**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF FLORIDA**
**MIAMI DIVISION**

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In re: CHAPTER 11
Case No. 10-49009-BKC-AJC

CABI SMA TOWER I, LLLP,

Debtor.

----------X

**THIRD REVISED DISCLOSURE STATEMENT RELATING TO FIRST AMENDED PLAN OF REORGANIZATION (SECOND EDITION) UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT.**

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**Counsel for the Debtor**

Dated: January 27, 2012

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# I.

# INTRODUCTION

Cabi SMA Tower I, LLLP ("Cabi" or the "Debtor"), as the debtor and debtor-in-possession, is soliciting acceptances of an amended chapter 11 plan of reorganization (the "Plan of Reorganization" or "Plan") attached as Exhibit 1 to this Disclosure Statement. This solicitation is being conducted at this time to obtain sufficient votes to enable the Plan of Reorganization to be confirmed by the Bankruptcy Court. Capitalized terms used in this Disclosure Statement but not defined herein have the meanings ascribed to such terms in the Plan.

Attached as exhibits to this Disclosure Statement are copies of the following documents:

The Plan of Reorganization (Exhibit 1);

Historical Financial Information (Exhibit 2);

Liquidation Analysis (Exhibit 3);

Projections of Revenue, Expenses, Financing Costs and Cash Flow (Exhibits 4A and 4B);

Business Plan (Exhibit 5);

Equity Commitment Letter and Construction Commitment Letter (Exhibit 6);

Major Pro Forma Assumptions (Exhibit 7);

Financing Assumptions (Exhibits 8A and 8B);

Net Present Value Analysis (Exhibit 9);

Design Specifications, Project Attributes, and Leasing Letter (Exhibit 10);

Design Team Qualifications (Exhibit 11);

Project Fact Sheet and Zoning Analysis (Exhibit 12); and

Information Relating to Grupo GICSA S.A. de C.V. and E-Group (Exhibit 13).

WHO IS ENTITLED TO VOTE: Pursuant to the Disclosure Statement Order, the holders of Allowed Secured Prepetition Loan Claims (Class 4), Allowed Other Secured Claims (Class 5), Allowed Customer Deposit Claims (Class 6), Allowed General Unsecured Claims (Class 7), and the Allowed Deficiency Claim (Class 8) are entitled to vote on the Plan. A ballot for the acceptance or rejection of the Plan is enclosed with the Disclosure Statement submitted to the holders of claims in these classes that are entitled to vote. Holders of Old Equity Interests (Class 9) are deemed to reject the Plan and are not entitled to vote.

**THE DEBTOR RECOMMENDS THAT CREDITORS ENTITLED TO VOTE CLAIMS IN CLASS 4, CLASS 5, CLASS 6, CLASS 7 AND CLASS 8 VOTE TO ACCEPT THE PLAN.** The Debtor's legal advisors are Bilzin Sumberg Baena Price & Axelrod LLP. They can be contacted at:

Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, Suite 2300
Miami, Florida 33131
Attn: Mindy A. Mora
mmora@bilzin.com
Tara V. Trevorrow
ttrevorrow@bilzin.com

The following table summarizes the treatment of Claims and Equity Interests under the Plan. For a complete explanation, please refer to the discussion in section VI below, entitled "THE PLAN OF REORGANIZATION" and to the Plan itself.

**IRS CIRCULAR 230 NOTICE:** TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

## II.

## SUMMARY OF CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN[1]

| Class | Type of Claim or Equity Interest | Treatment | Approximate Allowed Amount[2] | Approximate Percentage Recovery[2] |
|---|---|---|---|---|
| -- | Administrative Expenses | Except to the extent that a holder of an Allowed Administrative Expense agrees to less favorable | $750,000 | 100% |

[1] This table is only a summary of the classification and treatment of claims and equity interests under the Plan and all conditions thereto. Reference should be made to the entire Disclosure Statement and the Plan for a complete description of the classification and treatment of claims and equity interests.

[2] The amounts set forth herein are the Debtor's estimates; the actual amounts will depend upon the final reconciliation and resolution of all Administrative Expenses and Claims.

| Class | Type of Claim or Equity Interest | Treatment | Approximate Allowed Amount[2] | Approximate Percentage Recovery[2] |
|---|---|---|---|---|
| | | treatment, the Reorganized Debtors shall pay in full in Cash on or as soon as reasonably practicable after the later of the Effective Date, the date allowed or the date due in the ordinary course. | | |
| -- | Priority Tax Claims | Except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder shall receive payment in full in Cash over a period not exceeding five (5) years from the Petition Date, together with interest thereon at the Applicable Rate. | $0 | 100% |
| 1 | Priority Non-Tax Claims | Not impaired; except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, such Allowed Claims shall be paid in full in Cash on or as soon as reasonably practicable after the later of the Effective Date, the date allowed or the date due in the ordinary course. | $0<br>* Any priority unsecured Claim relating to a Customer Deposit Claim will be paid from the Distribution for Allowed Class 6 Claims | 100% |
| 2 | Secured Claim of Miami-Dade Tax Collector | Unimpaired; as soon as reasonably practicable on or after the Effective Date, the Miami-Dade County Tax Collector shall receive payment in full in Cash in the amount of any remaining 2009 and 2010 taxes owed to Miami-Dade County on the disbursement date, which shall include statutory interest in the event that the 2009 and 2010 taxes are delinquent at the time of payment; provided, however, that so long as either any Value Adjustment Board petitions or any action in the Circuit Court regarding the assessments of the | $829,126.60, plus statutory interest of approximately $150,000 | 100% |

| Class | Type of Claim or Equity Interest | Treatment | Approximate Allowed Amount[2] | Approximate Percentage Recovery[2] |
|---|---|---|---|---|
| | | Miami-Dade County Property Appraiser with respect to the taxed real or personal property are pending, such payment shall be limited to the amount of the good faith payment estimated to be due and owing by the Debtor, and in any event shall be applied toward satisfaction of the Allowed Secured Tax Claim. The Miami-Dade County Property Appraiser reserves his right to seek review pursuant to Florida law of Value Adjustment Board reductions of 2009 and subsequent years' assessments of the taxed real or personal property and, if as a result of such challenges taxes are owed, Debtor shall pay such taxes within the time prescribed by Florida law, and the payment of said taxes shall be secured by statutory liens attaching to said property pursuant to Florida law until payment in full is made. Further, in the event of the sale of taxed property during any period in which the valuation and tax liability of the said property may be in dispute, Debtor will give notice to potential purchasers of the tax dispute and provisions will be made for the payment of any resulting taxes. | | |
| 3 | Secured Tax Certificate Claims | Impaired; as soon as reasonably practicable on or after the Effective Date, the Holders of Secured Tax Certificate Claims shall receive payment in full in Cash in the outstanding amount of the applicable Tax Certificate, including any accrued interest thereon; provided, however, that so | $352,980.57 plus approximately $15,000 in interest | 100% |

| Class | Type of Claim or Equity Interest | Treatment | Approximate Allowed Amount[2] | Approximate Percentage Recovery[2] |
|---|---|---|---|---|
| | | long as either any Value Adjustment Board petitions or any action in the Circuit Court regarding the assessments of the Miami-Dade County Property Appraiser with respect to the taxed real or personal property are pending, such payment shall be limited to the amount of the good faith payment estimated to be due and owing by the Debtor, and in any event shall be applied toward satisfaction of the Allowed Secured Tax Certificate Claim. | | |
| 4 | Secured Prepetition Loan Claim | Impaired; as soon as reasonably practicable on or after the Effective Date, the Holder of the Allowed Secured Prepetition Loan Claim shall receive either (a) the New Brickell Central Note, if the Holder of the Allowed Secured Prepetition Note makes an election pursuant to § 1111(b) of the Bankruptcy Code, or (b) the New Senior Note, and from and after the Effective Date, the payments provided for thereunder, if the Holder of the Allowed Secured Prepetition Note does not make an election pursuant to § 1111(b) of the Bankruptcy Code. | $14,152,893, or if Brickell Central makes an election pursuant to §1111(b) of the Bankruptcy Code, $30,516,551 | 100% |
| 5 | Other Secured Claims | Impaired; as soon as reasonably practicable on or after the Effective Date, except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder of an Allowed Other Secured Claim shall receive, at the sole option of the Debtor, payment in full in Cash in the amount of the Allowed Other Secured Claim, (b) | $0 | 100% |

| Class | Type of Claim or Equity Interest | Treatment | Approximate Allowed Amount[2] | Approximate Percentage Recovery[2] |
|---|---|---|---|---|
| | | reinstatement of the Allowed Other Secured Claim, (c) satisfaction by the surrender of the collateral securing such Allowed Other Secured Claim, or (d) a treatment that otherwise renders the Allowed Other Secured Claim unimpaired pursuant to section 1124 of the Bankruptcy Code. | | |
| 6 | Customer Deposit Claims | Impaired; pursuant to the terms of the Settlement Agreement, as soon as reasonably practicable after a Customer Deposit Claim is Allowed, each Holder of an Allowed Customer Deposit Claim shall receive, as applicable and solely to the extent not previously paid pursuant to the Settlement Agreement, (a) Cash in the amount of the principal balance of the Escrow Funds of the Holder on deposit with the Escrow Agent as of the Petition Date, to the extent not previously disbursed to such Holder by a prior order of the Bankruptcy Court, (b) Cash in the statutory amount of any Priority Non-Tax Claim pursuant to 11 U.S.C. § 507(a)(7), and (c) Cash in the amount of twenty percent (20%) of such Holder's Allowed Unsecured Customer Deposit Claim.<br><br>Such distribution shall be in full and final settlement of any and all claims asserted in any litigation instituted by any Holder of a Customer Deposit Claim, and all such litigation shall be dismissed with prejudice. | Secured<br>$3,909,956.24<br><br>Priority<br>$104,000<br><br>Unsecured<br>$2,176,361.36 | 100%<br><br>100%<br><br>20% |
| 7 | General | Impaired; on or as soon as | $ 2,020,954.92 | 15% |

| Class | Type of Claim or Equity Interest | Treatment | Approximate Allowed Amount[2] | Approximate Percentage Recovery[2] |
|---|---|---|---|---|
| | Unsecured Claims | reasonably practicable after the Effective Date, or the date that is ten (10) days after the date such claim is Allowed (whichever is later), each Holder of an Allowed General Unsecured Claim shall receive Cash in an amount equal to fifteen percent (15%) of such Allowed Claim. | * (Amount does not include Claims relating to Customer Deposit Claims) | |
| 8 | Deficiency Claim | Impaired; as soon as reasonably practicable after the Effective Date and provided that the Holder of the Secured Prepetition Loan Claim has not made an election pursuant to § 1111(b) of the Bankruptcy Code, the Holder of the Allowed Deficiency Claim shall be entitled to receive the New Junior Note and, from and after the Effective Date, the payments provided for thereunder. If the Holder of the Secured Prepetition Loan Claim makes an election pursuant to § 1111(b) of the Bankruptcy Code, then Class 8 shall not exist and all references herein to Class 8 shall be void. | $16,363,658, or if Brickell Central makes an election pursuant to §1111(b) of the Bankruptcy Code, $0 | 100% |
| 9 | Old Equity Interests | Impaired; no Distribution. | N/A | 0% |

## A. Summary of Voting Procedures

If you are entitled to vote to accept or reject the Plan, a ballot is enclosed for voting purposes. If you hold claims in more than one class and you are entitled to vote claims in more than one class, you will receive separate ballots, which must be used for each separate class of claims. Please vote and return your ballot(s) in accordance with the instructions set forth herein.

TO BE COUNTED, YOUR VOTE INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE PROPERLY COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BALLOT, AND MUST BE **ACTUALLY RECEIVED** BY THE CLERK OF THE BANKRUPTCY COURT, **NO LATER THAN 4:00 P.M.,**

**PREVAILING EASTERN TIME, ON [_____], 2011 (THE "VOTING DEADLINE")**. PLEASE RETURN YOUR PROPERLY COMPLETED BALLOT TO THE VOTING AGENT AT THE FOLLOWING ADDRESS:

Clerk of Bankruptcy Court
Claude M. Pepper Federal Building
51 SW First Avenue
Room 1510
Miami, FL 33130

BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL **NOT** BE COUNTED. FAXED COPIES OF BALLOTS WILL **NOT** BE COUNTED.

ANY PROPERLY EXECUTED, TIMELY RECEIVED BALLOT THAT DOES NOT INDICATE EITHER ACCEPTANCE OR REJECTION OF THE PLAN WILL BE COUNTED AS A VOTE TO ACCEPT THE PLAN. ANY PROPERLY EXECUTED, TIMELY RECEIVED BALLOT THAT INDICATES BOTH ACCEPTANCE AND REJECTION OF THE PLAN WILL BE COUNTED AS A VOTE TO ACCEPT THE PLAN. **BALLOTS SHOULD NOT BE DELIVERED DIRECTLY TO THE DEBTOR OR ANY OTHER PLAN PROPONENT.**

If you are a holder of a Claim entitled to vote on the Plan and did not receive a ballot, received a damaged ballot, or lost your ballot, or if you have any questions concerning the procedures for voting on the Plan, please contact the Voting Agent, Bilzin Sumberg Baena Price & Axelrod LLP, 1450 Brickell Avenue, Suite 2300, Miami, Florida 33131, Attn: Luisa Flores, Telephone: (305) 350-7205, Facsimile: (305) 351-2271.

SUMMARIES OF CERTAIN PROVISIONS OF DOCUMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE DOCUMENT, INCLUDING THE DEFINITIONS OF TERMS CONTAINED IN SUCH DOCUMENT.

**1). IF YOU HAVE THE FULL POWER TO VOTE AND DISPOSE OF AN ALLOWED SECURED PREPETITION LOAN CLAIM (CLASS 4):**

Please complete the information requested on the Ballot, sign, date, and indicate your vote on the Ballot, and return your completed Ballot in the enclosed pre-addressed envelope so that it is actually received by the Voting Agent before the Voting Deadline.

**2). IF YOU HAVE THE FULL POWER TO VOTE AND DISPOSE OF AN ALLOWED OTHER SECURED CLAIM (CLASS 5):**

Please complete the information requested on the Ballot, sign, date, and indicate your vote on the Ballot, and return your completed Ballot in the enclosed pre-addressed envelope so that it is actually received by the Voting Agent before the Voting Deadline.

**3). IF YOU HAVE THE FULL POWER TO VOTE AND DISPOSE OF AN ALLOWED CUSTOMER DEPOSIT CLAIM (CLASS 6):**

Please complete the information requested on the Ballot, sign, date, and indicate your vote on the Ballot, and return your completed Ballot in the enclosed pre-addressed envelope so that it is actually received by the Voting Agent before the Voting Deadline.

**4). IF YOU HAVE THE FULL POWER TO VOTE AND DISPOSE OF AN ALLOWED GENERAL UNSECURED CLAIM (CLASS 7):**

Please complete the information requested on the Ballot, sign, date, and indicate your vote on the Ballot, and return your completed Ballot in the enclosed pre-addressed envelope so that it is actually received by the Voting Agent before the Voting Deadline.

**5). IF YOU HAVE THE FULL POWER TO VOTE AND DISPOSE OF AN ALLOWED UNSECURED DEFICIENCY CLAIM (CLASS 8):**

Please complete the information requested on the Ballot, sign, date, and indicate your vote on the Ballot and return your completed Ballot in the enclosed pre-addressed envelope so that it is actually received by the Voting Agent before the Voting Deadline.

Any voter that has delivered a valid ballot may withdraw its vote by delivering a written notice of withdrawal to the Voting Agent before the Voting Deadline.

Any holder that has delivered a valid ballot may change its vote by delivering to the Voting Agent a properly completed subsequent ballot so as to be received before the Voting Deadline.

For detailed voting instructions, see the instructions on your ballot. For a further discussion of voting on the Plan, see section VIII below, entitled "VOTING PROCEDURES AND REQUIREMENTS."

## B. Overview of Chapter 11 Process

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself and all economic parties in interest. In addition to permitting rehabilitation of a debtor, chapter 11 promotes equality of treatment of similarly situated claims and similarly situated equity interests with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan of reorganization is the principal objective of a chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by the

bankruptcy court makes the plan binding upon a debtor, any issuer of securities under the plan, any person acquiring property under the plan, and any creditor of, or holder of an equity interest in, a debtor. Subject to certain limited exceptions, the confirmation order discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

To solicit acceptances of a proposed plan, however, section 1126 of the Bankruptcy Code requires a debtor and any other plan proponents to conduct such solicitation, pursuant to a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. The Debtor is submitting this Disclosure Statement in accordance with the Disclosure Statement Order and the requirements of sections 1125 and 1126 of the Bankruptcy Code.

## III.

## DESCRIPTION OF THE BUSINESS

### A. Corporate Structure

The Debtor is a limited liability limited partnership organized and existing under the laws of the State of Florida. The general partner of the Debtor is Cabi GP SMA, LLC.

### B. Description of Capital at Brickell and the Parcels

The Debtor is the owner of multiple vacant parcels around South Miami Avenue and S.W. 14th Street in Miami, Florida (collectively, the "Parcels"), on which it had planned, prior to the Petition Date, to develop a luxury residential condominium development known as Capital at Brickell ("Capital"). The Debtor acquired the Parcels to develop residential, hotel, and retail space. The Parcels are currently being managed by Cabi Developers, LLC pursuant to a management agreement.

Prior to the Petition Date, the Debtor had pre-sold approximately 250 condominium units at Capital (each, a "Condominium Unit"), but approximately 195 of such purchasers either obtained a partial refund of his/her deposits or transferred the deposit to a project owned by an affiliate of the Debtor. As of the Petition Date, the Debtor had outstanding contracts for the sale of approximately 55 Condominium Units at Capital.[3] At this time, the Debtor is not actively marketing the remaining Condominium Units, and has elected not to proceed with the construction of Capital. Instead, post-confirmation, the Debtor intends to develop a retail project (the "Project") as more fully described in Section VI.D. below.

[3] These purchase contracts are being terminated in connection with the approved settlement of an adversary proceeding between the Debtor and certain purchasers, adversary proceeding no. 11-10783 pending in the Bankruptcy Court. *See* Section VI.C.2., Class 6 below.

## C. Prepetition Indebtedness[4]

### 1. Secured Debt

#### a. The Prepetition Loan

On or about November 23, 2004, Mellon United National Bank ("Mellon Bank") made a loan (the "Mellon Loan") to Cabi SMA, LLC[5] in the principal amount of $4,000,000, which was evidenced by a promissory note of the same date (the "Original Mellon Note"). As security for the Original Mellon Note, Cabi SMA, LLC executed a Mortgage and Security Agreement (the "Original Mellon Mortgage") in favor of Mellon Bank, dated November 23, 2004, which was recorded in Official Records Book 22867, at Page 4669 of the Public Records of Miami-Dade County, Florida. The Mellon Loan was also secured by (a) an Assignment of Leases, Rents and Profits, dated November 23, 2004, and recorded in Official Records Book 22867, Page 4681 of the Public Records of Miami-Dade County, (b) a guarantee agreement executed by Abraham Cababie Daniel, Elias Cababie Daniel, Jacobo Cababie Daniel, CABI Holdings, Inc., and CABI Control S.A. de C.V., and (c) a UCC-1 Financing Statement, which was recorded in Official Records Book 22867, Page 4687 of the Miami-Dade County Public Records. The Original Mellon Mortgage also secured future advances made pursuant to the Mellon Loan and provided that no such advances could cause the principal unpaid amount of the Mellon Loan to exceed $41,000,000.

The Original Mellon Mortgage was modified by a Mortgage Modification and Spreader Agreement and Receipt for Future Advance (the "First Mellon Mortgage Modification") executed as of February 7, 2005 by City National Bank of Florida (the "Trustee"), as Trustee under a land trust agreement, also dated February 7, 2005 and known as Land Trust No. 2401-1967-00, and Cabi SMA, LLC (collectively with the Trustee, the "Mellon Mortgagors") in favor of Mellon Bank. The First Mellon Mortgage Modification was recorded in Official Records Book 23084, Page 791 of the Public Records of Miami-Dade County, Florida (collectively with the Original Mellon Mortgage, the "Mellon Mortgage") and secured an additional advance in principal amount of $16,500,000.

The Mellon Loan as amended by the First Mellon Mortgage Modification was evidenced by a Renewal and Future Advance Promissory Note, which was executed on February 7, 2005 by the Mellon Mortgagors in favor of Mellon Bank in the principal amount of $20,500,000 (the "Mellon Note").

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[4] The foregoing summary of the Debtor's prepetition indebtedness is provided for information purposes only and shall not constitute an admission, waiver or estoppel concerning the extent, validity and/or priority of any Claims, or otherwise; the Debtor reserves and retains any and all rights and remedies held in that regard.

[5] Cabi SMA, LLC was subsequently merged into Cabi SMA, LLLP. Cabi SMA, LLLP was subsequently merged into the Debtor.

**b. The HSBC Loan**

On or about May 26, 2006, Mellon Bank assigned the Mellon Note and the Mellon Mortgage to HSBC.

On or about May 26, 2006, HSBC made a loan (the "HSBC Loan") to the Debtor and several of its affiliates in the principal amount of $32,500,000. To secure the HSBC Loan, the Debtor, along with the Mellon Mortgagors (Cabi SMA, LLC having merged into Cabi SMA, LLLP), Cabi SMA Tower 2, LLLP, Cabi SMA Retail I, LLLP, and Cabi SMA Retail 2, LLLP (collectively, the "HSBC Mortgagors"), executed an Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement, and Notice of Future Advance in favor of HSBC, also dated May 26, 2006, which was evidenced by an amended and restated promissory note (the "HSBC Note") of the same date.

The HSBC Note amended and restated the outstanding principal balance and unfunded principal amount of the Mellon Note (which, at the time of the assignment, was $20,500,000)[6] and evidenced a future advance in the amount of $12,500,000.

The HSBC Note was scheduled to mature on November 24, 2007, subject to the HSBC Mortgagors' right to extend such date to May 24, 2008.

**c. The Extensions**

On or about November 24, 2007, the HSBC Mortgagors and HSBC executed an amendment to the HSBC Loan to extend the maturity date of the HSBC Loan to May 24, 2008.

On or about May 24, 2008, the HSBC Mortgagors and HSBC further extended the maturity date of the HSBC Loan to August 24, 2008 by mutual agreement, as evidenced by a letter agreement dated May 24, 2008, a loan extension closing statement, and other supporting documents of the same date.

On or about September 2, 2008, the HSBC Mortgagors and HSBC again further extended the maturity date of the HSBC Loan by mutual agreement, as evidenced by a maturity date extension letter of the same date.

**d. The November 2008 Amendment**

On or about November 22, 2008, the HSBC Mortgagors executed an amended and restated promissory note relating to the HSBC Loan (the "November 2008 Note Amendment") in favor of HSBC. The November 2008 Note Amendment renewed and replaced the existing HSBC Note. The stated intent of the November 2008 Amendment was the substitution and renewal, without enlargement, of the HSBC Note in light of the intervening merger of Cabi SMA, LLLP and Cabi SMA Tower I, LLLP, with Cabi SMA Tower I, LLLP being the surviving entity.

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[6] As stated in the HSBC Note, the outstanding principal amount of the Mellon Bank Note at the time of the assignment was $19,967,762.50, with an unfunded amount of $532,277.50.

**e. The Cross-Default Agreement**

On or about February 9, 2009, the Debtor and several of its affiliates, including Cabi New River, LLC ("Cabi New River"), entered into a Cross-Default and Cross-Collateralization Agreement (the "Cross-Default Agreement") for the benefit of HSBC. The Cross-Default Agreement provides that the security provided under the documents evidencing the HSBC Loan (the "HSBC Loan Documents") also secures a loan in the stated amount of $18,000,000 made by HSBC to Cabi New River, LLC (the "Cabi New River Loan"). The Cross-Default Agreement further provides that an event of default under either the HSBC Loan or the Cabi New River Loan constitutes an event of default under the non-defaulting borrower's loan documents.

Cabi New River also filed a chapter 11 bankruptcy petition on the Petition Date. Cabi New River's chapter 11 case is pending before this Court as Case No. 10-49013-BKC-AJC.

**f. The Release of Collateral Assignment**

On December 9, 2010, Sabadell United Bank ("Sabadell"), a national banking association formerly known as Mellon United National Bank, and Cabi SMA Tower I, LLLP, entered into a release of collateral assignment (the "Release"). Pursuant to the Release, Sabadell released any remaining interest it may have held pursuant to the Collateral Assignment of Beneficial Interests in Land Trust, dated November 23, 2004, between Cabi SMA, LLC (as predecessor in interest to the Debtor) and Mellon Bank (as predecessor in interest to Sabadell). Accordingly, Sabadell released all interests in Land Trust No. 2401-1967-00.

**g. Sale of the HSBC Loan to Brickell Central and Termination of Cross-Collateralization Agreement**

On or about February 28, 2011, HSBC sold all of its right, title, and interest in the HSBC Loan to Brickell Central, LLC ("Brickell Central"). In connection with the sale, HSBC terminated its cross-collateralization rights between the HSBC Loan and the Cabi New River Loan.

As of the Petition Date, the Debtor believes that HSBC was owed approximately $29,198,303 in respect of the Prepetition Loan.

**2. Other Creditors**

In addition to the indebtedness described above, creditors have asserted Claims against the Debtor as follows: (i) approximately $310,196.75 in Claims have been asserted with respect to debt owed to affiliates or intercompany Claims, (ii) approximately $1,615,908.40 in Claims have been asserted by Customers, and (iii) approximately $440,000 has been asserted by Holders of General Unsecured Claims.

**3. Pre-Petition Litigation**

Prepetition, the Debtor was a party to the following lawsuits filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida:

(i) Cananwill, Inc., v. Cabi Holdings, Inc. and Cabi SMA LLLP, Case No. 09-79627 (CA 04);

(ii) HJ Foundation, Inc., n/k/a Lopac Enterprises, Inc., vs. Gryphon Construction, LLC, Cabi SMA, LLLP, Cabi SMA Tower I, LLLP, and City National Bank Corporate d/b/a/ City National Bank of Florida;

(iii) Chicago Title Insurance company vs. Cabi SMA LLLP, Cabi SMA Tower I, LLLP, and Cabi SMA, LLC, Case No. 09-15273 (CA 02);

(iv) Abraham Nahmad Dayan and Jacobo Nahmad Chayo vs. Cabi SMA, LLLP and Cabi GP SMA, LLC, Case No. 09-64155 (CA 21);

(v) Capital at Brickell One Unit 4106, LLC v. Cabi SMA Tower I,LLLP, Case No. 10-45184 (CA 04); and

(vi) Mark Weisberg, Marc Swedroe, and John Haggiag vs. Cabi SMA Tower I, LLP and Fidelity National Title Insurance Company, Case No. 10-47733 (CA 31).

Each of these causes of action has been stayed pursuant to operation of 11 U.S.C. § 362.

Prepetition, Cananwill sought return of monies relating to insurance premiums for the Debtor's proposed prepetition project that were allegedly credited to the Debtor in error. The complaint alleges breach of contract, unjust enrichment, and conversation.

As of the Petition Date, the dispute between HJ Foundation, Inc., other contractor parties to the litigation, and the Debtor had been largely resolved.

Prepetition, the Debtor and Chicago Title reached a settlement in principle, which settlement shall be incorporated into the Plan.

Abraham Nahmad Dayan and Jacobo Nahmad Chayo are alleged investors in the Debtor who sought information prepetition regarding the status of the Debtor and of their alleged investment.

The remaining two above-listed actions are purchaser deposit cases, one of which has been removed to the Bankruptcy Court as an adversary proceeding.

**4. Post-Petition Litigation**

On or about March 10, 2011, several Customers filed a class action adversary complaint for breach of contract (Case No. 11-01783). The Debtor engaged in settlement negotiations with the plaintiffs, which resulted in a settlement on the terms described in the treatment of Class 6 below which has been approved by the Bankruptcy Court.

On July 7, 2011, the City of Miami filed a complaint (the "City Complaint") to enforce an alleged code enforcement lien in the amount of $250. The Debtor filed a suggestion of bankruptcy in the relevant action noting the pendency of the Debtor's bankruptcy case, has

corresponded with attorneys for the City of Miami regarding the City Complaint, and is awaiting further correspondence and discussions with the City of Miami.

## IV.

## KEY EVENTS LEADING TO THE COMMENCEMENT OF THE REORGANIZATION CASES

### A. The Decline in the Real Estate Market

The Debtor filed Chapter 11 because of (a) the declining real estate market, and (b) its inability, due to circumstances beyond its control, to renew, repay, or refinance its secured mortgage debt owed to HSBC, which matured in November 2010.

### B. Required Changes to the Debtor's Business Plan

The Debtor is optimistic about its long-term economic prospects. The Debtor's principal asset consists of the partially-developed land at the Parcels. Post-confirmation, the Debtor intends to pursue a different business plan than it pursued prior to this Case. Instead of constructing a condominium project for which the market is extremely limited at this point, the Debtor intends to develop a retail project. A description of the Debtor's business plan is attached to this Disclosure Statement as Exhibit 5. The Debtor believes that the restructuring proposed in the Plan will enable the Debtor to thrive in the near and long term for the benefit of all economic parties in interest.

## V.

## THE REORGANIZATION CASE

### A. Use of Cash Collateral

The Debtor has not sought to use cash collateral since the commencement of the case, other than to pay ordinary business expenses.

### B. Bar Date

The Court set May 3, 2011 as the deadline for all creditors other than governmental entities to file proofs of claim in this Case.

## VI.

## THE PLAN OF REORGANIZATION

### A. Introduction

The Plan provides for a restructuring of the Debtor's financial obligations. The Debtor believes that the proposed restructuring will provide the Debtor with the necessary

liquidity to compete effectively in today's business environment, in connection with the development of a retail project.

The Debtor also believes, and will demonstrate to the Bankruptcy Court, that, under the Plan, creditors will receive substantially more value than they would receive in a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

The following is a general discussion of the provisions of the Plan. The Plan is attached as Exhibit 1 to this Disclosure Statement. In the event of any discrepancies, the terms of the Plan will govern.

## B. Plan Funding

The Plan is premised upon the funding of (i) up to $4,870,000 on the Effective Date in order to consummate the Plan and (ii) shortfalls, if any, from additional equity contributions by Newco (the "Equity Contribution") or development financing by Newco (the "Development Financing"). The specific names of the entities which will provide the Equity Contribution and the Development Financing (collectively, the "Plan Investors") will be provided in the Plan Supplement. The Plan Investors will make the Equity Contribution and the Development Financing via a newly formed limited liability company, Teca Group Investments LLC ("Newco").

## C. Classification and Treatment of Claims and Equity Interests Under the Plan of Reorganization

One of the key concepts under the Bankruptcy Code is that only claims and equity interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below. In general, an "allowed" claim or "allowed" equity interest simply means that the Debtor agrees, or in the event of a dispute, that the Bankruptcy Court determines, that the claim or equity interest, and the amount thereof, is in fact a valid obligation of the Debtor. By operation of sections 1111(a), 501(a) and 502(a) of the Bankruptcy Code, a claim or interest that appears in the schedules filed by the Debtor and is not identified as disputed, contingent, or unliquidated, is deemed "allowed" unless a party in interest objects. Additionally, section 502(a) of the Bankruptcy Code provides that a timely filed proof of claim or equity interest is deemed "allowed" (regardless of the Debtor's schedules) unless the debtor or other party in interest objects. However, section 502(b) of the Bankruptcy Code specifies certain claims that may not be "allowed" in bankruptcy even if a proof of claim is filed. These include, but are not limited to, claims that are unenforceable under the governing agreement between a debtor and the claimant or applicable non-bankruptcy law, claims for unmatured interest, property tax claims in excess of the debtor's equity in the property, claims for services that exceed their reasonable value, real property lease and employment contract rejection damage claims in excess of specified amounts, late-filed claims, and contingent claims for contribution and reimbursement.

The Bankruptcy Code requires that, for purposes of treatment and voting, a chapter 11 plan divide the different claims against, and equity interests in, a debtor into separate classes based upon their legal nature. Claims of a substantially similar legal nature are usually

classified together, as are equity interests of a substantially similar legal nature. Because an entity may hold multiple claims and/or equity interests which give rise to different legal rights, the "claims" and "equity interests" themselves, rather than their holders, are classified.

Under a chapter 11 plan, the separate classes of claims and equity interests must be designated either as "impaired" (affected by the plan) or "unimpaired" (unaffected by the plan). If a class of claims is "impaired," the Bankruptcy Code affords certain rights to the holders of such claims, such as the right to vote on the plan, and the right to receive, under the chapter 11 plan, no less value than the holder would receive if the debtor were liquidated in a case under chapter 7 of the Bankruptcy Code. Under section 1124 of the Bankruptcy Code, a class of claims or interests is "impaired" unless the plan (i) does not alter the legal, equitable and contractual rights of the holders or (ii)irrespective of the holders' acceleration rights, cures all defaults (other than those arising from the debtor's insolvency, the commencement of the case or nonperformance of a nonmonetary obligation), reinstates the maturity of the claims or interests in the class, compensates the holders for actual damages incurred as a result of their reasonable reliance upon any acceleration rights, and does not otherwise alter their legal, equitable and contractual rights. Typically, this means that the holder of an unimpaired claim will receive on the later of the consummation date or the date on which amounts owing are actually due and payable, payment in full, in Cash, with postpetition interest to the extent appropriate and provided for under the governing agreement (or if there is no agreement, under applicable nonbankruptcy law), and the remainder of the debtor's obligations, if any, will be performed as they come due in accordance with their terms. Thus, other than its right to accelerate the debtor's obligations, the holder of an unimpaired claim will be placed in the position it would have been in had the debtor's case not been commenced. Pursuant to section 1126(f) of the Bankruptcy Code, holders of unimpaired claims or interests are "conclusively presumed" to have accepted the plan. Accordingly, their votes are not solicited. Under the Plan, the Holders of Class 1 (Priority Non-Tax Claims) and Class 2 (Other Secured Claims) are unimpaired and conclusively presumed to accept the Plan.

Under certain circumstances, a class of claims or equity interests may be deemed to reject a plan of reorganization. For example, a class is deemed to reject a plan of reorganization under section 1126(g) of the Bankruptcy Code if the holders of claims or interests in such class do not receive or retain property under the plan on account of their claims or equity interests. Under this provision of the Bankruptcy Code, the holders of equity interests in Class 9 (Old Equity Interests) are deemed to reject the Plan because they receive no distribution and retain no property interest under the Plan. Because Class 9 (Old Equity Interests) are deemed to reject the Plan, the Debtor is required to demonstrate that the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to such class. Among these are the requirements that the plan be "fair and equitable" with respect to, and not "discriminate unfairly" against, the claims and equity interests in such class. For a more detailed description of the requirements for confirmation, see section IX.B below, entitled "CONFIRMATION OF THE PLAN OF REORGANIZATION -- Requirements for Confirmation of the Plan of Reorganization."

Consistent with these requirements, the Plan divides the Allowed Claims against, and Allowed Equity Interests in the Debtor into the following classes:

| Class | Designation | Impairment | Entitled to Vote |
|---|---|---|---|
| Class 1 | Priority Non-Tax Claims | Unimpaired | No |
| Class 2 | Secured Claim of Miami-Dade Tax Collector | Unimpaired | No |
| Class 3 | Secured Tax Certificate Claims | Unimpaired | No |
| Class 4 | Secured Prepetition Loan Claims | Impaired | Yes |
| Class 5 | Other Secured Claims | Impaired | Yes |
| Class 6 | Customer Deposit Claims | Impaired | Yes |
| Class 7 | General Unsecured Claims | Impaired | Yes |
| Class 8 | Deficiency Claim | Impaired | Yes |
| Class 9 | Old Equity Interests | Impaired | No (Deemed to Reject) |

**1. Unclassified**

**a. Administrative Expenses**

Administrative Expenses are the actual and necessary costs and expenses of the Debtor's Case that are allowed under sections 503(b), 507(a)(1) and 507(b) of the Bankruptcy Code. Such expenses will include, but are not limited to, amounts owed to vendors providing goods and services to the Debtor during the chapter 11 cases and tax obligations incurred after the Petition Date. Other Administrative Expenses include the actual, reasonable, and necessary professional fees and expenses of the Debtor's advisors incurred during the pendency of the Case.

Except to the extent that a Holder of an Allowed Administrative Expense agrees to a less favorable treatment, and except as provided in Section 2.1 of the Plan, as soon as reasonably practicable on or after the Effective Date, the Reorganized Debtor shall pay Cash in an amount equal to such Allowed Administrative Expense to each Holder of an Allowed Administrative Expense; *provided*, *however*, that Allowed Administrative Expenses representing liabilities incurred in the ordinary course of business by the Debtor, shall be assumed and paid by the Reorganized Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

All Persons seeking awards by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code shall (i) file, on or before the deadline specified in Local Rule 2016-1(c)(1), their respective applications for final

allowances of compensation for services rendered and reimbursement of expenses incurred and (ii) be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court (A) upon the later of (1) the Effective Date and (2) the date on which the order that deemed such Administrative Expense Allowed becomes a Final Order or (B) upon such other terms as may be mutually agreed upon by such Holder and the Reorganized Debtor. The Reorganized Debtor is authorized to pay compensation for professional services rendered and reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval. The Debtor estimates that on or about the Effective Date the Allowed amount of such Claims will aggregate approximately $750,000.

**b. Priority Tax Claims**

Priority Tax Claims essentially consist of unsecured claims of federal and state governmental authorities for the kinds of taxes specified in section 507(a)(8) of the Bankruptcy Code, such as certain income taxes, property taxes, excise taxes, and employment and withholding taxes. These unsecured claims are given a statutory priority in right of payment. The Debtor estimates that on the Effective Date, the Allowed amount of such Claims will aggregate approximately $0.

With respect to any Priority Tax Claims not paid pursuant to prior Bankruptcy Court order, except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, commencing on as soon as reasonably practicable on or after the Effective Date, and continuing over a period not exceeding five (5) years after the Petition Date, Cash payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with simple interest at the Applicable Rate, subject to the sole option of the Debtor or Reorganized Debtor to prepay the entire amount of the Allowed Priority Tax Claim at any time without penalty. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due.

**2. Classified**

The Plan provides for the treatment of each class of claims or interests as outlined below.

**Class 1 – Priority Non-Tax Claims**
(*Not Impaired; Not Entitled to Vote*)

Priority Non-Tax Claims include certain claims that are granted priority in payment under section 507(a) of the Bankruptcy Code, including certain wage, salary and other compensation obligations to employees of the Debtor up to a statutory cap of $10,000 per employee, and individual customer deposits for the purchase, lease or rental of property up to a statutory cap of $2,600 per Claim. The Debtor estimates that on the Effective Date, the allowed amount of such claims will aggregate approximately $104,000. However, such Claims shall be entitled to a Distribution under Class 6 of the Plan.

With respect to any Allowed Priority Non-Tax Claims not paid pursuant to prior Bankruptcy Court order, as soon as reasonably practicable on or after the Effective Date or the

date that is ten (10) days after the date such claim is Allowed, and except to the extent that a Holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, each Allowed Priority Non-Tax Claim shall be paid in full in Cash in accordance with the priorities set forth in section 507 of the Bankruptcy Code. All Allowed Priority Non-Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business.

To the extent a Holder of a Customer Deposit Claim receives a Distribution under Class 6, such Holder will not receive a Distribution under Class 1.

**Class 2 – Secured Claim of Miami-Dade Tax Collector**
(*Unimpaired; Not Entitled to Vote*)

Class 2 consists of the Secured Claim of Miami-Dade Tax Collector, which arises from ad valorem taxes due in respect of the Debtor's Property for tax years 2009 and 2010. The Debtor estimates that on the Effective Date, the Allowed amount of the Secured Claim of Miami-Dade Tax Collector will be approximately $829,126.60, plus statutory interest of approximately $150,000.

As soon as reasonably practicable on or after the Effective Date, the Miami-Dade County Tax Collector shall receive payment in full in Cash in the amount of any remaining 2009 and 2010 taxes owed to Miami-Dade County on the disbursement date, which shall include statutory interest in the event that the 2009 and 2010 taxes are delinquent at the time of payment; provided, however, that so long as either any Value Adjustment Board petitions or any action in the Circuit Court regarding the assessments of the Miami-Dade County Property Appraiser with respect to the taxed real or personal property are pending, such payment shall be limited to the amount of the good faith payment estimated to be due and owing by the Debtor, and in any event shall be applied toward satisfaction of the Allowed Secured Tax Claim. The Miami-Dade County Property Appraiser reserves his right to seek review pursuant to Florida law of Value Adjustment Board reductions of 2009 and subsequent years' assessments of the taxed real or personal property and, if as a result of such challenges taxes are owed, Debtor shall pay such taxes within the time prescribed by Florida law, and the payment of said taxes shall be secured by statutory liens attaching to said property pursuant to Florida law until payment in full is made. Further, in the event of the sale of taxed property during any period in which the valuation and tax liability of the said property may be in dispute, Debtor will give notice to potential purchasers of the tax dispute and provisions will be made for the payment of any resulting taxes.

**Class 3 – Secured Tax Certificate Claims**
(*Unimpaired; Not Entitled to Vote*)

Class 3 consists of the Allowed Secured Tax Certificate Claims. The Debtor estimates that on the Effective Date, the Allowed amount of such Claims will aggregate approximately $352,980.57, plus approximately $15,000 in interest.

As soon as reasonably practicable on or after the Effective Date, the Holders of Secured Tax Certificate Claims shall receive payment in full in Cash in the outstanding amount of the applicable Tax Certificate, including any accrued interest thereon; provided, however, that

so long as either any Value Adjustment Board petitions or any action in the Circuit Court regarding the assessments of the Miami-Dade County Property Appraiser with respect to the taxed real or personal property are pending, such payment shall be limited to the amount of the good faith payment estimated to be due and owing by the Debtor, and in any event shall be applied toward satisfaction of the Allowed Secured Tax Certificate Claim.

**Class 4 – Secured Prepetition Loan Claim**
(*Impaired; Entitled to Vote*)

Class 4 consists of the Allowed Secured Prepetition Loan Claim. Based upon an Appraised Value of $15,250,00 and after allowing for payment of real estate taxes, the Debtor estimates that on the Effective Date, the Allowed amount of the Allowed Secured Prepetition Loan Claim will be approximately $14,152,893, or if Brickell Central makes an election pursuant to §1111(b) of the Bankruptcy Code, $30,516,551. However, the exact Allowed amount of such Claim shall be determined from both the Appraised Value of the Property and the fair market value of the other collateral which secures such Claim.

As soon as reasonably practicable on or after the Effective Date, the Holder of the Allowed Secured Prepetition Loan Claim shall receive either (a) the New Brickell Central Note, if the Holder of the Allowed Secured Prepetition Note makes an election pursuant to § 1111(b) of the Bankruptcy Code, or (b) the New Senior Note, and from and after the Effective Date, the payments provided for thereunder, if the Holder of the Allowed Secured Prepetition Note does not make an election pursuant to § 1111(b) of the Bankruptcy Code

The New Brickell Central Note shall provide for the following terms: (i) an aggregate principal amount equal to the Prepetition Loan Claim; (ii) a maturity of seven (7) years from the Effective Date; (iii) solely as to the value of the Secured Prepetition Loan Claim, an interest rate of LIBOR plus 250 basis points, fixed for the first year, then adjustable quarterly; (iv) interest payable monthly in arrears; (v) principal in the amount of $300,000 payable annually for the first three (3) years, and thereafter principal in the amount of $700,000 payable annually until maturity; (vi) no prepayment penalty for payment of principal prior to maturity; and (vii) secured pursuant to the Mortgage by a first priority mortgage lien in and security interest on all of the Reorganized Debtor's assets.

The New Senior Note shall provide for the following terms: (i) an aggregate principal amount equal to the Secured Prepetition Loan Claim; (ii) a maturity of seven (7) years from the Effective Date; (iii) an interest rate of LIBOR plus 250 basis points, fixed for the first year, then adjustable quarterly; (iv) interest payable monthly in arrears; (v) principal in the amount of $150,000 payable annually for the first three (3) years, and thereafter principal in the amount of $350,000 payable annually until maturity; (vi) no prepayment penalty for payment of principal prior to maturity; and (vii) secured pursuant to the Mortgage by a first priority mortgage lien in and security interest on all of the Reorganized Debtor's assets.

A term sheet detailing additional terms with respect to the New Brickell Central Note and/or the New Senior Note as Exhibit "B".

**Class 5 – Other Secured Claims**
(*Impaired; Entitled to Vote*)

Class 5 consists of Allowed Other Secured Claims, which are secured Claims other than those classified in Classes 2, 3, 4, and as applicable, 6. The Debtor estimates that on the Effective Date, the Allowed amount of Other Secured Claims will aggregate approximately $0.

As soon as reasonably practicable on or after the Effective Date, except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder of an Allowed Other Secured Claim shall receive, at the sole option of the Debtor, payment in full in Cash in the amount of the Allowed Other Secured Claim, (b) reinstatement of the Allowed Other Secured Claim, (c) satisfaction by the surrender of the collateral securing such Allowed Other Secured Claim, or (d) a treatment that otherwise renders the Allowed Other Secured Claim unimpaired pursuant to section 1124 of the Bankruptcy Code.

**Class 6 – Customer Deposit Claims**
(*Impaired; Entitled to Vote*)

Class 6 consists of the Allowed Customer Deposit Claims. The Debtor estimates that on the Effective Date, the Allowed amount of such claims will consist of $3,909,956.24 as Secured Claims, $104,000 as Non-Tax Priority Claims, and $2,176,361.36 as General Unsecured Claims.

On May 26, 2011, the Debtor filed a motion to approve a settlement agreement (the "Settlement Agreement") with a proposed class of claimants. The proposed settlement class (the "Settlement Class") is defined as the persons listed on Exhibit "A" to the Settlement Agreement, including those parties who entered into an agreement with the Debtor to purchase a condominium unit at Capital at Brickell, provided such purchase agreement was not terminated prior to the Petition Date. The Settlement Class consists of persons and entities holding Class 6 Customer Deposit Claims. A final hearing to approve the Settlement Agreement was held on August 16, 2011, and subject to certain conditions regarding payment of related fees, the Bankruptcy Court finally approved the Debtor's entry into the Settlement Agreement.

The Settlement Agreement provided proposed class members (each, a "Class Member") with the opportunity to opt out of the class settlement if they wished to do so and further provided that Class Members electing not to participate in the benefits of the proposed settlement were entitled to vote on an individual basis. All Class Members elected to participate in the Settlement Agreement and therefore the proposed class representatives will vote on behalf of the entire Settlement Class.

The Settlement Agreement provides the following payment terms for Class Members, in full and complete satisfaction of any Claims held by such persons or entities against the Debtor's estate:

i. The Debtor will direct Escrow Agent to return to the Class Members the entire principal portion of their Remaining Deposits (as defined in the Settlement Agreement) and all interest accrued thereon pro rata, after

deducting attorneys' fees due to proposed counsel for the Settlement Class ("Class Counsel"). The interest accrued on the Class Members' deposits shall be provided by a schedule prepared by the Debtor, and verified by Class Counsel from the escrow account bank statements.

ii. In addition to receiving the above distributions, the Debtor shall amend the Plan to provide that, upon the effective date of the Plan or as soon as reasonably practicable thereafter, each Class Member will receive, to the extent such Class Member has an Allowed General Unsecured Claim against the Debtor: (i) the sum of up to $2,600 in respect of any priority unsecured Claim, provided such Class Member is an individual, and (ii) an amount equal to 20% of such Class Member's Net Unsecured Claim (as defined in the Settlement Agreement). The amount paid by the Debtor in respect of the Class Members' priority claims and the Net Unsecured Claims shall be paid as a distribution under the Debtor's plan of reorganization.

Pursuant to the terms of the Settlement Agreement, as soon as reasonably practicable after a Customer Deposit Claim is Allowed, each Holder of an Allowed Customer Deposit Claim shall receive, as applicable and solely to the extent not previously paid pursuant to the Settlement Agreement, (a) Cash in the amount of the principal balance of the Escrow Funds of the Holder on deposit with the Escrow Agent as of the Petition Date, to the extent not previously disbursed to such Holder by a prior order of the Bankruptcy Court, (b) Cash in the statutory amount of any Priority Non-Tax Claim pursuant to 11 U.S.C. § 507(a)(7), and (c) Cash in the amount of twenty percent (20%) of such Holder's Allowed Unsecured Customer Deposit Claim.

Such distribution shall be in full and final settlement of any and all claims asserted in any litigation instituted by any Holder of a Customer Deposit Claim, and all such litigation shall be dismissed with prejudice.

**Class 7 – General Unsecured Claims**
(*Impaired; Entitled to Vote*)

Class 7 consists of Allowed General Unsecured Claims, which generally include the Claims of trade and other business creditors for goods and services provided to the Debtor prior to the Petition Date, Claims for damages arising from the Debtor's rejection of executory contracts and unexpired leases, and Claims asserted in litigation in respect of events arising prior to the Petition Date.

The Debtor estimates that on the Effective Date, the amount of Allowed General Unsecured Claims will aggregate approximately $2,020,954.92.

On or as soon as reasonably practicable after the Effective Date, or the date that is ten (10) days after the date such claim is Allowed (whichever is later), each Holder of an Allowed General Unsecured Claim shall receive Cash in an amount equal to fifteen percent (15%) of such Allowed Claim.

**Class 8 – Deficiency Claim**
*(Impaired, Entitled to Vote)*

Class 8 consists of the Allowed Deficiency Claim. The Debtor estimates that as of the Effective Date, the amount of the Allowed Deficiency Claim will be approximately $16,363,658, or if Brickell Central makes an election pursuant to §1111(b) of the Bankruptcy Code, $0.

As soon as reasonably practicable after the Effective Date and provided that the Holder of the Secured Prepetition Loan Claim has not made an election pursuant to § 1111(b) of the Bankruptcy Code, the Holder of the Allowed Deficiency Claim shall be entitled to receive the New Junior Note and, from and after the Effective Date, the payments provided for thereunder. If the Holder of the Secured Prepetition Loan Claim makes an election pursuant to § 1111(b) of the Bankruptcy Code, then Class 8 shall not exist and all references herein or in the Plan to Class 8 shall be void.

The New Junior Note shall provide for the following terms: (i) an aggregate principal amount equal to the amount of the difference between (x) the Appraised Value of the Collateral, as of the Confirmation Date, and (y) the Prepetition Loan Claim, as of the Petition Date; (ii) a maturity of seven (7) years from the Effective Date; (iii) an interest rate of LIBOR plus 250 basis points, fixed for the first year, then adjustable quarterly; (iv) interest payable at maturity; (v) no prepayment penalty for payment of principal and interest prior to maturity; and (vi) secured by a mortgage lien and a security interest on all of the Property, subordinated solely to ad valorem taxes on the Property, the New Senior Note and the New Construction Financing. A term sheet detailing additional terms with respect to the New Junior Note will be attached to the Plan Supplement as Exhibit "A".

Brickell Central asserts that it may elect to waive its Class 8 unsecured claim and have its entire alleged Claim amount (consisting of the Class 4 Secured Prepetition Loan Claim and the Class 8 Deficiency Claim) treated as secured pursuant to Section 1111(b). In such case, Brickell Central would be entitled to receive aggregate payments equal to the full Allowed amount of its claim under the Plan. The Debtor has modified a prior version of the Plan to allow for BC to have the option to make an 1111(b) election. *See* Class 4 –Secured Prepetition Loan Claim, *infra*.

**Class 9 – Old Equity Interests**
(*Impaired; Deemed to Reject the Plan and Not Entitled to Vote*)

Class 9 consists of the Old Equity Interests, which include any and all shares of common stock, shares of preferred stock or other equity or ownership interests whatsoever in the Debtor, including all rights relating to any Equity Security, and all rights, interests, and Claims arising under or in connection with any agreements entered into by the Debtor in connection with the issuance, purchase or sale of such security.

On the Effective Date, the Old Equity Interests shall be cancelled and the Holders of Old Equity Interests shall not be entitled to, and shall not receive or retain, any property or

interest in property on account of such Old Equity Interests. On the Effective Date, all obligations of the Debtor to Holders of Old Equity Interests shall be completely discharged.

### 3. Nonconsensual Confirmation

If any impaired class of Claims entitled to vote shall not accept the Plan by the requisite majority provided in section 1126(c) of the Bankruptcy Code, the Debtor reserves the right to amend the Plan, undertake to have the Bankruptcy Court confirm the Plan under section 1129(b), of the Bankruptcy Code or both. With respect to the impaired class of Old Equity Interests (Class 9) that is deemed to reject the Plan, the Debtor shall request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

## D. Means of Implementing the Plan

### 1. Plan Contributions / New Partnership Interests

The Plan distributions will be funded, in part, by Newco through (i) the Equity Contribution made in the Reorganized Debtor in the amount of $5 million, and (ii) insider loans to be made by Newco to the Reorganized Debtor for development financing in the aggregate amount of $12.7 million. *See* Exhibits 4A, 4B, and 8A to this Disclosure Statement. Newco is an entity known as Teca Group Investments, LLC, which is owned in turn by Grupo GICSA S.A. de C.V. ("GICSA"). In exchange for the Equity Contribution, on the Effective Date, the Reorganized Debtor is authorized to issue 100% of its New Partnership Interests to Newco and the New General Partner, which is Teca Group Investments GP, LLC, without the need for any further partnership action and without any further action by Holders of Claims or Equity Interests. The Debtor shall use the Equity Contribution and the Development Financing to fund the Carry Cost Reserve in the amount of $205,000, the Interest Reserve in the amount of $162,031, and certain of the distributions provided for under the Plan. A description of the amortization of Development Financing is included in Exhibits 4A, 4B, and 8A to the Disclosure Statement. As a matter of disclosure, Elias Cababie and Abraham Cababie, who are principals of the Debtor, either directly or indirectly, are also shareholders of GICSA either directly or indirectly.

### 2. The New Brickell Central Note / New Notes

On the Effective Date, the Reorganized Debtor is authorized to (i) execute and deliver to Brickell Central either the New Brickell Central Note or the New Notes, as applicable, (ii) execute and deliver to Brickell Central any relevant modification to the Mortgage, which shall secure the New Brickell Note or the New Senior Note, as applicable, (iii) provided Brickell Central does not make an election pursuant to § 1111(b) of the Bankruptcy Code, execute and deliver to Brickell Central a subordinated mortgage to secure the New Junior Note, and (iv) incur the indebtedness and obligations provided under the New Brickell Central Note or the New Notes, as applicable, and perform such obligations, without the need for any further corporate or partnership action and without any further action by Holders of Claims or Equity Interests. Upon delivery of the New Notes, the Loan Agreement relating to the HSBC Loan, dated as of May 26, 2006, shall terminate.

It is the Debtor's position that payment in full to Brickell Central of the principal amount and accrued interest under the New Senior Note will enable Brickell Central to receive deferred cash payments with a value of at least the allowed amount of Brickell Central's interest in the Debtor's interest in the Property. Alternatively, payments to Brickell Central under the terms of the New Brickell Central Note will also provide Brickell Central with deferred cash payments with a value of at least the allowed amount of Brickell Central's interest in the Debtor's interest in the Property. Included in Exhibits 4A and 4B to this Disclosure Statement is a schedule of the projected amortization and repayment of the New Brickell Central Note or the New Notes, as appropriate, which describes these payments to Brickell Central, and attached as Exhibit 9 is a schedule that provides a net present value analysis of such payments.

**3. New Construction Financing**

In order to construct the planned Project, the Reorganized Debtor will be obtaining a construction loan in the amount of $60,000,000 from E-Group, the Construction Lender. Subsequent to the Effective Date, the Debtor is authorized to (i) execute and deliver to the Construction Lender the Construction Loan Note, and (ii) execute and deliver a mortgage to secure the Construction Loan Note, which mortgage shall be subordinate only to ad valorem taxes on the Property and either (a) the Mortgage securing the New Brickell Central Note or (b) the Mortgage securing the New Senior Note, as applicable. *See* Exhibits 4A, 4B, and 8A to this Disclosure Statement for a projection of the amount and timing of advances and repayments of the New Construction Financing. *See* Exhibit 8A for a description of the terms of the New Construction Financing.

**4. Cancellation of Existing Securities and Agreements**

On the Effective Date, the HSBC Loan Documents, all agreements, documents and instruments relating to the Old Equity Interests, and all Old Equity Interests shall be cancelled; *provided, however*, that the Mortgage shall continue in effect and shall secure either the New Brickell Central Note or the New Senior Note issued pursuant to the Plan, as applicable.

**5. Legal Form and Governance**

(1) New Organizational Documents. The Debtor, as may be specified in the Plan Supplement, shall be deemed to have adopted the New Organizational Documents effective as of the Effective Date. On the Effective Date, or as soon thereafter as practicable, the Debtor shall file the applicable New Organizational Documents as required or deemed appropriate, with the appropriate Persons in the applicable jurisdiction of organization. The New Organizational Documents shall provide for the New Partnership Interests, among other things, as deemed necessary, advisable, or appropriate by the New General Partner of the Reorganized Debtor. Except to the extent amended or restated by applicable New Organizational Documents, the Debtor’s Existing Organizational Documents will remain in full force and effect after the Effective Date.

(2) Management of the Reorganized Debtor. On the Effective Date, the operation of the Reorganized Debtor shall become the general responsibility of its

New General Partner, subject to, and in accordance with, its New Organizational Documents or Existing Organizational Documents. The New General Partner of the Reorganized Debtor, together with specific biographical information, shall be set forth in the Plan Supplement. The members of the New General Partner and Newco are entities that will be owned directly or indirectly by GICSA.

(3) Due Authorization. On the Effective Date, the adoption of the New Organizational Documents shall be authorized and approved in all respects, to be effective as of the Effective Date, in each case without further action under applicable law, regulation, order, or rule, including without limitation, any action by the partners or limited partners of the Debtor or the New General Partner or limited partners of the Reorganized Debtor. On the Effective Date, the cancellation and termination of all old Equity Interests, the authorization and issuance of the New Partnership Interests, and all other matters provided in the Plan involving the legal structure or governance of the Reorganized Debtor shall be deemed to have occurred, been authorized, and be in effect from and after the Effective Date, in each case without further action under applicable law, regulation, order, or rule, including, without limitation, any action by the New General Partner or limited partners of the Debtor or the Reorganized Debtor.

**6. Brief Summary of Business Plan**

In light of changing economic conditions, the Debtor has abandoned its original design concept of a high-rise condominium development in favor of a retail complex. Given the strong demographic composition of the surrounding area, the absence of suitable retail development, and the high density of urban office workers who frequent the area throughout the workweek, the Debtor has determined that an 8-story complex with over 270,000 square feet of retail space, plus full parking facilities, will provide the highest and best use for the Project site.

The Project will have all of the attributes of successful urban big box developments, including a high density of population, high disposable household income of local residents, convenient access to major thoroughfares, and ample parking. In addition, the Project boasts access to mass transit and tourist spending, as well as the ability to tap into a captive office population.

The Debtor has prepared a business plan regarding its planned retail project, which is attached as Exhibit 5 to this Disclosure Statement. Attached as Exhibits 4A and 4B to the Disclosure Statement is a schedule of the projected revenue and expenses associated with the development of the Debtor's planned retail facility.

**7. Project Design Team**

The Project design team includes architect Larry Beame, of Beame Architectural Partnership, and Rod Castan and Elias Vassilaros of Courtelis Company.

Beame Architectural Partnership is a full-service architecture, planning, and interior design firm specializing in the design of retail, entertainment, mixed-use, hospitality, and other facilities. The partnership has practiced in the local area for over twenty-five years (including a name change in May 1998). Beame Architectural Partnership has received design

awards for projects throughout the southeastern United States and Latin America, including awards for The Falls Shopping Center (Miami, Florida), The Streets of Mayfair (Coconut Grove, Florida), Dolphin Mall (Miami, Florida), Pointe Orlando (Orlando, Florida), Oceanside (Pompano Beach, Florida), TerraMall (San Jose, Costa Rica), and Shopping Center Iguatemi Rio (Rio de Janeiro, Brazil).

Courtelis Company ("Courtelis"), individually or as a joint venture partner, has been responsible for developing over five million square feet of retail facilities in the Florida market. Courtelis has developed retail facilities varying from 50,000 square foot neighborhood centers to 450,000 square foot specialty theme retail centers. Courtelis has been responsible for site planning, designing, constructing, leasing, and managing commercial developments.

A representative list of projects for Beame Architectural Group and an expanded list of qualifications for Courtelis are attached as Exhibit 11. Additional professionals will be added to the Project design team as construction on the project advances, including the general contractor, engineers, and landscape architects. A list of design construction professionals is included in Exhibit 5.

**8. Zoning Analysis and MUSP**

Under the City of Miami zoning code, Miami 21, adopted May 2010, development parameters and designs are structured in such a way that the architect can design the project, and as long as the project stays within the standards of Miami 21, no approvals are necessary to develop the project. In such case, the only requirement would be for the design drawings to be developed into construction drawings and a building permit to be applied for at the city building department. Construction drawings are estimated to take six to nine months. The general time frame to obtain a building permit once drawings are submitted to the city is approximately six to eight months. It is the Debtor's intention to further develop these design concepts consistent with the design standards of Miami 21 to eliminate any need for zoning approvals for the project, thus allowing the project to go directly to construction drawings and building permitting.

There is no site plan approval process at the City of Miami under the Miami 21 zoning code. Generally speaking, even when a developer can build a project as of Right, most jurisdictions require the developer to undergo a site plan approval process. However, under Miami 21, there is no site plan approval process; instead, so long as the developer meets the requirements of the Miami 21 zoning code, the developer is allowed to build as of Right. This means that, after preparing initial designs, the architect's next step is to produce construction drawings so that the developer can apply for a building permit. Upon submission, the City of Miami reviews the construction plans, verifies that they are in compliance with Miami 21, and grants a building permit.

The Debtor's agents have already met with the Planning and Zoning Director as well as the Zoning Administrator for the City of Miami about the Debtor's planned project presently known as Capital Brickell Place. Both the Director and the Administrator have verbally confirmed that the Debtor's project complies with the Miami 21 zoning code and may now proceed to construction drawings and building permits. Based upon the design chosen by

the Debtor, there are no exceptions or variances needed and no additional time required for the project to move forward.

In connection with the original project the Debtor had contemplated for this site, i.e., the Capital at Brickell condominium project, the Debtor obtained a Major Use Special Permit ("MUSP"). A copy of the Project Fact Sheet describing the MUSP is attached as page 1 of Exhibit 12. The MUSP resulted in the Debtor obtaining all of the entitlements it needs to build a project that includes 329,286 square fee of non-residential use, plus 1,185,430 square feet of residential use. This means that the site was approved for a much larger development that would have placed a greater burden on the roads, utilities and surrounding community than the project which the Debtor is planning to construct on the Property. The Debtor's current business plan, by contrast, contemplates the construction of 271,000 square feet of non-residential use, which is only 82.39% of permitted non-residential use under the MUSP, or 16% of the total residential and non-residential uses permitted for the Property under the MUSP.

In July 2011, the Debtor renewed the MUSP and accordingly the MUSP entitlements are in full force and effect. Under the six-year extension granted by the City of Miami, so long as the Debtor renews the MUSP each two years, the developer has until 2017 to obtain a building permit to enjoy the entitlements afforded by the MUSP.

In connection with obtaining the MUSP in 2005, Cabi SMA had to show that the original planned project at the Property consisting of approximately 1,700,000 square feet would not place an undue burden upon traffic, utilities, water and other local facilities. The issuance of the MUSP was based upon several administrative meetings with staff and public hearings, which required the submission of a traffic study, an economic impact study, a project analysis by utilities, and compliance with the City of Miami Comprehensive Plan.

The Debtor contemplates the balance of the design, construction and leasing schedule, as follows:

| **Activity** | **Months** |
|---|---|
| Construction drawings | 1-10 |
| Leasing | 1-12 |
| Permitting | 11-16 |
| Construction | 25-39 |

This schedule is further borne out by the Financial Projections which contemplate a 38-month period from the Effective Date before the Reorganized Debtor will begin receiving lease income to facilitate the payments due to creditors under the Plan. See Exhibits 4A and 4B.

While Miami 21 is a comprehensive zoning code that governs how developers must design their projects within the City of Miami, there are certain salient factors that the Debtor's architect took into account in designing the proposed Project to ensure compliance with Miami 21.

**9. Design Attributes**

Capital Brickell Place was designed as a retail and activity hub to anchor the South end of the South Miami Avenue commercial district. The shops and restaurant face the street welcoming customers. Glass facades are used to activate the pedestrian realm with the use of decorative storefronts, show windows and open public areas. The 20 foot deep sidewalk and public plaza lined with palm trees are incorporated to continue the trend of activity and pedestrian movement in the community. The plaza and sidewalks also provide open space and set-backs as required by the City of Miami Zoning Code Miami 21.

The development was designed to maximize on essential retail strategies and comply with "Miami 21" without the need for waivers and variances. The circulation, both pedestrian and vehicular, is carefully planned to be convenient, enhancing the shopping experience. The property is easily approached by pedestrians, from the Metro Mover and by a comfortable roadway system that surrounds the development. An abundance of glass elevators and escalators run through each floor allowing customers to reach their destination quickly.

The parking is located below and above the stores to maintain close proximity to customers. The upper parking levels are artistically screened from adjacent neighbors with a series of metallic screens that allow air to penetrate and offer visual interest. Impact to adjacent roadway system is minimized through the use of abundant vehicular stacking space within the parking areas eliminating the need for stores to block adjacent roadways while entering the project. In addition, parking was designed as a revenue generator with adequate space for toll devices, three lanes in and four lanes to exit. The number of parking spaces exceeds the minimum required by Miami 21. Instead the parking count is based on the number of spaces required to attract national tenants with strong credit ratings.

Each floor has been designed for the retail market offering flexibility in store sizes that accommodate a variety of tenants. On the upper levels store sizes from 8,000 square feet to not more than 55,000 square feet can be achieved. The ground level accommodates restaurants on the plaza and smaller service tenants. Each store has excellent visibility from common areas, plus exterior signage in accordance with "Miami 21" located along main pedestrian circulation routes.

The back-of-house service areas are screened from public view to diminish negative impact on the neighbors. All truck and service activities take place within a large enclosed service area. Freight elevators are positioned to deliver merchandize efficiently to upper level tenants.

The development is designed to the highest standards of urban retail centers and with its unique location in this market Capital Brickell Place is destined to be a successful income producing property.

**10. Project Financing**

GICSA will be acting as the equity sponsor of the reorganized debtor and E-Group will be the construction lender for the Project. The Debtor has provided or will be providing copies of GICSA's financial statements for the years 2007-2011 to the Court under

seal, and to Brickell Central pursuant to a confidentiality agreement. The Debtor has also provided a bank reference letter for E-Group attached as part of Exhibit 13 to this Disclosure Statement.

GICSA has extensive experience in retail development, having developed over 6.8 million square feet in retail developments in Mexico. Founded in 1989, GICSA has also developed over 12 million square feet of commercial centers, corporate offices, industrial spaces, hotels, and luxury residential real estate projects. An extensive list of retail, office, industrial, and residential developments is included in Exhibit 13 to this Disclosure Statement.

E-Group, the construction lender, has partnered with GICSA on millions of square feet of retail projects in Mexico and is a well-respected Mexican real estate development company with over 35 years of experience. E-Group has over 200 projects throughout Mexico, and has worked with over 2500 clients and suppliers. E-Group enjoys an excellent reputation as one of the premier developers in Mexico, with a development portfolio that includes a vast array of retail, corporate, industrial, and residential developments. Photographs and descriptions of various E-Group projects are included in Exhibit 13 to this Disclosure Statement.

**11. Refinancing of the Project and Projections**

At maturity of the New Brickell Central Note or the New Notes, as applicable, the Reorganized Debtor will refinance the Project through a permanent financing source. *See* Exhibits 4A and 4B to this Disclosure Statement. Based upon (i) a projected valuation of $120,000,000 in year 7, (ii) a normalized capitalization rate on then-existing net operating income of approximately $8.4 million, and (iii) total third party debt of approximately $87 million, the Debtor does not anticipate any problem with obtaining this permanent loan facility, as the loan to value ratio will be approximately 70% and the coverage ratio will be 1.25 to 1 or better.

The Debtor has prepared proforma financial projections of the cash sources and cash uses associated with the development of the Project on the Property. See attached Exhibits 4A and 4B. During the first two years after the Effective Date, the Reorganized Debtor will be finalizing the construction drawings and obtaining the necessary building permits, prior to commencing construction. Also during the first two years , the leasing agent will be negotiating with proposed tenants and signing leases for the project upon completion of construction. On the Effective Date and during the first two years after the Effective Date, the Reorganized Debtor will be drawing down $5 million from an equity investment by Newco and $15 million in an insider loan from GICSA., the parent of Newco, to cover pre-construction disbursements, including leasing commissions, impact fees, permits and municipal fees, real estate taxes and principal and interest payments on the Senior Note, as well as project administration costs.

Construction activity will commence in the twenty-fifth month after the Effective Date and is expected to take approximately 15 months. During the construction phase of the Project development, the Reorganized Debtor will begin to draw down on the $60 million construction loan it is obtaining from E Group, with approximately $49 million being drawn in the third year, and approximately $11 million being drawn in the fourth year. Tenants will begin taking occupancy of the Project immediately after construction is complete, in the spring of the

fourth year after the Effective Date. The lease income is projected to provide approximately $7 million of net operating revenue in the fourth year, after allowing for vacancy, commissions and other expenses. In the fifth year after the Effective Date, the Project is projected to yield net operating revenue of approximately $11 million (full year of operations), derived from rental income and other income (principally from advertising, cart and parking) Throughout the post-Effective Date period until maturity in year seven, the Reorganized Debtor will be paying principal and interest to Brickell Central, as holder of the senior land loan, as well as interest on the construction loan. No repayment of principal or interest, will be paid on the $15 million insider loan, until the obligations due Brickell Central and the Construction Lender are paid in full.

Through the entire pre-construction, construction, and post-construction periods, the Reorganized Debtor is projected to have positive cumulative cash flow from operations and financing. By year seven, when the Reorganized Debtor is obligated to refinance its outstanding debt, the Reorganized Debtor will have accumulated approximately $15.4 million in free cash. Because GICSA will be precluded from collecting on its insider loan until Brickell Central and the Construction Lender are paid in full, the Reorganized Debtor will be incentivized to refinance its debt at the earliest possible date. In year seven, when the obligations due Brickell Central and the Construction Lender mature, the Reorganized Debtor will not have any problem in retiring these obligations, as the Reorganized Debtor will have a $20 million dollar investment, over $15 million in accumulated cash and will be able to either refinance the Project, issue commercial paper, bring in addition equity or sell the Project if necessary. In year seven, net operating income is projected to be approximately $8.4 million. Utilizing an interest coverage ratio of 1.35, and with available cash of $15.4 million, the Reorganized Debtor will be able to qualify for a permanent loan of approximately $95 million, which will be more than sufficient to satisfy in full the remaining obligations due Brickell Central and the Construction Lender in the aggregate amount of approximately $87.5 million. Alternatively, if the Reorganized Debtor decides to sell the Project, applying a market capitalization rate of 7% to net operating income of $8.4 million, the Project is expected to be worth approximately $120 million, which should also generate sufficient cash to retire the debt obligations of the Reorganized Debtor.

The proposed plan is clearly a highly desirable project from the point of view of the potential tenants, the city, most creditors of the estate and from an economic point of view as outlined above. While the project will require a substantial equity and insider loan totaling $20 million, the Debtor and GICSA are excited and confident about the potential of this project. The project is so desirable, Brickell Central, the holder of the HSBC loan and a direct competitor of the Debtor, purchased the senior note and adjacent property in anticipation of being able to foreclose and develop the Debtor's Property.

Brickell Central disputes that it is a direct competitor of the Debtor and disputes that it purchased the senior note in anticipation of being able to foreclose and develop the Debtor's Property.

## E. Securities Law Matters

### 1. Exemptions from Registration

To the extent that the New Brickell Central Note, the New Notes or the New Partnership Interests constitute "securities," the issuance of either the New Brickell Central Note or the New Notes, as applicable, and the New Partnership Interests (to the extent such interests constitute "securities," they are hereinafter collectively referred to as the "New Securities") pursuant to the Plan shall be exempt from any securities law registration requirements pursuant to section 4(2) of the Securities Act of 1933 (the "Securities Act") (or Regulation D promulgated thereunder) and similar provisions of applicable state securities laws.

Section 4(2) of the Securities Act provides that the issuance of securities by an issuer in a transaction not involving any public offering is exempt from registration under the Securities Act. Regulation D is a non-exclusive safe-harbor promulgated by the United States Securities and Exchange Commission (the "Commission") under the Securities Act related to, among other things, section 4(2) of the Securities Act. The term "issuer," as used in section 4(2) of the Securities Act, means, among other things a person who issues or proposes to issue any security.

The New Securities will be "restricted securities" under applicable federal securities laws upon issuance on the Effective Date. The Securities Act and the rules of the Commission provide in substance that the holders may dispose of the New Securities only pursuant to an effective registration statement under the Securities Act or an exemption therefrom. However, the Debtor has no obligation or intention to register any of the New Securities, or to take action so as to permit sales pursuant to the Securities Act (including Rule 144 thereunder). Accordingly, under the Commission's rules, the holders may dispose of the New Securities principally only in "private placements" which are exempt from registration under the Securities Act, in which event the transferee will acquire "restricted securities" subject to the same limitations as in the hands of the holders. As a consequence, the holders must bear the economic risks of the New Securities for an indefinite period of time. There is no public market for the New Securities and such a public market may never develop.

The instruments that evidence the New Securities will bear a legend substantially in the form below:

> **THE ISSUANCE OF THE SECURITIES EVIDENCED BY THIS INSTRUMENT HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SUCH LAWS. SUCH SECURITIES MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE OFFERED FOR SALE, SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID ACT AND ANY APPLICABLE SECURITIES LAWS OF ANY STATE AND OTHER JURISDICTION.**

The Debtor makes no representations concerning the right of any person to transfer any securities to be distributed pursuant to the Plan.

**2. Exemption from Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the New Brickell Central Note or the New Notes, as applicable, the New Partnership Interests, any merger agreements, or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

**3. Expedited Tax Determination**

The Debtor and the Reorganized Debtor are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Debtor for any and all taxable periods (or portions thereof) ending before or after the Petition Date through, and including, the Effective Date.

**F. Plan Provisions Governing Distribution**

**1. Date of Distributions**

Unless otherwise provided herein, any distributions and deliveries to be made hereunder shall be made on the Effective Date or as soon as practicable thereafter and deemed made on the Effective Date. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**2. Distributions Concerning Customer Deposit Claims**

Customer Deposit Claim Reserve. From and after the Effective Date, all Cash to be distributed on account of any Allowed Customer Deposit Claim (i) will be maintained by and in the name of the Disbursing Agent in the Customer Deposit Claim Reserve until all objections relating to any such Customer Deposit Claim have been resolved by settlement or Final Order, and will be held in trust pending distribution by the Disbursing Agent for the benefit of the Holders of such Claims, (ii) will be accounted for separately, and (iii) will not constitute property of the Reorganized Debtor except as provided in Section 7.3 of the Plan. The Disbursing Agent will invest any Cash in a manner consistent with the investment and deposit guidelines applicable to funds maintained by bankruptcy trustees.

Reserved Amount. The Customer Deposit Claim Reserve will be funded by escrow funds currently held by the Escrow Agent for the Reorganized Debtor and will be funded in the amount of (i) the principal balance of the Allowed Amount of Secured Customer Deposit

Claims (unless such balance has previously been distributed by the Escrow Agent pursuant to an order of the Bankruptcy Court), plus (ii) an amount equal to the number of such Allowed Claims held by any individuals (in the event any portion of such individual's Claim is unsecured), times $2,600, in respect of the Non-Tax Priority Claims of such individuals, plus (iii) an amount equal to twenty percent (20%) of the Allowed Amount of Unsecured Customer Deposit Claims; *provided, however*, that any amounts payable under the Settlement Agreement that have been distributed to Class Members prior to the Effective Date will not be funded and may be excluded from the Customer Deposit Claim Reserve.

Recourse. Each Holder of a Customer Deposit Claim will have recourse only to the undistributed Cash held in the Customer Deposit Claim Reserve for satisfaction of the distributions to which Holders of Allowed Customer Deposit Claim are entitled under the Plan, and not to the Reorganized Debtor, its property, or any assets previously distributed on account of any other Allowed Claim.

**3. Distributions Concerning General Unsecured Claims**

General Unsecured Claim Reserve. From and after the Effective Date, all Cash to be distributed on account of any Allowed General Unsecured Claim (a) will be maintained by and in the name of the Disbursing Agent in the General Unsecured Claim Reserve until all litigation relating to any General Unsecured Claim has been resolved by settlement or Final Order, (b) will be held in trust pending distribution by the Disbursing Agent for the benefit of the Holders of such Claims, (c) will be accounted for separately, and (d) will not constitute property of the Reorganized Debtor except as provided in Section 7.3 of the Plan. The Disbursing Agent will invest any Cash in a manner consistent with the investment and deposit guidelines applicable to funds maintained by bankruptcy trustees.

Reserved Amount. The amount of Cash to be placed in the General Unsecured Claim Reserve shall be an amount equal to fifteen percent (15%) of the aggregate amount of all Allowed General Unsecured Claims, to be shared pro rata by the Holders of Allowed General Unsecured Claims.

Recourse. Each Holder of a General Unsecured Claim will have recourse only to the undistributed Cash held in the General Unsecured Claim Reserve for satisfaction of the distributions to which Holders of Allowed General Unsecured Claims are entitled under the Plan, and not to the Reorganized Debtor, its property or any assets previously distributed on account of any other Allowed Claim.

**4. Disbursing Agent**

All distributions under the Plan shall be made by the Reorganized Debtor as Disbursing Agent or such other entity designated by the Reorganized Debtor as a Disbursing Agent on the Effective Date, which Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

**5. Rights and Powers of Disbursing Agent**

**a. Powers of the Disbursing Agent**

The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (ii) make all distributions contemplated hereby, (iii) employ professionals to represent it with respect to its responsibilities, if necessary, and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

**b. Expenses Incurred On or After the Effective Date**

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtor.

**6. Delivery of Distributions**

**a. Last Known Address**

Subject to Bankruptcy Rule 9010, all distributions to any Holder of an Allowed Claim shall be made at the address of such Holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtor or its agents, as applicable, unless the Debtor or Reorganized Debtor has been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim or interest by such Holder that contains an address for such Holder different from the address reflected for such Holder on the Schedules. In the event that any distribution to any Holder is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of such Holder, but no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of the later of one year from the Effective Date or 6 months after such Claim is Allowed. After such date, all unclaimed property or interest in property shall revert to the Reorganized Debtor, and the Claim of any other Holder to such property or interest in property shall be discharged and forever barred.

**b. Distributions for Allowed Secured Prepetition Loan Claims**

Distributions required under the Plan to the Holder of the Allowed Prepetition Loan Claim in Classes 4 and 8 shall be made to Brickell Central, in accordance with any and all documents relating to the HSBC Loan, as amended by any relevant documents included in the Plan Supplement.

**7. Manner of Payment**

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements.

All distributions of Cash, the New Brickell Central Note or the New Notes, as applicable, or the New Partnership Interests to the Holders of Claims against the Debtor under the Plan shall be made by, or on behalf of, the Reorganized Debtor.

**8. Setoffs and Recoupment**

The Debtor may, but shall not be required to, set off against, or recoup from, any Claim and the payments to be made pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever that the Debtor may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Reorganized Debtor of any such claim it may have against such claimant.

**9. Allocation of Plan Distributions Between Principal and Interest**

Except as otherwise provided herein, to the extent that any Allowed Claim entitled to a distribution under the Plan consists of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

**10. De Minimis Distributions Less Than $25.00**

No distribution of less than Twenty-Five Dollars ($25.00) shall be made to any Holder of an Allowed Claim. Such undistributed amount will be retained by the Reorganized Debtor.

**11. Withholding and Reporting Requirements**

In connection with the Plan and all distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such withholding tax obligations. Any property to be distributed pursuant to the Plan shall, pending the

implementation of such arrangements, be treated as an undeliverable distribution pursuant to Section 6.6(a) of the Plan.

## G. Procedures for Treating Disputed Claims

### 1. Objections

Except as otherwise provided herein, as of the Effective Date, objections to, and requests for estimation of, Claims may be interposed and prosecuted only by the Reorganized Debtor. Such objections and requests for estimation shall be served on the respective claimant and filed with the Bankruptcy Court on or before the latest of (a) the deadline established under Local Rule 3007-1(B)(1), (b) sixty (60) days after a proof of Claim has been filed with the Bankruptcy Court, (c) sixty (60) days after an application for allowance of an Administrative Expense has been filed with the Bankruptcy Court in the Case, or (d) with respect to certain Claims identified prior to the Confirmation Date by the Debtor, such other date as may be fixed by the Bankruptcy Court.

### 2. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, if any portion of a Claim is Disputed, no payment or distribution provided under the Plan shall be made on account of such Claim unless and until such Disputed Claim becomes Allowed.

### 3. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan. Any amounts that remain in the Customer Deposit Claim Reserve or the General Unsecured Claim Reserve following resolution and payment of all Allowed Customer Deposit Claims and Allowed General Unsecured Claims shall be retained by the Reorganized Debtor.

## H. Provisions Governing Executory Contracts and Unexpired Leases

### 1. Treatment

Except as otherwise provided herein, including in Section 10.5 (Indemnification Obligations), in the Confirmation Order or other order of the Bankruptcy Court, or in any contract, instrument, release, indenture, or other agreement, or document entered into in connection with the Plan, as of the Effective Date the Debtor shall be deemed to have rejected each pre-petition executory contract and unexpired lease to which it is a party, unless such contract or lease (a) was previously assumed or rejected by the Debtor, (b) previously expired or terminated pursuant to its own terms, (c) is the subject of a motion to assume filed on or before the Confirmation Date, or (d) is set forth in the Plan Supplement, as an executory contract or unexpired lease to be assumed. The Confirmation Order shall constitute an order of the

Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving the contract and lease assumptions or rejections described above, as of the Effective Date.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property shall include (a) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements has been rejected pursuant to an order of the Bankruptcy Court.

**2. Purchase Agreements**

Except and to the extent previously assumed pursuant to an order of the Bankruptcy Court entered on or before the Confirmation Date, all Purchase Agreements deemed executory contracts assumable by the Debtor pursuant to section 365(a) of the Bankruptcy Code, shall be deemed rejected pursuant to the Confirmation Order.

**3. Cure Payments**

Any monetary amounts by which any executory contract or unexpired lease to be assumed hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor. If there is a dispute regarding (i) the nature or amount of any Cure, (ii) the ability of the Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (iii) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be.

**4. Rejection Damage Claims**

Proofs of all Claims arising out of the rejection of executory contracts and unexpired leases pursuant to the Plan shall be filed with the Bankruptcy Court, with proper supporting documentation detailing the calculation of such claim, and served upon the Debtor and its counsel not later than thirty (30) days after the earlier of (a) the date on which notice of the occurrence of the Effective Date has been served and (b) the date of entry of an order of the Bankruptcy Court approving such rejection. Any Claims not filed within such time shall be forever barred from assertion against the Debtor, its Estate, the Reorganized Debtor, and their respective properties and interests.

## I. Conditions Precedent to Confirmation

The Plan shall not be confirmed unless and until the following conditions have been satisfied or waived in accordance with Article IX of the Plan: (a) the Confirmation Order, in form and substance satisfactory to the Debtor has been entered on the docket maintained by

the Clerk of the Bankruptcy Court; and (b) the Plan, all exhibits thereto, and the Confirmation Order are acceptable in form and substance to the Debtor and Newco.

## J. Conditions Precedent to Effectiveness

### 1. Conditions Precedent

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions are satisfied in full or waived in accordance with Article IX of the Plan:

(1) All amounts to be paid by Newco on the Effective Date as the Equity Contribution are indefeasibly paid in full, in Cash;

(2) All actions and all agreements, instruments, or other documents necessary to implement the terms and provisions of the Plan, including those actions identified in Article V of the Plan, are effected or executed and delivered, as applicable, in form and substance satisfactory to the Debtor; and

(3) All authorizations, consents, and regulatory approvals, if any, required by the Debtor in connection with the consummation of the Plan are obtained and not revoked.

### 2. Waiver of Conditions

Each of the conditions precedent of the Plan may be waived, in whole or in part by the Debtor. Any such waivers may be affected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action. The Debtor has not included the impact of such waivers in its projections because (i) it is not anticipated that the Debtor will waive any of the conditions precedent, and (ii) even if the Debtor were to waive one of the conditions precedent as part of a refinancing, such waiver would not impact the anticipated Distributions to be made under the Plan.

### 3. Satisfaction of Conditions

Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Debtor determines that one of the conditions precedent set forth in Section 9.2 of the Plan cannot be satisfied and the occurrence of such condition is not waived or cannot be waived, then the Debtor shall file a notice of the failure of the Effective Date with the Bankruptcy Court and the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant Section 9.2 of the Plan, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims against the Debtor or the allowance of any Claim as an Allowed Claim.

## K. Effect of Confirmation

### 1. Revesting of Assets

On the Effective Date, the Debtor, its properties and interests in property, and its operations shall be released from the custody and jurisdiction of the Bankruptcy Court, and all property of the Estate of the Debtor, including any pre-paid expenses and deposits with vendors, shall vest in the Reorganized Debtor. From and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, subject to the terms and conditions of the Plan. As provided in Section 10.8 of the Plan, the Reorganized Debtor shall retain the Estate Causes of Action, other than those released in Section 10.8 of the Plan.

### 2. Binding Effect

Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtor and such holder's respective successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Plan, whether or not such holder has accepted the Plan, and whether or not such holder is entitled to a Distribution under the Plan.

### 3. Discharge of Debtor

Except to the extent otherwise provided herein or in the Confirmation Order, the rights afforded in the Plan and the treatment of all Claims against or Equity Interests in the Debtor hereunder shall be in exchange for and in complete satisfaction, discharge, and release of all debts of, Claims against, and Equity Interests in, the Debtor of any nature whatsoever, known or unknown, including, without limitation, any interest accrued or expenses incurred thereon from and after the Petition Date, or against its Estate, the Reorganized Debtor, or its properties or interests in property. Except as otherwise provided herein or in the Confirmation Order, upon the Effective Date, all Claims against and Equity Interests in the Debtor shall be satisfied, discharged and released in full exchange for the consideration, if any, provided hereunder. Except as otherwise provided herein or in the Confirmation Order, all Persons shall be precluded from asserting against the Debtor or the Reorganized Debtor or its properties or interests in property, including the Property, any other Claims based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

### 4. Term of Injunctions or Stays

(1) Except as otherwise expressly provided herein or in the Confirmation Order, all Persons who have held, hold or may hold Claims or Equity Interests will be permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Equity Interest against the Debtor or Reorganized Debtor, or its Affiliates or Representatives, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest, (iii) creating, perfecting, or enforcing any encumbrance of any

kind against the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, or against the property or interests in property, including the Property, of the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest, and (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due to the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, or against the property or interests in property of the Debtor or Reorganized Debtor, or their respective Affiliates or Representatives, with respect to such Claim or Equity Interest.

(2) Unless otherwise provided in the Confirmation Order, all injunctions or stays arising under or entered during the Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until and after the Effective Date.

(3) In furtherance of the foregoing, on and after Effective Date, any "fifty percent shareholder" (within the meaning of section 382(g)(4)(D) of the Tax Code) shall be enjoined from claiming a worthless stock deduction with respect to any Equity Interests held by such Person for any taxable year of such shareholder ending prior to the Effective Date.

(4) As long as the Debtor continues to perform its duties and obligations under the Plan as provided herein, including payment of the New Brickell Central Note or the New Notes, as applicable, Brickell Central, its Affiliates, and any successor to or partner in interest with Brickell Central shall be enjoined from enforcement of any claim or obligation with respect to the Guarantees. The use of a post-confirmation injunction to preclude a secured creditor from enforcing a nondebtor guarantee so long as the reorganized debtor is performing under its plan was approved by the United States Bankruptcy Court for the Middle District of Florida in *In re Safety Harbour Resort and Spa*, Case No. 10-25886, 2011 WL 3849639, at *2-3 (Bankr. M.D. Fla. Aug. 30, 2011).

**5. Indemnification Obligations**

The Debtor's obligations under the Corporate Indemnities to indemnify any Indemnified Person with respect to Claims arising prior to the Effective Date will be deemed and treated as executory contracts that are assumed by the Reorganized Debtor pursuant to the plan and sections 365 and 1123(b) of the Bankruptcy Code as of the Effective Date and the occurrence of the Effective Date shall be the only condition necessary to such assumption and all requirements for Cure and/or adequate assurance of future performance under section 365 for such assumption shall be deemed satisfied (the "Assumed Corporate Indemnities").

**6. Exculpation**

As of the Confirmation Date, the Debtor and its Affiliates and Representatives shall be deemed to have solicited acceptances of the Plan of Reorganization in good faith and in compliance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The Debtor, the Reorganized Debtor, the Disbursing Agent, and each of their respective

Affiliates and Representatives shall have no liability to any Holder of any Claim or Equity Interest or any other Person for any act or omission taken or not taken in good faith in connection with, or arising out of, the Case, the Disclosure Statement, the Plan, the solicitation of votes for and the pursuit of confirmation of the Plan, the offer and issuance of any securities under the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence as determined by a Final Order and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**7. Releases**

**FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING, BUT NOT LIMITED TO, THE DISTRIBUTIONS TO BE MADE UNDER THE PLAN, AND THE PLAN CONTRIBUTIONS, EFFECTIVE AS OF THE EFFECTIVE DATE, EACH RELEASEE IS HEREBY RELEASED BY ALL OF THE CREDITORS OF THE DEBTOR, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD ANY CLAIM OR EQUITY INTEREST, ALL OTHER PERSONS, THE DEBTOR, THE ESTATE, AND THE REORGANIZED DEBTOR FROM ANY AND ALL CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, DIRECTLY OR INDIRECTLY ARISING FROM OR RELATED TO THE DEBTOR, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, OR OTHERWISE, THAT ANY OF THE CREDITORS OF THE DEBTOR, ANY PERSONS WHO HAVE HELD, HOLD OR MAY HOLD ANY CLAIM OR EQUITY INTEREST, ANY OTHER PERSONS, THE DEBTOR, THE ESTATE OR THE REORGANIZED DEBTOR WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN ITS OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR THAT ANY CREDITORS OF THE DEBTOR, ANY PERSONS WHO HAVE HELD, HOLD OR MAY HOLD ANY CLAIM OR EQUITY INTEREST, OR ANY OTHER PERSON WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT ON BEHALF OF THE DEBTOR OR THE ESTATE OR THE REORGANIZED DEBTOR, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE, INCLUDING WITHOUT LIMITATION, CLAIMS, ACTIONS, AND CAUSES OF ACTION ARISING FROM ACTIONS TAKEN OR NOT TAKEN IN GOOD FAITH IN CONNECTION WITH THE CASE, THE PLAN, THE GUARANTEES, ALL AGREEMENTS, DOCUMENTS AND INSTRUMENTS RELATING TO THE OLD EQUITY INTERESTS, AND THE RESTRUCTURING OF THE DEBTOR AND OTHER TRANSACTION CONTEMPLATED BY THE PLAN; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL BE DEEMED TO RELEASE ANY RIGHTS, CLAIMS, OR INTERESTS THAT ANY SUCH PARTY MAY BE RECEIVING OR RETAINING PURSUANT TO THE PLAN ON OR AFTER THE EFFECTIVE DATE; AND PROVIDED FURTHER THAT ANY PERSON WHO IS OBLIGATED UNDER A GUARANTY IN RESPECT OF THE HSBC LOAN SHALL NOT BE RELEASED FROM HIS OBLIGATIONS THEREUNDER AS A RESULT OF CONFIRMATION OF THE PLAN. ALL PERSONS SHALL BE PRECLUDED AND PERMANENTLY ENJOINED**

**FROM ASSERTING AGAINST THE RELEASEES, AND THEIR RESPECTIVE ASSETS AND PROPERTIES, ANY AND ALL CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER WHICH ARE RELEASED UNDER THIS SECTION 10.7. ANY PERSON INJURED BY ANY WILLFUL VIOLATION OF SUCH INJUNCTION SHALL RECOVER ACTUAL DAMAGES, INCLUDING COSTS AND ATTORNEYS' FEES, AND, IN APPROPRIATE CIRCUMSTANCES, MAY RECOVER PUNITIVE DAMAGES, FROM THE WILLFUL VIOLATOR.**

**8. Causes of Action**

Effective as of the Effective Date, Estate Causes of Action, including all preference or other avoidance action claims and actions of the Debtor arising under chapter 5 of the Bankruptcy Code shall be retained by the Reorganized Debtor, provided, however, that any such Estate Causes of Action against any current officers or directors of the Debtor, or any of its respective Representatives or Affiliates, are released and extinguished.

**L. Retention of Jurisdiction**

The Bankruptcy Court shall have exclusive jurisdiction of all matters, except as expressly noted herein, arising out of, or related to, the Case and the plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

1. To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims including any Administrative Expenses resulting therefrom;

2. To determine any and all adversary proceedings, applications, and contested matters that are pending on the Effective Date;

3. To ensure that distributions to Holders of Allowed Administrative Expenses and Allowed Claims are accomplished as provided herein;

4. To hear and determine any timely objections to, or requests for estimation of, Administrative Expenses or proofs of claims, including, without limitation, any objections to the classification of any Administrative Expense, Claim or Equity Interest, and to allow or disallow any Disputed Administrative Expense or Disputed Claim, in whole or in part;

5. To resolve disputes as to the ownership of any Administrative Expense, Claim or Equity Interest;

6. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

7. To issue such orders in aid of execution of the plan, to the extent authorized by section 1142 of the Bankruptcy Code;

8. To consider any amendments to or modifications of the plan, or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

9. To hear and determine all applications of retained professionals under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date;

10. To hear and determine disputes or issues arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated hereby, any agreement, instrument, or other document governing or relating to any of the foregoing, or any settlement approved by the Bankruptcy Court;

11. To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including, without limitation, any request by the Debtor prior to the Effective Date, or request by the Reorganized Debtor after the Effective Date, for an expedited determination of tax under section 505(b) of the Bankruptcy Code);

12. To hear any other matter not inconsistent with the Bankruptcy Code;

13. To hear and determine all disputes involving the existence, scope, and nature of the discharges, releases and injunctions granted under the Plan, the Confirmation Order, or the Bankruptcy Code;

14. To issue injunctions and effect any other actions that may be necessary or desirable to restrain interference by any Person with the consummation or implementation of the Plan;

15. To enter a final decree closing the Case; and

16. To hear any claim, matter or chose in action, whether or not it has been commenced prior to the Effective Date, that the Debtor or Reorganized Debtor may prosecute, including any Estate Causes of Action which has not been liquidated prior to the Effective Date, including, without limitation, any matter for which the United States District Court for the Southern District of Florida (the "District Court") may also have concurrent jurisdiction, in which case the claim, matter, or chose in action may also be heard by the District Court.

## M. Miscellaneous Provisions

### 1. Payment of Statutory Fees

All fees payable under section 1930, chapter 123, title 28, United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. All such fees that arise after the Effective Date shall be paid by the Reorganized Debtor.

The obligation of the Reorganized Debtor to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code shall continue until such time as the Case is Closed, dismissed or converted.

**2. Modification of Plan**

The Plan may be modified by the Debtor, in accordance with section 1127 of the Bankruptcy Code.

**3. Revocation of Plan**

The Debtor reserves the right, at any time prior to the entry of the Confirmation Order, to revoke and withdraw the Plan.

**4. Severability of Plan Provisions**

In the event that, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable in accordance with its terms.

**5. Governing Law**

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan or Plan Supplement provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without giving effect to the principles of conflict of laws.

**6. Compliance with Tax Requirements**

In connection with the consummation of the Plan, any party issuing any instrument or making any distribution under the Plan, including the Reorganized Debtor and the Disbursing Agent, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan

has the right, but not the obligation, to not make a distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

**7. Computation of Time.**

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

**8. Notices.**

All notices, requests, and demands to or upon the Debtor to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Cabi SMA Tower I, LLLP
19950 West Country Club Drive
Suite 900
Aventura, FL 33180
Attn: Elias Amkie Levy
Facsimile: (305) 466-1877
Email: eamkie@cabicorp.com

- and –

Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue
Suite 2300
Miami, FL 33131
Attn: Mindy Mora, Esq.
Tara V. Trevorrow, Esq.
Facsimile: (305) 351-2242
Email: mmora@bilzin.com

**9. Filing or Execution of Additional Documents**

On or before the Effective Date, and without the need for any further order or authority, the Debtor or Reorganized Debtor shall file with the Bankruptcy Court or execute, as appropriate, such agreements and other documents that are in form and substance satisfactory to the Debtor or Reorganized Debtor as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

# VII.

# CERTAIN FACTORS AFFECTING THE DEBTOR

## A. Certain Bankruptcy Law Considerations

### 1. Risk of Non-Confirmation of the Plan of Reorganization

Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate resolicitation of votes. Moreover, the failure of the Debtor to obtain a final and nonappealable Confirmation Order on or before the Proposed Confirmation Date may result in further modification of the Plan.

### 2. Non-Consensual Confirmation

In the event any impaired class of claims or equity interests does not accept a plan of reorganization, a bankruptcy court may nevertheless confirm such plan at the proponent's request if at least one impaired class has accepted the Plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the Plan, the bankruptcy court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. Because Class 9 (Old Equity Interests) is deemed to reject the Plan, these requirements must be satisfied with respect to Class 9. The Debtor believes that the Plan satisfies these requirements, however, there can be no guarantee that the Bankruptcy Court will make such a finding.

### 3. Risk of Non-Occurrence of the Effective Date

Although the debtor believes that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to such timing.

## B. Additional Factors to Be Considered

### 1. The Debtor Has No Duty to Update

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtor has no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

### 2. No Representations Outside This Disclosure Statement Are Authorized

No representations concerning or related to the Debtor, the Reorganization Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your

acceptance, or rejection, of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

**3. Projections and Other Forward Looking Statements Are Not Assured, and Actual Results Will Vary**

Certain of the information contained in this Disclosure Statement is, by nature, forward looking, and contains estimates and assumptions which might ultimately prove to be incorrect, and contains projections which may be materially different from actual future experiences. There are uncertainties associated with any projections and estimates, and they should not be considered assurances or guarantees of the amount of funds or the amount of Claims in the various classes that might be allowed.

**4. Claims Could Be More Than Projected**

The Allowed amount of Claims in each class could be significantly more than projected, which in turn, could cause the value of distributions to be reduced substantially. If Administrative Expenses, Priority Tax Claims, Priority Non-Tax Claims, the Secured Claim of Miami-Dade Tax Collector, Secured Tax Certificate Claims, the Secured Prepetition Loan Claim, Other Secured Claims, Customer Deposit Claims, General Unsecured Claims and the Deficiency Claim exceed projections, it may impair the value of the (i) the New Senior Note or the New Brickell Central Note, as appropriate, to be issued to the Holder of the Allowed Secured Prepetition Loan Claim, (ii) the Customer Deposit Claim Reserve to be distributed to the Holders of Allowed Customer Deposit Claims, (iii) the General Unsecured Claim Reserve to be distributed to the Holders of Allowed General Unsecured Claims, and (iv) the New Junior Note to be issued to the Holder of the Allowed Deficiency Claim.

**5. No Legal or Tax Advice is Provided to You by this Disclosure Statement**

The contents of this Disclosure Statement should not be construed as legal, business or tax advice. Each creditor or Equity Interest holder should consult his, her, or its own legal counsel and accountant as to legal, tax and other matters concerning his, her, or its Claim or Equity Interest.

This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

**6. No Admission Made**

Nothing contained herein shall constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Debtor or on holders of Claims or Equity Interests.

### 7. Business Factors and Competitive Conditions

#### a. General Economic Conditions

The Debtor believes that the general economic conditions of the United States economy will be stable over the next several years. The stability of economic conditions is subject to many factors outside the Debtor's control, including interest rates, inflation, unemployment rates, consumer spending, war, terrorism and other such factors. Any one of these or other economic factors could have a significant impact on the operating performance of the Reorganized Debtor.

#### b. Business Factors

The Debtor believes that it will succeed in implementing and executing its business plan and operational restructuring for benefits of all constituencies. However, there are risks that the goals of the Debtor's going-forward business plan and operational restructuring strategy will not be achieved. In such event, the Debtor may be forced to sell all or parts of its assets, develop and implement further restructuring plans not contemplated herein, or become subject to further insolvency proceedings.

#### c. Competitive Conditions

In addition to uncertain economic and business conditions, the Reorganized Debtor will likely face competitive pressures. The Reorganized Debtor's anticipated operating performance may be impacted by these and other unpredictable activities by competitors.

#### d. Other Factors

Other factors that holders of Claims should consider are potential regulatory and legal developments that may impact the Reorganized Debtor. Although these and other such factors are beyond the Debtor's control and cannot be determined in advance, they could have a significant impact on the Reorganized Debtor's operating performance.

### 8. Access to Financing and Trade Terms

The Debtor's operations are dependent on the availability of construction and development financing. The Debtor believes that substantially all of its needs for funds necessary to consummate the Plan and for post-Effective Date financing will be met by the Equity Contribution and the New Construction Financing.

### 9. Lack of Trading Market

It is not contemplated that the New Securities will be registered under the Securities Act or the Securities Exchange Act of 1934 as of the Effective Date nor is it contemplated that the New Securities will be listed on a national securities exchange or other public market. Accordingly, it is not contemplated that there will be any trading market for such New Securities and there can be no assurance that a holder of any of the New Securities will be able to sell such interests in the future or as to the price at which any such sale may occur. .

**10. Restrictions on Transfer**

Holders of New Securities issued under the Plan will be unable to freely transfer or to sell their securities except pursuant to (i) an effective registration of such securities under the Securities Act and under equivalent state securities or "blue sky" laws or (ii) pursuant to an available exemption from registration requirements.

## C. Certain Tax Matters

For a summary of certain federal income tax consequences of the Plan to holders of claims and equity interests and to the Debtor, see section XII below, entitled "CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN."

# VIII.

# VOTING PROCEDURES AND REQUIREMENTS

## A. Voting Deadline

IT IS IMPORTANT THAT THE HOLDERS OF CLAIMS IN CLASS 4 (SECURED PREPETITION LOAN CLAIM), CLASS 5 (OTHER SECURED CLAIMS), CLASS 6 (CUSTOMER DEPOSIT CLAIMS), CLASS 7 (GENERAL UNSECURED CLAIMS), AND CLASS 8 (DEFICIENCY CLAIM) TIMELY EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN OF REORGANIZATION. All known holders entitled to vote on the Plan have been sent a ballot together with this Disclosure Statement. Such holders should read the ballot carefully and follow the instructions contained therein. Please use only the ballot that accompanies this Disclosure Statement.

**IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE RECEIVED BY THE CLERK OF BANKRUPTCY COURT AT THE ADDRESS SET FORTH BELOW BEFORE THE VOTING DEADLINE OF 4:00 P.M., EASTERN TIME, ON _____, 2011**.

**IF A BALLOT IS DAMAGED OR LOST, YOU MAY CONTACT THE DEBTOR'S VOTING AGENT AT THE NUMBER SET FORTH BELOW.**

**ANY PROPERLY EXECUTED, TIMELY RECEIVED BALLOT THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE COUNTED AS A VOTE TO ACCEPT THE PLAN.**

**ANY PROPERLY EXECUTED, TIMELY RECEIVED BALLOT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL BE COUNTED AS A VOTE TO ACCEPT THE PLAN.**

**FAXED COPIES OF BALLOTS WILL NOT BE ACCEPTED. MAIL OR DELIVER YOUR BALLOT TO:**

**CLERK OF BANKRUPTCY COURT**

51 SW First Avenue, Room 1510
Miami, FL 33130

**IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU MAY CONTACT DEBTOR'S COUNSEL AT:**

**BILZIN SUMBERG BAENA PRICE & AXELROD LLP**
1450 Brickell Avenue, Suite 2300
Miami, FL 33131
Attn: Luisa Flores
lflores@bilzin.com
(305) 350-7205

**B. Holders of Claims Entitled to Vote**

Class 4 Secured Prepetition Loan Claim, Class 5 Other Secured Claims, Class 6 Customer Deposit Claims, Class 7 General Unsecured Claims and Class 8 Deficiency Claim are the only classes of Claims under the Plan that are impaired and entitled to vote to accept or reject the Plan. Each holder of an Allowed Claim who is entitled to vote in Class 4 Secured Prepetition Loan Claim, Class 5 Other Secured Claims, Class 6 Customer Deposit Claims, Class 7 General Unsecured Claims or Class 8 Deficiency Claim may vote to accept or reject the Plan.

**C. Vote Required for Acceptance by a Class**

Under the Bankruptcy Code, acceptance of a plan of reorganization by a class of claims occurs when holders of at least two-thirds in dollar amount and more than one half in number of the allowed claims of that class that cast ballots for acceptance or rejection of the Plan of reorganization vote to accept the Plan. Thus, acceptance of the Class 4 Secured Prepetition Loan Claim, Class 5 Other Secured Claims, Class 6 Customer Deposit Claims, Class 7 General Unsecured Claims and Class 8 Deficiency Claim will occur only if at least two-thirds in dollar amount and a majority in number of the holders of the Claims in the respective class that cast their ballots vote in favor of acceptance.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

## D. Voting Procedures

### 1. Holder of Class 4 Claim (Secured Prepetition Loan Claim)

The Holder of the Allowed Secured Prepetition Loan Claim as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Voting Agent so that they are received by the Voting Agent before the Voting Deadline.

### 2. Holders of Class 5 Claims (Other Secured Claims)

The Holders of Other Secured Claims as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Voting Agent so that they are received by the Voting Agent before the Voting Deadline.

### 3. Holders of Class 6 Claims (Customer Deposit Claims)

The Holders of Allowed Customer Deposit Claims as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Voting Agent so that they are received by the Voting Agent before the Voting Deadline.

### 4. Holders of Class 7 Claims (General Unsecured Claims)

All Holders of Allowed General Unsecured Claims as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Voting Agent so that they are received by the Voting Agent before the Voting Deadline.

### 5. Holder of Class 8 Claim (Deficiency Claim)

The Holder of the Allowed Deficiency Claim as of the Record Date should complete the enclosed ballot. To be counted, properly executed ballots must be returned to the Voting Agent so that they are received by the Voting Agent before the Voting Deadline.

# IX.

# CONFIRMATION OF THE PLAN OF REORGANIZATION

## A. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a plan of reorganization. As set forth in the Disclosure Statement Order, the Bankruptcy Court has scheduled the confirmation hearing for **[_____]**. The confirmation hearing may be adjourned from time-to-time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the confirmation hearing or any subsequent adjourned confirmation hearing.

Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of claims or interests held or asserted by the objector against the Debtor's estate or property, the basis for the

objection and the specific grounds therefore, and must be filed with the Bankruptcy Court, together with proof of service thereof, and served upon (i) Bilzin Sumberg Baena Price & Axelrod LLP, 1450 Brickell Avenue., Suite 2300, Miami, FL 33131, Attorneys for the Debtor (Attention: Mindy A. Mora, Esq.), and (ii) the Office of the United States Trustee, Southern District of Florida, 51 S.W. 1st Ave., Suite 1204, Miami, FL 33130 so as to be received no later than 4:00 p.m. (Eastern Time) on **[_____]**

Objections to confirmation of the Plan of Reorganization are governed by Bankruptcy Rule 9014. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**B. Requirements for Confirmation of the Plan of Reorganization**

**1. Requirements of Section 1129(a) of the Bankruptcy Code**

**a. General Requirements**

At the confirmation hearing, the Bankruptcy Court will determine whether the following confirmation requirements specified in section 1129 of the Bankruptcy Code have been satisfied:

(1) The Plan complies with the applicable provisions of the Bankruptcy Code.

(2) The Debtor has complied with the applicable provisions of the Bankruptcy Code.

(3) The Plan has been proposed in good faith and not by any means proscribed by law.

(4) Any payment made or promised by the Debtor or by a Person issuing securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Reorganization Case, or in connection with the Plan and incident to the Reorganization Case, has been disclosed to the Bankruptcy Court, and any such payment made before confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.

(5) The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director or officer of the Debtor, an affiliate of the Debtor participating in a Plan with the Debtor, or a successor to the Debtor under the Plan of Reorganization, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity holders and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the Debtor, and the nature of any compensation for such insider. With respect to each class of claims or equity interests, each holder of an

impaired claim or impaired equity interest either has accepted the Plan or will receive or retain under the Plan on account of such holder's claim or equity interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. See discussion of "Best Interests Test" below.

(6) Except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code (discussed below), each class of claims or equity interests has either accepted the Plan or is not impaired under the Plan.

(7) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that administrative expenses and priority claims other than priority tax claims will be paid in full on the Effective Date and that priority tax claims will receive on account of such claims deferred Cash payments, over a period not exceeding six years after the date of assessment of such claims, of a value, as of the Effective Date, equal to the allowed amount of such claims.

(8) At least one class of impaired claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a claim in such class.

(9) Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan. See discussion of "Feasibility" below.

**b. Best Interests Test**

As described above, the Bankruptcy Code requires that each holder of an impaired claim or equity interest either (a) accepts the Plan or (b) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

The first step in meeting this test is to determine the dollar amount that would be generated from the liquidation of the Debtor's assets and properties in the context of a chapter 7 liquidation case. The gross amount of cash available would be the sum of the proceeds from the disposition of the Debtor's assets and the cash held by the Debtor at the time of the commencement of the chapter 7 case. The next step, is to reduce that total by the amount of any claims secured by such assets, the costs and expenses of the liquidation, and such additional administrative expenses and priority claims that may result from the termination of the Debtor's business and the use of chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and shareholders in strict priority in accordance with section 726 of the Bankruptcy Code (see discussion below). Finally, taking into account the time necessary to accomplish the liquidation, the present value of such allocations may be compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

The Debtor's costs of liquidation under chapter 7 would include the fees payable to a chapter 7 trustee in bankruptcy, as well as those that might be payable to attorneys and other professionals that such a trustee may engage, plus any unpaid expenses incurred by the Debtor during the chapter 11 case and allowed in the chapter 7 case, such as compensation for attorneys, financial advisors, appraisers, accountants and other professionals, and costs and expenses of members of any statutory committee of unsecured creditors appointed by the United States Trustee pursuant to section 1102 of the Bankruptcy Code and any other committee so appointed. Moreover, the deficiency claims of the Secured Lenders, would not be waived in a chapter 7 liquidation and additional claims would arise by reason of the breach or rejection of obligations incurred and executory contracts or leases entered into by the Debtor both prior to, and during the pendency of, the chapter 11 case.

The foregoing types of claims, costs, expenses, fees and such other claims that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-chapter 11 priority and unsecured claims. Under the absolute priority rule, no junior creditor would receive any distribution until all senior creditors are paid in full, with interest, and no equity holder receives any distribution until all creditors are paid in full, with interest. The Debtor believes that in a chapter 7 case, holders of Old Equity Interests would receive no distributions of property. Accordingly, the Plan satisfies the rule of absolute priority.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in a chapter 11 case, including (i) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (ii) the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail and (iii) substantial increases in claims which would be satisfied on a priority basis, the Debtor has determined that confirmation of the Plan will provide each creditor and equity holder with a recovery that is not less than it would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

Moreover, the Debtor believes that the value of any distributions from the liquidation proceeds to each class of allowed claims in a chapter 7 case would be the same or less than the value of distributions under the Plan because such distributions in a chapter 7 case may not occur for a substantial period of time. In this regard, it is possible that distribution of the proceeds of the liquidation could be delayed for a year or more after the completion of such liquidation in order to resolve the claims and prepare for distributions. In the event litigation were necessary to resolve claims asserted in the chapter 7 case, the delay could be further prolonged and administrative expenses further increased.

**The Debtor's liquidation analysis is an estimate of the proceeds that may be generated as a result of a hypothetical chapter 7 liquidation of the assets of the Debtor. The analysis is based upon a number of significant assumptions which are described. The liquidation analysis does not purport to be a valuation of the Debtor's assets and is not necessarily indicative of the values that may be realized in an actual liquidation.**

**c. Liquidation Analysis**

The Debtor's chapter 7 liquidation analysis and assumptions are set forth in Exhibit 3 to this Disclosure Statement. The Liquidation Analysis demonstrates that under an orderly liquidation, the estimated gross liquidation proceeds would be in the amount of approximately $16,041,039. As of the Proposed Confirmation Date, the Secured Prepetition Loan Claim and the Deficiency Claim are expected to total approximately $30 million (including principal, interest, and other costs).

Following the payment of approximately $25,000 in liquidation costs, approximately $16,016,039 would remain in assets available for distribution. Secured ad valorem property tax claims will have to be paid in the amount of approximately $1.35 million. Accordingly, Brickell Central would only receive a recovery of approximately forty-eight percent (48%) of its Claim. Moreover, this analysis demonstrates that there would be no assets left for any recovery to holders of Administrative Expense Claims, Priority Tax Claims, Priority Non-Tax Claims, Other Secured Claims, the unsecured and Non-Tax Priority portion of any Customer Deposit Claim, the Deficiency Claim, and General Unsecured Claims.

**d. Feasibility**

The Bankruptcy Code requires a debtor to demonstrate that confirmation of a plan of reorganization is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor unless so provided by the plan of reorganization. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed its ability to meet its financial obligations as contemplated thereunder. Based upon its analysis, as a result of the funding to be provided by Newco and from the New Construction Financing, the Debtor believes that it will be able to make all payments required to be made pursuant to the Plan and that it will need no further financial reorganization. The Debtor's projections are set forth in Exhibits 4A and 4B to this Disclosure Statement.

**2. Requirements of Section 1129(b) of the Bankruptcy Code**

The Bankruptcy Court may confirm the Plan over the rejection or deemed rejection of the Plan by a class of claims or equity interests if the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such class.

**a. No Unfair Discrimination**

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under a plan of reorganization. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair."

**b. Fair and Equitable Test**

This test applies to classes of different priority (e.g., unsecured versus secured) and includes the general requirement that no class of claims receive more than 100% of the allowed amount of the claims in such class. As to the dissenting class, the test sets different standards, depending on the type of claims or interests in such class.

**c. Secured Claims**

Each holder of an impaired secured claim either (i) retains its liens on the property (or if sold, on the proceeds thereof) to the extent of the allowed amount of its secured claim and receives deferred Cash payments having a value, as of the effective date of the Plan, of at least the allowed amount of such claim or (ii) receives the "indubitable equivalent" of its allowed secured claim.

**d. Unsecured Claims**

Either (i) each holder of an impaired unsecured claim receives or retains under the Plan property of a value equal to the amount of its allowed unsecured claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive or retain any property under the Plan of reorganization on account of such claims or interests.

**e. Equity Interests**

Each equity interest holder will not receive or retain any property under the Plan of reorganization on account of its interest in the Debtor.

The Debtor believes the Plan will satisfy both the "no unfair discrimination" requirement and the "fair and equitable" requirement notwithstanding that Class 6 (Old Equity Interests) is deemed to reject the Plan, because as to Class 6, there is no class of equal priority receiving more favorable treatment and no class that is junior to such a dissenting class will receive or retain any property on account of the claims or equity interests in such class.

## X.

## FINANCIAL INFORMATION

The pro forma audited and unaudited, respectively, balance sheets and income statements for the fiscal years ended 2009 and 2010 are contained in Exhibit 2 to this Disclosure Statement, the full text of which is incorporated herein by reference. This financial information is provided to permit the holders of claims and equity interests to better understand the Debtor's historical business performance and the impact of the Case on the Debtor's business.

## XI.

## ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN OF REORGANIZATION

If the Plan is not confirmed and consummated, the alternatives to the Plan include (i) liquidation of the Debtor under chapter 7 of the Bankruptcy Code and (ii) an alternative chapter 11 plan of reorganization.

**A. Liquidation Under Chapter 7**

If no plan can be confirmed, the Debtor's chapter 11 cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed to liquidate the assets of the Debtor for distribution in accordance with the priorities established by the Bankruptcy Code. In a chapter 7 liquidation, the Debtor believes that there would be no distribution to the holders of Administrative Claims, Non-Tax Priority claims, Customer Deposit Claims (to the extent such Claims are in excess of the amount on deposit for the Holder of such Claim with the Escrow Agent), General Unsecured Claims, or the holders of Equity Interests.

A discussion of the effects that a chapter 7 liquidation would have on the recovery of holders of claims and equity interests and the Debtor's liquidation analysis are set forth in section IX.B.1(b) above, entitled "CONFIRMATION OF THE PLAN OF REORGANIZATION -- Requirements for Confirmation of the Plan of Reorganization -- Requirements of Section 1129(a) of the Bankruptcy Code -- Best Interests Test." The Debtor believes that liquidation under chapter 7 would result in smaller distributions being made to creditors than those provided for in the Plan – and likely no distributions to any creditors other than the secured creditors – because of (a) the loss of any all going concern value (since the Debtor could not continue to operate), (b) the likelihood that the assets of the Debtor would have to be sold or otherwise disposed of in a less orderly fashion over a shorter period of time, (c) additional administrative expenses involved in the appointment of a trustee and (d) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtor's operations.

**B. Alternative Plan of Reorganization**

If the Plan of Reorganization is not confirmed, the Debtor or any other party in interest could attempt to formulate a different chapter 11 plan of reorganization. Such a plan of reorganization might involve either a reorganization and continuation of the Debtor's business or an orderly liquidation of its assets. With respect to an alternative plan, the Debtor has explored various alternatives in connection with the formulation and development of the Plan. The Debtor believes that the Plan, as described herein, enables creditors and equity holders to realize the most value under the circumstances. In a liquidation after Confirmation, the Debtor's assets might be sold in an orderly fashion over a more extended period than in a liquidation under chapter 7, possibly resulting in somewhat greater (but indeterminate) recoveries than would be obtained in chapter 7. Further, if a trustee were not appointed, because such appointment is not required in a chapter 11 case, the expenses for professional fees would most likely be lower than those incurred in a chapter 7 case; though any savings may be reduced by the costs of professionals such as investment bankers if such were utilized. Although preferable to a chapter 7 liquidation, the Debtor believes that any alternative liquidation under chapter 11 is a much less attractive alternative to creditors and equity holders than the Plan because of the greater return provided by the Plan.

## XII.

## CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and to the holders of Class 7 Claims. The following summary does not address the U.S. federal income tax consequences to holders whose Claims are unimpaired or otherwise entitled to payment in full in Cash under the Plan (*e.g.*, Administrative Expense Claims, Priority Non-Tax Claims, and Other Secured Claims), or holders of Old Equity Interests that are extinguished without a distribution in exchange therefor.

The following summary is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service (the "IRS"), all as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below.

The U.S. federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the IRS will adopt. In addition, this summary generally does not address foreign, state or local tax consequences of the Plan, nor does it address the U.S. federal income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker-dealers, persons not holding their Claims as capital assets, financial institutions, tax-exempt organizations, persons holding Claims who are not the original holders of those Claims or who acquired such Claims at an acquisition premium, and persons who have claimed a bad debt deduction in respect of any Claims).

***Accordingly, the following summary of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of a Claim.***

***<u>IRS Circular 230 Notice</u>: To ensure compliance with IRS Circular 230, holders of Claims and Equity Interests are hereby notified that: (A) any discussion of federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by holders of Claims or Equity Interests for the purpose of avoiding penalties that may be imposed on them under the Tax Code; (b) such discussion is written in connection with the promotion or marketing by the Debtor of the transactions or matters addressed herein; and (c) holders of Claims and Equity Interests should seek advice based on their particular circumstances from an independent tax advisor.***

## A. Consequences to Holders of Class 7 Claims

Pursuant to the Plan, the holders of Allowed General Unsecured Claims (Class 7) will receive a Cash distribution in satisfaction and discharge of their Claims.

The following discussion does not necessarily apply to holders who have Claims in more than one class relating to the same underlying obligation. Such holders should consult their tax advisors regarding the effect of such dual status obligations on the federal income tax consequences of the Plan to them.

In general, each holder of an Allowed General Unsecured Claim, should recognize gain or loss in an amount equal to the difference between (x) the amount of Cash received by the holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (y) the holder's adjusted tax basis in its Claim (other than any basis attributable to accrued but unpaid interest). Pursuant to the Plan, distributions to any holder of an Allowed General Unsecured Claim will be allocated first to the original principal amount of such Claim as determined for federal income tax purposes and then, to the extent the consideration exceeds such amount, to any portion of such Claim representing accrued original issue discount ("OID") or accrued but unpaid interest. However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general, to the extent that an amount received by a holder of debt is received in satisfaction of accrued interest or OID during its holding period, such amount will be taxable to the holder as interest income (if not previously included in the holder's gross income). Conversely, a holder will generally recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full. Each holder is urged to consult its tax advisor regarding the allocation of consideration and the deductibility of losses realized in respect of Allowed General Unsecured Claims for federal income tax purposes.

Where gain or loss is recognized by a holder of an Allowed General Unsecured Claim the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the Claim was originally issued at a discount or a premium, whether the Claim was acquired at a market discount, and whether and to what extent the holder previously had claimed a bad debt deduction in respect of that Claim.

## B. Information Reporting and Withholding

All distributions to holders of Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then-applicable withholding rate (currently 28%). Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is a United States person that is not subject to backup withholding. Backup withholding is not an

additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax and the appropriate information is supplied to the IRS. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, the following: (1) certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds; and (2) certain transactions in which the taxpayer's book-tax differences exceed a specified threshold in any tax year. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

***The foregoing summary has been provided for informational purposes only. All holders of Claims receiving a distribution under the Plan are urged to consult their tax advisors concerning the federal, state, local and foreign tax consequences applicable under the Plan.***

## XIII.

## CONCLUSION

The Debtor believes that confirmation and implementation of the Plan is in the best interests of all creditors, and urge holders of impaired Claims in Class 3, Class 4a, Class 4b, Class 4c, and Class 5 entitled to vote on the Plan to vote to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received no later than _____ 4:00 p.m. (Eastern Time) on the Voting Deadline.

Dated: January 27, 2012

Respectfully submitted,

Cabi SMA Tower I, LLLP

By: Cabi SMA GP, LLC, its general partner

By: /s/ Elias Amkie Levy
Elias Amkie Levy, Managing Member