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8 **UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 In re:	Chapter 11
11 EPICENTER PARTNERS L.L.C.,	Case No. 2:16-bk-05493-MCW
12 GRAY MEYER FANNIN L.L.C.,	Jointly Administered with:
13 SONORAN DESERT LAND INVESTORS LLC,	Case No. 2:16-bk-05494-MCW
14 EAST OF EPICENTER LLC,	Case No. 2:16-bk-07659-MCW
15 GRAY PHOENIX DESERT RIDGE II, LLC	Case No. 2:16-bk-07660-MCW
16	Case No. 2:16-bk-07661-MCW
17 <u>Debtors.</u>	

17 This Filing Applies to:

- 18 All Debtors
19 Specified Debtors
20 EPICENTER PARTNERS L.L.C.,
21 GRAY MEYER FANNIN L.L.C.,
22 SONORAN DESERT LAND INVESTORS
23 LLC,
24 EAST OF EPICENTER LLC,
25 GRAY PHOENIX DESERT RIDGE II, LLC

25 **DISCLOSURE STATEMENT TO ACCOMPANY CHAPTER 11 PLAN OF**
26 **REORGANIZATION FOR EPICENTER PARTNERS LLC AND GRAY MEYER**
27 **FANNIN LLC AS OF AUGUST 12, 2016**
28

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EXHIBIT "1": EPICENTER PARTNERS LLC AND GRAY MEYER FANNIN LLC
PLAN OF REORGANIZATION
EXHIBIT "2": LIQUIDATION ANALYSIS

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I.

INTRODUCTION

On May 16, 2016 (the “**Petition Date**”), Epicenter Partners, LLC (“**Epicenter**”) and Gray Meyer Fannin, LLC (“**GMF**”), debtors and debtors-in-possession (collectively, “**Debtors**” or “**Plan Proponents**”), filed petitions for relief (the “**Petition**”) under Title 11, Chapter 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of Arizona (the “**Bankruptcy Court**”) commencing the above-captioned Chapter 11 case (the “**Chapter 11 Case**”).

The Debtors have prepared this Disclosure Statement in connection with the *Chapter 11 Plan of Reorganization for Epicenter Partners LLC and Gray Meyer Fannin LLC as of August 12, 2016* [Dkt. No. 87] (as may be amended, modified, or supplemented, the “**Plan**”) filed on August 12, 2016. All capitalized, undefined terms herein shall have the meanings ascribed in the Plan.

The Exhibits to this Disclosure Statement included in the Appendix are incorporated into, and are a part of, this Disclosure Statement. The Plan is attached hereto as **Exhibit “1.”** Any interested party desiring further information should contact:

Stinson Leonard Street, LLP
Attn: Anthony P. Cali, Esq.
1850 N. Central Ave., Suite 2100
Phoenix, Arizona 85004
Telephone: (602) 212-8509
Email: Anthony.cali@stinson.com

Interested parties may also obtain further information from the Bankruptcy Court at the following website: <http://www.azb.uscourts.gov>. Each Holder of a Claim and parties otherwise affected by the Plan should read this Disclosure Statement, and the Exhibits attached hereto, including the Plan. These documents contain important information concerning the classification and treatment of Claims, Equity Securities, and Executory Contracts.

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II.

GENERAL OVERVIEW

A. General Information About Debtors' Business and Events Leading to Chapter 11 Case.

1. Formation of the Debtors and Their Management.

GMF came into existence in 2001. It was originally formed for the purpose of providing development services for affiliates. Epicenter came into existence in 2004. It was formed for the purposes of acquiring, managing, selling or holding land for investment. Both Debtors are fully owned by Gray/Western Development Company and managed, pursuant to that entity, by Bruce Gray.

2. The Debtors' Acquisition of the Estate Property.

On July 7, 1993, an entity called Northeast Phoenix Partners (“NPP”) entered into Commercial Lease No. 03-52415 with the State of Arizona through the State Land Commissioner regarding approximately 5,700 acres of real property in Phoenix, Arizona located north of the Central Arizona Project Canal and south of Pinnacle Peak Road between 32nd Street and 64th Street. NPP filed a special action appeal of a City of Phoenix Board of Adjustment decision in Maricopa County Superior Court of Arizona captioned *Desert Ridge Community Association, et. al v. City of Phoenix, et. al.*, Case No. LC2007-000011 (the “Action”). The Debtors filed a Counterclaim, First Amended Counterclaim, and Second Amended Counterclaim in the Action against NPP, Desert Ridge Community Association, and CityNorth, LLC (hereafter referred to as the “Litigation Claim”).

On October 19, 2010, Debtors obtained final judgement in the State Court on the Litigation Claim against NPP and CityNorth in the amount of \$110,658,800 plus interest. Subsequently, on May 31, 2012, Debtors negotiated a Settlement Agreement with respect to the Litigation Claim which provided that Debtors would receive, in summary, an assignment of the Lessee's Rights under the terms of the Arizona State Land Department Commercial Lease No. 03-52415 (the “ASLD Lease”), the assignment of the Master Development Rights, the assignment of the Declarant's Rights and all intellectual property related thereto (collectively,

1 such property interests shall hereafter be referred to as the “**Estates’ Property**”). The Estates’
2 Property comprises virtually all of the property of the Debtors’ bankruptcy estates.

3 **3. The ASLD Lease, the CPSP, and Master Developer Rights.**

4 As mentioned above, the Debtors are party to a long-term lease with the Arizona State
5 Land Department which figures as part of the Desert Ridge Master Planned Community—a plan
6 for a 5,700 acre master planned community on previously undeveloped Arizona Trust Land
7 located in Northeast Phoenix. Under the plan, various parcels within the Desert Ridge
8 development are auctioned by the state to various developer owner's to be developed within
9 guidelines enforced by one Master Developer.

10 **a) The Desert Ridge Master Planned Community**

11 The Desert Ridge Master Planned Community (“**Desert Ridge**”) is an ambitious plan
12 for a 5,723 acre master planned community on previously undeveloped Arizona Trust Land
13 located in Northeast Phoenix. The development plan anticipates 25,431 private residences and
14 332 acres of commercial property near the center core of the development. Under the plan,
15 various parcels within the Desert Ridge development are auctioned by the state to various
16 developers, owners, or lessors to be developed within guidelines enforced by one Master
17 Developer on behalf of the State, the City of Phoenix, and the Design Review Committee.
18 Integral with the State's goals and objectives in conceiving the Desert Ridge Community is the
19 role of the Master Developer who is charged with “insuring that Desert Ridge is developed in
20 accordance with [the State's] goals”.

21 The state trust land (like all of the State trust properties) are managed by the ASLD to
22 generate revenue primarily for support of the common schools of the state. Of the original
23 5,723 acres, 332 acres were designated as commercial core land (the “**Commercial Core**”).
24 The 332 acres of Commercial Core property is state trust land leased under a 99 year lease from
25 the State of Arizona (the “**Core Lease**”). The 96.5 acres of the Debtors’ are part of the
26 Commercial Core and subject to the Core Lease. In fact, all real property interests in these
27 jointly administered cases originate from the Core Lease. Fee ownership of the Commercial
28 Core returns to the State at the end of the Core Lease term net of the value of improvements

1 upon the land. As such, the ASLD retains a continuing interest in the development of the
2 Commercial Core and Desert Ridge as a whole.

3 In the conception of Desert Ridge, the ASLD sought to align the interest of the Master
4 Developer with the long-term interests of the State by tying the Master Development rights to
5 the Core Lease. The ASLD envisioned that the Master Developer would have a long term
6 commitment to the community as a holder of a long-term leasehold interest in the Commercial
7 Core. The rights, duties and obligations of the Master Developer may not be transferred or
8 assigned without the express written consent of the ASLD.

9 **b) The Master Development Plan.**

10 The Master Development Plan, also referred to as the Specific Plan, was approved by
11 the City of Phoenix on June 6, 1990, and adopted by the ASLD on November 29, 1990. The
12 Master Development Plan is the governing land use document of the City of Phoenix for Desert
13 Ridge. The Master Development Plan provides the underlying zoning controls, specifies the
14 phasing and construction of infrastructure necessary to serve the area and establishes the future
15 planning framework and zoning processes, including review and approval of conceptual parcel
16 site plans and individual project site plans, subdivision review procedures, plan amendment
17 procedures, development monitoring and phasing. The stated purpose of the Master
18 Development Plan is to establish an effective, regulatory development control mechanism
19 guiding development of the Desert Ridge planned community.

20 Since the adoption of the Master Development Plan, the development of Desert Ridge
21 was delayed by the economic slow down that resulted from the Great Recession stemming from
22 the financial crisis of 2007. Nearly 2,000 acres of the original master plan community
23 auctioned to private residential developers have been returned to the ASLD when the private
24 developers could not keep up payments.¹

25
26
27 ¹ See, Michael Clancy, *Desert Ridge in Northeast Phoenix falls short of original master plan*, Republic,
28 azcentral.com, Jan. 2, 2012, <http://archive.azcentral.com/community/nephoenix/articles/20111228desert-ridge-falls-short-original-master-plan.html> (last visited Aug 20, 2016).

1 c) **The Conceptual Parcel Site Plan.**

2 Before any individual building, project or use can be approved within Parcel 5A, a
3 Conceptual Parcel Site Plan (“CPSP”) for Parcel 5A must be submitted. The criteria that must
4 be addressed in a conceptual parcel site plan for Parcel 5A is stated in Chapter 6 of the Master
5 Development Plan. These standards include traffic circulation standards, perimeter standards
6 governing noise, odor and light, pedestrian access standards, central gathering space and other
7 criteria. If these standards are met, approval of the site plan or any amendment thereto is
8 governed by the processes included in chapter 4 of the Desert Ridge Specific Plan.

9 The 2008 CPSP (devised by North Phoenix Partners) for Parcel 5A was approved by the
10 City in 2008. However, conceptual parcel site plans are not intended to be static documents and
11 there is no limitation on amending the conceptual site plan at this stage of the development or
12 again in the future. In this case a change to the CPSP for Parcel 5A was necessitated by the
13 dramatic decline in the demand for traditional “brick and mortar” retail due to the growth in
14 online retailing since 2008.² The Debtors are seeking to amend the 2008 CPSP to, among other
15 things, replace upscale big box retailing with an equal amount of Class A office space to reflect
16 the current market considering the shift in market demands since 2008.

17 **4. The Debtors’ Secured Creditors and Events Leading to the Chapter 11 Case.**

18 In order to fund the Debtors’ prosecution of the aforementioned Litigation Claim, the
19 Debtors entered into various agreements with counsel representing them in that litigation—the
20 law firm of Simpson Thatcher & Bartlett LLP (“STB”)—and litigation financiers, Burford
21 Capital Limited, and its wholly-owned subsidiary Ganymede Investments Limited (collectively,
22 “Burford”). Ultimately (and currently the subject of a dispute), STB and Burford obtained a
23 security interest in the Debtors’ Property.

24
25

26 ² See, Chris Isidore, *Sports Authority Bankruptcy Could Close Remaining Stores*, CNN Money, May 2, 2016,
27 <http://money.cnn.com/2016/05/02/news/companies/sports-authority-sale-store-closings/index.html> (last visited Aug
28 20, 2016); Krystina Gustafson, *Men's Warehouse parent closing 250 stores*, March 10, 2016,
 <http://www.cnn.com/2016/03/10/mens-warehouse-parent-closing-250-stores.html> (last visited Aug 20, 2016);
 Matt Egan, *Macy's is closing another 100 stores*, CNN Money, August 11, 2016,
 <http://money.cnn.com/2016/08/11/investing/macys-closes-100-stores/index.html> (last visited Aug 20, 2016).

1 On April 14, 2016, Ganymede filed a Notice of Trustee's Sale and Notification of
2 Disposition of Personal Property and sought to foreclose on the Debtors' Property. Upon
3 information and belief, on or about March 23, 2016, Ganymede and STB sold their respective
4 claims to CPF Vaseo Associates, LLC ("CPF"). On May 13, 2016, counsel for CPF sent
5 correspondence to counsel for Debtors notifying Debtors that the claimed payoff amount as of
6 May 16, 2016 for the Ganymede Note was a total of \$54,853,149.17, plus interest accruing at
7 \$52,440.74 per day thereafter. The same correspondence notified Debtors that the claimed
8 payoff amount for the STB Note as of May 16, 2016 was \$3,674,319.86, plus interest accruing at
9 \$610.76 per day thereafter. Faced with the potential foreclosure of their Property, the Debtors
10 filed this Chapter 11 Case.

11 **B. Debtors' Restructuring Efforts.**

12 On May 16, 2016, the Debtors initiated the present Chapter 11 Case. Since the Petition
13 Date, the Debtors have been operating as debtors-in-possession. The Bankruptcy Court has
14 authorized the employment of Stinson Leonard Street LLP as counsel for the Debtor. An Official
15 Committee of Unsecured Creditors was appointed in this Chapter 11 Case on June 15, 2016
16 [Dkt. No. 39]. The Debtors are current on all post-petition obligations, including the filings of
17 their monthly operating reports.

18 **1. Joint Administration.**

19 On July 6, 2016, three entities affiliated with the Debtors filed voluntary petitions for
20 relief under Chapter 11 of the Bankruptcy Code: Sonoran Desert Land Investors, LLC; East of
21 Epicenter, LLC; and Gray Phoenix Desert Ridge II, LLC (collectively, the "**July Debtors**"). The
22 July Debtors' cases are currently jointly administered with the Debtors' cases. The July Debtors
23 are working towards preparing their own plan of reorganization.

24 **2. Litigation.**

25 Since initiating the Chapter 11 Case, the Debtors have filed a number of adversary
26 proceedings against CPF. Those proceedings include the following.

27 **a) Adversary No. 2:16-ap-00334-MCW.** This Adversary Proceeding is
28 currently proceeding under seal. In general, the sealed complaint alleges counts of (i) fraudulent

1 transfers, (ii) equitable subordination, (iii) recharacterization, and (iv) claim objections against
2 CPF.

3 **b) Adversary No. 2:16-ap-00343-MCW.** This adversary proceeding
4 requests an injunction or stay against CPF. The adversary proceeding seeks to prevent CPF from
5 pursuing guaranty claims against Bruce and Barbara Gray and from attempting to divert attention
6 and resources from the pending Chapter 11 Case.

7 **c) Adversary No. 2:16-ap-00395-MCW.** This adversary proceedings seeks
8 a determination that CPF does not have a valid or effective assignment of the Master Developer
9 Rights with respect to the Property or that such right has not been perfected and is avoidable
10 under 11 U.S.C. §§ 506(d) and 544. The proceeding also supplements Debtors' aforementioned
11 objection to the CPF Claim(s).

12 **III.**

13 **INFORMATION REGARDING THE PLAN AND THIS DISCLOSURE STATEMENT**

14 **A. Chapter 11**

15 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code.
16 Under Chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its
17 creditors, and equity interest holders. The commencement of a Chapter 11 case creates an estate
18 that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The
19 Bankruptcy Code provides that the debtor may continue to operate its business and remain in
20 possession of its property as a "debtor-in-possession."

21 **B. Plan of Reorganization**

22 A plan describes in detail (and in language appropriate for a legal contract) the means for
23 satisfying claims against, and equity interests in, a debtor.
24

25 **C. The Purpose of a Disclosure Statement**

26 Before a debtor or other plan proponent can solicit acceptances of a plan, Section 1125 of
27 the Bankruptcy Code requires the debtor or other plan proponent to prepare a disclosure
28 statement containing adequate information of a kind, and in sufficient detail, to enable those

1 parties entitled to vote on the plan to make an informed voting decision about whether to accept
2 or reject the plan.

3 **D. Approval of the Disclosure Statement**

4 This Disclosure Statement should only be considered after the Bankruptcy Court has
5 found that this Disclosure Statement provides adequate information in accordance with Section
6 1125 of the Bankruptcy Code and has entered an order approving this Disclosure Statement.
7 Approval by the Bankruptcy Court is not an opinion or ruling on the merits of the Plan and it
8 does not mean that the Plan has been or will be approved by the Bankruptcy Court.

9 **E. The Plan Confirmation Process**

10 **1. Requirements.** The requirements for confirmation of the Plan are set forth in
11 detail in Section 1129 of the Bankruptcy Code. The Bankruptcy Court will confirm the Plan only
12 if all of the requirements of § 1129 are met. Among the requirements for confirmation are:

13 **a) Acceptance by Impaired Classes.** Except to the extent that the
14 “cramdown” provisions of Section 1129(b) of the Bankruptcy Code may be invoked, each
15 impaired class of claims must either vote to accept the Plan or be deemed to accept the Plan.
16 “Impaired” is defined at Section 1124 of the Bankruptcy Code. A class of claims is impaired
17 unless the Plan leaves unaltered the legal, equitable, or contractual rights of the holders of such
18 claims.

19 **b) Feasibility.** The Bankruptcy Court is required to find that confirmation of
20 the Plan is not likely to be followed by the liquidation, or further need for further financial
21 reorganization (except as provided in the Plan) of the Debtors. Based on the Feasibility Analysis
22 (Exhibit “3” to this Disclosure Statement), the Reorganized Debtors will be able to operate
23 without the need for further reorganization or liquidation except as provided in the Plan. The
24 Feasibility Analysis was also prepared to assist creditors in their evaluation of the Plan. The
25 Debtors’ Plan is feasible because payment to CPF will be made through conveyance of property
26 already owned by the Debtors in full satisfaction of CPF’s alleged secured claim. Payments to
27 other creditors will be made through plan financing or a capital contribution to be in place by
28 confirmation, funds received by the Debtors in accordance with the Property Development

1 Agreement (as defined in the Plan), and/or any recovery received from the Creditors Trust.

2 c) **“Best Interests” Test.** The Bankruptcy Court must find that the Plan in in
3 the “best interests” of creditors. To satisfy this requirement, the Bankruptcy Court must
4 determine that each holder of a claim against the Debtors: (i) has accepted the Plan; or (ii) will
5 receive or retain under the Plan money or other property which, as of the Effective Date, has a
6 value not less than the amount such holder would receive if the Debtors’ property were
7 liquidated under Chapter 7 of the Bankruptcy Code. Generally, to determine what Holders of
8 Allowed Claims and Equity Securities would receive if Debtors were liquidated, the Bankruptcy
9 Court must determine what funds would be generated from the liquidation of Debtors’ Assets
10 and properties in the context of a Chapter 7 liquidation case, which for unsecured Creditors
11 would consist of the proceeds resulting from the disposition of the Assets of Debtors, including
12 the unencumbered Cash held by Debtors at the time of the commencement of the liquidation
13 case. Such amounts would be reduced by the costs and expenses of the liquidation and by such
14 additional Administrative Claims and Priority Claims as may result from the termination of
15 Debtors’ businesses and the use of Chapter 7 for the purpose of liquidation.

16 In a Chapter 7 case, the Chapter 7 trustee would be entitled to seek a sliding scale
17 commission based upon the funds distributed by such trustee to Creditors, even though Debtors
18 have already incurred some (if not all) of the expenses associated with generating those funds.
19 Accordingly, there is a reasonable likelihood that Creditors would “pay again” for the funds
20 accumulated by Debtors because the Chapter 7 trustee would be entitled to receive a commission
21 in some amount for all funds distributed from the Estate.

22 The Liquidation Analysis is attached hereto as Exhibit “2” (the “**Liquidation Analysis**”).
23 The information set forth in Exhibit “2” provides a statement of the liquidation value of the
24 Debtors’ assets assuming a Chapter 7 liquidation in which a trustee appointed by the Bankruptcy
25 Court would liquidate the assets of the Debtors’ estate. Underlying the Liquidation Analysis are
26 a number of estimates and assumptions that, although considered reasonable by the Debtors, are
27 inherently subject to significant economic and competitive uncertainties and contingencies
28 beyond the control of the Debtors. The Liquidation Analysis is also based upon assumptions with

1 regard to liquidation decisions that are subject to change. It also does not take into account all the
2 costs and expenses of administering such property in a Chapter 7 proceeding. Accordingly, the
3 values reflected may not be realized if the Debtors were, in fact, to undergo such liquidation.

4 As set forth in the Liquidation Analysis³ and accompanying notes annexed hereto as
5 Exhibit “2,” Debtors have determined that Confirmation of the Plan will provide Holders of
6 Claims and Equity Securities with no less of a recovery than he/she/it would receive if Debtors
7 were liquidated under Chapter 7. Debtors’ Plan provides most Creditors with full payment of
8 their Allowed Claims over time. Furthermore, Holders of Equity Securities would certainly
9 receive less if Debtors were liquidated under Chapter 7.

10 Thus, as evidenced by the Liquidation Analysis and the accompanying notes annexed
11 hereto as Exhibit “2,” the value provided under the Plan to the Holders of Claims and Equity
12 Securities is equal to or better than they would receive under a Chapter 7 liquidation.

13 **d) “Cramdown” Provisions.** Pursuant to Section 1129(b) of the Bankruptcy
14 Code, the Bankruptcy Court may confirm the Plan even though a class of claims has not voted to
15 accept the Plan, so long as one impaired class of claims has accepted the Plan (excluding the
16 votes of insiders) and the Plan is “fair and equitable” and “does not discriminate unfairly”
17 against the non-accepting classes.

18 **2. Effect of Confirmation.** Except as otherwise provided in the Plan, entry of the
19 Confirmation Order, shall vest title to all property of the Debtors’ Estate and of the Debtors, in
20 the Reorganized Debtors, free and clear of all claims and liens of creditors. Upon entry of the
21 Confirmation Order, the Plan shall be binding upon the Debtors, all creditors, and other parties-
22 in-interest, regardless of whether they cast a ballot to accept or reject the Plan.

23 **F. Voting on the Plan**

24 **1. Who May Vote.** Pursuant to Section 1126 of the Bankruptcy Code, only the
25 holders of claims in classes that are impaired by the Plan may vote on the Plan. Classes of claims
26

27 ³ The Liquidation Analysis sets forth Debtors’ best estimates as to value and recoveries in the
28 event that the Chapter 11 Case is converted to a case under Chapter 7 of the Bankruptcy Code
and Debtors’ Assets are liquidated.

1 not impaired by the Plan are deemed to accept the Plan and holders of such claims or interests
2 within such classes do not have the right to vote on the Plan. The holders of claims in any class
3 that will not receive any payment or distribution or retain any property under the Plan are
4 impaired, are deemed to reject the Plan, and do not have a right to vote. Administrative Claims
5 are not classified for purposes of voting or receiving distributions under the Plan. Such claims
6 are unimpaired and may not vote. All classes of Creditors are impaired under the Plan. Thus,
7 holders of such claims are entitled to vote on the Plan.

8 This Disclosure Statement is being distribution for informational purposes to all holders
9 of claims and parties-in-interest without regard to their right to vote.

10 **2. Eligibility.** In order to vote on the Plan, a claimant must have an allowed claim
11 and such claim must be in an impaired class. A person or entity having a claim in more than one
12 impaired class may vote in each class in which they hold a separate claim by casting a ballot in
13 each class.

14 **3. One Vote Per Holder.** If a holder of a claim holds more than one claim in any one
15 class, all claims of such holder in such class shall be aggregated and deemed to be one claim for
16 purposes of determining the number of claims in such class voting on the Plan.

17 The amount of a claim that will be used to determine votes for or against the Plan will be
18 either (a) the claim amount listed in the Debtor's schedules on file with the Bankruptcy Court, (or as
19 such schedules are amended prior to approval of this Disclosure Statement in its present form or as it
20 may be amended), unless such claim is listed in the schedules or on any amendment thereto, as
21 contingent, unliquidated or disputed or (b) the liquidated amount specified in a proof of claim timely
22 filed with the Bankruptcy Court that is not the subject of an objection. If the holder of a claim
23 submits a ballot, but such holder has not timely filed a proof of claim and such holders' claim is not
24 listed on the Debtor's schedules or is listed on the Debtor's schedules or any amendment thereto, as
25 contingent, unliquidated or disputed or such holder's claim is the subject of an objection or request
26 for estimation, the ballot will *not* be counted in accordance with Bankruptcy Rule 3018, unless the
27 Bankruptcy Court temporarily allows the claim for the purpose of accepting or rejecting the Plan in
28 accordance with Bankruptcy Rule 3018.

1 In addition, a vote may be disregarded if the Bankruptcy Court determines, after notice
2 and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in
3 accordance with the provisions of the Bankruptcy Code.

4 **G. Has the Securities and Exchange Commission reviewed and approved this**
5 **Disclosure Statement?**

6 This Disclosure Statement has been prepared in accordance with Section 1125 of the
7 Bankruptcy Code and Bankruptcy Rule 3016(b) and not necessarily in accordance with federal
8 or state securities laws or other non-bankruptcy laws.

9 This Disclosure Statement has not been approved or disapproved by the United States
10 Securities and Exchange Commission (the “SEC”), nor has the SEC passed upon the accuracy or
11 adequacy of the statements contained herein.

12 **H. Reliance Upon Statements Made in the Disclosure Statement.**

13 The Debtors make the statements in the Disclosure Statement as of the Date hereof,
14 unless otherwise specified. Persons revising this Disclosure Statement should not infer that the
15 facts set forth herein have not changed since the date hereof.

16 This Disclosure Statement, therefore, does not constitute, and may not be construed as, an
17 admission of fact or liability, a stipulation or a waiver in any proceeding other than the
18 solicitation of acceptances of the Plan and confirmation of the Plan. For all purposes other than
19 the solicitation of acceptances of the Plan, this Disclosure Statement should be construed as a
20 statement made in settlement negotiations related to contested matters, adversary proceedings,
21 and other pending or threatened litigations or actions.

22 This Disclosure Statement does not constitute legal, business, financial, or tax advice. All
23 persons desiring such advice or any other advice should consult with their own advisors.

24 **I. Inconsistencies between the Disclosure Statement and the Plan.**

25 This Disclosure Statement summarizes certain provisions of the Plan and certain other
26 documents and financial information that are incorporated by reference herein (collectively, the
27 “**Incorporated Documents**”). The summaries contained herein are qualified in their entirety by
28 reference to the Incorporated Documents. In the event of any inconsistency or discrepancy

1 between a description in this Disclosure Statement and the actual content of any of the
2 Incorporated Documents, the Incorporated Documents shall govern for all purposes.

3 **IV.**

4 **SUMMARY OF THE PLAN TREATMENT OF CREDITORS⁴**

5 Section 1123 of the Bankruptcy Code provides that a plan of reorganization shall classify
6 the claims of a debtor's creditors and equity interest holders. In compliance therewith, the Plan
7 divides Claims into various Classes and sets forth the treatment for each Class. The Plan
8 Proponents are also required under Section 1122 of the Bankruptcy Code to place a Claim into a
9 particular Class only if such Claim is substantially similar to other Claims in such Class. The
10 Plan Proponents believe that the Plan has classified all Claims in compliance with the provisions
11 of Section 1122 of the Bankruptcy Code, but it is possible that a Holder of a Claim will
12 challenge the Plan's classifications and that the Bankruptcy Court will find that different
13 classifications are required in order for the Plan to be confirmed. In such event, the Debtor
14 reserves the right, to the extent permitted by the Bankruptcy Code, to make reasonable
15 modifications of the classifications under the Plan to permit confirmation.

16 The following summary of the Plan is qualified in its entirety by reference to the detailed
17 explanations in this Disclosure Statement and the Plan itself.

18 **A. Non-Classified Claims.**

19 Pursuant to Section 1123(a)(1) of the Bankruptcy Code, the Allowed Priority Tax Claims
20 and Allowed Administrative Claims are not designated as Classes under the Plan. In general,
21 these Claims consist of the fees and costs of professionals employed on behalf of the Estate. The
22 Holders of such unclassified Claims are not entitled to vote on the Plan.

23 On or before the Administrative Claim Bar Date, each holder of an Administrative Claim
24 shall file with the Bankruptcy Court a request for payment of an Administrative Claim. Any
25 Administrative Claim that is not filed on or before the Administrative Claim Bar Date will be

26 _____
27 ⁴ The following summary of the Plan treatment of Creditors is qualified in its entirety by
28 reference to the Plan itself. For a more detailed description of the Plan, see Article VI and V
hereof and the Plan.

1 forever barred from assertion against the Debtors, the Estate, and the Assets. Unless otherwise
2 agreed to by the Holders of the Administrative Claims and Plan Proponents, the Plan Proponents
3 shall pay each holder of an Allowed Administrative Claim the full unpaid amount of such Claim
4 in Cash on the Closing Date or as soon as practicable thereafter.

5 The amount of Administrative Claims for fees and costs incurred by Debtors' counsel,
6 but unpaid as of the Confirmation Hearing, is estimated to be less than \$30,000.00.

7 Each Holder of an Allowed Priority Tax Claim will, in full and final satisfaction of such
8 Claim, be paid in Cash in full (or be treated in compliance with Section 1129(a)(9)(C) of the
9 Bankruptcy Code) by the Plan Proponent on the Effective Date or as soon as practicable
10 thereafter.

11 **B. Classified Claims.**

12 The Distributions under the Plan to each Class are summarized in the following table:

13

<u>Class</u>	<u>Description</u>	<u>Treatment</u>
Class 1	ASLD Lease Claim	Impaired. Solicitation required.
Class 2	CPF Secured Claim (Disputed)	Impaired. Solicitation required.
Class 3	Priority Unsecured Claims	Unimpaired. No solicitation required.
Class 4	General Unsecured Claims	Impaired. Solicitation required.
Class 5	Equity Securities	Unimpaired. No solicitation required

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24 Bankruptcy Code § 1129(b) provides that, if the Plan is rejected by one or more impaired
25 Classes of Claims, the Plan nevertheless may be confirmed by the Bankruptcy Court, if: (i) the
26 Bankruptcy Court determines that the Plan does not discriminate unfairly and is fair and
27 equitable with respect to the rejecting Class(es) of Claims; and (ii) at least one Class of Impaired
28 Claims has voted to accept the Plan.

1 The specific treatment of each Class under the Plan is set forth in the Plan and is
2 summarized below:

3 **1. Class 1 – ASLD Lease Claim.**

4 Class 1 consists of the ASLD Lease Claim. The ASLD Lease Claim shall be an Allowed
5 Claim. The Holder of the ASLD Lease Claim will be paid, in Cash, all amounts due under the
6 Settlement Agreement between the Debtors and ASLD when due, or as otherwise extended or
7 modified by ASLD.

8 The Creditor(s) in Class 1 is Impaired under the Plan and thus, the Holder of the Class 1
9 Claim is entitled to vote on the Plan.

10 **2. Class 2 – CPF Secured Claim**

11 Class 2 consists of the CPF Secured Claim. The CPF Secured Claim is disputed and is
12 made up of the combined claims of CPF resulting from the acquisition by CPF of the claims of:
13 (a) Burford and (b) STB. The CPF Secured Claim is a Disputed Claim which is the subject of
14 Adversary Proceeding No. 2:16-ap-00334-MCW. To the extent that the CPF Secured Claim is
15 determined to be an allowed claim, it may be treated as one claim or, at the election of CPF,
16 broken into two subclasses comprised of (1) the Burford acquired claim, and (2) the STB
17 acquired claim.

18 Prior to, or in conjunction with the Confirmation Hearing, the Bankruptcy Court will
19 make a Valuation Determination of the Debtor's Property. Based on the Valuation
20 Determination, the Plan Proponents will determine the CPF Acreage to be placed into CPF
21 Escrow in full satisfaction of the CPF Secured Claim, subject to the outcome of the Adversary
22 Proceeding and the CPF Resolution Date.

23 The CPF Acreage will be placed in CPF Escrow on the Confirmation Date. Subject to
24 approval of the assignment by ASLD and the CPSP, on the CPF Resolution Date, the CPF
25 Acreage will be delivered to CPF from escrow in full satisfaction of the CPF Secured Claim.
26 Pending the transfer of the CPF Acreage to CPF, CPF will retain its existing liens against the
27 CPF Acreage. All other liens and encumbrances that CPF may have against all other Estate
28 Assets shall be deemed released and extinguished on the Effective Date of the Plan.

1 The Creditor in Class 2 is Impaired under the Plan and thus, the Holder of the Class 2
2 Claim is entitled to vote on the Plan. The Debtors reserve the right to seek to designate the Class
3 2 Claim under Bankruptcy Code § 1127(e).

4 **3. Class 3 –Priority Unsecured Claims.**

5 Class 3 consists of Priority Unsecured Claims. The Holders of the Priority Unsecured
6 Claims shall receive, on the Effective Date or as soon thereafter as practicable, the full amount of
7 the Allowed Priority Unsecured Claims.

8 Creditors in Class 3 are Unimpaired under the Plan, deemed to have accepted the Plan,
9 and therefore, not entitled to vote on the Plan.

10 **4. Class 4 - General Unsecured Claims.**

11 A General Unsecured Claim is a Claim, including a Claim arising under Section 502(g)
12 of the Bankruptcy Code that is not secured by a charge against or interest in property in which
13 the Estate has an interest and is not an unclassified Claim, Administrative Claim, or Priority
14 Unsecured Claim.

15 Each Holder of an Allowed General Unsecured Claim shall receive one-hundred percent
16 (100%) of its Allowed Claim paid: (a) monthly over thirty-six (36) months, with additional
17 payments being made from the Creditors Trust Proceeds, if any, and when received; (b) with
18 interest accrued on unpaid amounts at the rate of four percent (4%) per annum, simple interest;
19 and (c) all accrued and unpaid interest paid on the 36th month anniversary after the Effective
20 Date.

21 Creditors in Class 4 are Impaired under the Plan, and therefore, the Holders of Class 5
22 Claims are entitled to vote on the Plan.

23 **5. Class 5 - Equity Securities.**

24 On the Effective Date, the Equity Securities existing on the Petition Date shall remain in
25 Gray/Western Development Company.

26 Equity Securities in Class 5 are Unimpaired under the Plan. The Holders of Equity are
27 not entitled to vote on the Plan.

28

1 V.

2 **ADDITIONAL PLAN PROVISIONS**

3 In addition to the terms of the Plan described in Section IV above, the Plan contains the
4 following provisions. The description contained herein is qualified in its entirety by reference to
5 the remainder of this Disclosure Statement and the Plan itself.

6 **A. Means for Implementation of the Plan.**

7 **1. Substantive Consolidation.**

8 The Plan shall constitute a motion for substantive consolidation of the liabilities and
9 assets of the Plan Proponents. Confirmation of the Plan will constitute the Bankruptcy Court's
10 grant of that motion for substantive consolidation. Substantive consolidation of the liabilities and
11 assets of the Plan Proponents on the Effective Date will: (a) consolidate the property of each
12 estate for purposes of Plan voting and Distributions to Holders of Allowed Claims under the
13 Plan; and (b) convert all Claims against each Debtor into Claims against the consolidated Estate
14 such that any proof of claim filed against one or more Debtors is deemed to be a single claim
15 filed against the consolidated Estate and all duplicative proofs of claim for the same Claim filed
16 against more than one Debtor will be deemed expunged.

17 **2. Funding on the Effective Date.**

18 All payments under the Plan which are due on the Effective Date will be funded by : (1)
19 the Plan Contribution to be contributed by the Plan Sponsor, (2) the Property Development
20 Funds (funding due to the Debtors in accordance Property Development Agreement dated July 3,
21 2012), and (3) the Creditors Trust Proceeds if and when they are realized and collected.

22 **3. Plan Contribution Waterfall Payments.**

23 The funds from the Plan Contribution will be used in the following order: (1) to pay all
24 Allowed Administrative Claims; (2) to pay all Allowed Priority Unsecured Claim; (3) to pay the
25 ASLD Lease Claim, when due; and (4) to fund the Creditors Trust.

26 **4. Creditors Trust.**

27 A payment of \$500,000, made from the Plan Contribution, will be placed into a Creditors
28 Trust to fund the continued prosecution of the Adversary Proceeding and to prosecute the

1 Burford Lawsuit on arrangements to be negotiated with Reorganized Debtors' counsel, the
 2 Reorganized Debtors, and the Committee. The Reorganized Debtors will prosecute the
 3 Adversary Proceeding until the CPF Resolution Date, as well as the Burford Claim. In the event
 4 that affirmative money damages are awarded to the plaintiffs in the Adversary Proceeding and/or
 5 the Burford Claim, such proceeds will be used first, to pay any unpaid costs of litigating the
 6 Adversary Proceeding or Burford Claim and, second, to be distributed to Holders of Allowed
 7 General Unsecured Claims that have not otherwise been paid. Any remaining proceeds will be
 8 distributed to the Reorganized Debtors' Equity Interests.

9 **5. Revesting of Estate Assets.**

10 Upon the Effective Date, all Assets of the Debtors will revest in the Reorganized Debtors
 11 (including, but not limited to, the Master Developer Rights), free and clear of all liens, claims,
 12 and encumbrances other than as expressly provided for in the Plan. The Reorganized Debtors
 13 shall continue to run the Debtors' business in the ordinary course after the Effective Date.

14 **6. Post-Confirmation Management of the Reorganization Debtors.**

15 The Debtors are currently managed by Bruce Gray through the affiliated entity
 16 Gray/Western Development Company. Bruce Gray has been a successful real estate developer in
 17 a career that has spanned decades. He developed his first project, Oswago Bay, in Lake Oswago
 18 Oregon in 1993. After that, he became a key figure in Arizona real estate development. Since
 19 1995, Mr. Gray and his affiliated entities have completed nearly thirty (30) projects in Arizona
 20 which, in total, account for nearly 8,000 apartment units:

<u>Name of Property</u>	<u># of Units</u>	<u>Year Built</u>
The Pavilions on Camelback	64	1995
The Legacy at Squaw Peak	88	1997
Canyon Gate Condominiums	72	1997
Indigo Creek	408	1998
Andover Park	155	1998
Andover Square	80	1999
Montevida	276	2000
Indigo Springs	240	2000
The Pavilions on Central	254	2001
Monterra	258	2001
Clarendon Park	138	2002

1	Indigo Palms	432	2003
	Camelback Ssquare	367	2004
2	Bacaro on Princess Drive	312	2004
	MonteViejo	480	2004
3	MonteVerde	435	2005
	Bacara at the Canyons	233	2005
4	Montelena at the Canyons	396	2006
	Arete on Dunlap	205	2006
5	Grigio Tempe Town Lake	523	2008
	Barossa Paradise Ridge	204	2008
6	Barossa at the Park	273	2009
	Barossa at Triana	246	2009
7	Indigo at the Park	306	2009
	Indigo at Triana	485	2010
8	Grigio Metro	408	2010
	Ninety Degrees	337	2010
9			
10			

11 In addition, Mr. Gray and his affiliated entities have designed six (6) other projects that
12 account for over 4,400 more apartments units:

	<u>Name of Property</u>	<u># of Units</u>	<u>Year</u>
14	Blue Sky - San Diego	939	2011-2013
15	Blue Sky - Scottsdale	749	2010-2014
16	Grigio - Paradise Ridge	572	2007-2009
17	Desert Ridge 2H (Arete, Bacaro, Pavilions)	820	2006-2009
18	Desert Ridge 4HW (Grigio Phase I & II and Pavilions)	882	2005-2008
19	Biltmore Spectrum	476	2015-2016

20 It is anticipated that Bruce Gray will continue to manage and operate the Debtors'
21 business post-confirmation.

22 **7. United States Trustee Fees.**

23 Quarterly fees due to the United States Trustee pursuant to 11 U.S.C. 1930(a)(6) will be
24 paid when due by the Plan Proponents.

25 **8. Limitation of Liability of the Reorganized Debtors.**

26 *No action or claim may be asserted against the Plan Proponents for any matter*
27 *relating to or arising out of this Chapter 11 Case, the confirmation of the Plan, the*
28 *consummation of the Plan, or the administration of the Plan or the property to be*

1 *administered or distributed under the Plan, in any court without first obtaining approval of the*
2 *Bankruptcy Court, and, in such event, any such action must be prosecuted before the*
3 *Bankruptcy Court, which shall retain jurisdiction to adjudicate any such actions. The Plan*
4 *Proponents are acting solely as fiduciaries on behalf of the Estate in implementing this Plan.*
5 *Neither the Plan Proponents, nor any of their employees, shall have any personal liability for*
6 *servicing in the fiduciary capacity of Plan Proponents, except for willful misconduct or gross*
7 *negligence.*

8 **9. Terms of Injunctions or Stays.**

9 *Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case*
10 *pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and that are in*
11 *existence on the Effective Date, shall remain in full force and effect until the Chapter 11 Case*
12 *is closed.*

13 **B. Provisions Governing Distributions.**

14 **1. General Provisions; Undeliverable Distributions.**

15 Distributions to the holders of Allowed Claims shall be made by the Reorganized Debtors
16 at the address of each holder as set forth in the Schedules, unless superseded by the address set
17 forth on proofs of Claim filed by such holder. If any Distribution is returned as undeliverable, the
18 Reorganized Debtors may, without requirement and in their sole discretion, make such efforts to
19 determine the current address of the holder of the Claim with respect to which the Distribution
20 was made as the Reorganized Debtors deem appropriate, but no Distribution to any holder shall
21 be made unless and until the Reorganized Debtors have determined the then-current address of
22 the holder.

23 **2. Unclaimed Property.**

24 Distributions that are not claimed by the expiration of ninety (90) days from the Closing
25 Date shall be deemed to be unclaimed property and shall vest in the Reorganized Debtors, and
26 the Claims with respect to which those Distributions are made shall be automatically canceled.
27 After the expiration of that 90-day period, the Claim of any Entity to those Distributions shall be
28 discharged and forever barred. Nothing contained in the Plan shall require the Reorganized

1 Debtors to attempt to locate any holder of an Allowed Claim. All funds or other property that
2 vests in in the Reorganized Debtors shall then be distributed to the Reorganized Debtors.

3 **3. Time Bar to Cash Payments by Check.**

4 Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null
5 and void if not negotiated within ninety (90) days after the date of issuance thereof, and shall be
6 treated as unclaimed property under this Plan, and shall be discharged and forever barred and the
7 proceeds of those checks shall become the property of the Reorganized Debtors.

8 **4. Compliance with Tax Requirements.**

9 In connection with making Distributions under this Plan, to the extent applicable, the
10 Reorganized Debtors shall comply with all tax withholding and reporting requirements imposed
11 on it by any governmental unit, and all Distributions pursuant to this Plan shall be subject to such
12 withholding and reporting requirements. The Reorganized Debtors may withhold the entire
13 Distribution due to any holder of an Allowed Claim until such time as such holder provides the
14 necessary information to comply with any withholding requirements of any governmental unit.
15 Any property so withheld will then be paid by the Reorganized Debtors to the appropriate
16 authority. If the holder of an Allowed Claim fails to provide the information necessary to comply
17 with any withholding requirements of any governmental unit within 90 days from the date of
18 first notification to the holder of the need for such information or for the Cash necessary to
19 comply with any applicable withholding requirements unclaimed property under this Plan, and
20 shall be discharged and forever barred.

21 **VI.**

22 **DISPUTED CLAIMS**

23 **A. Resolution of Disputed Claims.**

24 From and after the Effective Date, the Reorganized Debtors shall have all rights of the
25 Debtors to file, prosecute, compromise, withdraw, or resolve objections to Claims; provided
26 however that nothing in the Section shall prejudice the right of the Reorganized Debtors to object
27 to Claims prior to the Effective Date.

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1 **B. Payment of Disputed Claims.**

2 No payments or other distributions will be made to holder of disputed claims unless and
3 until such Claims are Allowed Claims pursuant to a Final Order. If a Claim is not an Allowed
4 Claim as of the Effective Date or when payment is otherwise due under the Plan, payment of
5 such Claim will commence if and when such Claim becomes an Allowed Claim pursuant to a
6 Final Order.

7 As set forth above, the Debtors dispute the CPF Secured Claim. Accordingly, the final
8 amount of the CPF Secured Claim is in dispute and will need to be resolved.

9 **C. Objections to Administrative Claims.**

10 From and after the Effective Date, the Reorganized Debtors shall have all rights of the
11 Debtors to object to any Administrative Claims that are asserted. Any objections to
12 Administrative Claims (other than Professional Fee Claims) will be filed and served by the date
13 thirty (30) days after the Administrative Claims Bar Date or such other date as may be fixed by
14 the Bankruptcy Court. All objections will be litigated to Final Order; provided, however, that the
15 Reorganized Debtors shall have the authority to file, settle, compromise, or withdraw any
16 objections without Bankruptcy Court Approval.

17 **VII.**

18 **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

19 **A. Reorganized Debtors and Existing Contracts and Unexpired Leases.**

20 All executory contracts and unexpired leases that exist between the Debtors and any party
21 that have not been previously assumed pursuant to an order of the Bankruptcy Court or through
22 the Confirmation Order, shall be deemed rejected as of the Effective Date of the Plan. The ASLD
23 Lease, however, will be assumed, to be paid in accordance with the provisions of the Plan.

24 **B. Rejection Claims.**

25 All Rejection Claims must be filed with the Bankruptcy Court and served on the Debtors
26 and other parties in interest no later than thirty (30) days after the rejection of any executory
27 contract or unexpired lease. Any Rejection Claim for which a proof of Claim is not timely filed
28 within thirty (30) days of the rejection of an executory contract or unexpired lease will be forever

1 barred from assertion against the Debtors, the Estate, and the Assets, and shall be subject to the
2 discharge and permanent injunction set forth below. Unless otherwise ordered by the Bankruptcy
3 Court, all Rejection Claims that are timely filed as provided herein shall be subject to review by
4 the Debtors, who shall have 60 days from the Closing Date to review and object to any such
5 Rejection Claim. To the extent (a) there is no objection following such 60-day period to any
6 timely filed Rejection Claim or (b) there is a Final Order allowing such timely filed Rejection
7 Claim, such Rejection Claim (or portion thereof allowed by Final Order) shall be an Allowed
8 Rejection Claim and paid by the Plan Proponents.

9 VIII.

10 LIMITATIONS AND RISK FACTORS

11 A. Risk Factors

12 In addition to risks discussed elsewhere in this Disclosure Statement, the Plan and the
13 transactions contemplated by the Plan involve the following limitations and risks, which should
14 be taken into consideration.

- 15 • Finance Risk: While the Debtors believe that it is unlikely, there is risk that
16 unforeseen changes in the economy will impact their ability to obtain Plan
17 Financing or a capital contribution in an amount as determined by the Bankruptcy
18 Court sufficient to make the required distributions under the Plan. The Debtors
19 are confident in their ability to obtain financing, but such loans are always subject
20 to certain application and underwriting consideration that could impact the
21 Debtors' ability to obtain financing.
- 22 • Valuation Risk: The treatment of certain claims under the Plan is premised on the
23 Property receiving a sufficient valuation determination from the Bankruptcy
24 Court such that certain creditors may receive land in full satisfaction of their
25 claims. Although the Debtors are confident in their valuation of the Property,
26 there is a risk that the Bankruptcy Court may not adopt a sufficient valuation of
27 the Property for purposes of Plan implementation.

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1 **B. Debtors Have No Duty to Update.**

2 The statements in this Disclosure Statement are made by the Debtors as of the date
3 hereof, unless otherwise specified herein. The delivery of this Disclosure Statement after that
4 date does not imply that there has been no change in the information set forth herein since that
5 date. The Debtors have no duty to update this Disclosure Statement unless ordered to do so by
6 the Bankruptcy Court.

7 **C. No Admissions Made.**

8 Nothing contained herein shall constitute an admission of any fact or liability by the
9 Debtors or any other party nor shall it be deemed evidence of the tax or other legal effects of the
10 Plan on Debtors or on Holders of Claims.

11 **D. Risks and Considerations.**

12 **1. Projections and Other Forward Looking Statements Are Not Assured and**
13 **Actual Results Will Vary.**

14 Certain information herein is, by nature, forward looking, and contains estimates and
15 assumption which might ultimately prove to be incorrect, and the Debtors' projections may differ
16 materially from actual future results. There are uncertainties associated with assumptions,
17 projections, and estimates and they should not be considered assurances or guarantees of the
18 amounts of Claims in the various Classes that will be allowed.

19 **2. Confirmation of the Plan is Not Assured.**

20 Although the Debtors believe the Plan will satisfy all requirements for Confirmation, the
21 Bankruptcy Court may not reach that conclusion. It is also possible that modifications to the
22 Plan will be required for Confirmation and that such modifications would necessitate a re-
23 solicitation of votes.

24 **IX.**

25 **PRESERVATION OF CAUSES OF ACTION, INJUNCTION, RELEASE, AND**
26 **RELATED PROVISIONS**

1 **A. Vesting and Transfers of Causes of Action.**

2 Except as otherwise provided in the Plan or Confirmation Order, in accordance with
3 section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtors or the Estate
4 may hold against any Entity shall vest upon the Effective Date in the Reorganized Debtors.
5 Upon the Effective Date, the Reorganized Debtors shall have the exclusive right to institute,
6 prosecute, abandon, settle or compromise any Cause of Action. Causes of Action, and any
7 recoveries therefrom, shall remain the sole property of the Reorganized Debtors. Each Cause of
8 Action is expressly reserved for later adjudication by the Reorganized Debtors (including,
9 without limitation, Causes of Action not specifically identified or described) and, therefore, no
10 preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral
11 estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or
12 laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order. In
13 addition, the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a
14 defendant or an interested party, against any Entity, including, without limitation, the plaintiffs
15 or co-defendants in such lawsuits, is expressly reserved.

16 Any Entity to whom the Debtors have incurred an obligation (whether on account of
17 services, purchase or sale of goods or otherwise), or who has received services from the Debtors
18 or a transfer of money or property of the Debtors, or who has transacted business with the
19 Debtors, should assume that any such obligation, transfer, or transaction may be reviewed by the
20 Reorganized Debtors subsequent to the Effective Date and may be the subject of a Cause of
21 Action after the Effective Date, regardless of whether: (i) such Entity has filed a proof of Claim
22 against the Debtors in the Chapter 11 Case; (ii) an objection to any such Entity's proof of Claim
23 has been filed; (iii) any such Entity's Claim was included in the Schedules; (iv) an objection to
24 any such Entity's scheduled Claim has been filed; or (v) any such Entity's scheduled Claim has
25 been identified as disputed, contingent or unliquidated.

26 **B. Release and Injunction.**

27 **From and after the Effective Date, all Entities are permanently enjoined from**
28 **commencing or continuing in any manner against the Reorganized Debtors, the Estate, or**

1 the Assets, as the case may be, any suit, action or other proceeding, on account of or
2 respecting any Claim, demand, liability, obligation, debt, right, Cause of Action, interest or
3 remedy that arose before the Effective Date.

4 From and after the Effective Date, all Entities shall be precluded from asserting
5 against the Reorganized Debtors, the Estate, or the Assets, any other Claims or Equity
6 Securities based upon any documents, instruments, or any act or omission, transaction or
7 other activity of any kind or nature that occurred prior to the Effective Date.

8 The rights afforded in the Plan and the treatment of all Claims and Equity
9 Securities in the Plan shall be in exchange for and in complete satisfaction of Claims and
10 Equity Securities of any nature whatsoever against the Reorganized Debtors, the Estate,
11 and the Assets. On the Effective Date, all such Claims against the Reorganized Debtors
12 shall be satisfied and released in full.

13 On and after the Effective Date, all Entities are permanently enjoined, on account of
14 any Claim or Membership Interest, from:

15 (i) commencing or continuing in any manner any action or other
16 proceeding of any kind against the Reorganized Debtors, the Estate, or the Assets;

17 (ii) enforcing, attaching, collecting or recovering by any manner or means
18 any judgment, award, decree or order against the Reorganized Debtors, the Estate,
19 or the Assets;

20 (iii) creating, perfecting or enforcing any encumbrance of any kind
21 against the Reorganized Debtors, the Estate, or the Assets;

22 (iv) commencing or continuing in any manner any action or other
23 proceeding of any kind against the Reorganized Debtors in respect of any Claim,
24 Membership Interest, or Cause of Action.

25 **C. Payment of Statutory Fees.**

26 All fees payable to the United States Trustee or under section 1930 of Title 28 of the
27 United States Code shall be paid by the Reorganized Debtors as and when due.

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X.

CERTAIN FEDERAL INCOME TAX CONSEQUENCES

THE FOLLOWING SUMMARY DOES NOT CONSTITUTE EITHER A TAX OPINION OR TAX ADVICE TO ANY PERSON. NO REPRESENTATIONS REGARDING THE EFFECT OF IMPLEMENTATION OF THE PLAN ON INDIVIDUAL CREDITORS ARE MADE HEREIN OR OTHERWISE. RATHER, THE TAX DISCLOSURE IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. ALL CREDITORS ARE URGED TO CONSULT THEIR RESPECTIVE TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF THE PLAN.

Creditors, Holders of Equity Securities, and any Person affiliated with the foregoing are strongly urged to consult their respective tax advisors regarding the federal, state, local, and foreign tax consequences which may result from the Confirmation and consummation of the Plan. This Disclosure Statement shall not in any way be construed as making any representations regarding the particular tax consequences of the Confirmation and consummation of the Plan to any Person. This Disclosure Statement is general in nature and is merely a summary discussion of potential tax consequences and is based upon the Internal Revenue Code of 1986, as amended (the “IRC”), and pertinent regulations, rulings, court decisions, and treasury decisions, all of which are potentially subject to material and/or retroactive changes. Under the IRC, there may be federal income tax consequences to Debtors, their Creditors, their Equity Security Holders, and/or any Person affiliated therewith as a result of Confirmation and consummation of the Plan.

Upon the Confirmation and consummation of the Plan, the federal income tax consequences to Creditors and their affiliates arising from the Plan will vary depending upon, among other things, the type of consideration received by the Creditor in exchange for its Claim, whether the Creditor reports income using the cash or accrual method of accounting, whether the Creditor has taken a “bad debt” deduction with respect to its Claim, whether the Creditor received consideration in more than one tax year, and whether the Creditor is a resident of the United States. If a Creditor’s Claim is characterized as a loss resulting from a debt, then the extent of the deduction will depend on whether the debt is deemed wholly worthless or partially

1 worthless, and whether the debt is construed to be a business or non-business debt as determined
2 under the 26 U.S.C. § 166, and/or other applicable provisions of the Internal Revenue Code.

3 CREDITORS SHOULD CONSULT THEIR TAX ADVISOR REGARDING THE TAX
4 TREATMENT (INCLUDING FEDERAL, STATE, LOCAL, AND FOREIGN TAX
5 CONSEQUENCES) OF THEIR RESPECTIVE ALLOWED CLAIMS. THIS DISCLOSURE IS
6 NOT A SUBSTITUTE FOR TAX PLANNING AND SPECIFIC ADVICE FOR PERSONS
7 AFFECTED BY THE PLAN.

8 **XI.**

9 **CONFIRMATION OF THE PLAN**

10 **A. Confirmation of the Plan.**

11 Pursuant to Section 1128(a) of the Bankruptcy Code, the Bankruptcy Court will hold a
12 hearing regarding confirmation of the Plan at the United States Bankruptcy Court for the District
13 of Arizona, 230 North 1st Avenue, Suite 101, Phoenix, AZ 85003, commencing on
14 _____, 2016, at _____.m. (MST).

15 **B. Objections to Confirmation of the Plan.**

16 Section 1128(b) provides that any party-in-interest may object to confirmation of a plan.
17 Any objections to Confirmation of the Plan must be in writing, must state with specificity the
18 grounds for any such objections, and must be timely filed with the Bankruptcy Court and served
19 upon counsel for Debtors at the following address:

20 Stinson Leonard Street, LLP
21 Attn: Anthony P. Cali, Esq.
22 1850 N. Central Ave., Suite 2100
23 Phoenix, Arizona 85004
24 (602) 212-1600 Telephone
(602) 586.5209 Facsimile
Email: Anthony.cali@stinson.com

25 **XII.**

26 **ALTERNATIVES TO THE PLAN**

27 The Debtors believe that the Plan provides Creditors the best and most complete form of
28 recovery available. As a result, the Debtors believe that the Plan serves the best interests of all

1 Creditors and parties-in-interest in the Chapter 11 Case. The Debtors believe not only that the
2 Plan enables the Creditors to realize the greatest sum possible under the circumstances, but also
3 that rejection of the Plan in favor of some theoretical alternative method of reconciling the
4 Claims of the various Classes would require, at the very least, an extensive and time-consuming
5 negotiation process and would not result in a better recovery for any Class.

6 For example, if a plan cannot be confirmed, a Chapter 11 case may be converted to a case
7 under Chapter 7, in which a Chapter 7 trustee would be elected or appointed to liquidate the
8 assets of the Debtors for distribution to its creditors and holders of equity security in accordance
9 with the priorities established by the Bankruptcy Code.

10 As previously stated, the Debtors believe that a liquidation under Chapter 7 would result
11 in a reduced recovery of funds by Holders of Claims and Equity Securities because of: (i)
12 additional Administrative Claim expenses involved in the appointment of a Chapter 7 trustee for
13 Debtors and attorneys and other professionals to assist such Chapter 7 trustee; and (ii) additional
14 expenses and Claims, some of which may be entitled to priority, which would be generated
15 during the Chapter 7 liquidation.

16 **XIII.**

17 **RECOMMENDATION AND CONCLUSION**

18 The Plan provides the best possible recovery for all parties-in-interest. Accordingly, the
19 Debtors strongly recommend that all Creditors entitled to a Distribution or other parties-in-
20 interest that are affected by the Plan not object to the Plan, and that the Bankruptcy Court
21 confirm the Plan.

22 DATED this 31st day of August, 2016.

23 EPICENTER PARTNERS, LLC an Arizona limited
24 liability company,

25 By: /s/ Bruce Gray
26 Bruce Gray, Manager

1 GRAY MEYER FANNIN, LLC an Arizona limited
2 liability company,

3 By: /s/ Bruce Gray
4 Bruce Gray, Manager

5 **Prepared and Submitted:**

6
7 **STINSON LEONARD STREET, LLP**

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