganized Debtors, NewCo, the Investor, the Sponsors, nor the Debt Financing Lenders shall be successors or successors in interest of the Debtors or Extended Stay Inc. nor incur any successor or transferee Liability<sup>32</sup> of any kind, nature or character, including, without limitation, in relation to (a) any and all liabilities arising or resulting from or relating to the transactions contemplated by the Plan, (b) any and all Claims, Liens, Liabilities, encumbrances, charges and other interests arising from or relating to any conduct, liabilities, or obligations of the Debtors or Extended Stay Inc., and (c) except as provided in paragraph ~~71~~72 of this Order, any and all Claims, Liens, Liabilities,

---

<sup>32</sup> The Investment Agreement defines “Liability” as “any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for taxes, including, without limitation, taxes arising as a result of the transactions contemplated by this [Investment] Agreement or the Plan.”

encumbrances, charges and other interests and any and all right, title, and interests related thereto, of governmental entities relating to any tax or similar liabilities.

### **CONCLUSIONS OF LAW**

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Confirmation. All requirements for confirmation of the Plan have been satisfied. Accordingly, the Plan in its entirety is CONFIRMED pursuant to section 1129 of the Bankruptcy Code. A copy of the confirmed Plan is attached as “Exhibit A” to this Order. The terms of the Plan and the Plan Supplement are incorporated by reference into, and are an integral part of, this Order.

2. Objections. All parties have had a full and fair opportunity to litigate all issues raised by the Objections, or which might have been raised, and the Objections have been fully and fairly litigated. All Objections, responses, statements, and comments in opposition to the Plan, other than those withdrawn with prejudice in their entirety prior to the Confirmation Hearing or otherwise resolved on the record of the Confirmation Hearing and/or herein are overruled for the reasons stated on the record.

3. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law stated in the Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

4. Plan Supplement. The documents contained in the Plan Supplement, and any amendments, modifications, and supplements thereto, and all documents and agreements introduced into evidence by the Debtors at the Confirmation Hearing (including all exhibits and attachments thereto and documents referred to therein), and the execution, delivery, and performance thereof by the Reorganized Debtors, are authorized and approved when they are finalized, executed and delivered, and are integral to, part of and are incorporated by reference into the Plan. Without further order or authorization of this Court, the Debtors, and the Reorganized Debtors and their successors, in consultation with the Investor and each of the Sponsors and the Special Servicer (in consultation with the Operating Advisor), are authorized and empowered to make all modifications to all documents included as part of the Plan Supplement that are consistent with the Plan. Execution versions of the documents comprising the Plan Supplement shall constitute legal, valid, binding, and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and, to the extent applicable, shall create, as of the Effective Date, all liens and security interests purported to be created thereby.

5. Solicitation and Notice. Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Order, was appropriate and satisfactory based on the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. The solicitation of votes on the Plan and the Solicitation Materials complied with the solicitation procedures in the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. Notice of the Plan Supplement, and all

related documents, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

6. Omission of Reference to Particular Plan Provisions. The failure to specifically describe or include any particular provision of the Plan in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan be approved and confirmed in its entirety.

7. Plan Classification Controlling. The classifications of Claims and Equity Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classification set forth on the Ballots tendered or returned by the Debtors' creditors in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Equity Interests under the Plan for distribution purposes; and (c) shall not be binding on the Debtors, the Reorganized Debtors, the Litigation Trust, creditors, or interest holders for purposes other than voting on the Plan.

8. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, upon entry of this Confirmation Order and subject to the occurrence of the Effective Date, the provisions of the Plan shall bind (i) any holder of a Claim against or Equity Interest in the Debtors and their respective successors and assigns, whether or not such Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan, (ii) any and all non-debtor parties to assumed executory contracts and unexpired leases with the Debtors, (iii) those parties who filed Objections to the Plan, (iv) the

Mortgage Debt Parties, (v) the holders of the Mortgage Certificates, (vi) every other party in interest in these Chapter 11 Cases, and (vii) all parties receiving property under the Plan, and their respective heirs, executors, administrators, successors, or assigns.

9. Merger, Dissolution, or Consolidation of Corporate Entities. Pursuant to and in accordance with Section 6.7 of the Plan, on or as soon as practicable after the Effective Date, the Debtors and/or NewCo, as applicable, shall take such actions as may be or become necessary, without further action being required under applicable law, regulation, order or rule (including, without limitation, any action by the board of directors, stockholders, partners, members or managers of any Debtor or members of NewCo), and cause (i) 100% of the New Debtor Equity of the surviving Tier 1 Debtors to be issued to NewCo or a subsidiary of NewCo; (ii) the Equity Interests of each of the Tier 2 Debtors and the ESH/TN Properties Membership Interests to remain outstanding and Unimpaired; (iii) the Equity Interests of each of the Tier 3 Debtors to be cancelled, extinguished and not re-issued; and (iv) the Restructuring Transactions to be implemented. Pursuant to, under and in accordance with the Plan, the Debtors, NewCo and/or the Reorganized Debtors may, without any further order of the Court, effectuate some, all or none of the Restructuring Transactions. Before, on, or as soon as practicable after the Effective Date, the Debtors, NewCo and/or the Reorganized Debtors may, without further order of the Court or the need to modify the Plan, effectuate other Restructuring Transactions not in the Plan Supplement that are similar in nature and involve Tier 1 Debtors and/or Tier 2 Debtors, all of which will be effectuated pursuant to, under and in accordance with the Plan. If additional material Restructuring Transactions not listed in the Plan Supplement are to be effectuated, a list thereof shall be filed with the Court on or before the Effective Date. All Restructuring Transactions are being taken pursuant to and in accordance with the Plan and shall be

implemented pursuant to and in accordance with the Plan. The Tier 3 Debtors shall be deemed liquidated and dissolved by the Debtors for all purposes without the necessary for other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith. In addition, as of the Effective Date or as soon as practicable thereafter and without the need for any further action by this Court or any other court or governmental unit, or by the board of directors, stockholders, partners, members or managers of any Reorganized Debtors, the Reorganized Debtors may, pursuant to and in accordance with the Plan, (i) cause any or all of the Reorganized Debtors to be merged into one or more of the Reorganized Debtors, dissolved or otherwise consolidated, (ii) cause the transfer of assets between or among the Reorganized Debtors, or (iii) engage in any other transaction in furtherance of the Plan. Any and all transfers, mergers, dissolutions or consolidations effected by the Debtors, NewCo and/or the Reorganized Debtors as contemplated by the Plan, including the Restructuring Transactions, shall be deemed transfers, mergers, dissolutions and consolidations effected under and pursuant to the Plan, and pursuant to Section 1146(a) of the Bankruptcy Code, and the making or delivery of any instrument in connection therewith shall not be taxed under any law imposing any sales and use, stamp, real estate transfer, mortgage recording, or other similar tax.

10. Surrender and Cancellation of Instruments. Pursuant to Section 6.5 of the Plan, as of the Effective Date, all notes and any obligations of the Debtors under the Mortgage Facility or the Mezzanine Facilities shall be discharged and be of no further force or effect against the Debtors or the Mortgage Properties, and the holders thereof shall have no rights against the Debtors or the Mortgage Properties, except the right to receive the Distributions provided in the Plan. As of the Effective Date, the ESA UD Mortgage Claim and the General Unsecured Claims, and the rights of the holders thereof thereunder, shall be cancelled and

deemed null and void and of no further force and effect, and the holders thereof shall have no rights, and such notes, agreements, certificates and securities shall evidence no rights, except the right to receive the Distributions provided in the Plan. It is understood, however, that (i) Section 6.5 of the Plan shall not affect any Guaranty Claims, other than a Guaranty Claim against a Debtor, or the pursuit of Litigation Trust Assets, and (ii) notwithstanding Section 6.11 of the Plan, the notes or certificates in respect of the Mortgage Facility and the Mezzanine Facilities shall not be surrendered and cancelled so as not to impair the pursuit of Litigation Trust Assets or any Guaranty Claims other than a Guaranty Claim against a Debtor.

11. Subject to Section 6.5 of the Plan, each holder of an instrument evidencing a Claim shall surrender such instrument to the Reorganized Debtors. At the option of the Reorganized Debtors or NewCo, as applicable (in their reasonable discretion), no Distribution hereunder shall be made to or on behalf of any holder of such Claim unless and until such instrument is received or the unavailability of such instrument is reasonably established to the satisfaction of the Reorganized Debtors. In accordance with section 1143 of the Bankruptcy Code, any such holder of such a Claim that fails to surrender or cause to be surrendered such instrument or to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Reorganized Debtors and, in the event that the Reorganized Debtors requests, fails to furnish a bond in form and substance (including, without limitation, amount) reasonably satisfactory to the Reorganized Debtors shall be deemed to have forfeited all rights, claims, and interests and shall not participate in any Distribution hereunder.

12. Issuance of NewCo Common Interests. The Reorganized Debtors' issuance of 100% of the New Debtor Equity of the surviving Tier 1 Debtors to NewCo or a subsidiary of NewCo, to be issued pursuant to the Investment Agreement, is authorized without the need for



any further corporate action and without any further action by holders of Claims or Equity Interests.

13. Transfer by NewCo. On the Effective Date, NewCo shall pay over or distribute to, or at the direction of, the Plan Administrator the Investment to the extent necessary to make all cash distributions required under the Plan, other than the payment of the Excess Cash and the funding of the Administrative/Priority Claims Reserve.

14. Substantive Consolidation for Plan Purposes Only. Entry of this Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of the Debtors solely for the purpose of voting, confirmation and distribution as provided in section 6.1 of the Plan. On and after the Effective Date, (i) all assets and liabilities of the Debtors shall be treated for purposes of the Plan as though they were merged, (ii) all guarantees of the Debtors of payment, performance or collection of obligations of any other of the Debtors shall be eliminated and cancelled, (iii) all joint obligations of two or more of the Debtors and all multiple Claims against such entities on account of such joint obligations, shall be considered a single Claim against the Debtors, (iv) all intercompany claims and obligations between one Debtor and any of the other Debtors, including as a result of the rejection of any executory contract or unexpired lease, shall be eliminated, extinguished and cancelled, except for such intercompany claims and obligations necessary to pursue Litigation Trust Assets, and (v) any Claim filed against any of the Debtors shall be deemed filed against the consolidated Debtors and shall be one Claim against and a single obligation of the consolidated Debtors. Except as otherwise provided in paragraph ~~71~~72 of this Order, the Plan or the Restructuring Transactions, (a) all property of each Debtor shall vest in each respective Reorganized Debtor, free and clear of all Claims, Liens, Liabilities,

encumbrances, charges and other interests and (b) each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents) in effect before the Effective Date. The provisions of the Intercreditor Agreement shall remain in full force and effect notwithstanding any substantive consolidation of the Debtors pursuant to the Plan.

15. The Litigation Trust. On the Effective Date, the Debtors shall transfer the Litigation Trust Funding to the Litigation Trust and the Debtors and the Litigation Trustee shall execute the Litigation Trust Agreement and shall take all steps necessary to establish the Litigation Trust in accordance with the Plan. On the Effective Date, the Debtors, and, to the extent provided in the Litigation Trust Agreement, ESI, shall be deemed to have automatically transferred to the Litigation Trust all of their right, title, and interest in and to all of the Litigation Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Litigation Trust free and clear of all Claims, Liens, Liabilities, encumbrances, charges and other interests subject only to the Allowed Claims of the Litigation Trust Beneficiaries as set forth in the Plan and the Litigation Trust Agreement, and the expenses of the Litigation Trust as provided in the Litigation Trust Agreement. Thereupon, the Debtors, and the Reorganized Debtors shall have no interest in the Litigation Trust Assets or the Litigation Trust. In connection with the vesting and transfer of the Litigation Trust Assets, including rights and causes of action, any attorney-client, work-product protection or other privilege or immunity attaching to any documents or communications (whether written or oral)

transferred to the Litigation Trust shall vest in the Litigation Trust. The Debtors, ESI and the Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges, protections and immunities. In the event of any conflict between the terms of Section 6.17 of the Plan and the Litigation Trust Agreement, the terms of the Litigation Trust Agreement shall govern. [\_\_\_\_ is hereby appointed as the Litigation Trustee.]

16. Indenture Trustee and ESI Settlement. As of the Effective Date, any interests or rights the Indenture Trustee has respecting the Litigation Trust Assets and the ESI Causes of Action (as such term is defined in the ESI Settlement Agreement) shall be deemed transferred to and vested in the Litigation Trust.

17. ~~16.~~ Distributions Under the Plan. All distributions under the Plan shall be made in accordance with Article VIII of the Plan and such methods of distribution are approved.

18. ~~17.~~ Disputed Claims. The provisions of Article VII of the Plan, including, without limitation, the provisions governing procedures for resolving Disputed Claims, are found to be fair and reasonable and are approved. In connection with distributions on account of Administrative Expense Claims, Priority Claims, General Unsecured Claims, and Mezzanine Facilities Claims, Distributions on account of such Disputed Claims shall be made in accordance with Section 7.2 of the Plan to the extent such Disputed Claims become Allowed.

19. ~~18.~~ Treatment is in Full Satisfaction. All distributions under the Plan shall be made in accordance with the Plan. The treatment set forth in the Plan is in full satisfaction of the legal, contractual and equitable rights (including any liens) that each entity holding a Claim or Equity Interest may have in or against the Debtors, the Estates, or their respective property. This treatment supersedes and replaces any agreements or rights those entities may have in or against the Debtors, the Estates, or their respective property.

~~20. 19.~~ Administrative Expense Objection Deadline. To assert an Administrative Expense Claim, other than an Administrative Expense Claim of the type specified in section 503(b)(1)(D) of the Bankruptcy Code, and other than an Administrative Expense Claim of a type specified in paragraph ~~69~~70 of this Order, a claimant shall file a proof of claim (a “Proof of Claim”) before 4:00 p.m. (Eastern Standard Time) on the first Business Day that is forty-five (45) days after the Confirmation Date, as such date may be extended from time to time by the Bankruptcy Court (the “Administrative Claims Bar Date”). Nothing in this Order shall extend or otherwise modify any deadline or requirement for filing claims set forth in previous Orders of this Court. All Proofs of Claim shall comply with the following requirements:

- i. specify the name and case number of the Debtor or Debtors against which the claimant asserts its Proof of Claim;
- ii. conform to the proof of claim to Official Bankruptcy Form No. 10;
- iii. to the extent applicable, limit any claims pursuant to section 502(b)(6) of the Bankruptcy Code;
- iv. include any supporting documentation or, if voluminous, a summary or explanation as to why documentation is not available;
- v. be in the English language; and
- vi. be denominated in United States Currency.

~~21. 20.~~ Proofs of Claim asserting Administrative Expense Claims must be received on or before the Administrative Claims Bar Date by KCC, the official claims agent in the Debtors’ Chapter 11 Cases, at the following address:

ESI Claims Processing  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, California 90245

~~22. 21.~~ The Debtors and KCC shall not be required to accept a Proof of Claim sent by facsimile, telecopy, or electronic mail transmission. Proofs of Claim will be deemed

timely filed only if actually received by KCC on or before the Administrative Claims Bar Date. Any person or entity, other than an entity asserting a Claim of a type specified in section 503(b)(1)(D) of the Bankruptcy Code, that fails to timely file a Proof of Claim in accordance with this Order on or before the Administrative Claims Bar Date is **FOREVER BARRED**, **ESTOPPED**, and **ENJOINED** from asserting and enforcing such claim against the Debtors, the Reorganized Debtors, or any of their respective estates, assets, properties, or interests in property.

~~23. 22.~~ Assumption or Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Pursuant to Sections 11.1 and 11.2 of the Plan, as of the Effective Date all executory contracts and unexpired leases that exist between the Debtors and any person or entity that are listed in the relevant Exhibit to the Plan Supplement or that have not been rejected by the Debtors with the approval of the Bankruptcy Court and that are not subject of pending motions to reject on the Confirmation Date, shall be deemed to have been assumed by the applicable Debtor and assigned to NewCo or its designee, as of the Effective Date. Any executory contracts or unexpired leases of any Debtor that are set forth in the relevant Exhibit to the Plan Supplement shall be deemed to have been rejected by the applicable Debtor. The inclusion of an executory contract or unexpired lease in the Plan Supplement shall not constitute an admission by the Debtors that such document is an executory contract or an unexpired lease or that the Debtors have any liability thereunder.

~~24. 23.~~ Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases. Entry of the this Order shall, subject to and upon the occurrence of the Effective Date, constitute the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption, assignment, or rejection of the executory contracts and

unexpired leases pursuant to sections 11.1, 11.2, 11.4 or 11.5 of the Plan. The effect of confirmation of the Plan, the results thereof, and the transactions resulting therefrom or any other effect of these Chapter 11 Cases, including specifically the changes to the Debtors' boards of directors and equity interests, shall not be and are not a "change of control" and shall not trigger any such or similar provision of any of the executory contracts and unexpired leases assumed pursuant to the Plan.

25. ~~24.~~ No Rejection Damages Associated with Rejected Executory Contracts and Unexpired Leases. Pursuant to Section 11.2 of the Plan, the Debtors rejected a number of executory contracts and unexpired leases. There are no rejection damages arising from the rejection of the executory contracts and unexpired leases.

26. ~~25.~~ Inclusiveness. Unless otherwise specified in the Plan Supplement, each executory contract and unexpired lease listed or to be listed therein shall include any and all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed on the Plan Supplement.

27. ~~26.~~ Insurance Policies and Agreements. Notwithstanding anything contained in the Plan to the contrary, unless specifically rejected by order of the Bankruptcy Court, all of the Debtors' insurance policies and any agreements, documents or instruments relating thereto, are treated as executory contracts under the Plan and will be assumed by the applicable Reorganized Debtor and assigned to NewCo or its designee, effective as of the Effective Date. Nothing contained in Section 11.4 of the Plan shall constitute or be deemed a waiver of any

cause of action that the Debtors may hold against any entity, including without limitation, the insurer, under any of the Debtors' policies of insurance.

28. ~~27.~~ Management Agreements. As of the Effective Date, (i) all existing management agreements between any Debtor that is a TRS and HVM, and the G&A Reimbursement Agreements and Services Agreements will be assumed by such Debtors (or, in the case of Extended Stay Inc. and pursuant to the ESI Settlement Agreement, assumed by Extended Stay Inc and assigned to NewCo) and (ii) all existing management agreements between any Debtor that is not a TRS and HVM will be assumed by such Debtor and assigned to a Debtor that is a TRS (or a newly formed TRS, wholly owned either directly or indirectly by NewCo, that is designated by an existing Debtor that is a TRS). Entry of this Order, subject to and upon the occurrence of the Effective Date, shall constitute the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the assumption or assumption and assignment, as applicable, of such agreements on the terms set forth in the Plan and Plan Supplement.

29. ~~28.~~ Cure of Defaults. Upon entry of this Order, the cure costs in connection with each executory contract and unexpired lease assumed pursuant to Section 11.1 of the Plan has been fixed at \$0.00. The applicable contract or lease counterparty is **BARRED** and **PERMANENTLY ENJOINED** from asserting against the applicable Debtor any default, claim or liability existing, accrued or arising, or relating to the applicable assumed contract or assumed lease for the period prior to the entry of this Order, except any obligations arising under such contract or lease from and after the Commencement Date but not yet due and payable under the terms of the applicable contract or lease.

30. ~~29.~~ Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan. Claims created by the rejection of executory

contracts or unexpired leases (including, without limitation, the rejection provided in Section 11.2 of the Plan) or the expiration or termination of any executory contract or unexpired lease prior to the Confirmation Date must be filed with the Bankruptcy Court and served on the Debtors no later than thirty (30) days after (a) in the case of an executory contract or unexpired lease that was terminated or expired by its terms prior to the Confirmation Date, the Confirmation Date, (b) in the case of an executory contract or unexpired lease rejected by the Debtors, the entry of the order of the Bankruptcy Court authorizing such rejection, or (c) in the case of an executory contract or unexpired lease that is deemed rejected pursuant to Section 11.2 of the Plan, the Confirmation Date. Any rejection claim for which a proof of claim is not filed and served within the time provided herein will be forever barred from assertion and shall not be enforceable against the Debtors, their assets, properties, or interests in property, or the Reorganized Debtors or their estates, assets, properties, or interests in property. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article VII of the Plan.

31. 30.-Vesting of Assets. Pursuant to Section 10.1 of the Plan, upon the Effective Date, all property and assets of the Debtors, including the Mortgage Properties, but excluding the Litigation Trust Assets, shall vest in the Reorganized Debtors and NewCo, as applicable, free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan or paragraph ~~71~~72 this Order, including, without limitation, any and all Claims, Liens, Liabilities, encumbrances, charges and other interests and any and all right, title and interests related thereto of governmental entities relating to any tax liabilities or similar liabilities. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or



applicable nonbankruptcy law. From and after the Effective Date, the Reorganized Debtors and/or NewCo may operate the Debtors' business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code.

32. ~~31.~~ Title to Assets. Except as otherwise provided in the Plan, on the Effective Date, title to all assets and properties and interests in property dealt with by the Plan shall vest in the Reorganized Debtors, NewCo, the Plan Administrator, the Administrative/Priority Claims Reserve or the Litigation Trust, as provided in the Plan, free and clear of all Claims, Equity Interests, Encumbrances, and other interests, and this Order shall be a judicial determination of discharge of the liabilities of the Debtors arising prior to the Effective Date, except as may be otherwise provided in the Plan.

33. ~~32.~~ Indemnification Obligations. Notwithstanding anything to the contrary in the Plan, subject to the occurrence of the Effective Date, the obligations of the Debtors as provided in the Debtors' respective certificates of incorporation, bylaws, or other applicable organizational documents, other agreements or law as of the Commencement Date to indemnify, defend, reimburse, exculpate, advance fees and expenses to, or limit the liability of officers who were officers or employees of such Debtors or their respective Affiliates at any time prior to the Effective Date, provided that such officers will continue to be officers of the Debtors or NewCo from and after the Effective Date, against any claims, causes of action or obligations whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, shall survive confirmation of the Plan, remain unaffected thereby after the Effective Date and not be discharged, irrespective of whether such indemnification, defense, advancement, reimbursement,

exculpation or limitation is owed in connection with an event occurring before or after the Commencement Date.

~~34. 33.~~ As of the Effective Date, each Debtor's certificate of incorporation, bylaws or similar organizational documents or other agreement shall provide for the indemnification, defense, reimbursement, exculpation and/or limitation of liability of, and advancement of fees and expenses to, officers who were officers of such Debtor or any of its respective Affiliates at any time prior to the Effective Date and who will continue to be officers or employees of the Debtors or NewCo from and after the Effective Date at least to the same extent as the bylaws of such Debtor in effect on the Commencement Date, against any claims or causes of action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, and none of the Debtors shall amend and/or restate its certificate of incorporation, bylaws or similar organizational document or other agreement before or after the Effective Date to terminate or materially adversely affect any of the Debtors' obligations or such officers' rights under Section 10.13(b) of the Plan.

~~35. 34.~~ Any Claim based on NewCo's or the Debtors' obligations set forth in Section 10.13 of the Plan shall not be a Disputed Claim or subject to any objection in either case by reason of section 502(e)(1)(B) of the Bankruptcy Code.

~~36. 35.~~ For avoidance of doubt, nothing in Section 10.13 of the Plan or this Order shall be construed as an indemnification for any Guaranty Claim.

~~37. 36.~~ Discharge of Claims and Termination of Equity Interests. Except as provided in the Plan, in consideration of the rights afforded in the Plan and the payments and distributions to be made under the Plan, all existing debts, Claims, and Equity Interests, of any

kind, nature, or description whatsoever against or in the Debtors or any of their assets or properties, shall be and hereby are discharged and terminated to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against the Debtors and Existing Equity Interests and Other Existing Equity Interests in the Debtors shall be, and shall be deemed to be, and hereby are, discharged and terminated, and all holders of Claims and Existing Equity Interests and Other Existing Equity Interests shall be precluded and enjoined from asserting against the Reorganized Debtors, NewCo, their respective successors or assignees, or any of their respective assets or properties, any other or further Claim or Equity Interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim or proof of Equity Interest, and whether or not the facts or legal bases therefore were known or existed prior to the Effective Date. Upon the Effective Date, all such persons shall be and hereby are forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Equity Interest in the Debtors.

38. ~~37.~~ Injunction. Pursuant to Section 10.6 of the Plan, except as otherwise provided in the Plan, all Persons who have held, hold or may hold Claims or Equity Interests and all Persons who have held, hold or may hold claims or causes of action that have been released pursuant to Section 10.10 of the Plan or are subject to exculpation pursuant to Section 10.9 of the Plan, and all other parties in interest, including any participants in the Auction, along with their respective present or former employees, agents, officers, managers, directors, principals and Affiliates, are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such

Claim or Equity Interest, or such released or exculpated claim or cause of action, against the Debtors, the Reorganized Debtors, NewCo or the Released Parties or any of their respective property or assets or any interest therein, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors, the Reorganized Debtors, NewCo or the Released Parties or any of their respective property or assets or any interest therein, (c) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors, the Reorganized Debtors, NewCo or the Released Parties or any of their respective property or assets or any interest therein, or (d) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors, the Reorganized Debtors, NewCo, the Released Parties or against any of their respective property or assets, or any interest therein, with respect to any such Claim or Equity Interest, or such released or exculpated claim or cause of action. For the avoidance of doubt, nothing in Section 10.6 of the Plan or in this Order shall be construed as enjoining the prosecution of any Guaranty Claim other than a Guaranty Claim against a Debtor.

~~39. 38.~~ Notwithstanding anything to the contrary in the Plan or this Order, none of the rights or claims of TriMont Real Estate Advisors, Inc. (“TriMont”) under and pursuant to the Trust and Servicing Agreement, including without limitation, all rights or claims of TriMont with respect to compensation under the Trust and Servicing Agreement relating to its portion of any ‘Special Servicing Fees,’ ‘Work-Out Fee’ or ‘Liquidation Fee’ (all as defined in the Trust and Servicing Agreement) that is or becomes payable under the Trust and Servicing Agreement shall be affected, discharged, released, exculpated or enjoined in any respect whatsoever by the Plan or this Order and all such rights and claims shall be expressly preserved and reserved.

40. ~~39.~~ Injunction Against Interference With Plan of Reorganization. Upon the entry of this Order, all holders of Claims and Equity Interests and other parties in interest, including the holders of Mortgage Certificates, along with their respective present or former employees, agents, officers, managers, directors, principals and Affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

41. ~~40.~~ Terms of Injunction. Unless otherwise provided in this Order, all injunctions or stays arising under or entered during these Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, that are in existence on the Confirmation Date, other than injunctions issued pursuant to the Plan (including injunctions under Section 10.6 of the Plan) shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

42. ~~41.~~ Exculpation. As provided for in Section 10.9 of the Plan, notwithstanding anything herein to the contrary, as of the Effective Date, none of (a) the Debtors or the Reorganized Debtors, (b) NewCo, (c) the Creditors' Committee and any subcommittee thereof, (d) BHAC, (e) the accountants, financial advisors, investment bankers, agents and attorneys for the Debtors, (f) HVM, (g) HVM Manager, (h) the Special Servicer, (i) the Trustee, (j) the Operating Advisor, (k) the Controlling Holder, (l) HVM Manager Owner, (m) the Investor, (n) each Sponsor, (o) the Debt Financing Lenders and (p) any present or former director, manager, officer, member, equity holder (and their respective Affiliates), employee, agent, financial advisor, partner, Affiliate, attorney, other professional advisor or representative (and their respective Affiliates) of the persons or parties described in clauses (a) through (p) of Section 10.9 or of their respective Affiliates (but solely in their capacities as such) shall have or incur any liability for any claim, cause of action or other assertion of liability for any act taken or omitted

to be taken since the Commencement Date in connection with, related to, or otherwise arising out of, the Chapter 11 Cases, the Auction, the formulation, negotiation, preparation, dissemination, implementation, confirmation, consummation, or administration of the Plan, property to be distributed under the Plan, or any other act or omission in connection with the Chapter 11 Cases, the Trust and Servicing Agreement, the Mortgage Facility Trust, the Plan, the Disclosure Statement or, in each case, any contract, instrument, document or other agreement related thereto, including, without limitation, the Investment Agreement; provided, however, that the foregoing shall not affect the liability of any person that otherwise would result from any such act or omission to the extent such act or omission is determined by a final order by a court of competent jurisdiction to have constituted willful misconduct or gross negligence; provided, further, that each Released Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, the above referenced documents, actions or inactions; provided, further, that nothing in Section 10.9 of the Plan or this Order shall be construed as a release or exculpation for any Guaranty Claim other than a Guaranty Claim against a Debtor.

43. 42. Releases. Pursuant to Section 10.10 of the Plan, as of the Effective Date, and in consideration of (a) the services provided by the present and former directors, managers, officers, employees, Affiliates, agents, financial advisors, attorneys, and representatives of the Debtors to the Debtors who acted in such capacities after the Commencement Date; (b) the services of the Creditors' Committee and their Affiliates; (c) the services provided by HVM; (d) the services provided by HVM Manager; (e) the services of, and assets contributed by, HVM Manager Owner; (f) the provision of the Debt Financing Arrangements by the Debt Financing Lenders; (g) the substantial contribution of the Investor, each of the Sponsors and their

Affiliates; and (h) the substantial contribution of the Special Servicer, the Trustee, the Operating Advisor and the Controlling Holder: (i) the Debtors, the Reorganized Debtors or NewCo; (ii) each holder of a Claim or Equity Interest that votes to accept the Plan, or is deemed to accept the Plan, or abstains from voting on the Plan; and (iii) each holder of a Mortgage Certificate, shall release unconditionally and forever each Released Party from any and all Claims, demands, causes of action and the like, relating to the Debtors or their Affiliates existing as of the Effective Date or thereafter arising from any act, omission, event or other occurrence that occurred on or prior to the Effective Date; provided, however, that nothing in Section 10.10 of the Plan or this Order shall be construed as a release of (i) any Guaranty Claim other than a Guaranty Claim against a Debtor, (ii) any claims constituting Litigation Trust Assets, or (iii) any claims against any such Released Party resulting from an action or omission determined by a final order by a court of competent jurisdiction to have constituted willful misconduct or gross negligence, provided that each such Released Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, its actions or inactions.

~~44. 43.~~ Government Releases. Except with respect to the claims held by the United States Government or any of its agencies or any state and local authority, in their capacity as holder of either a Mortgage Certificate or a Mezzanine Facility Claim, nothing in the Plan or the Confirmation Order shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, securities laws, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties other than the Debtors, the Reorganized Debtors and NewCo, nor shall anything in the Plan or Confirmation Order enjoin the United States or any state or local authority from bringing any

claim, suit, action or other proceedings against the Released Parties other than the Debtors, the Reorganized Debtors and NewCo for any liability whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, securities laws, environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in the Plan or this Order exculpate any of the Released Parties other than the Debtors, the Reorganized Debtors and NewCo from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, securities laws, environmental laws or any criminal laws of the United States or any state and local authority.

45. ~~44.~~ Mortgage Facility Trust Claims. The Mortgage Debt Parties have acted in accordance with the Trust and Servicing Agreement and the Mortgage Facility Trust throughout the Chapter 11 Cases, including, without limitation, in connection with the Auction, the Plan (including voting thereon) and the Disclosure Statement, and they have made a substantial contribution to the Estate and the Chapter 11 Cases. The rights and authority of and contributions made by the Mortgage Debt Parties under the Trust and Servicing Agreement and the Mortgage Facility Trust have been and are integral to the Plan. Accordingly, from and after the Effective Date, all Persons, including the holders of Mortgage Certificates, shall be deemed to have released, and shall be enjoined from commencing any action or proceeding or asserting or pursuing, any claim or cause of action against the Mortgage Debt Parties for any act taken or omitted since the Commencement Date in connection with, related to, or otherwise arising out of the Chapter 11 Cases, the Auction, the formulation, negotiation, preparation, dissemination, implementation, confirmation, consummation, or administration of the Plan, or property to be distributed under the Plan; provided, however, that nothing in Section 10.12 of the Plan shall be



construed as a release of any claims against any Mortgage Debt Party resulting from an act or omission determined by a final order of a court of competent jurisdiction to have constituted willful misconduct or gross negligence, provided that each such Mortgage Debt Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, its actions or inactions.

46. 45. Limitations on Exculpation and Releases of Representatives. Nothing in Sections 10.9 or 10.10 of the Plan shall (a) be construed to release or exculpate any Person from, or require indemnification of any Person against losses arising from, the fraud, malpractice, criminal conduct, intentional unauthorized misuse of confidential information that causes damages, or ultra vires acts of such Person, or (b) limit the liability of the professionals of the Debtors, the Reorganized Debtors, NewCo or the Creditors' Committee to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility.

47. 46. Retention of Causes of Action/Reservation of Rights. Except as provided in Section 6.17 and Section 10.10 of the Plan, nothing contained in the Plan or this Order shall be deemed to be a waiver or the relinquishment of any rights or causes of action that the Debtors, the Reorganized Debtors or NewCo may have or which NewCo or the Reorganized Debtors may choose to assert on behalf of the Debtors' estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (i) any and all Claims against any person or entity, to the extent such person or entity asserts a crossclaim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Debtors, the Reorganized Debtors, NewCo, their officers, directors, managers or representatives and (ii) the turnover of any property of the Debtors' estates.

~~48. 47.~~ Nothing contained in the Plan or this Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Commencement Date, against or with respect to any Claim left Unimpaired by the Plan. NewCo or the Reorganized Debtors, as applicable, shall have, retain, reserve, and be entitled to assert all such claims, causes of action, rights of setoff, and other legal or equitable defenses which the Debtors had immediately prior to the Commencement Date fully as if the Bankruptcy Cases had not been commenced, and all of the legal and equitable rights of NewCo or the Reorganized Debtors, as applicable, respecting any Claim left Unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Bankruptcy Cases had not been commenced.

~~49. 48.~~ Nothing in the Plan or this Order shall be construed as a release of any Guaranty Claim other than a Guaranty Claim against a Debtor, and all rights and defenses thereto are expressly reserved.

~~50. 49.~~ Nothing in the Plan shall be construed as a modification, release or waiver of the provisions of the Intercreditor Agreement, and the provisions of the Intercreditor Agreement shall remain in full force and effect, and all rights thereunder are expressly reserved.

~~51. 50.~~ The settlement reached with the Debtors, Special Servicer, the Creditors' Committee and ~~M&T~~ [the Indenture Trustee](#), as set forth on the record of the Confirmation Hearing and reflected in the Litigation Trust Agreement, including Exhibit A thereto (and the ESI Settlement Agreement) is approved. Except as expressly provided herein or in the Litigation Trust Agreement including Exhibit A thereto setting forth the priority of distributions from the Litigation Trust Agreement, nothing herein or in the Litigation Trust Agreement affects the rights and obligations of the Mortgage Facility Trust or holders of Mezzanine Facilities Claims

under the Intercreditor Agreement, including, without limitation, provisions pertaining to Guaranty Claims. ~~M&T~~The Indenture Trustee shall be a Litigation Trust Beneficiary to the extent ~~of \$4.5 million~~provided in the Litigation Trust Agreement. As of the Effective Date, ~~M&T shall transfer~~ any interests or rights ~~it~~the Indenture Trustee has respecting the Litigation Trust Assets ~~to~~and the ESI Causes of Action (as such term is defined in the ESI Settlement Agreement) shall be deemed transferred to and vested in the Litigation Trust.<sup>4</sup>

52. 51.Transfer Free and Clear of Liens. Except with respect to the Litigation Trust Assets, the Administrative/Priority Claims Reserve, the Mortgage Parties Indemnification Fund (each as defined in the Plan), any other wind down reserve or other fund established pursuant to the Plan, and any Claims of governmental entities treated in paragraph ~~71~~72 of this Order, all right, title and interest in and to any and all assets, property, unexpired leases and executory contracts of every kind and nature to be sold, assigned, transferred or otherwise disposed of under the Plan shall be sold, assigned, transferred and disposed of free and clear of any and all Claims, Liens, Liabilities, encumbrances, charges and other interests of any entity (as such term is defined in section 101(15) of the Bankruptcy Code) including, without limitation, (a) any and all claims, liens, encumbrances and any and all right, title and interests related thereto of government entities with respect to tax liabilities and (b) any and all claims, liens, encumbrances and any and all right, title and interests related thereto arising or resulting from or relating to the transactions contemplated hereby and by the Plan (including, without limitation, all Plan Documents).

---

<sup>4</sup>~~Language in draft form pending completion of settlement discussions.~~

~~53. 52.~~ Good Faith Purchaser. The Investor and the Sponsors are each a good faith purchaser of the Company, and the Company's assets and property and are entitled to the protections afforded good faith purchasers under the Bankruptcy Code.

~~54. 53.~~ NewCo, Reorganized Debtors, Investors, Sponsors, and Debt Financing Lenders Not Successors of the Debtors. Except with respect to administrative expense claims of the type specified in Section 1.7(c)(i) of the Plan as expressly provided for in Section 2.1 of the Plan, (i) NewCo shall not be a successor to any of the debtors in the Chapter 11 Cases by reason of any theory of law or equity, (ii) except as provided in paragraph ~~71~~72 of this Order, NewCo and the Reorganized Debtors shall not assume, incur or be responsible for any claims or liabilities of the Debtors or any of their affiliates, and (iii) neither the Reorganized Debtors, NewCo, the Investor, the Sponsors, nor the Debt Financing Lenders shall be successors or successors in interest of the Debtors or Extended Stay Inc. nor incur any successor or transferee Liability of any kind, nature or character, including, without limitation, in relation to (a) any and all liabilities arising or resulting from or relating to the transactions contemplated by the Plan, (b) any and all Claims, Liens, Liabilities, encumbrances, charges and other interests arising from or relating to any conduct, liabilities, or obligations of the Debtors or Extended Stay Inc., and (c) except as provided in paragraph ~~71~~72 of this Order, any and all Claims, Liens, Liabilities, encumbrances, charges and other interests and any and all right, title, and interests related thereto, of governmental entities relating to any tax or similar liabilities.

~~55. 54.~~ Authorization to Consummate Plan Transactions. The Debtors and the Reorganized Debtors are all authorized to consummate the transactions contemplated in the Investment Agreement and in the Plan and to enter into, execute and deliver all necessary documents, including those required in connection with the Debt Financing Arrangements,

including, without limitation, any such document necessary to effect the release and discharge of any mortgage, deed of trust, Lien, pledge, or other security interest on, in or against the Mortgage Properties.

56. ~~55.~~ Debt Financing Arrangements Not a Fraudulent Transfer. The guarantees, mortgages, pledges, liens and other security interests, and all other consideration granted pursuant to or in connection with the Debt Financing Arrangements are granted in good faith, for good and valuable consideration and for legitimate business purposes as an inducement to the Debt Financing Lenders to make the Debt Financing Arrangements, and do not constitute a fraudulent conveyance or fraudulent transfer and shall not otherwise be subject to avoidance or re-characterization and the borrowers under the Debt Financing Arrangements and the Debt Financing Lenders are authorized to enter into the Debt Financing Arrangements.

57. ~~56.~~ Successor or Transferee Liability and Debt Financing Arrangements. Neither the Investor, the Sponsors, the Debt Financing Lenders, nor any borrower, guarantor, pledgor, loan party or owner, lessee or licensee of collateral under the Debt Financing Arrangements that is not a Debtor shall have any successor or transferee liability of any kind, nature or character.

58. ~~57.~~ Conditions to Effective Date. The Plan shall not become effective unless and until the conditions set forth in Section 9.1 of the Plan have been satisfied or waived pursuant to Section 9.2 of the Plan.

59. ~~58.~~ Retention of Jurisdiction. Pursuant to Article XII of the Plan, this Court shall retain and have exclusive jurisdiction over any matter arising under the Bankruptcy Code and arising in or related to these Chapter 11 Cases or the Plan, to the fullest extent as is legally permissible.

60. ~~59.~~ Effectuating Documents and Further Transactions. On or before the Effective Date, and without the need for any further order or authority, the Debtors shall file with this Court or execute, as appropriate, such agreements and other documents that are in form and substance satisfactory to the Investor and each of the Sponsors as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Each of the officers of the Debtors, the Reorganized Debtors and NewCo is authorized, without the need for any further order or authority, to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any notes or securities issued pursuant to the Plan. The Reorganized Debtors and NewCo are authorized to execute all documents and enter into all agreements as may be necessary and appropriate in connection with the Debt Financing Arrangements.

61. ~~60.~~ The Plan Administrator. The appointment ~~of Christopher Kearns~~ of Capstone Advisory Group, LLC as the Plan Administrator is hereby approved.

62. ~~61.~~ Compliance with Tax Requirements. In connection with the Plan, the Debtors the Plan Administrator and the Litigation Trustee will comply with all withholding and reporting requirements imposed by federal, state and local taxing authorities, and all distributions under the Plan shall be subject to such withholding and reporting requirements.

63. ~~62.~~ Modifications. Pursuant to Section 13.1 of the Plan, except with respect to the Restructuring Transactions as set forth in paragraph 9 hereof, the Plan may be altered, amended or modified by the Debtors, in consultation with the Investor, each of the Sponsors and the Special Servicer (in consultation with the Operating Advisor), after the Confirmation Date, as provided in section 1127 of the Bankruptcy Code; provided, however, that no such alterations,

amendments or modifications that are material shall be made without the consents of the Investor, each of the Sponsors and the Special Servicer (in consultation with the Operating Advisor), which consents shall not be unreasonably withheld. The Plan, as altered, amended or modified must satisfy the conditions of sections 1122, 1123 and 1129 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code. A holder of an Allowed Claim that has accepted the Plan shall be deemed to have accepted the Plan as altered, amended or modified if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder. Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan, without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Equity Interests.

64. ~~63.~~ Payment of Statutory Fees. All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid by the Debtors on or before the Effective Date.

65. ~~64.~~ Post-Confirmation Date Professional Fees and Expenses. From and after the Confirmation Date, the Plan Administrator and the Litigation Trustee shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of professional persons thereafter incurred by them.

66. ~~65.~~ Dissolution of Creditors' Committee. On the Effective Date, the Creditors' Committee shall be released and discharged of and from all further authority, duties, responsibilities, and obligations relating to and arising from and in connection with the Debtors' Chapter 11 Cases, and, except for the limited purpose of preparing and presenting its final

applications for ~~fee fees~~ and expenses; (including the final application for reimbursement of expenses of members of the Creditors' Committee ~~shall be deemed dissolved~~ and the final resolution thereof; provided, however, (a) if the Effective Date occurs before the Confirmation Order becomes a Final Order, the Creditors' Committee may continue to exist and to serve for the purposes of ~~pursuing~~ any pending appeal of the Confirmation Order, and (b) the Creditors' Committee will continue to exist and to serve and have a right to be heard for the purposes of any ~~claims and causes of action~~ issue relating to ESI.

67. ~~66.~~ Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer, merger or consolidation under, in furtherance of, or in connection with the Plan, shall not be subject to any sales and use, stamp, real estate transfer, mortgage recording, or other similar tax. The Reorganized Debtors are hereby authorized to deliver a notice of this Confirmation Order, with the Plan annexed, to any state or local recording officer, and such officer is hereby directed to accept for filing the above documents or instruments without charging any sales and use, stamp, real estate transfer, mortgage recording, or other similar tax. Such notice (a) shall have the effect of an Order of this Court, (b) shall constitute sufficient notice of the entry of this Confirmation Order to such filing and recording officers and (c) shall be a reasonable instrument notwithstanding any contrary provision of non-bankruptcy law. The Bankruptcy Court specifically retains jurisdiction to enforce the foregoing direction, by contempt or otherwise.

68. ~~67.~~ Governmental Approvals Not Required. This Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state or other



governmental authority with respect to the implementation or consummation of the Plan and Disclosure Statement, any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement and any amendments or modifications thereto (including, without limitation, in connection with the execution and delivery of the documents evidencing and securing the Debt Financing Arrangements and the documents evidencing the termination and cancellation of the Mortgage Facility and the release of Liens on the Mortgage Properties heretofore granted thereunder).

69. ~~68.~~ Securities Laws Exemption. To the extent the Litigation Trust Beneficiaries' interest in the Litigation Trust is deemed to be a security, the distribution under the Plan of interests in the Litigation Trust, shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code, as amended.

70. ~~69.~~ Professional Compensation and Reimbursement. Pursuant to Section 2.2 of the Plan, all entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under section 330 of the Bankruptcy Code or applications for allowance of Administrative Expenses arising under section 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 503(b)(6) of the Bankruptcy Code shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred and applications for allowance of Administrative Expenses arising under section 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 503(b)(6) of the Bankruptcy Code by the first Business Day that is forty-five (45) days from and after the Effective Date. The date to hear and determine such applications for final allowances of compensation or reimbursement of expenses under section 330 of the Bankruptcy Code or

applications for allowance of Administrative Expense Claims arising under section 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 503(b)(6) of the Bankruptcy Code will be set by the Bankruptcy Court and will be within a reasonable time after the deadline to file such applications.

~~71. 70.~~ The Allowed Amount of all Administrative Expense Claims arising under section 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 503(b)(6) of the Bankruptcy Code shall, in full satisfaction, settlement, discharge and release thereof, and in exchange therefore, be paid in full, in Cash, from the Administrative/Priority Claims Reserve (a) upon the later of (i) the Effective Date and (ii) the date upon which any such Administrative Expense Claim becomes Allowed or (b) at such later date or upon such other less favorable terms as may be mutually agreed upon between each such Administrative Expense Creditor and the Plan Administrator.

~~72. 71.~~ With respect to the Objections filed or asserted by (i) the County of Denton, Midway Independent School District and the County of Williamson [Docket No. 1123], (ii) the Lewisville Independent School District and Carrollton-Farmers Branch Independent School District [Docket No. 1127], (iii) the Texas Comptroller of Public Accounts [Docket No. 1129], (iv) the Richardson ISD, Fort Worth ISD, Eagle Mountain-Saginaw ISD, Arlington ISD and Dallas Country Utility and Recreation District [Docket No. 1130], (v) Arlington ISD, Bexar County, Coppell ISD, Cypress-Fairbanks ISD, Dallas County, City of El Paso, Fort Bend County, Harris County, Irving ISD, Katy ISD and McLennan County, City of Memphis [Docket No. 1137] (vi) San Bernardino County Tax Collector, County of Riverside Tax Collector, and Treasurer of Douglas County [Docket Nos. 1099, 1100] (collectively, the “Tax Objectors”), to the extent that a Tax Objector has, by operation of state law, first priority statutory liens on the

real and personal property of the Debtors located in the jurisdiction of a particular tax objector, relating to ad valorem taxes on such real property of the Debtors assessed for the 2009 or 2010 tax year, each such Tax Objector shall retain its liens until the applicable taxes due and payable are paid in full. The payment in full of such taxes will include any and all applicable state law interest to the extent payable pursuant to the Bankruptcy Code (including all applicable state law interest under sections 506(b) and 511 of the Bankruptcy Code). ~~All property taxes, real estate taxes, ad valorem taxes or other taxes (other than occupancy, sales, use and similar taxes) asserted against the Debtors or the Reorganized Debtors relating to the period prior to the Effective Date, that have accrued but are unpaid on the Effective Date, regardless of when such taxes are finally determined by the applicable taxing authority as due and payable, shall be paid or reserved for as agreed among the Debtors, the Sponsors and the Special Servicer, or as determined by the Bankruptcy Court. All other aspects of the Administrative/Priority Claims Reserve are governed by Section 8.10 of the Plan.~~

73. With respect to all property taxes, real estate taxes, ad valorem taxes and similar taxes that relate to the period prior to the Effective Date, regardless of when such taxes are finally determined by the applicable taxing authority as due and payable, and that have not been paid as of the Effective Date, 50% of the amount of such taxes shall be for the account of and be the obligation of the Debtors and 50% of the amount of such taxes shall be for the account of and be the obligation of the Reorganized Debtors; provided, that the Reorganized Debtors shall pay all such property taxes, real estate taxes, ad valorem taxes and similar taxes as well as occupancy taxes, sales taxes, use taxes and similar taxes for the year 2010 (to the extent not all ready paid as of the Effective Date) payable by the Debtors or the Reorganized Debtors after the Effective Date in the ordinary course of business as and when they become due and

payable, regardless of whether the tax, or portions of the tax, relate to the period prior to the Effective Date. On the Effective Date, the Debtors shall pay NewCo 50% of the amount of all property taxes, real estate taxes, ad valorem taxes and similar taxes payable by the Debtors which are accrued and unpaid and/or relate to the period prior to and as of the Effective Date, less 50% of the prepaid amount of any such taxes for periods after the Effective Date.

74. 72. No Amendment, Modification or Waiver of Cash Collateral Order or Other Documents. Except as otherwise provided for in the Plan, nothing contained in the Plan shall be deemed to be an amendment, modification or waiver of any term or provision of the Trust and Servicing Agreement, the Mortgage Facility, or the Cash Collateral Order.

75. 73. Nothing in the Plan, this Order, the ESI Settlement or the ESI Settlement Order [Docket No.     ] will have the effect of impairing, enhancing, or altering either (i) the rights, remedies or defenses (or the enforceability thereof) of any defendant with respect to any rights, remedies, claims, causes of action (or interests therein) that are transferred to the Litigation Trust, or (ii) the rights, remedies, claims or causes of action (or interests therein) of any Debtor or ESI that are so transferred; it being understood that the effect of the Plan, this Order, the ESI Settlement and the ESI Settlement Order is to be “litigation neutral” with respect to all such rights, remedies, defenses, claims and causes of action.

76. 74. Notice of Entry of Confirmation Order. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c), the Reorganized Debtors or the Plan Administrator, as the case may be, shall file and serve notice of entry of this Order in substantially the form annexed hereto as “Exhibit B” (the “Notice of Confirmation Order”) on all creditors and interest holders, the United States Trustee for the Southern District of New York, the attorneys for the Creditors’ Committee, the attorneys for the Investor, and other parties in interest, by causing the Notice of

Confirmation Order to be delivered to such parties by first-Class mail, postage prepaid, within 10 business days after entry of this Order. The Notice of Confirmation Order shall also be posted on the website of the Debtors' Court-appointed voting and tabulation agent, KCC: <http://www.kccllc.net/extendedstay>. Such notice is adequate under the particular circumstances and no other or further notice is necessary. The form of Notice of Confirmation Order substantially in the form annexed hereto as "Exhibit B" is approved.

77. ~~75.~~ Notice of Effective Date. As soon as practicable after the occurrence of the Effective Date, the Reorganized Debtors or the Plan Administrator shall file notice of the occurrence of the Effective Date and shall serve a copy of same on all parties entitled to receive notice in these Chapter 11 Cases.

78. ~~76.~~ Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

79. ~~77.~~ Revocation or Withdrawal of the Plan of Reorganization. The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date, (i) with the consent of the Special Servicer and the Operating Advisor (such consent not to be unreasonably withheld), in their discretion, or at the direction of the Investor, in the event that the Investment Agreement is terminated in accordance with Section 13 thereof, and (ii) in all other circumstances with the consent of the Investor and each of the Sponsors, in their sole discretion, and the consent of the Special Servicer and the Operating Advisor (such consent not to be unreasonably withheld). If the Debtors take such action, the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors.

80. 78. Reversal. If any of the provisions of this Order are hereafter reversed, modified or vacated by a subsequent order of the Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under, or in connection with, the Plan prior to receipt of written notice of such order by the Debtors. Notwithstanding any such reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order, the Plan, all documents relating to the Plan and any amendments or modifications to any of the foregoing.

81. 79. Conflicts Between Order and Plan. The provisions of the Plan and this Order shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Order that cannot be so reconciled, then solely to the extent of such inconsistency, the provisions of this Order shall govern and any provision of this Order shall be deemed a modification of the Plan and shall control and take precedence. The provisions of this Order are integrated with each other and are non-severable and mutually dependent.

82. 80. Final Order; Waiver of Stay. This Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof. Any stay of this Order provided by any Bankruptcy Rule (including Bankruptcy Rule 3020(e)) is hereby waived, and this Order shall be effective and enforceable immediately upon its entry by the Court.

Dated: July \_\_, 2010  
New York, New York

---

UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**The Plan**

~~{To be provided}~~ [Docket No. 1157](#)



**EXHIBIT B**

**Notice of Confirmation Order**

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

Attorneys for Debtors and  
Debtors in Possession

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

-----X  
: **Chapter 11 Case No.**  
: **09-13764 (JMP)**  
: **(Jointly Administered)**  
: **Debtors.**  
: **EXTENDED STAY INC., et al.,**  
: **In re**  
-----X

**NOTICE OF ENTRY OF ORDER CONFIRMING DEBTORS' FIFTH  
AMENDED JOINT PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE, DATED JUNE 8, 2010, AS AMENDED**

**TO ALL CREDITORS, INTEREST HOLDERS, AND PARTIES IN INTEREST:**

PLEASE TAKE NOTICE that an order (the “**Confirmation Order**”) confirming the Debtors’ Fifth Amended Joint Plan Of Reorganization Under Chapter 11 of the Bankruptcy Code, as Amended, for ESA Properties LLC and seventy-three of its debtor affiliates, as debtors and debtors in possession (as amended the “**Plan**”), [**Docket No. 1027**], was entered in the above-captioned cases by the Honorable James Peck, United States Bankruptcy Judge, and docketed by the Clerk of the Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) on July \_\_, 2010. Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that the Confirmation Order and Plan establish certain deadlines by which holders of Claims must take certain actions.

PLEASE TAKE FURTHER NOTICE that copies of the Confirmation Order, the Plan, and related documents are available for inspection in the office of the Clerk of the Bankruptcy Court at the Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, or can be viewed for free at the Debtors’ claims agent’s website at [www.kcellc.net/extendedstay](http://www.kcellc.net/extendedstay) or for a fee on the Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). To access documents on the Court’s website, you will need a PACER password and login, which can be obtained at

<http://www.pacer.psc.uscourts.gov>. To obtain a hard copy of the Confirmation Order or the Plan, please contact the Debtors' claims agent, Kurtzman Carson Consultants LLC, at **(310) 823-9000**.

PLEASE TAKE FURTHER NOTICE that the Plan and its provisions are binding on the Debtors, the Reorganized Debtors, any holder of a Claim against or Equity Interest in the Debtors, including all governmental entities, and such holder's successors and assigns (whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has voted to accept the Plan), any and all non-debtor parties to assumed executory contracts and unexpired leases with the Debtors, the parties who filed objections to the Plan, the Mortgage Debt Parties, the holders of the Mortgage Certificates, all parties receiving property under the Plan, and their respective heirs, executors, administrators, successors, or assigns, and every other party in interest in the Debtors' Chapter 11 Cases.

Dated: July \_\_, 2010  
New York, New York

**WEIL, GOTSHAL & MANGES LLP**

767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

Attorneys for the Debtors  
and Debtors in Possession

Document comparison by Workshare Professional on Sunday, July 18, 2010 10:13:52 PM

<b>Input:</b>	
Document 1 ID	interwovenSite://USDMS/US_ACTIVE/43432854/10
Description	#43432854v10<US_ACTIVE> - ESH: Confirmation Order
Document 2 ID	interwovenSite://USDMS/US_ACTIVE/43432854/15
Description	#43432854v15<US_ACTIVE> - ESH: Confirmation Order
Rendering set	standard

<b>Legend:</b>	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	67
Deletions	133
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	206