

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

In re:

CABI SMA Tower I, LLLP,¹

Case No. 10-49009-BKC-AJC

Chapter 11

Debtor.

**MODIFICATION OF FIRST AMENDED PLAN OF REORGANIZATION UNDER
CHAPTER 11 OF THE BANKRUPTCY CODE (THIRD EDITION)**

CABI SMA Tower I, LLLP (the "Debtor"), debtor and debtor in possession, by and through undersigned counsel, hereby modifies its *First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Third Edition)* [ECF No. 392] (the "Plan") as follows (the "Plan Modification"):

A. Article I

Article I of the Plan is modified to reflect the deletion of the definitions for the following terms and the substitution of the definitions below in their place: "Initial Equity Contribution", "Mortgage", "New Brickell Central Note", "Plan Supplement", and "Prepetition Loan Claim".

Article I is further modified by the addition of the definition for the term, "Letter of Credit".

* * *

1.53 ***Initial Equity Contribution*** means the amount to be funded by Newco to the Reorganized Debtor prior to the Effective Date, plus the Debtor's cash on hand as of the Effective Date. In no event shall the Initial Equity Contribution be less than \$4,500,000.

¹ The Debtor's current mailing address is 19950 W. Country Club Dr., Suite 900, Aventura, FL 33180. The last four digits of the Debtor's tax identification number are [2440].

1.53A **Letter of Credit** means that certain Irrevocable Standby Letter of Credit No. _____ issued by Credit Suisse AG for the benefit of Brickell Central LLC in the maximum draw amount of the Prepetition Loan Claim.

1.58 **Mortgage** means that certain Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement, and Notice of Future Advance, dated May 26, 2006, by and between HSBC Realty Credit Corporation (USA), on the one hand, and City National Bank of Florida, as Trustee under land trust #2401-1967-00, Cabi SMA, LLLP, Cabi SMA Tower I, LLLP, Cabi SMA Tower 2, LLLP, Cabi SMA Retail I, LLLP, and Cabi SMA Retail 2, LLLP, on the other hand, as may have been amended from time to time, and as recorded in the Official Records Book 22867, at Page 4669, of the Public Records of Miami-Dade County, Florida, as it may be amended, restated, supplemented or modified on or after the Effective Date..

1.59 **New Brickell Central Note** means that certain amended and restated promissory note to be issued by the Reorganized Debtor to amend and restate the promissory note issued in connection with the HSBC Loan Documents, which note shall be substantially in the form to be set forth in the Plan Supplement, and which shall provide for, among other things, the following terms: (i) aggregate principal and interest payments equal to the Prepetition Loan Claim; (ii) a maturity of three (3) years from the Effective Date; (iii) interest in the aggregate amount of \$1,313,369.84; (iv) one-twelfth (1/12th) of the aggregate interest payable quarterly in arrears beginning on the three-month anniversary of the first day of the first month following the Effective Date; (v) principal in the amount of one-sixth (1/6th) of the Prepetition Loan Claim, payable semi-annually beginning on the six-month anniversary of the first day of the first month following the Effective Date; (vi) no prepayment penalty, fees, or charges shall be assessed for the payment of principal prior to maturity; and (vii) all obligations thereunder secured pursuant to the Mortgage by a first priority mortgage lien in and security interest on the "Mortgaged Property", as such term is defined in the Mortgage, and with a credit enhancement in the form of the Letter of Credit.

1.70 **Plan Supplement** means the supplement to this Plan, containing certain documents relevant to the implementation of this Plan, including, but not limited to, the lists of the principals of the New General Partner of the Reorganized Debtor, the list of executory contracts and unexpired leases to be assumed pursuant to this Plan, the New Brickell Central Note, and an Amended and Restated Mortgage. The Plan Supplement and the documents contained therein shall be filed with the Bankruptcy Court no later than three (3) Business Days before the Confirmation Hearing, provided that the documents included therein may thereafter be amended and supplemented prior to execution.

1.71 **Prepetition Loan Claim** means any and all unpaid principal, accrued and unpaid interest, which have not been waived, unpaid fees and attorneys' fees, and any other charges, amounts and costs owing, accrued, accruing or chargeable in respect of the Debtor's obligations under the HSBC Loan through the Petition Date, including, without limitation, term loans, advances and/or financial accommodations provided to or for the benefit of the Debtor; provided, however, that the Allowed amount of the Prepetition Loan Claim shall in no event exceed \$30,409,509.11, or such greater or lesser amount determined by the Bankruptcy Court pursuant

to a Final Order in respect of any objection filed by the Debtor with respect to the Allowed Amount of the Brickell Central Claim.

* * *

B. Article V

The third paragraph of Section 5.1, Section 5.2 and Section 5.7 are hereby modified in their entirety as follows:

Section 5.1 *Plan Contributions / New Partnership Interests.*

GICSA and E-Group shall provide the funds to Newco to enable it to fund the Equity Contribution in the Reorganized Debtor, from time to time as distributions under the Plan are due and payable.

* * *

Section 5.2 *The New Brickell Central Note, the Restated Mortgage and the Letter of Credit.*

On the Effective Date, the Reorganized Debtor is authorized to (i) execute and deliver to Brickell Central the New Brickell Central Note, (ii) execute and deliver to Brickell Central any relevant modification to or restatement of the Mortgage in a form satisfactory to the Reorganized Debtor, which modified or restated Mortgage shall secure the New Brickell Note, (iii) on or before the Effective Date, cause the Depository Financial Institution to issue to Brickell Central the Letter of Credit to satisfy any quarterly or semi-annual payment due and owing under the New Brickell Central Note, in the event the Reorganized Debtor fails to remit any such payment; (iv) incur the indebtedness and obligations provided under the New Brickell Central Note, and (v) 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.

* * *

Section 5.7 *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 this 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 this Plan, including, without limitation, the New Brickell Central Note, the New Partnership Interests, the Construction Loan Note and any related documents, any merger agreements, or agreements of consolidation, deeds, bills of sale, or assignments executed in

connection with any of the transactions contemplated under this Plan shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

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C. Article IX

Section 9.2 of the Plan is amended by striking the "; and" at the end of subparagraph (b) and replacing it with a period, and by deleting in its entirety subsection 9.2(c).

D. Article X

Sections 10.4(d) are hereby modified in their entirety as follows:

Section 10.4 *Terms of Injunctions or Stays.*

(d) In consideration of the principals of GICSA agreeing to cause GICSA to fund to Newco an amount necessary to make the Equity Contribution, as long as either (i) the Reorganized Debtor continues to perform its duties and obligations under this Plan as provided herein, including payment of the New Brickell Central Note, or (ii) the Depository Financial Institution has, in the event the Reorganized Debtor has failed to remit any payment due in respect of the New Brickell Central Note, honored any valid draw request made by Brickell Central as beneficiary under the Letter of Credit, then 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.

D. Effect of Plan Modification. In all other respects, except as expressly amended or modified by this Plan Modification, the Plan shall remain in full force and effect.

Dated: April 30, 2012

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

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