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

9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re

12 AMERICAN WEST  
DEVELOPMENT, INC., a Nevada  
13 corporation,

14 Debtor.

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

Chapter 11

**DEBTOR’S EMERGENCY MOTION  
FOR ORDER PURSUANT TO 11 U.S.C.  
§§ 363, 1107 AND 1108 (I) AUTHORIZING  
CONTINUED USE OF CASH  
MANAGEMENT SYSTEM, BANK  
ACCOUNTS AND BUSINESS FORMS;  
AND (II) GRANTING RELATED RELIEF**

Hearing Date: OST REQUEST PENDING

Hearing Time: OST REQUEST PENDING

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20 American West Development, Inc. (“AWDI” or “Debtor”), debtor and debtor in possession in  
21 the above-captioned case (the “Chapter 11 Case”), respectfully submits this motion (the “Motion”) for  
22 entry of an order: (a) authorizing AWDI to maintain and continue use of AWDI’s existing cash  
23 management system, bank accounts and business forms, (b) authorizing AWDI to treat the existing  
24 bank accounts as debtor-in-possession accounts, (c) authorizing and directing depository banks to use  
25 their commercially reasonable best efforts to continue to service and administer AWDI’s bank accounts  
26 without interruption and to honor checks drawn on and transfers made from AWDI’s current bank  
27 accounts in the ordinary course of business, (d) to the extent permitted by an order of this Court,  
28 authorizing and directing depository banks to use their commercially reasonable best efforts to honor

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1 any debits made, drawn or issued in payment of prepetition claims, (e) authorizing AWDI to pay  
 2 post-petition ordinary course bank fees, expenses and charges to U.S. Bank in connection with AWDI's  
 3 current bank accounts and other cash management functions, (f) authorizing AWDI to pay outstanding  
 4 pre-petition fees, expenses and charges arising from AWDI's cash management systems and bank  
 5 accounts so long as said amounts were incurred in the ordinary course and would otherwise have been  
 6 paid in the ordinary course but for AWDI's bankruptcy filing, (g) authorizing AWDI and depository  
 7 banks to continue to perform pursuant to the terms of any prepetition documents and agreements  
 8 governing AWDI's current bank accounts, (h) reimbursing AWDI's depository bank (U.S. Bank) for  
 9 any claims arising before or after the Petition Date in connection with any customer checks deposited  
 10 with U.S. Bank that have been dishonored or returned as a result of insufficient funds in AWDI's bank  
 11 accounts (if any), and (i) granting such other and further relief as is requested herein and otherwise just  
 12 and proper under the circumstances.

13 The relief requested is critical in order for AWDI to prevent serious delays in payments to  
 14 employees, suppliers and contractors, among others, and to avoid disruption in the handling of AWDI's  
 15 receipts, disbursements and cash holdings, by permitting AWDI to maintain its existing bank accounts  
 16 and administer its existing cash management system in the ordinary course of business. The relief is  
 17 also requested because it is necessary to induce AWDI's cash management lender and depository bank,  
 18 U.S. Bank, to continue providing cash management services without additional credit exposure.

19 The Motion is made and based upon the following memorandum of points and authorities, the  
 20 Omnibus Declaration of Robert M. Evans (the "Omnibus Declaration") filed in support of Debtor's  
 21 First Day Motions, the papers and pleadings on file with the Court in the Chapter 11 Case, and any oral  
 22 arguments the Court may entertain at the hearing on the Motion.

## 23 MEMORANDUM OF POINTS AND AUTHORITIES

### 24 I.

#### 25 STATEMENT OF FACTS

##### 26 A. General Background.

27 1. On March 1, 2012 (the "Petition Date"), Debtor filed a voluntary petition for relief under  
 28 chapter 11 of the Bankruptcy Code in this Court. See Docket No. 1.

1           2. Debtor has continued and is operating and managing its business as debtor in possession  
2 pursuant to sections 1107 and 1108 of the Bankruptcy Code. See generally Chapter 11 Case Docket.

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

5           4. The factual background relating to Debtor’s commencement of the Chapter 11 Case is  
6 set forth in detail in the Omnibus Declaration, which is incorporated herein by this reference.

7 **B. Debtor’s Cash Management System.**

8           5. Debtor implemented a cash management system to facilitate the timely and efficient  
9 collection, management and disbursement of funds used in AWDI’s business. Postpetition, Debtor  
10 proposes to retain its current cash management system and its prepetition bank accounts (“Cash  
11 Management System”).

12           6. As of the Petition Date, AWDI maintains at least two active bank accounts (collectively,  
13 the “Bank Accounts”) at U.S. Bank National Association, N.A. (“U.S. Bank”).

14           7. AWDI maintains the following Bank Accounts at U.S. Bank:

15           a. AWDI Operating Account (Account No. 153700355255). The AWDI  
16 Operating Account is funded principally from cost reimbursement and fee income from Debtor’s non-  
17 debtor affiliate home selling entities. The AWDI Operating Account also receives funds from non-  
18 debtor affiliate, AWH Ventures, Inc (“AWHV”), as explained below. Management fees are  
19 approximately \$1.1 to \$1.3 million per month, and miscellaneous income of \$80,000 is also realized.  
20 Debtor’s non-debtor affiliate home selling entities reimburse construction costs, incurred on their  
21 behalf, of approximately \$3 million per month.

22           Disbursements through the AWDI Operating Account average approximately \$4.2 to \$4.3  
23 million monthly. In the ordinary course of business, AWDI uses the funds from the AWDI Operating  
24 Account to pay for costs and expenses related to homebuilding, including payments to subcontractors,  
25 and non-payroll operating costs. AWDI also uses the AWDI Operating Account to make payments  
26 with respect to, among other things, employee benefits and other overhead expenses. Additionally,  
27 funds from the AWDI Operating Account are used to pay the leases for the use of model homes, which  
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1 are owned by non-debtor affiliates. Funds from the AWDI Operating Account are transferred to the  
2 AWDI Payroll Account (explained below).

3 b. AWDI Payroll Account (Account No. 153790801879). The AWDI Payroll  
4 Account is used exclusively for payroll. Funds are transferred from the AWDI Operating Account  
5 directly to the AWDI Payroll Account one to two days before payroll is deducted by the payroll agent.

6 10. Non-debtor affiliate AWHV has historically transferred funds to or for the benefit of  
7 Debtor, and maintained intercompany balances reflecting such transfers and reimbursements.

8 11. The Cash Management System enables Debtor to (a) better forecast and report its cash  
9 position, (b) monitor collection and disbursement of funds, (c) guard against check and bank fraud by  
10 reducing the number of accounts that require monitoring, and (d) maintain control over the  
11 administration of Debtor’s various U.S. Bank accounts, all of which facilitates effective collection,  
12 disbursement and movement of cash. The most important benefit of maintaining Debtor’s current  
13 Cash Management System is to avoid disruption of Debtor’s ability to meet its obligations.

14 12. To avoid the operational and administrative paralysis that would necessarily result if  
15 Debtor closed its prepetition bank accounts that are integral to its Cash Management System and to  
16 ensure a smooth transition into chapter 11 as possible, Debtor seeks authority to maintain its Cash  
17 Management System, including its Bank Accounts.

18 **II.**

19 **RELIEF REQUESTED**

20 Debtor respectfully requests that this Court enter an order substantially in the form of Exhibit A  
21 hereto: (a) authorizing the maintenance and continued use of Debtor’s Cash Management System and  
22 business forms, (b) treating the Bank Accounts as debtor-in-possession accounts, (c) authorizing and  
23 directing U.S Bank to use its commercially reasonable best efforts to continue to service and administer  
24 the Bank Accounts without interruption and to honor checks drawn on and transfers made from the  
25 Bank Accounts in the ordinary course of business, (d) to the extent permitted by an order of this Court,  
26 authorizing and directing U.S. Bank to use its commercially reasonable best efforts to honor any debits  
27 made, drawn or issued in payment of prepetition claims on the Bank Accounts, (e) authorizing AWDI  
28

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1 to pay post-petition ordinary course bank fees, expenses and charges to U.S. Bank in connection with  
2 AWDI's Bank Accounts and the Cash Management System, (f) authorizing AWDI to pay U.S. Bank for  
3 outstanding pre-petition fees, expenses and charges arising from AWDI's Cash Management System  
4 and the Bank Accounts so long as said amounts were incurred in the ordinary course and would  
5 otherwise have been paid in the ordinary course but for AWDI's bankruptcy filing, (g) authorizing  
6 AWDI and U.S. Bank to continue to perform pursuant to the terms of any prepetition documents and  
7 agreements governing the Cash Management System and the Bank Accounts, (h) reimbursing U.S.  
8 Bank for any claims arising before or after the Petition Date in connection with any customer checks  
9 deposited with U.S. Bank that have been dishonored or returned as a result of insufficient funds in  
10 AWDI's bank accounts (if any), (i) authorizing U.S. Bank to charge back to the Bank Accounts any  
11 amounts incurred by U.S. Bank resulting from returned checks or other returned items, regardless of  
12 whether such amounts were deposited prepetition or post-petition and regardless of whether the  
13 returned items related to prepetition or post-petition items, and (j) granting such other and further relief  
14 as is just and proper under the circumstances.

15 In addition, Debtor requests that in the event U.S. Bank honors a prepetition check or other item  
16 drawn on any Bank Account that is the subject of this Motion either: (a) at the direction of Debtor to  
17 honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such  
18 prepetition check or item to the honored, or (c) as the result of an innocent mistake made despite  
19 implementation of reasonable item handling procedures, U.S. Bank shall not be deemed to be liable to  
20 Debtor or to its estate. In addition, Debtor proposes that U.S. Bank be permitted to terminate the Cash  
21 Management System provided to Debtor upon not less than sixty (60) days prior written notice to  
22 Debtor and upon terms reasonably satisfactory to Debtor and U.S. Bank.

23 Finally, by this Motion Debtor also seeks an order that claims and obligations incurred by U.S.  
24 Bank from ordinary course transactions under Debtor's Cash Management System and/or Bank  
25 Accounts (collectively, the "Cash Management Claims") shall be accorded the same superpriority status  
26 held by Debtor's pre-petition secured creditors, including, without limitation, the same superpriority  
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1 status held by such secured creditors vis-à-vis Debtor’s post-petition debtor-in-possession financing  
2 lender.<sup>1</sup>

3 **III.**  
4 **ARGUMENT**

5 **A. Maintenance of Debtor’s Existing Bank Accounts is in the Best Interests of Debtor’s**  
6 **Estate**

7 The United States Trustee’s Operating Guidelines and Reporting Requirements (the “U.S.  
8 Trustee Guidelines”) require a chapter 11 debtor in possession to close all existing accounts and open  
9 new bank accounts in certain financial institutions designated as authorized depositories. The U.S.  
10 Trustee Guidelines also require that a debtor have a minimum of three new debtor in possession  
11 accounts: general, payroll and tax.

12 Debtor hereby seeks a waiver of the U.S. Trustee’s requirements that they close the existing  
13 Accounts and open new postpetition bank accounts at depositories authorized by the U.S. Trustee and  
14 that Debtor maintain tax and payroll accounts. Debtor seeks authority to convert the Bank Accounts to  
15 “debtor in possession” accounts and continue to utilize them as necessary to best serve their business  
16 needs.

17 The U.S. Trustee Guidelines for bank accounts are intended to ensure a clear separation between  
18 prepetition and postpetition receipts and disbursements, to assure payment of taxes and payroll, and to  
19 protect principal balances by requiring funds to be held in approved institutions.

20 Debtor’s Cash Management System, however, allows Debtor to identify and account for  
21 transfers of funds, track and keep separate prepetition and postpetition payments, and track tax and  
22 payroll obligations. Debtor’s Bank Accounts are held at a federally insured bank approved by the U.S.  
23 Trustee in this district.

24 Requiring Debtor to open new accounts and segregate taxes and payroll would complicate  
25 Debtor’s Cash Management System, needlessly increasing operating costs and workload on Debtor’s

26 <sup>1</sup> Contemporaneous with the filing of this Motion, Debtor is also filing a Motion for Order  
27 Pursuant to 11 U.S.C. § 364 and Fed. R. Bankr. P. 4001(c): (I) Authorizing Debtor to Obtain  
28 Postpetition Financing; and (II) Granting Related Relief.

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1 accounting personnel, while slowing payments to important vendors, with no discernible benefit.  
 2 Without the relief requested in the Motion, Debtor would have to completely rework its Cash  
 3 Management System, forcing Debtor's treasury, accounting and bookkeeping employees to focus  
 4 immediately on opening new accounts and revising procedures instead of their daily responsibilities.

5 Bankruptcy courts have routinely granted chapter 11 debtors authority to continue utilizing  
 6 existing cash management systems and treat requests for such authority as a relatively "simple matter."  
 7 In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); see also, In re Rebel Rents,  
 8 Inc., 307 B.R. 171 (Bankr. C.D. Cal. 2004); In re Westcliff Medical Laboratories, Inc., 2010 WL  
 9 5167443 (Bankr. C.D. Cal. 2010). This is particularly true where, as here, the chapter 11 case involves  
 10 a debtor with large and complex financial affairs. In In re Charter Co., 778 F.2d 617 (11th Cir. 1985),  
 11 for example, the bankruptcy court entered an order authorizing the debtor and 43 of its subsidiaries  
 12 "to continue to consolidate the management of its cash as has been usual and customary in the past, and  
 13 to transfer monies from affiliated entity to entity, including operating entities that are not debtors."  
 14 Id. at 620. The Eleventh Circuit Court of Appeals then affirmed a subsequent district court decision  
 15 denying a creditor's motion for leave to appeal the bankruptcy court's cash management order,  
 16 holding that authorizing the debtor to utilize its prepetition "routine cash management system"  
 17 was "entirely consistent" with applicable provisions of the Bankruptcy Code. Id. at 621. The continued  
 18 use of existing cash management systems (which includes the authority to continue using prepetition  
 19 bank accounts) has, however, been approved as a routine matter in unreported orders in numerous  
 20 chapter 11 cases in this district.<sup>2</sup> Debtor respectfully submits that continued use of the existing Bank  
 21 Accounts should be approved in this case as well.

22 In relation to the above requested relief, Debtor also requests that the Court: (i) authorize the  
 23 maintenance and continued use of Debtor's Cash Management System and business forms, (ii) treat the  
 24 Bank Accounts as debtor-in-possession accounts, (iii) authorize and direct U.S Bank to use its  
 25 commercially reasonable best efforts to continue to service and administer the Bank Accounts without  
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27 <sup>2</sup> See, e.g., In re Nevada Cancer Institute, BK-11-28676-BAM [Docket No. 66]; In re 155 East  
 28 Tropicana, LLC, BK-11-22216-BAM [Docket No. 55].

1 interruption and to honor checks drawn on and transfers made from the Bank Accounts in the ordinary  
2 course of business, (iv) to the extent permitted by an order of this Court, authorize and direct U.S. Bank  
3 to use its commercially reasonable best efforts to honor any debits made, drawn or issued in payment of  
4 prepetition claims on the Bank Accounts, (v) authorize AWDI to pay post-petition ordinary course bank  
5 fees, expenses and charges to U.S. Bank in connection with Debtor's Bank Accounts and the Cash  
6 Management System, (vi) authorize AWDI to pay U.S. Bank for outstanding pre-petition fees, expenses  
7 and charges arising from Debtor's Cash Management System and the Bank Accounts so long as said  
8 amounts were incurred in the ordinary course and would otherwise have been paid in the ordinary  
9 course but for Debtor's bankruptcy filing, (vii) authorize Debtor and U.S. Bank to continue to perform  
10 pursuant to the terms of any prepetition documents and agreements governing the Cash Management  
11 System and the Bank Accounts, (viii) reimburse U.S. Bank for any claims arising before or after the  
12 Petition Date in connection with any customer checks deposited with U.S. Bank that have been  
13 dishonored or returned as a result of insufficient funds in Debtor's bank accounts (if any), (ix) authorize  
14 U.S. Bank to charge back to the Bank Accounts any amounts incurred by U.S. Bank resulting from  
15 returned checks or other returned items, regardless of whether such amounts were deposited prepetition  
16 or post-petition and regardless of whether the returned items related to prepetition or post-petition  
17 items, and (x) grant such other and further relief as is just and proper under the circumstances.

18 In addition, Debtor requests that in the event U.S. Bank honors a prepetition check or other item  
19 drawn on any Bank Account that is the subject of this Motion either: (a) at the direction of Debtor to  
20 honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such  
21 prepetition check or item to the honored, or (c) as the result of an innocent mistake made despite  
22 implementation of reasonable item handling procedures, U.S. Bank shall not be deemed to be liable to  
23 Debtor or to its estate. In addition, Debtor proposes that U.S. Bank be permitted to terminate the Cash  
24 Management System provided to Debtor upon not less than sixty (60) days prior written notice to  
25 Debtor and upon terms reasonably satisfactory to the Debtor and U.S. Bank.

26 Finally, by this Motion, Debtor also requests an order that Cash Management Claims shall be  
27 accorded the same superpriority status held by Debtor's pre-petition secured creditors, including,  
28

1 without limitation, the same superpriority status held by such secured creditors vis-à-vis Debtor's post-  
2 petition debtor-in-possession financing lender.

3 All of the foregoing relief is necessary in order to allow Debtor to maintain the Cash  
4 Management System and the Bank Accounts and to carry on its post-petition business without  
5 disruption.

6 **B. Maintenance of Debtor's Existing Business Forms is in the Best Interests of Debtor's**  
7 **Estate**

8 Debtor also requests authority to continue using all existing correspondence and business forms  
9 (including, but not limited to letterhead, purchase orders, invoices, etc.) without reference to its "debtor  
10 in possession" status. In the ordinary course of business, Debtor uses pre-printed correspondence  
11 and business forms. The nature and scope of Debtor's business require that Debtor be permitted to  
12 continue using its pre-printed correspondence and business forms without alteration or modification.  
13 Changing correspondence and business forms would be unnecessary and burdensome to the estate, as  
14 well as expensive and disruptive to Debtor and the orderly administration of this case. Parties doing  
15 business with Debtor undoubtedly will be aware of this bankruptcy case, as a result of the size of this  
16 case, the integrated nature of Debtor's industry, and the publicity surrounding Debtor's status as debtor  
17 in possession.

18 Debtor utilizes a limited number of preprinted checks in its Bank Accounts at U.S. Bank, and  
19 requests authority to use existing preprinted checks after stamping the check with the legend "Debtor in  
20 Possession" and the case number of this case in order to minimize expense. Use of existing checks  
21 stamped as stated above with respect to other accounts would save the expense of buying new checks  
22 and also the delay in waiting to receive those checks. After existing checks are used, it will order checks  
23 printed with the legend and case number on them.

24 Bankruptcy courts routinely grant authority to continue using existing business instruments in  
25 chapter 11 cases. See, e.g., In re Johnson, 106 B.R. 623, 624 (Bankr. D. Neb. 1989) (debtors not  
26 required to obtain new checks imprinted with "Debtor in Possession" legend). The reason that such  
27 authority is routinely granted is fundamental – there is simply no reason to force a complex business  
28 enterprise to incur the expense of reprinting myriad business forms, or to hamper administration of

1 Debtor's case to the further economic detriment of its creditors while the new forms are being printed.  
 2 Accordingly, the Court should authorize Debtor's continued use of existing business forms as set forth  
 3 above.

4 **C. The Court Should Permit Immediate Relief**

5 Pursuant to Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy  
 6 Rules"), "a motion to use . . . property of the estate" shall not be granted by the Court within twenty-one  
 7 (21) days after the filing of the petition "[e]xcept to the extent that relief is necessary to avoid  
 8 immediate and irreparable harm . . ." Fed. R. Bankr. P. 6003(b). Debtor submits that the instant facts  
 9 satisfy the requirements for a waiver of the rule, in order to avoid a cash management crisis and  
 10 disruption to operations that would result in the absence of immediate relief.

11 For the same reason, Debtor requests that the Court waive Bankruptcy Rule 6004(h), which  
 12 provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of  
 13 fourteen (14) days after entry of the order, unless the court orders otherwise." Id. (emphasis added).<sup>3</sup>

14 **IV.**

15 **CONCLUSION**

16 For the foregoing reasons, Debtor respectfully requests that this Court enter an order  
 17 substantially in the form of Exhibit A hereto: (a) authorizing the maintenance and continued use of  
 18 Debtor's Cash Management System and business forms, (b) treating the Bank Accounts as debtor-in-  
 19 possession accounts, (c) authorizing and directing U.S Bank to use its commercially reasonable best  
 20 efforts to continue to service and administer the Bank Accounts without interruption and to honor  
 21 checks drawn on and transfers made from the Bank Accounts in the ordinary course of business, (d) to  
 22 the extent permitted by an order of this Court, authorizing and directing U.S. Bank to use its  
 23 commercially reasonable best efforts to honor any debits made, drawn or issued in payment of  
 24 prepetition claims on the Bank Accounts, (e) authorizing AWDI to pay post-petition ordinary course

25 \_\_\_\_\_  
 26 <sup>3</sup> To the extent the relief sought by the Motion implicates Bankruptcy Rule 4001(c)(2), which  
 27 similarly provides for a 14-day period before entry of an order authorizing a debtor to obtain credit,  
 28 Debtor submits that the critical role of the Cash Management System in Debtor's operations, including  
 the ability to promptly pay employees and vendors, satisfies the requirement for waiver of such rule.

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1 bank fees, expenses and charges to U.S. Bank in connection with AWDI’s Bank Accounts and/or the  
2 Cash Management System, (f) authorizing AWDI to pay U.S. Bank for outstanding pre-petition fees,  
3 expenses and charges arising from AWDI’s Cash Management System and/or the Bank Accounts so  
4 long as said amounts were incurred in the ordinary course and would otherwise have been paid in the  
5 ordinary course but for AWDI’s bankruptcy filing, (g) authorizing AWDI and U.S. Bank to continue to  
6 perform pursuant to the terms of any prepetition documents and agreements governing the Cash  
7 Management System and the Bank Accounts, (h) reimbursing U.S. Bank for any claims arising before  
8 or after the Petition Date in connection with any customer checks deposited with U.S. Bank that have  
9 been dishonored or returned as a result of insufficient funds in AWDI’s bank accounts (if any), and  
10 (i) authorizing U.S. Bank to charge back to the Bank Accounts any amounts incurred by U.S. Bank  
11 resulting from returned checks or other returned items, regardless of whether such amounts were  
12 deposited prepetition or post-petition and regardless of whether the returned items related to prepetition  
13 or post-petition items.

14 In addition, Debtor requests that in the event U.S. Bank honors a prepetition check or other item  
15 drawn on any Bank Account that is the subject of this Motion either: (a) at the direction of Debtor to  
16 honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such  
17 prepetition check or item to the honored, or (c) as the result of an innocent mistake made despite  
18 implementation of reasonable item handling procedures, U.S. Bank shall not be deemed to be liable to  
19 Debtor or to its estate. In addition, Debtor proposes that U.S. Bank be permitted to terminate the Cash  
20 Management System provided to Debtor upon not less than sixty (60) days prior written notice to  
21 Debtor and upon terms reasonably satisfactory to the Debtor and U.S. Bank.

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**EXHIBIT "A"**  
**PROPOSED ORDER**

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

<p>In re</p> <p>AMERICAN WEST DEVELOPMENT, INC., a Nevada corporation,</p> <p style="text-align: right;">Debtor.</p>	<p>Case No. BK-S-12-12349-MKN</p> <p>Chapter 11</p> <p><b>ORDER PURSUANT TO 11 U.S.C. §§ 363, 1107 AND 1108 (I) AUTHORIZING CONTINUED USE OF CASH MANAGEMENT SYSTEM, BANK ACCOUNTS AND BUSINESS FORMS; AND (II) GRANTING RELATED RELIEF</b></p> <p>Hearing Date:</p> <p>Hearing Time:</p>
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This Court having reviewed and considered American West Development, Inc.’s (“AWDI” or “Debtor”) motion (the “Motion”)<sup>1</sup> for entry of an order: (a) authorizing AWDI to maintain and continue use of AWDI’s existing Cash Management System, bank accounts and business forms, (b) authorizing

<sup>1</sup> All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

1 AWDI to treat the existing bank accounts as debtor-in-possession accounts, (c) authorizing and  
2 directing depository banks to use their commercially reasonable best efforts to continue to service and  
3 administer AWDI's bank accounts without interruption and to honor checks drawn on and transfers  
4 made from AWDI's current bank accounts in the ordinary course of business, (d) to the extent permitted  
5 by an order of this Court, authorizing and directing depository banks to use their commercially  
6 reasonable best efforts to honor any debits made, drawn or issued in payment of prepetition claims, (e)  
7 authorizing AWDI to pay post-petition ordinary course bank fees, expenses and charges in connection  
8 with AWDI's current bank accounts and other cash management functions, (f) authorizing AWDI to  
9 pay outstanding pre-petition fees, expenses and charges arising from AWDI's Cash Management  
10 System and bank accounts so long as said amounts were incurred in the ordinary course and would  
11 otherwise have been paid in the ordinary course but for AWDI's bankruptcy filing, (g) authorizing  
12 AWDI and depository banks to continue to perform pursuant to the terms of any prepetition documents  
13 and agreements governing the Cash Management System and AWDI's current bank accounts, (h)  
14 reimbursing U.S. Bank for any claims arising before or after the Petition Date in connection with any  
15 customer checks deposited with U.S. Bank that have been dishonored or returned as a result of  
16 insufficient funds in AWDI's bank accounts (if any), (i) authorizing U.S. Bank to charge back to the  
17 Bank Accounts any amounts incurred by U.S. Bank resulting from returned checks or other returned  
18 items, regardless of whether such amounts were deposited prepetition or post-petition and regardless of  
19 whether the returned items related to prepetition or post-petition items, and (j) granting such other and  
20 further relief as is just and proper under the circumstances, the Omnibus Declaration of Robert M.  
21 Evans (the "Omnibus Declaration"), and other papers filed in connection with the Motion; and it  
22 appearing that the relief requested in the Motion is in the best interests of Debtor's estate, its creditors  
23 and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief  
24 requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief  
25 requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper  
26 before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and due and proper notice of the Motion  
27 having been provided under the circumstances, and it appearing that no other or further notice need be  
28 provided; and after due deliberation and sufficient cause appearing therefore, it is ORDERED that:

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

- 1           1.       The Motion is granted.
- 2           2.       Debtor is authorized to continue using its integrated Cash Management System as  
3 described in the Motion.
- 4           3.       Debtor is authorized to: (a) continue to use, with the same account numbers, all of the  
5 bank accounts in existence as of the date of entry of the order for relief (the "Petition Date"), including,  
6 without limitation, the Bank Accounts, (b) use, in their present form, all correspondence and business  
7 forms (including, but not limited to, letterhead, contracts, purchase orders and invoices), as well as  
8 checks and other documents related to the Bank Accounts existing immediately before the Petition  
9 Date, without reference to its status as debtor in possession, and (c) treat the Bank Accounts for all  
10 purposes as accounts of the Debtor as debtor in possession.
- 11          4.       Except as otherwise expressly provided in this Order and only to the extent funds are  
12 available in each applicable Bank Account, U.S. Bank is authorized and directed to continue to use its  
13 commercially reasonable best efforts to service and administer the Bank Accounts as accounts of  
14 Debtor as debtor in possession, without interruption and in the ordinary course, and to receive, process,  
15 honor and pay any and all checks, drafts, wires and automated clearing house transfers issued and  
16 drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may  
17 be.
- 18          5.       To the extent permitted by an order of this Court other than this Order, U.S. Bank is  
19 authorized and directed to continue to use its commercially reasonable best efforts to honor any debits  
20 made, drawn or issued in payment of prepetition claims.
- 21          6.       Debtor is authorized to pay to U.S. Bank all post-petition ordinary course bank fees,  
22 expenses and charges in connection with the Bank Accounts and the Cash Management System.
- 23          7.       Debtor is authorized to pay any outstanding pre-petition fees, expenses and charges  
24 arising from AWDI's Cash Management System and the Bank Accounts so long as said amounts were  
25 incurred in the ordinary course and would otherwise have been paid in the ordinary course but for  
26 AWDI's bankruptcy.
- 27          8.       Debtor and U.S. Bank are authorized to continue to perform pursuant to the terms of any  
28 prepetition documents and agreements governing the Bank Accounts.

1           9. Debtor is authorized to open any new Bank Accounts or close any existing Bank  
2 Accounts as it deems necessary and appropriate in its sole discretion.

3           10. Debtor is authorized to reimburse U.S. Bank for any claims arising before or after the  
4 Petition Date in connection with any customer checks deposited with U.S. Bank that have been  
5 dishonored or returned as a result of insufficient funds in Debtor's Bank Accounts (if any).

6           11. U.S. Bank is authorized to charge back to the Bank Accounts any amounts incurred by  
7 U.S. Bank resulting from returned checks or other returned items, regardless of whether such amounts  
8 were deposited prepetition or post-petition and regardless of whether the returned items related to  
9 prepetition or post-petition items.

10           12. In the event U.S. Bank honors a prepetition check or other item drawn on any Bank  
11 Account that is the subject of the Motion either: (a) at the direction of Debtor to honor such prepetition  
12 check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to  
13 be honored, or (c) as the result of an innocent mistake made despite implementation of reasonable item  
14 handling procedures, U.S. Bank shall not be deemed to be liable to Debtor or to its estate.

15           13. U.S. Bank is permitted to terminate the Cash Management System provided to Debtor  
16 upon not less than sixty (60) days prior written notice to Debtor and upon terms reasonably satisfactory  
17 to Debtor and U.S. Bank.

18           14. All Cash Management Claims of U.S. Bank shall be accorded the same superpriority  
19 status held by Debtor's pre-petition secured creditors, including, without limitation, the same  
20 superpriority status held by such secured creditors vis-à-vis Debtor's post-petition debtor-in-possession  
21 financing lender.

22           15. Debtor and U.S. Bank are authorized to take all actions necessary to effectuate the relief  
23 granted pursuant to this Order in accordance with the Motion. Notwithstanding the possible  
24 applicability of Bankruptcy Rule 6003(b), the terms and conditions of this Order shall be immediately  
25 effective and enforceable upon its entry.

26           16. The Court retains jurisdiction with respect to all matters arising from or related to the  
27 implementation of this Order.  
28

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1 Prepared and Respectfully Submitted by:

2 **FOX ROTHSCHILD LLP**

3 By \_\_\_\_\_

4 BRETT A. AXELROD, ESQ.

5 Nevada Bar No. 5859

6 MICAELA RUSTIA MOORE, ESQ.

7 Nevada Bar No. 9676

8 3800 Howard Hughes Parkway

9 Suite 500

10 Las Vegas, Nevada 89169

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

12

13 APPROVED/DISAPPROVED:

14 **OFFICE OF THE UNITED STATES TRUSTEE**

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

16 Athanasios Agelakopoulos

17 Trial Attorney for Acting U.S. Trustee,

18 August B. Landis

19 **CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021**

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

21  The Court has waived the requirement of approval in LR 9021(b)(1).

22  No party appeared at the hearing or filed an objection to the motion

23  I have delivered a copy of this proposed order to all counsel who appeared  
24 at the hearing, any unrepresented parties who appeared at the hearing, and  
25 each has approved or disapproved the order, or failed to respond, as  
26 indicated below:

27 ATHANASIOS [INSERT, AS APPLICABLE]  
28 AGELAKOPOULOS, OFFICE OF  
THE UNITED STATES TRUSTEE \_\_\_\_\_

29 Approved / Disapproved

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

33 ###

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