



SO ORDERED.

SIGNED this 27 day of March, 2012.

Stephani W. Humrickhouse
Stephani W. Humrickhouse
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION

In Re: Croatan Surf Club,
Debtor.
: Chapter 11
: Case No. 11-00194-8-SWH
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:
:

**EIGHTH INTERIM CONSENT ORDER AUTHORIZING DEBTOR'S
USE OF CASH COLLATERAL ON LIMITED BASIS**

THIS CAUSE, coming before the Court with the consent of the parties; and, it appearing to the Court that all parties in interest to the Debtor's estate have received notice of the rescheduling by the Bankruptcy Administrator of the Debtor's Emergency Motion for Authorization to Use Cash Collateral (the "Motion") in accordance with the provisions of Bankruptcy Rule 4001 and of the continued hearing on April 26, 2011; the Court having held a hearing on May 16, 2011 on the Motion and heard testimony of witnesses and argument of counsel for the Debtor, Royal Bank America ("Royal") and Edwards Family Partnership LP ("Edwards"), having held a hearing on July 18, 2011, and having held a hearing on November 16, 2011, it further appearing that the parties hereto have proposed terms regarding the Debtor's interim use of cash collateral and have agreed to terms concerning interim authorization for the

Debtor's use of cash collateral as set forth in this interim order ("Order"). It further appears to the Court that the terms and conditions set forth below, are reasonable and appropriate, are in the best interests of the bankruptcy estate and all creditors and should be approved. It further appears to the Court that the notice of the motion and the hearing is adequate and proper.

THEREFORE, based upon the foregoing and the representations of counsel for the Debtor, Royal and Edwards and the consent of the Bankruptcy Administrator, and the record in this case, the Court hereby makes the following Findings of Fact and Conclusions of Law:

Findings of Fact and Conclusions of Law

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

B. The Debtor filed a certain petition for relief pursuant to Chapter 11 of the United States Bankruptcy Code on January 10, 2011 (the "Petition Date") and currently operates as a debtor-in-possession.

C. The Debtor is the owner of thirty five (35) residential condominiums units (separately either "Unit" or "Units" and collectively the "Property") at a development in Dare County, North Carolina ("Dare County") known as Croatan Surf Club (the "Project").

D. The following creditors assert claims against the Debtor that are allegedly secured by accounts or other cash collateral (collectively, the "Secured Creditors"), as follows:

a. Royal - On or about December 20, 2007, the Debtor entered into a lending arrangement with Royal, pursuant to which Royal made a \$17,000,000 construction loan to the Debtor for the development of the Project. According to Royal's amended proof of claim filed on June 1, 2011, the amount owing to Royal as to the Petition Date is \$20,108,549.43 [POC #2]. The Debtor disputes the calculation as set forth in Royal's proof of claim and believes that the

amount owed to Royal is approximately \$16,350,000. The Debtor filed an Objection and an Amended Objection to Royal's proof of claim (dkt nos. 248 and 278, respectively). Edwards filed a Response in support of the Debtor's Objection to Royal's proof of claim, along with its own "Additional Objection" to Royal's proof of claim (dkt nos. 265 and 266, respectively). The Debtor's obligation to Royal is secured, inter alia, by a Deed of Trust recording in Book 1753, Page 461 of the Dare County Register of Deeds. This obligation is further secured by an Assignment of Rents and Leases, recorded in Book 1753, Page 462 of the Dare County Register of Deeds. A UCC-1 Financing Statement has also been executed and recorded. Pursuant to the applicable security agreements and documents between or among Royal and the Debtor (collectively the "Royal Loan Documents"), Royal asserts that it retains a security interest in, but not limited to, all the Debtor's accounts, inventory, furniture, fixtures, equipment and general intangibles (which includes leases and rents). Based upon the Royal Loan Documents, it appears that all of the Debtor's outstanding accounts receivable and operating income constitute cash collateral of Royal within the meaning of § 363 of the Bankruptcy Code.

b. Edwards - On or about December 31, 2007, the Debtor also entered into a lending arrangement with Edwards. The Edwards obligation is secured by, inter alia, a Deed of Trust, Assignment of Rents, Security Agreement, and Financing Statement recording in Book 1753, Page 464 of the Dare County Register of Deeds. Pursuant to applicable security agreements and documents between the Debtor and Edwards (collectively the "Edwards Loan Documents"), Edwards asserts that it retains a security interest in, but not limited to, all the Debtor's accounts, inventory, equipment and general intangibles (which includes leases and rents). Based upon the Edwards Loan Documents, it appears that all of the Debtor's outstanding accounts receivable and operating income constitute cash collateral of this creditor within the

meaning of § 363 of the Bankruptcy Code. Edwards, Royal and the Debtor entered into a Subordination and Inter-Creditor Agreement as of December 31, 2007 (“Subordination Agreement”). Royal has taken the position that Edwards’ security interest in the cash collateral is second in priority to Royal’s security interest in said cash collateral. It should also be noted that Royal has filed a proof of claim on behalf of Edwards [POC #3] pursuant to the terms of the Subordination Agreement, in which Royal has asserted that the value of the Project is such that a portion of Royal’s claim and Edwards’ entire claim are unsecured. On May 10, 2011, Edwards filed an amended proof of claim as a secured claim in the amount of \$3,765,291.57 [POC #5] (“EFP’s POC”). Debtor disputes the calculation as set forth in Edwards’ proof of claim and believes that the amount owed to Edwards is less but did not file an objection to EFP’s POC. Royal filed an objection to EFP’s POC (“RBA Objection to EFP’s POC”). At the hearing on November 14, 2011, Royal and Edwards settled RBA’s Objection to the amount of EFP’S POC at \$3,274,166.67. Accordingly, all references in this Order to “Secured Creditors” shall mean both Royal and Edwards.

E. Debtor continues to collect money each month in rentals and deposits for the rental of Units through the Debtor’s rental agent, Village Realty and Management Services (“Village”).

F. The Debtor received releases of accumulated rental proceeds (“Rental Payments”) from Village in the amount of \$102,838.80 for October, 2011, \$44,890.03 of Rental Payments for November, 2011, \$23,087.64 of Rental Payments for December, 2011, \$19,252.26 of Rental Payments for January, 2012, and \$92,510.96 of Rental Payments for February, 2012, which amounts represent the rental deposit monies paid to Village by various third parties (“Renters”) with respect to the rental of Units for various timeframes, which rental deposits have become

non-refundable, provided that the Debtor, in fact, delivers the rented Units to the respective Renters pursuant to the rental agreement with the Renter and the balance of rental payment for Units occupied by the Renter during the previous month period, certain expenses and commissions of Village (the "Rental Payments"). The Debtor anticipates that during the first week of April, 2012, Village will release to the Debtor the Rental Payments received by Village during March, 2012. The Secured Creditors have asserted that the current and future Rental Payments, cash required by order of the Court to be held by Village in a segregated escrow account from Renters not released by Village ("Village Escrowed Funds"), and the current cash balance in the Debtor in Possession Account ("DIP Account") are cash collateral as defined under 11 U.S.C. § 363(a) securing their respective pre-Petition loans and obligations ("Cash Collateral").

G. This Court entered an Interim Cash Collateral Order on March 3, 2011 ("First Cash Collateral Order"). Following the entry of the First Cash Collateral Order, the Debtor received \$122,186.83 of Rental Payments from Village. Under that First Cash Collateral Order, during the months of February and March, the Debtor spent the following Cash Collateral: \$4,000.00 for cleaning expenses, \$5,055.07 for utilities, \$130.37 on bank service charges, \$52,000.00 for condominium association fees ("COA Fees") for February and March, 2011, and \$65,697.66 as partial payment of the outstanding 2010 ad valorem real estate taxes due to Dare County ("2010 Real Estate Taxes").

H. This Court entered a Second Interim Cash Collateral Order on May 4, 2011 ("Second Cash Collateral Order"). In accordance with the Second Cash Collateral Order, the Debtor received \$85,474.65 of Rental Payments from Village. Under that Second Cash Collateral Order, during the months of April, the Debtor spent the following cash collateral:

\$5000 for Unit Cleaning, \$3223.13 for utilities, \$3,800.00 for hot tub cleaning, \$200.00 for legal expenses, \$1,500.00 for web services, \$26,000.00 for COA Fees for April, 2011, and \$48,831.29 as payment of the balance of the 2010 Real Estate Taxes.

I. This Court entered a Third Interim Cash Collateral Order on June 1, 2011 (the “Third Cash Collateral Order”). In accordance with the Third Cash Collateral Order, the Debtor received \$93,425.21 of Rental Payments from Village. Under that Third Cash Collateral Order, during the month of May, 2011, the Debtor spent the following cash collateral: Condominium Association Fees: \$26,000.00; Cleaning: \$2,000.00; Utilities: approximately \$4,300.00; Hot Tub Cleaning: \$2,500.00; Annual Registered Agent Fee: \$200.00; Carpet Cleaning: \$4,350.00; Agents’ Luncheon: \$1,000; Bankruptcy Administration Fees: \$975.00.

J. This Court entered a Fourth Interim Cash Collateral Order on July 1, 2011, (the “Fourth Cash Collateral Order”). In accordance with the Fourth Cash Collateral Order, the Debtor received \$73,426.62 of Rental Payments from Village. Under that Fourth Cash Collateral Order, for the month of June, 2011, the Debtor spent the following cash collateral: \$26,000 for COA fees for June, 2011, \$26,000 for COA fees for July, 2011, approximately \$3,500 for utilities; \$1,000 to the Mediator (as defined below); \$975 for the Bankruptcy Administrator’s quarterly fee; \$2,200 for hot tub cleaning; and \$20,000 into the Tax Escrow Account (as defined below).

K. This Court entered a Fifth Interim Cash Collateral Order on August 1, 2011 (the “Fifth Cash Collateral Order”). In accordance with the Fifth Cash Collateral Order, the Debtor received \$182,415.95 of Rental Payments from Village for September, 2011, \$321,675.97 of Rental Payments from Village for August, 2011, and \$215,371.07 of Rental Payments from Village for July, 2011. Under that Fifth Cash Collateral Order, for the months of July, August

and September, the Debtor spent the following cash collateral: no expenditures during September, 2011; during August, 2011: \$26,000 for COA fees for August, 2011, \$26,000 for COA fees for September, 2011, \$5,316.33 for utilities, and \$2,000 for hot tub cleaning, and \$675.00 for the Bankruptcy Administrator's quarterly fee; for July, 2011: \$3,447.40 for utilities, \$2,150 for hot tub cleaning, and \$975.00 for the Bankruptcy Administrator's quarterly fee. In addition, the Debtor was permitted and required to make the following deposits in the Tax Escrow Account: \$35,000.00 during July, 2011 and \$40,000 during August, 2011.

L. The Court entered a Sixth Interim Consent Order Authorizing the Debtor's Use of Cash Collateral on a Limited Basis on December 6, 2011 (the "Sixth Cash Collateral Order"). In accordance with that Sixth Cash Collateral Order, the Debtor received \$102,838.80 of Rental Payments from Village for October, 2011, \$44,890.03 of Rental Payments from Village for November, 2011, \$23,087.64 of Rental Payments from Village for December, 2011, \$19,252.26 of Rental Payments from Village for January, 2012, and \$92,510.96 of Rental Payments from Village for February, 2012. Under that Sixth Cash Collateral Order, the Debtor spent the following cash collateral: during November, 2011, \$26,000.00 for COA Fees for October, 2011, \$26,000.00 for COA Fees for November, 2011, and \$3,700.00 for hot tub cleaning, \$6,310.01 for utilities; during December, 2011, \$26,000.00 for COA Fees for December, 2011, \$180,000.00 to Royal for Adequate Protection Payments for October, November, and December, 2011 and January, 2012, \$1,890.37 into the Tax Escrow Account, \$1,050.00 for hot tub cleaning, \$2,292.34 for utilities, \$1,975.00 for the Bankruptcy Administrator's quarterly fee, and \$25.00 for Royal service charges; and during January, 2012, \$19,703.60 for COA Fees, \$1,750.00 for hot tub cleaning, \$4,696.81 for utilities, \$1,745.00 for the Mediator, and \$1,950.00 for the Bankruptcy Administrator's quarterly fee.

M. On or about March 20, 2012, the Debtor submitted to the Court and anticipates that the Court will shortly enter the Seventh Interim Consent Order Authorizing Debtor's Use of Cash Collateral for Payment of Insurance Premiums (the "Seventh Cash Collateral Order"). In accordance with the Seventh Cash Collateral Order, the Debtor will be authorized to pay current and advance payments to the Croatan Surf Club Condominium Association, Inc. (the "COA") to be used solely by the COA to pay the premiums to insure the Property for the period commencing March 6, 2012. The premiums for such coverage (the "Insurance Premiums") are \$47,285.50. In accordance with the Seventh Cash Collateral Order, the Secured Creditors agreed to allow the Debtor to use \$47,285.50 of the Cash Collateral to pay the COA so the COA could immediately pay the Insurance Premiums. The monthly COA fee is Twenty Six Thousand Dollars (\$26,000.00). The Debtor and the Secured Creditors agreed that the payment of the \$47,285.50 of Insurance Premiums will be allocated as a payment of a portion of the Debtor's March COA Fees and the advance payment of a portion of the COA Fees for April through December, 2012 as follows: \$12,083.33 for March, 2012 COA Fees, \$4,000 per month for April through November, 2012 COA Fees, and \$3,201.62 for December, 2012 Fees.

N. The Debtor is currently anticipating a continuation of its business interests by way of its proposed reorganization under Chapter 11. It appears that in order for the Debtor to preserve its assets and maintain its operations during the months of February and March, 2012, the Debtor will be required to incur certain limited operating expenses, including COA Fees, utilities, hot tub cleaning on the Property, and deep cleaning of the Units, as well as other related expenses.

O. Other than through the use of cash on hand in the DIP Account and the current and future Rental Payments, the Debtor has no other current source of readily available cash with

which to preserve its assets or operate. If the Debtor is not permitted to utilize the funds that the Secured Creditors assert are their Cash Collateral, the Debtor will be unable to operate or maintain its assets.

P. The Debtor's operating and other expenses with respect to February, 2012 and March, 2012 shall include and be limited to: payment of all or a portion of COA Fees for each of those months, utilities, hot tub maintenance and cleaning, and deep cleaning of the Units. The Debtor will not use any of the Cash Collateral or any other cash it receives from whatever source as salary for its manager or any employee of the Debtor, management fees to its manager, or for any other purpose not provided for specifically in this Order.

Q. Specifically, the Debtor may use the Cash Collateral in a limited amount and for limited purposes (collectively, the "CC Payments") to pay expenses incurred during February, 2012 and March, 2012 as follows, such payments to be made after entry of this Order by the Court:

a. The Debtor may pay its COA Fees for February, 2012 in a sum not to exceed Twenty Six Thousand Dollars (\$26,000.00).

b. The Debtor may pay the balance of its COA Fees for March, 2012 in a sum not to exceed Thirteen Thousand Nine Hundred Sixteen Dollars and Sixty-Seven Cents (\$13,916.67).

c. The Debtor may pay for its utilities in an amount not to exceed Five Thousand Dollars (\$5,000.00).

d. The Debtor may pay for hot tub cleaning and maintenance in an amount not to exceed Two Thousand Dollars (\$2,000.00).

e. The Debtor may pay for deep cleaning of the Units in an amount not to

exceed Eight Thousand Dollars (\$8,000.00).

R. For the months of February, 2012 and March, 2012, the Debtor shall maintain the balance of its funds, after payment of the CC Payments in its DIP Account, which is subject to such liens of the Secured Creditors as may exist or granted hereunder to the extent of their respective security interest therein and hereunder and may not be used by the Debtor without consent of both of the Secured Creditors or further Order of this Court.

S. As adequate protection for Royal's and Edward's respective asserted secured interests in the Property and the Debtor's use of the Cash Collateral under this Order, the Debtor proposes that Royal and Edwards be granted post-Petition liens and security interests in the same collateral, and with the same priority, as their respective pre-Petition liens and security interests in the Debtor's assets.

T. During the term of this Eighth Cash Collateral Order, Royal will not receive a payment of money from the Debtor as an adequate protection payment for the Debtor's use of the Cash Collateral in February, 2012 and March, 2012. Nevertheless, Royal has not waived nor relinquished its right to request and receive adequate protection for the use of the Cash Collateral under §363(e) of the Bankruptcy Code. To the contrary, the parties hereto agree that Royal has reserved the right to request in the future the payment of adequate protection for the use of the Cash Collateral during the term of this Eighth Cash Collateral Order and any other future use of the Cash Collateral.

U. To the extent that the adequate protection under the Order is insufficient, the Debtor agrees that the Secured Creditors each reserve and preserve their respective rights to assert superpriority claim under 11 U.S.C. § 507(b) and to assert their respective rights to a superpriority administrative claim with priority over all costs, fees, amounts and claims under,

described in or contemplated by 11 U.S.C. § 507(a)(2) to the extent of and reflecting the priority of their interests in the Cash Collateral.

V. The terms and conditions of this Order appear to provide, on an interim basis, adequate protection of the Secured Creditors' respective interests in their respective collateral on a post-Petition basis.

W. The terms, conditions and limitations of this Order are reasonably tailored to protect the interests of all creditors of the bankruptcy estate.

X. The requirements of the Bankruptcy Rules and the Bankruptcy Code, including without limitation Bankruptcy Rule 4001(d), have been satisfied for the Debtor's interim use of cash collateral and for the grant of adequate protection to the Secured Creditors upon the terms set forth in this Order.

THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Court enters this Eighth Interim Cash Collateral Order and hereby **ORDERS**:

1. Notwithstanding 11 U.S.C. § 552 to the contrary, the security interests granted to Royal and Edwards under the Royal Loan Documents and the Edwards Loan Documents, to the extent of the Debtor's use of the Cash Collateral received through March 31, 2012, shall extend to their respective post-Petition collateral and shall have the same relative priority and the security interests and liens asserted by each of them as of the Petition Date.

2. In addition, pursuant to and consistent with 11 U.S.C. §§ 363(e) and 361, Royal and Edwards are granted to the extent of the Debtor's use of the Cash Collateral received through March 31, 2012 post-Petition replacement liens and security interests in that same post-Petition collateral in the same relative priority, including Cash Collateral (the "Replacement Liens"). Royal's and Edwards' Replacement Liens granted under this Order are and shall be deemed

perfected without any further action by either of them.

3. Royal's consent to this Eighth Cash Collateral Order shall not constitute a waiver nor relinquishment of Royal's right to request and receive adequate protection for the use of the Cash Collateral under §363(e) of the Bankruptcy Code. To the contrary, Royal's right to request and receive adequate protection for the use of the Cash Collateral under §363(e) of the Bankruptcy Code is reserved regarding the payment of adequate protection for the use of the Cash Collateral during the term of this Eighth Cash Collateral Order and any other future use of the Cash Collateral to the extent permitted under §363(e) of the Bankruptcy Code.

4. To the extent that the adequate protection under the Order is insufficient, the Secured Creditors' respective rights to assert a superpriority claim under 11 U.S.C. § 507(b) and to assert their respective rights to a superpriority administrative claim with priority over all costs, fees, amounts and claims under, described in or contemplated by 11 U.S.C. § 507(a)(2) to the extent of and reflecting the priority of their interests in the Cash Collateral is reserved and preserved by this Order.

5. Notwithstanding anything provided herein, each of the Secured Creditors reserves the right to challenge the validity, priority, enforceability or perfection of any party's alleged liens on their pre-Petition and post-Petition collateral.

6. The Debtor has not waived, and expressly reserves for itself and the bankruptcy estate, the right to challenge the validity and priority of any pre-Petition security interests and, derivatively, the post-Petition security interests acknowledged, granted and perfected hereunder. The Debtor has not waived, and expressly reserves for itself and the bankruptcy estate any and all causes of action and defenses to causes of action presently pending or as may hereafter occur. Further, the Debtor has not waived, and expressly reserves for itself and the bankruptcy estate to

dispute in future months the Secured Creditors' claim to be paid adequate protection payments and the extent of such adequate protection payment for the Debtor's use of the cash collateral in future months.

7. All proceeds of pre-Petition and post-Petition income collected by the Debtor on or after the date of this Order shall be collected, received, maintained, and segregated by the Debtor and deposited in the DIP Account and shall not be commingled or intermingled with other cash of the Debtor, and shall not be used by the Debtor except in accordance with the terms of this Order. Further any funds received by Village that are Village Escrowed Funds after the date of this Order shall be collected, received, maintained, and segregated by Village and shall not be commingled or intermingled with other cash of the Village or its other customers or clients. Notwithstanding expiration or termination of the Debtor's authority to use Cash Collateral hereunder, the Debtor and Village shall continue to comply with the provisions of this paragraph until further order of the Court to the contrary.

8. For the months of February, 2012 and March, 2012, the Debtor is allowed the use of the Cash Collateral for the payment of the CC Payments.

9. If an amended budget for the use of Cash Collateral during February, 2012 and March, 2012 is approved by the Debtor and by both of the Secured Creditors in writing, it shall become effective and shall be deemed incorporated into this Order (in the place of the CC Payments) as of the date on which the parties file a copy of that amended budget with the Court.

10. The parties shall have the right to file an additional motion for authority to use or limit the use of cash collateral and to seek an expedited hearing thereon; provided, however, that such hearing shall not occur on less than three (3) business days' notice to the other parties in interest and the Bankruptcy Administrator.

11. During this bankruptcy case, the Debtor shall deliver to the Secured Creditors the following financial information and business data and provide the following access at the following times:

a. Monthly Operation Reports. The Debtor shall serve upon Royal and Edwards a copy of the monthly operating report at the same time that the Debtor serves it upon the Bankruptcy Administrator.

b. Access to Books and Records and Collateral. Upon reasonable prior notice, the Debtor shall provide or cause to be provided to the representatives, counsel, consultants and/or employees of Royal and/or Edwards full and complete access to review, inspect and copy the Debtor's and the COA's books and records of the disbursements, receipts, payables and receivables of the Debtor and the COA, including but not limited to, the management, operation, rental, maintenance, insurance and taxes of the Property and the Project. Upon reasonable prior notice, the Debtor will also provide access and assistance to the representatives, counsel, consultants and/or employees of Royal and/or Edwards to inspect and appraise the Property and the Project. The Debtor shall cooperate and consult with, and provide to such representatives, counsel, consultants and/or employees of Royal and/or Edwards all such information as they may reasonably request for the purpose of appraising or evaluating the Debtor's performance or Royal's and Edwards' collateral.

c. Bank Statements and Checks. The Debtor shall deliver to Royal and Edwards no later than April 10, 2012 for the months of February, 2012 and March, 2012 a copy of the online bank statement and copies of all checks for that prior month for the DIP Account.

d. Weekly Reports of Cash Collateral. The Debtor will deliver to Royal and Edwards by 5:00 p.m. prevailing Eastern Time on each Monday a weekly report of all cash

received by the Debtor and all disbursements by the Debtor during the previous week ending on the prior Saturday.

e. Schedule of Rents for the Units. On the first Monday following the entry of this Order, the Debtor shall provide the Secured Creditors by electronic mail a spread sheet reports prepared by Village, updated weekly, indicating (A) (i) the name of the Renter, (ii) the Unit rented, the weeks rented by the Renter, (iii) the amount of rent for each such week rented by the Renter (collectively the "Reservation Report" in the form of the Reservation Report produced by the Debtor at the July 18th Hearing as Exhibit DV-2A) and (B) (iv) the amount and date of the rental deposit paid by the Renter ("Rental Deposit") for each respective rental period, (v) the amount(s) and date(s) of any Rental Deposit releases made by Village to the Debtor, with respect to each rental of a Unit, (vi) any commissions or fees, charges, cost or deductions paid from the Rental Deposit, and (vii) the current balance of the Rental Deposits held by Village (collectively, the "Rental Schedule"). Thereafter, the Debtor will provide to the Secured Creditors a weekly updated version of the Reservation Report and the Rental Schedule for each subsequent week by 5:00 p.m. prevailing Eastern Time on each Monday following the Saturday of the prior week.

12. Each of the Secured Creditors shall be permitted to request information directly from Village relating to the Debtor, including but not limited to, the rentals of the Units, reservations and deposit for the rental of the Units, the repair and maintenance expenses of the Units, and the operations, revenues and expenses of the COA, and within a reasonable time period after such request, Village is hereby instructed to provide such information to both of the Secured Creditors and the Debtor.

13. The Secured Creditors are hereby granted as adequate protection for the use of their Cash Collateral by the COA to pay for the Insurance Policies (as defined in prior cash

collateral orders) a security interest and lien on the each of the Insurance Policies and on the proceeds, refunds or unearned premiums of the Insurance Policies in the same priority as their security interest in Cash Collateral.

14. Any party may seek further consideration of the relief granted in this Order or other cash collateral issues covered by this Order by filing a request with the Court; provided, however, that a hearing on any such request shall not occur on less than three (3) business days' notice to an affected party.

15. This Order shall remain in full force and effect until the earlier of (i) March 31, , 2012; or (ii) the entry of an order by the Court terminating this Order for cause, including but not limited to breach of its terms and conditions; or (iii) the Court's determination that the Debtor is in default hereunder pursuant to the provisions of paragraph 20 of this Order with respect to the filing of a Certificate of Default (as hereinafter defined). Any liens, security interests or priority granted to the Secured Creditors hereunder shall survive the termination or expiration of this Order.

16. Nothing in this Order shall be deemed to authorize or direct the Debtor to pay any pre-Petition debt or claim.

17. The Debtor shall not (i) sell any Unit or the Property without the entry of an order of the Court after notice and hearing pursuant to 11 U.S.C. § 363 and Bankruptcy Rule 4001 or a confirmed plan of reorganization or (ii) dispose of any other asset out of the ordinary course of its business without the advance written consent of the Secured Creditors and, as necessary, the approval of this Court.

18. Nothing in this Order shall be deemed a waiver by any party of any rights, powers, authority, or remedies pursuant to the either the Royal Loan Documents or the Edwards

Loan Documents. Further, except as expressly provided to the contrary in this Order, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of Secured Creditors under the Bankruptcy Code or under applicable non-bankruptcy law, including, without limitation, the right of either of the Secured Creditors to: request relief from or modification of the automatic stay extant under Section 362 of the Bankruptcy Code, request conversion of the Debtor's chapter 11 case to one under chapter 7 of the Bankruptcy Code, request that appointment of a Trustee; oppose any sale or other disposition of any collateral or other assets of Debtor or the sale of all or any part of Debtor's business and propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a chapter 11 plan or plans or any other rights, claims or privileges (whether legal, equitable, contractual or otherwise) of Royal or Edwards. Further, Royal shall not, by reason of this Order or otherwise, be deemed to have waived any default or Event of Default by the Debtor under the Royal Loan Documents.

19. If any or all of the provisions of this Order are hereafter modified, vacated or stayed by any subsequent order of this Court or any other court, such stay, modification or vacation shall not affect the validity or enforceability of any security interest, lien or priority authorized or created hereby prior to the effective date of such modification, stay, vacation or final order. The validity and enforceability of all security interests, liens and priorities authorized or created in this Order shall survive the conversion of this case to a case under Chapter 7 of the Bankruptcy Code or the dismissal of this case. This Order shall be binding upon and inure to the benefit of the Debtor and the Secured Creditors. The terms and provisions of this Order shall bind any trustee appointed for the Debtor's estate under any provision of the Bankruptcy Code. This binding effect is an integral part of this Order.

20. Except as otherwise provided herein, nothing herein contained shall: (i) affect or impair either Secured Creditors' right to seek additional adequate protection of its respective interests in the pre-Petition or post-Petition collateral; or (ii) be deemed to constitute or constitute a commitment by Royal or Edwards to consent to the use of Cash Collateral, or to make advances to the Debtor or to finance the Debtor's Chapter 11 case.

21. It shall be a default hereunder for any one or more of the following to occur:

a. the Debtor's failure to keep, observe or perform any of its agreements or undertakings hereunder including, but not limited to, all payment requirements and reporting provisions contained herein, or shall fail to otherwise comply with any of the terms or conditions of this Order; provided, however, that, no reporting or access default hereunder shall be deemed to have occurred hereunder if the Debtor shall have cured any such failure within three (3) business days following written notice (which notice may given by electronic mail to Debtor's counsel) thereof from either of the Secured Creditors; or

b. the Debtor's use of Cash Collateral other than as permitted or required and authorized in this Order.

22. Upon Royal and/or Edwards filing with the Court a written certificate of any such default (a "Certificate of Default"), which Certificate of Default shall be immediately served upon the Debtor and the Bankruptcy Administrator, the Debtor may file a request with the Court for an expedited hearing to challenge such Certificate of Default hereunder within three (3) business days of the filing of such Certificate of Default; provided, however, that such expedited hearing shall not occur on less than three (3) business days' notice to the other parties. The Debtor's authority to use Cash Collateral hereunder shall terminate immediately upon the Court's determination that the Debtor has defaulted hereunder or the Debtor fails to request a hearing

hereunder within the said three (3) business days.

23. The Debtor shall serve notice of this Order on all parties entitled to receive the same pursuant to Bankruptcy Rules 1007 and 4001. A further hearing on the Debtor's Motion and continued use of collateral shall be held at the United States Bankruptcy Court, Raleigh, North Carolina, on April 25, 2012 at 3:00 p.m. at the US Bankruptcy Court, Room 208, 300 Fayetteville Street, in Raleigh.

24. This Order shall be deemed effective as of March 1, 2012.

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