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13 **UNITED STATES BANKRUPTCY COURT**
14 **DISTRICT OF NEVADA**

15 In Re
16 American West Development, Inc.,
17 Reorganized Debtor.
18 Tracy Hope Davis, United States Trustee,
19 Region 17,
20 Plaintiff,
21 vs.
22 American West Development, Inc.,
23 Defendant.

Case No. BK-S-12-12349-MKN
Chapter 11
Adversary Proceeding No.: 13-01154-MKN
**MOTION FOR APPROVAL
OF SETTLEMENT, PURSUANT TO 11
U.S.C. § 105 AND FED. R. BANKR. P.
7041 AND 9019, BETWEEN AMERICAN
WEST DEVELOPMENT, INC. AND THE
UNITED STATES TRUSTEE, REGION 17**
Hearing Date: June 10, 2015
Hearing Time: 9:30 a.m.

24 American West Development, Inc. ("Defendant", "AWDI" or the "Debtor"), the
25 Reorganized Debtor in the above-captioned chapter 11 case (the "Chapter 11 Case") and
26 defendant in the above-referenced adversary proceeding (the "Adversary Proceeding"),
27 respectfully submits this motion (the "7041/9019 Motion") for entry of an order, pursuant to
28 section 105 of the Bankruptcy Code and Rules 7041 and 9019(a) of the Federal Rules of

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1 Bankruptcy Procedure (“Bankruptcy Rules”), approving the Settlement Agreement dated as of
2 May 8, 2015 annexed hereto as **Exhibit 1** including all exhibits and attachments thereto (the
3 “Settlement Agreement”) by and between Defendant and Tracy Hope Davis, United States
4 Trustee for Region 17 (“Plaintiff” or “US Trustee”). The US Trustee and AWDI shall be referred
5 to herein as the “Settling Parties”.

6 The Settlement Agreement resolves the claims and issues raised by the Settling Parties in
7 the Adversary Proceeding.

8 This 7041/9019 Motion is made and based upon the following memorandum of points
9 and authorities, the Settlement Agreement, the Declaration of Lawrence Canarelli (the “Canarelli
10 Declaration”) filed herewith and in support hereof, the papers and pleadings on file with the
11 Court in this Adversary Proceeding (including the transcript of the January 29, 2015 settlement
12 conference that appears as Exhibit A to the Settlement Agreement (the “Transcript”) in which
13 settlement Judge Gregg W. Zive reads the settlement into the record) and the Chapter 11 Case,
14 the arguments and representations of counsel, and any oral or documentary evidence presented at
15 or prior to the time of the hearing on the 7041/9019 Motion.

16 WHEREFORE, the Debtor requests that the Court enter an Order in the form annexed
17 hereto as **Exhibit “2”**: (i) approving the Settlement Agreement discussed in section IV, below;
18 (ii) granting the 7041/9019 Motion and thereby approving the notice provisions pursuant to Fed.
19 R. Bankr. P. 7041 discussed and summarized in section IV(f), below, including the form of
20 notice attached as Exhibit C to the Settlement Agreement; and (iii) granting such further relief as
21 the Court deems just and proper.

22 Dated this 8th day of May, 2015.

23 **FOX ROTHSCHILD LLP**

24 By /s/Brett Axelrod
25 BRETT A. AXELROD (NV Bar No. 5859)
26 MARK J. CONNOT (NV Bar No. 10010)
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**MEMORANDUM OF LAW
POINTS AND AUTHORITIES**

I.

PRELIMINARY STATEMENT

Through, among other things, the January 29, 2015 settlement conference before Judge Zive, the Settling Parties have reached an arm’s length and good faith negotiated settlement of the claims and issues raised in the Adversary Proceeding on terms and conditions that are reasonable, fair and equitable. Judge Zive read the settlement into the record at the conclusion of the settlement conference. Counsel for AWDI and for Plaintiff each augmented the record and the Settlement Agreement memorializes the Parties’ resolution of the Adversary Proceeding.

At page 3, lines 6-7 of the Transcript, Judge Zive notes that “hours of good faith negotiations” led up to the settlement. At page 6, lines 22-25 and page 7, line 1 of the Transcript, Judge Zive further notes that “this settlement is clearly in the best interests of the parties before me today and does provide a benefit to Class 4 members that did not exist prior to this agreement. And it does provide benefits to all parties before me today.” At page 13, lines 16-17 of the Transcript, Judge Zive concludes that the Settlement Agreement “is a good resolution of the matter.”

II.

JURISDICTION

1. This Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This Court has post-confirmation jurisdiction pursuant to the order [Docket No. 853] confirming the First Amended Plan [Docket No. 714] (the “Plan”). See sections 11.1(e), (l) (r) and (t). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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1 **III.**

2 **PLAN CONFIRMATION AND ADVERSARY PROCEEDING**
3 **TO REVOKE CONFIRMATION ORDER**

4 3. The statutory bases for the relief requested herein are section 105 of title 11 of the
5 United States Code (the “Bankruptcy Code”) and Rules 7041 and 9019(a) of the Federal Rules of
6 Bankruptcy Procedure.

7 4. In the Bankruptcy Case, the Plan was confirmed and thereafter became effective
8 on March 15, 2013.

9 5. The Plan was accepted by in excess of two-thirds in dollar amount of the claims
10 and by a majority of the claimants that voted in each Class impaired under the Plan excluding the
11 vote of James L. Moore, the Court-appointed future claims representative (“Future Claims
12 Representative”) who, per a court-approved stipulation, was granted the right to vote claims in
13 Class 4 for which the holders thereof neither filed a proof of claim nor voted on the Plan (the
14 “Nonparticipating Class 4 Members”).

15 6. The affirmative vote of at least 80% of the Class 4 claims was required for full
16 funding of \$1.5 million to the Class 4 Construction Defect Trust created in connection with the
17 Plan in lieu of the \$500,000 minimum cash funding level. The Future Claims Representative’s
18 vote was needed to reach the 80% threshold.

19 7. Under Bankruptcy Code section 1144, the Plaintiff commenced the Adversary
20 Proceeding against Defendant seeking revocation of the order confirming the Plan and the
21 associated discharge. Defendant denied the allegations of the complaint and otherwise opposed
22 the relief sought thereunder. On September 16, 2013, Defendant filed its Motion to Dismiss
23 and/or for Summary Judgment Under Rule 7056 [Docket No. 7].

24 8. On May 13, 2014, the Court issued its Memorandum Decision and Order [Docket
25 Nos. 40 and 41] Denying Motion to Dismiss Adversary Proceeding and/or for Summary
26 Judgment [Docket No. 7].
27
28

1 9. Plaintiff and Defendant participated in a Court-ordered settlement conference
2 pertaining to the Adversary Proceeding before Judge Zive on January 29, 2015 from 9:30 a.m.
3 until approximately 3:00 p.m. The Parties had previously exchanged settlement offers and had
4 provided settlement briefs to Judge Zive, all as the Order Scheduling Settlement and Status
5 Conference required.

6 10. After the Plaintiff and Defendant agreed on the terms fully settling the Adversary
7 Proceeding, their agreement was read into the record and was acknowledged by each party's
8 designated representatives and by the respective counsel for the Plaintiff and Defendant.

9
10 **IV.**
11 **THE SETTLEMENT**

12 The Settlement Agreement can be summarized as follows:

- 13 a. The Class 4 ballots cast by the Future Claims Representative to accept the Plan on
14 behalf of the Nonparticipating Class 4 Members, including the grant of the release
15 contained therein, shall have no force or effect.
- 16 b. AWDI waives the Plan requirement that an 80% vote of Class 4 is required for the
17 Construction Defect Trust to be entitled to a \$1.5 million cash funding in lieu of
18 the minimum \$500,000 cash funding. As a result, the \$1.5 million cash funding
19 of the Plan that occurred on or before March 15, 2013 shall remain in the
20 Construction Defect Trust save and except for any disbursements that the Trustee
21 of the Construction Defect Trust has already made therefrom.
- 22 c. If, on or before the third anniversary of the effective date of the Plan, AWDI
23 receives written notice from the Trustee of the Construction Defect Trust,
24 approved in writing by the Trust Advisory Board, that the \$600,000 segment of
25 the \$1.5 million funding of the Construction Defect Trust that was dedicated to
26 paying allowed construction defect claims has been fully depleted as a result of
27 paying such claims, then, within three business days of receipt of said notice,
28 AWDI shall deposit \$650,000 into the construction defect claims paying segment

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of the funding of the Construction Defect Trust; provided however that within three business days of the fifth anniversary of the effective date of the Plan, the Trustee of the Construction Defect Trust shall deliver to AWDI any unused portion of the claims paying segment of the Construction Defect Trust, together with an accounting of all payments made on allowed construction defect claims approved in writing by the Trust Advisory Board.

- d. If the Plaintiff moves the Bankruptcy Court for an order requiring any future payment of Trustee or professional fees from the administrative segment of the funding of the Construction Defect Trust to be subject to the prior approval of the Bankruptcy Court and granting the US Trustee standing to object to the payment of said fees, AWDI will join in any such motion.
- e. AWDI has obtained an executed waiver/estoppel certificate from Robert Evans and certain other persons and entities, which is attached to the Settlement Agreement as Exhibit B and is expressly incorporated as part of the Settlement Agreement (the "Waiver/Estoppel Certificate"). Each of the persons/entities that have executed the Waiver/Estoppel Certificate acknowledges and agrees that, upon the dismissal with prejudice of the Adversary Proceeding, any release or exculpation that was granted on behalf of the Nonparticipating Class 4 Members as a result of the ballot cast by the Future Claims Representative is waived and that the bar of the statute of limitations for commencing any cause of action by the Nonparticipating Class 4 Members against the signatories of the Waiver/Estoppel certificate that was released and/or exculpated via the casting of said ballot is extended one year from the date that the order approving this 7041/9019 Motion is entered on the docket. Neither the execution and delivery of the Waiver/Estoppel Certificate nor the contents thereof shall have an impact upon the discharge of the AWDI or the injunction enforcing said discharge issued pursuant to sections 524 and 1141(d) of the Bankruptcy Code.

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- f. Notice of the 7041/9019 Motion shall be given to all parties in interest as of the record date for voting on the Plan and Plaintiff and Defendant agree that AWDI may use Garden City Group, Inc. to perform the noticing if it is available so to do and that each will not oppose a request that the 7041/9019 Motion be heard on shortened time.
- g. Judge Zive retains jurisdiction to resolve any disagreements that may arise in relation to this Settlement Agreement until the Bankruptcy Court rules on this 7041/9019 Motion, including but not limited to any remedies available to Judge Zive in the event a party attempts to breach this Settlement Agreement.
- h. Robert Evans will resign as President, Secretary and Treasurer of AWDI. Jeffrey Canarelli will assume those positions. Mr. Evans will also resign from the Board and his seat will remain vacant. Mr. Evans shall not be eligible for any of the aforementioned positions until an order granting the 7041/9019 Motion becomes a final order.
- i. Notwithstanding the provisions of Bankruptcy Rules 6004 or 6006 as applicable or any applicable provisions of the Local Rules, the order granting the 7041/9019 Motion shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in such rules will be expressly waived and shall not apply.
- j. Upon entry of an order granting the 7041/9019 Motion and approving the Settlement Agreement, the Plaintiff shall dismiss the Adversary Proceeding with prejudice in a manner consistent with **Exhibit 3** attached hereto.
- k. The Settlement Agreement is binding on Plaintiff and Defendant as expressed by Judge Zive in the Transcript (see, e.g. page 6, lines 14-21 and page 7, lines 2-9) but shall not become effective until an order of the Honorable Mike K. Nakagawa, Chief United States Bankruptcy Judge, granting the 7041/9019 Motion is entered on the docket.

V.

ARGUMENT

A. Legal Standard.

"Compromises are a normal part of the process of reorganization." Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (citations and internal quotation marks omitted). Accordingly, Bankruptcy Rule 9019 provides: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).

To safeguard the integrity of the bankruptcy process, bankruptcy courts impose procedural requirements for settlement of a discharge revocation action. These safeguards are embodied in Bankruptcy Rule 7041, the "special rule formulated for dismissals of discharge complaints." *Id.* (internal citations omitted); *see, e.g., In re Hass*, 273 B.R. 45 (Bankr SDNY 2002); *In re Taylor*, 190 B.R. 413 (Bankr. D. Colo. 1995).

The Court is afforded "great latitude in approving compromise agreements." Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). "The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims." Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1380-81 (9th Cir. 1986). Moreover, "[t]he law favors compromise and not litigation for its own sake" *Id.*, at 1381. Accordingly, to approve a settlement agreement, a bankruptcy court need not conduct a mini-trial on the merits of the claims or an exhaustive investigation into the underlying dispute between the parties. United States v. Alaska Nat'l Bank (In re Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982). It is sufficient that the court find that the settlement was negotiated in good faith and that it is fair and equitable. A & C Props., 784 F.2d at 1381.

The Ninth Circuit has identified four factors that a bankruptcy court must consider in determining whether a proposed settlement is reasonable, fair and equitable:

- a. the probability of success in the litigation;

- 1 b. the difficulties, if any, to be encountered in the matter of collection;
- 2 c. the complexity of the litigation involved, and the expense, inconvenience
- 3 and delay necessarily attending it; and
- 4 d. the paramount interest of the creditors and a proper deference to their
- 5 reasonable views in the premises.

6 A & C Properties, 784 F.2d at 1381 (citations omitted).

7 In considering these factors, bankruptcy courts need only canvass the issues, not decide
8 disputed facts and questions of law. See Burton v. Ulrich (In re Schmitt), 215 B.R. 417, 423
9 (B.A.P. 9th Cir. 1997). “If the court were required to do more than canvass the issue[s], ‘there
10 would be no point in compromising; the parties might as well go ahead and try the case.’” Suter
11 v. Goedert (In re Suter), 396 B.R. 535, 548 (D. Nev. 2008) (quoting 10 Collier on Bankruptcy, ¶
12 9019.02). Additionally, “while creditors’ objections to a compromise must be afforded due
13 deference, such objections are not controlling.” A & C Props., 784 F.2d at 1382. Indeed, the
14 settlement need not be the best that could have been achieved, but only must not fall “below the
15 lowest point in the range of reasonableness.” In re Pac. Gas & Elec. Co., 304 B.R. 395, 417
16 (Bankr. N.D. Cal. 2004) (quoting In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496
17 (Bankr. S.D.N.Y. 1991) (citations and internal quotation marks omitted)); accord Redwood
18 Trust v. Am. Bldg. Storage, LLC (In re Am. Bldg. Storage, LLC), No. CC-06-1259-MOPAD,
19 2007 WL 7532281, at *5 (B.A.P. 9th Cir. Apr. 2, 2007) (not for publication).

20 **B. The A & C Properties Factors Weigh Heavily in Favor of Approving the Settlement.**

21 The Settlement Agreement should be approved because all of the A & C Properties
22 factors favor such approval.

23 1. **Probability of Success in Litigation.**

24 Plaintiff’s case focuses on the important need to protect the integrity of the bankruptcy
25 process and the Bankruptcy Judge has already ruled that he would not have appointed the Future
26 Claims Representative if his connections to Evans had been fully disclosed. However, Class 4
27 voted to accept the Plan even if the vote of the Future Claims Representative is not counted so it
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1 is difficult for the Plaintiff to prove that the confirmation order was procured by fraud.
2 Moreover, section 1144 requires the revocation order to contain such provisions as are necessary
3 to protect any entity acquiring rights in good faith reliance on the confirmation order. To craft
4 those provisions would be difficult since holders of allowed Class 3 claims have already been
5 paid in full and the cash out amount has been already paid to those members of Class 4 who
6 made the cash out election. In addition, the holders of allowed Class 2 claims have been paid in
7 full and new secured debt encumbers the assets of the Reorganized Debtor. Furthermore,
8 bonding companies have issued performance bonds to the Reorganized Debtor. The
9 performance bonds outstanding total \$32,005,606 as of February 13, 2015. Of that amount,
10 \$18,230,539 in performance bonds have been issued since the effective date of the Plan. In
11 addition, there have been 1,057 home closings from the effective date of the Plan through
12 January 31, 2015. See Canarelli Declaration, ¶ 8. Lastly, the degree to which the Plan has been
13 implemented could well support the application of the equitable mootness doctrine.

14 **2. Difficulties in Collection.**

15 If the confirmation order was revoked, it could prove extremely difficult to collect
16 disgorgement payments from the members of Classes 2, 3 and 4 that have already been paid and
17 to return to the infuser of the new value contribution the funds it advanced to fund the Plan and
18 thereafter advanced to or invested in the Reorganized Debtor. See Canarelli Declaration, ¶ 6-7.

19 **3. Complexity, Expense and Delay Resulting from Litigation as well as its Post**
20 **Confirmation Advances to and Investments in the Reorganized Debtor.**

21 The disgorgement of the vast sums already paid out under the Plan would have to be
22 confronted. Additionally, the complexity of whether Class 2's waiver of participation of its
23 \$100+ million unsecured deficiency claim in Class 3 distributions would also have to be
24 addressed. Moreover, resolving the competing security interests of the members of Class 2 and
25 of the now extant secured lenders on the assets of AWDI would be required. Also, dealing with
26 the complexity of making the infuser of the new value contribution whole not only for that
27 contribution but for the other advances and investments made post confirmation would require
28

1 resolution. Since confirmation, in excess of \$20 million has been invested in the Reorganized
2 Debtor which is in addition to the \$10 million new value contribution made in connection with
3 confirmation to fund the plan and construction defect trust and provided working capital for the
4 reorganized debtor. See Canarelli Declaration, ¶ 10.

5 Among the triable issues would be the need for the Plaintiff to prove the actual intent
6 required to sustain a claim under section 1144, the potential need to examine the alleged reliance
7 interests of dozens, perhaps hundreds of creditors, trade vendors, etc. within the meaning of
8 section 1144(1), and numerous related issues, all of which are extremely fact intensive and,
9 derivatively, costly and time consuming to litigate. Moreover, even if Plaintiff were to prevail
10 on all counts of her complaint, section 1144 is written in permissive terms, and the Bankruptcy
11 Court may exercise its discretion under that statute to allow the confirmed plan to stand
12 notwithstanding any type of fraud within the meaning of section 1144 that Plaintiff may be able
13 to establish at trial.

14 **4. Benefit to Creditors.**

15 As more fully set forth in the Settlement Agreement, the Settlement Agreement benefits
16 creditors in that it permits them to retain the generous payments they have received under the
17 Plan (70 cents on the dollar to Class 3 and arguably 100 cents on the dollar to Class 2 leaving
18 aside its waiver of its \$100+ million unsecured deficiency claim waiver). Moreover, the
19 Settlement Agreement benefits Class 4 by increasing its cash funding should its initial cash
20 funding prove to be inadequate. The Settlement Agreement furthermore benefits creditors in
21 that: (1) the Class 4 ballot cast by the Future Claims Representative to accept the Plan on behalf
22 of the Nonparticipating Class 4 Members, including the release and exculpation contained
23 therein, shall have no force or effect; (2) the persons/entities that have executed the
24 Waiver/Estoppel Certificate acknowledge and agree that, upon the dismissal with prejudice of
25 the Adversary Proceeding, any release or exculpation that was granted on behalf of the
26 Nonparticipating Class 4 Members as a result of the ballot cast by the Future Claims
27 Representative is waived; and (3) the bar of the statute of limitations for commencing any cause
28

1 of action by the Nonparticipating Class 4 Members against the signatories of the
2 Waiver/Estoppel Certificate that was released and/or exculpated via the casting of said ballot is
3 extended one year from the date that the order approving this 7041/9019 Motion becomes final.
4 See Canarelli Declaration, ¶ 11.

5 **II.**

6 **CONCLUSION**

7 The Debtor believes that the Settlement Agreement should be approved. Upon
8 consideration of the A & C Properties factors and Judge Zive’s observations set forth in the
9 Transcript, the Settlement Agreement is fair and equitable and was by all accounts negotiated in
10 good faith and otherwise satisfactorily meets the Ninth Circuit’s test for approving compromises
11 of controversies under Bankruptcy Rule 9019.

12 Dated this 8th day of May, 2015.

13 **FOX ROTHSCHILD LLP**

14 By /s/Brett Axelrod
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EXHIBIT 1

**SETTLEMENT AGREEMENT FULLY RESOLVING ADVERSARY
PROCEEDING**

THIS SETTLEMENT AGREEMENT is entered into by and between Tracy Hope Davis, in her capacity as the United States Trustee for Region 17 ("Plaintiff" or "UST") and American West Development, Inc., in its capacity as the reorganized debtor ("Defendant" or "AWDI"), in chapter 11 case BK-S-12-12349-MKN, United States Bankruptcy Court, District of Nevada (the "Bankruptcy Case"), in light of the following facts:

A. In the Bankruptcy Case, the First Amended Plan of Reorganization ("the Plan") was confirmed and became effective on March 15, 2013. The Plan was accepted by in excess of two-thirds in dollar amount and by in excess of a majority in number of the claims that voted in each Class impaired under the Plan excluding the vote of James L. Moore, the Court-appointed future claims representative ("Future Claims Representative") who, per a court approved stipulation, was granted the right to vote claims in Class 4 for which the holders thereof neither filed a proof of claim nor voted on the Plan ("Nonparticipating Class 4 Members").

B. The affirmative vote of the Future Claims Representative was needed to make the vote to accept the Plan by Class 4 at least equal to 80 % of the Class 4 claims which was a requirement for the cash funding of the Class 4 Construction Defect Trust created in connection with the confirmed and effective Plan to be at a \$1.5 million level in lieu of the \$500,000 minimum cash funding level.

C. Under Bankruptcy Code section 1144, the Plaintiff commenced adversary proceeding no. 13-01154 against Defendant (the "Adversary Proceeding") seeking revocation of the order confirming the Plan and the associated discharge. Defendant denied the allegations of the complaint and otherwise opposed the relief sought thereunder. On September 16, 2013, Defendant filed its Motion to Dismiss and/or for Summary Judgment Under Rule 7056 [Docket No. 7]. On May 13, 2014, the Court issued its Memorandum Decision and Order [Docket Nos. 40 and 41] Denying Motion to Dismiss Adversary Proceeding and/or for Summary Judgment [Docket No. 7].

D. On January 29, 2015, the Plaintiff and Defendant appeared before the Hon. Gregg W. Zive as settlement judge at 9:30 a.m. and participated in a Court-ordered settlement conference pertaining to the Adversary Proceeding before Judge Zive until approximately 3:00 p.m. that day, having previously exchanged settlement offers and provided to Judge Zive settlement briefs, all as required by the Order Scheduling Settlement and Status Conference.

E. After the Plaintiff and Defendant agreed on the terms fully settling the Adversary Proceeding, their agreement was read into the record and their agreement was acknowledged by each party's designated representatives and by the respective counsel for the Plaintiff and Defendant as being the agreement of the parties. A

transcript of that proceeding is attached hereto as Exhibit A and incorporated herein by this reference.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Plaintiff and Defendant hereby agree as follows:

1. The Class 4 ballot cast by the Future Claims Representative to accept the Plan on behalf of the Nonparticipating Class 4 Members, including the release and exculpation contained therein, shall have no force or effect.
2. AWDI waives the Plan requirement that an 80% vote of Class 4 is required for the Construction Defect Trust to be entitled to a \$1.5 million cash funding in lieu of a \$500,000 cash funding so that the \$1.5 million cash funding of the Plan that occurred on or before March 15, 2013 shall remain in the Construction Defect Trust save and except for any disbursements that the Trustee of the Construction Defect Trust has already made therefrom.
3. If, on or before the third anniversary of the effective date of the Plan, AWDI receives written notice from the Trustee of the Construction Defect Trust, and approved in writing by the Trust Advisory Board, that the \$600,000 segment of the \$1.5 million funding of the Construction Defect Trust that was dedicated to paying allowed construction defect claims has been fully depleted as a result of paying such claims, then, within three business days of receipt of said notice, AWDI shall deposit \$650,000 into the construction defect claims paying segment of the funding of the Construction Defect Trust; provided however that within three business days of the fifth anniversary of the effective date of the Plan, the Trustee of the Construction Defect Trust shall deliver to AWDI any unused portion of the claims paying segment of the Construction Defect Trust, together with an accounting approved in writing by the Trust Advisory Board, of all payments made on allowed construction defect claims.
4. If the Plaintiff moves the Bankruptcy Court for an order requiring any future payment of Trustee or professional fees from the administrative segment of the funding of the Construction Defect Trust to be subject to the prior approval of the Bankruptcy Court and granting the UST standing to object to the payment of said fees, AWDI will join in any such motion.
5. AWDI has obtained an executed waiver/estoppel certificate from Robert Evans and certain other persons and entities, which is attached hereto as Exhibit B and is hereby incorporated as part of this Settlement Agreement (the "Waiver/Estoppel Certificate"). The persons/entities that have executed the Waiver/Estoppel certificate acknowledge and agree that, upon the dismissal with prejudice of the Adversary Proceeding, any release or exculpation that was granted on behalf of the Nonparticipating Class 4 Members as a result of the ballot cast by the Future Claims Representative is waived and that the bar of the statute of limitations for commencing any cause of action by the Nonparticipating Class 4 Members against

the signatories of the Waiver/Estoppel Certificate that was released and/or exculpated via the casting of said ballot is extended one year from the date that the order approving the motion to obtain Bankruptcy Court approval of this Settlement Agreement (the "7041/9019 Motion") becomes final. Neither the execution and delivery of the Waiver/Estoppel Certificate nor the contents thereof shall have an impact upon the discharge of AWDI or the injunction enforcing said discharge issued pursuant to sections 524 and 1141(d) of the Bankruptcy Code.

6. Notice of the 7041/9019 Motion shall be given in the form and substance of Exhibit C hereto to all parties in interest as of the record date for voting on the Plan and Plaintiff and Defendant agree that AWDI may use Garden City Group to do the noticing if it is available so to do and that each will not oppose a request that the 7041/9019 Motion be heard on shortened time.

7. Upon approval of the 7041/9019 Motion, Judge Zive retains jurisdiction to resolve any disagreements that may arise in relation to this Settlement Agreement, including but not limited to any remedies available to Judge Zive in the event a party attempts to breach this Settlement Agreement. Following the entry of an order approving the 7041/9019 Motion, Chief Judge Nakagawa will retain jurisdiction to oversee the enforcement of, determine the applicability/enforceability of, and to adjudicate any disputes and disagreements relating to this Settlement Agreement.

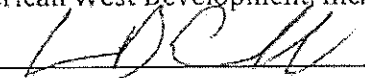
8. Robert Evans will resign as President, Secretary and Treasurer of AWDI. Jeffrey Canarelli will assume those positions. Mr. Evans will also resign from the Board and his seat will remain vacant. Mr. Evans shall not be eligible for any of the aforementioned positions until entry of an order granting the 7041/9019 Motion.

9. Upon entry of an order granting the 7041/9019 Motion and approving this Settlement Agreement (including all exhibits and attachments hereto), the Plaintiff shall dismiss the Adversary Proceeding with prejudice in a manner consistent with Exhibit 3 to the 7041/9019 Motion.

10. The Settlement Agreement is binding on Plaintiff and Defendant as expressed by Judge Zive in Exhibit A hereto but shall not become effective until an order granting the 7041/9019 Motion is entered on the docket.

IN WITNESS WHEREOF, this Settlement Agreement has been executed by the parties as of the 8th day of May 2015 by their respective representative thereunto duly authorized so to do.

American West Development, Inc.

By 

Lawrence Canarelli, CEO

Brian E. Goldberg, Esq., Assistant United States Trustee-Las Vegas Field Office, on behalf of Tracy Hope Davis, as U.S. Trustee, Region 17

By Brian E. Goldberg
Brian E. Goldberg

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (RENO)

IN RE:	:	Case No. 12-12349-MKN
	:	
AMERICAN WEST DEVELOPMENT, INC.,	:	Chapter 11
	:	
Debtors.	:	
.....	:	
	:	
TRACY HOPE DAVIS,	:	Adv. No. 13-01154-MKN
UNITED STATES TRUSTEE,	:	
	:	
Plaintiff,	:	
	:	300 Booth Street
v.	:	Reno, NV 89509
	:	
AMERICAN WEST DEVELOPMENT, INC.,	:	
	:	
Defendants.	:	Thursday, January 29, 2015
.....	:	2:32 p.m.

TRANSCRIPT OF SETTLEMENT CONFERENCE
BEFORE THE HONORABLE GREGG W. ZIVE
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For American West Development, Inc.:	Fox Rothschild LLP By: CHARLES D. AXELROD, ESQ. MARK J. CONNOT, ESQ. 3800 Howard Hughes Parkway, Suite 500 Las Vegas, NV 89169 (702) 262-6899
---	--

For the U.S. Trustee:	Office of the United States Trustee By: NICHOLAS STROZZA, ESQ. By: ATHANASIOS AGELAKOPOULOS, ESQ. By: BRIAN E. GOLDBERG, ESQ. 300 Booth Street, Suite 3009 Reno, NV 85909
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Audio Operator:	Stacie C. Burney, ECR
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Transcription Company:	Access Transcripts, LLC 10110 Youngwood Lane Fishers, IN 46038 (855) 873-2223 www.accesstranscripts.com
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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 (Proceedings commence at 2:32 p.m.)

2 THE COURT: Please be seated. This is in the matter
3 of American West Development, Inc. in Adversary Number
4 13-01154, Tracy Hope Davis, United States Trustee, plaintiff,
5 versus American West Development, Inc., defendant. Throughout
6 this hearing I'll probably be referring to the defendant as
7 AWDI instead of using its full name.

8 May I have appearances of counsel for both parties,
9 please.

10 MS. AXELROD: Good morning, Your Honor. Charles
11 Axelrod and Mark Connot, Fox Rothschild, LLP, on behalf of
12 AWDI. Also present in the courtroom is Ed Lubbers, our general
13 outside counsel. Mr. Robert Evans is President, and the owner
14 --

15 MR. TANNER: Lawrence Tanner.

16 MR. AXELROD: Lawrence Tanner, the owner of the
17 company.

18 THE COURT: Thank you.

19 MR. STROZZA: Good afternoon, Your Honor. Nicholas
20 Strozza, Office of the US Trustee.

21 MR. AGELAKOPOULOS: Good afternoon, Your Honor. May
22 it please the Court, Athanasios Agelakopoulos for United States
23 Trustee Tracy Hope Davis.

24 MR. GOLDBERG: Good afternoon, Your Honor. May it
25 please the Court, Brian Goldberg, also of the Office of the

1 United States Trustee on behalf of the United States Trustee
2 for Region 17, Tracy Davis. Thank you.

3 THE COURT: Thank you. Pursuant to an order signed
4 by Judge Mike Nakagawa on November 3rd, 2014, the parties have
5 spent the day conducting a settlement conference over which I
6 have been presiding. And following hours of good-faith
7 negotiations, the parties have entered into a settlement
8 agreement of this adversary which sought to revoke a plan of
9 reorganization for the debtor, AWDI, the effective date of
10 which was March 15th, 2013.

11 In full settlement of all the matters between the
12 Office of the United States Trustee and the reorganized debtor,
13 AWDI, the parties have agreed as follows:

14 The debtor will waive the provisions of the plan that
15 required an 80 percent affirmative vote by members of Class 4,
16 which is a class composed of construction defect claimants,
17 known and unknown. The unknown claimants were represented by a
18 future claims representative that had been appointed in April
19 of 2013, shortly after the -- that's actually wrong. It would
20 be 2012 when the case was filed. As I noted, 2013, March 15th,
21 was the date of plan confirm -- effective date of the plan. I
22 apologize for that error.

23 The treatment of Class 4 called for either a 500,000
24 or a \$1.5 million deposit into a claims defect trust over which
25 a claims defect trustee would oversee. By not counting the

1 votes -- the vote of the future claims representative, the 80
2 percent threshold would not have been achieved. However, by
3 waiving that threshold, the amount of \$1.5 million deposited
4 into the trust will remain the option under the plan.

5 In addition to the 1.5 million, which is not wholly
6 earmarked for class members, because of the 1.5 million, there
7 was a carve-out of up to \$900,000 for trust administrative
8 expenses including the prosecuting of any actions against any
9 persons or entity that the trustee could bring claims against
10 pursuant to an assignment of claims from the debtor consistent
11 with the terms of the confirmed plan, and also administrative
12 expense to administer the trust.

13 The residual amount, \$600,000, was the only
14 guaranteed amount that would be available for class members.
15 That amount might -- it is agreed that that amount might need
16 augmentation, even though history to date since plan
17 confirmation indicated that it probably will not, but to ensure
18 that the class members receive additional protection, the
19 reorganized debtor has agreed to the following:

20 If at any time prior to or on the third anniversary
21 of the effective date of the plan -- this is March 15th, 2013
22 -- the fund for the benefit of the homeowners -- that was the
23 \$600,000 -- were to be depleted, the reorganized debtor, AWDI,
24 would provide an additional \$650,000. Then on the fifth
25 anniversary of the effective date of the confirmed plan, any

1 amounts remaining in the claim defect trust account shall be
2 paid to AWDI. The parties have also agreed, because of the
3 significant amount that was carved out for advancement
4 expenses, and candidly because of the administrative expenses
5 incurred to date, especially in light of the very small number
6 of claimants seeking compensation from that trust, both parties
7 have agreed that they will ask the Court to require the claim
8 defect trustee to obtain Court approval for any fees and
9 expenses in order to ensure that the maximum amount remains
10 available at least through the fifth anniversary of the plan
11 effective date.

12 In a separate manner, the plan of reorganization
13 contained consensual provisions addressing third-party
14 releases, exculpation, and release of claims. The debtor has
15 agreed that it will obtain waivers of any of those provisions
16 or estop certificates so that estopping any beneficiary of
17 those provisions from enforcing or utilizing in any manner
18 those provisions from Mr. Evans.

19 And Mr. Evans is present today and he has agreed to
20 that treatment. Correct, Mr. Evans?

21 MR. EVANS: Yes, Your Honor.

22 THE COURT: And from any other insider and/or equity
23 interest holder in the reorganized debtor, AWDI.

24 It has also been agreed that the statute of
25 limitations pertaining to any claim that might otherwise not

1 have been able to be brought because of the release exculpation
2 or release of claim language in the plan will have its statute
3 of limitations extended from one year from the time that Judge
4 Nakagawa enters an order approving the settlement agreement
5 pursuant to Federal Rule of Bankruptcy Procedure 9019, if, in
6 fact, he does approve this agreement.

7 The trustee -- United States Trustee has agreed that
8 if this agreement is approved by Judge Nakagawa, it shall
9 dismiss with prejudice the adversary proceeding.

10 The motion seeking approval pursuant to Rule 9019,
11 the parties have agreed could be brought on shortened time if
12 Judge Nakagawa so allows; that notice shall be provided to all
13 parties in interest, including members of Class 4 of the Rule
14 9019 motion. But I have explained to counsel and to the
15 parties that this agreement is binding upon them now; that
16 while I may not have any binding effect upon any of the other
17 parties to the bankruptcy case, as far as these parties are
18 concerned, they have reached an enforceable agreement.
19 Enforceable by me as the settlement judge, to utilize any of
20 the remedies available to me in the event that either party
21 attempts to breach this agreement. I do not anticipate that
22 that will be necessary because this settlement is clearly in
23 the best interest of the parties before me today and does
24 provide a benefit to Class 4 members that did not exist prior
25 to this agreement. And it does provide benefits to all parties

1 before me today.

2 But I want to emphasize, in a colloquial term, no
3 buyer remorse, no attempting to modify, alter, or change the
4 terms of the agreement in any manner or fashion whatsoever. If
5 there is any disagreement regarding the terms of the written
6 memorialization of this agreement, which I expect will be
7 either in the motion seeking approval or in an exhibit to that
8 motion, that I have agreed to retain jurisdiction to resolve
9 any of those matters and I will do so.

10 Counsel, you've heard the terms of the agreement that
11 I placed on the record. Do you have anything you wish to add
12 or to modify or you believe that I have missed? Mr. Axelrod?

13 Please identify yourself for the record.

14 MR. LUBBERS: My name is Ed Lubbers. I am the
15 general counsel for the reorganized debtor.

16 THE COURT: I'm going to ask you to spell your last
17 name, please.

18 MR. LUBBERS: L-U-B as in "boy," B as in "boy," E-R-
19 S.

20 I'm going to assume, Judge, that the notice
21 obligation for the Rule 9019 motion will be on the reorganized
22 debtor and I would like to reserve the right to use the same
23 company that we used for notice provisions during the process
24 of the plan. Does the trustee's office have any issue with
25 that?

1 MR. STROZZA: No issue.

2 MR. LUBBERS: I don't know the name of the company,
3 but I know we hired --

4 (Indiscernible - simultaneous speech)

5 MR. LUBBERS: We would also -- I'd also like to make
6 it clear that the notice to Class 4 would be to those people
7 who would have received notice for the confirmation of the
8 plan.

9 THE COURT: Oh, yes. I forgot to put that on the
10 record. It has a date of the confirmation of the plan, the
11 record date for that. That's correct.

12 MR. LUBBERS: And we would like to ad that Mr. Evans
13 will resign as president, secretary, treasurer, and board
14 member effective January 30th, two thousand -- what year are
15 we?

16 THE COURT: '15.

17 MR. LUBBERS: '15, 2015.

18 THE COURT: I forgot. That's correct. We had agreed
19 to that even before we went into private session.

20 MR. STROZZA: Thank you, Your Honor. Nick Strozza,
21 US Trustee.

22 Just two points of clarification and I don't know who
23 the released parties are, but I don't know -- does -- Mr.
24 Canarelli is here. Does he need to consent in the same fashion
25 as you --

1 THE COURT: I'm going to put this on the -- after we
2 get done with --

3 MR. STROZZA: Okay. And then the release would go to
4 the defined terms of released parties, not just the individuals
5 that Mr. --

6 THE COURT: Whatever -- the -- but they can only
7 obtain the waivers that I've identified.

8 MR. STROZZA: Wait, the release is only to the
9 specific people that can obtain waivers for or is it to the
10 group?

11 THE COURT: No, the -- they can agree that the plan
12 will not provide the waivers, but they can't waive now rights
13 that have been established by the plan from intended
14 beneficiaries in the absence of consent. So we can put that on
15 the record that that's what AWDI intends to do, but obviously
16 it can't -- for example, there may be a --

17 MR. STROZZA: Yeah, I got it.

18 THE COURT: -- released party, said I wasn't a party
19 to the settlement, you can't bind me, and I think they're
20 probably right.

21 MR. LUBBERS: If I --

22 MR. STROZZA: Sure.

23 MR. LUBBERS: I've asked the US Trustee's office to
24 do the first draft of that release because I know they're
25 concerned -- of that waivers, because I know they're concerned.

1 I will --

2 THE COURT: What's the statute of limitation
3 language?

4 MR. LUBBERS: I will provide my attorneys so that
5 they could provide to the US Trustee's office the list of
6 individuals that will qualify for the waiver as insiders in
7 equity interest holders.

8 THE COURT: All right. Does that help, Mr. Strozza?

9 MR. STROZZA: That's actually a question I had is
10 just so we know who the names are, who's going to be giving
11 this, and he said he's --

12 (Counsel confer)

13 THE COURT: Yeah. And notice will go out to
14 everyone. And under Espinoza, that may be sufficient to bind
15 them to the waivers.

16 (Counsel confer)

17 THE COURT: I'm not opining that that would be the
18 effect, only the potential effect.

19 (Counsel confer)

20 MR. AGELAKOPOULOS: For the record Athanasios
21 Agelakopoulos for the US Trustee. Just a brief bit of
22 clarification.

23 I believe Mr. Lubbers mentioned that they would
24 obtain the certificates of estoppel or waivers from
25 individuals. I also want to know if that includes other

1 entities that the -- that may qualify as insiders as well.

2 THE COURT: Oh, yeah. Are any of the related
3 entities the insiders have?

4 MR. LUBBERS: I don't want to beat any dead horses,
5 but I don't think there are any.

6 THE COURT: If there are, add them.

7 MR. LUBBERS: So they probably will not be on my
8 list, but I'd be more than willing to discuss it with you if
9 you think there is.

10 MR. AGELAKOPOULOS: We just want that as a point of
11 clarification, that that includes also entities as well as
12 individuals.

13 THE COURT: Yes. That was my understanding. That
14 your understanding? There you go. All right.

15 I don't -- Mr. Strozza, I need you to approach the
16 podium. Did you speak to the United States Trustee for this
17 region?

18 MR. STROZZA: Yes, Your Honor. I spoke to Tracy Hope
19 Davis, US Trustee for Region 17, and went through the terms as
20 we had discussed them and we have her agreement to the deal.

21 THE COURT: She has authorized you to enter into this
22 agreement on her behalf?

23 MR. STROZZA: She has, Your Honor.

24 THE COURT: And she understands that it's binding on
25 the US Trustee's office subject to --

1 MR. STROZZA: She does, Your Honor.

2 THE COURT: -- approval by Judge Nakagawa?

3 MR. STROZZA: She does.

4 THE COURT: Thank you. I need the principal who is
5 speaking on behalf of the reorganized debtor to step forward,
6 please. Please state your full name.

7 MR. CANARELLI: My name is Lawrence D. Canarelli, C-
8 A-N-A-R-E-L-L-I.

9 THE COURT: All right. Would you please swear --
10 LAWRENCE D. CANARELLI, PRINCIPAL FOR THE REORGANIZED DEBTOR,
11 SWORN

12 VOIR DIRE EXAMINATION BY THE COURT:

13 Q What is your position with AWDI, the reorganized debtor?

14 A I'm the CEO.

15 Q And are you authorized to act on behalf of American West
16 Development, Inc.?

17 A I am.

18 Q And did you participate in the settlement negotiations
19 that occurred today?

20 A I did.

21 Q And did you listen to the terms of the settlement
22 agreement as I placed them on the record and as clarified by
23 counsel?

24 A Yes.

25 Q Did you understand those terms?

1 A I did.

2 Q Do you agree to be bound by those terms?

3 A Yes.

4 Q Were you one of the released parties?

5 A I will be.

6 Q And do you agree to waive that release?

7 A I do, yes.

8 Q And did you agree that American West Development, Inc.
9 will be bound by the terms of this settlement agreement as you
10 understand it?

11 A Yes, I do.

12 Q And do you have any questions about what the agreement is
13 of me?

14 A No.

15 THE COURT: Thank you very much. I thank you all for
16 your participation in today's conference. I actually think
17 that it is a good resolution of the matter and I wish you all
18 the best of luck.

19 (Concluded at 2:52 p.m.)

20 * * * * *

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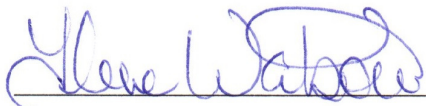
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C E R T I F I C A T I O N

I, ILENE WATSON, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



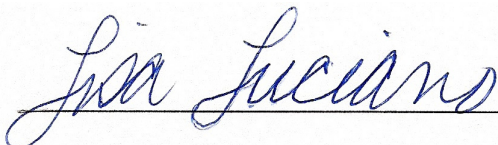
ILENE WATSON, AAERT NO. 447

DATE: February 4, 2015

ACCESS TRANSCRIPTS, LLC

C E R T I F I C A T I O N

I, Lisa Luciano, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



LISA LUCIANO, AAERT NO. 327

DATE: February 4, 2015

ACCESS TRANSCRIPTS, LLC

EXHIBIT B

EXHIBIT B

WAIVER/ ESTOPPEL CERTIFICATE

Each of the undersigned do hereby agree as follows:

This Waiver/Estoppel Certificate relates to and has been executed in connection with the Settlement Agreement Fully Resolving Adversary Proceeding by and between Tracy Hope Davis, in her capacity as the United States Trustee for Region 17 (“UST”) and American West Development, Inc., in its capacity as the reorganized debtor (“AWDI”), in chapter 11 case BK-S-12-12349-MKN, United States Bankruptcy Court, District of Nevada (the “Bankruptcy Case”).

Effective upon said Adversary Proceeding having been dismissed with prejudice, any release or exculpation that was granted by holders of Class 4 claims for whom the Future Claim Representative cast a ballot accepting AWDI’s first amended plan of reorganization is waived and the statute of limitations for commencing causes of action released via the casting of said acceptance ballot by the Future Claims Representative on behalf of said members of Class 4 is hereby extended one (1) year from the date of entry of the order granting the motion approving the compromise between AWDI and the United States Trustee for Region 17.

This Waiver/Estoppel Certificate is entered knowingly, voluntary and intelligently. The individual or entity executing the Waiver/Estoppel Certificate has either (a) had the assistance of counsel in reaching the decision to execute the document or (b) expressly acknowledges that either he/she/it has had the opportunity to seek out the advice of counsel in connection with executing the Waiver/Estoppel Certificate but he/she/it has made the decision to not avail himself/herself/itself of such assistance knowingly, voluntarily and intelligently.

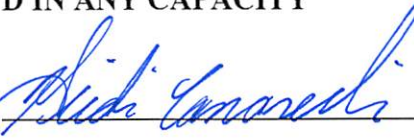
If this Waiver/Estoppel Certificate is executed by an entity, it expressly represents that all formalities required for valid action by the entity to enter into this Waiver/Estoppel Certificate have been satisfied.

Dated this 6th day of May, 2015.

LAWRENCE D. CANARELLI,
INDIVIDUALLY AND IN ANY
CAPACITY

By: 


HEIDI CANARELLI, INDIVIDUALLY
AND IN ANY CAPACITY

By: 


THE CANARELLI FAMILY TRUST

By: 
LAWRENCE D. CANARELLI
Its: TRUSTEE

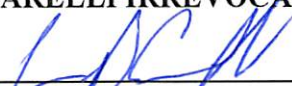
THE JEFFREY LAWRENCE GRAVES
CANARELLI IRREVOCABLE TRUST

By: 
LAWRENCE D. CANARELLI AND
HEIDI CANARELLI, TRUSTEES

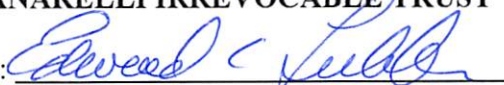
THE STACIA LEIGH LEMKE
IRREVOCABLE TRUST

By: 
LAWRENCE D. CANARELLI AND
HEIDI CANARELLI, TRUSTEES

THE ALYSSA LAWREN GRAVES
CANARELLI IRREVOCABLE TRUST

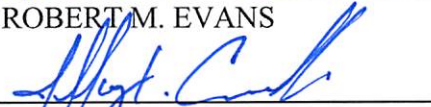
By: 
LAWRENCE D. CANARELLI AND
HEIDI CANARELLI, TRUSTEES

THE SCOTT LYLE GRAVES
CANARELLI IRREVOCABLE TRUST

By: 
EDWARD C. LUBBERS, TRUSTEE

OFFICERS/DIRECTORS OF AMERICAN
WEST DEVELOPMENT, INC.:

By: 
ROBERT M. EVANS

By: 
JEFFREY L. CANARELLI

By: 
MARK DUNFORD

AWH VENTURES, INC.

By: 

**AMERICAN WEST DEVELOPMENT, INC.,
REORGANIZED DEBTOR**

By: 

EXHIBIT C

Electronically Filed May 8, 2015

1 BRETT A. AXELROD (NV Bar No. 5859)
2 MARK J. CONNOT (NV Bar No. 10010)
3 CHARLES D. AXELROD (Admitted Pro Hac Vice)

4 **FOX ROTHSCHILD LLP**
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8 Facsimile: (702) 597-5503
9 Email: baxelrod@foxrothschild.com
10 mconnot@foxrothschild.com
11 caxelrod@foxrothschild.com

12 *Counsel for American West Development, Inc.*

13 **UNITED STATES BANKRUPTCY COURT**

14 **DISTRICT OF NEVADA**

15 In Re
16 American West Development, Inc.,
17
18 Debtor.

19 Case No. BK-S-12-12349-MKN

20 Chapter 11

21 Tracy Hope Davis United States Trustee,
22 Region 17,

23 Adversary Proceeding No.: 13-01154-MKN

24 Plaintiff,

25 **NOTICE OF HEARING ON MOTION
26 FOR APPROVAL OF SETTLEMENT,
27 PURSUANT TO 11 U.S.C. § 105 AND
28 RULES 7041/9019 OF THE FED. R.
BANKR. P., BETWEEN AMERICAN
HOME DEVELOPMENT, INC. AND THE
UNITED STATES TRUSTEE, REGION 17**

vs.

American West Development, Inc.,

Defendant.

Hearing Date: June 10, 2015

Hearing Time: 9:30 a.m.

PLEASE TAKE NOTICE that on the 8th day of May, 2015, American West Development, Inc. (“AWDI”) filed a Motion For Approval of Settlement, Pursuant To 11 U.S.C. §105 and Rules 7041 and 9019 of the Federal Rules of Bankruptcy Procedure, Between American West Development, Inc. and Tracy Hope Davis, the United States Trustee, Region 17 (the “Motion”). If the Motion is granted, the adversary proceeding commenced under

FOX ROTHSCHILD LLP
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1 Bankruptcy Code section 1144 by the United States Trustee to revoke confirmation of American
2 West Development, Inc.'s First Amended Plan of Reorganization (the "Plan") and discharge
3 would be dismissed with prejudice in consideration of American West Development, Inc.
4 depositing an additional \$650,000 into the construction defect claims paying segment of the
5 funding of the Construction Defect Trust created under the Plan if, on or before March 15, 2016,
6 the initial \$600,000 funding has been fully depleted, with any portion of the claims paying
7 segment of the Construction Defect Trust that is unused by March 15, 2018 being returned to
8 AWDI. In addition, the Nonparticipating Class 4 Members as defined in the Motion and
9 Settlement Agreement ("Nonparticipating Class 4 Members") who neither filed a proof of claim
10 in AWDI's chapter 11 case nor directly cast a ballot to accept or reject the Plan are relieved,
11 pursuant to the terms of the executed settlement agreement attached to the Motion as Exhibit 1
12 (the "Settlement Agreement") and the Waiver/Estoppel Certificate made part of the Settlement
13 Agreement and attached to the Settlement Agreement as Exhibit B from the release and
14 exculpation they were deemed to have given by the casting of an acceptance ballot of the Plan on
15 their behalf by James L. Moore, the Court-appointed Future Claims Representative ("Future
16 Claims Representative") pursuant to a prior Court approved stipulation and the bar of the statute
17 of limitations for any cause of action or claim that may be brought by any of those
18 Nonparticipating Class 4 Members against any of the signatories of the Waiver/Estoppel
19 Certificate that was covered by said release and exculpation is extended by one year.

20 **NOTICE IF FURTHER GIVEN** that a copy of the Motion is available electronically
21 through the Court's CM/ECF system at <http://ecf.nvb.uscourts.gov> (PACER account required). A
22 copy of the Motion may also be obtained by contacting AWDI's counsel, Fox Rothschild, LLP,
23 Telephone: (702) 262-6899.

24 **NOTICE IS FURTHER GIVEN** that if you do not want the court to grant the relief
25 sought in the Motion, or if you want the court to consider your views on the Motion, then you
26 must file an opposition with the court, and serve a copy on the person making the Motion *no*
27 *later than 14 days* preceding the hearing date for the Motion, unless an exception applies (see
28 Local Rule 9014(d)(3)).

1 The opposition must state your position, set forth all relevant facts and legal authority,
2 and be supported by affidavits or declarations that conform to Local Rule 9014(c).

3 If you object to the relief requested, you *must* file a **WRITTEN** response to this pleading with
4 the court. You *must* also serve your written response on the person who sent you this notice.

5 If you do not file a written response with the court, or if you do not serve your written response
6 on the person who sent you this notice, then:

- 7 • The court may *refuse to allow you to speak* at the scheduled hearing; and
- 8 • The court may *rule against you* without formally calling the matter at the hearing.

9 **NOTICE IS FURTHER GIVEN** that a hearing on the Motion will be held before a
10 United States Bankruptcy Judge, in the Foley Federal Building, 300 Las Vegas Boulevard
11 South, Courtroom No. 2, Las Vegas, Nevada on **June 10, 2015**, at the hour of **9:30 a.m.**
12 **prevailing Pacific time.**

13 Dated this 8th day of May, 2015.

14 **FOX ROTHSCHILD LLP**

15 By /s/Brett Axelrod
16 BRETT A. AXELROD (NV Bar No. 5859)
17 MARK J. CONNOT (NV Bar No. 10010)
18 CHARLES D. AXELROD (Admitted Pro Hac Vice)
19 3800 Howard Hughes Parkway, Suite 500
20 Las Vegas, NV 89169
21 *Counsel for Debtor American West Development, Inc.*

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Las Vegas, Nevada 89169
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(702) 597-5503 (fax)

EXHIBIT 2

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re

American West Development, Inc.,

Debtor.

Case No. BK-S-12-12349-MKN

Chapter 11

Tracy Hope Davis, United States Trustee,
Region 17,

Plaintiff,

vs.

American West Development, Inc.,

Defendant.

Adversary Proceeding No.: 13-01154

**ORDER GRANTING MOTION FOR
APPROVAL OF SETTLEMENT,
PURSUANT TO 11 U.S.C. § 105 AND
FED. R. BANKR. P. 7041 AND 9019(a),
BETWEEN AMERICAN WEST
DEVELOPMENT, INC. AND THE
UNITED STATES TRUSTEE, REGION 17**

Hearing Date:
Hearing Time:

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This Court, having reviewed and considered the motion (the "Motion")¹ filed by American West Development, Inc. ("AWDI"), for entry of an order, pursuant to 11 U.S.C. § 105 and Rules 7041 and 9019(a) of the Federal Rules of Bankruptcy Procedure, approving the Settlement Agreement dated as of May 8, 2015 by and between Defendant and Tracy Hope Davis, United States Trustee for Region 17, no oppositions thereto having been filed, and the appearances of the parties by their counsel and oral argument as noted on the record; the Court having stated its findings of fact and conclusions of law on the record at the hearing on the Motion, which findings of fact and conclusions of law are incorporated herein by this reference in accordance with Federal Rule of Civil Procedure 52, as made applicable by Bankruptcy Rules 7052 and 9014; and it appearing that the relief requested is warranted on the grounds, among others, that the Settlement Agreement: (a) was negotiated in good faith and is fair and equitable, (b) contemplates an immediate resolution of all issues raised in the Adversary Proceeding on reasonable terms; (c) avoids litigation that could prove to be protracted and expensive; and (d) is in the best interests of the Debtor, its Bankruptcy Estate and creditors because it resolves all issues raised in the Adversary Proceeding without the incurrence of additional expense, protects the distributions already made pursuant to AWDI's confirmed and effective First Amended Plan of Reorganization (the "Plan"), further protects members of Class 4 under the Plan by maintaining the \$1.5 million cash funding of the Construction Defects Trust (the "Trust") despite obviating the releases granted by the Future Claims Representative on behalf of members of Class 4 who neither filed a proof of claim nor cast a ballot on the Plan ("the Nonparticipating Class 4 Members") and extending the bar of the statute of limitations by one year for Nonparticipating Class 4 Members for causes of action that were within the now obviated release, by further protecting members of Class 4 by making \$650,000 in additional cash funding available to the Trust to pay allowed Class 4 claims in the event the original \$600,000 funding

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

1 for that purpose proves inadequate, and after due deliberation and sufficient cause appearing
2 therefor, it is hereby

3 **ORDERED** that the Motion is GRANTED; and

4 **IT IS FURTHER ORDERED** that

5 1. The Settlement Agreement is approved;

6 2. Debtor is authorized to take all actions contemplated by the Settlement
7 Agreement according to the terms and provisions thereof,

8 3. This Court shall, and hereby does, retain jurisdiction with respect to all matters
9 arising from or related to the implementation and interpretation of this Order; and

10 4. Notwithstanding the provisions of Bankruptcy Rules 6004 or 6006 as applicable
11 or any applicable provisions of the Local Rules, this Order shall not be stayed for fourteen (14)
12 days after the entry hereof, but shall be effective and enforceable immediately upon entry, and
13 the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not apply.

14 5. The executed Waiver/Estoppel Certificate attached to the Settlement Agreement
15 as Exhibit B shall not have any impact upon the discharge of the Debtor or the injunction in
16 support of said discharge.

17 Prepared and Respectfully Submitted by:

18 **FOX ROTHSCHILD LLP**

19 By _____
20
21 BRETT A. AXELROD (NV Bar No. 5859)
22 MARK J. CONNOT (NV Bar No. 10010)
23 CHARLES D. AXELROD (Admitted Pro Hac Vice)
24 3800 Howard Hughes Parkway, Suite 500
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26 *Counsel for Debtor American West Development, Inc.*

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- The Court has waived the requirement of approval in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

###

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EXHIBIT 3

1 BRET AXELROD (5859)
 MARK CONNOT (10010)
 2 CHARLES AXELROD (ADMITTED PRO HAC VICE)
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 6 caxelrod@foxrothschild.com
 7 *Counsel for Reorganized Debtor*
 AMERICAN WEST DEVELOPMENT, INC.

Electronically Filed [Enter Date]

8 **UNITED STATES BANKRUPTCY COURT**
 9 **DISTRICT OF NEVADA**

10 In re
 11 AMERICAN WEST DEVELOPMENT, INC.
 12 Reorganized Debtor.
 13 _____
 14 TRACY HOPE DAVIS, UNITED STATES
 TRUSTEE FOR REGION 17,
 15 Plaintiff,
 16 v.
 17 AMERICAN WEST DEVELOPMENT, INC.,
 18 Defendant.

Case No.: Bankruptcy-S-12-12349-MKN
 Chapter 11
 Adversary Proceeding No.: 13-01154

**STIPULATION AND ORDER FOR
 DISMISSAL WITH PREJUDICE**

20 WHEREAS, on August 12, 2013, Tracy Hope Davis, United States Trustee for Region 17
 21 (“Plaintiff”), filed a Complaint pursuant to 11 U.S.C. § 1144 and Fed. R. Bankr. P. 7001(5)
 22 against American West Development, Inc. (“AWDI”) commencing this adversary proceeding;
 23

24 WHEREAS, on January 29, 2015, a settlement conference was held in this adversary
 proceeding;

25 WHEREAS, on May 8, 2015, Plaintiff and AWDI executed a Settlement Agreement
 26 resolving this matter;
 27

28

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1 WHEREAS, on _____, 2015, the Bankruptcy Court entered an order granting
2 AWDI's motion seeking entry of an order approving the Settlement Agreement attached hereto
3 as Exhibit 1 and as defined in the motion (ECF No. ____); and

4 WHEREAS, Plaintiff and AWDI desire to dismiss this adversary proceeding pursuant to
5 the terms of the executed Settlement Agreement and the entry of the Bankruptcy Court's order
6 approving the same (ECF No. ____) and seek Bankruptcy Court approval to do so by means of
7 this Stipulation;

8 **NOW, THEREFORE, IT IS HEREBY STIPULATED BY THE UNDERSIGNED**
9 **PARTIES THAT.**

10 1. Pursuant to the terms of the executed Settlement Agreement and the entry of the
11 Bankruptcy Court's order approving the same (ECF No. ____) and Federal Rule of Bankruptcy
12 Procedure 7041 this adversary proceeding is hereby dismissed with prejudice, with each Party to
13 bear its own attorneys' fees and costs.

14 The Stipulation may be executed in counterparts, any of which may be transmitted by
15 facsimile, and each of which shall be deemed an original, but all of which together shall
16 constitute one instrument.

17 DATED this _____ day of May, 2015.

18
19 **FOX ROTHSCHILD LLP**

**OFFICE OF THE UNITED STATES
TRUSTEE**

20
21 By: _____
22 Brett Axelrod (5859)
23 Mark Connot (10010)
24 Charles Axelrod (*Admitted Pro Hac Vice*)
25 3800 Howard Hughes Parkway, Suite 500
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27 Telephone: 702.262.6899
28 Attorneys for Reorganized Debtor/
Defendant AMERICAN WEST
DEVELOPMENT, INC.

By: _____
Brian E. Goldberg, Esq.
300 Las Vegas Blvd., South, Suite 4300
Las Vegas, NV 89101

Assistant United States Trustee—Las Vegas
Field Office for Plaintiff TRACY HOPE
DAVIS, UNITED STATES TRUSTEE FOR
REGION 17

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