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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**
10

11 In re:

12 TAOW LLC,

13 Debtor.
14 _____/

No. 18–40158
Chapter 11

15 **DEBTOR’S SECOND AMENDED DISCLOSURE STATEMENT**

16 **I. INTRODUCTION**

17 **A. Purpose of this Document**

18 This Disclosure Statement contains information about the Chapter 11 bankruptcy case of
19 TAOW LLC ("Debtor") and describes the Debtor's Second Amended Plan of Reorganization
("Plan").

20 *Your rights may be affected by the Plan. You should read the Plan and this Disclosure*
21 *Statement carefully and discuss them with an attorney.*

22 This Disclosure Statement describes the financial condition of the Debtor, significant
23 events during the bankruptcy case, and when and how much creditors will be paid if the
24 Bankruptcy Court confirms the Plan. It also describes which creditors can vote to accept or
reject the Plan, and the factors the Bankruptcy Court considers in deciding whether to confirm
the Plan.

25 This Disclosure Statement also discusses why the Debtor believes that it can make the
26 payments required by the Plan, and whether the Plan pays creditors at least as much as they
would receive if the Debtor had filed for relief under Chapter 7 of the Bankruptcy Code.

27 The Plan designates seven (7) classes of claims and specifies which classes are impaired
28 by the Plan and which classes are not impaired. The Plan provides the means for its

1 implementation by vesting the assets of the estate in the Debtor upon confirmation and providing
2 for the payment of claims as provided in the Plan. The manner, amount, and timing of
3 distributions to each creditor is determined by the Plan. The provisions of the confirmed Plan bind
4 the Debtor, and the creditors of the Debtor, whether they have accepted the Plan and whether they
5 are impaired by the Plan.

6 Distributions under the Plan are in exchange for, and in complete satisfaction of, existing
7 claims and will discharge and release all such claims and liens against the Debtor, and its property
8 except as otherwise provided in the Plan. After confirmation, all holders of impaired claims and
9 interests shall be precluded from asserting any claim against the Debtor or its property based on
10 any transaction or other activity of any kind that occurred prior to commencement of the case,
11 except as otherwise provided for under this Plan.

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

13 The Court will hold a hearing to determine whether the Plan meets the requirements for
14 confirmation. The date and time of the confirmation hearing is in the Notice of the hearing.

15 If you may vote to accept or reject the plan, please indicate your acceptance or rejection
16 of the Plan on the enclosed ballot and return the ballot to counsel for the Debtor, Lawrence L.
17 Szabo, 3608 Grand Ave., Oakland, CA 94610.

18 Your ballot must be received by [insert date]. Untimely-received ballots will not be
19 included in the tally of ballots.

20 Objections to this Disclosure Statement or to the confirmation of the Plan must be filed
21 and served upon Debtor's counsel by [insert date].

22 If you want additional information about the Plan, contact Lawrence L. Szabo, 3608
23 Grand Ave., Oakland, CA 94610, 510-834-4893, szabo@sbcglobal.net.

24 **C. Representations in the Disclosure Statement**

25 Debtor has made reasonable efforts to insure the information in this Disclosure
26 Statement is accurate, complete and free from error; however, Debtor cannot guarantee that the
27 information in this Disclosure Statement is without error. All estimates and analysis regarding
28 Debtor's assets, claims against Debtor, property values, and pending or anticipated litigation,
are Debtor's best estimates.

The Court may conditionally find this Disclosure Statement to contain adequate
information to enable parties affected by the Plan to make an informed judgment about the Plan.
The Court has not yet determined whether the Plan meets the legal requirements for
confirmation. The Court's approval of this Disclosure Statement is not an endorsement of the
Plan by the Court, or a recommendation it be accepted. The Court's conditional approval of this
Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan.

II. BACKGROUND

A. Description and History of the Debtor

1 TAOW LLC, the Debtor, is a California limited liability company organized by Rene G.
2 Boisvert ("Boisvert") in January of 2010. Boisvert is Debtor's sole member and manager.
3 TAOW LLC has been suspended by the State of California, Franchise Tax Board ("FTB") for
4 failure to meet tax requirements. TAOW LLC filed a certificate of dissolution with the
5 California Secretary of State on December 13, 2013.

6 In 1984, Boisvert purchased the single-family, 2-bedroom, 1400 sq. ft. residence known
7 as 610 Boulevard Way, Oakland California. Boisvert has resided in the property and used it as
8 his business office continually ever since. Boisvert transferred 610 Boulevard Way to the
9 Boisvert Trust in September 2004. Boisvert was self-employed as a licensed California real
10 estate broker engaged in arranging real estate loans, representing parties in real estate sale
11 transactions, and providing consulting services to real estate developers and investors. Around
12 2004, Boisvert also began the business of identifying and procuring land in Oakland, California
13 to develop into residential properties. Boisvert typically forms a single-member limited liability
14 company which, by itself, or with other investors, develops residential properties.

15 In February 2008, Donald M. De Gutz, purchaser of a home developed by Boisvert, filed a
16 complaint against Boisvert and entities owned and controlled by Boisvert in Alameda County
17 Superior Court. In September of 2009, the Alameda County Superior Court awarded De Gutz a
18 judgment against Boisvert and entities controlled by Boisvert for \$161,732.56 on De Gutz's
19 causes of action for breach of contract, breach of Boisvert's fiduciary duty in his capacity as a
20 real estate broker, and fraud. In February of 2010, the Court awarded De Gutz an additional
21 \$50,000 in attorney's fees (together, "the Judgment"). De Gutz filed an abstract of the Judgment
22 in the Official Records of Alameda County on September 30, 2009.

23 On December 9, 2009, the Boisvert Trust executed and delivered a deed of trust for 610
24 Boulevard Way to 800 Center LLC, an entity owned and controlled by Boisvert. The Deed of
25 Trust states it is granted to secure payment of a \$240,000 promissory note. Boisvert alleges that
26 the loan was never funded.

27 De Gutz assigned the Judgment to Lars Lohan in September 2011. On September 14,
28 2012, the Superior Court granted Lohan "charging orders" against 800 Center LLC and TAOW
LLC whereby Boisvert's membership interests in the entities were charged with the unpaid
balance of the Judgment. The charging orders require the entities to give Lohan, instead of
Boisvert, any distributions they may make to Boisvert on account of his membership interests.

The Boisvert Trust transferred 610 Boulevard Way to TAOW LLC by a deed filed in the
Official Records of Alameda County on April 12, 2012. TAOW LLC entered into a lease
agreement with Boisvert for 610 Boulevard Way dated June 10, 2012 whereby Boisvert agrees to
pay the mortgage debt, insurance and taxes for the property. TAOW LLC also agreed to a 25-
year lease for the separate studio-office space on the property with "Taking it to the Streets", a
non-profit charity Boisvert organized, for rent of \$1 per year.

On January 21, 2014 the Superior Court entered an order declaring that 800 Center LLC's
interest in the Deed of Trust became a distributive interest to Boisvert and was subject to
Lohan's charging order lien. The Superior Court apparently reasoned that because 800 Center
LLC had dissolved, it had to make a distribution of its assets, including the note and Deed of
Trust for 610 Boulevard Way, to Boisvert. The Superior Court assigned Lohan the beneficial

1 interest of the Deed of Trust and the note. The Superior Court also ruled that Lohan "may make
2 demand to Boisvert for payment in full on the face value of the Deed of Trust in the amount of
3 \$240,000 forthwith" and that "[if] Boisvert fails to satisfy the indebtedness under the Deed of
4 Trust within 60 days of the date of this order, Lohan may apply to this court for authorization to
exercise further rights as an assignee under the law, including the power of sale under the Deed
of Trust ...".

5 On August 17, 2017, the Superior Court granted charging orders against Boisvert's
6 membership interests in KASO LLC, MG2 LLC, and MGJV LLC.¹ On the same day, the
7 Superior Court also granted Lohan's request for an order authorizing him to exercise the power
8 of sale under the Deed of Trust. Boisvert filed a notice of appeal of the court's order on August
31, 2018, and the appeal is pending. Lohan recorded a notice of a sale of 610 Boulevard Way
scheduled for January 19, 2018. Debtor filed for relief under Chapter 11 on January 18, 2018.

9 **B. Post-filing activities.**

10 The bankruptcy court granted Lohan relief from the automatic stay on June 6, 2018 based
11 on its finding that the Debtor filed its chapter 11 case in bad faith. The lifting of the stay
12 allowed Lohan to proceed with a foreclosure sale for 610 Boulevard, which had been continued
to June 29, 2018.

13 Shortly after the court lifted the automatic stay, Boisvert caused MGJV LLC to apply for a
14 loan to pay Lohan's claim, to be secured by properties MGJV LLC owns at 1414 and 1416 11th
15 Street, Oakland, California. An escrow for the loan was opened with Lawyer's Title. Boisvert
16 was informed by a title officer for Lawyer's Title that even though Lohan's judgment lien did not
17 attach to MGJV's properties, Lawyers Title would nevertheless require a release of the judgment
18 lien before it would insure title for the properties. The underwriting counsel for Lawyers Title
concluded that "[t]he judgment liens do not attach to the LLC's properties. However, given the
history of between [*sic*] Mr. Boisvert and the creditor, and the amount of the judgment lien. For
[*sic*] title insurance purposes, our office would require a specific release of the property."

19 Lohan, despite repeated requests, submitted no written pay-off demand to the loan escrow
20 before June 26, 2018. Boisvert, concluding that without Lohan's demand the loan could not close
21 in time to stop the foreclosure sale, sought other sources for funds to pay Lohan. Boisvert
22 obtained an unsecured personal loan for \$255,012.19, the amount required to satisfy Lohan's
deed of trust obligation. Boisvert deposited the funds in an account of MGJV LLC, and MGJV
wired the funds to Lohan's foreclosure trustee on June 26, 2018.

23 **C. Avoidable Transfers and Other Litigation**

24 Bankruptcy law allows a bankruptcy estate to avoid certain transfers of a debtor's
25 property made by a debtor before the debtor filed its bankruptcy case. To the best of Debtor's
26 knowledge, Debtor made no avoidable preferential payments to a creditor before filing its case.
Bankruptcy law allows a bankruptcy estate to avoid transfers made by a debtor with the intent

27 ¹ Boisvert is the sole member of KASO LLC and MG2 LLC. He is not a member of MGJV
28 LLC. The members of MGJV LLC are MG2 LLC (65% membership interest) and Majua &
Noyon LLC (35% membership interest).

1 to hinder, delay or defraud creditors, or transfers for which the debtor received a less than a
2 reasonably equivalent value. Debtor did not make such transfers. Debtor does not intend to
3 pursue preference, fraudulent conveyance, or other avoidance actions. The Plan gives the
4 Debtor the right to pursue such actions if the Debtor discovers grounds for such actions.
5 Debtor was not involved in any litigation when it filed for bankruptcy relief, and it does not
6 believe that it has any cause of action or claims against any other party. The Plan gives the
7 Debtor the right to prosecute any legal claim or action it may have.

8 **D. Claim Objections**

9 The Plan preserves the right of parties to object to claims. If someone objects to your
10 claim, the court may temporarily allow your claim for voting purposes; but the Plan will pay
11 your claim only if the court allows your claim for all purposes. Paragraph 7.1 of the Plan
12 establishes the procedures for resolving disputed claims. Debtor scheduled the claim of Lars
13 Lohan as a \$401,000, disputed claim. Lohan filed a proof of a secured claim for \$419,401.98.
14 Boisvert paid \$255,012.19 of Lohan's claim on June 26, 2018. Lohan has not amended his
15 proof of claim. TAOW will object to Lohan's claim if Lohan does not amend his claim.
16 Boisvert believes that Lohan's claim is approximately \$130,000. Patrick Bulmer filed a secured
17 claim for \$8,519.50. Debtor does not intend to object to Bullmer's proof of claim. No party has
18 objected to the allowance of any claim. The court established May 29, 2018 as the "deadline"
19 for filing a proof of claim, except for "a government unit", which must be "filed before 180
20 days after the date relief was entered." The State of California, Franchise Tax Board ("FTB")
21 filed an unsecured claim for \$9,612.58. Debtor does not intend to object to the FTB's claim.

22 **III. SUMMARY OF THE PLAN OF REORGANIZATION**

23 Section II of the Plan places the holders of claims against the Debtor and its property and
24 the holders of interests in the Debtor in various classes and describes the treatment each class
25 will receive under the Plan. Section III of the Plan states which classes of claims or interests are
26 "unimpaired" under the Plan. If a Plan does not alter the legal, equitable and contractual rights
27 of the holder of a claim or interest, such claim or interest is "unimpaired". Only a class of
28 claims or interests impaired by the Plan may "vote" on the Plan, i.e., accept or reject the Plan.

29 **A. Unclassified Claims**

30 The Code does not require a Plan to classify certain types of claims. The Code requires
31 the full payment of such claim and deems such claims "unimpaired". Holders of unclassified,
32 unimpaired claims may not vote on the Plan; however, they may object to confirmation if their
33 treatment under the Plan does not comply with Bankruptcy Code requirements. Unclassified
34 claims include:

35 **1. Administrative Expenses.** Administrative expenses are the costs and
36 expenses of administering a Debtor's chapter 11 case, including the Debtor's attorney's fees, as
37 allowed under § 507(a)(2) of the Code. The Code requires Debtor to pay all allowed
38 administrative expenses on the effective date of the Plan unless a claimant agrees to a different
39 treatment. Administrative costs and expenses include post-petition expenses arising in the
40 ordinary course of business, professional fees, and fees due the Office of the U.S. Trustee. The
41 Plan requires Debtor to pay the allowed administrative fees and expenses of Debtor's attorney,
42 Lawrence L. Szabo fees, estimated to be \$30,000. Lawrence L. Szabo has agreed that his

1 allowed administrative claim shall be treated under the Plan by payment of the allowed amount
2 of his claim when MGJV transfers its interests 1414 or 1416 –11th Street, Oakland, California,
3 or when KASO transfers its interest in Magnolia Street, or by six months from the effective
4 date of the Plan, whichever comes sooner. The Plan also requires Debtor to pay fees due the
Office of the U.S. Trustee on the effective date of the Plan, which likely will be the minimum
quarterly fee of \$325.00.

5 **2. Priority Tax Claims.** Priority tax claims are unsecured income, employment,
6 and other taxes entitled to payment priority under § 507(a)(8) of the Code. Unless the holder of
7 a § 507(a)(8) priority tax claim agrees otherwise, § 1129 (a) (9) (C) of the Code requires a plan
8 to pay such claim in full, with interest, in equal regular installments over a period not exceeding
9 5 years from filing the Chapter 11 case. The State of California, Franchise Tax Board (FTB)
10 has filed a \$4,260.29 priority claim against the Debtor. The Plan requires Debtor to pay the
allowed amount of the FTB's priority tax claim, plus interest at 4% *per annum*, within 5 days of
a transfer of MGJV LLC's interest in 1414 11th Street, 1416–11th Street, or within 5 days of a
transfer of KASO LLC's interest in Magnolia Street, or within 180 days after the Effective Date
of the Plan, whichever is sooner.

11 **B. Designated Classes of Claims and Equity Interests**

12 **1. Classes of Secured Claims.** Section II of the Plan designates five classes of
13 claims secured by interests in the Debtor's real property: Classes 1, 2, 3, 4, and 5. The Plan does
14 not alter the legal, equitable and contractual rights of the holders of Classes 1, 2, and 3 claims.
The holders of Classes 1, 2, and 3 claims may not accept or reject the Plan.

15 **2. Class of Non-priority Unsecured Claims.** Section II of the Plan designates
16 "Class 6" as allowed claims not secured by property of the estate and that have no priority for
17 payment under § 507(a) of the Code. The State of California, Franchise Tax Board has filed a
18 proof of a \$5,352.29 non-priority unsecured claim against the Debtor. The Plan requires the
19 Debtor to pay "Class 6" claims the allowed amount of their claims, plus interest at 2.32% per
20 annum (the legal rate for federal court judgments) within 5 days of a transfer of MGJV LLC's
interest in 1414 11th Street, 1416–11th Street, or within 5 days of a transfer of KASO LLC's
interest in Magnolia Street, or within 180 days after the Effective Date of the Plan, whichever is
sooner. Class 7 claimholders may accept or reject the Plan.

21 **3. Class of Equity Interests.** Equity interest holders are entities which hold an
22 interest in the Debtor's property after payment of all claims against the Debtor and its property.
23 Section II of the Plan designates "Class 7" as the equity interest of Rene G. Boisvert, the sole
24 member of the Debtor, in property of the Debtor's estate. The Plan leaves Boisvert's legal,
equitable and contractual rights in the Debtor unaltered. Boisvert may not accept or reject the
Plan.

25 **C. Implementation of the Plan**

26 Paragraph 6.1 of the Plan states that all property of the bankruptcy estate shall revert in the
27 Debtor upon confirmation of the Plan. The Debtor will retain its interests in the real property
28 known as 610 Boulevard Way, Oakland California, and its interest in its consulting contracts
with MGJV LLC and KASO LLC. The primary source for the payment of Lohan's secured
claim is the proceeds of the sale of 1414 or 1416 11th Street, Oakland, California, or 2903

1 Magnolia Street, Oakland California. MGJV LLC and KASO LLC will contribute the proceeds
2 of the sale of the properties as needed to fund the Plan. A secondary source for payments
3 required under the plan is income received by the Debtor under Debtor's contracts with MGJV
4 and KASO LLC for developments services.

5 In April 2015 Debtor contracted with MGJV LLC to provide real estate consulting
6 services for developing up to five single-family homes at the intersection of 11th Street and
7 Mandela Parkway in Oakland, California. ***See attached Exhibit A.*** Debtor's contract with MGJV
8 LLC requires MGJV to pay Debtor a \$170,000 in two equal installments when it sells the final
9 two homes of the project.

10 In August 2015 Debtor contracted with KASO LLC to provide consulting services for
11 developing a single-family home at 2903 Magnolia Street, Oakland, California. ***See attached***
12 ***Exhibit B.*** Debtor's August 2015 contract with KASO LLC requires KASO to pay Debtor an
13 \$85,000 fee payable upon the sale of the home.

14 In February 2016 Debtor contracted with KASO LLC to provide consulting services for
15 developing a single-family home at 1486–34th Street, Oakland, California. ***See attached Exhibit***
16 ***C.*** Debtor's February 2016 contract with KASO LLC requires KASO to pay Debtor an \$87,500
17 fee payable upon the sale of the homes.

18 Rene Boisvert, the sole member of the Debtor, is also the sole member of MG2 LLC.
19 MG2 LLC has a 65% membership interest in MGJV LLC. Majua & Noyon LLC is the other
20 member of MGJV LLC. Neither Boisvert nor the Debtor nor any entity owned or controlled by
21 Boisvert or the Debtor has an interest in Majua & Noyon LLC.

22 MGJV LLC was formed in January of 2015 by MG2 LLC and Majua & Noyon LLC as a
23 joint venture to develop land at the intersection 11th Street and Mandela Parkway in West
24 Oakland. Majua and Noyon contributed the land to the joint venture. The parties agreed to
25 attribute a value of \$200,000 for the land contribution. A joint venture agreement between MG2
26 and Majua & Noyon provides that Majua & Noyon LLC shall be reimbursed for its \$200,000
27 land contribution by receiving \$40,000 from the sale of each house (\$40,000 x 5 houses =
28 \$200,000). ***See attached Exhibit D.***

1 Title to the land was taken by MG2 LLC and Majua & Noyon LLC in March 2015. MG2
2 and Majua & Noyon deeded their interests in the property to MGJV LLC in September 2015.
3 MGJV LLC financed development and construction costs with \$150,000 and \$1,350,000
4 "interest only" loans and payable in October 2018. Payments to the lender from the proceeds of
5 the sales of 1408, 1410, and 1412–11th Street have reduced the principal balance of the
6 \$1,350,000 construction loan to \$250,000. MGJV has negotiated a month-to-month extension
7 agreement for the \$400,000 total remaining balance of the construction loans. MGJV LLC
8 continues to pay the monthly installments on the loans. The loans are not in default.

9 The 11th Street development consists of six parcels, described as Lots 1 through 6 of Tract
10 Map 7588, filed December 11, 2006 in the Official Records of Alameda County. MGJV
11 constructed 1550 sq. ft. single- family residences on each of Lots 1-5 (commonly known as
12 1408, 1410, 1412, 1414 and 1416–11th Street) and constructed a driveway and five covered
13 carports on Lot 6. MGJV made a "Declaration of Easements, Covenants and Restrictions"

1 which was recorded on November 28, 2016. The Declaration creates nonexclusive easements for
2 the benefit of Lots 1-5 on the driveway portion of Lot 6, and an exclusive easement for each of
3 Lots 1-5 on the covered carport adjacent to the lot.

4 MGJV sold 1408-11th Street (Lot 5) for \$820,00 in February 2017; 1410-11th Street (Lot
5 4) for \$839,000 in March 2017; and 1412-11th Street (Lot 3) for \$826,000 in March of 2017.
6 MGJV executed and delivered a grant deed to each of the buyers granting "Parcel One",
7 describing the particular lot of Lots 1-5 purchased; "Parcel Two", described as an undivided 1/5
8 interest, as a tenant in common, in "Lot 6", but reserving from Parcel Two "the exclusive
9 easements appurtenant to the remaining lots in Tract 7588"; and "Parcel Three", described as the
10 exclusive easement appurtenant to "Parcel One", as described in the Declaration of Easements,
11 Covenants and Restrictions" recorded November 28, 2016.

12 MGJV did not reimburse Majua & Noyon for its \$200,000 land contribution from these
13 sales because the proceeds of the sales were needed and used to pay the construction costs of
14 1414 and 1416-11th Street. 1414 and 1416-11th Street are fully constructed and await final permit
15 approval and certificates of occupancy. MGJV intends to sell 1416-11th Street and 1414-11th
16 Street after the City certifies the properties for occupancy.

17 The City of Oakland, Planning and Building Department has failed to grant "certificates of
18 occupancy" for 1414 and 1416-11th Street, presumably because of violations of building and
19 zoning codes. The City issued a Notice of Violation to the owners of Lot 6 on June 6, 2018 and
20 a subsequent, identical Notice of Violation on October 1, 2018. The Violations state that "5
21 permanent carports, electric iron gate, concrete paving, wood fencing/partitions have been
22 constructed on the vacant lot [Lot 6] without permits, inspections or approval." The Violations
23 state that the owners of Lot 6 must "[o]btain permits, inspections and approval to remove
24 unpermitted carports and wood fencing/partitions."

25 Mary Apprill, one of the co-owners of 1410 -11th Street, contends that to remedy the
26 alleged violations on Lot 6, the City will require the new owners of Lots 3-5 to "sign on" to new
27 building permits and approve the work to remedy the violation. Apprill claims that the new
28 owners will not "sign on" to any proposals without first securing a merger Lot 6 into the other
five lots. Apprill claims that the City of Oakland estimates the merger will take between six
months and a year. Apprill also claims that after the merger the City will require the owners of
the five remaining parcels to grant reciprocal easements for vehicular ingress and egress on their
parcels. Apprill claims that the concrete driveway constructed on Lot 6 must be removed and the
pavers called for in the approved plans need to be installed before the City will grant certificates
of occupancy. Apprill claims that without the merger of Lot 6 into the other five lots, the five
carports will "likely have to be removed". Debtor disagrees with all of Apprill's contentions.

29 Debtor contends that the City has wrongfully withheld certificates of occupancy for 1414
30 and 1416-11th Street because the City "signed off" on the plans and permits for Lots 1 through 6,
31 and because some of the work done on Lot 6 does not require new permits. But to avoid further
32 delay, MGJV intends to install "pavers" on the driveway and carports, to add fire sprinklers to
33 the carports, and to upgrade the landscaping on Lot 6. Debtor contends that doing such work is
34 allowed under existing permits or does not require permits. Debtor contends that doing such
35 work will bring Lot 6 into compliance with the City's requirements and will result in the City
36 issuing certificates of occupancy for 1414 and 1416-11th Street. Debtor expects that MGJV will

complete the work, and that the City will issue certificates of occupancy for 1414 or 1416–11th Street before the end of year 2018. Debtor contends that the carports will not "have to be removed", and that the City of Oakland will issue certificates of occupancy for 1414 and 1416 11th Street without the merger of Lot 6 into the other five parcels.

Boisvert believes it will take about 90 to 100 days to market and sell 1414 and 1416–11th Street after the City of Oakland issues certificates of occupancy for the properties. Boisvert expects 1416 –11th Street to sell for \$900,000.. An appraisal of 1416-11th Street in June of 2018 estimated the fair market value of 1416–11th Street to be \$900,000. *See attached Exhibit E.* 1414- 11th Street is virtually identical to 1416–11th Street, so Debtor believes it will sell for the same price. Debtor expects that the proceeds of the sale of 1414-11th Street will be distributed as follows:

Anticipated sale price:	\$900,000.00
Less: Broker/Closing costs, 6%	\$54,000.00
Deeds of trust, construction loans	\$400,000.00
Lohan judgment lien (approx.)	\$130,000.00
Majua & Noyon LLC (4 x \$40,000)	\$160,000.00
TAOW LLC, for consulting services	<u>\$85,000.00</u>
Net to MGJV:	\$71,000.00
Possible distribution to MG2 (65%)	\$46,150.00

Debtor believes that the proceeds of a sale of 1416-11th Street, if it occurs after a sale of 1414-11th Street, will be distributed as follows:

Anticipated sale price:	\$900,000.00
Less: Broker/Closing costs, 6%	\$54,000.00
Payment to TAOW LLC for consulting services	<u>\$85,000.00</u>
Net to MGJV:	\$761,000.00
Possible distribution to MG2 (65%)	494,650.00

Boisvert is the sole member of KASO LLC, which owns 2903 Magnolia Street, Oakland California. Construction of a 1550 sq. ft single family residence at 2903 Magnolia Street has continued after the filing of this case. There are no outstanding violations issued by the City of Oakland for building or zoning code violations regarding 2903 Magnolia Street. Mr. Boisvert believes that the single-family residence at 2903 Magnolia Street will be completed by the end of 2018 and that it will sell for \$900,000 within a reasonable time thereafter. The proceeds of the sale of 2903 Magnolia will be distributed as follows:

Anticipated sale price:	\$900,000.00
Deed of trust, construction loan:	400,000.00
Broker and Closing costs, 6%:	42,000.00
TAOW LLC consulting services contract:	<u>85,000.00</u>
Anticipated net proceeds to KASO LLC:	\$373,000.00

The Plan will be funded within 5 days of a transfer of MGJV LLC's interest in 1414–11th Street or 1416–11th Street, or within 5 days of a transfer of KASO LLC's interest in 2903 Magnolia Street.

1
2 **D. Risk Factors**

3 The City of Oakland may refuse to provide certificates of occupancy for the 11th
4 Street properties, which could delay sale of the properties. Changes to the housing market could
5 cause the properties to sell for less than their projected prices.

6 **E. Threatened litigation**

7 Apprill claims she has incurred over \$75,000.00 in attorney fees and that she may recover
8 those fees from Boisvert, MGJV LLC or MG2 LLC. Apprill claims she will file a complaint in
9 the Superior Court in Alameda County, seeking to compel mediation and arbitration and
10 demanding attorney fees and damages "expected to exceed \$250,000.00. Apprill claims she will
11 record a notice of pending action regarding the 11th Street properties. Debtor contends that
12 Apprill's claims are meritless.

13 Apprill claims that Mr. Michael Bernasek, the owner of property adjacent to the 11th Street
14 development believes that he has claims against MGJV, LLC for wrongful excavation, trespass
15 and encroachment, and that she expects that Mr. Bernasek will file a complaint seeking damages
16 for the alleged actions. Debtor contends Mr. Bernasek's purported claims are meritless.

17 Lohan claims he has conversion claims against MGJV LLC and MG2 LLC based upon
18 their violation of the state court's charging orders. Lohan claims that the \$255,012.19 that MGJV
19 LLC paid to Lohan on account of Lohan's judgment against Boisvert was subject to Lohan's
20 charging order lien. Debtor contends that that because the \$255,012.19 was paid to Lohan, the
21 \$255,012.19 was not converted by MGJV, LLC.

22 Lohan also claims that the approximately \$4,600.00 per month that MG2, LLC pays to
23 Debtor to cover the mortgage and other expenses for 610 Boulevard Way violates the state court's
24 charging order to MG2, LLC. Debtor contends that such payments are not a distribution to, or on
25 behalf of, Boisvert, but are payments for services rendered by the Debtor and are not subject to
26 the charging order.

27 **F. Judgments against Boisvert.**

28 Besides the De Gutz judgment, discussed above, two judgments have been entered against
Boisvert. George Dedekian, an architect, obtained a judgment for \$4,203.00 in principal and
\$330.00 in costs against Boisvert on August 13, 2009. Dedekian created a judgment lien against
610 Boulevard Way by recording his judgment on October 13, 2010. Dedekian assigned his
judgment to Patrick Bulmer on January 29, 2013.

On July 2, 2018, Burton F. Boltuch obtained a judgment Boisvert for the unpaid \$65,000
principal amount of money loaned, \$13,864.59 in unpaid interest; \$195.00 in late fees; \$50,000
for damages arising from Boisvert's fraudulent and intentional conduct; \$50,000 for punitive
damages arising from the malicious and oppressive conduct of Boisvert; \$67,000 in attorney's
fees; \$3,626 for sanctions ordered by the court; and \$4,162 in recoverable costs. Boisvert did not
appear at the trial of the case. Boisvert has appealed the judgment.

1 **G. Federal tax consequences arising from the implementation of the Plan.**

2 Debtor is a California limited liability company. A limited liability company is not a
3 separate tax entity; it is a "pass-through entity." Like a partnership, the profits and losses of the
4 LLC "pass through" the LLC to members of the LLC, who report the profits and losses on their
5 personal tax returns. The LLC does not pay federal income taxes. The owner(s) of the LLC must
6 report the gain on a sale of the LLC's asset on his or her individual income tax return.
7 Implementation of the Plan has no Federal tax consequences on the Debtor.

8 Confirmation of the Plan should not result in income tax consequences to creditors except
9 those creditors who receive a distribution after they have "charged off" a claim for tax purposes.
10 Creditors who have "charged off" their claims may incur a recognizable gain when their claims are
11 paid. Creditors should consult their own tax professionals for advice regarding the tax
12 consequences arising from implementation of the Plan.

13 **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

14 The bankruptcy court must find that the Plan must meet the requirements listed in §§
15 1129 (a) or (b) of the Code before it may be confirmed by the court. A Plan may be
16 confirmed if (i) it is accepted by each impaired class, or (ii) it is accepted by at least one
17 impaired class (exclusive of insiders) and the Court determines that the plan is "fair and
18 equitable" (as defined by 11 U.S.C. § 1129(b)) to rejecting classes of creditors. The issues
19 regarding the bankruptcy court's determination of whether a plan is "fair and equitable" are
20 complex. If the Debtor asks the bankruptcy court to confirm the Plan over a class's rejection
21 of the Plan, a member of the rejecting class should consult an attorney for advice

22 Under section 1126 (c) of the Code, a class of claims has accepted a plan if such plan
23 has been accepted by creditors that hold at least two-thirds in amount and more than one-half
24 in number of the allowed claims of such class held by creditors that have voted.

25 There are other requirements for confirmation of a plan. You may wish to discuss with
26 your attorney whether the Plan meets all the requirements for confirmation.

27 **A. Who May Object to Confirmation of the Plan?**

28 Even if you are not entitled to "vote" on the Plan, you may object to the confirmation of
the Plan and to the adequacy of this disclosure statement. An objection to confirmation must
be filed, served on interested parties, and state the grounds for the objection. Even if you are
not entitled to "vote" on the Plan, you may object to the confirmation of the Plan and to the
adequacy of this disclosure statement.

B. Who May Vote on the Plan?

 A creditor or equity interest holder may "vote", *i.e.*, accept or reject the Plan, if it holds
an "allowed" claim or equity interest, unless the creditor or interest holder is a member of a
class of claims or interests that is "unimpaired" by the Plan, or a member of a class that
receives no distribution under the plan. Classes 1, 2, 3 and 7 are unimpaired by the Plan. The

1 Plan impairs the claims of Classes 4, 5, and 6.

2 **1. What is an allowed claim or equity interest?** All claims listed by a debtor
3 on the schedules it files with the court, except those scheduled as disputed, contingent or
4 unliquidated, are deemed allowed in the amount scheduled unless a creditor files a proof of
5 claim or a party objects to a claim. If a creditor or interest holder files a proof of claim or
equity interest, the claim is deemed allowed as stated on the claim unless somebody files an
objection to the allowance of the claim.

6 If a claim or equity interest is not allowed because an objection has been filed, the
7 holder of the claim or equity interest cannot vote on the Plan unless the bankruptcy court,
8 after notice and hearing, either overrules the objection or temporarily allows the claim or
equity interest to accept or reject the Plan as provided by Rule 3018(a) of the Federal Rules of
Bankruptcy Procedure.

9 **2. Claims not entitled to vote.** The holders of these types of claims and equity
10 interests may not accept or reject the Plan:

- 11 (a) claims and equity interests disallowed by a court order, unless the claim or
interest is temporarily allowed for voting purposes;
- 12 (b) claims or equity interests of the members of an unimpaired class;
- 13 (c) holders of claims entitled to priority under sections 507 (a) (2) (administrative
14 expenses and certain statutory fees), 507(a)(3) (certain claims allowed in an
involuntary case, and 507(a)(8) (allowed unsecured claims of governmental units
for certain taxes) of the Bankruptcy Code;
- 15 (d) holders of claims or equity interests in classes that do not receive or retain any
16 value under the Plan; and
- (e) administrative expense claims.

17 **3. Who can vote in more than one class?** A creditor who hold claims in
18 multiple classes may accept or reject a Plan in each capacity. Under section 506 of the Code a
19 claim secured by a lien on property in which the estate has an interest may be "bifurcated",
i.e., allowed partly as a secured claim and partly as an unsecured claim. Nobody has requested
20 that the bankruptcy court bifurcate a claim a claim secured by a lien on property. To the best
of Debtor's knowledge, none of Debtor's creditors hold a claim in multiple classes.

21 **4. Solicitation of votes.** Nobody may solicit your vote to accept or reject any plan
22 during the bankruptcy case unless, at or before the time of the solicitation, you have been
23 provided with the plan or a summary of the plan and a written disclosure statement approved by
the court as containing adequate information for you to make an informed judgment about the
24 plan. Then any person may solicit your vote for or against the Plan.

25 **C. Liquidation Analysis**

26 If a class of impaired claims rejects the Plan, the court cannot confirm the Plan unless
27 the Bankruptcy Court finds that the rejecting class will receive or retain property under the
Plan no less than if Debtor's bankruptcy estate were liquidated under chapter 7 of the
28 Bankruptcy Code. Debtor's Plan pays all impaired, allowed claims in full, plus interest. A
rejecting class of impaired claims will therefore receive or retain property under the Plan with

a value of no less than if Debtor's bankruptcy estate were liquidated under chapter 7.

D. Feasibility

The bankruptcy court must find that the Plan is feasible before it may confirm the Plan. A Plan is feasible if confirmation of the Plan is not likely to be followed by Debtor's liquidation or need for further financial reorganization. The Debtor believes the Plan is feasible because during the Plan, the Debtor will have sufficient cash to make all distributions. The Plan obligates the Debtor to pay these claims and expenses no later than within 180 days from the effective date of the Plan:

Lohan (estimated, amount is disputed)	\$130,000.00
Bullmer, proof of claim	\$8,519.50
Franchise Tax Board, priority proof of claim	\$4,260.29
Franchise Tax Board, non-priority proof of claim	\$5,352.29
Lawrence L. Szabo, estimated allowed amount	<u>\$30,000.00</u>
Total:	\$178,132.08

Lohan's claim will probably be paid directly from the escrow for the sale of 1414 or 1416 11th Street, or 2903 Magnolia Street, in order to satisfy the title company's requirement that Lohan's lien be released. The remaining claims, totaling approximately \$48,132.08, will be paid from the \$85,000 Debtor will receive for its consulting services for the development of 1414-11th Street, 1416-11th Street, or 2093 Magnolia Street. If claims are allowed for substantially more than set forth above, and if the \$85,000 received by Debtor for its services is not sufficient to fund the Plan, Boisvert can receive a distribution from MG2 of its \$46,150.00 share of the 1414-11th Street sale proceeds, or the net proceeds from the sale of 1415-11th Street, or a distribution for KASO LLC of the net proceeds from the sale of 2093 Magnolia Street.

V. EFFECT OF CONFIRMATION OF THE PLAN

A. Discharge.

Paragraph 9.1 of the Plan provides that Debtor will receive a discharge of existing debts as provided by 11 U.S.C. §524, to the extent such discharge is effective under 11 U.S.C. §1141. Generally, this means that the discharge occurs when the Plan is confirmed.

B. Binding Effect of Plan on Claims Impaired by the Plan. Confirmation of the Plan obligates the Debtor to pay all creditors whose claims are impaired by the Plan as provided by the Plan. After the effective date of confirmation of the Plan, the Debtor's obligations under the confirmed Plan replace the obligations that Debtor had to creditors before the effective date of the Plan. Debtor's obligations under the confirmed Plan constitute binding contractual promises. An impaired creditor may bring legal action against the Debtor if the Debtor breaches the Plan's binding contractual promises of payment to the impaired creditor. An impaired creditor who retains a lien under the Plan retains all rights and remedies that a lienholder has under applicable non-bankruptcy law.

C. Claims not Affected by Plan. Upon confirmation of the Plan, any creditor whose claims are unimpaired by the Plan (i.e., Classes 1, 2, and 3) may immediately exercise its contractual, legal, and equitable rights to enforce its claim, except rights to enforce a claim based on defaults described in section 1124(2)(A) and (D) of the Bankruptcy Code.

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