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Hearing Date: June 19, 2007
Hearing Time: 10:00 am

JONATHAN S. PASTERNAK (JP-6107)
ERICA R. FEYNMAN (EF-1351)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

NISTHAUZ GROUP, INC.

Chapter 11
Case No. 07 B 42503(DEM)

Debtor.

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**APPLICATION FOR ORDER AUTHORIZING DEBTOR TO
OBTAIN CREDIT FROM JORGE NISTHAUZ ON A FINAL BASIS
PURSUANT TO SECTION 364(b) OF THE BANKRUPTCY CODE**

**TO: THE HONORABLE DENNIS E. MILTON,
UNITED STATES BANKRUPTCY JUDGE:**

The application of the above-captioned Debtor and Debtor-in-Possession (the "Debtor") Nisthauz Group, Inc., by its attorneys, Rattet, Pasternak & Gordon Oliver, LLP, respectfully sets forth and alleges as follows:

BACKGROUND

1. On or about May 9, 2007 (the "Filing Date"), the Debtor filed a voluntary petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code (the "Code").
2. Thereafter the instant proceeding was referred to your Honor for administration under the Code.
3. The Debtor has continued in possession of its property and the management of its business affairs as a Debtor-in-Possession pursuant to §§1107 and 1108 of the Code.

4. An Official Committee of Unsecured Creditors has not been appointed. A trustee or examiner has not been appointed.

5. The Debtor owns, and until recently, operated an eight-unit residential apartment building located at 40-23 99th Street, Corona, New York (the "Apartment Building").

6. This Court has jurisdiction of this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges" of the District Court dated July 10, 1984 (Ward, Acting C.J.).

RELIEF REQUESTED

7. The Debtor submits this Application pursuant to Section 364(b) of the Code and Bankruptcy Rule 4001(c) seeking authority for the Debtor to obtain credit as a simple administrative expense as that term is defined in Section 503(b)(1)(A) of the Code in order to preserve the value of the Debtor's most significant asset, the Apartment Building, for the benefit of the estate, pending a refinance.

8. The Debtor seeks to borrow up to the sum of \$25,000.00, on an as-needed basis, and on a final basis, from Jorge Nisthauz (the "Lender"), the principal of the Debtor, pursuant to the terms of the loan agreement (the "Loan Agreement"), a copy of which is annexed hereto as Exhibit "A".

9. In December of 2006, in a proceeding brought by the Commissioner of the Dept. of Housing Preservation and Development of the City of New York ("HPD"), Index. No. HP 638/05, Hon. James Grayshaw, New York State Housing Court Judge entered an Order appointing Mr. Rafael Lara, as Administrator, pursuant to Article 7A of the New York State Real Property Actions and Proceedings Law for the Apartment Building (the "Housing Order").

10. As of the date of this Application, Mr. Lara continues to operate the Apartment Building pursuant to the Housing Order.

11. The purpose of Mr. Lara's appointment, *inter alia*, is to cure certain violations filed against the Apartment Building and to oversee the construction and rehabilitation of the Apartment Building in connection therewith.

12. At the conclusion of the construction and rehabilitation of the Apartment Building and confirmation that all violations have been removed from the municipal records, Mr. Lara will turnover the operation of the Apartment Building to the Debtor. The Debtor will be responsible to reimburse HPD for the costs of construction and rehabilitation, any necessary emergency repairs undertaken during Mr. Lara's administration, along with any other monies advanced by HPD, for the benefit of the Apartment Building and its tenants, such as electricity, gas and water.

13. Although permitted to do so under the Housing Order, Mr. Lara has not advanced any surplus money to the Debtor for payment of obligations such as the mortgage or taxes and instead has retained all excess rents from the Apartment Building after the payment of necessary operating expenses.

14. This tact has resulted in the Debtor's default to its pre-petition lender which caused a foreclosure action to be commenced and thus, the necessity of the filing of this proceeding.

15. The approval of the Loan Agreement is critical for the Debtor in order for it to preserve the value of the Apartment Building. Without funding, the Debtor will be unable to pay

monthly mortgage obligations, which are \$4,000 per month, exposing the Debtor to potential relief from the automatic stay and ultimate foreclosure.

16. The Debtor estimates the value of the Apartment Building is approximately \$750,000 and the secured debt thereon is approximately \$450,000. As such, the Debtor has significant equity in the Apartment Building which it seeks to preserve by refinancing the property to satisfy its obligations to HPD, the pre-petition lender and its other creditors.

BASIS FOR THE RELIEF SOUGHT

17. Section 364 (a), (b), (c) and (d) of the Code provide as follows:

"(a) If the trustee is authorized to operate the business of the debtor under section of 1108, 1304, 1203, or 1204 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt-

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The Court, after notice and a hearing, may authorize the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if-

(A) the [debtor] is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted."

19. Thus, section 364 of the Code provides for an escalating level of protection for a lender, providing such lender sufficient protection and incentive to grant credit in a speculative and uncertain business environment.

20. In the instant case, the Lender is seeking only a simple administrative expense claim pursuant to section 364(b). Thus, in terms of the escalating scale of protection provided under section 364, the transaction for which approval is being sought herein is at the low end of such protections, with a limited effect on the Debtor's creditors and the estate.

21. Because the Apartment Building is currently operated by an Administrator and the Debtor has no access to or use of the rental profits from the Apartment Building to maintain debt service, it is essential that the Debtor be permitted to secure credit in order to be able to pay its minimum post-petition expenses not being paid by Mr. Lara.

22. The proceeds of the borrowing shall be used by the Debtor only for the payment of debt service, certain property taxes as they come due, United States Trustee fees and any other post-petition operating expenses which are deemed by the Debtor and approved by the Lender, to be critical to the preservation of the equity in the Apartment Building.

23. If the Debtor does not obtain the aforementioned relief, the Debtor will be unable to maintain debt service thereby jeopardizing the estate's only asset and preventing the Debtor's ability to provide a distribution to its creditors.

TERMS AND CONDITIONS OF PROPOSED LENDING

24. The Debtor seeks to borrow up to the aggregate sum of \$25,000.00 from the Lender pursuant to terms and conditions as stated in the Agreement annexed hereto as Exhibit "A".

25. The Lender has agreed to a simple administrative claim with no monthly interest or amortization.

26. In addition, as set forth in the proposed form of Order annexed hereto as Exhibit "B", the Lender's simple administrative claim shall be subject to a carve out for the United States Trustee Fees under 28 U.S.C. Section 1930, Chapter 11 professional fees as may be allowed by the Court pursuant to 11 U.S.C. §§330 or 331 and the fees of a hypothetical chapter 7 trustee in an amount not to exceed \$10,000.

27. In light of the foregoing, the Debtor respectfully submits that the proposed Agreement is in the best interests of the Debtor, its creditors and the estate at large. Without Court approval of the proposed borrowing, the Debtor will have insufficient cash with which to meet its post-petition expenses and estate's only asset will be compromised thereby causing irreparable harm to the Debtor, the creditors and the estate.

NOTICE PROVISIONS

28. In order to obtain Court permission to borrow funds pursuant to Section 364 of the Code, the Debtors are required to comply with Bankruptcy Rule 4001(c) with respect to this request. Bankruptcy Rule 4001(c)(1) provides as follows:

(1) Motion, Service. A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to Section 705 or appointed pursuant to Section 1102 of the Code or its authorized agent or, if the case is a Chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to Section 1102, on the creditors included on the list filed pursuant to

Rule 107(d), and on such other entities as the court may direct. The motion shall be accompanied by a copy of the agreement.

29. Bankruptcy Rule 4001(c)(2) provides as follows:

(2) Hearing. The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

30. The Debtor proposes to give fifteen (15) days notice of the relief requested herein by serving, via overnight mail, a copy of these pleadings upon: (a) Office of the United States Trustee; (b) all parties who have filed notices of appearance and request for papers; (c) the Debtor's twenty largest unsecured creditors; and (d) the Debtor's taxing authorities. These are the parties required under Bankruptcy Rule 4001(c)(1), as applicable to the circumstances of these cases.

31. The Debtor respectfully requests waiver of submission of a memorandum of law in connection with this Application, in that there are no novel or difficult issues of law presented herein.

WHEREFORE, the Debtor respectfully requests that the Court enter the proposed form of Order annexed hereto as Exhibit "B", granting the Debtor all of the relief requested herein, together with such other and further relief as is just and proper under the circumstances, for all of which no prior request has been made to this or any other Court.

Dated: Harrison, New York
June 4, 2007

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By: /s/ Erica Feynman
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