

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**

**PLAN OF REORGANIZATION
OF
JANUARY 14, 2011**

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OVERVIEW AND IDENTIFICATION OF PROPONENT

Croatian Surf Club, LLC., the Debtor-in-Possession ("Debtor"), hereby submit to its creditors as proponent, its Plan of Reorganization (the "Plan") pursuant to Chapter 11 of Title 11 United States Code (hereinafter the "Bankruptcy Code" or "Code").

SUMMARY OF PLAN

This Plan provides for full payment of all administrative expenses. The Plan provides for treatment of the two liens on the Debtor's assets. The two liens will be paid in full from the sales of condominium units and/or proceeds from rentals and/or proceeds from the litigation adversary action described below, if applicable. To the extent that there are any general unsecured Claims held by non-insiders, they will be paid in full. All unsecured Claims of insiders shall be paid in full, but only after all other creditors are paid in full.

A more detailed discussion of the Plan and its implementation together with projections of income and expenses and the time necessary to complete the Plan is found in the Disclosure Statement (hereafter called the Disclosure Statement) of even date herewith. The Plan should be read in conjunction with the Disclosure Statement. The Debtor urges creditors and parties in interest to consult with counsel. The parties in interest should not rely on any representations not contained in the Plan or Disclosure Statement in making a determination on voting on the Plan. A detailed discussion of the voting rights of creditors is contained in the Disclosure Statement.

ARTICLE I

A. DEFINITIONS

Except as otherwise indicated, the terms used in this Plan have the definitions used in the Bankruptcy Code and applicable Rules of Practice and Procedure in Bankruptcy ("Bankruptcy Rules" or "Rules") and the United States District Court for the Eastern District of North Carolina. In addition, the following terms shall have the following meanings:

1.01. **Administrative Claim** shall mean a claim under §503 of the Bankruptcy Code that is entitled to priority under §507(a)(1) of the Bankruptcy Code.

1.02. **Adversary Action** shall have the meaning set forth in Article 2.02 hereof.

1.03. **Allowed Claim** shall mean a claim (a) with respect to which a proof of claim has been filed with the Court within the applicable period of limitation fixed by the Bankruptcy Rules, Rule 3003, or (b) scheduled in the list of creditors prepared and filed with the Court pursuant to Bankruptcy Rules, Rule 1007(b), and not listed as disputed, contingent or unliquidated as to amount, and in either case, as to which no objection to the allowance thereof has been filed within any applicable period of limitation fixed by Bankruptcy Rules, Rule 3007, or an order of the Court, or as to which any such objection has been determined by an order or

judgment which is no longer subject to appeal and as to petition interest unless otherwise stated hereafter in the Plan.

1.04. **Allowed Secured Claim** shall mean an Allowed Claim secured by a lien, security interest, mortgage or other interest in property in which the Debtor has an interest, or which is subject to setoff under §553 of the Code, to the extent of the value, pursuant to §506(a) of the Code, of the property or to the extent the amount is subject to said setoff as the case may be. An Allowed Secured Claim may include post-petition interest if permitted under §506 of the Code.

1.05. **Bankruptcy Code** shall mean the United States Bankruptcy Code, 11 U.S.C. §101, *et seq.*

1.06. **Bankruptcy Rules** shall mean the Federal Rules of Bankruptcy Procedure as in effect on the Confirmation Date.

1.07. **Bar Date** shall mean the deadline set by the Court for filing proofs of claim or interests in the Chapter 11 Case.

1.08. **Chapter 11 Case** shall mean the Debtor's case under Chapter 11 of the Bankruptcy Code which was commenced by the filing of a voluntary petition with the Bankruptcy Court on January 10, 2011.

1.09. **Claim** shall mean a claim against Debtor as defined in §101(5) of the Bankruptcy Code.

1.10. **Claimant** shall mean a person or entity holding a Claim or Interest (including his, her or its successors, assigns, heirs, executors or personal representatives).

1.11. **Confirmation** shall mean the entry by the Bankruptcy Court of an order confirming this Plan.

1.12. **Confirmation Date** shall mean the date upon which the Order of Confirmation is entered by the Court.

1.13. **Confirmation Order** shall mean the order entered by the Bankruptcy Court confirming this Plan in accordance with the provisions of the Bankruptcy Code.

1.14. **Court** shall mean the United States Bankruptcy Court for the Eastern District of North Carolina in which the Debtor's Chapter 11 case is pending or the United States District Court for the Eastern District of North Carolina together with any court having competent jurisdiction to hear appeals from either the Bankruptcy Court or the United States District Court.

1.15. **Debtor** shall mean Croatan Surf Club, LLC, a North Carolina limited liability company, the Debtor-in-Possession and proponent of this Plan of Reorganization.

1.16. **Disbursing Agent** shall mean the reorganized Debtor.

1.17. **Disclosure Statement** shall mean the Disclosure Statement of the Debtor dated the date hereof and filed by the Debtor pursuant to §1125 of the Bankruptcy Code, as amended from time to time.

1.18. **Disputed Claim** shall mean any Claim which is scheduled as disputed, contingent or unliquidated, or which is objected to, in whole or in part, before the Effective Date.

1.19. **Effective Date** shall mean the later date of (i) thirty (30) days after the Confirmation Order becomes a Final Order and (ii) the date when all conditions to consummation of the Plan have been either satisfied or waived. However, at the option of the Debtor, a Confirmation Order subject to a pending appeal or certiorari proceeding may be considered a Final Order provided no order has been entered by any court of competent jurisdiction staying the effect of the Confirmation Order.

1.20. **Election Date** shall mean the date fixed by the Bankruptcy Court as the last day for submitting a vote on the Plan.

1.21. **Estate** shall mean the bankruptcy estate of the Debtor created pursuant to §541 of the Bankruptcy Code.

1.22. **Fee Claim** shall mean a claim under §330 or §503 of the Bankruptcy Code for allowance of compensation and reimbursement of expenses in this Chapter 11 Case.

1.23. **Final Order** shall mean an order, judgment or other decree issued by the Bankruptcy Court and entered on its docket that has not been reversed, stayed, modified or appealed, and as to which the time to appeal, petition for a certiorari or file a motion for reconsideration has expired, or any such notice, petition or motion has been withdrawn, as a result of which such order shall have become final and non-appealable in accordance with Bankruptcy Rule 8002. However, the Confirmation shall be treated as a Final Order even if an appeal has been filed, provided that no stay is obtained which would prevent the occurrence of the Effective Date.

1.24. **Impaired Class** shall mean a class that is impaired within the meaning of §1124 of the Bankruptcy Code.

1.25. **Insider** shall mean any "insider" as that term is defined in paragraph (C), (E) or (F) of §101(31) of the Bankruptcy Code.

1.26. **Interest** shall mean an equity interest in the Debtor or the right to acquire the same, including, without limitation, as a holder of a right to acquire any interest.

1.27. **Lender** shall mean collectively, Royal Bank America ("Royal"), Bank of Currituck ("Currituck") and First Commonwealth Bank ("First Commonwealth").

1.28. **Mezzanine Lender** shall mean Edwards Family Partnership, L.P.

1.29. **Net Rental Proceeds** shall mean gross revenues derived from the Project less all cash operating expenses of the Project (*i.e.*, excluding amortization, depreciation, interest or taxes). A projected budget articulating anticipated Net Rental Proceeds for 2011 is attached to the Disclosure Statement.

1.30. **Operating Agreement** shall mean Operating Agreement of Croatan Surf Club, LLC dated December 31, 2007.

1.31. **Petition** shall mean the voluntary petition initiating this Chapter 11 Case.

1.32. **Petition Date** shall mean January 10, 2011.

1.33. **Plan** shall mean this Plan of Reorganization of Croatan Surf Club, LLC, a North Carolina limited liability company, as the same hereafter may be amended or modified, including the Exhibits hereto. References to Exhibits hereto shall include such Exhibits as they may be amended from time to time in accordance with their terms.

1.34. **Professional Person** shall mean any attorney, accountant, appraiser, auctioneer or other professional within the meaning of §327 of the Bankruptcy Code employed by Order of the Bankruptcy Court.

1.35. **Property** shall mean the subject property which is situated along North Virginia Dare Trail in the City of Kill Devil Hills, Dare County, North Carolina and is comprised of a land parcel and improvements thereon consisting of, *inter alia*, 36 unit luxury resort condominium commonly referred to as the Croatan Surf Club.

1.36. **The Project** shall mean the remaining 35 condominium units (1 unit has been previously sold pre-petition) at that certain condominium complex commonly called the Croatan Surf Club located at 1325 North Virginia Dare Trail, Kill Devil Hills, NC 27948.

1.37. **Unimpaired Class** shall mean a class that is not impaired within the meaning of §1124 of the Bankruptcy Code.

1.38. **Unsecured Claim** shall mean a Claim held by any general secured creditor of the Debtor other than Administrative Claims or Priority Claims.

1.39. **Other Terms** shall mean a term that is used in this Plan and not defined in this Plan, but that is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the same meaning in this Plan as it is given in the Bankruptcy Code or Bankruptcy Rules. The words "herein," "hereof," "hereto," "hereunder" and other words of similar import refer to the provisions of this Plan unless the context otherwise clearly indicates. The singular of a defined term shall include the plural and the plural shall include the singular.

B. RULES OF INTERPRETATION

For purposes of this Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and neuter; (c) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release or other agreement or document being in particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (d) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (e) any reference to an entity as a holder of a Claim or Interest includes that entity's successors and assigns; (f) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (g) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (h) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (i) subject to the provisions of any contract, Articles of Incorporation, Bylaws, instrument, release or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with federal law, including the Bankruptcy Code and Bankruptcy Rules; and (j) the rules of construction set forth in §102 of the Bankruptcy Code will apply.

C. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

D. EXHIBITS

All Exhibits hereto and in the Disclosure Statement are incorporated into and are a part of the Plan as if fully set forth herein.

ARTICLE II

MEANS OF IMPLEMENTATION AND GENERAL DESCRIPTION OF THE PLAN

2.01 General Description: The Debtor's Plan is a restructuring of certain debts.

2.02 Means of Implementation: The Debtor will restructure its obligations and pay off said restructured obligations by future sales of condominium units, rental income derived from the condominium units in the interim, and proceeds of the adversary action filed against Royal and Currituck alleging multiple counts of lender liability. A copy of the adversary action

("Adversary Action"), captioned *Croatan Surf Club, LLC, Clarence E. Dean and Kelly Ann Dean, Kenneth J. Termini, Jeremiah T. Shanahan, Robert E. Coburn and Denise Coburn, BKDean Properties, LLC, Tall Dune Holdings, LLC, Shanahan Properties, LLC and Coburn Properties, LLC v. Royal Bank America and Bank of Currituck, General Court of Justice, Superior Court Division, of Dare County, North Carolina, Case No. 10-CVS-381*, is exhibited in the Disclosure Statement. The current state court litigation, at the Debtor's discretion, may be removed to this Court and conducted as an adversary action under the Bankruptcy Code.

ARTICLE III

PROVISION FOR PAYMENT OF ADMINISTRATIVE CLAIMS, EXPENSES AND CERTAIN PRIORITY CLAIMS

3.01. **Administrative Expenses:** The administrative expenses of the Debtor's Chapter 11 case, allowed pursuant to §503(b) of the Code and given priority pursuant to §507(a)(1) of the Code, shall be paid in full upon the Effective Date. In the event that funds are not available to pay such costs and expenses within ten (10) days of the Effective Date of the Plan, then each holder of such a claim will receive payments from the Debtor until paid in full. Such Claims remaining unpaid ten days following the Effective Date shall accrue interest at a rate of eight percent (8%) per annum. Notwithstanding the foregoing, an administrative Claim representing a liability (including operating expenses listed on Exhibit A) incurred in the ordinary course of business may be paid in the ordinary course of business.

If funds are not available, this claim should be paid in full from the reserves from the sales of real estate or from the remaining proceeds from the sales of real estate. The reserves from the sales of real estate are set forth in the treatment of Classes 5 and 6.

3.02. **Allowed Claim for Wages, Salaries, or Commissions and Contributions to Employee Benefit Plans:** Any Allowed Claims for wages, salaries or commissions and contributions to employee benefit plans, or other Claims entitled to priority pursuant to §507(a)(3), §507(a)(4), §507(a)(5), §507(a)(6), §507(a)(7) of the Code, if any, shall be paid in full within 1 year of the Effective Date, with interest at the rate of 6%, or as otherwise sooner paid by the Debtor, in the Debtor's sole discretion. The Debtor is not aware of any such Claims.

3.03. **Professional Fees Incurred After the Effective Date:** Professional fees incurred by the Debtor after the Effective Date must be approved by the Debtor and, thereafter, can be paid without further Order of the Court. Any dispute, which may arise with regard to professional fees after the Effective Date, shall be submitted to the Bankruptcy Court, which shall retain jurisdiction to settle these types of disputes. In the event of such dispute, the Debtor shall pay that portion of the fees, if any, which is not in dispute, punctually.

ARTICLE IV CLASSIFICATION OF CLAIMS

CLASS 1 – Class 1 consists of any pre-petition tax Claims of the State of North Carolina. Class 1 Claims are impaired under the Plan.

CLASS 2 – Class 2 consists of any pre-petition tax Claims of the Internal Revenue Service. Class 2 Claims are impaired under the Plan.

CLASS 3 – Class 3 consists of any pre-petition tax Claims of the Employment Security Commission. Class 3 Claims are impaired under the Plan.

CLASS 4 – Class 4 consists of any pre-petition tax Claims of Dare County. Class 4 Claims are impaired under the Plan.

CLASS 5 – Class 5 consists of any post-petition Claims of Creditors entitled to payment of current operating expenses respecting the Project as shown on Exhibit A. Class 5 Claims are impaired under the Plan.

CLASS 6 – Class 6 consists of the Secured Claim of Lender. Lender's Secured Claim is secured by a deed of trust on the Project. Class 6 Claims are impaired under the Plan.

CLASS 7 – Class 7 consists of the Secured Claim of Mezzanine Lender. Mezzanine Lender's Secured Claim is secured by a deed of trust on the Project. Class 7 Claims are impaired under the Plan.

CLASS 8 – Class 8 consists of any Claims of Croatan Surf Club Condominium Association, Inc., which is the Property Owners Association. Croatan Surf Club Condominium Association, Inc. has a statutory lien on each unit for any unpaid dues, assessments, or other charges. Class 8 Claims are impaired under the Plan.

CLASS 9 – Class 9 consists of the remaining Claims of all Creditors of the Debtor, excluding those Claims treated in CLASSES 1 through 8, and excluding those Claims held by insiders of the Debtor, as such term is defined by the Code in 11 USC 101(31), as the same are allowed and ordered paid by the Court. These Claims shall include, but are not limited to, Creditors whose Claims may arise out of the rejection of executory contracts, and Secured Creditors to the extent that the Court finds the same unsecured in whole or in part, or the confirmation of the Plan deems said Claims unsecured in whole or in part. Class 9 Claims are impaired under the Plan.

CLASS 10 – Class 10 consists of those Claims held by insiders of the Debtor, as such term is defined by the Code in 11 USC 101(31), as the same are allowed and ordered paid by the Court. This class does NOT include the interests that the various members of the Debtor have in the Debtor. Class 10 Claims are impaired under the Plan.

CLASS 11 – Class 11 consists of the members’ interests in the Debtor. Class 11 Claims are impaired under the Plan.

**ARTICLE V
TREATMENT OF CLAIMS**

The Claims of creditors and interests are classified and shall be treated as follows:

5.01. **Class 1:** Class 1 consists of the unsecured priority tax Claim of the North Carolina Department of Revenue. Although the Debtor does not believe that any such taxes are owed, the Debtor provides for the following treatment in the event that a priority tax claim is owed.

Claim information:

Proof of Claim:	None filed
Claim Amount:	Estimated by Debtor at \$0.00
Interest Rate	3.00%, (estimated federal rate)

Payment of Claim: The Debtor anticipates having sufficient funds from the sales of condominium units. Net Rental Proceeds derived from the Project and/or proceeds of the Adversary Action to pay the Claims of the North Carolina Department of Revenue. To the extent that a Claim exists, this Claim shall be paid current from Net Rental Proceeds derived from the Project, or, if such proceeds are insufficient to pay such Claims, then such Claims shall be paid in full on the fifth anniversary from the Effective Date. Said obligation shall accrue interest at the rate of 3%.

THIS CLASS OF CREDITORS IS IMPAIRED.

5.02. **Class 2.** Class 2 consists of the unsecured priority tax Claim of the Internal Revenue Service. Although the Debtor does not believe that any such taxes are owed, the Debtor provides for the following treatment in the event that a priority tax claim is owed.

Claim information:

Proof of Claim:	None filed
Claim Amount:	Estimated by Debtor at \$0.00
Interest Rate	3.00%, (estimated federal rate)

Payment of Claim: The Debtor anticipates having sufficient funds from the sales of condominium units. Net Rental Proceeds derived from the Project and/or proceeds of the Adversary Action to pay the Claims of the Internal Revenue Service. To the extent that a Claim exists, this Claim shall be paid current from Net Rental Proceeds derived from the Project, or if such proceeds are not sufficient to pay such Claims, then such Claims shall be paid in full on the fifth anniversary from the Effective Date. Said obligation shall accrue interest at the rate of 3%.

THIS CLASS OF CREDITORS IS IMPAIRED.

5.03 **Class 3.** – Class 3 consists of the unsecured priority tax claim of the Employment Security Commission. Although the Debtor does not believe that any such taxes are owed, the Debtor provides for the following treatment in the event that a priority tax claim is owed.

Claim information:

Proof of Claim:	None filed
Claim Amount:	Estimated by Debtor at \$0.00
Interest Rate	3.00%, (estimated federal rate)

Payment of Claim: The Debtor anticipates having sufficient funds from the sales of condominium units, Net Rental Proceeds derived from the Project and/or proceeds of the Adversary Action to pay the Claims of the Employment Security Commission. To the extent that a Claim exists, this Claim shall be paid current from Net Rental Proceedings derived from the Project, or if such proceeds are not sufficient to pay such Claims, then such Claims shall be paid in full on the fifth anniversary from the Effective Date. Said obligation shall accrue interest at the rate of 3%.

THIS CLASS OF CREDITORS IS IMPAIRED.

5.04 **Class 4.** – Class 4 consists of the claim of Dare County for ad valorem taxes owing on the unsold condominium units at the Project. The Debtor does not believe that there are any pre-petition taxes owing to Dare County. To the extent that pre-petition taxes are owed, they will be paid current from Net Rental Proceeds derived from the Project, or if such proceeds are not sufficient to pay such Claims, then the Claims shall be paid in full on the earlier of 1) the sale of a particular condominium unit against which taxes are owed, or 2) the third anniversary from the Effective Date. Said obligation shall accrue interest at the rate of 3%.

THIS CLASS OF CREDITORS IS UNIMPAIRED.

5.05 **Class 5.** – Class 5 consists of current post-petition Claims of Creditors entitled to payment of current operating expenses as shown on Exhibit A. These expenses will be paid first from Net Rental Proceeds derived from the Project and second from excess net proceeds from condominium unit sales after payment of the applicable release price to Lender and Mezzanine Lender under the terms of the Plan respecting Classes 6 and 7 below. These expenses may also be paid from proceeds of the Adversary Action, if any.

5.06 **Class 6:** Class 6 consists of the secured claim of the Lender. This Claim is secured by a first deed of trust on the Project. Said deed of trust is recorded in Book 1753, Page 461 of the Dare County Register of Deeds.

CLAIM INFORMATION

Proof of Claim:	None filed as of the date of filing of the Chapter 11 Case
Claim Amount:	Estimated at \$16,350,000.00
Contract Interest Rate:	Prime + 1%. As of December 13, 2010, the prime rate was 3.25% and has been since December 16, 2008. The resulting current interest rate is 4.25%.
Collateral:	The remaining 35 condominium units at the Project
Lien Position:	First
Collateral Value:	Estimated at \$27,000,000.00

The annual accruing interest is estimated at Seven Hundred Twenty Thousand Dollars (\$720,000.00) on a \$16,350,000 principal debt. Monthly interest is estimated at Sixty Thousand Dollars \$60,000.00). Per diem (365 days) is estimated at Nineteen Hundred Seventy Two Dollars and Sixty Cents (\$1,972.60).

Lender asserts that this obligation is in default and has accelerated the entire indebtedness. The Debtor proposes to restructure this debt as follows:

Reset Obligation: On the Confirmation Date, the acceleration of the entire obligation owing Lender shall be deemed revoked, shall be placed in a non-default status, and shall be reset as a performing loan. This new obligation shall include principal, accrued interest at the non-default Contract Interest Rate stated above, reasonable attorneys fees and other fees and charges under the terms of the documents and instruments evidencing or securing Lender's Claim ("Lender's Loan Documents") to the extent allowed under 11 U.S.C. §506(b) (the "506(b) Charges"). This newly calculated obligation shall be referred to herein as the Reset Obligation.

Interim Interest Payments: The Debtor shall pay interest only on the Reset Obligation while the various condominium units at the Project are liquidated. The interest shall be paid at the contractual rate (WSJ Prime + 1.00%) and shall be paid in accordance with the Schedule attached as Exhibit C to the Disclosure Statement to account for seasonal rental availability. The first monthly payment shall be due on the later of (i) 30 days after the Confirmation Date or (ii) as set forth on Exhibit C to the Disclosure Statement. In the event that any monthly payment falls on a weekend, or federal holiday, then the payment shall be due on the next day which is not a weekend or federal holiday. Said interest payments shall continue until the Reset Obligation is paid in full. As set forth in the original Note, the interest rate charged is variable, and may change in the event that the WSJ Prime interest rate changes.

As set forth below, when condominium units at the Project are sold, payments of principal shall be made on the Reset Obligation. When payments of principal are made, the Reset Obligation shall be re-calculated, and the resulting monthly interest payment shall be re-calculated. In such an event, the Lender shall notify the Debtor of the new payment amount no

less than 15 days before the next scheduled payment date. Such new payments shall be ratably adjusted in accordance with the interest payment schedule attached as Exhibit C.

In the event that the WSJ Prime interest rate changes, the resulting monthly interest payment shall be re-calculated. In such an event, the Lender shall notify the Debtor of the new payment amount no less than 15 days before the next scheduled payment date. Such new payments shall be ratably adjusted in accordance with the interest payment schedule attached as Exhibit C.

Reduction/Pay Down of the Reset Obligation: The Debtor shall continue to market for sale and/or rent the condominium units at the Project in accordance with Debtor's prior practices. To the extent required to do so by judgment in the Adversary Action, Lender will be required to provide market end loan financing to facilitate condominium unit sales.

Release Prices – Lender shall be obligated to release its lien on each condominium unit upon payment of a release price per condominium unit equal to a schedule set out in the Disclosure Statement. Any excess payments over the per condominium unit release price shall be applied first to current operating expense Claims pursuant to Class 5, then to other Claims in the order and priority indicated in this Plan.

Balloon Payment – If not sooner paid respecting condominium unit sales, all outstanding principal, interest and §506(b) Charges, less any judgment obtained on account of the Adversary Action, will be due and payable on the date occurring five (5) years from the Effective Date (the "Extended Maturity Date").

THIS CLASS IS IMPAIRED FOR VOTING PURPOSES

5.07 Class 7. – Class 7 consists of the secured claim of Mezzanine Lender. This claim is secured by a second deed of trust on the Project. Said deed of trust is recorded in Book 1753, Page 464 of the Dare County Register of Deeds.

CLAIM INFORMATION

Proof of Claim:	None filed as of date of filing of the Chapter 11 Case
Claim Amount:	Estimated at \$3,000,000
Contract Interest Rate:	10%
Collateral:	The remaining 35 condominium units at the Project
Lien Position:	Second
Collateral Value:	Estimated at \$27,000,000.00

The annual accruing interest is estimated at Three Hundred Thousand Dollars (\$300,000.00) on a \$3,000,000.00 principal debt. Monthly interest is estimated at Twenty Five Thousand Dollars (\$25,000.00). Per diem (365 days) is estimated at Eight Hundred Twenty One Dollars and Ninety Two Cents (\$821.92).

Mezzanine Lender asserts that this obligation is in default and has or may accelerate the entire indebtedness. The Debtor proposes to restructure this debt as follows:

Mezzanine Reset Obligation: On the Confirmation Date, the acceleration of the entire obligation owing Mezzanine Lender shall be deemed revoked, shall be placed in a non-default status, and shall be reset as a performing loan. This new obligation shall include principal, accrued interest at the non-default Contract Interest Rate stated above, reasonable attorneys fees and other fees and charges under the terms of the documents and instruments evidencing or securing Mezzanine Lender's Claim ("Mezzanine Lender's Loan Documents") to the extent allowed under 11 U.S.C. §506(b) (the "506(b) Charges"). This newly calculated obligation shall be referred to herein as the Mezzanine Reset Obligation.

Interim Interest Payments: The Debtor shall pay interest only on the Mezzanine Reset Obligation while the various condominium units at the Project are liquidated. The interest shall be a per annum fixed rate of 10% and shall be paid in accordance with the Schedule attached as Exhibit C to account for seasonal rental availability. The first monthly payment shall be due on the later of (i) 30 days after the Confirmation Date or (ii) as set forth on Exhibit C to the Disclosure Statement. In the event that any monthly payment falls on a weekend, or federal holiday, then the payment shall be due on the next day which is not a weekend or federal holiday. Said interest payments shall continue until the Mezzanine Reset Obligation is paid in full.

As set forth below, when condominium units at the Project are sold, payments of principal shall be made on the Mezzanine Reset Obligation. When payments of principal are made, the Reset Obligation shall be re-calculated, and the resulting monthly interest payment shall be re-calculated. In such an event, the Mezzanine Lender shall notify the Debtor of the new payment amount no less than 15 days before the next scheduled payment date. Such new payments shall be ratably adjusted in accordance with the interest payment schedule attached as Exhibit C.

Reduction/Pay Down of the Reset Obligation: The Debtor shall continue to market for sale and/or rent the condominium units at the Project in accordance with the Debtor's prior practices.

Release Prices – Mezzanine Lender shall be obligated to release its lien on each condominium unit upon payment of a release price per condominium unit equal the sum exhibited in the Disclosure Statement. Any excess payments over the per condominium unit release price shall be applied first to current operating expense Claims pursuant to Class 5, then to other Claims in the order and priority indicated in this Plan.

Balloon Payment – If not sooner paid respecting condominium unit sales, all outstanding principal, interest and §506(b) Charges will be due and payable on the date occurring five (5) years from the Effective Date (the “Extended Maturity Date”).

Exit Fee – Mezzanine Lender shall also be entitled to an Exit Fee equal to One Hundred Twenty Thousand Dollars (\$120,000.00), which Exit Fee will be due and payable on the Extended Maturity Date.

THIS CLASS IS IMPAIRED FOR VOTING PURPOSES

5.08 **Class 8** – Class 8 consists of any Claims of Croatan Surf Club Condominium Association, Inc., which is the Property Owners Association. Croatan Surf Club Condominium Association, Inc. would have a statutory lien for any unpaid dues, assessments, or other charges.

Claim information:

Proof of Claim:	None filed as of the date of filing of the Chapter 11 Case
Claim Amount:	Estimated at \$0.00
Interest:	Interest would accrue at the North Carolina legal rate, which is 8%.
Collateral:	The remaining 35 condominium units at the Project
Lien Position:	Junior to the Claims of Royal Bank America and Edwards Family Partnership, LP
Collateral Value:	\$27,000,000.00

Payment of Claim: The Debtor shall continue to pay the monthly dues owing the Croatan Surf Club Condominium Association, Inc. as they come due. Said payments shall come from the Net Rental Proceeds derived from the Project.

The Debtor does not believe that any pre-petition Claims exist in favor of Croatan Surf Club Condominium Association, Inc. However, to the extent that pre-petition Claims do exist, the same shall be paid on the Effective Date.

THIS CLASS IS IMPAIRED FOR VOTING PURPOSES

5.09. **Class 9.** Class 9 consists of the remaining Claims of all Creditors of the Debtor, excluding those Claims treated in CLASSES 1 through 8, and excluding those Claims held by insiders of the Debtor, as such term is defined by the Code in 11 USC §101(31), as the same are allowed and ordered paid by the Court. These Claims shall include, but are not limited to, Creditors whose Claims may arise out of the rejection of executory contracts, and Secured

Creditors Claims to the extent that the Court finds the same unsecured in whole or in part, or the confirmation of the Plan deems said Claims unsecured in whole or in part.

Because of Debtor's estimate of Collateral Value and the proceeds Debtor estimates will be received by the Estate on account of the Adversary Action, the Debtor does not believe that any pre-petition Claims exist that would be classified as Class 9 Claims. However, to the extent that such Claims exist, they shall accrue interest at the Federal Judgment Interest Rate. The Federal Judgment Interest Rate is estimated to be 3% as of the date of the filing of the Chapter 11 Case. Such Claims, if any, will be paid in full on the Extended Maturity Date.

THIS CLASS IS IMPAIRED FOR VOTING PURPOSES.

5.10. **Class 10** – Class 10 consists of those Claims held by insiders of the Debtor, as such term is defined by the Code in 11 USC §101(31), as the same are allowed and ordered paid by the Court. This class does NOT include the members' interests in the Debtor.

To the extent that such Claims exist, they shall accrue interest at the Federal Judgment Interest Rate. The Federal Judgment Interest Rate is estimated to be 3% as of the date of the filing of the Chapter 11 Case. Such Claims, if any, will be paid in full on the Extended Maturity Date.

THIS CLASS IS IMPAIRED FOR VOTING PURPOSES.

5.11. **Class 11** – Class 11 consists of the members of the Debtor, namely Clarence E. Dean and Kelly Ann Dean, Kenneth J. Termini, Jeremiah Shanahan, Robert E. Coburn and Denise Coburn, BKDean Properties, LLC, Coburn Properties, LLC, Shanahan Properties, LLC, and Tall Dune Holdings, LLC. The members will retain their membership interests in Debtor. In the event that a cramdown is needed with respect to Claims of secured or unsecured creditors, the members derivative interests in the proceeds of the Adversary Action shall be contributed by the members as and to the extent required by Bankruptcy Code in order to maintain such membership interests.

THIS CLASS IS IMPAIRED FOR VOTING PURPOSES.

VI. MEANS OF IMPLEMENTATION AND EXECUTION OF PLAN

6.01 **Assumption of Liabilities.** Except as otherwise provided herein, Reorganized Debtor shall assume liability for and the obligations to make the distributions required to be made to all of the Classes described in Articles II - V of the Plan. The Debtor proposes to make payments under the plan from: funds on hand; Net Rental Proceeds; and net proceeds from the sale of any condominium units or other assets, if any. The Debtor shall take such other action as necessary to satisfy the other terms and requirements of the Plan and the Bankruptcy Code.

Except as expressly stated in the Plan, or allowed by a Final Order of the Bankruptcy Court, no interest, penalty, or late charge shall be allowed on any claim subsequent to the Petition Date, unless otherwise required by the Code. No attorney's fees or expenses shall be paid with respect

to any claim except as specified herein or as allowed by a Final Order of the Court. Confirmation of this plan shall constitute a finding that the Debtor does not waive, release, or discharge, but rather retains and reserves any and all pre-petition Claims and any and all post-petition Claims that it could or might assert against any party or entity arising under or otherwise related to any state or federal statute, state or federal common law, and any and all violations arising out of rights or Claims provided for by Title 11 of the United States Code, by the Federal Rules of Bankruptcy Procedure, or by the Local Rules of this Court, including all rights to assert and pursue any and all avoidance actions, preference actions, and any other actions pursuant to 11 U.S.C. §§545, 546, 547, 548, and 550. Further, the Debtor retains all rights to assert and pursue all Claims under 11 U.S.C. §542, including, without limitation, the Adversary Action, actions to seek turnover of estate assets, actions to recover accounts receivable, and/or actions to invalidate setoffs.

6.02 Revesting of Assets. The revesting of Assets in the Reorganized Debtor shall be subject to the rights and duties of the Debtor and the Reorganized Debtor as provided in this Plan. As of the Effective Date, the Plan shall revest in the Debtor all of the Assets of the Debtor and without further documentation, all of the Assets and assumed liabilities of the Debtor, together with all of the related rights, powers, obligations and duties of the Debtor as provided by the United States Bankruptcy Code, this Plan, all orders of the United States Bankruptcy Court, all equitable rights and all laws shall be transferred to the Reorganized Debtor as a successor of the Debtor in all things.

6.03 Injunction. From and after the Confirmation Date, all holders of "Claims" (including, without limitation, Secured Claims, General Unsecured Claims, and all Priority Claims) against the Debtor, the Debtor in Possession, or Reorganized Debtor are permanently restrained and enjoined (a) from commencing or continuing in any manner, any action or other proceeding of any kind with respect to any such Claim against the Debtor, the Assets, or Reorganized Debtor, (b) from enforcing, attaching, collecting, or recovering by any manner or means, any judgment, award, decree, or order against the Debtor, Reorganized Debtor, or the Assets, (c) from creating, perfecting, or enforcing any encumbrance of any kind against the Debtor, Reorganized Debtor or the Assets, (d) from asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Debtor, and (e) from performing any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; provided, however, that each holder of a contested Claim may continue to prosecute its proof of Claim in accordance with the Plan and all holders of Claims shall be entitled to enforce their rights under the Plan.

6.04 Revocation of Plan. The Debtor has reserved the right to revoke and withdraw this Plan before the entry of the Confirmation Order. If the Debtor revokes or withdraws this Plan, or if confirmation of this Plan does not occur, then, with respect to the Debtor, this Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtor, as the case may be, or any other Person or to prejudice in any manner the rights of such Debtor, as the case may be, or Person in any further proceedings involving such Debtor.

6.05 **Exemption from stamp tax or transfer tax.** Any transfers done pursuant to the confirmed Plan shall not be subject to any stamp tax or similar tax, pursuant to 11 U.S.C. §1146.

**ARTICLE VII
EXECUTORY CONTRACTS, EXECUTORY CONTRACT HOLDERS,
AND UNEXPIRED LEASES**

7.01 The Debtor is party to an executory contract with Village Realty and Management Services. Village Realty and Management Services markets the Project for short term and long term rentals. Village Realty and Management Services is paid a commission for these services. The Debtor accepts and affirms any and all Executory Contracts and Unexpired Leases with or through Village Realty and Management Services.

**ARTICLE VIII
ACCEPTANCE OR REJECTION OF THE PLAN**

8.01 **Impaired Classes of Claims and Interests Entitled to Vote.** Claim and/or Interest holders in each Class identified as impaired in Article IV of this Plan are entitled to vote as a class to accept or reject the Plan.

8.02 **Acceptance by an Impaired Class.** In accordance with §1126(c) of the Bankruptcy Code and except as provided in §1126(c) of the Bankruptcy Code, a class of Claims entitled to vote to accept or reject the Plan shall have accepted the Plan if the Plan is accepted by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such class that have timely and properly voted to accept or reject the Plan.

8.03 **Presumed Acceptances by Unimpaired Classes.** Claims and/or Interest holders in each class identified as not impaired in Article 2 of this Plan are conclusively presumed, under §1126(c) of the Bankruptcy Code, to accept the Plan and the votes of such Claim holders will not be solicited.

**ARTICLE IX
MISCELLANEOUS PROVISIONS**

9.01 **Vesting of Assets.** Upon confirmation all assets of the Debtor's bankruptcy estate shall vest in the Debtor subject to the liens, encumbrances and security interests as provided by this Plan.

9.02. **Retention of Jurisdiction.** The Court shall retain jurisdiction over the Debtor and their operation subject to confirmation of the Plan for the following purposes only:

- A. To rule on the allowance of Claims and to hear any objections thereto;

- B. To conclude the Adversary Action or any other adversary proceeding pending upon the Effective Date;
- C. To allow and approve or disapprove the payment of any administrative expenses not previously allowed;
- D. To determine and resolve questions concerning the existence of defaults under the Plan;
- E. To modify the Plan pursuant to §1127(b) of the Code;
- F. To correct any defect, to cure any omission, to reconcile any inconsistency in the Plan or Order of Confirmation as may be necessary to carry out the purposes and intent of the Plan; and
- G. To issue any order necessary to carry out the Plan.

9.03. **Adversary Proceedings.** The Debtor reserves the right to begin or continue any adversary proceedings permitted under Title 11, United States Code, and the applicable Bankruptcy Rules, including, without limitation, the Adversary Action.

9.04. **Modification of Plan.** The Debtor may submit modifications of the Plan to the Court at any time prior to confirmation pursuant to 11 U.S.C. §1127.

9.05. **Default Remedies.** Any creditor may serve notice of default on the Debtor. Such notices shall be in writing and delivered by registered mail to the Debtor, c/o Clarence E. Dean, Post Office Box 107, Kill Devil Hills, North Carolina 27948. The Debtor shall have forty-five (45) days to cure the default. If the default is not cured, any creditor may take such action as the Code permits. This provision shall be cumulative with other rights and remedies provided to parties in interest under the Bankruptcy Code.

9.06. **Granting of liens.** If an existing lien on assets contains language providing that the granting of a lien on collateral be deemed an event of default, the granting of a lien in accordance with this Plan shall not be deemed such an event of default.

9.07. **Cancellation of Liens.** Except as provided specifically herein, any and all pre-petition liens encumbering the Debtor's assets, whether Deeds of Trust, UCC-1 Financing Statements, or otherwise, shall be deemed canceled of record upon the entry of the Order of Confirmation. The Debtor shall be entitled to present this Plan, and the Order of Confirmation to any public official charged with the maintenance of records regarding liens, and direct said official to cancel said liens of record.

9.08. **Survival of Terms.** The covenants, representations and agreements made in this Plan shall survive the Confirmation Date and the transactions contemplated herein.

9.09 **Successors Bound.** This Plan shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Debtor, and the holders of Claims and interests.

9.10 **Controlling Law.** This Plan shall be read and construed and take effect in all respects in accordance with the law as set forth in the United States Bankruptcy Code and the Rules promulgated thereunder. State law matters shall be construed under the laws of the State of North Carolina.

9.11 **Further Assurance.** If at any time, the Debtor shall consider, or be advised, that any further releases, assurances or documents are reasonably necessary or desirable to carry out the provisions hereof, and the transactions contemplated herein, the holders of Claims and the holders of interest shall, upon reasonable request, execute and deliver any and all documents and assurances, and do all things necessary or appropriate to carry out fully the provisions hereof.

9.12 **Incorporation of Disclosure.** All the terms and conditions of the Disclosure Statement are incorporated herein by reference.

9.13 **Management of the Property.** On the Effective Date, the Debtor shall assume the existing Management Agreement between the Debtor and Village Realty ("Management Agreement"). From and after the Effective Date, management fees shall be paid from Net Rental Proceeds as and when due in accordance with the Management Agreement. Management fees that are accrued and unpaid as of the Effective Date ("Accrued Fees") shall be paid by the Reorganized Debtor as funds become available to make such payments as contemplated on Exhibit A.

9.14 **Continued Existence.** The Reorganized Debtor will continue to exist after the Effective Date as a limited liability company.

9.15 **Prepayment of Certain Claims.** The Reorganized Debtor may prepay Allowed Claims of Class 6 and 7 at any time and without penalty.

9.16 **Disputed Claims.** Notwithstanding anything in the Plan to the contrary, in the event that any Claim shall remain a Disputed Claim as of the Effective Date, the amount of the distribution for such Claim under this Plan shall not be made with respect to such Claim until such Claim becomes an Allowed Claim.

9.17 **Objection Deadline.** As soon as is practicable, but in no event later than one hundred twenty (120) days after the Confirmation Date (subject to being extended by the Bankruptcy Court upon motion of the Reorganized Debtor), objections to Claims shall be filed with the Bankruptcy Court and served upon the holders of each Claim to which objections are made.

9.18 **Notice of Default Under the Plan.** No default shall be declared under the Plan unless any payment due under the Plan (other than a payment required on the Effective Date) shall have not been made or deemed made sixty (60) days after written notice of the default to the Debtor, provided that Debtor has not cured the same within that time period.

9.19 **Remedy of Technical Defects.** After the Effective Date, the Debtor may, with approval of the Bankruptcy Court, and so long as it does not materially and adversely affect the interests of any Claimant, remedy any defect or omission, or reconcile any inconsistencies in the Plan or in the Order confirming the Plan, in such manner as may be necessary to carry out the purposes and effect of the Plan.

9.20 **No Interest or Attorneys' Fees.** Except as expressly stated in the Plan, or as allowed by the Bankruptcy Court, no interest, penalty or late charge arising after the Petition Date, and no award or reimbursement of attorneys' fees or related expenses or disbursements, shall be allowed on or in connection with any Claim.

X. APPLICATION OF PLAN PAYMENTS

10.01. All payments made by the Debtor shall be applied as indicated in the respective treatment for each creditor, or if no such application of payments is specified, then payments shall be applied to principal and interest on a monthly basis according to the amortization schedule proposed for each creditor. In the event that a creditor is entitled to costs and/or attorneys fees post-petition under Section 506(b) of the Code, such creditor must file an application in accordance with the Code and/or Bankruptcy Rules pertaining to approval of costs and/or attorney fees prior to such costs and/or attorneys fees becoming part of the creditor's allowed claim. Confirmation of the Plan shall impose an affirmative duty and legal obligation on the holders and/or the servicers of any Claims secured by liens, mortgages and/or deeds of trust to apply payments in the manner set forth in the Plan in accordance with Section 524(i).

10.02. Confirmation of the plan shall impose a duty on the holders and/or servicers of Claims secured by liens on real property to apply the payments received from the Debtor to the month in which they were made under the plan or directly by the Debtor, whether such payments are immediately applied to the loan or placed into some type of suspense account and to otherwise comply with 11 U.S.C. Section 524(i).

ARTICLE XI CRAMDOWN

The Debtor, as the proponent of this Plan of Reorganization, hereby moves the Court that this Court make appropriate findings and thereby deem that the provisions of this Plan provide fair and equitable treatment with respect to any class that is impaired under this Plan and has indicated that it will not accept this Plan. The Debtor further move that this Court confirm this Plan notwithstanding the requirements of 11 U.S.C. §1129(a)(8) and/or §1126(b) as to such class.

**ARTICLE XII
STAY OF ACTIONS AGAINST CO-DEBTORS**

In light of the fact that Lender and Mezzanine Lender will be paid in full pursuant to the terms and provisions of this Plan and that the individual members of Debtor who are guarantors and/or indemnitors of Debtor's obligations under the Lender's Loan Documents and those that evidence or secure the Claim of Mezzanine Lender (the "Mezzanine Lender's Loan Documents"), Lender and Mezzanine Lender are enjoined from enforcing the Lender's Loan Documents or the Mezzanine Lender's Loan Documents, as the case may be, or any judgments obtained against such members/guarantors pursuant to the Lender's Loan Documents and/or the Mezzanine Lender's Loan Documents, executing upon such judgments against any of the said members/guarantors or exercising remedies of Mezzanine Lender under the Operating Agreement of Debtor pursuant to 11 U.S.C. §105 from the date of the filing of the Chapter 11 Case through the Extended Maturity Date, excepting only if Debtor fails to perform its obligations under the Plan as expressly set forth herein.

**ARTICLE XIII
DISCHARGE OF DEBTOR**

13.01 UPON SUBSTANTIAL CONSUMMATION OF THE PLAN AND VESTING OF ALL ASSETS, THE DEBTOR WILL BE DISCHARGED OF ALL CLAIMS AND LIABILITIES ARISING PRIOR TO THE FILING OF THE PETITION FOR RELIEF PURSUANT TO 11 U.S.C. §1141. THIS PROVISION SHALL BE TREATED AS NOTICE AND MOTION PURSUANT TO SECTIONS 1141(D)(1), 1141(D)(2), AND 1141(D)(3), AS APPLICABLE. UPON SUCH EVENT, ALL MEMBERS OF DEBTOR, IN THEIR CAPACITIES AS GUARANTORS, SHALL BE SIMILARLY DISCHARGED SINCE PERFORMANCE OF THIS PLAN SHALL BE DEEMED AN ACCORD AND SATISFACTION OF ALL CLAIMS OF LENDER AND MEZZANINE LENDER.

SUBSTANTIAL CONSUMMATION SHALL BE ACHIEVED BY THE DEBTOR ONCE THE FOLLOWING HAS OCCURRED: 1) THE INITIAL PAYMENT IS MADE TO THE CLASS 8 CREDITORS. THE GRANTING OF A DISCHARGE UNDER THESE CIRCUMSTANCES IS WARRANTED AS THE CONFIRMED PLAN CREATES A CONTRACT WITH CREDITORS FOR THE REPAYMENT OF DEBTS IN ACCORDANCE WITH THE TERMS OF THE PLAN THAT IS ENFORCEABLE AGAINST THE DEBTOR. FURTHER, THE WITHHOLDING OF A DISCHARGE UNTIL COMPLETION OF ALL PLAN PAYMENTS WILL SUBSTANTIALLY HAMPER THE DEBTOR IS OBTAINING A FRESH START AS CONTEMPLATED BY THE CODE, AS THE DEBTOR'S OPPORTUNITIES TO OBTAIN CREDIT AND ACQUIRE OTHER ASSETS, IN HIS NORMAL COURSE OF LIFE WILL BE SUBSTANTIALLY IMPAIRED. ADDITIONALLY, WITHOUT THE GRANTING OF THE DISCHARGE UPON SUBSTANTIAL CONSUMMATION, THERE IS NO TRUE CLOSURE TO THIS CASE FOR POSSIBLY UP TO FOUR OR FIVE YEARS.

13.02 The confirmation of the Plan shall operate as of the Effective Date of the Plan to enjoin any action against a guarantor or co-obligor of any claim settled or satisfied under the terms of the Plan during the Term of the Plan. Confirmation of the Plan shall satisfy all Claims or causes of action arising out of any claim settled under the terms of the Plan.

DATED this 14th day of January, 2011.

/S/ Walter L. Hinson
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