

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	
<b>MARVKY CORPORATION</b>	§	<b>CASE NO. 10-37786</b>
<b>DEBTOR</b>	§	<b>(CHAPTER 11)</b>

**DEBTOR’S SECOND AMENDED PLAN OF REORGANIZATION**

Marvky Corporation (the “Debtors”) hereby proposes the following Plan of Reorganization (the “Plan”) pursuant to §1121(a) of the Bankruptcy Code.

**ARTICLE 1.**

**DEFINITIONS**

Defined Terms. In addition to such other terms as are defined in other sections of this Plan, the following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural, masculine and feminine forms of the terms defined).

1.1. “Administrative Expense” means any Claim arising after the Petition Date and prior to the Effective Date, constituting a cost or expense of administration of the Chapter 11 Cases allowed under §503(b) and §507(a)(1) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses of preserving the Debtor’s estate any actual and necessary expenses of operating the business of the Debtor, all compensation or reimbursement of expenses to the extent allowed pursuant to §330 or §503 of the Bankruptcy Code, and any fees or charges assessed against the estate of the Debtor pursuant to §1930, chapter 123 of title 28 of the United States Code.

1.2. “Administrative Expense Creditor” means any Person, including a Professional, entitled to payment on account of an Administrative Expense

1.3. “Allowed,” when used with respect to a Claim means a Claim (a) to the extent it is not Contested; or (b) a Disputed Claim, proof of which was filed timely with the Bankruptcy Court, and (I) as to which no objection was filed by the Objection Deadline, unless such Claim is to be determined in a forum other than the Bankruptcy Court, in which case such Claim shall not become Allowed until determined by Final Order of such other forum and allowed by Final Order of the Bankruptcy court; or (ii) as to which an objection was filed by the Objection Deadline, to the extent allowed by a Final Order. “Allowed,” when used with respect to an Administrative Claim of a Professional shall mean an Administrative Claim approved by application to the Bankruptcy Court and entry of a Final Order approving such Administrative Claim.

1.4. “Assets” means all of the right, title, and interest in and to property of whatsoever type or nature owned by the Debtor as of the Petition Date, together with assets subsequently acquired by the Debtor, and including, but not limited to, property defined in §541 of the Bankruptcy Code (each identified item of property being herein sometimes referred to as an Asset).

1.5. “Ballot” means the form of ballot provided to holders of Claims pursuant to Bankruptcy Rule 3017(d), by which each holder may accept or reject the Plan

1.6. “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended and as codified at title 11 of the United States Code, as applicable to this Chapter 11 Case

1.7. “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division, or such other court having jurisdiction over all or any part of this Chapter 11 Case.

1.8. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to this Chapter 11 Case, including applicable local rules of the Bankruptcy Court.

1.9. “Business Day” means any day other than Saturday, Sunday, a legal holiday, or a day on which national banking institutions in New York, New York is authorized or obligated by law or executive order to close

1.10. “Cash” means legal tender of the United States of America.

1.11. “Chapter 11 Case” means the above captioned reorganization cases of the Debtors under Chapter 11 of the Bankruptcy Code.

1.12. “Claim” means (a) a right to payment from the Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured (including potential and unmatured tort and contract claims), disputed, undisputed, legal, equitable, secured or unsecured or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Debtor whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured (including potential and unmatured tort and contract claims), disputed, undisputed, secured or unsecured.

1.13. “Claimant” means the holder of a Claim.

1.14. “Class” means a category or group of holders of Claims as designated in Article 4.0 of the Plan.

1.15. “CNC” means CNC investments, Ltd. L.L.P. which is the property management company used by the Debtor pursuant to a Management Agreement between CNC and the Debtor.

1.16. “Collateral” means any Asset subject to a first priority valid and enforceable Lien to secure payment of a Claim.

1.17. “Confirmation Date” means the date of entry of the Confirmation Order.

1.18. “Confirmation Hearing” means the hearing conducted by the Bankruptcy Court pursuant to §1128 of the Bankruptcy Code and Bankruptcy Rule 1020(h) to consider confirmation of the Plan, as the same may be continued from time to time

1.19. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan.

1.20. “Contested,” when used with respect to a Claim, means a Claim (a) that is listed in the Debtor’s Schedules as disputed, contingent, or unliquidated; (b) that is listed in the Debtor’s

Schedules as undisputed, liquidated, and not contingent and as to which a proof of claim has been filed with the Bankruptcy Court, to the extent the proof of claim amount exceeds the scheduled amount; (c) that is the subject of a pending action in a forum other than the Bankruptcy Court unless such Claim has been determined by Final Order in such other forum and Allowed by Final Order of the Bankruptcy Court; or (d) as to which an objection has been or may be timely filed and has not been denied by Final Order to the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Contested Claim only to the extent of the objection.

1.21. “Creditor” means a “creditor” as defined in §101(10) of the Bankruptcy Code

1.22. “Debtor” means Marvky Corporation

1.23. “Debtor-in-Possession” means Marvky Corporation in its capacity as debtor-in-possession under §1101(1) of the Bankruptcy Code

1.24. “Disallowed,” when used with respect to all or any part of a Claim, means that portion of a Claim to which an objection to allowance or a motion to disallow has been sustained by a Final Order

1.25. “Disclosure Statement” means the written statement, as amended, supplemented, or modified from time to time, describing the Plan that is approved and distributed in accordance with §1125, §1126(b) and §1145 of the Bankruptcy Code and Bankruptcy Rule 3018.

1.26. “Effective Date” means, and shall occur on the first Business Day after the Confirmation Date on which all conditions to the effectiveness of the Plan have been satisfied or waived.

1.27. “Fee Application” means an application for allowance of a Fee Claim.

1.28. “Fee Claim” means a Claim by a Professional or any other party in interest under §328, §330 or §503 of the Bankruptcy Code for compensation or reimbursement in the Chapter 11 Case.

1.29. “Final Order” shall mean an Order of the Court which, not having been reversed, modified or amended and not being stayed, and the time to appeal from which, or to seek review or certiorari or rehearing, has expired and such Order has become conclusive upon all matters adjudicated thereby, and in full force and effect.

1.30. “FNMA” and or “Fannie Mae” means Federal National Mortgage Association, a federally chartered corporation which is currently under the conservatorship of the Federal Housing Finance Agency.

1.31. “General Unsecured Claim” means any Claim other than an Administrative Expense, a Secured Claim, a Priority Claim or an insider Claim.

1.32. “Grandbridge” means Grandbridge Real Estate Capital LLC, a servicer who has contracted with Fannie Mae to service the loans by Fannie Mae to the Debtor.

1.33. “ICON” means Investors Construction which is a consulting firm owned by George W. “Bill” Stallings that has been actively engaged in assisting the Debtor since prior to the inception

of this bankruptcy case and in particular, has provided significant assistance with the sale of Maryland Lakes.

1.34. “Insider Claim” means any Claim held by an insider of the Debtor as the term “insider” is defined in Bankruptcy Code §101(31).

1.35. “Lien” means any mortgage, lien, charge, security interest, encumbrance, or other security device of any kind affecting any asset or property of the Debtor contemplated by §101(37) of the Bankruptcy Code.

1.36. “Management Agreement” means the management agreement between the Debtor and CNC under which CNC provides certain bookkeeping and property management services to the Debtor.

1.37. “Marvky” means Marvky Corporation, a Texas Corporation and the Debtor herein.

1.38. “M&M Claims” means a claim asserted as a secured claim pursuant to statute or by operation of law for goods or services performed on the Properties. Such claims may be objected to or disputed by the Debtor.

1.39. “Objection” means an objection to the allowance of a Claim filed by any party entitled to do so by the deadline fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court.

1.40. “Objection Deadline” means the date by which Objections to Claims must be filed, to be fixed in the manner prescribed pursuant to section 8.1 of the Plan.

1.41. “Person” means any individual, corporation, general partnership, limited partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, government, or any political subdivision thereof or other entity.

1.42. “Plan” means this Plan of Reorganization proposed by the Debtor as it may be altered, amended, or modified from time to time.

1.43. “Priority Claim” means a Claim other than a Claim for an Administrative Expense to the extent that it is entitled to priority in payment under §507(a) of the Bankruptcy Code.

1.44. “Priority Non-Tax Claim” means a Priority Claim other than a Priority Tax Claim.

1.45. “Priority Tax Claim” means a Claim of a governmental unit of the kind specified in §507(4)(8) of the Bankruptcy Code.

1.46. “Professionals” means those Persons (a) retained by the Debtor pursuant to an order of the Bankruptcy Court in accordance with §327 and §1103 of the Bankruptcy Code or (b) who seek compensation or reimbursement pursuant to §503(n)(3), §503(b)(4), §503(b)(5), or §506(b) of the Bankruptcy Code.

1.47. “Properties” means:

- (a) Maryland Lakes means Maryland Lakes Apartments, located at 4748 West Sierra Vista Road, Glendale, Maricopa County, Arizona; and

(b) Hammerly Walk means Hammerly Walk Apartments, located at 8787 Hammerly Boulevard, Houston, Harris County, Texas, 77080;

1.48. “Reorganized Debtor” means the entity to whom the Assets shall re-vest on the Effective Date of the Plan.

1.49. “Schedules” means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor pursuant to §521 of the Bankruptcy Code and Bankruptcy Rule 1007 as such schedules or statements may be amended.

1.50. “Secured Claim” means (a) an Allowed Claim secured by a Lien on an Asset, which Lien is valid, perfected and enforceable pursuant to applicable law and is not subject to avoidance pursuant to the Bankruptcy Code or other applicable non-bankruptcy law, but only to the extent of the value of such Asset; and (b) a Secured Tax Claim.

1.51. “Secured Creditor” means the holder of a Secured Claim.

1.52. “Secured Tax Claim” means any Claim for prepetition ad valorem taxes.

1.53. “Subordinated Claim” means any Claim that is subordinated by Final Order of the Bankruptcy Court pursuant to §510 of the Bankruptcy Code.

#### MISCELLANEOUS INTERPRETIVE PROVISIONS

1.54. Interpretation. Unless otherwise specified, all section and article references in this Plan are to the respective section in or articles of the Plan as the same may be amended, waived, or modified from time to time. The headings in the Plan are for convenience and reference only and shall not limit or otherwise affect the provisions hereof.

1.55. Plan Controls. In the event of an inconsistency between the Plan and the Disclosure Statement, the Plan shall control.

1.56. Other Terms. The words “herein,” “hereof,” “hereto,” “hereunder,” and other similar words refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. A term used herein that is not defined herein shall have the meaning ascribed to that term, if any, in the Bankruptcy Code.

### **ARTICLE 2.0**

#### **GENERAL TERMS AND CONDITIONS**

2.1. General Concept of Plan. This Plan provides that the Reorganized Debtor will continue owning and operating Hammerly Walk. Maryland Lakes was sold on March 28, 2011 which satisfied the majority of the Debtor’s obligation to Fannie Mae. With the sale completed and the associated reduction in debt, it is anticipated that, once repairs are completed, Hammerly Walk will be refinanced. The Plan provides that the Reorganized Debtor pay Fannie Mae monthly interest only payments at four and half percent (4.5%) for eighteen (18) months. At the end of this eighteen (18) month period, the Hammerly Walk Note will mature. The Plan anticipates that the Reorganized

Debtor will obtain financing and refinance the Hammerly Walk Note prior to maturity. Distributions will be made to all holders of Allowed Claims using available cash on hand as of the Effective Date and income generated from operations at Hammerly Walk.

2.2. Intent and Purpose of Plan. This Plan is intended to address all claims against the Debtor of whatever character, whether or not contingent or liquidated, and whether or not allowed by the Court pursuant to §502(a) of the Bankruptcy Code. However, only those claims allowed pursuant to §502(a) of the Bankruptcy Code will receive the treatment afforded by Article 4.0 of the Plan.

### **ARTICLE 3.0**

#### **TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS**

3.1. Payment of Administrative Expense claims. Each holder of an Administrative Claim that becomes an Allowed Administrative Claim on or after the date the confirmation order is final shall receive without interest on the date the confirmation order is final, subject to court approval, the amount of such claim, unless such holders have agreed to a different treatment of such claim. An Administrative Claim that becomes an Allowed Administrative Claim on or after the confirmation order is final shall receive without interest the amount of such claim. Except as provided in section 4.1.1, a claim for an Administrative Claim shall be forever barred and shall not be enforceable against the Debtor, the Reorganized Debtor, or their respective properties, agents, successors or assigns, unless a request for payment of Administrative Claim is filed with the Court and served upon the Reorganized Debtor and Debtor's counsel no later than the later of thirty (30) days after 1) the Effective Date, 2) the resolution of the dispute between the Debtor and Fannie Mae, and Fannie Mae and CNC and ICON related to various fees and other expenses Fannie Mae, CNC and ICON allege are due, and 3) resolution of any claims or actions described in section 6.4, to the extent that fees and expenses associated with any claims or actions are properly Administrative Expenses. All payments for allowed Administrative Claims due on the date the confirmation order is final, subject to Court approval, shall be made by the Reorganized Debtor.

3.2. Payment of United States Trustee Fees Incurred Prior to Confirmation. All fees incurred pursuant to 28 U.S.C. §1930(a)(6) for time periods prior to entry of the Confirmation Order shall be paid by the Debtor on the date the confirmation order becomes final.

3.3. Payment of United States Trustee Fees Incurred Subsequent to Confirmation. All fees incurred pursuant to 28 U.S.C. §1930(a)(6) for time periods subsequent to entry of the Confirmation Order shall be paid by the Reorganized Debtor from its assets. After Confirmation, the Reorganized Debtor shall file with the court and serve on the United States Trustee a monthly financial report for each month (or portion thereof) the case remains open in a format prescribed by the United States Trustee and provided to the Reorganized Debtor by the United States Trustee.

3.4. Payment to Professionals After Confirmation. Claims of professionals for services provided and expenses incurred prior to the entry of the confirmation order shall be deemed Administrative Claims and shall be paid as provided in section 4.1.1 of the Plan; provided however, that notwithstanding the provisions of section 4.1.1, requests for payment of claims of professionals

as Administrative Claims shall be filed with the Court and served on the Reorganized Debtor, Debtor's counsel and the United States Trustee as provided and within the time frame established in section 3.1 above. Claims of professionals for the services rendered and expenses incurred after the confirmation order is final shall be paid as agreed by the Reorganized Debtor from its assets.

## ARTICLE 4.0

### PLAN TREATMENT AND IMPLEMENTATION

#### 4.1. Identification and Treatment of Classes of Creditors

##### Class 1.

##### Administrative Claims

##### Mason, Coplen & Banks, P.C.

Claim of John Akard Jr., of Counsel, Mason, Coplen & Banks, P.C. ("MCB"), for representing the Debtor in this bankruptcy proceeding under §507(a)(1). Prepetition MCB was paid a retainer of \$12,500 to apply toward its fees and expenses. Of this amount, \$4,239 was earned prepetition (including \$1039 paid for the filing fee) and \$8,261.00 was withdrawn pursuant to Bankruptcy Local Rule 2016-1(c) and the Notice of Distribution of Retainer (Docket No. 32) filed on October 11, 2010. MCB anticipates earning an additional \$65,000 in fees and expenses for services rendered in this proceeding. MCB's claim will be paid upon the later of the Effective Date or the Approval of its Application for Compensation.

##### U.S. Trustee Fees

All U.S. Trustee fees will be paid timely through the closing of this proceeding.

##### Class 1 Claims are not impaired

##### Class 2(a)

##### Secured Creditors – Ad valorem taxes

##### Harris County and City of Houston

This creditor filed a claim for \$80,311.14 for 2010 property taxes. Both prepetition and post petition the Debtor has made payments into a Tax Escrow account held by Grandbridge on behalf of FNMA. The Debtor anticipates that these taxes will be paid in full. If Grandbridge does not pay these taxes, the Debtor will seek a Court order requiring the turnover of the escrowed funds to pay these taxes in full.

##### Maricopa County

This creditor filed a claim for \$37,744.12 for 2010 property taxes. This amount was paid to Maricopa County in connection with the sale of Maryland Lakes and thus this claim has been paid in full.

Class 2(a) is not impaired (provided Grandbridge pays the Harris County and City of Houston taxes in full)

Class 2(b)

Secured Creditors – Mortgage

Grandbridge as Special Servicer for Fannie Mae

As is described in detail in the Disclosure Statement, the amount due to Fannie Mae on the Maryland Lakes Note has been or will be mostly, if not fully, paid from the proceeds of the sale of Maryland Lakes. There are certain charges or fees by Fannie Mae, CNC and ICON which have been disputed by either Fannie Mae or the Debtor. Pursuant to an agreement between Fannie Mae and the Debtor, certain amounts are subject to a “holdback” and will be held in the Debtor-in-Possession bank account until an agreement is reached or further order of the Court.

After taking into account the “holdback,” application of payments and related, Fannie Mae’s claim will be paid in full as follows:

- a) Maryland Lakes - The majority of the Maryland Lakes Note was paid at closing of the sale of Maryland Lakes. To the extent that any balance remains due to Fannie Mae related to Maryland Lakes after resolution of the disputes between Fannie Mae and CNC and ICON and application of the related “holdback” funds, such remaining balance will be added to the principal due on the Hammerly Walk obligation provided for in paragraph b).
- b) Hammerly Walk - Fannie Mae will be given a secured claim equal to the balance due on the Hammerly Walk Note (approximately \$3.2 million) and any amount which remains from the Maryland Lakes Note. The Reorganized Debtor will pay four and half percent (4.5%) interest on this secured claim with interest-only equal monthly payments for eighteen (18) months beginning on the first day of the first month after the Effective Date of the Plan. At the conclusion of this eighteen (18) month period, the amount due will mature in the full principal and accrued but unpaid interest will be due. Fannie Mae will retain all liens it had as of the petition date and as provided for in any order of the Court during the administration of the Chapter 11 case. If the Reorganized Debtor fails to pay any of the amount due timely, it will be an event of default. Fannie Mae will provide the Reorganized Debtor and its counsel notice by certified, regular and electronic mail of an event of default and the Reorganized Debtor will have thirty (30) days from the receipt of such notice to cure the default. If the Reorganized Debtor fails to cure within such thirty (30) day period, Fannie Mae may pursue its remedies as provided by law and under the Hammerly Walk Note.

Class 2(b) is impaired

Class 2(c)

Secured Creditors – M&M Claims

Various creditors have asserted M&M claims against the Properties for goods or services provided on the Properties. Some of these M&M claims were paid in full or part prepetition. To



the extent such claims are allowed, they will be paid in full as provided for Class 4 Claims below or, if sooner, in connection with refinance of Hammerly Walk.

Class 2(c) is impaired

Class 3

Priority Unsecured Creditors - Payroll

The priority payroll claims of the Debtors were paid as provided in the Order Authorizing Payment of Employee Compensation (Docket 29). Thus, no priority payroll claims are anticipated. However, to the extent such claims exist, they will be paid on the later of being allowed or on the Effective Date.

Priority Unsecured Creditors - Taxes

The IRS and the Texas Workforce Commission have filed claims totaling \$35,732.39. The Debtor believes that such amounts have been or will be paid in the ordinary course of business and as provided pursuant to the budget agreed to by FNMA and the Debtor (see eg. Fifth Agreed Interim Order Granting and Conditioning Debtor's Use of Cash Collateral Through February 28, 2011 (Docket No. 72)). However, to the extent such claims exist, they will be paid on the later of being allowed or on the Effective Date.

Class 3 is not impaired

Class 4

General Unsecured Claims

The total owed to Unsecured Creditors is \$352,850.65. The Debtor intends to pay these creditors in full in 60 equal monthly payments of \$5,880.84 beginning on the 15<sup>th</sup> day of the first month following 60 days after the Effective Date of the Plan. The Debtor reserves the right to pay these amounts sooner from cash flow from operations or from refinancing proceeds.

Included with the Unsecured Claims is a claim by CNC, the Debtor's management company, of \$618,607.00, but CNC owes the Debtor \$595,593.00 for amounts advanced. Additionally CNC Developers is owed \$201,020. The amounts owed to CNC will be offset by the amounts owed by CNC. The net amount due to CNC of \$23,014.00 and the amount due to CNC Developers (collectively "CNC Claims") are included in Class 4 Claims.

Class 4 is impaired

Any claim in any of the Classes may be paid in accordance with any agreement for waiver, deferral, installment payment or otherwise as agreed between the holder of any such claim and the Debtor. Any such agreement made prior to the Effective Date will be made the subject of a motion in compromise filed with the Court and notice to the creditors and all other parties in interest who have filed with the Court requests for receipt of all notices, in accordance with §102 of the Bankruptcy Code and Bankruptcy Rules 2002 and 2019(a) and Local Rule 2002, upon five (5) days notice, without the necessity of modification of the Plan.

4.2. Treatment of Executory Contracts and Unexpired Leases. The Plan assumes all current leases and contracts, but the Debtor reserves the right to reject any lease or contract within sixty (60) days after the Plan is confirmed. Claims for damages for the rejection of executory contracts and unexpired leases will constitute general unsecured claims against the Debtor. Such Claims for damages must be filed not later than the thirtieth (30<sup>th</sup>) day following the rejection of the lease or contract. Any Claims not filed within such times shall be forever barred from assertion against the Debtor or the Reorganized Debtor.

## ARTICLE 5.0

### ACCEPTANCE OR REJECTION OF PLAN

5.1. Classes Entitled to Vote. Each impaired Class of Claims shall be entitled to vote separately to accept or to reject the Plan. Any unimpaired Class of Claims shall not be entitled to vote to accept or to reject the Plan.

5.2. Class Acceptance Requirement. A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have voted on the Plan.

5.3. Cramdown. This section shall constitute the Debtor's request, pursuant to §1129(b)(1), that the Bankruptcy Court confirms the Plan notwithstanding the fact that the requirements of §1129(a) may not be met.

## ARTICLE 6.0

### MEANS OF IMPLEMENTATION OF THE PLAN

6.1. Assumption of Liabilities. Except as otherwise provided herein, the Reorganized Debtor shall assume liability for and the obligations to make the distributions required to be made under the Plan, but shall not otherwise assume liabilities of the Debtor.

6.2. Revocation of Plan. The Debtor reserves the right to revoke and withdraw this Plan before the entry of the Confirmation Order. If the Debtor revokes or withdraws this Plan, or if confirmation of this Plan does not occur, then this Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or Person in any further proceedings involving the Debtor.

6.3. Transfer of Assets to the Reorganized Debtor. On the Effective Date, the Assets, will be reserved, preserved, assigned, transferred, and conveyed, as the case may be, to the Reorganized Debtor free and clear of all liens, claims and encumbrances or interests except to the extent that such Liens and Claims are expressly retained under this Plan.

6.4. Avoidance & Other Actions. The Debtor is not aware of any and does not anticipate pursuing any affirmative recoveries in the prosecution of claims for preferences, fraudulent transfers, other avoidance actions which arose prior to the Effective Date. With regard to other claims or

actions, however, as is more fully described in the Disclosure Statement, in September 2009 the Debtor received proceeds from an insurance claim related to damages incurred in September 2008 during Hurricane Ike which were held in a Replacement Reserve Account. Prepetition Fannie Mae refused to release these funds to effect the necessary repairs to Hammerly Walk, which refusal substantially damaged the Debtor and resulted in the loss of rental income and impaired the value of Hammerly Walk. While no claim or action has been brought by the Debtor against Fannie Mae, the Debtor anticipates pursuing a claim or action against Fannie Mae for the damage effected by Fannie Mae's breach of its obligations under the loan Agreement between Fannie Mae and the Debtor, and its negligence, and/or other causes of action. Any amount actually recovered from such claim or action (after payment of expenses associated with such claim or action and any other offsets) will be paid to and used to reduce the amount due to the Class 4, general unsecured creditors.

6.5. **Maintenance of Causes of Action.** Unless expressly released and the extent allowed by law, any causes of action belonging to the Debtor's estate pursuant to §541 of the Bankruptcy Code, are preserved and will vest in the Reorganized Debtor.

## ARTICLE 7.0

### PROVISIONS GOVERNING DISTRIBUTION

7.1. Distributions. Any payments or distributions to be made by the Reorganized Debtor pursuant to the Plan shall be made to the holders of Allowed Claims. Any payments or distributions to be made by the Reorganized Debtor pursuant to the Plan shall be made on the Effective Date except as otherwise provided for in the Plan, or as may be ordered by the Bankruptcy Court. Any payment, or distribution by the Reorganized Debtor pursuant to this Plan, to the extent delivered by the United States Mail, shall be deemed made when deposited by the Reorganized Debtor into the United States Mail.

7.2. Distributions to Be Made by the Reorganized Debtor. Distributions to be made to any holder of an Allowed Claim under the Plan shall be made by the Reorganized Debtor.

7.3. Means of Cash Payment. Payments of Cash to be made by the Reorganized Debtor pursuant to the Plan shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank.

7.4. Delivery of Distributions. Distributions and deliveries to holders of Allowed Claims shall be made at the addresses set forth on the proofs of claim filed by such holders (or at the last known addresses or such holders if no proof of claim is filed), or if the Debtor has been notified of a change of address, at the address set forth in such notice. All Unclaimed Property shall revert to the Reorganized Debtor.

7.5. Time Bar to Cash Payments. Checks issued by the Reorganized Debtor in respect of Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of delivery thereof. Requests for reissuance of any check shall be made directly to the Reorganized Debtor by the holder of the Allowed Claim to whom such check originally was issued. Any claim in respect of such a voided check shall be made on or before the later of the first anniversary of the Effective Date or ninety (90) days after the date of delivery of such check. After such date, all Claims in

respect of void checks shall be discharged and forever barred, and the amount of such checks shall become Unclaimed Property, to be treated in accordance with paragraph 7.4 of this Plan.

7.6. No Interest Unless Otherwise Provided. Except as is provided for in paragraph 4.1 above regarding Fannie Mae's Class 2(b) secured claim providing for monthly interest payments, no interest shall be paid on any Claim.

7.7. No De Minimus Distributions. No Distribution of less than five dollars (\$5.00) shall be made to any holder of an Allowed Claim. Such undistributed amount shall be retained by the Reorganized Debtor. Whenever a payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole cent.

7.8. No Equity Distribution Until Claims Paid-In-Full. No distribution will be made to the shareholders of the Debtor or Reorganized Debtor unless and until all of the claims provided for under the Plan have been paid-in-full or otherwise satisfied.

## ARTICLE 8.0

### PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND CONTINGENT CLAIMS

8.1. Objection Deadline. Unless a different date is set by order of the Bankruptcy Court, all objections to Claims shall be served and filed no later than ninety (90) days after the Effective Date or ninety (90) days after a particular proof of claim is filed, whichever is later. Any proof of claim filed more than thirty (30) days after the Confirmation Date shall be of no force and effect, shall be deemed disallowed, and will not require objection. All Contested Claims shall be litigated to Final Order; *provided, however* that the Reorganized Debtor may compromise and settle any Contested Claim in their sole discretion, subject to approval of the Bankruptcy Court.

8.2. Responsibility for Objecting to Claims. Only the Reorganized Debtor may file objections to claims after the Effective Date of the Plan.

8.3. No Distribution Pending Allowance. Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to any Contested Claim unless and until such Contested Claim becomes an Allowed Claim.

8.4. Administration of Contested Claims.

(a) No Distribution Pending Allowance. Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to any Contested Claim unless and until such Contested Claim becomes an Allowed Claim.

(b) Disputed Claims Reserve. In determining the amount of distributions to be made under the Plan to holders of Allowed Claims, the appropriate distributions required by the Plan shall be made according to estimates and subject to the provisions of the Plan. To protect the interests of holders of Contested Claims, the Disputed Claims Reserve shall be established. As payments are made on Allowed Claims, the Reorganized Debtor shall fund the Disputed Claims Reserve with

Cash in an amount that represents the Pro Rata Share of the Cash that would otherwise be distributed to holders of Contested Claims if such Claims were Allowed.

(c) Distribution After Allowance. As soon as practicable after a Contested Claim becomes an Allowed Claim, the holder of an Allowed Claim shall receive a distribution in an amount equal to the aggregate of all the distributions that such holders would have received had such Contested Claim been an Allowed Claim on the Effective Date. Distributions to each holder of a Contested Claim, to the extent that such Claim becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such Claim belongs. The Reorganized Debtor shall have the right to make or direct the making of all interim distributions to the holders of Allowed Claims. No interest shall be paid on account of a Contested Claim that later becomes an Allowed Claim except as otherwise provided in the Plan.

(d) Distribution After Disallowance. If and when a Contested Claim becomes a Disallowed Claim, or to the extent it is an Allowed Claim in an amount less than had previously been reserved, the portion of the Disputed Claims Reserve which is attributable to such claim may be withdrawn by the Reorganized Debtor for use in its operations.

## ARTICLE 9.0

### EXECUTORY CONTRACTS AND LEASES

9.1. General Treatment: Assumed If Not Rejected. The Plan constitutes a motion by the Debtor to assume, as of the Effective Date, all prepetition executory contracts and, unexpired leases to which the Debtor is a party, except for executory contracts or unexpired leases that: (a) have been assumed or rejected pursuant to Final Order of the Bankruptcy Court; (b) are the subject of a separate motion pursuant to §365 of the Bankruptcy Code to be filed and served by the Debtor on or before the Effective Date.

9.2. Bar to Rejection Damages. If the rejection of an executory contract or an unexpired lease by the Debtor results in damages to the other party or parties to such contract or lease, a Claim for such damages shall be forever barred and shall not be enforceable against the Debtor or the Reorganized Debtor or their properties or agents, successors, or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon the Reorganized Debtor by the earlier of (a) 30 days after the Confirmation Date or (b) such other deadline as the Court may set for asserting a Claim for such damages.

9.3. Rejection Claims. Any Rejection Claim arising from the rejection of an unexpired lease or executory contract not barred by section 9.2 of the Plan shall be treated as a General Unsecured Claim against the Debtor pursuant to Article 4.0 of the Plan; *provided, however*, that any Rejection Claim based upon the rejection of an unexpired lease of real property either prior to the Confirmation Date or upon the entry of the Confirmation Order shall be limited in accordance with §502(b)(6) of the Bankruptcy Code and state law mitigation requirements. Nothing contained herein shall be deemed an admission by the Debtor that such rejection gives rise to or results in a Claim or shall be deemed a waiver by the Debtor of any objections to such Claim if asserted.

9.4. Assume Executory Contracts. For executory contracts assumed by the Reorganized Debtor, all cure payments which may be required by Bankruptcy Code §365(b)(1) under any executory contract or unexpired lease that is assumed, or assumed and assigned, under this Plan shall be made by the Reorganized Debtor; provided, however, in the event of a dispute regarding the amount of any cure payments, the cure of any other defaults, the ability to provide adequate assurance of future performance, or any other matter pertaining to assumption or assignment, the Reorganized Debtor shall make such cure payments and cure such other defaults and provide adequate assurance of future performance, all as may be required by Bankruptcy Code §365(b)(1), following the entry of a Final Order resolving such dispute. To the extent that a party to an assumed executory contract or unexpired lease has not filed an appropriate pleading with the Bankruptcy Court on or before the thirtieth (30th) day after the Effective Date disputing the amount of any cure payments offered to it by the Reorganized Debtor, disputing the cure of any other defaults, disputing the promptness of the cure payments, or disputing the provisions of adequate assurance of future performance, then such party shall be deemed to have waived its right to dispute such matters.

## ARTICLE 10.0

### CONDITIONS PRECEDENT TO CONFIRMATION

10.1. Conditions to Confirmation. The following are conditions precedent to the occurrence of the Confirmation Date, each of which must be satisfied or waived in accordance with section 11.3 of the Plan:

- (a) An order finding that the Disclosure Statement contains adequate information pursuant to §1125 of the Bankruptcy Code shall have been entered;
- (b) The proposed Confirmation Order shall be in a form and substance satisfactory to the Debtor; and
- (c) The Bankruptcy Court will have approved any other necessary agreements or settlements required by the Plan.

10.2. Conditions to Effective Date of Plan. The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with section 11.3 of the Plan:

- (a) The Confirmation Order shall have been entered in a form and substance satisfactory to the Debtor and shall, among other things, provide that the Debtor and the Reorganized Debtor are authorized and directed to take all actions necessary or appropriate to consummate the Plan, including without limitation, to enter into, implement and perform under the contracts, instruments and other agreements or documents created in connection with the Plan;
- (b) The Confirmation Order shall not then be stayed, vacated or reversed;
- (c) All material authorizations consents and regulatory approvals required, if any, in connection with the consummation of the Plan shall have been obtained; and

(d) All material actions, documents and agreements necessary to implement the Plan shall have been effected or executed.

10.3. Waiver of Conditions. Each of the conditions set forth in §11.1 and §11.2 of the Plan, with the express exception of the conditions contained in sections 11.1(a) and 11.2(a) and (b) may be waived in whole or in part by the Debtor without any notice to parties in interest or the Bankruptcy Court and without a hearing.

## ARTICLE 12.0

### DISCHARGE; LIMITATION OF LIABILITY

11.1. Discharge of Debtor. To the extent permitted by §1141 of the Bankruptcy Code, all consideration distributed under the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever against the Debtor or any of its assets or properties. Except as otherwise provided herein, upon the Effective Date, the Debtor and its successors in interest shall be deemed discharged and released pursuant to §1141(d)(1)(A) of the Bankruptcy Code from any and all Claims treated in the Plan, as well as all other Claims, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in §502(g), §502(h), or §502(i) of the Bankruptcy Code, whether or not (a) a proof of claim based upon such debt is filed or deemed filed under §501 of the Bankruptcy Code; (b) a Claim based upon such debt is Allowed under §502 of the Bankruptcy Code; (c) the holder of a Claim based upon such debt has accepted this Plan; or (d) the Claim has been Allowed, disallowed, or estimated pursuant to §502(c) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor and its successors in interest other than those obligations specifically set forth pursuant to this Plan.

11.2. Exculpation and Limitation of Liability. Neither the Debtor, the Professional Persons retained by the Debtor and the Professional Persons employed by the Debtor; any of the Debtor, or its affiliates or any of its managers, officers, directors, partners, associates, employees, members or agents (collectively, the “Exculpated Persons”), shall have or incur any liability to any person for any act taken or omission made in good faith in connection with or related to the bankruptcy case or actions taken therein, including negotiating, formulating, implementing, confirming or consummating the Plan, the Disclosure Statement, or any contract, instrument, or other agreement, or document created in connection with the Plan. The Exculpated Persons shall have no liability to any Creditors for actions taken under the Plan, in connection therewith or with respect thereto in good faith, including, without limitation, failure to obtain Confirmation of the Plan or to satisfy any condition or conditions, or refusal to waive any condition or conditions, precedent to Confirmation or to the occurrence of the Effective Date. Further, the Exculpated Persons will not have or incur any liability to any holder of a Claim, holder of an interest, or party-in-interest herein or any other Person for any act or omission in connection with or arising out of their administration of the Plan or the property to be distributed under the Plan, except for gross negligence or willful misconduct as finally determined by the Bankruptcy Court, and in all respects such person will be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

## ARTICLE 13.0

### CONSUMMATION OF THE PLAN

12.1. Retention of Jurisdiction. Pursuant to §1334 and §157 of title 28 of the United States Code, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising in, arising under, and related to the Chapter 11 Cases and the Plan, for the purposes of §105(a) and §1142 of the Bankruptcy Code, and for, among other things, the following purposes:

(a) to hear and to determine any and all objections to or applications concerning the allowance of Claims or the allowance, classification, priority, compromise, estimation, or payment of any Administrative Expense, or Claim;

(b) to hear and determine any and all applications for payment of fees and expenses from the Debtor estate made by attorneys or any other Professional pursuant to §330 or §503 of the Bankruptcy Code, or for payment of any other fees or expenses authorized to be paid or reimbursed from the Debtor's estate under the Bankruptcy Code, and any and all objections thereto;

(c) to hear and determine pending applications for the rejection, assumption, or assumption and assignment of unexpired leases and executory contracts and the allowance of Claims resulting therefrom, and to determine the rights of any party in respect of the assumption or rejection of any executory contract or lease;

(d) to hear and determine any and all adversary proceedings, applications, or contested matters, including any remands from any appeals;

(e) to hear and to determine all controversies, disputes, and suits which may arise in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan or in connection with the enforcement of any remedies made available under the Plan, or, prior to the Effective Date, any agreements or settlements approved under the Plan and any agreements to be executed and delivered under the Plan;

(f) to liquidate any disputed, contingent, or unliquidated Claims;

(g) to hear and determine all disputes between Creditors regarding the extent, validity or priority of Liens;

(h) to ensure that distributions to holders of Allowed Claims are accomplished as provided herein;

(i) to enter and to implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(j) to consider any modification of the Plan pursuant to §1127 of the Bankruptcy Code, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(k) to enter and to implement such orders as may be necessary or appropriate to execute, interpret, implement, consummate, or to enforce the terms and conditions of the Plan and the transactions contemplated thereunder;



(l) to hear and to determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or related to the Plan, including any suits or actions against any third parties which are specifically reserved and assigned to the Reorganized Debtor; and

(m) to enter a final decree closing the Chapter 11 Case.

12.2. Abstention and Other Courts. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of or relating to the Chapter 11 Cases, this section of the Plan shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

12.3. Nonmaterial Modifications. The Debtor may, with the approval of the Bankruptcy Court but without notice to all holders of Claims, correct any nonmaterial defect, omission, or inconsistency in the Plan in such manner and to such extent as may be necessary or desirable. The Debtor may undertake such nonmaterial modification pursuant to this section insofar as it does not adversely change the treatment of the Claim of any Creditor who has not accepted in writing the modification.

12.4. Material Modifications. Modifications of this Plan may be proposed in writing by the Debtor at any time before confirmation, provided that this Plan, as modified, meets the requirements of §1122 and §1123 of the Bankruptcy Code, and the Debtor shall have complied with §1125 of the Bankruptcy Code. This Plan may be modified at any time after Confirmation and before the Effective Dates provided that the Plan, as modified, meets the requirements of §1122 and §1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan as modified, under §1129 of the Bankruptcy Code, and the circumstances warrant such modification.

## ARTICLE 14.0

### MISCELLANEOUS PROVISIONS

13.1. Severability. Should the Bankruptcy Court determine that any provision of the Plan is unenforceable either on its face or as applied to any Claim or transaction, the Debtor may modify the Plan in accordance with sections 13.3 or 13.4 of the Plan, as applicable, so that such provision shall not be applicable to the holder of any Claim.

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

13.3. Binding Effect. The Plan shall be binding upon, and shall inure to the benefit of, the Debtor, the Reorganized Debtor, the holders of the Claims, the holders of interests, and their respective successors and assigns.

13.4. Governing Law. Unless a rule of law or procedure supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) is applicable, or a specific choice of law provision is provided, the internal laws of the State of Texas shall govern the construction and implementation of the Plan and any agreements, documents and instruments executed in connection with the Plan without regard to conflicts of law.

13.5. Payment of Statutory Fees. All fees, payable to §1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date.

13.6. Timing of Distributions. Any payment or distribution required to be made hereunder on a day other than a Business Day shall be due and payable on the next succeeding Business Day.

13.7. Filing of Additional Documents. The Debtor shall file, as Plan Documents, such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

13.8. Certifications. The failure to make any certification required to be made pursuant to the Plan on a timely basis shall result in the Reorganized Debtor withholding, without interest, any distribution to which the Person required to make such certification would otherwise be entitled. Such withheld distribution shall be made only upon such Person's compliance with the certification requirements of the Plan.

Dated: April 20, 2011

Respectfully submitted,

MARVKY CORPORATION

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