

Electronically Filed April 5, 2012

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
mmoore@foxrothschild.com
7 *[Proposed] Counsel for American West Development, Inc.*

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

11 In re
12 AMERICAN WEST DEVELOPMENT,
13 INC., a Nevada corporation,
14 fdba Castlebay 1, Inc.
fdba Development Management, Inc.
15 fdba Fairmont 1, Inc.
16 fdba Glen Eagles 3, Inc.
fdba Heritage 1, Inc.
17 fdba Inverness 5, Inc.
fdba Kensington 1, Inc.
18 fdba Kingsbridge 1, Inc.
fdba Promontory Estates, LLC
19 fdba Promontory Point 4, Inc.
20 fdba Silverado Springs 1, Inc.
fdba Silverado Springs 2, Inc.
21 fdba Tradition, Inc.
fdba Windsor 1, Inc.
22 Debtor.
23

Case No. BK-S-12-12349-MKN
Chapter 11
**AMENDED MOTION FOR ORDER
AUTHORIZING DEBTOR TO HONOR
AND PAY PREPETITION BOND
OBLIGATIONS IN THE ORDINARY
COURSE OF ITS BUSINESS**

Hearing Date: April 10, 2012
Hearing Time: 9:30 a.m.

24 American West Development, Inc. ("AWDI" or "Debtor"), debtor and debtor in possession in
25 the above-captioned case (the "Chapter 11 Case"), respectfully submits this amended motion (the
26 "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed
27 Order"), pursuant to sections 105(a), 363, 506(a) and 507(a)(8) of title 11 of the United States Code (the
28 "Bankruptcy Code") and Rule 6003 of the Federal Rules of Bankruptcy Procedures ("Bankruptcy

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

1 Rules”), authorizing, but not directing, Debtor to continue to honor and pay its obligations on
 2 prepetition surety bonds (the “Bond Obligations”), including posting collateral in connection with such
 3 bonds, as needed, and, if necessary, to issue new surety bonds. Expedited relief is necessary to allow
 4 Debtor to continue its operations without interruption by satisfying all of its Bond Obligations in the
 5 ordinary course of business thereby avoiding any unnecessary penalties and interest or fees that may be
 6 incurred in the event Debtor fails to continue to make timely payments.

7 This Motion is identical in all material respects to that document filed and served on March 1,
 8 2012, as Docket No. 36; *except for* amendments to (i) Exhibit B, to remove those Bond Obligations (as
 9 defined herein) that were released as of the Petition Date (defined below) or were obligations of a non-
 10 debtor affiliate of Debtor and to add three additional bonds that were previously omitted, and (ii)
 11 Section II.B at paragraph 10, to correct the aggregate face amount of the Bond Obligations as of the
 12 Petition Date (also now shown on Exhibit B).

13 The Motion is made and based upon the following memorandum of points and authorities, the
 14 Omnibus Declaration of Robert M. Evans (the “Omnibus Declaration”), filed in support of Debtor’s
 15 First Day Motions on March 1, 2012 (the “Petition Date”), the papers and pleadings on file with the
 16 Court in this Chapter 11 Case, and any oral arguments the Court may entertain at the hearing on the
 17 Motion.

18 DATED this 5th day of April 2012.

19 **FOX ROTHSCHILD LLP**

20 By /s/ Brett A. Axelrod
 21 BRETT A. AXELROD, ESQ.
 Nevada Bar No. 5859
 22 MICAELA RUSTIA MOORE, ESQ.
 Nevada Bar No. 9676
 23 3800 Howard Hughes Parkway, Suite 500
 Las Vegas, Nevada 89169
 24 *[Proposed] Counsel for American West Development, Inc.*

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

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

MEMORANDUM OF LAW
POINTS AND AUTHORITIES

I.

JURISDICTION

1. This Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. 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.

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 105(a), 363, 506(a), and 507(a)(8), and Bankruptcy Rule 6003.

II.

FACTUAL BACKGROUND

A. General Background.

4. On the Petition Date, Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

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

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

7. The factual background relating to Debtor, including its business operations, its capital and debt structure, and the events leading up to the filing of this Chapter 11 Case, is set forth in detail in the Omnibus Declaration and is incorporated for all purposes herein by this reference.

B. The Need for the Requested Relief.

8. Debtor acts as the general contractor for the construction and delivery of new homes to the customers of its non-debtor home-seller affiliates for which Debtor is paid from the close of escrow on such home sales.

9. As general contractor, in the ordinary course of its business, Debtor is required to provide third parties with financial assurance in the form of surety bonds ("Surety Bonds") to secure

1 Debtor’s payment or performance of certain obligations under various contracts with local government
2 units, principally in connection with infrastructure improvements, as a condition for obtaining permits
3 and other approvals necessary for the development of residential projects. Each Surety Bond is treated
4 differently based upon the improvements being secured by such bond.

5 10. Debtor incurs various Bond Obligations that are similar to tax assessments with fees
6 paid over time in connection with the Surety Bonds based upon how long it takes to complete the
7 bonded improvements, which typically requires a minimum of six months. As of the Petition Date, the
8 aggregate face amount of the Bond Obligations totaled approximately \$17,744,349, as detailed in the
9 list set forth on **Exhibit B** attached hereto and incorporated herein by this reference.

10 11. The Surety Bonds are released once the respective government unit inspects and
11 approves the improvements completed by AWDI. Subsequent to obtaining its approval and bond
12 release, the local government unit will maintain the particular utility; e.g., a storm drain.

13 12. Failure to provide, maintain, timely renew or issue new bonds as needed in the ordinary
14 course of business could jeopardize Debtor’s ability to conduct or continue its operations.

15 13. The Bond Obligations are payable in installments totaling approximately \$9,000 per
16 month. As of the Petition Date, Debtor was current on the amounts owing on the Bond Obligations for
17 the period prior to the Petition Date. The Bond Obligations arguably constitute prepetition debt
18 because the original issue dates of the bonds occurred prior to the Petition Date.

19 14. The Bond Obligations are long-term obligations, and Debtor is not seeking to pay them
20 earlier than necessary. Further, the Bond Obligations are reduced as Debtor completes construction
21 and delivers homes in a particular community and the obligations under the respective Surety Bonds
22 are released. By this Motion, Debtor seeks only to continue to make regular installment payments on
23 account of the Bond Obligations.

24 15. Continuing to honor its Bond Obligations in the ordinary course of its business,
25 including the payment of premiums and obtaining new Surety Bonds as necessary for Debtor’s
26 business will minimize disruptions to Debtor’s business and operations thereby maximizing value and
27 benefits to Debtor’s estate and its creditors.

28 ///

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

1 16. Due to the nature of Debtor's business and the extent of its operations, Debtor must be
 2 permitted to continue to honor and pay its Bond Obligations on an ongoing basis in order to continue
 3 the revenue-generating aspects of its operations. A lapse of any of the bonds without renewal could
 4 cause Debtor to violate the applicable laws requiring it to maintain such bonds, and any interruption of
 5 Debtor's ability to satisfy the Bond Obligations would have a devastating and adverse effect on
 6 Debtor's operations, its enterprise value and its ability to successfully reorganize to the detriment of all
 7 parties in interest.

8 III.

9 RELIEF REQUESTED

10 By this Motion, Debtor respectfully requests entry of an order, substantially in the form
 11 attached hereto as **Exhibit A**, authorizing, but not directing, Debtor to honor and pay the Bond
 12 Obligations by making ongoing regular installment premium payments and posting collateral, as
 13 necessary, or obtaining new surety bonds, all in the ordinary course of its business.

14 IV.

15 LEGAL ARGUMENT

16 A. **Sufficient Authority Exists to Authorize Debtor to Pay the Prepetition Bond Obligations.**

17 Sufficient authority to grant the relief requested herein is found in Bankruptcy Code sections
 18 1107(a), 1108, 363 and 105(a), upon which courts have relied in authorizing the payment (or other
 19 special treatment) of prepetition obligations in appropriate circumstances.

20 Section 105(a) authorizes the bankruptcy court to "issue any order, process, or judgment that is
 21 necessary or appropriate to carry out the provisions of [Title 11]." Walls v. Wells Fargo Bank, N.A.,
 22 276 F.3d 502, 506 (9th Cir. 2002). Under Bankruptcy Code sections 1107(a) and 1108, a debtor in
 23 possession is a fiduciary "holding the bankruptcy estate and operating the business for the benefit of its
 24 creditors and (if the value justifies) equity owners." In re CoServ, LLC, 273 B.R. 487, 497 (Bankr.
 25 N.D. Tex. 2002). Inherent in the debtor in possession's fiduciary duties is an obligation to "protect and
 26 preserve the estate, including an operating business's going-concern value." Id. Indeed, a debtor can
 27 only discharge its fiduciary duty in some instances "by the preplan satisfaction of a prepetition claim."
 28 Id. The CoServ court expressly noted that the satisfaction of prepetition claims before plan

1 confirmation would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only
2 means to effect a substantial enhancement of the estate” Id.

3 In keeping with the foregoing, courts have also authorized a debtor’s payment of prepetition
4 obligations under Bankruptcy Code sections 363 and 105(a) when a sound business purposes exists for
5 such payment. See In re Tropical Sportswear Int’l Corp., 320 B.R. 15, 17-18 (Bankr. M.D. Fla. 2005)
6 (authorizing payment to critical vendors for prepetition amounts and finding that a sound business
7 justification existed for payment because the vendors would not do business with the debtors absent
8 critical vendor status, and the disfavored creditors were not any worse off due to the critical vendor
9 order); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound
10 business justification existed to authorize payment of prepetition wages); see also Armstrong World
11 Indus., Inc. v. James A. Phillips (In re James A. Phillips, Inc.), 29 B.R. 391, 397 (S.D.N.Y. 1983)
12 (relying on section 363 to allow contractor to pay prepetition supplier claims where necessary for
13 general contractor to release funds owed to debtors).

14 Bankruptcy Code section 363(c)(1) imbues a debtor with express authority to “enter into
15 transactions . . . in the ordinary course of business” and “use property of the estate in the ordinary
16 course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). Debtor respectfully submits
17 that continuing to honor and pay the Bond Obligations, including obtaining new surety bonds and
18 posting of additional collateral, as necessary, is in the ordinary course of its business. To the extent
19 that honoring and paying the Bond Obligations involve the use of estate assets outside the ordinary
20 course of Debtor’s business, Debtor submits that the Court may grant Debtor the authority to do so
21 under Bankruptcy Code section 363(b). See In re Kmart Corp., 359 F.3d 866, 872 (7th Cir. 2004); see
22 also In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Section 363(b) authorizes
23 transactions outside the ordinary course of business, and a court should so authorize such transactions
24 where a debtor has articulated a valid business justification for the requested use of estate assets other
25 than “mere appeasement of major creditors.” See Ionosphere, 98 B.R., at 175.

26 Debtor submits it is an exercise of sound business judgment to maintain its Bond Obligations in
27 the ordinary course of business. Debtor’s ability to honor outstanding Bond Obligations and to issue
28 new surety bonds to provide financial assurances and secure Debtor’s payment or performance of

1 certain obligations owed to third parties such as local governmental units without interruption is crucial
 2 to the continuance of Debtor's ongoing business operations. Debtor's failure to honor and pay the
 3 Bond Obligations could well result in the revocation of Debtor's ability to engage in revenue-
 4 generating operations that are integral to Debtor's business, thereby jeopardizing the value of Debtor's
 5 estate and its ability to successfully reorganize.

6 Additionally, the Court may authorize payment of prepetition claims in appropriate
 7 circumstances pursuant to Bankruptcy Code section 105(a), which provides for the issuance of "any
 8 order, process, or judgment that is necessary or appropriate to carry out the provisions" of the
 9 Bankruptcy Code. 11 U.S.C. § 105(a). Thus, section 105(a) permits a court to authorize preplan
 10 payment of prepetition obligations when essential to the continued operations of a debtor's business.

11 The Ninth Circuit Court of Appeals recognized the importance of paying certain prepetition
 12 claims in a reorganization case, even when the claimants are provided an advantage over other
 13 creditors in its holding in Burchinal v. Central Washington Bank (In re Adams Apple, Inc.), 829 F.2d
 14 1484, 1490 (9th Cir. 1987):

15 [A] "fundamental tenet" – rehabilitation of debtors . . . may supersede the policy
 16 of equal treatment. Cases have permitted unequal treatment of pre-petition debts
 17 when necessary for rehabilitation, in such contexts as (i) pre-petition wages to
 18 key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii)
 19 debts to providers of unique and irreplaceable supplies; and (iv) peripheral
 20 benefits under labor contracts.

21 (citations omitted). See also Weinstein, Eisen & Weiss, LLPL v. Gill (In re Cooper Commons, LLC),
 22 424 F.3d 963, 969 (9th Cir. 2005) (citing Adams Apple for its rejection of the fundamental tenet of
 23 bankruptcy law that like creditors must always be treated alike) (amended In re Cooper Commons,
 24 LLC, 430 F.3d 1215 (9th Cir. 2005)).

25 The rationale for the rule acknowledged by the Adams Apple court is that a debtor's
 26 rehabilitation in reorganization cases is "the paramount policy and goal of Chapter 11." Ionosphere, 98
 27 B.R., at 176; In re Just For Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (section 105 provides "a
 28 statutory basis for the payment of prepetition claims"); In re NVR LP, 147 B.R. 126, 127 (Bankr. E.D.
 Va. 1992) ("[U]nder 11 U.S.C. § 105 the court can permit pre-plan payment of a prepetition obligation
 when essential to the continued operation of the debtor."). Moreover, courts have permitted

1 postpetition payment of prepetition claims under section 105(a) where nonpayment would trigger a
 2 withholding of goods or services essential to a debtor's business reorganization. See In re UNR Indus.,
 3 143 B.R. 516, 520 (Bankr. D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or
 4 employees whose continued cooperation is essential to the debtor's successful reorganization);
 5 Ionosphere, 98 B.R., at 167-77 (finding that section 105 empowers bankruptcy courts to authorize
 6 payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor);
 7 In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (payment of prepetition
 8 claims authorized under section 105(a) where such payment is necessary "to permit the greatest
 9 likelihood of survival of the debtors and payment of creditors in full or at least proportionately.").

10 Without question, Debtor's request to continue to honor and pay the Bond Obligations is proper
 11 and in accordance with Bankruptcy Code section 105(a) given the critical need for Debtor to preserve
 12 the going concern value of its business in order to effect a successful reorganization through, among
 13 other things, avoiding the severe disruption to its operations that would be brought about by any
 14 interruption in the maintenance of the Bond Obligations. Continuing to honor and pay the Bond
 15 Obligations – including obtaining new surety bonds as needed and honoring obligations under existing
 16 Surety Bonds – in the ordinary course of business is necessary to avoid jeopardizing the operation of
 17 Debtor's business. Failure to obtain new or maintain existing surety bonds without interruption could
 18 cause Debtor to be in violation of applicable laws and regulations effectively terminating Debtor's
 19 revenue-generating operations to the detriment of all parties in interest.

20 **B. In the Alternative, Authority Exists for Payment of the Bond Obligations to the Extent**
 21 **Construed as Secured Claims or Priority Tax Claims.**

22 To the extent the Bond Obligations are secured claims pursuant to Bankruptcy Code section
 23 506(a) or priority tax claims pursuant to Bankruptcy Code section 507(a)(8), Debtor should be
 24 authorized to honor and pay them because such obligations must be paid in full in any event as a
 25 condition to satisfying the requirements for plan confirmation under Bankruptcy Code section 1129.

26 The Surety Bonds are collateralized and are likely secured claims under Bankruptcy Code
 27 section 506(a). Therefore, no prejudice to creditors or other parties in interest would result from
 28 Debtor continuing to honor and pay the Bond Obligations as they become due. Indeed, authorizing

1 Debtor to do so will benefit the estate and all parties in interest by avoiding penalties and interest as
2 well as foreclosure proceedings and any unnecessary disruptions to Debtor's business should it fail to
3 maintain existing Surety Bonds in compliance with the regulations of the various jurisdictions in which
4 it conducts its business.

5 If the Bond Obligations are deemed priority claims, Bankruptcy Code section 1129 requires
6 that they be paid no less favorably than the most favored nonpriority unsecured claim under a plan of
7 reorganization through regular installment payments over a period not to exceed five years from the
8 Petition Date having a total value, as of the effective date of such plan, equal to the allowed amount of
9 each such claim. 11 U.S.C. § 1129(a)(9)(C). Similarly, the Bond Obligations must receive the same
10 plan treatment if deemed secured claims that, if unsecured, would be governed by Bankruptcy Code
11 section 507(a)(8). 11 U.S.C. § 1129(a)(9)(D). Alternatively, Bankruptcy Code section 1129(b)(2)(A)
12 provides that such obligations otherwise be satisfied through deferred cash payments totaling at least
13 the allowed amount of each such claim having a value on the effective date of a plan that is equal to the
14 value of the collateral securing the claim with the liens against the collateral continuing in place or, if
15 the collateral is sold, with the lien securing the claim attaching to the proceeds of such sale; or that the
16 holder receive the indubitable equivalent of its claim. 11 U.S.C. § 1129(b)(2)(A).

17 In either case, whether the Bond Obligations constitute secured claims under Bankruptcy Code
18 section 506(a) or priority claims under Bankruptcy Code section 507(a)(8), Debtor's payment of the
19 Bond Obligations now will most likely affect only the timing of the payments and not the amounts to
20 be received by the issuers. Moreover, by continuing to honor and pay the Bond Obligations now,
21 Debtor will avoid any unnecessary penalties and interest or fees that might otherwise accrue as well as
22 any disruption of Debtor's revenue-generating operations. Debtor's other creditors and parties in
23 interest will not be prejudiced by the Court granting the relief requested by Debtor herein.

24 **C. The Court Can and Should Waive Any Application of Bankruptcy Rule 6004(h).**

25 Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale or lease of property.
26 . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise."
27 Debtor submits that the facts of this Chapter 11 Case warrant a waiver of Bankruptcy Rule 6004(h) in

28 ///

1 this instance in order to avert any disruption to Debtor’s operation that would occur in the absence of
2 immediate relief.

3 As noted herein, Debtor’s ability to continue to complete and deliver homes to customers in
4 order that clean title may be conveyed at the close of escrow from which Debtor receives revenue is
5 contingent on continuing to honor and to pay the Bond Obligations in the ordinary course of business.
6 Accordingly, Debtor requests that the Court waive Bankruptcy Rule 6004(h) such that an order
7 consistent with the Motion be immediately effective upon entry.

8 **V.**

9 **RESERVATION OF RIGHTS**

10 Nothing contained in this Motion is, or should be construed as, (a) an admission as to the
11 validity of any claim against Debtor; (b) a waiver of Debtor’s right to dispute any claim on any
12 grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or
13 unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affecting Debtor’s rights
14 under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject
15 to this Motion.

16 **VI.**

17 **CONCLUSION**

18 WHEREFORE, for all of the foregoing reasons, Debtor respectfully requests that the Court (a)
19 enter an order, substantially in the form attached hereto as **Exhibit A**, authorizing, but not directing,
20 Debtor to honor and pay the Bond Obligations by making ongoing regular installment payments and

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)

1 obtaining new surety bonds, as needed, in the ordinary course of business; and (b) grant such other and
2 further relief as this Court deems just and proper.

3 DATED this 5th day of April, 2012.

4 **FOX ROTHSCHILD LLP**

5 By /s/ Brett A. Axelrod

6 BRETT A. AXELROD, ESQ.

7 Nevada Bar No. 5859

8 MICAELA RUSTIA MOORE, ESQ.

9 Nevada Bar No. 9676

10 3800 Howard Hughes Parkway, Suite 500

11 Las Vegas, Nevada 89169

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

13
14
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 FORM OF 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,

fdba Castlebay 1, Inc.
fdba Development Management, Inc.
fdba Fairmont 1, Inc.
fdba Glen Eagles 3, Inc.
fdba Heritage 1, Inc.
fdba Inverness 5, Inc.
fdba Kensington 1, Inc.
fdba Kingsbridge 1, Inc.
fdba Promontory Estates, LLC
fdba Promontory Point 4, Inc.
fdba Silverado Springs 1, Inc.
fdba Silverado Springs 2, Inc.
fdba Tradition, Inc.
fdba Windsor 1, Inc.

Debtor.

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

Chapter 11

**ORDER AUTHORIZING DEBTOR TO
HONOR AND PAY PREPETITION BOND
OBLIGATIONS IN THE ORDINARY
COURSE OF ITS BUSINESS**

Hearing Date:
Hearing Time:

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

1 The Court, having reviewed and considered the amended Motion (the "Motion") filed by
2 American West Development, Inc. ("AWDI" or "Debtor"), for entry of an order in the above-captioned
3 case (the "Chapter 11 Case"), authorizing, but not directing, Debtor to continue to honor and pay its
4 obligations on prepetition surety bonds (the "Bond Obligations"), including obtaining new surety
5 bonds, as needed; and it appearing that the relief requested is in the best interests of Debtor's estate, its
6 creditors and all other parties in interest; and the Court having jurisdiction to consider the Motion and
7 the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and
8 the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being
9 proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed and
10 considered all other pleadings and evidence submitted by the parties in connection with the Motion; and
11 due and proper notice of the Motion having been provided; and it appearing that no other or further
12 notice need be provided; and the Court having determined that the legal and factual bases set forth in
13 the Motion establish just cause for the relief granted herein; and the Court having considered the oral
14 arguments of counsel at the hearing held on April 10, 2012, and having made findings of fact and
15 conclusions of law on the record, which are incorporated herein pursuant to Rule 52 of the Federal
16 Rules of Civil Procedure, made applicable to these proceedings by Rule 7052 of the Federal Rules of
17 Bankruptcy Procedure; and good and sufficient cause appearing therefor,

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

- 19 1. The Motion is GRANTED.
- 20 2. Debtor is hereby authorized, but not directed, to continue to honor and pay its prepetition
21 Bond Obligations, as defined in the Motion and set forth on Exhibit B to the Motion, by continuing to
22 make regular installment payments on account of the Bond Obligations, and, if necessary, to obtain new
23 surety bonds, in the ordinary course of business.
- 24 3. Debtor is authorized to take all actions necessary or appropriate to effectuate the relief
25 granted pursuant to this order in accordance with the Motion.
- 26 4. Fed. R. Bankr. P. 6004(h) is hereby waived such that the terms and conditions of this
27 Order shall be immediately effective and enforceable upon its entry.

28 ///

1 5. The Court retains jurisdiction with respect to all matters arising from or related to the
2 implementation of this Order.

3
4 DATED this __ day of __ 2012.

5 Prepared and respectfully submitted by:

6 **FOX ROTHSCHILD LLP**

7 By _____

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
13 Suite 500

14 Las Vegas, Nevada 89169

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

16 APPROVED/DISAPPROVED:

17 **OFFICE OF THE UNITED STATES TRUSTEE**

18 By _____

19 Athanasios Agelakopoulos

20 Office of the United States Trustee

21 Foley Federal Building

22 300 Las Vegas Boulevard South, Suite 4300

23 Las Vegas, Nevada 89101

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

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

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, Approved / Disapproved
OFFICE OF THE UNITED STATES TRUSTEE

- 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)

EXHIBIT B**BOND OBLIGATIONS**

NAME	BOND #	AMOUNT
GULF	B3600533	\$16,940
INSURANCE COMPANY OF THE WEST	2169264	\$190,123
INSURANCE COMPANY OF THE WEST	2206596	\$403,072
INSURANCE COMPANY OF THE WEST	2206605	\$157,116
INSURANCE COMPANY OF THE WEST	2206606	\$156,515
INSURANCE COMPANY OF THE WEST	2206607	\$116,801
INSURANCE COMPANY OF THE WEST	2206608	\$109,148
INSURANCE COMPANY OF THE WEST	2206609	\$109,132
INSURANCE COMPANY OF THE WEST	2207094	\$1,218,210
INSURANCE COMPANY OF THE WEST	2207095	\$191,435
INSURANCE COMPANY OF THE WEST	2207096	\$190,423
INSURANCE COMPANY OF THE WEST	2207097	\$175,311
INSURANCE COMPANY OF THE WEST	2207098	\$173,080
INSURANCE COMPANY OF THE WEST	2207099	\$175,517
INSURANCE COMPANY OF THE WEST	2208693	\$189,639
INSURANCE COMPANY OF THE WEST	2187601	\$159,295
INSURANCE COMPANY OF THE WEST	2187602	\$142,596
INSURANCE COMPANY OF THE WEST	2165381	\$603,606
INSURANCE COMPANY OF THE WEST	2173752	\$3,304,211
INSURANCE COMPANY OF THE WEST	2207105	\$316,128
INSURANCE COMPANY OF THE WEST	2207106	\$210,452
INSURANCE COMPANY OF THE WEST	2207107	\$118,625
INSURANCE COMPANY OF THE WEST	2207108	\$169,434
INSURANCE COMPANY OF THE WEST	2207109	\$203,434
INSURANCE COMPANY OF THE WEST	2207110	\$533,302
INSURANCE COMPANY OF THE WEST	2208694	\$149,834
INSURANCE COMPANY OF THE WEST	2277901	\$187,799
INSURANCE COMPANY OF THE WEST	2169276	\$162,467
INSURANCE COMPANY OF THE WEST	2169277	\$177,768
INSURANCE COMPANY OF THE WEST	2169278	\$372,821
INSURANCE COMPANY OF THE WEST	2169279	\$290,088
INSURANCE COMPANY OF THE WEST	2169280	\$277,783
INSURANCE COMPANY OF THE WEST	2187603	\$391,752
THE INSCO DICO HOME OFFICE	761489S	\$329,063
THE INSCO DICO HOME OFFICE	761494S	\$996,528
THE INSCO DICO HOME OFFICE	864013S	\$455,991
THE INSCO DICO HOME OFFICE	864014S	\$136,195
THE INSCO DICO HOME OFFICE	864015S	\$136,212
THE INSCO DICO HOME OFFICE	864016S	\$139,351
THE INSCO DICO HOME OFFICE	864017S	\$135,020
THE INSCO DICO HOME OFFICE	864018S	\$132,792
THE INSCO DICO HOME OFFICE	864019S	\$133,153
THE INSCO DICO HOME OFFICE	864020S	\$133,105

EXHIBIT B**BOND OBLIGATIONS**

NAME	BOND #	AMOUNT
THE INSCO DICO HOME OFFICE	864021S	\$525,985
THE INSCO DICO HOME OFFICE	862142S	\$67,741
THE INSCO DICO HOME OFFICE	763442S	\$226,072
THE INSCO DICO HOME OFFICE	763441S	\$327,358
THE INSCO DICO HOME OFFICE	864025S	\$200,986
THE INSCO DICO HOME OFFICE	864026S	\$184,886
THE INSCO DICO HOME OFFICE	864027S	\$145,800
THE INSCO DICO HOME OFFICE	864028S	\$468,944
THE INSCO DICO HOME OFFICE	864029S	\$140,940
THE INSCO DICO HOME OFFICE	864030S	\$183,646
THE INSCO DICO HOME OFFICE	864031S	\$135,824
THE INSCO DICO HOME OFFICE	864034S	\$242,589
THE INSCO DICO HOME OFFICE	864036S	\$206,832
THE INSCO DICO HOME OFFICE	864035S	\$615,476
TOTAL		\$17,744,349