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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

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

Chapter 11
Case No. 2:16-bk-05493-MCW
Jointly Administered with:
Case No. 2:16-bk-05494-MCW
Case No. 2:16-bk-07659-MCW
Case No. 2:16-bk-07660-MCW
Case No. 2:16-bk-07661-MCW

26 This Filing Applies to:

- 27 ☐ All Debtors
28 ☒ Specified Debtors

- EPICENTER PARTNERS L.L.C.,
- GRAY MEYER FANNIN L.L.C.,
- SONORAN DESERT LAND INVESTORS
LLC,
- EAST OF EPICENTER LLC,
- GRAY PHOENIX DESERT RIDGE II, LLC

**DISCLOSURE STATEMENT TO ACCOMPANY SECOND AMENDED CHAPTER 11
PLAN OF REORGANIZATION FOR EPICENTER PARTNERS LLC AND GRAY
MEYER FANNIN LLC**

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APPENDIX

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

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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 *Second Amended Chapter 11 Plan of Reorganization for Epicenter Partners LLC and Gray Meyer Fannin LLC* [Dkt. No. 278] (as may be amended, modified, or supplemented, the “**Plan**”) filed on December 29, 2016. All capitalized, undefined terms herein shall have the meanings ascribed in the Plan.

The Plan is attached hereto as **Exhibit “1.”** Any interested party desiring further information should contact:

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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 Plan attached hereto. These documents contain important information concerning the classification and treatment of Claims, Equity Securities, and Executory Contracts.

1 II.

2 GENERAL OVERVIEW

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

5 1. Formation of the Debtors and Their Management.

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

11 2. The Debtors' Acquisition of the Estate Property.

12 On July 7, 1993, an entity called Northeast Phoenix Partners ("NPP") entered into
13 Commercial Lease No. 03-52415 with the State of Arizona through the State Land
14 Commissioner regarding approximately 5,700 acres of real property in Phoenix, Arizona
15 located north of the Central Arizona Project Canal and south of Pinnacle Peak Road between
16 32nd Street and 64th Street. NPP filed a special action appeal of a City of Phoenix Board of
17 Adjustment decision in Maricopa County Superior Court of Arizona captioned *Desert Ridge*
18 *Community Association, et. al v. City of Phoenix, et. al.*, Case No. LC2007-000011 (the
19 "Action"). The Debtors filed a Counterclaim, First Amended Counterclaim, and Second
20 Amended Counterclaim in the Action against NPP, Desert Ridge Community Association, and
21 CityNorth, LLC (hereafter referred to as the "Litigation Claim").

22 On October 19, 2010, Debtors obtained final judgement in the State Court on the
23 Litigation Claim against NPP and CityNorth in the amount of \$110,658,800 plus interest.
24 Subsequently, on May 31, 2012, Debtors negotiated a Settlement Agreement with respect to the
25 Litigation Claim which provided that Debtors would receive, in summary, an assignment of the
26 Lessee's Rights to approximately 96.5 acres of real property under the terms of the Arizona State
27 Land Department Commercial Lease No. 03-52415 (the "ASLD Lease"), the assignment of the
28

1 Master Development Rights,¹ the assignment of the Master Declarant's Rights and all intellectual
2 property related thereto (collectively, such property interests shall hereafter be referred to as the
3 “**Estates’ Property**”). The Estates’ Property comprises virtually all of the property of the
4 Debtors’ bankruptcy estates.

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

6 As mentioned above, the Debtors are party to a long-term lease with the Arizona State
7 Land Department which figures as part of the Desert Ridge Master Planned Community—a plan
8 for a 5,700 acre master planned community on previously undeveloped Arizona Trust Land
9 located in Northeast Phoenix. Under the plan, various parcels within the Desert Ridge
10 development are auctioned by the state to various developer owner's to be developed within
11 guidelines enforced by one Master Developer. In order to continue as a Master Developer, the
12 Master Developer has to own property within the Desert Ridge Commercial Core. Accordingly,
13 if a creditor foreclosed on all of the Debtors’ real property it would materially impair the
14 Debtors’ rights as Master Developer.

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

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

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¹ All capitalized terms not otherwise defined herein shall have the same meanings as ascribed to them in the Plan.

1 The state trust land (like all of the State trust properties) are managed by the ASLD to
2 generate revenue primarily for support of the common schools of the state. Of the original
3 5,723 acres, 332 acres were designated as commercial core land (the “**Commercial Core**”).
4 The 332 acres of Commercial Core property is state trust land leased under a 99 year lease from
5 the State of Arizona (the “**Core Lease**”). The 96.5 acres of the Debtors’ are part of the
6 Commercial Core and subject to the Core Lease. In fact, all real property interests in these
7 jointly administered cases originate from the Core Lease. Fee ownership of the Commercial
8 Core returns to the State at the end of the Core Lease term net of the value of improvements
9 upon the land. As such, the ASLD retains a continuing interest in the development of the
10 Commercial Core and Desert Ridge as a whole.

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

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

18 The Master Development Plan, also referred to as the Specific Plan, was approved by
19 the City of Phoenix on June 6, 1990, and adopted by the ASLD on November 29, 1990 (the
20 “**Master Development Plan**”). The Master Development Plan is the governing land use
21 document of the City of Phoenix for Desert Ridge. The Master Development Plan provides the
22 underlying zoning controls, specifies the phasing and construction of infrastructure necessary to
23 serve the area and establishes the future planning framework and zoning processes, including
24 review and approval of conceptual parcel site plans and individual project site plans,
25 subdivision review procedures, plan amendment procedures, development monitoring and
26 phasing. The stated purpose of the Master Development Plan is to establish an effective,
27 regulatory development control mechanism guiding development of the Desert Ridge planned
28 community.

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

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

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

14 The former CPSP (devised by North Phoenix Partners) for Parcel 5A, which covered
15 the 96.5 acres held by the Debtors under the Core Lease was approved by the City in 2008. A
16 change to the 2008 CPSP for Parcel 5A was necessitated by the dramatic decline in the demand
17 for traditional “brick and mortar” retail due to the growth in online retailing since 2008.³ As
18 further discussed in Section II.B.2, *supra*, during the course of this Chapter 11 Case, the
19 Debtors obtained approval from the City of Phoenix of an amended CPSP which, among other
20 things, replaces upscale big box retailing with an equal amount of Class A office space to
21 reflect the current market considering the shift in market demands since 2008.

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

23 ² See, Michael Clancy, *Desert Ridge in Northeast Phoenix falls short of original master plan*, Republic,
24 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).

25 ³ See, Chris Isidore, *Sports Authority Bankruptcy Could Close Remaining Stores*, CNN Money, May 2, 2016,
26 <http://money.cnn.com/2016/05/02/news/companies/sports-authority-sale-store-closings/index.html> (last visited Aug
27 20, 2016); Krystina Gustafson, *Men's Warehouse parent closing 250 stores*, March 10, 2016,
28 <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 In order to fund the Debtors' prosecution of the aforementioned Litigation Claim, the
2 Debtors entered into various agreements with counsel representing them in that litigation—the
3 law firm of Simpson Thatcher & Bartlett LLP (“STB”)—and litigation financiers, Burford
4 Capital Limited, and its wholly-owned subsidiary Ganymede Investments Limited (collectively,
5 “**Burford**”). Ultimately (and currently the subject of a dispute), STB and Burford obtained a
6 security interest in the Debtors' Property.

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

17 **B. Debtors' Restructuring Efforts.**

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

24 **1. Joint Administration.**

25 On July 6, 2016, three entities affiliated with the Debtors filed voluntary petitions for
26 relief under Chapter 11 of the Bankruptcy Code: Sonoran Desert Land Investors, LLC; East of
27 Epicenter, LLC; and Gray Phoenix Desert Ridge II, LLC (collectively, the “**July Debtors**”). The
28

1 July Debtors' cases are currently jointly administered with the Debtors' cases. The July Debtors
2 have submitted their own plan of reorganization.

3 **2. Amendment of the CPSP.** Beginning in February 2016, the Debtors began work
4 on amending the CPSP with respect to their Property with the goal of materially enhancing the
5 value of the Property. The City of Phoenix approved the amended CPSP on September 9, 2016.
6 The amended CPSP is not an encumbrance on the Property, but merely one approved lawful use
7 that the Debtors, in the exercise of their business judgment as the Master Developer, believe will
8 enhance both marketability and value of the Property.

9 **3. Property Valuation.** During the course of the Bankruptcy Case, the Debtors had
10 the Property valued by Thomas Raynak of CBRE. As set forth in the Raynak appraisals, the
11 Property with the amended CPSP, has an aggregate of "As If Complete" market value of
12 \$166,178,750 and an "As Is" market value of \$121,100,000. The "As Is" value is net of
13 infrastructure costs and roads, and further discounted for time, administrative, marketing, and
14 other costs intended to reflect a possible "bulk sale" scenario to a land wholesaler. Despite CPF's
15 expressed concerns in the *Objection to May Debtors' Disclosure Statement and Reservation of*
16 *Rights* [Dkt. No. 187], the "As Is" Property valuation is net of all infrastructure costs related to
17 the Property. Any subsequent lessor under the Core Lease would be responsible for making any
18 necessary infrastructure changes to the Property, but the ultimate Valuation Determination will
19 have compensated the holder for any such outlays.

20 **4. Negotiations with Creditors Committee.** During the Chapter 11 Case, the
21 Debtors have engaged in negotiations with the Committee. The negotiations have resulted in a
22 consensual plan treatment that is reflected in the current Plan.

23 **5. Agreement with ASLD.** After negotiations with the Debtors, ASLD has agreed
24 to extend the time by which the Debtors must assume or reject the ASLD Lease to March 1,
25 2017. The *Stipulated Order Extending Time to Assume or Reject Certain Executory Contracts*
26 *and Non-Residential Real Property Leases Between Certain Debtors and Arizona State Land*
27 *Department* [Dkt. No. 205] was entered by the Bankruptcy Court on October 27, 2016.

28 **6. Litigation.**

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

3 a) **Adversary No. 2:16-ap-00334-MCW**. This Adversary Proceeding is
4 currently proceeding. In general, the complaint alleges counts of (i) fraudulent transfers, (ii)
5 equitable subordination, (iii) recharacterization, and (iv) claim objections against CPF. On
6 October 5, 2016, the Bankruptcy Court granted CPF's motion to dismiss the adversary
7 proceeding with leave for Debtors to amend the Complaint. On November 28, 2016, the Debtors
8 filed their *First Amended Complaint* [Dkt. No. 59]. On December 15, 2016, CPF filed its *Motion*
9 *of CPF Vaseo Associates for Dismissal of First Amended Complaint*. [Adversary No. 2:16-ap-
10 00334-MCW, Dkt. No. 68].

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

15 This adversary proceeding included a counterclaim filed by CPF. The counterclaim, filed
16 on September 12, 2016, asks the Bankruptcy Court to enjoin the Debtors from pursuing or
17 otherwise seeking approval of any amendments to the 2008 CPSP related to the Debtors'
18 Property. The counterclaim also requests that the Court order the Debtors to withdraw proposed
19 amendments to the 2008 CPSP. Because the City of Phoenix had already approved the amended
20 CPSP (*see* Section II.B.2, *supra*) at the time CPF filed the counterclaim, the Debtors asserted
21 that the counterclaim is moot and ought to be dismissed. Accordingly, on October 6, 2016,
22 Debtors filed their *Motion to Dismiss Counterclaim* [Adv. Dkt. No. 62]. Pursuant to the
23 *Stipulation for Dismissal of Counterclaim Without Prejudice* [Adv. Dkt. No. 77] and the
24 subsequent *Order Dismissing Counterclaim Without Prejudice* [Adv. Dkt. No. 79], CPF's
25 counterclaim was dismissed without prejudice.

26 c) **Adversary No. 2:16-ap-00395-MCW**. This adversary proceedings seeks
27 a determination that CPF does not have a valid or effective assignment of the Master Developer
28 Rights or Declarant Rights with respect to the Property or that such right has not been perfected

1 and is avoidable under 11 U.S.C. §§ 506(d) and 544. The proceeding also supplements Debtors'
2 aforementioned objection to the CPF Claim(s).

3 d) **Stay Relief Proceedings.** On August 29, 2016, CPF filed its *Motion for*
4 *Relief from the Automatic Stay with Respect to All Collateral Securing CPF's Secured Claims*
5 [Dkt. No. 113] (the “**Stay Relief Motion**”). The Stay Relief Motion seeks relief from that
6 automatic stay so that CPF may foreclose on all collateral securing its Claims. A preliminary
7 hearing on the Stay Relief Motion was held on October 18, 2016. At the hearing, the Court
8 indicated that the matter was to be taken under advisement. As of the date of this filing, the
9 Bankruptcy Court has yet to rule on the Stay Relief Motion.

10 III.

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

12 A. **Chapter 11**

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

19 B. **Plan of Reorganization**

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

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

23 Before a debtor or other plan proponent can solicit acceptances of a plan, Section 1125 of
24 the Bankruptcy Code requires the debtor or other plan proponent to prepare a disclosure
25 statement containing adequate information of a kind, and in sufficient detail, to enable those
26 parties entitled to vote on the plan to make an informed voting decision about whether to accept
27 or reject the plan.

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

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

7 **E. The Plan Confirmation Process**

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

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

17 b) **Feasibility.** The Bankruptcy Court is required to find that confirmation of
18 the Plan is not likely to be followed by the liquidation, or further need for further financial
19 reorganization (except as provided in the Plan) of the Debtors. The Reorganized Debtors will be
20 able to operate without the need for further reorganization or liquidation except as provided in
21 the Plan. The cash sources and uses analysis below was prepared to assist creditors in their
22 evaluation of the Plan. The Debtors’ Plan is feasible because payment to CPF will be made
23 through conveyance of property already owned by the Debtors in full satisfaction of CPF’s
24 alleged secured claims. Payments to other creditors will be made through plan financing or a
25 capital contribution to be in place by confirmation, funds received by the Debtors in accordance
26 with the Property Development Agreement (as defined in the Plan), and/or any recovery received
27 from the Creditors Trust. The Plan contemplates a Plan Contribution in an amount no less than
28 \$8,558,135 that is sufficient to cover all necessary Plan payments to be used as indicated below:

Month	Working Capital	ASLD Rent	Admin Expenses	Unsecured Creditor Payments
1	50,100		704,000	400,000
2	50,100		23,800	50,000
3	50,100		23,800	50,000
4	50,100		23,800	50,000
5	50,100		23,800	50,000
6	50,100		23,800	50,000
7	50,100	3,760,600	23,800	50,000
8	50,100		23,800	50,000
9	50,100		23,800	50,000
10	50,100		23,800	50,000
11	50,100		23,800	50,000
12	50,100		23,800	50,000
13	50,100		23,800	50,000
14	50,100		23,800	50,000
15	50,100		23,800	50,000
16	50,100		23,800	50,000
17	50,100		23,800	50,000
18	50,100		23,800	50,000
19	50,100	781,635	23,800	50,000
20	50,100		23,800	50,000
21	50,100		23,800	50,000
22	50,100			50,000
23	50,100			50,000
24	50,100			50,000
				83,500
Total	\$1,202,400	\$4,542,235	\$1,180,000	\$1,633,500

As indicated above, the Plan Contribution sources and uses analysis accounts for payments such as the ASLD Lease Payment to be made by July 7, 2017, and for other such items that may accrue if litigation with CPF lasts beyond July 2017. The Debtors are currently in advanced negotiations with respect to the Plan Contribution and fully anticipate that financing will be in place by Plan Confirmation.

c) **“Best Interests” Test.** The Bankruptcy Court must find that the Plan is in the “best interests” of creditors. To satisfy this requirement, the Bankruptcy Court must determine that each holder of a claim against the Debtors: (i) has accepted the Plan; or (ii) will receive or retain under the Plan money or other property which, as of the Effective Date, has a value not less than the amount such holder would receive if the Debtors’ property were

1 liquidated under Chapter 7 of the Bankruptcy Code. Generally, to determine what Holders of
2 Allowed Claims and Equity Securities would receive if Debtors were liquidated, the Bankruptcy
3 Court must determine what funds would be generated from the liquidation of Debtors' Assets
4 and properties in the context of a Chapter 7 liquidation case, which for unsecured Creditors
5 would consist of the proceeds resulting from the disposition of the Assets of Debtors, including
6 the unencumbered Cash held by Debtors at the time of the commencement of the liquidation
7 case. Such amounts would be reduced by the costs and expenses of the liquidation and by such
8 additional Administrative Claims and Priority Claims as may result from the termination of
9 Debtors' businesses and the use of Chapter 7 for the purpose of liquidation.

10 In a Chapter 7 case, the Chapter 7 trustee would be entitled to seek a sliding scale
11 commission based upon the funds distributed by such trustee to Creditors, even though Debtors
12 have already incurred some (if not all) of the expenses associated with generating those funds.
13 Accordingly, there is a reasonable likelihood that Creditors would "pay again" for the funds
14 accumulated by Debtors because the Chapter 7 trustee would be entitled to receive a commission
15 in some amount for all funds distributed from the Estate.

16 The Debtor's liquidation analysis incorporated herein (the "**Liquidation Analysis**").
17 provides a statement of the liquidation value of the Debtors' assets assuming a Chapter 7
18 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the assets of
19 the Debtors' estate. Underlying the Liquidation Analysis are a number of estimates and
20 assumptions that, although considered reasonable by the Debtors, are inherently subject to
21 significant economic and competitive uncertainties and contingencies beyond the control of the
22 Debtors. The Liquidation Analysis is also based upon assumptions with regard to liquidation
23 decisions that are subject to change. It also does not take into account all the costs and expenses
24 of administering such property in a Chapter 7 proceeding. Accordingly, the values reflected may
25 not be realized if the Debtors were, in fact, to undergo such liquidation.

<u>Liquidation Analysis</u> ⁴		
Current Assets		% Recovery
Real Property ⁵		0
Personal Property ⁶		0
Payment of Claims	<u>Est. Claim</u>	
Secured Claims		
Class 1 - ASLD Lease Claim ⁷	\$4,149,396.78	unknown
Classes 2, 3 – CPF Secured Claims ⁸	<u>\$61,506,685.00</u>	100%
	\$61,506,685.00	
<i>Net Liquidation Value After Distribution of Value of to Secured Claims</i>		\$0.00
Administrative Claims		
Theoretical Chapter 7 Trustee Fees ⁹	\$10,000.00	
Theoretical Chapter 7 Professional Fees and Expenses ¹⁰	\$10,000.00	
Chapter 11 Professional Fees and Expenses ¹¹	<u>\$100,000.00</u>	

⁴ For purposes of this Chapter 7 Liquidation Analysis, it is assumed hypothetically that the Chapter 11 Case is converted to a proceeding under Chapter 7 of the Bankruptcy Code (the "Chapter 7 Case").

⁵ The liquidation analysis assumes that a Chapter 7 Trustee would sell the property at auction. The analysis also assumes that CPF would receive the property after asserting a credit bid in the full amount of its alleged claim.

⁶ The personal property is comprised of certain leasehold improvements on the real property. Because these improvements are allegedly part of the CPF collateral, the personal property would be of no value to the remainder of the estate in the event of foreclosure and are therefore not included in the assets that could be distributed in a liquidation.

⁷ In the event of a liquidation, the payment of the ASLD Lease Claim would ultimately fall on the new lessor of the Property. Accordingly, payment of the ASLD Lease Claim in a liquidation scenario is unknown by the Debtor.

⁸ This is the amount the Debtors believe CPF would assert in a credit bid for the property in the event of a liquidation.

⁹ The Chapter 7 professional fees and expenses are an estimation of the fees and costs expected to be incurred by professionals retained by the theoretical Chapter 7 trustee who would be appointed if the Plan is not confirmed at the Confirmation Hearing and the Chapter 11 Case is converted to the Chapter 7 Case.

¹⁰ See *id.*

¹¹ The Chapter 11 professional fees and expenses are an estimation of the unpaid fees and costs expected to be incurred from the Petition Date through the Conversion Date by Debtors' duly-retained professionals, which fees and expenses exceed the retainers held by such professionals and are anticipated to be unpaid as of the Conversion Date.

		\$120,000.00	0%
	<i>Net Liquidation Value After Distribution to Administrative Claims</i>		\$0.00
	Priority Claims		
	Class 4 - Allowed Other Priority Claims ¹²	\$86,735.62	\$0.00 0%
		\$86,735.62	
	Unsecured Claims		
	Class 5 - Allowed General Unsecured Claims ¹³	\$1,400,000.00	\$0.00 0%
	Class 6- GDG Litigation Claim ¹⁴	\$5,670,000.00	
		\$7,070,000.00	
	Equity Securities		
	Class 7 - Equity Securities		0%

As set forth in the Liquidation Analysis and accompanying notes, Debtors have determined that Confirmation of the Plan will provide Holders of Claims and Equity Securities with no less of a recovery than he/she/it would receive if Debtors were liquidated under Chapter 7. Debtors' Plan provides most Creditors with full payment of their Allowed Claims over time. Furthermore, Holders of Unsecured Claims and Equity Securities would certainly receive less if Debtors were liquidated under Chapter 7.

Thus, as evidenced by the Liquidation Analysis, the value provided under the Plan to the Holders of Claims and Equity Securities is equal to or better than they would receive under a Chapter 7 liquidation.

d) **"Cramdown" Provisions.** Pursuant to Section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan even though a class of claims has not voted to accept the Plan, so long as one impaired class of claims has accepted the Plan (excluding the votes of insiders) and the Plan is "fair and equitable" and "does not discriminate

¹² The amounts of the Other Priority Claims have been taken from the Debtors' Schedules.

¹³ The amount of the Allowed General Unsecured Claims is an estimate based upon the Debtors' Schedules and the proofs of claim that have been filed to date and the Debtors' assessment of the Disputed General Unsecured Claims.

¹⁴ The amount of the GDG Litigation Claim has been taken from Proof of Claim No. 16 filed on October 20, 2016. The GDG Litigation Claim is Disputed.

1 unfairly” against the non-accepting classes.

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

7 **F. Voting on the Plan**

8 **1. Who May Vote.** Pursuant to Section 1126 of the Bankruptcy Code, only the
9 holders of claims in classes that are impaired by the Plan may vote on the Plan. Classes of claims
10 not impaired by the Plan are deemed to accept the Plan and holders of such claims or interests
11 within such classes do not have the right to vote on the Plan. The holders of claims in any class
12 that will not receive any payment or distribution or retain any property under the Plan are
13 impaired, are deemed to reject the Plan, and do not have a right to vote. Administrative Claims
14 are not classified for purposes of voting or receiving distributions under the Plan. Such claims
15 are unimpaired and may not vote. All classes of Creditors are impaired under the Plan. Thus,
16 holders of such claims are entitled to vote on the Plan.

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

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

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

26 The amount of a claim that will be used to determine votes for or against the Plan will be
27 either (a) the claim amount listed in the Debtor’s schedules on file with the Bankruptcy Court, (or as
28 such schedules are amended prior to approval of this Disclosure Statement in its present form or as it

1 may be amended), unless such claim is listed in the schedules or on any amendment thereto, as
2 contingent, unliquidated or disputed or (b) the liquidated amount specified in a proof of claim timely
3 filed with the Bankruptcy Court that is not the subject of an objection. If the holder of a claim
4 submits a ballot, but such holder has not timely filed a proof of claim and such holders' claim is not
5 listed on the Debtor's schedules or is listed on the Debtor's schedules or any amendment thereto, as
6 contingent, unliquidated or disputed or such holder's claim is the subject of an objection or request
7 for estimation, the ballot will *not* be counted in accordance with Bankruptcy Rule 3018, unless the
8 Bankruptcy Court temporarily allows the claim for the purpose of accepting or rejecting the Plan in
9 accordance with Bankruptcy Rule 3018.

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

13 The Debtors reserve the right to designate the correct Class, if any creditor submits a
14 Ballot that fails to either identify a Class number or votes a Ballot in an incorrect Class. The
15 Debtors also reserve the right to designate the treatment options afforded any creditor who
16 submits a Ballot and fails to designate any treatment option afforded that Class but only if
17 reasonable attempts to contact the creditor to discern its intent have failed.

18 **G. Has the Securities and Exchange Commission reviewed and approved this**
19 **Disclosure Statement?**

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

23 This Disclosure Statement has not been approved or disapproved by the United States
24 Securities and Exchange Commission (the "SEC"), nor has the SEC passed upon the accuracy or
25 adequacy of the statements contained herein.

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

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

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

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

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

14 This Disclosure Statement summarizes certain provisions of the Plan and certain other
15 documents governing the use of the Debtors' Property (collectively, the "**Incorporated**
16 **Documents**"). The summaries contained herein are qualified in their entirety by reference to the
17 Incorporated Documents. In the event of any inconsistency or discrepancy between a description
18 in this Disclosure Statement and the actual content of any of the Incorporated Documents, the
19 Incorporated Documents shall govern for all purposes. Nothing contained herein shall be deemed
20 to alter or amend the Plan or the documents governing the Debtors' Property.

21 **IV.**

22 **SUMMARY OF THE PLAN TREATMENT OF CREDITORS¹⁵**

23 Section 1123 of the Bankruptcy Code provides that a plan of reorganization shall classify
24 the claims of a debtor's creditors and equity interest holders. In compliance therewith, the Plan
25 divides Claims into various Classes and sets forth the treatment for each Class. The Plan
26

27 ¹⁵ 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 Proponents are also required under Section 1122 of the Bankruptcy Code to place a Claim into a
2 particular Class only if such Claim is substantially similar to other Claims in such Class. The
3 Plan Proponents believe that the Plan has classified all Claims in compliance with the provisions
4 of Section 1122 of the Bankruptcy Code, but it is possible that a Holder of a Claim will
5 challenge the Plan's classifications and that the Bankruptcy Court will find that different
6 classifications are required in order for the Plan to be confirmed. In such event, the Debtor
7 reserves the right, to the extent permitted by the Bankruptcy Code, to make reasonable
8 modifications of the classifications under the Plan to permit confirmation.

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

11 **A. Non-Classified Claims.**

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

16 On or before the Administrative Claim Bar Date, each holder of an Administrative Claim
17 shall file with the Bankruptcy Court a request for payment of an Administrative Claim. Any
18 Administrative Claim that is not filed on or before the Administrative Claim Bar Date will be
19 forever barred from assertion against the Debtors, the Estate, and the Assets. Unless otherwise
20 agreed to by the Holders of the Administrative Claims and Plan Proponents, the Plan Proponents
21 shall pay each holder of an Allowed Administrative Claim the full unpaid amount of such Claim
22 in Cash on the Closing Date or as soon as practicable thereafter.

23 The amount of Administrative Claims for fees and costs incurred by Debtors' counsel,
24 but unpaid as of the Confirmation Hearing, is estimated to be less than \$650,000.00.

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

B. Classified Claims.

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

<u>Class</u>	<u>Description</u>	<u>Treatment</u>
Class 1	ASLD Lease Claim	Impaired. Solicitation required.
Class 2	CPF (Burford) Secured Claim	Impaired. Solicitation required.
Class 3	CPF (STB) Secured Claim	Impaired. Solicitation required.
Class 4	Priority Unsecured Claims	Unimpaired. No solicitation required.
Class 5A	Undisputed General Unsecured Claims	Impaired. Solicitation required.
Class 5B	Disputed General Unsecured Claims	Impaired. Solicitation required.
Class 5C	Related Party Unsecured Claims	Impaired. Solicitation required.
Class 6	GDG Litigation Claim	Impaired. Solicitation required.
Class 7	Equity Securities	Unimpaired. No solicitation required

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

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

1 **1. Class 1 – ASLD Lease Claim.**

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

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

8 **2. Class 2 – CPF (Burford) Secured Claim.**

9 Class 2 consists of the CPF (Burford) Secured Claim. The CPF (Burford) Secured Claim
10 is a Disputed Claim which is the subject of Adversary Proceeding No. 2:16-ap-00334-MCW. To
11 the extent the CPF (Burford) Secured Claim is determined to be an Allowed Secured Claim, CPF
12 shall elect one of two alternative treatments.

13 a) **Option 1 Treatment (Settlement Option)**

14 In the event each of Class 2 and Class 3 elect Option 1, the CPF (Burford) Secured Claim
15 shall be treated as follows:¹⁶

16
17 Prior to, or in conjunction with the Confirmation Hearing, the Bankruptcy Court will
18 make a Valuation Determination of the Debtor's Property.

19 In exchange for a release of all claims and causes of actions between the Debtors and
20 CPF, on the Effective Date, or as soon as practicable thereafter, the Debtors will transfer the CPF
21 Effective Date Acreage and the Group 2 Parcels, as both may be modified by the Debtors or the
22 Bankruptcy Court pursuant to the Valuation Determination, to CPF in full satisfaction of the CPF
23 Secured Claims, subject to approval of the assignment by ASLD.

24 CPF will retain its existing liens against the CPF Acreage pending the transfer of the CPF
25 Acreage to CPF. CPF shall also retain any existing liens, to the extent that they exist, with
26

27
28 ¹⁶ For the avoidance of doubt, an election of Option 1 by Class 2 shall be deemed an
election of Option 1 by Class 3 and vice versa.

1 respect to the Master Developer Rights pending the transfer of the CPF Acreage to CPF and
2 resolution of the Lien Avoidance Adversary.

3 b) **Option 2 Treatment (Litigation Option)**

4 Prior to, or in conjunction with the Confirmation Hearing, the Bankruptcy Court will
5 make a Valuation Determination of the Debtor's Property.

6 On the Effective Date, or as soon as practicable thereafter, the Debtors shall transfer the
7 CPF Effective Date Acreage to CPF to be applied, at CPF's election, in partial satisfaction of (i)
8 the CPF (Burford) Secured Claim, or (ii) the CPF (Burford) Secured Claim and the CPF (STB)
9 Secured Claim on a Pro Rata basis. The Debtors will transfer the CPF (Burford) Escrow
10 Acreage as necessary to provide equivalent value pursuant to the Valuation Determination, into
11 the CPF Escrow in full satisfaction of the remaining CPF (Burford) Secured Claim (if any),
12 subject to the outcome of the Adversary Proceeding and the CPF Resolution Date. The CPF
13 (Burford) Escrow Acreage will be placed into the CPF Escrow on the Confirmation Date.
14 Subject to approval of the assignment by ASLD, on the CPF Resolution Date, the CPF Acreage
15 will be delivered to CPF from escrow in full satisfaction of the CPF Secured (Burford) Claim.

16 CPF will retain its existing liens against the CPF Acreage pending the transfer of the CPF
17 Acreage to CPF. CPF shall also retain any existing liens, to the extent that they exist, with
18 respect to the Master Developer Rights pending the transfer of the CPF Acreage to CPF and
19 resolution of the Lien Avoidance Adversary.

20 The Creditor in Class 2 is Impaired under the Plan and thus, the Holder of the Class 2
21 Claim is entitled to vote on the Plan. CPF will choose between Option 1 and Option 2 in
22 conjunction with casting its vote. The Debtors reserve the right to seek to designate the Class 2
23 Claim under Bankruptcy Code § 1127(e).

24 **3. Class 3 – CPF (STB) Secured Claim.**

25 Class 3 consists of the CPF (STB) Secured Claim. The CPF (STB) Secured Claim is a
26 Disputed Claim which is the subject of Adversary Proceeding No. 2:16-ap-00334-MCW. To the
27 extent the CPF (STB) Secured Claim is determined to be an Allowed Secured Claim, CPF shall
28 elect one of two alternative treatments.

1 a) **Option 1 Treatment (Settlement Option)**

2 In the event each of Class 2 and Class 3 elect Option 1, the CPF (STB) Secured Claim
3 shall be treated as follows:

4
5 Prior to, or in conjunction with the Confirmation Hearing, the Bankruptcy Court will
6 make a Valuation Determination of the Debtor's Property.

7 In exchange for a release of all claims and causes of actions between the Debtors and
8 CPF, on the Effective Date, or as soon as practicable thereafter, the Debtors will transfer the CPF
9 Effective Date Acreage and the Group 2 Parcels, as both may be modified by the Debtors or the
10 Bankruptcy Court pursuant to the Valuation Determination, to CPF in full satisfaction of the CPF
11 Secured Claims, subject to approval of the assignment by ASLD.

12 CPF will retain its existing liens against the CPF Acreage pending the transfer of the CPF
13 Acreage to CPF. CPF shall also retain any existing liens, to the extent that they exist, with
14 respect to the Master Developer Rights pending the transfer of the CPF Acreage to CPF and
15 resolution of the Lien Avoidance Adversary.

16 b) **Option 2 Treatment (Litigation Option)**

17 Prior to, or in conjunction with the Confirmation Hearing, the Bankruptcy Court will
18 make a Valuation Determination of the Debtor's Property.

19 On the Effective Date, or as soon as practicable thereafter, the Debtors shall transfer the
20 CPF Effective Date Acreage to CPF to be applied, at CPF's election, in partial satisfaction of (i)
21 the CPF (Burford) Secured Claim, or (ii) the CPF (Burford) Secured Claim and the CPF (STB)
22 Secured Claim on a Pro Rata basis. The Debtors will transfer the CPF (STB) Escrow Acreage as
23 necessary to provide equivalent value pursuant to the Valuation Determination, into the CPF
24 Escrow in full satisfaction of the remaining CPF (STB) Secured Claim (if any), subject to the
25 outcome of the Adversary Proceeding and the CPF Resolution Date. The CPF (STB) Escrow
26 Acreage will be placed into the CPF Escrow on the Confirmation Date. Subject to approval of
27 the assignment by ASLD, on the CPF Resolution Date, the CPF Acreage will be delivered to
28 CPF from escrow in full satisfaction of the CPF Secured (STB) Claim.

1 CPF will retain its existing liens against the CPF Acreage pending the transfer of the CPF
2 Acreage to CPF. CPF shall also retain any existing liens, to the extent that they exist, with
3 respect to the Master Developer Rights pending the transfer of the CPF Acreage to CPF and
4 resolution of the Lien Avoidance Adversary.

5 The Creditor in Class 3 is Impaired under the Plan and thus, the Holder of the Class 2
6 Claim is entitled to vote on the Plan. CF will choose between Option 1 and Option 2 in
7 conjunction with casting its vote. The Debtors reserve the right to seek to designate the Class 3
8 Claim under Bankruptcy Code § 1127(e).

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

10 Class 4 consists of Priority Unsecured Claims. The Holders of the Priority Unsecured
11 Claims shall receive, on the Effective Date or as soon thereafter as practicable, the full amount of
12 the Allowed Priority Unsecured Claims.

13 Creditors in Class 4 are Unimpaired under the Plan, deemed to have accepted the Plan,
14 and therefore, not entitled to vote on the Plan.

15 **5. Class 5 - General Unsecured Claims.**

16 A General Unsecured Claim is a Claim, including a Claim arising under Section 502(g)
17 of the Bankruptcy Code that is not secured by a charge against or interest in property in which
18 the Estate has an interest and is not an unclassified Claim, Administrative Claim, or Priority
19 Unsecured Claim. The Class 5 General Unsecured Claims will be divided into three (3)
20 subclasses, with each subclass being entitled to vote.

21 a) **Class 5A – Undisputed General Unsecured Claims**

22 The Holders of Allowed Undisputed General Unsecured Claims shall receive one-
23 hundred percent (100%) of their Allowed Claims paid as follows: Holders of Undisputed
24 General Unsecured Claims will receive a \$400,000 cash payment distributed to such Holders on
25 a Pro Rata basis on the Effective Date. Beginning thirty (30) days after the Effective Date, the
26 remaining balance of the Undisputed General Unsecured Claims will be paid through eight
27 quarterly payments at five percent (5%) simple interest per annum, with additional payments
28 being made from the Creditors Trust Proceeds (if any, and as defined in Section 5.4 below), if

any, as and when received. Any payments (if any) made from the Creditors Trust will first be applied to accrued interest, and thereafter to reduce the amounts otherwise due to Class 5A Claims. The source of payments to the Holders of Allowed General Unsecured Claims will be (1) the Plan Contributions, (2) the Property Development Funds if collected by the Effective Date, and (3) the Creditors Trust Proceeds, if any. Payments due to Holders of Allowed General Unsecured Claims will be secured by a first lien on a 0.9 acre parcel of the Property (subject only to the rights of ASLD under the ASLD Agreement) selected by the Debtors and approved by the Committee at least one week prior to the deadline for objection to or voting on the Plan, whichever is earlier.

b) **Class 5B – Disputed General Unsecured Claims**

No payments will be made on account of the Disputed General Unsecured Claims until such time that the Disputed General Unsecured Claims become Allowed Claims. If, and when, the Disputed General Unsecured Claims become Allowed Claims pursuant to a Final Order, the Disputed General Unsecured Claims will be paid through thirty-six (36) fully amortized monthly payments at four percent (4%) simple interest per annum beginning on the 15th day of the first month after entry of the Final Order allowing such Claims. The source of payments to the Holder of the Disputed General Unsecured Claims will be through the sale or refinancing of a portion of the Retained Acreage.

c) **Class 5C – Related Party Unsecured Claims**

The Class 5C Related Party Unsecured Claims will receive payment of their Allowed Class 5C Claims only after all Class 5A Claims and 5B Claims (to the extent Allowed) are paid in full. The source of payment of Class 5C Claims will be the Plan Contribution and/or post-confirmation sale or disposition of the Reorganized Debtors Acreage.

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

6. Class 6 – GDG Litigation Claim.

Debtors will continue to litigate the GDG Litigation Claim. No payments will be made on account of the GDG Litigation Claim until such time that the GDG Litigation Claim becomes an

1 Allowed Claim. If, and when, the GDG Litigation Claim becomes an Allowed Claim pursuant to
2 a Final Order, the GDG Litigation Claim will be paid through thirty-six (36) fully amortized
3 monthly payments at four percent (4%) simple interest per annum beginning on the 15th day of
4 the first month after entry of the Final Order allowing such Claim. The source of payments to the
5 Holder of the GDG Litigation Claim will be through the sale or refinancing of a portion of the
6 Retained Acreage.

7 Class 6 is Impaired under the Plan and, therefore, the Holder of the Class 6 Claim is
8 entitled to vote on the Plan.

9 **7. Class 7 - Equity Securities.**

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

12 Equity Securities in Class 7 are Unimpaired under the Plan. The Holders of Equity are
13 not entitled to vote on the Plan.

14 **V.**

15 **ADDITIONAL PLAN PROVISIONS**

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

19 **A. Property Rights**

20 **1. ASLD Approval Rights.**

21 The transfers of the Debtors' real property contemplated in the Plan require ASLD
22 approval pursuant to the ASLD Lease. Prior to the Chapter 11 Case, CPF requested that the
23 ASLD approve CPF as an "Approved Lender" and "Permitted Mortgagee" pursuant to Article
24 20.5 of the Master Lease. CPF's request was granted on or about April 18, 2016. Debtors believe
25 that approval of CPF as an "Approved Lender" and "Permitted Mortgagee" would also constitute
26 approval of CPF as a lessee under the Core Lease and no further ASLD approval would be
27 necessary to effectuate the transfer of the property contemplated in this Plan.
28

1 **2. Applicable Property Restrictions.**

2 Under the Plan Treatment detailed in Section I above, the real property transferred to
3 CPF or any other Holder of an Allowed Claim (the “Real Property Recipients”) shall be subject
4 to certain restrictions as required by applicable documents governing the Property. Real Property
5 Recipients shall be subject to the same restrictions with respect to the use and development of
6 any real property that it may receive under the Plan as any other owners or lessors of property
7 within the DRSP.

- 8 a) Real Property Recipients may amend the CPSP with respect to any parcel
9 they lease from ASLD, subject to the Master Developer’s
10 approval. Pursuant to Section E(2)(a)(1) of the DRSP the Master
11 Developer shall establish the overall development intensity for the core
12 and shall indicate the mix of uses in the CPSP by square footage between
13 retail uses, office uses and other uses.
- 14 b) Real Property Recipients may develop any parcel they lease from ASLD,
15 subject to compliance with the development regulations as described in
16 the CPSP, the DRSP, the City of Phoenix Zoning Ordinance and the
17 Master CC&Rs.
- 18 c) As it pertains to any parcel leased by CPF, the Master Developer does not
19 have the right to unilaterally make material alterations to CPF’s zoning
20 entitlements under the CPSP, the DRSP, the zoning, the Commercial
21 Core Declaration or the Master CC&Rs. As it pertains to any parcel
22 leased by CPF, any revision to the CPSP, the DRSP, the zoning, the
23 Commercial Core Declaration or the Core CC&Rs would require CPF’s
24 consent in addition to all of the other regulatory approvals.

25 **B. Means for Implementation of the Plan.**

26 **1. Substantive Consolidation.**

27 The Plan shall constitute a motion for substantive consolidation of the liabilities and
28 assets of the Plan Proponents. Confirmation of the Plan will constitute the Bankruptcy Court’s

1 grant of that motion for substantive consolidation. Substantive consolidation of the liabilities and
2 assets of the Plan Proponents on the Effective Date will: (a) consolidate the property of each
3 estate for purposes of Plan voting and Distributions to Holders of Allowed Claims under the
4 Plan; and (b) convert all Claims against each Debtor into Claims against the consolidated Estate
5 such that any proof of claim filed against one or more Debtors is deemed to be a single claim
6 filed against the consolidated Estate and all duplicative proofs of claim for the same Claim filed
7 against more than one Debtor will be deemed expunged. The May Debtors are co-Master
8 Developers and co-owners of the Property. Accordingly, Holders of Claims against the Debtors
9 are not prejudiced by the substantive consolidations of the liabilities and assets of the Plan
10 Proponents.

11 **2. Valuation Determination.**

12 As part of the Plan, the Court will conduct an evidentiary hearing on or before the
13 Confirmation Date which will result in a fair market valuation of the Property based on its best
14 use under the DRSP. The Court has set the valuation hearing pursuant to the *Motion to Set*
15 *Valuation Hearing with Respect to Debtors' Real Property* [Dkt. No. 191] to begin on February
16 8, 2017 at 9:30 a.m. (MST) and continuing on February 9, 2017 and February 10, 2017 as
17 necessary.

18 **3. Funding on the Effective Date.**

19 All payments under the Plan which are due on the Effective Date will be funded by : (1)
20 the Plan Contribution to be contributed by the Plan Sponsor, (2) the Property Development
21 Funds (funding due to the Debtors in accordance Property Development Agreement dated July 3,
22 2012), and (3) the Creditors Trust Proceeds if and when they are realized and collected.

23 **4. Sale of Property.**

24 The Reorganized Debtors may continue to sell portions of the Property post-
25 confirmation, including property forming part of the CPF Escrow Acreage. CPF shall retain any
26 existing liens in the sale proceeds and any such proceeds generated from the sale of all or a
27 portion of the CPF Escrow Acreage shall remain in escrow pending resolution of the Adversary
28 Proceeding

1 **5. Escrowed Land.**

2 In the event that CPF elects the litigation options under Sections 4.2.2(a) and 4.3.2(a) of
3 the Plan, the Reorganized Debtors will be responsible for payment of the insurance and
4 maintenance costs associated with the escrowed land, including all costs associated with the
5 escrow arrangement. These costs will be covered by the Plan Contribution.

6 **6. Installation of New Infrastructure.**

7 Engineering, permitting, and installation of new infrastructure under the CPSP will likely
8 last up to two (2) years. The Reorganized Debtors will be responsible for any engineering work
9 associated with the new infrastructure with outside firms such as Hilgart-Wilson. The Plan
10 Contribution will be sufficient to cover the cost of the engineering work to be completed by the
11 Reorganized Debtors. If CPF or any Real Property Recipients desire to have such outside firms
12 break out their individual work separately, they may do so (proving that such work does not
13 conflict with all contiguous work) at their cost. The new infrastructure will be designed for the
14 uses designated on each parcel of the Property consistent with the current approved CPSP.
15 Engineering for the new infrastructure will be completed within approximately nine (9) months
16 from the Confirmation Date. Real Property Recipients can permit work on the property anytime
17 thereafter. Real Property Recipients may complete their own infrastructure at such time as they
18 see fit or pass such obligations through to subsequent purchasers of the property. Similarly, Real
19 Property Recipients are responsible for any necessary removal of existing infrastructure of the
20 property they receive. The value of the property received by the Real Property Recipients,
21 however, shall be net of the infrastructure costs and any such removal. Real Property Recipients
22 will be responsible for any bonding requirements associated with the property they receive,
23 including bonding requirements for any public improvements related to the property.

24 **7. Plan Contribution Waterfall Payments.**

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

1 **8. Creditors Trust.**

2 A payment of \$500,000, made from the Plan Contribution, will be placed into a Creditors
3 Trust to fund the continued prosecution of the Adversary Proceeding and to prosecute the
4 Burford Lawsuit on arrangements to be negotiated with Reorganized Debtors' counsel, the
5 Reorganized Debtors, and the Committee. The Reorganized Debtors will prosecute the
6 Adversary Proceeding until the CPF Resolution Date, as well as the Burford Claim. In the event
7 that affirmative money damages are awarded to the plaintiffs in the Adversary Proceeding and/or
8 the Burford Claim, such proceeds will be used first, to pay any unpaid costs of litigating the
9 Adversary Proceeding or Burford Claim and, second, to be distributed to Holders of Allowed
10 General Unsecured Claims that have not otherwise been paid. Any remaining proceeds will be
11 distributed to the Reorganized Debtors' Equity Interests.

12 **9. Revesting of Estate Assets.**

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

17 **10. Post-Confirmation Management of the Reorganized Debtors.**

18 The Debtors are currently managed by Bruce Gray through the affiliated entity
19 Gray/Western Development Company. Bruce Gray has been a successful real estate developer in
20 a career that has spanned decades. He developed his first project, Oswago Bay, in Lake Oswago
21 Oregon in 1993. After that, he became a key figure in Arizona real estate development. Since
22 1995, Mr. Gray and his affiliated entities have completed nearly thirty (30) projects in Arizona
23 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

1	Montevida	276	2000
	Indigo Springs	240	2000
2	The Pavilions on Central	254	2001
	Monterra	258	2001
3	Clarendon Park	138	2002
	Indigo Palms	432	2003
4	Camelback Square	367	2004
	Bacaro on Princess Drive	312	2004
5	MonteViejo	480	2004
	MonteVerde	435	2005
6	Bacara at the Canyons	233	2005
	Montelena at the Canyons	396	2006
7	Arete on Dunlap	205	2006
	Grigio Tempe Town Lake	523	2008
8	Barossa Paradise Ridge	204	2008
	Barossa at the Park	273	2009
9	Barossa at Triana	246	2009
	Indigo at the Park	306	2009
10	Indigo at Triana	485	2010
	Grigio Metro	408	2010
11	Ninety Degrees	337	2010

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

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

22 It is anticipated that Bruce Gray will continue to manage and operate the Debtors'
23 business post-confirmation. Mr. Gray has been a licensed architect and land planner in Arizona
24 for thirty-two (32) years and designed commercial projects from shopping centers, office
25 buildings, nursing homes, and hospitals. Mr. Gray was a principal land planner on multiple
26 large-tract master planned communities in the Northeast Valley, including Troon North and
27 Legend Trail. He was previously appointed by Phoenix City Council to the Design Review
28 Standards Committee that authored many of the current zoning requirements and standards for

1 the City of Phoenix. Mr. Gray has been named by *AZ Business Leaders* magazine one of the
2 Arizona's most influential people in real estate in multiple years. His company has been named
3 by *Ranking Arizona* magazine the #1 multi-family developer in Arizona more than any other
4 company (13 of the past 16 years).

5 **11. United States Trustee Fees.**

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

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

9 *No action or claim may be asserted against the Plan Proponents for any matter*
10 *relating to or arising out of this Chapter 11 Case, the confirmation of the Plan, the*
11 *consummation of the Plan, or the administration of the Plan or the property to be*
12 *administered or distributed under the Plan, in any court without first obtaining approval of the*
13 *Bankruptcy Court, and, in such event, any such action must be prosecuted before the*
14 *Bankruptcy Court, which shall retain jurisdiction to adjudicate any such actions. The Plan*
15 *Proponents are acting solely as fiduciaries on behalf of the Estate in implementing this Plan.*
16 *Neither the Plan Proponents, nor any of their employees, shall have any personal liability for*
17 *serving in the fiduciary capacity of Plan Proponents, except for willful misconduct or gross*
18 *negligence.*

19 **13. Terms of Injunctions or Stays.**

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

24 **C. Provisions Governing Distributions.**

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

26 Distributions to the holders of Allowed Claims shall be made by the Reorganized Debtors
27 at the address of each holder as set forth in the Schedules, unless superseded by the address set
28 forth on proofs of Claim filed by such holder. If any Distribution is returned as undeliverable, the

1 Reorganized Debtors may, without requirement and in their sole discretion, make such efforts to
2 determine the current address of the holder of the Claim with respect to which the Distribution
3 was made as the Reorganized Debtors deem appropriate, but no Distribution to any holder shall
4 be made unless and until the Reorganized Debtors have determined the then-current address of
5 the holder.

6 **2. Unclaimed Property.**

7 Distributions that are not claimed by the expiration of ninety (90) days from the Closing
8 Date shall be deemed to be unclaimed property and shall vest in the Reorganized Debtors, and
9 the Claims with respect to which those Distributions are made shall be automatically canceled.
10 After the expiration of that 90-day period, the Claim of any Entity to those Distributions shall be
11 discharged and forever barred. Nothing contained in the Plan shall require the Reorganized
12 Debtors to attempt to locate any holder of an Allowed Claim. All funds or other property that
13 vests in in the Reorganized Debtors shall then be distributed to the Reorganized Debtors.

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

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

19 **4. Compliance with Tax Requirements.**

20 In connection with making Distributions under this Plan, to the extent applicable, the
21 Reorganized Debtors shall comply with all tax withholding and reporting requirements imposed
22 on it by any governmental unit, and all Distributions pursuant to this Plan shall be subject to such
23 withholding and reporting requirements. The Reorganized Debtors may withhold the entire
24 Distribution due to any holder of an Allowed Claim until such time as such holder provides the
25 necessary information to comply with any withholding requirements of any governmental unit.
26 Any property so withheld will then be paid by the Reorganized Debtors to the appropriate
27 authority. If the holder of an Allowed Claim fails to provide the information necessary to comply
28 with any withholding requirements of any governmental unit within 90 days from the date of

1 first notification to the holder of the need for such information or for the Cash necessary to
2 comply with any applicable withholding requirements unclaimed property under this Plan, and
3 shall be discharged and forever barred.

4 **VI.**

5 **RESPONSES TO CPF OBJECTIONS AND QUESTIONS**

6 **A. Parcel Configuration.**

- 7 • CPF: MF6a and MF6b are parts of a parcel that CBRE Group, Inc. (“CBRE”)
8 appraised and which was called MF6 in the appraisal. Part of the MF6 parcel that
9 CBRE appraised is not included in the property proposed to be given to CPF.
- 10 ○ Debtors’ Response: CPF is relying on the October 18, 2016 CBRE
11 appraisal and not the October 27, 2016 revision. Corrected parcel
12 designations and values are provided in the Parcel Map included in the
13 Second Amended Plan.
- 14 • CPF: H1, MF4 and MF5 are of different sizes and configurations than what was
15 proposed in the CBRE appraisal.
- 16 ○ Debtors’ Response: CPF is relying on the October 18, 2016 CBRE
17 appraisal and not the October 27, 2016 revision. Corrected parcel
18 designations and values are provided in the Parcel Map included in the
19 Second Amended Plan. H1 and RETAIL were modified to accommodate
20 all surface parking, which altered parcels MF4 and MF5, respectively.
- 21 • CPF: MF4 is appraised and valued by CBRE as Multifamily but the 2016
22 Conceptual Site plan does not allow Multifamily in this area, identified in the
23 2016 Conceptual Site Plan at Parcel F5.
- 24 ○ Debtors’ Response: The City of Phoenix is aware of this inconsistency and
25 has assured the Debtors that uses within F4 and F5 of the CPSP are
26 fungible.
- 27
28

1 **B. 2016 CPSP.**

- 2 • CPF: The 2016 Conceptual Site Plan that the CBRE appraisal is based upon
3 realigns the roads, water, sewer, storm water, 404 culverts and other utilities
4 (“**New Infrastructure**”) from what was originally approved, designed and
5 installed per the 2008 Conceptual Site Plan.
- 6 ○ Debtors’ Response: Only a small fraction of the infrastructure
7 contemplated by the 2008 CPSP is actually installed. For example, most
8 water lines and pavement is not installed on the Property. The new
9 infrastructure plan realigns certain underground facilities to reflect the
10 new road alignment. The cost of infrastructure changes, removal and
11 installation are included in the cost estimate appearing in the CBRE
12 appraisals.
- 13 • CPF: There is no mention of the time involved, the approvals needed, who the
14 design professionals will be, what their qualifications are, how much it will cost.
- 15 ○ Debtors’ Response: Completion of the infrastructure will take
16 approximately two years, including city approvals. The new CPSP
17 includes approval of all new interior private roadways and their cross-
18 sections. The cost of infrastructure changes, removal and installation are
19 included in the cost estimate appearing in the CBRE appraisals.
- 20 • CPF: There is no way for CPF to actually evaluate if the new infrastructure can be
21 adequately designed to serve the allocated entitlements until they are designed
22 and approved.
- 23 ○ Debtors’ Response: The Debtors have had everything related to the
24 Property professionally engineered at a preliminary level. All of the
25 perimeter utilities serving the site are sized for the magnitude of
26 development now planned, with excess capacity. Final engineering design
27 on-site has not yet commenced. The Debtors have approached the
28 Property as any sophisticated developer would do at this early stage.

- 1 • CPF: This would also require studies for adequacy for storm water, sewer and
2 water. The CBRE appraisal assumes the New Infrastructure exists.
 - 3 ○ Debtors' Response: The CBRE appraisal makes no such assumption. The
4 Debtors' engineer has completed studies for adequacy for storm water,
5 sewer and water available to the Property; all are sufficient. The future
6 costs related to the Property and the New Infrastructure are carefully
7 broken out in the CBRE appraisal.
- 8 • CPF: Access and Right of Way. There is no existing access or right of way
9 easements to provide access to the majority of the parcels.
 - 10 ○ Debtors' Response: The only public right-of-way is the perimeter public
11 streets and freeway. Everything on-site is private and therefore,
12 technically speaking, more akin to shared internal parking lots with cross-
13 access easements and shared maintenance. The net and gross parcel sizes
14 are carefully broken out in the CBRE appraisals. New easements will be
15 legally defined and recorded at the appropriate time.
- 16 • CPF: Storm Water. It is unknown to what extent these parcels will be able to rely
17 upon the storm water drainage basin that currently exists and serves much of the
18 property. Currently, there is a storm water system that is in place. The system was
19 designed, approved and installed to accommodate the drainage needs for specific
20 and identified land areas. The pipes that are installed drain the water to a basin on
21 the south side of the property. The drainage basin is not on the property proposed
22 to be transferred to CPF. Currently, a good portion of the property proposed to be
23 transferred to CPF utilizes the existing drainage basin. Without a study by a civil
24 engineer and an approval from the City of Phoenix, it is unknown how the
25 property proposed for CPF will accommodate storm water. If the storm water has
26 to be accommodated on the property proposed for CPF, there will be much less
27 land available for development and therefore much less value.
28

1 ○ Debtors' Response: This issue has been thoroughly vetted by Debtor's
2 engineer. CPF is advised to assume that the existing basin on the Property
3 (at parcels H3 and H4 which may be reconfigured to underground storage
4 tanks in the future) handles retention for High Street and interior private
5 roadways only, and that all future development must provide their own
6 underground retention facilities, as is customary for similar projects in the
7 Phoenix metropolitan area.

8 • CPF: Water and Sewer. The sewer system that currently runs through portions of
9 the property proposed for CPF will have to be redesigned and reconstructed. It is
10 unknown at this time if the new design will be approved sufficiently to service the
11 property proposed for CPF.

12 ○ Debtors' Response: The systems referenced by CPF are all part of the
13 new, planned engineering work. Preliminary design and sizing by
14 Debtor's engineer is done and sufficient for the contemplated uses and
15 development. No water lines are installed. The sanitary sewer system is
16 presently incomplete. Certain lines will require removal and relocation.
17 The cost of infrastructure changes, removal and installation are included in
18 the cost estimate appearing in the CBRE appraisals.

19 • CPF: Existing Infrastructure Conflicts. The existing 404 Culvert System runs
20 directly through Parcels H2, MU6 and MF5 preventing development of
21 significant portions of these parcels.

22 ○ Debtors' Response: Only a fraction of what is present today is a 404
23 system. A large, underground engineered box is in place on the Property
24 that the Debtors assume will remain. The box runs along edge of the
25 parcels referenced and thus has a minimal impact on the Property. The
26 box is structurally designed for buildings to go directly above, as is also
27 the case at Desert Ridge Marketplace. Other round pipes there today will
28 either go away entirely (with additional storm runoff tying into the

underutilized box) or will be relocated where most advantageous for future development. The existing storm water facilities were oversized or poorly designed. For example, the round pipes present today were set several feet too high. It is cheaper to take them out and rework them than to import over hundreds of thousands of cubic yards fill to elevate the entire site. The cost of infrastructure changes, removal and installation are included in the cost estimate appearing in the CBRE appraisals.

- CPF: The existing Sewer System runs directly through Parcels H1, Off3b, preventing development of portions of these parcels.
 - Debtors' Response: CPF is making a flawed assumption. Please see responses above. The cost of infrastructure changes, removal and installation are included in the cost estimate appearing in the CBRE appraisals.
- CPF: The existing storm drain system runs through Parcels MF5, H1, Off3b, Off3c and Off3d
 - Debtors' Response: Please see responses above. The cost of infrastructure changes, removal and installation are included in the cost estimate appearing in the CBRE appraisals.
- CPF: The existing Right of Way and Utility easements run directly through Parcels H2, MU6, MF5, H1, Off3b, Off3d, Off3c
 - Debtors' Response: Please see responses above. The cost of infrastructure changes, removal and installation are included in the cost estimate appearing in the CBRE appraisals.

VII.

DISPUTED CLAIMS

A. Resolution of Disputed Claims.

From and after the Effective Date, the Reorganized Debtors shall have all rights of the Debtors to file, prosecute, compromise, withdraw, or resolve objections to Claims; provided

1 however that nothing in the Section shall prejudice the right of the Reorganized Debtors to object
2 to Claims prior to the Effective Date.

3 **B. Payment of Disputed Claims.**

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

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

11 **C. Objections to Administrative Claims.**

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

19 **VIII.**

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

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

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

26 **B. Rejection Claims.**

27 All Rejection Claims must be filed with the Bankruptcy Court and served on the Debtors
28 and other parties in interest no later than thirty (30) days after the rejection of any executory

1 contract or unexpired lease. Any Rejection Claim for which a proof of Claim is not timely filed
2 within thirty (30) days of the rejection of an executory contract or unexpired lease will be forever
3 barred from assertion against the Debtors, the Estate, and the Assets, and shall be subject to the
4 discharge and permanent injunction set forth below. Unless otherwise ordered by the Bankruptcy
5 Court, all Rejection Claims that are timely filed as provided herein shall be subject to review by
6 the Debtors, who shall have 60 days from the Closing Date to review and object to any such
7 Rejection Claim. To the extent (a) there is no objection following such 60-day period to any
8 timely filed Rejection Claim or (b) there is a Final Order allowing such timely filed Rejection
9 Claim, such Rejection Claim (or portion thereof allowed by Final Order) shall be an Allowed
10 Rejection Claim and paid by the Plan Proponents.

11 IX.

12 LIMITATIONS AND RISK FACTORS

13 A. Risk Factors

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

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

the Property for purposes of Plan implementation.

B. Debtors Have No Duty to Update.

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

C. No Admissions Made.

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

D. Risks and Considerations.

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

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

2. Confirmation of the Plan is Not Assured.

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

X.

**PRESERVATION OF CAUSES OF ACTION, INJUNCTION, RELEASE, AND
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 the

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

4 From and after the Effective Date, all Entities shall be precluded from asserting against
5 the Reorganized Debtors, the Estate, or the Assets, any other Claims or Equity Securities based
6 upon any documents, instruments, or any act or omission, transaction or other activity of any
7 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 Securities in
9 the Plan shall be in exchange for and in complete satisfaction of Claims and Equity Securities of
10 any nature whatsoever against the Reorganized Debtors, the Estate, and the Assets. On the
11 Effective Date, all such Claims against the Reorganized Debtors shall be satisfied and released in
12 full.

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

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

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

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

22 (iv) commencing or continuing in any manner any action or other proceeding
23 of any kind against the Reorganized Debtors in respect of any Claim, Membership
24 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.
28

1 **XI.**

2 **CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

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

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

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

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 _____, 2017, 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 Mesch Clark Rothschild
21 Attn: Michael McGrath, Isaac D. Rothschild
22 259 North Meyer Ave.
23 Tucson, Arizona 85701
24 Phone: (520) 624-8886
25 Fax: (520) 798-1037
26 Email: mmcgrath@mcrazlaw.com, irothschild@mcrazlaw.com

27 Stinson Leonard Street, LLP
28 Attn: Anthony P. Cali, Esq.
1850 N. Central Ave., Suite 2100
Phoenix, Arizona 85004
(602) 212-1600 Telephone
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Email: Anthony.cali@stinson.com

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XIII.

ALTERNATIVES TO THE PLAN

The Debtors believe that the Plan provides Creditors the best and most complete form of recovery available. As a result, the Debtors believe that the Plan serves the best interests of all Creditors and parties-in-interest in the Chapter 11 Case. The Debtors believe not only that the Plan enables the Creditors to realize the greatest sum possible under the circumstances, but also that rejection of the Plan in favor of some theoretical alternative method of reconciling the Claims of the various Classes would require, at the very least, an extensive and time-consuming negotiation process and would not result in a better recovery for any Class.

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

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

XIV.

RECOMMENDATION AND CONCLUSION

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

1 DATED this 29th day of December, 2016.

2 EPICENTER PARTNERS, LLC an Arizona limited
3 liability company,

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

6 GRAY MEYER FANNIN, LLC an Arizona limited
7 liability company,

8 By: /s/ Bruce Gray
9 Bruce Gray, Manager

10
11 **Prepared and Submitted:**

12
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