

Elizabeth C. Mason
BAKER BOTTS L.L.P.
2001 Ross Avenue
Dallas, Texas 75201
Telephone: 214.953.6500
Facsimile: 214.953.6503
ATTORNEY FOR HINES VAF II MACARTHUR RIDGE, L.P.

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:

WIND PLUS HOLDINGS, et al.

DEBTORS

§
§
§
§
§
§
§

CASE NO. 09-47227-RFN

Jointly Administered under
Chapter 7

**AGREED MOTION OF HINES VAF II MACARTHUR RIDGE, L.P. FOR RELIEF
FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C.
§ 362(d) AND BANKRUPTCY RULE 4001(d)**

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT ELDON B. MAHON U.S. COURTHOUSE, 501 W. TENTH STREET, FORT WORTH, TEXAS 76102-3643 BEFORE CLOSE OF BUSINESS ON AUGUST 20, 2010, WHICH IS TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED, A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Hines VAF II MacArthur Ridge, L.P. ("Hines") moves this Court for entry of an agreed order modifying the automatic stay pursuant to § 362(d) of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Bankruptcy Rule 4001, and would respectfully show the Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. The Court's consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b). Venue of this proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409. This Court has authority to grant the relief requested pursuant to 11 U.S.C. § 362(d)(1).

FACTUAL BACKGROUND

2. On November 2, 2009, the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, originally assigned case numbers 09-37475-11 and 09-37478-11 in the Northern District of Texas, Dallas Division (collectively, the "Bankruptcy Cases"). The Bankruptcy Cases were transferred subsequently to the Fort Worth Division under case numbers 09-47227-rfn and 09-47228-rfn and are jointly administered under Case No. 09-47227-rfn.

3. On February 10, 2010, the Bankruptcy Cases were converted from chapter 11 to chapter 7 of the Bankruptcy Code. Areya Holder has been appointed as the chapter 7 trustee in the Bankruptcy Cases (the "Trustee").

4. On March 2, 2009, one of the Debtors, Wind Plus Holdings, Inc. ("WPH"), as tenant, and Hines as lessor, executed that certain Lease Agreement for the lease of 2770 rentable square feet of space in that certain nonresidential real property located at 909 Hidden Ridge Drive, Suite 450, Irving, Texas 75038 (the "Leased Premises") for a period commencing on

March 9, 2009 until the day immediately preceding that same date 38 months later (the "Lease"). The Lease provides for monthly rent payments of \$5193.75.

5. In connection with the Lease, the WPH provided Hines with a pre-petition security deposit in the amount of \$5,193.75 (the "Security Deposit"). As of the date of the filing of this Motion, Hines holds the Security Deposit.

6. On March 18, 2010, the Trustee filed a motion seeking to reject the Lease. Subsequently thereafter, the Trustee and Hines entered into an agreed order under which the Trustee rejected the Lease effective as of March 31, 2010 (on which date the Trustee vacated the Leased Premises) and agreed that Hines shall have an allowed, administrative priority chapter 11 claim against the Debtor, WPH, in the amount of \$5,912.46 and an allowed, administrative priority chapter 7 claim against the Debtor, WPH, in the amount of \$5,909.46 (together, the "Administrative Claims"). Further, under the agreed order, Hines reserved all rights to file a claim for any and all damages relating to the rejection of the Lease, should the estate permit parties to file such claims. This Court approved the agreed order on April 20, 2010.

**HINES RESPECTFULLY REQUESTS THAT THIS COURT MODIFY THE AUTOMATIC STAY TO
ALLOW HINES TO RETAIN AND APPLY THE SECURITY DEPOSIT**

7. By this Motion, Hines respectfully requests that this Court enter the agreed order pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001(d): (i) allowing Hines to retain and apply the Security Deposit to the Administrative Claims; and (ii) granting such other and further relief as this Court deems just and proper.

CAUSE FOR RELIEF

8. Section 362(d)(1) of the Bankruptcy Code provides that "[o]n request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under

subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-- (1) for cause . . .”

9. Sufficient cause exists to modify the automatic stay with regard to the Security Deposit, and Hines does not by this Motion seek to modify the automatic stay for any other purpose. Further, the Trustee does not oppose this Motion and has agreed to enter into the proposed order filed contemporaneously with this Motion.

WHEREFORE, Hines respectfully requests that this Court enter an agreed order granting the relief sought in this Motion and such other and further relief as the Court deems just and proper.

Dated: July 30, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

2001 Ross Avenue

Dallas, Texas 75201-2980

Telephone: 214.953.6500

Facsimile: 214.661.6503

By: /s/ Elizabeth C. Mason

Elizabeth C. Mason

State Bar No. 24065070

ATTORNEY FOR

HINES VAF II MACARTHUR RIDGE, L.P.

AGREED:

QULLING, SELANDER, CUMMISKEY & LOWNDS, P.C.

2001 Bryant Street, Suite 1800

Dallas, Texas 75201

Telephone: 214.871.2100

Facsimile: 214.871.2111

By: /s/ Linda S. LaRue

Linda S. LaRue

ATTORNEY FOR AREYA HOLDER, TRUSTEE

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:

WIND PLUS HOLDINGS, et al.

DEBTORS

§
§
§
§
§
§

CASE NO. 09-47227-RFN

**Jointly Administered under
Chapter 7**

**AGREED ORDER MODIFYING THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362(d)**

On this day, the Court considered the Motion filed by Hines VAF II MacArthur Ridge, L.P. (“Hines”)¹ on July 30, 2010, for entry of an agreed order modifying the automatic stay to allow Hines to retain the Security Deposit provided to Hines by WPH in connection with the Lease. The Court, noting the agreement of the parties below, finds that the agreement is well-taken and that the terms embodied by this Agreed Order should be approved. It is, therefore,

ORDERED that the Motion is hereby GRANTED; and it is further

ORDERED that the automatic stay is hereby modified to allow Hines to retain and apply the Security Deposit to the Administrative Claims; and it is further

ORDERED that unless expressly modified by another Order of this Court, the stay remains in effect for all other purposes; and it is further

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

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2010, a true and correct copy of the foregoing document was served via the Court's CM/ECF notification system and/or regular U.S. mail, on all parties set forth on the attached Master Service List.

/s/ Elizabeth C. Mason
Elizabeth C. Mason

CERTIFICATE OF CONFERENCE

I hereby certify, on this 30th day of July, that good faith settlement discussions were held between Hines and the Trustee, and that the Motion is unopposed by the Trustee.

/s/ Elizabeth C. Mason
Elizabeth C. Mason

AGREED AS TO FORM AND SUBSTANCE as of this ___ day of _____ 2010:

BAKER BOTTS L.L.P.

/s/ Elizabeth C. Mason
Elizabeth C. Mason
2001 Ross Avenue
Dallas, Texas 75201-2980
Telephone: 214.953.6500
Facsimile: 214.661.6503

**ATTORNEY FOR HINES VAF II
MACARTHUR RIDGE, L.P.**

**QULLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.**

/s/ Linda LaRue
Linda S. LaRue
2001 Bryant Street, Suite 1800
Dallas, Texas 75201
Telephone: 214.871.2100
Facsimile: 214.871.2111

**ATTORNEY FOR AREYA HOLDER,
TRUSTEE**

ept
863

Label Matrix for local noticing
0539-4
Case 09-47227-rfn7
Northern District of Texas
Ft. Worth
Tue Jul 27 14:48:08 CDT 2010

Albert and Emi Killeri
2640 N. Military Road
Arlington, VA 22207-5118

Amy L. Fouts
5960 McFarland
Indianapolis, IN 46227-8723

Brandon H. & Amy Ivie
5500 Preston Road, Suite 250
Dallas, TX 75205-2699

Britt Brown
5443 Ellsworth Avenue
Dallas, TX 75206-5321

Chris S. Wood
44 Marywood Trail
Wheaton, IL 60189-5879

David S. Cobb
6655 South Kessler Frederick Road
Tipp, OH 45371-9654

Donald Delany
DH Delaney & Company
Box 806
Wheaton, IL 60187-0806

(p)ELECTRIC POWER ENGINEERS INC
11614 BEE CAVES ROAD SUITE 260
AUSTIN TX 78738-5552

(p)HERBERT E WARNER
117 FAIRWATER DR
MONTGOMERY TX 77356-5594

J. Richard Tubb, PLLC
8117 Preston Road, Ste. 300
Dallas, TX 75225-6347

Alex Maki
10400 Mateo Trail
Irving, TX 75063-9398

Bernard Leroy
91 Rue De General De Gaulle
2710 Le Vaudreuil
Paris, France

Brandon Ivie
4749 Jerral Drive
Frisco, TX 75034-2211

Bruce Drucker
Trianon Partners, LLC
945 Ellington Lane
Pasadena, CA 91105-2742

Dallas County
Linebarger Goggan Blair & Sampson, LLP
CO Laurie Spindler Huffman
2323 Bryan Street Suite 1600
Dallas, TX 75201-2637

David Winthers
970 Cherrywood Lane
West Chicago, IL 60185-5012

Dr. Daniel and Carol Luetkehans
1510 Cadet Court
Wheaton, IL 60189-7380

Fulbright & Jaworski
1301 McKinney Street, Suite 5100
Houston, TX 77010-3095

Internal Revenue Service
1100 Commerce Street
MC 5027 DAL
Dallas, TX 75242-1001

501 W. Tenth Street
Fort Worth, TX 76102-3637

Amy Ivie
4749 Jerral Drive
Frisco, TX 75034-2211

Brad Price
572 Waters Edge Drive
South Elgin, IL 60177-3709

(p)BRANDON KERSHAW
5761 SUMMER STAR LANE
FRISCO TX 75034-1981

Cantey Hanger, LLP
600 West 6th Street, Suite 300
Fort Worth, TX 76102-6898

David B. Frick Trust
845 Western Avenue
Glen Ellyn, IL 60137-3797

Don Blanton
Blanton & Associates, Inc.
5 Lakeway Centre Court, Suite 200
Austin, TX 78734-2616

Dr. Jack Hughes
9212 NW County Road 1343
Blooming Grove, TX 76626-3309

Goodrich Postnikoff & Albertson, LLP
Attn: Kevin G. Herd
777 Main Street
Suite 1360
Fort Worth, TX 76102-5360

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 21126
PHILADELPHIA PA 19114-0326