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

11 In re
12 AMERICAN WEST DEVELOPMENT, INC.,
13 a Nevada corporation,
14 Debtor.

Case No. BK-S-12-12349-MKN
Chapter 11

**MOTION FOR ORDER ESTABLISHING
CERTAIN CASE MANAGEMENT,
NOTICE AND ADMINISTRATIVE
PROCEDURES**

Hearing Date: OST REQUEST PENDING
Hearing Time: OST REQUEST PENDING

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19 American West Development, Inc. ("AWDI" or "Debtor"), debtor and debtor in possession in
20 the above-captioned bankruptcy case (the "Chapter 11 Case"), respectfully submits this motion (the
21 "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Case
22 Management Order"), establishing certain case management, notice and administrative procedures.
23 Debtor seeks to establish a framework that will facilitate the efficient administration of its Chapter 11
24 Case (defined below). Entry of the Case Management Order will implement Case Management
25 Procedures (defined below) to, among other things, (i) establish omnibus hearing dates, (ii) establish
26 administrative procedures concerning requests for relief that may be filed in Debtor's Chapter 11 Case;
27 and (iii) authorize Debtor to limit notice with respect to certain matters that are anticipated to arise in its
28 Chapter 11 Case.

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1 This Motion is made pursuant to Rules 2002 and 9007 of the Federal Rules of Bankruptcy
2 Procedure (the “Bankruptcy Rules”). In addition, Bankruptcy Rules 4001, 6004, 6006, 6007, 9006,
3 9013, 9014 and 9019 allow this Court to determine those parties to whom Debtor must provide notice.
4 The Motion is based upon the following memorandum of points and authorities, the Omnibus
5 Declaration of Robert Evans (the “Omnibus Declaration”),¹ filed in support of Debtor’s First Day
6 Motions on March 1, 2012 (the “Petition Date”), the papers and pleadings on file with the Court in this
7 Chapter 11 Case, the arguments and representations of counsel, and any oral or documentary evidence
8 presented at or prior to the time of the hearing on the Motion.

9 DATED this 1st day of March 2012.

10 **FOX ROTHSCHILD LLP**

11 By /s/ Brett A. Axelrod

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19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I.**

21 **JURISDICTION**

22 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This
23 matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

24 2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

25 3. The statutory bases for the relief requested herein are sections 102 and 105 of title 11 of
26 the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), Bankruptcy Rules 2002 and
27 9007, and Rule 2002 of the Local Rules of Bankruptcy Practice of the United States District Court for
28 the District of Nevada (the “Local Rules”).

¹ Capitalized terms not otherwise defined herein shall have the same meaning ascribed in the Omnibus Declaration.

1 II.

2 FACTUAL BACKGROUND

3 4. On the Petition Date, Debtor filed its voluntary petition for relief under chapter 11 of the
4 Bankruptcy Code thereby initiating the Chapter 11 Case.

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

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

10 7. The general factual background relating to Debtor’s operations, capital structure and the
11 events leading to the commencement of this Chapter 11 Case is set forth in detail in the Omnibus
12 Declaration and is incorporated for all purposes herein by this reference.

13 8. As described in more detail in the Omnibus Declaration, Debtor endeavored to prepare
14 the majority of the pertinent pleadings in this Chapter 11 Case for filing on the Petition Date or shortly
15 thereafter. Nevertheless, Debtor anticipates numerous motions and applications will follow in the days
16 and weeks ahead. Debtor estimates thousands of creditors and parties in interest exist in this Chapter 11
17 Case and anticipates that the parties in interest who may file requests for service of pleadings, pursuant
18 to Bankruptcy Rule 2002, may number in the hundreds.

19 9. Due to the expected size of the Chapter 11 Case, Debtor believes that implementation of
20 the proposed notice, administrative and case management procedures described herein and to be
21 attached to the Case Management Order (collectively, the “Case Management Procedures”) is
22 warranted to ensure the Chapter 11 Case is administered in the most efficient and effective way
23 possible. In particular, the proposed Case Management Procedures will benefit Debtor, the Court and
24 all parties in interest by, among other things:

- 25 (a) Reducing the need for emergency hearings and requests for expedited relief;
- 26 (b) Fostering consensual resolution of important matters;
- 27 (c) Assuring prompt receipt of appropriate notice affecting parties’ interests;
- 28

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- (d) Providing ample opportunity to parties in interest to prepare for and respond to matters before this Court;
- (e) Reducing the substantial administrative and financial burden that would otherwise be placed on Debtor and other parties in interest who file documents in this Chapter 11 Case; and
- (f) Reducing administrative burdens on the Court and the Clerk’s office.

10. Debtor proposes to serve the Case Management Procedures on a Master Service List (defined herein) that it will maintain in accordance with the Case Management Procedures. Debtor further proposes to publish the Case Management Procedures on the website (the “Case Website”) maintained by its proposed notice, balloting and claims agent (the “Notice and Claims Agent”) that will provide copies of all pleadings filed in this Chapter 11 Case and will be accessible to the public for free.² The Case Management Procedures will also be available by contacting the Notice and Claims Agent or Debtor’s counsel. In the event the Case Management Procedures are modified during the course of the Chapter 11 Case, Debtor will redistribute the Case Management Procedures to the Master Service List.

**III.
REQUEST FOR RELIEF**

11. The large number of creditors and other parties in interest involved in this Chapter 11 Case will impose heavy administrative costs and other burdens upon Debtor, the Court, and the Clerk’s Office. Debtor desires to assist and cooperate with the Clerk’s Office to help alleviate those burdens to the fullest extent possible. Accordingly, Debtor respectfully requests that the Court enter the Case Management Order (a) establishing the Case Management Procedures as the governing framework for administration of this Chapter 11 Case, (b) approving the form and proposed notice of the Case Management Procedures, (c) finding that notice of this Motion is appropriate and sufficient under the circumstances, and (d) granting such other relief as is just and proper.

IV.

² Contemporaneously with this Motion, Debtor filed an application to retain The Garden City Group, Inc. as its Notice and Claims Agent. Such motion is pending before the Court and proposes, among other things, that the Notice and Claims Agent will provide instructions to all creditors and parties in interest for accessing the Case Website.

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CASE MANAGEMENT PROCEDURES

A. Omnibus Hearing Dates.

12. All Matters to be Heard at Omnibus Hearings. Debtor proposes that the Court schedule periodic omnibus hearings to consider all motions, pleadings, applications, objections and responses thereto, and other requests for relief filed in the Chapter 11 Case (the "Omnibus Hearings") no less frequently than once per month.

13. Setting Omnibus Hearings. Debtor proposes that periodic omnibus hearings be set in the Chapter 11 Case as follows:

(a) Ordinary Scheduling Procedures. In accordance with Bankruptcy Rule 2002 and Local Rule 9014, a party may notice its Request for Relief (defined below) as set for hearing on the date of the next upcoming Omnibus Hearing date provided such Omnibus Hearing date is no less than twenty-eight (28) days after the filing of the Request for Relief.

(b) Emergency Scheduling Procedures. Notwithstanding the Ordinary Scheduling Procedures, every party may request a hearing on less than twenty-eight (28) days' notice in accordance with Local Rule 9006.

(c) Initial Omnibus Hearings. The first seven (7) Omnibus Hearings shall be held on the following dates and times:

- (i) ___:___ a.m./p.m on the ___ day of April, 2012
- (ii) ___:___ a.m./p.m on the ___ day of May, 2012
- (iii) ___:___ a.m./p.m on the ___ day of June, 2012
- (iv) ___:___ a.m./p.m on the ___ day of July, 2012
- (v) ___:___ a.m./p.m on the ___ day of August, 2012
- (vi) ___:___ a.m./p.m on the ___ day of September, 2012
- (vii) ___:___ a.m./p.m on the ___ day of October, 2012

14. Subsequent Omnibus Hearings. At or before the last Omnibus Hearing noted above, Debtor shall request that the Court schedule additional Omnibus Hearings. Upon the scheduling of additional Omnibus Hearings, the Notice and Claims Agent shall post the dates and times for the subsequent Omnibus Hearings at the Case Website. Parties in interest may contact the Notice and Claims Agent for information concerning all scheduled Omnibus Hearings.

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B. Filing and Notice Procedures; Deadlines for Filing Responsive Pleadings.

15. Procedures Established for Notices. Debtor proposes that all notices, motions, applications and other requests for relief, including all briefs, memoranda, affidavits, declarations and other documents filed in support of such papers seeking relief (collectively, the “Requests for Relief”) and all objections and responses to such Requests for Relief (collectively, the “Objections,” and together with the Requests for Relief and all other filed documents, the “Court Filings”) shall be filed with the Court or other applicable court and served in accordance with the notice procedures set forth herein at paragraphs 16-36 (the “Notice Procedures”).

16. Entities Entitled to Service. Debtor proposes that all Court Filings shall be served upon the Master Service List, the Rule 2002 List and Affected Entities (each as defined hereinafter and collectively referred to as the “Service List”):

(a) Master Service List. This list shall be maintained by the Notice and Claims Agent and made available to parties in interest by their (a) accessing the Case Website; (b) contacting the Notice and Claims Agent directly; or (c) contacting Debtor’s counsel directly, and shall include contact information for the following parties:

- (i) the Office of the United States Trustee for the District of Nevada;
- (ii) Debtor and its counsel;
- (iii) counsel to any official committee of creditors or, until such appointment, the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims filed in the Chapter 11 Case by Debtor, pursuant to Bankruptcy Rule 1007(d);
- (iv) counsel to the administrative agent for Debtor’s prepetition secured lenders;
- (v) the Internal Revenue Service; and
- (vi) the Securities and Exchange Commission.

(b) Rule 2002 List. This list shall be maintained by the Notice and Claims Agent and made available to parties in interest by their (a) accessing the Case Website; or (b) contacting the Notice and Claims Agent directly; and shall include contact information for those entities who file or have filed a proper request for service of papers pursuant to Bankruptcy Rule 2002 as follows:

- (i) A Request for Service of Papers Requires Email Address – A request for service of papers pursuant to Bankruptcy Rule 2002 filed with the Court (each, a “Rule 2002 Notice Request”) shall be deemed proper if and only if it includes the following information with request to the party filing such request: (a) name; (b) street address; (c) name of client(s), if applicable; (d) telephone number; (e) facsimile number; and (f) email address.

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(ii) Certification For Opting Out of Email Service – Any individual or entity filing a Rule 2002 Notice Request who does not maintain (and cannot practicably obtain) an email address and thereafter cannot receive service by email must include in the Rule 2002 Notice Request a certification that shall include a statement certifying that the individual or entity (a) does not maintain an email address, and (b) cannot practicably obtain an email address at which the individual or entity could receive service by email.

(iii) Updates to Rule 2002 Notice Request – Each entity submitting a Rule 2002 Notice Request shall file with the Court an updated Rule 2002 Notice Request, as necessary, to reflect changes to any information, including email address and contact person, and shall serve a copy of such request upon Debtor and Debtor’s counsel.

(iv) At least every fifteen (15) days during the first sixty (60) days following the Petition Date, and thereafter once a month, the Notice and Claims Agent shall maintain and update the Rule 2002 List by: (a) making any additions and deletions necessary since the last update; (b) filing the updated Rule 2002 List with the Court; (c) serving the updated Rule 2002 List on the parties listed thereon; (d) filing a proof of service; and (e) simultaneously with the filing of the updated Rule 2002 List, posting the updated Rule 2002 List on the Case Website.

(c) Affected Entities. This group shall be comprised of all entities with a particularized interest in the subject matter of the particular Court Filing (each, an “Affected Entity”).

17. Filing and Service of Requests for Relief.

(a) Deadline for Requests for Relief. Debtor proposes that, unless otherwise ordered by the Court, the deadline to file a Request For Relief (the “Request Deadline”) shall be no less than twenty-eight (28) days before the applicable hearing date in accordance with Bankruptcy Rule 2002 and Local Rule 9014.

(b) Service of Requests for Relief. Debtor further proposes that, unless the Court orders otherwise, all Requests For Relief filed with the Court shall be served, so as to actually be received by the Request Deadline, upon the Master Service List and each Affected Entity, with such Affected Entities to be determined based on the particular Court Filing being served; *provided, however*, that if the Request for Relief is set on an expedited basis on a date that is ten (10) days or less before the applicable hearing, then such Request for Relief shall also be served by email, facsimile, hand delivery, or overnight mail upon Debtor and its counsel, any committee appointed in the case and its counsel, the entity filing the Request for Relief, and each Affected Entity.

18. Filing and Service of Objections, Replies and Other Responsive Pleadings.

(a) Deadline for Objections. Debtor proposes that, unless otherwise ordered by the Court, the deadline to file objections to Requests For Relief (the “Objection Deadline”) shall be fourteen (14) days before the applicable hearing date in accordance with Local Rule 9014. An Objection Deadline concerning a Request for Relief set to be heard on an Omnibus Hearing Date may be extended with the consent of the entity filing

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1 the Request for Relief to a date that is no later than seven (7) days before the applicable
 2 hearing date. For motions that are set on an expedited basis and less than fourteen (14)
 3 days after the Request for Relief is filed, the Objection Deadline shall be 5:00 p.m.
 prevailing Pacific Time no later than five (5) days before the hearing date. Failure to file
 objections by the Objection Deadline may cause the Court to not consider the objection.

4 (b) Service of Objections. Debtor further proposes that all objections filed
 5 with the Court shall be served, so as to actually be received by the applicable Objection
 6 Deadline, upon the entity filing the Request for Relief, the Master Service List, and each
 7 Affected Entity, with such Affected Entities to be determined based on the particular
 8 Court Filing being served; *provided, however*, that if the Objection Deadline is after the
 date that is five (5) days before the applicable hearing, then objections shall also be
 served by email, facsimile, hand delivery, or overnight mail upon Debtor and its counsel,
 any committee appointed in the case and its counsel, the entity filing the Request for
 Relief, and each Affected Entity.

9 (c) Filing and Service of Replies to Objections. Debtor further proposes that
 10 if a Court Filing is a reply to an objection, such reply shall be filed with the Court and
 11 served so as to actually be received by Debtor and its counsel, the parties filing
 12 objections and each Affected Entity, seven (7) days before the applicable hearing date in
 accordance with Local Rule 9014. If such reply is filed with respect to a motion set on
 an expedited basis, the reply shall be filed with the Court and served on the foregoing
 13 parties enumerated in this subsection (c) no later than 12:00 p.m. prevailing Pacific Time
 at least one (1) business day before the applicable hearing date.

14 19. Service of Orders. Debtor proposes that any party submitting an order for the Court's
 15 consideration be required to serve a file-stamped copy of such order on (i) each Affected Entity, and (ii)
 16 Debtor and its counsel, within two (2) business days of entry of the order. Debtor shall cause all
 17 entered orders to be posted on the Case Website.

18 20. With respect to Court Filings for which notices are required to be served on all creditors
 19 and parties in interest, including particular notices required pursuant Bankruptcy Rules 2002(a)(2) and
 20 (3), 4001, 6004, 6007 or 9019, Debtor proposes that parties shall be required to serve all such filings
 21 only on the Service List by email or otherwise (if an exemption is granted) and in accordance with the
 22 following procedures, unless otherwise ordered by the Court —

23 (a) in the case of any use, sale, lease or abandonment of substantially all of
 24 Debtor's property, on each entity asserting an interest in that property;

25 (b) in the case of a motion for relief or modification of the automatic stay, on
 26 each entity asserting a lien or encumbrance on the affected property;

27 (c) in the case of a motion relating to the use of cash collateral or obtaining
 28 credit, each party asserting an interest in the cash collateral or a lien or other interest in
 property upon which a lien or encumbrance is proposed to be granted;

1 (d) in the case of a motion under Bankruptcy Rule 9019, all parties that are
2 parties to the relevant compromise and settlement or that may be directly affected by
such compromise or settlement;

3 (e) in the case of assumption, assignment or rejection of an executory
4 contract or an unexpired lease, each party to the executory contract or the unexpired
lease;

5 (f) any objection, opposition, response, reply or further document filed
6 directly in response to a document shall be served on the entity who filed such
document; and

7 (g) all matters for which the Bankruptcy Rules specifically require notice to
8 all parties in interest shall be served on all parties in interest unless otherwise directed
by the Court.

9 21. Debtor proposes that, except as set forth herein or otherwise provided by order of the
10 Court, the Notice Procedures shall not apply to notices of the matters or proceedings described in the
11 following Bankruptcy Rules:

12 (a) Bankruptcy Rule 2002(a)(1) (meeting of creditors pursuant to
Bankruptcy Code section 341);

13 (b) Bankruptcy Rule 2002(a)(2) (any proposed use, sale or lease of property
14 of the estate other than in the ordinary course of business, to the extent that such use,
sale or lease concerns all or substantially all of Debtor’s assets);

15 (c) Bankruptcy Rule 2002(a)(4) (hearing on the dismissal of a case or cases
16 or the conversion of a case to another chapter);

17 (d) Bankruptcy Rule 2002(a)(5) (time fixed to accept or reject a proposed
modification of a chapter 11 plan);

18 (e) Bankruptcy Rule 2002(a)(7) (time fixed for filing a proof of claim
19 pursuant to Bankruptcy Rule 3003(c));

20 (f) Bankruptcy Rule 2002(b)(1) (time fixed for filing objections and any
hearing to consider approval of a disclosure statement);

21 (g) Bankruptcy Rule 2002(b)(2) (time fixed for filing objections and any
22 hearing to consider confirmation of a chapter 11 plan);

23 (h) Bankruptcy Rule 2002(d) (certain matters for which notice is to be
provided to equity security holders);

24 (i) Bankruptcy Rule 2002(f)(1) (entry of an order for relief);

25 (j) Bankruptcy Rule 2002(f)(2) (dismissal or conversion of a case to another
chapter of the Bankruptcy Code);

26 (k) Bankruptcy Rule 2002(f)(3) (time allowed for filing claims pursuant to
27 Bankruptcy Rule 3002);

28 (l) Bankruptcy Rule 2002(f)(6) (waiver, denial or revocation of a discharge
as provided in Bankruptcy Rule 4006);

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1 (m) Bankruptcy Rule 2002(f)(7) (entry of an order confirming a chapter 11
plan); and

2 (n) Bankruptcy Rule 2002(f)(8) (summary of the trustee's final report and
3 account should a case be converted to chapter 7 of the Bankruptcy Code).

4 22. Debtor further proposes that, pursuant to Bankruptcy Rule 3003(c)(2), any creditor
5 appearing on the lists filed in accordance with Bankruptcy Rule 1007(d) who is required, but fails, to
6 file a proof of claim in this Chapter 11 Case in accordance with any orders of the Court establishing a
7 claims bar date (such creditors, the "Excluded Creditors") shall not be entitled to further notice, and
8 Debtor shall not be required to provide any further notice to any such creditor, with respect to such
9 claim or otherwise in this Chapter 11 Case after the claims bar date established by the Court has passed.

10 23. Right to Request Special Notice Procedures. Nothing herein shall prejudice the right of
11 any entity to (a) move the Court to further limit or expand notice of contested matters and adversary
12 proceedings upon a showing of good cause, including, without limitation, the right to file a motion
13 seeking emergency *ex parte* relief or relief upon shortened notice, or (b) request an enlargement or
14 reduction of any time period under Bankruptcy Rules 9006(b) or 9006(c).

15 24. Use of Negative Notice. Nothing in these Case Management Procedures shall affect the
16 applicability of a party's ability to file and serve a Request for Relief on negative notice under the
17 Bankruptcy Rules and Local Rules applicable to such Request for Relief.

18 **C. Service by Electronic Mail.**

19 25. Debtor proposes that all Court Filings shall be electronically served through the Court's
20 Case Management/Electronic Case Filing System ("CM/ECF"), other than service of a summons and
21 complaint in an adversary proceeding or documents filed under seal, which shall be deemed to
22 constitute proper service for all parties who are sent such email service. Subject to the limited
23 exclusions set forth herein, each party that has filed a proper Rule 2002 Notice Request, pursuant to
24 these Case Management Procedures, shall be deemed to have consented to electronic service of papers.
25 A party filing a Court Filing that is served on entities via the CM/ECF has no further obligation for
26 service of such Court Filing with respect to such entities to be proper.

27 26. Debtor further proposes that if a Rule 2002 Notice Request fails to include an email
28 address and a Certification, Debtor shall forward a copy of the Case Management Procedures as

1 approved by the Court to such party within five (5) business days specifically requesting an email
2 address. If no email address or no Certification is provided in response to such request, such party shall
3 not be added to the Rule 2002 List and shall not be served with copies of pleadings and documents filed
4 in this case unless such pleadings or documents directly affect such party.

5 **D. Limit Notice Matters.**

6 27. To the extent the Bankruptcy Code, the Bankruptcy Rules or the Local Rules require
7 broader notice, Debtor respectfully requests that motions or applications regarding the following
8 matters or proceedings be the subject of limited notice in this Chapter 11 Case:

- 9 (a) any proposed use, sale, or lease of property of the estate pursuant to
10 Bankruptcy Code section 363 and Bankruptcy Rules 2002(a)(2),
11 4001(b) and 6004 (except a sale of substantially all of Debtor's
12 assets);
- 13 (b) any proposed extension of Debtor's exclusive right to file a plan of
14 reorganization and solicit acceptance thereof (including, without
15 limitation, the time to file a disclosure statement), pursuant to
16 Bankruptcy Code section 1121 and Bankruptcy Rule 3016;
- 17 (c) any proposed approval of a compromise or settlement of a
18 controversy pursuant Bankruptcy Rules 2002(a)(3) and 9019;
- 19 (d) any proposed abandonment or disposition of property of the estate
20 pursuant to Bankruptcy Code section 554 and Bankruptcy Rules
21 6007(a) or (b);
- 22 (e) any proposed assumption or rejection of contracts or leases under
23 Bankruptcy Code section 365 and Bankruptcy Rule 6006(a) or (c);
- 24 (f) any proposed modification of the automatic stay pursuant to
25 Bankruptcy Code section 362 or Bankruptcy Rules 4001(a) or 9014;
- 26 (g) any proposal to prohibit or condition the use, sale or lease of property
27 pursuant to Bankruptcy Code section 363 or Bankruptcy Rule
28 4001(a) or 6004;
- (h) any proposed objections to claims pursuant to Bankruptcy Code
section 502 or Bankruptcy Rules 3002, 3003 or 3007;
- (i) any proposed reconsideration of claims pursuant to Bankruptcy Rule
3008;
- (j) any verified statement filed by any entity or committee (other than
those appointed pursuant to Bankruptcy Code sections 1102 or 1104)
representing more than one creditor pursuant to Bankruptcy Rule
2019(a) and any motion filed in respect thereof pursuant to
Bankruptcy Rule 2019(b);

- (k) any proposed application for employment of professionals pursuant to Bankruptcy Code sections 327, 1103 or 1104 or Bankruptcy Rule 2014;
- (l) any proposed application for compensation or reimbursement of expenses of professionals, pursuant to Bankruptcy Code sections 328, 329, 330 or 331 and Bankruptcy Rules 2002(a)(6), 2016, 2017 and 6005; except as provided by other orders of this Court; hearing on any other contested matter in this case that requires notice to all creditors or equity holders pursuant to the Bankruptcy Code, Bankruptcy Rule 9014, or the Local Rules; and
- (m) all other pleadings, papers, and requests for relief or other order of the Court.

The notices, motions and applications for which Debtor is seeking to limit notice, as set forth above, are hereinafter referred to as the “Limited Notice Matters.”

28. Notwithstanding the foregoing, and except as to the Excluded Creditors, the relief requested in this Motion does not affect the rights of all creditors and parties in interest in this Chapter 11 Case to receive notice of the following matters or proceedings:

- (a) the meeting of creditors;
- (b) the deadline for filing proofs of claim;³
- (c) the hearing on any motion to convert or dismiss the Chapter 11 Case;
- (d) the time fixed for filing objections and the hearing to consider approval of a disclosure statement;
- (e) the time fixed for filing objections to and the hearing to consider confirmation of a plan or plans of reorganization; and
- (f) the time fixed to accept or reject a proposed modification of a plan or plans of reorganization.

As required by Bankruptcy Rule 2002(d), Debtor is prepared to provide notice of the foregoing matters (a)-(b) to all creditors and equity interest holders and requests authority to provide notice of the foregoing matters (c)-(f) to all creditors and equity interest holders except the Excluded Creditors.

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³ Contemporaneously with this Motion, Debtor filed a separate motion to establish bar dates and approve the form of notice and procedures in this Chapter 11 Case, and such motion is pending before the Court.

1 **E. Proposed Limit Notice Procedures.**

2 29. As permitted by Bankruptcy Rules 2002(i) and (m), Debtor proposes that the Court enter
3 the Case Management Order that, to the extent allowed, limits the parties upon whom Debtor must
4 serve notice with respect to the Limited Notice Matters in the Chapter 11 Case as follows:

5 **1. Service of Limited Notice Matters that Are Not Emergency or Expedited.**

6 30. Notice of motions concerning Limited Notice Matters to be heard on regular notice shall
7 be deemed sufficient if served via the Court's CM/ECF, first class mail, overnight delivery, facsimile
8 or email upon the following parties: (a) the Office of the United States Trustee; (b) parties that file
9 with the Court and serve upon Debtor and its counsel a proper Rule 2002 Notice Request, pursuant to
10 these Case Management Procedures; (c) any party with a pecuniary interest in the subject matter of the
11 particular Limited Notice Matter or its counsel; and (d) (i) counsel for any official unsecured creditors
12 committee that may be appointed in this Chapter 11 Case; or, (ii) until such time as counsel for any
13 official committee is named, the creditors appearing on the lists filed in accordance with Bankruptcy
14 Rule 1007(d) (hereinafter, the foregoing collectively, "Limited Service List"). Debtor proposes that
15 any party that wishes to change its address on the Limited Service List or the list of all creditors and
16 equity interest holders shall provide notice of the requested change to the Court, counsel for Debtor,
17 and the parties entitled to such notice.

18 **2. Service of Limited Notice Matters that Require Emergency or Expedited Relief.**

19 31. Pursuant to Local Rule 9006(e), if a motion for order shortening time is granted, the
20 notice of the entry of the order shortening time together with a copy of the motion must be served in the
21 most expeditious manner possible (e.g., email, facsimile, or hand delivery) within one (1) business day
22 after the order is entered, unless the court orders otherwise. However, in some instances service by one
23 of the means listed is not possible within the time frame available or is not practical (e.g., service on a
24 very large group for which Debtor has no facsimile numbers or email addresses readily available).
25 Therefore, with respect to those Limited Notice Matters to be heard on emergency or expedited notice,
26 Debtor proposes that, in addition to the methods of service authorized by Local Rule 9006(e), notice be
27 deemed sufficient if served only on the Limited Service List, via overnight delivery or email address, if
28 known to Debtor, so long as the notice will be delivered prior to the scheduled hearing time.

1 32. Debtor submits the Case Management Procedures as concerning Limited Notice Matters
2 are necessary and appropriate given that the creditor body is so large and many of the creditors would
3 not be interested in receiving copies of all the Limited Notice Matters. Requiring notice to, and service
4 upon, so many parties would substantially increase the cost and administrative burden on Debtor
5 without conferring any meaningful benefit to Debtor's estate and consequently would diminish the
6 assets ultimately available for distribution to creditors. Further, allowing service of an emergency or
7 expedited motion by overnight delivery in the instances outlined above provides the other parties notice
8 of the matter while preserving the ability of parties in the Chapter 11 Case to bring such matters before
9 the Court on a timely and efficient basis.

10 33. After the initial service of the Case Management Order subsequent to its entry, Debtor
11 anticipates that it may be appropriate to make supplemental mailings of notices in a number of
12 situations, including in the event that (a) notices are returned by the post office with forwarding
13 addresses (unless notices are returned as "return to sender" without a forwarding address, in which case
14 Debtor should not be required to mail additional notices to such creditors), (b) certain parties acting on
15 behalf of parties in interest (e.g., banks and brokers) that decline to pass along notices to these parties
16 and instead return their names and addresses to Debtor for direct mailing, and (c) additional potential
17 claimants become known as the result of the noticing process. In this regard, Debtor requests that the
18 Court permit it, with the assistance of the Notice and Claims Agent, to make supplemental mailings as
19 necessary to recipient parties. Debtor believes that these proposed supplemental mailings will help it
20 provide actual notice to known parties wherever practicable, facilitating the noticing process and easing
21 the administrative burden on Debtor. Debtor respectfully submits that such notice constitutes
22 appropriate and sufficient notice of the Limited Notice Matters.

23 **F. Telephonic Appearances via Court Call.**

24 34. Debtor proposes that parties requesting telephonic appearances on a "listen only" basis
25 be permitted to do so via Court Call's services without further authorization from the Court subsequent
26 to entry of the Case Management Order.

27 35. Debtor further proposes that parties wishing to telephonically appear and offer oral
28 argument with respect to a Request for Relief be required to first request permission by contacting the

1 Court at least three (3) business days prior to a hearing date set on regular notice or at least one (1)
2 business day prior to a hearing date set on expedited notice. Such request may be emailed to chambers
3 at mkn_cd@nvb.uscourts.gov and must include Debtor's name, bankruptcy case number, date and time
4 of hearing, name and telephone number of participant, and state good cause for telephonic appearance
5 (note that office location alone does not constitute good cause) after which a member of the Court's
6 staff will notify the requesting party whether or not permission has been granted. If permission is
7 granted, the requesting party must contact Court Call at 1-888-882-6878 to arrange the telephonic
8 appearance.⁴

9 **G. Courtesy Copies.**

10 36. Debtor proposes that courtesy copies of all Court Filings that are set for hearing,
11 together with all exhibits and attachments, must be delivered by the party filing such Court Filing via
12 hand delivery or mail to the Bankruptcy Court Clerk's office no later than two (2) business days after
13 filing. If the matter is set on expedited notice, courtesy copies of Court Filings must be delivered to
14 chambers by the filing party within twenty-four (24) hours of the filing date but in no event later than
15 12:00 p.m. prevailing Pacific Time on the date immediately preceding the scheduled hearing date.

16 **H. Service of This Motion.**

17 37. Debtor is serving a copy of this Motion by email, overnight delivery or facsimile only
18 on the Limited Service List contemporaneously with the filing of, and prior to the hearing on, the
19 Motion since the vast majority of creditors will not be interested in receiving notice of the Limited
20 Notice Matters or this Motion. Additionally, Debtor is serving a copy of this Motion on the Master
21 Service List, which includes the creditors holding the twenty (20) largest unsecured claims in Debtor's
22 estate, as well as the Office of the United States Trustee. Debtor respectfully submits that service of
23 this Motion as noted herein is appropriate and sufficient under the circumstances and further notice
24 need not be given.

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26
27 ⁴ Parties seeking more information regarding Court Call fees and services are referred to Court
28 Call's website at www.courtcall.com.

1 any order, process, or judgment that is necessary or appropriate to carry out the provisions of
2 [Title 11].” Walls v. Wells Fargo Bank, N.A., 276 F.3d 502, 506 (9th Cir. 2002). In addition to the
3 Court’s general equitable powers under Bankruptcy Code section 105(a), the Court, “unless
4 inconsistent with another provision of this title or with the applicable [Bankruptcy Rules], may issue an
5 order . . . prescribing such limitations and conditions as the court deems appropriate to ensure that
6 the case is handled expeditiously and economically.” 11 U.S.C. § 105(d)(2).

7 The Case Management Procedures proposed herein comport with applicable provisions of the
8 Bankruptcy Code and Bankruptcy Rules. Debtor believes that due to the large number of creditors and
9 other parties in interest in this Chapter 11 Case, the Case Management Procedures are appropriate.
10 Service of notice of all pleadings and other documents to all creditors would delay substantially the
11 provision of notice in each particular instance, thereby hampering the conduct of Debtor’s business and
12 impeding the consummation of transactions. Moreover, service of notice to all creditors with respect to
13 such matters would substantially increase the cost of administering Debtor’s estate.

14 The Court’s CM/ECF system facilitates the legal fiction that the Bankruptcy Court Clerk’s
15 office is always open because pleadings can be filed and accessed 24 hours a day, 7 days a week. See
16 Fed. R. Bankr. P. 5001. Further, all registered CM/ECF parties on the Master Service List, as well as
17 all other parties in interest that may be directly affected by a particular Request for Relief, will receive
18 notice of such Request for Relief directly from the party submitting such documents to the Court via the
19 CM/ECF system well in advance of the hearing on the matter. All parties in this case who are
20 registered participants in the CM/ECF system will receive a “Notice of Electronic Filing” via electronic
21 mail whenever a Request for Relief is effected, which will provide additional notice to such parties.
22 Although email is nearly universally available, if a party cannot reasonably obtain access to email, then
23 such party may seek an exemption pursuant to the Case Management Procedures to receive paper
24 copies.

25 Each party in interest that desires notice of pleadings and other documents may, by filing a Rule
26 2002 Notice, receive such notice. Therefore, no party will be adversely affected by the Case
27 Management Procedures, including the proposed email service set forth herein. The Case Management
28 Procedures fall within the Court’s authority to regulate notices and will mitigate the administrative and

1 economic burdens that would otherwise be imposed upon the Court, the Clerk's office and Debtor's
2 estate, without diminishing the opportunity for creditors and parties in interest to receive notice if they
3 so desire.

4 **VI.**
5 **NOTICE**

6 Notice of this Motion has been given by electronic mail, facsimile or overnight delivery to the
7 following parties or their counsel: (a) the Office of the United States Trustee for the District of
8 Nevada; (b) counsel to any statutory Committee of Unsecured Creditors appointed in this Chapter 11
9 Case; (c) counsel to the administrative agent for Debtor's prepetition secured lenders; (d) the Internal
10 Revenue Service; (e) the Securities and Exchange Commission; (f) Debtor's twenty (20) largest
11 unsecured creditors; and (g) all parties that have filed a Rule 2002 Notice Request in this Chapter 11
12 Case. In light of the nature of the relief requested, Debtor respectfully submits that such notice is
13 appropriate and sufficient under the circumstances and that no further notice is necessary.

14 **VII.**
15 **CONCLUSION**

16 **WHEREFORE**, to facilitate the efficient administration of this Chapter 11 Case and reduce the
17 significant costs, delays, and burdens that would be associated with providing notice of all matters in
18 this Chapter 11 Case to all creditors and parties in interest, Debtor respectfully requests that the Court
19 enter the Case Management Order, substantially in the form attached hereto as **Exhibit A**, (a)
20 establishing the Case Management Procedures as the governing framework for administration of this
21 Chapter 11 Case; (b) approving the form and proposed notice of the Case Management Procedures; (c)

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1 finding that notice of this Motion is appropriate and sufficient under the circumstances; and (d) granting
2 such other relief as is just and proper.

3 DATED this 1st day of March 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

11 Suite 500

12 Las Vegas, Nevada 89169

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

EXHIBIT A

PROPOSED FORM OF CASE MANAGEMENT ORDER

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BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
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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 ESTABLISHING CERTAIN
CASE MANAGEMENT, NOTICE AND
ADMINISTRATIVE PROCEDURES**

Hearing Date:
Hearing Time:

The Court, having reviewed and considered the Motion for Order Establishing Certain Case Management, Notice and Administrative Procedures (the "Motions"), filed in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case") by the debtor and debtor in possession ("Debtor"), seeking an order pursuant to sections 102 and 105 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to, among other things, (a) establish the case management procedures set forth in

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1 the Motion as the governing framework for administration of the Chapter 11 Case, and (b) approve the
2 form and proposed notice of the Case Management Procedures; and upon consideration of the Omnibus
3 Declaration of Robert M. Evans; having jurisdiction to consider the Motion and the relief requested
4 therein pursuant to 28 U.S.C. § 1334; consideration of the Motion and the relief requested therein being
5 a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper in this district pursuant to 28
6 U.S.C. §§ 1408 and 1409; appropriate and sufficient notice of the Motion having been provided under
7 the circumstances, and it appearing that no other or further notice need be provided; having determined
8 that the relief sought in the Motion is in the best interests of Debtor, its creditors and all other parties in
9 interest; having determined that the legal and factual bases set forth in the Motion establishes just cause
10 for the relief granted herein; and upon all the proceedings held before the Court at the date and time
11 noted above; with all other findings of the Court as set forth in the record at such hearing, which are
12 incorporated herein pursuant to Federal Rule of Civil Procedure 52, made applicable to these
13 proceedings by Bankruptcy Rule 7052; and after due deliberation and sufficient cause appearing
14 therefor,

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

- 16 1. The Motion is GRANTED.
- 17 2. The case management, notice and administrative procedures attached hereto as **Exhibit 1**
18 (the “Case Management Procedures”) are approved and shall be implemented immediately upon entry
19 of this Order to provide the governing framework for administration of this Chapter 11 Case.
- 20 3. Debtor shall serve notice of this Order and the Case Management Procedures upon the
21 Master Service List (as defined in the Case Management Procedures) that Debtor shall maintain in
22 accordance with the Case Management Procedures.
- 23 4. Debtor shall publish the Case Management Procedures on the website:
24 www.awdevelopmentreorg.com (the “Case Website”) maintained by its notice, balloting and claims
25 agent (the “Notice and Claims Agent”). Additionally, Debtor’s counsel and the Notice and Claims
26 Agent shall provide copies of the Case Management Procedures to any party who contacts them to
27 make such request.

1 5. In the event the Case Management Procedures are modified during the course of the
2 Chapter 11 Case, Debtor or the Notice and Claims Agent will redistribute the Case Management
3 Procedures to the Master Service List and shall republish the Case Management Procedures on the Case
4 Website.

5 6. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes
6 arising from or related to the implementation of this Order.

7 Prepared and Respectfully Submitted by:

8 **FOX ROTHSCHILD LLP**

9 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

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

17 APPROVED/DISAPPROVED:

18 **OFFICE OF THE UNITED STATES TRUSTEE**

19 By _____

Athanasios Agelakopoulos, Trial Attorney for
August B. Landis, Acting U.S. Trustee
Foley Federal Building
300 Las Vegas Boulevard South, Suite 4300
Las Vegas, Nevada 89101

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

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

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

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

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.

###

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EXHIBIT 1

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1 BRETT A. AXELROD, ESQ.
 Nevada Bar No. 5859
 2 MICAELA RUSTIA MOORE, ESQ.
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 mmoore@foxrothschild.com
 7 *[Proposed] Counsel for American West Development, Inc.*

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

<p>11 In re</p> <p>12 AMERICAN WEST DEVELOPMENT, INC.,</p> <p>13 a Nevada corporation,</p> <p>14 Debtor.</p>	<p>Case No. BK-S-11-12349-MKN</p> <p>Chapter 11</p>
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15
 16
 17 **CASE MANAGEMENT, NOTICE AND ADMINISTRATIVE PROCEDURES**

18 The United States Bankruptcy Court for the District of Nevada (the "Court") approved the
 19 following case management, notice and administrative procedures (the "Case Management
 20 Procedures") for the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case") of American
 21 West Development, Inc. ("Debtor"), debtor and debtor in possession in the Chapter 11 Case, pursuant
 22 to its order (the "Case Management Order") entered on ____, 2012.

23 Anyone may obtain a copy of the Case Management Order in addition to any document filed
 24 with the Court in the Chapter 11 Case by (a) accessing the website maintained by The Garden City
 25 Group, Inc. ("GCG" or the "Notice and Claims Agent"), Debtor's notice, balloting and claims agent, at
 26 www.awdevelopmentreorg.com (the "Case Website"); (b) contacting GCG directly at: AW Bankruptcy
 27 Administration, c/o GCG, Inc., PO Box 9748, Dublin, OH 43017-5648, or on their Telephone Hotline:
 28 (877) 604-9532; or (c) accessing the Case Management/Electronic Case Filing System ("CM/ECF") on

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1 the Court’s website at www.nvb.uscourts.gov through an account obtained from the PACER service
2 center at 1 (800) 676-6856 or http://pacer.psc.uscourts.gov. Additionally, paper copies of all pleadings
3 filed in the Chapter 11 Case are available during posted hours at the Court Clerk’s office located at
4 Foley Federal Building and U.S. Courthouse, 300 Las Vegas Boulevard South, Las Vegas, Nevada
5 89101.

6 **A. Omnibus Hearing Dates.**

7 1. All Matters to be Heard at Omnibus Hearings. The Court shall schedule periodic
8 omnibus hearings to consider all motions, pleadings, applications, objections and responses thereto, and
9 other requests for relief filed in the Chapter 11 Case (the “Omnibus Hearings”) no less frequently than
10 once per month.

11 2. Setting Omnibus Hearings.

12 (a) Ordinary Scheduling Procedures. In accordance with Rule 2002 of the
13 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9014 of the
14 Court’s Local Rules of Bankruptcy Procedure (the “Local Rules”), a party may notice
15 its Request for Relief (defined below) as set for hearing on the date of the next
16 upcoming Omnibus Hearing date provided such Omnibus Hearing date is no less than
17 twenty-eight (28) days after the filing of the Request for Relief.

18 (b) Emergency Scheduling Procedures. Notwithstanding the Ordinary
19 Scheduling Procedures, every party may request a hearing on less than twenty-eight (28)
20 days’ notice in accordance with Local Rule 9006.

21 (c) Initial Omnibus Hearings. The first seven (7) Omnibus Hearings shall be
22 held on the following dates and times:

- 23 (i) ___:___ a.m./p.m on the ___ day of April, 2012
- 24 (ii) ___:___ a.m./p.m on the ___ day of May, 2012
- 25 (iii) ___:___ a.m./p.m on the ___ day of June, 2012
- 26 (iv) ___:___ a.m./p.m on the ___ day of July, 2012
- 27 (v) ___:___ a.m./p.m on the ___ day of August, 2012
- 28 (vi) ___:___ a.m./p.m on the ___ day of September, 2012
- (vii) ___:___ a.m./p.m on the ___ day of October, 2012

29 3. Subsequent Omnibus Hearings. At or before the last Omnibus Hearing noted above,
30 Debtor shall request that the Court schedule additional Omnibus Hearings. Upon the scheduling of
31 additional Omnibus Hearings, the Notice and Claims Agent shall post the dates and times for the

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1 subsequent Omnibus Hearings at the Case Website. Parties in interest may contact the Notice and
2 Claims Agent for information concerning all scheduled Omnibus Hearings.

3 **B. Filing and Notice Procedures; Deadlines for Filing Responsive Pleadings.**

4 4. Procedures Established for Notices. All notices, motions, applications and other requests
5 for relief, including all briefs, memoranda, affidavits, declarations and other documents filed in support
6 of such papers seeking relief (collectively, the “Requests for Relief”) and all objections and responses to
7 such Requests for Relief (collectively, the “Objections,” and together with the Requests for Relief and
8 all other filed documents, the “Court Filings”) shall be filed with the Court or other applicable court and
9 served in accordance with the notice procedures set forth herein at paragraphs 5-22 (the “Notice
10 Procedures”).

11 5. Entities Entitled to Service. All Court Filings shall be served upon the Master Service
12 List, the Rule 2002 List and Affected Entities (each as defined hereinafter and collectively referred to as
13 the “Service List”):

14 (a) Master Service List. This list shall be maintained by the Notice and
15 Claims Agent and made available to parties in interest by their (a) accessing the Case
16 Website; (b) contacting the Notice and Claims Agent directly; or (c) contacting Debtor’s
17 counsel directly, and shall include contact information for the following parties:

- 18 (i) the Office of the United States Trustee for the District of Nevada;
- 19 (ii) Debtor and its counsel;
- 20 (iii) counsel to any official committee of creditors or, until such
21 appointment, the entities listed on the List of Creditors Holding the 20 Largest
22 Unsecured Claims filed in the Chapter 11 Case by Debtor, pursuant to
23 Bankruptcy Rule 1007(d);

24 (iv) counsel to the administrative agent for Debtor’s prepetition
25 secured lenders;

- 26 (v) the Internal Revenue Service; and
- 27 (vi) the Securities and Exchange Commission.

28 (b) Rule 2002 List. This list shall be maintained by the Notice and Claims
Agent and made available to parties in interest by their (a) accessing the Case Website;
or (b) contacting the Notice and Claims Agent directly; and shall include contact
information for those entities who file or have filed a proper request for service of
papers pursuant to Bankruptcy Rule 2002 as follows:

- (i) A Request for Service of Papers Requires Email Address – A
request for service of papers pursuant to Bankruptcy Rule 2002 filed with the

1 Court (each, a “Rule 2002 Notice Request”) shall be deemed proper if and only
 2 if it includes the following information with request to the party filing such
 3 request: (a) name; (b) street address; (c) name of client(s), if applicable; (d)
 4 telephone number; (e) facsimile number; and (f) email address.

5 (ii) Certification For Opting Out of Email Service – Any individual
 6 or entity filing a Rule 2002 Notice Request who does not maintain (and cannot
 7 practicably obtain) an email address and thereafter cannot receive service by
 8 email must include in the Rule 2002 Notice Request a certification that shall
 9 include a statement certifying that the individual or entity (a) does not maintain
 10 an email address, and (b) cannot practicably obtain an email address at which
 11 the individual or entity could receive service by email.

12 (iii) Updates to Rule 2002 Notice Request – Each entity submitting a
 13 Rule 2002 Notice Request shall file with the Court an updated Rule 2002 Notice
 14 Request, as necessary, to reflect changes to any information, including email
 15 address and contact person, and shall serve a copy of such request upon Debtor
 16 and Debtor’s counsel.

17 (iv) At least every fifteen (15) days during the first sixty (60) days
 18 following the Petition Date, and thereafter [once a month], the Notice and
 19 Claims Agent shall maintain and update the Rule 2002 List by: (a) making any
 20 additions and deletions necessary since the last update; (b) filing the updated
 21 Rule 2002 List with the Court; (c) serving the updated Rule 2002 List on the
 22 parties listed thereon; (d) filing a proof of service; and (e) simultaneously with
 23 the filing of the updated Rule 2002 List, posting the updated Rule 2002 List on
 24 the Case Website.

25 (c) Affected Entities. This group shall be comprised of all entities with a
 26 particularized interest in the subject matter of the particular Court Filing (each, an
 27 “Affected Entity”).

28 6. Filing and Service of Requests for Relief.

(a) Deadline for Requests for Relief. Unless otherwise ordered by the Court,
 the deadline to file a Request For Relief (the “Request Deadline”) shall be no less than
 twenty-eight (28) days before the applicable hearing date in accordance with Bankruptcy
 Rule 2002 and Local Rule 9014.

(b) Service of Requests for Relief. Unless the Court orders otherwise, all
 Requests For Relief filed with the Court shall be served, so as to actually be received by
 the Request Deadline, upon the Master Service List and each Affected Entity, with such
 Affected Entities to be determined based on the particular Court Filing being served;
provided, however, that if the Request for Relief is set on an expedited basis on a date
 that is ten (10) days or less before the applicable hearing, then such Request for Relief
 shall also be served by email, facsimile, hand delivery, or overnight mail upon Debtor
 and its counsel, any committee appointed in the case and its counsel, the entity filing the
 Request for Relief, and each Affected Entity.

7. Filing and Service of Objections, Replies and Other Responsive Pleadings.

1 (a) Deadline for Objections. Unless otherwise ordered by the Court, the
 2 deadline to file objections to Requests For Relief (the “Objection Deadline”) shall be
 3 fourteen (14) days before the applicable hearing date in accordance with Local Rule
 4 9014. An Objection Deadline concerning a Request for Relief set to be heard on an
 5 Omnibus Hearing Date may be extended with the consent of the entity filing the Request
 6 for Relief to a date that is no later than seven (7) days before the applicable hearing date.
 For motions that are set on an expedited basis and less than fourteen (14) days after the
 Request for Relief is filed, the Objection Deadline shall be 5:00 p.m. prevailing Pacific
 Time no later than five (5) days before the hearing date. Failure to file objections by the
 Objection Deadline may cause the Court to not consider the objection.

7 (b) Service of Objections. All objections filed with the Court shall be served,
 8 so as to actually be received by the applicable Objection Deadline, upon the entity filing
 9 the Request for Relief, the Master Service List, and each Affected Entity, with such
 10 Affected Entities to be determined based on the particular Court Filing being served;
 11 *provided, however,* that if the Objection Deadline is after the date that is five (5) days
 12 before the applicable hearing, then objections shall also be served by email, facsimile,
 hand delivery, or overnight mail upon Debtor and its counsel, any committee appointed
 in the case and its counsel, the entity filing the Request for Relief, and each Affected
 Entity.

13 (c) Filing and Service of Replies to Objections. If a Court Filing is a reply to
 14 an objection, such reply shall be filed with the Court and served so as to actually be
 15 received by Debtor and its counsel, the parties filing objections and each Affected Entity,
 16 seven (7) days before the applicable hearing date in accordance with Local Rule 9014. If
 17 such reply is filed with respect to a motion set on an expedited basis, the reply shall be
 18 filed with the Court and served on the foregoing parties enumerated in this subsection (c)
 19 no later than 12:00 p.m. prevailing Pacific Time at least one (1) business day before the
 20 applicable hearing date.

21 8. Service of Orders. Any party submitting an order for the Court’s consideration shall
 22 serve a file-stamped copy of such order on (i) each Affected Entity, and (ii) Debtor and its counsel,
 23 within two (2) business days of entry of the order. Debtor shall cause copies of all entered orders to be
 24 posted on the Case Website.

25 9. With respect to Court Filings for which notices are required to be served on all creditors
 26 and parties in interest, including particular notices required pursuant Bankruptcy Rules 2002(a)(2) and
 27 (3), 4001, 6004, 6007 or 9019, parties shall serve all such filings only on the Service List by email or
 28 otherwise (if an exemption is granted) and in accordance with the following procedures, unless
 otherwise ordered by the Court —

(a) in the case of any use, sale, lease or abandonment of substantially all of
 Debtor’s property, on each entity asserting an interest in that property;

1 (b) in the case of a motion for relief or modification of the automatic stay, on
each entity asserting a lien or encumbrance on the affected property;

2 (c) in the case of a motion relating to the use of cash collateral or obtaining
3 credit, each party asserting an interest in the cash collateral or a lien or other interest in
property upon which a lien or encumbrance is proposed to be granted;

4 (d) in the case of a motion under Bankruptcy Rule 9019, all parties that are
5 parties to the relevant compromise and settlement or that may be directly affected by
such compromise or settlement;

6 (e) in the case of assumption, assignment or rejection of an executory
7 contract or an unexpired lease, each party to the executory contract or the unexpired
lease;

8 (f) any objection, opposition, response, reply or further document filed
9 directly in response to a document shall be served on the entity who filed such
document; and

10 (g) all matters for which the Bankruptcy Rules specifically require notice to
11 all parties in interest shall be served on all parties in interest unless otherwise directed
by the Court.

12 10. Except as set forth herein or otherwise provided by order of the Court, the Notice
13 Procedures shall not apply to notices of the matters or proceedings described in the following
14 Bankruptcy Rules:

15 (a) Bankruptcy Rule 2002(a)(1) (meeting of creditors pursuant to
16 Bankruptcy Code section 341);

17 (b) Bankruptcy Rule 2002(a)(2) (any proposed use, sale or lease of property
18 of the estate other than in the ordinary course of business, to the extent that such use,
sale or lease concerns all or substantially all of Debtor's assets);

19 (c) Bankruptcy Rule 2002(a)(4) (hearing on the dismissal of a case or cases
or the conversion of a case to another chapter);

20 (d) Bankruptcy Rule 2002(a)(5) (time fixed to accept or reject a proposed
21 modification of a chapter 11 plan);

22 (e) Bankruptcy Rule 2002(a)(7) (time fixed for filing a proof of claim
pursuant to Bankruptcy Rule 3003(c));

23 (f) Bankruptcy Rule 2002(b)(1) (time fixed for filing objections and any
24 hearing to consider approval of a disclosure statement);

25 (g) Bankruptcy Rule 2002(b)(2) (time fixed for filing objections and any
hearing to consider confirmation of a chapter 11 plan);

26 (h) Bankruptcy Rule 2002(d) (certain matters for which notice is to be
provided to equity security holders);

27 (i) Bankruptcy Rule 2002(f)(1) (entry of an order for relief);
28

1 (j) Bankruptcy Rule 2002(f)(2) (dismissal or conversion of a case to another
chapter of the Bankruptcy Code);

2 (k) Bankruptcy Rule 2002(f)(3) (time allowed for filing claims pursuant to
3 Bankruptcy Rule 3002);

4 (l) Bankruptcy Rule 2002(f)(6) (waiver, denial or revocation of a discharge
as provided in Bankruptcy Rule 4006);

5 (m) Bankruptcy Rule 2002(f)(7) (entry of an order confirming a chapter 11
6 plan); and

7 (n) Bankruptcy Rule 2002(f)(8) (summary of the trustee's final report and
account should a case be converted to chapter 7 of the Bankruptcy Code).

8 11. Pursuant to Bankruptcy Rule 3003(c)(2), any creditor appearing on the lists filed in
9 accordance with Bankruptcy Rule 1007(d) who is required, but fails, to file a proof of claim in the
10 Chapter 11 Case in accordance with any orders of this Court establishing a claims bar date (such
11 creditors, the "Excluded Creditors") shall not be entitled to further notice, and Debtor shall not be
12 required to provide any further notice to any Excluded Creditors, with respect to such claim or
13 otherwise in the Chapter 11 Case after the claims bar date established by the Court has passed.

14 12. Right to Request Special Notice Procedures. Nothing herein shall prejudice the right of
15 any entity to (a) move the Court to further limit or expand notice of contested matters and adversary
16 proceedings upon a showing of good cause, including, without limitation, the right to file a motion
17 seeking emergency *ex parte* relief or relief upon shortened notice, or (b) request an enlargement or
18 reduction of any time period under Bankruptcy Rules 9006(b) or 9006(c).

19 13. Use of Negative Notice. Nothing in these Case Management Procedures shall affect the
20 applicability of a party's ability to file and serve a Request for Relief on negative notice under the
21 Bankruptcy Rules and Local Rules applicable to such Request for Relief.

22 **C. Service by Electronic Mail.**

23 14. All Court Filings shall be electronically served through the CM/ECF, other than service
24 of a summons and complaint in an adversary proceeding or documents filed under seal, which shall be
25 deemed to constitute proper service for all parties who are sent such email service. Subject to the
26 limited exclusions set forth herein, each party that has filed a proper Rule 2002 Notice Request,
27 pursuant to these Case Management Procedures, shall be deemed to have consented to electronic
28

1 service of papers. A party filing a Court Filing that is served on entities via the CM/ECF has no further
2 obligation for service of such Court Filing with respect to such entities to be proper.

3 15. If a Rule 2002 Notice Request fails to include an email address and a Certification,
4 Debtor shall forward a copy of these Case Management Procedures to such party within five (5)
5 business days specifically requesting an email address. If no email address or no Certification is
6 provided in response to such request, such party shall not be added to the Rule 2002 List and shall not
7 be served with copies of pleadings and documents filed in this case unless such pleadings or documents
8 directly affect such party.

9 **D. Limit Notice Matters.**

10 16. To the extent the Bankruptcy Code, the Bankruptcy Rules or the Local Rules require
11 broader notice, motions or applications regarding the following matters or proceedings shall be subject
12 to limited notice in the Chapter 11 Case:

13 (a) any proposed use, sale, or lease of property of the estate pursuant to
14 Bankruptcy Code section 363 and Bankruptcy Rules 2002(a)(2), 4001(b) and 6004
(except a sale of substantially all of Debtor's assets);

15 (b) any proposed extension of Debtor's exclusive right to file a plan of
16 reorganization and solicit acceptance thereof (including, without limitation, the time
17 to file a disclosure statement), pursuant to Bankruptcy Code section 1121 and
18 Bankruptcy Rule 3016;

19 (c) any proposed approval of a compromise or settlement of a controversy
20 pursuant Bankruptcy Rules 2002(a)(3) and 9019;

21 (d) any proposed abandonment or disposition of property of the estate
22 pursuant to Bankruptcy Code section 554 and Bankruptcy Rules 6007(a) or (b);

23 (e) any proposed assumption or rejection of contracts or leases under
24 Bankruptcy Code section 365 and Bankruptcy Rule 6006(a) or (c);

25 (f) any proposed modification of the automatic stay pursuant to
26 Bankruptcy Code section 362 or Bankruptcy Rules 4001(a) or 9014;

27 (g) any proposal to prohibit or condition the use, sale or lease of property
28 pursuant to Bankruptcy Code section 363 or Bankruptcy Rule 4001(a) or 6004;

(h) any proposed objections to claims pursuant to Bankruptcy Code
section 502 or Bankruptcy Rules 3002, 3003 or 3007;

(i) any proposed reconsideration of claims pursuant to Bankruptcy Rule
3008;

(j) any verified statement filed by any entity or committee (other than
those appointed pursuant to Bankruptcy Code sections 1102 or 1104) representing

1 more than one creditor pursuant to Bankruptcy Rule 2019(a) and any motion filed in
2 respect thereof pursuant to Bankruptcy Rule 2019(b);

3 (k) any proposed application for employment of professionals pursuant to
4 Bankruptcy Code sections 327, 1103 or 1104 or Bankruptcy Rule 2014;

5 (l) any proposed application for compensation or reimbursement of
6 expenses of professionals, pursuant to Bankruptcy Code sections 328, 329, 330 or
7 331 and Bankruptcy Rules 2002(a)(6), 2016, 2017 and 6005; except as provided by
8 other orders of this Court; hearing on any other contested matter in this case that
9 requires notice to all creditors or equity holders pursuant to the Bankruptcy Code,
10 Bankruptcy Rule 9014, or the Local Rules; and

11 (m) all other pleadings, papers, and requests for relief or other order of the
12 Court.

13 The notices, motions and applications set forth above are hereinafter referred to as the “Limited
14 Notice Matters.”

15 17. Notwithstanding the foregoing, except in the case of Excluded Creditors, these Case
16 Management Procedures do not affect the rights of all creditors and parties in interest in the Chapter 11
17 Case to receive notice of the following matters or proceedings:

- 18 (a) the meeting of creditors;
- 19 (b) the deadline for filing proofs of claim;
- 20 (c) the hearing on any motion to convert or dismiss the Chapter 11 Case;
- 21 (d) the time fixed for filing objections and the hearing to consider
22 approval of a disclosure statement;
- 23 (e) the time fixed for filing objections to and the hearing to consider
24 confirmation of a plan or plans of reorganization; and
- 25 (f) the time fixed to accept or reject a proposed modification of a plan or
26 plans of reorganization.

27 As required by Bankruptcy Rule 2002(d), Debtor shall provide notice of the foregoing matters
28 (a)-(b) to all creditors and equity interest holders and are authorized to provide notice of the foregoing
29 matters (c)-(f) to all creditors and equity interest holders except for the Excluded Creditors.

30 **E. Limit Notice Procedures.**

31 **1. Service of Limited Notice Matters that Are Not Emergency or Expedited.**

32 18. Notice of motions concerning Limited Notice Matters to be heard on regular notice shall
33 be deemed sufficient if served via the Court’s CM/ECF, first class mail, overnight delivery, facsimile or

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1 email upon the following parties: (a) the Office of the United States Trustee; (b) parties that file with
2 the Court and serve upon Debtor and its counsel a proper Rule 2002 Notice Request, pursuant to these
3 Case Management Procedures; (c) any party with a pecuniary interest in the subject matter of the
4 particular Limited Notice Matter or its counsel; and (d) (i) counsel for any official unsecured creditors
5 committee that may be appointed in this Chapter 11 Case; or, (ii) until such time as counsel for any
6 official committee is named, the creditors appearing on the lists filed in accordance with Bankruptcy
7 Rule 1007(d) (hereinafter, the foregoing collectively, "Limited Service List"). Any party that wishes to
8 change its address on the Limited Service List or the list of all creditors and equity interest holders shall
9 provide notice of the requested change to the Court, counsel for Debtor, and the parties entitled to such
10 notice.

11 **2. Service of Limited Notice Matters that Require Emergency or Expedited Relief.**

12 19. Pursuant to Local Rule 9006(e), if a motion for order shortening time is granted, the
13 notice of the entry of the order shortening time together with a copy of the motion must be served in the
14 most expeditious manner possible (e.g., email, facsimile, or hand delivery) within one (1) business day
15 after the order is entered, unless the court orders otherwise. In addition to the methods of service
16 authorized by Local Rule 9006(e), notice shall be sufficient if served only on the Limited Service List,
17 via overnight delivery or email address, if known to Debtor, so long as the notice will be delivered prior
18 to the scheduled hearing time.

19 20. After the initial service of the Case Management Order subsequent to its entry, Debtor
20 may make, as necessary, supplemental mailings of notices in a number of situations, including in the
21 event that (a) notices are returned by the post office with forwarding addresses (unless notices are
22 returned as "return to sender" without a forwarding address, in which case Debtor is not required to
23 mail additional notices to such creditors), (b) certain parties acting on behalf of parties in interest (e.g.,
24 banks and brokers) that decline to pass along notices to these parties and instead return their names and
25 addresses to Debtor for direct mailing, and (c) additional potential claimants become known as the
26 result of the noticing process. In such instances, Debtor's supplemental mailing of notices, with the
27 assistance of the Notice and Claims Agent, constitutes appropriate and sufficient notice with respect to
28 the Limited Notice Matters.

1 **F. Telephonic Appearances via Court Call.**

2 21. Parties may appear telephonically in the Chapter 11 Case on a “listen only” basis via
3 Court Call’s services without further authorization from the Court.

4 22. Parties wishing to telephonically appear and offer oral argument with respect to a
5 Request for Relief must first request permission by contacting the Court at least three (3) business days
6 prior to a hearing date set on regular notice or at least one (1) business day prior to a hearing date set on
7 expedited notice. Such request may be emailed to chambers at mkn_cd@nvb.uscourts.gov and must
8 include Debtor’s name, bankruptcy case number, date and time of hearing, name and telephone number
9 of participant, and state good cause for telephonic appearance (note that office location alone does not
10 constitute good cause) after which a member of the Court’s staff will notify the requesting party
11 whether or not permission has been granted. If permission is granted, the requesting party must contact
12 Court Call at 1-888-882-6878 to arrange the telephonic appearance.¹

13 **G. Courtesy Copies.**

14 23. Courtesy copies of all Court Filings that are set for hearing, together with all exhibits
15 and attachments, must be delivered by the party filing such Court Filing via hand delivery or mail to the
16 Bankruptcy Court Clerk’s office no later than two (2) business days after filing. If the matter is set on
17 expedited notice, courtesy copies of Court Filings must be delivered to chambers by the filing party
18 within twenty-four (24) hours of the filing date but in no event later than 12:00 p.m. prevailing Pacific
19 Time on the date immediately preceding the scheduled hearing date.

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¹ Parties seeking more information regarding Court Call fees and services are referred to Court
28 Call’s website at www.courtcall.com.