

1 Tara J. Schleicher, WSBA #26884
2 TSchleicher@fwlaw.com
3 Farleigh Wada Witt
4 121 SW Morrison Street, Suite 600
5 Portland, Oregon 97204-3136
6 Telephone: (503) 228-6044

7 Attorneys for Debtors

Judge: Brian D. Lynch
Chapter 11
Hearing Date: 10/03/2017
Hearing Time: 9:00 a.m.
Location: Vancouver
Response Date: 9/26/17

8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

10 In re
11 Gateway Medical Center II, LLC,
12 Jointly Administered with
13 Gateway Medical Center, LLC, Case No.
14 17-41779-BDL,
15 Debtors.

Case No. 17-41780-BDL

JOINT DEBTORS' DISCLOSURE
STATEMENT

16 I. INTRODUCTION

17 On May 4, 2017, Gateway Medical Center II, LLC ("Gateway II") and Gateway
18 Medical Center, LLC ("Gateway") (collectively, "Debtors") each filed a voluntary petition for
19 relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). On May
20 31, 2017, the Bankruptcy Court entered an order authorizing the joint administration of the
21 Debtors' Bankruptcy Cases. On August 2, 2017, the Debtors filed a Joint Chapter 11 Plan and
22 Motion to Substantively Consolidate (the "Plan") with the Bankruptcy Court, which included a
23 motion to substantively consolidate the Debtors' cases. A copy of the Plan is attached hereto as
24 Exhibit 1. Capitalized terms in this Disclosure Statement have the definitions set forth in the
25 Plan. The Debtors are seeking acceptance of the Plan by each of their creditors.

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1 The purpose of this Disclosure Statement is to provide you with adequate
2 information to enable you to make an informed judgment concerning whether to vote for or
3 against the Plan. You are urged to review the Plan with care and, if appropriate, consult with an
4 attorney about the Plan and its impact on your legal rights before voting on the Plan. Capitalized
5 terms used but not defined in this Disclosure Statement shall have the meanings assigned to such
6 terms in the Plan or the Bankruptcy Code.

7 This Disclosure Statement is submitted in accordance with Section 1125 of the
8 Bankruptcy Code and Bankruptcy Rule 3016. This Disclosure Statement has been approved by
9 Order of the Bankruptcy Court as containing adequate information to permit parties in interest to
10 make an informed judgment when voting on the Plan. The Bankruptcy Court's approval of this
11 Disclosure Statement, however, does not constitute a recommendation by the Bankruptcy Court
12 either for or against the Plan.

13 The description of the Plan contained in this Disclosure Statement is intended as a
14 summary only and is qualified in its entirety by reference to the Plan itself. This Disclosure
15 Statement does not attempt to summarize or discuss each and every section of the Plan. If any
16 inconsistency exists between the Plan and this Disclosure Statement, the terms of the Plan are
17 controlling. This Disclosure Statement may not be relied on for any purpose other than to
18 determine how to vote on the Plan.

19 This Disclosure Statement has been prepared by the Debtors in good faith based
20 upon information available to the Debtors and information contained in Debtors' books and
21 records. The information concerning the Plan has not been subject to a verified audit. The
22 statements contained in this Disclosure Statement are made as of the date hereof unless another
23 time is specified herein, and the delivery of this Disclosure Statement shall not imply there has
24 been no change in the facts set forth herein since the date of this Disclosure Statement and the
25 date the material relied on in preparation of this Disclosure Statement was compiled.

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1 Nothing contained herein shall constitute an admission of any fact or liability by
2 any party, or be admissible in any proceeding involving the Debtors or any other party.

3 **II. BRIEF EXPLANATION OF CHAPTER 11**

4 Chapter 11 of the Bankruptcy Code is the principal reorganization provision of
5 the Bankruptcy Code. Pursuant to Chapter 11, a debtor attempts to reorganize its business for
6 the benefit of its creditors and other parties in interest. A debtor may also use Chapter 11 and a
7 plan of reorganization to facilitate the orderly sale of the debtor's assets and an efficient
8 distribution to the debtor's creditors and interest holders.

9 The formulation and confirmation of a Chapter 11 plan is the principal purpose of
10 a Chapter 11 case. A plan sets forth a proposed method of compensating the debtor's creditors.
11 Chapter 11 does not require all holders of claims to vote in favor of a plan in order for the
12 Bankruptcy Court to confirm that plan. However, the Bankruptcy Court must find that the plan
13 meets a number of statutory tests before it may confirm (*i.e.*, approve) that plan. These tests are
14 designed to protect the interests of holders of claims who do not vote to accept the plan of
15 reorganization, but who will nonetheless be bound by the plan's provisions if it is confirmed by
16 the Bankruptcy Court.

17 **III. BRIEF SUMMARY OF THE PLAN**

18 The Plan provides for the full payment of all creditors' Allowed Claims.
19 Therefore, the Debtors urge you to accept the proposed Plan and promptly return your completed
20 ballot to enable your vote to be counted.

21 As detailed below, the Debtors' respective assets include real property located at
22 2621 and 2501 NE 134th Street, Vancouver, Washington (collectively, the "Property"). After
23 confirmation of the Plan, custodial receiver D. Keith Kaiser of Kidder Mathews ("KM") will
24 continue to manage, with consultation and input from the Debtors' managing member, and
25 oversee operations at the Property. Court-approved real estate broker Marcus & Millichap will
26 assist the Debtors in marketing and selling the Property. In addition to the net rental income

1 generated by the Property pending a sale, the sale proceeds will be sufficient to pay the Debtors’
2 creditors in full.

3 For example, the Plan provides that the Debtors will pay unsecured creditors with
4 claims under \$500.00 within fifteen (15) days of the Effective Date of the Plan. Those claims
5 are referred to as Convenience Class Claims. The Plan provides for payment in full of all other
6 known general Allowed Claims Unsecured Claims in two lump sums – eighty percent (80%)
7 paid within 45 days of the Effective Date of the Plan and the remaining twenty percent (20%) by
8 no later than April 30, 2018. All Allowed Secured Claims will receive payment in full on their
9 Allowed Claims from proceeds of sale of the Property by no later than April 30, 2018.

10 The Debtors believe that the Plan provides the best possible return for creditors in
11 the nearest term and at the lowest cost. If the Debtors’ assets were liquidated in a chapter 7
12 proceeding, the Allowed Claim of one secured creditor would be paid less than the amount owed
13 and Allowed Unsecured Claims and Equity Interests would receive nothing. Debtors ask that
14 you support the Plan. Enclosed you will find a ballot. The Debtors ask that you return a ballot
15 voting in favor of the Plan.

16 **IV. BACKGROUND INFORMATION**

17 **A. Historical Background and Events Leading to Bankruptcy**

18 The Debtors are affiliated entities. They are manager-managed Washington
19 limited liability companies. The sole manager of the Debtors is Daniel J. Boverman
20 (“Boverman”). They are owned by the same interest holder, Michael DeFrees (“DeFrees”). The
21 Debtors own adjacent medical office buildings located in Vancouver, Washington. More
22 specifically, Gateway II owns the real property and improvements commonly known as 2621 NE
23 134th Avenue, Vancouver, Washington 98686 (“Gateway II Property”). The Gateway II
24 Property includes an office building constructed in 2007 and has 32,041 rentable square feet on a
25 2.05-acre site. Gateway owns adjacent real property and improvements commonly known as
26 2501 NE 134th Avenue, Vancouver, Washington 98686 (the “Gateway Property”). The Gateway

1 Property includes an office building that was constructed in 2001 and has 22,077 rentable square
2 feet on a 1.56-acre site. The Gateway Property and Gateway II Property are collectively referred
3 to herein as the “Property.”

4 The Debtors have three secured creditors – Opus Bank (“Opus”), Maxim
5 Commercial Capital, LLC (“Maxim”), and the Clark County Treasurer (collectively, the
6 “Secured Creditors” and individually, a “Secured Creditor”). On or about August 28, 2015, each
7 of the Debtors and Opus entered into certain Promissory Notes, Trust Deeds and Security
8 Agreements (respectively, the “Notes,” “Trust Deeds,” and “Security Agreements”). By virtue
9 of the Trust Deeds, Security Agreements, and UCC-1 Financing Statements recorded on August
10 28, 2015, Opus asserts that it holds a security interest and lien in Debtors’ assets including, but
11 not limited to, the Property, rents, accounts receivable, cash, goods, equipment, fixtures, general
12 intangibles, instruments, chattel paper, and certain intellectual property (the “Assets”), and all
13 products, proceeds, rents, and profits of the Assets (collectively, the “Cash Collateral”).

14 The approximate amount that Opus was owed as of May 4, 2017, on the Gateway
15 Note was \$5,431,348 and \$6,649,597 on the Gateway II Note. In sum, the approximate amount
16 of Opus’ secured claim as of the Petition Date was \$12,080,945. As of the date of the Plan,
17 Opus had not filed Proofs of Claim in either Bankruptcy Case.

18 Maxim is a Secured Creditor of the Debtors by virtue of certain commercial
19 guaranties and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing
20 dated November 24, 2015 (“Maxim Trust Deed”). More specifically, Debtors guaranteed and
21 secured certain loan obligations owed by non-debtor, third party Gateway National Corporation
22 (“Gateway National”) to Maxim. Non-debtor, third parties Vancouver RV Park, LLC
23 (“Vancouver RV”) and DeFrees also guaranteed Gateway National’s obligations to Maxim.

24 The underlying loan transactions arose as follows. In 2015, Maxim entered into
25 two loan transactions with Gateway National. On September 10, 2015, it entered into an
26 Equipment Finance Agreement with Gateway National whereby Maxim loaned Gateway

1 National the principal sum of \$750,000.00. Maxim further alleges that on or about November
2 24, 2015, Gateway National executed and delivered a promissory note in favor of Maxim in the
3 principal amount of \$2,329,600.00. (Collectively, the above loans are referred to as the “Maxim
4 Loans.”) Debtors and Vancouver RV Park, LLC (“Vancouver RV”) executed the Maxim Trust
5 Deed which further secured the Maxim Loan with (1) real property and improvements owned by
6 Vancouver RV (“Vancouver RV Property”), (2) the Gateway Property, and (3) the Gateway II
7 Property. By virtue of the Maxim Trust Deed and the UCC-1 Financing Statement recorded on
8 November 24, 2015, Maxim asserts that it holds a second priority lien and security interest in the
9 Property, Debtors’ Assets, and Cash Collateral. Maxim asserts that as of March 20, 2017, the
10 balance owed on the Maxim Loans was \$3,227,697.50. As of the date of the Plan and Disclosure
11 Statement, Maxim had not filed Proofs of Claim in either Bankruptcy Case.

12 On June 15, 2016, Maxim, Gateway National, Vancouver RV, and DeFrees
13 entered into a Forbearance Agreement. Pursuant to that Forbearance Agreement, DeFrees
14 intends to pay Maxim from the proceeds of the sale of significant real property and
15 improvements (“Yacht Harbor Property”) which has equity sufficient to fully or substantially
16 satisfy the Maxim Loans. Vancouver RV is in the process of listing the Vancouver RV property
17 for sale. Additionally, Gateway National is in the process of selling certain commercial
18 construction equipment that secures the Maxim Loans. There is more than sufficient equity from
19 the real and personal property being sold by the borrower, Gateway National, and guarantors,
20 DeFrees and Vancouver RV, to pay the Maxim Loans in full. Under the principle of
21 marshalling, as set forth in the Plan, Maxim must look to these outside assets for payment first
22 before receiving proceeds from the sale of the Debtors’ Properties.

23 Lastly, the Clark County Treasurer has a lien on the Property for unpaid property
24 taxes. Specifically, the Clark County Treasurer has filed Proofs of Claim in both Bankruptcy
25 Cases as follows: (1) Claim 1-2 for \$110,973.54 filed in the Gateway II Bankruptcy Case and
26 secured by a statutory lien on the Gateway II Property, and (2) Claim 3-1 for \$84,585.38 filed in

1 the Gateway Bankruptcy Case and secured by a statutory lien on the Gateway Property.

2 As discussed above, the Secured Creditors each have a lien on both the Gateway
3 Property and Gateway II Property (collectively, the “Liens”). When the two Properties are
4 considered together, there is significant equity over and above the Liens sufficient to pay all
5 remaining creditors of the Debtors in full.

6 Unfortunately, the Property was the subject of a non-judicial foreclosure sale
7 scheduled for May 5, 2017. The Debtors were forced to file for bankruptcy relief in order to
8 prevent the loss of that equity, not only for their interest holder, but also for Maxim, whose
9 interest would likely have been foreclosed without sufficient payment, if any at all.
10 Additionally, the loss of that equity would mean that at least a portion of the unsecured creditors
11 with claims in these bankruptcy proceedings would not receive payment.

12 The Debtors were both the subject of lawsuits commenced by Opus in Clark
13 County Superior Court for the appointment of a custodial receiver under RCW 7.60.035 (*Opus*
14 *Bank v. Gateway Medical Center, LLC* (Case No. 16-2-02503-3) and companion case *Opus Bank*
15 *v. Gateway Medical Center II, LLC* (Case No. 16-2-02505-0), filed on or about December 30,
16 2016 (collectively, the “Receivership Cases”). At the request of Opus, Keith Kaiser of Kidder
17 Matthews (“KM”) was appointed custodial receiver to manage the Property on December 30,
18 2016. The Property has been managed by KM from December 30, 2016 to the Petition Date.
19 The lease payments of both Gateway II and Gateway tenants have been made to KM from
20 January 2017 to the Petition Date and expenses for the operation of both businesses have been
21 paid/managed by KM for that same time period.¹

22 As described herein, the Plan provides that continuation of the Debtors’
23 businesses by KM, with consultation and input from Boverman, while Debtors market and sell
24 the Property will benefit all involved parties by paying all Allowed Claims in full. However,

25 _____

26 ¹ See § IV. B.3., *infra*, regarding continued management by KM post-petition.

1 under the Plan, Boverman will have the discretion to make interest payments to the Secured
2 Creditors post-confirmation from the Opus Account or direct KM to make interest payments to
3 Secured Creditors from the Custodial Receivers Accounts.

4 **B. Significant Events During Bankruptcy**

5 1. Joint Administration of Cases. By order entered May 31, 2017 (Doc. 33), the
6 Court directed that the Bankruptcy Cases of the Debtors would be jointly administered.

7 2. Employment of Professional Persons. By order entered June 12, 2017 (Doc. 48 in
8 Jointly Administered Bankruptcy Case), the Court approved the employment of Farleigh Wada
9 Witt as bankruptcy counsel for the Debtors.

10 3. Continued Management by Custodial Receiver. By orders of the courts entered
11 on June 7, 2017 (Doc. 41 in Gateway Bankruptcy and Doc. 44 in Gateway II Bankruptcy), the
12 Custodial Receiver was permitted to continue in possession and control of the Debtors' assets.
13 Those assets include the Properties as well as all leases, rents, issues, and profits of such
14 Property and accrued proceeds and profits held by the Receiver.

15 4. Actions to Market and Sell the Property. By order entered June 19, 2017 (Doc.
16 55), the Court approved the employment of Marcus & Millichap Real Estate Investment Services
17 of Seattle (the "Broker") as real estate broker for the Debtors. Since becoming employed, the
18 Broker has diligently worked to value the Property and develop a marketing plan and offering
19 memoranda for the listing of the Properties.

20 The Broker has completed all of its due diligence, has drone video, offering
21 memoranda, due diligence data room online, website etc. The Broker group the Debtors have
22 employed are associated with Smelter Healthcare Real Estate Group, who are specialists in
23 medical office properties and who possess a large database of active investors in the sector. The
24 Broker has already contacted select potential buyers and begun obtaining confidentiality
25 agreements.

26 5. Claims Bar Date. The Court has not established a claims bar date as of the filing

1 of this Disclosure Statement.

2 **V. PLAN OVERVIEW AND CLAIM CLASSIFICATION/TREATMENT**

3 The Plan provides for the payment of all Allowed Claims in full from net rental
4 proceeds, Debtors' cash on hand, and proceeds from the sale of the Property. The Plan further
5 provides for the substantive consolidation of the Debtors' Bankruptcy Estates for the purposes of
6 performing under the Plan and paying all Allowed Claims in full. As set out in section V.C.1.
7 below, substantive consolidation is necessary to assure the payment in full of Maxim (to the
8 extent that Maxim is not paid from other sources to which other creditors do not have recourse),
9 and Debtors' Allowed Unsecured Claims and Equity Interests.

10 **A. Classification and Treatment of Claims**

11 Below is a general summary of the Plan's classification and treatment of Claims.
12 It is intended as a general summary only and is qualified in its entirety by reference to the Plan.
13 The Plan classifies the claims against the Debtors into five (5) separate classes of Creditor
14 Claims and one class of Equity Interests. The Plan also provides for certain Unclassified Claims
15 pursuant to applicable provisions of the Bankruptcy Code. Holders of Unclassified Claims are
16 not eligible to vote for or against the Plan.

17 1. Class 1: Secured Claim of Clark County Treasurer. Class 1 consists of the
18 Secured Claim of the Clark County Treasurer (the "Class 1 Claim") for unpaid real property
19 taxes assessed against the Property. Under the Plan, the Class 1 Claim is deemed allowed in the
20 amount of \$195,558.92 as of the Petition Date. The Clark County Treasurer will retain its lien
21 on the Property until the Class 1 Claim is paid in full. The Class 1 Claim shall accrue interest at
22 the statutory rate of twelve percent (12.0%) per annum until paid in full. Debtors shall pay the
23 Class 1 Claim in full on or before April 30, 2018.

24 2. Class 2: Secured Claim of Opus Bank. Class 2 consists of the Secured Claims
25 asserted by Opus (the "Class 2 Claim"). As detailed in the Plan and discussed above, the
26 approximate balance as of the Petition Date on the Gateway Note was \$5,431,348 and the

1 balance on the Gateway II Note was \$6,649,597. In sum, the approximate amount of Opus' total
2 Claims total \$12,080,945 secured by the Property as well as Debtors' remaining Assets and Cash
3 Collateral. Until the Allowed amount of the Class 2 Claim has been paid in full, Opus shall
4 retain its liens against the Property, Assets, and Cash Collateral that secure the Class 2 Claim.
5 Notwithstanding the foregoing, the Custodial Receiver and Debtors are authorized to use the
6 Cash Collateral and funds held in the Custodial Receiver's Account and the Opus Account to
7 make any Payments provided in the Plan and prepare the Property for sale, including making
8 reasonable improvements to the Property as reasonably necessary for leasing or sale purposes.

9 The Debtors shall pay the Allowed amount of the Class 2 Claim in full on or
10 before April 30, 2018. The Class 2 Claim shall accrue interest at the contract rate of five and
11 20/100 percent (5.20%) per annum until paid in full. The Debtors shall make monthly accrued
12 interest payments to Opus until the Allowed amount of the Class 2 Claim is paid in full.

13 3. Class 3: Secured Claim of Maxim. Class 3 consists of the Secured Claim
14 asserted by Maxim (the "Class 3 Claim"). Maxim asserts a claim secured by a junior lien on the
15 Property, Assets, and Cash Collateral. As detailed above and in the Plan, Maxim asserts that as
16 of March 20, 2017, the balance owed on the Maxim Loans was \$3,227,697.50. Maxim shall
17 retain its junior liens that secure the Class 3 Claim until the Allowed amount of the Class 3
18 Claim has been paid in full. Notwithstanding the foregoing, the Custodial Receiver and Debtors
19 are authorized to use the Cash Collateral and funds held in the Custodial Receiver's Account and
20 the Opus Account to make any Payments provided in the Plan and prepare the Property for sale,
21 including making reasonable improvements to the Property.

22 Pursuant to the equitable principle of marshalling, the Plan requires Maxim to
23 first seek payment of its Class 3 claim from borrower, Gateway National, and non-debtor
24 guarantors DeFrees and Vancouver RV. *Meyer v. United States*, 375 U.S. 233, 237-38 (1963).
25 Those non-debtor entities have sufficient assets to pay Maxim in full, leaving sufficient assets in
26 the Debtors' Bankruptcy Estates to satisfy all remaining creditors' Allowed Claims in full. The

1 marshalling of assets in this case is necessary to protect all Allowed Claims and Equity Interests
2 of the Debtors.

3 If the Class 3 Claim is not satisfied in full as a result of Maxim's recovery from
4 the above third parties, the Debtors shall pay the Allowed amount of the Class 3 Claim in full by
5 April 30, 2018.

6 4. Class 4: Convenience Class. Class 4 consists of all Convenience Class Claims.
7 Convenience Class Claims are those Allowed Unsecured Claims which are equal to or less than
8 \$500.00, or Claimants electing to reduce their Unsecured Claims to \$500.00 or less. Debtors
9 estimate that there are nine (9) Convenience Class creditors with Claims totaling approximately
10 \$1,593.00. Each holder of an Allowed Claim that is a Class 5 Claim shall be paid in full in Cash
11 in not later than fifteen (15) days after the Effective Date of the Plan.

12 5. Class 5: General Unsecured Claims. Class 5 consists of all General Unsecured
13 Claims. The Debtors estimate claims under this Class 5 total approximately \$15,532.00. All
14 Allowed General Unsecured Claims shall be paid in full as described below. Interest shall
15 accrue on and after the Effective Date on the unpaid balance of each Class 5 Claim at the Federal
16 Judgment Rate until such Claim is paid in full.

17 First, Debtors shall pay all Allowed Class 5 Claims in existence on the Effective
18 Date as follows. Within forty five (45) days of the Effective Date, Debtors shall pay each holder
19 of a Class 5 Claim an amount equal to eighty percent (80%) of his or her Allowed Claim. By no
20 later than April 30, 2018, Debtors shall pay each holder of a Class 5 Claim the remaining twenty
21 percent (20%) of his or her Allowed Claim.

22 Second, Debtors shall pay all Allowed Class 5 Claims that arise after the Effective
23 Date as a result of a rejection of a lease, as follows. Debtors shall pay the holders of an Allowed
24 Class 5 Claim asserted after the Effective Date pursuant to Section 7.1 in full by the later of (a)
25 April 30, 2018 or (b) allowance of thirty (30) days after such Class 5 Creditor's Proof of Claim.

26 6. Class 6: Equity Interests. Class 6 consists of the Equity Interests in the Debtors.

1 The Holder of such Equity Interests shall retain such interests following Confirmation but shall
2 receive no distributions on account of such interests unless and until all payments owing to
3 holders of Allowed Claims described in this Plan have been made.

4 7. Unclassified Claims.

5 *i. Administrative Expense Claims.* Each holder of an Allowed
6 Administrative Expense Claim shall be paid by Debtors in full in Cash on the later of (a) the
7 Effective Date or (b) the date on which such Claim becomes Allowed, unless such holder shall
8 agree to a different treatment of such Claim; provided, however, that Administrative Expense
9 Claims representing obligations incurred in the ordinary course of business by Debtors during
10 the Bankruptcy Case shall be paid by Debtors or Reorganized Debtors in the ordinary course of
11 business and in accordance with any terms and conditions of the particular transaction, and any
12 agreements relating thereto.

13 *ii. Priority Tax Claims.* The Debtors believe there are no Priority Tax
14 Claims in this case. The Debtors are limited liability companies. As a result, they are treated as
15 “pass-through” entities for the purpose of federal income taxes. Thus, they are not liable for
16 such taxes. As of the filing of this Plan with the Court, the Claims Bar Date had not passed and
17 no taxing agency has yet filed a Proof of Claim, so it is unknown whether any Taxing Agency
18 will assert a Priority Tax Claim.

19 As detailed above, the Clark County Treasurer holds a Claim for unpaid real
20 property taxes secured by the Property. Since the Clark County Treasurer holds a Secured Claim
21 to the extent it is an Allowed Claim, it is not a Priority Tax Claim and is being treated under
22 Section 5.2 of the Plan. Pursuant to Code § 1129(a)(9)(D), the Clark County Treasurer shall
23 receive treatment not less favorably under the Plan than it would have received if its Claim was
24 treated as holding a Priority Tax Claim and paid pursuant to the provisions of Code Section
25 1129(a)(9)(C).

26 *iii. Bankruptcy Fees.* The Debtors shall be responsible for timely payment of

1 fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until the case is closed, converted or dismissed.
2 After confirmation, the Debtors shall file with the Court a monthly financial report for each
3 month, or portion thereof, that the case remains open. The monthly financial report shall include
4 a statement of all disbursements made during the course of the month, whether or not pursuant to
5 the Plan.

6 *iv. Professional Fees.* Debtors shall pay the Professional Fees when Allowed
7 as Administrative Expense Claims within fifteen (15) days after entry of a final order approving
8 the amount of the fees, or otherwise as the holder of an Administrative Expense Claim for
9 Professional Fees may agree in writing or as allowed by law.

10 **B. Assumption/Assignment and Rejection of Unexpired Leases and Executory**
11 **Contracts**

12 Pursuant to § 365(a) of the Bankruptcy Code, the Plan constitutes a motion to
13 authorize Debtors to assume and assign the unexpired leases set forth in Plan Exhibit 2
14 (individually, “Lease” and collectively, “Leases”) to the purchaser(s) of the Property in
15 conjunction with and effective upon the closing of a sale of the Property (“Closing”), and
16 contingent upon the purchaser(s)’ consent. The Debtors are the lessors under each Lease. As of
17 the date of this Plan, none of the lessees under the Leases have filed a Proof of Claim. Debtors
18 believe that no cure payments under Section § 365(b)(1)(A) will become due from Debtors upon
19 assumption.

20 1. Objections. Any party to an unexpired lease who believes it has a claim against
21 the Debtors is required under the Plan to file any claim for arrearage required to be cured by
22 § 365(b)(1) of the Bankruptcy Code and any objections to the assumption. Failure to assert such
23 arrearage or to file any objections shall constitute an agreement to the assumption as set out
24 herein and a conclusive acknowledgment that no defaults or claims exist under said contract (on
25 the part of the Debtors) that require a cure.

26 2. Claims for Rejection Damages. To the extent that the Purchaser(s) do not consent

1 to an assignment of one or more of the Leases, those specific leases shall be deemed rejected
2 effective upon Closing (“Rejection”). Any entity holding a claim based upon the Rejection of an
3 unexpired lease under the Plan is required to file a Proof of Claim with the Bankruptcy Court
4 within thirty (30) days after Rejection if the Bankruptcy Case is open at that time, or submit a
5 Proof of Claim to Debtors if the Bankruptcy Case is closed at that time. A Claim based upon the
6 Rejection of an executory contract or unexpired lease shall be a Class 5 Claim to the extent it is
7 an Allowed Claim. The failure of any such entity to submit a Proof of Claim within the specified
8 time period will result in the disallowance of such Claim.

9 **C. Means for Execution of the Plan**

10 1. Substantive Consolidation. As detailed in the Plan, all necessary elements exist in
11 this case to warrant substantive consolidation of the Debtors’ respective Bankruptcy Estates.
12 *See, In re Bonham*, 229 F.3d 750, 766-8 (9th Cir. 2000). Substantive consolidation will result in
13 a savings on professional fees to the Estates of the Debtors by (among other savings) making
14 claims administration and the preparation, negotiation, and confirmation of the Plan and
15 Disclosure Statement more simplified, efficient, and less costly. More fundamentally,
16 substantive consolidation will facilitate the full payment to Maxim and the unsecured creditors of
17 both of the Debtors. There is insufficient equity in the assets of the Gateway Estate to pay the
18 secured claims of the Clark County Treasurer, Opus, and Maxim. As such, in a liquidation of
19 Gateway, Maxim would not be fully paid and Gateway’s unsecured creditors would receive
20 nothing. In stark contrast, there is sufficient equity in a substantively consolidated case of the
21 combined Estates to pay all of the Debtors’ creditors’ Allowed Claims in full.

22 2. Corporate Existence and Vesting of Assets. Under the Plan, each of the Debtors
23 would continue to exist in accordance with the laws of the State of Washington and pursuant to
24 their respective Operating Agreements. Under the Plan, Debtors will continue to work with the
25 Broker to market and sell the Property. The Custodial Receiver shall remain in control of and
26 continue to manage the Debtors’ Property as well as all leases, rents, issues, and profits of such

1 Property and accrued proceeds and profits held by the Receiver, subject to use by the Custodial
2 Receiver for the improvement and maintenance of the Properties to be determined in
3 consultation with and with input from Boverman.

4 3. Disputed Claims; Objections to Claims. The Plan provides for payment in full of
5 all Allowed Claims. No Cash or other property shall be distributed under the Plan on account of
6 any Disputed Claim, or a portion of any such Claim, unless and until such Disputed Claim
7 becomes an Allowed Claim. The Debtors reserve the right to contest and object to any Claims
8 and previously Scheduled Amounts unless allowance is specifically provided for in the Plan and
9 Confirmation Order. All Disputed Claims shall be resolved by the Bankruptcy Court.

10 VI. ASSETS, LIABILITIES, AND TAX CONSEQUENCES

11 A. Debtors' Assets

12 The material assets of the Debtors are set forth in their respective Schedules A/B
13 filed in this case, as amended. Principally, the material assets of the Debtors consist of (1) the
14 Property, (2) office furniture, fixtures, and equipment, (3) fertility equipment, (4) accounts
15 receivable (*e.g.*, rent due from tenants), (5) cash held in restricted and unrestricted accounts at
16 Opus Bank, (6) cash held in accounts at Riverview Community Bank, and (7) cash held and
17 controlled by the Custodial Receiver in accounts at U.S. Bank.

18 B. Debtors' Liabilities

19 The liabilities of the Debtors as of the Petition Date are set forth in their
20 respective Schedules D, E, and F as previously filed in their Bankruptcy Cases, as amended.
21 Principally, they consist of approximately \$13,718,359 in secured claims and approximately
22 \$25,000 in general unsecured claims.

23 VII. CONFIRMATION REQUIREMENTS/LIQUIDATION ANALYSIS

24 At the hearing on confirmation, the Bankruptcy Court will determine whether the
25 provisions of Bankruptcy Code Section 1129 of the Bankruptcy Code have been satisfied. If all
26 the provisions of Section 1129 are met, the Bankruptcy Court may enter an order confirming the

1 Plan. Joint Debtors believe the Plan satisfies all the requirements of Chapter 11 of the
2 Bankruptcy Code, that Debtors have complied or will have complied with all the requirements of
3 Chapter 11, and that the Plan has been proposed and is made in good faith.

4 Among other Code requirements, to confirm the Plan the Bankruptcy Court must
5 determine that the Plan satisfies Section 1129(a)(7). That section requires that each impaired
6 creditor (whose claim has not been disputed or for which an objection has been filed and
7 temporary allowance not granted) with a right to vote either accepts the Plan or, alternatively,
8 receives under the Plan at least as much as it would receive if the Debtors' assets were liquidated
9 and the proceeds distributed under a Chapter 7 liquidation. This is generally known as the "best
10 interests" test. The Debtors believe that the Plan satisfies this requirement.

11 To apply the best interests test, the Debtors' assets are valued in the context of the
12 value which would be generated from their distressed liquidation in the context of a Chapter 7
13 case by a Chapter 7 trustee appointed by the Bankruptcy Court. This analysis would take into
14 account the costs and expenses of the liquidation, and such additional administrative and priority
15 claims which may result from the use of Chapter 7 for the purpose of liquidation. Net liquidation
16 proceeds would be paid to general unsecured creditors only to the extent funds are available after
17 secured creditors have been paid the full value of their collateral and priority creditors receive
18 full payment on their claims.

19 The Plan involves a short period of reorganization followed by the liquidation of
20 Debtors' assets. The Debtors' Plan projections and a liquidation analysis is attached hereto as
21 Exhibit 2. By substantively consolidating the Estates, the Plan provides for full payment of all
22 Allowed Claims from net rental income, Debtors' liquid assets, and proceeds from the sale of the
23 Property. The Plan provides for the orderly and targeted marketing of the Property by the
24 Broker, as opposed to distressed liquidation of the Debtors' assets in a Chapter 7 proceeding.
25 Additionally, a Chapter 7 trustee would be also entitled to a commission on all funds distributed
26 on a blended rate of roughly five percent (5%) pursuant to Section 326(a). As provided under

1 the Liquidation Analysis, that expense, including processional fees, could be well in excess of
2 \$800,000 and would not be payable under the Plan.

3 A Chapter 7 trustee would also engage his/her own professionals (attorneys,
4 accountants) to represent him/her during the liquidation, who would incur an additional level of
5 costs in simply getting up to speed in the case. For these reasons, among others, the Debtors
6 believe that conversion to a case under Chapter 7 would result in (a) significant additional costs
7 being borne by the Estates above those the consolidated Estate would incur under the Plan;
8 (b) potentially lower distributions being received by Creditors; and (c) delay distributions to
9 Creditors. Under the circumstances, the Debtors believe that the Plan provides a much better
10 alternative for all interested parties.

11 Underlying the liquidation analysis are projections and assumptions which are
12 inherently subject to uncertainties and contingencies. The liquidation analysis is based on
13 assumptions that may change.

14 **VIII. CONFIRMATION OF THE PLAN**

15 **A. Ballots and Voting Deadline**

16 A ballot for voting to accept or reject the Plan is enclosed with each copy of this
17 Disclosure Statement and mailed to all Creditors entitled to vote. After carefully reviewing this
18 Disclosure Statement and its exhibits, including the Plan, please indicate your acceptance or
19 rejection of the Plan by voting in favor or against the Plan on the enclosed ballot as directed
20 below.

21 The Bankruptcy Court had directed that, to be counted for voting purposes, ballots
22 for acceptance or rejection of the Plan must be signed and received no later than _____ .m.
23 Pacific Time, on _____, 2017, by the Debtors at the following address:

24 Farleigh Wada Witt
25 Attn: Diane Fallon
121 SW Morrison, Ste. 600
26 Portland, OR 97204

1 All persons entitled to vote on the Plan may cast their vote for or against the Plan by completing,
2 dating, and signing the enclosed ballot and returning it, by First Class Mail or hand delivery, to
3 the Debtors, at the address indicated above. Additionally, ballots may be submitted via e-mail in
4 PDF format to dfallon@fwlaw.com or via facsimile transmission to Farleigh Wada Witt, Attn:
5 Diane Fallon at (503) 228-1741. Ballots emailed or sent by facsimile transmission will be
6 counted if faxed or emailed to Ms. Fallon by _____ .m. Pacific Time on
7 _____, 2017.

8 Any ballots received after _____ .m. Pacific Time on _____,
9 2017 will not be included in any calculation to determine whether the parties entitled to vote on
10 the Plan have voted to accept or reject the Plan.

11 Holders of each Claim that was scheduled by the Debtors or with respect to which
12 a Proof of Claim has been filed for which no objection is pending will receive ballots and are
13 permitted to vote based on the amount of the Proof of Claim. If no Proof of Claim has been
14 filed, then the vote will be based on the amount scheduled by the Debtors in its Schedules.
15 Holders of any Disputed Claims who have settled their dispute with the Debtors are entitled to
16 vote the settlement amount of their Claim. The Bankruptcy Code provides that such votes will
17 be counted unless the Claim has been disputed, disallowed, disqualified or suspended prior to
18 computation of the vote on the Plan. The Claim to which an objection has been filed is not
19 allowed to vote unless and until the Bankruptcy Court rules on the objection. The Bankruptcy
20 Code provides that the Bankruptcy Court may, if requested to do so by the holder of such claim,
21 estimate or temporarily allow a Disputed Claim for the purposes of voting on the Plan.

22 If a person holds Claims in more than one class entitled to vote on the Plan, such
23 person will be entitled to complete and return a ballot for each Class. If you do not receive a
24 ballot or if a ballot is damaged or lost, please contact:

25 Farleigh Wada Witt
26 Attn: Diane Fallon

1 121 SW Morrison, Ste. 600
2 Portland, OR 97204
3 Telephone Number: (503) 228-6044

4 When a ballot is signed and returned without further instruction regarding
5 acceptance or rejection of the Plan, the signed ballot shall be counted as a vote accepting the
6 Plan. When a ballot is returned indicating acceptance or rejection of the Plan but is unsigned, the
7 unsigned ballot will not be included in any calculation to determine whether parties entitled to
8 vote on the Plan have voted to accept or reject the Plan. When a ballot is returned without
9 indicating the amount of the Claim, the amount shall be as set forth on the Debtors' Schedules or
10 any Proof of Claim filed with respect to such Claim.

11 **B. Parties Entitled to Vote**

12 Pursuant to Section 1126 of the Bankruptcy Code, each class of impaired claims
13 or interests that is not deemed to reject the Plan is entitled to vote to accept or reject the Plan.
14 Any holder of an Allowed Claim that is in an impaired class under the Plan, and whose Class is
15 not deemed to reject the Plan, is entitled to vote. A Class is "impaired" unless the legal,
16 equitable and contractual rights of the holders of claims in that Class are left unaltered by the
17 Plan or if the Plan reinstates the Claims held by members of such Class by (1) curing any
18 defaults, (2) reinstating the maturity of such claim, (3) compensating the holder of such Claim
19 for damages that result from the reasonable reliance on any contractual provision of law that
20 allows acceleration of such claim and (4) otherwise leaving unaltered any legal, equitable or
21 contractual right of which the Claim entitled the holder of such claim. Because of their favorable
22 treatment, classes that are not impaired are conclusively presumed to accept the Plan.
23 Accordingly, it is not necessary to solicit votes from the holders of claims in classes that are not
24 impaired.

25 **C. Votes Required for Class Acceptance of the Plan**

26 For a Class of Claims to accept a plan, Section 1126 of the Bankruptcy Code
requires acceptance by Creditors that hold at least two-thirds in dollar amount and a majority in

1 number of the Allowed Claims of such Class, in both cases counting only those claims actually
2 voting to accept or reject the Plan. If the Plan is confirmed, the Plan will be binding with respect
3 to all holders of Claims and Interests in each Class, including Classes and members of Classes
4 that did not vote or that voted to reject the Plan.

5 **D. Confirmation Hearing**

6 The hearing on confirmation of the Plan has been set for _____, 2017, at
7 _____ before the Honorable Brian D. Lynch, United States Bankruptcy Judge, in Courtroom
8 ____, United States Bankruptcy Court, _____. The Bankruptcy
9 Court shall confirm the Plan at that hearing only if certain requirements, as set forth in § 1129 of
10 the Bankruptcy Code, are satisfied.

11 Section 1128(b) of the Bankruptcy Code provides that any party in interest may
12 object to confirmation of the Plan. Any objections to confirmation of the Plan must be made in
13 writing and filed with the Bankruptcy Court and received by counsel for the Debtors no later
14 than _____, 201____, by _____ p.m. Pacific time. Unless an objection to confirmation is
15 timely filed and received, it may not be considered by the Bankruptcy Court.

16 **IX. MISCELLANEOUS PROVISIONS**

17 In addition to the provisions discussed herein, the Plan contains a number of
18 administrative and miscellaneous provisions. *See, e.g.*, Plan Sections IX (Miscellaneous
19 Provisions), Section X (Satisfaction/Discharge), Section XI (Modification of Plan), Section XII
20 (Retention of Jurisdiction), and Section XIII (Closing Order). Those provisions are not restated
21 or summarized in this Disclosure Statement. Please review the Plan carefully.

22 **X. TAX CONSEQUENCES**

23 Although the Debtors have not concluded a tax analysis, confirmation of the Plan
24 is not expected to generate tax consequences to Debtors. Debtors are limited liability companies
25 and considered pass-through entities for tax purposes.

26

1 CIRCULAR 230 DISCLAIMER: TO ENSURE COMPLIANCE WITH
2 REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE,
3 HOLDERS OF CLAIMS ARE HEREBY NOTIFIED THAT (A) ANY
4 DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE
5 STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR
6 WRITTEN TO BE USED OR RELIED UPON, AND CANNOT BE USED OR
7 RELIED UPON, FOR THE PURPOSE OF (1) AVOIDING TAX-RELATED
8 PENALTIES UNDER THE INTERNAL REVENUE CODE OF 1986, AS
9 AMENDED, OR (2) PROMOTING, MARKETING OR RECOMMENDING TO
10 ANOTHER PARTY ANY TRANSACTION OR TAX MATTER(S)
11 ADDRESSED HEREIN, AND (B) ANY DISCUSSION OF FEDERAL TAX
12 ISSUES IN THIS DISCLOSURE STATEMENT (INCLUDING ANY
13 ATTACHMENTS) ARE WRITTEN IN CONNECTION WITH DEBTOR
14 SOLICITING ACCEPTANCES OF THE PLAN THROUGH THIS
15 DISCLOSURE STATEMENT.

16 YOU ARE URGED TO CONSULT YOUR OWN TAX ADVISOR ABOUT
17 ANY FEDERAL, STATE, LOCAL, AND APPLICABLE FOREIGN, INCOME
18 AND OTHER TAX CONSEQUENCES OF THE PLAN.

19 XI. RECOMMENDATION AND CONCLUSION

20 Please read this Disclosure Statement and the Plan carefully. After reviewing all
21 the information and making an informed decision, please vote by using the enclosed ballot. The
22 Debtors strongly urges you to vote in support of the Plan

23 RESPECTFULLY SUBMITTED this 2nd day of August, 2017.

24 FARLEIGH WADA WITT

25 By: /s/ Tara J. Schleicher
26 Tara J. Schleicher, WSBA #26884
(503) 228-6044
tschleicher@fwwlaw.com
Of Attorneys for Debtors