

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

STEPHEN MATTHEW BANDER,

Respondent.

CASE NO. SC21-11

Fla. Bar File 2018-70,073 (11G)

**On Review of a Report of Referee
in a Florida Bar Disciplinary Proceeding**

APPENDIX TO RESPONDENT'S INITIAL BRIEF

D. Culver Smith III
Florida Bar No. 105933
Culver Smith III, P.A.
500 South Australian Avenue
Suite 600
West Palm Beach, FL 33401
561-598-6800
csmith@culversmithlaw.com
Counsel for Respondent

RECEIVED, 08/03/2022 09:46:09 AM, Clerk, Supreme Court

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Bander Law Firm, P.L.L.C.
174 N.E. 96th Street
Miami, FL 33138

Invoice

Invoice #: 761
Invoice Date: 2/23/2015
Due Date: 2/23/2015

Bill To:
Felix Guevara

PAID
03/03/2015

Case No.

Date	Description	Amount
2/23/2015	Engagement fee for EB-5	20,000.00

<https://secure.lawpay.com/pages/banderlawfirm/operating>

Total	\$20,000.00
Payments/Credits	-\$20,000.00
Balance Due	\$0.00

Phone #	Fax:
(305) 358-5800	(786) 924-1232

In the Supreme Court of Florida (Before a Referee)
Case No. SC21-11

Respondent's Exhibit 3

In Evidence on 3

Bander Law Firm, P.L.L.C.
 174 N.E. 96th Street
 Miami, FL 33138

Invoice

Invoice #: 831
 Invoice Date: 7/17/2015
 Due Date: 5/18/2015

PAID
08/05/2015

Bill To:
 Skyrise Miami Tower Investors, LLC
 2665 South Bayshore Drive
 Suite 1200
 Miami, FL 33133

Case No. Carlos Felix

Date	Description	Amount
5/18/2015	Reimbursement of Legal Fees for the case of Carlos Felix.	20,000.00

Please make checks payable to Bander Law Firm, P.L.L.C or pay by credit card using form attached.

Total	\$20,000.00
Payments/Credits	-\$20,000.00
Balance Due	\$0.00

Phone #	Fax:
(305) 358-5800	(786) 924-1232

Bill

Bander Law Firm, P.L.L.C.
174 N.E. 96th Street
Miami, FL 33138

Date	Ref. No.
08/05/2015	

Vendor
James Ansin
1000 South Pointe Dr. #1501
Miami Beach, FL 33149

Bill Due 08/15/2015
Terms
Memo Refund

PAID

Expenses

Account	Memo	Amount	Customer Job	Class
Unearned Retainers		20,000.00		

Expense Total : 20,000.00

Bill Total : \$20,000.00

Subp_AmericanLife_SEC_BanderResp_001606

Bander Law Firm, P.L.L.C.

174 N.E. 96th Street
Miami, FL 33138

Invoice

Date	Invoice #
9/9/2016	1421

Bill To
Carlos Felix-Guevara

PAID
10/01/2016

P.O. No.	Terms	Project

Item	Description	Est. Amt.	Enter. Amt.	Priority	Alt.	Rate	Currency	Total	Amount
EB-5	Final payment due upon decision of EB-5 petition	12,500.00				12,500.00	100.00%	100.00%	12,500.00
						Total			\$12,500.00
						Payments/Credits			-\$12,500.00
						Balance Due			\$0.00

Bander Law Firm, P.L.L.C.
174 N.E. 98th Street
Miami, FL 33138

Invoice

Invoice #: 1420
Invoice Date: 9/9/2016
Due Date: 9/9/2016

Bill To:
Skyrise Miami Tower Investors, LLC
2685 South Bayshore Drive
Suite 1200
Miami, FL 33133

PAID
10/17/2016

Case No. Carlos Felix

Date	Description	Amount
9/9/2016	Reimbursement of Legal Fees for the case of Carlos Felix	12,500.00

<https://secure.lawpay.com/pages/banderlawfirm/operating>

Total \$12,500.00

Payments/Credits -\$12,500.00

Balance Due \$0.00

Phone #	Fax
(305) 358-5800	(786) 924-1232

Bill

Bander Law Firm, P.L.L.C.
174 N.E. 96th Street
Miami, FL 33138

Date	Ref. No.
10/17/2016	

Vendor
James Ansin 1000 South Pointe Dr. #1501 Miami Beach, FL 33149

PAID

Bill Due	10/27/2016
Terms	
Memo	Refund

Expenses

Account	Memo	Amount	Customer Job	Class
Unearned Retainers		12,500.00		

Expense Total : 12,500.00

Bill Total : \$12,500.00

Subp_AmericanLife_SEC_BanderResp_001605

**NOTICE TO INVESTORS AND FIFTH (5TH) ADDENDUM TO
CONFIDENTIAL PRIVATE OFFERING MEMORANDUM**

October 12, 2018

THIS NOTICE ("Notice") is being provided in connection with that certain Confidential Private Offering Memorandum dated October 1, 2014 (the "**Original Memorandum**"), as updated for four (4) separate prior Addendums to the Original Memorandum (the "**Addenda**"), which Addenda are attached hereto as **Exhibit "A"** and the related Operating Agreement for **SKYRISE MIAMI TOWER INVESTORS, LLC**, a Delaware limited liability company (the "**Company**"), as amended by a First Amendment dated effective December 8, 2014 (collectively, the "**Operating Agreement**"), attached hereto as **Exhibit "B"**, and the enclosed Second Amendment to Operating Agreement attached hereto as **Exhibit "C"**. The Operating Agreement, as amended, together with the Original Memorandum, as amended, shall collectively be referred to as the "**Offering Documents**". Some modifications to the Original Memorandum have been made and are referenced in the attached second addendum to the Original Memorandum (the "**Second Addendum**").

Please direct any inquiries relating to this Notice to:

MIAMI METROPOLITAN REGIONAL CENTER
2665 South Bayshore Drive, Suite 1200
Miami, FL 33133
Attention: Hank Adorno

In the Supreme Court of Florida (Before a Referee)
Case No. SC21-11

114810292.5

Respondent's Exhibit 9

In Evidence on _____

**ADDENDUM NO. 5
TO
CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM OF
SKYRISE MIAMI TOWER INVESTORS, LLC**

Dated as of October 12, 2018

This Addendum No. 5 (this “**Addendum**”) amends and supplements certain information contained in, and should be read in conjunction with, that certain Confidential Private Placement Memorandum, dated October 1, 2014 (the “**Original Memorandum**”), for SkyRise Miami Tower Investors, LLC, a Delaware limited liability company (the “**Company**”), as amended and supplemented pursuant to the Addendum No. 1, Addendum No. 2, Addendum No. 3 and Addendum No. 4 to Confidential Private Placement Memorandum of the Company (the “**Addenda**” and the Original Memorandum, as amended and supplemented pursuant to the Addenda, is referred to as the “**Memorandum**”). Capitalized terms used and not otherwise defined in this Addendum have the meanings given to such terms in the Original Memorandum.

SkyRise Miami, LLC, a Florida limited liability company (the “**Project Company**”), has proceeded to develop the Project substantially in accordance with the information contained in the Original Memorandum, as amended, for purposes of the financing under this Offering. The Maximum Offering Amount has been capped at \$20,000,000 (40 investors), 21 of whom already have subscribed and most of those have received I-526 Petition approvals from USCIS, and ten (10) whom have also received conditional residency status in the United States.

The foregoing changes to the scope of the Project have resulted in updates to certain of the financial measures and other terms relating to the Project and Offering as originally set forth in the Original Memorandum, as amended, as more fully set forth in this Addendum.

1. **Maximum Raise.** The Maximum Offering Amount has been reduced from \$270,000,000 to Twenty Million Dollars (\$20,000,000).

2. **Budget.** The total Project cost has increased to approximately \$600,000,000. As a result, the sources of funding of the Project have been expanded as shown in the Comparison of Sources and Uses and Capital Stack set forth in **Exhibit “D”**, attached hereto.

3. **Job Creation.** Given such increase in the Project’s construction budget, when combined with the projected increase in operating revenue, this will result in a significant increase in the jobs that are being created. The existing economic report confirms a job creation (6,700 jobs) that substantially exceeds the required 500 jobs needed to support an offer of \$20 million.

4. **Distributions.** The Project Company has made certain changes to the Project fee waterfall of distributions as set forth in **Exhibit “E”**. The Project Company believes such changes are expected to have a positive impact on the profitability and overall viability of the Project. In particular, the Project Company believes that the expanded revenue sources resulting from the significant increase in the entertainment venues at the Project justify the increased budget for the Project.

5. Senior Loan. A term sheet for the senior loan (the "**Senior Loan**") on the Project has been signed that contains the approximate terms set forth in Exhibit "F" attached hereto.

6. Bridge Loan. In addition to the Senior Loan, a bridge loans has been signed on terms and conditions set forth in Exhibit "G" attached hereto.

7. Priority of Repayments of Loans and Equity. The priority of the repayment of loans and equity is set forth in Exhibit "E" attached hereto.

8. Manager. The Company shall have one Manager, the RC Manager. All references to a Co-Manager shall be removed.

9. Escrow Release Conditions. The Escrow Release Conditions have been modified as follows:

All subscription payments will be paid to SunTrust Bank (the "**Escrow Agent**"). All subscription proceeds will be held in escrow by the Escrow Agent pursuant to the Escrow Agreement which establishes the Expense Escrow Account, Project Escrow Account and Holdback Escrow Account. The escrow funds will be released to the Company and the Regional Center upon satisfaction of the following conditions ("**Escrow Release Conditions**"):

1. The Minimum Offering Amount has been subscribed for (the "**Initial Condition**");
2. The filing of the I-526 Petition for the applicable investor once the Initial Condition has been satisfied;
3. USCIS has either (a) approved the Tower project as an exemplar, or (b) approved an I-526 Petition filed by any Investing Member;
4. Project Company and/or its affiliates have expended and documented the expenditure of not less than US\$30,000,000 in equity for project purposes, as well as the liquid availability of an additional US\$35,000,000 available to fund pending funding requirements;
5. Project Company has committed to or documented the commitment for additional equity that in the aggregate amount will not be less than US\$140,000,000;
6. The Phase III construction contract for the Tower has been fully executed;
7. A payment and performance bond and/or evidence of the ability to issue payment and performance bond for Phase III of the project hard costs has been issued by the General Contactor(s) and/ or by the major sub-contractors;

8. Additional equity and/or institutional financing in an amount not less than US\$450,000,000 has been formally committed in writing; and
9. All requisite governmental approvals and permits necessary to commence Phase III construction of the Tower have been secured.

Due to the nature of the supplementary information contained in this Addendum, the Company has elected to provide Investing Members an opportunity to withdraw their investment in the Company and receive a return of their Capital Contribution and Administration Fee, if any amount remains after payment of fees (as described below), or otherwise consent to continuing to remain an Investing Member in the Company. Investing Members may withdraw their investment in the Company by notifying the Company in writing of their election to do so on the attached Investor Consent Letter. Following the proper request to withdraw the investment in the Company, the Company will return the Capital Contribution and the Administration Fee, if any amount remains after payment of Investing Member's legal fees and/or agent's fee, within 15 business days of receiving the Investor Consent Letter to such Investing Member. The executed Investor Consent Letter must be received by the Company on or prior to February 12, 2019 5:00 PM Eastern Time (the "**Withdrawal Deadline**"). If an Investing Member does not elect to withdraw his or her investment on or prior to the Withdrawal Deadline, such Investing Member will not be permitted to withdraw his or her investment except as otherwise provided in the Memorandum and related subscription materials. In the event that an Investing Member does not select either option as provided for above, the Investing Member will automatically be deemed to have elected to remain an Investing Member in the Company.

In furtherance thereof, the undersigned Investing Member hereby releases the Company, the Manager, the Regional Center, and each of their affiliates (collectively, the "**Released Parties**"), from any and all complaints, charges, liabilities, obligations, grievances, promises, agreements, suits, costs, debts, and expenses, and causes of action of any nature, whether, whether at law or in equity, and whether accrued, inchoate, contingent, known or unknown, arising out of or related to the undersigned's investment in the Company and the undersigned's immigration status with respect thereto and the transactions contemplated therein.

The Investing Member is also being provided an Investor Consent Letter attached to this Addendum to consent to the changes made herein and in the prior addenda to the Original Memorandum.

The Company does not believe that, for purposes of EB-5 immigration law, the updates set forth herein will require any additional filings with USCIS and should not be deemed material.

Even if the final decision as to whether the changes to the Project as originally set forth in the Memorandum are in fact material changes, same should have no effect on those Investing Members who have received their conditionally residency status.

Please direct any inquiries relating to this Addendum to the Company at:

MIAMI METROPOLITAN REGIONAL CENTER
2665 South Bayshore Drive, Suite 1200
Miami, FL 33133
Attention: Hank Adorno

INVESTOR CONSENT LETTER

The undersigned Investing Member hereby indicates his or her decision to consent to withdraw his or her investment in the Company or to remain an Investing Member in the Company, as set forth in the Fifth Addendum (the "Addendum"), by checking one of the boxes below (*please check one*):

<p>_____</p> <p><i>(Please Type or Print Name of Investor)</i></p> <p>By: _____</p> <p style="margin-left: 40px;"><i>(Signature)</i></p> <p>_____</p> <p><i>(Please Type or Print Name of Signatory)</i></p> <p>Title: _____</p> <p>Date of Birth: _____</p>
--

(1) I **CONSENT** to the Addendum and elect to remain an Investing Member in the Company.

(2) I **DO NOT** CONSENT to the Addendum, hereby elect to withdraw my investment in the Company and elect to have my Capital Contribution and Administration Fee refunded, as directed by me, via wire transfer pursuant to the wire instructions set forth below. Further, I understand I may not receive a refund of all or any of the Administration Fee if same was utilized to pay for my legal fees and/or agent's fee. I understand I will no longer be an Investing Member of the Company and I hereby acknowledge that upon receipt of this Consent Letter, the Regional Center will notify USCIS of my withdrawal from the Company.

Bank Name:	
Swift Code:	
ABA #:	
Account #:	
Beneficiary Name/Address:	

Please return this Investor Consent Letter via email or mail as soon as possible, and in any event no later than February 12, 2019 (i.e., the Withdrawal Deadline), to:

MIAMI METROPOLITAN REGIONAL CENTER
 2665 South Bayshore Drive, Suite 1200
 Miami, FL 33133
 Attention: Hank Adorno
 E-Mail: hadorno@miamet.com

You do not need to return an originally signed copy. Scanned and faxed documents are fine.

**SKYRISE MIAMI TOWER INVESTORS, LLC
OPERATING AGREEMENT**

SIGNATURE PAGE

(Signature)

Print Name: _____

Address: _____

Telephone: _____

Tax I.D. or Social Security #: _____

Number of Units: _____

Email Address: _____

SkyRise Miami Tower Investors, LLC

Operating Agreement

Investor Signature Page

LIST OF EXHIBITS

- Exhibit A - Addendum to Original Memorandum
- Exhibit B - Operating Agreement and First Amendment to Operating Agreement
- Exhibit C - Second Amendment to Operating Agreement
- Exhibit D - Revised Capital Stack
- Exhibit E - Waterfall of Distributions
- Exhibit F - Terms of Senior Loan
- Exhibit G - Terms of Bridge Loan
- Investor Consent Letter Attached

Exhibit "A"

Addendum to Original Memorandum

Exhibit "B"

First Amendment to Operating Agreement

Exhibit "C"

Second Amendment to Operating Agreement

Exhibit "D"

Revised Capital Stack

<u>Original Memorandum</u>		<u>Updated Budget</u>	
Project Cost	\$430 million		\$600 million
Sponsor Equity	\$30 million		\$65 million
Other Equity	\$80 million		\$75 million
EB-5 Funding	\$270 million		\$10 million
Other Financing	\$50 million	Senior Debt	\$399 million
		Mezzanine Debt	\$51 million

Exhibit "E"

Waterfall of Distributions

WATERFALL (Refinance/Capital Event)

1. Senior Loan
2. Bridge Financing
3. Existing \$10,000,000 of EB-5 Financing (this Offering)
4. Equity (sponsor & investors), including preferred equity and sponsor equity that are expected to accrue preferred returns ranging from 12% to 15% per year
5. Repayment of equity contribution
6. Pari-passu distribution of profits to equity/profit participants

WATERFALL (from cash flow)

1. Debt service on Senior Loan
2. Debt service – Bridge Financing
3. Debt service - \$10 m EB-5 loan (this Offering)
4. Equity partners - preferred return
5. Balance to Amortization of Senior Loan

Exhibit "F"

Terms of Senior Loan

BORROWER:	SkyRise Miami, LLC
SPONSOR:	Jeff Berkowitz ("JB")
TOTAL PROJECT COST:	\$600,000,000
LOAN AMOUNT:	\$399,000,000 ("CL") (Based upon no more than 67% LTC)
LOAN TERM:	<ul style="list-style-type: none">➤ Initial term of 5 years➤ 1 (one) year extension option<ul style="list-style-type: none">○ extension fee - 50 bps➤ Initial term will commence upon the closing and the initial advance \$12.5 million to cover closing costs) and will expire 60 months after the earlier to occur of (i) the one year anniversary of the closing date and (ii) the first construction advance.
INTEREST RATE:	30-day libor + 1,100 bps <ul style="list-style-type: none">➤ 1 + 700 BPS paid current; 400 bps are accrued and compounded
ORIGINATION FEE:	1%
UNUSED FEE:	25 bps per annum on the undrawn amount
PREPAYMENT:	Loan may be prepaid in whole, but not in part, at any time, other than pursuant to the amortization provisions
RECOURSE:	Sponsor completion and cost overrun guarantee
LOAN FUNDING CONDITIONS:	<ul style="list-style-type: none">➤ Initial advance of up to \$12.5 million to cover closing cost➤ Prior to closing and the initial advance, Sponsor/Borrower shall have invested no less than \$35 million in the Project➤ Prior to first construction advance

- Sponsor shall have invested no less than \$100 million of equity (of which not less than \$65 million shall be from the Sponsor and \$35 million shall be from Sponsor's partners and investors, including up to \$10 million in EB-5 funds)
- Bridge loan of \$51,000,000 has been utilized

COST OVERRUNS:

All costs in excess of \$600,000,000 will be paid by Sponsor/Borrower

Exhibit "G"

Terms of Bridge Loan

AMOUNT:	\$51,000,000
TERM:	Same as Senior Loan (no extension fee)
ORIGINATION FEE:	50 bps
UNUSED FEE:	None
RATE:	15% accrued during construction and to the extent unpaid, thereafter until maturity

CERTIFICATE OF SERVICE

I certify that on August 3, 2022, an electronic copy of this document was filed with the Florida Courts E-Filing Portal and served via the Portal on counsel named below, the listing of whose names and e-mail addresses I have verified.

/s/ D. Culver Smith III

D. Culver Smith III

Service List

Kevin W. Cox
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jennifer.gillis@hklaw.com
Counsel for Complainant

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Tallahassee, FL 32301
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Counsel for Complainant

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315 South Calhoun Street
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Tallahassee, FL 32301
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Counsel for Complainant

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Tallahassee, FL 32399
psavitz@floridabar.org
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Rivergate Plaza, Suite M-100
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jfalcone@floridabar.org
Bar Counsel, The Florida Bar