

1 Ashley M. McDow (245114)
2 Michael T. Delaney (261714)
3 **BAKER & HOSTETLER LLP**
4 11601 Wilshire Boulevard, Suite 1400
5 Los Angeles, CA 90025-0509
Telephone: 310.820.8800
Facsimile: 310.820.8859
Email: amcdow@bakerlaw.com
mdelaney@bakerlaw.com

Attorneys for Debtor and Debtor-in-Possession,
SARKIS INVESTMENTS COMPANY, LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
SARKIS INVESTMENTS COMPANY, LLC,
Debtor.

Case No.: 2:13-bk-29180-RK

Chapter 11

**~~FIRST~~SECOND AMENDED
DISCLOSURE STATEMENT
DESCRIBING DEBTOR'S
~~FIRST~~SECOND AMENDED CHAPTER
11 PLAN OF REORGANIZATION**

Hearing:

Date: April ~~9~~,16, 2014

Time: 11:00 a.m.

Place: Courtroom 1675

U.S. Bankruptcy Court

255 E. Temple Street

Los Angeles, CA 90012

1 **I. INTRODUCTION**

2 On or about July 29, 2013 (the “Petition Date”), Sarkis Investments Company, LLC
3 (“Sarkis” or the “Company” or the “Debtor”) commenced the above-captioned bankruptcy case
4 (the “Bankruptcy Case”) by filing a voluntary petition for relief under chapter 11 of Title 11 of the
5 United States Code (the “Bankruptcy Code”). The Debtor owns and leases several parcels of
commercial real property (collectively, the “Properties”) commonly known as 3550 Porsche Way,
Ontario, CA 91764 (“3550 Porsche Way”); 3640 Porsche Way, Ontario, CA 91764 (“3640
Porsche Way”); 3660 Porsche Way, Ontario, CA 91764 (“3660 Porsche Way”); 3700 Inland
Empire Boulevard, Ontario, CA 91764 (“3700 Inland Empire”); and 3760 Inland Empire
Boulevard, Ontario, CA 91764 (“3760 Inland Empire”).

Prior to the commencement of the Bankruptcy Case (also known as “pre-petition”), MSCI
2007-IQ13 Ontario Retail Limited Partnership (the “Lender” or “MSCI”) commenced an action
(the “Receivership Action”) in the California Superior Court (the “State Court”) to appoint a
receiver to collect the rents, issues, and profits from the Debtor’s business operations. The State
Court in the Receivership Action appointed Patrick Galentine ~~of Coreland Companies~~ (the
“Receiver”) as receiver.

Following the commencement of the Bankruptcy Case (also known as “post-petition”),
MSCI, the Debtor and the United States Trustee (the “UST”) entered into a stipulation
temporarily excusing the receiver from turnover pursuant to § 543 of the Bankruptcy Code,
which, among other things, permitted the Receiver to remain in place and collect the rents, issues,
and profits from the Debtor’s business operations.

The Debtor continues to operate its business and manage its affairs as a
debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee
or examiner has been appointed in the Bankruptcy Case.

The Debtor is the proponent of the ~~First~~Second Amended Chapter 11 Plan of
Reorganization (the “Plan”).[†] **THE DOCUMENT YOU ARE READING IS THE**

[†] ~~The Plan involves a Primary Plan, which calls for the repayment of Allowed Claims over a 10-year term, and an
Alternate Plan, which calls for the repayment of Allowed Claims of a 3-year term. The Primary Plan and Alternate
Plan may be referred to herein collectively as the “Plans.”~~

1 **DISCLOSURE STATEMENT FOR THE ENCLOSED PLAN** (the “Disclosure Statement”).

2 Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them
3 in the Plan.

4 The Plan is a reorganization plan and seeks to vest all assets of the Debtor in the
5 Reorganized Debtor (following confirmation of the Plan, the Debtor shall be known as the
“Reorganized Debtor”). The Debtor seeks to accomplish payments under the Plan by paying
creditors on account of their Allowed Claims (defined hereinafter) in full over time from cash
flows generated from future operations and/or the proceeds from the sale of the ~~Company and/or~~
the Properties.

The Plan contemplates that the Reorganized Debtor will initially continue operating its
business, and will use revenues generated from such operation to fund the payments required
under the Plan. Simultaneously, the Debtor will market the Properties and may sell the Properties
to pay all Allowed Claims in full. The Reorganized Debtor will make payments under this Plan
to the holders of Allowed Claims. Under the Plan, the Reorganized Debtor shall be vested with
standing to object to any claim(s) and to pursue any causes of action ~~reserved under~~ not expressly
extinguished or otherwise assigned to another person or entity in the Plan. The Effective Date
(defined hereinafter) of the Plan will be the first Business Day immediately following the date on
which all of the conditions precedent to the occurrence of the Effective Date defined herein have
been satisfied or waived.

Upon confirmation of the Plan, the treatment of Allowed Claims and Allowed Interests
(defined hereinafter) pursuant to the Plan supersedes any agreements or rights the holders of those
claims or ~~interest~~ interests may have with, in or against the Debtor or its assets except to the extent
the Plan expressly provides otherwise, and is in full satisfaction of the legal, equitable, and
contractual rights of the holders of the claims or interests. Unless the Plan provides otherwise, no
distributions will be made and no rights will be retained on account of any claim or interest that is
not an Allowed Claim or Allowed Interest.

1 As is required by the Bankruptcy Code, the Plan classifies Claims and Interests into
2 various classes according to their right to priority under the Bankruptcy Code. The Plan states
3 whether each Class of Claims or Interests is impaired and provides the treatment that the Holders
4 of each Allowed Claim or Allowed Interest within each Class shall receive.
5

A. Purpose of the Disclosure Statement

The purpose of this Disclosure Statement is to set forth information: (1) about the history of the Debtor, its business, and the Bankruptcy Case; (2) concerning the Plan and alternatives to the Plan; (3) advising the holders of Claims and Interests of their rights under the Plan; (4) assisting the Creditors²¹ and Interest Holders who are entitled to vote on the Plan in making an informed judgment regarding whether they should vote to accept this Plan and to reject any plan not proposed by the Debtor; and (5) assisting the Bankruptcy Court in determining whether the Plan complies with the provisions of Chapter 11 of the Bankruptcy Code and should be confirmed.

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer and other advisors to obtain more specific advice on how the Plan could affect you and what is the best course of action for you. Baker & Hostetler, LLP (“Baker”), general insolvency counsel for the Debtor, does not represent you.

Be sure to read the Plan as well as the Disclosure Statement. If there are any inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

By order dated **[INSERT DATE]**, the Bankruptcy Court approved this Disclosure Statement as containing “adequate information” concerning the Plan, meaning that it contains sufficient information to enable Creditors and Interest Holders to make an informed judgment in exercising their rights to vote to accept or reject the Plan. ~~Any party may now solicit votes for or against the Plan.~~

²¹ A Creditor shall mean 1) any entity that has a Claim against the Debtor that arose at the time of or before the order for relief concerning the Debtor; 2) any entity that has a Claim against the estate of a kind specified in Section 348(d), 502(f), 502(g), 502(h) or 502(i) of Title 11; or 3) an entity that has a community claim. 11 U.S.C. §101(10). The term entity includes persons, estates, trusts, governmental units, and the United States Trustee. 11 U.S.C. §101(15).

1 The only Creditors or Interest Holders who may vote for or against the Plan are those who
2 have a Claim that is both (1) allowed or allowed for voting purposes and (2) classified in an
3 impaired Class. A Class is impaired if the legal, equitable, or contractual rights of the Claim or
4 Equity Interests in the Class are altered. Classes of Claims or Equity Interests that are not
5 impaired are conclusively presumed to have voted to accept the Plan and therefore are not entitled
to vote on the Plan.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. In other words, the terms of the Plan are not yet binding on anyone. However, if the Court later confirms the Plan, then the Plan will be binding on the Debtor, all Creditors and Interest Holders in this Case.

1. Time and Place of the Confirmation Hearing

The hearing during which the Bankruptcy Court will determine whether or not to confirm the Plan will take place on [INSERT DATE] in Courtroom 1675 of the United States Bankruptcy Court located at 255 E. Temple Street, Los Angeles, California 90012.

2. Deadline for Voting for or Against the Plan

If you are entitled to vote, it is in your best interest to vote in a timely manner on the enclosed ballot and return the ballot in the enclosed envelope to Baker & Hostetler LLP, Attn: Ashley M. McDow, 11601 Wilshire Boulevard, Suite 1400, Los Angeles, California 90025-0509.

YOUR BALLOT MUST BE RECEIVED BY **5:00 P.M. ON [INSERT DATE]** OR IT WILL NOT BE COUNTED.

The Debtor shall file a summary of tabulated ballots on or before [INSERT DATE].

3. Deadline for Objecting to the Confirmation of the Plan

Objections to the confirmation of the Plan must be filed with the Bankruptcy Court and served upon the counsel for the Debtor not later than [INSERT DATE].

4. Person to Contact for Further Information Regarding the Plan

1 Any interested party desiring further information about the Plan should contact Ashley M.
2 McDow of Baker & Hostetler LLP by phone at (310) 442-8846 or by email at
3 amcdow@bakerlaw.com.

4 **C. Disclaimer**

5 The financial data relied upon in formulating the Plan, the Disclosure Statement, and the documents in support thereof is based on the financial records provided by the Receiver from which ~~Adam Meislik~~, [GlassRatner Advisory & Capital Group LLC \(“GlassRatner”\)](#),² financial consultant for the Debtor, prepared the cash flow projections, which are the basis for the Plan and Disclosure Statement. The professionals employed by the Debtor drafted the Plan and the Disclosure Statement based on this information and have no independent knowledge regarding the accuracy or the completeness of the data or information contained therein or herein.

The discussion in this Disclosure Statement regarding the Debtor contains projections that are ~~necessarily speculative~~ [based on a three percent \(3%\) growth in income and expenses over historical operational information as reported by the Receiver and contained in the current lease agreements for the Properties. However, as with all projections, the projections are necessarily speculative and the Debtor’s actual performance may be better or worse than projected.](#) Although the projections attempt to anticipate and account for possible risks and uncertainties that may affect the future operations of the Debtor, no projections can account for all such risks. Accordingly, there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in the projections. The liquidation analysis, projections of financial performance, and other information contained herein are estimates only, and the timing, amount, and value of actual distributions to Creditors may be affected by many factors that cannot be predicted. Therefore, any analyses, estimates, or projections may or may not prove to be accurate.

² [The principal advisors working on this case with GlassRatner are Adam Meislik and Patrick Lacy. The qualifications of Messrs. Meislik and Lacy are set forth in the application to employ GlassRatner filed with the Court.](#)

1
2
3
4
5

Unless specifically set forth herein to the contrary, the information contained or referred to in this Disclosure Statement has not been subject to an audit. The Debtor's records are based upon bookkeeping performed internally by the Receiver and/or his agents, representatives and/or professionals. The Debtor believes that it has made every reasonable effort ~~has been made~~ to present financial information as accurately as reasonably practicable given the nature and condition of the Receiver's books and records. However, the Debtor cannot warrant or represent that the records kept by the ~~Debtor are neither warranted nor represented to be~~ Receiver are free of inaccuracy nor consistent with any accounting standards.

The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Any tax disclosure that may be contained in the Disclosure Statement is not intended to be used and cannot be used for the purpose of avoiding any tax penalties that may be imposed on any person or entity. All Creditors and Interest Holders should consult their own legal counsel, accountants and other advisors as to legal, tax, and other matters concerning their Claims or Interests.

The Bankruptcy Court has not yet determined whether the Plan is confirmable, and makes no recommendation as to whether or not you should support the Plan.

II. BACKGROUND OF THE DEBTOR

A. Pre-petition Ownership and Management of the Debtor; Description and History of Debtor's Business

1. Loan History and Acquisition of Properties

On or about February 1, 2007, IXIS Real Estate Capital Inc., as lender (the "Original Lender"), made a \$21,000,000 loan in connection with the Properties (the "Loan") ~~—(as evidenced by (among other things) a Loan Agreement (the "Loan Agreement")—to the following entities,)~~ to Ontario DP, LLC, Ontario SP, LLC, Ontario MM, LLC, Ontario AT, LLC, Ontario KG, LLC and Ontario GME, LLC (the "Original Borrowers"), as tenants in common, ~~in connection with the Properties.~~

1 In conjunction with the Loan Agreement, the Original Borrowers executed a Promissory
2 Note dated February 1, 2007 (the “Note”) and, as security for the Note, a Deed of Trust,
3 Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of February 1,
4 2007 (the “Deed of Trust”), in favor of the Original Lender’s nominee, Mortgage Electronic
5 Registration Systems, Inc. (“MERS”). Original Borrowers also executed an Assignment of
Leases and Rents dated as of February 1, 2007 (the “Assignment of Rents”), in favor of Original
Lender’s assignee, MERS. Collectively, the Loan Agreement, the Note, the Deed of Trust ~~and,~~
the Assignment of Rents and any and all other documents and/or instruments evidencing, securing
and/or otherwise pertaining to the Loan are referred to herein as the “Loan Documents.”

On or about July 17, 2007, Sarkis acquired the Property from the Original Borrowers and, in connection therewith, agreed to assume the Loan, pursuant to an Assumption Agreement (the “Assumption Agreement”) entered into by (among others) Sarkis, MERS, the Original Borrowers and U.S. Bank National Association, as Trustee for Morgan Stanley Capital 1, Inc., Commercial Mortgage Pass Through Certificates, Series 2007-IQ10 as assignee of the Original Lender (the “Assigned Lender”). On or about February 8, 2011, the Assigned Lender transferred its interest in the Loan to MSCI.

2. Ownership of the Debtor

The Debtor is a limited liability company formed under the law of the State of Delaware. The sole member of the Debtor is and has always been Sarkis Investments, LLC, a Delaware limited liability company (“Sarkis Investments”). The sole member of Sarkis Investments is and has always been The Sarkis Sarkissian Trust, dated May 29, 1994 (as amended, the “Trust”). At the inception of the Trust and through and including the date of the Assumption Agreement, Sarkis Sarkissian (“Mr. Sarkissian”) was the trustor, the primary beneficiary, and the sole trustee of the Trust. On June 16, 2010, Mr. Sarkissian died and, subsequently, the Trust (as well as Mr. Sarkissian’s other assets) passed into probate.

Pamela Muir (“Ms. Muir”) was appointed as the Temporary Trustee for the Trust on or about November 1, 2010 and has served in that capacity since. Subsequently, Ms. Muir was

1 confirmed as the permanent trustee for the Trust and as the manager of the Debtor. As manager
2 of the Debtor, Ms. Muir exercises control over the Debtor.

3 **B. Events Precipitating and Preceding the Sarkis Chapter 11 Filing**

4 **1. Allegations of Default under the Loan Documents**

5 On or about September 28, 2010, the Assigned Lender issued a letter alleging certain non-monetary defaults under the Loan (the “2010 Default Letter”). Therein, the Assigned Lender claimed that: (a) Mr. Sarkissian’s death resulted in the “Transfer of his indirect interest in Borrower” and that “[s]uch Transfer is not a Permitted Transfer and therefore is a default under Section 8.1(d) of the Loan Agreement” and that such default was a “Springing Recourse Event” under Section 10.1 of the Loan Agreement which causes the Loan to be fully Recourse to the Borrower and to the Guarantors”; (b) that purported loans (the “Alleged Invalid Loans”) purportedly made by Borrower to Sarkis Investments II, LLC (~~“Investments II”~~), a company also owned by the Trust, to support a property located on Avenue I in Redondo Beach, California (the “Redondo Beach Property”) and related distributions constituted a default; and (c) there was a breach of the Loan based upon an alleged “amendment to the Operating Agreement of Borrower on or about October 26, 2009” (the “Purported Amendment”). The 2010 Default Letter claimed that the Loan Agreement provides that Plaintiff “shall not, among other things . . . without the prior consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower’s organization documents.” The 2010 Default Letter further claimed that the Purported Amendment constituted a default because the Purported Amendment does not contain certain special purpose entity language required by the Assigned Lender and that the manager purportedly appointed under the Purported Amendment (Lucy Ulikhanova (“Ms. Ulikhanova”)) did not qualify as an “Independent Manager” under Section 9 of the Debtor’s Operating Agreement (the “Operating Agreement”).

On or about February 10, 2011, two days after the Assigned Lender transferred its interests in the Loan to MSCI, the Assigned Lender issued another default letter (the “2011 Default Letter”). Therein, the Assigned Lender (which no longer held any interest under the Loan

1 Documents as a result of the aforementioned assignment to MSCI) once again claimed that Mr.
2 Sarkissian’s death—an individual that was several steps removed from ~~Plaintiff~~the Debtor, the
3 borrower in this matter—constituted an “ongoing Event of Default” and that “the Rents now
4 belong to Lender as described in the Deed of Trust.” As such, pursuant to the 2011 Default
5 Letter, the Assigned Lender purported to revoke the Debtor’s license to collect rents on the
Property.

2. Appointment of State Court Receiver

On or about November 14, 2011, MSCI filed suit against the Debtor, seeking to appoint a receiver based on the alleged non-monetary defaults under the Loan Documents, San Bernardino County Superior Court, Case No. CIVRS1109905 (the “Receiver Action”). On or about November 18, 2011, MSCI applied *ex parte* for appointment of a rents and profits receiver, which application was granted and ~~Patriek Galentine~~the Receiver was appointed as the receiver (~~the “Receiver”~~) of the Properties. On January 5, 2012, the court in the Receiver Action issued a preliminary injunction and ordered the permanent appointment of at the Receiver as the receiver. The court in the Receiver Action authorized the Receiver to use funds available to pay the monthly debt service payments owed on the Loan.

The Receiver has been in possession of the Properties since November 2011, collecting substantial rents from ~~and managing~~ the Properties. As of September 2012, the Receiver ceased making the requisite monthly payments due on the Loan despite available rental proceeds to do so, which triggered a monetary default on the Loan—an occurrence that had never happened while the Debtor was in possession and control of the Properties.

3. Cure of the Alleged Defaults

With the exception of the alleged default caused by the death of Mr. Sarkissian (which, by definition, cannot be “cured”), the Debtor, by and through Ms. Muir, has cured all alleged non-monetary defaults (or will do so before the Effective Date). On or about November 19, 2010, Ms. Muir filed a Certificate of Correction with the Secretary of State of Delaware (the “Certificate of Correction”) stating Ms. Ulikhanova was not authorized to execute the Certificate of

1 Amendment (regarding the Purported Amendment) and that the “sole member of the Limited
2 Liability Company [(i.e., Sarkis Investments)] did not approve or ratify the addition of a new
3 member [(Ms. Ulikhanova)] or the giving of officer titles to any person.” The Certificate of
4 Correction further confirmed that the “sole equity member of the [Debtor] is Sarkis Investments,
5 LLC” and that the Debtor “has no officers.”

On or about April 2, 2012, the [Alleged](#) Invalid Loans were repaid to the Debtor. Further, the deeds of trust in favor of Ms. Ulikhanova (the “[Ulikhanova Deeds of Trust](#)”) purporting to encumber the Redondo Beach Property and/or the Properties have been [or will be](#) either discharged or released.³

The alleged monetary default caused by the Receiver’s failure to pay the amounts due under the Loan in or about September 2012 remains uncured. Despite the fact that the Receiver and/or MSCI was the cause of the monetary default, the Debtor intends to cure this default in order to eliminate the default interest that was improperly imposed. The payment of the cure amount shall not in any way impact the ability of the Debtor to later challenge the validity of the default charges which were imposed or seek reimbursement for the amount paid to cure the same.

4. MSCI Foreclosure Efforts

On or about September 5, 2012, MSCI issued a “Bring Current Statement” (the “[September 2012 Bring Current Statement](#)”) wherein MSCI demanded payment of \$3,692,755.77 in order to cure the alleged default, which amount included \$3,046,497.35 of alleged default interest accruing from October 26, 2009—the date of the alleged non-monetary default caused by the Purported Amendment.

On or about October 3, 2012, First American Title Insurance Company (“[First American](#)”), as foreclosure trustee for MSCI, commenced the process for a non-judicial

³ The Debtor believes that these defaults are hypothetical and were asserted by MSCI and/or the Assigned Lender due to the fact that the Purported Amendment and the Ulikhanova Deeds of Trust are void *ab initio* under the Resolution Adopted by Unanimous Written Consent by the Sole Member of Sarkis Investments Company, LLC, dated November 4, 2010 (the “[2010 Resolution](#)”) and paragraph 4(a) of the Deed of Trust. Additionally, the Debtor also believes these defaults are hypothetical as Ms. Ulikhanova and, prior to his death, Mr. Sarkissian, individually as opposed to in his capacity as trustee for the Trust, lacked the authority to execute any of the documents purportedly causing the alleged non-monetary defaults.⁴

1 foreclosure of the Properties by recording a Notice of Default and Election to Sell under Deed of
2 Trust (the “Notice of Default”). The Notice of Default states that Plaintiff is “behind in its
3 payments” and that it “may have the legal right to bring [its] account in good standing by paying
4 \$3,596,407.77 as of August 5, 2012. . . .”
5

On or about January 15, 2013, First American Title Insurance Company, as foreclosure trustee for MSCI, issued a Notice of Trustee’s Sale (the “Trustee’s Sale Notice”) for the Property. The Trustee’s Sale Notice stated that the total due and owing under the Loan was \$29,106,754.84.

On or about July 10, 2013, Sarkis filed suit against MSCI in the California Superior Court for the County of San Bernardino, CIVRS1304780 (the “Sarkis Action”), alleging claims for breach of contract, declaratory relief, predatory lending/unfair business practices, and slander of title. The Sarkis Action sought injunctive relief and monetary damages arising out of MSCI’s erroneous default claims and wrongful efforts to foreclose on the Properties. In the Sarkis Action, the Debtor moved for a temporary restraining order to prevent the scheduled foreclosure, which the court denied.

5. Sarkis Bankruptcy Petition

On the Petition Date, the Debtor commenced the Bankruptcy Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

C. Pre-petition Legal Proceedings Pending as of the Petition Date

In addition to the Sarkis Action and the Receiver Action, the Debtor was also named a defendant in pre-petition litigation commenced by the City of Ontario (the “City”), styled *City of Ontario v. Sarkis Investments Company, LLC, et al.*, CIVRS1200784, in the California Superior Court for the County of San Bernardino (the “City Action”). Therein, the City alleged that one of the Properties—namely, the 3660 Porsche Way property—was in disrepair and, as such, constituted a public nuisance. The City Action also sought the appointment of a receiver; however, that request was rendered moot by the appointment of a receiver in the Receiver Action.

Post-petition, the Debtor removed [the Sarkis Action](#), [the Receiver Action](#), and [the City Action](#) (collectively, the “State Court Actions”) to the Bankruptcy Court. Although MSCI moved

1 to remand the State Court Actions, the Court found that they are *core* and, thus, retained
2 jurisdiction over them. At present, the State Court Actions have been essentially dormant while
3 the Debtor focuses on reorganizing its affairs and working towards an amicable resolution with
4 MSCI. Under the Plan, the Debtor reserves all claims and defenses with respect to the Sarkis
5 Action (also referred to herein as the “Sarkis AP”).

Under the Plan, the Debtor shall also request that the Court dismiss the City Action and the Receiver Action as moot. The City Action seeks to compel the remediation of a nuisance and appoint a receiver if necessary to ~~do so~~ achieve that goal. Similarly, the Receiver Action seeks to appoint a receiver and obtain an injunction to enforce the assignment of rents agreement by compelling the Debtor to turn over the rents to the appointed receiver. As to the City Action, the nuisance has been remediated by the Receiver; thus, this claim is moot. As to the ~~claims~~ claim seeking appointment of ~~the Receiver, the Debtor resumes control of the business as a receiver, the~~ Reorganized Debtor will resume control of the Company and the Properties under the Plan; as a result, these claims ~~are~~ will also be moot. Finally, the Debtor has or will cure ~~the defaults triggering each and every default (which is curable) that triggered~~ the assignment of rents to MSCI; ~~accordingly~~. Accordingly, the claim for an injunction is moot and/or improper. For these reasons, the City Action and the Receiver Action are moot and the relief sought therein is now improper. Under these circumstances, dismissal of the City Action and the Receiver Action is ~~warranted~~ appropriate.

D. Pre-petition Sale Efforts

Following the appointment of Ms. Muir, Mr. Zehnaly submitted an unsolicited offer to purchase the Properties. ~~The Debtor~~ Sarkis and Mr. Zehnaly entered into a purchase agreement for the Properties, pursuant to which Mr. Zehnaly was required to use his best efforts to assume the Loan obligations and consummate the acquisition, ~~and~~. Mr. Zehnaly paid a \$500,000.00 deposit, which was non-refundable unless the agreement was cancelled due to the inability to satisfy certain conditions. In contravention of this duty, Mr. Zehnaly failed to use his best efforts to

1 assume the Loan. As a result, Mr. Zehnaly was ultimately unable to assume the Loan ~~or terminate~~
2 ~~the agreement.~~ Therefore and, therefore, Mr. Zehnaly is not entitled to a refund of the deposit.

3 Notwithstanding, Mr. Zehnaly filed proof of claim 7-1 in the Bankruptcy Case seeking
4 reimbursement of the \$500,000.00 non-refundable deposit paid in the course of the proposed
5 purchase of the Properties (the “Zehnaly Claim”). The Debtor did not cause the failure of the
proposed transaction. Indeed, all of Mr. Zehnaly’s contingencies to the purchase were waived
and, as such, Mr. Zehnaly has no right to payment upon the Zehnaly Claim. Accordingly, the
Plan classifies the Zehnaly Claim in Class 3 (general unsecured creditors) but proposes a
Distribution of ~~\$0.00-~~50,000.00. Nonetheless, in the unlikely event that the Zehnaly Claim is
allowed (either in full or in part), the Debtor will have sufficient funds to pay amount of the
Zehnaly Claim that is allowed.⁴

Other than the failed transaction with Mr. Zehnaly, the Debtor did not ~~attempt~~enter into
any other transactions to to sell the Properties or the Company ~~pre-petition~~prior to the Petition
Date.

III. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE

A. Retention of Debtor’s Professionals and Agents

On or about August 12, 2013, the Debtor filed an application to employ Baker ~~& Hostetler~~
~~LLP (“Baker”)~~ as general bankruptcy counsel (the “Baker Application”). On or about September
25, 2013, the Bankruptcy Court entered an order approving the Baker Application.

On or about November 22, 2013, the Debtor filed an application to employ Hahn Fife &
Company, LLP as accountant for the bankruptcy estate (the “Hahn Application”). On or about
December 12, 2013, the Bankruptcy Court entered an order approving the Hahn Application.

On or about January 28, 2013, the Debtor filed an application to employ GA Keen Realty
Advisors, LLC (“GA Keen”) as real estate broker for the bankruptcy estate (the “GA Keen
Application”). MSCI filed an objection to the GA Keen Application. The Debtor, MSCI and GA
Keen subsequently stipulated to the employment of GA Keen subject to certain modifications to

⁴ ~~The Cash Flow Statements include the Zehnaly Claim in full to demonstrate that the Debtor is capable of paying the full amount potentially owed for Class 4.~~

1 the terms of GA Keen’s employment. The Debtor lodged a proposed stipulated order to approve
2 the GA Keen Application subject to such modifications on or about February 27, 2014. The
3 Court rejected the proposed order for procedural reasons. Accordingly, on or about April
4 2014, the Debtor and GA Keen entered into an amended retention agreement incorporating the
5 changes requested by MSCI by and through its objection. The Debtor subsequently filed an
amended application to employ GA Keen (the “Amended GA Keen Application”) pursuant to the
amended retention agreement. No opposition to the Amended GA Keen Application was timely
filed. On or about _____, 2014, the Court entered an order approving the employment of
GA Keen pursuant to the amended retention agreement.

In or about February 2014, Baker retained GlassRatner ~~Advisory & Capital Group LLC~~
(~~“GlassRatner”~~) as financial advisors/consultants and Colliers International Valuation & Advisory
Services, LLC (“Colliers”) as valuation advisors for the estate. On or about April 1, 2014, the
Debtor filed an application to employ GlassRatner as financial advisor/consultant to the Estate
(the “GlassRatner Application”). No opposition to the GlassRatner Application was timely filed.
On or about _____, 2014, the Court entered an order approving the employment of
GlassRatner.

B. Stipulations to Keep Receiver in Place

On or about October 28, 2013, the Debtor, MSCI and the Receiver entered into a
stipulation to excuse the Receiver from turning over property of the bankruptcy estate in
accordance with § 543(d)(1) of the Bankruptcy Code (the “Receiver Stipulation”). Among other
things, the Receiver Stipulation permitted the Receiver to continue to collect rents derived from
the Properties and operate the Company. In exchange, MSCI authorized the Debtor, by and
through the Receiver, to utilize MSCI’s alleged cash collateral⁵⁴ without the payment of adequate
protection or any amounts due under the Loan. The Receiver Stipulation ~~currently expires~~ expired

⁵⁴ “Cash collateral” is defined under § 363 of the Bankruptcy Code. In sum, the proceeds from any collateral (e.g.,
rent) may be deemed the collateral of the creditor holding a secured claim against the income producing property
under certain circumstances. Under the Receiver Stipulation, the Debtor reserved its right to later contest the
characterization of rents derived from the Properties as “cash collateral” and the Bankruptcy Court has not
determined that the rents constitute the “cash collateral” of MSCI.

1 on or about March 2, 2014; however, the parties to the Receiver Stipulation ~~have~~ tentatively
2 agreed to extend the Receiver Stipulation for an additional period of approximately sixty (60)
3 days.

4 **C. Establishment of Claims Bar Date**

5 On or about September 16, 2013, the Debtor filed a notice of claims bar date (“Claims Bar Notice”). According to the Claims Bar Notice, the deadline to file non-governmental claims was November 15, 2013, and the deadline to file governmental claims was January 27, 2014. The deadlines for filing administrative claims and claims resulting from the rejection of an executory contract or unexpired lease ~~and administrative claims~~ are established under the Plan.

D. Exclusivity

Pursuant to § 1121 of the Bankruptcy Code, a debtor has the exclusive right to proposed a plan of reorganization within the first 120 days following the filing of a petition and solicit votes on a plan within the first 180 days of a bankruptcy case. On or about October 28, 2013, the Debtor filed a timely motion for an extension of the exclusivity period. On or about January 27, 2014, the Court entered an order extending the exclusivity period to February 27, 2014.

On or about February 4, 2014, the Debtor filed a second timely motion for an extension of the exclusivity period. MSC I filed an opposition to this second motion. During a hearing on the second motion to extend the exclusivity period held on February 25, 2014, the Court extended the exclusivity period to February 28, 2014—the deadline previously set by the Court for the Debtor to file the Plan. On February 28, 2014, the Debtor filed its Plan of Reorganization and Disclosure Statement, which are amended by this Disclosure Statement and the ~~associated First Amended Plan of Reorganization~~ Plan.

The Debtor and MSC I have further stipulated to an extension of the exclusivity period up to and including April 30, 2014. ~~If necessary~~ By and through the motion to approve the Disclosure Statement, the Debtor sought an additional extension of the exclusivity period. On or about _____, 2014, the Court entered an order granting/denying the requested extension. If necessary and appropriate, the Debtor shall seek a further extension of the exclusivity period.

1
2
3
4
5

E. Use of Cash Collateral and Cash Collateral Proceedings

As previously discussed, MSCI has thus far authorized the Debtor, by and through the Receiver, to use cash collateral during to finance the ~~pendency of the Bankruptcy Case pursuant to the Receiver Stipulation~~ operation of the Company and the Properties.

F. Debtor’s Schedules, Interim Statements and Operating Reports

On or about August 12, 2013, the Debtor filed its ~~Schedules~~ schedules, which describe the Debtor’s assets and liabilities. Copies of the ~~Schedules~~ schedules may be obtained through the online PACER system or in the Clerk’s office for the Court. The Debtor has subsequently amended Schedule D, which lists Creditors holding Secured Claims, and Schedule F, which lists Creditors holding General Unsecured Claims, based on information provided to the Debtor by the Receiver.

The Debtor has filed all monthly operating reports. Copies of the monthly operating reports may be obtained through the online PACER system or in the Clerk’s office for the Court.

G. Leases and Executory Contracts

The Debtor is the lessor on a number of leases for all or portions of the Properties. To facilitate the performance of the Plan, the Debtor intends to assume ~~most if not all of such~~ unexpired leases. A list of all the unexpired leases and/or executory contracts, as applicable, that the Debtor intends to assume is attached hereto as **Exhibit A**. All unexpired leases and/or executory contracts not listed in Exhibit A shall be deemed rejected upon the Effective Date.

H. Adversary Proceedings and Related Litigation

As previously discussed, the Debtor removed the State Court Actions to this Court where they are currently pending as the Sarkis AP, the MSCI AP, and the Ontario AP (collectively, the “Adversary Proceedings”). The Adversary Proceedings involve the same claims and causes of action alleged in the State Court Actions.

Under the Plan, the Debtor shall ~~also~~ request that the Court dismiss the Ontario AP and the MSCI AP as moot. The Ontario AP seeks to compel the remediation of a nuisance and appoint a receiver if necessary to ~~do so~~ achieve that goal. Similarly, the MSCI AP seeks to

1 appoint a receiver and obtain an injunction to enforce the assignment of rents agreement by
2 compelling the Debtor to turn over the rents to the appointed receiver. As to the Ontario AP, the
3 nuisance has been remediated by the Receiver; thus, this claim is moot. As to the ~~claims~~claim
4 seeking appointment of ~~the Receiver, the Debtor resumes control of the business as a receiver, the~~
5 Reorganized Debtor will resume control of the Company and the Properties under the Plan; as a
result, these claims ~~are~~will also be moot. Finally, the Debtor has or will cure ~~the defaults-~~
~~triggering~~each and every default (which is curable) that triggered the assignment of rents to
MSCI; ~~accordingly.~~ Accordingly, the claim for an injunction is moot and/or improper. For these
reasons, the Ontario AP and the MSCI AP are moot and the relief sought therein is now improper.
Under these circumstances, dismissal of the Ontario AP and the MSCI AP is
~~warranted~~appropriate.

Under the Plan, the Reorganized Debtor reserves all claims and defenses relating to the
Sarkis AP and intends to prosecute the same ~~post-confirmation~~following the Effective Date. The
Debtor estimates the value of the claims ~~therein~~ alleged therein to be in excess of ~~\$10,000,000.00.~~
~~If successful, the Debtor intends to apply any award obtained in~~ ten million dollars (\$10,000,000).
Any and all funds that are received by the Reorganized Debtor by and through the Sarkis AP ~~as an~~
~~off set to the MSCI Claims or utilize the award~~shall be used to fund the Plan, ~~if necessary~~.

The Debtor is also investigating potential liability for individuals and entities involved in
the mismanagement of the Properties ~~pre-petition~~prior to the Petition Date. The Debtor is
informed and believes that the Receiver had sufficient sums to debt service the Loan. The Debtor
is further informed and believes that, instead of keeping the Loan payments current, the Receiver
diverted money to certain maintenance projects. The Debtor is informed and believes that the
“necessary” maintenance projects caused the Receiver to have insufficient funds to debt service
the Loan and, as a result, in or about September 2012, the Receiver caused the Debtor to commit a
monetary default—an occurrence that never took place under the Debtor’s management. ~~The~~
~~Debtor is informed and believes that as~~ As a result of the ~~breach~~monetary default, MSCI has
purported to impose default interest under the Loan in excess of \$1,000,000.00 ~~since September~~

1 ~~2012~~ and commenced foreclosure proceedings—proceedings which forced the Debtor to file the
2 instant Bankruptcy Case to save the Properties. Based on the foregoing, the Debtor believes that
3 the Receiver may have breached his fiduciary duty to the Debtor and may have engaged in other
4 grossly negligent and/or tortious conduct. The Debtor intends to continue to investigate these
5 matters ~~post-petition and, if adequate grounds are uncovered, and~~ may file suit to reimburse the
estate for any harm caused by the Receiver’s apparent mismanagement as appropriate and
necessary.

The Reorganized Debtor shall retain a qualified, independent investigator to evaluate any potential claims against Pamela Muir relating to Ms. Muir’s pre-petition operation of the Debtor. The Debtor has not yet identified any meritorious claims against Ms. Muir; however, the Debtor expressly reserves the right to prosecute any such claims at any time, assuming the applicable statute of limitations do not bar such claims.

I. Plan and Disclosure Statement Proceedings

On or about February 28, 2014, the Debtor filed the Debtor’s Chapter 11 Plan of Reorganization and associated disclosure statement. On or about March 4, 2014, the Debtor filed ~~this~~the First Amended Disclosure Statement ~~and the associated~~describing First Amended Chapter 11 Plan of Reorganization—~~On or about _____, (the “FADS”).~~ On or about March 24, 2014, the UST filed an objection to the FADS requesting certain additional disclosures. On or about March 26, 2014, MSCI filed an opposition to the FADS. In an effort to address the objections to the FADS, the Debtor agreed to include the requested additional disclosures in this Disclosure Statement. The Court held a hearing on the Disclosure Statement on ~~April~~____, 2014, during which the Court approved the Disclosure Statement. On or about _____, 2014, the Court entered an order approving the Disclosure Statement and establishing a schedule for the solicitation of votes on the Plan.

J. Cure

~~The Debtor intends to “cure” under 11 U.S.C. §1123(a)(5)(G) by paying \$1,489,181.00 (the “Cure Amount”) on or before the Effective Date, which Cure Amount consists of all of the~~

1
2
3
4
5

mortgage payment which had accrued after the alleged monetary default(s) as well as attorneys' fees and costs incurred prior to the Petition Date. Once the Cure Amount is paid, *In re Entz-White* and its progeny will enable the Debtor to eradicate any and all default interest and/or prepayment penalties/premiums which allegedly had accrued on the Loan. *Great Western Bank & Trust v. Entz-White Lumber and Supply, Inc. (In re Entz-White Lumber and Supply, Inc.)*, 850 F.2d 1338 (9th Cir. 1988) ("*In re Entz-White*"). In the unlikely event the definition of cure as contemplated in 11 U.S.C. §1123(a)(5)(G) is deemed by the Court to be the equivalent of "unimpairment" under 11 U.S.C. §1124—thus requiring the Debtor to leave all of the terms of the Loan unimpaired in order to obtain the benefits of "cure" provided for in *In re Entz-White* and its progeny—the Debtor will leave the terms of the Loan unaltered and pay the Cure Amount in order to eradicate any and all alleged default interest and/or prepayment penalties/premiums. Treatment under the latter approach shall be referred to herein (and in the Plan) as the Alternate Plan. Attached hereto as Exhibit C is a set of cash flow projections which demonstrate that even under the Alternate Plan, which is based upon an illogical interpretation of the Bankruptcy Code and *In re Entz-White* and its progeny, the Plan is still feasible, and will still be able to meet all of the requirements of 11 U.S.C. §1129. As demonstrated in Exhibit C, the Alternate Plan will provide for the sale of the Properties on or about the Maturity Date in the event the Debtor is unable to obtain refinancing sufficient to pay all of the Allowed Claims in full on or before that date.

J. ~~K.~~ Sale of Assets

Although the Debtor proposes an earn-out plan herein, the Debtor has also retained GA Keen to market the Properties for sale. ~~Over the course of the Plan, the Debtor maintains~~The Debtor and the Reorganized Debtor shall maintain the exclusive right to sell the Properties and distribute the proceeds from any such sale in accordance with the terms of the Plan if, in its sole and absolute discretion, the Debtor determines that the sale of the Properties serves the best interests of the estate and its creditors. In the event the purchaser of the Properties assumes the Loan ~~(which shall not require the express consent of any party,~~⁵ other than the contractual

⁵ Authorization for a purchaser to assume the Loan shall not require the express consent of any party other than the purchaser and MSCI, which shall not unreasonably withhold such consent.

1 ~~assumption fees and costs (which will be paid by the purchaser and MSCI, which shall not~~
2 ~~unreasonably withhold such consent)~~, there shall be no prepayment premium, penalty, fee or cost
3 associated with the pre-maturity date disposition of the Properties or payment on account of or in
4 relation to the Note, the MSCI Secured Claim, and/or any of the Loan Documents (“Prepayment
5 Premium”).

If the Debtor chooses to sell the Properties to a purchaser who is unwilling or unable to assume the Loan, such disposition shall not trigger the payment of any Prepayment Premium, irrespective of whether the disposition of the Properties occurs prior to the Maturity Date. In the event MSCI claims that any Prepayment Premium is due as a result, directly or otherwise, of the disposition of the Properties, MSCI shall not be entitled to payment on account of the MSCI Class 1 claim or any right or entitlement created under the Loan Documents ~~at upon~~ the close of escrow; ~~rather.~~ Rather, the Debtor shall hold the sale proceeds in trust subject to a replacement lien in favor of MSCI in an amount equal to the unpaid portion of MSCI’s Class 1 ~~claim~~ Claim at the time of the ~~disposition~~ sale of the Properties (without any Prepayment Premium). The Debtor shall use the sale proceeds and other estate funds to make the Class 1 payments under the Plan. MSCI shall be entitled to immediate turnover of an amount equal to the unpaid portion of MSCI’s Class 1 claim at the time of turnover if and only if MSCI waives in writing any claim to any Prepayment Premium or other penalty or cost associated with the pre-Maturity Date disposition of the Properties or payment of MSCI’s Class 1 claim, ~~regardless of whether MSCI asserts such penalty, premium, fee or cost against the Debtor or any third party.~~

K. ~~L.~~ Preferential and Fraudulent Conveyance Actions

On the Effective Date, the Reorganized Debtor will be vested with authority to enforce, file, litigate, prosecute, settle and/or collect any action or proceeding filed pursuant to the provisions of sections 510, ~~542, 543, 542, 543,~~ 544, 545, 547, 548, 549 or 550 of the Bankruptcy Code, or any similar action or proceeding filed to recover property for or on behalf of the estate or to avoid a lien or transfer (“Avoidance Actions”), although it will not be required to do so.

1
2
3
4
5

The Debtor has not made a final determination as to whether any remaining Avoidance Actions exist, and the investigation will continue after the Effective Date. The Debtor has discovered that the Receiver paid certain unsecured claims with post-petition funds without proper authorization. The Debtor reserves the right to seek to recover these unauthorized payments to restore all unsecured creditors to equal footing if the benefit of such recovery outweighs the administrative expense of recovering these unauthorized payments.

All parties are advised that notwithstanding the fact that the existence of any particular Avoidance Action may not be listed, disclosed, or set forth in the Plan, an Avoidance Action may be filed against any creditor or other party at any time prior to the expiration of the applicable statute of limitations. If the Reorganized Debtor elects to pursue any Avoidance Action or any claim, one hundred percent of any proceeds, net of any and all attorneys' fees and costs incurred in connection with the Avoidance Action or claims, which are recovered from the prosecution and/or settlement of any Avoidance Action or claims shall be paid to Holders of Allowed Claims in accordance with the treatment set forth in the Plan or, if all Allowed Claims have been paid in full, to the equity interest holders.

L. ~~**M.**~~ **Claim Objections**

As discussed herein, the Debtor intends to challenge certain claims filed against the Estate, including, but not limited to, the Zehnaly Claim. The Debtor believes that the failed acquisition of the Properties giving rise to the Zehnaly Claim is attributable to Zehnaly's failure to act in good faith and/or use his best efforts to assume the Loan. As such, Zehnaly was not entitled to cancel the acquisition agreement and demand return of the \$500,000.00 deposit, which Zehnaly now attempts to do via the Zehnaly Claim.⁶

The Debtor is ~~presently~~also investigating the *bona fides* of ~~other claims, including, but not limited to, the secured claim asserted by the County of San Bernardino (the "SB Claim").~~ proof of claim 6-1 filed by Donald Scoggins (the "Scoggins Claim"), which seeks repayment of \$48,280.00 for attorneys' fees and expenses allegedly rendered to or for the benefit of the Debtor

⁶ Notwithstanding the fact that the Debtor believes the Zehnaly Claim lacks merit, the Debtor includes the Zehnaly Claim in Class 3 at a value of \$50,000.

1 [during the probate proceeding relating to Mr. Sarkissian’s estate. It appears that the Scoggins](#)
2 [Claim may not be entitled to reimbursement from the Debtor or, alternatively, may be paid from](#)
3 [Mr. Sarkissian’s probate estate. If warranted, the Debtor may seek to disallow the Scoggins](#)
4 [Claim in whole or in part.](#)
5

The Debtor reserves the right to investigate all claims against the Estate and, if cause exists therefor, seek to disallow such claims by motion or adversary proceeding (“Disallowance Action”). All parties are advised that notwithstanding the fact that the existence of any particular Disallowance Action may not be listed, disclosed, or set forth in the Plan, a Disallowance Action may be filed against any creditor or other party at any time prior to the expiration of the applicable statute of limitations, [which, pursuant to the Plan, shall be one hundred twenty \(120\) days after the Effective Date, unless extended by Court order](#). If the Reorganized Debtor elects to pursue any Disallowance Action or any claim, the disallowance of any such claim shall inure to the Class [54](#) claimants as all other claimants shall be paid in full under the Plan.

IV. FINANCIAL INFORMATION REGARDING THE DEBTOR

A. Historical Financial Information

Attached hereto as **Exhibit D** are copies of the Debtor’s unaudited income statements for the fiscal year 2013 as well as year-to-date 2014, and the unaudited balance sheets for December 2013 and January 2014. Attached hereto as **Exhibit E** is a copy of the most recent report filed by the Receiver, which contains, among other things, the financial information regarding the Company’s current performance.

B. Financial Information Provided During the Case

As set forth above, the Debtor filed [Schedules](#) [schedules](#) in this Bankruptcy Case that provide substantial financial information regarding its assets and liabilities as of the Petition Date. The [Schedules](#) [schedules](#) are available on-line through PACER or at the Clerk’s Office. In addition to such [Schedules](#) [schedules](#), the Debtor has prepared and filed monthly operating reports as required by the OUST, and those are also available for inspection from the same sources as the [Schedules](#) [schedules](#). The Receiver has also filed periodic receiver reports containing information

1 about the Debtor’s finances and financial performance, and those are also available for inspection
2 from the same sources as the ~~Schedules~~schedules.

3 THE DEBTOR CANNOT WARRANT OR REPRESENT THAT THE FINANCIAL
4 INFORMATION CONTAINED IN OR ATTACHED TO OR REFERENCED BY THIS
5 DISCLOSURE STATEMENT IS WITHOUT ANY INACCURACIES OR IS CONSISTENT
WITH ANY ACCOUNTING STANDARDS, ALTHOUGH THE DEBTOR BELIEVES THAT
IT HAS MADE REASONABLE EFFORTS, UNDER THE CIRCUMSTANCES, TO PRESENT
THE FINANCIAL INFORMATION RECEIVED FROM THE RECEIVER FAIRLY AND
ACCURATELY AND IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
PRINCIPLES.

V. SUMMARY OF THE PLAN OF REORGANIZATION

The following is a summary of the material provisions of the Plan, although it should not replace a review of the Plan in its entirety.

The treatment of Allowed Claims and Allowed Interests under the Plan supersedes any agreements or rights the Holders of those Claims or Interests may have in or against the Debtor or ~~their~~its assets and is in full satisfaction of the legal, equitable, and contractual rights of the holders of the Claims or Interests. Unless the Plan provides otherwise, no distributions will be made and no rights retained on account of any Claim or Interest that has not become an Allowed Claim or Allowed Interest.

As is required by the Bankruptcy Code, the Plan classifies Claims and Interests into various Classes according to their right to priority. The Plan states whether each class of Claims or Interests is impaired and provides the treatment that each Class will receive.

Under the Plan, the Debtor intends to ~~cure alleged prepetition defaults claimed by MSCI, thereby avoiding default interest and prepayment penalties/premiums, and, thereafter,~~ repay the Allowed Claims⁷ over a term of 10 years. ~~This plan is referred to herein as the “Primary Plan.”~~
~~In the unlikely event that the Court determines that the Debtor cannot cure if the Debtor alters the~~

⁷ With respect to the MSCI Claim, the allowed MSCI Claim excludes the claimed prepayment premium as the Loan was not accelerated as of the Petition Date and the Debtor is not repaying the Loan under the Plan.

1 ~~terms of the Loan, the Debtor shall cure the alleged prepetition defaults and perform under the~~
2 ~~terms of the Loan, which will allow the Debtor to avoid the alleged default interest and~~
3 ~~prepayment penalties/premiums, among other things. The Debtor shall thereafter repay the~~
4 ~~Allowed Claims over a term of 32 months from the Effective Date. This alternate plan is referred~~
5 _____

1 ~~to herein as the “Alternate Plan.” Under either the Primary Plan or the Alternate~~⁸

2 Under the Plan, a portion of the Allowed Claims may be paid through take-out financing,
3 refinancing of the Properties and/or sale of the Properties. ~~Both plans provide~~The Plan provides

4 ⁸ If the Court determines that the Plan is infeasible, the Debtor shall “cure” and reinstate the Loan pursuant to 11
5 U.S.C. § 1124, which will allow the Debtor to avoid the alleged default interest and prepayment
penalties/premiums, among other things, and render MSCI unimpaired. See *Great Western Bank & Trust v.*
Entz-White Lumber and Supply, Inc. (In re Entz-White Lumber and Supply, Inc.), 850 F.2d 1338 (9th Cir. 1988)
(“*In re Entz-White*”). The Cure Amount (\$1,489,181) is comprised of the ten prepetition missed payments
(\$119,618.07 x 10) and the fees and costs incurred as a result of the default (\$293,000). The Reorganized Debtor
shall thereafter market the Properties for sale for a term of six (6) months after the Effective Date (the “Sale
Period”). During the Sale Period, the Reorganized Debtor shall continue to service the Loan and will make all
Effective Date payments (\$325,000 to Baker, \$80,000 to GlassRatner, and all other administrative claims in full).
The Reorganized Debtor shall also make monthly payments to Baker and GlassRatner on account of their
administrative claims in the amount of \$15,000 and \$8,750, respectively. If the administrative claim of either
Baker or GlassRatner is paid in full prior to the end of the Sale Period, the amount payable on account of the
satisfied administrative claim shall be paid to the holder of the unsatisfied administrative claim. All other payments
shall be stayed pending sale or the final disposition of the Sarkis AP, as described herein. ¹
The Reorganized Debtor shall have the sole and absolute discretion to accept the highest and best offer during this
term. MSCI shall have any and all rights granted under 11 U.S.C. § 363(k) to credit bid at the time of any § 363
sale of the Properties in the maximum amount of \$20,906,832.58 (the calculation is based on the outstanding princip
al balance of \$20,847,415 (which may be \$300,000 less based on the amount in the TREPP Report) minus
approximately \$200,000 for principal paid in the process of curing the 10 payments in default plus an estimated
\$300,000 in reasonable attorneys’ fees). Upon sale of the Properties pursuant to 11 U.S.C. § 363, MSCI shall
surrender to the Reorganized Debtor all funds held in reserve or, if MSCI refuses to do so, the Reorganized Debtor
shall treat the retention of those funds as partial payment of any amounts due to MSCI from the sale of the
Properties. The proceeds from the sale of the Properties (est. \$23,250,000 after costs of sale) (the “Sale Proceeds”)
shall be distributed as follows: first, to MSCI, in the amount of \$20,906,832.58 (or such other amount then owing
to MSCI); and second, the remaining funds shall be distributed to the other Creditors in accordance with the
Bankruptcy Code. ¹
If MSCI claims an entitlement to a Prepayment Premium, the Debtor shall hold the entire amount claimed by MSCI
in an escrow account pending resolution of the dispute (the Debtor disputes MSCI’s entitlement to a Prepayment
Penalty under this scenario as the disposition of property under a plan of reorganization is involuntary as a matter
of law and, as such, cannot trigger MSCI’s entitlement to a Prepayment Penalty) (the “Prepayment Premium
Dispute”). MSCI shall be entitled to waive its claim to a Prepayment Premium at any time during the pendency of
the Prepayment Premium Dispute and, upon such waiver, shall receive the amount of \$20,906,832.58 (or such other
amount then owing to MSCI) in full and complete satisfaction of its claim. The Debtor and MSCI may amicably
resolve this dispute at any time. If the Sale Proceeds exceed \$20,906,832.58 (or such other amount then owing to
MSCI) plus whatever sum is claimed by MSCI as a Prepayment Premium, such sum shall be distributed pursuant to
the Bankruptcy Code from escrow. Upon resolution of the Prepayment Premium Dispute, any undistributed sale
proceeds shall be distributed in accordance with the Bankruptcy Code as soon as practicable. If an Claim is not paid
in full from the Sale Proceeds, such Claim(s) shall be paid in full with interest from any award from or proceeds
from the settlement of the Sarkis AP before any equity Interest holder (Class 4) receives any distribution under the
Plan in accordance with the Absolute Priority Rule. ¹
In the event that the Properties are not sold within the Sale Period or the highest and best offer is less than or equal
to \$21,000,000, MSCI shall be entitled to exercise any and all state law remedies as to the Properties. Upon
exercise of such rights, MSCI shall turnover all reserve accounts to the Reorganized Debtor. The Reorganized
debtor shall use the Reserve Account funds and any funds in the debtor in possession bank accounts to pay any
unpaid claims in accordance with the Bankruptcy Code. If any Claim remains unpaid, such Claim(s) shall be paid
in full with interest from any award from or proceeds from the settlement of the Sarkis AP before any equity
Interest holder (Class 4) receives any distribution under the Plan in accordance with the Absolute Priority Rule. ¹
This alternate plan is referred to herein as the “Alternate Plan.” All terms of the Plan that are not inconsistent with
the Alternate Plan are incorporated into the Alternate Plan, to the extent applicable. Projections identifying the
payments under the Alternate Plan are attached hereto as Exhibit C.

1 for payment of 100% of the Allowed Claims with interest at the legal, market or applicable-
2 ~~contractual~~ rate, as appropriate.

3 **A. Allowance and Treatment of Unclassified Claims**

4 Certain types of Claims are not placed into voting classes but are instead unclassified.
5 They are not considered to be impaired, and they do not vote on the Plan because they are automatically entitled to certain treatment under the Bankruptcy Code. The following Claims have not been put into a Class:

1. Administrative Claims

Administrative Claims are for costs or expenses incurred in the administration of the Bankruptcy Case that are allowable under 11 U.S.C. § 503(b) or 28 U.S.C. § 1930 (“Administrative Claims”), and include claims incurred post-petition in the ordinary course of the Debtor’s business, fees and expenses of professionals, and fees due to the Office of the United States Trustee (the “OUST”). The following chart lists all of Debtor’s unpaid Administrative Claims and their treatment under the Plan:

Description	Estimated Amount Required to Be Paid On The Effective Date ⁶⁹	Treatment
Clerk’s Office Fees	TBD	Paid in full on or before the Effective Date.
Office of the U.S. Trustee	TBD	In accordance with 28 U.S.C. §1930(a)(6), prior to the Effective Date, the Debtor will timely pay any and all quarterly fees as they become due and, after the Effective Date, the Reorganized Debtor will timely pay any and all quarterly fees when <u>as they become due</u> .
Baker & Hostetler LLP, General Insolvency Counsel to Debtor	<p>Total Amount of Claim: \$700,000.00¹⁰</p> <p>Amount Due on Effective Date: \$225,000.00</p>	<p>Upon the Effective Date or entry of an order approving the payment of fees, whichever is later, Baker & Hostetler shall be paid the sum of \$225,000.00 on account <u>total amount</u> of its <u>allowed</u> administrative claim. The remainder of the claim shall be paid in monthly installments</p>

⁶⁹ These amounts are only estimates and are subject to change. The unpaid amount of allowed final fees and costs for some professionals may be higher and others may be lower.

¹⁰ The total administrative claim includes an estimate for post-confirmation services.

1
2
3
4
5

		in the amount of \$15,000.00 per month for months 1-12 and \$50,000.00 per month thereafter until paid in full commencing the first full month following the Effective Date or entry of an order approving such fees, whichever is later.
GlassRatner, Financial Consultant to Debtor	Total Amount of Claim: \$170,000.00 ¹¹ Amount Due on Effective Date: \$80,000.00	<u>Upon the Effective Date or entry of an order approving the payment of fees, whichever is later,</u> GlassRatner shall be paid the sum of \$80,000.00 on account <u>total amount</u> of its <u>allowed</u> administrative claim on the Effective Date. The remainder of the claim shall be paid in monthly installments in the amount of \$8,750.00 per month until paid in full.
GA Keen Realty Advisory LLC, Real Estate Broker to Debtor	Total Amount of Claim: [TBD] <u>Amount Due on Effective Date:</u> \$0.00	GA Keen shall be paid a commission in the amount of 1.25% of the gross sale amount or such other amount approved by the Court (the "GA Keen Commission") from the sale of the Properties upon entry of an order approving the sale of the Properties or the GA Keen Commission. If the Properties are not sold, GA Keen shall not receive any Distribution under the Plan.
Hahn & Fife, Accountant to Debtor	Total Amount of Claim: \$2,000.00 <u>Amount Due on Effective Date:</u> \$2,000.00	Paid in full on the Effective Date.
Patrick Galentine of Coreland Companies, State Court receiver	Total Amount of Claim: \$3,835.00 <u>Amount Due on Effective Date:</u> \$3,835.00	Paid in full on the Effective Date.
Franchise Tax Board	Unknown	Taxes which accrue after the Petition Date and prior to the Effective Date will be paid in full on or before the Effective Date.
Internal Revenue Service	Unknown	Taxes which accrue after the Petition Date and prior to the Effective Date will be paid in full on or before the Effective Date.
County of San Bernardino ¹²	Unknown	Taxes which accrue after the Petition Date and prior to the Effective Date will be paid in full on or before the Effective Date.

a. Ordinary Course Administrative Claims

¹¹ See, supra, at n. 12.

¹² The County of San Bernardino filed proof of claim 4-1 seeking payment of \$312,026.57 (the "County Claim"). The Receiver paid the County Claim in full and, as such, the Plan provides for a \$0.00 distribution.

1 Ordinary course Administrative Claims generally include debt the Debtor incurs in the
2 ordinary course of operating its business (“Ordinary Course Administrative Claims”) as well as
3 taxes accrued after the Petition Date and prior to the Effective Date. Ordinary Course
4 Administrative Claims do not include claims for professional fees (“Professional Fee Claims”).
5

b. Professional Fee Claims

Professional Fee Claims are Administrative Claims incurred by professionals of the estate. The Bankruptcy Code requires that all Professional Fee Claims be paid in full on the Effective Date unless the professional agrees to different treatment. Prior to being paid, the payment of such professional fees must be approved by the Court.

c. Administrative Claims Bar Date

All requests for payment of an Administrative Claim that accrued between the Petition Date and the Effective Date (other than the Professional Fee Claims) and that have not otherwise been paid by the Debtor or specifically treated under the Plan must be filed with the Bankruptcy Court no later than forty-five (45) days after entry of the order confirming the Plan (the “Confirmation Order”) or shall be forever barred (the “Administrative Claims Bar Date”). Within ten (10) days after entry of the Confirmation Order, the Reorganized Debtor will serve notice of the Administrative Claims Bar Date on all creditors and parties in interest.

d. Deadline for Objections to Administrative Claims

All objections to the allowance of any Administrative Claim (other than Professional Fee Claims) must be filed no later than ninety (90) days after the Administrative Claims Bar Date (the “Administrative Claims Objection Deadline”). The Administrative Claims Objection Deadline may be extended for one additional ninety (90) day period by the filing by the Reorganized Debtor of a notice of extension of the Administrative Claims Objection Deadline. Any further extensions may only be obtained by an order of the Bankruptcy Court for cause. If no objection is filed to an Administrative Claim on or before the Administrative Claim Objection Deadline, such Administrative Claim will be deemed allowed as of the Administrative Claim Objection Deadline unless the Administrative Claim Objection Deadline is extended. Except as otherwise agreed or

1 provided under the Plan, an Administrative Claim will be paid in full within sixty (60) days after
2 the date that it becomes an Allowed Claim.

3 **2. Priority Tax Claims**

4 Priority tax claims include certain unsecured income, employment, and other taxes
5 described by § 507(a)(8) of the Bankruptcy Code (“Priority Tax Claims”). The Bankruptcy Code
requires that each holder of a § 507(a)(8) Priority Tax Claim receive the present value of such
Claim in deferred cash payments, over a period of time not exceeding five (5) years from the
order for relief. The Internal Revenue Service and the California Franchise Tax Board hold
priority tax claims. ~~The treatment of such claims is set forth in Class 2 below~~ Such claims receive
a lump-sum payment in the 36th month of the Plan.

B. Allowance and Treatment of Classified Claims and Interests

As required by the Bankruptcy Code, the Plan places Claims and Interests into various
classes according to their right to priority and other relative rights. The charts below list each class
of Claims and Interests established under the Plan and indicates whether the class is impaired or
unimpaired by the Plan. A class is unimpaired if the Plan leaves unaltered the legal, equitable,
and contractual rights to which the holders of Claims or Interests in the class are entitled, with
limited exceptions.

1. Classes of Secured Claims

Secured claims are Claims secured by valid and properly perfected liens on property in
which the Debtor has an interest (“Secured Claims”). The holders of Secured Claims may be
referred to herein as “Secured Creditors”. The allowed Secured Claims may be prepaid without
the payment of any Prepayment Premium or other prepayment penalty, fee, premium or cost(s).
The following chart lists the Secured Claims and their treatment under the Plan:

Class	Description	Insiders? ⁷¹ 3	Impaired?	Treatment
1A	Claimant:	No	Yes	Although the Debtor may dispute the San-

⁷¹ As defined in 11 U.S.C. §101(31), the term Insider includes, the (i) director of the Debtor; (ii) officer of the Debtor; (iii) person in control of the Debtor; (iv) partnership in which the Debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the Debtor.

1
2
3
4
5

	<p>County of San Bernardino</p> <p>Collateral Description: The Properties</p> <p>Collateral Value: \$23,580,000.00</p> <p>Claim Amount: \$312,026.57</p>			<p>Bernardino claim, the following treatment assumes that such claim is valid:</p> <p>Primary Plan Treatment: San Bernardino shall receive a first priority lien on the Properties securing indebtedness in the amount of \$312,026.57 (the "SB Claim"). The SB Claim shall be paid in 36 equal monthly payments in the amount of \$5,785.00 commencing on the Effective Date with the remainder paid in a lump sum in the 37th month of the Plan. Under this plan, an interest rate of 18% per annum shall apply to the SB Claim.</p> <p>Alternate Plan Treatment: San Bernardino shall receive a first priority lien on the Properties securing indebtedness in the amount of \$312,026.57 (the "SB Claim"). The SB Claim shall be paid as follows: (a) 32 equal monthly payments of \$4,680.00 commencing on the Effective Date and, thereafter, (b) a lump sum payment of \$312,027.00 upon the sale or refinancing of the Properties on or before the Maturity Date (February 5, 2017). Under this plan, an interest rate of 18% per annum shall apply to the SB Claim.</p>
<p>1B</p>	<p>Claimant: MSCI 2007-IQ13 Ontario Retail Limited Partnership</p> <p>Collateral Description: The Properties</p> <p>Basis for Perfection: First-Priority Deed of Trust</p> <p>Collateral Value: \$23,580,000.00</p> <p>Claim Amount: \$20,906,833.00 23,580</p>	<p>No</p>	<p>Yes</p>	<p>The Debtor intends to cure the prepetition default on the Effective Date with a lump sum payment in the amount of \$1,489,181.00. The Plan shall not pay any accrued default interest. The Plan shall not pay any portion of the asserted "Prepayment Premium" (as defined herein and in the Loan Documents).</p> <p>Primary Plan Treatment: MSCI shall receive a lien subject only to the San Bernardino lien on the Properties securing indebtedness in the amount of \$20,906,833.00 (on account of the "MSCI</p>

1
2
3
4
5

	<p><u>,000.00¹⁴</u></p>		<p>Claim²). The MSCI Claim a lien against the Properties securing indebtedness in the amount of \$23,580,000.00. The repayment of the MSCI Claim shall be paid based on a 30-year amortization with a balloon payment on or before the 120th month of the Plan. MSCI shall receive 120 equal monthly payments in the amount of \$105,931.85119,476.40 with an interest rate of 4.5% per annum. The residual amount owed on account of the MSCI Claim will be paid on or before the 120th month of the Plan through take-out financing or the sale of the Properties.</p> <p>Alternate Plan Treatment: MSCI shall receive on account of the MSCI Claim a lien subject only to the San Bernardino lien against the Properties securing indebtedness in the amount of \$20,906,833.00. During the terms of the alternate plan (the Effective Date through and including February 5, 2017), MSCI shall receive equal monthly payments in the amount of \$119,618.08 with an interest rate of 5.529% per annum. The residual amount owed on account of the MSCI Claim will be paid on or before the Maturity Date (February 5, 2017) through take-out financing or the sale of the Properties, operations reserves or the sale of the Properties.</p> <p>Modifications to the Loan Documents:¹⁵ To the extent the Loan Documents are inconsistent with the following terms, the following terms shall supersede the relevant provisions of the Loan Documents:</p> <p>1. Prepayment of the Loan, MSCI Claim</p>
--	------------------------------------	--	--

¹⁴ If the Court decides that MSCI is entitled to the claimed prepayment premium, the Debtor shall reinstate the Loan under § 1124 and, in so doing, extinguish MSCI's entitlement to default interest and a prepayment premium, if any, under *Entz-White*. In such case, MSCI shall hold an allowed claim in the amount of approximately \$20,600,000 (the calculation is based on the outstanding principal balance of \$20,906,832.58 (which may be \$300,000 based on the amount in the TREPP Report) minus approximately \$200,000 for principal paid in the process of curing the 10 payments in default plus an estimated \$300,000 in reasonable attorneys' fees). The reinstatement of the Loan will also render MSCI unimpaired and unable to vote on the Plan. Under the Plan and Alternate Plan, the Debtor reserves the right to contest the reasonableness of any fee or expense included in the allowed MSCI Claim.

¹⁵ The modifications provided for herein shall not apply under the Alternate Plan.

1
2
3
4
5

				<p>or any other debt owing to MSCI (or any related entity) shall not trigger any Prepayment Premium, including, but not limited to, the Prepayment Premium (as defined in the Loan), any yield maintenance, or defeasance.</p> <p>2. Any and all accounts of The Reorganized Debtor shall cease paying any amount into or on account of any reserves under the Loan Documents, including, without limitation, those defined in the Loan Documents as “Subaccounts,” (the “Reserve Accounts”) shall cease to exist and/or be payable. MSCI shall no longer have any security interest in the Reserve Accounts or any funds held or previously held therein. Any and all funds held in the Reserve Accounts on the Effective Date shall be turned over to the Debtor within ten (10) business days of the Effective Date along with records showing any deposits into or withdrawal from the <u>MSCI shall retain any such reserve funds and hold the same in trust for the Reorganized Debtor. The Reorganized Debtor shall be entitled to utilize any Reserve Account funds as necessary (which determination shall be based on the Reorganized Debtor’s sole and absolute discretion) to operate and/or maintain the Reorganized Debtor and/or the Properties. The Reorganized Debtor shall not be obligated to replace or repay any funds withdrawn from any Reserve Accounts within the two years preceding the Effective Date Account.</u></p> <p>3. The Debtor shall no longer require the consent or approval of MSCI to make any “Alterations” or “Material Leases” (as those terms are defined in the Loan Documents) after the Effective Date.</p> <p>4. The Assumption of the Loan or any obligations under the Loan Documents by a purchaser of the Properties shall not be affected or otherwise limited in any way by any prior or currently-existing default under any of the Loan Documents.</p>
--	--	--	--	---

1
2
3
4
5

				<p>5. The Debtor and/or the Reorganized Debtor shall not be liable for or obliged to reimburse any loan servicer or special loan servicer for any expenses incurred by such entity relating to the Debtor, the Reorganized Debtor, or the Loan Documents (or any of them).</p> <p>6. All “Borrower’s Recourse Liabilities” and “Springing Recourse Events” (as those terms are defined in the Loan Documents) shall be stricken from the Loan Documents and any provision purporting to impose any fee, cost or liability, or otherwise affect the rights of the Debtor or Reorganized Debtor on account of any “Borrower’s Recourse Liabilities” or “Springing Recourse Events” shall be null and void.</p> <p>7. Paragraph 10.5 of the Loan (or Loan Agreement) shall no longer be in the sole and absolute discretion of MSCI; rather, MSCI’s actions under this provision must be carried out in a reasonable manner.</p> <p>8. The Default provisions of the Loan Documents are null and void. Any alleged default under the Loan Documents (or any of them) or the Plan shall be governed by the Default and Cure provisions provided in the Plan.</p> <p><u>Remaining Loan Provisions:</u> All provisions of the Loan Documents not inconsistent with or revised or superseded by the terms of the Plan shall remain in full force and effect.</p> <p>Debt Recharacterization: If permitted under applicable law, the Debtor may seek to recharacterize the debt of MSCI as equity in the Reorganized Debtor. If recharacterized, MSCI would no longer hold a Class 1B claim and would receive distributions as an Equity Interest Holder in Class 5.</p>
--	--	--	--	---

In its opposition to the FADS, MSCI contended that the FADS did not provide for the contingency that MSCI held a deficiency claim in that class of general unsecured creditors (Class

1 3). MSCI, however, cannot possess a deficiency claim under any potential scenario. The
 2 Properties are presently worth no less than \$23,580,000. The MSCI Claim is comprised of
 3 principal in the amount of \$20,847,415, note interest of \$1,005,370, default interest of \$1,177,038, late
 4 fees of \$107,599.84, miscellaneous fees of \$293,568 and a prepayment premium of \$3,229,801. Based on
 5 these elements and deducting the funds MSCI currently holds in reserves, MSCI asserts a claim totaling
 \$25,940,270. The Debtor, however, has not and will not under the Plan sell the Properties or fully
 perform under the Loan Documents¹⁶ prior to the Maturity Date; accordingly, the “prepayment premium”
 will not be due. Accordingly, the maximum claim MSCI may hold (exclusive of post-petition interest and
 expenses) totals \$23,430,991, which is less than the current, conservative valuation of the Properties.
 Consequently, based on the information provided and the operation of the Loan Documents, MSCI cannot
 claim an amount owing in excess of the current value of the Properties and, thus, cannot possess a
 deficiency claim in Class 3.

2. Classes of Priority Unsecured ~~Tax~~ Claims

Certain Priority Claims that are referred to in Bankruptcy Code sections 507(a)(~~8~~)
 (collectively, the “Priority~~Tax~~ Claims” and, individually, a “Priority~~Tax~~ Claim”) are required to
 be placed in classes. The holders of Priority~~Tax~~ Claims may be referred to herein as “Priority
 Unsecured Creditors”. The Bankruptcy Code requires that each holder of such a Priority Claim
 receive cash payments under the Plan equal to the total value of its claim as of the Effective Date
 of the Plan. Priority~~Tax~~ Claims must receive treatment equal to or more favorable than the
 treatment of general unsecured claims and the term of repayment may not exceed ~~5~~3 years from
 the Petition Date. The Debtor does not owe any obligation that may be classified as a Priority
 Claim, except for certain priority tax claims, which are not classified and are provided for
 separately herein.

Class	Description	Insiders?	Impaired?	Treatment
2A	Claimant: California-Franchise Tax Board Claim Amount:-	No	Yes	The Class 2A claim shall be paid in monthly installment commencing on the Effective Date of the plan in the amount of \$946.78 for months 1-24 and the amount of \$1,180.59 for

¹⁶ See *infra* at section III.L.

1
2
3
4
5

	\$30,241.71			months 25-32.
2B	Claimant: Internal Revenue- Service Claim Amount: \$1,700.00	No	Yes	The Class 2B claim shall be paid in monthly installment commencing on the Effective Date of the plan in the amount of \$53.22 for months 1-24 and the amount of \$66.37 for months 25-32.

3. Classes of General Unsecured Claims

General unsecured Claims are unsecured Claims not entitled to priority under § 507(a) of the Bankruptcy Code (“General Unsecured Claims”). The holders of General Unsecured Claims may be referred to herein as “General Unsecured Creditors”. The following chart identifies the Plan’s treatment of the Debtor’s General Unsecured Claims.

Class	Description	Insiders?	Impaired?	Treatment
32	Judgment Creditors Claimants: (1) Tri-West Mechanical, Inc. (\$156,255.61) and (2) City of Ontario (\$14,688.32) Total Claims: \$170,943.93	No	Yes	Primary Plan Treatment: Class 32 claimants shall receive 84 equal monthly payments (to be divided <i>pro rata</i>) commencing in the 37th month of the Plan in the amount of \$2,052.20 until the claim is paid in full. Class 32 claims shall accrue interest at the federal default interest rate (0.12%). Alternate Plan Treatment: Class 3 claimants shall receive a lump sum payment equal to the allowed claims upon the sale or refinancing of the Properties on or before the Maturity Date (February 5, 2017). Class 3 claims shall accrue interest at the federal default interest rate (0.12%). -
43	Remaining General Unsecured Claims Claimants: (1) Southern California Edison (\$4,956.47), (2) Donald Scoggins (\$48,280.00), (3) Ghazer Zehnaty	No	Yes	Primary Plan Treatment: Class 43 claimants shall receive 84 equal monthly payments (to be divided <i>pro rata</i>) commencing in the 37th month of the Plan in the amount of \$7,729.57 . No interest shall be paid on the Class 4 claims _____. Class 43 claims

1
2
3
4
5

	(\$0.00),⁸ (4) Coreland Companies (\$1,531.52), (5) TSP Roof Systems, Inc. (\$1,828.00), (6) Fire Safety First (\$350.00), (7) AAA-Property Services (\$81.46), (8) Dial Security (\$700.00), (9) Quality Septic Services (\$1,940.00), (10) Ram Plumbing Hearting (\$139.00), (11) Critical Environments, Inc. (\$4,522.00), (12) Verizon California (\$117.61), (13) M3 Mechanical (\$28,485.66), (14) Marquis Construction (\$21,539.00), (15) Golden Eagle Insurance (\$6,125.03), and (16) BB&T Insurance (\$5,700.00) <u>Donald Scoggins (\$48,280.00) and (2) Ghazer Zehnaly (\$50,000.00)</u>			shall accrue interest at the federal default interest rate (0.10%) . <u>Alternate Plan Treatment:</u> Class 4 claimants shall receive a lump sum payment equal to the allowed claims upon the sale or refinancing of the Properties on or before the Maturity Date (February 5, 2017). Class 4 claims shall accrue interest at the federal default interest rate (0.10%) <u>0.10% per annum.</u>
	Total Claims: \$149,284.03 <u>98,280.00</u>			

4. Class of Interest Holders

Interest holders are the parties who hold an ownership interest (i.e. equity interest) in the Debtor (the “Interest Holders”). The Debtor is a limited liability company and, therefore, its member is an Interest Holder. The following chart lists the treatment under the Plan of the Debtor’s Interest Holders:

Class	Description	Impaired?	Treatment
<u>54</u>	Claimant:	No	As of the Effective Date, the Interest Holder shall

⁸As discussed herein, the Debtor disputes the Zehnaly Claim and proposes no payments on account of the Zehnaly Claim under Class 4.

1
2
3
4
5

	Sarkis Investments, LLC		receive an interest in the Reorganized Debtor equal to the interest the Interest Holder held in the Company pre-petition.
--	-------------------------	--	---

VI. MEANS OF EFFECTUATING THE PLAN

This section is intended to explain how the Debtor intends to effectuate the reorganization contemplated by the Plan, and how the Debtor intends to fund the Distributions and other obligations to creditors undertaken in the Plan. This section also provides information regarding prospective corporate governance of the Reorganized Debtor, funding sources for Plan obligations, and other material issues bearing upon performance of the Plan.

A. Funding for the Plan

1. Cash from Operations

The Plan will be funded with (a) available cash on the Effective Date (currently projected at approximately \$~~2,977,643~~2,662,379), consisting primarily of pre-petition and pre-confirmation revenues generated from business operations, litigation recovery and funds held in reserve by MSCI (to the extent necessary for the post-confirmation operations and maintenance of the Reorganized Debtor and/or Properties or until the allowed MSCI Claim has been paid in full), (b) a non-refundable deposit forfeited by the previous purchaser, and (c) cash flow generated from post-petition operation and the continuing operation of the Debtor’s business. To the extent any funds to be used for the performance of the Plan constitute cash collateral of MSCI, confirmation of the Plan shall constitute express authorization to utilize such funds to perform the Plan. To the extent such authorization is denied, the Debtor shall segregate the cash collateral and solely use such funds to reimburse itself for contractual reimbursements pursuant to the Loan Documents and/or to pay amounts due to MSCI under the Plan in accordance with 11 U.S.C. § 506(c).

The financial projections attached hereto (the “Financial Projections”) as **Exhibits B** and **C** assume a growth rate of ~~3%~~three percent (3%)¹⁷ per annum based upon historical growth and current and proposed lease agreements.

2. Continued Effort to Sell the Properties and/or the Company

¹⁷ The three percent (3%) growth rate employed in the projections applies to income and expenses.

1 Although ~~both Plans provide~~the Plan provides for distributions to ~~creditors~~Creditors and
2 Interest holders on account of their Allowed Claims and allowed Interests over a period of time,
3 the Reorganized Debtor ~~will~~may engage in efforts to sell the Properties ~~and, in the case of the~~
4 ~~Alternate Plan, intends on selling the Properties on or before February 5, 2017 (the Maturity~~
5 ~~Date)~~. In the event that the Reorganized Debtor enters into a transaction for the sale of the
Properties, the Reorganized Debtor, upon closing of such transaction and Bankruptcy Court
approval of the same, shall immediately pay the allowed portion of the Allowed Claims, if
necessary or otherwise provided for in this Plan.

The Reorganized Debtor shall retain the sole right to continue to market the Properties for
sale and, with the assistance of its professionals, shall be responsible for investigating, negotiation
and effectuating any such sale. The Reorganized Debtor shall also retain the right to seek
approval of the sale from the Bankruptcy Court and avail itself of any relief available under the
Bankruptcy Code (including, but not limited to, all subsections of 11 U.S.C. § 363), Federal Rules
of Bankruptcy Procedure and/or other applicable law, if it so chooses, relating to the sale, transfer
or disposition of property. The Debtor may sell the Properties in its sole and absolute discretion.
The Debtor shall consider selling the Properties if the potential sale proceeds—along with any
cash on hand, funds on deposit in the debtor in possession accounts, reserves held by MSCI, and
any proceeds from the prosecution of the Sarkis AP—are sufficient to pay all Allowed Claims in
full or, if for any other reason, the Reorganized Debtor determines that sale of the Properties
serves the best interests of the estate and its creditors.

Notwithstanding any provision of the Plan, the Debtor expressly reserves the right to sell
the Properties at any point in time after confirmation of the Plan. Except as expressly provided
herein, the Debtor shall pay all Allowed Claim upon sale of the Properties.

3. Refinancing of the Properties

Although the ~~Plans provide~~Plan provides for distributions to ~~creditors~~Creditors and
Interest holders on account of their Allowed Claims and allowed Interests over a period of time,
the Reorganized Debtor reserves the right to investigate, negotiate and enter into a transaction to

1 refinance and/or restructure the debt secured on the Properties. If the Reorganized Debtor
2 refinances the Properties, the Reorganized Debtor will continue to operate the business and pay
3 any and all Allowed Claims in accordance with the terms of the Plan.

4 **B. Composition of the Reorganized Debtor and Post-Confirmation Management**

5 From and after the Effective Date, ~~the management shall consist of the Debtor's pre-petition management.~~ Pamela Muir shall serve as manager for the Reorganized Debtor, unless another fiduciary is appointed. The Reorganized Debtor shall retain (a) G&E Real Estate Management Services, Inc. (d/b/a Newmark Grubb Knight Frank), (b) Wilson Commercial Real Estate, or (c) another qualified independent property management company (the "Property Manager"), to manage and operate the Properties. The Property Manager shall receive compensation commensurate with the services provided at the prevailing market rate.

C. Corporate Actions

On the Effective Date, all actions contemplated by the Plan, including matters involving the corporate structure of the Debtor or Reorganized Debtor, shall be deemed authorized and approved in all respects, subject to the provisions of the Plan, by virtue of the entry of the Confirmation Order, in accordance with the Bankruptcy Code and applicable state law and without any requirement of further action ~~by the partners, officers, or directors of the Debtor or the Reorganized Debtor.~~ On the Effective Date, the officers and directors of the Reorganized Debtor will be authorized and directed to implement the provisions of the Plan and any other agreements, documents, and instruments contemplated by the Plan in the name of and on behalf of the Reorganized Debtor.

D. Changes in Rate Subject to Regulatory Commission Approval

The Debtor is not subject to governmental regulatory commission approval of its rates.

E. Exemption from Certain Transfer Taxes

Pursuant to §1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any Security or the making or delivery of any instrument of transfer under this Plan may not be taxed under any law imposing a stamp tax, use tax, sales tax or similar tax. Any sale of any asset of the

1 Debtor occurring after or upon the Effective Date shall be deemed to be in furtherance of this
2 Plan.

3 **F. Post-Confirmation Litigation**

4 Except as set forth below, on the Effective Date, the Reorganized Debtor will be vested
5 with authority to enforce, file, litigate, prosecute, settle and/or collect any action, adversary
proceeding, judgment, and/or claims or causes of action. All parties are advised that
notwithstanding the fact that the existence of any particular action, claim for relief, or cause of
action may not be listed, disclosed, or set forth in the Plan, the Reorganized Debtor may
commence litigation against any party, whether such party is a creditor of the estate, at any time
prior to the expiration of the applicable statute of limitations. ~~If Under the Primary Plan or~~
~~Alternate Plan is confirmed~~, the adversary proceeding styled *MSCI 2007-IQ13 Ontario Retail*
Limited Partnership v. Sarkis Investments Company, LLC bearing adversary proceeding number
2:13-ap-01859-RK (the “MSCI AP”)¹⁸ and the adversary proceeding styled *City of Ontario v.*
Sarkis Investments Company, LLC bearing adversary proceeding number 2:13-ap-01860-RK (the
“Ontario AP”)¹⁹ shall be dismissed upon the Effective Date unless the Court orders otherwise.

Possible claims the Debtor intends to file, prosecute and/or defend against
post-confirmation include, without limitation, (1) the adversary proceeding styled *Sarkis*
Investments Company, LLC v. MSCI 2007-IQ13 Ontario Retail Limited Partnership bearing
adversary proceeding number 2:13-ap-01938-RK (the “Sarkis AP”), ~~and~~²⁰ (2) the potential
adversary proceeding against the Receiver (the “Receiver AP”) for failing to pay all payments to
MSCI when due, which caused the monetary default under the Loan Document and, eventually,
the commencement of the foreclosure proceeding leading to the instant Bankruptcy Case,²¹ and

¹⁸ The removed Receiver Action.

¹⁹ The removed City Action.

²⁰ The removed Sarkis Action.

²¹ The Debtor estimates that the recovery from the Receiver AP will be \$1,677,038.28, which is comprised of \$1,177,038.28 in default interest and \$500,000 in estimated attorneys’ fees and costs resulting from the Receiver’s mismanagement of the Properties and the resulting monetary default under the Loan. Under the Alternate Plan, the Reorganized Debtor will not seek Damages for the payment of default interest as the Reorganized Debtor will no longer be liable for these amounts after “curing” the default.

1 [\(3\) potential adversary proceeding against Pamela Muir for the alleged pre-petition management](#)
2 [of the Debtor leading to the appointment of the Receiver.](#)²²

3 **1. The Sarkis AP**

4 The Sarkis AP involves claims alleged against MSCI arising out of a \$21,000,000.00 loan
5 secured on the Properties (the “MSCI Loan”), including, but not limited to, breach of contract,
slander of title, predatory lending, unfair business practices, interference with prospective
economic advantage, interference with contractual relations, and declaratory relief. Under the
Plan, the Debtor reserves all claims and defenses relating to the Sarkis AP and intends to
prosecute the same post-confirmation. The Debtor estimates the value of the claims therein
alleged in excess of \$10,000,000.00. If successful, the Debtor intends to ~~apply~~[utilize](#) any award
obtained in the Sarkis AP ~~as an off-set to the MSCI Claims or utilize the award~~ to fund the Plan.

2. The MSCI AP and Ontario AP

Under the Plan, the Debtor shall also request that the Court dismiss the Ontario AP and
the MSCI AP as moot. The Ontario AP seeks to compel the remediation of a nuisance and
appoint a receiver if necessary to do so. Similarly, the MSCI AP seeks to appoint a receiver and
obtain an injunction to enforce the assignment of rents agreement by compelling the Debtor to
turn over the rents to the appointed receiver. As to the Ontario AP, the nuisance has been
remediated by the Receiver; thus, this claim is moot. As to the claims seeking appointment of the
Receiver, the Debtor resumes control of the business as Reorganized Debtor under the Plan; as a
result, these claims are also moot. Finally, the Debtor has or will cure the defaults triggering the
assignment of rents to MSCI; accordingly, the claim for an injunction is moot and/or improper.
For these reasons, the Ontario AP and the MSCI AP are moot and the relief sought therein is now
improper. Under these circumstances, dismissal of the Ontario AP and the MSCI AP is
warranted.

²² [The Reorganized Debtor shall retain a qualified, disinterested attorney or law firm to evaluate Ms. Muir’s management of the Debtor and determine whether the Reorganized Debtor holds any meritorious claims against Ms. Muir. If the Reorganized Debtor commences litigation against Ms. Muir, the Reorganized Debtor may, in its sole discretion, seek to remove Ms. Muir from her position as manager of the Reorganized Debtor. The Debtor presently has no estimate for the alleged damages resulting from Ms. Muir’s alleged mismanagement of the Properties.](#)

1
2
3
4
5

3. Fraudulent/Preferential Transfer Claims

On the Effective Date, the Reorganized Debtor will be vested with authority to enforce, file, litigate, prosecute, settle and/or collect any action or proceeding filed pursuant to the provisions of sections 510, 542, 543, 544, 545, 547, 548, 549 or 550 of the Bankruptcy Code, or any similar action or proceeding filed to recover property for or on behalf of the estate or to avoid a lien or transfer (“Avoidance Actions”), although it will not be required to do so.

The Debtor has not made a final determination as to whether any remaining Avoidance Actions exist, and the investigation will continue after the Effective Date. The Debtor has discovered that the Receiver paid certain unsecured claims with postpetition funds without authorization. The Debtor reserves the right to seek to recover these unauthorized payments to restore all unsecured creditors to equal footing if the benefit of such recovery outweighs the administrative expense of recovering these unauthorized payments.

All parties are advised that notwithstanding the fact that the existence of any particular Avoidance Action may not be listed, disclosed, or set forth in the Plan, an Avoidance Action may be filed against any creditor or other party at any time prior to the expiration of the applicable statute of limitations. If the Reorganized Debtor elects to pursue any Avoidance Action or any claim, one hundred percent of any proceeds, net of any and all attorneys’ fees and costs incurred in connection with the Avoidance Action or claims, which are recovered from the prosecution and/or settlement of any Avoidance Action or claims shall be paid to Holders of Allowed Claims in accordance with the treatment set forth in the Plan.

4. Claim Disallowance Litigation

As discussed herein, the Debtor intends to challenge certain claims filed against the Estate, including, but not limited to, the Zehnaly Claim. The Debtor believes that the failed acquisition of the Properties giving rise to the Zehnaly Claim is attributable to Zehnaly’s failure to act in good faith and/or use his best efforts to assume the Loan. As a result of his failure to use his best efforts, Zehnaly was ultimately unable to assume the Loan. As such, Zehnaly was not entitled to cancel

1 the acquisition agreement or demand return of the \$500,000.00 deposit, which Zehnaly now
2 attempts to do via the Zehnaly Claim.

3 The Debtor is ~~presently~~also investigating the *bona fides* of ~~other claims, including, but not~~
4 ~~limited to, the secured claim asserted by the County of San Bernardino (the “SB Claim”).~~ proof
5 of claim 6-1 filed by Donald Scoggins (the “Scoggins Claim”), which seeks repayment of
\$48,280.00 for attorneys’ fees and expenses allegedly rendered to or for the benefit of the Debtor
during the probate proceeding relating to Mr. Sarkissian’s estate. It appears that the Scoggins
Claim may not be entitled to reimbursement from the Debtor or, alternatively, may be paid from
Mr. Sarkissian’s probate estate. If warranted, the Debtor may seek to disallow the Scoggins
Claim in whole or in part.

The Debtor reserves the right to investigate all claims against the Estate and, if cause exists therefor, seek to disallow such claims by motion or adversary proceeding (“Disallowance Action”). All parties are advised that notwithstanding the fact that the existence of any particular Disallowance Action may not be listed, disclosed, or set forth in the Plan, a Disallowance Action may be filed against any creditor or other party at any time prior to the expiration of the applicable statute of limitations, which, pursuant to the Plan, shall be one hundred twenty (120) days after the Effective Date, unless extended by Court order. If the Reorganized Debtor elects to pursue any Disallowance Action or any claim, the disallowance of any such claim shall inure to the Class ~~54~~ claimants as all other claimants shall be paid in full under the Plan.

5. Other Potential Claims

The Debtor has not made a final determination as to whether to commence or prosecute any other lawsuits or adversary proceedings. In the event the Debtor is unable to reach a consensual resolution with MSCI, which resolves all claims between the Debtor and MSCI, the Debtor intends to file a first amended complaint, which shall include claims of relief for breach of contract, predatory lending/unfair business practices, slander of title, rescission (pre-loan assumption letter agreement), intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, intentional interference with

1 contractual relations, and declaratory relief. [The first amended complaint may also name](#)
2 [additional parties, including LNR Partners LLC, a Florida limited liability company.](#)

3
4 In the event that the Debtor is held responsible for all of any portion of the default interest
5 alleged by MSCI for the period commencing June 5, 2012 through and including the Effective
Date, the Debtor will seek to recover all such amounts from the Receiver. The Receiver was
appointed in November, 2011. In every month that the Receiver has controlled the Properties, the
gross revenue from the Properties exceeded the amount of the monthly mortgage payment. From
the time that the Receiver assumed control of the Properties until June, 2012, the Receiver made
the monthly mortgage payments. On or about June, 2012, the Receiver elected to make Capital
Expenditure improvements (the “CapEx”) to the Properties at the expense of making the
mortgage payments. For every month that such mortgage payments were not made, MSCI alleges
that over \$85,000 in default interest accrued. Based upon information and belief, the Receiver did
not attempt to borrow the amounts expended on CapEx (approximately \$1,000,000) by way of a
Receiver’s Certificate(s). Had the Receiver issued a Receiver’s Certificate(s) for such amounts,
the Receiver could have made the monthly mortgage payments (thereby avoiding the alleged
\$85,000 of default interest) instead paying interest (based upon an assumed interest rate of 12%)
of approximately \$10,000 per month, thereby saving the debtor over \$75,000 per month or over
\$900,000 per year.

[The Reorganized Debtor shall retain a qualified, independent investigator to evaluate any
potential claims against Pamela Muir relating to Ms. Muir’s pre-petition operation of the Debtor,
which may have led to the appointment of the Receiver. The Debtor has not yet identified any
meritorious claims against Ms. Muir; however, the Debtor expressly reserves the right to
prosecute any such claims at any time, assuming the applicable statute of limitations do not bar
such claims.](#)

G. Compromise of Controversies

From and after the Effective Date, the Reorganized Debtor shall be entitled to compromise
all or any part of a Disputed Claim without any need for notice to Creditors or approval from the

1 Bankruptcy Court. A Disputed Claim shall mean a claim (1) for which no proof of claim was
2 filed and which the Debtor listed in its schedules as unliquidated, disputed, contingent or
3 unknown; ~~or~~ (2) which is the subject of a timely objection or request for estimation which was
4 filed on or before the claims objection deadline, which objection has not been withdrawn or
5 determined by a final order; and/or (3) which is disputed under the Plan. The Reorganized
Debtor, however, may seek approval of any compromise under Rule 9019 of the Federal Rules of
Bankruptcy Procedure or avail itself of any relief available under the Bankruptcy Code, Federal
Rules of Bankruptcy Procedure and/or other applicable law, if it so chooses, relating to the
settlement of any dispute or other compromise.

H. Right to Setoff

Pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, the
Reorganized Debtor may setoff against any Allowed Claim and Distribution to be made pursuant
to the Plan on account of such Allowed Claim any account stated, claim, right, or Cause of Action
which the Debtor, the Reorganized Debtor and/or the bankruptcy estate possesses against the
~~Holder~~holder of such Allowed Claim; provided, however, that neither the failure to effect such a
setoff nor the allowance of any Claim shall constitute a waiver or release by the Debtor and/or the
Reorganized Debtor of any such account, claim, right, and/or cause of action that they may
possess against the ~~Holder~~holder of such Allowed Claim.

I. Distributions

The Reorganized Debtor will distribute any and all funds that are required to be
distributed under this Plan (“Distributions”). In the event that any Claims are disallowed or the
amount thereof are reduced, any and all funds that otherwise would have been paid on account of
those Claims shall be distributed to ~~Holders~~holders of Allowed Claims and/or Interests in
accordance with the terms provided herein and in the Plan.

1. Timing of Distributions

Except as otherwise provided by the Plan, any Distributions required to be made on the
Effective Date shall be deemed timely made as soon as practicable after such date and, in any

1 event, no later than fifteen (15) Business Days after such date. All periodic payments shall be
2 made monthly no later than the fifteenth (15th) of the month for which payment is due.

3 **2. Manner of Distribution**

4 At the option of the Reorganized Debtor, Distributions may be made in cash, wire transfer,
5 or by a check drawn on a domestic bank approved by the OUST.

3. Undeliverable Distributions

Distributions to ~~Holder~~holders of Allowed Claims will be sent to the last known address set forth on such holder's proof of claim filed with the Bankruptcy Court or on the ~~Schedules,~~ schedules (if no proof of claim was filed). Holders of Claims may change the address to which Distributions will be sent by filing a written change of address with the Bankruptcy Court and serving a copy of the change of address on counsel for the Reorganized Debtor and the Reorganized Debtor. If a Distribution is returned as undeliverable, the Reorganized Debtor shall hold the Distribution and shall not be required to take any further action with respect to the delivery of the Distribution unless and until the Reorganized Debtor is notified in writing of the then-current address of the person or entity entitled to receive the Distribution. Unless and until the Reorganized Debtor is so notified, such Distribution shall be deemed to be "Unclaimed Property" and shall be dealt with in accordance with the provision below for Distribution of Unclaimed Property.

4. Rounding of Payments

Whenever payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

5. Compliance with Tax Requirements

The Reorganized Debtor shall comply with all withholding and reporting requirements imposed by federal, state, or local taxing authorities in connection with making Distributions under the Plan.

In connection with each Distribution with respect to which the filing of an information return (such as an Internal Revenue Service Form 1099 or 1042) or withholding is required, the

1 Reorganized Debtor shall file such information return with the Internal Revenue Service and
2 provide any required statements in connection therewith to the recipients of such Distribution and
3 effect any such withholding and deposit all moneys so withheld to the extent required by law.
4 With respect to any person or entity from whom a tax identification number, certified tax
5 identification number, or other tax information is required by law to avoid withholding has not
been received by the Reorganized Debtor, then the Reorganized Debtor may, at its sole option,
withhold the amount required and distribute the balance to such person or entity or decline to
make such a Distribution until the information is received.

6. Distribution of Unclaimed Property

If any Distributions are returned to the Reorganized Debtor as undeliverable, then such Distributions shall be deemed to be “Unclaimed Property.” Nothing contained in the Plan shall require the Reorganized Debtor, or anyone else, to attempt to locate such person or entity. The Unclaimed Property shall be set aside and, in the case of cash, held in a segregated interest-bearing account to be maintained by the Reorganized Debtor. If such person or entity presents itself within six (6) months of the date the payment was returned as undeliverable, then the Unclaimed Property shall be distributed to such person or entity, together with any interest or dividends earned thereon. If such person or entity does not present itself within six (6) months of the date the payment was returned as undeliverable, then any such Unclaimed Property and accrued interest or dividends earned thereon shall become the property of the Reorganized Debtor and shall be distributed in accordance with the priority distribution scheme set forth in the Plan.

7. Limitation on Liability

Neither the Debtor ~~or~~ the Reorganized Debtor, their respective affiliates, or any of their respective employees, members, officers, directors, shareholders, agents, or Professionals shall be liable for (i) any acts or omissions, except for willful misconduct, in connection with implementing the Distribution provisions of the Plan and the making or withholding of Distributions under the Plan, or (ii) any change in the value of Distributions made under the Plan

1 resulting from any delays in making such Distributions in accordance with the terms of the Plan
2 (including, but not limited to, any delays caused by the resolution of Disputed Claims).

3 **8. *De Minimis* Distribution**

4 If any single Distribution required by the Plan would be for an amount of \$5.00 or less,
5 then the Reorganized Debtor shall not be required to process the Distribution and may, at its sole
option, either add the Distribution to the next Distribution if the collective amount would be
greater than \$5.00 or may be treat it as an undeliverable Distribution.

J. Claims Objections and Disputed Claims

1. Standing

From and after the Effective Date, the Debtor or the Reorganized Debtor, as the case may
be, shall have the sole and exclusive right to review all Claims filed or deemed filed and may
object to or seek subordination of any Claim filed or scheduled in this Bankruptcy Case, except
where prohibited under an operative settlement with the ~~Holder~~holder of such Claim.

2. Claims Objection Deadline

Unless extended by the Bankruptcy Court, any objection to a Claim must be filed with the
Bankruptcy Court and served on the ~~Holder~~holder of the Claim within one hundred twenty (120)
days of the Effective Date (the “Claims Objection Deadline”). Any further extension of the
Claims Objection Deadline must be obtained from the Bankruptcy Court for cause and must be
requested prior to the expiration of the time to object after service upon the Reorganized Debtor
and the OUST.

3. Treatment of Disputed Claims

a. Distribution on Account of Disputed Claims Pending Allowance

If any portion of a Claim is a Disputed Claim, then pending allowance of the disputed
portion of the Claim, a Distribution shall only be made on account of the undisputed portion(s) of
the Claim.

b. Reserve for Disputed Claims

1 In the event that Disputed Claims are pending at the time of a Distribution under the Plan,
2 the Reorganized Debtor shall maintain a reasonable reserve for such Disputed Claims. No
3 Distribution shall be made from that reserve until such Disputed Claim has been determined by
4 entry of a final order of the Bankruptcy Court. If a Disputed Claim is ultimately disallowed by the
5 Bankruptcy Court, the amount reserved for that Disputed Claim shall become property of the
Reorganized Debtor and shall be distributed in accordance with the priority distribution scheme
set forth in the Plan.

K. Amendment of the Corporate Charter

On the Effective Date, the Debtor’s corporate charter shall, if necessary, be deemed amended to prohibit the issuance of nonvoting equity securities as required by § 1123(a)(6) of the Bankruptcy Code.

L. Conditions to the Effective Date

The Plan shall not become effective until the Effective Date. The Effective Date shall occur 15 days after entry of the Confirmation Order unless there is a notice of appeal and a stay pending appeal.

VII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Executory Contracts and Unexpired Leases Being Assumed

Effective as of and conditioned on the occurrence of the Effective Date, the Debtor will assume all of the executory contracts and unexpired leases of the Debtor identified on **Exhibit A** and incorporated herein by reference, and assign them to the Reorganized Debtor. Any executory contract or unexpired lease not specifically identified on Exhibit A will be deemed rejected as of the Effective Date.

The Debtor may amend Exhibit A to add or delete any executory contract or unexpired lease, up to and including the Confirmation Date. However, if any such amendments are made to Exhibit A less than twenty-one (21) days before the Confirmation Date, then the affected contract or lease party shall have fourteen (14) days from service of the notice of amendment in which to serve on the Debtor a written objection to the same. Upon receipt of the objection, the Debtor

1 shall promptly set a hearing on the same, and the assumption or rejection of the affected contract
2 or lease shall be delayed until the Bankruptcy Court makes a determination on this issue (such
3 determination may be made after the Effective Date without delaying the Confirmation of the
4 Plan).
5

If an executory contract or unexpired lease has been assumed by the Debtor prior to confirmation of the Plan pursuant to an order of the Bankruptcy Court, such assumption shall not be affected by the Plan even if such executor contract or unexpired lease is omitted from Exhibit A. The assumption of any contract or lease by and through the provisions of the Plan shall only be to the extent that such assumed contract or lease constitutes an executory contract or unexpired lease within the meaning of § 365 of the Bankruptcy Code. The assumption of any executory contract or unexpired lease does not constitute an admission by the Debtor or Reorganized Debtor. Any contract or lease assumed by and through the Plan shall be assumed as previously amended or modified, whether before or after the Petition Date.

Except as otherwise noted on Exhibit A, the Debtor is not aware of any cure payments that must be made to assume the executory contracts and/or unexpired leases identified on Exhibit A. If a party identified on Exhibit A believes that there is a cure amount owing, then such party must object to the assumption of its executory contract or unexpired leases no later than fourteen (14) days prior to the hearing on confirmation of the Plan. Failure to file a timely objection to the assumption of an executory contract and/or unexpired lease on the grounds that the Debtor must cure a default prior to the assumption of the executory contract and/or unexpired lease shall constitute a waiver of the alleged default and release of the Debtor from the obligation to cure such default. In the event that no objection to the assumption of an executory contract and/or unexpired lease is made timely and no cure payment is provided for in the Plan and/or Exhibit A, the entry of the Confirmation Order shall act as a judicial determination that no cure amount is due or owing on any of the executory contracts and/or ~~expired~~unexpired leases identified in the Plan and/or Exhibit A as of the Effective Date. If there is a dispute regarding the cure amount that the Debtor cannot timely resolve prior to the hearing on confirmation of the Plan, the Debtor may

1 either (1) elect to reject the executory contract or unexpired lease at the hearing on confirmation
2 of the Plan or (2) have the Bankruptcy Court adjudicate the amount of the cure claim without
3 delaying confirmation of the Plan.

4 **B. Executory Contracts and Unexpired Leases Being Rejected**

5 Effective as of and conditioned on the occurrence of the Effective Date, the Debtor rejects all of the executory contracts and unexpired leases not specifically identified on ~~Schedule A to the Plan~~ Exhibit A unless such executory contract or unexpired lease was already assumed. If an executory contract or unexpired lease was rejected by the Debtor prior to the Effective Date pursuant to an order of the Bankruptcy Court, the rejection shall not be affected by the Plan. The Debtor does not intend to reject any executory contract or unexpired lease under the Plan. Accordingly, the Debtor does not anticipate any claims based on damages resulting from the rejection of any such contract or lease will exist under the Plan. Regardless, if such a claim is filed, the claim shall be included in Class 3 and shall be entitled to vote on the Plan if such vote may be timely cast.

C. Bar Date for Rejection Damages

Any Claim arising out of the rejection of an executory contract or unexpired lease (a “Rejection Claim”) shall be forever barred and shall not be enforceable against the Debtor or the Reorganized Debtor or entitled to a Distribution under the Plan unless a proof of claim for such Rejection Claim is filed and served on the Debtor or the Reorganized Debtor within the later of (a) thirty (30) days after the date of entry of the order authorizing the rejection, or (b) thirty (30) days from the date of service of the Notice of Claims Bar Date. Failure to file a proof of claim in a timely manner may result in disallowance of any alleged damages resulting from the rejection of any executory contract or unexpired lease.

VIII. TAX CONSEQUENCES OF THE PLAN

A. Introduction

The implementation of the Plan may have federal, state, and local tax consequences to the Debtor, Creditors, and/or Interest Holders. The Debtor has not obtained a tax opinion about the

1 effect of the Plan on Creditors or Interest Holders. This Disclosure Statement does not constitute,
2 and is not intended to constitute, either a tax opinion or tax advice to any person, and the
3 summary contained in the Plan is provided for informational purposes only. **CREDITORS AND**
4 **INTEREST HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR**
5 **TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS,**
ATTORNEYS, OR ADVISORS.

The discussion below summarizes only certain of the federal income tax consequences associated with implementation of the Plan. It does not cover all aspects of federal income taxation that may be relevant to the Debtor or the Holders of Claims or Interests, nor does the discussion deal with tax issues peculiar to certain types of taxpayers. No aspect of foreign, state, local, or estate and gift taxation is addressed.

B. Federal Tax Consequences to the Debtor

In the event the Debtor does not sell the Properties, the Debtor will continue to pay taxes in the ordinary course. If the Debtor chooses to sell the Properties, there will not likely be any federal tax consequences to the Debtor. As the basis was \$31,000,000.00, and, even if the Properties are sold for ~~\$23,000,000.00 or \$24,000,000.00~~, 24,000,000.00 or \$25,000,000.00, the losses which can be offset by and through the Estate on account of their sale will offset any capital gain which may otherwise be realized.

C. Tax Consequences to Creditors

Holders of a Claim who receive Cash in payment of their Claims will recognize gain or loss equal to the difference, if any, between the amount of the Cash payment(s) received that is/are not attributable to interest and their respective adjusted tax bases in their Claims.

The character of any gain or loss recognized by a holder of a Claim as capital gains or ordinary income and, if capital gains, as long-term or short-term, will depend on the holder's status, the nature of the Claim, and the holder's holding period. The character of such gain or loss may also be affected by special rules under the Internal Revenue Code. Any portion of a Claim payment that is attributable to accrued unpaid interest that the holder has not already included in

1 income will result in the recognition of ordinary income. Holders of Claims should consult with
2 their own tax advisors as to the character and timing of recognition of gain or loss.

3 **IX. CONFIRMATION REQUIREMENTS AND PROCEDURES**

4 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THIS PLAN
5 SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON
CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following
discussion is intended solely for the purpose of alerting readers about basic confirmation issues,
which they may wish to consider as well as certain deadlines for filing Claims. The ~~Plan~~
~~Proponents~~ Debtor CANNOT and ~~DOES~~ NOT represent that the discussion contained below is
a complete summary of the law on this topic or on those issues that affect Creditors, the Claims or
the Interest Holders.

Many requirements must be met before the Bankruptcy Court can confirm the Plan. Some
of the requirements include that the Plan must be proposed in good faith, acceptance of the Plan,
whether the Plan pays creditors at least as much as creditors would receive in a chapter 7
liquidation, and whether the Plan is feasible. These requirements are not the only requirements
for confirmation.

A. Who May Vote or Object

1. Who May Object to Confirmation of the Plan

Any party in interest may object to the confirmation of the Plan, but as explained below,
not everyone is entitled to vote to accept or reject the Plan.

2. Who May Vote to Accept/Reject the Plan

A Creditor or Interest Holder has a right to vote for or against the Plan if that Creditor or
Interest Holder has ~~a~~ an undisputed Claim which is both (1) Allowed or Allowed for voting
purposes and (2) classified in an impaired Class.

3. What is an Allowed Claim/Interest

As noted above, a Creditor or Interest holder must first have an Allowed Claim or Interest
to have the right to vote. Generally, any proof of claim or Interest will be deemed Allowed unless

1 there is objection to the Claim or Interest. When an objection to a Claim or Interest is filed, the
2 Creditor or Interest holder holding the Claim or Interest cannot vote unless the Bankruptcy Court,
3 after notice and hearing, either overrules the objection or allows the Claim or Interest for voting
4 purposes.
5

THE BAR DATES FOR FILING VARIOUS PROOFS OF CLAIM OR INTERESTS IN THIS CASE ARE SET FORTH ABOVE. A Creditor or Interest Holder may have an Allowed Claim or Interest even if a Proof of Claim or Interest was not timely filed, but only if the Claim (1) is scheduled on the Debtor's Schedules and such Claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the Claim. An Interest is deemed allowed if it is scheduled and no party in interest has objected to the Interest.

4. What is an Impaired Claim/Interest

As noted above, an Allowed Claim or Interest only has the right to vote if it is in a Class that is impaired under the Plan. A Class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that Class. For example, a Class comprised of general unsecured claims is impaired if the Plan fails to pay the members of that Class 100% of what they are owed.

In this case, the Debtor believes that all Classes of Creditors are impaired²³ and are entitled to vote to accept or reject the Plan. The only class which is not impaired is Class ~~5.4~~, which is a class of Interest Holders, who are not entitled to vote to accept or reject the Plan. Parties who dispute the Debtor's characterization of their Claim or Interest as being impaired or unimpaired may file an objection to the Plan contending that the Debtor has incorrectly characterized the Class.

5. Who is Not Entitled to Vote

The following four types of Claims are not entitled to vote: (1) Claims that have been disallowed; (2) Claims in unimpaired Classes; (3) Claims entitled to priority pursuant to Section 507(a)(1), (a)(2), (a)(8), or (b); and (4) Claims or Interests in classes that do not receive or retain

²³ [If the Court determines that the Debtor must pay MSCI a prepayment premium, the Debtor shall reinstate the Loan, which will render MSCI unimpaired and unable to vote on the Plan.](#)

1 any value under the Plan. Claims in unimpaired classes are not entitled to vote because such
2 classes are deemed to have accepted the Plan. Claims entitled to priority pursuant to Section
3 507(a)(2), (a)(3), and (a)(8) are not entitled to vote because such Claims are not placed in classes
4 and they are required to receive certain treatment specified by the Bankruptcy Code. Claims or
5 Interests in classes that do not receive or retain any value under the Plan do not vote because such
classes are deemed to have rejected the Plan. **EVEN IF YOUR CLAIM OR INTEREST IS
THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO
THE CONFIRMATION OF THE PLAN.**

6. Votes Necessary to Confirm the Plan

If impaired Classes exist, the Bankruptcy Court cannot confirm the Plan unless: (1) at least one impaired class of Claims has accepted the Plan without counting the votes of any Insiders within that Class; and (2) all impaired Classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cramdown” on non-accepting Classes, as discussed later in item 8 below.

7. Votes Necessary for a Class to Accept the Plan

A Class of Claims is considered to have accepted the Plan when more than one-half (1/2) in number and at least two-thirds (2/3) in dollar amount of the Claims which actually voted, voted in favor of the Plan. A Class of Interests is considered to have “accepted” the Plan when at least two-thirds (2/3) in amount of the Interest Holders of such Class which actually voted, voted to accept the Plan.

8. Treatment of Non-Accepting Classes

As noted above, even if not all of the impaired Classes vote to accept the proposed Plan, the Bankruptcy Court may nonetheless confirm the Plan if the non-accepting Classes are treated in the manner required by the Code. The process by which non-accepting Classes are forced to be bound by the terms of a Plan is commonly referred to as “cramdown.” The Code allows the Plan to be “crammed down” on non-accepting Classes of Claims or Interests if it meets all consensual

1 requirements, except the voting requirements of Section 1129(a)(8), and if the Plan does not
2 “discriminate unfairly” and is “fair and equitable” toward each impaired Class that has not voted
3 to accept the Plan as referred to in Section 1129(b) and applicable case law.

4 **9. Request for Confirmation Despite Non-acceptance by Impaired**
5 **Class(es)**

The Debtor will ask the Bankruptcy Court to confirm this Plan by cramdown on all impaired Classes if any of these Classes do not vote to accept the Plan.

B. Liquidation Analysis

Another confirmation requirement is the “Best Interest Test,” which requires a liquidation analysis. Under the Best Interest Test, if a Claimant or Interest holder is in an impaired class and that Claimant or Interest holder does not vote to accept the Plan, then that Claimant or Interest holder must receive or retain under the Plan property of a value not less than the amount that such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

In a chapter 7 case, the debtor’s assets are usually sold by a chapter 7 trustee and generally distributed in the following order: (1) to creditors whose interest was secured by property of the estate; (2) to administrative claim holders; (3) pro-rata to creditors whose interest was not secured by property of the estate; and (4) Interest Holders.

For the Bankruptcy Court to be able to confirm the Plan, the Bankruptcy Court must find that all Creditors and Interest Holders who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a chapter 7 liquidation. The Debtor maintains that this requirement is met here because Creditors [and Interest Holders](#) receive as much if not more under the Plan as they would if the Debtor’s assets were liquidated in a chapter 7.

In its liquidation analysis, the Debtor has assigned a value to the assets that it believes would be realized upon an orderly liquidation of those assets. The Debtor’s business relates to the operation of the Properties. The liquidation of the Properties by a chapter 7 trustee in the current market would likely realize less than the Secured Claim asserted by MSCI. [As such, the payment](#)

1 [of any other Creditor or Interest Holder in a liquidation is dependent on a trustee successfully](#)
2 [prosecuting the Sarkis AP and/or any other claim \(e.g., against the Receiver or Ms. Muir\).](#)

3 Attached to this Disclosure Statement as **Exhibit F** is a liquidation analysis which
4 demonstrates that unsecured creditors in a hypothetical chapter 7 liquidation would receive
5 ~~zero~~[one hundred](#) percent (~~0~~[100](#)%) on account of their Allowed Claims.²⁴ Although there are
inherent assumptions made in preparing a liquidation analysis and estimating the potential
recoveries that Creditors would receive in a chapter 7 liquidation scenario, the Debtor believes
that the comprehensive liquidation analysis provides an accurate representation of the results that
would likely occur.

C. Risk Factors

HOLDERS OF CLAIMS OR INTERESTS AGAINST THE DEBTOR SHOULD READ
AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW. THESE RISK
FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS THE ONLY RISKS INVOLVED
IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

The principal risks associated with the Plan are as follows:

1. The Debtor's ability to make Distributions is, in substantial part, dependent on cash flow from operations. The Debtor's business involves the leasing of multiple parcels of commercial real property to a variety of businesses. Accordingly, the Debtor's cash flow is affected by occupancy and the lease value of rentals in the market. If the Debtor's occupancy or the rental value of the Properties decreases by a significant margin, the Debtor's ability to perform under the Plan may be affected.

2. While the Bar Date for the filing of Claims has passed, there is a possibility that the Debtor could be subject to as-yet-unknown late-filed Claims or Interests. Although such Claims or Interest may be entitled to Distributions under the Plan, the Debtor believes that such

²⁴ [Payment of 100% under a liquidation plan is premised on an estimated recovery from the Sarkis AP of \\$10,000,000. In a chapter 7 liquidation, the chapter 7 trustee may not prosecute or obtain sufficient funds to provide a 100% distribution. If the Sarkis AP does not result in any judgment for the Estate, general unsecured creditors would receive 0% in liquidation. The Plans proposed by the Debtor, in contrast, provide for a 100% distribution without respect to any recovery from the Sarkis AP or other actions.](#)

1 claims would be subordinated to any and all timely-filed Claims and Interests and, thus, would
2 not affect any Creditor's Distribution under the Plan.

3 3. There are conditions to the confirmation of the Plan and its consummation that are
4 more particularly described herein and in the Plan. If the Debtors are unable to satisfy those
5 conditions, the Plan may not be confirmed.

4. Even if all classes of Claims that are entitled to vote accept the Plan, the Plan might not be confirmed by the Bankruptcy Court. The Debtor believes that the Plan satisfies all the requirements for confirmation of a plan of reorganization under the Bankruptcy Code, including under section 1129, but there can be no assurance that the Bankruptcy Court will also conclude that the requirements of confirmation have been satisfied.

5. Although the Debtor believes the claims in the Sarkis [AP and Receiver](#) AP are meritorious and the estimated value of such claims reasonable, litigation is never certain. The Court may enter a judgment in favor of MSCI or [the Receiver, or](#) award less than the estimated value of the claims alleged in the Sarkis [AP and Receiver](#) AP. The Plan, however, is not dependent on success in the Sarkis [AP and Receiver](#) AP; rather, the Plan is feasible whether or not the Debtor and/or Reorganized Debtor succeed in any of the pending or potential litigation.

D. Feasibility

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

THE FINANCIAL PROJECTIONS SET FORTH IN THIS DISCLOSURE STATEMENT REPRESENT AN ESTIMATE OF FUTURE PERFORMANCE BASED UPON CERTAIN ASSUMPTIONS SET FORTH ~~WITH SUCH FINANCIAL PROJECTIONS~~ [HEREIN](#). THESE FUTURE EVENTS MAY OR MAY NOT OCCUR, AND THE FINANCIAL PROJECTIONS MAY NOT BE RELIED UPON AS A GUARANTEE OR OTHER ASSURANCE OF THE ACTUAL RESULTS WHICH WILL OCCUR. BECAUSE OF THE UNCERTAINTIES

1 INHERENT IN PREDICTIONS OF FUTURE EVENTS AND EVENTS OUTSIDE OF THE
2 DEBTOR'S CONTROL, THE REORGANIZED DEBTOR'S ACTUAL CASH FLOW MAY BE
3 DIFFERENT FROM THAT PREDICTED, AND SUCH DIFFERENCE MAY BE MATERIAL
4 AND ADVERSE TO THE INTERESTS OF CREDITORS.
5

The Plan and the Financial Projections are based on a conservative growth scenario [of three percent \(3%\) for income and expenses](#). The Financial Projections are the result of a concerted effort by GlassRatner to use the past performance of the Debtor, [current leases](#) and real estate market trends to predict the future performance of the Reorganized Debtor. The Financial Projections are conservative and not predicated on momentous increases in revenues, net income, or cash flows. The Financial Projections reveal the simple fact of this case: the Debtor is a healthy company that is more than capable of restructuring. The Financial Projections set forth the Debtor's estimate of the anticipated cash flow of the Reorganized Debtor to fund the Plan. The projected cash flow is primarily premised on existing lease agreements and the increases provided under these agreements. As such, the increases are not assumption; rather, they are provided for in existing contracts. The Financial Projections are based on the classification and treatment of Creditors. *See ~~Exs~~ [Ex. B and C](#).*

The provisions regarding the sale of the Properties and/or refinancing and/or restructuring of the debt secured on the Properties ensure the Plan is feasible. If at any point in time during the Plan the Reorganized Debtor is unable to perform, the Debtor has the authority to sell the Properties or enter into a transaction to refinance and/or restructure the debt secured by the Properties. These provisions ensure that the Plan will not be followed by subsequent reorganization or liquidation [not provided for herein](#). Based on the projected increased revenue from the Properties, the Debtor's experts opine that the value of the Properties will increase over time as the Reorganized Debtor pays the obligations secured upon the Properties.

X. EFFECT OF CONFIRMATION OF THE PLAN

1
2
3
4
5

A. Discharge

Except as otherwise specifically provided in the Plan or the Confirmation Order, pursuant to § 1141 of the Bankruptcy Code, the rights under the Plan and the treatment of Claims and Interests under the Plan will be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever against the Debtor, the Reorganized Debtor, their property, and/or the estate and/or property of the estate. Except as otherwise provided in the Plan or the Confirmation Order, discharge shall have the following effects, among others:

1. On the Effective Date, the Debtor, the bankruptcy estate, the Reorganized Debtor, [or any co-obligor, assignee, or guarantor of the Debtor](#), and their/its property will be deemed discharged and released from any and all Claims and Interests, including without limitation, all liens, demands, liabilities, Claims, and Interests that arose before the Effective Date or that are based upon or otherwise relate to acts, events, omissions, transactions or other activities of any kind that occurred before the Effective Date, and all debts of the kind specified in Bankruptcy Code §§ 502(g), 502(h), or 502(i) regardless of whether: (a) a proof of claim or proof of interest based on such debt or interest is filed or deemed filed; (b) a Claim or Interest based on such debt or Interest is allowable under Bankruptcy Code § 502; or (c) the person holding the Claim or Interest based on such a debt or Interest has accepted the Plan;

2. All Persons will be precluded from asserting against the Debtor, the bankruptcy estate, the Reorganized Debtor, [or any co-obligor, assignee, or guarantor of the Debtor](#), or its property, any other or further Claims or Interests based on, arising from, or in connection with any act, event, omission, transaction, or other activity of any kind that occurred before the Effective Date;

3. Any debt of the Debtor, whether secured or unsecured, which was in default prior to the Effective Date, will no longer be deemed in default;

1 4. As set forth in §§ 524 and 1141 of the Bankruptcy Code, except as otherwise
2 provided in the Plan or the Confirmation Order, the Confirmation Order constitutes a discharge of
3 any and all Claims against and all debts and liabilities of the Debtor. The Reorganized Debtor
4 and its property will, to the fullest extent permitted by § 1141 of the Bankruptcy Code, be deemed
5 discharged and released from any and all Claims and Interests, including, without limitation, all
demands, liabilities, liens, Claims and Interests that arose before the Confirmation Date or that are
based on or otherwise relate to acts, events, omissions, transactions, or other activities of any kind
that occurred before the Effective Date (the “Discharge”); and

5. Subject to the limitations and conditions imposed under § 1125(e) of the
Bankruptcy Code, persons who, in good faith and in compliance with applicable provisions of the
Bankruptcy Code, either solicit Plan acceptances or rejections or participate in the offer, issuance,
sale, or purchase of securities under the Plan will not be liable on account of their solicitation or
participation for violation of any applicable law, rule, or regulation governing the solicitation of
Plan acceptances or rejections or the offer, issuance, sale, or purchase of such securities.

B. Injunction

Except as otherwise specifically provided in the Plan or the Confirmation Order, on and
after the Effective Date, all creditors who have held, hold, or who may hold a Claim or Interest
Holders who have held, hold, or who may hold any Interest discharged pursuant to the terms of
the Plan, shall be permanently enjoined from the following: (1) taking any of the following
actions on account of any discharged Claim or Interest: (a) except as expressly contemplated
herein, commencing or continuing in any manner any action or other proceeding against ~~any~~
~~shareholders, officers or directors of the shareholders, officers or directors of~~ the Debtor, the
Reorganized Debtor, ~~their successors,~~ or their property; (b) enforcing, attaching, executing,
collecting, or recovering in any manner any judgment, award, decree, or order against ~~any~~
~~shareholders, officers or directors of~~ the Debtor, the Reorganized Debtor, ~~their successors,~~ or their
property; (c) creating, perfecting, or enforcing any lien against ~~any shareholders, officers or~~
~~directors of~~ the Debtor, the Reorganized Debtor, ~~their successors,~~ or their property; (d) asserting

1 any set off, right of subrogation, or recoupment of any kind against any obligation due to ~~the~~
2 ~~shareholders, officers or directors of~~ the Debtor, the Reorganized Debtor, ~~their successors,~~ or their
3 property; and (e) commencing or continuing any action, in any manner, in any place that does not
4 comply with or is inconsistent with the provisions of the Plan; and (2) taking any such action on
5 account of any Claims or rights of action that are vested in or transferred to the Reorganized
Debtor as of the Effective Date or under the Plan. Any person or entity injured by a willful
violation of such injunction will recover its actual damages, including costs and attorney's fees,
and, in appropriate circumstances, may recover punitive damages from the violator as provided by
applicable law.

C. Limitation of Liability

~~Effective as of~~ Upon the Effective Date, ~~except as expressly contemplated herein, neither~~
the Debtor ~~nor~~, the Reorganized Debtor ~~nor~~, ~~and~~ any of their respective officers, directors,
shareholders, employees, guarantors, and/or other agents, advisors, and/or Professionals will not
be liable to any ~~claim~~ Claim or Interest holder or to any other person for any act or omission, save
and except that the Reorganized Debtor, ~~in connection with~~ may, to the extent permitted by
applicable statutes and case law, be liable for actions taken and/or omissions or arising out of the
negotiation, preparation, and pursuit of confirmation of the Plan, the approval of this disclosure
statement, the consummation of the Plan, and the administration of the Plan, ~~the Case, or the~~
~~property to be distributed under the Plan, to the extent permitted by applicable statutes and case~~
~~law, except that the Reorganized Debtor will be liable for~~ and the performance of obligations
assumed by it or imposed upon it by or through the Plan. ~~Notwithstanding the foregoing, nothing~~
~~contained herein shall release any claims that may be asserted against the Debtor's officers,~~
~~directors, shareholders, employees, and other agents, advisors or Professionals that relate to the~~
~~period prior to the Petition Date to the extent any such claims exist and are not inconsistent with~~
~~an operative settlement agreement.~~

1
2
3
4
5

D. Vesting of Property of the Estate in the Reorganized Debtor

On the Effective Date, all property and rights of the estate of the Debtor shall be transferred to the Reorganized Debtor free and clear of all claims, liens, and rights of ~~creditors~~Creditors and interests of Interest Holders. The Reorganized Debtor may operate its business and use, acquire, and dispose of its property and settle and compromise claims or interests without the supervision of or any authorization from the Bankruptcy Court or the United States Trustee, and free of any restriction from the Bankruptcy Code or the Bankruptcy Rules. Notwithstanding, the Reorganized Debtor expressly reserves the right to avail itself of any of the rights and/or benefits provided under the Bankruptcy Code (e.g., the sale provisions of 11 U.S.C. § 363), Federal Rules of Bankruptcy Procedure (e.g., the compromise provisions of Fed.R.Bankr.P. 9019), and other applicable law, if and only if the Reorganized Debtor so chooses.

E. Plan Supplement

Any and all exhibits, lists or schedules referred to herein but not filed with ~~this~~the Plan shall be contained in the Plan Supplement to be filed with the Clerk of the Court prior to the Confirmation Hearing. Claimants may obtain a copy of the Plan Supplement, once filed, from the Debtor by written request to the Debtor’s counsel at the notice address set forth above.

Each of the schedules, list and/or exhibits to the Plan (whether annexed ~~hereto~~to the Plan or included in the Plan Supplement), the ~~Disclosure Statement~~Plan, and the schedules and exhibits to the Disclosure Statement are ~~an~~ integral parts of the Plan and/or Disclosure Statement, and are hereby incorporated by reference and made a part of the ~~Plan~~Disclosure Statement.

F. Modification of the Plan

The Debtor may modify the Plan, ~~including the Plan Documents,~~ and/or any supporting or related documents at any time before the Confirmation Order is entered; provided, however, that any modifications to the Plan Documents shall be subject to third-party approvals to the extent required under the terms of the Plan Documents. However, the Bankruptcy Court may require a new disclosure statement and/or re-voting on the Plan. The Reorganized Debtor may seek to modify the Plan at any time after entry of the Confirmation Order only if (1) the Plan has not been

1 substantially consummated and (2) the Bankruptcy Court authorizes the proposed modifications
2 after notice and a hearing. Substantial Consummation, as defined in 11 U.S.C. §1101(2), shall
3 mean: (1) a transfer of all or substantially all of the property proposed by the ~~plan~~Plan to be
4 transferred; (2) assumption by the ~~debtor~~Debtor or by ~~the~~any successor to the ~~debtor~~Debtor under
5 the ~~plan~~Plan of the business or of the management of all or substantially all of the property dealt
with by the ~~plan~~Plan; and (3) commencement of Distributions under the Plan.

XI. POST-CONFIRMATION MATTERS

A. Post-Confirmation Status Report

Within 120 days of the entry of the Confirmation Order, the Reorganized Debtor shall file a status report explaining what progress has been made toward consummation of the Plan. The initial report shall be served on the OUST, the 20 largest unsecured creditors, and those parties who have requested special notice. Further reports shall be filed every 180 days thereafter and served on the same entities, unless otherwise ordered. The status report shall include the following information: (1) a schedule listing for each debt and each class of Claims: the total amount required to be paid under the Plan, the amount required to be paid as of the date of the report, the amount actually paid as of the date of the report, and the deficiency, if any, in required payments; (2) a schedule of any and all post-confirmation tax liabilities that have accrued or come due and a detailed explanation of payments thereon; (3) projections as to the continuing ability of the Reorganized Debtor to comply with the terms of the Plan; (4) an estimate of the date for Plan consummation and application for final decree; and (5) any other pertinent information needed to explain the progress toward consummation of the Plan.

B. Post-Confirmation Fees to the Office of the United States Trustee

Pursuant to 28 U.S.C. § 1930(a)(6), quarterly fees to the OUST will continue to be due until the Bankruptcy Case is closed, dismissed, or converted to Chapter 7. Such fees shall be paid by the Reorganized Debtor from the funds dedicated to the OUST under the Plan.

[If the Properties are sold during the pendency of the Plan, the Debtor shall pay all necessary OUST fees from escrow or as soon thereafter as is required by relevant law.](#)

1
2
3
4
5

C. Conversion

If the Court orders the Bankruptcy Case converted to chapter 7 after the Plan is confirmed, then all property that had been property of the bankruptcy estate, and that has not been disbursed pursuant to the Plan, will vest in the chapter 7 estate. The automatic stay will be reimposed upon the vested property, but only to the extent that the Court did not authorize relief from stay during the Bankruptcy Case. The Debtor and the Reorganized Debtor reserve any and all rights and defenses to any motion to dismiss or convert the Bankruptcy Case.

D. Post-Confirmation Default

1. Monetary Default

The failure to remit payment to any Claimant under the Plan on or before the date due shall constitute an event of default. Upon the occurrence of an event of default, the relevant Claimant shall notify the [Reorganized Debtor](#) of the alleged default [in writing](#) within five (5) calendar days of the alleged default. Failure to timely notify the [Reorganized Debtor](#) of the alleged default [in writing](#) shall constitute a waiver of the default (but not a waiver of the entitlement to the payment due) and such default shall not constitute an event of default for purposes of this paragraph. The [Reorganized Debtor](#) shall have ten (10) calendar days after receipt of [written](#) notice of the alleged default to cure or contest the [alleged](#) default. If the [Reorganized Debtor](#) (i) fails to cure or contest the alleged default by filing a motion in the Bankruptcy Court within ten (10) calendar days after ~~receiver~~[receipt](#) of [written](#) notice of the alleged default or (ii) defaults for the third time within any 12-month period, the [Reorganized Debtor](#) shall be in material breach of the Plan. Upon the occurrence of a material breach under the ~~plan~~[Plan](#), the affected Claimant may thereafter move to enforce the Plan or, if applicable, move for relief from the automatic stay.

2. Non-Monetary Default

Upon the occurrence of a non-monetary default, the affected Claimant shall notify the [Reorganized Debtor](#) of the alleged default [in writing](#) within five (5) calendar days of the alleged default. Failure to timely notify the [Reorganized Debtor](#) of the alleged default [in writing](#) shall

1 constitute a waiver of the default. The [Reorganized](#) Debtor shall have thirty (30) calendar days
2 after receipt of [written](#) notice of the alleged default to cure or contest the [alleged](#) default. If the
3 [Reorganized](#) Debtor (i) fails to cure or contest the alleged default by filing a motion in the
4 Bankruptcy Court within thirty (30) calendar days after receipt of [written](#) notice of the alleged
5 default, the [Reorganized](#) Debtor shall be in material breach of the Plan. Upon the occurrence of a
material breach under the ~~plan~~[Plan](#), the affected Claimant may thereafter avail itself of the
remedies available under the Bankruptcy Code.

E. Final Decree

Once the bankruptcy estate has been fully administered as referred to in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Reorganized Debtor shall file a motion with the Court to obtain a final decree to close the Bankruptcy Case.

XII. MISCELLANEOUS PROVISIONS

A. Retention of Jurisdiction

The Bankruptcy Court will retain jurisdiction of all matters arising in or related to the Plan to the fullest extent provided by law until the entry of a final decree, including, without limitation:

1. The adjudication of the validity, scope, classification, allowance, and disallowance of any Claim, including but not limited to administrative claims, tax claims;
2. To hear and determine any action or adversary proceeding pending or filed which relates to the Bankruptcy Case and/or the Plan;
3. To hear and determine any issue relating to the assumption or rejection of executory contracts and unexpired leases;
4. To hear and determine any modification to the Plan in accordance with the Bankruptcy Rules and the Bankruptcy Code;
5. To enforce and interpret terms of the Plan;

1 6. To correct any defects, cure any omissions, or reconcile any inconsistency in the
2 Plan or the Confirmation Order as may be necessary to carry out the purpose and intent of the
3 Plan;

4 7. To hear and determine such matters and make such orders as are consistent with
5 the Plan as may be necessary to carry out the provisions thereof and to adjudicate any disputes
arising under or related to any order entered by the Bankruptcy Court in this Case;

8. The entry of an order concluding and terminating this case; and

9. In the sole and absolute discretion of the [Reorganized](#) Debtor, to preside over and enter a final order in the Sarkis AP [or any other litigation commenced by the Reorganized Debtor post-confirmation.](#)

B. Governing Law

Unless a rule of law or procedure is supplied by federal law, including the Bankruptcy Code and the Bankruptcy Rules, the laws of the State of California (without reference to its conflict of law rules) will govern the construction and implementation of the Plan and any agreements, documents, and/or instruments executed in connection with the Plan, including but not limited to the Plan Documents, unless otherwise specifically provided in such agreements, documents, or instruments.

C. Successors and Assigns

The rights, benefits, and obligations of any entity named or referred to in the Plan will be binding on, and will inure to the benefit of, the heirs, executors, administrators, successors, and assigns of each entity.

D. Inconsistencies

To the extent the Plan is inconsistent with the Disclosure Statement or other Plan Documents, the provisions of the Plan shall be controlling. To the extent the Plan is inconsistent with the Confirmation Order, the provisions of the Confirmation Order shall be controlling.

1
2
3
4
5

E. Rules of Construction

For the purpose of this Plan, unless otherwise provided in this Plan, (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (ii) each pronoun stated in the masculine, feminine or neuter shall include the masculine, feminine and neuter; (iii) any reference in this Plan to an existing document, exhibit or schedule filed or to be filed means such document, exhibit or schedule as it may have been or may be amended, modified or supplemented pursuant to this Plan; (iv) any reference to a person or entity as a holder of a Claim or Interest includes that person or entity's successors and assigns; (v) except as otherwise stated herein, all references in this Plan to sections, articles and exhibits are references to ~~Sections~~sections, articles and exhibits of or to this Plan; (vi) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (vii) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, indenture, agreement, or other document being in a particular form or on particular terms and conditions means that such document shall be substantially and materially in such form or substantially and materially on such terms and conditions or as amended or as modified; and (viii) the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply to the extent such rules are not inconsistent with the express terms of this Plan or any other provision in this Section.

F. Rules of Interpretation

1. Except as otherwise provided in the Plan, Bankruptcy Rule 9006(a) applies when computing any time period under the Plan.
2. Any term used in the Plan that is not a defined term, but that is used in the Bankruptcy Code or Bankruptcy Rules has the meaning assigned to such term in the Bankruptcy Code or Bankruptcy Rules, as applicable.
3. Any reference to an existing document means the document as it has been, or may be, amended or supplemented.

1
2
3
4
5

4. Unless otherwise specified, all references to sections or exhibits are references to this Disclosure Statement's sections or exhibits.

5. Section captions and headings are used only as convenient references and do not affect the meaning or effect of the Disclosure Statement or Plan.

Dated: ~~March 4,~~April 11, 2014

BAKER & HOSTETLER LLP

By: _____

Ashley M. McDow
Michael T. Delaney

Attorneys for Debtor and Debtor-in-Possession
SARKIS INVESTMENTS COMPANY, LLC

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: Baker & Hostetler LLP, 11601 Wilshire Blvd., Ste. 1400, Los Angeles, CA 90025-0509

A true and correct copy of the foregoing document entitled (*specify*): **SECOND AMENDED DISCLOSURE STATEMENT DESCRIBING DEBTOR'S SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) April 11, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) April 11, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 11, 2014

Roxane Ojeda

/s/ Roxane Ojeda

Date

Printed Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

[Michael T Delaney: mdelaney@bakerlaw.com](mailto:mdelaney@bakerlaw.com), gharris@bakerlaw.com; rojeda@bakerlaw.com
[Mark Domeyer: mdomeyer@mileslegal.com](mailto:mdomeyer@mileslegal.com)
[Richard T Egger: richard.egger@bbklaw.com](mailto:richard.egger@bbklaw.com), cheryl.madaris@bbklaw.com
[Geoffrey A Heaton: gheaton@duanemorris.com](mailto:gheaton@duanemorris.com)
[Alvin Mar: alvin.mar@usdoj.gov](mailto:alvin.mar@usdoj.gov)
[Ashley M McDow: amcdow@bakerlaw.com](mailto:amcdow@bakerlaw.com), rojeda@bakerlaw.com; gharris@bakerlaw.com; mdelaney@bakerlaw.com
[Aron M Oliner: roliner@duanemorris.com](mailto:roliner@duanemorris.com)
[Kelly M Raftery: bknotice@mccarthyholthus.com](mailto:bknotice@mccarthyholthus.com)
[Martha E Romero: Romero@mromerolawfirm.com](mailto:Romero@mromerolawfirm.com)
[United States Trustee \(LA\): ustpregion16.la.ecf@usdoj.gov](mailto:ustpregion16.la.ecf@usdoj.gov)
[Reed S Waddell: rwaddell@frandzel.com](mailto:rwaddell@frandzel.com), efiling@frandzel.com; sking@frandzel.com
[Craig A Welin: cwelin@frandzel.com](mailto:cwelin@frandzel.com), efiling@frandzel.com; bwilson@frandzel.com

2. SERVED BY UNITED STATES MAIL:

Presiding Judge:
Hon. Robert N. Kwan
U.S. Bankruptcy Court
255 E. Temple St., Ste. 1682
Los Angeles, CA 90012

U.S. Trustee:
Alvin Mar, Esq.
915 Wilshire Blvd., Ste. 1850
Los Angeles, CA 90017

Interested Parties:
Donald T Fife
Hahn Fife & Company, LLP
790 E Colorado Blvd, 9th Fl.
Pasadena, CA 91101

Patrick Galentine
17542 E 17th St Ste 420
Tustin, CA 92780

[see attached mailing matrix for additional recipients]

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Document comparison by Workshare Compare on Friday, April 11, 2014 9:06:22 PM

Input:	
Document 1 ID	interwovenSite://BHDMS/BHDOCS/603088740/1
Description	#603088740v1<BHDOCS> - In re Sarkis - Disclosure Statement for First Amended Plan (clean)
Document 2 ID	interwovenSite://BHDMS/BHDOCS/603290570/1
Description	#603290570v1<BHDOCS> - In re Sarkis - Second Disclosure Statement for Second Amended Plan (clean)
Rendering set	bh standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	394
Deletions	280
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	684