

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

CABI NEW RIVER LLC,¹

Case No. 10-10-49013

Chapter 11

Debtor.

**DEBTOR'S EMERGENCY MOTION
PURSUANT TO 11 U.S.C. §§ 105(a), 361, AND 363,
AND BANKRUPTCY RULE 4001 FOR ENTRY OF INTERIM
AND FINAL ORDERS AUTHORIZING USE OF CASH COLLATERAL
AND GRANTING REPLACEMENT LIENS AND SUPER-PRIORITY CLAIMS**
**EXPEDITED HEARING DURING WEEK OF JANUARY 3, 2011 REQUESTED
PURSUANT TO LOCAL RULES 9013-1(F) AND (J)**

The above-captioned debtor and debtor-in-possession requests an emergency hearing in this matter the week of January 3, 2011 to prevent immediate and irreparable harm that would occur if the Debtor does not have immediate access to use of cash collateral to fund the continued operation of its business and critical expenses in order to preserve and protect the property of its estate (and the pre-petition secured creditor's collateral). As such, the Debtor requests an emergency hearing as authorized by Local Rules 9013-1(F) and (J).

**SUMMARY STATEMENT OF RELIEF REQUESTED
PURSUANT TO BANKRUPTCY RULE 4001(B)(1)(B) AND LOCAL RULES**

The Debtor seeks authority to use cash collateral to fund its operating expenses and costs of administration in this Chapter 11 case in accordance with the budget attached hereto as Exhibit "A" (the "Budget"). HSBC Realty Credit Corporation ("HSBC") may have a valid and perfected security interest in Cash Collateral (as defined herein). The Debtor proposes to grant to HSBC as adequate protection a replacement lien in rental income generated post-petition by the Debtor. In addition, in the event the proposed replacement liens prove inadequate, HSBC shall also be afforded an allowed

¹ The Debtor's current mailing address is 19950 W. Country Club Dr., Suite 900, Aventura, FL 33180. The last four digits of the Debtor's tax identification number are [0247].

superpriority administrative claim pursuant to section 507(b) to the extent of any such failure of adequate protection.

The key terms regarding the use of the proposed use of Cash Collateral are as follows:

a. **Adequate Protection.** The Debtor has agreed to incur Adequate Protection Liens and Claims (as that term is defined below) consisting of the granting of replacement liens and superpriority claims to HSBC. No replacement liens granted as adequate protection attach to any avoidance actions under Chapter 5 of the Bankruptcy Code.

b. **Purpose of Use of Cash Collateral.** The Budget summarizes the uses of the Cash Collateral and the Debtor has agreed to use it in accordance with the Budget. The proposed order provides that particular expense items may exceed the amount in the Budget by fifteen percent (15%), so long as the aggregate expenses do not exceed the aggregate amount listed in the Budget for the cash collateral period by more than ten percent (10%).

c. **Reporting Requirements.** The Debtor will furnish to HSBC by no later than Thursday of every other week a Budget Reconciliation (as defined herein) and an updated rolling 4-week forecast of cash receipts and disbursements for the Debtor for the next succeeding 4 weeks, substantially in the form of the Budget, provided, that if requested by HSBC, the Debtor shall, as soon as reasonably practicable, provide an updated rolling 13-week forecast.

CABI New River, LLC (the "Debtor"), debtor and debtor in possession, by and through undersigned counsel, hereby files this Emergency Motion Pursuant to 11 U.S.C. §§ 105(a), 361, and 363, and Bankruptcy Rule 4001 for Entry of Interim and Final Orders Authorizing Use of Cash Collateral and Granting Replacement Liens and Super-Priority Claims (the "Motion") which requests entry of an order, substantially in the form annexed hereto as Exhibit "B": (a) authorizing the Debtor to use Cash Collateral (as hereinafter defined) in accordance with the Budget pursuant to section 363 of title 11 of the United States Code (the "Bankruptcy Code") on an interim basis pending the Final Hearing (as defined herein); (b) granting pre-petition secured party HSBC a super-priority claim, certain liens and other rights pursuant to Sections 361 and 363 of the Bankruptcy Code as adequate protection for the Debtor's use of Cash Collateral on an interim basis pending the Final Hearing; (c) scheduling a final cash collateral hearing in

accordance with Bankruptcy Rule 4001(b)(2) (the "Final Hearing") (or further interim hearing, as the case may be) and approving notice with respect thereto in accordance with Rule 4001(b)(2) and (d)(3) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and (d) authorizing the use of Cash Collateral pursuant to the Budget and granting of a super-priority claim and replacement liens in favor of HSBC on a final basis at the Final Hearing. In support of this Motion, the Debtor states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this motion (the "Motion") pursuant to 28 U.S.C. §§157 and 1334.
2. The subject matter of the Motion is a core proceeding pursuant to 28 U.S.C. §157(b).
3. Venue is proper in this district pursuant to 28 U.S.C. § 1408.
4. The statutory predicates for the relief sought by the Motion are sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001(b)(2) and (d)(3).

BACKGROUND

A. General Background

1. On December 28, 2010 (the "Petition Date"), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code.
2. Since the Petition Date, the Debtor has been operating its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
3. As of the date hereof, no creditors' committee has been appointed or designated in this case. In addition, no request for the appointment of a trustee or examiner has been made.

4. The Debtor is a limited liability company organized and existing under the laws of the State of Florida.

5. The controlling member of the Debtor is CABI Holdings, Inc. The managers of the Debtor are Elias Amkie Levy, Elias Cababie Daniel, Abraham Cababie Daniel, Rafael Harari Tussie, and Jaime Dayan Tawil.

B. The Property

6. The Debtor is the owner of a 5.8-acre parcel fronting New River in Fort Lauderdale, Florida (the "Property"). The Property currently contains a marina which contains more than 200 boat dry-storage spaces (the "Marina"), a restaurant known as "Pirate's Republic", a water taxi service which operates out of a warehouse on premises, and a vacant parcel. The Marina is operated by Reiter Management, Inc., and both the restaurant and water taxi service lease their premises from the Debtor. The Marina also includes a service department facility, operated by Boatech, Inc. The Property is currently being managed by Cabi Developers, Inc. pursuant to a management agreement.

7. The Debtor acquired the Property to develop a large indoor boat storage facility for over 500 boats, supported by a full service fuel dock, a 2,500 square foot administration office and marine store, and a residential condominium.

C. Reasons for Filing

8. The Debtor filed Chapter 11 because of the declining real estate market, and its inability, due to circumstances beyond the Debtor's control, to restructure or refinance its secured mortgage debt owed to HSBC, which matured in November 2010.

Description of Indebtedness and Cash Collateral

A. The Loan

9. On or about November 9, 2005, HSBC made a loan (the "Loan") to the Debtor in the principal amount of \$16,500,000. To secure the Loan, the Debtor executed a Mortgage, Assignment of Leases and Rents and Security Agreement (the "Original Mortgage"), dated November 9, 2005 in favor of HSBC, evidenced by a promissory note (the "Original Note") of the same date. The Original Mortgage was recorded in Official Records Book 40954, page 327 of the Public Records of Broward County, Florida. The Loan was also secured by an: (a) Assignment of Leases and Rents, dated November 9, 2005 and recorded in Official Records Book 40890, at page 961, of the Public Records of Broward County, Florida (the "Original Lease Assignment"), and (b) Assignment of Contracts, Licenses and Permits dated November 9, 2005 (the "Original Contract Assignment").

10. The Debtor subsequently requested and obtained from HSBC an additional advance under the Loan in the principal amount of \$1,500,000, increasing the total amount of secured indebtedness to \$18,000,000. As evidence of the increased amount of the Loan, the Debtor executed and delivered to HSBC an Amended and Restated Renewed Promissory Note (the "Amended Note"), dated as of December 24, 2007, in the amount of \$18,000,000. The Amended Note was secured by a First Modification of Mortgage, Assignment of Leases and Rents and Security Agreement, and Notice of Future Advance granted by the Debtor in favor of HSBC, dated December 24, 2007 (the "Amended Mortgage"). The Amended Mortgage was subsequently recorded February 15, 2008 in Book 45101, Page 1034, of the Official Records of Broward County, Florida. The Loan was also secured by a: (a) First Modification of Assignment of Leases and Rents, dated December 24, 2007, and recorded in Official Records Book 40890, at

page 961, of the Public Records of Broward County, Florida, and (b) First Modification of Assignment of Contracts, Licenses and Permits, dated December 24, 2007.

11. HSBC filed a Form UCC-1 Financing Statement with the Florida Secured Transaction Registry naming the Debtor as the debtor and HSBC as the secured party on November 14, 2005, file #200501161021.

12. In connection with the Loan, on November 9, 2005, the Debtor, Abraham Cababie Daniel and Elias Cababie Daniel executed an Environmental and ADA Indemnity Agreement, in favor of HSBC, which was subsequently amended in the First Modification of Environmental and ADA Indemnification Agreement, dated December 24, 2007.

13. Abraham Cababie Daniel and Elias Cababie Daniel also executed personal guaranties in favor of HSBC relating to the Loan.

14. On February 9, 2009, the Debtor entered into a Cross-Default and Cross-Collateralization Agreement with HSBC and other parties, including its affiliate CABI SMA Tower I, LLLP (the "Tower I Debtor"), which provides that the security provided under Loan Documents would also secure the \$29,198,303 loan HSBC provided to the Tower I Debtor and its affiliates (the "Tower I Loan"). Additionally, such agreement provides that the security provided under the Tower I Loan documents would secure the Loan, and that an event of default under the Tower I Loan or the Loan would constitute an event of default under the non-defaulting borrower's loan documents. The Tower I Debtor also filed bankruptcy on the Petition Date.

15. All of the documents relating to the Loan described in paragraphs 9 through 14 are referred to collectively as the "Loan Documents".

16. The Loan matured by its terms on November 1, 2010.

17. Pursuant to the Loan Documents, upon information and belief, HSBC will assert a perfected lien and security interest on all the real and personal property described therein, including, but not limited to, (i) the land upon which the Property is located, (ii) any and all buildings and improvements on the Property (the "Improvements"), (iii) all fixtures, equipment, and inventory, and other similar tangible personal property on or affixed to the land or the Improvements, and (v) the rental income arising from the lease of any part of the Property (collectively, the "Collateral").

18. As of the Petition Date, HSBC has asserted it is owed approximately \$18,169,865.52 in respect of the Loan. The Debtor's estate may have claims against HSBC, and the Debtor reserves all rights and claims against HSBC and nothing herein shall be deemed to prejudice such rights.

B. Other Creditors

19. In addition to the indebtedness described above, the Debtor owes property taxes to Broward County in the amount of \$1,100,000. The Debtor has approximately \$200,000 in unsecured debt, and the parties that rent the boat storage spaces may have unsecured priority claims.

RELIEF REQUESTED

A. Proposed Use of Cash Collateral and Necessity of Relief Requested

20. Pursuant to 11 U.S.C. § 363(a), cash collateral includes the Debtor's cash and cash equivalents, including rents and proceeds that are subject to a security interest (collectively, the "Cash Collateral").

21. By this Motion, the Debtor also seeks entry of interim and final orders authorizing its use of Cash Collateral generally in accordance with the Budget and for purposes which include (without limitation) the following:

- a. care, maintenance and preservation of the property of the Debtor's estate;
- b. payment of necessary management fees, suppliers, utilities, and other business expenses;
- c. other payments necessary to sustain continued business operations. and
- d. costs of administration in connection with this Chapter 11 case.

22. The Debtor requests authority to use Cash Collateral immediately to pay operating expenses necessary to continue the operation of the Debtor's business and to maintain its estate, to maximize the return on its assets, and to otherwise avoid irreparable harm and injury to its business and its estate. Absent such authorization, the Debtor will not be able to otherwise maintain and protect the estate's assets, the Collateral, and any prospect of a reorganization benefiting all parties in interest. The payment of insurance expenses and U.S. Trustee fees are also necessary to avoid potential dismissal or conversion of this chapter 11 case pursuant to Section 1112(b)(4)(C) of the Bankruptcy Code.

23. As set forth in the Budget, the Debtor will earn more in rental proceeds from the boat slips and the tenants leasing the Property during the period requested in this Motion.

24. There is insufficient time for a final evidentiary hearing pursuant to Bankruptcy Rule 4001(b)(2) to be held before the Debtor must use Cash Collateral. If this Motion is not considered on an expedited basis and if the Debtor is denied the ability to immediately use Cash Collateral, there will be direct and immediate harm to the continuing operation of the Debtor's business. In order to continue its business activity in an effort to achieve successful reorganization, the Debtor needs to use Cash Collateral in its ordinary business operations. The inability of the Debtor to meet its ordinary business expenses will require the Debtor to discontinue normal operations, which will result in irreparable injury to the Debtor and its chances for reorganization. Any such discontinuation would also adversely impact upon the

value of the Collateral by reducing the value of the Property. Indeed, it is undoubtedly in the best interests of HSBC, the Debtor, and all other parties in interest that the Debtor be permitted to use its Cash Collateral since such usage will preserve the value of the Collateral and preserve the value of the Debtor as a going concern. In light of the immediate and irreparable harm that will be occasioned upon the Debtor were the relief requested herein not immediately granted, Bankruptcy Rule 4001(b)(2) authorizes this Court to hold an immediate preliminary hearing on this Motion.

B. Offer of Adequate Protection

25. In exchange for the Debtor's ability to use Cash Collateral in the operation of its business, as adequate protection, the Debtor proposes to grant to HSBC (solely to the extent of the diminution of HSBC's interest in the Cash Collateral) a valid and perfected replacement security interest in, and lien on proceeds of rental income generated by the Debtor post-petition equal in extent, validity, and priority to the security interest in those items held as of the Petition Date pursuant to the Loan Documents (the "HSBC Adequate Protection Liens").

26. The last appraisal on the Property shows a fair market value as of November 2008 of \$22,000,000. The Debtor recognizes this is a dated appraisal and will seek to obtain a current appraisal. Notwithstanding, the Debtor has observed appraised values in 2008 have generally deteriorated throughout South Florida. Accordingly, the Debtor believes HSBC is undersecured.

27. The Debtor alleges that the interests of HSBC will be adequately protected by the HSBC Adequate Protection Liens provided hereunder. As reflected in the Budget, all of the cash to be used will be used to pay the carrying costs of the Property on a cash flow positive basis

other than a minimal payment to the U.S. Trustee.² Consequently, no further provision for adequate protection is required because the Debtor submits that HSBC is undersecured and therefore, is not entitled to payment of post-petition interest or fees. *See United Savings Ass'n of Tex. v. Timbers of Inwood Forest Assoc.*, 484 U.S. 365 (1988).

28. Additionally, and solely to the extent that the HSBC Adequate Protection Liens proposed herein do not provide HSBC with new collateral equal in value to the any diminution in the value of the Cash Collateral, HSBC shall be entitled to an allowed, superpriority administrative expense claim under Section 507(b) of the Bankruptcy Code (the "HSBC Superpriority Claim" and together with HSBC Adequate Protection Liens, the "HSBC Adequate Protection Liens and Claims"). The HSBC Superpriority Claim shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, sections 326, 328, 330, 503(b), 506(c), 507(a), 507(b), 546(c), 726, and 1114 of the Bankruptcy Code, or otherwise (whether incurred in this Chapter 11 case or any conversion thereof to a case under Chapter 7 of the Bankruptcy Code or any other proceeding related hereto or thereto).

29. In addition, the Debtor shall prepare and furnish to HSBC a bi-monthly report of receipts, disbursements, and a reconciliation of actual expenditures and disbursements with those set forth in the Budget, on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget (the "Budget Reconciliation"). Such Budget

² Section 506(a) of the Bankruptcy Code provides that the value of a secured party's interest in property of the estate shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest. The Debtor expressly reserves the right to obtain an appraisal or to dispute the findings, assumptions or conclusions set forth in any appraisal presented by any other party, or otherwise advance an alternative view on the value of HSBC's collateral at any time or at any future hearing. The Debtor reserves all rights and claims against HSBC, and nothing herein shall be deemed to prejudice such rights.

Reconciliation shall be provided to HSBC so as actually to be received within four (4) Business Days following the end of every other week.

30. Finally, the Debtor shall provide to HSBC within four (4) business days after the end of every other week, an updated rolling 4-week forecast of cash receipts and disbursements for the Debtor for the next succeeding 4 weeks, substantially in the form of the Budget, provided, that if requested by HSBC, the Debtor shall, as soon as reasonably practicable, provide an updated rolling 13-week forecast.

31. If allowed to use Cash Collateral, the Debtor believes that it can stabilize its business operations and maintain going concern values. Otherwise, the Debtor's business operations will cease and its assets will have only liquidation value.

C. Approval of the Use of Cash Collateral is Warranted

32. The Debtor's use of property of its estate is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with section 363 of the Bankruptcy Code. *See* 11 U.S.C. § 1107(a).

33. The principal restraint on the use of cash collateral is set forth by Section 363(e), which specifies that, absent consent, the Court shall condition the use of secured property "as is necessary to provide adequate protection of such interest." Pursuant to Section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Debtor to use cash collateral as long as the

applicable secured creditors consent or, if they object, are adequately protected. *See In re Delta Resources, Inc.*, 54 F.3d 722 (11th Cir. 1995); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); *In re McCormick*, 354 B.R. 246, 251 (Bankr. C.D. Ill. 2006) (providing that use of cash collateral of a secured creditor requires the debtor to have the consent of the secured creditor or, alternatively, the debtor must establish that the secured creditor's interest in the cash collateral is adequately protected.); *In re Senior Care Properties, Inc.*, 137 B.R. 527 (Bankr. N.D. Fla. 1992); *In re Lane*, 108 B.R. 6 (Bankr. D. Mass. 1989).

34. Adequate protection is to be determined on a case-by-case factual analysis. *See Mbank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *see also* S. Rep. No. 95-989, 95th Cong., 2d Sess. 54 (1978). For example, in *O'Connor*, the court held that "[i]n order to encourage the Debtor's efforts in the formative period prior to the proposal of a reorganization, the court must be flexible in applying the adequate protection standard." *O'Connor*, 808 F.2d at 1396. (citations omitted). *See also In re Quality Interiors, Inc.*, 127 BR. 391 (Bankr. N.D. Ohio 1991) (holding that the granting of a replacement lien provided adequate protection); *In re 495 Central Park Avenue Corp.*, 136 B.R. 626 (Bankr. S.D.N.Y. 1992) (projected property improvements constituted adequate protection when rental income from lease conditioned on improvements would increase value of real estate); *In re Sheehan*, 38 B.R. 859 (Bankr. D.S.D. 1984) (court allowed cash collateral to be used in exchange for replacement lien on crops to be grown with the cash).

35. Pursuant to Section 361 of the Bankruptcy Code, adequate protection may be provided through periodic cash payments, replacement liens, or other relief constituting the "indubitable equivalent" of the creditor's interest. *In re Resolution Trust Co. v. Swedeland Development Group, Inc. (In re Swedeland Development Group, Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) (*en banc*). This last possibility is regarded as a "catch all", allowing courts discretion in

fashioning the protection provided to a secured party. *Id.* Accordingly, a determination of whether there is adequate protection is made on a case by case basis. *Id.*; *see also Mbank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1397 (10th Cir. 1987).

36. HSBC asserts it holds valid, perfected and enforceable prepetition liens as set forth in the Amended Mortgage and is therefore entitled to adequate protection to protect it against any diminution in the value of its secured interest in the Cash Collateral. *See* 11 U.S.C. §§ 363(c)(2)(B) and (e). The Debtor does not expect any diminution during this case.

37. A secured creditor, however, is not entitled to impose its will on the other parties-in-interest that stand to benefit from the continuation of the Debtor as a going concern. *See, e.g. In re ProAlert, LLC*, 314 B.R. at 441-45 (recognizing that secured creditors' rights are not absolute and that, upon a finding of adequate protection, cash collateral may be used by a debtor for administrative expenses and professional fees over objection of secured creditor).

38. As set forth herein, HSBC is adequately protected by the Debtor's offer of the HSBC Adequate Protection Liens and Claims on the post-petition cash generated by the Debtor. As set forth in the Budget, HSBC is adequately protected by the projected income that the Debtor will receive during the period covered by the Budget and which income would not sharply reduced if not entirely eliminated absent the use of the Cash Collateral. Even if the Debtor's cash flow proves insufficient to replace the Cash Collateral that is utilized pursuant to the Budget, it cannot be gainsaid that the uses are intended to preserve the value of HSBC's collateral and enhance cash flow through additional rentals under the Program. Clearly, HSBC is the primary beneficiary of such efforts at this juncture.

39. Conversely, if the Debtor is denied the use of the Cash Collateral to maintain its operations and to preserve the value of HSBC's collateral, the resulting deterioration of the collateral and loss of critical mass by the Debtor will only diminish HSBC's prospects, result in a

fire-sale liquidation, and delay or frustrate the ultimate payment of creditors, including HSBC. *See Chrysler Credit Corp. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)*, 727 F.2d 1017, 1019 (11th Cir. 1984) (adequacy of protection requires determination of value of interest in collateral and whether a proposed use of cash collateral threatens that value). Accordingly, the proposed uses of Cash Collateral to preserve value adequately protect HSBC's interests by enhancing rather than threatening the value of its security interests.

40. Thus, the Debtor believes that the approval of the Motion is in the best interests of the Debtor, its creditors and its estate because it will enable the Debtor to (i) continue the orderly operation of its business and avoid an immediate total shutdown of operations; (ii) meet its ordinary course expenditures, and other operating expenses; and (iii) make payments authorized under other Orders entered by this Court, thereby avoiding immediate and irreparable harm to the Debtor's estate.

INTERIM APPROVAL OF THE MOTION SHOULD BE GRANTED

41. As set forth above, Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable to the Debtor's estate.

42. There is insufficient time for a final evidentiary hearing pursuant to Bankruptcy Rule 4001(b) and (c) to be held before the Debtor must use Cash Collateral. If this Motion is not considered on an expedited basis and if the Debtor is denied the ability to use Cash Collateral, there will be direct and immediate harm to the continuing operation of the Debtor's business. In order to continue its business activity in an effort to achieve successful reorganization, the Debtor needs immediate access to use Cash Collateral in its ordinary business operations. The

inability of the Debtor to meet its ordinary business expenses will require the Debtor to discontinue normal operations which will result in irreparable injury to the Debtor and its chances for reorganization. Any such discontinuation would also adversely impact upon the value of the Collateral by reducing the rental proceeds. Indeed, it is undoubtedly in the best interests of HSBC, the Debtor, and all other parties in interest that the Debtor be permitted to use its Cash Collateral since such usage will preserve the value of the Collateral and preserve the value of the Debtor as a going concern. In light of the immediate and irreparable harm that will be occasioned upon the Debtor (and upon HSBC) were the relief requested herein not immediately granted, Bankruptcy Rule 4001(b)(2) and (c)(2) authorizes this Court to hold an immediate preliminary hearing on this Motion.

NOTICE

43. No trustee or examiner has been appointed in this case and no official committees have yet been appointed pursuant to Section 1102 of the Bankruptcy Code. Notice of this Motion will be given by the Court's CM/ECF Transmission to the U.S. Trustee, by United States first class mail and e-mail transmission and/or hand delivery to counsel for HSBC, Alan Grunspan, Esq., Carlton Fields, 100 S.E. 2nd Street, Suite 4200 Miami, FL 33131 and by Federal Express to those parties listed on the List of Creditors Holding 20 Largest Unsecured Claims. The Debtor submits that, given the emergency nature of the relief requested herein, no other or further notice need be given.

BASIS FOR EMERGENCY RELIEF

44. The facts previously set out herein clearly justify an immediate hearing on this Motion. The only significant source of revenue for the Debtor is its rental income. If the Debtor cannot utilize Cash Collateral, it will have no ability to pay necessary operating expenses, and its business will be greatly harmed. The Debtor has narrowly tailored the relief requested on an

emergency basis in order to allow it to survive pending a final cash collateral hearing under Bankruptcy Rule 4001(b)(2).

WHEREFORE, the Debtor respectfully requests that the Court (a) enter an order granting the instant Motion, the proposed form of which is attached hereto as Exhibit "B", authorizing the Debtor to use Cash Collateral on an interim basis in substantial conformity with the Budget, and granting replacement liens to HSBC as adequate protection; (b) scheduling a preliminary hearing on the Motion the week of January 3, 2011; (c) scheduling the Final Hearing (or further interim hearing, as the case may be) and approving notice with respect thereto in accordance with Bankruptcy Rules 4001(b)(2) and (d)(3); (d) authorizing the use of Cash Collateral pursuant to the Budget, and the granting of a super-priority claim and replacement liens in favor of HSBC to the extent their Cash Collateral is depleted, on a final basis at the Final Hearing, and (e) granting such other and further relief as the Court deems just and proper.

Dated: December 28, 2010.

Respectfully submitted,

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

**BILZIN SUMBERG BAENA PRICE &
AXELROD LLP**

Proposed Counsel for the Debtor

1450 Brickell Ave., Suite 2300

Miami, FL 33131

Telephone: (305) 374-7580

Facsimile: (305) 375-7593

By: /s/ Mindy A. Mora

Mindy A. Mora

Fla. Bar No. 678910

mmora@bilzin.com

Jason Jones

Fla. Bar No. 186554

jjones@bilzin.com

EXHIBIT "A"

Cabi New River, LLC

Weekly Cashflow Budget

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13
Week ended	Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday
	1/7/11	1/14/11	1/21/11	1/28/11	2/4/11	2/11/11	2/18/11	2/25/11	3/4/11	3/11/11	3/18/11	3/25/11	4/1/11
	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget
Receipts:													
Leasing Receipts - Retail	\$ 21,439		\$ -	\$ -	\$ 21,439		\$ -	\$ -	\$ 21,349		\$ -	\$ -	
Marina Operation Receipts -Gross	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012
Total Receipts	\$ 43,451	\$ 22,012	\$ 22,012	\$ 22,012	\$ 43,451	\$ 22,012	\$ 22,012	\$ 22,012	\$ 43,361	\$ 22,012	\$ 22,012	\$ 22,012	\$ 22,012

Disbursements:

Marina Operational Expenses	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488	\$ 11,488
Insurance -Property, Wind, GL, et all	\$ 7,500		\$ -		\$ -	\$ 1,211		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sales & Use Tax	\$ -		\$ 1,184		\$ -	\$ -	\$ 1,184		\$ -	\$ -	\$ 1,184		\$ -
Misc	\$ -	\$ -		\$ 200			\$ -	\$ 200		\$ -	\$ -	\$ 200	
Sub-total Operating Costs	\$ 18,988	\$ 11,488	\$ 12,672	\$ 11,688	\$ 11,488	\$ 12,699	\$ 12,672	\$ 11,688	\$ 11,488	\$ 11,488	\$ 12,672	\$ 11,688	\$ 11,488

Filing Fees & Expenses:

Legal - Bilzin	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
US Trustee	\$ -	\$ -			\$ -	\$ -	325	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Management Expenses-Cabi Developers	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500
Sub-total	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,825	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500
Total Disbursements	\$ 26,488	\$ 18,988	\$ 20,172	\$ 19,188	\$ 18,988	\$ 20,199	\$ 20,497	\$ 19,188	\$ 18,988	\$ 18,988	\$ 20,172	\$ 19,188	\$ 18,988

Operating Cash

Beginning Cash Balance	\$ 25,956	\$ 42,919	\$ 45,943	\$ 47,783	\$ 50,607	\$ 75,070	\$ 76,884	\$ 78,399	\$ 81,223	\$ 105,596	\$ 108,620	\$ 110,460	\$ 113,284
Change in Cash	\$ 16,963	\$ 3,024	\$ 1,840	\$ 2,824	\$ 24,463	\$ 1,813	\$ 1,515	\$ 2,824	\$ 24,373	\$ 3,024	\$ 1,840	\$ 2,824	\$ 3,024
Operating Cash Balance	\$ 42,919	\$ 45,943	\$ 47,783	\$ 50,607	\$ 75,070	\$ 76,884	\$ 78,399	\$ 81,223	\$ 105,596	\$ 108,620	\$ 110,460	\$ 113,284	\$ 116,308

EXHIBIT "B"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

CABI NEW RIVER LLC,¹

Case No. 10-10-49013

Chapter 11

Debtor.

[PROPOSED] INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. §§ 105(a), 361, AND 363, AND BANKRUPTCY RULE 4001, (II) PROVIDING ADEQUATE PROTECTION PURSUANT TO SECTIONS 361 AND 363 OF THE BANKRUPTCY CODE, AND (III) SCHEDULING FINAL HEARING

This cause came on for hearing before the Court on January __, 2011 at ____ ..m. (the "Interim Hearing"), upon the *Debtor's Emergency Motion Pursuant to 11 U.S.C. §§ 105(a), 361, and 363, and Bankruptcy Rule 4001 for Entry of Interim and Final Orders Authorizing Use of*

¹ The Debtor's current mailing address is 19950 W. Country Club Dr., Suite 900, Aventura, FL 33180. The last four digits of the Debtor's tax identification number are [0247].

Cash Collateral and Granting Replacement Liens and Super-Priority Claims [ECF No. ___] (the "Motion").² Pursuant to the Motion, the Debtor seeks the entry of interim and final orders authorizing it to use Cash Collateral (as defined in the Motion) in which HSBC Realty Credit Corporation ("HSBC"), as lender may assert liens and security interests.

The Court finds that due and sufficient notice of the Motion was provided to: (i) the Office of the United States Trustee for the Southern District of Florida, (ii) HSBC, (iii) all other known secured creditors of the Debtor, and (iv) all unsecured creditors of the Debtor listed on the List of Creditors Holding 20 Largest Unsecured Claims, and that no other or further notice is necessary. The Court considered the Motion, together with the record and the arguments of counsel at the Hearing, and it appearing that the use of Cash Collateral is in the best interests of the Debtor and its creditors and essential for the operation of the Debtor's business on an interim basis, and being otherwise duly advised in the premises, and for the reasons announced on the record at the Hearing, the Court finds as follows:

A. On December 28, 2010 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case").

B. This Court has jurisdiction over these proceedings and the parties and property affected hereby pursuant to 28 U.S.C. §1334 and this is a "core" proceeding pursuant to 28 U.S.C. §157. Venue is proper in this Court pursuant to 28 U.S.C. § 1408. Notice of the Hearing on the Motion was adequate and appropriate in the current circumstances of this Chapter 11 Case as contemplated by 11 U.S.C. § 102(a) and Fed. R. Bankr. P. 2002, 4001(b)(c) & (d) and 9104.

C. Good cause has been shown for the entry of this Order. The Debtor has an immediate and critical need to use the Cash Collateral in order to continue to attempt to

² Unless otherwise indicated, capitalized terms used herein shall have the meaning ascribed to such terms in the Motion.

effectuate a reorganization of its financial affairs. In accordance with Rule 4001 of the Bankruptcy Rules, the Court finds the Debtor's authorization to use Cash Collateral pursuant to this Order is necessary to avoid immediate and irreparable harm to the Debtor's estate.

D. Based on the record presented to the Court at the Hearing, good, adequate and sufficient cause has been shown to justify the immediate grant of the relief requested in the Motion to avoid irreparable harm to the Debtor's estate. The terms of the Debtor's use of the Cash Collateral, as more fully set forth herein, are (i) fair and reasonable, and (ii) adequately protect HSBC for such use pending the Final Hearing. Entry of this Order is in the best interests of the Debtor's estate and all parties in interest in this Chapter 11 Case.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Motion is GRANTED to the extent set forth herein. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits. This Order shall constitute findings of fact and conclusions of law, and shall become effective immediately upon its entry.

2. It is the intent of the Court, by this Order, to reserve unto all parties, all legal and equitable rights and duties, and to preserve the status quo pending further proceedings. As a result, any right, objection, factual assertion or legal argument not specifically addressed and ruled upon herein shall remain as it was prior to the entry of this Order pending a Final Hearing.

3. Subject to the terms and conditions set forth in this Order, the Debtor is authorized, pursuant to 11 U.S.C. § 363 to use Cash Collateral on an interim basis effective as of January ____, 2011 and continuing through January ____, 2011 (the "Expiration Date") (January ____, 2011 through January ____, 2011 is hereafter referred to as the "Cash Collateral Period"), in accordance with the budget attached hereto as Exhibit 1 (the "Budget"). Particular expense items may exceed the amount in the Budget by fifteen percent (15%), so long as the aggregate

expenses do not exceed the aggregate amount listed in the Budget for the Cash Collateral Period by more than 10%. At the Final Hearing (as defined below), the Court will consider the Debtor's request to use Cash Collateral after the Expiration Date.

4. The Court shall conduct a final hearing on the Motion (the "Final Hearing") on January ____, 2011 at ____ ____.m. at the United States Bankruptcy Court, 51 S.W. 1st Avenue, Room ____, Miami, FL 33130 before the Honorable _____, United States Bankruptcy Judge.

5. During the Cash Collateral Period, the Debtor will furnish to HSBC by no later than Thursday of every other week a report of receipts, disbursements, and a reconciliation of actual expenditures and disbursements with those set forth in the Budget, on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget (the "Budget Reconciliation") (such bi-monthly period to cover the prior two week period).

6. During the Cash Collateral Period, the Debtor shall provide the following additional information to HSBC within four (4) business days after the end of every other week, an updated rolling 4-week forecast of cash receipts and disbursements for the Debtor for the next succeeding 4 weeks, substantially in the form of the Budget, provided, that if requested by HSBC, the Debtor shall, as soon as reasonably practicable, provide an updated rolling 13-week forecast.

7. In addition to the existing rights and interests of HSBC in the Cash Collateral (if any) and for the purpose of providing HSBC additional adequate protection for any such interest, HSBC is hereby granted, as security, a replacement lien of equal extent, validity, priority, and dignity to its pre-petition liens (if any), which replacement lien shall attach to post-petition collateral. The Court makes no determination at this time as to the extent, priority, or validity of any security interest held by or the obligations owed to HSBC prior to the Petition Date. To the

extent the adequate protection as provided herein is found to be insufficient, HSBC shall be afforded a superpriority claim pursuant to Section 507(b) of the Bankruptcy Code solely to the extent of any deficiency.

8. Nothing contained herein shall preclude or restrict the Debtor, any creditors' committee that may be appointed, or any subsequently appointed trustee from challenging the validity, extent or priority of any claims, liens or obligations asserted or claimed by HSBC, and nothing herein set forth shall waive any claims, rights, or demands which the Debtor, any creditors' committee, or any subsequently appointed trustee possess or may assert against HSBC.

9. The provisions of this Order, and any and all rights, remedies, privileges, and benefits conferred hereunder, shall be effective immediately upon entry of this Order pursuant to Bankruptcy Rules 6004(h) and 7062.

10. The provisions of this Order shall remain in full force and effect unless modified or vacated by subsequent order of this Court.

###

Submitted by:

Mindy A. Mora
Bilzin Sumberg Baena Price & Axelrod LLP
200 S. Biscayne Boulevard, Suite 2500
Miami, FL 33131
Telephone: (305) 374-7580
Facsimile: (305) 375-7593

Copies to:

Mindy A. Mora
(Attorney Mora shall upon receipt serve a copy of this Order upon all interested parties and file a certificate of service.)