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

10 In re

11 AMERICAN WEST DEVELOPMENT,
INC., a Nevada corporation,

- 12 fdba Castlebay 1, Inc.
- 13 fdba Development Management, Inc.
- 14 fdba Fairmont 1, Inc.
- 15 fdba Glen Eagles 3, Inc.
- 16 fdba Heritage 1, Inc.
- 17 fdba Inverness 5, Inc.
- 18 fdba Kensington 1, Inc.
- 19 fdba Kingsbridge 1, Inc.
- 20 fdba Promontory Estates, LLC
- 21 fdba Promontory Point 4, Inc.
- 22 fdba Silverado Springs 1, Inc.
- 23 fdba Silverado Springs 2, Inc.
- 24 fdba Tradition, Inc.
- 25 fdba Windsor 1, Inc.

26 Debtor.

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

Chapter 11

**DEBTOR'S FIRST AMENDED
 CHAPTER 11 PLAN OF
 REORGANIZATION**

Hearing Date:
 Hearing Time:

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1 American West Development, Inc. (“Debtor”), debtor and debtor-in-possession in the
2 above-captioned case (the “Chapter 11 Case”), hereby proposes this first amended chapter 11 plan of
3 reorganization (the “Plan”), dated as of October 15, 2012, pursuant to section 1121(b) of title 11 of the
4 United States Code (the “Bankruptcy Code”).

5 **DISCLAIMER**

6 Reference is made to the Disclosure Statement accompanying this Plan, including the exhibits
7 appended thereto, for a discussion of Debtor’s history, business, results of operations and assets, and a
8 brief summary and detailed analysis of this Plan. All creditors are encouraged to consult the Disclosure
9 Statement and to read this Plan carefully and completely before voting to accept or reject this Plan.

10 **ARTICLE I**

11 **DEFINITIONS AND RULES OF INTERPRETATION**

12 1.1 Definitions. The capitalized terms used herein and in the accompanying Disclosure
13 Statement shall have the respective meanings set forth in the Glossary of Defined Terms attached as
14 **Exhibit “A”** hereto, such meanings to be equally applicable to the singular and the plural forms of the
15 terms defined, unless the context otherwise requires. If capitalized terms used in this Plan are not
16 defined in the Glossary of Defined Terms, then they are as defined in any other section of this Plan.
17 Unless otherwise provided in this Plan, all terms used herein shall have the meaning assigned to them
18 under the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).
19 The rules of construction applicable to the Bankruptcy Code and the Bankruptcy Rules shall be
20 applicable to this Plan.

21 1.2 Rules of Interpretation. Any term used in this Plan that is not defined in this Plan, either
22 in this Article I or elsewhere, but that is defined in the Bankruptcy Code or the Bankruptcy Rules, has
23 the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules. For purposes of
24 this Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or
25 the plural, shall include both the singular and the plural; (b) to the extent a reference or description in
26 this Plan to an Operative Document is inconsistent with the terms or conditions of that Operative
27 Document, the terms and conditions of the Operative Document shall govern over the reference or
28 description contained in this Plan; (c) any reference in this Plan to an existing document, schedule,

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1 Operative Document or exhibit Filed or to be Filed means such document, schedule, Operative
 2 Document, or exhibit, as it may have been or may be amended, modified or supplemented as of the
 3 Confirmation Date in accordance with the terms hereof; (d) unless otherwise specified in a particular
 4 reference, all references in this Plan to Sections, Articles and exhibits are references to Sections,
 5 Articles and exhibits of or to this Plan; (e) the words “herein,” “hereof,” “hereto,” “hereunder,” and
 6 others of similar import refer to this Plan in its entirety rather than to only a particular portion of this
 7 Plan; (f) the word “all” shall mean “any and all;” (g) captions and headings to Articles and Sections are
 8 inserted for convenience of reference only and are not intended to be a part of or to affect the
 9 interpretations of this Plan; (h) the rules of construction set forth in Bankruptcy Code section 102 shall
 10 apply, including that the terms “includes,” “shall include,” and “including” are not limiting; (i) all
 11 exhibits and schedules to this Plan are incorporated into this Plan, and shall be deemed to be included in
 12 this Plan, regardless of when they are Filed; (j) any service or notice provided for in this Plan shall be
 13 provided at the addresses specified in Article XIII hereof; (k) except to the extent that the Bankruptcy
 14 Code or other state or federal law is applicable, or to the extent the exhibits, New Secured Loan
 15 Documents or Operative Documents provide otherwise, the rights, duties and obligations under this
 16 Plan shall be governed, construed and enforced in accordance with the laws of the State of Nevada; and
 17 (l) to the extent a reference or description in the Disclosure Statement to this Plan, a New Secured Loan
 18 Document or an Operative Document is inconsistent with the terms or conditions of this Plan, the New
 19 Secured Loan Document or Operative Document, the terms and conditions of this Plan, the New
 20 Secured Loan Document or Operative Documents, as applicable, shall govern over the reference con-
 21 tained in the Disclosure Statement.

22 1.3 Appendices and Operative Documents. All appendices to the Plan and the Operative
 23 Documents are incorporated into and are a part of this Plan as if set forth in full herein.

24 **ARTICLE II**

25 **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

26 2.1 Introduction.

27 (a) All Claims and Interests, except Administrative Claims (including Professional
 28 Fee Claims) and Priority Tax Claims, are placed in the Classes set forth below. In accordance with

1 Bankruptcy Code section 1123(a)(1), Administrative Claims and Priority Tax Claims are not required to
2 be, and have not been, placed in any Class under the Plan.

3 (b) A Claim or Interest is placed in a particular Class only to the extent that the
4 Claim or Interest falls within the description of that Class and is classified in other Classes to the extent
5 that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or
6 Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this
7 Plan only to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that
8 Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective
9 Date.

10 2.2 Unclassified Claims.

11 (a) Administrative Claims.

12 (1) Deadline to File Administrative Claims. The Holder of an Administrative
13 Claim, other than (i) a Professional Fee Claim, or (ii) a liability incurred and paid in the ordinary course
14 of business by Debtor, must File with the Bankruptcy Court and serve on Debtor and Debtor's counsel,
15 notice of such Administrative Claim on or before the Administrative Claim Bar Date. Such notice must
16 include, at a minimum, (i) the name of the Holder of such Administrative Claim, (ii) the basis of the
17 Administrative Claim, including why it is entitled to administrative priority under the Bankruptcy
18 Code, and (iii) the amount of the Administrative Claim. Failure to File and serve such notice timely and
19 properly shall result in the Administrative Claim being forever barred and discharged. The
20 Administrative Claim Bar Date does not require the Internal Revenue Service to file a request for
21 payment by that date.

22 (2) Payment Provisions. Subject to the provisions of Bankruptcy Code
23 sections 330(a), 331 and 503(b), each Holder of an Administrative Claim shall, either:

24 (A) be paid from the Confirmation Funds in the Allowed amount of
25 such Administrative Claim on, or as soon as reasonably practicable after, the later of (i) the Effective
26 Date, (ii) the date upon which such Administrative Claim becomes Allowed, or (iii) such date as is
27 otherwise agreed to by Debtor or Reorganized Debtor, as the case may be, and the Holder of such
28 Administrative Claim; or

1 (B) have such Administrative Claim assumed by Reorganized Debtor,
2 to be paid by Reorganized Debtor in Cash in the Allowed amount of such Administrative Claim on, or
3 as soon as reasonably practicable after, the later of (i) the date upon which such Administrative Claim
4 becomes Allowed, (ii) the date on which such Administrative Claim becomes due in the ordinary course
5 of business, or (iii) such date as is otherwise agreed by Debtor, Reorganized Debtor and the Holder of
6 such Administrative Claim.

7 (3) Professional Fee Claims and US Trustee Fees. Notwithstanding the
8 foregoing or anything to the contrary in this Plan:

9 (A) all final applications for the allowance and payment of
10 Professional Fee Claims constituting amounts due for services rendered on or before the Effective Date
11 shall be Filed no later than ninety (90) days after the Effective Date, unless otherwise ordered by the
12 Bankruptcy Court.

13 (B) Debtor shall pay, or cause to be paid, all accrued US Trustee
14 Fees on or before the Effective Date; and following the Effective Date, Reorganized Debtor shall be
15 responsible for timely payment of all US Trustee Fees until such time as the Final Decree closing the
16 Chapter 11 Case is entered and all US Trustee Fees due are paid in full. US Trustee Fees are not subject
17 to an allowance process.

18 (C) Debtor or Reorganized Debtor (as applicable) shall File with the
19 Bankruptcy Court and serve on the United States Trustee a quarterly financial report for each quarter
20 (or portion thereof) that the Chapter 11 Case remains open in such format as reasonably may be
21 required by the United States Trustee.

22 (b) Priority Tax Claims. The legal and equitable rights of the Holders of Allowed
23 Priority Tax Claims are unaltered by this Plan. Each Holder of an Allowed Priority Tax Claim shall be
24 entitled to receive, on account of such Allowed Priority Tax Claim, in full satisfaction, settlement,
25 release and discharge of and in exchange for such Allowed Priority Tax Claim, equal quarterly,
26 consecutive Cash payments beginning on the Effective Date, and continuing until completed no later
27 than five (5) years after the Petition Date totaling the principal amount of such Claim plus interest on
28

1 any outstanding balance from the Petition Date. The rate of interest on such payments shall be
2 determined under applicable nonbankruptcy law, pursuant to Bankruptcy Code section 511.

3 2.3 Classified Claims and Interests.

4 (a) Class 1: Other Priority Claims.

5 *Claims in Class:* Class 1 consists of Other Priority Claims against Debtor.

6 *Treatment:* The legal and equitable rights of the Holders of Allowed Other Priority
7 Claims are unaltered by this Plan. Each Holder of an Allowed Other Priority Claim shall, either: (i) be
8 paid the Allowed amount of such Claim in Cash on the Effective Date; or (ii) receive such other
9 treatment as is agreed to by the Holder of such Allowed Other Priority Claim, and Debtor or
10 Reorganized Debtor, as the case may be.

11 *Impairment and Voting:* Class 1 Claims are not Impaired and the Holders of Allowed
12 Other Priority Claims are conclusively deemed to have accepted this Plan, pursuant to Bankruptcy Code
13 section 1126(f). Therefore, the Holders of Allowed Class 1 Claims are not entitled to vote to accept or
14 reject this Plan.

15 (b) Class 2: Secured Claims.

16 *Claims in Class:* Class 2 consists of the Secured Claims of the Secured Lenders against
17 Debtor.

18 *Treatment.* On the Effective Date, each Secured Lender, as a Holder of an Allowed
19 Secured Claim, shall receive, in full satisfaction, settlement, release and exchange for its Allowed
20 Secured Claim, payments from and performance by Reorganized Debtor under the New Secured Loan
21 according to the terms and conditions of the New Secured Loan Documents. The New Secured Loan
22 will be evidenced by the New Secured Notes, which will be executed by Reorganized Debtor and be
23 payable to the order of each Secured Lender according to such Secured Lender's pro rata interest in the
24 New Secured Loan. The New Secured Notes will be in the aggregate principal amount of \$49,635,000,
25 maturing on December 31, 2015 (the "Maturity Date"). The New Secured Loan shall be secured by
26 Liens on the Secured Lenders' collateral pursuant to the New Secured Loan Documents. Pursuant to
27 the terms of the Lock-Up and Settlement Letter Agreement, the Secured Lenders shall waive any
28 respective entitlement to receive or recover from Debtor or Reorganized Debtor any interest accruing at

1 the default rate under the Term Loan Documents prior to the Effective Date to the extent (and only to
2 the extent) that such default rate interest would be triggered under the Term Loan Documents by the
3 commencement of the Chapter 11 Case.

4 The New Secured Notes provide that the Secured Lenders will receive interest on the
5 principal amounts of the New Secured Notes at either (a) a fixed rate of interest based on reserve-
6 adjusted LIBOR rate plus the Applicable Margin for interest periods of one (1), two (2), three (3) or
7 six (6) months or (b) a variable rate of interest based on the “prime rate” as announced from time to
8 time by California Bank & Trust plus the Applicable Margin. If a fixed rate is selected, then upon
9 expiration of the applicable interest period the variable rate will become applicable unless a new fixed
10 rate interest period is selected in accordance with the New Secured Loan Documents. The variable rate
11 will change with each change in the applicable “prime rate.” The New Secured Notes further provide
12 that: (i) accrued interest shall be due and payable on the first Business Day of each month, beginning
13 with the first day of the first month after the month in which the Effective Date occurs, with interest
14 being calculated based on the actual number of days that principal is outstanding over a year of 360
15 days; and (ii) the entire outstanding principal balance of the New Secured Notes plus any accrued and
16 unpaid interest shall be immediately due and payable in one balloon payment on the Maturity Date.
17 The New Secured Notes shall be secured, pursuant to the New Secured Loan Documents, by the
18 Secured Lenders’ collateral and shall be in a form acceptable to and approved by the Secured Lenders,
19 which form is annexed as an exhibit to the Disclosure Statement. In the event of a default by
20 Reorganized Debtor under the New Secured Loan Documents, the full amount of the obligation owed
21 by Debtor’s co-borrowers under the Term Loan shall, at the option of a designated percentage of the
22 Secured Lenders, become immediately due and payable in full. In the event of any conflict between
23 the New Secured Loan Documents and this Plan, the terms and conditions of the New Secured Loan
24 Documents shall control.

25 Upon the Effective Date: (i) Debtor’s obligations as co-borrower under the Term Loan
26 shall be deemed replaced by its obligations as borrower under the New Secured Loan; (ii) Reorganized
27 Debtor shall be deemed to be the sole owner of all of Debtor’s re-vested assets, including the
28 Receivable and contract rights under each of the Design-Build Agreements and the Marketing and

1 Administrative Services Agreements, free and clear of all Liens and interests except the Secured
2 Lenders' Liens and interests under the New Secured Loan Documents; and (iii) all Liens and security
3 interests in the Receivable shall automatically be deemed to secure only Reorganized Debtor's
4 obligations to the Secured Lenders under the New Secured Loan Documents. In addition, the Term
5 Loan provides that Reorganized Debtor may become a co-borrower thereunder under certain conditions
6 as set forth therein.

7 *Impairment and Voting:* Class 2 Claims are Impaired under the Plan. Therefore, the
8 Holders of Allowed Class 2 Secured Claims are entitled to vote to accept or reject this Plan.

9 (c) Class 3: General Unsecured Claims.

10 *Claims in Class:* Class 3 consists of General Unsecured Claims against Debtor.

11 *Treatment:* Unless otherwise agreed to by the Holder, each Holder of an Allowed
12 Class 3 General Unsecured Claim shall receive on the Effective Date, in full satisfaction, settlement,
13 release and exchange of such Allowed General Unsecured Claim, its Pro Rata share of one million five
14 hundred thousand dollars (\$1,500,000), provided, however, that such Holder may not receive more than
15 one hundred percent (100%) of the principal amount of its Allowed Class 3 General Unsecured Claim.
16 Holders of Allowed Class 3 General Unsecured Claims are not entitled to interest on account of their
17 claims. Distribution to Holders of Allowed Class 3 General Unsecured Claims will be made pursuant to
18 Section 8.2(b) of this Plan.

19 On the Effective Date, assuming that Class 3 votes to accept the Plan, the Secured
20 Lenders shall waive any Distribution on account of their Allowed Class 3 General Unsecured Claims,
21 which are Deficiency Claims, as established or determined by the 9019 Order or otherwise.

22 *Impairment and Voting:* Class 3 Claims are Impaired under the Plan. Therefore,
23 Holders of Allowed Class 3 General Unsecured Claims are entitled to vote to accept or reject this Plan.

24 (d) Class 4: Construction Defect Claims.

25 *Claims in Class:* Class 4 consists of all Construction Defect Claims against Debtor.

26 *Treatment:* On the Effective Date, liability of Debtor for all Construction Defect Claims
27 shall be assumed by, and channeled pursuant to an injunction of the Bankruptcy Court to, the
28 Construction Defect Trust. Except as provided below in this Section 2.3(d) regarding Construction

1 Defect Claims for which the Cash Out Election is made and remains available since at least eighty
2 percent (80%) in number of the Holders of Class 4 Construction Defect Claims who timely and properly
3 voted to accept or reject the Plan actually voted to accept the Plan, all Construction Defect Claims shall
4 be processed, liquidated and paid pursuant to the terms and provisions of the TDP, and the Construction
5 Defect Trustee will determine, subject to the terms of the Construction Defect Trust Declaration and the
6 TDP, whether a Construction Defect Claim is an Allowed Claim for purposes of receiving a
7 Distribution on account thereof from the Construction Defect Trust. The sole recourse of a Holder of a
8 Construction Defect Claim shall be against the corpus of the Construction Defect Trust, and such
9 Holder shall have no rights whatsoever at any time to assert such Construction Defect Claim against
10 Debtor, the Estate, Reorganized Debtor or the Assets vested in Reorganized Debtor upon Confirmation
11 of this Plan. Without limiting the foregoing, on the Effective Date, all Holders of Construction Defect
12 Claims shall be permanently and forever stayed, restrained and enjoined from taking any actions against
13 Reorganized Debtor, Debtor, the Estate, the Assets, the Distribution Agent and the Professionals or their
14 respective assets and property for the purpose of, directly or indirectly, collecting, recovering or
15 receiving payment of, on or with respect to any Construction Defect Claim. On the Effective Date, the
16 Construction Defect Trust will be funded with the Construction Defect Trust Contribution. In addition,
17 there will be transferred to the Construction Defect Trust various rights and causes of action that could
18 augment the corpus of the Construction Defect Trust and the amount ultimately distributed to Holders
19 of Allowed Construction Defect Claims.

20 The Class 4 Ballot provided to Holders of Construction Defect Claims includes the
21 option for such Holders to make the Cash Out Election. So long as at least eighty percent (80%) in
22 number of the Holders of Class 4 Construction Defect Claims actually vote to accept the Plan, each
23 Holder of a Construction Defect Claim who makes the Cash Out Election shall: (i) receive a Cash Out
24 Payment, which shall consist of a check in the amount of its Allowed Construction Defect Claim mailed
25 by the Construction Defect Trustee (funded from the Construction Defect Trust Contribution) within
26 sixty (60) days of the Effective Date to the address to which the Class 4 Ballot was mailed unless a
27 different address is provided on such Holder's completed Class 4 Ballot; (ii) not have any further right
28 to any Distribution on account of any Construction Defect Claim from the Construction Defect Trustee,

1 the Distribution Agent, Debtor, Reorganized Debtor or otherwise; and (iii) grant the Cash Out Release
2 effective immediately upon receipt of the Cash Out Payment without any further action or approval. If
3 the Plan is not accepted by at least eighty percent (80%) in number of the Holders of Class 4 Claims
4 who timely and property vote to accept or reject the Plan, there shall be no Cash Out Election available
5 and the Claims of all Holders of Class 4 Claims shall be processed, liquidated and paid pursuant to the
6 terms and provisions of the TDP.

7 *Impairment and Voting:* Class 4 Claims are Impaired under the Plan. Therefore,
8 Holders of Class 4 Construction Defect Claims who make the Cash Out Election will be deemed to
9 have Allowed Claims in the respective Allowed amounts of their Class 4 Claims for purposes of voting
10 on the Plan and are entitled to vote to accept or reject this Plan. Holders of Class 4 Construction Defect
11 Claims that do not make the Cash Out Election will be tabulated for purposes of voting on the Plan in
12 the amount of \$1.00 unless the Bankruptcy Court enters an order pursuant to Bankruptcy Rule 3018(a)
13 temporarily allowing any such Claim in a different amount. **HOLDERS OF CLASS 4 CLAIMS WHO
14 HAVE NOT FILED A PROOF OF CLAIM AND WHO DO NOT VOTE WILL EFFECTIVELY BE
15 DELEGATING TO THE FUTURES REPRESENTATIVE THEIR RIGHT TO VOTE TO ACCEPT
16 OR REJECT THE PLAN. THE FUTURES REPRESENTATIVE INTENDS TO VOTE TO ACCEPT
17 THE PLAN ON BEHALF OF THE HOLDERS OF CLASS 4 CLAIMS FOR WHO HAVE NOT
18 VOTED THEMSELVES, THEREBY GRANTING THE NON-DEBTOR RELEASE SET FORTH IN
19 SECTION 12.4(b) ON BEHALF OF SUCH HOLDERS.**

20 (e) Class 5: Bond Claims.

21 *Claims in Class:* Class 5 consists of all Bond Claims against Debtor.

22 *Treatment:* Bond Claims will be paid in the ordinary course of Reorganized Debtor's
23 business.

24 *Impairment and Voting:* Class 5 is not Impaired and the Holders of Allowed Bond
25 Claims are conclusively deemed to have accepted this Plan, pursuant to Bankruptcy Code section
26 1126(f). Therefore, the Holders of Allowed Class 5 Claims are not entitled to vote to accept or reject
27 this Plan.

28 (f) Class 6: Old Equity Interests.

1 *Claims in Class:* Class 6 consists of all Old Equity Interests.

2 *Treatment:* Holders of Old Equity Interests shall not receive or retain any property on
3 account of such Old Equity Interests under this Plan. Upon the Effective Date, all Old Equity Interests
4 shall be extinguished and canceled without further action by Debtor or notice to Holders of Old Equity
5 Interests being necessary.

6 *Impairment and Voting:* Class 6 Interests are Impaired under the Plan. Because the
7 Holders of Old Equity Interests are deemed not to have accepted this Plan pursuant to Bankruptcy Code
8 section 1126(g), such Holder are therefore not required to vote to accept or reject the Plan.

9 2.4 Retention of Defenses Regarding Claims. Except as otherwise provided in (a) this Plan,
10 and (b) the DIP Financing Order, nothing shall affect Debtor's rights and defenses, both legal and
11 equitable, with respect to any Claims.

12 2.5 Disputed, Contingent and Unliquidated Claims and Interests. Any Claim or Interest that
13 has been or is hereafter listed in the Schedules as disputed, contingent or unliquidated, and for which no
14 Proof of Claim or Proof of Interest has been timely Filed by the Bar Date, is not considered Allowed
15 and shall be expunged without further action by Debtor and without any further notice to or action,
16 order or approval of the Bankruptcy Court.

17 **ARTICLE III**

18 **ACCEPTANCE OR REJECTION OF THIS PLAN**

19 3.1 Acceptance by an Impaired Class. In accordance with Bankruptcy Code section 1126(c)
20 and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall be
21 deemed to have accepted this Plan if this Plan is accepted by the Holders of at least two-thirds (2/3) in
22 dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have
23 timely and properly voted to accept or reject this Plan.

24 3.2 Summary of Classes Voting on this Plan.

25 (a) Only the votes of Holders of Allowed Claims in Classes 2, 3 and 4 will be
26 solicited with respect to this Plan.

27 (b) Classes 1 and 5 shall be conclusively deemed to have accepted the Plan pursuant
28 to Bankruptcy Code section 1126(f) and Class 6 will be deemed not to have accepted the Plan pursuant

1 to Bankruptcy Code section 1126(f). Accordingly, acceptances of the Plan will not be solicited from
2 the Holders of Class 1 or 5 Claims, or from the Holders of Class 6 Interests.

3 3.3 Elimination of Vacant Classes. Any Class of Claims that does not contain any Allowed
4 Claims as of the Voting Record Date or any Claims temporarily Allowed under Bankruptcy Rule
5 3018(a) or otherwise shall be deemed eliminated from the Plan for purposes of voting to accept or reject
6 the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to
7 Bankruptcy Code section 1129(a)(8).

8 3.4 Tabulation of Votes. The Voting and Claims Agent will tabulate all votes on this Plan
9 for the purpose of determining whether this Plan has been accepted by each Impaired Class entitled to
10 vote.

11 3.5 Nonconsensual Confirmation. If any Impaired Class of Claims entitled to vote shall not
12 accept the Plan by the requisite statutory majorities provided in Bankruptcy Code section 1126(c),
13 Debtor reserves the right, subject to the Lock-Up and Settlement Letter Agreement, to amend the Plan
14 in accordance with Section 12.1 hereof or undertake to have the Bankruptcy Court confirm the Plan
15 under Bankruptcy Code section 1129(b) or both. With respect to any Impaired Classes of Claims that
16 are deemed to reject the Plan, Debtor shall request that the Bankruptcy Court confirm the Plan under
17 Bankruptcy Code section 1129(b).

18 **ARTICLE IV**

19 **EXECUTORY CONTRACTS**

20 4.1 Executory Contracts. Debtor/Reorganized Debtor shall be deemed to have assumed each
21 Assumed Contract as of the Effective Date. The Confirmation Order shall constitute an order of the
22 Bankruptcy Court under Bankruptcy Code sections 365 and 1123(b)(2) approving the Assumed
23 Contract assumptions by Debtor/Reorganized Debtor, as of the Effective Date.

24 4.2 Cure of Defaults for Assumed Executory Contracts.

25 (a) Any of the Assumed Contracts that are, or may be, alleged to be in default, shall
26 be Cured by the Effective Date. Except with respect to Assumed Contracts with respect to which
27 Debtor and the applicable counterparties have stipulated in writing as to the appropriate Cure, all
28 requests for Cure that differ from the amounts and treatment proposed by Debtor must be Filed with the

1 Bankruptcy Court on or before the Cure Request Bar Date. Any request for payment or other Cure that
2 is not timely Filed shall be disallowed automatically and forever barred from assertion and shall not be
3 enforceable against Debtor or Reorganized Debtor, without the need for any objection by Debtor or
4 further notice to or action, order or approval of the Bankruptcy Court, and any Claim for Cure shall be
5 deemed fully satisfied, released and discharged upon payment by Reorganized Debtor of the amounts
6 listed on the proposed Cure schedule, notwithstanding anything included in the Schedules or in any
7 Proof of Claim to the contrary. Debtor or Reorganized Debtor also may settle any Cure dispute without
8 further notice to or action, order or approval of the Bankruptcy Court.

9 (b) If a counterparty objects to any Cure or any other matter related to assumption,
10 absent an agreement being reached by Debtor and the objecting counterparty, the Bankruptcy Court
11 shall determine the Allowed amount of such Cure and any related issues. If there is a dispute regarding
12 such Cure, the ability of Debtor or Reorganized Debtor to provide “adequate assurance of future
13 performance” within the meaning of Bankruptcy Code section 365, or any other matter pertaining to
14 assumption, then Cure shall occur as soon as reasonably practicable after entry of an order resolving
15 such dispute, approving such assumption, or as may be agreed upon by Debtor or Reorganized Debtor
16 and the counterparty to the Assumed Contract. Any counterparty to an Assumed Contract that fails to
17 object timely to the proposed assumption of such Executory Contract will be deemed to have consented
18 to such assumption. Debtor and Reorganized Debtor reserve the right either to reject or nullify the
19 assumption of any Executory Contract no later than thirty (30) days after there is a Final Order
20 determining the Cure or any request for adequate assurance of future performance required to assume
21 such Executory Contract.

22 (c) Assumption of any Assumed Contract pursuant to this Plan or otherwise shall
23 result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary,
24 including defaults with respect to provisions restricting the change in control or ownership interest
25 composition or other bankruptcy-related defaults, arising under any Assumed Contract at any time prior
26 to the effective date of assumption. Any Proofs of Claim Filed with respect to an Assumed Contract
27 that has been assumed shall be deemed disallowed and expunged, without further notice to or action,
28

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1 order or approval of the Bankruptcy Court, upon payment by Reorganized Debtor of the required Cure
2 amount.

3 4.3 Rejection of Executory Contracts.

4 (a) Entry of the Confirmation Order shall, subject to and upon the occurrence of the
5 Effective Date, constitute the approval, pursuant to Bankruptcy Code sections 365(a) and 1123(b)(2),
6 of the rejection of all Executory Contracts of Debtor other than the Assumed Contracts.

7 (b) Any Holder of an Allowed Claim whose Claim arises from the rejection of a
8 Rejected Contract with Debtor shall have the rights of a Holder of an Allowed General Unsecured
9 Claim and shall receive the treatment provided to Holders of Allowed Class 3 General Unsecured
10 Claims as set forth in this Plan.

11 4.4 Filing of Rejection Claims. Any Person or Entity who believes they are entitled to assert
12 a Claim against Debtor by virtue of the rejection of a Rejected Contract pursuant to this Article IV or a
13 Final Order entered after the Confirmation Date, may File a Claim not later than twenty (20) days after
14 the date the rejection order was entered or such later time as may be set forth for the Filing of such
15 Claim in said Final Order. If such Claim is not so Filed, it shall be forever barred from assertion against
16 Debtor and Reorganized Debtor. Nothing in this Section 4.4 shall affect the right of any party-in-
17 interest to object to any Claim which has been improperly Filed or not Filed on a timely basis.

18 4.5 Modifications, Amendments, Supplements, Restatements or Other Agreements.

19 (a) Each Assumed Contract shall include all modifications, amendments,
20 supplements, restatements or other agreements that in any manner affect such Assumed Contract, and
21 all Executory Contracts related thereto, if any, including all easements, licenses, permits, rights,
22 privileges, immunities, options, rights of first refusal, and any other interests, unless any of the
23 foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under this
24 Plan.

25 (b) Modifications, amendments, supplements and restatements to pre-petition
26 Executory Contracts that have been executed by Debtor during the Chapter 11 Case shall not be
27 deemed to alter the pre-petition nature of the Executory Contract, or the validity, priority or amount of
28 any Claims that may arise in connection therewith.

1 Distribution Agent for distribution pursuant to this Plan and the Construction Defect Trust Contribution
2 shall be turned over to the Construction Defect Trustee.

3 On the Effective Date the DIP Lender shall make the New Capital Contribution by funding the
4 maximum amount of the DIP Loan by payment of Cash to Reorganized Debtor and the Construction
5 Defect Trust in an aggregate amount equal to the difference between (x) the maximum amount of the
6 DIP Loan of ten million dollars (\$10,000,000), and (y) the outstanding amount of the DIP Loan
7 advanced and paid to Debtor prior to the Effective Date. Notwithstanding the foregoing, the maximum
8 amount of the New Capital Contribution shall not exceed the aggregate amount Reorganized Debtor and
9 the Construction Defect Trust require to fund the Distributions required under this Plan. The DIP
10 Lender shall, thereupon, forgive, release and discharge the DIP Loan and Liens securing same in
11 consideration of its receipt of the New Equity Interests in Reorganized Debtor pursuant to this Plan.

12 5.2 Issuance of Equity Interests. On the Effective Date, Old Equity Interests shall be
13 extinguished, canceled, terminated and be of no force and effect thereafter. In consideration of the New
14 Capital Contribution, one hundred percent (100%) of the New Equity Interests in Reorganized Debtor
15 shall be issued to the DIP Lender (subject to a pledge thereof in favor of the Secured Lenders to secure
16 any obligations of Reorganized Debtor under the New Secured Loan).

17 5.3 Disposition of Assets and Equity Interests. On the Effective Date (as more fully set forth
18 in Article XII of this Plan), without any further action, Reorganized Debtor will be vested with all of
19 Debtor's Assets, free and clear of all Claims, Liens and Old Equity Interests (except for Liens provided
20 or authorized pursuant to this Plan).

21 5.4 Satisfaction of Allowed Claims. On and after the Effective Date, unless such Claims
22 shall be paid on or prior to such date, (i) to the extent not satisfied with Confirmation Funds,
23 Reorganized Debtor shall be responsible for satisfying Allowed Administrative Claims and Allowed
24 Class 1 Other Priority Claims pursuant and subject to the treatment thereof as set forth in this Plan and
25 the Confirmation Order; (ii) Reorganized Debtor shall satisfy Allowed Class 2 Secured Claims and
26 Allowed Class 5 Bond Claims pursuant and subject to the treatment thereof as set forth in this Plan and
27 the Confirmation Order; (iii) the Distribution Agent shall satisfy Allowed Class 3 General Unsecured
28 Claims from the Confirmation Funds; and (iv) the Construction Defect Trust shall be deemed to have

1 assumed Debtor's obligations on account of Class 4 Construction Defect Claims, in each case including
2 obligations (if any) on account of such Claims that are Disputed Claims or with respect to which any
3 applicable period for asserting a Claim has not expired.

4 5.5 Corporate Actions.

5 (a) Adoption of Reorganized Debtor's Bylaws. On the Effective Date and without
6 further order of the Bankruptcy Court or need for corporate approval, Reorganized Debtor's Bylaws
7 shall supersede and replace all other corporate agreements and bylaws previously governing Debtor.

8 (b) Renaming Reorganized Debtor and Authority to Execute Operative Documents.

9 The Confirmation Order shall, among other things, constitute an order authorizing the managers,
10 officers and agents of Debtor and Reorganized Debtor to execute and deliver the Operative Documents,
11 as applicable (to the extent they have not already been executed and delivered), including without
12 limitation all documents necessary to, on or prior to the Effective Date, rename Reorganized Debtor, at
13 the option and in the sole discretion of Reorganized Debtor, without requiring any further corporate
14 authorizations and notwithstanding the requirements under any applicable non-bankruptcy law.

15 5.6 Exemption from Certain Transfer Taxes and Further Transactions. Pursuant to

16 Bankruptcy Code section 1146(a), the issuance or exchange of any security, or the making or delivery
17 of any instrument of transfer under, in furtherance, or in connection with this Plan, including, but not
18 limited to, any deeds, bills of sale, assignments or other instruments of transfer, shall not be subject to
19 any stamp tax, real estate transfer tax or similar tax.

20 5.7 Final Decree. Notwithstanding otherwise applicable law, Debtor shall not request entry
21 of the Final Decree with respect to the Chapter 11 Case, unless and until:

22 (a) The New Capital Contribution has been disbursed to Reorganized Debtor and
23 the Construction Defect Trustee to be distributed in accordance with this Plan and the TDP, as
24 applicable, and the New Equity Interests have been issued in accordance with this Plan.

25 (b) All adversary proceedings and contested matters pending in the Chapter 11 Case
26 have been resolved by entry of a Final Order.

27 (c) All Claims have either: (i) become Allowed Claims and been paid in accordance
28 with the treatment to be given such Allowed Claims pursuant to this Plan; (ii) been disallowed by a

1 Final Order or deemed to be a Disallowed Claim, in accordance with the terms of this Plan or the
2 Bankruptcy Code; or (iii) been assumed by Reorganized Debtor.

3 (d) All Distributions to be made under this Plan shall have been made (i) to Holders
4 of Allowed Claims in accordance with the requirements of this Plan by the Distribution Agent; and
5 (ii) to Holders of Allowed Construction Defect Claims in accordance with the TDP by the Construction
6 Defect Trust.

7 5.8 Effectuating Documents, Further Transactions. On and after the Effective Date, Debtor
8 and its agents, officers and members, are authorized to and may issue, execute, deliver, file or record
9 such contracts, securities, instruments, releases and other agreements or documents and take such
10 actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and
11 conditions of this Plan in the name of and on behalf of Debtor, as applicable, without the need for any
12 approvals, authorizations or consents except for those expressly required pursuant to this Plan.

13 5.9 Post Effective Date Fees and Expenses.

14 (a) From and after the Effective Date, the Distribution Agent shall pay all Post
15 Effective Date Fees from the Post Effective Date Fee Fund without the necessity of any approval by the
16 Bankruptcy Court.

17 (b) In the event, and to the extent, that there are not sufficient funds in the Post
18 Effective Date Fee Fund from which to pay any of the Post Effective Date Fees, Reorganized Debtor
19 shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy
20 Court, pay any Post Effective Date Fees which are not paid by the Distribution Agent from the Post
21 Effective Date Fee Fund.

22 (c) In order to seek payment of Post Effective Date Fees, each respective
23 Professional will send its invoice to Reorganized Debtor, the Distribution Agent, and the Administrative
24 Agent for the Secured Lenders. Reorganized Debtor and the Secured Lenders shall have ten (10)
25 Business Days thereafter within which to notify the other, the Professional, and the Distribution Agent
26 in writing that it objects to payment of the invoice. If no objection is made within that time frame,
27 Distribution Agent or Reorganized Debtor (as applicable) shall pay the invoice within thirty (30) days
28 thereafter. In the event Reorganized Debtor or the Secured Lenders object(s) and the parties are unable

1 to resolve the objection, the Professional may bring the matter before the Bankruptcy Court for
2 determination by motion after giving twenty-eight (28) days' notice to the objecting party(ies).

3 **ARTICLE VI**

4 **THE CONSTRUCTION DEFECT TRUST**

5 6.1 Creation of the Construction Defect Trust and Appointment of the Construction Defect
6 Trustee.

7 (a) On the Effective Date, the Construction Defect Trust will be created pursuant to
8 the Construction Defect Trust Declaration.

9 (b) The Construction Defect Trust shall be administered by the Construction Defect
10 Trustee, who shall be James L. Moore, whose annual compensation shall be \$100,000. Entry of the
11 Confirmation Order shall constitute approval of the foregoing.

12 (c) The Construction Defect Trustee shall have all of the rights and powers, and shall
13 perform all of the duties, conveyed upono him as set forth in this Plan and the Construction Defect
14 Trust Declaration.

15 (d) On the Effective Date, the DIP Lender shall transfer to the Construction Defect
16 Trust the Construction Defect Trust Contribution. If, but only if, the Holders of at least eighty percent
17 (80%) in number of Class 4 Construction Defect Claims actually vote to accept the Plan, then within
18 sixty (60) days of the Effective Date, the Cash Out Payment will be made to such Holders who made
19 the Cash Out Election. The Remaining Construction Defect Trust Fund, a portion equal to sixty percent
20 (60%) of which is earmarked to pay the reasonable costs and expenses associated with the
21 administration of the Construction Defect Trust, including, but not limited to, reasonable costs and
22 expenses to be incurred by the Construction Defect Trust in connection with the prosecution of
23 Insurance Coverage Actions and Construction Defect Actions, will be used to pay Allowed Class 4
24 Construction Defect Claims allowed by the Construction Defect Trustee for those who did not make the
25 Cash Out Election. DIP Lender shall not be reimbursed for such transfer and neither DIP Lender nor
26 Reorganized Debtor shall have any further obligation to fund the Construction Defect Trust.

27 6.2 Property of the Construction Defect Trust. In addition to DIP Lender funding the
28 Construction Defect Trust with the Construction Defect Trust Contribution pursuant to Section 6.1 of

1 this Plan, and notwithstanding any prohibition against assignability under applicable non-bankruptcy
2 law, on the Effective Date, Reorganized Debtor shall be deemed to have automatically transferred to the
3 Construction Defect Trust all of its right, title and interest in and to all of the Insurance Coverage
4 Actions and Construction Defect Actions and the proceeds thereof, and any right, title or interest in
5 pursuing and receiving any and all Insurance Recoveries. In accordance with Bankruptcy Code section
6 1141(c), on the Effective Date, the transfer of the Insurance Coverage Actions, Insurance Recoveries
7 and Construction Defect Actions shall automatically vest in the Construction Defect Trust free and clear
8 of, among other things, all Claims and Interests for the benefit of the Holders of Allowed Construction
9 Defect Claims. Notwithstanding the foregoing, Reorganized Debtor reserves the right, in its sole
10 discretion, to retain the Insurance Recoveries and pay the net proceeds of such recoveries (after the
11 deduction of the reasonable and necessary unreimbursed costs and expenses associated with obtaining
12 such proceeds) to the Construction Defect Trust if, after consultation with the Construction Defect
13 Trustee, it is determined that such retention better preserves such assets.

14 6.3 Purpose of the Construction Defect Trust. The Construction Defect Trust shall
15 be established for the primary purpose of (a) liquidating its assets in accordance with
16 Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or
17 business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of
18 the Construction Defect Trust, and (b) liquidating, resolving, paying and satisfying all Construction
19 Defect Claims pursuant to claims liquidation procedures established by the Construction Defect
20 Trustee, after consultation with and approval by the Construction Defect Trust Advisory Board.
21 Accordingly, the Construction Defect Trustee shall, in an expeditious but orderly manner, disburse the
22 Cash Out Payments to Holders of Construction Defect Claims who make the Cash Out Election,
23 liquidate and convert to Cash the Insurance Coverage Actions, Insurance Recoveries and Construction
24 Defect Actions, make timely distributions to the other Holders of Allowed Construction Defect Claims
25 of Cash and property, and not unduly prolong the duration of the Construction Defect Trust. The
26 Construction Defect Trustee shall not be deemed a successor-in-interest of Debtor or Reorganized
27 Debtor for any purpose other than as specifically set forth herein or in the Construction Defect Trust
28 Declaration. The Construction Defect Trust is intended to qualify and shall be treated as a “qualified

1 settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and the Construction Defect Trustee
2 shall be the “administrator” of the Construction Defect Trust pursuant to Treas. Reg. § 1.468B-2(k)(3).
3 No election shall be made to treat the Construction Defect Trust as a grantor trust for U.S. federal
4 income tax purposes. Accordingly, the Construction Defect Trust shall be treated as a taxable entity for
5 federal income tax purposes.

6 6.4 Powers of the Construction Defect Trustee. The Construction Defect Trustee shall have
7 the power to administer the assets of the Construction Defect Trust in a manner consistent with the
8 Construction Defect Trust Declaration, and the Construction Defect Trustee, in consultation with the
9 Construction Defect Trust Advisory Board, shall be the Estate representative and the representative of
10 the Construction Defect Trust’s beneficiaries designated to prosecute any and all Insurance Coverage
11 Actions and Construction Defect Actions transferred to the Construction Defect Trust, and to object to
12 and resolve objections to Construction Defect Claims pursuant to the claims liquidation procedures
13 established by the Construction Defect Trustee, after consultation with and approval by the
14 Construction Defect Trust Advisory Board. Without limiting the generality of the foregoing, the
15 Construction Defect Trustee shall (a) hold, administer and prosecute the assets of the Construction
16 Defect Trust and any proceeds thereof; (b) have the power and authority to retain, as an expense of the
17 Construction Defect Trust, attorneys, advisors, other professionals and employees as may be
18 appropriate to perform the duties required of the Construction Defect Trustee hereunder or in the
19 Construction Defect Trust Declaration and the TDP; (c) object to Construction Defect Claims and
20 prosecute and resolve such objections; (d) otherwise resolve all Construction Defect Claims; (e) make
21 Distributions as provided in the Construction Defect Trust Declaration; and (f) provide periodic reports
22 and updates regarding the status of the administration of the Construction Defect Trust. The
23 Construction Defect Trustee shall be deemed a Distribution Agent under the Plan when making
24 distributions to Holders of Construction Defect Trust Interests pursuant to and as defined in the
25 Construction Defect Trust Declaration. Further, the Construction Defect Trustee shall be deemed the
26 Distribution Agent in Article VIII with respect to the filing, prosecution and resolution of objections to
27 Construction Defect Claims.

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1 6.5 Construction Defect Trust Advisory Board. On the Effective Date, the Construction
2 Defect Trust Advisory Board shall be created pursuant to the Construction Defect Trust Declaration.
3 The initial members of the Construction Defect Trust Advisory Board shall be David N. Keys for a
4 five year term, Lance W. Johns for a four-year term and Jerry McGuire for a three-year term. The
5 Construction Defect Trust Advisory Board shall consult with and advise the Construction Defect
6 Trustee regarding the administration of the Construction Defect Trust and the liquidation and resolution
7 of Construction Defect Claims in accordance with the provisions of this Plan and the Construction
8 Defect Trust Declaration.

9 6.6 Cooperation Between Construction Defect Trustee and Disbursing Agent

10 (a) The right to control the Insurance Coverage Actions, Insurance Recoveries and
11 the Construction Defect Actions, including negotiations relating thereto and settlements thereof, shall be
12 vested in the Construction Defect Trust on and after the Effective Date. Notwithstanding the foregoing,
13 to enable the Construction Defect Trustee to perform his duties under the Construction Defect Trust
14 Declaration and the Plan, Reorganized Debtor shall cooperate with the Construction Defect Trustee in
15 pursuing the Insurance Coverage Actions, Insurance Recoveries and the Construction Defect Actions,
16 and shall provide the representatives of the Construction Defect Trust with reasonable access to
17 personnel and books and records of Debtor and/or Reorganized Debtor relating to the Insurance
18 Coverage Actions, Insurance Recoveries and the Construction Defect Actions. Reorganized Debtor
19 shall provide the Construction Defect Trust with advance notice of any proposed disposition of any
20 books and records relating to the Insurance Coverage Actions, Insurance Recoveries and the
21 Construction Defect Actions and a reasonable opportunity for the Construction Defect Trust to
22 segregate and remove such books and records as the Construction Defect Trust may select. The
23 Construction Defect Trustee and the Disbursing Agent shall consult and cooperate reasonably in the
24 performance of their duties under the Plan.

25 (b) If the Construction Defect Trust obtains from Reorganized Debtor or its
26 representatives any documents or communications (whether electronic, written or oral) to which any
27 privilege attaches, the Construction Defect Trust shall be deemed the privilege holder for purposes of
28 fulfilling the Construction Defect Trust obligations and preserving the privilege, shall be required to

1 take all reasonable steps to maintain any such privilege and may not waive any such privilege without
2 the consent of Reorganized Debtor, which consent shall not be unreasonably withheld. Any disputes
3 between the Construction Defect Trust and Reorganized Debtor regarding the production of any
4 documents or communications or the waiver of any privileges shall be decided by the Bankruptcy
5 Court. In the event that any third party challenges any such privilege, Reorganized Debtor or the
6 Construction Defect Trustee may seek protection from a court of competent jurisdiction.

7 (c) Reorganized Debtor shall cooperate with the Construction Defect Trust and use
8 commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to
9 be done all things necessary or appropriate to effectuate all transfers and assignments identified herein
10 to the Construction Defect Trust. Reorganized Debtor shall, without limitation, (i) provide the
11 Construction Defect Trust with copies of insurance policies and settlement agreements, if any, included
12 within or relating to any Construction Defect Claims; (ii) provide the Construction Defect Trust with
13 information necessary or helpful to the Construction Defect Trust in connection with its efforts to
14 obtain insurance coverage for the Construction Defect Claims as well as the Insurance Recoveries;
15 (iii) execute assignments or allow the Construction Defect Trust to pursue claims in its own name with
16 respect to Construction Defect Claims (subject to appropriate disclosure of the fact that the Construction
17 Defect Trust is doing so and the reasons why it is doing so), including by means of arbitration,
18 alternative dispute resolution proceedings or litigation, to the extent necessary or helpful to the efforts
19 of the Construction Defect Trust to obtain insurance coverage for the Construction Defect Claims as
20 well as the Insurance Recoveries; and (iv) at the sole cost and expense of the Construction Defect Trust,
21 pursue and recover insurance coverage for the Construction Defect Claims, including the Insurance
22 Recoveries, in its own name or right to the extent that any or all of the transfers, assumptions and
23 assignments of the Insurance Coverage Actions, Insurance Recoveries and Construction Defect Actions
24 provided for herein are not able to be fully effectuated, with any and all recoveries therefrom to be
25 transferred to the Construction Defect Trust.

26 6.7 Assumption of Liabilities by the Construction Defect Trust. Upon the occurrence of the
27 Effective Date, in exchange for the consideration provided for herein, the Construction Defect Trust
28 shall be deemed, without need for further action, to have assumed responsibility and liability for all

1 Construction Defect Claims. The Construction Defect Trust shall have no recourse, claims, causes of
2 action or right to recovery against Reorganized Debtor on account of the Construction Defect Claims.

3 6.8 Termination of the Construction Defect Trust. The Construction Defect Trust shall exist
4 for an initial term of five (5) years following the Effective Date (subject to extension under certain
5 circumstances). On or prior to the date of termination, the Bankruptcy Court, upon motion by a party in
6 interest, may extend the term of the Construction Defect Trust for a finite period, if such an extension is
7 necessary to liquidate the assets of the Construction Defect Trust or for other good cause. Multiple
8 extensions of the termination of the Construction Defect Trust may be obtained so long as Bankruptcy
9 Court approval is obtained prior to the expiration of each extended term and the Construction Defect
10 Trustee receives an opinion of counsel or a favorable ruling from the Internal Revenue Service that any
11 further extension would not adversely affect the status of the Construction Defect Trust as a qualified
12 settlement fund for federal income tax purposes. Notwithstanding the foregoing or any other provision
13 of the Plan or the Construction Defect Trust Declaration, the Construction Defect Trustee may make
14 distributions of Cash and property held by the Construction Defect Trust to the Holders of Allowed
15 Construction Defect Claims at such times as the Construction Defect Trustee, after consultation with the
16 Construction Defect Trust Advisory Board, shall determine, in its discretion, and in accordance with
17 the TDP.

18 **ARTICLE VII**

19 **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

20 7.1 Allowance of Claims. After the Effective Date, Reorganized Debtor shall have and
21 retain any and all rights and defenses Debtor had with respect to any Claim or Interest immediately
22 prior to the Effective Date, except with respect to any Claims deemed Allowed under the Plan, any
23 Construction Defect Claims, and any applications for allowance of compensation and reimbursement
24 of expenses under Bankruptcy Code sections 330, 331 and/or 503. Except as expressly provided in the
25 Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including the
26 Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed
27 Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order
28 (including the Confirmation Order) in the Chapter 11 Case allowing such Claim. No Construction

1 Defect Claim shall become an Allowed Construction Defect Claim (i) unless the Holder makes the Cash
2 Out Election, or (ii) until Allowed by the Construction Defect Trustee after consultation with the
3 Construction Defect Trust Advisory Board. All settled Claims approved prior to the Effective Date
4 pursuant to a Final Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019 or otherwise shall
5 be binding on all parties.

6 7.2 Claims Administration Responsibilities. Except as otherwise specifically provided in the
7 Plan, after the Effective Date, Reorganized Debtor shall have the sole authority: (1) to File, withdraw
8 or litigate to judgment any objections to Claims; (2) to settle or compromise any Disputed Claim
9 without any further notice to, or action, order or approval by, the Bankruptcy Court; and (3) to
10 administer and adjust the Claims Register to reflect any such settlements or compromises without any
11 further notice to, or action, order or approval by, the Bankruptcy Court.

12 7.3 Claim Objection Deadline. As soon as practicable, but in no event later than thirty (30)
13 days after the Effective Date (subject to being extended by the order of the Bankruptcy Court upon
14 motion of Reorganized Debtor without notice or a hearing), objections to Claims shall be Filed with the
15 Bankruptcy Court and served upon the Holders of each of the Claims to which objections are made.
16 Notwithstanding anything to the contrary in this Plan, Construction Defect Claims shall be liquidated,
17 resolved, paid and satisfied by the Construction Defect Trust, rather than by objection in the Bankruptcy
18 Court, unless the Construction Defect Trustee Files an objection to any Construction Defect Claim in
19 the Bankruptcy Court within thirty (30) days after the Effective Date.

20 7.4 Contingent Claims. Until such time as a Contingent Claim or a contingent portion of an
21 Allowed Claim becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed
22 Claim for all purposes related to Distributions under the Plan. The Holder of a Contingent Claim will
23 only be entitled to a Distribution under the Plan when and if such Contingent Claim becomes an
24 Allowed Claim.

25 7.5 Estimation of Claims. Debtor or Reorganized Debtor shall be permitted, at any time, to
26 request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to
27 Bankruptcy Code section 502(c), regardless of whether Debtor previously had objected to such Claim
28 or whether the Bankruptcy Court had ruled on such objection, and the Bankruptcy Court shall retain

1 Unsecured Claims have been resolved by settlement or Final Order and the Claims have been Allowed
2 or Disallowed, as the case may be, which shall, in no event, be later than one hundred twenty (120) days
3 after the Effective Date (subject to being extended by the order of the Bankruptcy Court upon motion of
4 Reorganized Debtor without notice or a hearing).

5 (c) Special Rules for Distributions to Holders of Disputed Claims. Except as
6 otherwise provided in this Plan and except as otherwise agreed by the relevant parties: (i) no partial
7 payments and no partial Distributions shall be made with respect to a Disputed Claim until all such
8 disputes in connection with such Disputed Claim have been resolved by settlement or Final Order, and
9 (ii) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any
10 Distribution on account of the Allowed Claim unless and until all objections to the Disputed Claim have
11 been resolved by settlement or Final Order and such Disputed Claim has been Allowed or Disallowed,
12 as the case may be.

13 (d) Special Rules for Distributions to Holders of Allowed Construction Defect
14 Claims. Distributions to Holders of Allowed Construction Defect Claims for which no Cash Out
15 Election was made shall be made pursuant to the TDP by the Construction Defect Trustee.

16 8.3 Manner of Payment Under this Plan. Distributions of Cash to be made by the
17 Distribution Agent pursuant to this Plan shall be made, at the discretion of the Distribution Agent, by
18 check drawn on the Distribution Agent's bank account or by wire transfer from a domestic bank.

19 8.4 Whole Dollars. Any other provision of this Plan to the contrary notwithstanding, no
20 payments of cents will be made in connection with a Distribution. Whenever any payment of cents
21 would otherwise be called for, the actual payment may reflect a rounding of such fraction to the nearest
22 whole dollar (up or down).

23 8.5 [reserved]

24 8.6 Stop Payment. Holders of Allowed Claims, except for Allowed Construction Defect
25 Claims, shall have ninety (90) days from the check date to negotiate Distribution checks issued by the
26 Distribution Agent under the terms of this Plan, otherwise payment on such checks may at the
27 Distribution Agent's sole discretion be stopped and the funds shall be returned to the Distribution Agent
28

1 and shall be promptly distributed to Reorganized Debtor. The Construction Defect Trust and TDP
2 govern these issues as they pertain to Construction Defect Claims.

3 8.7 Delivery of Distributions.

4 (a) Record Date for Distributions. On the Distribution Record Date, the Claims
5 Register shall be closed and any Person responsible for making Distributions shall be authorized and
6 entitled to recognize only those record Holders listed on the Claims Register as of the close of business
7 on the Distribution Record Date. Notwithstanding the foregoing, if a Claim is transferred twenty (20)
8 or fewer days before the Distribution Record Date, the Distribution Agent shall make Distributions to
9 the transferee only to the extent practical and in any event only if the relevant transfer form contains an
10 unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

11 (b) Distribution Agent. The Distribution Agent shall make all Distributions required
12 under this Plan, whereas the Construction Defect Trustee shall make all distributions under the
13 Construction Defect Trust Declaration pursuant to the TDP or the Cash Out Election, as the case may
14 be.

15 (c) Delivery of Distributions in General. Except as otherwise provided in this Plan,
16 and notwithstanding any authority to the contrary, Distributions to all Holders of Allowed Claims shall
17 be made to Holders of record as of the Distribution Record Date by the Distribution Agent: (a) in
18 accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy
19 Rule 7004; (b) to the signatory set forth on any of the Proofs of Claim Filed by such Holder or other
20 representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is
21 Filed or if Debtor has been notified in writing of a change of address); (c) at the addresses set forth in
22 any written notices of address changes delivered to Debtor after the date of any related Proof of Claim;
23 (d) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Distribution
24 Agent has not received a written notice of a change of address; or (e) on any counsel that has appeared
25 in the Chapter 11 Case on the Holder's behalf. Except as otherwise provided in this Plan, Distributions
26 under this Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment or
27 like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the
28 Distributions in the manner set forth in this Plan. Absent willful misconduct or gross negligence,

1 Debtor, Reorganized Debtor and Distribution Agent, as applicable, shall not incur any liability on
2 account of any Distributions made under this Plan.

3 8.8 Returned Distributions. In the case of Distributions to the Holders of Allowed Claims
4 that are returned to the Distribution Agent due to an incorrect or incomplete address, the Distribution
5 Agent shall retain any such returned Distribution in a segregated account established by the Distribution
6 Agent to keep track of any returned Distributions. Unless the Holder of the Allowed Claim relating to
7 any such returned Distribution contacts the Distribution Agent (or its designee) within three (3) months
8 from the date on which such Distribution was returned and provides the Distribution Agent (or its
9 designee) with acceptable proof of identity and an accurate address, such Holder shall forfeit all rights
10 thereto, and to any and all future Distributions or rights under this Plan. In such event, the Claim for
11 which such Distributions were issued shall be treated as a Disallowed Claim and the Distribution on
12 account of such Disallowed Claim shall promptly be distributed to Reorganized Debtor.

13 8.9 Disputed Distributions. In the event of any dispute between or among Holders of Claims
14 as to the right of any Holder of a Claim to receive or retain any Distribution to be made to such Holder
15 under this Plan, the Distribution Agent, in lieu of making such Distribution to such Holder, may make it
16 instead into an escrow account for payment as ordered by the Bankruptcy Court or as the interested
17 parties to such dispute may otherwise agree among themselves. Any such Holder who fails to raise
18 such dispute by filing an appropriate request for relief with the Bankruptcy Court prior to the issuance
19 of such disputed Distribution by the Distribution Agent shall be deemed to have forever waived any
20 right to dispute such Distribution or to enjoin, impair or otherwise restrict the use of any such
21 Distribution.

22 8.10 Setoffs. The Distribution Agent may, but shall not be required to, set-off against any
23 Distributions to be made pursuant to this Plan to a Holder of an Allowed Claim, Claims of any nature
24 whatsoever that Debtor may have, or may have had, against such Holder that have not been previously
25 released, but neither the failure to do so, nor the allowance of any Claim held by such Holder, shall
26 constitute a waiver or release by the Distribution Agent of any such Claim Debtor may have, or may
27 have had, against such Holder. Nothing in this Plan shall affect the right of the Internal Revenue
28 Service to assert setoff and recoupment rights, or impair the ability of the Internal Revenue Service to

1 collect interest on its Administrative Claims in accordance with applicable non-bankruptcy law, and
2 such rights are expressly reserved.

3 8.11 Withholding Taxes. The Distribution Agent shall be entitled to deduct any applicable
4 federal or state withholding taxes from any payments made with respect to Allowed Claims, as
5 appropriate, and shall otherwise comply with Bankruptcy Code section 346.

6 8.12 Allocation of Distributions. Distributions on account of Allowed Claims shall, for tax
7 purposes, be treated as allocated first to principal, and thereafter to interest only to the extent that the
8 entire principal amount has been recovered, if applicable.

9 **ARTICLE IX**

10 **RESERVATION OF RIGHTS PENDING CONFIRMATION AND EFFECTIVE DATE**

11 9.1 Withdrawal of Plan; Rights if Plan Not Confirmed or Effective Date Does Not Occur.

12 Subject to the Lock-Up and Settlement Letter Agreement, Debtor reserves the right to revoke or
13 withdraw this Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If
14 Debtor revokes or withdraws this Plan, or if the Effective Date does not occur on or before June 1,
15 2013, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise
16 embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Class of
17 Claims), assumption or rejection of Executory Contracts affected by this Plan, and any document or
18 agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in
19 this Plan shall: (a) constitute a waiver or release of any Claims or Interests by or against Debtor or any
20 Person or Entity; (b) prejudice in any manner the rights of Debtor or any other Person or Entity in any
21 further proceedings involving Debtor; or (c) constitute an admission, acknowledgment, offer or under-
22 taking of any sort by Debtor or any other Person or Entity.

23 9.2 No Admissions or Waiver. Without limiting the generality of any similar provision in
24 this Plan, notwithstanding anything in the Plan to the contrary, nothing contained in the Plan or in the
25 Disclosure Statement shall be deemed an admission by Debtor or any Person or Entity with respect to
26 any matter set forth herein. If the Effective Date does not occur on or before June 1, 2013, no statement
27 contained in the Plan or in the Disclosure Statement may be used or relied on in any manner in any suit,
28 action, proceeding or controversy within or outside of the Chapter 11 Case against Debtor. Without in

1 any way limiting the provisions set forth in Section 9.1, Debtor reserves any and all of its rights as
2 against all Persons and Entities in the event the Effective Date does not occur on or before June 1, 2013.

3 9.3 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the
4 Chapter 11 Case under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the
5 Confirmation Date, shall remain in full force and effect until the Effective Date unless the Bankruptcy
6 Court shall order otherwise, provided however that the injunction under Bankruptcy Code section 105
7 that channels all liability for Construction Defect Claims to the Construction Defect Trust shall remain
8 in full force and effect in perpetuity.

9 **ARTICLE X**

10 **CONDITIONS TO EFFECTIVE DATE**

11 10.1 Conditions to Occurrence of Effective Date. Each of the following is a condition
12 precedent to the occurrence of the Effective Date, unless waived in writing by Debtor:

13 (a) [reserved];

14 (b) The Confirmation Order, which shall be in form and substance reasonably
15 acceptable to Debtor, shall have been entered by the Bankruptcy Court and shall have become a Final
16 Order, and provide, among other things, that: (i) Debtor, Reorganized Debtor, the Secured Lenders and
17 the DIP Lender have acted in good faith; (ii) the Distributions and/or consideration received by the DIP
18 Lender and Reorganized Debtor shall not be subject to avoidance, turnover or disgorgement in any
19 subsequent insolvency proceeding by any Person or Entity; and (iii) the Liens securing the New
20 Secured Loan constitute valid first priority Liens, subject only to any Permitted Encumbrances, and
21 shall not be subject to avoidance, turnover or disgorgement in any subsequent insolvency proceeding by
22 any Person or Entity;

23 (c) Debtor shall have timely sent the Notice of Confirmation;

24 (d) The Disclosure Statement Order shall have been entered by the Bankruptcy Court
25 and shall have become a Final Order;

26 (e) The Bar Date shall have passed;

27 (f) The Construction Defect Trust Declaration shall have been executed and
28 delivered;

1 (g) The Construction Defect Trust Contribution and the Construction Defect
2 Actions shall have been transferred to the Construction Defect Trust;

3 (h) The New Capital Contribution shall have been fully funded and paid to
4 Reorganized Debtor and the Construction Defect Trust, respectively, in an amount which sufficiently
5 provides for the required amount of Confirmation Funds, working capital and other Cash needs,
6 including the amounts to fund the Construction Defect Trust Contribution;

7 (i) The required amount of Confirmation Funds shall have been paid and turned
8 over to the Distribution Agent for Distribution in accordance with this Plan;

9 (j) The Confirmation Order shall have authorized the assumption of all Assumed
10 Contracts;

11 (k) To the extent Confirmation Funds are insufficient to satisfy the Allowed
12 Administrative Claims and Allowed Other Priority Claims in full, Reorganized Debtor shall have
13 assumed or paid the remaining amounts unless otherwise agreed by the Holder of such Allowed
14 Administrative Claim and Allowed Other Priority Claim;

15 (l) All conditions precedent to the closing of the New Secured Loan Documents
16 shall have been satisfied or waived in accordance with the terms thereof;

17 (m) Any outstanding US Trustee Fees shall have been paid in full; and

18 (n) Issuance of the channeling injunction contained in Section 12.5(d).

19 10.2 Notice of Effectiveness. When all the conditions contained in Section 10.1 have been
20 completed, Debtor shall File with the Bankruptcy Court and serve upon all Creditors and all potential
21 Holders of Administrative Claims known to Debtor (whether or not disputed), a notice of the
22 occurrence of the Effective Date of the Plan. Such notice shall include notice of the Administrative
23 Claim Bar Date.

24 **ARTICLE XI**

25 **RETENTION OF JURISDICTION**

26 11.1 Retention of Jurisdiction. Except to the extent otherwise expressly set forth herein, the
27 Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case following the Confirmation Date for
28 the following purposes, it being expressly intended that such retention of jurisdiction shall in all cases

1 hereafter set forth, extend to any actions or proceedings commenced prior or subsequent to the
2 Confirmation Date and/or the Effective Date whether by Debtor, Reorganized Debtor or the parties
3 specified herein:

4 (a) To hear and determine any objections to the allowance of Claims or Construction
5 Defect Claims, including any objections by Reorganized Debtor with respect to any Claims which have
6 been reinstated or assumed in accordance with the terms of this Plan;

7 (b) To determine any and all applications for compensation for any Professionals
8 and similar fees to the extent made specifically subject to a hearing under this Plan and applicable
9 provisions of the Bankruptcy Code;

10 (c) To determine any and all applications for the rejection or assumption and
11 assignment of Executory Contracts to which Debtor is a party or with respect to which it may be liable,
12 and to hear and determine, and if need be to liquidate, any and all Claims arising therefrom;

13 (d) To modify this Plan pursuant to Bankruptcy Code section 1127 or to remedy
14 any defect or omission or reconcile any inconsistency in the Confirmation Order to the extent
15 authorized by the Bankruptcy Code;

16 (e) To hear and determine all controversies, suits and disputes, if any, as may arise in
17 connection with the interpretation or enforcement of this Plan;

18 (f) To hear and determine all controversies, suits and disputes, if any, as may arise
19 with regard to orders of the Bankruptcy Court entered in the Chapter 11 Case;

20 (g) To adjudicate all controversies concerning the classification of any Claim or
21 Interest;

22 (h) To liquidate or estimate damages in connection with any disputed, contingent or
23 unliquidated Claim;

24 (i) To adjudicate all Claims to a security or ownership interest in any of the Assets,
25 or in any proceeds thereof,

26 (j) To adjudicate all Claims or controversies arising out of any purchases, sales or
27 contracts made or undertaken by Debtor;

28

1 (k) To determine all questions and disputes regarding recovery of, and entitlement to,
2 any property of Debtor, or in any proceeds thereof;

3 (l) To adjudicate all Causes of Action with respect to which Debtor or Reorganized
4 Debtor is a party, whether or not such Claim or controversy is raised or filed before or after the
5 Effective Date;

6 (m) To determine issues and disputes concerning entitlement to Distributions to be
7 made under and pursuant to this Plan;

8 (n) To enter any order, including injunctions, necessary to enforce the title, rights
9 and powers of Debtor or Reorganized Debtor or the rights of any Person or Entity hereunder and to
10 impose such limitations, restrictions, terms and conditions on such title, rights and powers as the
11 Bankruptcy Court may deem necessary or appropriate;

12 (o) To determine such other matters as may be provided for in the Confirmation
13 Order and this Plan, or as may from time to time be authorized under the provisions of the Bankruptcy
14 Code or any other applicable law;

15 (p) To enter a Final Decree closing the Chapter 11 Case;

16 (q) To enforce the provisions of any Administrative Claim Bar Date order entered
17 by the Bankruptcy Court;

18 (r) To make such orders as are necessary or appropriate to carry out the provisions of
19 this Plan, including but not limited to orders interpreting, clarifying or enforcing the provisions hereof;

20 (s) Without limiting the generality of any of the foregoing, to hear and determine
21 matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 345,
22 505 and 1146;

23 (t) To hear and determine all issues, if any, as may arise in connection or related to
24 the channeling injunction in Section 12.5(d); and

25 (u) To hear and determine all issues referred to the Bankruptcy Court by the
26 Construction Defect Trust and/or the TDP.

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1 11.2 Jurisdiction Unaffected. The occurrence of the Effective Date and/or the entry of a Final
2 Decree shall not divest the Bankruptcy Court of any jurisdiction otherwise retained under this Article
3 XI or the Confirmation Order.

4 11.3 Failure or Inability of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy
5 Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction
6 over any matter arising under, arising in or related to the Chapter 11 Case, including any of the matters
7 set forth in the Plan, the Plan shall not prohibit or limit the exercise of jurisdiction by any other court of
8 competent jurisdiction with respect to such matter.

9 11.4 New Secured Loan Documents. Any issues or disputes with respect to the New Secured
10 Loan Documents arising after the Effective Date may be resolved pursuant to the applicable provisions
11 thereof.

12 11.5 Term Loan. Notwithstanding anything contained in this Plan, nothing herein shall confer
13 on the Bankruptcy Court jurisdiction to hear or determine any claims, causes of action or disputes
14 arising under or in connection with the Term Loan or the Term Loan Documents, as they may be
15 amended from time to time.

16 **ARTICLE XII**

17 **EFFECT OF CONFIRMATION OF PLAN**

18 12.1 Discharge.

19 (a) IN CONJUNCTION WITH BANKRUPTCY CODE SECTION 1141, EXCEPT
20 AS OTHERWISE PROVIDED FOR HEREIN, THE RIGHTS AFFORDED HEREIN AND THE
21 TREATMENT OF ALL CLAIMS AND EQUITY INTERESTS HEREIN SHALL BE IN EXCHANGE
22 FOR AND IN COMPLETE SATISFACTION, DISCHARGE AND RELEASE OF CLAIMS AND
23 EQUITY INTERESTS OF ANY NATURE WHATSOEVER AGAINST DEBTOR, AND OF THE
24 ASSETS OF THE ESTATE, INCLUDING ANY INTEREST ACCRUED ON SUCH CLAIMS FROM
25 AND AFTER THE PETITION DATE.

26 (b) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT
27 AS PROVIDED IN THE CONFIRMATION ORDER, CONFIRMATION DISCHARGES DEBTOR
28 AND REORGANIZED DEBTOR FROM ALL CLAIMS OR OTHER DEBTS THAT AROSE

1 BEFORE THE EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN
2 BANKRUPTCY CODE SECTIONS 502(g), 502(h) OR 502(i), WHETHER OR NOT: (X) A PROOF
3 OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO HAVE BEEN
4 FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(a); (Y) A CLAIM BASED ON
5 SUCH DEBT IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502; OR (Z) THE HOLDER
6 OF A CLAIM BASED ON SUCH DEBT HAS ACCEPTED THE PLAN.

7 (c) EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, (I) ON THE
8 EFFECTIVE DATE, ALL CLAIMS AGAINST DEBTOR WHICH AROSE BEFORE THE
9 EFFECTIVE DATE SHALL BE SATISFIED, DISCHARGED AND RELEASED IN FULL, (II) ON
10 THE EFFECTIVE DATE, THE RIGHTS AND INTERESTS OF ALL HOLDERS OF OLD EQUITY
11 INTERESTS SHALL BE TERMINATED, CANCELED AND BE OF NO FORCE AND EFFECT,
12 AND (III) ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST DEBTOR,
13 REORGANIZED DEBTOR, ITS SUCCESSORS, OR ANY OF ITS ASSETS, ANY OTHER OR
14 FURTHER CLAIMS OR EQUITY INTERESTS BASED UPON ANY ACT OR OMISSION,
15 TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED
16 BEFORE THE EFFECTIVE DATE, AS WELL AS ANY DEBT OF A KIND SPECIFIED IN
17 BANKRUPTCY CODE SECTIONS 502(g), 502(h) OR 502(i), IRRESPECTIVE OF WHETHER
18 (X) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO
19 HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(a), (Y) SUCH
20 CLAIM IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502, OR (Z) THE HOLDER OF
21 THE CLAIM HAS ACCEPTED THE PLAN.

22 (d) Nothing contained in (a)-(c) above shall discharge any claim of the Internal
23 Revenue Service of the type described in section 1141(d)(6) of the Bankruptcy Code.

24 12.2 Binding Effect of Plan/Injunction.

25 (a) UPON THE EFFECTIVE DATE, BANKRUPTCY CODE SECTION 1141
26 SHALL BECOME APPLICABLE WITH RESPECT TO THE PLAN AND THE PLAN SHALL BE
27 BINDING ON ALL PARTIES TO THE FULLEST EXTENT PERMITTED BY BANKRUPTCY
28 CODE SECTION 1141(a). IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1141, ALL

1 OF DEBTOR'S ASSETS, EXCEPT SUCH ASSETS BEING TRANSFERRED TO THE
2 CONSTRUCTION DEFECT TRUST ON THE EFFECTIVE DATE PURSUANT TO THE TERMS
3 OF THIS PLAN, SHALL BE VESTED IN REORGANIZED DEBTOR FREE AND CLEAR OF ALL
4 CLAIMS, LIENS AND INTERESTS OF CREDITORS AND EQUITY INTEREST HOLDERS,
5 EXCEPT FOR THE LIENS GRANTED TO THE SECURED LENDERS HEREUNDER AND
6 PURSUANT TO THE TERMS OF THE NEW SECURED LOAN DOCUMENTS.

7 (b) UPON THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES SHALL BE
8 PERMANENTLY ENJOINED BY THE PLAN FROM (I) COMMENCING OR CONTINUING ANY
9 ACTION, EMPLOYING ANY PROCESS, ASSERTING OR UNDERTAKING AN ACT TO
10 COLLECT, RECOVER, OR OFFSET, DIRECTLY OR INDIRECTLY, ANY CLAIM, RIGHTS,
11 CAUSES OF ACTION, LIABILITIES OR INTERESTS IN OR AGAINST ANY ASSETS
12 DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE PLAN, OR VESTED IN REORGANIZED
13 DEBTOR, BASED UPON ANY ACT, OMISSION, TRANSACTION OR OTHER ACTIVITY THAT
14 OCCURRED BEFORE THE EFFECTIVE DATE, (II) CREATING, PERFECTING OR ENFORCING
15 ANY LIEN OR ENCUMBRANCE AGAINST ANY ASSETS DISTRIBUTED OR TO BE
16 DISTRIBUTED UNDER THE PLAN OTHER THAN AS PERMITTED UNDER THE PLAN AND
17 UNDER THE NEW SECURED LOAN DOCUMENTS, AND (III) WITHOUT LIMITING THE
18 GENERALITY OF THE FOREGOING, ASSERTING ANY CLAIMS AGAINST REORGANIZED
19 DEBTOR BASED ON SUCCESSOR LIABILITY OR SIMILAR OR RELATED THEORY, EXCEPT
20 TO THE EXTENT A PERSON OR ENTITY HOLDS AN ALLOWED CLAIM UNDER THE PLAN
21 AND IS ENTITLED TO A DISTRIBUTION AND/OR LIEN UNDER THE PLAN IN
22 ACCORDANCE WITH ITS TERMS, AND TO ENFORCE ITS RIGHTS TO SUCH DISTRIBUTION
23 AND/OR LIEN UNDER THE PLAN.

24 (c) ON AND AFTER THE EFFECTIVE DATE, EACH HOLDER OF ANY
25 CLAIM AGAINST OR INTEREST IN DEBTOR IS PERMANENTLY ENJOINED FROM TAKING
26 OR PARTICIPATING IN ANY ACTION THAT WOULD INTERFERE OR OTHERWISE HINDER
27 DEBTOR OR REORGANIZED DEBTOR FROM IMPLEMENTING THIS PLAN, THE
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1 CONFIRMATION ORDER OR ANY OPERATIVE DOCUMENTS IN ACCORDANCE WITH THE
2 TERMS THEREOF.

3 12.3 Exculpation. None of the Exculpated Parties shall have or incur any liability to any
4 Holder of a Claim against or Interest in Debtor, or any other party-in-interest, or any of their successors
5 or assigns, for any act, omission, transaction or other occurrence in connection with, relating to, or
6 arising out of the Chapter 11 Case, the pursuit of confirmation of this Plan, or the Consummation of this
7 Plan, except and solely to the extent such liability is based on fraud, gross negligence or willful
8 misconduct. The Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with
9 respect to any of their duties and responsibilities under this Plan or in the context of the Chapter 11
10 Case. No Holder of a Claim against or Interest in Debtor, or any other party-in-interest, shall have any
11 right of action against the Exculpated Parties, for any act, omission, transaction or other occurrence in
12 connection with, relating to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of this
13 Plan, the Consummation of this Plan or the administration of this Plan, except to the extent arising from
14 fraud. The Reorganized Debtor shall indemnify the Futures Representative for any liability that the
15 Futures Representative incurs as a result of the performance of his duties in such capacity, except and
16 solely to the extent such liability is based on fraud, gross negligence or willful misconduct.

17 12.4 Releases.

18 (a) RELEASES BY DEBTOR AND ESTATE. EFFECTIVE AS OF THE
19 EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF
20 THE RELEASED PARTIES, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, TO THE
21 FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, DEBTOR, IN ITS INDIVIDUAL
22 CAPACITY AND AS DEBTOR-IN-POSSESSION, AS THE CASE MAY BE, DEBTOR'S ESTATE,
23 AND EACH OF ITS RELATED PERSONS (COLLECTIVELY, THE "RELEASING PARTIES")
24 SHALL, AND SHALL BE DEEMED TO, COMPLETELY, CONCLUSIVELY, ABSOLUTELY,
25 UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASE, WAIVE, VOID,
26 EXTINGUISH AND DISCHARGE EACH AND ALL OF THE RELEASED PARTIES (AND EACH
27 SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FOREVER RELEASED,
28 WAIVED AND DISCHARGED BY THE RELEASING PARTIES) AND EACH RELEASED

1 PARTY'S RESPECTIVE ASSETS AND RELATED PERSONS, OF AND FROM ANY AND ALL
2 CLAIMS, CAUSES OF ACTION, LITIGATION CLAIMS, AVOIDANCE ACTIONS AND ANY
3 OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, REMEDIES,
4 JUDGMENTS AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN,
5 FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT,
6 MATURED OR UNMATURED, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER
7 ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, OR OTHERWISE,
8 BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT OR
9 OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR
10 ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY IN WHOLE OR IN
11 PART TO DEBTOR, REORGANIZED DEBTOR OR THEIR RESPECTIVE ASSETS AND
12 ESTATE, THE CHAPTER 11 CASE, THE DISCLOSURE STATEMENT, THIS PLAN OR THE
13 SOLICITATION OF VOTES ON THIS PLAN THAT SUCH RELEASING PARTY WOULD HAVE
14 BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY)
15 OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR OTHER ENTITY WOULD
16 HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF DEBTOR OR ITS
17 ESTATE (WHETHER DIRECTLY OR DERIVATIVELY) AGAINST ANY OF THE RELEASED
18 PARTIES; PROVIDED, HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS RELEASE
19 SHALL NOT OPERATE TO WAIVE OR RELEASE (I) ANY CAUSES OF ACTION EXPRESSLY
20 SET FORTH IN AND PRESERVED BY THIS PLAN; (II) ANY CAUSES OF ACTION ARISING
21 FROM ACTUAL OR INTENTIONAL FRAUD OR WILLFUL MISCONDUCT AS DETERMINED
22 BY FINAL ORDER OF THE BANKRUPTCY COURT OR ANY OTHER COURT OF COMPETENT
23 JURISDICTION; AND/OR (III) THE RIGHTS OF SUCH RELEASING PARTY TO ENFORCE THIS
24 PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR
25 DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THIS PLAN OR ASSUMED
26 PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO FINAL ORDER OF THE
27 BANKRUPTCY COURT. THE FOREGOING RELEASE SHALL BE EFFECTIVE AS OF THE
28 EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR ORDER OF THE BANKRUPTCY

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1 COURT, ACT OR ACTION UNDER APPLICABLE LAW, REGULATION, ORDER OR RULE OR
2 THE VOTE, CONSENT, AUTHORIZATION OR APPROVAL OF ANY PERSON.

3 (b) Releases by Holders of Claims and Interests. Effective as of the Effective Date,
4 for good and valuable consideration, to the fullest extent permissible under applicable law, each Holder
5 of a Claim or Equity Interest that has indicated, via voting to accept the Plan, its agreement to grant the
6 release contained in this Section 12.4, including all Holders of Construction Defect Claims for whom
7 the Futures Representative casts a Ballot, shall, and shall be deemed to, completely, conclusively,
8 absolutely, unconditionally, irrevocably and forever release, waive, void, extinguish and discharge the
9 Released Parties, other than the Futures Representative with respect to any Ballot cast by the Futures
10 Representative, from any and all Claims, Causes of Action, Avoidance Actions and any other
11 obligations, rights, suits, damages, judgments, debts, remedies and liabilities whatsoever, including any
12 Claims or Causes of Action that could be asserted on behalf of or against Debtor, whether known or
13 unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or
14 unmatured, existing or hereafter arising, in law, equity or otherwise, that such Holder of a Claim or
15 Equity Interest would have been legally entitled to assert in its own right (whether individually,
16 derivatively or collectively), based in whole or in part upon any act or omission, transaction, agreement,
17 event or other occurrence taking place on or before the Effective Date, in any way relating or pertaining
18 to (w) the purchase or sale, or the rescission of a purchase or sale, of any security of Debtor, (x) Debtor,
19 Reorganized Debtor or their respective assets, property and Estate, (y) the Chapter 11 Case, and (z) the
20 negotiation, formulation and preparation of the Plan, the Disclosure Statement, or any related
21 agreements, instruments or other documents; provided, however, that these releases will have no effect
22 on the liability of any Released Party arising from any act, omission, transaction, agreement, event or
23 other occurrence constituting willful misconduct, gross negligence, fraud or criminal conduct as
24 determined by a Final Order or a final order of a court of competent jurisdiction other than the
25 Bankruptcy Court; provided further, however, the foregoing shall not constitute a waiver or release of
26 any right of the Holder of an Allowed Claim or Equity Interest, or party to an Assumed Contract to
27 payment under this Plan or otherwise on account of such Allowed Claim or any of the rights of any
28 parties in respect of Assumed Contracts under or in connection with this Plan or prior order of the

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1 Bankruptcy Court; provided further, however, that nothing in the Plan or any order confirming the Plan
2 shall release, waive, void, extinguish, discharge, modify, alter or limit in any way (i) any and all
3 obligations, debts and liabilities of any non-Debtor Person or Entity to the Secured Lenders, or (ii) any
4 and all rights and remedies held by the Secured Lenders against any non-Debtor Person or Entity or
5 their respective assets; provided further, however, that nothing in the Plan shall enjoin, alter, diminish
6 or impair the rights of the Construction Defect Trust with respect to any Insurance Recovery, any
7 Insurance Coverage Action, or any Construction Defect Action, with the Construction Defect Trust
8 being, and deemed to be, for all purposes of insurance and indemnity, the successor Debtor in respect of
9 all Construction Defect Claims and all Insurance Recoveries.

10 (c) Cash Out Release. The Cash Out Release shall take effect and become binding
11 as to any Holder of a Construction Defect Claim who makes the Cash Out Election immediately upon
12 receipt of the Cash Out Payment without any further action or approval.

13 (d) Binding Effect of Releases. The Releases set forth in this Article XII shall be
14 binding upon and shall inure to the benefit of any chapter 7 trustee in the event the Chapter 11 Case is
15 converted to a case under chapter 7 of the Bankruptcy Code.

16 12.5 Injunctions.

17 (a) Injunction Against Releasors. All of the Releasors, along with any of their
18 successors or assigns, are permanently enjoined, from and after the Effective Date, from
19 (i) commencing or continuing in any manner any action or other proceeding of any kind against the
20 Released Parties in respect of any Released Liabilities, (ii) enforcing, attaching, collecting or recovering
21 by any manner or means of any judgment, award, decree or order against the Released Parties in respect
22 of any Released Liabilities, (iii) creating, perfecting or enforcing any encumbrance of any kind against
23 the Released Parties or their respective assets in respect of any Released Liabilities, or (iv) asserting any
24 right of setoff, subrogation or recoupment of any kind against any obligation due from the Released
25 Parties or against the property or interests in property of the Released Parties, in respect of any Released
26 Liabilities; provided, however, that nothing contained herein shall preclude such Releasors from
27 exercising their rights pursuant to and consistent with the terms hereof and the contracts, instruments,
28 releases and other agreements and documents delivered under or in connection with this Plan; provided,

1 further, that nothing contained herein shall be deemed to enjoin any Releasor from taking any action
2 against any Released Party based on the release exceptions contained in Section 12.4 of this Plan.

3 (b) [reserve].

4 (c) Injunction Against Interference with Plan. Upon the Effective Date, all Holders
5 of Claims against or Interests in Debtor and its Related Persons and any of its successors or assigns
6 shall be enjoined from taking any actions to interfere with the implementation or Consummation of the
7 Plan.

8 (d) Injunction Channeling Construction Defect Claims. Upon the Effective Date,
9 pursuant to Bankruptcy Code section 105, all Persons and Entities shall be permanently and forever
10 stayed, restrained and enjoined from taking any of the following actions against or affecting
11 Reorganized Debtor, Debtor, the Estate, the Assets, the Distribution Agent, the Professionals and their
12 respective assets and property for the purpose of, directly or indirectly, collecting, recovering or
13 receiving payment of, on or with respect to any Construction Defect Claims, regardless of when such
14 Claims are deemed to arise, all of which will be channeled to the Construction Defect Trust, including,
15 but not limited to:

16 (1) commencing, conducting or continuing in any manner, directly or
17 indirectly, any suit, action or other proceeding of any kind (including a judicial, arbitral, administrative
18 or other proceeding);

19 (2) enforcing, levying, attaching, collecting or otherwise recovering by any
20 manner or means, whether directly or indirectly, any judgment, award, decree or order;

21 (3) creating, perfecting or otherwise enforcing in any manner, directly or
22 indirectly, any encumbrance;

23 (4) asserting any setoff, right of subrogation or recoupment of any kind; and

24 (5) proceeding in any manner in any place with regard to any matter that is
25 subject to resolution pursuant to the Construction Defect Trust, except in conformity and compliance
26 therewith.

27 Notwithstanding anything to the contrary, nothing in this Plan shall enjoin, alter, diminish, or impair
28 the rights of the Construction Defect Trust with regard to any insurance company and/or with respect

1 to any Insurance Coverage Action, Insurance Recoveries or Construction Defect Action, with the
2 Construction Defect Trust being, and deemed to be, for all purposes of insurance and indemnity, the
3 successor to Debtor in respect of all Construction Defect Claims and other recoveries from any
4 insurance company, including Insurance Recoveries.

5 12.6 Adequate Protection Liens; Cash Collateral Orders.

6 (a) As of the Effective Date, any replacement Liens granted as adequate protection
7 pursuant to the terms of any Cash Collateral Orders shall be deemed to be terminated, discharged,
8 eliminated and of no further force and effect;

9 (b) As of the Effective Date, Debtor's obligations under all Cash Collateral Orders
10 shall be deemed to be fully satisfied, released, discharged and terminated, and such Cash Collateral
11 Orders shall be of no further force and effect.

12 12.7 DIP Loan and Liens. As of the Effective Date, the DIP Loan shall be fully paid or
13 otherwise satisfied through issuance of the New Equity Interests, the DIP Lending Order shall terminate
14 and all Liens granted under the DIP Lending Order, as well as Debtor's obligations under the DIP Loan
15 and DIP Lending Order, shall be deemed to be terminated, discharged, eliminated and of no further
16 force and effect.

17 12.8 Termination of Debt Instruments. On the Effective Date, all instruments evidencing
18 indebtedness of Debtor held by Holders of Claims that are Impaired by this Plan or have been paid in
19 full pursuant hereto shall be deemed canceled as against Debtor (or in the case of the New Secured
20 Loan, replaced by the New Secured Notes and related New Secured Loan Documents), but not against
21 any non-Debtor Person or Entity.

22 12.9 Judgments Void. Any judgment obtained before or after the Effective Date in any court
23 other than the Bankruptcy Court shall be null and void as a determination of liability of Debtor and/or
24 Reorganized Debtor with respect to any debt treated by the Plan.

25 12.10 Revesting of Assets in Reorganized Debtor. Except as otherwise expressly provided
26 herein or in the Confirmation Order, on the Effective Date, but retroactive to the Confirmation Date,
27 without any further action, Reorganized Debtor will be vested with all of Debtor's Assets, wherever
28 situated, free and clear of all Claims, Liens and Old Equity Interests (except for Liens provided or

1 authorized pursuant to this Plan and Permitted Encumbrances). Without limiting the generality of the
2 foregoing, on and after the Effective Date, Reorganized Debtor shall be vested with all of Debtor's
3 Assets, wherever situated, free and clear of any Claims based on any form of successor liability or
4 similar or related theory of liability. On and after the Effective Date, Reorganized Debtor shall be free
5 of any restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate its business and
6 may use, acquire or dispose of its assets free of any restrictions imposed by the Bankruptcy Code and
7 the Bankruptcy Rules and without supervision or approval by the Bankruptcy Court, other than the
8 obligations set forth in this Plan or the Confirmation Order. Without limiting the generality of the
9 foregoing and except as otherwise expressly provided herein or in the Confirmation Order, any Causes
10 of Action will be preserved and retained solely for Reorganized Debtor's commencement, prosecution,
11 use and benefit.

12 12.11 Discharge of Statutory Committee/Futures Representative. Upon the Effective Date,
13 the Futures Representative and the members of any Statutory Committee shall be discharged from
14 their duties as such. Notwithstanding the foregoing, the Futures Representative and any Statutory
15 Committee shall be entitled to appear and be heard regarding final applications for allowance of
16 Professional Fee Claims.

17 12.12 Preservation of Causes of Action. Pursuant to Bankruptcy Code section 1123(b), Debtor
18 as Reorganized Debtor shall retain and reserve the right to enforce all rights to commence and pursue
19 Causes of Action whether arising prior to or after the Petition Date, and whether pending as of or Filed
20 after the Effective Date, in any court or other tribunal. Unless a Cause of Action is expressly waived,
21 relinquished, released, compromised or settled in the Plan or any Final Order, Debtor on behalf of itself
22 and as Reorganized Debtor expressly reserves all Causes of Action for later adjudication and, therefore,
23 no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel,
24 issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to
25 any Causes of Action upon Confirmation or the Effective Date. No Person or Entity may rely on the
26 absence of a specific reference in the Plan, or the Disclosure Statement to any Cause of Action against
27 them as an indication that Debtor or Reorganized Debtor will not pursue any and all available Causes of
28 Action against such Person or Entity. Debtor and Reorganized Debtor expressly reserve all rights to

1 prosecute any and all Causes of Action against any Person or Entity, except as otherwise expressly
2 provided in the Plan.

3 12.13 Maintenance of Administrative Claim Status Post Discharge. Notwithstanding any
4 discharge granted to Debtor, Allowed Administrative Claims shall maintain their administrative priority
5 status under Bankruptcy Code section 507(a)(2) until paid in full.

6 12.14 No Limitation on Effect of Confirmation. Nothing contained in the Plan or the
7 Disclosure Statement will limit, waive or restrict in any way the effect of Confirmation as set forth in
8 Bankruptcy Code section 1141; provided, however, nothing shall affect the ability of the Internal
9 Revenue Service to pursue any non-debtor to the extent allowable under non-bankruptcy law for any
10 liabilities that may be related to any federal tax liabilities of the Debtor or the Reorganized Debtor;
11 provided further, however, that except with respect to the provisions of Section 12.5(d) hereof
12 applicable to Construction Defect Claims, nothing in the Plan or any order confirming the Plan shall
13 release, waive, void, extinguish, discharge, modify, alter or limit in any way (i) any and all obligations,
14 debts and liabilities of any non-Debtor Person or Entity to the Secured Lenders, or (ii) any and all rights
15 and remedies held by the Secured Lenders against any non-Debtor Person or Entity or their respective
16 assets. Confirmation will bind Debtor, Reorganized Debtor, all Creditors, Equity Interest Holders and
17 other parties in interest to the provisions of the Plan, whether or not the Claim or Equity Interest of such
18 Creditor or Equity Interest Holder is Impaired under the Plan and whether or not such Creditor or
19 Equity Interest Holder has accepted the Plan and whether or not a Proof of Claim or Equity Interest has
20 been Filed or deemed to have been Filed under Bankruptcy Code sections 501 or 1111(a), or such
21 Claim or Equity Interest is Allowed under Bankruptcy Code section 502.

22 **ARTICLE XIII**

23 **MISCELLANEOUS PROVISIONS**

24 13.1 Modification of this Plan.

25 (a) Subject to the Lock-Up and Settlement Letter Agreement, Debtor may alter,
26 amend or modify the Plan at any time before the entry of the Confirmation Order, provided that the
27 Plan, as altered, amended or modified, satisfies the conditions of Bankruptcy Code sections 1122 and
28 1123, and Debtor shall have complied with Bankruptcy Code section 1125. However, the Bankruptcy

1 Court may require a new Disclosure Statement and/or re-voting on the Plan if Debtor modifies the Plan
2 before Confirmation.

3 (b) Subject to the Lock-Up and Settlement Letter Agreement, Debtor may also seek
4 to alter, amend or modify the Plan at any time after Confirmation so long as (1) the Plan has not been
5 substantially consummated, (2) the Plan, as altered, amended or modified, satisfies the conditions of
6 Bankruptcy Code sections 1122 and 1123, and (3) the Bankruptcy Court authorizes the proposed
7 alteration, amendment or modification after notice and a hearing under Bankruptcy Code section 1129.

8 (c) Subject to the Lock-Up and Settlement Letter Agreement, a Holder of a Claim
9 that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified,
10 if the proposed alteration, amendment or modification does not materially and adversely change the
11 treatment of the Claim of such Holder. Subject to the Lock-Up and Settlement Letter Agreement, prior
12 to the Effective Date, Debtor may make appropriate technical, non-material modifications to the Plan or
13 the Disclosure Statement without further order or approval of the Bankruptcy Court, provided that such
14 technical modifications do not adversely affect the treatment of Holders of Claims or Equity Interests.

15 (d) Subject to the Lock-Up and Settlement Letter Agreement, Debtor further reserves
16 the right to modify the treatment of any Allowed Claims at any time after the Effective Date of the Plan
17 upon the consent of the Creditor whose Allowed Claim treatment is being modified, so long as no other
18 Creditors are materially adversely affected.

19 (e) Subject to the Lock-Up and Settlement Letter Agreement, Debtor reserves the
20 right, in accordance with the Bankruptcy Code, to amend, alter or modify this Plan before or after the
21 Confirmation Date, including to make any amendments, alterations or modifications necessary to satisfy
22 the requirements of Bankruptcy Code section 1129(b).

23 (f) Any modification of the Plan that directly or indirectly affects any Secured
24 Lender cannot be made without the unanimous consent of the Secured Lenders.

25 13.2 Notices. Except as otherwise set forth in Section 13.3 below, all notices, requests,
26 elections or demands in connection with this Plan, including any change of address of any Holder of a
27 Claim for the purposes of receiving any Distributions under this Plan, shall be in writing and shall be
28 delivered personally or by facsimile, electronic mail or overnight courier (confirmed by first class mail

1 or express mail) or mailed by first class mail. Such notice shall be deemed to have been given when
2 received or, if mailed by first class mail, seven (7) days after the date of mailing, or if express mailed,
3 the next Business Day following the date of mailing and addressed to the following:

4 (a) If to Debtor, to:

5 American West Development, Inc.
6 250 Pilot Road, Suite 140
7 Las Vegas, Nevada 89119
8 Attention: Robert M. Evans
9 Email: BobEvans@AmericanWestHomes.com
10 Facsimile: (702) 736-7970

11 with copies to:

12 Fox Rothschild LLP
13 3800 Howard Hughes Parkway, Suite 500
14 Las Vegas, Nevada 89169
15 Attention: Brett A. Axelrod, Esq.
16 Email: baxelrod@foxrothschild.com
17 Facsimile: (702) 597-5503

18 (b) If to Secured Lenders, to:

19 California Bank & Trust
20 c/o CB&T Real Estate Finance
21 2929 North Central Avenue, Suite 1200
22 Phoenix, Arizona 85012
23 Attention: Bruce Weyers
24 Email: Bruce.Weyers@nbarizona.com
25 Facsimile: (602) 230-1345

26 with copies to:

27 Snell & Wilmer L.L.P.
28 One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202
Attention: Dave Sprentall, Esq.
Email: dsprentall@swlaw.com
Facsimile: (602) 382-6070

29 All notices and requests to Holders of Claims of any Class shall be sent to them at their known
30 address. Any Holder of a Claim of any Class may designate in writing any other address for purposes
31 of this Section 13.2, which designation shall be effective upon receipt.

1 13.3 Limitation of Notice. Debtor shall give the following notice with regard to the following
2 matters, which notice shall be deemed to be good and sufficient notice of such matters, with no
3 requirement for any additional or further notice:

4 (a) Notice of Entry of Confirmation Order. The notice of entry of the Confirmation
5 Order shall be sufficient if mailed to all known Holders of Claims (which have not become Disallowed
6 Claims) and Interests within five (5) Business Days of the Confirmation Date.

7 (b) Post-Confirmation Date Service List—Additional Persons Entitled to Notice.
8 Except as set forth in Section 13.2 hereof, from and after the date the Confirmation Order becomes a
9 Final Order, notices of appearances and demands for service of process Filed with the Bankruptcy
10 Court prior to such date shall no longer be effective, and no further notices, other than the Notice of
11 Confirmation Order, shall be required to be sent to such parties, unless such parties File a new notice of
12 appearance and demand for service of process dated subsequent to the Effective Date, which subsequent
13 notice and demand must be Filed with the Bankruptcy Court and served upon the Persons and Entities
14 listed in Section 13.2 above.

15 (c) Subordination. Nothing in this Plan shall in any way be deemed to have
16 impaired, altered or otherwise affected the rights of Debtor or Reorganized Debtor to enforce any right
17 of subordination that may exist by agreement or otherwise, including under Bankruptcy Code section
18 510; provided, however, that neither Debtor nor Reorganized Debtor have any subordination right or
19 remedy against the Secured Lenders as of the Effective Date.

20 13.4 Requisite Secured Lenders' Approval. Wherever the approval of the Secured Lenders
21 with respect to the Term Loan or New Secured Loan is referred to anywhere in this Plan, the Entity
22 seeking such approval shall be entitled to direct the request for approval solely to the Secured Lenders
23 pursuant to the requirements of Section 13.2 hereof, and the Secured Lenders shall then be responsible
24 for determining and communicating whether or not such approval has or has not been obtained. Any
25 written statement by the Secured Lenders specifically referring to such approval to any other Person or
26 Entity concerning any consent or approval of the Secured Lenders required hereunder which is signed
27 by the Person to whom notices directed to the Secured Lenders must be addressed pursuant to Section
28 13.2 hereof may be relied upon by such Person or Entity.

1 13.5 Headings. The headings used in this Plan are inserted for convenience only and neither
2 constitutes a portion of this Plan nor in any manner affect the provisions of this Plan.

3 13.6 Exhibits. [reserve].

4 13.7 Nonseverability of Plan Provisions. If, prior to Confirmation, any term or provision of
5 this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court
6 shall have the power, at the request of Debtor and subject to the consent of any Person or Entity
7 adversely affected thereby, to alter and interpret such term or provision to make it valid or enforceable
8 to the maximum extent practicable, consistent with the original purpose of the term or provision held to
9 be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or
10 interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms
11 and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired
12 or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a
13 judicial determination and shall provide that each term and provision of this Plan, as it may have been
14 altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its
15 terms; (b) integral to this Plan and may not be deleted or modified without the consent of Debtor and
16 any other Person or Entity affected by such provision; and (c) nonseverable and mutually dependent.

17 13.8 Waiver or Estoppel. Each Holder of a Claim or an Interest shall be deemed to have
18 waived any right to assert any argument, including the right to argue that its Claim or Interest should be
19 Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an
20 agreement made with Debtor or its counsel, or any other Entity, if such agreement was not disclosed in
21 this Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the
22 Confirmation Date.

23 13.9 Conflicts.

24 (a) To the extent that any provision of the Disclosure Statement, any amendments
25 to the Plan, the Operative Documents or any New Secured Loan Documents, or any order (other than
26 the Confirmation Order) referenced in this Plan (or any exhibits, schedules, appendices, supplements or
27 amendments to any of the foregoing), conflict with or is in any way inconsistent with any provision of
28 this Plan, this Plan shall govern and control, unless expressly set forth herein.

1 (b) From and after the Effective Date, to the extent that any provision of this Plan,
2 the Disclosure Statement, or any order (other than the Confirmation Order) referenced in this Plan (or
3 any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with
4 or are in any way inconsistent with any provision of any New Secured Loan Document, then the New
5 Secured Loan Document shall govern and control, unless otherwise expressly set forth therein.

6 13.10 Computation of Time. In computing any period of time prescribed or allowed by this
7 Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

8 13.11 Governing Law. Except to the extent that the Bankruptcy Code or any other federal law
9 is applicable, and except as otherwise provided by the New Secured Loan Documents, the rights and
10 obligations arising under this Plan shall be governed by, and construed and enforced in accordance
11 with, the laws of the State of Nevada.

12 13.12 Successors and Assigns. The rights and obligations of any Person or Entity named or
13 referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and
14 assigns of such Person or Entity.

15 13.13 Good Faith. Confirmation of the Plan will constitute a finding that the Plan has been
16 proposed in good faith and in compliance with all applicable provisions of the Bankruptcy Code.


17 13.14 Post Confirmation Conversion or Dismissal. A Creditor or party in interest may bring
18 a motion to convert or dismiss the Chapter 11 Case under Bankruptcy Code section 1112(b), after the
19 Plan is confirmed, if there is a default in performance of the Plan or if cause exists under Bankruptcy
20 Code section 1112(b). If the Bankruptcy Court orders the Chapter 11 Case converted to a case under
21 chapter 7 of the Bankruptcy Code after the Plan is confirmed, then all property that had been Assets,
22 and that has not been disbursed or distributed pursuant to the Plan, will revert in the chapter 7 estate,
23 and the automatic stay pursuant to Bankruptcy Code section 362(a) will be reimposed upon the reverted
24 property only to the extent that relief from stay was not previously granted by the Bankruptcy Court
25 during the Chapter 11 Case. In addition, any Allowed Administrative Claims which are not paid on the
26 Effective Date shall continue to be entitled to administrative priority under Bankruptcy Code section
27 507(a)(1) in any such subsequent chapter 7 case to which the Chapter 11 Case is converted.

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1 13.15 Post Confirmation Quarterly Fees. US Trustee Fees continue to be payable to the Office
2 of the United States Trustee after Confirmation until such time as the Chapter 11 Case is converted,
3 dismissed or closed pursuant to Final Decree.

4 DATED this 15th day of October, 2012.

5 **AMERICAN WEST DEVELOPMENT, INC.**
6 a Nevada corporation

7 By  /s/Robert M. Evans
8 Robert M. Evans, President

9 Respectfully submitted by:

10 **FOX ROTHSCHILD LLP**

11 By: /s/ Brett A Axelrod
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13 Nevada Bar No. 5859
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1 **EXHIBIT A**

2 **GLOSSARY OF DEFINED TERMS**

3 1. "9019 Motion" means the motion seeking Bankruptcy Court approval of the Lock-Up
4 and Settlement Letter Agreement.

5 2. "9019 Order" means the order entered by the Bankruptcy Court approving the 9019
6 Motion.

7 3. "Administrative Claim" means a Claim for costs and expenses of administration,
8 pursuant to Bankruptcy Code sections 503(b), 507(a)(2), 507(b) or 546(c)(2), including, but not limited
9 to: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the
10 Effective Date of preserving the Estate and operating the business of Debtor (such as wages, salaries
11 or commissions for services, and payments for goods and services); (b) the value of any goods received
12 by Debtor within twenty (20) days before the Petition Date, which goods have been sold to Debtor in
13 the ordinary course of its business; (c) compensation and reimbursement of expenses for legal, financial
14 advisory, accounting and other services, including but not limited to, Allowed Professional Fees,
15 pursuant to Bankruptcy Code sections 328, 330(a) or 331 or otherwise for the period commencing on
16 the Petition Date and ending on the Effective Date; (d) all fees and charges assessed against the Estate
17 pursuant to chapter 123 of the Judicial Code and 28 U.S.C. § 1930; and (e) all Bankruptcy Court
18 approved requests for compensation or expense reimbursement for making a substantial contribution in
19 the Chapter 11 Case, pursuant to Bankruptcy Code sections 503(b)(3), (4) and (5).

20 4. "Administrative Claim Bar Date" means the deadline for Filing requests for payment of
21 Administrative Claims, which shall be thirty (30) days after the Effective Date, except with respect to
22 Professional Fees, which shall be subject to the provisions of Section 2.2 hereof.

23 5. "Affiliate" has the meaning set forth in Bankruptcy Code section 101(2).

24 6. "Allowed" means, with reference to any Claim or Interest, except for a Claim that is a
25 Construction Defect Claim, and with respect to Debtor: (a) any Claim against or Interest in Debtor that
26 has been listed by Debtor in its Schedules, as such Schedules may be amended by Debtor from time to
27 time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent
28 and for which no contrary Proof of Claim or Proof of Interest has been Filed; (b) any Claim or Interest

1 allowed (i) under this Plan, (ii) by Final Order, or (iii) as to which the liability of Debtor and the amount
2 thereof are determined by a final order of a court of competent jurisdiction other than the Bankruptcy
3 Court; or (c) any Claim or Interest as to which a Proof of Claim or a Proof of Interest has been timely
4 Filed in a liquidated amount with the Bankruptcy Court, pursuant to the Bankruptcy Code or any order
5 of the Bankruptcy Court, or has been Filed with leave of the Bankruptcy Court after notice and a
6 hearing, provided that no objection to the allowance of such Claim or Interest or motion to expunge
7 such Claim or Interest has been interposed by any party in interest before any final date for the Filing of
8 such objections or motions set forth in this Plan, the Confirmation Order or other order of the
9 Bankruptcy Court. For purposes of determining the amount of an Allowed Claim, there shall be
10 deducted therefrom an amount equal to the amount of any valid and enforceable Claim that Debtor may
11 hold against the Holder thereof, to the extent such Claim may be validly offset, recouped or otherwise
12 reduced under applicable law.

13 7. "Allowed Construction Defect Claim" means a Construction Defect Claim that is
14 deemed allowed by the Construction Defect Trustee, after consultation with the Construction Defect
15 Advisory Board; provided that (i) the amount of the Class 4 Construction Defect Claim of each Holder
16 thereof who makes the Cash Out Election, if the Cash Out Election remains available, shall be deemed
17 to be reduced (as necessary) and allowed in the amount of the Cash Out Payment made to such Holder
18 pursuant to this Plan without further approval of the Bankruptcy Court or action on the part of Debtor,
19 Reorganized Debtor, the Construction Defect Trust, the Construction Defect Trustee, the Construction
20 Defect Advisory Board or the Holder, (ii) such allowed amount shall be binding on such Holder for all
21 purposes under the Plan, and (iii) such Allowed Class 4 Construction Defect Claim for each Holder
22 thereof who makes the Cash Out Election shall be satisfied in full and discharged upon such Holder's
23 receipt of such Cash Out Payment.

24 8. "Applicable Margin" means, with respect to borrowings under the New Secured Loan,
25 (i) 3.25% per annum in the case of fixed rate borrowings and 0.50% per annum in the case of variable
26 rate borrowings; provided that during any Remargin Period (as defined in the Term Loan Documents)
27 under the Term Loan, "Applicable Margin" means 5.25% per annum in the case of fixed rate
28 borrowings and 2.50% per annum in the case of variable rate borrowings.

1 9. “Assets” means all of Debtor’s right, title and interest of any nature in property of any
2 kind, wherever located, as specified in Bankruptcy Code section 541. For the avoidance of doubt, all of
3 Debtor’s rights and benefits under any license, permit, development order, zoning approval or other
4 governmental or quasi-governmental undertaking or action shall constitute an interest in property.

5 10. “Assumed Contracts” means any of Debtor’s Executory Contracts existing on the
6 Petition Date and any Executory Contracts entered into by Debtor after the Petition Date which, prior to
7 the Confirmation Date, have been assumed by Debtor pursuant to Bankruptcy Code section 365, or are
8 to be assumed by Debtor or Reorganized Debtor pursuant to the Plan.

9 11. “Avoidance Actions” means all Causes of Action of the Estate under the Bankruptcy
10 Code, including but not limited to those set forth in sections 506(c), 506(d), 510, 542, 543, 544, 545,
11 547, 548, 549, 550, 551 or 553, regardless of whether or not such actions have been commenced prior
12 to the Effective Date.

13 12. “Ballot” means a ballot in the form or forms approved by the Bankruptcy Court pursuant
14 to the Disclosure Statement Order on which the Holder of an Allowed Claim who is entitled to vote to
15 accept or reject the Plan (including the Holder of any Construction Defect Claim who makes the Cash
16 Out Election) actually votes to accept or reject the Plan.

17 13. “Bankruptcy Code” means Title 11 of the United States Code, as amended from time to
18 time, as applicable to the Chapter 11 Case.

19 14. “Bankruptcy Court” means the United States Bankruptcy Court for the District of
20 Nevada, or such other court as may from time to time have jurisdiction over the Chapter 11 Case.

21 15. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as heretofore or
22 hereafter amended, and the general, local and chambers rules and orders of the Bankruptcy Court.

23 16. “Bar Date” means the date or dates established by order of the Bankruptcy Court, or the
24 Bankruptcy Code or the Bankruptcy Rules by which all Persons (except Holders of Claims that appear
25 in the Schedules not scheduled as disputed, contingent or unliquidated, but only with respect to such
26 Claims) asserting a Claim against Debtor (except the Administrative Claims, which are governed by the
27 Administrative Claim Bar Date, and the Construction Defect Claims, which are governed by the
28

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1 Construction Defect Claim Bar Date) must File a Proof of Claim or forever be barred from asserting a
2 Claim against Debtor or its property, voting on the Plan, and sharing in Distributions under the Plan.

3 17. “Bond Claims” means any Claim against Debtor, relating to or arising under any
4 municipal bond assessments, infrastructure improvement bonds, special improvement districts or
5 associated maintenance charges.

6 18. “Business Day” means any day, other than a Saturday, Sunday, or “legal holiday”, as
7 defined in Bankruptcy Rule 9006(a).

8 19. “Cash” means legal tender of the United States of America, which may be conveyed by
9 check or wire transfer.

10 20. “Cash Collateral” has the meaning set forth in Bankruptcy Code section 363(a).

11 21. “Cash Collateral Orders” means any and all interim and Final Orders entered by the
12 Bankruptcy Court, permitting Debtor to use the Cash Collateral of the Secured Lenders.

13 22. “Cash Collateral Stipulation” means that Stipulated Agreement Between Debtor and its
14 Pre-Petition Secured Lenders Regarding (I) Use of Cash Collateral; and (II) Adequate Protection filed
15 in the Chapter 11 Case on March 1, 2012 as Docket No. 12.

16 23. “Cash Out Election” means the election made by a Holder of a Class 4 Construction
17 Defect Claim to receive a Cash Out Payment in lieu of any other or further Distribution from the
18 Construction Defect Trust. The Cash Out Election shall be void if less than eighty percent (80%) in
19 number of the Holders of Class 4 Construction Defect Claims actually vote to accept the Plan, *provided*
20 *that*, except with respect to any Ballot submitted by the Futures Representative, any Holder of more
21 than one (1) Class 4 Construction Defect Claim will be treated as a single Holder for purposes of
22 calculating such eighty percent (80%) amount.

23 24. “Cash Out Election Ratio” means a ratio calculated wherein (x) the numerator is the total
24 aggregate number of Holders of Class 4 Construction Defect Claims who timely and properly make the
25 Cash Out Election, and (y) the denominator is the total aggregate number of Holders of Class 4
26 Construction Defect Claims.

27 25. “Cash Out Payment” means a one-time Cash payment to each Holder of a Construction
28 Defect Claim who makes the Cash Out Election, which Cash Out Payment shall be equal to (x) the

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1 Total Cash Out Fund, divided by (y) the total aggregate number of Holders of Construction Defect
2 Claims who make the Cash Out Election.

3 26. “Cash Out Release” means the form of release to be granted by each Holder of a
4 Construction Defect Claim who makes the Cash Out Election, which Cash Out Release shall, in return
5 for the Cash Out Payment, comprehensively release Debtor, Reorganized Debtor, the Construction
6 Defect Trust and any Affiliate of the foregoing from any and all liability for any and all Construction
7 Defect Claims.

8 27. “Causes of Action” means any Claim, Avoidance Action, cause of action, controversy,
9 demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account,
10 defense, offset, power, privilege, license and franchise of any kind or character whatsoever, known,
11 unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or
12 unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether
13 arising before, on or after the Petition Date, including through the Effective Date, in contract or in tort,
14 in law or in equity, or pursuant to any other theory of law.

15 28. “Chapter 11 Case” shall have the meaning given to it in the Preamble of the Plan.

16 29. “Claim” has the meaning set forth in Bankruptcy Code section 101(5).

17 30. “Claims Objection Deadline” means the deadline for filing objections to Claims as set
18 forth in Section 7.3 of the Plan.

19 31. “Claims Register” means the official register of Claims and Interests maintained in the
20 Chapter 11 Case.

21 32. “Class” means a class of Claims or Interests pursuant to Bankruptcy Code section
22 1122(a) and as described in Article II of the Plan.

23 33. “Confirmation” means the entry by the Bankruptcy Court of the Confirmation Order in
24 the Chapter 11 Case.

25 34. “Confirmation Date” means the date upon which the clerk of the Bankruptcy Court
26 enters the Confirmation Order on the docket of the Chapter 11 Case.

27 35. “Confirmation Funds” means all funds required to be disbursed, or deposited and held
28 for later disbursement upon allowance or other Bankruptcy Court authorization, on or as of the

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1 Effective Date (i) to Holders of Allowed Professional Fee Claims, other Allowed Administrative
2 Claims, Allowed Other Priority Claims to be paid in Cash on the Effective Date, any Allowed Priority
3 Tax Claims other than Priority Tax Claims to be paid in deferred payments pursuant to the Plan, (ii) to
4 the DIP Lender to fully pay and satisfy the DIP Loan, (iii) to the United States Trustee for US Trustee
5 Fees due as of the Effective Date, and (iv) for any other Distributions and payment of costs and
6 expenses in connection with consummating the Plan.

7 36. “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider
8 confirmation of the Plan pursuant to Bankruptcy Code section 1129, as such hearing may be adjourned
9 or continued from time to time.

10 37. “Confirmation Order” means the order entered by the Bankruptcy Court confirming the
11 Plan in accordance with the Bankruptcy Code.

12 38. “Construction Defect Actions” means the Causes of Action that Debtor may have against
13 any subcontractor or other Person or Entity who installed defective materials in a home built and sold
14 by Debtor, directly or indirectly, any insurer of any such subcontractor or any other Person or Entity,
15 any retailer, wholesaler, distributor, manufacturer or provider of defective materials that was installed in
16 a home built or sold by Debtor, directly or indirectly, and/or any insurer of any such retailer, whole-
17 saler, distributor, manufacturer or provider.

18 39. “Construction Defect Advisory Board” means the advisory board to be established
19 pursuant to the Construction Defect Trust Declaration and with which the Construction Defect Trustee
20 shall consult regarding matters that will have a material impact on the value of the Construction Defect
21 Trust, which matters shall be set forth in detail in the Construction Defect Trust Declaration.

22 40. “Construction Defect Claim” means (i) any threatened or pending civil action or
23 statutory pre-litigation Claim against Debtor relating to construction defects, warranty claims, or
24 third party indemnity claims relating to, or arising from, ownership on the Confirmation Date of a
25 home constructed by Debtor, including without limitation, those civil actions with case numbers
26 A-11-638731-D, A-11-633888-D, 08-A-558243, and A-11-642932-D, pending in the Eighth Judicial
27 District Court for Clark County, Nevada on the Petition Date; (ii) a related or similar Claim for which a
28 Proof of Claim is Filed or which Debtor listed in the Schedules Filed in the Chapter 11 Case.

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1 41. "Construction Defect Claim Bar Date" means the deadline for filing Proofs of Claim for
2 Construction Defect Claims, which shall be governed by the Construction Defect Trust and its related
3 TDP.

4 42. "Construction Defect Trust" means the trust established pursuant to the Construction
5 Defect Trust Declaration.

6 43. "Construction Defect Trust Contribution" means a portion of the New Capital
7 Contribution in the amount of either (i) one million five hundred thousand dollars (\$1,500,000) or
8 (ii) two hundred thousand dollars (\$200,000), which will be (a) contributed to the Construction Defect
9 Trust, and (b) allocated between the Total Cash Out Fund and the Remaining Construction Defect Trust
10 Fund according to the Cash Out Election Ratio if at least eighty percent (80%) in number of the Holders
11 of Class 4 Construction Defect Claims actually vote to accept the Plan.

12 44. "Construction Defect Trust Declaration" means the declaration of trust to be entered into
13 by Debtor, the Construction Defect Trustee and the Construction Defect Advisory Board. The
14 Construction Defect Trust Declaration shall be in substantially the form Filed with the Bankruptcy
15 Court as part of the Disclosure Statement.

16 45. "Construction Defect Trustee" means the Person selected to serve as the initial trustee of
17 the Construction Defect Trust, and any successor trustee thereof.

18 46. "Consummation" means the occurrence of the Effective Date.

19 47. "Contingent Claim" means a Claim which is contingent, unmatured or unliquidated on or
20 immediately before the Confirmation Date.

21 48. "Creditor" means a Holder of a Claim.

22 49. "Cure" means the payment of Cash by Debtor, or the distribution of other property and
23 the performance of any other obligations as the parties may agree or the Bankruptcy Court may order
24 necessary to cure defaults under Executory Contracts Debtor is authorized to assume under Bankruptcy
25 Code section 365(a) or under the Plan.

26 50. "Cure Request Bar Date" means the deadline for Filing requests for payment of Cure,
27 which shall be fifteen (15) days prior to the date of the Confirmation Hearing.

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1 51. “Debtor in Possession” means Debtor, as debtor in possession in the Chapter 11 Case,
2 exercising Debtor’s rights and operating Debtor’s business pursuant to Bankruptcy Code sections 1107
3 and 1108, respectively.

4 52. “Debtor” means American West Development, Inc.

5 53. “Deficiency Claim” means the difference between the amount of a Secured Lender’s
6 Allowed Claim and the value of the collateral which secures such Secured Lender’s Allowed Claim.

7 54. “Design-Build Agreements” means various Design-Build Agreements between Debtor,
8 certain affiliated land-owning entities and certain affiliated home-selling entities.

9 55. “DIP Financing Order” means the order of the Bankruptcy Court approving and
10 authorizing the DIP Loan on an interim basis and any Final Order entered with respect thereto.

11 56. “DIP Lender” means the Entity that made the DIP Loan.

12 57. “DIP Loan” means the postpetition loan in the amount of up to ten million dollars
13 (\$10,000,000) made by DIP Lender to Debtor pursuant to the DIP Financing Order.

14 58. “Disallowed Claim” or “Disallowed,” when used in connection with the term “Claim,”
15 means any Claim or portion thereof that has been disallowed by a Final Order of the Bankruptcy Court
16 or scheduled as disputed, contingent or unliquidated that is not superseded by a timely filed Proof of
17 Claim.

18 59. “Disclosure Statement” means the solicitation materials and disclosure statements,
19 including all exhibits and schedules thereto, as amended, supplemented or modified from time to time,
20 that are found by the Bankruptcy Court under the circumstances of the Chapter 11 Case to contain
21 adequate information to solicit acceptances and rejections of the Plan.

22 60. “Disclosure Statement Order” means that certain Order: (I) Approving (A) Adequacy of
23 Master Disclosure Statement, (B) Adequacy and Use of Home Owner Disclosure Statement as
24 Summary of First Amended Plan, (C) Procedures and Schedule for the Solicitation, Submission and
25 Tabulation of Votes, (D) Form and Scope of Notices, and (E) Form of Ballots and Related Documents;
26 (II) Scheduling Confirmation Hearing and Related Deadlines; and (III) Granting Related Relief, entered
27 by the Bankruptcy Court, as the order may be amended from time to time.

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1 61. “Disputed Claim” means: (a) any Claim or portion of a Claim (including any
2 Administrative Claim, Priority Tax Claim or Other Priority Claim) listed in the Schedules as disputed,
3 contingent or unliquidated; or (b) any Claim, as to which an objection to the allowance thereof has been
4 Filed with the Bankruptcy Court within any time limitation fixed by the Bankruptcy Code, the
5 Bankruptcy Rules, the Plan or an order of the Bankruptcy Court, which objection has not been settled,
6 withdrawn or determined, in whole or in part, by a Final Order.

7 62. “Distribution” means any distribution made by the Distribution Agent on account of
8 Allowed Claims under the Plan pursuant to the terms of the Plan or by the Construction Defect Trustee
9 of the Construction Defect Trust pursuant to the TDP in respect of Construction Defect Claims.

10 63. “Distribution Agent” means Debtor, or the Person or Entity chosen by Debtor to make or
11 to facilitate Distributions pursuant to the Plan or, with respect to Construction Defect Claims, the
12 Construction Defect Trustee.

13 64. “Distribution Record Date” means August 10, 2012 unless the Bankruptcy Court estab-
14 lishes a different date for the Distribution Record Date in the Confirmation Order.

15 65. “Effective Date” means the first Business Day after the date on which the conditions
16 specified in Article X of the Plan have been satisfied in full or waived.

17 66. “Entity” has the meaning as set forth in Bankruptcy Code section 101(15).

18 67. “Equity Interest” means the same as “Interest.”

19 68. “Estate” means the estate of Debtor that was created by the commencement of the
20 Chapter 11 Case pursuant to Bankruptcy Code section 541, and shall be deemed to include any and all
21 Assets of Debtor, whether real, personal or mixed, rights, Causes of Action, avoidance powers or
22 extensions of time that Debtor or the estate shall have had effective as of the Petition Date or thereafter,
23 whether by virtue of Bankruptcy Code sections 544, 545, 546, 547, 548, 549 or 550 or otherwise.

24 69. “Exculpated Party” means each of: (a) Debtor and its Estate; (b) the Secured Lenders;
25 (c) Reorganized Debtor; (d) the DIP Lender; (e) the Distribution Agent; (f) the Construction Defect
26 Trustee; (g) the Futures Representative; and (h) Professionals.

27 70. “Executory Contract” means an executory contract or unexpired lease to which Debtor is
28 a party that is subject to assumption or rejection under Bankruptcy Code section 365 or under the Plan.

1 71. “File” means to duly and properly file with the Bankruptcy Court as reflected on the
2 Bankruptcy Court’s docket or the Claims Register in the Chapter 11 Case or, in the case of Class 4
3 Claims, duly and properly filed with the Trustee of the Construction Defect Trust.

4 72. “Final Decree” means an order of the Bankruptcy Court closing the Chapter 11 Case
5 pursuant to Bankruptcy Code section 350.

6 73. “Final Order” means an order or judgment entered by the Bankruptcy Court: (a) that
7 has not been reversed, stayed, modified, amended, revoked, varied or set aside, and as to which (i) any
8 right to appeal or seek certiorari, review, reargument, stay or rehearing has been waived, or (ii) the time
9 to appeal or seek certiorari, review, reargument, stay or rehearing has expired and no appeal or petition
10 for certiorari, review, reargument, stay or rehearing is pending; or (b) as to which an appeal has been
11 taken or petition for certiorari, review, reargument, stay or rehearing has been filed, and (i) such appeal
12 or petition for certiorari, review, reargument, stay or rehearing has been resolved by the highest court to
13 which the order or judgment was appealed or from which certiorari, review, reargument, stay or
14 rehearing was sought, and (ii) the time to appeal further or seek certiorari, review, reargument, stay or
15 rehearing has been waived or expired and no such further appeal or petition for certiorari, review,
16 reargument, stay or rehearing is pending, provided, however, that no order or judgment shall fail to be a
17 “Final Order” hereunder solely because of the possibility that a motion pursuant to Bankruptcy Code
18 sections 502(j) or 1144, Rules 59 or 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule
19 9024 may be Filed with respect to such order or judgment.

20 74. “Futures Representative” means James L. Moore, the representative of potential Holders
21 of Construction Defect Claims for which damage or loss has not yet become manifest, duly appointed
22 by the Bankruptcy Court.

23 75. “General Unsecured Claims” means any Claim against Debtor that is not an
24 (a) Administrative Claim, (b) Priority Tax Claim, (c) Other Priority Claim, (d) Secured Claim,
25 (e) Construction Defect Claim, or (f) Bond Claim.

26 76. “Holder” means any Person or Entity that is the record or beneficial owner of a Claim or
27 Interest in the Chapter 11 Case; provided that the Holder of a Construction Defect Claim arising in
28 connection with a particular home constructed by Debtor shall be the owner of legal record of such

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1 residence (a) as of the Voting Record Date for purposes of voting to accept or reject the Plan and
2 making (and receiving) the Cash Out Election, and (b) as of the Distribution Record Date for purposes
3 of further participation in the Construction Defect Trust by any Holder of a Construction Defect Claim
4 that does not make the Cash Out Election.

5 77. “Impaired” means with respect to any Class of Claims or Interests, a Class of Claims or
6 Interests that is impaired within the meaning of Bankruptcy Code section 1124.

7 78. “Insurance Coverage Actions” means any rights to indemnification, reimbursement,
8 contribution or other payment under any of Debtor’s existing insurance policies, including Debtor’s
9 director and officer liability insurance policies, as of the Effective Date, that may provide coverage with
10 respect to Construction Defect Claims.

11 79. “Insurance Recovery” means (a) the right to pursue and receive the benefits and
12 proceeds of any insurance policy issued to, owned by, or otherwise providing coverage to Debtor,
13 including any insurance policy owned by any third party on which Debtor is named as an additional
14 insured, with respect to Construction Defect Claims; (b) the right to pursue and receive recovery from
15 or as a result of any Insurance Coverage Action; (c) the right to pursue and receive recovery from or as
16 a result of any Claim, Cause of Action or right of Debtor or Reorganized Debtor against any insurance
17 company concerning insurance coverage for or relating to Construction Defect Claims, or enforcement
18 of any extracontractual or statutory remedies and relief relating to any insurance providing coverage for
19 Construction Defect Claims, including, without limitation, any Insurance Coverage Actions or any other
20 litigation, arbitration, mediation and informal negotiations, whether past, pending or not yet initiated,
21 including, without limitation, consequential, contractual, extracontractual and statutory damages, or
22 other proceeds, distributions, awards or benefits; (d) the right to pursue and receive recovery from or as
23 a result of any Claim, Cause of Action or right of Debtor or Reorganized Debtor to pursue insurance
24 recovery related to Construction Defect Claims through available administrative or other means from
25 any insurance company that is insolvent or has been liquidated, or is otherwise subject to statutory or
26 legal protections against litigation; and (e) the right to pursue and receive any other recovery from an
27 insurance company, in its capacity as such, with respect to Construction Defect Claims.
28

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1 80. "Interest" means any: (i) equity or other ownership interest in any Person or Entity,
2 including, but not limited to, all issued and outstanding or reserved for issuance, common stock,
3 preferred stock, membership interests, warrants, options or other ownership rights or rights to purchase
4 or receive additional shares of stock or membership interests in any Person or Entity, and/or any other
5 instrument or document to the extent that it directly or indirectly evidences, creates or reserves any
6 equity or ownership interest in any Person or Entity giving rise to any Claim or Interest, (ii) equity
7 security, including all membership interests together with any warrants, options or contractual rights to
8 purchase or acquire such equity securities at any time and all rights arising with respect thereto and
9 (iii) partnership, limited liability company or similar interest.

10 81. "Interest Holder" means the Holder of an Interest or Equity Interest.

11 82. "Key Transaction Documents" means the Plan, the Disclosure Statement, the Ballots, the
12 New Secured Loan Documents, and Reorganized Debtor's Bylaws or amended certificates of
13 incorporation.

14 83. "LIBOR Rate" means the London Inter-Bank Market Offered Rate, as more specifically
15 defined in the New Secured Loan Documents.

16 84. "Lien" has the meaning set forth in Bankruptcy Code section 101(37).

17 85. "Lock-Up and Settlement Letter Agreement" means that certain Restructuring, Lock-Up
18 and Settlement Letter Agreement entered into by Debtor and the Secured Lenders, approved by the
19 9019 Order, to be implemented through the Plan, and establishing, among other things, the Allowed
20 amounts of each Secured Lender's Secured Claim at the values of each Secured Lender's collateral,
21 which collateral Debtor believes is worth an aggregate amount of \$49,635,000, on a net present value
22 basis, and providing that the Secured Lenders will waive their rights to receive any Distribution on
23 account of their Class 3 General Unsecured Claims under the Plan, provided that the Holders of Class 3
24 Claims vote as a Class to accept the Plan.

25 86. "Marketing and Administrative Services Agreement" means various Marketing and
26 Administrative Services Agreements between Debtor and certain affiliated home-selling entities.

27 87. "Maturity Date" means December 31, 2015, as defined in Section 2.3(b) of the Plan.
28

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1 88. “New Capital Contribution” means the aggregate sum in a maximum amount of ten
2 million dollars (\$10,000,000) from the DIP Lender for, among other things, providing Reorganized
3 Debtor with the amount of Cash required for all Confirmation Funds, working capital for Reorganized
4 Debtor to fund operations, and any Plan needs, including the Construction Defect Trust Contribution.
5 The aggregate sum of the New Capital Contribution may be increased, with the mutual written
6 agreement of Debtor, the DIP Lender and the Secured Lenders. The New Capital Contribution shall be
7 paid to Reorganized Debtor on the Effective Date by way of the DIP Lender funding the maximum
8 amount of the DIP Loan by payment of Cash to Reorganized Debtor and the Construction Defect Trust
9 in an amount equal to the difference between (x) the maximum amount of the DIP Loan of ten million
10 dollars (\$10,000,000), and (y) the outstanding balance of the DIP Loan on the Effective Date and,
11 contemporaneously therewith, forgiving, releasing and discharging the DIP Loan and Liens securing
12 same in consideration of its receipt of the New Equity Interests in Reorganized Debtor.

13 89. “New Equity Interests” means those Interests of Reorganized Debtor to be authorized
14 and issued to the DIP Lender pursuant to the Plan on the Effective Date in exchange for the New
15 Capital Contribution.

16 90. “New Secured Loan” means the refinanced (restructured) secured loan pursuant to the
17 terms of the Plan to be evidenced by the New Secured Loan Documents.

18 91. “New Secured Loan Documents” means the New Secured Notes and related documents
19 in form and substance acceptable to and approved by the Secured Lenders, evidencing, securing and
20 providing for the terms and conditions of the New Secured Loan, to be executed by and between the
21 Secured Lenders and Reorganized Debtor on or as of the Effective Date, which are attached as exhibits
22 to the Disclosure Statement, with any modifications or additional documents in form and substance
23 acceptable to and approved by the Secured Lenders.

24 92. “New Secured Loan Payment Terms” means the payment terms of the New Secured
25 Notes, as summarized in Section 2.3 of the Plan.

26 93. “New Secured Notes” means the promissory notes in form and substance acceptable to
27 and approved by the Secured Lenders to be issued by Reorganized Debtor to the Secured Lenders
28 evidencing the New Secured Loan, as summarized in Section 2.3 of the Plan.

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1 94. "Notice of Confirmation" means that certain notice, pursuant to Bankruptcy Rule
2 3020(c)(2), notifying Holders of Claims and Interests that the Bankruptcy Court has confirmed the Plan.

3 95. "Old Equity Interests" means Equity Interests in Debtor.

4 96. "Operative Document" means any contract, instrument, release, settlement agreement or
5 other agreement or document, if any, that is reasonably necessary to effectuate and implement the
6 transactions provided for in the Plan, including the Key Transaction Documents.

7 97. "Other Priority Claims" means any Claim entitled to priority under Bankruptcy Code
8 sections 507(a) other than under subsections (a)(2) and (a)(8) thereof.

9 98. "Other Secured Claims" means any Secured Claim other than a Claim with respect to the
10 Term Loan.

11 99. "Permitted Encumbrances" means (i) Liens for *ad valorem* taxes not yet due and
12 payable, (ii) easements, restrictions, conditions and limitations of record that affected the title to any of
13 Debtor's real properties as of the Petition Date, (iii) any Liens securing Other Secured Claims that are
14 reinstated or assumed by Reorganized Debtor, and (iv) as such term is defined in the New Secured Loan
15 Documents.

16 100. "Person" means any individual, corporation, partnership, limited liability company, joint
17 venture, association, trust or organization, or other "person" as defined in Bankruptcy Code section
18 101(41), as well as any governmental agency, governmental unit or political subdivision.

19 101. "Petition Date" means March 1, 2012.

20 102. "Plan" means this Debtor's First Amended Chapter 11 Plan of Reorganization to which
21 this Exhibit A is attached, either in its present form or as the same may be altered, amended or modified
22 from time to time pursuant to the Bankruptcy Code or Final Order.

23 103. [reserve]

24 104. [reserve]

25 105. "Post Effective Date Fee Fund" means a sum of two million eighty thousand dollars
26 (\$2,080,000) to be paid to the Distribution Agent on the Effective Date from the New Capital
27 Contribution, which shall be part of the Confirmation Funds and used by the Distribution Agent to pay
28 any Post Effective Date Fees.

1 106. "Post Effective Date Fees" means the reasonable fees and expenses of Debtor's
2 Professionals incurred by Debtor and/or Reorganized Debtor after the Effective Date, including those
3 fees and expenses incurred for legal, financial advisory, accounting and other services rendered in
4 connection with the implementation, Consummation and performance of the Plan and which are
5 necessary to complete the administration of, conclude and close the Chapter 11 Case.

6 107. "Price Guarantee" means, in summary, that pricing incentive offered by Debtor from
7 2006 through 2008 to certain home purchasers to receive a credit against their purchase of a
8 replacement home from Debtor equal to the difference between the price paid for their original home
9 and the value of the replacement home (if less) on the fifth (5th) anniversary of the date of the original
10 home purchase, under certain express conditions.

11 108. "Price Promise" means, in summary, that three-year pricing incentive offered by
12 Debtor from 2006 through 2008 to certain home purchasers who paid the current asking base price, at
13 the time of the original home purchase, to receive a purchase price refund, under certain express
14 conditions.

15 109. "Priority Tax Claims" means any Claim that is entitled to priority under Bankruptcy
16 Code sections 502(i) or 507(a)(8). Priority Tax Claims do not include *ad valorem* tax Claims if such
17 Claims under applicable state law are Secured by a Lien on Debtor's Assets.

18 110. "Pro Rata" means, with respect to an amount of Cash or other consideration to be paid or
19 distributed on a particular date to a Holder of an Allowed Claim, that such Distribution shall be made in
20 accordance with the ratio, as of such date, of the amount such Allowed Claim is to the aggregate of the
21 amounts of Claims in the Class to which such Allowed Claim belongs.

22 111. "Professional" means a Person or Entity: (a) employed pursuant to a Bankruptcy Court
23 order in accordance with Bankruptcy Code sections 327 or 1103 and to be compensated for services
24 rendered prior to or on the Effective Date, pursuant to Bankruptcy Code sections 327, 328, 329, 330
25 or 331; (b) awarded compensation and reimbursement by the Bankruptcy Court, pursuant to
26 Bankruptcy Code section 503(b)(4); or (c) employed by the Futures Representative pursuant to an
27 order of the Bankruptcy Court.

28

1 112. "Professional Fee Claim" means any Claim for compensation or reimbursement of fees
2 and expenses as may be requested by (i) the Futures Representative, or (ii) a Professional to the extent
3 such Professional is required to apply to the Bankruptcy Court for payment of such Claim pursuant to
4 Bankruptcy Code sections 326, 328, 330 or 331 and the terms of the Plan.

5 113. "Professional Fees" means all reasonable fees and expenses incurred by Professionals
6 or the Futures Representative and allowed by the Bankruptcy Court.

7 114. "Proof of Claim" means a proof of claim for a Claim which has been Filed.

8 115. "Proof of Interest" means a proof of interest for an Interest which has been Filed.

9 116. "Receivable" means the right of Debtor to receive deferred payments due from certain
10 affiliates, representing amounts due for lot development, unit construction and other services for which
11 Debtor has acted as general contractor pursuant to agreements memorialized as (i) various Marketing
12 and Administrative Services Agreements, and (ii) various Design-Build Agreements.

13 117. "Rejected Contract" means any Executory Contract that has been rejected prior to
14 Confirmation, or is the subject of a pending motion for rejection or has been designated in the
15 Disclosure Statement as a contract or lease that is not to be an Assumed Contract, or is otherwise
16 rejected pursuant to the Plan.

17 118. "Related Persons" means, with respect to any Person, such Person's predecessors,
18 successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and
19 Subsidiaries, and each of their respective current and former officers, directors, principals, employees,
20 shareholders, members (including ex officio members), partners, agents, financial advisors, attorneys,
21 accountants, investment bankers, investment advisors, consultants, representatives and other
22 professionals, and any Person claiming by or through any of them.

23 119. "Released Liabilities" means, with respect to a given Releasor, all claims, obligations,
24 suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities based on any act,
25 omission, transaction, event or other occurrence (other than rights to enforce the terms of the Plan or
26 any related document or agreement), whether known or unknown, foreseen or unforeseen, then existing
27 or thereafter arising, in law, equity or otherwise that arose prior to the Effective Date and relate to
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1 Debtor, the Plan or the Chapter 11 Case, which could have been asserted by such Releasor (or on behalf
2 of Debtor or its Estate) against any Released Party.

3 120. "Released Party" means each of: (a) Debtor and its Estate; (b) Reorganized Debtor; (c)
4 the DIP Lender; (d) the Distribution Agent; (e) the Futures Representative; (f) Professionals; (g) the
5 Secured Lenders; and (h) the respective Related Persons of each of the foregoing.

6 121. "[reserve]".

7 122. "Releasing Parties" shall have the meaning given to it in Section 12.4(a) of the Plan.

8 123. "Releasors" means each of: (a) Debtor and its Estate; (b) Reorganized Debtor; (c) the
9 DIP Lender; (d) the Distribution Agent; (e) the Futures Representative; (f) Professionals; and (g) the
10 respective Related Persons of each of the foregoing.

11 124. "Remaining Construction Defect Trust Fund" shall mean a portion of the Construction
12 Defect Trust Contribution calculated in accordance with the Cash Out Election Ratio as the remainder
13 of (x) the Construction Defect Trust Contribution, less (y) the Total Cash Out Fund, sixty percent
14 (60%) of which Remaining Construction Defect Trust Fund shall be earmarked first to be used to
15 administer the Construction Defect Trust. If less than eighty percent (80%) in number of the Holders of
16 Class 4 Construction Defect Claims actually vote to accept the Plan, there shall be no Total Cash Out
17 Fund and the Cash Out Election Ratio shall be inapplicable.

18 125. "Reorganized Debtor" means, on or after the Effective Date, Debtor as reorganized
19 debtor.

20 126. "Reorganized Debtor's Bylaws" means the amended and restated agreements that will
21 govern Reorganized Debtor as of the Effective Date, the form of which is attached as an exhibit to the
22 Disclosure Statement.

23 127. "Schedule of Assumed Contracts" means the schedule of Assumed Contracts and
24 Debtor's proposed respective Cure amounts, if any, which is attached as an exhibit to the Disclosure
25 Statement.

26 128. "Schedule of Disputed Claims" means the non-exhaustive list of Claims whose amounts
27 are disputed, which is attached as an exhibit to the Disclosure Statement.

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1 129. "Schedules" means the schedules of Assets and liabilities, the list of Holders of Interests
2 and the statements of financial affairs Filed by Debtor under Bankruptcy Code section 521 and
3 Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation Date.

4 130. "Secured" means, when referring to a Claim: (a) secured by a Lien on any Assets, which
5 Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court
6 order, or that is subject to setoff pursuant to Bankruptcy Code section 553, to the extent of the value of
7 the Creditor's interest in the Estate's interest in such property or to the extent of the amount subject to
8 setoff, as applicable, as determined pursuant to Bankruptcy Code section 506(a); or (b) a Claim deemed
9 or treated under the Plan as a Secured Claim.

10 131. "Secured Lenders" means, collectively, the "Lenders," as defined in the Term Loan
11 Documents and the New Secured Loan Documents.

12 132. "Statutory Committee" means, collectively, any committee appointed in the Chapter 11
13 Case pursuant to Bankruptcy Code section 1102.

14 133. "TDP" means the Construction Defect Trust Distribution Procedures attached as
15 Exhibit 1 to the Construction Defect Trust Declaration.

16 134. "Term Loan" means the secured loan the Secured Lenders provided to Debtor before the
17 Petition Date pursuant to the Term Loan Documents, which Term Loan, notwithstanding the
18 commencement of the Chapter 11 Case, remains outstanding as to other co-borrowers of Debtor
19 thereunder.

20 135. "Term Loan Documents" means the agreement, instruments and documents governing
21 the Term Loan, including, without limitation, that certain Term Loan Credit Agreement among
22 California Bank & Trust (individually and as Administrative Agent and as Lead Arranger), Wells Fargo
23 Bank, National Association (individually and as Syndication Agent), the Secured Lenders, certain
24 borrowers (including Debtor) and certain guarantors dated as of December 31, 2009, as amended from
25 time to time, and including exhibits thereto.

26 136. "Total Cash Out Fund" means a portion of the Construction Defect Trust Contribution
27 calculated according to the Cash Out Election Ratio.

28 137. "US Trustee Fees" means fees payable pursuant to 28 U.S.C. § 1930.

1 138. “Voting and Claims Agent” means The Garden City Group, in its capacity as
2 solicitation, notice, claims and balloting agent for Debtor.

3 139. “Voting Record Date” means the date for determining which Holders of Claims,
4 including Construction Defect Claims and Equity Interests are entitled to receive the Disclosure
5 Statement and vote to accept or reject the Plan, as established by the Disclosure Statement Order.

6 140. “Warranty Program” means all warranty obligations or customer programs established
7 by Debtor for the benefit of its customers, as modified from time to time, whether or not such
8 obligations or programs were or have been terminated according to their terms before the Petition Date
9 or during the Chapter 11 Case.

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