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

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

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

Case No. BK-S-12-12349-MKN  
Chapter 11  
**EX PARTE APPLICATION FOR  
ORDER SHORTENING TIME FOR  
HEARING ON DEBTOR’S EMERGENCY  
FIRST DAY MOTIONS AND LIMITING  
NOTICE THEREOF**

17 American West Development, Inc. (“AWDI” or “Debtor”), debtor and debtor in possession in  
18 the above-captioned case (the “Chapter 11 Case”), hereby submits this Ex Parte Application For Order  
19 Shortening Time For Hearing (the “Application”) on Debtor’s Emergency First Day Motions (as  
20 defined herein).

21 Specifically, Debtor has filed the following emergency first-day motions (collectively, the  
22 “First Day Motions”):

- 23 1. Motion for Approval of Stipulation for Entry of Interim and Final  
24 Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, and 363 and Fed. R.  
25 Bankr. P. 2002, 4001 and 9014 (a) Authorizing and Approving Debtor’s  
26 (1) Use of Cash Collateral, and (2) Granting Adequate Protection to  
27 Prepetition Secured Parties; and (B) Scheduling a Final Hearing (the  
28 “Motion for Use of Cash Collateral”);

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

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

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- 2. Motion for Order Establishing Certain Case Management, Notice and Administrative Procedures (the “Case Management Procedures Motion”);
- 3. Debtor's Motion for Entry of an Order (A) Setting Bar Dates for Filing Proofs of Claim, (B) Approving the Form and Manner for Filing Proofs of Claim, and (C) Approving Notice Thereof (the “Bar Date Motion”);
- 4. Motion for Order Authorizing Payment to Critical Vendors (the “Critical Vendors Motion”);
- 5. Motion for an Order (I) Authorizing Debtor to Pay Prepetition Employee Salaries and Benefits; and (II) Authorizing and Directing Financial Institutions to Honor Checks Related to Such Obligations (the “Wages and Benefits Motion”);
- 6. Debtor's Motion for an Order (1) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service; (2) Authorizing Ordinary Course Payments to Utility Providers; (3) Deeming Utility Providers Adequately Assured of Future Performance; and (4) Establishing Procedures for Determining Requests for Additional Adequate Assurance (the “Utilities Motion”);
- 7. 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 (the “Cash Management Procedures Motion”);

The First Day Motions are based on the Omnibus Declaration of Robert M. Evans filed in support of Debtor’s First Day Motions (the “Omnibus Declaration”). Additional information on Debtor and the events leading up to this Chapter 11 Case are set forth therein.

By this Application, Debtor respectfully requests that the Court enter an order: (i) setting an emergency hearing on the First Day Motions no later than March 9, 2012 (the “First Day Hearing”), (ii) directing Debtor to serve notice of the First Day Hearing in accordance with the procedure set forth in section III below; (iii) approving the form and scope of notice of the First Day Motions described in section III below and providing that no other notice of the First Day Motions need be given under the circumstances.

1 WHEREFORE, for the reasons set forth herein, Debtor respectfully requests that the Court hear  
2 the First Day Motions on an order shortening time, and grant such other and further relief as may be  
3 just and proper.

4 DATED this 1st day of March, 2012.

5 **FOX ROTHSCHILD LLP**

6 By s/Brett A. Axelrod

7 BRETT A. AXELROD, ESQ.

8 Nevada Bar No. 5859

9 MICAELA RUSTIA MOORE, ESQ.

10 Nevada Bar No. 9676

11 3800 Howard Hughes Parkway, Suite 500

12 Las Vegas, Nevada 89169

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

15 **POINTS AND AUTHORITIES**

16 **I.**

17 As set forth in the First Day Motions, and the Omnibus Declaration, it is necessary for the Court  
18 to hear the First Day Motions on an expedited basis in order to permit Debtor to transition smoothly  
19 into chapter 11 with minimal disruption to its business operations, streamline the administration of this  
20 Chapter 11 Case, and ensure that Debtor has adequate financing to meet its obligations to customers,  
21 employees, vendors and others.

22 1. The Motion for Use of Cash Collateral: As described in greater detail in the Omnibus  
23 Declaration, Debtor faces a continuous need to compensate its various subcontractors for work in  
24 developing lots and constructing homes for sale, yet Debtor is not paid by its affiliated home seller  
25 entities for its services until the closing of each sale. Prior to the Petition Date, AWDI relied on  
26 advances from AWH Ventures, Inc. (funded with borrowings from AWDI's pre-petition Lenders under  
27 the Credit Agreement and advances from affiliated entities) to provide the liquidity necessary to bridge  
28 the gaps between outlaying expenses for development/construction and receiving payment for these  
services at home sale closings. With the added expenses associated with its Chapter 11 Case, Debtor  
requires additional financing in order maintain its operations and remain current on expenses.  
Operationally, Debtor requires financing to ensure uninterrupted payment of expenses for the operation

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

1 of its business, including payroll, marketing, leasing services, utilities and all other operational needs.  
2 The bulk of Debtor's expenses are related to payments to subcontractors for vertical and horizontal  
3 construction. Debtor also needs to pay expenses associated with regulatory licenses and fees. Thus, it  
4 is imperative that the Court hold a hearing on the Motion for Use of Cash Collateral on an emergency  
5 basis.

6       2.     The Case Management Procedures Motion: The procedures proposed in the Case  
7 Management Procedures Motion will streamline the preparation and service of notices in this case by  
8 limiting, to the extent allowed, the parties upon whom notice must be served. Because the relief  
9 requested in this motion will dramatically reduce the burden, complication, delay, and cost to Debtor's  
10 estate associated with administering this case and providing notice of proceedings in same, Debtor  
11 requests that the Case Management Procedures Motion be heard on an emergency basis.

12       3.     Critical Vendor Motion: In the ordinary course of its business, Debtor relies on third-  
13 party subcontractors and material suppliers to provide the various services and materials identified  
14 above (each, a "Critical Vendor," and collectively, the "Critical Vendors"), without whom Debtor could  
15 not sustain its operations. Debtor has established relationships with these Critical Vendors over the  
16 years and believes that these relationships ensure continued access to consistent labor and materials and  
17 otherwise provide substantial savings and benefits. These Critical Vendors provide the myriad products  
18 and services that are necessary at all stages of home construction and development. The products and  
19 services the Critical Vendors provide include, among other things, engineering services,  
20 slab/foundation, flooring, framing, drywall, plumbing, electrical, roofing, paving, HVAC, landscaping,  
21 and utility construction, to name a few. Because Debtor could not sustain its operations without the  
22 Critical Vendors, Debtor requests that the Critical Vendor Motion also be heard on an order shortening  
23 time.

24       4.     The Wages & Benefits Motion: Debtor employs approximately 71 full-time employees  
25 (the "Employees") in the ordinary course of its business. Among other things, Debtor's Employees (a)  
26 manage and monitor construction of new homes, (b) participate in major design and building decisions,  
27 (c) coordinate the activities of subcontractors and suppliers, (d) review the work of subcontractors for  
28 quality and cost controls, (e) monitor compliance with zoning and building codes, (f) play a significant

1 role in working with Debtor's homebuyers on the construction process and instructing buyers on post-  
 2 closing home maintenance, and (g) manage Debtor's day to day business activities. Continued service  
 3 by the Employees is essential to Debtor's ongoing operations.

4 5. In the ordinary course of its business, and as is customary for most large companies,  
 5 Debtor has established various employee benefit plans and policies that provide certain Employees with  
 6 medical, vacation, employee savings, and other similar benefits (collectively, the "Employee Benefits").

7 6. Failure to pay and/or honor prepetition employee wages and benefits could greatly harm  
 8 employee morale, leading to a disruption of Debtor's operations and reduction in the value of Debtor's  
 9 assets. Because continued service by its Employees and payment of Employee Benefits is essential to  
 10 Debtor continued operations, Debtor requests that the Employee Wages and Benefits Motion be heard  
 11 on shortened time.

12 7. The Utilities Motion: In the normal course of business, Debtor has relationships with  
 13 various utilities for, among other things, electricity, natural gas, water, telecommunications, sewage,  
 14 trash removal and other similar services ("Utility Services")<sup>1</sup> from numerous companies or divisions  
 15 thereof (the "Utility Providers"). Debtor intends to continue to use the Utility Providers that are set forth  
 16 on **Exhibit A**<sup>2</sup> attached to the Motion. Debtor estimates that its average monthly postpetition payments  
 17 to the Utility Providers will aggregate approximately \$75,210.09 Debtor cannot continue to operate  
 18 without continued Utility Services. If any of the Utility Providers alter, refuse or discontinue service,  
 19 even for a brief period, Debtor's business operations would be severely disrupted and Debtor would be  
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22 <sup>1</sup> The Bankruptcy Code does not define "utility," but Debtor reserves all rights to argue that any  
 23 entity listed on the Utilities List is a "utility" within the meaning of or entitled to the protection of  
 24 Bankruptcy Code section 366 and to argue that any such entity is compelled by contractual obligation,  
 law or regulation, to continue to furnish services to Debtor notwithstanding the filing of this Chapter 11  
 Case.

25 <sup>2</sup> The listing of any entity on **Exhibit A** attached to the Utility Motion is not an admission that any  
 26 listed entity is a utility within the meaning of Bankruptcy Code section 366. Debtor reserves the right  
 27 to assert at any time that any entity listed on **Exhibit A** is not entitled to adequate assurance pursuant to  
 28 section 366 of the Bankruptcy Code. Debtor further reserves the right to terminate the services of any  
 Utility Provider at any time and to seek an immediate refund of any Utility Deposit without giving  
 effect to any right of setoff or claim asserted by a Utility Provider against Debtor.

1 unable to maintain its business. As a result, the relief requested in the Utility Motion is critical and  
2 Debtor requests that the Utility Motion be heard on shortened time.

3 8. Cash Management Procedures Motion: Debtor implemented a cash management system  
4 to facilitate the timely and efficient collection, management and disbursement of funds used in AWDI's  
5 business. Postpetition, Debtor proposes to retain its current cash management system and its prepetition  
6 bank accounts ("Cash Management System").

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

14 10. Based on the foregoing, and for the other reasons set forth in the First-Day Motions,  
15 Debtor requests that the Court set a hearing on the First-Day Motions as soon as possible, but no later  
16 than March 9, 2012.

17 The proposed shortening of time will not adversely impact any party's ability to respond to the  
18 First Day Motions, since the parties have had notice of the First Day Motions as described above.  
19 Further, the proposed shortening of time will still allow for compliance with Rule 4001(d) of the  
20 Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), which provides that objections, if  
21 any, to the First Day Motions may be filed and served within the time fixed by the Court. Fed. R.  
22 Bankr. P. 4001(d)(2).

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II.

LEGAL ARGUMENT

A. **The Relief Is Authorized by Rule 9006 and Meets Due Process Requirements.**

Bankruptcy Rules 9006(c)(1) and (d) authorize a court to reduce the time for a hearing, and a party to file an ex parte motion to shorten the time for a hearing. Bankruptcy Rule 9006(c)(1) provides in relevant part:

In General. Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

Fed. R. Bankr. P. 9006(c)(1).

Courts have generally acknowledged that such expedited relief does not violate due process rights, *even if the motion to shorten time is made ex parte*. Bankruptcy Rule 9006(c)(1) (emphasis added). “Bankruptcy Rule 9006(c) permits the bankruptcy court ‘for cause shown’ in its discretion, with or without motion or notice, to reduce the notice period, and ex parte motions for material reductions in the notice period are routinely granted by bankruptcy courts.” Hester v. NCNB Texas Nat’l Bank (In re Hester), 899 F.2d 361, 364 n. 3 (5th Cir.1990); see also 9 Collier on Bankruptcy 9006.07 (Lawrence P. King ed., 15th ed. 1995). See, e.g. In re Gledhill, 76 F.3d 1070 (10th Cir.[Utah] 1996).

The Court’s decision to reduce the notice period under Bankruptcy Rule 9006 will allow Debtor (a) to operate its business through the consensual use of cash collateral, (b) maintain the status quo with its employees, and (c) maintain its cash management system in order to receive and timely process postpetition receipts and payments. Accordingly, Debtor believes it is appropriate that the First Day Motions be heard on an order shortening time.

**Counsel Has Conferred With the Notice Parties.**

Prior to filing the First Day Motions, counsel consulted the Notice Parties as shown on the Attorney Information Sheet For Proposed Order Shortening Time, filed concurrently herewith and incorporated by reference herein and has previously provided the Office of the United States Trustee



1 and the Agent for its secured lenders with copies of all First Day pleadings.

2 **III.**

3 **NOTICE**

4 **A. Notice of First Day Hearing.**

5 Upon the Court’s entry of an order approving this Application, Debtor will serve the (i) Debtors  
6 20 largest unsecured creditors; (ii) Debtor’s secured creditors and lienholders of record; (iii) the Office  
7 of the United States Trustee for the District of Nevada; (iv) the federal and state governmental units  
8 required by Local Bankruptcy Rule 2002(a)(6); (v) Debtor’s utility providers; and (vi) Debtor’s insured  
9 depository institutions with notice of the First Day Hearing by facsimile or overnight mail.

10 **B. The First Day Motions.**

11 Debtor will serve the First-Day Motions and the Omnibus Declaration as follows:

12 1. All First-Day Motions are being served via overnight mail on: (i) Debtor’s 20 largest  
13 unsecured creditors; (ii) Debtor’s secured creditors and lienholders of record; (iii) the Office of the  
14 United States Trustee for the District of Nevada; and (iv) the federal and state governmental units  
15 required by Local Bankruptcy Rule 2002(a)(6).

16 2. Debtor’s utility providers are being served with the Utility Motion via overnight mail.

17 3. Debtor’s insured depository institutions are being served with the Cash Management  
18 Motion and the Cash Collateral Motion via certified mail and overnight mail.

19 4. Debtor submits that such notice is adequate and appropriate under the circumstances and  
20 that no other or further notice of the First-Day Motions and the First-Day Hearing need be given.

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Las Vegas, Nevada 89169  
(702) 262-6899  
(702) 597-5503 (fax)



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**IV.**

**CONCLUSION**

WHEREFORE, for all of the foregoing reasons, Debtor respectfully requests that the Court hear the First Day Motions on an order shortening time, and grant such other and further relief as may be just and proper.

DATED this 1st day of March, 2012.

**FOX ROTHSCHILD LLP**

By s/Brett A. Axelrod

BRETT A. AXELROD, ESQ.  
Nevada Bar No. 5859  
MICAELA RUSTIA MOORE, ESQ.  
Nevada Bar No. 9676  
3800 Howard Hughes Parkway  
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*[Proposed] Counsel for American West Development, Inc.*

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**EXHIBIT A**

**DECLARATION AFFIRMING REQUESTED RELIEF**

I, Brett Axelrod, declare under penalty of perjury that I am competent to make this declaration under the laws of the United States and the State of Nevada; that I have read the above Ex Parte Application for an Order Shortening Time and that the facts stated therein are true and correct to the best of my knowledge and belief.

DATED this 1st day of March, 2012.

By           s/ Brett Axelrod            
BRETT AXELROD

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