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15 IN THE UNITED STATES BANKRUPTCY COURT

16 FOR THE DISTRICT OF ARIZONA

17 In re

Chapter 11

18 BILTMORE 24 INVESTORS SPE, LLC

Case No. 2:16-bk-13358-BKM

19 (EIN 32-0407608),

20 Debtor.

21 Address: 5515 E. Deer Valley Dr., Phoenix, AZ 85054

22 **DEBTOR'S DISCLOSURE STATEMENT IN SUPPORT OF**

23 **CHAPTER 11 PLAN OF REORGANIZATION**

24 **DATED FEBRUARY 2017**

25

26

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1 **I. DEBTOR'S INTRODUCTION AND REPRESENTATIONS**

2 **A. Introduction**

3 Biltmore 24 Investors SPE, LLC ("Debtor") proposes this Disclosure Statement in
4 Support of the accompanying Chapter 11 Plan of Reorganization for Biltmore 24 Investors,
5 SPE, LLC Dated February 2017 (the "Disclosure Statement"). The Debtor is disseminating
6 this Disclosure Statement to its creditors for the purpose of soliciting acceptance of the Plan.

7 The Debtor believes this Disclosure Statement contains information that is material,
8 important, and necessary for creditors to arrive at an informed decision in exercising their
9 right to vote for acceptance of the Plan. This Disclosure Statement is being disseminated in
10 conjunction with the *Chapter 11 Plan of Reorganization for Biltmore 24 Investors SPE,*
11 *LLC Dated February 2017* [DE 47] (the "Plan") proposed by the Debtor.

12 The United States Bankruptcy Court for the District of Arizona ("the Bankruptcy
13 Court" or the "Court") has set a hearing on confirmation of the Plan in the U.S. Bankruptcy
14 Court, Courtroom 702, Seventh Floor, 230 North First Avenue, Phoenix, Arizona. The time
15 and date of the hearing is set forth in the Order accompanying this Disclosure Statement.
16 Creditors may vote on the Plan by filling out and mailing the accompanying ballot in
17 accordance with the procedure provided on the ballot and the *Order Approving Disclosure*
18 *Statement and Fixing Time for Filing Acceptance or Rejection of Plan, Combined with*
19 *Notice Thereof*, so that counsel receives it by the deadline set forth in the Court's Order. As
20 a creditor, your vote is important. For a class of creditors' claims to accept the Plan,
21 acceptances must be filed by at least 2/3 in amount, and more than 1/2 in number of the
22 allowed claims of each class that actually vote on the Plan. Failure to vote on the Plan does
23 not constitute either an acceptance or rejection of the Plan.

24 The Debtor believes this Disclosure Statement provides sufficient and adequate
25 information for interested parties to make an informed decision as to whether to vote in
26

1 favor or reject the Plan.

2 **B. Ballot Procedures**

3 Creditors will receive an electronic or paper copy of this Disclosure Statement, the
4 Plan, an Order setting the hearing on confirmation of the Plan, and a Ballot. The Debtor
5 reserves the right to (i) designate the correct Class if any creditor submits a Ballot that fails
6 to either identify a Class number or votes a Ballot in an incorrect Class and (ii) designate the
7 treatment options afforded any creditor who submits a Ballot and fails to designate any
8 treatment option afforded that Class, but only if reasonable attempts to contact the creditor
9 to discern its intent have failed.

10 **C. Representations**

11 NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE
12 AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.
13 ANY REPRESENTATIONS OR INDUCEMENTS TO OBTAIN YOUR ACCEPTANCE
14 OF THE PLAN OTHER THAN AS CONTAINED HEREIN SHOULD NOT BE RELIED
15 UPON. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED.
16 THE DEBTOR IS UNABLE TO REPRESENT THAT THE INFORMATION HEREIN IS
17 WITHOUT ANY INACCURACY, ALTHOUGH THE INFORMATION DISCLOSED IS
18 ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION,
19 AND BELIEF.

20 THE BANKRUPTCY COURT HAS NOT VERIFIED THE ACCURACY OF THE
21 INFORMATION CONTAINED HEREIN, AND THE COURT'S APPROVAL OF THIS
22 DISCLOSURE STATEMENT DOES NOT IMPLY THAT THE COURT ENDORSES OR
23 APPROVES THE PLAN, BUT ONLY THAT IF THE INFORMATION IS ACCURATE,
24 IT IS SUFFICIENT TO PROVIDE AN ADEQUATE BASIS FOR CREDITORS TO
25 MAKE AN INFORMED DECISION WHETHER TO ACCEPT OR REJECT THE PLAN.
26

1 This Disclosure Statement was prepared by the Debtor, its employees, and its
2 professionals. Please be advised that the statements made in this Disclosure Statement
3 represent the position of the Debtor and not its creditors.

4 **D. Defined Terms**

5 Most words or phrases in this Disclosure Statement have their usual and customary
6 meanings. Certain capitalized terms have the same meaning as defined herein, or as defined
7 in the Plan. If not otherwise defined, certain terms in this Disclosure Statement have the
8 same meaning as provided in the Bankruptcy Code or Federal Rules of Bankruptcy
9 Procedure.

10 **E. Source of Information for the Disclosure Statement**

11 This Disclosure Statement was prepared with information provided by
12 representatives of the Debtor and the Debtor's court appointed bankruptcy attorneys.

13 **II. HISTORICAL PERSPECTIVE**

14 **A. General Information About Debtor's Business and Events Leading to**
15 **Chapter 11 Case.**

16 **1. Formation of the Debtor and Its Management**

17 Debtor was formed for the purpose of real estate acquisition and ownership. Debtor is
18 owned by Biltmore 24 Investors, LLC and is managed by Bruce Gray.

19 **2. The Debtor's Acquisition of the Estate Property**

20 On April 29, 2013, Debtor acquired real property located on the southwest corner of
21 24th Street and Highland Avenue in Phoenix, Arizona which consisted of a multifamily
22 housing unit located on 8 acres of land.

23 **3. Events Leading to the Chapter 11 Case**

24 In the summer of 2015, Debtor demolished the multifamily housing units on the
25 Property and began plans to develop new multifamily units on the Property. Debtor has
26 incurred expenses in preparation for development, including preparation of architectural

1 plans and city approval. However, Debtor was unable to make payments claimed due by
2 secured lenders, leading to default being declared by the lenders. Faced with the potential
3 foreclosure of its Property, the Debtor filed this Chapter 11 Case.

4 **III. OPERATIONS DURING CHAPTER 11 CASE**

5 The Debtor is the owner of certain real property. The Debtor has continued to market
6 the property and determine a plan of Reorganization.

7 **IV. ASSET DESCRIPTION AND VALUE**

8 Debtor owns approximately 8 acres of vacant land (“Property”) located on the
9 southwest corner of 24th Street and Highland Avenue in Phoenix, Arizona. The Debtor
10 values the Property at \$47,100,000.00. Debtor’s other assets consist of accounts receivable
11 valued at \$10,950 and construction improvements valued at \$212,545.

12 Debtor has obtained zoning and approvals to allow the Property to be divided into an
13 approximately 3 acre parcel on the corner of 24th Street and Highland Avenue (“Corner
14 Parcel”) and an approximately 5 acre parcel on which plans for multifamily housing have
15 been prepared (“Multifamily Parcel”).

16 **V. SCHEDULED CLAIMS**

17 The Debtor’s schedules describe in detail the creditors holding secured, priority, and
18 unsecured claims. Most of the scheduled vendor claims are not disputed or unliquidated.

19 The Debtor intends to request that a claim bar date be set and will notice out such a
20 bar date to all creditors with the approval of this Disclosure Statement.

21 As of the Petition Date, the Debtor did not owe any employees for wages outside of
22 the ordinary course of business.

23 Wanxiang International Investment Corporation (“Wanxiang”) holds a secured claim
24 in the approximate amount of \$20,843,653.00. Debtor also owes real property taxes to the
25 Maricopa County Treasurer in the approximate amount of \$345,137. Spray Systems
26 Environmental (“SSE”) has a claim of \$315,663.32 secured by a mechanic’s lien on the

1 Property.

2 Dave's Construction Services asserts a claim of \$409,748.92 secured by a
3 mechanic's lien, and Waste Management asserts a claim of \$85,367.31 secured by a
4 mechanic's lien, each of which is disputed by Debtor.

5 Debtor owes priority tax debt to the State of Arizona in the amount of \$26,510.34
6 and to the City of Phoenix in the amount of \$8,491.46. Debtor also owes general unsecured
7 claims to trade creditors, pre-petition professionals and professional services.

8 **VI. EVENTS SINCE THE FILING OF CHAPTER 11**

9 **A. Case Administration**

10 The Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy
11 Code on November 22, 2016. The Debtor filed its required schedules and statement of
12 financial affairs on November 22, 2016. [DE 1]. Debtor filed schedule amendments on
13 December 30, 2016 and January 26, 2017 [DE 38, 43].

14 The Debtor compiled extensive information for and attended initial interviews with
15 the Office of the U.S. Trustee. The Debtor then appeared at first meetings of creditors. The
16 Debtor is filing the monthly operating reports as required by the U.S. Trustee. The Debtor
17 must pay quarterly fees to the U.S. Trustee based on those reports.

18 Debtor filed first day motions seeking authority: (a) to use existing bank accounts;
19 and (b) to employ Stinson Leonard and Street as its counsel. The Court entered orders
20 granting these two motions.

21 On December 28, 2016, the Court entered an Order granting Debtor's Application to
22 permit the substitution of attorneys for the Debtor and to employ Mesch Clark Rothschild as
23 attorneys for Debtor. Debtor will be moving to employ Don Arones and Cushman &
24 Wakefield as brokers to market and sell a portion of the Property through a §363 sale.

1 **VII. DEBTOR'S CURRENT MANAGEMENT AND OPERATIONS**

2 The Debtor is currently managed by Bruce Gray. The Debtor anticipates that Bruce
3 Gray will manage the Debtor in the future. A Curriculum Vitae for Bruce Gray is attached
4 as Exhibit A.

5 **VIII. EXISTENCE/NON-EXISTENCE OF AVOIDABLE TRANSFERS**

6 Bankruptcy law provides that certain preferential payments or payments made
7 without fair consideration can be recovered from the payee by the Estates. The Debtor has
8 listed certain payments made in the look-back period in its Statement of Financial Affairs at
9 SOFA 3(b) and 3(c). The Schedules include a list of creditors paid, the dates of payment,
10 and the amounts paid. The Debtor has done a preliminary review of payments made in the
11 90 days before bankruptcy and currently does not believe any preferential actions exist.

12 The Debtor also retains its right to avoid (a) payments or distributions to any other
13 recipients made within the preference period and (b) any liens that a creditor may have
14 attempted to perfect in the 90 days before the bankruptcy.

15 **IX. SUMMARY OF THE PLAN OF REORGANIZATION**

16 The goal of the proposed Plan is to allow Debtor to realize a fair market value for its
17 property interest and to pay all allowed claims, including claims of unsecured creditors and
18 trade vendors through a sale of all or a portion of the Property.

19 All claims and interests are placed into classes as set forth below. A claim or interest
20 is placed in a particular class, only to the extent that the claim or interest falls within the
21 description of that class, and is classified in all other classes to the extent that any portion of
22 the claim or interest falls within the description of such other class.

23 A claim or interest is placed in a particular class for all purposes, including voting on
24 the Plan, confirmation and receiving distributions pursuant to the Plan, only to the extent
25 that such claim or interest is an Allowed Claim in that class, and such claim has not been
26 paid, released, or otherwise settled prior to the Effective Date.

1 Debtor will sell the Property through a sale pursuant to §363 of the Bankruptcy Code.
2 Debtor may sell only a portion of the Property if such a sale will generate sufficient
3 proceeds to pay all creditors in full. The Plan will be funded from proceeds of the sale of
4 Debtor's Property. All allowed claims will be paid from sale proceeds.

5 Although the following is not a substitute for a careful reading of the Plan, it is a
6 general discussion of the treatment of allowed claims and interests under the Plan.

7 **Treatment of Administrative Claims.** On or before the Administrative Claim Bar
8 Date, each Holder of an Administrative Claim shall file with the Bankruptcy Court a request
9 for payment of an Administrative Claim. Any Administrative Claim that is not filed on or
10 before the Administrative Claim Bar Date will be forever barred from assertion against the
11 Debtors, the Estate, and the Assets. Unless otherwise agreed to by the Holders of the
12 Administrative Claims and Debtor, the Debtor shall pay each holder of an Allowed
Administrative Claim the full unpaid amount of such Claim in Cash on the later of the
Effective Date or when such Claim is Allowed by a final order.

13 **Treatment of Professional Fees.** No payments of Professional Fees may be made
14 without prior order of the Bankruptcy Court. On or before the Administrative Claim Bar
15 Date, each Professional shall file an application for the final allowance of compensation and
16 reimbursement of expenses that each such Professional has already received. Such claims
will be paid upon entry of a final Order allowing such claims.

17 **Treatment of U.S. Trustee Fees.** U.S. Trustee fees shall be allowed in accordance
18 with 28 U.S.C. § 1930. The Plan Proponent shall pay to the U.S. Trustee all fees due and
19 owing under 28 U.S.C. § 1930 in Cash on the Effective Date or as soon as practicable
thereafter.

20 **Class 1 – Wanxiang Secured Claim.** The Wanxiang Claim in the approximate
21 amount of \$20,843,853 shall be an Allowed Claim and shall be treated as follows:

22 *The holder of the Wanxiang Secured Claim shall retain its lien on the Property and*
23 *will be paid in full from proceeds of the sale of the Property on the later of the Closing Date*
24 *of the sale or the Effective Date of the Plan. Wanxiang's lien will attach to the proceeds of*
25 *the sale in the same priority, extent, and validity as existed prepetition and Wanxiang will*
26 *have all rights of a secured creditor pursuant to §363(k).*

Class 1 is Impaired under this Plan and may vote.

1 **Class 2 –Secured Mechanic’s Lien Claims.** Class 2 Claims consist of the claims of
2 SSE in the amount of \$315,663.32, Dave’s Construction Services in the amount of
3 \$409,748.92, and Waste Management in the amount of \$85,367.31.

4 *Any holder of a Class 2 Claim which is determined to be an Allowed Secured Claim*
5 *shall retain its lien on the Property and will be paid in full from proceeds of the sale of the*
6 *Property on the later of the Closing Date of the sale or the Effective Date of the Plan. The*
7 *liens of Allowed Class 2 Secured Claims will attach to the proceeds of the sale in the same*
8 *priority, extent, and validity as existed prepetition, and holders of Allowed Class 2 Secured*
9 *Claims will have all rights of a secured creditor pursuant to §363(k). Any Class 2 Claim*
10 *which is determined to be an Allowed Unsecured Claim will be treated under Class 4.*

11 **Class 2 is Impaired under this Plan and may vote.**

12 **Class 3 – Secured Tax Claims.** Class 3 Claims consist of the secured claims of
13 Maricopa County.

14 *Holders of Class 3 Claims shall retain their liens in the Property and will be paid in*
15 *full from proceeds of the sale of the Property on the later of the Closing Date of the sale or*
16 *the Effective Date of the Plan. Class 3 liens will attach to the proceeds of the sale in the*
17 *same priority, extent, and validity as existed prepetition, and Class 3 Claims will have all*
18 *rights of a secured creditor pursuant to §363(k).*

19 **Class 3 is Impaired under this Plan and may vote.**

20 **Class 4 – Priority Tax Claims.** Class 4 Claims consist of priority tax claims held by
21 the Arizona Department of Revenue and the City of Phoenix.

22 *Allowed Claims of Class 4 creditors will receive payment of their Allowed Claims*
23 *upon the later of the closing date of the sale or the Effective Date of the Plan. In the event*
24 *that a sale of Property is insufficient to pay all secured creditors, Class 4 Claims will be*
25 *paid pro-rata from proceeds remaining after secured claims are paid in full.*

26 **Class 4 is Impaired under this Plan and may vote.**

Class 5 – Unsecured Claims. Class 5 Claims consist of all unsecured claims.

Allowed Claims of Class 5 creditors will receive payment of their Allowed Claims
upon the later of the closing date of the sale or the Effective Date of the Plan. In the event
that a sale of Property is insufficient to pay all creditors, Class 5 Claims will be paid pro-
rata from proceeds remaining after secured claims and priority claims are paid in full.

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Class 5 is Impaired under this Plan and may vote.

Class 6 – Equity Interests. The holders of the Equity Interests in Class 6 shall be treated as follows:

All Equity Interests shall be retained by the current holders.

Class 6 is unimpaired under this Plan and may not vote.

X. MEANS FOR IMPLEMENTATION OF PLAN

Funding On and After the Effective Date. All payments under the Plan which are due on and after the Effective Date will be funded by the proceeds of the sale of the Property or a portion of the Property sufficient to make all plan payments. Debtor will file or has filed a Motion seeking Court approval pursuant to §§363, 1141 to conduct an auction of the Multifamily Parcel or the entire Property.

Revesting Of Estate Assets. Upon the Effective Date, all Assets of the Debtor will revert in the Reorganized Debtor, free and clear of all liens, claims and encumbrances other than as expressly provided for in the Plan. The Reorganized Debtor shall continue to run the Debtor’s business in the ordinary course after the Effective Date. After the Effective Date, the Reorganized Debtor shall be further responsible for (a) making all payments contemplated under the Plan, (b) making all reporting and other filings as required by the United States Trustee, and (c) closing the Chapter 11 Case.

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

Limitation of Liability of the Plan Proponent. No action or claim may be asserted against the Plan Proponent for any matter relating to or arising out of this Chapter 11 Case, the confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be administered or distributed under the Plan, in any court without first obtaining approval of the Bankruptcy Court, and, in such event, any such action must be prosecuted before the Bankruptcy Court, which shall retain jurisdiction to adjudicate any such actions. The Plan Proponent is acting solely as a fiduciary on behalf of the Estate in implementing this Plan. Neither the Plan Proponent, nor any of its employees, shall have any personal liability for serving in the fiduciary capacity of a Plan Proponent, except for willful misconduct or gross negligence.

1 **XI. TAX CONSEQUENCES**

2 The Debtor has not obtained a tax opinion and does not express any opinion as to the
3 tax consequences to the creditors or equity security holders. Interested parties are
4 encouraged to obtain their own professional counsel to determine the tax consequences of
5 the Plan.

6 BECAUSE THE DEBTOR EXPRESSES NO TAX ADVICE, IN NO EVENT WILL
7 THE DEBTOR OR ITS PROFESSIONAL ADVISORS BE LIABLE FOR ANY TAX
8 CONSEQUENCES OF THE PLAN. CREDITORS MUST LOOK SOLELY TO AND
9 RELY SOLELY UPON THEIR OWN ADVISORS AS TO THE TAX CONSEQUENCES
10 OF THE PLAN.

11 **XII. LIQUIDATION ANALYSIS**

12 Pursuant to 11 U.S.C. §1129(a)(7), the Plan must provide that creditors who do not
13 accept the Plan will receive at least as much as they would receive in a liquidation of the
14 Debtor under Chapter 7 of the Bankruptcy Code. The Debtor believes that the Plan satisfies
15 this “best interest of creditors” test.

16 Distributions to creditors under the Plan will equal or exceed the recoveries they
17 would receive in a Chapter 7 liquidation. Debtor’s Plan proposes a sale of Property
18 sufficient to pay all creditors in full on the Effective Date. Debtor believes that a sale of a
19 portion of the Property will generate sufficient proceeds to pay all creditors in full but in the
20 unlikely event that a partial sale will be insufficient, Debtor will sell all Estate Property to
21 pay creditors. Therefore, Debtor’s Plan will provide a greater return to creditors than they
22 would receive in a liquidation under Chapter 7 or Chapter 11.

23 Accordingly, the Debtors can satisfy the “best interests of creditors” test for
24 confirmation of the Plan.

25 **XIII. RISK ANALYSIS**

26 Inherent in the Chapter 11 Plan are standard business risks. Debtor’s Plan proposes

1 to sell Property and pay creditors in full. There is some risk that the sale of the Property
2 through a proposed §363 sale will not generate sufficient proceeds to pay creditors in full.
3 Despite this risk, the Debtor's Plan is feasible and economically sound. The Plan will pay
4 creditors more than they would receive if the Debtor's Plan was not confirmed, and the
5 bankruptcy estate was liquidated instead.

6 **XIV. CONFIRMATION IN SPITE OF REJECTION OF PLAN**

7 The Court will be asked to confirm the Plan as to any class of claims or interest that
8 does not accept the Plan. To do so, the Court must find that the Plan is (1) fair and equitable
9 to each class of claims or interests that is impaired and has not accepted the Plan, and that
10 classification of claims is not discriminatory; and (2) that each claim or interest holder
11 receives, under the Plan, property of a value as of the Effective Date, that is not less than
12 what would be received or retained if the property was liquidated under Chapter 7 of the
13 Code.

14 The first requirement is satisfied with respect to any class that might not accept the
15 Plan, because the classification has not been designed in a discriminatory manner. The
16 second requirement is satisfied as demonstrated by the Liquidation Analysis set forth above.
17 If a class of secured claims does not accept the Plan, the Code provides that the fair and
18 equitable requirement is satisfied if the property subject to the liens securing such claims is
19 sold subject to §363(k) with liens to attach to the proceeds of the sale. This requirement may
20 be satisfied as to each class treated as a secured claim, because the Plan provides for a sale
21 of the Property subject to §363(k) with full payment of claims made from the proceeds.

22 If a class of unsecured claims does not accept the Plan, the fair and equitable rule
23 requires that each claimant be paid the allowed amount of the claim plus interest at a market
24 rate; otherwise, no junior class of creditors can receive or retain any property under the Plan.
25 The Plan proposes payment in full to all classes of creditors upon the closing date of the sale
26 or the Effective Date of the Plan. If a partial sale is insufficient to pay all creditors in full,

1 Debtor will sell all Estate Property. As a result, the Plan complies with the absolute priority
2 rule and permits current equity to retain its ownership of the Debtor.

3 **XV. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

4 The Debtor is a party to certain executory contracts related to the operation of its
5 business. Any executory contract not assumed prior to confirmation will be deemed
6 rejected upon confirmation of the Plan. If an executory contract is assumed, there will not
7 be any alteration of its existing terms without the express agreement of the parties.

8 Allowed prepetition unsecured claims arising from the rejection of executory
9 contracts shall be treated as Class 5 claims and will be paid pursuant to the terms of the
10 Plan.

11 **XVI. LIQUIDATION OF CLAIMS**

12 The Debtor will be responsible for pursuing objections to claims asserted against the
13 estate. The Debtor will have authority to settle any claim disputes and agree on the
14 appropriate amounts of such claims. The Debtor will seek Court approval for resolution of
15 claim disputes.

16 To date, the Debtor has not objected to any of the filed claims. All rights to object to
17 any and all scheduled (if scheduled as disputed, contingent or unliquidated) and/or filed
18 claims are reserved by the Debtor. The Debtor must file with the Court any and all claim
19 objections within 180 days after the Effective Date. The Debtor listed several unsecured
20 creditors in its schedules that were not disputed. To the extent such creditors did not file
21 claims, or filed claims in amounts equal to or less than those scheduled by the Debtor, they
22 will be deemed Allowed if not objected to within 180 days after the Effective Date, in the
23 lesser amount of the filed or scheduled claims.

24 Payments and distributions to each holder of a Disputed Claim that becomes an
25 Allowed Claim will be made in accordance with the provisions of the Class in the Plan to
26 which such Allowed Claim belongs. The Debtor will withhold from the funds to be

1 distributed under the Plan the amount attributable to any Claim that is a Disputed Claim.
2 The Debtor will withhold the amount of cash in an aggregate amount sufficient to pay each
3 holder of a Disputed Claim: (i) the amount of cash such holder would have been entitled to
4 receive under the Plan if such Claim had been an Allowed Claim on the Distribution Date in
5 the “face amount” of such Disputed Claim as defined in the Plan; or (ii) such other amount
6 as the Court may estimate is appropriate. In the case of any Disputed Claim that is filed in
7 an unliquidated or undetermined amount, the Court, upon motion by the Debtor or the
8 holder of such Disputed Claim, shall determine an amount sufficient to withhold with
9 respect to such Disputed Claim and may estimate the likely maximum amount of the Claim
10 in order to make such determination. Any Creditor whose Claim is estimated by Court order
11 will not have recourse against the reorganized estate, any Distributions made on account of
12 Allowed Claims, or any other Entity or property if the finally Allowed Claim of such
13 creditor exceeds the estimated amount. Instead, such creditor will have recourse only against
14 the funds withheld for that Claim as calculated above.

15 **XVII. RETENTION OF JURISDICTION**

16 Notwithstanding the entry of the Confirmation Order and the occurrence of the
17 Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case
18 and all Entities with respect to all matters related to the Chapter 11 Case, the Debtor, and the
19 Plan, as is legally permissible, including, without limitation, jurisdiction to:

20 (a) allow, disallow, determine, liquidate, classify, estimate or establish the
21 priority or secured or unsecured status of any Claim or Equity Security, including the
22 resolution of any request for payment of any Administrative Claim and the resolution
23 of any and all objections to the allowance or priority of Claims or Equity Securities;

24 (b) grant or deny any applications for allowance of compensation or
reimbursement of expenses;

25 (c) resolve any matters related to the assumption, assignment or rejection of
26 any executory contract or unexpired lease to which the Debtor is party or with respect

1 to which the Debtor may be liable and to hear, determine and, if necessary, liquidate,
2 any Claims arising therefrom, including those matters related to any amendment to
the Plan after the Effective Date;

3 (d) ensure that Distributions to holders of Allowed Claims are accomplished
4 pursuant to the provisions of the Plan; litigated matters and any other matters and
5 grant or deny any applications involving the Debtor that may be pending on the
6 Effective Date or instituted by the Plan Proponent after the Effective Date, provided,
7 however, that the Plan Proponent shall reserve the right to commence actions in all
appropriate jurisdictions;

8 (f) enter such orders as may be necessary or appropriate to implement or
9 consummate the provisions of the Plan and all other contracts, instruments, releases,
indentures and other agreements or documents adopted in connection with the Plan;

10 (g) resolve any cases, controversies, suits or disputes that may arise in
11 connection with the Effective Date, Sale, interpretation or enforcement of the Plan or
12 any Entity's obligations incurred in connection with the Plan;

13 (h) issue injunctions, enforce them, enter and implement other orders or take
14 such other actions as may be necessary or appropriate to restrain interference by any
Entity with the Effective Date or enforcement of the Plan;

15 (i) resolve any other matters that may arise in connection with or relate to the
16 Plan, the Confirmation Order or any contract, instrument, release, indenture or other
17 agreement or document adopted in connection with the Plan; and

18 (j) enter and implement such orders as necessary or appropriate if the
Confirmation Order is modified, stayed, reversed, revoked or vacated;

19 (k) enter an order and/or the decree contemplated in Federal Rule of
20 Bankruptcy Procedure 3022 concluding the Chapter 11 Case.

21 //

22 //

1 **XVIII. RECOMMENDATION**

2 The Debtor recommends approval of the Plan as it is in the best interest of the estate
3 and its creditors.

4
5 DATED: February 20, 2017

MESCH CLARK ROTHSCHILD

6
7 By /s/ Jeffrey J. Coe, #30581

8 Michael McGrath
9 Frederick J. Petersen
10 Jeffrey J. Coe
11 Attorneys for Debtor

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Exhibit A

Curriculum Vitae of Bruce Gray to be Supplemented