

Date Signed:
October 3, 2013



SO ORDERED.

A handwritten signature in black ink, appearing to read "R. Faris", written over a horizontal line.

Robert J. Faris
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re:

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes Resort and
Naniloa Volcanoes Golf Club,

Debtor.

Bk. No. 12-02279
(Chapter 11)

Hearing:

Date: October 21, 2013

Time: 9:30 a.m.

Judge: The Hon. Robert J. Faris

Rel. Dkt. Nos. 8, 26, 89, 188, 207,
247, 327, 343, 361

**TENTH STIPULATED INTERIM ORDER (i) AUTHORIZING USE OF
CASH COLLATERAL PURSUANT TO 11 U.S.C. §§ 363(c)(2), (ii)
GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 363
AND 364, (iii) SCHEDULING OF FINAL HEARING, AND (iv) GRANTING
RELATED RELIEF; EXHIBIT "A"**

On November 20, 2012, HAWAII OUTDOOR TOURS, INC. dba NANILOA VOLCANOES RESORT AND NANILOA VOLCANOES GOLF CLUB ("HOT" or "Debtor") filed its Chapter 11 petition and its Motion for Order Authorizing Debtor to Use Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2) on an Interim and Final Basis ("Cash Collateral Motion"), wherein the Debtor moved

this Court for, among other things, entry of an interim order (“First Interim Order”) authorizing the Debtor’s use of cash collateral on an interim basis (the “Interim Relief”). After notice and at the November 21, 2012 hearing on the Motion for Interim Relief, the Court found, subject to the terms and conditions set forth in the First Interim Order, that (i) granting the First Interim Order requested in the Cash Collateral Motion was in the best interests of the Debtor, its estate and its creditors; (ii) that the First Interim Order was necessary to provide the Debtor with sufficient cash and liquidity to avoid immediate and irreparable harm during the term of the First Interim Order; (iii) in accordance with Rule 4001(a), (b) and (d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and LBR 4001-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Hawaii (the “Local Rules”), and after due and proper notice of the Cash Collateral Motion; and (iv) upon the record presented, including, without limitation, statements of counsel, after due deliberation thereon, good and sufficient cause, the Court entered its First Interim Order Re: Use of Cash Collateral. The First Interim Cash Collateral Order was effective through December 17, 2012, and then continued to further hearing on the Motion for Interim Relief on December 20, 2012.

HOT continued to operate the Naniloa Volcanoes Resort and Naniloa Volcanoes Golf Club (the “Naniloa” or the “Property”) during the period of the

First Interim Cash Collateral Order. A Second Stipulated Interim Order (i) Authorizing Use of Cash Collateral Pursuant to §§ 363(c)(2), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 363 and 364, (iii) Scheduling of Final Hearing, and (iv) Granting Related Relief (“Second Interim Cash Collateral Order”) was filed on December 21, 2012 (Dkt #89) which, among other things, extended the use of cash collateral to January 22, 2013. A Third Stipulated Interim Order (i) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. § 363 and 364, (iii) Scheduling of Final Hearing and (iv) Granting Related Relief (“Third Interim Cash Collateral Order”) was filed on February 25, 2013 (Dkt #188) which, among other things, extended the use of cash collateral to February 25, 2013. A Fourth Stipulated Interim Order (i) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. § 363 and 364, (iii) Scheduling of Final Hearing and (iv) Granting Related Relief (“Fourth Interim Cash Collateral Order”) was filed on March 6, 2013 (Dkt #207) which, among other things, extended the use of cash collateral to March 25, 2013 and subsequently to a continued hearing on March 28, 2013. A Fifth Stipulated Interim Order (i) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. § 363 and 364,

(iii) Scheduling of Final Hearing and (iv) Granting Related Relief (“Fifth Interim Cash Collateral Order”) was filed on April 9, 2013 (Dkt #247).

On April 29, 2013, a hearing was held on the Debtor’s continued use of cash collateral but no formal order has been entered. The Court orally ordered and authorized Debtor’s use cash collateral to the conclusion of the next hearing on cash collateral scheduled for May 20, 2013, and ordered Debtor to produce to First-Citizens Bank and the Department (1) any and all written notices of violation or warnings concerning the Property or operations of the Hotel and Golf Course and (2) a current accounting of advance payments or deposits for room reservations or special functions (together the “Sixth Interim Cash Collateral Order”).

On May 14, 2013, David C. Farmer (“Trustee”) was appointed as Chapter 11 Trustee.

On June 10, 2013, a Seventh Stipulated Interim Order (i) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. § 363 and 364, (iii) Scheduling of Final Hearing and (iv) Granting Related Relief (“Seventh Interim Cash Collateral Order”) was filed (Dkt #327) which, among other things, extended the use of cash collateral to a continued hearing on July 8, 2013.

On July 11, 2013, an Eighth Stipulated Interim Order (i) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. § 363 and 364, (iii) Scheduling of Final Hearing and (iv) Granting Related Relief (“Eighth Interim Cash Collateral Order”) was filed (Dkt #343) which, among other things, extended the use of cash collateral to a continued hearing on August 26, 2013.

On September 4, 2013, a Ninth Stipulated Interim Order (i) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. § 363 and 364, (iii) Scheduling of Final Hearing and (iv) Granting Related Relief (“Ninth Interim Cash Collateral Order”) was filed (Dkt #361) which, among other things, extended the use of cash collateral to a continued hearing on September 27, 2013.

The Trustee has continued to operate the Property during the periods of the Sixth, Seventh, Eighth, and Ninth Interim Cash Collateral Orders, and now seeks a Tenth Interim Cash Collateral Order for the period from September 27, 2013 to October 21, 2013, to continue the operations of the Property in compliance with this Tenth Interim Cash Collateral Order.

THE COURT HEREBY FINDS AND CONCLUDES that,

I. BACKGROUND

A. Debtor is the owner and operator for the property located at 93 Banyan Drive, Hilo, Hawaii 96720, which includes the hotel known as the Naniloa Volcanoes Resort (the “Hotel”) and a nine-hole golf course known as the Naniloa Volcanoes Golf Club (the “Golf Course”) with the following real property tax identification numbers: (3) 2-1-001-012, (3) 2-1-005-013, (3) 2-1-005-016, (3) 2-1-005-017, (3) 2-1-005-027, (3) 2-1-005-032, (3) 2-1-005-046 (hereinafter referred to as the “Property”).

B. On November 20, 2012, (the “Petition Date”), the Debtor commenced this Chapter 11 case (the “Chapter 11 Case”) by filing a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101 et seq., as amended (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Hawaii (the “Court”).

C. On November 22, 2012, this Court approved Debtor’s Motion for Order Authorizing Debtor to Use Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2) on an Interim and Final Basis (“Cash Collateral Motion”), and granted entry of an interim order (“First Interim Order”) authorizing Debtor’s use of cash collateral on an interim basis (the “Interim Relief”), which was effective from

November 22, 2012 through December 17, 2012, and further continued to December 20, 2012. The First Interim Order allowed Debtor to use cash collateral to operate the Property.

D. On or about December 20, 2012 an official committee of unsecured creditors (the “Committee”) was formed.

E. On December 21, 2012, the Second Interim Cash Collateral Order allowed Debtor to use cash collateral to operate the Property in accordance with the terms and conditions of said order.

F. On February 25, 2013, the Third Interim Cash Collateral Order allowed the Debtor to use Cash Collateral to operate the Property in accordance with the terms and conditions of said Order.

G. On March 6, 2013, the Fourth Interim Cash Collateral Order allowed Debtor to use Cash Collateral to operate the Property in accordance with the terms and conditions of said Order.

H. On April 9, 2013, the Fifth Interim Cash Collateral Order allowed Debtor to use Cash Collateral to operate the Property in accordance with the terms and conditions of said Order.

I. On April 29, 2013, a hearing was held on Debtor's continued use of cash collateral. The Court orally ordered and authorized Debtor's use cash collateral to the conclusion of the next hearing on cash collateral scheduled for May 20, 2013 and ordered that Debtor produce to First-Citizens Bank and the Department (1) any and all notices of violation or warnings concerning the Property or operations of the Hotel and Golf Course and (2) a current accounting of advance payments or deposits for room reservations or special functions.

J. On May 14, 2013, David C. Farmer ("Trustee") was appointed as Chapter 11 Trustee.

K. On June 10, 2013, a Seventh Interim Cash Collateral Order allowed Trustee to use cash collateral to operate the Property in accordance with the terms and conditions of said order.

L. On July 11, 2013, an Eighth Interim Cash Collateral Order allowed Trustee to use cash collateral to operate the Property in accordance with the terms and conditions of said order.

M. On August 30, 2013, the Bankruptcy Court approved the Application to Employ Colliers International HI, LLC ("Colliers") as the real estate broker, effective as of August 27, 2013 to market and sell the Benda Trust Lease and the General Lease.

N. On September 4, 2013, a Ninth Interim Cash Collateral Order allowed Trustee to use cash collateral to operate the Property in accordance with the terms and conditions of said order. The Trustee continues to operate the business and manage the Property pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Trustee seeks to continue to operate the Property pursuant to a Tenth Interim Order (i) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. 363(c)(2), (ii) Granting Adequate Protection Pursuant to 11 U.S.C. 363 and 364, (iii) Scheduling of Final Hearing, and (iv) Granting Related Relief (“Tenth Interim Cash Collateral Order”), on the terms and conditions set forth herein.

O. On September 16, 2013, the Trustee timely filed a Motion for Order (A) Authorizing the Assumption of Certain Unexpired Non-Residential Real Property Leases and (B) Establishing Cure Costs (“Motion to Assume”), Dkt. # 367). The Motion to Assume is scheduled to be heard on Monday, October 21, 2013.

P. The Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over this Chapter 11 Case, and over the persons and property affected hereby. Consideration of the Cash Collateral Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are Sections 105, 361, 363 and 507 of the Bankruptcy Code, Bankruptcy Rules 4001(a), (b) and (d) and 6003 and Local Rule 4001-2.

II. FIRST-CITIZENS BANK PRE-PETITION LOAN

Q. Prior to the Petition Date, on January 20, 2006, the State of Hawaii, as lessor, and Hawaii Outdoor Tours, Inc., as lessee, entered into General Lease No. S-5844 (the "General Lease"), dually recorded on February 1, 2006 in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-021241, and on February 1, 2006, in the Office of the Assistant Registrar, Land Court, State of Hawaii, Document No. 3385990 and noted on of Certificates of Title Nos. 108,763 and 106,776. The General Lease is for a term of sixty-five (65) years, commencing on February 1, 2006, up to and including the 31st day of January 2071, for the Property situate at Waiakea, South Hilo, on the Island of Hawaii, Hawaii, as more specifically described in Exhibit "A" to the General Lease.

R. On or about January 23, 2006, HOT as borrower, for value received, made, executed and delivered to Lender First Regional Bank ("First Regional") a Promissory Note (the "Promissory Note") and a Construction Loan Agreement the "Construction Loan Agreement") in the principal amount of \$10,000,000.00.

S. The Promissory Note and Construction Loan Agreement were secured by a Construction Mortgage, which encumbers the Property, dated January 23, 2006 (hereinafter the "Mortgage"), and dually recorded on February 1, 2006, in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-021243 and

on February 1, 2006 in the Office of the Assistant Registrar, Land Court, State of Hawaii, as Document No. 3385991 and noted on Certificate of Title Nos. 108,763 and 106,776.

T. The Promissory Note, Construction Loan Agreement, Mortgage and other Loan Documents were subsequently assigned to First-Citizens Bank & Trust Company (“First-Citizens Bank”).

U. The Promissory Note, Mortgage, Commercial Security Agreement, and other Loan Documents matured on February 1, 2011, and all amounts due and owing under said documents became and are now due and owing.

V. On or about October 5, 2012, First-Citizens Bank made a payment to the State of Hawaii Department of Land and Natural Resources (“DLNR”), in the amount of \$260,015.95 to cure Debtor’s default under the performance bond of the General Lease (the “Bond Payment”).

W. In August 2012, Debtor failed and neglected to make a lease payment in the amount of \$262,000.00 to the DLNR for lease rent owed under the General Lease (“August Lease Payment”).

X. First-Citizens Bank made the August Lease Payment to the DLNR, on behalf of Debtor, and as an advance to Debtor, and First-Citizens Bank, with court approval pursuant to the Second Interim Cash Collateral Order, was allowed a

super-priority administrative expense claim (the “Super-Priority Claim”) in the amount of \$262,000.00 plus interest accruing at 6.50% per annum from and after December 27, 2012.

Y. To secure its obligations under the Secured Loan Agreements, Debtor granted to First-Citizens Bank a first priority security interest in, a lien upon, and a right of set off against, and assignment to First-Citizens Bank as security, among other things, all property of Debtor, whether now owned or hereinafter acquired or existing, and wherever located (collectively, including “Cash Collateral” (defined below), the “Pre-Petition Collateral”):

i. The Property.

ii. All of Debtor’s assets, owned now or acquired in the future and wherever located, including but not limited to: inventory, accounts, fixtures, equipment, plans, permits, books, records, contract rights, deposits, prepaid rents, instruments, letters of credit, claims, causes of action, lawsuits, judgments, awards, general intangibles and loan proceeds; accessions, additions, replacements, and substitutions related to the foregoing, all records of any kind relating to any of the foregoing; all proceeds related to the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds).

iii. Assignment of all rent derived from the Property located in the County of Hawaii, State of Hawaii.

iv. This does not include Debtor's leasehold interest in real property identified by tax identification number (3) 9-8-001-002 (the "Ka'u State Lease").

Z. First-Citizens Bank claims, and Debtor acknowledged in prior cash collateral orders, that in accordance with the terms of the Secured Loan Agreements, Debtor is truly and justly indebted to First-Citizens Bank, without defense, recoupment claim, counterclaim or offset of any kind, and that as of December 20, 2012, (i) with respect to the loans made and not including accrued and unaccrued interest, costs and fees, pursuant to the Secured Loan Agreements in the principal amount of approximately \$9,736,403.67 together with interest thereon as stated in the Secured Loan Agreements (the "Pre-Petition Loan Indebtedness"), and (ii) pursuant to the Secured Loan Agreements, Debtor may be liable to First-Citizens Bank for, among other things, accrued and unpaid interest, commitment fees, advances, attorneys' and advisors' fees, other out-of-pocket expenses, costs and indemnities (collectively, subsections (i) and (ii) of this section are the "Secured Loan Obligations").

AA. Without prejudice to the rights of any other party, including Debtor, Debtor acknowledged and stipulated that under the Secured Loan Agreements and as security for repayment of the Secured Loan Obligations, Debtor granted to First-

Citizens Bank a security interest in, and liens upon, the Cash Collateral, Pre-Petition Collateral, and the Property.

BB. First-Citizens Bank claims that it holds a security interest in, and liens on, the Pre-Petition Collateral which were properly perfected and are valid and enforceable first priority liens on and security interests in the Pre-Petition Collateral. Debtor and Trustee acknowledge that its cash on hand and cash equivalent as of the Petition Date are proceeds of the Pre-Petition Collateral and cash collateral of First-Citizens Bank within the meaning of Bankruptcy Code § 363(a) (“Cash Collateral”). First-Citizens Bank is entitled, pursuant to Bankruptcy Code §§ 361 and 363(e), to adequate protection of its interest in the Pre-Petition Collateral, including for the use of Cash Collateral, the use, sale or lease of the Pre-Petition Collateral other than Cash Collateral, and for the imposition of the automatic stay.

CC. As of September 11, 2013, with application of partial payment by co-guarantor Ken Direction Corporation, First-Citizens Bank claims a total secured debt of \$10,076,016 plus accrued interest, attorneys’ fees and other charges.

DD. The Department of Taxation, State of Hawaii (the “Department”) claims valid, perfected, and unavoidable statutory liens against all of Debtor’s

property, pursuant to the following Certificate of Tax Liens filed at the Bureau of Conveyances, State of Hawaii:

(i) Certificate of Tax Lien, recorded July 28, 2011 filed as Document No. 2011-118459.

(ii) Certificate of Tax Lien, recorded August 31, 2011 filed as Document No. 2011-139606.

(iii) Certificate of Tax Lien, recorded September 30, 2011 filed as Document No. 2011-159801.

(iv) Certificate of Tax Lien, recorded October 31, 2011 filed as Document No. 2011-179216.

(v) Certificate of Tax Lien, recorded November 29, 2011 filed as Document No. 2011-200499.

(vi) Certificate of Tax Lien, recorded January 13, 2012 filed as Document No. A-43950774.

(vii) Certificate of Tax Lien, recorded February 13, 2012 filed as Document No. A-44260563.

(viii) Certificate of Tax Lien, recorded April 11, 2012 filed as Document No. A-44841318.

(ix) Certificate of Tax Lien, recorded June 1, 2012 filed as Document No. A-45350896.

(x) Certificate of Tax Lien, recorded June 29, 2012 filed as Document No. A-45630830.

EE. The outstanding balance of the secured tax claim by the Department as of the Petition Date is \$473,535.80.

FF. The Department claims junior lien interests in the assets of the Debtor held as of the Petition Date.

GG. In accordance with Section 552(b) of the Bankruptcy Code, the Pre-Petition Collateral includes, without limitation, all proceeds, products and profits of the Pre-Petition Collateral, whether existing before or after the commencement of the Chapter 11 Case. "Available Cash" shall consist of Debtor's cash and cash equivalents that are subject to the existing liens and security interests of First-Citizens Bank. Debtor and Trustee acknowledge and stipulate that, as of the Petition Date, all of the Available Cash were the proceeds, products and profits of the Pre-Petition Collateral.

HH. Debtor and Trustee acknowledge and agree that all of the Available Cash held on the Petition Date together with any cash or cash equivalent proceeds

of the Pre-Petition Collateral received on or after the Petition Date shall constitute Cash Collateral.

II. Without prejudice to the rights of any party, including the Trustee for purposes of this Eighth Interim Cash Collateral Order, the Trustee acknowledges and agrees that (i) the Secured Loan Obligations constitute legal, valid and binding obligations of Debtor, enforceable in accordance with the terms of the Secured Loan Agreements (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (ii) no offsets, defenses, recoupment claims or counterclaims exist to the currently outstanding Secured Loan Obligations, (iii) First-Citizens Bank liens, security interests and assignments are first priority, valid, enforceable, perfected and not subject to avoidance, subordination, challenge or disallowance; and, (iv) no portion of the Secured Loan Obligations is subject to avoidance, subordination, challenge or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

III. THE TRUSTEE'S NEED FOR USE OF CASH COLLATERAL

JJ. An immediate need exists for the Trustee to have access to the Cash Collateral in order to continue the operations, meet payroll and other necessary, ordinary course business expenditures, administer and preserve the value of the bankruptcy estate, and maintain adequate access to cash in amounts customary and necessary to operate a company of its size in this industry to maintain customer

and vendor confidence. The ability of the Trustee to finance the operations by way of working capital requires his access to cash resources, the absence of which would immediately and irreparably harm Debtor, its estate, and its creditors. The Trustee requires these cash resources to operate the businesses, preserve the confidences of vendors, suppliers and customers, and to preserve the value of their businesses. The Trustee acknowledges that First-Citizens Bank is entitled to adequate protection as set forth herein.

KK. The Trustee further requests, pursuant to Section 363(c) of the Bankruptcy Code, that First-Citizens Bank consent to the Trustee's use of the Cash Collateral and the Trustee's use, sale and lease of the other Pre-Petition Collateral pursuant to the terms and conditions of the Eighth Interim Cash Collateral Order during the Eighth Interim Cash Collateral Period (as defined below). The Trustee acknowledges and agrees, subject to this Court's determination, that First-Citizens Bank is entitled to adequate protection pursuant to Sections 361 and 363(e) of the Bankruptcy Code with respect to Cash Collateral and other Pre-Petition Collateral, including, without limitation, to compensate First-Citizens Bank for any loss or diminution in the value of Cash Collateral or other Pre-Petition Collateral resulting from the Trustee's use of Cash Collateral, the use, sale or lease of other Pre-Petition Collateral and the imposition of the automatic stay during the Tenth Interim Cash Collateral Period.

LL. Subject to the entry, and continued effectiveness, of this Tenth Interim Cash Collateral Order, First-Citizens Bank and the Department have consented to the Trustee's use of Cash Collateral and use, sale or lease of other Pre-Petition Collateral during the Tenth Interim Cash Collateral Period. The foregoing notwithstanding, nothing in this Tenth Interim Cash Collateral Order shall be construed as limiting or prohibiting First-Citizens Bank or the Department from objecting to any relief sought by the Debtor or Trustee in this Chapter 11 case, including, without limitation, any Post-Petition Financing¹ or any motion for the further use of Cash Collateral, other than the entry of this Tenth Interim Cash Collateral Order and any Final Order entered on the Cash Collateral Motion ("Final Order"), provided such Final Order is on terms acceptable to First-Citizens Bank and the Department, and approved by this Court.

MM. The Tenth Interim Relief requested herein is, subject to the terms and conditions hereof, necessary, essential and appropriate for the continued operations of Debtor's business, the Naniloa, and the preservation of Debtor's estate and the value of the Property.

NN. Good and sufficient cause has been shown for the entry of this Tenth Interim Cash Collateral Order. Among other things, the entry of this Tenth Interim

¹ The term "Post-Petition Financing" means any post-petition financing facility, cash loans or liquidity facility provided to the Trustee pursuant to Section 364 of the Bankruptcy Code secured by liens on and against property of the Debtor's estate. Any party that provides the Trustee with Post-Petition Financing shall be referred to as a "Post-Petition Lender."

Order is in the best interests of the bankruptcy estate, its creditors and its estate because it will enable the Trustee to (i) continue operating Debtor's business and the Property and avoid an immediate shutdown of operations, (ii) meet obligations for payroll, necessary expenditures, and other operating expenses, (iii) pay necessary fees under the Bankruptcy Code and make payments authorized under other orders entered by the Court, (iv) obtain needed goods and services, (v) retain vendor, customer and employee confidence, and (vi) maintain adequate cash resources customary and necessary for a hotel operations of this size, and thereby avoiding immediate and irreparable harm to the Debtor's estate.

OO. Prior notice of the hearing (the "Tenth Interim Hearing") for the entry of the Tenth Interim Cash Collateral Order and the Tenth Interim Relief requested in the Cash Collateral Motion was given by the Trustee to (i) the office of the United States Trustee for the District of Hawaii; (ii) First-Citizens Bank; (iii) counsel to First-Citizens Bank; (iv) all known parties asserting liens on the Debtor's assets; (v) the State of Hawaii, Department of Taxation; (vi) counsel to the State of Hawaii, Department of Taxation and Department of Land and Natural Resources; (vii) the Committee and its counsel; and (viii) the parties listed on the Debtor's list of twenty (20) largest unsecured creditors (the "Initial Notice Parties"). Requisite, due and proper notice has been provided in accordance with Bankruptcy Rule 4001 and Local Rule 4001-2, which notice is sufficient for all

purposes under the Bankruptcy Code and no other notice need be provided for entry of this Tenth Interim Cash Collateral Order.

PP. The Trustee has requested immediate entry of this Tenth Interim Cash Collateral Order pursuant to Bankruptcy Rule 6004(g), and First-Citizens Bank and the Department have consented to the Interim Relief contained herein. Good and sufficient cause has been shown for the entry of this Tenth Interim Cash Collateral Order.

QQ. On July 10, 2013, the Court entered the Order Granting Trustee's Ex Parte Motion for an Order Establishing Bar Date for Filing of Requests for Allowance and Payment of Administrative Expense Claims and Approving Form and Notice Thereof ("Administrative Bar Date Order"), (Dkt #341).

RR. On July 10, 2013, the Notice of Bar Date for Filing Requests for Allowance and Payment of Administrative Expense Claims was filed with the Bankruptcy Court ("Notice of Bar Date"), (Dkt #342).

SS. Pursuant to the Administrative Bar Date Order and the Notice of Bar Date, all requests for payment of administrative expense claims were required to be filed on or before August 22, 2013 ("Bar Date").

TT. As of the Bar Date, other than First-Citizens Bank's Super-Priority Claim, only Hawaii Employers' Mutual Insurance Co., Inc. and Developers Surety and Indemnity Company have filed alleged administrative claims with the Court.

UU. Pursuant to 11 U.S.C. § 365(d)(4)(B), the Debtor obtained an order extending the deadline to June 18, 2013 to assume or reject Debtor's unexpired non-residential leases, including without limitation, the State General Lease (Dkt #238). The deadline to assume or reject Debtor's unexpired non-residential leases was further extended an additional ninety (90) days until and including September 16, 2013, pursuant to the Stipulated Order to Extend Time for Trustee to Assume or Reject State of Hawaii and the Eleanor Rose Benda Trust Leases ("Stipulation to Extend"), filed with the Bankruptcy Court on June 4, 2013 (Dkt #326).

VV. The Trustee and the Eleanor Rose Benda Trust entered into a Third Stipulated Order to Extend Time for Trustee to Assume or Reject Benda Trust Lease ("Third Stipulation to Extend Benda"), filed with the Bankruptcy Court on September 16, 2013 (Dkt #368).

WW. No reserve has been set aside for Debtor's attorneys' fees and costs and the Committee's attorney's fees and costs.

NOW, based upon the Cash Collateral Motion of the Debtor, as amended by the Trustee, and the record before the Court with respect to the Cash

Collateral Motion, as amended at the Tenth Interim Hearing, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED effective immediately that:

1. The Tenth Interim Cash Collateral Motion is GRANTED with respect to the Interim Relief on the terms and conditions set forth herein. The findings and conclusions above are true in all respects and incorporated by reference in this Tenth Interim Cash Collateral Order.

2. (a) Period of Interim Relief. Any provision of the Bankruptcy Code or the Bankruptcy Rules notwithstanding, this Tenth Interim Cash Collateral Order shall take effect immediately. So long as no breach of the termination provisions hereof has occurred, this Tenth Interim Cash Collateral Order shall remain in effect until the earliest (i) of the close of business on October 21, 2013, (ii) the conclusion of the final hearing on the Cash Collateral Motion authorizing the Trustee's continued use of the Cash Collateral (the "Final Hearing") or (iii) the breach of the termination provisions provided in Section 16 of this Tenth Interim Cash Collateral Order (such period, as it may be extended pursuant to the following proviso, the "Tenth Interim Cash Collateral Period"). The Trustee's ability and authorization to use Cash Collateral during the Tenth Interim Cash

Collateral Period shall at all times be subject to the termination provisions of this Interim Order.

(b) During the Tenth Interim Cash Collateral Period, subject to the Court's ruling, the Trustee waives any right to seek relief under the Bankruptcy Code, including, without limitation, under Sections 105(a) and 363(c), and 506(c) to the extent any such relief would in any way restrict or impair the rights and remedies of First-Citizens Bank or the Department as set forth in this Tenth Interim Cash Collateral Order; provided, however, (i) after the occurrence of a termination event set forth in Section 16 hereof, the Trustee may seek entry of an Order authorizing the use of Cash Collateral over First-Citizens Bank's and/or the Department's objection; (ii) at any time, the Trustee may seek to sell the Pre-Petition Collateral; and (iii) with respect to sub-paragraphs (i) and (ii) above, First-Citizens Bank and the Department reserve all rights and remedies, under the Bankruptcy Code, this Tenth Interim Cash Collateral Order or otherwise, including, without limitation, the right to object to such relief. If the Trustee, or any other person, challenges the expiration or termination of the Tenth Interim Cash Collateral Period, any such objector's remedy shall be limited to requesting a hearing before the Court, with at least three (3) business days' written notice to First-Citizens Bank and the Department. In any such hearing, the sole issue before the Court shall be whether the Tenth Interim Cash Collateral Period expired or was

terminated pursuant to the terms of this Tenth Interim Cash Collateral Order. A change in circumstances shall not be grounds for modification of this Section 2(b).

GOOD FAITH, RELIANCE AND CONDUCT

3. The Trustee, First-Citizens Bank, and the Department and their respective agents, advisors and employees have acted in good faith in negotiating, consenting and agreeing to the Trustee's use of Cash Collateral and use, sale and lease of other Pre-Petition Collateral as contemplated and provided by this Tenth Interim Cash Collateral Order. The negotiation of the terms and provisions of this Tenth Interim Cash Collateral Order has been conducted at arm's length, and the Court finds that such terms and conditions are fair and reasonable, under the circumstances.

4. To the extent First-Citizens Bank and the Department are not secured in the Pre-Petition Collateral, they shall not have a Replacement Lien (as defined below) or a Super-priority Claim (as defined below) with regard to any use of such Cash Collateral which is not found to be Cash Collateral of First-Citizens Bank or the Department pursuant to Section 363 of the Bankruptcy Code; provided, however, that First-Citizens Bank shall have its Super-Priority Claim as set forth herein. In the event that any Court of competent jurisdiction determines, in a final non-appealable order, that First-Citizens Bank or the Department was undersecured or unsecured as of the Petition Date, and not entitled to be paid

interest, fees and related charges post-petition, then (i) the Trustee's obligations to make all payments and to comply with all other terms and conditions established by this Tenth Interim Cash Collateral Order shall not terminate or abate, but all such payments of interest, fees and related charges paid during the Tenth Interim Cash Collateral Period shall be applied to the secured amount of the Secured Loan Obligations as of the Petition Date, or as may otherwise be provided by court order, and (ii) First-Citizens Bank and the Department shall be entitled to a hearing before the Court with at least three (3) business days' written notice to the Trustee and its counsel, re-examining the adequate protection of its secured interests in the Pre-Petition Collateral and Replacement Collateral, and the authority of the Trustee to use Cash Collateral.

5. (a) Nothing in this Tenth Interim Cash Collateral Order, shall in any way be construed or interpreted to impose or allow the imposition upon First-Citizens Bank and the Department or its agents, advisors or employees (in their capacities as such) any liability for any claims arising from the activities of the Debtor or any of its affiliates, before or after the Petition Date, or the Trustee in the operation of its businesses, or in connection with its restructuring efforts.

(b) In exercising any of its rights or remedies, as and when permitted pursuant to this Tenth Interim Cash Collateral Order, First-Citizens Bank shall not be deemed to be in control of the operations of the Property.

6. Based on the findings set forth in this Tenth Interim Cash Collateral Order, and First-Citizens Bank and the Department's reliance in good faith on the terms thereof, if any of the provisions of this Tenth Interim Cash Collateral Order are hereafter modified, vacated or stayed by an order of this Court or another court, such stay, modification or vacation shall not affect the validity and enforceability of any claim, lien, security interest or priority authorized for First-Citizens Bank and/or the Department's benefit that is granted or attaches prior to the effective date of such stay, modification or vacation, and any use of Cash Collateral or use, sale or lease of other Pre-Petition Collateral by the Trustee pursuant to this Tenth Interim Order prior to the effective date of such modification, stay or vacation shall be governed in all respects by the original provisions of this Interim Order.

AUTHORIZED USE OF CASH COLLATERAL

7. The Trustee is hereby authorized to use Cash Collateral during the Tenth Interim Cash Collateral Period, subject to the conditions and limitations set forth herein.

8. Authorized Uses of Cash Collateral. The Trustee may use Cash Collateral during the Tenth Interim Cash Collateral Period, as limited by the Budget attached hereto as Exhibit "A," to pay the ordinary and reasonable expenses of operating the Property which are necessary to avoid immediate and

irreparable harm including, without limitation, the quarterly fees payable to the United States Trustee, as they become due in the ordinary course.

9. Non-Ordinary Course Expense. The Trustee shall seek prior approval from First-Citizens, the Department, and the Committee for payment of any expenses exceeding \$2,500.00 for non-ordinary course business expenses which are not included in the Budget attached as Exhibit “A.” The Trustee shall notify counsel of First-Citizens, the Department, and the Committee, respectively, via email of such a request at least 24 hours in advance before making payment of such expense to allow counsel an opportunity to respond and/or object.

If any written objections to a request for payment of non-ordinary course expense are submitted via email to counsel for the Trustee by First-Citizens, the Department, or the Committee, the Trustee is not authorized to make such payment without first receiving Court approval.

10. Secured Loan Agreement Amendments. During the Tenth Interim Cash Collateral Period, the material terms of the Secured Loan Agreements shall continue in full force and effect except as may be modified by operation of law or pursuant to the terms of this Tenth Interim Cash Collateral Order.

**ADEQUATE PROTECTION IN FAVOR OF FIRST-CITIZENS
BANK FOR THE TRUSTEE’S USE OF CASH COLLATERAL**

11. Adequate Protection. On account of the Trustee's use of Cash Collateral, his use, sale or lease of the other Pre-Petition Collateral and the imposition of the automatic stay pursuant to Section 362 of the Bankruptcy Code, in each case during the Interim Cash Collateral Period, First-Citizens Bank is hereby granted the following adequate protection pursuant to Sections 361 and 363(e) of the Bankruptcy Code:

(a) Replacement Collateral and Replacement Liens. The Trustee, on behalf of Debtor and the bankruptcy estate, hereby grants, assigns and pledges to First-Citizens Bank a valid, perfected and enforceable first priority and senior replacement lien and security interest (the "Senior Replacement Lien") in all of the Borrower Accounts created from and after the Petition Date and all of Debtor's right, title and interest in, to and under the Pre-Petition Collateral, to the extent same existed on the Petition Date and the proceeds, products, offspring, rents and profits of all of the foregoing, all as may otherwise be described in the Secured Loan Agreements, (collectively, the "Senior Replacement Collateral). The Trustee also hereby grants, assigns and pledges to the Department a valid, perfected and enforceable a second priority replacement lien and security interest, junior to the Senior Replacement Lien of First-Citizens Bank (the "Junior Replacement Lien") in all of the Borrower Accounts created from and after the Petition Date and all of Debtor's right, title and interest in, to and under the Pre-

Petition Collateral, to the extent same existed on the Petition Date and the proceeds, products, offspring, rents and profits of all of the foregoing (collectively, the “Junior Replacement Collateral). The Replacement Liens granted hereunder shall be limited in amount to the aggregate diminution in value of the interests of First-Citizens Bank and the Department in the Pre-Petition Collateral and Cash Collateral during the Tenth Interim Cash Collateral Period (the “Interim Replacement Value”) provided, however, that First-Citizens Bank shall be granted a blanket lien and security interest in all assets of Debtor and Debtor’s bankruptcy estate to secure the missed monthly Adequate Protection Payments of \$55,000 established by the preceding Interim Cash Collateral Orders (collectively the “Adequate Protection Liens”). In the event the case is converted to a Chapter 7 case, the liens and security interests of First-Citizens Bank will be subordinated to the fees and expenses of the Chapter 7 trustee but will not be subordinated to the professional fees and expenses incurred by any professional employed by a Chapter 7 trustee.

(b) Automatic Perfection of Replacement Liens. The Replacement Liens and Adequate Protection Liens granted under this Tenth Interim Cash Collateral Order shall be valid, perfected and enforceable against the Replacement Collateral as of the Petition Date without further filing or recording of any document or instrument or the taking of any further actions, and shall not be

subject to dispute, avoidance or subordination as to the Interim Replacement Value.

(c) Priority of Replacement Liens. The Replacement Liens and Adequate Protection Liens granted hereunder shall be subject and subordinate in priority to any liens, security interests and other encumbrances, existing as of the Petition Date, or which attach to the Replacement Collateral after the Petition Date, that are senior, valid, perfected, enforceable and unavoidable, that are granted with First-Citizens Bank's and the Department's consent or that are otherwise senior to the pre-petition liens in favor of First-Citizens Bank and the Department. The Replacement Liens and Adequate Protection Liens shall be valid and enforceable against any trustee appointed in this Chapter 11 case, or in any subsequent proceeding affecting Debtor, including any conversion of this Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code or dismissal of this case.

(d) Taxes. The Trustee shall and hereby agrees to cause to be timely filed any and all state and federal tax returns and to pay any and all post-petition federal, state and county taxes as and when due, regardless of whether such taxes appear on the Budget. The Trustee shall promptly provide copies and notify in writing First-Citizens Bank and the Department of any and all such filed tax returns and payments.

(e) Super-Priority Administrative Expense Claim.

Subordinate only to the Carve-Out, the Trustee and the Committee acknowledge and reaffirm the validity of the Super-Priority Claim allowed and authorized by the court in favor of First-Citizens Bank in the principal amount of \$262,000.00 plus interest accruing at 6.50% per annum from and after December 27, 2012 (“Super-Priority Claim”).

POST-PETITION FINANCING

12. The Trustee and First-Citizens Bank have agreed, subject to court approval of this Tenth Interim Cash Collateral Order, to provide post-petition financing of a reserve account held by the Trustee at First Hawaiian Bank (the “Reserve Account”), upon the following terms and conditions:

a. Upon entry of this Tenth Interim Cash Collateral Order, First-Citizens Bank shall cause the sum of \$100,000.00 to be wire transferred to the Reserve Account.

b. The Reserve Account funds shall be used solely in the event that the Trustee does not have sufficient cash to fund the following : (i) payroll, (ii) payroll taxes, (iii) State of Hawaii general excise tax (“GET”), and/or (iv) State of Hawaii transient accommodation taxes (“TAT”) (collectively “Payroll and Taxes”).

c. At least 24 hours prior to drawing on the Reserve Account, the Trustee shall provide to counsel for First-Citizens Bank a detailed written report on (i) all available cash and cash balances of bank accounts and (ii) the amount of funds the Trustee intends to draw from the Reserve Account to pay the Payroll and Taxes.

d. If the Reserve Account is drawn upon to pay Payroll and Taxes, the Trustee shall provide to counsel for First-Citizens Bank written evidence of the application of such funds within 24 hours of the draw upon the Reserve Account.

e. The Trustee hereby grants to First-Citizens Bank a first priority security interest in and to the funds in the Reserve Account, and the funds in the Reserve Account are hereby deemed Cash Collateral, subject to the terms and conditions of the Tenth Interim Cash Collateral Order.

f. If the Reserve Account is drawn upon to pay all or any portion of the Payroll and Taxes, then such sum shall be a super-priority administrative expense of the bankruptcy estate and the principal amount shall accrue interest at the rate of 6.5% per annum from and after the date of draw and be included in First-Citizen Bank's Super-Priority Claim previously approved by the court.

g. The funds in the Reserve Account shall be returned to First-Citizens Bank in the event that the funds are not used as set forth herein or for any other purpose approved in advance in writing by First-Citizens Bank.

h. There is no agreement for any additional funding of the Reserve Account.

THE BUDGET

13. Attached to the Cash Collateral Motion as Exhibit “A” is a budget for the six (6) months operations ending January 31, 2014 (the “Budget”), which has been prepared by the Trustee. The Budget reflects, on a line-item basis, anticipated cash receipts and expenditures and includes all necessary and required expenses which the Trustee expects to incur during the term of the Budget in order to avoid immediate and irreparable harm. The Trustee is authorized to use the Cash Collateral only for the payment of such items as set forth in the Budget.

DISCLOSURE REQUIRED OF THE TRUSTEE

14. As a continuing obligation and as additional adequate protection the Trustee shall provide First-Citizens Bank and the Department, by

email or other reasonably acceptable means, the following information during the Tenth Interim Cash Collateral Period:

(a) Daily Reports. The Trustee shall provide the Secured Creditors on a daily basis with (i) daily cash reports (including without limitation the payee for any disbursements and a full and complete detailed, itemized listing of any and all receipts and disbursements on a daily basis) of its operations on or a regular basis and (ii) bank statements for the Trustee's operating bank account as such bank statements become available to the Trustee. The Trustee shall also provide on a weekly basis to First-Citizens Bank, Colliers Weekly Reports in accordance with the Stipulated Protective Order (Dkt #383), filed with the Bankruptcy Court on September 26, 2013.

15. Upon telephonic or written notice by First-Citizens Bank or the Department, the Trustee shall permit any of First-Citizens Bank's and/or the Department's agents, advisors, auditors and employees full and reasonable access, during normal business hours, to inspect, review and photocopy or otherwise duplicate (as applicable) the Trustee's books, records and place of business to verify the existence, condition, value and location of property in which First-Citizens Bank and the Department hold liens or security interests. The Trustee shall permit, without material disruption to the operation of the Property, First-Citizens Bank's and the Department's agents and consultants, respectively, (the

“Creditors’ Consultants”), full access to examine the respective corporate, financial and operating records, make copies thereof, inspect the assets, properties, operations and affairs of the Naniloa, and inspect the physical condition of the Property. The Trustee shall provide First-Citizens Bank, the Department and the Creditors’ Consultants, with reasonable promptness, such financial information concerning the Trustee’s cash flow projections, business plan, and other aspects of operations as such parties may reasonably request from time to time except matters and documents that are privileged.

ACCOUNTS

16. The Trustee shall maintain an appropriate cash management system.

TERMINATION OF THE TRUSTEE’S ABILITY TO USE CASH COLLATERAL

17. The Trustee’s ability to use Cash Collateral during the Tenth Interim Cash Collateral Period will terminate upon the expiration of the Interim Order as provided in Section 2 hereof, other than due to the entry of the Final Order or any other order of the Court approving use of Cash Collateral (subject to consent of First-Citizens Bank and the Department), without First-Citizens Bank or the Department’s prior written consent to such extension of the Tenth Interim Cash

Collateral Period, provided, however, that it shall be a termination of this Tenth Interim Cash Collateral Order if the Trustee takes any of the following action:

(a) the modification or extension of this Interim Order, without providing First-Citizens Bank or the Department a minimum of three (3) business days prior written notice of the hearing on such modification or extension;

(b) an application is filed by the Trustee, without the prior written consent of First-Citizens Bank and the Department, for the approval of any claim arising under Section 507(b) of the Bankruptcy Code or any lien in the Chapter 11 Case which is pari passu with or senior to the Super-Priority Claim or Replacement Liens, excluding, in all cases, the Super-Priority Claim, Replacement Liens or other liens arising under or otherwise permitted by this Tenth Interim Cash Collateral Order or prior Orders of this Court;

(c) the commencement of any action by the Trustee against First-Citizens Bank, the Department, their agents, advisors and/or employees, to subordinate, avoid, challenge or disallow any liens, security interests, obligations of Debtor or Guarantors, or claims made in connection with the Secured Loan Obligations;

(d) (i) if the Chapter 11 case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; (ii) the Trustee shall file a

motion, or other pleading, seeking dismissal of the Chapter 11 case under Section 1112 of the Bankruptcy Code, or otherwise; (iii) the Trustee resigns; or (iv) a subsequent trustee under Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the Debtor's business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106 of the Bankruptcy Code shall be appointed or elected in any of the Chapter 11 Cases;

(e) (i) the Trustee shall assert in any pleading filed in any court that any material provision of this Tenth Interim Cash Collateral Order is not valid and binding for any reason, or (ii) any material provision of this Tenth Interim Cash Collateral Order shall for any reason, other than the entry of the Final Order, or any other order of this Court approving the Trustee's use of Cash Collateral, cease to be valid and binding without the prior written consent of First-Citizens Bank;

(f) The Trustee fails in any material respect to comply with any provisions in the Secured Loan Agreements, except to the extent such compliance is excused by operation of the Bankruptcy Code, Order entered in this case, or agreement of First-Citizens Bank;

(g) in the event First-Citizens Bank and the Department consent in writing to any Post-Petition Financing, the occurrence of a default,

material breach or termination event under the terms of such Post-Petition Financing, or an order approving such Post-Petition Financing, shall constitute an event of default under this Interim Order as though this Interim Order contained such provisions in their entirety;

(h) there shall occur a condition or event after the Petition Date that, in the reasonable judgment of First-Citizens Bank and the Department, could be reasonably expected to have a material adverse effect on the property, business, condition (financial or otherwise) or prospects of the Property, or

(i) an order filed by the Bankruptcy Court rejecting the Lease.

Upon the occurrence of a termination event as set forth above (and including any applicable cure period), First-Citizens Bank's consent and the Department's consent to the Trustee's use of Cash Collateral shall automatically terminate and the Trustee may not use, sell or lease Cash Collateral and shall segregate and account for any Cash Collateral in his possession, custody or control, and shall hold such Cash Collateral for the exclusive benefit of First-Citizens Bank, subject to further order of the Court.

EXERCISE OF REMEDIES BY FIRST-CITIZENS BANK

18. Limitation on Exercise of Rights and Remedies. Neither First-Citizens Bank nor the Department shall take any action during the Tenth Interim Cash Collateral Period to seize or take control over any of the Cash Collateral, Pre-Petition Collateral, Replacement Collateral or the Debtor's other property, nor shall First-Citizens Bank or the Department impose freezes of assets or seek to exercise any alleged right of setoff or recoupment, or exercise any other right or remedy against the Pre-Petition Collateral, Cash Collateral, Replacement Collateral or the Debtor's other property during the Tenth Interim Cash Collateral Period; provided, that First-Citizens Bank and the Department may do any of the foregoing after application to, and receiving authority from, the Court, to the extent necessary, upon a breach or violation by the Trustee of any of the terms or conditions of, or upon the termination of, this Tenth Interim Cash Collateral Order.

19. Additional Relief. Notwithstanding any provision hereof, this Tenth Interim Cash Collateral Order is without prejudice to First-Citizens Bank's or the Department's rights to seek any other or additional relief in, or relating to, the Chapter 11 case, including, without limitation, relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code, and the filing of objections and/or claims relating to motions for adequate protection, or the use, sale, lease or other disposition or use of the Pre-Petition Collateral, Replacement Collateral or Cash Collateral. First-Citizens Bank and the Department expressly reserves their rights

to claim that the provisions of this Tenth Interim Cash Collateral Order do not constitute “adequate protection” for the purposes of Sections 361 and 363(c) and (e) of the Bankruptcy Code, or otherwise, and to request additional or supplemental protection over and above the provisions of this Interim Order.

20. No Waiver. Except as expressly set forth herein, no rights of First-Citizens Bank or the Department are waived pursuant to, or modified by, this Tenth Interim Order. First-Citizens Bank’s rights and remedies pursuant to the Secured Loan Agreements and this Interim Order, and the Department’s rights and remedies pursuant to law and this Interim Order shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. First-Citizens Bank’s or the Department’s failure, at any time or times hereafter, to require strict performance by the Trustee of any provision of this Interim Order shall not waive, affect or diminish any right of First-Citizens Bank or the Department thereafter to demand strict compliance and performance herewith. Any failure or delay on First-Citizens Bank or the Department in the exercise of any rights, remedies, claims, powers, benefits or privileges under the Secured Loan Agreements or this Tenth Interim Cash Collateral Order shall not constitute a waiver by First-Citizens Bank or the Department, subject First-Citizens Bank or the Department to any liability to any entity under this Tenth Interim Cash Collateral Order or preclude any other or

further exercise of any such right or remedy or the exercise of any other right or remedy. None of First-Citizens Bank's or the Department's rights or remedies under this Tenth Interim Cash Collateral Order shall be deemed to have been suspended or waived by First-Citizens Bank or the Department unless such suspension or waiver is in writing and directed to the Trustee or the Court specifying such suspension or waiver.

21. No Reliance. In the negotiation of this Tenth Interim Cash Collateral Order, First-Citizens Bank did not, and during the Tenth Interim Cash Collateral Period, First-Citizens Bank or the Department do not, have any obligation or duty to any other entity to exercise any of their rights, remedies, claims, powers, benefit or privileges. No entity may rely upon any delay or failure or in any way seek to assert a defense to any obligation owing to First-Citizens Bank or the Department based on First-Citizens Bank's or the Department's failure or delay to exercise its rights or remedies.

**ADDITIONAL PROVISIONS GOVERNING
RIGHTS OF THE PARTIES**

22. Proofs of Claim. First-Citizens Bank shall not be required to file a proof of claim or administrative claim, in respect of claims arising from the Secured Loan Agreements, in the Chapter 11 Case, such claims being fully

acknowledged by the Trustee and Debtor, and asserted by First-Citizens Bank with notice to all parties in interest.

23. Carve-Out for Allowed Fees and Expenses of Trustee and Trustee's Employed Professionals. Pursuant to the Seventh and Eighth Interim Cash Collateral Order, the Trustee, First-Citizens Bank and the Department agreed to a "carve-out" of Cash Collateral and procedures for the payment of allowed Trustee's fees and expenses and professional fees and expenses incurred by the professionals retained by the Trustee, pursuant to Bankruptcy Code § § 326, 327 and 328.

A carve-out in the amount of \$55,000 per month for a total of three (3) months (no more than \$165,000 total) which commenced upon the Trustee's appointment as trustee in May 2013 was allotted for allowed fees and expenses incurred by the Trustee and the Trustee's professionals employed with court approval (the "Carve-Out"). Any additional carve-out shall be allowed only upon the agreement of First-Citizens Bank, the Department and the Trustee, and subject to Bankruptcy Court approval. All of the allowed Trustee's fees shall be as provided under § 326 of the Bankruptcy Code. The Carve-Out, if available from revenues of the Hotel and Golf Course, may be held in escrow or a client trust account of Trustee's counsel. If the Carve-Out funds are not available from revenues of the Hotel and Golf Course, and First-Citizens Bank does not agree to

provide additional cash collateral to continue the fee payments to Trustee and professionals as set forth herein, the Trustee reserves the right to immediately seek conversion of the case to a case under Chapter 7 or dismissal of the case.

The Trustee and Trustee's professionals shall submit monthly invoices of fees and expenses to First-Citizens Bank, the Department, the Committee and the Office of the United States Trustee. The Trustee's monthly invoices shall not exceed the § 326 limits on actual subject month disbursements. These parties in interest shall have five (5) business days following submission of the invoices ("Objection Period") to submit to Trustee's counsel written objections to any invoices submitted by Trustee or any professional employed by the Trustee with court approval. Upon the expiration of the Objection Period, if no objections are raised, the Trustee and Trustee's professionals shall be paid 80% of their total respective fees with the remaining 20% to be set aside and held in reserve pending final court approval. If no objections are raised, the Trustee and Trustee's professionals shall be paid 100% of their expenses, not exceeding a total of \$55,000.00 per month, with any overage set aside and held in reserve pending final court approval. In the event that there are any objections to the invoices submitted by the Trustee or Trustee's professionals, only the non-objectionable fees and expenses shall be paid. The remaining fees shall be paid from the Carve-Out, subject to court approval.

The Parties agreed that the Trustee and Trustee's Counsel were authorized to apply any remaining balance of the Carve-Out to the monthly invoices for fees and expenses to be submitted by the Trustee and Trustee's Counsel for the month of August 2013 in accordance with the fee procedures provided herein.

First-Citizens Bank agrees that its Super-Priority Claim is subordinate to the Carve-Out.

In the event that First-Citizens Bank is a successful credit bidder for the Collateral or any portion of the Collateral, the Trustee's fees shall be subject to mutual agreement of First-Citizens Bank, the Department and the Trustee, but shall not be greater than 1.5% of a successful credit bid, and subject to final court approval.

Notwithstanding anything herein to the contrary, no Pre-Petition Collateral, Cash Collateral, or any portion of the Carve-Out may be used by the Trustee, the Trustee's professionals or the Committee or counsel for the Committee to object to, challenge, or contest in any manner, or raise any defenses to, the amount, validity, perfection, priority, extent or enforceability of the Secured Loan Obligations or the liens securing the Secured Loan Obligations, or to prosecute or assert any claims or causes of action against First-Citizens Bank. Nothing

contained herein shall limit or impair First-Citizens Bank's, the Committee's or the Department's rights to object to any request for compensation submitted by any professional retained by the Trustee or any Official Committee, all of such rights being expressly preserved, and nothing herein shall obligate First-Citizens Bank to advance funds for payment of any allowed fees and expenses of the Trustee and retained professionals or the Committee or counsel for the Committee.

APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT

24. Filing Applications for Compensation. Any person obtaining monthly compensation and reimbursement under this order shall file applications for monthly compensation and reimbursement not less frequently than every 150 days and not more frequently than every 120 days and promptly give notice of such applications. Monthly payments shall be suspended to any person who fails to file a timely application. Notwithstanding any provision of this order to the contrary, all compensation and reimbursement are subject to final court approval.

MISCELLANEOUS

25. Binding Effect. The provisions of this Tenth Interim Cash Collateral Order shall be binding upon and inure to the benefit of the Trustee, First-Citizens Bank, the Department, Debtor, the Committee, and any successor trustee

subsequently appointed for the estate of the Debtor, whether in this Chapter 11 case or in the event of a conversion to a case under Chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Tenth Interim Cash Collateral Order.

26. Force and Effect, Jurisdiction. In the event that any order dismissing this Chapter 11 case is entered pursuant to Section 1112 of the Bankruptcy Code, or otherwise, (a) the Secured Loan Obligations, Replacement Liens and Super-Priority Claim granted to or for the benefit of First-Citizens Bank and the Department pursuant to this Tenth Interim Cash Collateral Order shall continue in full force and effect and shall maintain their priorities as provided in this Tenth Interim Cash Collateral Order until all of the Secured Loan Obligations shall have been indefeasibly paid in full, and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

27. Continuing Effect of Secured Loan Agreements. Except to the extent this Tenth Interim Cash Collateral Order expressly provides otherwise, the Trustee shall continue to faithfully perform, and be bound by, terms of the Secured Loan Agreements. In the case of any conflict between the terms of the Secured Loan Agreements and this Tenth Interim Cash Collateral Order, this Tenth Interim Cash Collateral Order shall control.

28. Titles and Headings. The titles and headings in this Tenth Interim Order are and shall be without substantive meaning or content of any kind whatsoever.

29. Time of the Essence. Time is of the essence as to all terms, conditions and provisions set forth in this Tenth Interim Cash Collateral Order.

30. Amendment and Modification. The terms and conditions in this Tenth Interim Cash Collateral Order may not be amended, altered, modified or affected without the prior written consent of the Trustee, First-Citizens Bank and the Department; provided, however, First-Citizens Bank, the Department and the Trustee may make non-material modifications or amendments to the Budget in a writing signed by all three parties without further order of this Court, and all actions taken pursuant to such modified Budget shall be and hereby are expressly authorized hereunder.

31. Immediate Effect. This Tenth Interim Cash Collateral Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon execution thereof.

NOTICE OF FINAL HEARING

32. Final Hearing. The Final Hearing or additional interim hearing on the Cash Collateral Motion is scheduled for October 21, 2013 at 9:30 a.m.

Following entry of this Tenth Interim Cash Collateral Order, the Trustee shall immediately provide notice of the Cash Collateral Motion and a copy of this Tenth Interim Cash Collateral Order and notice of the Final Hearing of further Interim Hearing to (i) the Initial Notice Parties, (ii) any counsel to any Official Committee, and (iii) any party that has filed a request for notice in the Chapter 11 Case within 24 hours of the entry of this Order. Such notice shall constitute good and sufficient notice of the Final Hearing. The notice of approval of this Tenth Interim Order shall state that any party in interest objecting to the use of Cash Collateral or the terms of the Final Order shall file written objections with the Clerk of the Bankruptcy Court no later than Friday, October 18, 2013, which objections shall be served so that the same are received on or before such date by: (a) counsel to Trustee, (b) counsel to the Committee; (c) the U.S. Trustee; (d) counsel to First-Citizens Bank; (e) counsel to the Department; and (f) counsel to the Debtor. Any objections by creditors or other parties in interest to any of the provisions of this Tenth Interim Cash Collateral Order shall be deemed waived unless filed and served in accordance with the notice on or before the close of business on such date.

33. Retention of Jurisdiction. The Bankruptcy Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

34. Waiver. Nothing herein shall constitute a waiver of any rights, remedies, or issues of the Trustee, Debtor, First-Citizens Bank, the Department, the Committee, or any other creditor or party in interest except as expressly provided herein.

<<<END OF ORDER>>>

STIPULATED BY:

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Trustee
DAVID C. FARMER

/s/ Ted N. Pettit
TED N. PETTIT
Attorney for Secured Creditor
FIRST-CITIZENS BANK

/s/ Cynthia M. Johiro
CYNTHIA M. JOHIRO
DAMIEN A. ELEFANTE
Attorneys for the State of Hawaii

/s/ Christopher J. Muzzi
CHRISTOPHER J. MUZZI
Attorney for the Official Committee
of Unsecured Creditors

SUBMITTED BY:

TIMOTHY J. HOGAN 5312-0
ATTORNEY AT LAW
1050 Bishop Street, No. 433
Honolulu, Hawaii 96813
Tel. No. (808) 382-3698
Fax No. (808) 356-1682
E-mail: tjh@timhogan.com

Attorney for DAVID C. FARMER, Chapter 11 Trustee

In re Hawaii Outdoor Tours, Inc., Case No. 12-02279 (Chapter 11); TENTH STIPULATED INTERIM ORDER (i) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. §§ 363(c)(2), (ii) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 363 AND 364, (iii) SCHEDULING OF FINAL HEARING, AND (iv) GRANTING RELATED RELIEF; EXHIBIT "A"

EXHIBIT "A"

DETAILED CHAPTER 11 TRUSTEE MONTHLY BUDGET PROJECTIONS FORECAST VS ACTUAL

	Forecast vs Actual May Forecast DIP	May Actual	June Forecast TTE	June Actual	July Forecast	July Actual	August Forecast	August Actual
REVENUES:								
Room	315,000		250,000		270,000		280,000	257,009
Food	95,000		10,000		10,000		15,000	16,536
Beverage	60,000		4,000		4,000		7,000	8,911
Sundry	1,500		996		1,200		996	1,286
Golf	13,000		9,000		10,000		9,000	11,276
Long Term Rental	12,927		9,000		9,000		9,000	15,221
GE Tax			11,659		12,533		13,225	13,211
TAT			23,125		24,975		25,900	25,420
Misc.								7,469
TOTAL REVENUES	497,427	483,007.68	317,780	322,295	341,708	434,498	360,121	356,339

COST OF SALES:								
Food	31,666		3,500		3,500		5,250	
Liquor	15,000		920		920		1,610	
Snacks	750		500		600		500	
Sundry	12,000		250		250		250	
Golf	200		1,000		1,000		1,000	
TOTAL COST OF SALES	59,616	11,384.02	6,170	8,851	6,270	15,170	8,610	14,504

EXPENSES:								
Advertising	5,000		1,400		1,400		1,400	
Amortization	439		439		439		439	
Auto	525		525		525		525	
Cleaning Supplies	4,500		4,500		4,500		4,500	
Credit Cards	5,500		4,767		5,126		5,402	
Payroll Processing	650		650		650		650	
Emp - Dental	523		625		625		625	
Medical	14,666		16,165		16,165		16,165	
FICA/FUTA/SUCI	12,879		12,500		12,500		12,500	
TDI			1,635		1,635		1,635	

PAGE TWO

	MAY FORECAST	MAY ACTUAL	JUNE FORECAST	JUNE ACTUAL	JULY FORCAST	JULY ACTUAL	MONTH 1 August	
Insurance	16,146		16,146		16,146			
Interest	55,000		55,000		55,000			
Lease Rental					8,000			
Misc			1,000		1,000		1,000	
Music/Entertainment	2,800		1,400		1,400		1,400	
Repair & Maintenance	5,000		5,000		5,000		5,000	
Room Commissions	4,178		5,000		5,000		5,000	
Salaries/Wages	104,209		103,000		103,000		103,000	
Taxes - GE	13,000		11,659		12,533		13,225	
TAT	12,927		23,125		24,975		25,900	
RPT							63,284	
Telephone	2,500		2,000		2,000		2,000	
Utility - Electric	50,000		53,000		53,000		53,000	
Propane	8,300		8,300		8,300		8,300	
Waste Removal	6,000		6,800		6,800		6,800	
Water	5,400		16,500		16,500		16,500	
Cable TV	4,719		4,719		4,719		4,719	
Other - Prof Services								
Other - US Trustee Fee			1,950		1,950		1,950	
TOTAL EXPENSES	334,861	519,734	357,805	471,243	367,253	508,397	354,919	496,912
Depreciation backed out		39,263		39,263		39,263		
NET INCOME	102,950	-8,847.34	-46,195	-46,195	-3,408	-49,806	-3,408	
CARRY OVER							207,785	
ENDING SUB-BALANCE							204,377	

NOTE:

As of September 1, 2013	Total Cash Trustee Accts	207,341
	Add Deposits in Transit	
	Total Outstanding Checks	
	Bank (Dip Accts)	444
	Total Unrestricted Cash all Accts	207,785
	Restricted Utility Escrow	40,008
	Restricted Carveout	31,260.00

NOTE: This budget only includes expenses and costs the Trustee is expressly authorized to pay under the terms of the Interim Cash Collateral Stipulation between the Debtor and Lender, but this budget does not include amounts for the payments of allowed fees and expenses by the Trustee and the Trustee's professionals, which are authorized in accordance with Section 22 of the Eighth Interim Cash Collateral Order.

NOTE: The restricted carveout for the Trustee and his professionals was not funded and _____ is currently the balance of the carveout fund.

NOTE: Flood insurance paid in full for whole year in January. Other insurance paid 35% down in February and balance to be paid over 7 months.

NOTE: Real Property Taxes are paid in advance until June 30, 2013.

NOTE: Interest payments were committed for three months commencing in May. The Trustee and his professionals have advance with Section 22 of the Seventh and Eighth Interim Cash Collateral Orders. The instant budget does not include interest payments.

NOTE: In prior budgets lease rent was reported as an allocation of the rental payments on a monthly basis.

The instant budget reports ground rents as a current expenses in the month they are due for cash flow forecasting.

SIX MONTH BUDGET

MONTH 1 September	MONTH 2 October	MONTH 3 November	MONTH 4 December	MONTH 5 January	MONTH 6 February				
191,000	180,000	180,000	180,000	180,000	180,000				
22,000	15,000	15,000	10,000	10,000	10,000				
7,000	3,000	5,000	5,000	5,000	5,000				
1,200	1,386	1,500	1,794	1,500	1,500				
10,000	8,000	6,000	8,500	6,500	6,500				
9,000	9,000	9,000	9,000	9,000	9,000				
9,896	8,915	8,920	8,829	8,734	8,734				
17,668	16,650	16,650	16,650	16,650	16,650				
267,764	241,951	242,070	239,773	237,384	237,384				

7,700	5,250	5,250	3,500	3,500	3,500				Based on 35% Food Cost
1,610	690	1,150	1,150	1,150	1,150				Based on 23% Liquor Cost
600	604	750	500	750	750				
250	250	250	250	250	250				
1,000	1,000	1,000	1,000	1,000	1,000				
11,160	7,794	8,400	6,400	6,650	6,650				

1,400	1,400	1,400	1,400	1,400	1,400				
439	439	439	439	439	439				
525	525	525	525	525	525				
4,500	4,500	4,500	4,500	4,500	4,500				
4,016	3,629	3,631	3,597	3,561	3,561				Based on 1.5% of revenues
650	650	650	650	650	650				
625	625	625	625	625	625				
16,165	16,165	16,165	16,165	16,165	16,165				
12,500	12,500	12,500	12,500	12,500	12,500				
		1,635							

MONTH 2 September	Month 3 October	MONTH 4 November	Month 5 December	MONTH 6 January	MONTH 6 February				
									State Deferred August Lease Rent to 9/16/2013.
1,000	1,000	1,000	1,000	1,000	1,000				No agreement for further deferral
1,400	1,400	1,400	1,400	1,400	1,400				That is currently unpaid.
15,000	15,000	15,000	15,000	15,000	15,000				
5,000	5,000	5,000	5,000	5,000	5,000				Benda Trust Lease rent due October 1
103,000	103,000	103,000	103,000	103,000	103,000				Was not paid
9,896	8,915	8,920	8,829	8,734	8,734				
17,668	16,650	16,650	16,650	16,650	16,650				
2,000	2,000	2,000	2,000	2,000	2,000				
53,000	53,000	53,000	53,000	53,000	53,000				
8,300	8,300	8,300	8,300	8,300	8,300				
6,800	6,800	6,800	6,800	6,800	6,800				
16,500	16,500	16,500	16,500	16,500	16,500				
4,719	1,994	4,719	1,994	4,719	4,719				
1,950	1,950	1,950	1,950	1,950	1,950				
287,053	281,942	286,309	281,824	284,418	284,418				
-30,449	-47,785	-52,639	-48,451	-53,684	-53,684				
207,341	176,892	129,106	76,467	28,017	28,017				
176,892	129,106	76,467	28,017	-25,667	-25,667				