

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

Chapter 11

THE CYPRESS OF TAMPA LLC and  
THE CYPRESS OF TAMPA II LLC,

Case No.: 8:12-bk-17518-KRM [Lead Case]  
Case No.: 8:12-bk-17520-KRM

Debtors.

(Jointly Administered Cases)

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**DEBTORS' MOTION FOR ORDER  
AUTHORIZING AND APPROVING PLAN SUPPORT AGREEMENT  
(Expedited Consideration Requested)**

Debtors (collectively, the "Debtors"), The Cypress of Tampa LLC ("Cypress I") and The Cypress of Tampa II, LLC ("Cypress II") pursuant to Sections 105(a) and 363 of the Bankruptcy Code and Rules 4001 and 9019 of the Federal Rules of Bankruptcy Procedure move for the entry of an order authorizing and approving the terms of a compromise between the Debtors and Cypress Retail Holdings, LLC ("CRH" or "Lender") which provides for Lender's consent to the use of cash collateral coupled with its consensual support of a proposed chapter 11 plan (the "Plan"), as provided in the Plan Support Agreement attached as **Exhibit "A"** (the "Plan Support Agreement").<sup>1</sup> In support, the Debtors state as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed such terms in the Plan Support Agreement.

### **General Background**

2. On November 20, 2012 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses and possess their property as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made.

3. The Debtors’ income is primarily derived from rental income from the operations of their 110,000 square foot retail space, and proceeds derived from the occasional sale of certain contiguous outparcels (collectively, the “Real Property”).

4. As evidenced by Proofs of Claim Numbers 2 (against Cypress I) and 5 (against Cypress II), CRH has asserted claims of over \$30 Million against the Debtors on the basis of certain loan (the “Loan”), and asserting that indebtedness is secured by a first position lien encumbering all of the Debtors’ Real Property and personal property (collectively, the “Assets”).

5. Prior to the Petition Date, the Debtors were in the midst of hotly contested litigation that CRH initiated on March 12, 2012, through which CRH sought a money judgment based on a breach of the documents evidencing the Loan and attempting to foreclose on the Debtors’ Assets. That civil lawsuit is still pending in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County (Case No. 12-CA-003911) (the “State Court Action”). In the State Court Action, the Debtors asserted various defenses including standing, breach, setoff, and other denials.

6. Following the Petition Date, based on CRH’s asserted liens in the Assets, this Court has authorized the Debtors’ use of cash collateral on an interim basis pursuant to an interim cash collateral order and/or oral rulings (the “Interim Cash Collateral Orders”). Pursuant

to these Interim Cash Collateral Orders, the Debtors are currently authorized to use cash collateral through February 21, 2013 for certain delineated expenses related to their chapter 11 cases.

7. A continued hearing to consider the continued use of cash collateral and other relief is currently scheduled for February 21, 2013.

8. Regarding CRH's claims, the Debtors and CRH have identified a number of unresolved disagreements ranging from the outstanding balance of the indebtedness under the loans to potential disputes regarding the value of the subject Real Property. Judicial resolution of those disputes (in Bankruptcy Court or through the State Court Action) would undoubtedly be time consuming, expensive, and possibly disruptive to the commercial tenants located on the Debtors' Real Property.

9. Moreover, the Debtors and CRH have identified disputes regarding the use of cash collateral, including legal questions regarding ownership of the rents derived from the Debtors' operations, the appropriate uses of those rents in the operation and management of the Real Property, and the duration of the Debtors' authorization to use cash collateral.

10. Moreover, CRH believes that it has grounds to seek relief from the automatic stay and proceed to foreclose against the Assets in State Court, while the Debtors assert that CRH's interests in the Assets are being adequately protected such that stay relief is not appropriate at this time.

11. In light of these various disputes among CRH and the Debtors, the parties began negotiating heavily immediately after the Petition Date and have been able to reach a global resolution of all of their disputes. The compromise reached by the parties is outlined in the Plan Support Agreement. Essentially, that Plan Support Agreement provides for (i) a consensual use

of cash collateral for the remainder of the case, and (ii) the material terms of a chapter 11 plan that, if filed by the Debtor, will have the support and consent of CRH.

### **Proposed Settlement Terms**

12. The Debtors and CRH have agreed to the terms of the Plan Support Agreement, subject to approval of this Court. The parties intend that the Plan Support Agreement will (a) resolve any claims and controversies between the Debtors and CRH regarding the use of cash collateral without the need for additional hearing or litigation; (b) provide a framework of a consensual Plan that will be formulated and promptly filed; (c) secure the Lender's support for that Plan if proposed by the Debtors; (d) resolve all claims and controversies asserted in the State Court Action; and (e) provide a timeline for the successful conclusion of these chapter 11 cases and the disposition of the Debtors' primary Assets in a manner that will provide the greatest value to creditors.

13. Specifically, the material terms of the Plan Support Agreement include the following:

(a) **Use of Cash Collateral on a Final Basis.** Lender will agree to the Debtors' use of cash collateral on a final basis through and including June 13, 2013, pursuant to the terms of a Final Order authorizing the Debtors' use of "cash collateral" as defined in Section 363(a) of the Bankruptcy Code (the "Final Cash Collateral Order"). The Final Cash Collateral Order shall provide for the Debtors' continued use of cash collateral for roughly another 120 days, under a substantially similar budget as has already been approved by the Court.

(b) **The Plan.** In accordance with the terms of the Plan Support Agreement, the Debtors will propose and file a chapter 11 Plan (and a corresponding Disclosure



Statement) that will provide for (i) a stipulation by the Debtors regarding the nature, extent, validity, and priority of CRH's claims and liens; (ii) the conveyance of the Real Property and other personal property<sup>2</sup> to CRH (or its designee) free and clear of liens and interest pursuant to a confirmation order and a Deed in Lieu of Foreclosure; (iii) CRH's provision of a "Carve-Out" for the payment of administrative and priority claims, and unsecured claims; (iv) mutual general releases between the Debtors, the Lender, and the insiders of the Debtors that are, in most instances, also personal guarantors of the Loan; and (v) the treatment of all other claims and equity interests against the Debtors. In the event the Real Property is not transferred to CRH pursuant to the Plan within one hundred twenty (120) days from the filing of the Plan, the Debtors shall instead consent to CRH taking title through a "friendly foreclosure," subject to the terms and conditions set forth in the Plan Support Agreement.

(c) **Treatment of Allowed Claims.** The Plan Support Agreement also provides for a proposed treatment of claims and equity interests consistent with the best interests of creditors that shall be contained in the Plan.

14. Upon approval by the Court, the Plan Support Agreement shall become effective, and the obligations therein shall become binding on the Debtors and the Lender. Provided that the terms of the Plan are materially consistent with the Plan Support Agreement, among other things, (i) the Debtors and CRH shall refrain from proposing or supporting any chapter 11 plan for the Debtors other than the Plan; and (ii) CRH will not object to the Plan or take any action

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<sup>2</sup> The Debtors and CRH believe the legal description of the Real Property and other assets accurately reflect the intent to convey all of the real estate and personal property used in the operation of the Debtors' shopping center, but have agreed to conduct additional due diligence to confirm the accuracy of the same. As such, the parties reserve the right to amend these property descriptions to the extent needed to give effect to the parties' intent under the Plan Support Agreement.

directly or indirectly inconsistent with the terms and conditions of the Plan Support Agreement, as detailed in the Plan Support Agreement.

15. The parties have also agreed to pursue their respective obligations on the timeline set forth in the Plan Support Agreement.

### **Basis for Relief Requested**

16. Bankruptcy Rule 9019(a) grants the Court authority to approve post-petition settlements of claims and controversies.<sup>3</sup> Under this authority, bankruptcy courts consider the overall wisdom of compromising and settling disputes arising in bankruptcy cases. See, e.g., In re Air Safety Developmental, L.C., 336 B.R. 843, (S.D. Fla. 2005). In reviewing a proposed settlement, the Court's ultimate inquiry should be "whether the proposed settlement is fair and equitable." In re Air Safety Developmental, L.C., 336 B.R. at 843 (citing In re Gallagher, 283 B.R. 342, 246 (Bankr. M.D. Fla. 2002). Ultimately, the question is not whether a better settlement might have been achieved or a better result reached if litigation pursued. Instead, the court should approve settlements that meet a minimal threshold of reasonableness. See e.g., In re Bicoastal Corp., 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) ("This Court has broad discretion to approve a settlement or compromise, and it should do so unless the proposed settlement falls below the lowest point in the range of reasonableness.").

17. The Eleventh Circuit specifically set forth four criteria to be considered by the court in determining fairness, reasonableness, and adequacy of a settlement: "(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and

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<sup>3</sup> Bankruptcy Rule 9019 states, in pertinent part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed.R.Bankr.P. 9019(a). Additionally, to supplement this authority, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary" to carry out the provisions of the Bankruptcy Code and Bankruptcy Rules. 11 U.S.C. § 105(a).

delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.” In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir. 1990).

18. The Debtors submit that the compromise, including the terms of the Plan Support Agreement regarding the Final Cash Collateral Order and the basis for a consensual Plan, are fair and equitable and in the best interests of the estates and creditors. First, the Plan Support Agreement, if approved, resolves all disputes and controversies between the Parties, including (i) the extensive litigation regarding the extent, validity, and priority of the Lender’s debt and lien position in the Debtors’ Real Property; (ii) complex valuation litigation of a retail facility and adjoining vacant land; (iii) all disputes related to the Debtors’ use of cash collateral on a final basis, (iv) and the time-consuming State Court Action. These chapter 11 cases would be negatively impacted by the time, expense, and uncertainty of litigating these contested issues.

19. Second, pursuant to the Plan Support Agreement, Lender has committed to assume certain expenses the Debtors would otherwise have to pay and has provided a consensual “Carve-Out” that will fund the Debtors’ Plan. That Carve-Out provides administrative solvency and will likely produce a return to unsecured creditors as a result of the confirmation the Plan that would not otherwise exist. Accordingly, this settlement maximizes recoveries to stakeholders.

20. Third, the Plan Support Agreement represents the accord of the Debtors and the Lender that will save vast amounts of time and money and, the Debtors believe in the exercise of their business judgment, a reasonable exit strategy. The Plan Support Agreement was negotiated at arms-length and in good faith by informed counsel and professionals for the Debtors and Lender. The Parties’ support for the Plan Support Agreement, in and of itself, suggests the Plan

Support Agreement is fair, equitable, and incorporates the paramount interests of the Debtors' creditors.

21. Accordingly, for the foregoing reasons, the Debtors submits that the Plan Support Agreement satisfies the requirements of Bankruptcy Rule 9019 and should (along with the Final Cash Collateral Order) be approved by this Court.

**WHEREFORE**, the Debtors respectfully request the entry of an order (i) authorizing and approving the Plan Support Agreement and binding the Parties to those terms, and (ii) granting such other relief as the Court deems just and proper.

DATED this 15th day of February 2013.

/s/ Chad S. Bowen

Chad S. Bowen

Florida Bar No. 0138290

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*Attorneys for Debtors and*

*Debtors-in-Possession*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail, CM/ECF electronic service and/or U.S. Mail, postage prepaid to **Office of the United States Trustee**, 501 E. Polk St., Ste. 1200, Tampa, FL 33602; **Mitchell C. Robiner**, Gunster, Yoakley & Stewart PA, 401 E. Jackson Street, Suite 2400, Tampa, FL 33602; **RAM Development Company**, c/o Peter D. Cummings & Associates, Inc., Registered Agent, 4801 PGA Blvd., Palm Beach Gardens, FL 33418; **Cypress Retail Holdings, LLC** c/o RAM Realty Associates II, LLC as Manager, 4801 PGA Blvd., Palm Beach Gardens, FL 33418; **Wells Fargo Bank, National Association**, 333 South Grand Avenue, 9<sup>th</sup> Floor, Los Angeles, CA 90071; **Wells Fargo Bank, National Association** c/o Corporation Service Company, Registered Agent, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833; to those all creditors and parties-in-interest listed on the attached matrix; and any parties receiving CM/ECF service on this 15th day of February 2013.

/s/ Chad S. Bowen

Chad S. Bowen

## **Exhibit A**

### **Plan Support Agreement**

# JENNIS & BOWEN

ATTORNEYS

Chad S. Bowen

cbowen@jennisbowen.com

February 14, 2013

Mitchell C. Robiner  
Gunster Law Firm  
401 East Jackson Street  
Suite 2400  
Tampa, Florida 33602

**Re: The Cypress of Tampa, LLC - Case No. 8:12-bk-17518-KRM  
The Cypress of Tampa II, LLC - Case No. 8:12-bk-17520-KRM  
(Jointly Administered) (the "Bankruptcy Cases")**

Dear Mitch:

Following our recent discussions, please let this correspondence serve as a memorandum of understanding (this "Memorandum") describing the treatment of claims held by Cypress Retail Holdings, LLC ("CRH") in the referenced Bankruptcy Cases of The Cypress of Tampa, LLC and The Cypress of Tampa II, LLC (collectively, "Cypress" or the "Debtors"), which were filed on November 20, 2012 (the "Petition Date") in the United States Bankruptcy Court for the Middle District of Florida, Tampa Division (the "Bankruptcy Court"). By signing this agreement, the parties agree that if the Debtors file a joint chapter 11 plan that includes the material terms set forth herein (the "Plan") on or before **Monday, February 18, 2013**, then CRH shall timely vote the full amount of its claim(s) in these Bankruptcy Cases to accept such Plan once votes are solicited, and shall actively support the Debtors' effort to obtain timely confirmation of the Plan.

This Memorandum is being provided in confidence and should not, at this time, be disclosed to any party or person other than you and CRH's representatives. This Memorandum is in furtherance of our continuing settlement discussions and is entitled to protection from any use or disclosure to any party or person pursuant to Federal Rule of Evidence 408 and other applicable rules of evidence. This Memorandum does not constitute an offer with respect to any securities or a solicitation of votes for a plan of reorganization for purposes of Sections 1125 and 1126 of the Bankruptcy Code. Any such offer or solicitation will be conducted in accordance with the Bankruptcy Code and/or applicable securities laws. Notwithstanding the foregoing, the Debtor intends to file this Memorandum as the basis of a *Motion to Compromise Controversy* pursuant to Fed.R.Bankr.P. 9019 in conjunction with the upcoming final hearing on the Debtors' pending motion to use assets that may constitute cash collateral (the "Motion to Compromise").

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## I. GENERAL TERMS

Subject to CRH's execution of this Memorandum where indicated below (and delivery of the same to the undersigned Debtors' counsel) the Debtors will draft and file a joint chapter 11 Plan providing for the terms set forth herein along with a corresponding joint disclosure statement (the "Disclosure Statement"). In summary, the Plan and the Disclosure Statement will effectuate a series of transactions whereby upon confirmation of the Plan (1) the Debtors will convey to CRH (or its designee) fee simple title to that 111,000 square foot (+/-) retail space (the "Retail Space"), pad sites (the "Pad Sites"), and certain contiguous outparcels of vacant land (the "Outparcels") located at the corner of County Line Road and Bruce B. Downs Boulevard in Hillsborough County, Florida, (including all furniture, fixtures, equipment and tangible personal property owned by the Debtors used in connection with the property), as set forth in the legal descriptions attached hereto as Exhibit "A" (collectively, the "Property"), free and clear of all liens, claims, and encumbrances other than the liens of CRH, encumbrances in connection with taxes, existing easements, and similar matters of record, (2) the Debtors will convey to CRH (or its designee) all of its right, title, and interest in and to any and all leases (and corresponding security deposits) affecting the Property, all licenses, permits, and other executory contracts affecting the Property or its operation which CRH (or its designee) elects to assume, (3) the parties will endeavor to ensure that the confirmation order contains such language as may reasonably be acceptable to a title company in order to provide a policy of title insurance consistent with the transactions contemplated herein, including, without limitation, (i) language sufficient to terminate the two Put/Call Agreements affecting the Property (the "Put/Call Agreements"), (ii) language sufficient to terminate the two grazing leases affecting the Property (the "Grazing Leases"), to the extent such termination is possible under applicable Bankruptcy and other law, and (iii) language sufficient to delete all "standard exceptions" in the title policy (excluding the survey exceptions) to be issued to CRH (or its designee), (4) the Debtors will execute a non-foreign affidavit and Form 1099S Reporting to IRS, (5) the confirmation order will contain a provision authorizing the transaction described herein, (6) the Debtors will execute letters to tenants signed by the Debtors notifying the tenants of the acquisition of the Property by CRH and directing the tenants to pay all rents and other sums to CRH (or its designee) from and after the date the Property is transferred to CRH (or its designee), (7) the Debtors will execute a closing statement consistent with the transactions contemplated herein, (8) the Plan shall provide that on or before the Effective Date the Debtors will be deemed to have rejected, pursuant to Bankruptcy Code Section 365, any contracts and leases not explicitly assumed at CRH's request, including any management agreements or leasing agreements affecting the Property, and any service contracts affecting the Property, (9) the Debtors shall transfer to CRH (or its designee) all of the



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Debtors' cash that is on deposit as of the Effective Date (which shall include tenant security deposits) after payments of certain amounts as specified below, and (10) the persons comprising the Debtors' ownership group and/or guarantors (the "Insiders") shall waive their right to distributions from the Debtors' bankruptcy estates on account of their claims and equity interests therein, and shall (along with CRH) also execute mutual general releases between themselves and CRH (which shall include, without limitation, releases from any and all guaranty obligations that may exist in favor of CRH). In the event the confirmation order does not contain language satisfactory to the title company that would permit the title company to delete from the title policy the Put/Call Agreements, the Grazing Leases and the "standard exceptions" described in subparagraph 3 above, Debtors will (i) execute such documents necessary to terminate the two Grazing Leases affecting the Property, to the extent such termination is possible under applicable Bankruptcy and other law, and without imposing liability on the Debtors, other than a possible unsecured claim from rejection damages under Section 365 of the Bankruptcy Code, (ii) execute and obtain the necessary signatures on two Termination of Put/Call Agreements terminating the two Put/Call Agreements affecting the Property, and (iii) execute a title affidavit satisfactory to the title company to delete the standard exceptions.

The aforementioned treatment is intended to provide (A) full satisfaction of all of CRH's claims against the Debtors and their respective estates, (B) a "pot" of money derived from a carve-out of CRH's cash collateral in the amount of One Hundred Thousand Dollars (\$100,000.00) (the "Carve-Out") from which distributions to all administrative claimants and other unsecured creditors (i.e. unsecured creditors other than CRH and the Insiders) shall be made, and (C) a complete release of any and all claims and causes of action among CRH, the Debtors, and the Insiders (to include a "non-debtor release" of the Insiders by all other creditors, which is to be effectuated by confirmation of the Plan).

## II. TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

The Plan will classify and provide treatment for claims against, and interests in, the Debtors<sup>1</sup> as generally described below. Claims in each such class will be satisfied in full by the treatment described below on the effective date of the Plan, which is expected to occur within fourteen (14) days after the entry of a confirmation order (the "Effective Date").<sup>2</sup> Specifically, the Plan will provide for the following classifications and treatments of claims:

<sup>1</sup> The use of the term "Debtor" or "Debtors" herein shall also include or mean, as the case may be, the Reorganized Debtor or Reorganized Debtors, as the context requires.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning customarily ascribed to them in chapter 11 plans.

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<p><u>Unclassified Claims</u>          (Administrative Expenses and Priority Tax Claims)</p>	<p>Pursuant to the Bankruptcy Code, neither (1) holders of Administrative Expenses (such as those arising after the Petition Date and allowed as administrative expenses under Section 503(b) of the Bankruptcy Code), or (2) holders of allowed tax claims entitled to priority under Section 507(a)(8) of the Bankruptcy Code (such as sales tax on rent receipts) are entitled to vote on the Plan and such claims need not be classified.</p> <p>Post-petition Administrative Expense Claims arising in the ordinary course of the Debtors' business operations as set forth in the budget approved by the Court (the "<u>Approved Budget</u>") in its <i>Second Interim Order Authorizing Debtors' Use of Case Collateral and Granting Replacement Liens</i>, as amended ("<u>OCB Claims</u>") shall be paid in full from the Debtors' cash on hand immediately prior to the Effective Date (i.e. prior to surrendering the Debtors' cash deposits to CRH) (the "<u>Effective Date Cash</u>"). In contrast, the allowed Administrative Expense Claims of Debtors' counsel, US Trustee fees, and the fees of other bankruptcy professionals (collectively "<u>Professional Claims</u>") shall be paid in full from the Carve-Out (defined above) in accordance with the priority scheme established by the Bankruptcy Code.</p> <p>Allowed priority tax claims shall be paid, at CRH's election, either (1) in full (without post-petition interest or penalties) from the Debtors' Effective Date Cash, or (2) by CRH after the Effective Date in compliance with Section 1129(a)(9)(C) of the Bankruptcy Code, or as otherwise agreed with the holder of such claims.</p>
<p><u>Class 1 – Secured Tax Claims</u></p>	<p>On the Effective Date, the allowed secured claims of governmental units (including persons claiming by, through, or under a governmental unit) shall either (1) be paid in cash, in full, from the Debtors' Effective Date Cash or (2) at CRH's election, by CRH after the Effective Date in compliance with Section 1129(a)(9)(C) of the Bankruptcy Code, or as otherwise agreed with the holder of such claims. To the extent not paid in full, such governmental units shall retain their liens encumbering the Property and any other collateral encumbered by a valid, enforceable, and perfected lien.</p>
<p><u>Class 2 – Secured Claim of CRH</u></p>	<p>On the Effective Date, the allowed secured claim of CRH shall be conclusively established to be the total amount of the debt under those certain notes, mortgages, and other instruments (the</p>



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	<p>"Effective Date Loan Amount") which are all the subject of the foreclosure lawsuit, styled <u>Cypress Retail Holdings, LLC v. The Cypress of Tampa, LLC, et. al., Case No. 12-003911</u>, currently pending in the Thirteenth Judicial Circuit Court for Hillsborough County, Florida ("Foreclosure Lawsuit"). The Effective Date Loan Amount shall be fully paid and satisfied through a "giveback" of certain real estate and cash, as described below:</p> <p>(1) <i>Surrender of Real Property:</i> On the Effective Date, the Debtors shall execute and deliver to CRH one or more Deeds in Lieu of Foreclosure (the "<u>Deed</u>") conveying the Property to CRH free and clear of all liens, claims, and encumbrances (other than the encumbrances on account of CRH's liens, tax liens, easements, and similar matters of record), pursuant to a confirmed chapter 11 Plan. Additionally, the Deed shall contain a "no-merger clause" reasonably acceptable to CRH that ensures CRH's retained liens on the Property shall not be merged into or extinguished by any such Deed. The Debtors shall retain their interest in any choses in action and promissory note receivables owed to the Debtors.</p> <p>(2) <i>Additional Documents:</i> On the Effective Date (a) the Debtors will convey to CRH (or its designee) such documents as are reasonably necessary to consummate the transactions contemplated in this Agreement. All documentation required in this Paragraph 2, together with the Deed, are hereinafter collectively referred to as the "<u>Closing Documents</u>."</p> <p>(3) <i>Surrender of Net Cash:</i> On the Effective Date, the Debtors shall surrender to CRH an amount of money representing all of the Debtors' Effective Date Cash, less an amount equal to the sum of (a) all post-petition OCB Claims for goods or services provided to the Debtors up to and including the Effective Date and any claims arising under Section 503(b)(9) of the Bankruptcy Code, (b) claims for taxes that accrued up through the Effective Date, and (c) the Carve-Out that is surrendered by CRH under the Plan (the "<u>Net Cash</u>"). The Net Cash shall include any and all security deposits the Debtors hold as of the Effective Date by, for, or on account of their tenants. Attached hereto as <b>Exhibit "B"</b> is a current schedule of all security deposits paid by the tenants.</p> <p>(4) <i>Stipulation Regarding Value:</i> As part of their global compromise (unless otherwise agreed by all parties in a subsequent writing), the Debtors, Insiders, and CRH irrevocably stipulate and agree that upon confirmation (1) the value of the Property surrendered to CRH under the Plan, plus (2) the amount</p>
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of the Net Cash surrendered under the Plan, shall collectively be equal to the Effective Date Loan Amount.

(5) *Deficiency Claim.* Unless otherwise agreed in writing by the Debtors, CRH, and the Insiders, the execution and delivery of the Closing Documents to CRH, along with the tender to CRH of the Net Cash on the Effective Date, shall constitute a full and complete satisfaction of any and all claims of CRH against the Debtors and as such, CRH shall have no deficiency or other unsecured claims against the Debtors. In the event it is subsequently agreed in writing by the Debtors, CRH, and the Insiders that CRH holds an unsecured deficiency claim, CRH agrees to waive its right to distribution on account of such claim and to also vote any such unsecured claim in favor of the Plan.

(6) *Carve-Out:* The Carve-Out shall be for the benefit of the Debtors' estates, as determined by the Debtors and the Bankruptcy Court, and shall be used exclusively to pay allowed Professional Claims, allowed unsecured priority claims (other than priority tax claims), and allowed Class 5 general unsecured claims.

(7) *Releases:* On the Effective Date, the Debtors and Insiders on one hand, and CRH on the other hand, shall be deemed to fully release and discharge the other(s) from any and all claims, charges, lawsuits, or causes of action of any kind or nature that they may have against the others (including CRH's claims against the Insiders relating to liability on guaranties), and shall execute one or more mutual general releases to further memorialize the same.

(8) *Closing.* The Effective Date of the Plan and the closing of the transactions contemplated by the Plan shall occur as soon as reasonably practical following confirmation of the Plan and shall request the Bankruptcy Court make the Confirmation Order immediately effective upon its entry. In any event, if such a closing does not occur on or before one hundred twenty (120) days following the filing date of the Debtors' Plan and Disclosure Statement with the Bankruptcy Court, then the Motion to Compromise shall provide for the transactions contemplated herein (to specifically include the payment of the Carve-Out to the Debtors, and the execution and delivery of the mutual general releases among CRH, the Debtors, and the Guarantors) shall on that date nevertheless be consummated in the absence of such a Plan and that the Debtors shall thereupon surrender the Property and stipulate to relief from stay to allow CRH to complete a



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	<p>friendly foreclosure whereby the Debtors shall withdraw any and all defenses raised in the Foreclosure Lawsuit and stipulate to the entry of a Final Judgment of Foreclosure to allow CRH to take title only by exercising only its <i>in rem</i> remedies, with no claim of a deficiency. Under such scenario the Debtors will continue to maintain the Property as provided below in subparagraph (10) and use the cash collateral for ordinary course business expenses and turnover the net cash to CRH once CRH obtains title to the Property. The parties may mutually agree to extend the 120-day period to allow for confirmation upon fifteen (15) days written notice to the Debtors.</p> <p>(9) <i>Stamp Taxes.</i> In accordance with Section 1146 of the Bankruptcy Code, the conveyance of all Property and other assets pursuant to the Plan shall not be subject to any stamp or similar tax, to the fullest extent permissible under the Bankruptcy Code.</p> <p>(10) <i>Continued Operations:</i> As may be reflected in the Motion to Compromise, during the pendency of the Bankruptcy Cases and the Plan confirmation process (the "<u>Interim Period</u>"), the Debtors shall continue to operate the Property in the normal course of business (including, without limitation, the continued use and compensation of the Debtors' property management company), subject to the Approved Budget. The Debtors agree to make only those expenditures in compliance with the orders of the Bankruptcy Court authorizing the continued use of "cash collateral," and (with the consent of CRH or further order of the Bankruptcy Court) those extraordinary expenses that are necessary to maintain and operate the Property. In the event a "friendly foreclosure" is used, the Debtors shall continue to operate the Property in the normal course of business (including, without limitation, the continued use and compensation of the Debtors' property management company), for up to a maximum of two hundred and ten (210) days after the date of filing the Debtors' Plan and Disclosures Statement (unless otherwise extend by the Debtors at their discretion) at which point CRH will accept delivery of and immediately record the Deed in Lieu of Foreclosure and the Debtors (and the Debtors' property management company) shall have no further obligations under the Plan regarding the Property. Until title to the Transferred Property transfers to CRH as contemplated herein, neither the Debtor, its property management company, nor any of their respective officers, owners, directors, or representatives shall be liable to CRH for any acts or omissions in connection with the operation of</p>
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	the Property that are made in good faith and in the absence of willful misconduct or gross negligence.
<u>Class 3 – Priority Claims</u>	Allowed claims entitled to priority claims under Section 507 of the Bankruptcy Code, if any, shall be paid (a) in cash from the Carve-Out in full satisfaction, settlement, release, extinguishment, and discharge of such Claim on the Effective Date to the extent required under the Bankruptcy Code, or (b) upon such other terms as may be agreed upon by the Holder of the Claim and the Debtors. Notwithstanding the foregoing, to the extent any such Claim pertains to a post-petition vendor who holds an OCB Claim in conformity with the Approved Budget or a 503(b)(9) Claim, such claims shall be paid in cash, in full, from the Debtors' Effective Date Cash, or (2) at CRH's election, by CRH after the Effective Date.
<u>Class 4 – Personal Injury Claims</u>	Any Claims arising out of personal injury that occurred on the Property prior to the Effective Date and for which the Debtors are or may be adjudicated liable shall be paid, if at all, solely from the proceeds of any available insurance policy and CRH shall not be responsible for any deductible or other expenses related to addressing, insuring, or otherwise disposing of such claim. Creditors holding such claims shall not be entitled to participate in any distributions funded from the Carve-Out.
<u>Class 5 – General Unsecured Claims</u>	General unsecured claims (including any unsecured "deficiency" resulting from the value of collateral being less than the amount of indebtedness secured by such collateral) shall be paid on a "pro-rata" basis from the Carve-Out and proceeds (if any) resulting from the liquidation of the Debtors' assets not otherwise transferred to CRH, after payment of all other claims of higher priority pursuant to the Plan.
<u>Class 6 – Equity Interests</u>	All existing equity interests in the Debtors, however denominated, shall be cancelled and holders of such interests will not receive or retain any property on account of such equity interests.

Of course, Mitch, there are a number of other aspects of the Plan that we will need to address outside of the provisions dealing with claim treatments. These are fairly



Mitchell C. Robiner  
February 14, 2013  
Page 9 of 10

standard provisions and probably do not warrant detailed discussion at this point. For example:

- The Plan will provide that the Debtors will retain any assets and causes of action not specifically conveyed to CRH (including without limitation any causes of action and promissory note receivables held by the Debtors), and will likewise reserve the right to object to claims after the Effective Date. Nevertheless, our goal and expectation is that there will not be a very long post-Effective Date claims reconciliation process and that we will be able to obtain a final decree closing the Bankruptcy Cases shortly after the Effective Date.
- The Plan will provide for a "non-debtor release" of the Insiders by all other creditors (remember, CRH will be consensually releasing them as described above) in consideration of, among other things, their waiver of distribution rights under the Plan.
- If the Debtor has any contracts useful or necessary to the operation of the Property, then we will need to work together to identify those executory contracts and then agree on Plan provisions that will assign those contracts to CRH (instead of rejecting them) as of the Effective Date.
- The Debtors may want to substantively consolidate their respective cases upon the Effective Date and will preserve the right to make that election prior to confirmation.
- Lastly, once we are further along in the process, we can begin dealing with the practical details of transitioning the Property to the new ownership of CRH (like ensuring proper calculation and payment of the OCB Claims, notifying tenants of the change of ownership, and the like), either as part of the Plan or otherwise.

Please review the above terms carefully with your client. If they are acceptable, please have your client execute this Memorandum below where indicated. Once we receive a signed copy from CRH and the Debtors, we will prepare the Motion to Compromise our disputes in connection with the Debtors' continued use of Cash Collateral, which shall be based on this Memorandum. We can thereafter begin in earnest drafting the Plan and Disclosure Statement described above.

Mitchell C. Robiner  
February 14, 2013  
Page 10 of 10

I look forward to your prompt response and your client's agreement so that we can efficiently conclude these Bankruptcy Cases to the benefit of all stakeholders.

Sincerely,

JENNIS & BOWEN, P.L.



Chad S. Bowen

**ACKNOWLEDGED AND AGREED:**

The Cypress of Tampa, LLC

By: Gordon Comer  
Gordon Comer  
Its: President Manager

Cypress Retail Holdings, LLC

By: [Signature]  
Name: Keith L. Cummings  
Its: Manager

The Cypress of Tampa II, LLC

By: Gordon Comer  
Gordon Comer  
Its: President Manager



EXHIBIT "A"  
LEGAL DESCRIPTION

**EXHIBIT "A"****Phase I (revised):**

A parcel of land lying in Section 1, Township 27 South, Range 19 East, Hillsborough County, Florida, and being more particularly described as follows:

Commence from the Northeast corner of said Section 1, run thence along the North boundary of said Section 1, N.89°56'45"W., 100.01 feet; thence S.00°40'23"E., 60.00 feet to a point of Intersection with the South right-of-way line of County Line Road (State Road No. S-582) as recorded in Official Records Book 4486, Page 1747, Public Records of Hillsborough County, Florida, with the Westerly right-of-way line of Bruce B. Downs Boulevard (State Road No. 581), said point also being the POINT OF BEGINNING; thence continue along said Westerly right-of-way line, S.00°40'23"E., 1266.80 feet to a point on the South line of the Northeast 1/4 of the Northeast 1/4 of said Section 1; thence along said Westerly right-of-way line, S.00°40'23"E., 333.07 feet, thence leaving said right-of-way line of Bruce B. Downs Blvd., N.70°26'35"W., 46.15 feet; thence the following 17 courses: (1) N.19°19'44"W., 10.59 feet; (2) thence N.03°11'44"E., 35.29 feet; (3) thence N.84°46'28"W., 15.20 feet; (4) thence S.00°57'22"E., 47.16 feet; (5) thence S.23°01'39"W., 32.39 feet; (6) thence N.34°59'05"W., 35.57 feet; (7) thence N.08°13'20"W., 13.01 feet; (8) thence N.64°38'15"W., 29.93 feet; (9) thence N.08°09'25"E., 39.01 feet; (10) thence N.10°58'20"W., 34.54 feet; (11) thence N.19°41'29"W., 49.16 feet; (12) thence N.08°15'49"E., 24.40 feet; (13) thence N.34°40'09"W., 25.95 feet; (14) thence N.04°08'06"W., 46.32 feet; (15) thence N.09°04'39"W., 34.81 feet; (16) thence N.19°40'51"W., 27.82 feet; (17) thence N.27°15'03"W., 24.89 feet; thence N.89°57'51"W. along the South line of the North 1/4 of said Section 1, a distance of 1330.33 feet; thence N.17°01'57"E., 20.20 feet; thence N.63°22'57"E., 28.41 feet; thence N.41°36'47"E., 28.46 feet; thence N.30°17'24"E., 57.06 feet; thence N.65°15'35"E., 45.56 feet; thence N.36°00'00"W., 57.38 feet; thence N.54°00'00"E., 18.58 feet to a point of curvature; thence Northeasterly, 331.61 feet along the arc of a curve to the left having a radius of 380.00 feet and a central angle of 50°00'00" (chord bearing N.29°00'00"E., 321.19 feet) to a point of tangency; thence N.04°00'00"E., 100.00 feet to a point of curvature; thence Northeasterly, 231.30 feet along the arc of a curve to the right having a radius of 320 feet and a central angle of 41°24'50" (chord bearing N.24°42'25"E., 226.30 feet) to a point of tangency; thence N.45°24'50"E., 98.95 feet to a point of curvature; thence Northeasterly, 340.42 feet along the arc of a curve to the left having a radius of 430.00 feet and a central angle of 45°21'35" (chord bearing N.22°44'03"E., 331.60 feet) to a point of tangency; thence N.00°03'15"E., 101.10 feet to a point of curvature; thence Northeasterly, 39.27 feet along the arc of a curve to the right having a radius of 25.00 feet and a central angle of 90°00'00" (chord bearing N.45°03'15"E., 35.36 feet) to a point of tangency of the aforesaid South right-of-way line of County Line Road; thence along said South right-of-way line, lying 60.00 feet South of and parallel with the aforesaid North boundary of Section 1; thence S.89°56'45"E., 908.65 feet to the POINT OF BEGINNING.

**Phase II (revised):**

A parcel of land lying in Section 1, Township 27 South, Range 19 East, Hillsborough County, Florida, being more particularly described as follows:

Commence from the Northeast corner of said Section 1, run thence along the North boundary of said Section 1, N.89°56'45"W., 100.01 feet; thence S.00°40'23"E., 60.00 feet to a point of Intersection with South right-of-way line of County Line Road (State Road No. S-582) as recorded in Official Records Book 4486, Page 1747, Public Records of Hillsborough County, Florida, with the Westerly right-of-way line of Bruce B. Downs Boulevard (State Road No. 581), lying 100.00 feet West of and parallel with the East boundary of said Section 1; thence along said Westerly right-of-way line, continue, S.00°40'23"E., 1599



**EXHIBIT "A"**

feet to the POINT OF BEGINNING; S.00°40'23"E., 969.94 feet to a point of curvature; thence Southwesterly, 39.27 feet along the arc of a curve to the right having a radius of 25.00 feet and a central angle of 90°00'00" (chord bearing S.44°19'37"W., 35.36 feet) to a point of tangency; thence S.89°19'37"W., 97.40 feet to a point of curvature; thence Westerly, 101.90 feet along the arc of a curve to the right having a radius of 547.00 feet and a central angle of 10°40'23" (chord bearing N.85°20'12"W., 101.75 feet); thence S. 10°00'00"W., 12.00 feet to a point on a curve; thence Westerly, 43.90 feet along the arc of said curve to the right having a radius of 559.00 feet and a central angle of 04°30'00" (chord bearing N.77°45'00"W., 43.89 feet) to a point of tangency; thence N.75°30'00"W., 168.07 feet; thence N.76°38'45"W., 250.05 feet; thence N.75°30'00"W., 220.42 feet to a point of curvature; thence Northwesterly, 68.16 feet along the arc of a curve to the right having a radius of 150.00 feet and a central angle of 26°02'06" (chord bearing N.62°28'57"W., 67.57 feet); thence N.40°32'06"E., 28.23 feet; thence N.42°41'17"W., 24.41 feet; thence N.05°36'16"W., 26.19 feet; thence N.22°11'20"E., 63.07 feet; thence N.42°35'12"E., 24.91 feet; thence N.00°34'25"E., 44.97 feet; thence N.01°15'12"W., 47.73 feet; thence N.48°14'06"E., 19.95 feet; thence N.14°56'14"E., 51.67 feet; thence N.02°06'47"E., 44.15 feet; thence N.57°13'40"E., 39.73 feet; thence N.09°54'17"E., 37.86 feet; thence N.33°38'44"E., 56.62 feet; thence N.40°02'02"E., 70.02 feet; thence N.25°16'55"E., 44.82 feet; thence N.18°57'58"W., 48.04 feet; thence S.86°22'13"W., 13.81 feet; thence N.27°57'43"W., 21.57 feet; thence S.79°19'31"W., 52.06 feet; thence N.53°57'07"W., 42.41 feet; thence N.12°39'21"W., 32.99 feet; thence N.11°06'07"E., 34.63 feet; thence N.34°27'24"E., 39.14 feet; thence N.37°14'05"E., 27.91 feet; thence N.08°07'16"W., 55.52 feet; thence N.39°45'15"W., 37.01 feet; thence N.69°01'10"W., 46.43 feet; thence N.75°21'47"W., 36.15 feet; thence N.56°04'23"W., 39.07 feet; thence N.77°42'40"W., 81.55 feet; thence N.34°19'52"W., 52.23 feet; thence N.67°01'03"W., 18.13 feet; thence N.24°52'26"W., 26.22 feet; thence N.46°42'51"W., 36.75 feet; thence S.72°33'18"W., 45.72 feet; thence N.82°16'14"W., 38.66 feet; thence N.81°06'27"W., 32.11 feet; thence S.86°01'44"W., 56.57 feet; thence S.82°11'40"W., 34.62 feet; thence S.64°13'34"W., 27.47 feet; thence N.20°07'25"W., 35.83 feet; thence S.87°02'25"W., 42.48 feet; thence N.72°55'14"W., 47.43 feet; thence N.22°54'31"W., 25.07 feet; thence N.26°38'22"W., 33.46 feet; thence N.50°35'19"W., 32.57 feet; thence N.21°40'59"W., 35.74 feet; thence N.17°01'57"E., 21.69 feet to a point on the South boundary of the North 1/4 of said Section 1; thence S.89°57'51"E along said boundary, 1330.33 feet; thence the following 18 courses (1) S.27°15'03"E., 24.89 feet; (2) thence S.19°40'51"E., 27.82 feet; (3) thence S.09°04'39" 34.81 feet; (4) thence S.04°08'06"E., 46.32 feet; (5) thence S.34°40'09"E., 25.95 feet; (6) thence S.08°15'49"W., 24.40 feet; (7) thence S.19°41'29"E., 49.16 feet; (8) thence S.10°58'20"E., 34.54 feet; (9) thence S. 08°09'25"W., 39.01 feet; (10) thence S.64°38'15"E., 29.93 feet; (11) thence S.08°13'20' 13.01 feet; (12) thence S.34°59'05"E., 35.57 feet; (13) thence N. 23°01'39"E., 32.39 feet; (14) thence S.00°57'22"E., 47.16 feet; (15) thence S. 84°46'28"E., 15.20 feet; (16) thence S.03°11'44"W., 35.29 f (17) thence S.19°19'44"E., 10.59 feet (18) thence S.70°26'35"E., 46.15 feet to the POINT OF BEGINNING

**PARCEL B: "SCALA" COMMERCIAL PARCEL No. 2**

A parcel of land lying in Section 1, Township 27 South, Range 19 East, Hillsborough County, Florida and being more particularly described as follows:

Commence from the Northeast corner of said Section 1, run thence along the North boundary of said Section 1, N.89°56'45"W., 100.01 feet; thence S.00°40'23"E., 60.00 feet to a point of Intersection with South right-of-way line of County Line Road (State Road No. S-582) as recorded in Official Records Book 4486, Page 1747, Public Records of Hillsborough County, Florida, and the Westerly right-of-way line of Bruce B. Downs Boulevard (State Road No. 581); thence along said South right-of-way line, lying 60.0 feet South of and parallel with said North boundary of Section 1, N.89°56'45"W., 1060.65 feet to a point cusp, said point also being the POINT OF BEGINNING; thence Southeasterly, 39.27 feet along the arc curve to the right having a radius of 25.00 feet and a central angle of 90°00'00" (chord bearing S.44°56'45"E., 35.36 feet) to a point of tangency; thence S.00°03'15"W., 130.59 feet to a point of

**EXHIBIT "A"**

curvature; thence Southerly, 138.05 feet along the arc of a curve to the right having a radius of 370.00 feet and a central angle of  $21^{\circ}22'41''$  (chord bearing  $S.10^{\circ}44'36''W.$ , 137.25 feet); thence  $N.64^{\circ}18'14''W.$ , 257.19 feet; thence  $N.00^{\circ}03'15''E.$ , 179.16 feet to a point on the aforesaid South right-of-way line of County Line Road; thence along said South right-of-way line, lying 60.00 feet South of and parallel with the aforesaid North boundary of Section 1,  $S.89^{\circ}56'45''E.$ , 232.32 feet to the POINT OF BEGINNING.

**PARCEL D: "683" COMMERCIAL PARCEL No. 2**

A parcel of land lying in Section 1, Township 27 South, Range 19 East, Hillsborough County, Florida, said parcel also being in part a portion of that property recorded in Official Records Book 4060, Page 46; Public Records of Hillsborough County, Florida, lying Easterly of Trout Creek and being more particularly described as follows:

Commence from the Northeast corner of said Section 1, run thence along the North boundary of said Section 1,  $N.89^{\circ}56'45''W.$ , 100.01 feet; thence  $S.00^{\circ}40'23''E.$ , 60.00 feet to a point of intersection with the South right-of-way line of County Line Road (State Road No. S-582) as recorded in Official Records Book 4486, Page 1747, Public Records of Hillsborough County, Florida, with the Westerly right-of-way line of Bruce B. Downs Boulevard (State Road No. 581), lying 100.00 feet West of and parallel with the East boundary of said Section 1; thence along said Westerly right-of-way line the following two (2) courses: 1) continue,  $S.00^{\circ}40'23''E.$ , 2725.80 feet to the POINT OF BEGINNING; 2) continue,  $S.00^{\circ}40'23''E.$ , 275.81 feet to a point on the Southerly boundary of the aforesaid property recorded in Official Records Book 4060, Page 46; thence along said Southerly boundary,  $N.89^{\circ}57'51''W.$ , 400.03 feet; thence  $N.00^{\circ}40'23''W.$ , 359.99 feet; thence  $S.75^{\circ}30'00''E.$ , 113.79 feet to a point of curvature; thence Easterly, 50.34 feet along the arc of a curve to the left having a radius of 641.00 feet and a central angle of  $04^{\circ}30'00''$  (chord bearing  $S.77^{\circ}45'00''E.$ , 50.33 feet); thence  $S.10^{\circ}00'00''W.$ , 12.00 feet to a point on a curve; thence Easterly, 121.64 feet along the arc of said curve to the left having a radius of 653.00 feet and a central angle of  $10^{\circ}40'23''$  (chord bearing  $S.85^{\circ}20'12''E.$ , 121.47 feet) to a point of tangency; thence  $N.89^{\circ}19'37''E.$ , 97. feet to a point of curvature; thence Southeasterly, 39.27 feet along the arc of a curve to the right having a radius of 25.00 feet and a central angle of  $90^{\circ}00'00''$  (chord bearing  $S.45^{\circ}40'23''E.$ , 35.36 feet to the POINT OF BEGINNING.

**ALL OF THE ABOVE DESCRIBED LANDS BEING NOW DESCRIBED AS:**

Lots 3, 4, 5, 6 and 7, Cypress of Tampa, according to the map or plat thereof, as recorded in Plat Book 116, Pages 210 through 222, inclusive, of the Public Records of Hillsborough County, Florida.

**LESS AND EXCEPT:**

A portion of Lot 7, CYPRESS OF TAMPA, a subdivision according to the plat thereof, recorded in Plat Book 116, Page 210, Public Records of Hillsborough County, Florida, said portion being more particularly described as follows:

A parcel of land lying in Section 1, Township 27 South, Range 19, East, Hillsborough County, Florida; described as follows:

Commencing at the Northeast corner of said Section 1, and run thence along the North boundary line said Section 1, North 89 degrees 56'45" West; 100.01 feet; thence South 00 degrees 40'23" East, 60 feet to a point of intersection with the South right-of-way line of County Line Road, as recorded in Official Records Book 4486 Page 1747 of the Public Records of Hillsborough County, Florida, with the Westerly right-of-way line of Bruce D. Downs Boulevard; thence continue South 00 degrees 40'23" East, Along

**EXHIBIT "A"**

Westerly right-of-way line, 1090.24 feet for a Point of Beginning; thence continue South 00 degrees 40'23" East, along said Westerly right-of-way line, 190.08 feet; thence leaving said Westerly Right-of-way line, South 89 degrees 19'37" West, 168.12 feet; thence North 27 degrees 15'18" West, 32.52 feet; thence North 38 degrees 01'05" West, 24.96 feet; thence North 41 degrees 21'45" West, 28.09 feet; thence North 28 degrees 05'46" West, 32.64 feet; thence North 73 degrees 05'27" West, 25.52 feet; thence North 00 degrees 40'23" West, 83.18 feet; thence North 89 degrees 19'37" East, 255.48 feet to the Point of Beginning.

**ALL TOGETHER WITH:**

Together with nonexclusive appurtenant easement as created by that certain Declaration of Easements, Covenants and Restrictions of Cypress of Tampa recorded in Official Records Book 18837 Page 875, Public Records of Hillsborough County, Florida, as may be amended from time to time.

and

Together with Drainage, Stormwater, Retention and Easement rights under that certain Drainage and Stormwater Retention and Easement Agreement dated May 26, 2004 as recorded in O.R. Book 13879, page 1094, as amended by First Amendment to Drainage and Stormwater Retention and Easement Agreement recorded in Official Records Book 18982, Page 1347, Public Records of Hillsborough County, Florida, over and cross the property described therein.

and

Together with Drainage, Stormwater, Retention and Easement rights under that certain Drainage and Stormwater Retention and Easement Agreement dated May 26, 2004 as recorded in O.R. Book 13879, page 1116, as amended by First Amendment to Drainage and Stormwater Retention and Easement Agreement recorded in Official Records Book 18982, Page 1354, Public Records of Hillsborough County, Florida, over and cross the property described therein.

and

Together with Easement rights under that certain Roadway Easement Agreement dated May 26, 2004 as recorded in O.R. Book 13879, page 1139, Public Records of Hillsborough County, Florida, over and cross the property described therein.

and

Together with Easement rights under that certain Roadway Easement Agreement dated May 26, 2004 as recorded in O.R. Book 13879, page 1164, as amended by First Amendment to Drainage and Stormwater Retention and Easement Agreement recorded in Official Records Book 18982, Page 1361, Public Record Hillsborough County, Florida, over and cross the property described therein.





Order No.: 3751089  
Customer Reference: Wells Fargo-Cypress

### EXHIBIT "A"

Lots 4, 5, 6 and 7, Cypress of Tampa, according to the map or plat thereof, as recorded in Plat Book 116, Pages 210 through 222, inclusive, of the Public Records of Hillsborough County, Florida.

#### LESS AND EXCEPT:

A portion of Lot 7, CYPRESS OF TAMPA, a subdivision according to the plat thereof, recorded in Plat Book 116, Page 210, Public Records of Hillsborough County, Florida, said portion being more Particularly described as follows:

A parcel of land lying in Section 1, Township 27 South, Range 19, East, Hillsborough County, Florida, Being described as follows:

Commencing at the Northeast corner of said Section 1, and run thence along the North boundary line Of said Section 1, North 89 degrees 56'45" West; 100.01 feet; thence South 00 degrees 40'23" East, 60.00 feet to a point of intersection with the South right-of-way line of County Line Road, as recorded In Official Records Book 4486 Page 1747 of the Public Records of Hillsborough County, Florida, with the Westerly right-of-way line of Bruce D. Downs Boulevard; thence continue South 00 degrees 40'23" East, Along said Westerly right-of-way line, 1090.24 feet for a Point of Beginning; thence continue South 00 degrees 40'23" East, along said Westerly right-of-way line, 190.08 feet; thence leaving said Westerly Right-of-way line, South 89 degrees 19'37" West, 168.12 feet; thence North 27 degrees 15'18" West, 32.52 feet; thence North 38 degrees 01'05" West, 24.96 feet; thence North 41 degrees 21'45" West, 28.09 feet; thence North 28 degrees 05'46" West, 32.64 feet; thence North 73 degrees 05'27" West, 25.52 feet; thence North 00 degrees 40'23" West, 83.18 feet; thence North 89 degrees 19'37" East, 255.48 feet to the Point of Beginning.

#### ALL TOGETHER WITH:

Together with nonexclusive appurtenant easement as created by that certain Declaration of Easements, Covenants and Restrictions of Cypress of Tampa recorded in Official Records Book 18837 Page 875, Public Records of Hillsborough County, Florida, as may be amended from time to time.

and

Together with Drainage, Stormwater, Retention and Easement rights under that certain Drainage and Stormwater Retention and Easement Agreement dated May 26, 2004 as recorded in O.R. Book 13879, page 1094, as amended by First Amendment to Drainage and Stormwater Retention and Easement Agreement recorded in Official Records Book 18982, Page 1347, Public Records of Hillsborough County, Florida, over and cross the property described therein.

and

Together with Drainage, Stormwater, Retention and Easement rights under that certain Drainage and Stormwater Retention and Easement Agreement dated May 26, 2004 as recorded in O.R. Book 13879, page 1116, as amended by First Amendment to Drainage and Stormwater Retention and Easement Agreement recorded in Official Records Book 18982, Page 1354, Public Records of Hillsborough County, Florida, over and cross the property described therein.

and

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**Exhibit "A" continued**

Together with Easement rights under that certain Roadway Easement Agreement dated May 26, 2004 as recorded in O.R. Book 13879, page 1139, Public Records of Hillsborough County, Florida, over and cross the property described therein.

and

Together with Easement rights under that certain Roadway Easement Agreement dated May 26, 2004 as recorded in O.R. Book 13879, page 1164, as amended by First Amendment to Drainage and Stormwater Retention and Easement Agreement recorded in Official Records Book 18982, Page 1361, Public Records of Hillsborough County, Florida, over and cross the property described therein.

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ALTA Commitment (6-17-06)



EXHIBIT "B"

SECURITY DEPOSITS



## Cypress tenant deposits 2-13-13

1/11/2008	7,784.73	salon jaad sec dep
2/14/2008	3,743.82	hudson clean sed dep
2/26/2008	5,318.88	Five Guy sec dep
6/26/2008	6,868.60	YFK Hungry H sec dep
8/4/2008	3,727.84	Pita of Tampa sec dep
9/14/2009	3,743.81	hudson cleaner sec dep
10/7/2009	6,516.30	eye doctor sec dep
10/13/2009	19,353.41	world sports sec dep
10/20/2009	3,094.08	china wok
10/26/2009	3,727.83	pita sec dep
11/19/2009	4,610.18	egp nail sec dep
11/24/2009	6,730.30	heverly sec dep
2/4/2011	6,158.92	frogury sec dep
8/3/2011	2,500.00	Nutri Shop deposit
2/28/2012	5,645.66	Barber Shop deposit

89524.36

Label Matrix for local noticing  
113A-8  
Case 8:12-bk-17518-KRM  
Middle District of Florida  
Tampa  
Fri Feb 15 10:02:52 EST 2013

The Cypress of Tampa II LLC  
12570 Telecom Drive  
Tampa, FL 33637-0905

Adams & Reese LLP  
101 E. Kennedy Blvd.  
Suite 4000  
Tampa, FL 33602-5152

Bernard Ruekberg  
2245 Bow Lane  
Safety Harbor, FL 34695-2006

City of Tampa  
P.O. Box 30191  
Tampa, FL 33630-3191

Cypress Retail Holdings, LLC  
c/o Mitchell C. Robiner, Esq.  
Gunster, Yoakley & Stewart, P.A.  
401 E. Jackson Street, Suite 2400  
Tampa, FL 33602-5226

Department of Revenue  
PO Box 6668  
Tallahassee FL 32314-6668

First Choice Reporting Svcs  
121 S. Orange Avenue  
Orlando, FL 32801-3233

Gordon & Marjorie Meyer  
as Trustees of 3M Trust  
49511 Canyon View  
Palm Desert, CA 92260-6783

Grandeur Hair Design  
10436 Villa View Circle  
Tampa, FL 33647-2598

Jennis & Bowen, PL  
400 N. Ashley Drive, Suite 2540  
Tampa, FL 33602-4317

The Cypress of Tampa LLC  
The Cypress of Tampa II, LLC  
8:12-bk-17518-KRM (Jointly Administered)  
12570 Telecom Drive  
Tampa, FL 33637-0905

Adams and Reese LLP  
c/o Joey E. Schlosberg, Esq  
Adams and Reese LLP  
150 2nd Ave N Suite 1700  
St. Petersburg, FL 33701-3343

Chastain Cypress, LLC  
P.O. Box 880908  
Port Saint Lucie, FL 34988-0908

Concord Wilshire  
2160 Kingston Court  
Suite B  
Marietta, GA 30067-8951

Dana Enterprises Inc.  
7113 Condor Court  
New Port Richey, FL 34655-4001

EarthScapes Complete  
Landscaping, Inc.  
12560 Hwy 301 N.  
Thonotosassa, FL 33592-2614

Florida Dept of Revenue  
Bankruptcy Section  
P.O. Box 6668  
Tallahassee, FL 32314-6668

Gordon Meyer  
49511 Canyon View Drive  
Palm Desert, CA 92260-6783

Headlines Barber Shop LLC  
2431 Mirador Lane, #104  
Wesley Chapel, FL 33544-6499

K. Rodney May  
Tampa

Acquinvest Corporation  
12570 Telecom Drive  
Tampa, FL 33637-0905

Barbara M. Chastain  
41 Tidy Island Blvd.  
Bradenton, FL 34210-3302

Chun Guan Zhang d/b/a  
China Wok  
12954 Lake Vista Drive  
Suite 105  
Gibsonston, FL 33534-3901

Cypress Retail Holdings LLC  
4801 PGA Blvd.  
Palm Beach Gardens, FL 33418-3941

Department of Labor and Security  
Hartman Building Suite 307  
2012 Capital Circle Southeast  
Tallahassee FL 32399-6583

Eye Doctors Optical OutletPA  
5607 Johns Road  
Tampa, FL 33634-4499

Frogury LLC  
13383 Arbor Pointe Cr. #204  
Tampa, FL 33617-1155

Gordon W. Comer  
P.O. Box 904  
Thonotosassa, FL 33592-0904

Heverly Educational Svcs LLC  
dba The Tutoring Center  
6207 Quiet Waters Place  
Temple Terrace, FL 33617-1767

Hillsborough County Tax Coll  
601 East Kennedy Blvd.  
County Center, 14th Floor  
Tampa, FL 33602-4932

Hudson Cleaners, Inc.  
6051 Yates Manor Drive  
Tampa, FL 33616-1303

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

J. Harold Chastain  
41 Tidy Island Blvd.  
Bradenton, FL 34210-3302

Kash N Karry Food Stores Inc  
P.O. Box 1000  
Real Estate Dept MS 6000  
Portland, ME 04104-5005

Kathleen T. Comer  
12570 Telecom Drive  
Tampa, FL 33637-0905

Kathleen T. Comer, Trustee  
Amended & Restated C Trust  
12570 Telecom Drive  
Tampa, FL 33637-0905

LA Fitness International LLC  
2600 Michelson Drive  
Suite 300  
Irvine, CA 92612-6536

LaRosa Civil Design, Inc.  
3300 N. Armenia Avenue  
Suite 101  
Tampa, FL 33607-1619

MRK Construction, Inc.  
26650 Wesley Chapel Blvd.  
Lutz, FL 33559-7203

Macfarlane Ferguson  
One Tampa City Center  
201 N. Franklin Street  
Suite 2000  
Tampa, FL 33602-5627

Marcus & Millichap  
Attn: Bill Kohlhepp  
300 S. Orange Avenue  
Suite 700  
Orlando, FL 32801-3373

Marquis Contracting, Inc.  
2209 Collier Parkway  
Suite 133  
Land o' Lakes, FL 34639-5285

Michael V. Gates  
Land Surveyor  
1330 Divot Lane  
Tampa, FL 33612-6533

Mitchell C. Robiner  
Gunster Yoakley & Stewart PA  
401 East Jackson Street  
Suite 2400  
Tampa, FL 33602-5226

Pita's of Tampa Bay Inc.  
14614 N. Dale Mabry Hwy  
Tampa, FL 33618-2024

RAM Realty Assoc. III LLC  
4801 PGA Blvd.  
Palm Beach Gardens, FL 33418-3941

RMD Associates Cypress LLC  
777 N. Ashley Drive, # 1608  
Tampa, FL 33602-4371

Redstone Commercial  
118 S. Oregon Avenue  
Tampa, FL 33606-1820

Star Environmental, Inc.  
P.O. Box 1177  
Brandon, FL 33509-1177

Tuan Nguyen dba Ego Nail  
& Tan Day Spa  
6601 Summer Cove Drive  
Riverview, FL 33578-8949

United American Realty Corp.  
12570 Telecom Drive  
Tampa, FL 33637-0905

VAM23 Shop, LLC dba  
Nutri Shop  
2940 Providence Lakes Blvd.  
Brandon, FL 33511-2745

Vertex Business Services  
5901 Benjamin Center Dr.  
Suite 110  
Tampa, FL 33634-5241

Waste Management  
P.O. Box 105453  
Atlanta, GA 30348-5453

Waste Management of Tampa  
3411 N. 40th Street  
Tampa, FL 33605-1639

Wells Fargo Bank  
333 South Grand Avenue  
9th Floor  
Los Angeles, CA 90071-1583

World Endurance Sports LLC  
dba Ironman Store  
29619 Chapel Park Drive  
Wesley Chapel, FL 33543-7402

(c)YKF FOODS, INC. D/B/A  
HUNGRY HOWIES  
27307 WESLEY CHAPEL BLVD  
WESLEY CHAPEL FL 33544-4287

David S Jennis +  
Jennis & Bowen PL  
400 North Ashley Drive  
Suite 2540  
Tampa, FL 33602-4317

United States Trustee - TPA +  
 Timberlake Annex, Suite 1200  
 501 E Polk Street  
 Tampa, FL 33602-3949

Denise E Barnett +  
 United States Trustee  
 501 East Polk Street  
 Suite 1200  
 Tampa, FL 33602-3945

Mitchell C Robiner +  
 Gunster, Yoakley & Stewart  
 401 East Jackson Street, Suite 2400  
 Tampa, FL 33602-5226

Addresses marked (c) above for the following entity/entities were corrected  
 as required by the USPS Locatable Address Conversion System (LACS).

YKF Foods, Inc. d/b/a  
 Hungry Howies  
 27307 SR 54  
 Wesley Chapel, FL 33544

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Cypress Retail Holdings, LLC

(d)Department of Labor and Security  
 Hartman Building Suite 307  
 2012 Capital Circle Southeast  
 Tallahassee FL 32399 0648

(d)Internal Revenue Service  
 PO Box 7346  
 Philadelphia, PA 19101-7346

(d)The Cypress of Tampa II LLC  
 12570 Telecom Drive  
 Tampa, FL 33637-0905

End of Label Matrix  
 Mailable recipients 62  
 Bypassed recipients 4  
 Total 66