

E-Filed: \_\_\_\_\_

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6 (702) 363-0317

7 Attorneys for Debtor

8 **UNITED STATES BANKRUPTCY COURT**  
9 **DISTRICT OF NEVADA**

10 THE ARTISAN HOTEL & SPA, LLC, )  
11 A Nevada Limited Liability )  
12 Company )  
13 Debtor. )

Case No. BK-S-08-24684-MKN  
Chapter 11

Date: OST PENDING  
Time: OST PENDING

14 **MOTION TO APPROVE A STIPULATED ORDER: (1) LIMITING THE USE OF THE**  
15 **CASH COLLATERAL, (2) PROVIDING SECURED CREDITOR, THE CITIZENS**  
16 **BANK OF OREGON, MISSOURI, WITH ADEQUATE PROTECTION AND (3)**  
17 **CONDITIONING THE AUTOMATIC STAY**

18 THE ARTISAN HOTEL & SPA, LLC (the "Debtor"), by and through its counsel David  
19 J. Winterton & Associates, Ltd. David J. Winterton & Associates, Ltd., hereby moves this Court  
20 for an order to use cash collateral under Section 363, Title 11 U.S.C. (The "Bankruptcy Code"),  
21 thereby permitting the Debtor to use the cash collateral with authority from the Court.

22 This motion (the "Motion") is made pursuant to Sections 105 and 363 of the Bankruptcy  
23 Code, as complemented by Rules 4001 (a) and 9006 of the Federal Rules of Bankruptcy  
24 Procedure in Local Rules of the U.S. District Court for the District of Nevada 4001 and 9006.

25 The Motion is further made and based upon the points and authorities which follow, any  
26 pleadings, papers or other mater contained in this Court's file, judicial notice of which is hereby  
27 requested, and any evidence offered and oral argument of counsel present at the time of hearing  
28 of this Motion.

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1 WHEREFORE, the Debtor requests that this Court immediately grant the order to use  
2 cash collateral and the Debtor hereby requests such other and further relief as is proper in this  
3 matter.

4 Dated this 17 day of February, 2009

5 Respectfully submitted,

6 DAVID J. WINTERTON & ASSOCIATES, LTD.

7 By: /s/ David J. Winterton  
8 David J. Winterton  
9 Nevada Bar 4142  
10 211 No. Buffalo, Suite A  
11 Las Vegas, Nevada 89145

## 12 MEMORANDUM OF POINTS AND AUTHORITIES

### 13 I.

#### 14 STATEMENT OF FACTS

15 1. On or about March 15, 2007, Citizens Bank loaned the Debtor the sum of  
16 \$6,000,000.00. The Debtor signed a Note and a Deed of Trust securing the Note. It also included  
17 an Assignment of Leases and Rent.

18 2. On or about November 7, 2008, Citizens Bank caused a Notice of Default and  
19 Election To Sell under Deed of Trust to be recorded against the property of the Debtor.

20 3. On or about February 7, 2008, Citizens Bank loaned the Debtor the sum of  
21 \$1,800,000.00 in the form of a Note secured by a Second Deed of Trust. It also included an  
22 Assignment of Leases and Rent.

23 4. The Debtor and the Bank have worked out a Stipulation Order (1) Limiting the Use  
24 of Cash Collateral, (2) Providing Secured Creditor, the Citizens Bank of Oregon, Missouri with  
25 Adequate Protection and (3) Conditioning the Automatic Stay.

26 5. The Debtor and the Bank now seek this court approval of the Stipulation Order.

### 27 II.

#### 28 LEGAL AUTHORITY

Under 11 U.S.C. § 363 entitled use, sale, or lease of property it outlines the use of cash

1 collateral. It states:

2 (a) In this section, "cash collateral" means cash, negotiable instruments,  
3 documents of title, securities, deposit accounts, or other cash equivalents whenever  
4 acquired in which the estate and an entity other than the estate have an interest and  
5 includes the proceeds, products, offspring, rents, or profits of property and the fees,  
6 charges, accounts, or other payments for the use or occupancy of rooms and other  
7 public facilities in hotels, motels, or other lodging properties subject to a security  
8 interest as provided in section 552(b) of this title, whether existing before or after the  
9 commencement of a case under this title.

10 In the present case, Citizens Bank has a "cash collateral" interest in the proceeds of the  
11 rent of the Debtor.

12 Under the Bankruptcy Code the Chapter 11 trustee may use the cash collateral without the  
13 secured creditor's consent, if the court, after notice and hearing, authorizes such use, as outlined  
14 under 11 U.S.C. § 363.

- 15 (2) The trustee may not use, sell, or lease cash collateral under paragraph  
16 (1) of this subsection unless—  
17 (A) each entity that has an interest in such cash collateral consents; or  
18 (B) the court, after notice and a hearing, authorizes such use, sale,  
19 or lease in accordance with the provisions of this section.

20 11 U.S.C. § 363.

21 The court's authorization for use of the cash collateral must adequately protect the  
22 creditor's interest in the collateral. 11 U.S. C. §363(e); United States v. Whiting Pools, Inc., 462  
23 U.S. 198, 203-04, 76 L. Ed. 2d 515, 103 S. Ct. 2309 (1983); In re Zeeway Corp., 71 Bankr. 210,  
24 211 (9th Cir. Bap 1987).

25 Under §363(e), the debtor must provide "adequate protection" of the creditor's interest as  
26 a condition of using cash collateral. Adequate protection may be provided by (1) making  
27 periodic cash payments or equivalent to the decrease in the value of the creditor's interest; (2) an  
28 additional or replacement lien on other property; or (3) other relief that provides the "indubitable  
equivalent" of the creditor's interest in the property. 11 U.S.C. § 361.

A classic method for finding adequate protection is the existence of an equity cushion. In  
fact, it has been found that an equity cushion standing alone can provide evidence of adequate  
protection for a secured claim. In re Mellor, 734 F.2d 1396 (9th Cir. 1984). The Ninth Circuit  
implied in the context of a relief from stay motion that a 10% cushion satisfies the adequate

1 protection standard. Id. See also In re James Wilson Assoc., 965 F.2d 160, 171 (7th Cir. 1992).

2 In evaluating an equity cushion, the court should consider the size of the equity cushion,  
3 the rate of which the cushion will be eroded by interest, depreciation and other costs, and whether  
4 the periodic payment are to be made to prevent or mitigate the erosion of the cushion. In re  
5 Liona Corp., N.V., 68 Bankr. 761, 767 (Bankr. E.D. Pa. 1987).

6 The failure of a secured creditor to object to the unauthorized use of cash collateral is not  
7 tantamount to that creditor's consent to the use of cash collateral. See Freightliner Market  
8 Development Corp. V. Silver Wheel Freightlines, Inc., 823 F. 2d 362, 368 (9th Cir. 1987). It  
9 requires the debtor to seek out affirmative express consent form all parties involved before using  
10 cash collateral. See also United Bank of Arizona, V. United States (In re Stewart-Smith  
11 Construction, 892 F.2d 1046 (9th Cir. 1989).

12 It is anticipated under the terms of the agreement that the Debtor will be making adequate  
13 protection payments. As a result, they will have adequate protection. The terms and the amounts  
14 of the payments have been agreed upon under the stipulation to use the cash collateral.

15 **III.**

16 **LEGAL ANALYSIS**

17 The Bank is the major creditor in this case. The Debtor and the Bank have worked out  
18 terms wherein the Debtor can use the Bank's cash collateral. It is imperative for the Debtor to  
19 use the cash collateral to stay in business. The Bank has also set up certain reporting guidelines  
20 and terms to make sure the Debtor will be able to make the payments to the Bank. This will  
21 include monthly operating reports. The Debtor requests that the court approve the Stipulation  
22 under the terms and conditions attached to this Motion.

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IV.

CONCLUSION

For the above stated reasons, the Debtor respectfully request that its Motion to Use Cash Collateral be granted and any other relief that the Court deems just and proper.

Dated this 17 day of February, 2009.

Respectfully submitted,

DAVID J. WINTERTON & ASSOCIATES, LTD.

By: /s/ David J. Winterton  
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Electronically Filed January \_\_, 2009

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 Attorneys for The Citizens Bank of Oregon, Missouri

8  
 9 UNITED STATES BANKRUPTCY COURT  
 10 DISTRICT OF NEVADA

11 In re

12 THE ARTISAN HOTEL & SPA, LLC,  
 13 Debtor.

Case No. BK-08-24684-MKN

Chapter 11

14 **STIPULATED ORDER: (1) LIMITING**  
**THE USE OF CASH COLLATERAL,**  
**(2) PROVIDING SECURED**  
**CREDITOR, THE CITIZENS BANK OF**  
**OREGON, MISSOURI, WITH**  
**ADEQUATE PROTECTION; AND**  
**(3) CONDITIONING THE**  
**AUTOMATIC STAY**

Hearing Date:  
 Hearing Time:

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 19 The Artisan Hotel & Spa ("Debtor"), by and through its counsel David J. Winterton, Esq.,  
 20 and The Citizens Bank of Oregon, Missouri ("Citizens Bank"), by and through its counsel Bob L.  
 21 Olson, Esq., of the law firm of Greenberg Traurig, LLP hereby enters into this Stipulated Order: (1)  
 22 Limiting the Use of Cash Collateral, (2) Providing Secured Creditor, The Citizens Bank of Oregon,  
 23 Missouri, With Adequate Protection and (3) Conditioning the Automatic Stay ("Stipulated Order").  
 24 In connection therewith, the parties agree and recite as follows:

25 A. On or about March 15, 2007, Citizens Bank loaned Debtor the sum of \$6,000,000,  
 26 which was memorialized by a Promissory Note (the "First Note") dated March 15, 2007, in the  
 27 principal amount of \$6,000,000. The First Note bears interest on the outstanding principal balance  
 28

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1 from March 15, 2007 at the rate of 8.250% per annum until March 15, 2010. The First Note  
2 requires monthly payments of \$51,593.04.

3 B. The First Note is secured by three (3) instruments. The first is a Real Estate Deed of  
4 Trust ("First Deed of Trust") that was recorded against the property on March 15, 2007, with the  
5 Office of the Recorder of Records for Clark County, Nevada, Book No. 20070315-0004952. The  
6 First Deed of Trust encumbers all of the Debtor's real property commonly known as the Artisan  
7 Hotel and Spa (the "Property"). The second instrument securing the First Note is an Assignment of  
8 Leases and Rents ("First Assignment of Rents") that was recorded with the Office of the Recorder  
9 of Records for Clark County, Nevada, on March 15, 2007, Book No. 20070315-0004953.

10 C. The third instrument securing the First Note is a Commercial Security Agreement  
11 (the "First Commercial Security Agreement") that gives Citizens Bank a security interest in the  
12 Debtor's accounts, inventory, equipment, instruments and chattel paper, general intangible, deposit  
13 accounts and all business assets including, but not limited to, furniture and fixtures, leases and rents,  
14 inventories, Nevada Department of Transportation Lease dated May 21, 2003 and general  
15 intangibles. The security interest included in the First Commercial Security Agreement was  
16 perfected when a financing statement was recorded with the Nevada Secretary of State on October  
17 17, 2005, Document No. 2005032599-7.

18 D. The First Note is in default. As of January 6, 2009, the payoff of the First Note was  
19 \$6,035,725.68. That amount does not include legal fees, costs of suit, foreclosure fees or other  
20 collection costs. The amount currently delinquent is \$219,565.20, which consists of unpaid  
21 principal of \$53,293.18 and accrued interest of \$166,272.02. On January 15, 2009, another  
22 payment of \$51,593.04 became due, thereby increasing the amount of the arrearages to \$271,158.24.  
23

24 E. Debtor's default under the First Note prompted Citizens Bank to commence  
25 foreclosure proceedings against the property. On or about November 7, 2008, Citizens Bank caused  
26 a Notice of Default and Election to Sell under Deed of Trust ("First NOD") to be recorded against  
27 the Property. The First NOD was recorded on November 7, 2008, with the Office of the Recorder  
28 of Records for Clark County, Nevada, Book No. 20081107-0002480.

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1 F. The Debtor has no defenses to payment of the full amount due on the First Note and  
2 has no setoffs or offsets against Citizens Bank.

3 G. On or about February 7, 2008, Citizens Bank loaned Debtor the sum of \$1,800,000,  
4 which was memorialized by a Promissory Note (the "Second Note") dated February 7, 2008, in the  
5 principal amount of \$1,800,000.00. The Second Note bears interest on the outstanding principal  
6 balance from March 15, 2007 at the rate of 8.375% per annum until March 2, 2012. The Second  
7 Note requires monthly payments to be made of \$15,596.34.

8 H. The Second Note is secured by three (3) instruments. The first is a Real Estate Deed  
9 of Trust ("Second Deed of Trust") that was recorded against the property on February 7, 2008, with  
10 the Office of the Recorder of Records for Clark County, Nevada, Book No. 20080207-0004395.  
11 The second instrument securing the Second Note is an Assignment of Leases and Rents ("Second  
12 Assignment of Rents") that was recorded with the Office of the Recorder of Records for Clark  
13 County, Nevada, on February 7, 2008, Book No. 20080207-0004396.

14 I. The third instrument securing the Second Note is a Commercial Security Agreement  
15 (the "Second Commercial Security Agreement") that gives Citizens Bank a security interest in the  
16 Debtor's accounts, inventory, equipment, instruments and chattel paper, general intangible, deposit  
17 accounts and all business assets including, but not limited to, furniture and fixtures, leases and rents,  
18 inventories, Nevada Department of Transportation Lease dated May 21, 2003 and general  
19 intangibles. The security interest included in the Second Commercial Security Agreement was  
20 perfected when a financing statement was recorded with the Nevada Secretary of State on October  
21 17, 2005, Document No. 2005032599-7.  
22

23 J. The Second Note is in default. As of January 6, 2009, the payoff of the Second Note  
24 was \$1,830,324.83. That amount does not include legal fees, costs of suit, foreclosure fees or other  
25 collection costs. The amount currently delinquent is \$62,385.36, which consists of unpaid principal  
26 of \$11,922.79 and accrued interest of \$50,462.57. On February 2, 2009, another payment of  
27 \$62,385.36 became due, thereby increasing the amount of the arrearages to \$77,981.70.  
28

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1 L. Debtor's default under the Second Note prompted Citizens Bank to commence  
2 foreclosure proceedings against the property. On or about November 7, 2008, Citizens Bank caused  
3 a Notice of Default and Election to Sell under Deed of Trust ("Second NOD") to be recorded  
4 against the property. The Second NOD was recorded on November 7, 2008, with the Office of the  
5 Recorder of Records for Clark County, Nevada, Book No. 20081107-0002480.

6 M. The Debtor has no defenses to payment of the full amount due on the Second Note  
7 and has no setoffs or offsets against Citizens Bank.

8 N. Section 14 of the First Deed of Trust contains the following assignment of leases and  
9 rents:

11 **ASSIGNMENT OF LEASES AND RENTS.** Grantor  
12 absolutely, unconditionally and irrevocably assigns, grants,  
13 bargains and conveys to Lender all the right, title and  
14 interest in the following (Property).

15 A. Existing or future leases, subleases, licenses, guaranties  
16 and any other written or verbal agreements for the use and  
17 occupancy of the Property, including but not limited to, any  
18 extensions, renewals, modifications or replacements  
19 (Leases).

20 B. Rents, issues and profits, including but not limited to,  
21 security deposits, minimum rents, percentage rents,  
22 additional rents, common area maintenance charges, parking  
23 charges, real estate taxes, other applicable taxes, insurance  
24 premium contributions, liquidated damages following  
25 default, cancellation premiums, "loss of rents", insurance,  
26 guest receipts, revenues, royalties, proceeds, bonuses,  
27 accounts, contract rights, general intangibles, and all rights  
28 and claims which Grantor may have that in any way pertain

to or are on account of the use or occupancy of the whole or  
any part of the Property (Rents).

O. The Second Deed of Trust contains identical language.

P. Similarly, the First Assignment of Rents provides:

**2. ASSIGNMENT OF LEASES AND RENTS,** For good  
and valuable consideration, the receipt and sufficiency of  
which is acknowledged, and to secure the Secured Debts

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and Assignor's performance under this Assignment, Assignor absolutely, unconditionally, irrevocably, and immediately assigns, grants, bargains and conveys to Lender all the right, title and interest in the following (all referred as Property).

A. Existing or future leases, subleases, licenses, guarantees and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacement (all referred as Leases).

B. Rents, issues and profits (all referred to as Rents), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Assignor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.

Q. The Second Assignment of Rents contains identical language.

R. All room receipts and other rents, issues, and profits generated by Debtor constitute the cash collateral of Citizens Bank.

S. Since the Petition Date the Debtor has used Citizens Bank's cash collateral in violation of 11 U.S.C. § 363.

NOW, HEREFOR, Debtor and Citizens Bank agree as follows:

1. The First Deed of Trust is a validly perfected and unavoidable first priority lien against the Debtor's Property, junior in priority only to real property taxes owed to Clark County, Nevada.

2. The Second Deed of Trust is a validly perfected and unavoidable second priority lien against the Debtor's Property, junior in priority only to the First Deed of Trust and real property taxes owed to Clark County, Nevada.

1                   3.     Citizens Bank has a validly perfected first-priority security interest in the  
2 Debtor's rents, issues and profits, which include hotel rents.

3                   4.     Citizens Bank's security interest in the Debtor's rents, issues and profits,  
4 which includes hotel rents and revenues, extends to those rents, issues, profits and hotel rents  
5 generated by the Debtor's business after the Petition Date pursuant to 11 U.S.C. §552(b).

6                   5.     Debtor may use Citizen Bank's cash collateral on the following terms and  
7 conditions contained in this Stipulated Order.

8                   6.     Debtor shall commence making the interest payments to Citizens Bank on the  
9 First Note, commencing on March 1, 2009, in the initial amount of \$37,456.44. These interest  
10 payments are payable in arrears and are due no later than the first day of March, 2009, and the first  
11 day of each successive month thereafter at a rate of \$1,337.73 per day.

12                   7.     Debtor shall commence making the interest payments to Citizens Bank on the  
13 Second Note, commencing on March 15, 2009, in the initial amount of \$17,780.08. These interest  
14 payments are payable in arrears and are due no later than the fifteenth day of March, 2009, and the  
15 fifteenth day of each successive month thereafter at a rate of \$413.49 per day.

16                   8.     On September 1, 2009, Debtor shall pay Citizens Bank the sum of  
17 \$99,267.63 as and for a portion of the delinquent interest accrued prior to February 1, 2009.

18                   9.     On December 1, 2009, Debtor shall pay Citizens Bank the sum of \$99,267.63  
19 as and for a portion of the delinquent interest accrued prior to February 1, 2009.

20                   10.    On February 1, 2010, Debtor shall pay Citizens Bank the sum of \$99,267.63  
21 as and for a portion of the delinquent interest accrued prior to February 1, 2009.

22                   11.    Debtor shall, at all times, maintain adequate liability insurance against the  
23 Property. Such liability insurance shall be in an amount of not less than \$1,000,000 per person and  
24 per incident.

25                   12.    Debtor shall, at all times, maintain adequate property insurance insuring the  
26 building, and all contents contained therein, for an amount of not less than \$8,000,000.

27                   13.    Debtor shall timely pay all post-petition real property taxes associated with  
28 the Property.

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1 14. Debtor shall timely pay all post-petition local improvement district, special  
2 improvement district and other assessments assessed against the Property.

3 15. Debtor shall not allow any additional liens to be attached to the Property.

4 16. Debtor shall timely file all state and federal tax returns, including without  
5 limitation income tax returns, sales tax returns, hotel room tax returns, 940s and 941s ("Tax  
6 Returns").

7 17. Debtor shall provide copies of all Tax Returns Debtor files to Citizens Bank  
8 within five (5) business days of the date those Tax Returns are filed.

9 18. Debtor shall deliver to Citizens Bank the following documents not later than  
10 five business days following receipt of these documents:

- 11 a. Bank statements;
- 12 b. Notices from the Internal Revenue Service;
- 13 c. Notices from any Nevada taxing authority;
- 14 d. Copies of past due notices from any entity including utilities; and
- 15 e. Notices of assessments of any tax liens.

16  
17 19. Debtor shall deliver to Citizens bank the following documents, each and  
18 every week, by no later than 5:00 p.m. on Friday:

- 19 a. Debtor's general ledger;
- 20 b. Debtor's bank deposit ledger; and
- 21 a. Debtor's checkbook registers.

22  
23 20. Debtor File all monthly operating reports on or before the dates such reports  
24 are due.

25  
26 21. The Debtor shall file complete statements and schedules with the Bankruptcy  
27 Court by no later than February 16, 2009.

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22. Debtor shall maintain all of its bank accounts ("Accounts") at Red Rock Community Bank ("Bank").

23. Citizens Bank shall be provided a replacement lien against: (a) the Accounts; (b) all of Debtor's unencumbered assets; (c) all post petition income generated by Debtor or on the Property including, without limitation, all proceeds from the sales of food and beverages and other services; and (d) all avoidance actions pursuant to 11 U.S.C. §§ 542-553.

24. Citizens Bank shall be provided a super-priority claim against the estate pursuant to 11 U.S.C. § 507(b).

25. In the event Debtor fails to perform any act required herein, Citizens Bank may in its sole and absolute discretion, provide Debtor and Debtor's counsel a ten (10) day Notice of Default. The Notice of Default shall be deemed received by Debtor upon the earlier of the date it is deposited into the U.S. Mail, postage pre-paid or sent via facsimile to Debtor's counsel. Debtor shall have ten (10) days following the receipt of such Notice of Default to cure the default described therein. In order to cure the default therein, Debtor shall make good the deficiency in performance described in the Notice of Default and pay to Citizens Bank the sum of \$250 as and for the cost of preparing the notice of default. In the event that Debtor fails to timely cure the Default described in the Notice of Default, Citizens Bank may: (1) submit to the Court an ex parte order terminating the automatic stay as it applies to Citizens Bank; and (2) send a demand to the Bank instructing it to deliver all funds in the Account to Citizens Bank.

26. Debtor, on its own behalf and on behalf of the estate, irrevocably waives any right to surcharge any collateral held by Citizens Bank pursuant to 11 U.S.C. § 506(e).

27. Debtor, on its own behalf and on behalf of the estate, irrevocably waives any right to challenge the extent, priority or validity of Citizens Bank's liens.

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1 28. Debtor, on its own behalf and on behalf of the estate, irrevocably waives  
2 any right to object to any proof of claim filed by Citizens Bank.

3 29. Debtor, on its own behalf and on behalf of the estate, irrevocably waives  
4 any right to file any avoidance action against Citizens Bank pursuant to 11 U.S.C. §§ 542-553.  
5

6 30. Nothing contained in this stipulation shall prohibit Citizens Bank from filing,  
7 in its sole and absolute discretion and at any time it deems appropriate, actions against any  
8 guarantors of the First Note and the Second Note.

9 31. All recitals in this Stipulation are true and correct and are binding upon  
10 Debtor.

11  
12 32. Debtor must file a plan of reorganization on or before September 30, 2009.  
13 Unless otherwise agreed by Citizens Bank in writing, Debtor may only propose a Plan of  
14 Reorganization in this case which will, except as provided in paragraphs 8-10, above, pursuant to 11  
15 U.S.C. § 1124: (a) leave unaltered the legal, equitable and contractual rights of Citizens Bank or its  
16 successor-in-interest; (b) cure all deficiencies in performance on the obligations to Citizens Bank on  
17 or before the effective date of the plan; provided, however, the effective date of the plan may not  
18 occur more than ninety (90) days following confirmation of the Plan; (c) reinstate the maturity of  
19 Citizens Bank's claims as such maturity existed before the default; (d) compensate Citizens Bank  
20 for any damages incurred as a result of the Debtor's monetary and nonmonetary defaults, including  
21 all accrued interest at the applicable default rate, all attorney's fees, foreclosure fees and other costs  
22 of collection; and (e) not otherwise alter the legal, equitable or contractual rights of Citizens Bank.

23 33. Upon approval by the United States Bankruptcy Court, this Order is binding  
24 Citizens Bank, the Debtor, and all successors-in-interest to the Debtor, including any bankruptcy  
25 trustee appointed in this case, any transferees of Debtor, any entity purporting to act on behalf of the  
26 estate, and any party-in-interest including, without limitation, creditors, the Debtor's equity security  
27 holders and committee of creditors.  
28

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1 34. Nothing contained herein shall prohibit Citizens Bank from credit bidding at  
2 any sale of the Property pursuant to 11 U.S.C. § 363(k).

3 35. Debtor shall file a motion with the United States Bankruptcy Court seeking  
4 approval of this Stipulation on or before February 6, 2009.  
5

6 36. Douglas DaSilva and Ninette DaSilva, in their capacity of guarantors of the  
7 First Note and the Second Note, consent to this Agreement.  
8

9 **AGREED TO BY:**

10 **THE ARTISAN HOTEL & SPA**

11 Dated this 11 day of February,  
12 2009.

13 By:   
14 DOUGLAS DA SILVA

15 Dated this \_\_\_ day of February,  
16 2009.

17 **CITIZENS BANK OF OREGON, MISSOURI**

18 By:   
19 BARRY E. KREEK

20 Dated this 11 day of February,  
21 2009.

22 By:   
23 DOUGLAS DA SILVA, Guarantor


24 Dated this \_\_\_ day of February,  
25 2009.

26 By:   
27 NINETTE DA SILVA, Guarantor

28 **REVIEWED BY:**

Dated this \_\_\_ day of February,  
2009.

**DAVID WINTERTON & ASSOCIATES, LTD.**

By:   
David J. Winterton, Esq.  
Attorneys for Debtor

Dated this 10 day of February,  
2009.

**GREENBERG TRAUIG, LLP**

By:   
Bob L. Olson

10LV 418,740,749v4

Greenberg Traurig, LLP  
Suite 5050 Alcoa, 370 Federal Highway Parkway  
East Virginia, Nevada 89119  
(702) 762-5773  
(fax) 762-5022 (fax)

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34. Nothing contained herein shall prohibit Citizens Bank from credit bidding at any sale of the Property pursuant to 11 U.S.C. § 363(k).

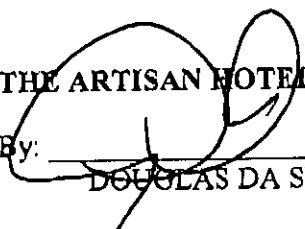
35. Debtor shall file a motion with the United States Bankruptcy Court seeking approval of this Stipulation on or before February 6, 2009.

36. Douglas DaSilva and Ninette DaSilva, in their capacity of guarantors of the First Note and the Second Note, consent to this Agreement.

**AGREED TO BY:**

**THE ARTISAN HOTEL & SPA**

Dated this 15 day of February, 2009.


By:   
DOUGLAS DA SILVA

Dated this \_\_\_ day of February, 2009.

**CITIZENS BANK OF OREGON, MISSOURI**

By: \_\_\_\_\_  
BARRY E. KREEK

Dated this 15 day of February, 2009.

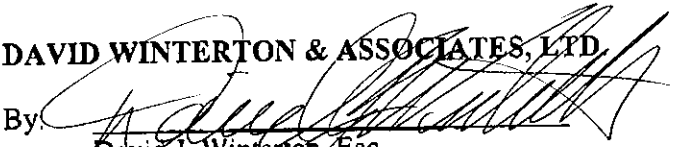
By:   
DOUGLAS DA SILVA, Guarantor

Dated this \_\_\_ day of February, 2009.

By:   
NINETTE DA SILVA, Guarantor

**REVIEWED BY:**

Dated this \_\_\_ day of February, 2009.

**DAVID WINTERTON & ASSOCIATES, LPD.**  
By:   
David J. Winterton, Esq.  
Attorneys for Debtor

Dated this \_\_\_ day of February, 2009.

**GREENBERG TRAUERIG, LLP**  
By: \_\_\_\_\_  
Bob L. Olson David J. Winterton, Esq.

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