

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

IN THE MATTER OF:

CASE NO.:

CROATAN SURF CLUB, LLC

11-00194-8-SWH
CHAPTER 11

**DEBTOR'S EMERGENCY MOTION FOR AUTHORIZATION
TO USE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363**

COMES NOW, Croatan Surf Club, LLC, (hereafter "Debtor"), by and through its undersigned counsel, and respectfully moves this Court for an Order authorizing the Debtor to use cash collateral pursuant to 11 U.S.C. § 363. Furthermore, the Debtor respectfully requests an emergency hearing before this Court, pursuant to Rules 1007(d) and 4001(b)(2) of the Bankruptcy Rules, in order to avoid immediate and irreparable harm to the Estate. In support of this Motion the Debtor shows unto this Court the following:

1. 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).
2. The Debtor filed its petition pursuant to Chapter 11 of the United States Bankruptcy Code on January 10, 2011, and operates as debtor-in-possession.
3. The Debtor owns 35 condominiums in Dare County, North Carolina. These condominiums are part of a development commonly known as the Croatan Surf Club. These units are leased to the general public for short term and long term rentals.
4. On or about December 20, 2007, the Debtor entered into a lending arrangement with Royal Bank America for the construction of the development. The amount owing to RBA is approximately \$19,000,000.00. This obligation is evidenced by a Deed of Trust recording in Book

1753, Page 461 of the Dare County Register of Deeds. This obligation is further evidenced 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.

5. Pursuant to the loan documents, RBA arguably retains a security interest in all the Debtor's accounts, inventory, equipment and general intangibles (which includes leases and rents).

8. Based upon the applicable security agreements and documents asserted by RBA, it appears that all of the Debtor's outstanding accounts receivable and operating income arguably constitute cash collateral of this creditor within the meaning of § 363 of the Bankruptcy Code.

9. The Debtor is currently anticipating a continuation of operations by way of this proposed reorganization. The Debtor believes that in order to maintain existing operations, and retain maximum value of its real estate, the Debtor will be required to incur certain operating expenses. Other than through the collection of the outstanding rentals, the Debtor has no other source of readily available cash with which to operate its business. As a result, the Debtor respectfully requests a preliminary hearing on this Motion in order to avoid a closure of the Debtor's operations and immediate, irreparable harm to the Estate.

10. The Debtor estimates that it will require necessary funds for operating and other expenses until a confirmation of the Debtor's plan. The Debtor hopes to have a plan confirmed no later than the second quarter of 2011. The necessary expenses that will be incurred include, but are not limited to, the following line items: commissions related to rentals; property owner association fees; repairs and maintenance; utilities; insurance; professional fees; and ad valorem taxes. A copy of Debtor's proposed budget, and anticipated operating income and expenses, are attached hereto and incorporated herein as Exhibit A.

11. The Debtor will maintain a Debtor in Possession ("D.I.P") bank account into which it will deposit all cash, checks and other cash items.

12. The Debtor represents that a reorganization and continuation of its operations will generate the greatest source of funds for creditors, including secured creditors. The Debtor requires immediate access to current sources of cash collateral in order to allow it to continue operations.

13. Furthermore, if the use of cash collateral is not immediately approved, the Estate will suffer immediate and irreparable harm, in that it will not be able to continue to operate. If the Debtor is unable to maintain constant cash flow, it cannot possibly succeed in bankruptcy. Rule 4001(b)(2) of the Bankruptcy Rules reads as follows:

(2) Hearing. The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Pursuant to Rule 4001, the Debtor respectfully requests a preliminary hearing authorizing it to use cash collateral as specified in this Motion.

14. In accordance with Rules 1007(d) and 4001(b) of the Bankruptcy Rules, the creditors' committee in this case, if formed pursuant to § 1102 of the Code, will be chosen from the twenty largest unsecured creditors of the Debtor, all of whom are named in the list which accompanies this Motion.

WHEREFORE, the Debtor respectfully prays for the following relief:

1. For a preliminary hearing on this Motion in order that immediate harm to the Estate can be avoided;
2. For leave of the Court to pay necessary expenses utilizing current cash collateral.

3. For an Order authorizing the Debtor's use of cash collateral in accordance with 11 U.S.C. § 363; and

4. For such other and further relief that this Court deems just and appropriate.

DATED: January 14, 2011

/s/Walter L. Hinson
Walter L. Hinson
State Bar No: 5664
HINSON & RHYNE, P.A.
P.O. Box 7479
Wilson, NC 27895-7479
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2011

	Jan	Feb	March	April	May	June	July	August	September	October	November	December	Year End 2011
Monthly Rental Income													
2011		75,000.00	90,000.00	125,000.00	135,000.00	245,000.00	295,000.00	285,000.00	245,000.00	95,000.00	45,000.00	15,000.00	1,650,000.00
2012											40,000.00	50,000.00	90,000.00
Gross Monthly Rental Income		75,000.00	90,000.00	125,000.00	135,000.00	245,000.00	295,000.00	285,000.00	245,000.00	95,000.00	85,000.00	65,000.00	1,740,000.00
Commissions and Fees		12,000.00	14,400.00	20,000.00	21,600.00	39,200.00	47,200.00	45,600.00	39,200.00	15,200.00	13,600.00	10,400.00	278,400.00
Net Monthly Rental Income		63,000.00	75,600.00	105,000.00	113,400.00	205,800.00	247,800.00	239,400.00	205,800.00	79,800.00	71,400.00	54,600.00	1,461,600.00

Expenses													
Deep Clean		4,000.00	4,000.00										
LLC Management and Admin		2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	27,000.00
Marketing				4,000.00					4,000.00				8,000.00
Condo Association		26,000.00	26,000.00	26,000.00	26,000.00	26,000.00	26,000.00	26,000.00	26,000.00	26,000.00	26,000.00	26,000.00	286,000.00
Legal		25,000.00	20,000.00	20,000.00	20,000.00	20,000.00	20,000.00	20,000.00	20,000.00	20,000.00	20,000.00	20,000.00	225,000.00
Repairs and Maintenance				3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00				18,000.00
Taxes					115,000.00							115,000.00	230,000.00
Utilities		2,500.00	2,500.00	2,500.00	3,000.00	3,500.00	4,500.00	4,500.00	4,500.00	3,000.00	2,500.00	2,500.00	35,500.00
Misc.					1,000.00	1,000.00	1,000.00	1,000.00	1,000.00				5,000.00
Total Monthly Expenses		59,500.00	54,500.00	57,500.00	170,000.00	55,500.00	56,500.00	56,500.00	60,500.00	51,000.00	50,500.00	165,500.00	837,500.00

Debt Service													
Royal Bank America							60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	360,000.00
Edwards Family Partnership							25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	150,000.00
Total Monthly Debt Service							85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	510,000.00

Net Rentals	63,000.00	75,600.00	105,000.00	113,400.00	205,800.00	247,800.00	239,400.00	205,800.00	79,800.00	71,400.00	54,600.00		1,461,600.00
Expenses	(59,500.00)	(54,500.00)	(57,500.00)	(170,000.00)	(55,500.00)	(56,500.00)	(56,500.00)	(60,500.00)	(51,000.00)	(50,500.00)	(165,500.00)		(837,500.00)
Debt service						(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)		(510,000.00)
Monthly Cash Flow	3,500.00	21,100.00	47,500.00	(56,600.00)	150,300.00	106,300.00	97,900.00	60,300.00	(56,200.00)	(64,100.00)	(195,900.00)		114,100.00
Accumulative	3,500.00	24,600.00	72,100.00	15,500.00	165,800.00	272,100.00	370,000.00	430,300.00	374,100.00	310,000.00	114,100.00		228,200.00

Jan Feb March April May June July August September October November December Year End 2011

2012

	Jan	Feb	March	April	May	June	July	August	September	October	November	December	Year End 2011
Monthly Rental Income													
2012	60,000.00	85,000.00	105,000.00	145,000.00	185,000.00	275,000.00	315,000.00	330,000.00	260,000.00	105,000.00	55,000.00	25,000.00	1,945,000.00
2013											60,000.00	110,000.00	170,000.00
Gross Monthly Rental Income	60,000.00	85,000.00	105,000.00	145,000.00	185,000.00	275,000.00	315,000.00	330,000.00	260,000.00	105,000.00	115,000.00	135,000.00	2,115,000.00
Commissions and Fees	9,600.00	13,600.00	16,800.00	23,200.00	29,600.00	44,000.00	50,400.00	52,800.00	41,600.00	16,800.00	18,400.00	21,600.00	338,400.00
Net Monthly Rental Income	50,400.00	71,400.00	88,200.00	121,800.00	155,400.00	231,000.00	264,600.00	277,200.00	218,400.00	88,200.00	96,600.00	113,400.00	1,776,600.00

Expenses

Deep Clean	4,000.00	4,000.00	-										
LLC Management and Admin	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	24,000.00
Marketing				-	4,000.00				4,000.00				8,000.00
Condo Association	28,500.00	28,500.00	28,500.00	28,500.00	28,500.00	28,500.00	28,500.00	28,500.00	28,500.00	28,500.00	28,500.00	28,500.00	342,000.00
Legal	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	180,000.00
Repairs and Maintenance				5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00			35,000.00
Taxes 2013												115,000.00	115,000.00
Utilities	2,500.00	2,500.00	2,500.00	2,500.00	3,000.00	3,500.00	4,500.00	4,500.00	4,500.00	3,000.00	2,500.00	2,500.00	38,000.00
Misc.					1,000.00	1,000.00	1,000.00	1,000.00	1,000.00				5,000.00
Total Monthly Expenses	52,000.00	52,000.00	48,000.00	53,000.00	58,500.00	55,000.00	56,000.00	56,000.00	60,000.00	53,500.00	48,000.00	163,000.00	755,000.00

Debt Service

Royal Bank America	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	720,000.00
Edwards Family Partnership	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	300,000.00
Total Monthly Debt Service	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	1,020,000.00

Net Rentals	50,400.00	71,400.00	88,200.00	121,800.00	155,400.00	231,000.00	264,600.00	277,200.00	218,400.00	88,200.00	96,600.00	113,400.00	1,776,600.00
Expenses	(52,000.00)	(52,000.00)	(48,000.00)	(53,000.00)	(58,500.00)	(55,000.00)	(56,000.00)	(56,000.00)	(60,000.00)	(53,500.00)	(48,000.00)	(163,000.00)	(755,000.00)
Debt service	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(85,000.00)	(1,020,000.00)
Monthly Cash Flow	(86,600.00)	(65,600.00)	(44,800.00)	(16,200.00)	11,900.00	91,000.00	123,600.00	136,200.00	73,400.00	(50,300.00)	(36,400.00)	(134,600.00)	1,600.00
Accumulative	141,600.00	76,000.00	31,200.00	15,000.00	26,900.00	117,900.00	241,500.00	377,700.00	451,100.00	400,800.00	364,400.00	229,800.00	231,400.00
Cash on Hand from 2011	228200												
	Jan	Feb	March	April	May	June	July	August	September	October	November	December	Year End 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

IN THE MATTER OF:

CASE NO.:

CROATAN SURF CLUB, LLC

11-00194-8-SWH
CHAPTER 11

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN of the DEBTOR'S MOTION FOR AUTHORIZATION TO USE CASH COLLATERAL filed simultaneously herewith in the above captioned case; and,

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response and request for a hearing is made by a party in interest in writing to the Clerk of this Court on or before **January 31, 2011**; and

FURTHER NOTICE IS HEREBY GIVEN, that a hearing will be conducted on the Motion and any response thereto on **February 2, 2011, at 10:30 a.m.** at the United States Bankruptcy Court, **Third Floor Courtroom, 300 Fayetteville Street, Raleigh, NC 27602.**

DATE: January 14, 2011

/s/Walter L. Hinson

Walter L. Hinson

State Bar No: 5664

HINSON & RHYNE, P.A.

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CERTIFICATE OF SERVICE

I, Ann B. Hinson, of the law firm of Hinson & Rhyne, P.A., of P. O. Box 7479, Wilson, North Carolina, certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age.

That on January 14, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. By filing the pleading using the CM/ECF system, the parties listed below will either receive notification of such filing by way of CM/ECF or by depositing copies thereof in the United States mail, first class mail, postage prepaid, an envelope addressed as shown below.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: January 14, 2011

/s/ Ann B. Hinson

Ann B. Hinson, Paralegal
Hinson & Rhyne, P.A.
P. O. Box 7479
Wilson, NC 27895-7479
(252) 291-1746

RECIPIENTS:

Bankruptcy Administrator

Attached Matrix

North Carolina Dept. of Revenue
P.O. Box 1168
Raleigh, NC 27602

Employment Security Commission
P.O. Box 26504
Raleigh, NC 27611

Securities & Exchange Commission
Branch of Reorganization
Suite 1000, 3475 Lennox Rd. NE
Atlanta, GA 30326-1232

Secretary of the Treasury
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Washington, DC 20220

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

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Federal Building
Raleigh, NC 27601-1461

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Clarence E. Dean Jr and Kelly Dean
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Robert and Denise Coburn
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Royal Bank America
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Nazareth, PA 18064

Tall Dune Holdings, LLC
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Croatan Surf Club, LLC - 11-00194-8

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