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8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF NEVADA**

10 **In re:**) **Chapter 11**
11 **American West Development, Inc.,**) **Case No.: BK-S-12-12349-MKN**
12 **Debtor.**)
13 _____)

14 **REPLY IN SUPPORT OF MOTION OF ZURICH AMERICAN INSURANCE**
15 **COMPANY AND ITS AFFILIATE INSURERS TO DETERMINE AND DECLARE**
16 **THAT THE DEBTOR’S DISCHARGE DOES NOT EXTEND TO CERTAIN**
17 **IDENTIFIED NON-DEBTORS, OR, IN THE ALTERNATIVE, TO MODIFY**
18 **DISCHARGE INJUNCTION**

19 Zurich American Insurance Company, Steadfast Insurance Company, and their
20 affiliate insurers (collectively, “Zurich”) hereby files its Reply in Support of Its Motion to
21 Determine and Declare that the Debtor’s Discharge Does Not Extend to certain Identified
22 Non-Debtors, or, in the alternative, to Modify Discharge Injunction.

23 **A. Zurich’s Motion Is Appropriate Procedurally.**

24 **1. Zurich Is Entitled to a Declaratory Order Determining the Scope**
25 **of Discharge.**

26 Zurich seeks a declaration pursuant to 11 U.S.C. § 105(a), 28 U.S.C. § 2201 and this
27 Court’s inherent authority, to interpret its own orders. The basic purpose of 11 U.S.C. § 105
28 is to enable the court to do whatever is necessary to aid its jurisdiction, anything arising in or
related to the bankruptcy case. See In re DeLorean Motor Co., 991 F2d 1236 (6 Cir. 1993).
The scope of the discharge is related to the bankruptcy case. Moreover, clarifying the order

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1 will aid in enforcing it (or conversely, make sure it is not misapplied). Zurich is respectfully
 2 requesting that this Court clarify the scope of the discharge. Specifically, Zurich requests
 3 clarification that the discharge does not apply to non-debtors so that Zurich will be free to
 4 pursue the non-debtors without potentially violating the discharge as the non-debtors have
 5 asserted. This motion is timely as there is no time period on the Court's inherent authority to
 6 interpret its own orders. Zurich is entitled to a declaration determining whether or not it is
 7 entitled to pursue non-debtors.

8 **2. Zurich Is Not Trying to Extend the Deadline to Seek**
 9 **Modification.**

10 11 U.S.C. § 524 of the Bankruptcy Code specifically provides:

11 (a) A discharge in a case under this title . . . (2) operates as an injunction against
 12 the commencement or continuation of an action, the employment of process, or an
 13 act, to collect, recover or offset any such debt as a personal liability of the debtor,
 14 whether or not discharge of such debt is waived; . . .

15 (e) [D]ischarge of a debt of the debtor does not affect the liability of any other
 16 entity on, or the property of any other entity for, such debt.

17 Based on Section 524(e), courts have repeatedly found that a debt that is discharged may be
 18 pursued from non-debtors, notwithstanding confirmation of a chapter 11 plan. In re Beeney,
 19 142 B.R. 360, 362 (B.A.P. 9th Cir. 1992) (collecting cases, and stating: "Subsection (e) makes
 20 clear that this injunction applies only to the debtor's personal liability and does not inhibit
 21 collection efforts against other entities."). Pursuant to 11 U.S.C. § 524(e), this Court's
 22 discharge order should not affect the liability of any other entity for such debt. See In re
 23 American Hardwoods, 885 F.2d 621, 625 (9th Cir. 1998) ("The bankruptcy court can affect
 24 only the relationships of debtors and creditor. It has no power to affect the obligations of
 25 [third parties].") (quotation omitted).

26 The bankruptcy court lacks the power to confirm plans of reorganization which
 27 do not comply with applicable provisions of the Bankruptcy Code. 11 U.S.C. §
 28 1129(a)(1). Pursuant to 11 U.S.C. § 524(a), a discharge under Chapter 11
 releases the debtor from personal liability for any debts. Section 524 does not,
 however, provide for the release of third parties from liability; to the contrary,
 524(e) specifically states that "discharge of a debt of the debtor does not affect the
 liability of any other entity on, or the property of any other entity for, such debt."
 11 U.S.C. § 524(e). This court has repeatedly held, without exception, that 524(e)
 precludes bankruptcy courts from discharging the liabilities of non-debtors.

1 Resorts Int'l v. Lowenschuss, 67 F.3d 1394, 1401 (9th Cir. 1995). Based on this controlling
2 authority, Zurich simply requests that the Court issue an order clarifying that Zurich may
3 pursue non-debtors, as long as a claim is not asserted against American West Development,
4 Inc. (“AWDI”), the debtor in this case.

5 Alternatively, if the confirmation order does impact the liability of non-debtors (which
6 is impermissible based on controlling authority), Zurich requests that the Court modify the
7 Order to comply with controlling Ninth Circuit law. It is “well settled that a bankruptcy judge
8 has the power to reexamine and revise an order which he entered during the pendency of
9 bankruptcy proceedings. In re Lintz W. Side Lumber, Inc., 655 F.2d 786, 789 (7th Cir. 1981)
10 (citing Frasch v. Wilson, 413 F.2d 69 (9th Cir. 1969). A court has the inherent equitable
11 power to correct its own mistakes. See In re Cisneros, 994 F.2d 1462 (9th Cir. 1993); 11
12 U.S.C. § 105(a); FED. R. BANKR. P. 9024. “Moreover, the equitable power given to
13 bankruptcy courts by virtue of 11 U.S.C. § 105(a) would be meaningless if courts were unable
14 to correct their own mistakes.” In re Mann, 197 B.R. 634 (Bankr. W.D. Tenn. 1996) (citing
15 In re Themys, 6 F.3d 688, 690 (10th Cir. 1993) (citing In re Anwiler, 958 F.2d 925, 929 (9th
16 Cir.), cert. denied 506 U.S. 882, 113 S. Ct. 236, 121 L. Ed. 2d 171 (1992)). Accordingly, if
17 the confirmation order affects Zurich’s ability to pursue non-debtors for debts owed to Zurich,
18 this Court has inherent discretionary authority to modify its own order and Zurich respectfully
19 requests that it exercise that discretion.
20

21 **3. Zurich Is Not Requesting that the Court Rule on the Merits of
22 the Dispute, Thus, an Adversary Proceeding Is Not Necessary.**

23 An adversary complaint is not necessary. Zurich is not seeking to revoke the
24 confirmation order, nor is it seeking to determine whether AWDI’s debt is dischargeable, nor
25 is it seeking a declaratory judgment related to either of the foregoing. Zurich’s request does
26 not impact AWDI’s discharge or the dischargeability of its debt. Zurich is simply asking the
27 Court to clarify its previous order so that it conforms to controlling authority and makes clear
28 that Zurich can pursue non-debtors outside the context of this bankruptcy. If the Court adopts
AWDI’s interpretation of the discharge order, any non-debtor that is jointly and severally

1 liable along with AWDI would be discharged of its debt. (See [Doc #1062] Opposition at p.
 2 12, ll. 3-6.) Again, this interpretation is contrary to Ninth Circuit precedent which has
 3 reiterated “without exception, that 524(e) precludes bankruptcy courts from discharging the
 4 liabilities of non-debtors.” Resorts Int’l v. Lowenschuss, 67 F.3d 1394, 1401 (9th Cir. 1995).
 5 Thus, the only plausible interpretation is that while the personal liability of the debtor is
 6 discharged, the debt of the non-debtors remains. Here, Zurich is not seeking to collect a debt
 7 owed by the Debtor. The \$250,000 in SIR obligations identified above are amounts due to
 8 Zurich by non-debtors, for amounts owed under policies issued to non-debtor American West
 9 Homes. *A fortiori*, since Section 524(e) authorizes parties to collect debts owed by the debtor
 10 from third-parties, it is abundantly clear that Zurich is authorized to seek to collect the
 11 \$250,000 which: (i) is not a debt owed by the Debtor; (ii) is not a discharged debt; but (iii) is
 12 a debt owed by non-debtors. Additionally, Zurich’s pursuit of non-debtors for debts owed by
 13 non-debtors under non-debtor contracts (the AW Homes Policies) is consistent with the
 14 Confirmation Order because it is not pursuing a debt owed by the Debtor. Alternatively, to
 15 the extent necessary, Zurich respectfully requests that this Honorable Court modify the
 16 discharge injunction to permit Zurich to pursue the non-debtor SIR Obligors for the \$250,000
 17 that is due to Zurich. Accordingly, Zurich is not asking the Court to rule on insurance specific
 18 substantive issues, nor is Zurich requesting that the Court exercise jurisdiction over the non-
 19 debtors.
 20

CONCLUSION

21
 22 1. Zurich respectfully requests that this Honorable Court enter an order declaring
 23 that Zurich can pursue amounts owed under the AW Homes Policies from the following non-
 24 debtors:

- 25 i. American West Homes, Inc.;
- 26 ii. Whitney Ranch, Inc.
- 27 iii. Gowan Properties, Inc.
- iv. El Capitan, Inc.
- v. Federal Land Management, LLC
- 28 iv. Cactus Sand & Gravel, Inc.
- vii. Pinnacle Peaks, LLC
- viii. West Mesa, LLC
- ix. Coronado Hills, LLC

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- x. Adaven Management, Inc.;
- xi. Section 31, LL
- xii. The Canarelli Family Trust Dated September 14, 1990;
- xiii. The Lawrence and Heidi Canarelli 1993 Irrevocable Trust;
- xiv. The Stacia Leigh Lemke Irrevocable Trust;
- xv. The Scott Lyle Graves Canarelli Irrevocable Trust;
- xvi. The Jeffrey Lawrence Graves Canarelli Irrevocable Trust;
- xvii. The Allysa Lauren Graves Canarelli Irrevocable Trust;
- xviii. Lawrence D. Canarelli; and
- xix. Heidi Canarelli
- xx. The SLG Canarelli 1993 Retained Annuity Trust;
- xxi. The ALG Canarelli 1993 Retained Annuity Trust;
- xxii. The SL Canarelli 1993 Retained Annuity Trust;
- xxiii. The JLG Canarelli 1993 Retained Annuity Trust;
- xxiv. Silverado Crossing; and
- xxv. Silverado Canyone.

In the alternative, Zurich respectfully requests the entry of an order modifying the discharge injunction to permit Zurich to pursue the non-debtor SIR Obligors for the amounts due to Zurich.

Date: July 15, 2015

Respectfully Submitted,
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