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

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: **Chapter 11 Case No.**  
: **09-13764 (JMP)**  
: **(Jointly Administered)**  
: **Debtors.**  
: **EXTENDED STAY INC., et al.,**  
: **In re**  
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**STIPULATION, AGREEMENT AND ORDER BETWEEN THE DEBTORS AND THE  
MORTGAGE DEBT PARTIES MODIFYING FINAL CASH COLLATERAL ORDER**

Extended Stay Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, “Extended Stay” or the “Debtors”),<sup>1</sup> and U.S. Bank National Association, as Successor Trustee, and the trust created under the Trust and Servicing Agreement, dated as of August 1, 2007 (collectively, the “Mortgage Debt Parties,” together with Extended Stay, the “Parties” and each a “Party”), by and through their respective counsel, hereby enter into this stipulation, agreement and order (the “Stipulation”) and represent and agree, as follows:

**RECITALS**

A. On June 15, 2009 (the “Commencement Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the

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

“Bankruptcy Code”). The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On July 23, 2009, the Bankruptcy Court entered the Final Order (A) Authorizing Use of Cash Collateral, (B) Granting Adequate Protection, and (C) Modifying the Automatic Stay [Docket No. 205] (the “Final Cash Collateral Order”). Pursuant to the terms of the Final Cash Collateral Order, the Debtors were authorized to use the Cash Collateral,<sup>2</sup> subject to the terms and conditions set forth therein, and the Mortgage Debt Parties were granted, pursuant to sections 361 and 363(e) of the Bankruptcy Code (a) the Adequate Protection Liens; (b) the Adequate Protection Superpriority Claims; and (c) the Adequate Protection Payments.

C. Since the Commencement Date, the Debtors have been providing payments of approximately \$18 million per month to the Mortgage Debt Parties, as Adequate Protection Payments. However, the Debtors, together with their professionals, have determined that due to the seasonality of the Debtors’ business and the fact that the Debtors will soon be entering their slow season, the Debtors will face a liquidity crisis without some adjustment to their obligation to make Adequate Protection Payments beginning in November 2009.

D. In light of the foregoing and after extensive discussions, the Parties have agreed, subject to approval of this Court, to modify the Final Cash Collateral Order, as described below.

**IT IS HEREBY STIPULATED, AGREED AND, UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:**

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Final Cash Collateral Order.

1. The recitals set forth above are incorporated as if fully set forth herein.
2. Paragraph 8 of the Final Cash Collateral Order is hereby modified to add the phrase “subject to the limitation contained in paragraph 8A below” at the beginning of clause (i) contained therein, and shall read in its entirety (with the additional language being shown with a double underline below):

8. Adequate Protection Payments. As additional adequate protection for any Adequate Protection Obligations, the Mortgage Debt Parties shall receive adequate protection payments (the “Adequate Protection Payments”) from the Debtors in the form of the following and regardless of whether such amounts are included in the Budget: (i) subject to the limitation contained in paragraph 8A below, payments payable monthly on the same date as provided in the Mortgage Loan Documents, in an amount equal to the interest at the non-default contract rate that is payable to the Trust in connection with the Mortgage Debt, including, without limitation, the payments due in June 2009; (ii) payments promptly so as not to incur any late fees, interest, penalties, or similar costs and charges of or with respect to (A) taxes as required by the applicable states and municipalities on or before the day first due and payable, (B) insurance and maintenance costs with respect to the Collateral required by the Mortgage Loan Documents, and (C) all required ground lease rent payments; and (iii) ongoing payment of the reasonable fees, costs and expenses of McKenna Long & Aldridge LLP (“McKenna”), Latham & Watkins LLP (“Latham”), PricewaterhouseCoopers LLP (“PWC”) and any other professional retained by the Mortgage Debt Parties or the Special Servicer, in accordance with the Mortgage Loan Documents that are incurred in connection with matters relating to the Mortgage Loan Documents and the rights and interests of the Trust and the Special Servicer in connection with the Chapter 11 Cases or for which they are otherwise entitled to under the Mortgage Loan Documents. Notwithstanding that the monthly amounts to be paid pursuant to clause (i) of the preceding sentence will be based on the non-default contract rate of interest, interest shall accrue on the Mortgage Loan for the period subsequent to the Commencement Date at the default rate of interest set forth in the Mortgage Loan Agreement. The difference between the amount of the accrued interest at such default rate and the amount paid as adequate protection payments (the “Incremental Interest”) shall be added to the amount owed by the Debtors in respect of the Mortgage Debt; provided, however, that the interest accruing on the Mortgage Debt as provided above shall be calculated without taking into account the Incremental Interest. The Creditors’ Committee reserves the right to contend that the allowable claim in respect of the Mortgage Debt should not include the Incremental Interest (any challenge to the entitlement to the Incremental Interest shall be known as an “Incremental Interest Challenge”). The Debtors are authorized and directed, promptly and no later than five (5) business days after the expiration of the applicable Professional Fee Objection Period (as defined below),

to pay the undisputed and reasonable fees, costs and charges set forth in such invoice (with a copy to counsel for the Creditors' Committee) that are incurred in connection with the Mortgage Loan Documents, the rights and interests of the Trust and the Special Servicer in connection with the Chapter 11 Cases, or for which they are otherwise entitled to under the Mortgage Loan Documents. None of the fees, costs and expenses payable to McKenna, Latham, PWC or any other professional retained by the Mortgage Debt Parties or the Special Servicer pursuant to this paragraph shall be subject to separate approval by this Court or U.S. Trustee guidelines; provided, that each such professional shall submit copies of its professional fee invoices to respective counsel to the Debtors and the Creditors' Committee. Such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine. The Debtors and the Creditors' Committee may object to the reasonableness of the fees, costs and expenses included in any such professional fee invoice; provided that, any such objection shall be forever waived and barred unless (i) it is filed with this Court and served on the respective professional no later than ten (10) days after the objecting party's receipt of the applicable professional fee invoice (the "Professional Fee Objection Period") and (ii) it describes with particularity the items or categories of fees, costs and expenses that are the subject of the objection and provides the specific basis for the objection to each such item or category of fees, costs and expenses. If an objection to a professional's invoice is timely filed and received, the Debtors shall only be required to pay the undisputed amount of the applicable invoice, and any such objection shall be resolved by the agreement of the objecting party and the affected professional or by the Court, with the payment, if any, of the disputed amount only occurring after such resolution. Neither McKenna, Latham, PWC nor any other professional retained by the Mortgage Debt Parties or the Special Servicer shall be required to file any interim or final fee application with respect thereto. If the fees and expenses of McKenna, Latham, PWC or any other professional retained by the Mortgage Debt Parties or the Special Servicer are not promptly paid or reimbursed by the Debtors as provided in this paragraph, then such fees and expenses may be paid by the Trust or the master servicer through servicing advances in accordance with the Trust and Servicing Agreement and the Mortgage Loan Documents.

3. A new paragraph 8A is hereby added to the Final Cash Collateral Order and shall provide, in its entirety, as follows:

8A. Minimum Cash Threshold. The amount of Adequate Protection Payments to be made by the Debtors to the Mortgage Debt Parties pursuant to clause (i) of paragraph 8 above shall be adjusted, as follows:

a. The Debtors' adequate protection payment obligation on the date that any interest payment is due under the Mortgage Loan Documents (each,

a “Payment Date”), may be deferred, in whole or in part, solely to the extent that the amount of Available Cash (as defined below) of the Mortgage Borrowers as of the close of business on the date that is 1 business day before the applicable Payment Date (the “Threshold Calculation Date”) is less than \$22.5 million, after giving effect to the amount of the Adequate Protection Payment. The term “Available Cash” means the actual amount of the “CMA & DIP” balance computed in a consistent manner as per the weekly Extended Stay Hotels Cash Collateral Budget Variance Report prepared by the Debtors in accordance with past practice and provided to the Special Servicer and the Creditors’ Committee. Any amount so deferred shall be referred to hereinafter as the “Deferred Adequate Protection Payment.”

b. In any month after which any portion of an Adequate Protection Payment has been deferred pursuant to paragraph a above, the Debtors shall determine on the Threshold Calculation Date, first, whether the Mortgage Borrowers have sufficient Available Cash to make the Adequate Protection Payment required on the Payment Date for that particular month. If the Mortgage Borrowers do not have sufficient Available Cash to make the full Adequate Protection Payment, then the amount deferred shall be added to the Deferred Adequate Protection Amount. If the Mortgage Borrowers do have sufficient Available Cash to make the Adequate Protection Payment for that month, then the Debtors shall pay the Mortgage Debt Parties any Available Cash of the Mortgage Borrowers that is in excess of \$22.5 million, not to exceed the Adequate Protection Payment for that month plus the then outstanding Deferred Adequate Protection Amount. Notwithstanding anything herein to the contrary, in no event shall the deferral of any Adequate Protection Payment constitute or be deemed to constitute, a waiver of any Adequate Protection Payment.

4. Except as expressly provided for in this Stipulation, all other provisions of the Final Cash Collateral Order shall remain in full force and effect.

5. This Stipulation shall not be nor be deemed to be an amendment, modification, waiver, or any similar action of or with respect to any term or provision of the Mortgage Loan Documents.

6. Each person who executes this Stipulation on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation on behalf of such Party.

7. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same

instrument. The Parties agree that this Stipulation may be executed via facsimile and/or electronic mail, and that this Stipulation executed in such manner shall have full legal force.

8. This Stipulation can only be amended or otherwise modified by a signed writing executed by the Parties and approved by the Court.

9. This Stipulation shall be interpreted, construed and enforced exclusively in accordance with the laws of the State of New York.

10. The terms of this Stipulation are subject to approval of the Court and shall be of no force and effect unless and until the Stipulation is approved.

11. This Stipulation shall be effective immediately upon its entry by the Court.

12. The Court shall retain jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation.

**AGREED TO:**

Dated: November 17, 2009  
New York, New York

/s/ Jacqueline Marcus  
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Attorneys for the Successor Trustee

**SO ORDERED:**

Dated: November , 2009  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE