

Electronically Filed October 26, 2012

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

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

11 In re

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

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

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

Debtor.

MOTION FOR ORDER:
(I) APPROVING (A) ADEQUACY OF FIRST AMENDED MASTER DISCLOSURE STATEMENT, (B) ADEQUACY AND USE OF FIRST AMENDED HOME OWNER DISCLOSURE STATEMENT AS SUMMARY OF FIRST AMENDED PLAN, (C) PROCEDURES AND SCHEDULE FOR THE SOLICITATION, SUBMISSION AND TABULATION OF VOTES, (D) FORM AND SCOPE OF NOTICES, AND (E) FORM OF BALLOTS AND RELATED DOCUMENTS; (II) SCHEDULING CONFIRMATION HEARING AND RELATED DEADLINES; AND (III) GRANTING RELATED RELIEF

Hearing Date: December 11, 2012
Hearing Time: 10:00 a.m.

28 American West Development, Inc. ("Debtor"), debtor and debtor in possession in the above-captioned chapter 11 case (the "Chapter 11 Case"), respectfully submits this motion (the "Motion") for entry of an order (the "Solicitation Order") pursuant to sections 1125, 1126 and 1128 of title 11 of the

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

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

1 United States Code, §§ 101 *et. seq.* (the “Bankruptcy Code”), Rules 2002, 3016, 3017, 3018, 3020 and
2 9006(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 3016 and
3 3018 of the Local Rules of Practice for the United States District Court, District of Nevada (“Local
4 Rules”): (1) approving (a) the adequacy of the Master Disclosure Statement Prepared In Connection
5 With Debtor’s First Amended Chapter 11 Plan of Reorganization (the “Master Disclosure Statement”),
6 (b) the adequacy of the Short Form Home Owner Disclosure Statement Prepared In Connection With
7 Debtor’s First Amended Chapter 11 Plan of Reorganization (the “Home Owner Disclosure Statement”
8 and together with the Master Disclosure Statement, the “Disclosure Statements”) and the use of the
9 Home Owner Disclosure Statement as a summary of Debtor’s First Amended Chapter 11 Plan of
10 Reorganization (the “First Amended Plan”, or the “Plan”), (c) the procedures and schedule for the
11 solicitation, submission and tabulation of votes on the Plan, including, without limitation, the tabulation
12 of votes by the Futures Representative (as defined in the Plan), as set forth in **Exhibit “A”** to the
13 attached proposed form of order (the “Solicitation Procedures”), (d) the form and scope of notices, and
14 (e) the form of ballots and related documents; (2) scheduling a Plan confirmation hearing and related
15 deadlines; and (3) granting related relief.

16 This Motion is made and based upon the following memorandum of points and authorities, the
17 papers and pleadings on file with the Court in this Chapter 11 Case, and any oral arguments the Court
18 may entertain at the hearing on the Motion.

19 DATED this 26th day of October 2012.

20 **FOX ROTHSCHILD LLP**

21 By /s/Brett A. Axelrod
22 BRETT A. AXELROD, ESQ.
23 Nevada Bar No. 5859
24 MICAELA RUSTIA MOORE, ESQ.
25 Nevada Bar No. 9676
26 3800 Howard Hughes Parkway, Suite 500
27 Las Vegas, Nevada 89169
28 *Counsel for Debtor*

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF LAW
POINTS AND AUTHORITIES

I.

JURISDICTION

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

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 1125, 1126 and 1128, Bankruptcy Rules 2002, 3016, 3017, 3018 and 3020, and Local Rules 3016 and 3018.

II.

BACKGROUND

A. General Background.

4. On March 1, 2012 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

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

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

B. The Plan and Disclosure Statements.

7. Prior to the Petition Date, Debtor developed that certain Chapter 11 Plan of Reorganization [Docket No. 263] dated May 29, 2012 (the "May Plan") and obtained the support of the Secured Lenders for the May Plan pursuant to a lock-up agreement. Debtor commenced the Chapter 11 Case with the intent to proceed immediately down the path to presenting the May Plan to its creditors for acceptance or rejection and, if accepted by at least one impaired class, to the Bankruptcy Court for confirmation. The May Plan was presented for confirmation before the Court on September 25, 2012; ultimately, the Court denied Confirmation of the May Plan. In an effort to expeditiously proceed towards a successful reorganization, Debtor addressed the issues raised by the

1 Court in connection with the May Plan, and on October 26, 2012 filed its First Amended Plan and
 2 related Disclosure Statements. Pursuant to the proposed Solicitation Procedures, Debtor’s goal is to
 3 have the Plan confirmed and become effective by January 31, 2013.

4 **C. The Solicitation Procedures.**

5 8. The proposed Solicitation Procedures are attached as **Exhibit “A”** to the proposed form
 6 of Solicitation Order (which is attached hereto as **Exhibit “1”**). Certain defined terms from the
 7 Solicitation Procedures are used herein.

8 9. The Solicitation Procedures cover four main topics:

- 9 (A) Voting Eligibility: Establishment of the Record Date, Identification of Claims
 10 Eligible to Vote, Identification of Eligible Holders, Determination of Amount of
 11 Claims for Voting Purposes and Reservation of Rights re: Estimation and/or
 12 Designation;
- 13 (B) Noticing: The Confirmation Hearing Notice, Notice of Non-Voting Status,
 14 Solicitation Packages, Disputed Claim Notice, Addresses, and, Undeliverable
 15 Mail;
- 16 (C) Submission and Tabulation of Votes: Voting Deadline; Completion,
 17 Submission and Tabulation of Ballots, including, without limitation, tabulation
 18 and effect of votes submitted by the Futures Representative; and
- 19 (D) Confirmation Hearing: Confirmation Hearing and Objection Deadline.

20 10. The Solicitation Procedures refer to certain proposed Notices and forms of Ballots,
 21 copies of which are attached as **Exhibits “B”** through **“E”** to the proposed form of Solicitation Order.

22 11. A chart of the proposed dates and deadlines (prevailing Pacific Time, where applicable)
 23 set forth in the Motion and the Solicitation Procedures is as follows:

<u>Event</u>	<u>Date/Deadline</u>
Deadline for objections to Disclosure Statements	November 27, 2012 at 5:00 p.m.
Deadline to file reply to objections to Disclosure Statements	December 4, 2012
Hearing on Motion and Disclosure Statements	December 11, 2012 at 10:00 a.m.
Record Date	August 10, 2012
Solicitation Date	December 17, 2012
Deadline for objection to Plan	December 28, 2012 at 5:00 p.m.

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

Voting Deadline	January 4, 2013 at 3:00 p.m.
Deadline to file memorandum in support of confirmation of the Plan and replies to any timely-filed objections	January 8, 2013
Confirmation Hearing	January 15, 2013 at 10:00 a.m.

III.

RELIEF REQUESTED

12. By this Motion, Debtor seeks entry of an order: (1) approving (a) the adequacy of the Master Disclosure Statement, (b) the adequacy of the Home Owner Disclosure Statement and its use as a summary of the Plan, (c) the Solicitation Procedures, (d) the form and scope of notices, (e) the form of ballots and related documents; and (f) that Holders of Class 4 Claims who have not filed a proof of claim and who do not vote to accept or reject the First Amended Plan shall be deemed to have delegated to the Futures Representative their rights to vote and their rights to grant consensual non-debtor releases other than the Futures Representative; (2) scheduling a confirmation hearing and related deadlines; and (3) granting related relief.

IV.

LEGAL ARGUMENT

A. The Disclosure Statements Contain Adequate Information.

13. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed plan of reorganization must provide holders of impaired claims and interests entitled to vote on the plan with “adequate information” regarding the plan. 11 U.S.C. § 1125(b).

14. Section 1125(a)(1) of the Bankruptcy Code defines “adequate information” to mean:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether the disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

1 11 U.S.C. § 1125(a)(1).

2 15. A court has broad discretion in determining the adequacy of the information contained in
3 a disclosure statement. See In re Brothby, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (“[T]he
4 determination of what is adequate information . . . is largely within the discretion of the bankruptcy
5 court.” (quoting In re Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988))); see also In re
6 Dakota Rail, Inc., 104 B.R. 138, 143 (Bankr. D. Minn. 1989) (stating that the court has “wide discretion
7 to determine . . . whether a disclosure statement contains information, without burdensome, unnecessary
8 and cumbersome detail.”). Courts may exercise their broad discretion to determine the adequacy of
9 information contained in a disclosure statement on a case-by-case basis. See In re Diversified Investors
10 Fund XVII, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1998) (quoting legislative history); In re Ionosphere
11 Clubs, Inc., 179 B.R. 24 (Bankr. S.D.N.Y. 1995) (“determination of what is adequate information is
12 subjective and made on a case by case by case basis”).

13 16. Based on the unique factual circumstances in this Chapter 11 Case, Debtor has prepared
14 two separate disclosures statements—the Home Owner Disclosure Statement (for parties with claims
15 based on their purchase or ownership of an American West home), and the Master Disclosure Statement
16 (for other creditors and those Home Owners who wish to review additional, more detailed information
17 than the Home Owner Disclosure Statement provides). For the reasons set forth below, the Disclosure
18 Statements amply satisfy the adequate information standard under Section 1125 of the Bankruptcy Code
19 as it has been interpreted by courts in the Ninth Circuit and elsewhere.

20 **1. The Disclosure Statements Comply with Office of the United States Trustee**
21 **Guidelines.**

22 17. The Office of the United States Trustee has promulgated certain guidelines applicable to
23 chapter 11 cases, including with respect to the content of a disclosure statement. Section 7.1 of the
24 “United States Trustee Region 17 Guidelines” (applicable to cases filed in the United States Bankruptcy
25 Court for the District of Nevada) sets forth a recommend list of information to be included in a
26 disclosure statement. As set forth in the following chart, the Disclosure Statements are consistent with
27 the relevant recommendations:
28

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Recommended Information	Master Disclosure Statement	Home Owner Disclosure Statement
<p>(a) <u>PURPOSE OF THE DISCLOSURE STATEMENT</u>: The disclosure statement should state that its purpose is to provide adequate information to enable a hypothetical reasonable investor typical of the holders of claims or interests in the case to make an informed judgment about the proposed plan. The source of the information contained in the statement should be disclosed and a determination of the reliability of the information should be made.</p>	Article I	Introduction
<p>(b) <u>DESCRIPTION OF BUSINESS</u>: The statement should describe debtor's business, including those factors which may be unusual or peculiar to the business such as seasonal cycles and unique product lines.</p>	Article III, Section A	Article I, Section (A)(1)
<p>(c) <u>REASONS FOR FINANCIAL DIFFICULTIES AND CORRECTIONS MADE</u>: The statement should contain a brief narrative description of the reasons for debtor's financial difficulties leading to the Chapter 11 bankruptcy and the actions taken to alleviate the situation since the commencement of the case.</p>	Article III, Section C	Article I, Section B
<p>(d) <u>HISTORICAL AND CURRENT FINANCIAL INFORMATION</u>: The statement should include debtor's historical financial data, post-petition financial data, including updated Monthly Operating Report information and a pro forma balance sheet as of the date of confirmation. Copies of relevant Monthly Operating Reports, or excerpts, should be attached. Where possible, financial information should be provided on both a cash and accrual basis.</p>	Article III, Section B	Article I, Section (A)(2)
<p>(e) <u>MATERIAL POST-PETITION EVENTS</u>: The statement should describe significant post-petition events (e.g., appointment of a creditor's committee and the position of the committee with respect to the plan, a trustee, or an examiner, post-petition financing or sale of</p>	Article IV	Article III, Section C (refers to Master Disclosure Statement)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Recommended Information	Master Disclosure Statement	Home Owner Disclosure Statement
assets, and any modification or termination of the automatic stay).		
(f) <u>LEGAL PROCEEDINGS</u> : The statement should briefly describe all material legal proceedings to which Debtor is, or may become, a party. The description should include the court in which the litigation is pending, its present status, the relief sought, and the effect, if any, on the plan.	Article III, Section C(2)	Article III, Section C (refers to Master Disclosure Statement)
(g) <u>ASSETS</u> : The statement should provide a review of the scheduled assets and their values, an estimate of the current value of all debtor's assets and the basis of such estimated values, (e.g., cost or appraisals), and an explanation of any deviation from the scheduled value.	Article IV, Section D(1)(a)	Article III, Section C (refers to Master Disclosure Statement)
(h) <u>LIABILITIES</u> : The statement should provide a review of the scheduled claims and their amounts and an estimate of the current amounts of all debtor's liabilities, including proofs of claim filed in the case. The disclosure statement should indicate whether any claims are disputed and what action will be taken to resolve the dispute	Article IV, Section D(1)(b)	Article III, Section C (refers to Master Disclosure Statement)
(i) <u>DESCRIPTION OF THE PLAN</u> : The statement should give a description of the major provisions of the plan, including, where practicable, estimated date creditors can expect to receive payment, expected percentage return on claims, description and approximate size of each class of creditors together with the estimated aggregate dollar amount of the claims in each class and summary of the treatment of each class. The description need not be detailed and may refer to the plan for more information.	Article V	Article II
(j) <u>MEANS OF EFFECTUATING THE PLAN</u> : The statement should include how the goals of the plan are to be accomplished, e.g., infusion of cash by an investor, sale of real or personal property, continued business operations, or issuance of stock. If an investor	Article V, Section C	Article II, Section D

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Recommended Information	Master Disclosure Statement	Home Owner Disclosure Statement
is to provide funds, financial information about the investor should be included.		
(k) <u>CASH REQUIREMENTS AND ADMINISTRATIVE EXPENSES</u> : The statement should describe the amount and source of cash to be paid upon confirmation of the plan or its effective date. The disclosure statement should also describe the administrative expenses, including an estimate of the amount of professional fees and costs that must be paid, the parties to whom the expenses are owed, and whether any parties consent to an alternative treatment	Exhibits C and D	Article III, Section C (refers to Master Disclosure Statement)
(l) <u>LIQUIDATION ANALYSIS</u> : The statement should describe the difference between treatment of creditors under the plan and treatment under a Chapter 7 liquidation. The statement should estimate the recovery on potential avoidance actions, if any. Where debtor is a partnership, the disclosure statement should describe the rights of a Chapter 7 trustee under 11 U.S.C. § 723, including an estimate of any recovery and relevant financial information about the general partners. Assumptions regarding liquidation values should be disclosed.	Exhibit B	Article III, Section B(4)(c)
(m) <u>PROJECTIONS</u> : Where applicable, the statement should include projections as far into the future as practicable, including assumptions used in formulating the projections such as expected sales levels, gross income and net profit/loss levels, and inventory acquisition, and an explanation of why the projections are realistic. The period covered by the projections should coincide with the period of payment deferral under the plan.	Exhibits C and D	Article III, Section B(4)(d)
(n) <u>MANAGEMENT COMPENSATION</u> : The statement should contain the information required by 11 U.S.C. § 1129(a)(5). For a plan implemented over time, the statement should identify persons that will control the debtor following confirmation and describe the nature	Article V, Section C(6)	Article II, Section D

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

Recommended Information	Master Disclosure Statement	Home Owner Disclosure Statement
and extent of control to be exercised; the business of the controlling person; the identity and experience of management of the controlling person; the identity of affiliates of the controlling person; the transaction whereby control is to be acquired; the business plans, if known, of the controlling person for debtor; pertinent financial information about the controlling person, if available; and bonding information, if applicable.		
(o) <u>INSIDER CLAIMS</u> : For claims of insiders, the statement should disclose the identity of each claimant, the claimant's affiliation to debtor, the circumstances giving rise to the claim, and the amount and treatment of the claim. The statement should also include any material consideration provided or to be provided to an insider in connection with the case, regardless of the source of payment or whether the consideration is payable under the plan.	Article V	Introduction; Article II, Section F (refers to Master Disclosure Statement)
(p) <u>STOCK ISSUED FOR DEBT</u> : If the plan provides for the issuance of stock for all or part of the debt, the statement should state whether the stock is exempt from securities laws under 11 U.S.C. § 1145. The disclosure statement should describe the nature of the stock or securities, including voting rights, accumulation of dividends, liquidation preference, the existence of other classes of stock, and registration rights.	Article V, Section C(2)	Article II, Section D (refers to Master Disclosure Statement)
(q) <u>VOTING</u> : The statement should describe in detail the vote required to constitute acceptance of the plan as set forth in 11 U.S.C. § 1126.	Article VI, Sections A and B	Article III, Sections B(1) and (2)
(r) <u>SIGNATURE</u> : The disclosure statement shall be signed by the debtor.	Article XI	Article IV

18. The Guidelines provide a comprehensive roadmap for the scope of information that a disclosure statement should provide in order to satisfy the requirements of section 1125 of the Bankruptcy Code. As illustrated by the foregoing summary chart, Debtor has faithfully heeded this

1 guidance in drafting the Disclosure Statements. Moreover, there are only three classes of claims
 2 eligible to vote under the Plan, with Class 2 being comprised of Secured Lender claims that the
 3 Secured Lenders have already committed to vote in favor of the Plan. Therefore, the primary use for
 4 the Disclosure Statements will be in soliciting votes from Eligible Holders in Classes 3 and 4, which
 5 are likely to consist primarily of Home Owners. For this reason, Debtor devoted particular attention to
 6 the Home Owner audience by drafting the Home Owner Disclosure Statement, which complements
 7 the Master Disclosure Statement's more exhaustive, in-depth discussion of the Plan.

8 **2. The Home Owner Disclosure Statement Provides Adequate Information for**
 9 **Home Owners.**

10 19. Consistent with the flexible, fact-specific nature of the "adequate information"
 11 requirement, section 1125(c) expressly authorizes the transmittal of separate and distinct disclosure
 12 statements, "differing in amount, detail or kind of information," to different classes under a plan.
 13 11 U.S.C. § 1125(c). See also In re Monroe Well Services, Inc., 80 B.R. 324, 332 n. 9 (Bankr. E.D. Pa.
 14 1987) (citing 11 U.S.C. § 1125(c)); In re Bloomingdale Partners, 155 B.R. 961, 972 (Bankr. N.D. Ill.
 15 1993); In re Zenith Electronics Corp., 241 B.R. 92, 99 (Bankr. D. Del. 1999) ("[i]n considering the
 16 adequacy of a disclosure statement, it is important to keep in mind the audience" to which the disclosure
 17 statement is addressed.).

18 20. Based on the thousands of homes that Debtor built in the years leading up to the Petition
 19 Date and Debtor's current payment of trade creditors in the ordinary course of business, Debtor
 20 anticipates that the bulk of unsecured claims to be asserted against its estate are likely to come from
 21 Home Owners based on issues arising out of the purchase or ownership of such homes. Debtor
 22 anticipates that the majority of Home Owners are not well-versed in the particulars of the Bankruptcy
 23 Code and are not likely to find the technical and complex explanations of Debtor's business and
 24 operations, the Chapter 11 Case and the entirety of the Plan helpful in determining whether to accept or
 25 reject the Plan. Instead, certain basic elements of the Plan will be crucial to most Home Owners, yet
 26 they may have difficulty gleaning these key Plan provisions from the hundreds of pages of detail
 27 contained in the Plan, Master Disclosure Statement and exhibits.

28 21. Accordingly, the Home Owner Disclosure Statement distills the approximately 91 pages

1 comprising the Master Disclosure Statement and the exhibits and other attachments thereto into a more
 2 concise and plainly stated package. Although the Home Owner Disclosure Statement is less detailed
 3 than the Master Disclosure Statement, Debtor submits that the Home Owner Disclosure Statement
 4 contains the key information relevant to the solicitation of votes from Home Owners. In doing so, the
 5 Home Owner Disclosure Statement considers the Home Owner audience and provides it with the
 6 necessary information to cast an informed vote on the Plan consistent with the requirements of section
 7 1125.

8 22. Disclosure Regarding “Self Insured Retention”. In light of the previous holding of this
 9 Court made in the context of the confirmation hearing on the May Plan, Debtor has devoted special
 10 attention to ensuring the disclosure of adequate information regarding certain “Self Insured Retention”
 11 (“SIR”) amounts that may be due under Debtor’s insurance policies. See Master Disclosure Statement,
 12 Article VII, Section B; Home Owner Disclosure Statement, Article VIII, Section A(2). In the
 13 Disclosure Statements, Debtor informs parties in interest that:

14 The success of the Construction Defect Trust in recovering proceeds of
 15 insurance policies is uncertain. Debtor’s insurance policies are subject
 16 to numerous terms and conditions, including deductibles or self-insured
 17 retention (“SIR”) amounts that may be determined on a “per occurrence”
 18 basis. For the insurance policy in place as of the Petition Date, the
 19 applicable SIR is \$50,000. For certain prior years, the SIR amounts are
 20 as high as \$3,000,000. The insurers may contest claims made by the
 21 Construction Defect Trust on a number of grounds, including that
 22 insurance proceeds will not be made available unless and until actual
 payment in the amount of the applicable SIR has been made. Resolving
 any such disputes may involve significant expense and delay. The
 amount (or lack) of success in recovering insurance proceeds could have
 a significant impact on recoveries for any Home Owners with Allowed
 Construction Defect Claims.

23 Id. Debtor respectfully submits that the foregoing clearly and adequately informs all parties in interest
 24 of the uncertainties and risks that may be inherent to recovering proceeds of insurance policies.

25 23. Therefore, because the Disclosure Statements each contain the information relevant to
 26 Eligible Holders voting in the class(es) to which they respectively are directed, the Court should
 27 approve the Disclosure Statements in tandem as containing adequate information regarding the Plan
 28 pursuant to section 1125 of the Bankruptcy Code. Moreover, Debtor specifically respectfully requests

1 that the Court find that the disclosures related to the SIR provisions of Debtor's insurance policies are
2 adequate, sufficient, and satisfy the requirements of section 1125(a) of the Bankruptcy Code.

3 **B. The Home Owner Disclosure Statement Provides a Sufficient Summary of the Plan for**
4 **Home Owners.**

5 24. Bankruptcy Rule 3017(d) permits a plan proponent to transmit to parties whose votes are
6 being solicited a "court-approved summary of the plan" in lieu of the full plan. Fed. R. Bank. P.
7 3017(d). For the same reason that Debtor prepared the Home Owner Disclosure Statement for
8 transmission to Home Owners (in lieu of the Master Disclosure Statement), Debtor also drafted the
9 Home Owner Disclosure Statement to contain (and comprise) a summary of the Plan. Debtor does not
10 believe that the vast majority of Home Owners will find a review of the Plan's technical legal language
11 to be helpful (or even understandable). The Home Owner Disclosure Statement summarizes the key
12 terms and concepts embodied in the Plan in a more "plain English" way. In the event that a particular
13 Home Owner wishes to review either the complete Plan or the Master Disclosure Statement, the Home
14 Owner Disclosure Statement prominently provides directions regarding how to obtain a copy of either
15 or both free of charge. Accordingly, Debtor submits that the Court should approve the Home Owner
16 Disclosure Statement as containing and comprising a summary of the Plan in accordance with
17 Bankruptcy Rule 3017(d).

18 **C. The Proposed Solicitation Procedures are Fair, Appropriate and Consistent With the**
19 **Bankruptcy Code, the Bankruptcy Rules and the Local Rules.**

20 25. Debtor is seeking to move the Chapter 11 Case toward confirmation of the Plan and
21 emerge from bankruptcy protection as expediently and efficiently as possible. In doing so, Debtor
22 remains cognizant of the need to ensure that its many constituents, including thousands of Home
23 Owners, receive sufficient notice of, and clear information about, the Plan solicitation and confirmation
24 processes. Indeed, the large number of potential Home Owner claimants calls for particular attention to
25 be placed on formulating fair and well designed procedures for the solicitation, submission and
26 tabulation of votes to accept or reject the Plan.

27 26. Debtor carefully crafted the Solicitation Procedures to strike a balance among these
28 challenging factual dynamics and the requirements of the Bankruptcy Code, the Bankruptcy Rules and

1 the Local Rules. As noted above, the Solicitation Procedures cover four main topics: (1) Voting
2 Eligibility; (2) Noticing; (3) Submission and Tabulation of Votes; and (4) the Confirmation Hearing.
3 The basis for the terms of the Solicitation Procedures is discussed below with respect to each of these
4 four main topics.

5 27. Notably, the Solicitation Procedures provide that all objections to Claims previously
6 brought by Debtor (“Previous Objections”) and all orders of this Court relating to such Previous
7 Objections, regardless of whether such Previous Objections purported to be limited for purposes
8 relating to the May Plan, shall apply with equal force and effect for all purposes relating to the First
9 Amended Plan, including, without limitation, for purposes of determining the voting eligibility or
10 voting amount of such Claims in connection with the First Amended Plan.

11 **1. Voting Eligibility.**

12 28. The Voting Eligibility section of the Solicitation Procedures establishes clear and
13 reasonable parameters for identifying which claims may be voted to accept or reject the Plan within the
14 Impaired Classes, which parties will be entitled to vote such claims (i.e. in the event of a claim transfer),
15 and the amount in which such claims may be voted.

16 29. The Voting Eligibility parameters are firmly grounded in the Bankruptcy Rules and the
17 Bankruptcy Code. Section 1126(a) of the Bankruptcy Code limits the right to vote to accept or reject a
18 chapter 11 plan to holders of “allowed” claims or interests. Bankruptcy Rule 3003(b)(1) provides that a
19 debtor’s schedule of liabilities “shall constitute prima facie evidence of the validity and amount of the
20 claims of creditors unless they are scheduled as disputed, contingent or unliquidated [and it] shall not be
21 necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in
22 [Rule 3003(c)(2)].” Bankruptcy Rule 3003(c)(2) provides that any creditor whose claim is not
23 scheduled or is scheduled as disputed, contingent or unliquidated shall file a proof of claim within the
24 time fixed by the court, and that any creditor who fails to do so “shall not be treated as a creditor with
25 respect to such claim for the purposes of voting and distribution.” Section 502(a) of the Bankruptcy
26 Code provides that the filing of a proof of claim shall cause such claim to be “deemed allowed, unless a
27 party in interest . . . objects.”
28

1 30. The Solicitation Procedures follow these provisions by identifying Eligible Holders and
 2 the amount of their claims for voting purposes according to (a) Debtor’s schedules, (b) filed proofs of
 3 claim, and/or (c) agreement of Debtor or order of the Bankruptcy Court. In the event an objection is or
 4 has been filed with respect to a particular claim, the Solicitation Procedures contemplate that such claim
 5 may be temporarily allowed for voting purposes in accordance with Bankruptcy Rule 3018(a). Also
 6 consistent with Bankruptcy Rule 3018(a), the Solicitation Procedures set August 10, 2012¹ as the date
 7 (the “Record Date”) upon which the Holder of a particular Claim as of the Record Date is identified as
 8 the party entitled to vote such Claim to accept or reject the Plan. Finally, the Solicitation Procedures
 9 preserve Debtor’s ability to seek estimation of a claim pursuant to section 502(c) and/or designation of a
 10 party’s vote under section 1126(e). Notably, any previous orders of this Court estimating a claim
 11 pursuant to section 502(c) made with regard to the May Plan shall apply with equal force and effect for
 12 all purposes relating to the First Amended Plan.

13 31. Futures Representative Voting on Behalf of Non-Responding Class 4 Construction
 14 Defect Claim Holders: The Court previously tasked the Futures Representative with the responsibility
 15 and duty to, *inter alia*, (i) file proofs of claim on behalf of Future Construction Defect Claimants,
 16 (ii) advocate the legal position of the Future Construction Defect Claimants in this Chapter 11 Case, and
 17 (iii) file such pleadings in this Chapter 11 Case as are necessary and appropriate on behalf of Future
 18 Construction Defect Claimants. See Order Appointing Future Claims Representative [Docket No. 189].

19 32. Consistent with the Court’s order, the Futures Representative filed proofs of claim in the
 20 Chapter 11 Case on behalf of Future Construction Defect Claimants (the “FCR POC”). Moreover, in
 21 connection with the May Plan, Debtor entered into a stipulation [Docket Nos. 511, 605] (the “Futures
 22 Rep Stipulation”) with the Futures Representative which provided that the Futures Representative shall
 23 be entitled to vote the claims set forth in the FCR POC as follows:

- 24 a. The Futures Representative shall only be entitled to submit a Class 4 Construction
 25 Defect Claim ballot on behalf of home owners (“Non-Responding Home Owners”) who

27 _____
 28 ¹ This is the same Record Date authorized and employed in connection with the May Plan.

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

- 1 (i) did not file their own proof of claim, and (ii) did not complete and submit their own
2 ballot;
- 3 b. Any such ballot(s) submitted by the Futures Representative shall be tabulated (i) as a
4 single, separate vote for each residence owned by the applicable Non- Responding
5 Home Owner(s), and (ii) in the amount of \$1,000 for each such Non-Responding Home
6 Owner; and
- 7 c. The foregoing provisions are solely for the purpose of voting on the Plan and shall have
8 no effect on the allowance or disallowance of any Class 4 Construction Defect Claim,
9 whether asserted by or on behalf of Non- Responding Home Owners or otherwise, and
10 the rights of all parties with respect thereto are expressly reserved.

11 33. Particularly in light of the Court’s ruling denying confirmation of the May Plan, it is
12 crucial that all parties have clarity regarding the role of the Futures Representative in the voting process
13 for the current Plan. Therefore, as part of the Solicitation Procedures for the Plan, Debtor is seeking:

- 14 a. To keep the Futures Rep Stipulation in full force and effect, so that the Futures
15 Representative will be entitled to submit a vote on the First Amended Plan on behalf of
16 Non-Responding Home Owners according to the same terms, and
- 17 b. To clarify that a vote by the Futures Representative to accept the First Amended Plan
18 on behalf of Non-Responding Home Owners will be effective to bind the Non-
19 Responding Home Owners to the release set forth in section 12.4(b) of the First
20 Amended Plan.

21 Specifically, the Futures Representative shall vote the claims of those Holders of Class 4 Claims who
22 have not filed a proof of claim and who do not vote on the Plan. Votes by the Futures Representative
23 submitted on behalf of the Non-Responding Home Owners shall be deemed to have the same force and
24 effect as a vote actually made by such Holders of Class 4 Claims, including, without limitation, to grant
25 the releases of Debtor and certain non-debtor parties set forth in Section 12.4(b) of the Plan.

26 34. The Bankruptcy Code permits a designated representative (like the Futures
27 Representative) to vote on another party’s behalf under appropriate circumstances such as these. See,
28 e.g., In re Avondale Gateway Center Entitlement, LLC, 2011 WL 1376997 (D. Ariz. 2011) (citing

1 authorities). Indeed, Bankruptcy Rule 3018(c) expressly recognizes that acceptance or rejection of a
2 chapter 11 plan may be submitted by an authorized agent of an eligible creditor. Fed. R. Bankr. P.
3 3018(c). Thus, courts have accepted votes cast on behalf of creditors by other designated
4 representatives, such as a court-appointed examiner, see In re Swyter, 263 B.R. 742, 744 (E.D. Va.
5 2001), or a subrogee under an intercreditor agreement, see Avondale at id. Here, the Court previously
6 charged the Futures Representative with the responsibility and duty to act on behalf of Future
7 Construction Defect Claimants in the Chapter 11 Case. In this capacity, the Futures Representative
8 properly may submit a vote to accept or reject the Plan on behalf of Non-Responding Home Owners
9 and thereby grant the releases of Debtor and certain non-debtor parties, other than himself as Futures
10 Representative, as set forth in Section 12.4(b) of the Plan. In doing so, the Futures Representative will
11 not disenfranchise any Class 4 claimant, because votes properly submitted by individual home owners
12 will be counted (and excluded from any ballot submitted by the Futures Representative). Moreover,
13 the stated intention of the Futures Representative to vote in favor of the First Amended Plan on behalf
14 of Non-Responding Home Owners (and thereby grant the section 12.4(b) releases) is plainly spelled out
15 in the Home Owner Disclosure Statement and on the Class 4 Ballot. Therefore, the provisions in the
16 Solicitation Procedures regarding voting by the Futures Representative on behalf of Non-Responding
17 Home Owners are necessary and appropriate under applicable law and the facts and circumstances of
18 this Chapter 11 Case.

19 **2. Noticing.**

20 35. The Noticing section of the Solicitation Procedures describes the manner in which
21 Debtor will solicit votes to accept or reject the Plan and otherwise provide notice of the confirmation
22 hearing and the solicitation process.

23 36. Bankruptcy Rule 2002 requires that twenty-eight (28) days' notice of the time fixed for
24 filing objections and of the hearing to consider confirmation of a chapter 11 plan must be provided to,
25 inter alia, all creditors. Bankruptcy Rule 2002(f) provides that notice of the time fixed for accepting or
26 rejecting a plan pursuant to Bankruptcy Rule 3017(c) shall be given in accordance with Bankruptcy
27 Rule 3017(d). Bankruptcy Rule 3017(c) provides that "on or before approval of the disclosure
28 statement, the court shall fix a time within which the holders of claims and interests may accept or

1 reject the plan and may fix a date for the hearing on confirmation.” Bankruptcy Rule 3017(d) requires
2 that all creditors in impaired classes receive (1) the plan or a court-approved summary of the plan,
3 (2) the disclosure statement approved by the court, (3) notice of the time within which acceptances and
4 rejections of the plan may be filed, and (4) other information as the court may direct. All creditors
5 entitled to vote on the plan must also receive a ballot (conforming to the Official Form) and notice of
6 the confirmation hearing and objection deadline. See id. Creditors in unimpaired classes may be sent
7 notice regarding their non-voting status in lieu of a plan and disclosure statement, along with notice of
8 the confirmation hearing and objection deadline. See id.

9 37. The Solicitation Procedures, and based on the relief requested herein, comply with the
10 provisions of Bankruptcy Rules 2002 and 3017 by providing for the Confirmation Hearing Notice
11 (which includes information regarding the Confirmation Hearing and the deadline to object to the Plan)
12 to be served on all creditors, and for the Solicitation Packages to be served on Eligible Holders. This
13 service will be completed on or before the Solicitation Date of December 17, 2012, which is more than
14 twenty-eight (28) days before the requested confirmation hearing. Moreover, pursuant to Rules 3017(c)
15 and 9006(c) and on account of the fact that the First Amended Plan documents are substantially similar
16 to the May Plan documents that parties in interest previously had ample opportunity to review and
17 comment, Debtor requests through this Motion that the deadline for any objections here to be set as 5:00
18 p.m. prevailing Pacific Time on December 28, 2012; and likewise, that the deadline for any replies to
19 oppositions to confirmation of the Plan shall be set as January 8, 2013. The Solicitation Packages
20 contain the materials required by Bankruptcy Rule 3017(d) and are tailored to the recipients (i.e., Home
21 Owner vs. non-Home Owner creditors). The Solicitation Procedures also provide for the Notice of
22 Non-Voting Status to be served on creditors in Unimpaired Classes (as well as to Holders of Interests,
23 which are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code).

24 38. Notably, Debtor previously published notice of the confirmation hearing held in
25 connection with the May Plan (the “Notice by Publication”). Specifically, prior to the solicitation date
26 for the May Plan, Debtor published notices in the *Wall Street Journal* and in the *Las Vegas Review-*
27 *Journal*. Through the Notice by Publication, all parties in interest not otherwise directly served with
28 pleadings in this Chapter 11 Case were provided constructive notice of the pendency of this Chapter 11

1 Case and given ample opportunity to formally request notice of all proceedings in this Chapter 11 Case
2 – including of the Confirmation Hearing. For this reason, Debtor respectfully requests that the Court
3 find that the previous Notice by Publication, combined with the additional notices that are proposed to
4 be mailed out by Debtor as set forth above, collectively satisfy all noticing requirements promulgated
5 by the Bankruptcy Rules, including by Bankruptcy Rules 2002 and 3017.

6 **3. Submission and Tabulation of Votes.**

7 39. In accordance with Bankruptcy Rule 3017(c), Debtor is requesting that the Court set
8 January 4, 2013 at 3:00 p.m. (prevailing Pacific Time) as the Voting Deadline. With solicitation taking
9 place on or before the Solicitation Date of December 17, 2012, parties will have 18 days notice to
10 submit their Ballots on or before the Voting Deadline, which is more than sufficient under the
11 circumstances.

12 40. Local Rule 3018 requires, inter alia, that a plan proponent must (a) file a Certification of
13 Acceptance and Rejection of Chapter 11 Plan (a/k/a ballot summary or voting report) no later than
14 one (1) business day before the confirmation hearing, and (b) tabulate the ballots of those accepting and
15 rejecting the plan. The Solicitation Procedures contain detailed provisions for the submission and
16 tabulation of Ballots. These provisions are designed to provide clarity from the outset regarding the
17 way in which votes to accept or reject the Plan will be counted, in order to avoid confusion or disputes
18 after the process is underway. As such, they are consistent with Local Rule 3018, Bankruptcy Rule
19 3018(c) and section 1126 of the Bankruptcy Code.

20 41. The Solicitation Procedures provide that votes submitted by the Futures Representative
21 on behalf of the Non-Responding Home Owners shall be tabulated and have the same force and effect
22 as if such votes were submitted by such Holders of Class 4 Claims themselves. Specifically, Holders
23 Of Class 4 Claims who have not filed a proof of claim and who do not vote shall be deemed to have
24 delegated to the Futures Representative their rights to vote and their rights to grant the consensual non-
25 debtor releases set forth in section 12.4(b) of the Plan.

26 **4. Confirmation Hearing.**

27 42. Section 1128(a) of the Bankruptcy Code provides that the court shall hold a hearing on
28 confirmation of a plan. Section 1128(b) provides that a party in interest may object to confirmation of a

1 plan. In accordance with these sections, Debtor is requesting that the Court schedule the Confirmation
2 Hearing for January 15, 2013 at 10:00 a.m. with an objection deadline of December 28, 2012 at 5:00
3 p.m. In addition, the Confirmation Hearing section of the Solicitation Procedures sets forth additional
4 procedures regarding continuance of the Confirmation Hearing and objections to confirmation of the
5 Plan. These provisions are consistent with common practice and are fairly designed to facilitate the
6 efficient use of time and resources by the court and parties in interest.

7 43. Therefore, because the Solicitation Procedures are consistent with the Local Rules,
8 Bankruptcy Rules and Bankruptcy Code, and otherwise provide for a fair and efficient means for
9 Debtor to conduct the solicitation and confirmation process, they should be approved by the Court.

10 **D. The Proposed Forms of Notices and Ballots are Clear and Complete.**

11 44. Debtor has drafted proposed forms of Ballots for use in soliciting votes to accept or
12 reject the Plan, as well as proposed forms of the Confirmation Hearing Notice, Notice of Non-Voting
13 Status and Disputed Claim Notice. Each of these forms was designed to comply with applicable
14 provisions of the Bankruptcy Rules and the Bankruptcy Code. At the same time, the proposed forms
15 were crafted to account for the unique characteristics of the Chapter 11 Case and the members of
16 Debtor's creditor body (including the many Home Owners).

17 45. The Confirmation Hearing Notice includes information about (i) the time and location of
18 the Confirmation Hearing, (ii) the time and manner in which any objections to the Plan must be
19 submitted, and (iii) the method by which parties may obtain further information regarding the Plan.
20 Because the Plan provides for channeling injunctions as part of the treatment for Class 4 Construction
21 Defect Claims, the Confirmation Hearing Notice also includes in conspicuous language
22 (**[(bold/italic/underlined)]**) a statement that the Plan proposes an injunction, describes briefly the nature
23 of the injunction, and identifies the entities that would be subject to the injunction. See Fed. R. Bankr.
24 P. 2002(c)(3).

25 46. The Ballot forms generally conform to the Official Form, with some modifications
26 unique to Debtor's circumstances. Chief among these is the inclusion of the Cash Out Election option
27 within the Ballot for Eligible Holders of Class 4 Construction Defect Claims. The Class 4 Ballot
28 provides three options for Eligible Holders: (a) vote to accept the Plan and make the Cash Out Election;

1 (b) vote to accept the Plan but decline the Cash Out Election; or (c) vote to reject the Plan. The Ballot
2 instructions clearly explain the necessary steps to complete and submit the Ballot. Notwithstanding the
3 foregoing, if less than eighty percent (80%) in number of the Holders of Class 4 Construction Defect
4 Claims actually vote to accept the Plan there shall be no Cash Out Election there shall be no Cash Out
5 Election available and the Claims of all Holders of Claims in Class 4 shall be processed, liquidated and
6 paid pursuant to the terms and provisions of the Construction Defect Trust Distribution Procedures.
7 The Construction Defect Trust Contribution shall be either (1) one million five hundred thousand
8 dollars (\$1,500,000) or (2) five hundred thousand dollars (\$500,000) if less than eighty percent (80%)
9 in number of the Holders of Class 4 Claims vote to accept the Plan.

10 47. The Class 4 Ballot further sets forth that those Holders Of Class 4 Claims who have not
11 filed a proof of claim and who do not vote to accept or reject the Plan shall be deemed to have delegated
12 to the Futures Representative their rights to vote and their rights to grant the consensual non-debtor
13 releases set forth in section 12.4(b) of the Plan.

14 48. The Notice of Non-Voting Status and the Disputed Claims Notice are similarly designed
15 to clearly and concisely present the necessary information to the intended recipients, with specific
16 direction on how to obtain additional information as needed.

17 49. Therefore, the Court should approve the proposed forms of Ballots, Confirmation
18 Hearing Notice, Notice of Non-Voting Status and Disputed Claim Notice attached as **Exhibits “B”**
19 through **“E”** to the proposed form of Solicitation Order attached hereto.

20 **V.**

21 **NOTICE**

22 50. Bankruptcy Rule 2002(b) requires that, inter alia, all creditors receive twenty-eight (28)
23 days’ notice of the time for filing objections and the hearing to consider approval of a disclosure
24 statement. Bankruptcy Rule 3017(a) provides that the plan and disclosure statement shall be mailed
25 with the notice of the hearing only to the debtor, any trustee or committee appointed under the
26 Bankruptcy Code, the Securities and Exchange Commission, and any party in interest who requests in
27 writing a copy of the statement or plan. Bankruptcy Rule 3017(a) further provides that notice of the
28 disclosure statement hearing must be provided to the debtor, creditors, equity security holders and

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

1 other parties in interest.

2 51. Copies of this Motion, the Plan and the Disclosure Statements are being served on
3 October 26, 2012 by electronic mail or U.S. Mail to the following parties or their counsel: (a) the
4 Office of the United States Trustee for the District of Nevada; (b) counsel to the DIP Lender; (c)
5 counsel to Secured Lenders; (d) the governmental agencies required by Local Rule 2002(b) and
6 Bankruptcy Rule 2002(j); (e) all parties listed on the List of Creditors Holding the 20 Largest
7 Unsecured Claims; (f) the Futures Representative and his counsel; and (g) any party requesting special
8 notice in the Chapter 11 Case and any other party in interest who requests a copy of the Disclosure
9 Statement(s) or the Plan.

10 52. In addition, notice of this Motion and the Disclosure Statements is being served on
11 October 26, 2012 via U.S. Mail on (i) each of the parties listed in the foregoing paragraph, (ii) all
12 creditors on Debtor’s master mailing matrices; (iii) all creditors listed in Debtor’s schedules, (iv) any
13 entity that has filed a proof of claim in the Chapter 11 Case, and (v) all equity security holders.
14 Therefore, Debtor submits that notice of this Motion is proper and no other or further notice need be
15 provided.

16 ///

17 ///

18 VI.

19 CONCLUSION

20 WHEREFORE, based upon all the foregoing, as set forth in this Memorandum, the Motion and
21 all other papers, documents, or other evidence submitted in support of the Motion, Debtor respectfully
22 requests that the Court grant the Motion in its entirety and: (1) approve (a) the adequacy of the Master
23 Disclosure Statement, (b) the adequacy of the Home Owner Disclosure Statement and its use as a
24 summary of the Plan, (c) the adequacy of the disclosures contained in the Disclosure Statements
25 relating to the SIR provisions of Debtor’s insurance policies, (d) the Solicitation Procedures in the form
26 attached as **Exhibit “A”** to the proposed Solicitation Order, (e) that Holders of Class 4 Claims who
27 have not filed a proof of claim and who do not vote to accept or reject the Plan shall be deemed to have
28 delegated to the Futures Representative their rights to vote and their rights to grant consensual non-

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

1 debtor releases, other than to himself as Futures Representative, (f) the form and scope of the
2 Confirmation Hearing Notice, Notice of Non-Voting Status and Disputed Claim Notice, and (g) the
3 forms of Ballots; (2) schedule the confirmation hearing and related deadlines; and (3) grant to Debtor
4 such other relief as the Court deems necessary and appropriate.

5 DATED this 26th day of October 2012.

6 **FOX ROTHSCHILD LLP**

7 By /s/Brett A. Axelrod

8 BRETT A. AXELROD, ESQ.

9 Nevada Bar No. 5859

10 MICAELA RUSTIA MOORE, ESQ.

11 Nevada Bar No. 9676

12 3800 Howard Hughes Parkway, Suite 500

13 Las Vegas, Nevada 89169

14 *Counsel for Debtor*

15
16
17
18
19
20
21
22
23
24
25
26
27
28
FOX ROTHSCHILD LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
(702) 262-6899
(702) 597-5503 (fax)

EXHIBIT "1"

PROPOSED SOLICITATION ORDER

BRETT A. AXELROD, ESQ.

Nevada Bar No. 5859

MICAELA RUSTIA MOORE, ESQ.

Nevada Bar No. 9676

FOX ROTHSCHILD LLP

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Telephone: (702) 262-6899

Facsimile: (702) 597-5503

Email: baxelrod@foxrothschild.com

mmoore@foxrothschild.com

Counsel for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

AMERICAN WEST DEVELOPMENT,
INC., a Nevada corporation,

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

Debtor.

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

Chapter 11

ORDER: (I) APPROVING (A) ADEQUACY OF FIRST AMENDED MASTER DISCLOSURE STATEMENT, (B) ADEQUACY AND USE OF FIRST AMENDED HOME OWNER DISCLOSURE STATEMENT AS SUMMARY OF FIRST AMENDED PLAN, (C) PROCEDURES AND SCHEDULE FOR THE SOLICITATION, SUBMISSION AND TABULATION OF VOTES, (D) FORM AND SCOPE OF NOTICES, AND (E) FORM OF BALLOTS AND RELATED DOCUMENTS; (II) SCHEDULING CONFIRMATION HEARING AND RELATED DEADLINES; AND (III) GRANTING RELATED RELIEF

Hearing Date: December 11, 2012

Hearing Time: 10:00 a.m.

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

1 The Court, having reviewed and considered the Motion [Docket No. ____] (the “Motion”) filed
2 by American West Development, Inc. (“Debtor”), debtor and debtor in possession in the above-
3 captioned chapter 11 case (the “Chapter 11 Case”), for entry of an order (the “Solicitation Order”)
4 pursuant to sections 1125, 1126 and 1128 of title 11 of the United States Code, §§ 101 *et. seq.* (the
5 “Bankruptcy Code”), Rules 2002, 3016, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy
6 Procedure (the “Bankruptcy Rules”), and Rules 3016 and 3018 of the Local Rules of Practice for the
7 United States District Court, District of Nevada (the “Local Rules”): (1) approving (a) the adequacy of
8 the Master Disclosure Statement Prepared In Connection With Debtor’s First Amended Chapter 11 Plan
9 of Reorganization (the “Master Disclosure Statement”), (b) the adequacy of the Short Form Home
10 Owner Disclosure Statement Prepared In Connection With Debtor’s First Amended Chapter 11 Plan of
11 Reorganization (the “Home Owner Disclosure Statement” and together with the Master Disclosure
12 Statement, the “Disclosure Statements”) and the use of the Home Owner Disclosure Statement as a
13 summary of Debtor’s First Amended Chapter 11 Plan of Reorganization (the “Plan”), (c) the
14 procedures and schedule for the solicitation, submission and tabulation of votes on the Plan (the
15 “Solicitation Procedures”), including, without limitation, the tabulation and effect of votes by the
16 Futures Representative (as defined in the Plan) submitted on behalf of Holders of Class 4 Construction
17 Defect Claims who have not filed a proof of claim and who fail to vote, (d) the form and scope of
18 notices, and (e) the form of ballots and related documents; (2) scheduling the Plan confirmation hearing
19 and related deadlines; and (3) granting related relief; and it appearing that the relief requested is in the
20 best interests of Debtor’s estate, its creditors and all other parties in interest; and the Court having
21 jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and
22 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant
23 to 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409;
24 and the Court having reviewed and considered all other pleadings and evidence submitted by the parties
25 in connection with the Motion; and due and proper notice of the Motion having been provided; and it
26 appearing that no other or further notice need be provided; and the Court having determined that the
27 legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the
28 Court having considered the oral arguments of counsel at the hearings held on December 11, 2012 (the

1 “Hearing”); and the Court having made findings of fact and conclusions of law on the record, which (to
2 the extent not expressly set forth below) are incorporated herein pursuant to Rule 52 of the Federal
3 Rules of Civil Procedure, made applicable to these proceedings by Rule 7052 of the Bankruptcy Rules;
4 and good and sufficient cause appearing therefor,

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

6 1. The Motion is granted. Capitalized terms used but not defined herein have the meaning
7 set forth in the Solicitation Procedures attached hereto as **Exhibit “A.”**

8 2. The Home Owner Disclosure Statement is approved as providing adequate information
9 for Home Owners as required by section 1125 of the Bankruptcy Court.

10 3. The Home Owner Disclosure Statement is approved for use as a summary of the Plan in
11 accordance with Bankruptcy Rule 3017(d), and Debtor shall not be required to include a copy of the
12 Plan in the Solicitation Package mailed to Home Owners.

13 4. The Master Disclosure Statement is approved as providing adequate information for all
14 Eligible Holders who are not Home Owners as required by section 1125 of the Bankruptcy Code.

15 5. The disclosures contained in the Disclosure Statements relating to “Self Insured
16 Retention” provisions of Debtor’s insurance policies are adequate, sufficient, and satisfy the
17 requirements of section 1125(a) of the Bankruptcy Code.

18 6. The Solicitation Procedures attached hereto as **Exhibit “A”** are approved as being fair,
19 appropriate and in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules and
20 the Local Rules.

21 7. Holders Of Class 4 Claims who have not filed a proof of claim and who do not vote to
22 accept or reject the Plan shall be deemed to have delegated to the Futures Representative their rights to
23 vote and their rights to grant the consensual non-debtor releases set forth in section 12.4(b) of the Plan

24 8. The forms of Notices and Ballots attached hereto as **Exhibits “B”** through **“E”** are
25 approved.

26 9. Objections to the Plan must be filed and served on or before December 28, 2012 at 5:00
27 p.m. prevailing Pacific Time in accordance with the Solicitation Procedures and any other applicable
28 rules to the following parties or their counsel: (a) Debtor and its counsel; (b) the Office of the United

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

1 States Trustee for the District of Nevada; (c) counsel to the DIP Lender; (d) counsel to Secured
2 Lenders; (e) the governmental agencies required by Local Rule 2002(b) and Bankruptcy Rule 2002(j);
3 (f) all parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims; (g) the Futures
4 Representative and his counsel; and (h) any party requesting special notice in the Chapter 11 Case.

5 10. The Court shall hold a Confirmation Hearing regarding the Plan on January 15, 2013 at
6 10:00 a.m. prevailing Pacific Time.

7 11. Debtor and GCG are authorized to make non-material and conforming changes
8 (including, but not limited to correcting typographical errors, altering formatting and inserting missing
9 or changed dates) to the Plan, Disclosure Statements and related solicitation documents and forms prior
10 to solicitation.

11 DATED: ____, 2012.

12 Prepared and respectfully submitted by:

13 **FOX ROTHSCHILD LLP**

14 By _____

15 BRETT A. AXELROD, ESQ.
16 Nevada Bar No. 5859
17 MICAELA RUSTIA MOORE, ESQ.
18 Nevada Bar No. 9676
19 3800 Howard Hughes Parkway, Suite 500
20 Las Vegas, Nevada 89169

21 *Counsel for Debtor*

22 APPROVED/DISAPPROVED:

23 **OFFICE OF THE UNITED STATES TRUSTEE**

24 BY _____

25 Athanasios Agelakopoulos
26 Trial Attorney for Acting U.S. Trustee, August B. Landis
27 300 Las Vegas Boulevard South, Suite 4300
28 Las Vegas, NV 89101

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- No party appeared at the hearing or filed an objection to the motion
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

ATHANASIOS
 AGELAKOPOULOS, OFFICE OF
 THE UNITED STATES TRUSTEE

Approved / Disapproved

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

###

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

EXHIBIT “A”

SOLICITATION PROCEDURES

These Solicitation Procedures are for use in connection with the Chapter 11 Plan of Reorganization dated October 26, 2012 (the “Plan”). Capitalized terms used but not defined herein have the meaning set forth in the Plan.

A. VOTING ELIGIBILITY¹

1. Record Date. Pursuant to Bankruptcy Rule 3018, August 10, 2012 shall be the date (the “Record Date”) upon which the Holder of a particular Claim as of the Record Date is identified as the party entitled to vote such Claim to accept or reject the Plan. For purposes of the Record Date, no transfer of Claims pursuant to Bankruptcy Rule 3001 shall be recognized unless (i) documentation evidencing such transfer was filed with the Bankruptcy Court on or before twenty-one (21) days prior to the Record Date; and (ii) no timely objection with respect to such transfer was filed by the transferee.

2. Claims Eligible To Vote. Debtor will solicit votes to accept or reject the Plan only from the following Classes, which are Impaired under the Plan (the “Impaired Classes”):

- Class 2 Secured Claims
- Class 3 General Unsecured Claims
- Class 4 Construction Defect Claims

Debtor will solicit votes only from the following Holders of Claims in the Impaired Classes (“Eligible Holders”):

- (a) Each Holder of a Claim in an Impaired Class that is listed in Debtor’s Schedules (as they may have been amended prior to the Solicitation Date), excluding those Claims that (i) are scheduled as contingent, unliquidated or disputed, or in a \$0 or unknown amount, (ii) have been superseded by a timely-filed Proof of Claim, or (iii) have been paid;
- (b) Each Holder of a Claim in an Impaired Class (i) for which a Proof of Claim has been or is deemed to be timely-filed and not withdrawn or disallowed prior to the Solicitation Date (as defined below), as reflected on the Claims Register, and (ii) as to which no objection has been filed prior to the Solicitation Date;
- (c) Any Holder of a Claim in an Impaired Class (i) for which a Proof of Claim has been or is deemed to be timely-filed and not withdrawn or disallowed prior to the Solicitation

¹ All objections to Claims previously brought by Debtor (“Previous Objections”) and all orders of this Court relating to such Previous Objections, regardless of whether such Previous Objections purported to be limited for purposes relating to Debtor’s previous proposed Chapter 11 Plan of Reorganization Dated May 29, 2012 [Docket No. 263] (the “May Plan”), shall apply with equal force and effect for all purposes relating to the Plan, including, without limitation, for purposes of determining the voting eligibility or voting amount of such Claims in connection with the Plan.

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

Date, as reflected on the Claims Register, (ii) as to which an objection has been filed prior to the Solicitation Date, and (iii) which has been allowed, whether temporarily for voting purposes or otherwise, by order of the Bankruptcy Court; and

(d) Any other Holder of a Claim in an Impaired Class that is determined to be eligible to vote to accept or reject the Plan either by (i) agreement of Debtor, or (ii) order of the Bankruptcy Court.

3. Amount of Claims for Voting Purposes. Eligible Holders of Claims in Impaired Classes shall be allowed to vote their Claims in:

(a) The amount listed in Debtor’s Schedules (as they may have been amended prior to the Solicitation Date) for any Claim that (i) is not scheduled as contingent, unliquidated or disputed, (ii) has not been superseded by a timely-filed Proof of Claim, and (iii) has not been paid;

(b) The liquidated amount set forth in a Proof of Claim filed by an Eligible Holder (i) that has been or is deemed to be timely-filed and not withdrawn or disallowed prior to the Solicitation Date, as reflected on the Claims Register, and (ii) as to which no objection has been filed prior to the Solicitation Date;

(c) The amount of \$1 for a Proof of Claim (i) that has been or is deemed to be timely-filed by an Eligible Holder and not withdrawn or disallowed prior to the Solicitation Date, as reflected on the Claims Register, (ii) that does not set forth a liquidated amount or is contingent or in a \$0 amount, (iii) as to which no objection has been filed prior to the Solicitation Date;

(d) The amount, if any, agreed to be allowed by Debtor or ordered to be allowed by the Bankruptcy Court (whether temporarily for voting purposes or otherwise) for a Claim as to which (i) a Proof of Claim has been or is deemed to be timely-filed and not withdrawn or disallowed prior to the Solicitation Date, as reflected on the Claims Register, and (ii) an objection has been filed prior to the Solicitation Date; or

(e) Such other amount agreed by Debtor or ordered by the Bankruptcy Court.

4. Reservation of Rights re: Estimation and/or Designation; Limited Effect.

Nothing herein shall be a waiver or otherwise limit the rights of Debtor, at any time, to seek an order of the Bankruptcy Court (a) estimating the amount of any Claim, whether for voting purposes or otherwise, or (b) designating a Claim pursuant to section 1126(e) of the Bankruptcy Code.

Any determination, statement or action regarding the status of an Eligible Holder or amount of claim for voting purposes shall be applicable only with respect to whether and the extent to which a party’s Claim may be voted to accept or reject the Plan and not for purposes of distribution under the Plan or otherwise unless specifically agreed by the parties or ordered by the Bankruptcy Court.

B. NOTICING

1. The Confirmation Hearing Notice. On or before the Solicitation Date, Debtor shall send the Confirmation Hearing Notice via U.S. Mail to:

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (a) the Office of the United States Trustee;
- (b) counsel to the Administrative Agent;
- (c) the governmental agencies required by Local Rule 2002(b) and Bankruptcy Rule 2002(j);
- (d) counsel to the DIP Lender;
- (e) the Futures Representative and his counsel;
- (f) all parties who have requested special notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002;
- (g) all Creditors listed in Debtor’s Schedules;
- (h) all Creditors listed in Debtor’s master mailing matrices; and
- (i) any other entity that has filed a Proof of Claim or request for allowance and/or payment of Administrative Claim in the Chapter 11 Case as of the Solicitation Date.

The Confirmation Hearing Notice shall be in the form attached as **Exhibit “B”** to the Bankruptcy Court’s order approving these Solicitation Procedures (the “Solicitation Order”).

For Eligible Holders, the Confirmation Hearing Notice shall be included in the Solicitation Package (defined below).

2. Notice of Non-Voting Status. Debtor shall not solicit votes to accept or reject the Plan from the Holders of unclassified Claims (Administrative Claims and Priority Tax Claims) and Claims in Unimpaired Classes (Class 1 Other Priority Claims and Class 5 Bond Claims), which are deemed to accept the Plan unanimously pursuant to section 1126(f) of the Bankruptcy Code. Debtor also shall not solicit votes to accept or reject the Plan from Holders of Interests, which are deemed to reject the Plan unanimously pursuant to section 1126(g) of the Bankruptcy Code.

On or before the Solicitation Date, Debtor shall send via U.S. Mail a Notice of Non-Voting Status to the parties listed in the foregoing paragraph (excluding any affiliates of Debtor). The Notice of Non-Voting Status shall be in the form attached to the Solicitation Order as **Exhibit “C.”**

3. The Solicitation Packages. Debtor shall prepare separate packages of solicitation materials (the “Solicitation Packages”) for (a) Eligible Holders whose Claim is based on their purchase or ownership of a residence from Debtor (“Home Owners”), and (b) all other Eligible Holders.

Debtor shall send to Home Owners a solicitation package consisting of:

- (i) the Short Form Home Owner Disclosure Statement Prepared In Connection With Debtor’s First Amended Chapter 11 Plan Of Reorganization;
- (ii) a Class 3 and/or Class 4 Ballot;
- (iii) the Confirmation Hearing Notice.

Debtor shall send to all other Eligible Holders (other than Home Owners) a solicitation package consisting of:

- (i) the Master Disclosure Statement Prepared In Connection With Debtor’s First Amended Chapter 11 Plan Of Reorganization (which includes a copy of the Plan attached as an exhibit);
- (ii) the Solicitation Order (including these Solicitation Procedures attached as **Exhibit “A”** but excluding the remaining exhibits thereto)
- (iii) a Class 2 and/or Class 3 Ballot; and
- (iv) the Confirmation Hearing Notice.

The Ballots for Classes 2, 3 and 4 shall be in the forms attached to the Solicitation Order as **Exhibit “D.”**

Some or all of the Solicitation Packages may consist of a CD-ROM or other electronic media in lieu of a paper hardcopy, so long as they also include instructions on how to obtain a paper hardcopy should the Eligible Holder desire to do so.

The Solicitation Packages shall be sent via U.S. Mail not later than December 17, 2012 (the “Solicitation Date”) to Eligible Holders as of such date. To the extent a party becomes an Eligible Holder subsequent to the Solicitation Date, Debtor shall promptly cause a Solicitation Package to be transmitted by whatever method is reasonable and cost effective under the circumstances.

4. Disputed Claim Notice. On or before the Solicitation Date, Debtor shall send a Disputed Claim Notice via U.S. Mail to any Holder (i) of a Claim as to which an objection was filed prior to the Solicitation Date and remained unresolved as of the Solicitation Date, and (ii) that would otherwise be an Eligible Holder but for such objection. The Disputed Claim Notice shall be in the form attached as **Exhibit “E”** to the Solicitation Order.

5. Addresses. Debtor shall mail Notices and/or Solicitation Packages, as applicable to:

- (a) the address listed in the Schedules for any Claim that has not been superseded by a timely-filed Proof of Claim;
- (b) the address listed in a timely-filed Proof of Claim or request for allowance and/or payment of Administrative Claim; or
- (c) the address listed in Debtor’s books and records for any party that (i) does not have a Claim listed in the Schedules, and (ii) has not filed a Proof of Claim or request for allowance and/or payment of Administrative Claim.

6. Undeliverable Mail. Notwithstanding the foregoing, Debtor shall not be required to mail any notice or Solicitation Package to any address to which notice of the Disclosure Statement Hearing was sent and such notice was returned as undeliverable, unless Debtor is provided with or otherwise locates a current address on or before the date that is ten (10) business days prior to the Solicitation Date. This provision shall not affect an Eligible Holder’s right to vote to accept or reject the Plan, but merely serves to limit Debtor’s obligation to provide notices and other materials. Debtor

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

1 need not re-mail undelivered Solicitation Packages or other undeliverable solicitation-related notices
2 that were returned marked “undeliverable” or “moved – no forwarding address” or for a similar reason,
unless Debtor has been informed in writing by such person of that person’s new address.

3 **C. SUBMISSION AND TABULATION OF VOTES**

4 **1. Completion of Ballots.** Eligible Holders must vote all of their Claims within a
5 particular Class either to accept or reject the Plan and may not split any votes. A person signing a
6 Ballot in the capacity of trustee, executor, administrator, guardian, attorney in fact, officer of a
7 corporation, or otherwise acting in a fiduciary or representative capacity must indicate such capacity
when signing and, if required or requested by Debtor, must submit proper evidence to demonstrate such
person’s authority.

8 Eligible Holders of Class 4 Construction Defect Claims must either (i) vote to accept the Plan
9 and make the Cash Out Election, (ii) vote to accept the Plan but decline the Cash Out Election, or
10 (iii) vote to reject the Plan. Eligible Holders of Class 4 Construction Defect Claims may not vote to
reject the Plan and make the Cash Out Election.

11 **HOLDERS OF CLASS 4 CLAIMS WHO HAVE NOT FILED A PROOF OF CLAIM
12 AND WHO DO NOT VOTE TO ACCEPT OR REJECT THE PLAN SHALL BE DEEMED TO
13 HAVE DELEGATED TO THE FUTURES REPRESENTATIVE THEIR RIGHTS TO VOTE
14 AND THEIR RIGHTS TO GRANT THE CONSENSUAL NON-DEBTOR RELEASE SET
FORTH IN SECTION 12.4(B) OF THE PLAN.**

15 **2. Submission of Ballots; Voting Deadline.** In order to be counted as votes to accept or
16 reject the Plan, all Ballots must be properly executed, completed and delivered to GCG by using the
return envelope provided or by delivery via (a) first class mail, (b) overnight courier or other priority
17 mail, or (c) personal delivery. **Ballots may NOT be delivered via facsimile or electronic mail—
Ballots sent via facsimile or electronic mail will NOT be counted.**

18 No completed Ballot should be sent to Debtor, Debtor’s professionals (other than GCG) or any
19 other party.

20 **The deadline for Ballots to be received by GCG is 3:00 p.m. (prevailing Pacific Time) on
January 4, 2013.**

21 The method of delivery of Ballots to GCG by an Eligible Holder is at the election and risk of
22 each Eligible Holder, and a Ballot will be considered delivered only when GCG actually receives an
executed Ballot via one of the permitted forms of transmission.

23 **3. Tabulation of Ballots.** Debtor shall tabulate all Ballots received as follows:

- 24 (a) GCG will date and time-stamp all Ballots as and when received;
- 25 (b) Ballots received after the Voting Deadline shall be rejected and not counted
26 unless otherwise agreed by Debtor or ordered by the Bankruptcy Court;
- 27 (c) If multiple Ballots are received prior to the Voting Deadline from the same
28 Eligible Holder with respect to the same Claim in an Impaired Class, then the

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

1 last valid Ballot timely received shall be the only Ballot counted and shall
2 supersede all such prior Ballots;

3 (d) Each Holder of more than one Claim in the same Impaired Class shall be treated
4 for vote tabulation purposes (i.e. numerosity) as if such holder has only one (1)
5 Claim in the applicable Class with a total dollar amount equal to the sum of the
6 aggregated Claims of such Holder in such Class;

7 (e) Eligible Holders must vote all of their claims within a particular Impaired Class
8 either to accept or reject the Plan and may not split votes for a particular Claim
9 or within a particular Impaired Class;

10 (f) If an Eligible Holder purports to split its vote for a particular Claim, or to split
11 votes for Claims in an Impaired Class (i.e. certain Claims to accept and certain
12 Claims to reject the Plan), then all such Claims shall be deemed to be voted to
13 accept the Plan;

14 (g) If an Eligible Holder submits a Ballot that does not indicate whether the Claim is
15 being voted to accept or reject the Plan, or that purports to both accept and reject
16 the Plan, then such Claim shall be deemed to be voted to accept the Plan;

17 (h) If an Eligible Holder of a Class 4 Construction Defect Claim purports to vote to
18 reject the Plan but still make the Cash Out Election, or to abstain from voting to
19 accept or reject the Plan but still make the Cash Out Election, then such Claim
20 shall be deemed to be voted to accept the Plan;

21 (i) If an Eligible Holder of a Class 4 Construction Defect Claims elects not to make
22 the Cash Out Election, such Claim will be tabulated in the amount of \$1.00
23 (unless the Bankruptcy Court enters an order temporary allowing any such
24 Claim in a different amount pursuant to Bankruptcy Rule 3018(a)).

25 (j) Subject to contrary order of the Bankruptcy Court, Debtor and GCG shall have
26 the exclusive right to apply these Solicitation Procedures to the tabulation of
27 Ballots;

28 (k) Subject to contrary order of the Bankruptcy Court, Debtor may waive any
defects or irregularities as to any particular Ballot in its sole discretion, at any
time either before or after the Voting Deadline;

(l) Eligible Holders may cure any irregularities or deficiencies in a submitted Ballot
prior to the Voting Deadline by submitting a corrected Ballot in accordance
with the Ballot submission requirements set forth herein;

(m) Within five (5) days prior to the Confirmation Hearing, GCG shall file with the
Bankruptcy Court a voting report (the "Voting Report"), which shall, among
other things, list by Class (i) Ballots voted to accept the Plan, (ii) Ballots voted
to reject the Plan, (iii) Class 4 Construction Defect Claims for which the Cash
Out Election was made, (iv) Ballots that do not conform to these procedures or
that contain any form of irregularity including, but not limited to, Ballots that are
late, illegible (in whole or in material part), unidentifiable, lacking signatures or

necessary information, damaged, or submitted by a party that is not an Eligible Holder; and

- (n) Debtor shall not be under any duty to provide notification of defects or irregularities with respect to submitted Ballots other than as provided in the Voting Report.

Determinations regarding the tabulation of Ballots shall be applicable only with respect to whether and the extent to which an Eligible Holder’s Claim in an Impaired Class is voted to accept or reject the Plan and not for purposes of distribution under the Plan or otherwise.

D. CONFIRMATION HEARING

The Confirmation Hearing is scheduled for **January 15, 2013 at 10:00 a.m. (prevailing Pacific Time)**. The Confirmation Hearing may be continued from time to time as announced in open court and no further notice of such continuance shall be provided.

The deadline to object to the Plan is **December 28, 2012 at 5:00 p.m. (prevailing Pacific Time)** (the “Objection Deadline”). To be considered by the Bankruptcy Court, an objection to the Plan must:

- (a) be in writing;
- (b) conform to the Bankruptcy Rules and the Local Rules;
- (c) state the name and address of the objecting party and the amount and nature of any Claim or Interest of such party;
- (d) state with particularity the basis and nature of such objection and, if practicable, a proposed modification to the Plan that would resolve such objection; and
- (e) be filed with the Bankruptcy Court and served on or before the Objection Deadline to the following parties or their counsel:
 - (i) Debtor and its counsel;
 - (ii) the Office of the United States Trustee for the District of Nevada;
 - (iii) counsel to the DIP Lender;
 - (iv) counsel to Secured Lenders;
 - (v) the governmental agencies required by Local Rule 2002(b) and Bankruptcy Rule 2002(j);
 - (vi) all parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims;
 - (vii) the Futures Representative and his counsel; and
 - (viii) any party requesting special notice in the Chapter 11 Case.

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

1 On or before January 8, 2013, Debtor shall file its memorandum in support of confirmation of
the Plan, which shall include any reply to any timely-filed objection(s).

2 Debtor expressly reserves the right to amend from time to time the terms of the Plan.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "B"
CONFIRMATION HEARING NOTICE

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

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

AMERICAN WEST DEVELOPMENT, INC., a
Nevada corporation.

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

Debtor.

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

Chapter 11

**NOTICE OF CONFIRMATION
HEARING, OBJECTION DEADLINE
AND RELATED MATTERS FOR
DEBTOR'S FIRST AMENDED
CHAPTER 11 PLAN OF
REORGANIZATION, INCLUDING
INJUNCTIONS CONTAINED
THEREIN**

Confirmation Hearing Date: January 15, 2013

Confirmation Hearing Time: 10:00 a.m.

PLEASE TAKE NOTICE that on [____], 2012, the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") entered an order (the "Solicitation Order") (i) approving the adequacy of the Master Disclosure Statement Prepared In Connection With Debtor's First Amended Chapter 11 Plan of Reorganization (the "Master Disclosure Statement") and the Short Form Home Owner Disclosure Statement Prepared In Connection With Debtor's First Amended Chapter 11 Plan of Reorganization (the "Home Owner Disclosure Statement" and together with the Master Disclosure Statement, the "Disclosure Statements"), (ii) approving certain procedures, deadlines and forms for the use by American West Development, Inc. ("AWDI"), debtor and debtor in possession ("Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), in soliciting votes to accept or reject Debtor's First Amended Chapter 11 Plan of Reorganization (the "Plan"), and (iii) granting related relief.

PLEASE TAKE FURTHER NOTICE that a hearing to confirm the Plan (the "Confirmation Hearing") will commence at **10:00 a.m. Prevailing Pacific Time on January 15, 2013 before the Honorable Mike K. Nakagawa, United States Bankruptcy Judge, located at Courtroom 2, Foley Federal Building and U.S. Courthouse, 300 Las Vegas Blvd South, Las Vegas, Nevada 89101.** The Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, without further notice to parties in interest. The Bankruptcy Court, in its discretion, may impose certain procedural rules governing the Confirmation Hearing.

PLEASE TAKE FURTHER NOTICE that the deadline to file and serve objections to confirmation of the Plan is **December 28, 2012 at 5:00 p.m. Prevailing Pacific Time** (the "Objection Deadline"). Any objection to the Plan must, by no later than the Objection Deadline: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Rules; (c) state the name and address of the objecting party and the amount and nature of any Claim or Interest of such party; (d) state with particularity the basis and nature of such objection and, if practicable, a proposed modification to the Plan that would resolve such objection; (e) be filed with the Bankruptcy Court; and (f) served on the following parties (the "Notice Parties"):

a. The Office of the United States Trustee: The Office of the United States Trustee, Attn: Athanasios Agelakopoulos, 300 Las Vegas Boulevard South, Suite 4300, Las Vegas, Nevada 89101, facsimile: (702) 388-6658, email: athanasios.agelakopoulos@usdoj.gov;

b. Debtor: American West Development, Inc., Attn: Robert M. Evans, 250 Pilot Road, Suite 140 Las Vegas NV 89119;

c. Debtor's Counsel: Fox Rothschild LLP, Attn: Brett A. Axelrod, Esq., 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169, facsimile: (702) 597-5503, email: baxelrod@foxrothschild.com;

d. Counsel to Debtor's Secured Lenders: Snell & Wilmer L.L.P., Attn: Donald F. Ennis, Esq., One

Arizona Center, 400 East Van Buren, Phoenix, Arizona 85004-2202, facsimile (602) 382.6070, email: dfennis@swlaw.com;

e. Counsel to the DIP Lender: The Lubbers Law Group, Attn: Edward C. Lubbers, Esq., 2500 West Sahara Avenue, Suite 206, Las Vegas, NV 89102;

f. The Futures Representative: James L. Moore, 31 Skybird Court, Las Vegas, NV 89135;

g. Counsel for the Futures Representative: Field Law Ltd., Attn: Mitchell D. Stipp, Esq., 10120 W. Flamingo Rd., Suite 4-124, Las Vegas, Nevada 89147, facsimile (702) 483-6283, email: mitchell.stipp@yahoo.com

h. all parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims;

i. the governmental agencies required by Local Rule 2002(b) and Bankruptcy Rule 2002(j); and

j. any party requesting special notice in the Chapter 11 Case.¹

If you object to the relief requested, you **must** file a **WRITTEN** response to this pleading with the court. You **must** also serve your written response on the person who sent you this notice.

If you do not file a written response with the court, or if you do not serve your written response on the person who sent you this notice, then:

- The court may **refuse to allow you to speak** at the scheduled hearing; and
- The court may **rule against you** without formally calling the matter at the hearing.

PLEASE TAKE FURTHER NOTICE that any reply to an objection or other response to the Plan must be in writing and must, by January 8, 2013, be (1) filed with the Court; (2) delivered to the chambers of the Honorable Mike K. Nakagawa, Chief United States Bankruptcy Judge; (3) served on the Notice Parties; and (4) served on any party that has filed an objection to the Plan.

PLEASE TAKE FURTHER NOTICE that courtesy copies must be delivered to the clerk's office at the Foley Federal Building and U.S. Courthouse, 300 Las Vegas Blvd South, Las Vegas, Nevada 89101, within 2 business days of the filing of any document(s).

PLEASE TAKE FURTHER NOTICE that pursuant to the Solicitation Order, the Bankruptcy Court approved the Solicitation Procedures attached as Exhibit "A" to the Solicitation Order. The Solicitation Procedures govern various important aspects of the means by which Debtor will solicit votes on and seek confirmation of the Plan. The Solicitation Procedures generally cover the following four main topics: (A) Voting Eligibility (Establishment of the Record Date, Identification of Claims Eligible to Vote, Identification of Eligible Holders, Determination of Amount of Claims for Voting Purposes and Reservation of Rights re: Estimation and/or Designation); (B) Noticing (The Confirmation Hearing Notice, Notice of Non-Voting Status, Solicitation Packages, Disputed Claim Notice, Addresses, and Undeliverable Mail); (C) Submission and Tabulation of Votes (Voting Deadline; Completion, Submission and Tabulation of Ballots); and (D) Confirmation Hearing (Confirmation Hearing and Objection Deadline).

PLEASE TAKE FURTHER NOTICE that in addition to the binding effect of the Plan to be imparted pursuant to section 1141 of the Bankruptcy Code on all Creditors and Holders of Interests, **the Plan also provides for certain injunctions, which include the following:**

- **Injunction Against Releasors**: Section 12.5(a) of the Plan enjoins Releasors from taking various actions against the Released Parties in respect of Released Liabilities. The Releasors consist of: (a) Debtor and its Estate; (b) Reorganized Debtor; (c) the DIP Lender; (d) the Distribution Agent; (e) the Futures Representative; (f) Professionals; and (g) the respective Related Persons of each of the foregoing. The Released Parties consist of: (a) Debtor and its Estate; (b) Reorganized Debtor; (c) the DIP Lender; (d) the

¹ A service list identifying the parties described in clauses h, i, and j may be obtained on www.awdevelopmentreorg.com or sending a written request to Debtor's counsel at pkois@foxrothschild.com.

Distribution Agent; (e) the Futures Representative; (f) Professionals; (g) the Secured Lenders; and (h) the respective Related Persons of each of the foregoing. To be a Released Liability, the liability must have arisen prior to the Effective Date and must relate to Debtor, the Plan or the Chapter 11 Case.

- **Injunction Against Interference With Plan.** Section 12.5(c) of the Plan enjoins all Holders of Claims against or Interests in Debtor and their respective Representatives and any of their successors or assigns from taking any actions to interfere with the implementation or consummation of the Plan.
- **Injunction Channeling Construction Defect Claims:** Section 12.5(d) of the Plan enjoins all Persons from taking any actions against or affecting Reorganized Debtor, Debtor, the Estate, the Assets, the Distribution Agent, the Professionals and their respective assets and property for the purposes of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to any Construction Defect Claims, regardless of when such Claims are deemed to arise, all of which will be channeled to the Construction Defect Trust.

PLEASE TAKE FURTHER NOTICE that copies of the Plan, either or both of the Disclosure Statements, and other documents can be obtained online at <http://www.awdevelopmentreorg.com> or upon request from **AW Bankruptcy Administration, c/o GCG, PO Box 9748, Dublin, OH 43017-5648; Telephone Hotline: (877) 604-9532.** PLEASE NOTE THAT GCG IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

Dated: DECEMBER 17, 2012

FOX ROTHSCHILD LLP

By /s/Brett A. Axelrod

BRETT A. AXELROD, ESQ. (Nevada Bar No. 5859)
MICAELA RUSTIA MOORE, ESQ. (Nevada Bar No. 9676)
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Counsel for Debtor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "C"

NOTICE OF NON-VOTING STATUS

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

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

In re:

AMERICAN WEST DEVELOPMENT, INC., a
Nevada corporation,

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

Debtor.

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

Chapter 11

NOTICE OF NON-VOTING STATUS

PLEASE TAKE NOTICE that on [_____], 2012, the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") entered an order (the "Solicitation Order") (i) approving the adequacy of the Disclosure Statements, (ii) approving certain procedures, deadlines and forms for the use by American West Development, Inc. ("AWDI"), debtor and debtor in possession ("Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), in soliciting votes to accept or reject Debtor's First Amended Chapter 11 Plan of Reorganization Dated October 26, 2012 (the "Plan"), and (iii) granting related relief.

PLEASE TAKE FURTHER NOTICE that pursuant to the Solicitation Order, the Bankruptcy Court approved the Solicitation Procedures attached as **Exhibit "A"** to the Solicitation Order. The Solicitation Procedures govern various important aspects of the means by which Debtor will solicit votes on and seek confirmation of the Plan.

PLEASE TAKE FURTHER NOTICE that pursuant to the Solicitation Procedures, Debtor will not solicit votes to accept or reject the Plan from: (i) the Holders of unclassified Claims (Administrative Claims and Priority Tax Claims); (ii) Claims in Unimpaired Classes (Class 1 Other Priority Claims and Class 5 Bond Claims), which are deemed to accept the Plan unanimously pursuant to section 1126(f) of the Bankruptcy Code; and (iii) Holders of Interests, which are deemed to reject the Plan unanimously pursuant to section 1126(g) of the Bankruptcy Code.

You are receiving this notice because the claims register, Debtor's books and records and/or the record in the Chapter 11 Case indicates that you are the Holder of a Claim or an Interest that falls into one of the three preceding categories. As such, this Notice is being sent to you for informational purposes only and not to solicit your vote on the Plan.

PLEASE TAKE FURTHER NOTICE that copies of the Plan, either or both of the Disclosure Statement, the Plan Supplement, and other documents can be obtained online at <http://www.awdevelopmentreorg.com> or upon request from **AW Bankruptcy Administration, c/o GCG, PO Box 9748, Dublin, OH 43017-5648; Telephone Hotline: (877) 604-9532. PLEASE NOTE THAT GCG IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

Dated: _____, 2012

FOX ROTHSCHILD LLP

By _____

BRETT A. AXELROD, ESQ. (Nevada Bar No. 5859)
MICAELA RUSTIA MOORE, ESQ. (Nevada Bar No. 9676)
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Counsel for Debtor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "D"

BALLOT FORMS (CLASSES 2, 3 AND 4)

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

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

AMERICAN WEST DEVELOPMENT, INC., a
Nevada corporation,

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

Debtor.

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

Chapter 11

**VOTING DEADLINE: 3:00 P.M. PREVAILING
PACIFIC TIME ON JANUARY 4, 2013**

**CLASS 2 BALLOT: FOR USE BY ELIGIBLE HOLDER(S) OF
SECURED CLAIM TO ACCEPT OR REJECT
DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

American West Development, Inc. ("AWDI"), debtor and debtor in possession ("Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), is the proponent of Debtor's First Amended Chapter 11 Plan of Reorganization (the "Plan"), which was filed with the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") on October 26, 2012.

On [____], 2012, the Bankruptcy Court entered an order (the "Solicitation Order") approving certain procedures (the "Solicitation Procedures") for use by Debtor in soliciting votes to accept or reject the Plan. Pursuant to the Solicitation Procedures, Eligible Holders of Claims in Classes 2, 3 and 4 under the Plan are entitled to vote. If Debtor mailed this Ballot to you, then you are listed as an Eligible Holder entitled to vote.

Pursuant to the Solicitation Order, the Bankruptcy Court also approved certain "disclosure statements" as providing adequate information to assist you in deciding how to vote. The Bankruptcy Court approved the Short Form Home Owner Disclosure Statement Prepared In Connection With Debtor's First Amended Chapter 11 Plan of Reorganization (the "Home Owner Disclosure Statement") specifically for the use by Eligible Holders whose Claim is based on their ownership of a residence purchased from Debtor ("Home Owners"). The Bankruptcy Court also approved the Master Disclosure Statement Prepared In Connection With Debtor's First Amended Chapter 11 Plan of Reorganization (the "Master Disclosure Statement"), which contains more detailed, technical and comprehensive information about the Plan.

You should review the Instructions included with this Ballot, the Master Disclosure Statement and any other documents you find helpful before you complete this Ballot. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim under the Plan. This Ballot is for your Secured Claim, which has been placed in Class 2 under the Plan. If you hold Claims in more than one Class, you will receive a ballot for each class in which you are entitled to vote.

If your Ballot is not received by Garden City Group on or before the Voting Deadline of 3:00 P.M. (Prevailing Pacific Time) on January 4, 2013 at the applicable address set forth in the Instructions included with this Ballot, then your Ballot will not be counted unless otherwise agreed by Debtor or ordered by the Bankruptcy Court.

If the Plan is confirmed by the Bankruptcy Court, then it will be binding on you whether or not you vote.

ACCEPTANCE OR REJECTION OF THE PLAN

The undersigned, the duly authorized Administrative Agent for the Eligible Holders of a Class 2 Secured Claim in the Chapter 11 Case in the unpaid amount of \$49,635,000* hereby:

Votes to **ACCEPT** the Plan** OR Votes to **REJECT** the Plan

* Amount is pursuant and subject to the terms of the Restructuring, Lock-Up and Settlement Letter Agreement.

**Under Section 12.4 of the Plan, by voting to accept the Plan you will be agreeing to grant the release set forth therein.

[Mark Only One of the Two Boxes Above: OR

Print or type name of creditor _____

Dated: _____ Telephone No. _____

Signature: _____

If by Authorized Agent, Name and Title _____

Address: _____

Please check one or both of the below boxes if the above address is a change of address for the purpose(s) of:

- Future notice mailings in the Chapter 11 Case; and/or
- Distributions, if any, upon your Claim in the Chapter 11 Case.

RETURN COMPLETED BALLOT TO:

<p><u>If By First Class Mail:</u> AW Bankruptcy Administration c/o GCG, Inc. PO Box 9748 Dublin, OH 43017- 5648</p>	<p><u>If By Overnight Delivery or Hand Delivery:</u> AW Bankruptcy Administration c/o GCG, Inc. 5151 Blazer Parkway, Suite A Dublin, OH 43017-9306</p>
--	---

INSTRUCTIONS FOR COMPLETING THIS BALLOT

1. All capitalized terms used but not otherwise defined in this Ballot (including in these Instructions) have the meaning ascribed to them in the Solicitation Procedures or the Plan.
2. **Section 12.4 of the Plan provides that a Holder’s vote to accept the Plan also shall be (and shall be deemed to be) an agreement by the accepting Holder to grant the release set forth therein.**
3. The Ballot is does not constitute, and shall not be deemed to be: (a) a Proof of Claim; or (b) an assertion or admission of a Claim.
4. To ensure that your vote is counted, you must:
 - (a) complete the Ballot by (i) checking or otherwise marking one (and only one) of the two boxes provided to indicate your vote either to accept or reject the Plan and printing your name, title (if you are voting a Claim held by any type of entity other than a natural person—i.e. a trust, partnership, limited liability company or corporation) and supplying the address to which you would like any future communications and/or distributions to be sent; and
 - (b) submit the completed Ballot, either by first class U.S. Mail, priority mail or personal delivery, so that it is **received on or before the Voting Deadline of 3:00 P.M. (Prevailing Pacific Time) on January 4, 2013 at the applicable address as follows:**

<p><u>If By First Class Mail:</u> AW Bankruptcy Administration c/o GCG, Inc. PO Box 9748 Dublin, OH 43017- 5648</p>	<p><u>If By Overnight Delivery or Hand Delivery:</u> AW Bankruptcy Administration c/o GCG, Inc. 5151 Blazer Parkway, Suite A Dublin, OH 43017-9306</p>
---	--

5. Ballots may NOT be delivered via facsimile or electronic mail—Ballots sent via facsimile or electronic mail will NOT be counted. No completed Ballot should be sent to Debtor, Debtor’s professionals (other than GCG) or any other party.
6. GCG will date and time-stamp all Ballots as and when received. The method of delivery of Ballots to GCG by an Eligible Holder is at the election and risk of each Eligible Holder, and a Ballot will be considered delivered only when GCG actually receives an executed Ballot via one of the permitted forms of transmission. Ballots received after the Voting Deadline shall be rejected and not counted unless otherwise agreed by Debtor or ordered by the Bankruptcy Court.
7. A person signing a Ballot in the capacity of trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity must indicate such capacity when signing and, if required or requested by Debtor, must submit proper evidence to demonstrate such person’s authority.
8. Eligible Holders must vote all of their claims within a particular Impaired Class either to accept or reject the Plan and may not split votes for a particular Claim or within a particular Impaired Class. If an Eligible Holder purports to split its vote for a particular Claim, or to split votes for Claims in an Impaired Class (i.e. certain Claims to accept and certain Claims to reject the Plan), then all such Claims shall be deemed to be voted to accept the Plan. If multiple Ballots are received prior to the Voting Deadline from the same Eligible Holder with respect to the same Claim in an Impaired Class, then the last valid Ballot timely received shall be the only Ballot counted and shall supersede all such prior Ballots. If an Eligible Holder submits a Ballot that does not indicate whether the Claim is being voted to accept or reject the Plan, or that purports to both accept and reject the Plan, then such Claim shall be deemed to be voted to accept the Plan.
9. Subject to contrary order of the Bankruptcy Court, Debtor and GCG shall have the exclusive right to apply the Solicitation Procedures to the tabulation of Ballots. Subject to contrary order of the Bankruptcy Court, Debtor may waive any defects or irregularities as to any particular Ballot in its sole discretion, at any time either before or after the Voting Deadline.

10. Eligible Holders may cure any irregularities or deficiencies in a submitted Ballot prior to the Voting Deadline by submitting a corrected Ballot in accordance with the Ballot submission requirements set forth herein.
11. Within five (5) days prior to the Confirmation Hearing, GCG shall file with the Bankruptcy Court a voting report (the "Voting Report"), which shall, among other things, list by Class (i) Ballots voted to accept the Plan, (ii) Ballots voted to reject the Plan, (iii) Class 4 Construction Defect Claims for which the Cash Out Election was made, (iv) Ballots that do not conform to these procedures or that contain any form of irregularity including, but not limited to, Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures or necessary information, damaged, or submitted by a party that is not an Eligible Holder. Debtor shall not be under any duty to provide notification of defects or irregularities with respect to submitted Ballots other than by filing the Voting Report.
12. Copies of the Home Owner Disclosure Statement, the Master Disclosure Statement, the Plan and other related documents are available at <http://www.awdevelopmentreorg.com>. Paper copies of these documents can also be obtained by written request to GCG at **AW Bankruptcy Administration, c/o GCG, PO Box 9748, Dublin, OH 43017- 5648; Telephone Hotline: (877) 604-9532. PLEASE NOTE THAT GCG IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

AMERICAN WEST DEVELOPMENT, INC., a
Nevada corporation,

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

Debtor.

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

Chapter 11

**VOTING DEADLINE: 3:00 P.M. PREVAILING
PACIFIC TIME ON JANUARY 4, 2013**

**CLASS 3 BALLOT: FOR USE BY ELIGIBLE HOLDER OF
GENERAL UNSECURED CLAIM TO ACCEPT OR REJECT
DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

American West Development, Inc. ("AWDI"), debtor and debtor in possession ("Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), is the proponent of Debtor's First Amended Chapter 11 Plan of Reorganization dated (the "Plan"), which was filed with the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") on October 26, 2012.

On [____], 2012, the Bankruptcy Court entered an order (the "Solicitation Order") approving certain procedures (the "Solicitation Procedures") for use by Debtor in soliciting votes to accept or reject the Plan. Pursuant to the Solicitation Procedures, Eligible Holders of Claims in Classes 2, 3 and 4 under the Plan are entitled to vote. If Debtor mailed this Ballot to you, then you are listed as an Eligible Holder entitled to vote.

Pursuant to the Solicitation Order, the Bankruptcy Court also approved certain "disclosure statements" as providing adequate information to assist you in deciding how to vote. The Bankruptcy Court approved the Short Form Home Owner Disclosure Statement Prepared In Connection With Debtor's First Amended Chapter 11 Plan of Reorganization (the "Home Owner Disclosure Statement") specifically for the use by Eligible Holders whose Claim is based on their ownership of a residence purchased from Debtor ("Home Owners"). The Bankruptcy Court also approved the Master Disclosure Statement Prepared In Connection With Debtor's First Amended Chapter 11 Plan of Reorganization (the "Master Disclosure Statement"), which contains more detailed, technical and comprehensive information about the Plan.

You should review the Instructions included with this Ballot, the Home Owner Disclosure Statement and/or the Master Disclosure Statement and any other documents you find helpful before you complete this Ballot. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim under the Plan. This Ballot is for your General Unsecured Claim, which has been placed in Class 3 under the Plan. If you hold Claims in more than one Class, you will receive a ballot for each class in which you are entitled to vote.

If your Ballot is not received by Garden City Group on or before the Voting Deadline of 3:00 P.M. (Prevailing Pacific Time) on January 4, 2013 at the applicable address set forth in the Instructions included with this Ballot, then your Ballot will not be counted unless otherwise agreed by Debtor or ordered by the Bankruptcy Court.

If the Plan is confirmed by the Bankruptcy Court, then it will be binding on you whether or not you vote.

ACCEPTANCE OR REJECTION OF THE PLAN

The undersigned, the Eligible Holder of a Class 3 General Unsecured Claim in the Chapter 11 Case in the unpaid amount of \$ _____ hereby:

Votes to ACCEPT the Plan*	OR	Votes to REJECT the Plan
----------------------------------	-----------	---------------------------------

* Under Section 12.4 of the Plan, by voting to accept the Plan you will be agreeing to grant the release set forth therein.

[Mark Only One of the Two Boxes Above: **OR**

Print or type name of creditor _____

Dated: _____ Telephone No. _____

Signature: _____

If by Authorized Agent, Name and Title _____

Address: _____

Please check one or both of the below boxes if the above address is a change of address for the purpose(s) of:

- Future notice mailings in the Chapter 11 Case; and/or
- Distributions, if any, upon your Claim in the Chapter 11 Case.

RETURN COMPLETED BALLOT TO:

<p><u>If By First Class Mail:</u> AW Bankruptcy Administration c/o GCG, Inc. PO Box 9748 Dublin, OH 43017-5648</p>	<p><u>If By Overnight Delivery or Hand Delivery:</u> AW Bankruptcy Administration c/o GCG, Inc. 5151 Blazer Parkway, Suite A Dublin, OH 43017-9306</p>
---	---

INSTRUCTIONS FOR COMPLETING THIS BALLOT

1. All capitalized terms used but not otherwise defined in this Ballot (including in these Instructions) have the meaning ascribed to them in the Solicitation Procedures or the Plan.
2. **Section 12.4 of the Plan provides that a Holder’s vote to accept the Plan also shall be (and shall be deemed to be) an agreement by the accepting Holder to grant the release set forth therein.**
3. The Ballot is does not constitute, and shall not be deemed to be: (a) a Proof of Claim; or (b) an assertion or admission of a Claim.
4. To ensure that your vote is counted, you must:
 - (a) complete the Ballot by (i) checking or otherwise marking one (and only one) of the two boxes provided to indicate your vote either to accept or reject the Plan and printing your name, title (if you are voting a Claim held by any type of entity other than a natural person—i.e. a trust, partnership, limited liability company or corporation) and supplying the address to which you would like any future communications and/or distributions to be sent; and
 - (b) submit the completed Ballot, either by first class U.S. Mail, priority mail or personal delivery, so that it is **received on or before the Voting Deadline of 3:00 P.M. (Prevailing Pacific Time) on January 4, 2013 at the applicable address as follows:**

<p><u>If By First Class Mail:</u> AW Bankruptcy Administration c/o GCG, Inc. PO Box 9748 Dublin, OH 43017- 5648</p>	<p><u>If By Overnight Delivery or Hand Delivery:</u> AW Bankruptcy Administration c/o GCG, Inc. 5151 Blazer Parkway, Suite A Dublin, OH 43017-9306</p>
---	--

5. Ballots may NOT be delivered via facsimile or electronic mail—Ballots sent via facsimile or electronic mail will NOT be counted. No completed Ballot should be sent to Debtor, Debtor’s professionals (other than GCG) or any other party.
6. GCG will date and time-stamp all Ballots as and when received. The method of delivery of Ballots to GCG by an Eligible Holder is at the election and risk of each Eligible Holder, and a Ballot will be considered delivered only when GCG actually receives an executed Ballot via one of the permitted forms of transmission. Ballots received after the Voting Deadline shall be rejected and not counted unless otherwise agreed by Debtor or ordered by the Bankruptcy Court.
7. A person signing a Ballot in the capacity of trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity must indicate such capacity when signing and, if required or requested by Debtor, must submit proper evidence to demonstrate such person’s authority.
8. Eligible Holders must vote all of their claims within a particular Impaired Class either to accept or reject the Plan and may not split votes for a particular Claim or within a particular Impaired Class. If an Eligible Holder purports to split its vote for a particular Claim, or to split votes for Claims in an Impaired Class (i.e. certain Claims to accept and certain Claims to reject the Plan), then all such Claims shall be deemed to be voted to accept the Plan. If multiple Ballots are received prior to the Voting Deadline from the same Eligible Holder with respect to the same Claim in an Impaired Class, then the last valid Ballot timely received shall be the only Ballot counted and shall supersede all such prior Ballots. If an Eligible Holder submits a Ballot that does not indicate whether the Claim is being voted to accept or reject the Plan, or that purports to both accept and reject the Plan, then such Claim shall be deemed to be voted to accept the Plan.
9. Subject to contrary order of the Bankruptcy Court, Debtor and GCG shall have the exclusive right to apply the Solicitation Procedures to the tabulation of Ballots. Subject to contrary order of the Bankruptcy Court, Debtor may waive any defects or irregularities as to any particular Ballot in its sole discretion, at any time either before or after the Voting Deadline.

10. Eligible Holders may cure any irregularities or deficiencies in a submitted Ballot prior to the Voting Deadline by submitting a corrected Ballot in accordance with the Ballot submission requirements set forth herein.
11. Within five (5) days prior to the Confirmation Hearing, GCG shall file with the Bankruptcy Court a voting report (the "Voting Report"), which shall, among other things, list by Class (i) Ballots voted to accept the Plan, (ii) Ballots voted to reject the Plan, (iii) Class 4 Construction Defect Claims for which the Cash Out Election was made, (iv) Ballots that do not conform to these procedures or that contain any form of irregularity including, but not limited to, Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures or necessary information, damaged, or submitted by a party that is not an Eligible Holder. Debtor shall not be under any duty to provide notification of defects or irregularities with respect to submitted Ballots other than by filing the Voting Report.
12. Copies of the Home Owner Disclosure Statement, the Master Disclosure Statement, the Plan and other related documents are available at <http://www.awdevelopmentreorg.com>. Paper copies of these documents can also be obtained by written request to GCG at **AW Bankruptcy Administration, c/o GCG, PO Box 9748, Dublin, OH 43017-5648; Telephone Hotline: (877) 604-9532. PLEASE NOTE THAT GCG IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

AMERICAN WEST DEVELOPMENT, INC., a
Nevada corporation,

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

Debtor.

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

Chapter 11

**VOTING DEADLINE: 3:00 P.M. PREVAILING
PACIFIC TIME ON JANUARY 4, 2013**

**CLASS 4 BALLOT: FOR USE BY ELIGIBLE HOLDER OF
CONSTRUCTION DEFECT CLAIM TO (I) ACCEPT OR REJECT
DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION
AND (II) MAKE OR DECLINE CASH OUT ELECTION**

American West Development, Inc. ("AWDI"), debtor and debtor in possession ("Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), is the proponent of Debtor's First Amended Chapter 11 Plan of Reorganization (the "Plan"), which was filed with the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") on October 26, 2012.

On [____], 2012, the Bankruptcy Court entered an order (the "Solicitation Order") approving certain procedures (the "Solicitation Procedures") for use by Debtor in soliciting votes to accept or reject the Plan. Pursuant to the Solicitation Procedures, Eligible Holders of Claims in Classes 2, 3 and 4 under the Plan are entitled to vote. If Debtor mailed this Ballot to you, then you are listed as an Eligible Holder entitled to vote.

Pursuant to the Solicitation Order, the Bankruptcy Court also approved certain "disclosure statements" as providing adequate information to assist you in deciding how to vote. The Bankruptcy Court approved the Short Form Home Owner Disclosure Statement Prepared In Connection With Debtor's First Amended Chapter 11 Plan of Reorganization (the "Home Owner Disclosure Statement") specifically for the use by Eligible Holders whose Claim is based on their ownership of a residence purchased from Debtor ("Home Owners"). The Bankruptcy Court also approved the Master Disclosure Statement Prepared In Connection With Debtor's First Amended Chapter 11 Plan of Reorganization (the "Master Disclosure Statement"), which contains more detailed, technical and comprehensive information about the Plan. Please refer to the Instructions included with this Ballot if you did not receive a Home Owner Disclosure Statement in the package with this Ballot, or if you wish to review the Master Disclosure Statement or a copy of the Plan.

You should review the Instructions included with this Ballot, the Home Owner Disclosure Statement and any other documents you find helpful before you complete this Ballot. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim under the Plan. This Ballot is for your Construction Defect Claim, which has been placed in Class 4 under the Plan. If you hold Claims in more than one Class, you will receive a ballot for each class in which you are entitled to vote.

If your Ballot is not received by Garden City Group ("GCG") on or before the Voting Deadline of 3:00 p.m. Prevailing Pacific Time on January 4, 2013 at the applicable address set forth in the Instructions included with this Ballot, then your Ballot will not be counted unless otherwise agreed by Debtor or ordered by the Bankruptcy Court.

Cash Out Election: In addition to voting on the Plan, Eligible Holders of Class 4 Construction Defect Claims have the option to make (or decline) the Cash Out Election. In brief, the Cash Out Election provides the opportunity to receive a one-time Cash Out Payment from the Construction Defect Trust, regardless of whether any construction defects have arisen in the Home Owner's residence to date, in return for a comprehensive release of the Home Owner's ability to assert liability for Construction Defect Claims against Debtor and certain other parties, including Affiliates of Debtor. **You may only make the Cash Out Election if you vote to accept the Plan—if you vote to reject the Plan then you do not have the opportunity to make the Cash Out Election.** Finally, if less than eighty percent (80%) in number of the Holders of Class 4 Construction Defect Claims actually vote to accept the Plan, there shall be no Cash Out Election available and your Claims shall be processed, liquidated and paid pursuant to the terms and provisions of the Construction Defect Trust Distribution Procedures. More information about the Cash Out Election can be found in the Home Owner Disclosure Statement and the Plan.

IF YOU FAIL TO TIMELY REMIT A BALLOT and IF YOU HAVE NOT FILED A PROOF OF CLAIM, YOU SHALL BE DEEMED TO HAVE DELEGATED TO THE FUTURES REPRESENTATIVE (AS DEFINED IN THE PLAN) YOUR RIGHTS TO VOTE YOUR CLAIM AND TO GRANT ON YOUR BEHALF THE CONSENSUAL NON-DEBTOR RELEASE SET FORTH IN SECTION 12.4(B) OF THE PLAN.

If the Plan is confirmed by the Bankruptcy Court, then it will be binding on you whether or not you vote.

**ACCEPTANCE OR REJECTION OF THE PLAN
-- AND --
CASH OUT ELECTION**

The undersigned, the Eligible Holder of a Class 4 Construction Defect Claim in the Chapter 11 Case in the unpaid amount of \$ _____, hereby:

Votes to ACCEPT the Plan* AND Opts to MAKE the Cash Out Election*	OR	Votes to ACCEPT the Plan* AND Opts to DECLINE the Cash Out Election	OR	Votes to REJECT the Plan** <i>** Claims voted to reject the Plan are not eligible for the Cash Out Election</i>
--	-----------	--	-----------	---

* Under Section 12.4 of the Plan, by voting to accept the Plan you will be agreeing to grant the release set forth therein. In addition, by opting to make the Cash Out Election you will be agreeing to grant the Cash Out Release, which is set forth in the Instructions included with this Ballot.

[Mark Only One of the Three Boxes Above: OR OR , **NOT** OR AND]

Print or type name of creditor _____

Dated: _____ Telephone No. _____

Signature: _____

If by Authorized Agent, Name and Title _____

Address: _____

Please check one or both of the below boxes if the above address is a change of address for the purpose(s) of:

- Future notice mailings in the Chapter 11 Case; and/or
- Distributions, if any, upon your Claim in the Chapter 11 Case.

RETURN COMPLETED BALLOT TO:

<p><u>If By First Class Mail:</u> AW Bankruptcy Administration c/o GCG, Inc. PO Box 9748 Dublin, OH 43017-5648</p>	<p><u>If By Overnight Delivery or Hand Delivery:</u> AW Bankruptcy Administration c/o GCG, Inc. 5151 Blazer Parkway, Suite A Dublin, OH 43017-9306</p>
--	--

INSTRUCTIONS FOR COMPLETING THIS BALLOT

1. All capitalized terms used but not otherwise defined in this Ballot (including in these Instructions) have the meaning ascribed to them in the Solicitation Procedures or the Plan.
2. **Section 12.4 of the Plan provides that a Holder's vote to accept the Plan also shall be (and shall be deemed to be) an agreement by the accepting Holder to grant the release set forth therein.**
3. The Ballot is does not constitute, and shall not be deemed to be: (a) a Proof of Claim; or (b) an assertion or admission of a Claim.
4. To ensure that your vote is counted, you must:
 - (a) complete the Ballot by (i) checking or otherwise marking one (and only one) of the three boxes provided to indicate your vote either to accept or reject the Plan and (if your vote is to accept the Plan) your decision either to make or decline the Cash Out Election, (ii) signing and dating the Ballot, and (iii) printing your name, title (if you are voting a Claim held by any type of entity other than a natural person—i.e. a trust, partnership, limited liability company or corporation) and supplying the address to which you would like any future communications and/or distributions to be sent; and
 - (b) submit the completed Ballot, either by first class U.S. Mail, priority mail or personal delivery, so that it is **received on or before the Voting Deadline of January 4, 2013 at 3:00 p.m. Prevailing Pacific Time at the applicable address as follows:**
4. **IF YOU FAIL TO TIMELY REMIT A BALLOT and IF YOU HAVE NOT FILED A PROOF OF CLAIM, YOU SHALL BE DEEMED TO HAVE DELEGATED TO THE FUTURES REPRESENTATIVE (AS DEFINED IN THE PLAN) YOUR RIGHTS TO VOTE YOUR CLAIM AND TO GRANT ON YOUR BEHALF THE CONSENSUAL NON-DEBTOR RELEASE SET FORTH IN SECTION 12.4(B) OF THE PLAN.**

<p><u>If By First Class Mail:</u> AW Bankruptcy Administration c/o GCG, Inc. PO Box 9748 Dublin, OH 43017- 5648</p>	<p><u>If By Overnight Delivery or Hand Delivery:</u> AW Bankruptcy Administration c/o GCG, Inc. 5151 Blazer Parkway, Suite A Dublin, OH 43017-9306</p>
---	--

5. Ballots may NOT be delivered via facsimile or electronic mail—Ballots sent via facsimile or electronic mail will NOT be counted. No completed Ballot should be sent to Debtor, Debtor's professionals (other than GCG) or any other party.
6. GCG will date and time-stamp all Ballots as and when received. The method of delivery of Ballots to GCG by an Eligible Holder is at the election and risk of each Eligible Holder, and a Ballot will be considered delivered only when GCG actually receives an executed Ballot via one of the permitted forms of transmission. Ballots received after the Voting Deadline shall be rejected and not counted unless otherwise agreed by Debtor or ordered by the Bankruptcy Court.
7. A person signing a Ballot in the capacity of trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity must indicate such capacity when signing and, if required or requested by Debtor, must submit proper evidence to demonstrate such person's authority.
8. Eligible Holders of Class 4 Construction Defect Claims must either (i) vote to accept the Plan and make the Cash Out Election, (ii) vote to accept the Plan and decline the Cash Out Election, or (iii) vote to reject the Plan. Eligible Holders of Class 4 Construction Defect Claims may not vote to reject the Plan and make the Cash Out Election. If an Eligible Holder of a Class 4 Construction Defect Claim purports to vote to reject

the Plan but still make the Cash Out Election, or to abstain from voting to accept or reject the Plan but still make the Cash Out Election, then such Claim shall be deemed to be voted to accept the Plan.

9. The Plan provides that, effective immediately upon receipt of the Cash Out Payment without any further action or approval, **Eligible Holders of Class 4 Construction Defect Claims who make the Cash Out Election shall (and shall be deemed to) grant a release (the "Cash Out Release") pursuant to which:**

Each such Holder completely, conclusively, absolutely, unconditionally, irrevocably and forever release, waive, void, extinguish and discharge the Released Parties other than the Futures Representative with respect to any ballot cast by the Futures Representative from any and all Claims, Causes of Action, Avoidance Actions and any other obligations, rights, suits, damages, judgments, debts, remedies and liabilities whatsoever, including any Claims or Causes of Action that could be asserted on behalf of or against Debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Holder would have been legally entitled to assert in its own right (whether individually, derivatively or collectively), based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, in any way relating or pertaining to (w) the purchase or sale, or the rescission of a purchase or sale, of any security of Debtor, (x) Debtor, Reorganized Debtor or their respective assets, property and Estate, (y) the Chapter 11 Case, and (z) the negotiation, formulation and preparation of the Plan, the Disclosure Statement, or any related agreements, instruments or other documents.

10. Eligible Holders must vote all of their claims within a particular Impaired Class either to accept or reject the Plan and may not split votes for a particular Claim or within a particular Impaired Class. If an Eligible Holder purports to split its vote for a particular Claim, or to split votes for Claims in an Impaired Class (i.e. certain Claims to accept and certain Claims to reject the Plan), then all such Claims shall be deemed to be voted to accept the Plan. If multiple Ballots are received prior to the Voting Deadline from the same Eligible Holder with respect to the same Claim in an Impaired Class, then the last valid Ballot timely received shall be the only Ballot counted and shall supersede all such prior Ballots. If an Eligible Holder submits a Ballot that does not indicate whether the Claim is being voted to accept or reject the Plan, or that purports to both accept and reject the Plan, then such Claim shall be deemed to be voted to accept the Plan.
11. Subject to contrary order of the Bankruptcy Court, Debtor and GCG shall have the exclusive right to apply the Solicitation Procedures to the tabulation of Ballots. Subject to contrary order of the Bankruptcy Court, Debtor may waive any defects or irregularities as to any particular Ballot in its sole discretion, at any time either before or after the Voting Deadline.
12. Eligible Holders may cure any irregularities or deficiencies in a submitted Ballot prior to the Voting Deadline by submitting a corrected Ballot in accordance with the Ballot submission requirements set forth herein.
13. Within five (5) days prior to the Confirmation Hearing, GCG shall file with the Bankruptcy Court a voting report (the "Voting Report"), which shall, among other things, list by Class (i) Ballots voted to accept the Plan, (ii) Ballots voted to reject the Plan, (iii) Class 4 Construction Defect Claims for which the Cash Out Election was made, (iv) Ballots that do not conform to these procedures or that contain any form of irregularity including, but not limited to, Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures or necessary information, damaged, or submitted by a party that is not an Eligible Holder. Debtor shall not be under any duty to provide notification of defects or irregularities with respect to submitted Ballots other than by filing the Voting Report.
14. Copies of the Home Owner Disclosure Statement, the Master Disclosure Statement, the Plan and other related documents are available at <http://www.awdevelopmentreorg.com>. Paper copies of these documents can also be obtained by written request to GCG at **AW Bankruptcy Administration, c/o GCG, PO Box 9748, Dublin, OH 43017-5648; Telephone Hotline: (877) 604-9532. PLEASE NOTE THAT GCG IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

EXHIBIT "E"

DISPUTED CLAIM NOTICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:
AMERICAN WEST DEVELOPMENT, INC., a
Nevada corporation

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

Debtor.

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

Chapter 11

DISPUTED CLAIM NOTICE

PLEASE TAKE NOTICE that on [____], the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") entered an order (the "Solicitation Order") (i) approving the adequacy of the Disclosure Statements, (ii) approving certain procedures, deadlines and forms for the use by American West Development, Inc. ("AWDI"), debtor and debtor in possession ("Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), in soliciting votes to accept or reject Debtor's First Amended Chapter 11 Plan of Reorganization dated October 26, 2012 (the "Plan"), and (iii) granting related relief.

PLEASE TAKE FURTHER NOTICE that pursuant to the Solicitation Order, the Bankruptcy Court approved the Solicitation Procedures attached as Exhibit "A" to the Solicitation Order. The Solicitation Procedures govern various important aspects of the means by which Debtor will solicit votes on and seek confirmation of the Plan.

You are receiving this Notice because (i) you are listed as the Holder of a Claim as to which an objection has been filed that remains unresolved, and (ii) you otherwise would be entitled to vote to accept or reject the Plan but for the pendency of such objection.

PLEASE TAKE NOTICE that in order to attempt to become entitled to vote to accept or reject the Plan, you may either (a) file a timely response to the pending objection to justify the allowance of your Claim for voting purposes or otherwise, unless the time to respond has already expired, (b) attempt to reach written agreement with Debtor with respect thereto, or (c) seek relief from the Bankruptcy Court, subject to applicable provisions of the Bankruptcy Code, Bankruptcy Rules and Local Rules.

PLEASE TAKE FURTHER NOTICE that copies of the Plan, either or both of the Disclosure Statements, and other documents can be obtained online at <http://www.awdevelopmentreorg.com> or upon request from **AW Bankruptcy Administration, c/o GCG, PO Box 9748, Dublin, OH 43017-5648; Telephone Hotline: (877) 604-9532. PLEASE NOTE THAT GCG IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

DATED: DECEMBER 17, 2012

FOX ROTHSCHILD LLP

By /s/Brett A. Axelrod

BRETT A. AXELROD, ESQ. (Nevada Bar No. 5859)
MICAELA RUSTIA MOORE, ESQ. (Nevada Bar No. 9676)
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Counsel for Debtor