

1 BRETT A. AXELROD, ESQ.  
Nevada Bar No. 5859  
2 MICAELA RUSTIA MOORE, ESQ.  
Nevada Bar No. 9676  
3 **FOX ROTHSCHILD LLP**  
4 3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
5 Telephone: (702) 262-6899  
Facsimile: (702) 597-5503  
6 Email: baxelrod@foxrothschild.com  
7 mmoore@foxrothschild.com  
8 *[Proposed] Counsel for American West Development, Inc.*

Electronically Filed March 1, 2012

9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re  
12 AMERICAN WEST  
DEVELOPMENT, INC., a Nevada  
13 corporation,  
14  
15 Debtor.  
16  
17  
18  
19

Case No. BK-S-12-12349-MKN  
Chapter 11  
**EMERGENCY MOTION FOR AN ORDER  
(I) AUTHORIZING DEBTOR TO PAY  
PREPETITION EMPLOYEE SALARIES  
AND BENEFITS; AND (II)  
AUTHORIZING AND DIRECTING  
FINANCIAL INSTITUTIONS TO HONOR  
CHECKS RELATED TO SUCH  
OBLIGATIONS**  
Hearing Date: OST REQUEST PENDING  
Hearing Time: OST REQUEST PENDING

20 American West Development, Inc. ("AWDI" or "Debtor"), debtor and debtor in possession in  
21 the above-captioned case (the "Chapter 11 Case"), by the within motion hereby moves the Court for an  
22 order substantially in the form attached hereto as **Exhibit A** (the "Order"), (I) authorizing, but not  
23 directing Debtor to pay certain prepetition employee salaries and benefits, and (II) authorizing and  
24 directing financial institutions to honor checks and transfers related to said obligations pursuant to  
25 Bankruptcy Code<sup>1</sup> sections 105(a), 363(b) and 507(a), Bankruptcy Rules 6003 and 6004, and Local  
26

27 <sup>1</sup> All references to "chapter" and "section" herein shall be to the "Bankruptcy Code" appearing  
28 in Title 11 of the U.S. Code; all references to a "Bankruptcy Rule" shall refer to the Federal Rules of  
(footnote continued)

FOX ROTHSCHILD LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)



1 under chapter 11 of the Bankruptcy Code.

2 5. Debtor is continuing in possession of its property and is operating and managing its  
3 business, as debtor in possession, pursuant to Bankruptcy Code sections 1107 and 1108. See generally  
4 Chapter 11 Case Docket.

5 6. No request has been made for the appointment of a trustee or examiner, and no statutory  
6 committee has been appointed. See id.

7 7. The factual background relating to Debtor’s commencement of this Chapter 11 Case is  
8 set forth in detail in the Omnibus Declaration and is incorporated for all purposes herein by this  
9 reference.

10 **III.**

11 **RELIEF REQUESTED**

12 **A. Salaries and Bonuses.**

13 8. Debtor employs approximately 71 full-time employees (the “Employees”) in the  
14 ordinary course of its business.

15 9. Among other things, Debtor’s Employees (a) manage and monitor construction of new  
16 homes, (b) participate in major design and building decisions, (c) coordinate the activities of  
17 subcontractors and suppliers, (d) review the work of subcontractors for quality and cost controls,  
18 (e) monitor compliance with zoning and building codes, (f) play a significant role in working with  
19 Debtor’s homebuyers on the construction process and instructing buyers on post-closing home  
20 maintenance, and (g) manage Debtor’s day to day business activities. Continued service by the  
21 Employees is essential to Debtor’s ongoing operations.

22 10. As of the Petition Date, Debtor owed its Employees various sums for salaries and  
23 bonuses (collectively, the “Salary Obligations”). Debtor pays its Employees on a semimonthly payroll  
24 cycle on the 15th and the last day of each month. When payroll checks are paid to Debtor’s Employees,  
25 the Employees are paid current as of the date of the applicable pay day. The last payroll was made on  
26 February 29, 2012; the next scheduled payroll is March 15, 2012.

FOX ROTHSCHILD LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)

1           11. Each semimonthly payroll averages approximately \$296,000 in the aggregate. Debtor  
2 estimates that as of the Petition Date approximately \$28,300.10 in commissions has accrued which was  
3 not reflected in the previous payroll. No Employees are owed in excess of \$11,725.<sup>2</sup>

4           12. Additionally, Debtor withholds from its Employees' wages amounts for federal income,  
5 social security and Medicare taxes, and remits the same to the appropriate taxing authorities. To the  
6 extent Debtor has withheld amounts pertaining to said taxes, Debtor seeks authorization to continue to  
7 deduct these funds and pay them to such governmental entities in the ordinary course of business.  
8 Debtor also seeks authorization to continue withholding amounts from Employees' paychecks for state  
9 and federal unemployment insurance, and to continue remitting such withholdings to the applicable  
10 state and federal taxing authorities.

11 **B. Employee Benefits.**

12           13. In the ordinary course of its business, and as is customary for most large companies,  
13 Debtor has established various employee benefit plans and policies that provide certain Employees with  
14 medical, vacation, employee savings, and other similar benefits (collectively, the "Employee Benefits").  
15 The Employee Benefits that cost Debtor are generally described below.

16           14. Health Insurance. An important element of the Employee Benefits is medical and  
17 prescription drug insurance. Debtor maintains a medical plan for its eligible Employees (the "Health  
18 Plan") administered by Anthem HMO Nevada (the "Health Plan Administrator"). This Employee  
19 Benefit is made available to those Employees that meet the minimum employee eligibility requirements  
20 consisting of (1) working a minimum of 30 hours per work week; and (2) having been employed by  
21 Debtor for the previous 180 days. The cost of the Health Plan is approximately \$360,000 per year and  
22 is paid monthly after the second week of each current month. Pursuant to the Health Plan, Debtor pays  
23 the majority of the cost for coverage of each enrolled Employee and any enrolled dependants. The  
24 Employee is responsible for the remainder of the Health Plan cost and that amount is deducted from  
25 each enrolled Employee's paycheck. Debtor's average monthly Health Plan expense is \$30,000.

26 \_\_\_\_\_  
27 <sup>2</sup> As discussed below, Bankruptcy Code section 507(a)(4) affords priority distribution for up to  
28 \$11,725 in wages, salaries, or commissions earned by an individual. 11 U.S.C. § 507(a)(4).

1           15.    Vacation. In addition to the Salary Obligations and the other Employee Benefits  
2 identified above, certain of Debtor's Employees accrue paid vacation time, based on length of service  
3 (the "Vacation Accruals"). If an Employee does not use his or her entitled Vacation Accruals and is  
4 subsequently terminated or resigns from employment with Debtor, he or she may be entitled to receive  
5 payment for such accrual upon separation. Vacation eligibility is established on the date the Employee  
6 completes six months of continuous service from the first date of hire. At that time, Employees become  
7 eligible for five days of paid vacation; vacation time is only earned at six-month intervals and is not  
8 prorated for termination purposes. Thereafter, every six months, Employees earn another five days of  
9 paid vacation. Employees who have accumulated more than two weeks vacation cannot take more than  
10 two consecutive weeks of vacation at any one time and can use no more than ten vacation days in any  
11 six month period. Unused vacation can be rolled into subsequent years but will not accrue beyond 20  
12 days. Upon termination of employment, Employees are paid for all earned, unused vacation at the rate  
13 of pay under which it was accrued, up to the maximum of 20 days of accrued vacation. The amount of  
14 Vacation Accruals that will have accrued but will remain unpaid prior to the Petition Date is estimated  
15 to be \$60,000.

16           16.    Reimbursable Expenses. In the ordinary course of their employment, certain authorized  
17 Employees may have used their own personal credit cards or expended their own personal funds on  
18 behalf of and for the benefit of Debtor (the "Reimbursable Business Expenses"). Employees rendered  
19 services and incurred Reimbursable Business Expenses in anticipation of receiving their standard  
20 compensation and reimbursements; however, as of the Petition Date, such obligations may remain  
21 unpaid and unreimbursed. Debtor cannot provide a definitive amount of Reimbursable Business  
22 Expenses as of the Petition Date, but based upon prior business practices, would estimate that amount  
23 does not exceed \$20,000. Debtor seeks authorization to pay such Reimbursable Business Expenses in  
24 the ordinary course of business. Also, Debtor provides company credit cards for two of its Employees  
25 and pays for the business expenses incurred thereon. Company credit card expenses average \$35,000  
26 per month. Debtor also seeks authorization to pay such authorized company credit card expenses in the  
27 ordinary course of business.  
28

1 17. Debtor maintains a payroll account (the “Account”) through which it provides various  
2 payroll services to its Employees, including services related to the providing of signed checks, direct  
3 deposit of Salary Obligations, and the withholdings of various sums from Employee paychecks for  
4 taxes, garnishments, and health care deductions, among other things. These payroll services are  
5 provided by Paychex, Inc. (the “Payroll Account Servicer”). Debtor seeks an order authorizing and  
6 directing financial institutions to honor checks related to the various Salary Obligations and Employee  
7 Benefit obligations identified above.

8 18. Debtor submits that it is essential for the morale and maintenance of trust of the  
9 Employees that necessary steps are taken to protect the Employee Benefit Plans described herein,  
10 including the payment of the Employees’ prepetition Salary Obligations, Health Plan obligations,  
11 Vacation Accruals, and Reimbursable Business Expense repayments.

12 19. By this Motion, Debtor seeks authority to pay and/or honor the Salary Obligations and  
13 Employee Benefits described herein for its Employees. As set forth in the Omnibus Declaration, the  
14 aggregate of Salary Obligations and Employee Benefit Contributions to be paid to or for the benefit of  
15 the Employees pursuant to this Motion will not exceed \$11,725 per Employee per the cap provided in  
16 Bankruptcy Code section 507(a)(4).

17 **IV.**

18 **LEGAL ARGUMENT**

19 Payment of Salary Obligations and Employee Benefits, including, among other things, the  
20 repayment of Reimbursable Business Expenses, the honoring of Vacation Accruals, and providing the  
21 other Employee Benefits identified above, are essential to preserve Employee morale and to maintain  
22 positive relations between Debtor and its Employees. If the relief requested herein is not granted, the  
23 success of Debtor’s reorganization will be placed in substantial jeopardy. Thus, the relief requested in  
24 this Motion is in the best interests of Debtor, the Estate and creditors. Sections 105(a)<sup>3</sup> and 363(b)<sup>4</sup> of  
25

26 <sup>3</sup> Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process,  
27 or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §  
28 105(a).

FOX ROTHSCHILD LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)

1 the Bankruptcy Code, in conjunction with sections 507(a)(4)<sup>5</sup> and 507(a)(5)<sup>6</sup> of the Bankruptcy Code,  
 2 enable this Court to authorize Debtor to make prepetition payments for Salary Obligations and  
 3 Employee Benefits. Further, section 105(a) authorizes the bankruptcy court to “issue any order,  
 4 process, or judgment that is necessary or appropriate to carry out the provisions of [Title 11].” Walls v.  
 5 Wells Fargo Bank, N.A., 276 F.3d 502, 506 (9th Cir. 2002).

6 The immediate payment of prepetition wage claims is necessary to retain Debtor’s skilled  
 7 Employees; therefore, such payments are critical to maintaining Debtor’s ongoing business and its  
 8 reorganization efforts. As a result, courts have held that pursuant to sections 105(a), 363(b), 507(a)(4)  
 9 and 507(a)(5) of the Bankruptcy Code, prepetition wage claims may be payable outside of a plan of  
 10 reorganization by virtue of their necessity, as well as their priority. See In re CEI Roofing, Inc., 315  
 11 B.R. 50, 61 (Bankr. N.D. Tex. 2004); In re CoServ, LLC, 273 B.R. 487, 494 n. 10 (Bankr. N.D. Tex.  
 12 2002); In re The Colad Group, Inc., 324 B.R. 208, 214 (Bankr. W.D.N.Y. 2005); see also In re Adams  
 13 Apple, Inc., 829 F.2d 1484, 1490 (9th Cir. 1987) (acknowledging the “doctrine of necessity,” and  
 14 noting that cases have permitted unequal treatment of prepetition debts when necessary for  
 15 rehabilitation, including specifically within the context of prepetition wages); In re Ionosphere Clubs,  
 16 Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (approving payment of prepetition wages to current  
 17 employees where it was necessary to pay such claims “in order to preserve and protect its business and  
 18 ultimately reorganize, retain its currently working employees and maintain positive employee morale”);

19  
 20 <sup>4</sup> Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that “[t]he trustee, after  
 21 notice and a hearing may use, sell, or lease, other than in the ordinary course of business, property of  
 the estate . . .” 11 U.S.C. § 363(b)(1).

22 <sup>5</sup> Section 507(a)(4) of the Bankruptcy Code provides, in pertinent part, a fourth priority claim  
 23 for “allowed unsecured claims, but only to the extent of \$11,725 for each individual . . . earned within  
 24 180 days before the date of filing of the petition . . . for - (A) wages, salaries, or commissions, including  
 vacation, severance, and sick leave pay earned by an individual; . . .” 11 U.S.C. § 507(a)(4).

25 <sup>6</sup> Section 507(a)(5) of the Bankruptcy Code provides, in pertinent part, a fifth priority claim for  
 26 “allowed unsecured claims for contributions to an employee benefit plan - (A) arising from services  
 27 rendered within 180 days before the date of the filing of the petition . . . but only (B) to the extent of -  
 28 (i) the number of employees covered by each such plan multiplied by \$11,725; less (ii) the aggregate  
 amount paid to such employees [for wages], plus the aggregate amount paid by the estate on behalf of  
 such employees to any other employee benefit plan.” 11 U.S.C. § 507(a)(5).

1 In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989) (approving the payment of certain prepetition  
2 wages, health insurance premiums, life insurance premiums, and workers' compensation premiums).

3 With respect to payroll taxes in particular, the payment of such taxes will not prejudice general  
4 unsecured creditors of Debtor's Estate as the relevant taxing authorities generally would hold priority  
5 claims under section 507(a)(8) of the Bankruptcy Code with respect to such obligations.<sup>7</sup> Moreover, the  
6 portion of the payroll taxes withheld from Employees' wages on behalf of the applicable taxing  
7 authority is held in trust by Debtor. As such, these payroll taxes are not property of the Estate under  
8 section 541 of the Bankruptcy Code. See Beiger v. IRS, 496 U.S. 53 (1990).

9 Nothing contained herein is intended or shall be construed as (i) an admission as to the validity  
10 of any claim against Debtor; (ii) a waiver of Debtor's or any party in interest's rights to dispute any  
11 claim; or (iii) an approval or assumption of any agreement, contract, program, policy or lease under  
12 section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any  
13 payment authorized pursuant to the Court's order is not intended and should not be construed as an  
14 admission to any claim's validity or a waiver of Debtor's rights to dispute such claim subsequently.

## 15 V.

### 16 NOTICE

17 Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property  
18 ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."  
19 In view of the urgency of the relief requested herein and the risk to Debtor's operations if Debtor cannot  
20 pay its Employees, a fourteen-day stay of the relief sought herein is impractical. Accordingly, Debtor  
21  
22

---

23 <sup>7</sup> Section 507(a)(8) of the Bankruptcy Code provides a priority claim for "allowed unsecured  
24 claims of governmental units, only to the extent that such claims are for -(A) a tax on or measured by  
25 income or gross receipts for a taxable year ending on or before the filing of the petition —(i) for which  
26 a return, if required, is last due, including extensions, after three years before the date of the filing of the  
27 petition; (ii) assessed within 240 days before the date of the filing of the petition, exclusive of—(I) any  
28 time during which an offer in compromise with respect to that tax was pending or in effect during that  
240-day period, plus 30 days; and (II) any time during which a stay of proceedings against collections  
was in effect in a prior case under this title during that 240-day period, plus 90 days." 11 U.S.C. §  
507(a)(8).

1 requests that this Court waive the stay under Bankruptcy Rule 6004(h) and provide in the order granting  
2 the relief sought herein that such order shall be effective immediately.

3 Bankruptcy Rule 6003(b) provides “except to the extent that relief is necessary to avoid  
4 immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant  
5 relief regarding ... a motion to use, lease or otherwise incur an obligation regarding property of the  
6 estate, including a motion to pay all or part of a claim that arose before filing of the petition. . . .” As  
7 described herein and in the Omnibus Declaration, if the outstanding Employee Obligations are not  
8 immediately satisfied, Debtor will experience immediate and irreparable harm. To ensure Debtor’s  
9 chances of successfully reorganizing and maximizing value for its creditors, this Court should find that  
10 the exception set forth in Bankruptcy Rule 6003 applies here.<sup>8</sup>

11 Given the emergency nature of the relief requested herein, and the potential disruption to  
12 Debtor’s business that will ensue if such relief requested is not granted, Debtor submits that no further  
13 notice need be given prior to granting the relief sought herein.

14 No previous motion for the relief sought herein has been made to this or any other court.

15 **VI.**

16 **CONCLUSION**

17 WHEREFORE, Debtor respectfully requests that the Court enter an order in the form as  
18 attached hereto as **Exhibit A** as follows: (A) authorizing but not requiring Debtor, in its sole discretion  
19 (i) to pay Salary Obligations to its Employees and to make Employee Benefit contributions or payments  
20 to or for the benefit of its Employees with respect to the Employee Benefit Plans; (ii) to pay all costs  
21 incident to Salary Obligations and Employee Benefit contributions such as payroll-related taxes and  
22 processing costs; (iii) to honor Vacation Accruals; and (vi) to reimburse Employees for Reimbursable  
23 Business Expenses, all in accordance with the stated policies with respect thereto; and (B) authorizing  
24 all applicable banks and other financial institutions to receive, process, honor and pay any and all

25 \_\_\_\_\_  
26 <sup>8</sup> To the extent any of the relief requested herein is not granted on the Petition Date, in the  
27 alternative, and out of an abundance of caution, Debtor requests that the Court set a final hearing on any  
28 remaining matters on the earliest available date that is more than 21 days after the Petition Date  
pursuant to Bankruptcy Rule 6003.

FOX ROTHSCHILD LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)

1 checks related to the foregoing, including specifically those drawn from the Account, whether presented  
2 prior to or after the Petition Date in accordance with the stated policies with regard thereto, provided  
3 sufficient funds exist in Debtor's Account to cover such payments. Debtor also requests such other and  
4 further relief as is just and proper.

5 DATED this 1st day of March 2012.

6 **FOX ROTHSCHILD LLP**

7 By:           /s/Brett A. Axelrod          

8 BRETT A. AXELROD, ESQ.

9 Nevada Bar No. 5859

10 MICAELA RUSTIA MOORE, ESQ.

11 Nevada Bar No. 9676

12 3800 Howard Hughes Parkway, Suite 500

13 Las Vegas, Nevada 89169

14 *[Proposed] Counsel for American West Development, Inc.*

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
FOX ROTHSCHILD LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)

**EXHIBIT A  
PROPOSED ORDER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BRETT A. AXELROD, ESQ.  
Nevada Bar No. 5859  
MICAELA RUSTIA MOORE, ESQ.  
Nevada Bar No. 9676  
**FOX ROTHSCHILD LLP**  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
Telephone: (702) 262-6899  
Facsimile: (702) 597-5503  
Email: baxelrod@foxrothschild.com  
mmoore@foxrothschild.com  
*[Proposed] Counsel for American West Development, Inc.*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re  
  
AMERICAN WEST DEVELOPMENT,  
INC., a Nevada corporation,  
  
Debtor.

Case No. BK-S-12-12349-MKN  
  
Chapter 11  
  
**ORDER GRANTING DEBTOR’S MOTION  
(I) AUTHORIZING DEBTOR TO PAY  
PREPETITION EMPLOYEE SALARIES  
AND BENEFITS; AND (II) AUTHORIZING  
AND DIRECTING FINANCIAL  
INSTITUTIONS TO HONOR CHECKS  
RELATED TO SUCH OBLIGATIONS**  
  
Hearing Date:  
Hearing Time:

The Court, having reviewed and considered Debtor’s<sup>1</sup> Motion (the “Motion”) for an order pursuant to 11 U.S.C. sections 105(a), 363(b) and 507(a), Bankruptcy Rules 6003 and 6004, and Local

<sup>1</sup> All capitalized, undefined terms shall have the meaning ascribed to them in the Motion.

FOX ROTHSCHILD LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)

1 Rule 4001(e) to pay prepetition Salary Obligations and Employee Benefits, as more fully set forth in the  
2 Motion; and upon consideration of the Omnibus Declaration of Robert M. Evans; and Debtor having  
3 appeared by and through its proposed counsel, Fox Rothschild LLP, and all other appearances having  
4 been noted on the record, the Court having stated its findings of fact and conclusions of law on the  
5 record at the hearing on the Motion, which findings of fact and conclusions of law are incorporated  
6 herein by this reference in accordance with Federal Rule of Civil Procedure 52, as made applicable by  
7 Bankruptcy Rule 9014, and it appearing that the relief requested is necessary to preserve Debtor's  
8 ongoing business operations and to avoid immediate and irreparable harm; and in the best interests of  
9 Debtor, the estate and creditors, given the emergency nature of the relief requested; after due  
10 deliberation and sufficient cause appearing therefor, it is hereby

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

12 **IT IS FURTHER ORDERED** that

- 13 1. Debtor is excepted from the operation of Bankruptcy Rule 6003(b);
- 14 2. Any stay pursuant to Bankruptcy Rule 6004(h) or otherwise is hereby waived, and this  
15 Order shall be effective immediately; and
- 16 3. All applicable banks and other financial institutions are authorized to receive, process,  
17 honor and pay any and all checks related to the foregoing, including specifically those drawn from the  
18 Account, whether presented prior to or after the Petition Date in accordance with the stated policies  
19 with regard thereto, provided sufficient funds exist in the Account to cover such payment; and
- 20 4. The payments authorized by this Order are not exempt from subsequent operation of  
21 sections 547, 548, 549 and 550 of the Bankruptcy Code.
- 22 5. This Court shall, and hereby does, retain jurisdiction with respect to all matters arising  
23 from or related to the implementation and interpretation of this Order.

FOX ROTHSCHILD LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)

Prepared and Respectfully Submitted by:

**FOX ROTHSCHILD LLP**

By \_\_\_\_\_

BRETT A. AXELROD, ESQ.  
Nevada Bar No. 5859  
MICAELA RUSTIA MOORE, ESQ.  
Nevada Bar No. 9676  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169

*[Proposed] Counsel for American West Development, Inc.*

APPROVED/DISAPPROVED:

**OFFICE OF THE UNITED STATES TRUSTEE**

BY: \_\_\_\_\_

Athanasios Agelakopoulos  
Trial Attorney for Acting United States Trustee,  
August B. Landis

**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:

ATHANASIOS AGELAKOPOULOS, OFFICE OF THE UNITED STATES TRUSTEE	[INSERT, AS APPLICABLE] _____
---	----------------------------------

Approved / Disapproved

- 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.

# # #

FOX ROTHSCHILD LLP  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)