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

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

**DEBTORS' OMNIBUS RESPONSE TO OBJECTIONS TO
CONFIRMATION OF DEBTORS' FIFTH AMENDED PLAN
OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

TO THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE:

ESA Properties L.L.C. and seventy-three of its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors"),¹ as and for their reply to the objections to confirmation of the Debtors' Fifth Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 8, 2010 [Docket Nos. 1027, 1157] (as amended and modified, the "Plan") respectfully represent:

¹ A list of the Debtors, along with the last four digits of each Debtor's federal tax identification number, is attached hereto as "Exhibit A."



Relevant Background

1. On May 27, 2010, in accordance with the bidding procedures approved in the Order Pursuant to Sections 105(a), 363 and 503(b) of the Bankruptcy Code and Bankruptcy Rule 6004(h) Approving Bidding Procedures and Notice of the Auction Relating Thereto and Granting Related Relief, dated April 23, 2010 [Docket No. 975], the Debtors conducted an auction, at which they sought the highest or best offer for the sponsorship and funding of a plan of reorganization for the Debtors. After multiple rounds of spirited bidding, a group of investors comprising of Centerbridge Partners, L.P., Paulson & Co. Inc. and Blackstone Real Estate Partners VI L.P. (together, the “C/P/B Investors”) was declared the winning bidder with a bid of \$3.925 billion and subsequently, in consultation with the C/P/B Investors, CWC Capital Asset Management LLC (the “Special Servicer”) and the entities that comprise the Operating Advisor under the Trust and Servicing Agreement, dated June 11, 2007, the Debtors documented and filed with the Court the Plan and related disclosure statement [Docket No. 1028] (as amended, the “Disclosure Statement”) reflecting the terms of the winning bid.

2. On June 17, 2010, a hearing (the “Disclosure Statement Hearing”) was held at the conclusion of which the Court entered an order approving the Disclosure Statement, dated June 22, 2010 [Docket No. 1098] (the “Disclosure Statement Order”). Pursuant to the terms of the Disclosure Statement Order, the Debtors solicited votes for the Plan.

3. The Debtors have obtained acceptance of the Plan by an overwhelming number and amount of the Debtors’ creditors who voted on the Plan. See 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, filed July 13, 2010 [Docket No.

1136] and Supplemental 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, filed July 16, 2010 [Docket No. 1152] (collectively, the "KCC Declaration").

The Objections

4. The Debtors have received fifteen formal objections to the confirmation of the Plan and two informal objections or requests related to the terms of the Plan (collectively, the "Objections"). The Objections are summarized in the chart attached hereto as "Exhibit B."²

Debtors' Response

5. Contemporaneously herewith, the Debtors have filed an amended version of the Plan (the "Amended Plan"), which incorporates comments received from parties in interest as well as the resolutions reached with certain of the objecting parties with respect to their Objections. In addition, the Debtors have filed as exhibits to the Declaration of Ari Lefkovits in Support of Debtors' Motion Pursuant to Bankruptcy Rule 9019 for Approval of a Settlement Agreement Between Extended Stay Inc. and Remaining Debtors, a (i) revised ESI Settlement Agreement³ and (ii) a revised form of the Litigation Trust Agreement. The Debtors have been advised that the following entities will withdraw their objections on the record at the Confirmation Hearing, based upon modifications reflected in the Amended Plan, the ESI Settlement Agreement, the Litigation Trust Agreement and/or the Confirmation Order or related documents: (a) the Official Committee of Unsecured Creditors, (b) Manufacturers and Traders

² Failure of the Debtors to address other arguments made in the Objections does not constitute a waiver of the Debtors' rights to object to such arguments at the hearing to consider confirmation of the Plan or an acknowledgment of the validity of such arguments. Nothing contained herein shall be deemed an admission or acceptance of any statement contained in the Objections.

³ Capitalized terms not defined herein shall have the same meanings ascribed them in the Plan.

Trust Company, as Indenture Trustee, (c) Blackstone Real Estate Special Situations Fund L.P., Blackstone Real Estate Special Situations Holdings L.P., and Equity Holder BRE/ESH Holdings L.L.C., and (d) Bank of America, N.A., as Holder of the ESH UD Mortgage Claim.⁴ While the Debtors have made various changes to the Amended Plan and the Confirmation Order to address the objections filed by various taxing authorities and other parties in interest, they have not received confirmation that such changes are acceptable to the respective parties in interest. Consequently, such objections technically remain outstanding.

6. With the exception of a few minor points raised by other parties, therefore, the only significant remaining objection is the objection of the United States Trustee to the scope of the releases in the Plan. As shall be set forth in the Declaration of Ari Lefkovits in Support of Confirmation of the Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Lefkovits Declaration") and the Memorandum of Law in Support of Confirmation of the Debtors' Fifth Amended Joint Plan Under Chapter 11 of the Bankruptcy Code (the "Confirmation Brief"), which shall be incorporated herein by reference, the release and exculpation provisions of the Plan were an essential component of the agreement with the C/P/B Investors and the Plan Support Agreement, dated as of June 4, 2010, between CP ESH Investors, LLC, each of the Sponsors, the Special Servicer, and the Operative Advisor, and satisfy the requirements of applicable law. The Debtors' responses to the remaining Objections regarding the proposed releases shall be discussed in the Confirmation Brief, to be filed prior to

⁴ The ESI Settlement Agreement and the Litigation Trust Agreement remain subject to internal approval from certain constituents and/or committees of the Operating Advisor, the Special Servicer and Creditors' Committee.

the Confirmation Hearing.

WHEREFORE the Debtors respectfully request that the Court overrule the Objections, to the extent that they have not already been withdrawn or resolved, and confirm the Amended Plan, and that the Court grant the Debtors such other further relief as is just.

Dated: July 19, 2010
New York, New York

/s/ Jacqueline Marcus

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Exhibit A

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

Debtor	Last Four Digits of Federal Tax I.D. Number
ESH/Homestead Mezz L.L.C. f/k/a BRE/Homestead Mezz L.L.C.	9883
ESA P Mezz L.L.C. f/k/a BRE/ESA P Mezz L.L.C.	7467
ESA Mezz L.L.C. f/k/a BRE/ESA Mezz L.L.C.	0767
ESH/Homestead Mezz 2 L.L.C. f/k/a BRE/Homestead Mezz 2 L.L.C.	9903
ESA P Mezz 2 L.L.C. f/k/a BRE/ESA P Mezz 2 L.L.C.	7480
ESA Mezz 2 L.L.C. f/k/a BRE/ESA Mezz 2 L.L.C.	0866
ESH/Homestead Mezz 3 L.L.C. f/k/a BRE/Homestead Mezz 3 L.L.C.	9936
ESA P Mezz 3 L.L.C. f/k/a BRE/ESA P Mezz 3 L.L.C.	8977
ESA Mezz 3 L.L.C. f/k/a BRE/ESA Mezz 3 L.L.C.	0929
ESH/Homestead Mezz 4 L.L.C. f/k/a BRE/Homestead Mezz 4 L.L.C.	9953
ESA P Mezz 4 L.L.C. f/k/a BRE/ESA P Mezz 4 L.L.C.	8997
ESA Mezz 4 L.L.C. f/k/a BRE/ESA Mezz 4 L.L.C.	0964
ESH/Homestead Mezz 5 L.L.C. f/k/a BRE/Homestead Mezz 5 L.L.C.	9613
ESA P Mezz 5 L.L.C. f/k/a BRE/ESA P Mezz 5 L.L.C.	9186
ESA Mezz 5 L.L.C. f/k/a BRE/ESA Mezz 5 L.L.C.	1006
ESH/Homestead Mezz 6 L.L.C. f/k/a BRE/Homestead Mezz 6 L.L.C.	9667
ESA P Mezz 6 L.L.C. f/k/a BRE/ESA P Mezz 6 L.L.C.	9247
ESA Mezz 6 L.L.C. f/k/a BRE/ESA Mezz 6 L.L.C.	8995
ESH/Homestead Mezz 7 L.L.C. f/k/a BRE/Homestead Mezz 7 L.L.C.	9722
ESA P Mezz 7 L.L.C. f/k/a BRE/ESA P Mezz 7 L.L.C.	9349
ESA Mezz 7 L.L.C. f/k/a BRE/ESA Mezz 7 L.L.C.	9065
ESH/Homestead Mezz 8 L.L.C. f/k/a BRE/Homestead Mezz 8 L.L.C.	9779
ESA P Mezz 8 L.L.C.	9402
ESA Mezz 8 L.L.C. f/k/a BRE/ESA Mezz 8 L.L.C.	9117

Debtor	Last Four Digits of Federal Tax I.D. Number
ESH/Homestead Mezz 9 L.L.C. f/k/a BRE/Homestead Mezz 9 L.L.C.	1011
ESA P Mezz 9 L.L.C.	0281
ESA Mezz 9 L.L.C.	0923
ESH/Homestead Mezz 10 L.L.C. f/k/a BRE/Homestead Mezz 10 L.L.C.	1063
ESA P Mezz 10 L.L.C.	0224
ESA Mezz 10 L.L.C.	0175
Homestead Village L.L.C. f/k/a BRE/Homestead Village L.L.C.	8930
ESA MD Beneficiary L.L.C. f/k/a BRE/ESA MD Beneficiary L.L.C.	7038
ESA P Portfolio MD Trust f/k/a BRE/ESA P Portfolio MD Trust	8258
ESA MD Properties Business Trust f/k/a BRE/ESA MD Properties Business Trust	6992
ESA P Portfolio MD Beneficiary L.L.C. f/k/a BRE/ESA P Portfolio MD Beneficiary L.L.C.	8432
ESA Canada Properties Trust f/k/a BRE/ESA Canada Properties Trust	2314
ESA Canada Trustee Inc. f/k/a BRE/ESA Canada Trustee Inc.	2861
ESA Canada Beneficiary Inc. f/k/a BRE/ESA Canada Beneficiary Inc.	7543
ESA UD Properties L.L.C.	7075
ESA 2007 Operating Lessee Inc. f/k/a BRE/ESA 2007 Operating Lessee Inc.	9408
ESA 2005 Operating Lessee Inc. f/k/a BRE/ESA 2005 Operating Lessee Inc.	8471
ESA Operating Lessee Inc. f/k/a BRE/ESA Operating Lessee Inc.	4369
ESA P Portfolio Operating Lessee Inc. f/k/a BRE/ESA P Portfolio Operating Lessee Inc.	7433
ESA Business Trust f/k/a BRE/ESA Business Trust	8078
ESA Management L.L.C.	9101
ESA P Portfolio Holdings L.L.C. f/k/a BRE/ESA P Portfolio Holdings L.L.C.	8432
ESA Canada Operating Lessee Inc. f/k/a BRE/ESA Canada Operating Lessee Inc.	8838
Extended Stay Hotels L.L.C.	7438
ESH/MSTX GP L.L.C. f/k/a BRE/MSTX GP L.L.C.	5876
ESH/TXGP L.L.C. f/k/a BRE/TXGP L.L.C.	6936

Debtor	Last Four Digits of Federal Tax I.D. Number
ESA TXGP L.L.C. f/k/a BRE/ESA TXGP L.L.C.	1199
ESA P Portfolio TXNC GP L.L.C. f/k/a BRE/ESA P Portfolio TXNC GP L.L.C.	7210
ESH/TN Member Inc. f/k/a BRE/TN Member Inc.	8365

Exhibit B

1. Objection of the United States Trustee**(Docket No. 1121)**

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none">The United States Trustee (“<u>UST</u>”) asserts that the non-debtor releases in the Plan are with respect to claims and causes of action that creditors (not the Debtors) may hold against non-debtors that do not impact property of the Debtors’ estates, the administration of the Debtors’ cases or the consummation of the Plan and, therefore, the Court does not have jurisdiction to grant such releases. <u>See</u> UST Objection, § 1.	<ul style="list-style-type: none">The Debtors believe that the releases satisfy the governing standards for issuance of third party releases. <u>See</u> (i) Declaration of Ari Lefkovits in Support of Confirmation of the Debtors’ Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the “<u>Lefkovits Declaration</u>”) and (ii) Memorandum of Law in Support of Confirmation of the Debtors’ Fifth Amended Joint Plan Under Chapter 11 of the Bankruptcy Code (the “<u>Confirmation Brief</u>”), ¶ I.C.3, I.C.6.
<ul style="list-style-type: none">The UST objects to the releases under § 10.10 of the Plan, including releases for gross negligence, willful misconduct, and breach of fiduciary duty. <u>See</u> UST Objection, ¶ 12.	<ul style="list-style-type: none">The Plan, as amended, includes the language requested by the UST in section 10.10 and section 10.12.
<ul style="list-style-type: none">The UST asserts that the Plan is not confirmable because general unsecured creditors would receive less under the Plan than under a chapter 7 liquidation, because distributions to holders of mezzanine claims and general unsecured claims are limited to causes of action placed into the Litigation Trust, and non-debtor releases limit the causes of action that creditors may bring. <u>See</u> UST Objection, § 3.	<ul style="list-style-type: none">The UST fails to take into account other effects of liquidation under chapter 7. In a liquidation under chapter 7, the sale to the Investor would be impossible and the likely proceeds of an orderly liquidation by the chapter 7 trustee would be substantially less than \$3.925 billion. As reflected in the Liquidation Analysis annexed as Exhibit D to Disclosure Statement (the “<u>Liquidation Analysis</u>”), there would not be any amounts available for distribution to unsecured creditors. Moreover, there would not be any funding to support a litigation trust. Therefore, the Plan satisfies the best interests test because it provides for a potential recovery to holders of mezzanine claims and general unsecured claims.

2. Limited Objection of the Official Committee of Unsecured Creditors (the “Creditors’ Committee”)

(Docket No. 1135)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none">• The Creditors’ Committee objects to the releases provided in the Plan, asserting that (i) the court lacks subject matter jurisdiction to grant the non-debtor, third-party releases, (ii) the releases are vague and should not be approved, (iii) the releases are not supported by unique circumstances, and (iv) the Debtors have not demonstrated any “substantial contributions” by certain Released Parties. <u>See</u> Creditors’ Committee Objection, ¶ 39-61.• The Creditors’ Committee objects to the exculpation provision in § 10.9 of the Plan because it covers essentially all of the Released Parties. <u>See</u> Creditors’ Committee Objection, ¶ 62.	<p>Based upon modifications reflected in the Amended Plan, the ESI Settlement Agreement, the Litigation Trust Agreement and/or the Confirmation Order or related documents, the Creditors’ Committee’s Objection has been resolved. The Debtors have been advised that the Creditors’ Committee will withdraw its objection on the record at the Confirmation Hearing.</p>
<ul style="list-style-type: none">• The Creditors’ Committee objects to the Plan because it fails to provide a means for objecting to the Mortgage Facility Claim and the Mortgage Facility Deficiency Claim. <u>See</u> Creditors’ Committee Objection, ¶ 63-67.	
<ul style="list-style-type: none">• The Creditors’ Committee asserts that its views regarding the form of the Litigation Trust Agreement and the choice of a Litigation Trustee should be given preferred weight by the Court. <u>See</u> Creditors’ Committee Objection, ¶ 68-71.	

<ul style="list-style-type: none"> The Creditors' Committee objects to the findings with respect to the actions of the Mortgage Debt Parties during the course of the Chapter 11 Cases. <u>See Creditors' Committee Objection</u>, ¶ 72-74. 	
<ul style="list-style-type: none"> The Creditors' Committee objects to the Plan dissolving the Creditors' Committee on the Effective Date. <u>See Creditors' Committee Objection</u>, ¶ 75-78. 	

3. Objection of Manufacturers and Traders Trust Company as Indenture Trustee⁵ (“<u>Indenture Trustee</u>”) (Docket No. 1133)	
<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none"> The Indenture trustee objects to the Plan to the extent that (i) the effectiveness of the Plan is premised on the ESI Settlement Agreement, which was not negotiated at arm's length and excluded the Indenture Trustee, (ii) the Plan transfers ESI's assets (including the Windows Litigation) to the Sponsor/NewCo for no value, and (iii) the Plan provides for impermissible third party releases. <u>See Indenture Trustee Objection</u>, ¶ 36-44. 	<ul style="list-style-type: none"> The Indenture Trustee's Objection has been resolved. The Debtors have been advised that the Indenture Trustee will withdraw its objection on the record at the Confirmation Hearing.

⁵ The Indenture Trustee filed a joint objection to the Plan and the Debtors' Motion Pursuant to Bankruptcy Rule 9019 for Approval of a Settlement Agreement Between Extended Stay Inc. and Remaining Debtors (the “ESI Settlement”). Although the Debtors recognize that the Plan and the ESI Settlement affect each other, the Debtors will only address specific objections to the Plan in this chart.

4. Objection of Blackstone

(Docket No. 1131)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none">Blackstone asserts that the Plan must be litigation-neutral with respect to the creation of the Litigation Trust, and is requesting that the Confirmation Order include a “Litigation Neutrality Provision.” <u>See</u> Blackstone Objection, at 2. Blackstone asserts that without its proposed language, the Plan will not comply with the applicable provisions of the Bankruptcy Code, including the “good faith” requirement. <u>See</u> Blackstone Objection, at 7 & 9	<ul style="list-style-type: none">The Debtors have agreed to insert the following language in paragraph 75 of the Confirmation Order: “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 (x) 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 (y) 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.”Based upon the foregoing, the Blackstone Objection has been resolved.

5. Limited Objection of TriMont Real Estate Advisors, Inc.

(Docket No. 1134)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none">• TriMont objects to the Plan’s broad release, injunction and exculpation provisions related to non-debtors’ release from liability relating to the TriMont Claims. TriMont asserts that such broad non-debtor release, injunction and exculpation provisions are impermissible under sections 524(e) and 105(a) of the Bankruptcy Code, and thus, the Plan does not satisfy section 1129(a)(1) of the Bankruptcy Code.	<ul style="list-style-type: none">• The Debtors have agreed to insert the following language in paragraph 39 of the Confirmation Order: “Notwithstanding anything to the contrary in the Plan or this Order, none of the rights or claims of TriMont Real Estate Advisors, Inc. (“<u>TriMont</u>”) 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.”
<ul style="list-style-type: none">• TriMont also asserts that its substantial contribution to the Debtors’ chapter 11 cases warrant it to be included in the definition of “Mortgage Debt Parties” and “Special Servicer.”	<ul style="list-style-type: none">• TriMont’s argument that it should be included as a Released Party is not a valid confirmation objection.

6. Limited Objection of Five Mile Capital II SPE ESH LLC (“Five Mile”)

(Docket No. 1128)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none">• Five Mile objects to the Plan providing any release of third party claims, including without limitation, Sections 10.6, 10.10. and 10.12 of the Plan, that could be construed as releasing Five Mile’s claims against the holders of other Certificates Holders, specifically including claims related to pending litigation between Five Mile and Cerberus and Centerbridge. <u>See</u> Five Mile Objection, ¶ 9.	<ul style="list-style-type: none">• The Debtors believe that the releases satisfy the governing standards for issuance of third party releases. <u>See</u> Lefkovits Declaration and Confirmation Brief ¶¶ I.C.3, I.C.6.• The only release that Cerberus is receiving is in its capacity as Operating Advisor, and not individually. Accordingly, the release of Cerberus under the Plan will not release Five Mile’s claims against Cerberus. Cerberus has informed the Debtors that it will confirm this on the record at the Confirmation Hearing.• In addition, Five Mile states that “it supports confirmation of the Plan, and hopes that its position in the capital stack of the Trust will allow its Certificates to be repaid in full. If this were to occur, [Five Mile] would discontinue its lawsuit....” <u>See</u> Five Mile Objection, pg 2. The Special Servicer has informed the Debtors that Five Mile’s Certificates will be repaid in full. Accordingly, the Debtors believe Five Mile’s Objection has been mooted.

7. Objection of Aecon Buildings, a Division of Aecon Construction Group Inc. and Aecon Construction Group Inc. (collectively, “Aecon”) (Docket No. 1124)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none"> Aecon asserts that it holds three secured claims against the Debtors’ Canadian properties. Aecon objects to the Plan to the extent that it does not include a treatment for the Aecon secured claims, in violation of Bankruptcy Code section 1123(a)(2)-(3) and 1129(a)(1). <u>See</u> Aecon Objection, ¶ 4-8. 	<ul style="list-style-type: none"> Aecon’s claims are disputed and are related to pending litigation. The Plan has been modified to reflect treatment for Other Secured Claims in Section 4.17 of the Plan, as follows: “On the Effective Date, or as soon thereafter as practicable, each holder of an Allowed Other Secured Claim shall receive, on account of its Claim against the Debtors, one of the following distributions: (i) the payment of such holder’s Allowed Other Secured Claim in full in cash; (ii) the sale or disposition proceeds of the property securing any Allowed Other Secured Claim to the extent of the value of its interest in such property; (iii) the surrender to the holder of any Allowed Other Secured Claim of the property securing such Claim; or (iv) such other distributions as shall be necessary to satisfy the requirements of chapter 11 of the Bankruptcy Code. The manner and treatment of each Allowed Other Secured Claim shall be determined by the Debtors with the Investor’s consent and transmitted in writing to the holder of such Other Secured Claim prior to the Effective Date of the Plan.” Accordingly, Aecon’s objection should be overruled.

8. Objection of Bank of America, N.A., as Holder of ESA UD Mortgage Claim⁶

(Docket No. 997)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none">Bank of America (“<u>BofA</u>”) asserts that the Plan is unconfirmable because the Plan impairs BofA’s Class 3 claim in contravention of § 1129(b)’s “fair and equitable” requirement for a cramdown confirmation of a plan over a dissenting class of creditors. BofA asserts that it is entitled to the full value of its claim, including applicable interest. <u>See</u> BofA Objection, ¶¶ 1, 16.	<ul style="list-style-type: none">The holder of the ESA UD Mortgage Claim and the Investor have reached an agreement regarding the treatment of the Class 3 ESA UD Mortgage Claim. As reflected in the Amended Plan, the holder of the ESA UD Mortgage Claim has agreed to accept a note in the amount of \$6,250,000, bearing interest at LIBOR plus 4.0% per annum (with a LIBOR floor of 1% per annum), due and payable four years from the Effective Date. Accordingly, ESA UD submitted a ballot accepting the Plan. <u>See</u> Supplemental KCC Declaration [Docket No. 1152].Accordingly, the Debtors have been advised that BofA will represent at the Confirmation Hearing that the BofA Objection has been resolved.

⁶ Bank of America, N.A., as holder of ESA UD Mortgage Claim filed an Objection to the Debtors’ Fourth Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated May 13, 2010 [Docket No. 997]. Although Bank of America’s Objection is in reference to a plan that has since been superseded, the Debtors are addressing Bank of America’s Objection in the interest of confirmation of the Debtors’ current Plan.

9. Objection of County of Denton, Midway Independent School District, County of Williamson (the “Texas Ad Valorem Tax Claimants”) (Docket No. 1123)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none"> • The Texas Ad Valorem Tax Claimants claim that they hold secured claims for 2010 ad valorem taxes on property owned by Debtors within their jurisdictions. The Texas Ad Valorem Tax Claimants’ assert that these taxes are secured by statutory, first priority liens on those properties. • The Texas Ad Valorem Tax Claimants object to the Plan to the extent that it fails to provide for the retention of the property tax liens securing their claims until those taxes have been paid. <u>See</u> Texas Ad Valorem Tax Claimants’ Objection, ¶ V.A. • The Texas Ad Valorem Tax Claimants assert that they are entitled to 1% interest per month from the petition date (pursuant to section 511 of the Bankruptcy Code), through and after the Effective Date, until paid, pursuant to section 506(b) of the Bankruptcy Code. <u>See</u> Texas Ad Valorem Claimants’ Objection, ¶ V.B. 	<ul style="list-style-type: none"> • The following language has been included in the paragraph 72 of the Confirmation Order: “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 “<u>Tax Objectors</u>”), 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).” • Accordingly, the Objection of the Texas Ad Valorem Tax Claimants should be overruled.

10. Limited Objection of Lewisville Independent School District and Carrollton-Farmers Branch Independent School District (the “School Districts”)

(Docket No. 1127)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none"> • The School Districts allege that they are holders of administrative claims for 2010 ad valorem taxes on certain property owned by Debtors within the School Districts’ jurisdictions, which are secured by statutory, first priority liens. <u>See</u> School Districts’ Objection, ¶ 1. • The School Districts object to the Plan to the extent that it fails to provide adequate protection for the School Districts’ statutory tax liens. <u>See</u> School Districts’ Objection, ¶ 2. 	<ul style="list-style-type: none"> • The following language has been included in the paragraph 72 of the Confirmation Order: “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 “<u>Tax Objectors</u>”), 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).”

<ul style="list-style-type: none">• The School Districts further object to the Plan to the extent that it requires the School Districts to file administrative expense claims for their 2010 taxes. <u>See School Districts Objection ¶ 3.</u>	<ul style="list-style-type: none">• The Plan does not require governmental agencies to file section 503(b)(1) administrative claims. However, in the Confirmation Order, the Debtors have specifically excluded the governmental agencies from the obligation to file administrative expense claims. Specifically, paragraph 20 of the Confirmation Order provides: “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 “<u>Proof of Claim</u>”)...”• Accordingly, the Objection of the School Districts should be overruled.
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11. Objection of Texas Comptroller of Public Accounts (the “Texas Comptroller”)

(Docket No. 1129)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none"> • The Texas Comptroller has filed estimated proofs of claim for state taxes based on pending sales and hotel tax audits, which are not expected to be completed before the Effective Date. The Texas Comptroller asserts that the claims are priority tax claims. <u>See</u> Texas Comptroller Objection, ¶ 1. • The Texas Comptroller objects to the Plan to the extent that no post-confirmation interest will be paid on disputed priority tax claims in violation Bankruptcy Code 1129(a)(9)(c). <u>See</u> Texas Comptroller Objection, ¶ 6-8. 	<ul style="list-style-type: none"> • The following language has been included in the paragraph 72 of the Confirmation Order: “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 “<u>Tax Objectors</u>”), 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).”

<ul style="list-style-type: none"> The Texas Comptroller objects to the Plan to the extent that the Administrative/Priority Claims Reserve is underfunded, leaving open the potential for claims that will not be resolved until later to receive less than their full amounts. Specifically, the Texas Comptroller asserts that section 8.10(b) of the Plan states that if the estimates reserve is insufficient, neither the Reorganized Debtors nor Newco will be responsible for the shortage. <u>See</u> Texas Comptroller Objection ¶¶ 2-5. 	<ul style="list-style-type: none"> The Debtors, together with the Plan Administrator, shall make sure that the Administrative/Priority Claims Reserve is adequately funded.
<ul style="list-style-type: none"> The Texas Comptroller objects to section 10.6(d) of the Plan to the extent that it precludes the right of setoff in violation of Bankruptcy Code section 553, in the event that it may have setoff rights against the Debtors. <u>See</u> Texas Comptroller Objection, ¶¶ 9-12. 	<ul style="list-style-type: none"> Section 10.6(d) of the Plan only applies to setoff claims relating to claims that have been released and is, therefore, permissible. Accordingly, the Texas Comptroller’s Objection should be overruled.

12. Objection of Richardson ISD, et al. (“RISD”)		(Docket No. 1130)
<u>Objection</u>	<u>Response</u>	
<ul style="list-style-type: none"> • RISD asserts that it holds fully secured claims for 2010 ad valorem taxes on certain property owned by Debtors within the RISD jurisdiction, which are secured by statutory, first priority liens. • RISD objects to the Plan to the extent that: (i) the claims are treated as anything other than secured claims, (ii) the Plan does not provide for statutory interest on these claims; (iii) payment is provided to lower priority creditors prior to the satisfaction of the RISD claims; (iv) the Plan provides that any lien other than Texas tax liens, are of higher priority liens than that of RISD ; (v) it fails to expressly provide for the retention of RISD liens until all taxes, penalties and interest are paid in full; (vi) it releases or discharges the liens against the Debtors or discharge the Debtors of liability from these taxes, penalties or interest; and (vii) the RISD claims are limited in any way until payment in full. <u>See</u> RISD Objection, ¶ 2-8. 	<ul style="list-style-type: none"> • The following language has been included in the paragraph 72 of the Confirmation Order: “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 “<u>Tax Objectors</u>”), 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).” • Accordingly, the RISD’s Objection should be overruled. 	

13. Objection of Local Texas Tax Authorities & City of Memphis

(Docket No. 1137)

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none">• The Local Texas Tax Authorities and the City of Memphis assert that they hold fully secured claims for 2010 ad valorem taxes on certain properties owned by Debtors, which are secured by first priority liens. <u>See</u> Objection, ¶ I.• The Local Texas Tax Authorities and the City of Memphis object to the Plan (i) to the extent it does not provide for the retention of their liens until the taxes are paid, and (ii) language in paragraph 10.1 of the Plan which provides that upon the Effective Date, all property of the Debtors shall vest free and clear of all claims and liens. <u>See</u> Objection, ¶ II, 1.	<ul style="list-style-type: none">• The following language has been included in the paragraph 72 of the Confirmation Order: “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 “<u>Tax Objectors</u>”), 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).”

<ul style="list-style-type: none"> The Local Texas Tax Authorities and the City of Memphis object to the Plan to the extent that it requires the them to file administrative expense claims for their 2010 taxes, pursuant to 11 U.S.C. § 503(b)(1). <u>See</u> Objection, ¶ II, 2. 	<ul style="list-style-type: none"> The Plan does not require governmental agencies to file section 503(b)(1) administrative claims. However, in the Confirmation Order, the Debtors have specifically excluded the governmental agencies from the obligation to file administrative expense claims. Specifically, paragraph 20 of the Confirmation Order provides: “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 “<u>Proof of Claim</u>”)...” Accordingly, the Objection of the Local Texas Tax Authorities & City of Memphis should be overruled.
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14. Objection of Pima County⁷		(Docket No. 935)
<u>Objection</u>	<u>Response</u>	
<ul style="list-style-type: none"> • Pima County asserts that it is a secured creditor with claims for unpaid personal and real property taxes against Extended Stay Inc. for the 2009 tax year. <u>See</u> Pima County Objection, ¶ 1. • Pima County asserts that the Plan does not (i) classify Pima County's claims, (ii) provide for the retention of its liens on the Debtors' property, and (iii) for payment of its claim in full, including interest at the statutory interest rate up to the date of payment. <u>See</u> Pima County Objection, ¶ 6. 	<ul style="list-style-type: none"> • Pima County's claims for the 2009 tax year have been paid. • Furthermore, Extended Stay Inc. is not a Debtor under the Plan. 	

⁷ Pima County filed an Objection to Approval of Debtors' Disclosure Statement and to Confirmation of Debtors' Third Amended Plan of Reorganization, dated April 14, 2010 [Docket No. 935]. Although Pima County's Objection is in reference to a Disclosure Statement and Plan that have since been superseded, the Debtors are addressing Pima County's Objection in the interest of confirmation of the Debtors' current Plan.

15. Request of San Bernardino County and County of Riverside Tax Collector⁸	
<u>Request</u>	<u>Response</u>
<ul style="list-style-type: none"> San Bernardino County and County of Riverside Tax Collector requested language stating that their Administrative Claims would be paid in full, include interest (if applicable), and that the parties would retain their liens until the claims were paid in full. In addition, the parties requested language regarding failure to pay such Administrative Claims. 	<ul style="list-style-type: none"> The following language has been included in the paragraph [72] of the Confirmation Order: “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 “<u>Tax Objectors</u>”), 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).”

⁸ San Bernardino Country Tax Collector and County of Riverside Tax Collector did not file a formal objection to the Plan, but contacted the Debtors to request additional language in the Plan and Confirmation Order. Accordingly, they are addressed in this chart.

16. Treasurer of Douglas County, Colorado’s Application Under § 503(b)(1)(B) for Payment of Administrative Expenses for Postpetition Property Taxes⁹

(Docket Nos. 1099, 1100)

<u>Request</u>	<u>Response</u>
<ul style="list-style-type: none"> Douglas County has requested payment of an administrative expense related to 2010 property taxes. 	<ul style="list-style-type: none"> The following language has been included in the paragraph [72] of the Confirmation Order: “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 “<u>Tax Objectors</u>”), 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).”

⁹ Douglas County did not file a formal objection to the Plan, but the Debtors are addressing Douglas County’s request for payment of an Administrative Expense in this chart.

17. Response and Reservation of Rights of Maiden Lane**(Docket No. 1126)**

<u>Objection</u>	<u>Response</u>
<ul style="list-style-type: none">• Maiden Lane asserts a reservation of rights to the confirmation of the Debtors' Plan, to the extent that evidence is given at the confirmation hearing showing that the value of the Debtors is higher than the valuation reflected in the Plan. Maiden Lane asserts that the Plan would fail the "best interest of creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code and would be unconfirmable.• Maiden Lane also reserves the right to object to the Plan on the basis the Plan does not meet the section 1129(a) or (b) requirements, to the extent applicable. See Maiden Lane Response, ¶ 3.	<ul style="list-style-type: none">• As reflected in the (i) Confirmation Order, (ii) the Confirmation Brief, (iii) the Lefkovits Declaration, (iv) the Liquidation Analysis, and (v) the record of the Confirmation Hearing, the Debtors have satisfied the "best interest of creditors" test set forth in section 1129(a)(7) of the Bankruptcy Code.• The establishment of higher value at the Confirmation Hearing does not mean the "best interest of creditors" test is not satisfied.• The evidence at the Confirmation Hearing will establish that the Plan satisfies all of the requirements of section 1129(a) and (b) of the Bankruptcy Code.