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

10 In re

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

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

26 Debtor.

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

Chapter 11

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

Hearing Date: ~~September 25, 2012~~  
 Hearing Time: ~~10:00 a.m.~~

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1 American West Development, Inc. (“Debtor”), debtor and debtor-in-possession in the above-  
2 captioned case (the “Chapter 11 Case”), hereby proposes this first amended chapter 11 plan of  
3 reorganization (the “Plan”), dated as of ~~May 29~~October 15, 2012, pursuant to section 1121(b) of title 11  
4 of the United States Code (the “Bankruptcy Code”).

5 **DISCLAIMER**

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

10 **ARTICLE I**

11 **DEFINITIONS AND RULES OF INTERPRETATION**

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

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



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

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

24 **ARTICLE II**

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

26 2.1 Introduction.  
27 (a) All Claims and Interests, except Administrative Claims (including Professional  
28 Fee Claims) and Priority Tax Claims, are placed in the Classes set forth below. In accordance with

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

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

10 2.2 Unclassified Claims.

11 (a) Administrative Claims.

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

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

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

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

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

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

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

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

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

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

3 2.3 Classified Claims and Interests.

4 (a) Class 1: Other Priority Claims.

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

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

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

15 (b) Class 2: Secured Claims.

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

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

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

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

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

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

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

9 (c) Class 3: General Unsecured Claims.

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

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

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

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

24 (d) Class 4: Construction Defect Claims.

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

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

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

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



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

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

22 (e) Class 5: Bond Claims.

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

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

26 *Impairment and Voting:* Class 5 is not Impaired and the Holders of Allowed Bond  
27 Claims are conclusively deemed to have accepted this Plan, pursuant to Bankruptcy Code section  
28

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1 1126(f). Therefore, the Holders of Allowed Class 5 Claims are not entitled to vote to accept or reject  
2 this Plan.

3 (f) Class 6: Old Equity Interests.

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

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

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

12 2.4 Retention of Defenses Regarding Claims. Except as otherwise provided in (a) this Plan,  
13 and (b) the DIP Financing Order, nothing shall affect Debtor’s rights and defenses, both legal and  
14 equitable, with respect to any Claims.

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

20 **ARTICLE III**

21 **ACCEPTANCE OR REJECTION OF THIS PLAN**

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

27 3.2 Summary of Classes Voting on this Plan.

28

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

3 (b) ~~Holders of Claims in~~ Classes 1 and 5 shall be conclusively deemed to have  
4 accepted the Plan pursuant to Bankruptcy Code section 1126(f) and ~~Holders of Interests in~~ Class 6 will  
5 be deemed not to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Accordingly,  
6 acceptances of the Plan will not be solicited from the Holders of Class 1 or 5 Claims, or from the  
7 Holders of Class 6 Interests.

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

13 3.4 Tabulation of Votes. The Voting and Claims Agent will tabulate all votes on this Plan  
14 for the purpose of determining whether this Plan has been accepted by each Impaired Class entitled to  
15 vote.

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

23 **ARTICLE IV**

24 **EXECUTORY CONTRACTS**

25 4.1 Executory Contracts. Debtor/Reorganized Debtor shall be deemed to have assumed each  
26 Assumed Contract as of the Effective Date. The Confirmation Order shall constitute an order of the  
27 Bankruptcy Court under Bankruptcy Code sections 365 and 1123(b)(2) approving the Assumed  
28 Contract assumptions by Debtor/Reorganized Debtor, as of the Effective Date.

1           4.2     Cure of Defaults for Assumed Executory Contracts.

2           (a)     Any of the Assumed Contracts that are, or may be, alleged to be in default, shall  
3 be Cured by the Effective Date. Except with respect to Assumed Contracts with respect to which  
4 Debtor and the applicable counterparties have stipulated in writing as to the appropriate Cure, all  
5 requests for Cure that differ from the amounts and treatment proposed by Debtor must be Filed with the  
6 Bankruptcy Court on or before the Cure Request Bar Date. Any request for payment or other Cure that  
7 is not timely Filed shall be disallowed automatically and forever barred from assertion and shall not be  
8 enforceable against Debtor or Reorganized Debtor, without the need for any objection by Debtor or  
9 further notice to or action, order or approval of the Bankruptcy Court, and any Claim for Cure shall be  
10 deemed fully satisfied, released and discharged upon payment by Reorganized Debtor of the amounts  
11 listed on the proposed Cure schedule, notwithstanding anything included in the Schedules or in any  
12 Proof of Claim to the contrary. Debtor or Reorganized Debtor also may settle any Cure dispute without  
13 further notice to or action, order or approval of the Bankruptcy Court.

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

27           (c)     Assumption of any Assumed Contract pursuant to this Plan or otherwise shall  
28 result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary,

1 including defaults with respect to provisions restricting the change in control or ownership interest  
2 composition or other bankruptcy-related defaults, arising under any Assumed Contract at any time prior  
3 to the effective date of assumption. Any Proofs of Claim Filed with respect to an Assumed Contract  
4 that has been assumed shall be deemed disallowed and expunged, without further notice to or action,  
5 order or approval of the Bankruptcy Court, upon payment by Reorganized Debtor of the required Cure  
6 amount.

7 4.3 Rejection of Executory Contracts.

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

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

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

22 4.5 Modifications, Amendments, Supplements, Restatements or Other Agreements.

23 (a) ~~Unless otherwise provided in the Plan Supplement, each~~ Each Assumed Contract  
24 ~~that is assumed~~ shall include all modifications, amendments, supplements, restatements or other agree-  
25 ments that in any manner affect such Assumed Contract, and all Executory Contracts related thereto, if  
26 any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first  
27 refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or  
28 repudiated or is rejected or repudiated under this Plan.

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

5 4.6 Reservation of Rights. ~~Neither the exclusion nor inclusion of any contract or lease in the~~  
6 ~~Plan Supplement, nor anything~~ Nothing contained in this Plan, ~~shall~~ constitute an admission by  
7 Debtor or Reorganized Debtor that any ~~such~~ contract or lease is, ~~in fact,~~ an Executory Contract or that  
8 Debtor or Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a  
9 contract or lease is or was an Executory Contract at the time of assumption or rejection, Debtor and/or  
10 Reorganized Debtor shall have thirty (30) days following entry of a Final Order resolving such dispute  
11 to alter the treatment of such contract or lease under the Plan.

12 4.7 Warranty Program. ~~Except as set forth in the Plan Supplement, from~~ From and after the  
13 Effective Date, Reorganized Debtor shall assume the Warranty Program.

14 4.8 Price Promises and Price Guarantees. To the extent the Price Promises and Price  
15 Guarantees are Executory Contracts, the Bankruptcy Court ~~has authorized~~ ruled that they be treated as  
16 Rejected Contracts. ~~Any, thereby giving any~~ Holder of an Allowed Claim whose Claim arises from the  
17 rejection of a Price Promise or Price Guarantee ~~shall have~~ the rights set forth in Section 4.3(b) of this  
18 Plan. ~~A party to a Price Promise or Price Guarantee agreement may file a claim for damages based on~~  
19 ~~the rejection up,~~ subject to such Holder's submission of a Proof of Claim prior to the bar date of June  
20 29, 2012 at 5:00 p.m. prevailing Pacific Time.

21 **ARTICLE V**

22 **PLAN IMPLEMENTATION**

23 5.1 Plan Implementation.

24 This Plan shall be implemented in all respects in a manner that is consistent with the terms and  
25 conditions of the Operative Documents, the Lock-Up and Settlement Letter Agreement, DIP Financing  
26 Order, and the requirements of section 1123(a) and other applicable provisions of the Bankruptcy Code.  
27 Without limiting the generality of the foregoing, the New Capital Contribution shall be used to fund this  
28 Plan and shall be distributed or applied in the manner necessary to: (i) provide all required Confirmation

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1 Funds for Distribution pursuant to this Plan; (ii) fund the Construction Defect Trust Contribution;  
 2 (iii) satisfy the costs, expenses, required payments and entitlements outlined herein on the Effective  
 3 Date, or pursuant to the TDP; and (iv) provide Reorganized Debtor and the Construction Defect Trust  
 4 with working capital and funding for operations and Plan needs. On the Effective Date, that portion of  
 5 the New Capital Contribution to be used for the Confirmation Funds shall be turned over to the  
 6 Distribution Agent for ~~D~~distribution pursuant to this Plan and the Construction Defect Trust  
 7 Contribution shall be turned over to the Construction Defect Trustee.

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

17 5.2 Issuance of Equity Interests. On the Effective Date, Old Equity Interests shall be  
 18 extinguished, canceled, terminated and be of no force and effect thereafter. In consideration of the New  
 19 Capital Contribution, one hundred percent (100%) of the New Equity Interests in Reorganized Debtor  
 20 shall be issued to the DIP Lender (subject to a pledge thereof in favor of the Secured Lenders to secure  
 21 any obligations of ~~the borrowers~~ Reorganized Debtor under the New Secured Loan).

22 5.3 Disposition of Assets and Equity Interests. On the Effective Date (as more fully set forth  
 23 in Article XII of this Plan), without any further action, Reorganized Debtor will be vested with all of  
 24 Debtor's Assets, free and clear of all Claims, Liens and Old Equity Interests (except for Liens provided  
 25 or authorized pursuant to this Plan).

26 5.4 Satisfaction of Allowed Claims. On and after the Effective Date, unless such Claims  
 27 shall be paid on or prior to such date, (i) to the extent not satisfied with Confirmation Funds,  
 28 Reorganized Debtor shall be responsible for satisfying Allowed Administrative Claims and Allowed

1 Class 1 Other Priority Claims pursuant and subject to the treatment thereof as set forth in this Plan and  
2 the Confirmation Order; (ii) Reorganized Debtor shall satisfy Allowed Class 2 Secured Claims and  
3 Allowed Class 5 Bond Claims pursuant and subject to the treatment thereof as set forth in this Plan and  
4 the Confirmation Order; (iii) the Distribution Agent shall satisfy Allowed Class 3 General Unsecured  
5 Claims from the Confirmation Funds; and (iv) the Construction Defect Trust shall be deemed to have  
6 assumed Debtor's obligations on account of Class 4 Construction Defect Claims, in each case including  
7 obligations (if any) on account of such Claims that are Disputed Claims or with respect to which any  
8 applicable period for asserting a Claim has not expired.

9 5.5 Corporate Actions.

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

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

20 5.6 Exemption from Certain Transfer Taxes and Further Transactions. Pursuant to  
21 Bankruptcy Code section 1146(a), the issuance or exchange of any security, or the making or delivery  
22 of any instrument of transfer under, in furtherance, or in connection with this Plan, including, but not  
23 limited to, any deeds, bills of sale, assignments or other instruments of transfer, shall not be subject to  
24 any stamp tax, real estate transfer tax or similar tax.

25 5.7 Final Decree. Notwithstanding otherwise applicable law, Debtor shall not request entry  
26 of the Final Decree with respect to the Chapter 11 Case, unless and until:  
27  
28

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

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

6 (c) All Claims have either: (i) become Allowed Claims and been paid in accordance  
7 with the treatment to be given such Allowed Claims pursuant to this Plan; (ii) been disallowed by a  
8 Final Order or deemed to be a Disallowed Claim, in accordance with the terms of this Plan or the  
9 Bankruptcy Code; or (iii) been assumed by Reorganized Debtor.

10 (d) All Distributions to be made under this Plan shall have been made (i) to Holders  
11 of Allowed Claims in accordance with the requirements of this Plan by the Distribution Agent; and  
12 (ii) to Holders of Allowed Construction Defect Claims in accordance with the TDBP by the  
13 Construction Defect Trustee.

14 5.8 Effectuating Documents, Further Transactions. On and after the Effective Date, Debtor  
15 and its agents, officers and members, are authorized to and may issue, execute, deliver, file or record  
16 such contracts, securities, instruments, releases and other agreements or documents and take such  
17 actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and  
18 conditions of this Plan in the name of and on behalf of Debtor, as applicable, without the need for any  
19 approvals, authorizations or consents except for those expressly required pursuant to this Plan.

20 5.9 Post Effective Date Fees and Expenses.

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

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

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1 (c) In order to seek payment of Post Effective Date Fees, each respective  
2 Professional will send its invoice to Reorganized Debtor, the Distribution Agent, and the Administrative  
3 Agent for the Secured Lenders. Reorganized Debtor and the Secured Lenders shall have ten (10)  
4 ~~b~~Business ~~d~~Days thereafter within which to notify the other, the Professional, and the Distribution  
5 Agent in writing that it objects to payment of the invoice. If no objection is made within that  
6 time frame, Distribution Agent or Reorganized Debtor (as applicable) shall pay the invoice within  
7 thirty (30) days thereafter. In the event Reorganized Debtor or the Secured Lenders object(s) and the  
8 parties are unable to resolve the objection, the Professional may bring the matter before the Bankruptcy  
9 Court for determination by motion after giving twenty-eight (28) days-' notice to the objecting  
10 party(ies).

11 **ARTICLE VI**

12 **THE CONSTRUCTION DEFECT TRUST**

13 6.1 Creation of the Construction Defect Trust and Appointment of the Construction Defect  
14 Trustee.

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

17 (b) The Construction Defect Trust shall be administered by the Construction Defect  
18 Trustee, who shall be ~~identified in the Construction Defect Trust Declaration no later than fourteen (14)~~  
19 ~~days prior to the Confirmation Hearing~~James L. The appointment of the initial Construction Defect  
20 ~~Trustee and the terms of its~~Moore, whose annual compensation shall be ~~subject to the \$100,000. Entry~~  
21 of the Confirmation Order shall constitute approval of the ~~Bankruptcy Court~~foregoing.

22 (c) The Construction Defect Trustee shall have all of the rights and powers, and shall  
23 perform all of the ~~rights, powers and~~ duties-, conveyed upono him as set forth in this Plan and the  
24 Construction Defect Trust Declaration.

25 (d) On the Effective Date, the DIP Lender shall transfer to the Construction Defect  
26 Trust the Construction Defect Trust Contribution ~~from which.~~ If, but only if, the Holders of at least  
27 eighty percent (80%) in number of Class 4 Construction Defect Claims actually vote to accept the Plan,  
28 then within sixty (60) days of the Effective Date, the Cash Out Payment will be made to ~~those such~~

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1  Holders  who made the Cash Out Election. The Remaining Construction Defect Trust Fund, a portion  
 2 equal to sixty percent (60%) of which is earmarked to pay the reasonable costs and expenses associated  
 3 with the administration of the Construction Defect Trust, including, but not limited to, reasonable costs  
 4 and expenses to be incurred by the Construction Defect Trust in connection with the prosecution of  
 5 Insurance Coverage Actions and Construction Defect Actions, will be used to pay  Allowed  Class 4  
 6  Construction Defect  Claims allowed by the Construction Defect Trustee for those who did not make the  
 7 Cash Out Election. DIP Lender shall not be reimbursed for such transfer and neither DIP Lender nor  
 8 Reorganized Debtor shall have any further obligation to fund the Construction Defect Trust.

9           6.2      Property of the Construction Defect Trust.  In addition to  ~~the~~   DIP Lender  funding  ~~of the~~   
 10 Construction Defect Trust with the Construction Defect Trust Contribution pursuant to Section 6.1 of  
 11 this Plan, and notwithstanding any prohibition against assignability under applicable non-bankruptcy  
 12 law, on the Effective Date, Reorganized Debtor shall be deemed to have automatically transferred to the  
 13 Construction Defect Trust all of its right, title and interest in and to all of the Insurance Coverage  
 14 Actions and Construction Defect Actions and the proceeds thereof, and any right, title or interest in  
 15 pursuing and receiving any and all Insurance Recoveries. In accordance with Bankruptcy Code section  
 16 1141(c), on the Effective Date, the transfer of the Insurance Coverage Actions, Insurance Recoveries  
 17 and Construction Defect Actions shall automatically vest in the Construction Defect Trust free and clear  
 18 of, among other things, all Claims and  ~~i~~   i  Interests for the benefit of the Holders of Allowed Construction  
 19 Defect Claims. Notwithstanding the foregoing, Reorganized Debtor reserves the right, in its sole  
 20 discretion, to retain the Insurance Recoveries and pay the net proceeds of such recoveries (after the  
 21 deduction of the reasonable and necessary unreimbursed costs and expenses associated with obtaining  
 22 such proceeds) to the Construction Defect Trust if, after consultation with the Construction Defect  
 23 Trustee, it is determined that such retention better preserves such assets.

24           6.3      Purpose of the Construction Defect Trust.  The Construction Defect Trust shall  
 25 be established for the primary purpose of (a) liquidating its assets in accordance with  
 26 Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or  
 27 business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of  
 28 the Construction Defect Trust, and (b) liquidating, resolving, paying and satisfying all Construction

1 Defect Claims pursuant to claims liquidation procedures established by the Construction Defect  
2 Trustee, after consultation with and approval by the Construction Defect Trust Advisory Board.  
3 Accordingly, the Construction Defect Trustee shall, in an expeditious but orderly manner, disburse the  
4 Cash Out Payments to Holders of Construction Defect Claims who make the Cash Out Election,  
5 liquidate and convert to Cash the Insurance Coverage Actions, Insurance Recoveries and Construction  
6 Defect Actions, make timely distributions to the other Holders of Allowed Construction Defect Claims  
7 of Cash and property, and not unduly prolong the duration of the Construction Defect Trust. The  
8 Construction Defect Trustee shall not be deemed a successor-in-interest of Debtor or Reorganized  
9 Debtor for any purpose other than as specifically set forth herein or in the Construction Defect Trust  
10 Declaration. The Construction Defect Trust is intended to qualify and shall be treated as a “qualified  
11 settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and the Construction Defect Trustee  
12 shall be the “administrator” of the Construction Defect Trust pursuant to Treas. Reg. § 1.468B-2(k)(3).  
13 No election shall be made to treat the Construction Defect Trust as a grantor trust for U.S. federal  
14 income tax purposes. Accordingly, the Construction Defect Trust shall be treated as a taxable entity for  
15 federal income tax purposes.

16           6.4     Powers of the Construction Defect Trustee. The Construction Defect Trustee shall have  
17 the power to administer the assets of the Construction Defect Trust in a manner consistent with the  
18 Construction Defect Trust Declaration, and the Construction Defect Trustee, in consultation with the  
19 Construction Defect Trust Advisory Board, shall be the Estate representative and the representative of  
20 the Construction Defect Trust’s beneficiaries designated to prosecute any and all Insurance Coverage  
21 Actions and Construction Defect Actions transferred to the Construction Defect Trust, and to object to  
22 and resolve objections to Construction Defect Claims pursuant to the claims liquidation procedures  
23 established by the Construction Defect Trustee, after consultation with and approval by the  
24 Construction Defect Trust Advisory Board. Without limiting the generality of the foregoing, the  
25 Construction Defect Trustee shall (a) hold, administer and prosecute the assets of the Construction  
26 Defect Trust and any proceeds thereof; (b) have the power and authority to retain, as an expense of the  
27 Construction Defect Trust, attorneys, advisors, other professionals and employees as may be  
28 appropriate to perform the duties required of the Construction Defect Trustee hereunder or in the

1 Construction Defect Trust Declaration and the TDP; (c) object to Construction Defect Claims and  
2 prosecute and resolve such objections; (d) otherwise resolve all Construction Defect Claims; (e) make -  
3 ~~d~~Distributions as provided in the Construction Defect Trust Declaration; and (f) provide periodic  
4 reports and updates regarding the status of the administration of the Construction Defect Trust. The  
5 Construction Defect Trustee shall be deemed a Distribution Agent under the Plan when making  
6 distributions to ~~h~~Holders of Construction Defect Trust Interests pursuant to and as defined in the  
7 Construction Defect Trust Declaration. Further, the Construction Defect Trustee shall be deemed the  
8 Distribution Agent in Article VIII with respect to the filing, prosecution and resolution of objections to  
9 Construction Defect Claims.

10 6.5 Construction Defect Trust Advisory Board. On the Effective Date, the Construction  
11 Defect Trust Advisory Board shall be created pursuant to the Construction Defect Trust Declaration.  
12 The initial members of the Construction Defect Trust Advisory Board shall be ~~those individuals~~  
13 ~~identified no later than fourteen (14) days prior to the Confirmation Hearing~~David N. Keys for a  
14 five year term, Lance W. Johns for a four-year term and Jerry McGuire for a three-year term. The  
15 Construction Defect Trust Advisory Board shall consult with and advise the Construction Defect  
16 Trustee regarding the administration of the Construction Defect Trust and the liquidation and resolution  
17 of Construction Defect Claims in accordance with the provisions of this Plan and the Construction  
18 Defect Trust Declaration.

19 6.6 Cooperation Between Construction Defect Trustee and Disbursing Agent

20  
21 (a) The right to control the Insurance Coverage Actions, Insurance Recoveries and  
22 the Construction Defect Actions, including negotiations relating thereto and settlements thereof, shall be  
23 vested in the Construction Defect Trust on and after the Effective Date. Notwithstanding the foregoing,  
24 to enable the Construction Defect Trustee to perform ~~its~~his duties under the Construction Defect Trust  
25 Declaration and the Plan, Reorganized Debtor shall cooperate with the Construction Defect Trustee in  
26 pursuing the Insurance Coverage Actions, Insurance Recoveries and the Construction Defect Actions,  
27 and shall provide the representatives of the Construction Defect Trust with reasonable access to  
28 personnel and books and records of Debtor and/or Reorganized Debtor relating to the Insurance

1 Coverage Actions, Insurance Recoveries and the Construction Defect Actions. Reorganized Debtor  
2 shall provide the Construction Defect Trust with advance notice of any proposed disposition of any  
3 books and records relating to the Insurance Coverage Actions, Insurance Recoveries and the  
4 Construction Defect Actions and a reasonable opportunity for the Construction Defect Trust to  
5 segregate and remove such books and records as the Construction Defect Trust may select. The  
6 Construction Defect Trustee and the Disbursing Agent shall consult and cooperate reasonably in the  
7 performance of their duties under the Plan.

8 (b) If the Construction Defect Trust obtains from Reorganized Debtor or its  
9 representatives any documents or communications (whether electronic, written or oral) to which any  
10 privilege attaches, the Construction Defect Trust shall be deemed the privilege holder for purposes of  
11 fulfilling the Construction Defect Trust obligations and preserving the privilege, shall be required to  
12 take all reasonable steps to maintain any such privilege and may not waive any such privilege without  
13 the consent of Reorganized Debtor, which consent shall not be unreasonably withheld. Any disputes  
14 between the Construction Defect Trust and Reorganized Debtor regarding the production of any  
15 documents or communications or the waiver of any privileges shall be decided by the Bankruptcy  
16 Court. In the event that any third party challenges any such privilege, Reorganized Debtor or the  
17 Construction Defect Trustee may seek protection from a court of competent jurisdiction.

18 (c) Reorganized Debtor shall cooperate with the Construction Defect Trust and use  
19 commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to  
20 be done all things necessary or appropriate to effectuate all transfers and assignments identified herein  
21 to the Construction Defect Trust. Reorganized Debtor shall, without limitation, (i) provide the  
22 Construction Defect Trust with copies of insurance policies and settlement agreements, if any, included  
23 within or relating to any Construction Defect Claims; (ii) provide the Construction Defect Trust with  
24 information necessary or helpful to the Construction Defect Trust in connection with its efforts to  
25 obtain insurance coverage for the Construction Defect Claims as well as the Insurance Recoveries;  
26 (iii) execute assignments or allow the Construction Defect Trust to pursue claims in its own name with  
27 respect to Construction Defect Claims (subject to appropriate disclosure of the fact that the Construction  
28 Defect Trust is doing so and the reasons why it is doing so), including by means of arbitration,

1 alternative dispute resolution proceedings or litigation, to the extent necessary or helpful to the efforts  
2 of the Construction Defect Trust to obtain insurance coverage for the Construction Defect Claims as  
3 well as the Insurance Recoveries; and (iv) at the sole cost and expense of the Construction Defect Trust,  
4 pursue and recover insurance coverage for the Construction Defect Claims, including the Insurance  
5 Recoveries, in its own name or right to the extent that any or all of the transfers, assumptions and  
6 assignments of the Insurance Coverage Actions, Insurance Recoveries and Construction Defect Actions  
7 provided for herein are not able to be fully effectuated, with any and all recoveries therefrom to be  
8 transferred to the Construction Defect Trust.

9           6.7     Assumption of Liabilities by the Construction Defect Trust. Upon the occurrence of the  
10 Effective Date, in exchange for the consideration provided for herein, the Construction Defect Trust  
11 shall be deemed, without need for further action, to have assumed responsibility and liability for all  
12 Construction Defect Claims. The Construction Defect Trust shall have no recourse, claims, causes of  
13 action or right to recovery against Reorganized Debtor on account of the Construction Defect Claims.

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

1 **ARTICLE VII**

2 **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

3 7.1 Allowance of Claims. After the Effective Date, Reorganized Debtor shall have and  
4 retain any and all rights and defenses Debtor had with respect to any Claim or Interest immediately  
5 prior to the Effective Date, except with respect to any Claims deemed Allowed under the Plan, any  
6 Construction Defect Claims, and any applications for allowance of compensation and reimbursement  
7 of expenses under Bankruptcy Code sections 330, 331 and/or 503. Except as expressly provided in the  
8 Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including the  
9 Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed  
10 Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order  
11 (including the Confirmation Order) in the Chapter 11 Case allowing such Claim. No Construction  
12 Defect Claim shall become an Allowed Construction Defect Claim (i) unless the Holder makes the Cash  
13 Out Election, or (ii) until Allowed by the Construction Defect Trustee after consultation with the  
14 Construction Defect Trust Advisory Board. All settled Claims approved prior to the Effective Date  
15 pursuant to a Final Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019 or otherwise shall  
16 be binding on all parties.

17 7.2 Claims Administration Responsibilities. Except as otherwise specifically provided in the  
18 Plan, after the Effective Date, Reorganized Debtor shall have the sole authority: (1) to File, withdraw  
19 or litigate to judgment any objections to Claims; (2) to settle or compromise any Disputed Claim  
20 without any further notice to, or action, order or approval by, the Bankruptcy Court; and (3) to  
21 administer and adjust the Claims Register to reflect any such settlements or compromises without any  
22 further notice to, or action, order or approval by, the Bankruptcy Court.

23 7.3 Claim Objection Deadline. As soon as practicable, but in no event later than thirty (30)  
24 days after the Effective Date (subject to being extended by the order of the Bankruptcy Court upon  
25 motion of Reorganized Debtor without notice or a hearing), objections to Claims shall be Filed with the  
26 Bankruptcy Court and served upon the Holders of each of the Claims to which objections are made.  
27 Notwithstanding anything to the contrary in this Plan, Construction Defect Claims shall be liquidated,  
28 resolved, paid and satisfied by the Construction Defect Trust, rather than by objection in the Bankruptcy



1 Court, unless the Construction Defect Trustee Files an objection to any Construction Defect Claim in  
2 the Bankruptcy Court within thirty (30) days after the Effective Date.

3 7.4 Contingent Claims. Until such time as a Contingent Claim or a contingent portion of an  
4 Allowed Claim becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed  
5 Claim for all purposes related to Distributions under the Plan. The Holder of a Contingent Claim will  
6 only be entitled to a Distribution under the Plan when and if such Contingent Claim becomes an  
7 Allowed Claim.

8 7.5 Estimation of Claims. Debtor or Reorganized Debtor shall be permitted, at any time, to  
9 request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to  
10 Bankruptcy Code section 502(c), regardless of whether Debtor previously had objected to such Claim  
11 or whether the Bankruptcy Court had ruled on such objection, and the Bankruptcy Court shall retain  
12 jurisdiction to estimate any Claim at any time during any litigation concerning any objection to such  
13 Claim, including during the pendency of any appeal relating to such objection. In the event that the  
14 Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall  
15 constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as  
16 determined by the Bankruptcy Court. If such estimated amount constitutes a maximum limitation on  
17 the amount of such Claim, Debtor may elect to pursue any supplemental proceedings to object to the  
18 allowance of such Claim.

19 7.6 Payments. Payments and Distributions to each Holder of a Disputed Claim that  
20 ultimately becomes an Allowed Claim shall be made in accordance with the provision of this Plan with  
21 respect to the Class of Claims to which the Allowed Claim of such Holder belongs.

22 **ARTICLE VIII**

23 **PROVISIONS CONCERNING PLAN DISTRIBUTIONS**

24 8.1 Distributions on Account of Claims Allowed as of the Effective Date. Distributions  
25 under this Plan on account of Claims, other than General Unsecured Claims and Construction Defect  
26 Claims for which no Cash Out Election is made, Allowed on or before the Effective Date, shall be made  
27 on the Effective Date, or on the first date thereafter as is reasonably practicable.

28 8.2 Distributions on Account of Claims Allowed After the Effective Date.



1 (a) Payments and Distributions on Disputed Administrative and [Other Priority](#)  
2 Claims. Except as otherwise provided in this Plan, or any Final Order in the Chapter 11 Case, any  
3 Disputed Administrative Claim or Disputed Priority Claim that becomes Allowed after the Effective  
4 Date shall be satisfied from the Confirmation Funds or, to the extent there are no available  
5 Confirmation Funds from which to pay such Claim, the obligation to satisfy such Claims will be  
6 assumed by Reorganized Debtor in the ordinary course of business in accordance with the terms and  
7 conditions of any controlling agreements, course of dealing, course of business or industry practice.

8 (b) Special Rules for Distributions to Holders of General Unsecured Claims. After  
9 adequately reserving for each Disputed Claim in Class 3, an initial ~~d~~Distribution on account of Allowed  
10 General Unsecured Claims shall be made on the Effective Date. Additional ~~distributions to~~  
11 Distributions on account of General Unsecured Claims, even if Allowed, shall not be made until all  
12 objections to Disputed General Unsecured Claims have been resolved by settlement or Final Order and  
13 the Claims have been Allowed or Disallowed, as the case may be, which shall, in no event, be later than  
14 one hundred twenty (120) days after the Effective Date (subject to being extended by the order of the  
15 Bankruptcy Court upon motion of Reorganized Debtor without notice or a hearing).

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

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

27  
28

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1           8.3    Manner of Payment Under this Plan. Distributions of Cash to be made by the  
2 Distribution Agent pursuant to this Plan shall be made, at the discretion of the Distribution Agent, by  
3 check drawn on the Distribution Agent’s bank account or by wire transfer from a domestic bank.

4           8.4    Whole Dollars. Any other provision of this Plan to the contrary notwithstanding, no  
5 payments of cents will be made in connection with a Distribution. Whenever any payment of cents  
6 would otherwise be called for, the actual payment may reflect a rounding of such fraction to the nearest  
7 whole dollar (up or down).

8           8.5    [reserved]

9           8.6    Stop Payment. Holders of Allowed Claims, except for Allowed Construction Defect  
10 Claims, shall have ninety (90) days from the check date to negotiate Distribution checks issued by the  
11 Distribution Agent under the terms of this Plan, otherwise payment on such checks may at the  
12 Distribution Agent’s sole discretion be stopped and the funds shall be returned to the Distribution Agent  
13 and shall be promptly distributed to Reorganized Debtor. The Construction Defect Trust and TDP  
14 govern these issues as they pertain to Construction Defect Claims.

15          8.7    Delivery of Distributions.

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

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

27           (c)    Delivery of Distributions in General. Except as otherwise provided in this Plan,  
28 and notwithstanding any authority to the contrary, Distributions to all Holders of Allowed Claims shall

1 be made to Holders of record as of the Distribution Record Date by the Distribution Agent: (a) in  
2 accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy  
3 Rule 7004; (b) to the signatory set forth on any of the Proofs of Claim Filed by such Holder or other  
4 representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is  
5 Filed or if Debtor has been notified in writing of a change of address); (c) at the addresses set forth in  
6 any written notices of address changes delivered to Debtor after the date of any related Proof of Claim;  
7 (d) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Distribution  
8 Agent has not received a written notice of a change of address; or (e) on any counsel that has appeared  
9 in the Chapter 11 Case on the Holder's behalf. Except as otherwise provided in this Plan, Distributions  
10 under this Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment or  
11 like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the  
12 Distributions in the manner set forth in this Plan. Absent willful misconduct or gross negligence,  
13 Debtor, Reorganized Debtor and Distribution Agent, as applicable, shall not incur any liability on  
14 account of any Distributions made under this Plan.

15           8.8     Returned Distributions. In the case of Distributions to the Holders of Allowed Claims  
16 that are returned to the Distribution Agent due to an incorrect or incomplete address, the Distribution  
17 Agent shall retain any such returned Distribution in a segregated account established by the Distribution  
18 Agent to keep track of any returned Distributions. Unless the Holder of the Allowed Claim relating to  
19 any such returned Distribution contacts the Distribution Agent (or its designee) within three (3) months  
20 from the date on which such Distribution was returned and provides the Distribution Agent (or its  
21 designee) with acceptable proof of identity and an accurate address, such Holder shall forfeit all rights  
22 thereto, and to any and all future Distributions or rights under this Plan. In such event, the Claim for  
23 which such Distributions were issued shall be treated as a Disallowed Claim and the Distribution on  
24 account of such Disallowed Claim shall promptly be distributed to Reorganized Debtor.

25           8.9     Disputed Distributions. In the event of any dispute between or among Holders of Claims  
26 as to the right of any Holder of a Claim to receive or retain any Distribution to be made to such Holder  
27 under this Plan, the Distribution Agent, in lieu of making such Distribution to such Holder, may make it  
28 instead into an escrow account for payment as ordered by the Bankruptcy Court or as the interested

1 parties to such dispute may otherwise agree among themselves. Any such Holder who fails to raise  
2 such dispute by filing an appropriate request for relief with the Bankruptcy Court prior to the issuance  
3 of such disputed Distribution by the Distribution Agent shall be deemed to have forever waived any  
4 right to dispute such Distribution or to enjoin, impair or otherwise restrict the use of any such  
5 Distribution.

6 8.10 Setoffs. The Distribution Agent may, but shall not be required to, set-off against any  
7 Distributions to be made pursuant to this Plan to a Holder of an Allowed Claim, Claims of any nature  
8 whatsoever that Debtor may have, or may have had, against such Holder that have not been previously  
9 released, but neither the failure to do so, nor the allowance of any Claim held by such Holder, shall  
10 constitute a waiver or release by the Distribution Agent of any such Claim Debtor may have, or may  
11 have had, against such Holder. Nothing in this Plan shall affect the right of the Internal Revenue  
12 Service to assert setoff and recoupment rights, or impair the ability of the Internal Revenue Service to  
13 collect interest on its Administrative Claims in accordance with applicable non-bankruptcy law, and  
14 such rights are expressly reserved.

15 8.11 Withholding Taxes. The Distribution Agent shall be entitled to deduct any applicable  
16 federal or state withholding taxes from any payments made with respect to Allowed Claims, as  
17 appropriate, and shall otherwise comply with Bankruptcy Code section 346.

18 8.12 Allocation of Distributions. Distributions on account of Allowed Claims shall, for tax  
19 purposes, be treated as allocated first to principal, and thereafter to interest only to the extent that the  
20 entire principal amount has been recovered, if applicable.

21 **ARTICLE IX**

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

23 9.1 Withdrawal of Plan; Rights if Plan Not Confirmed or Effective Date Does Not Occur.  
24 Subject to the Lock-Up and Settlement Letter Agreement, Debtor reserves the right to revoke or  
25 withdraw this Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If  
26 Debtor revokes or withdraws this Plan, or if the Effective Date does not occur on or before June 1,  
27 2013, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise  
28 embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Class of

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1 Claims), assumption or rejection of Executory Contracts affected by this Plan, and any document or  
2 agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in  
3 this Plan shall: (a) constitute a waiver or release of any Claims or Interests by or against Debtor or any  
4 Person or Entity; (b) prejudice in any manner the rights of Debtor or any other Person or Entity in any  
5 further proceedings involving Debtor; or (c) constitute an admission, acknowledgment, offer or under-  
6 taking of any sort by Debtor or any other Person or Entity.

7 9.2 No Admissions or Waiver. Without limiting the generality of any similar provision in  
8 this Plan, notwithstanding anything in the Plan to the contrary, nothing contained in the Plan, ~~Plan~~  
9 ~~Supplement~~ or in the Disclosure Statement shall be deemed an admission by Debtor or any Person or  
10 Entity with respect to any matter set forth herein. If the Effective Date does not occur on or before June  
11 1, 2013, no statement contained in the Plan, ~~Plan Supplement~~ or in the Disclosure Statement may be  
12 used or relied on in any manner in any suit, action, proceeding or controversy within or outside of the  
13 Chapter 11 Case against Debtor. Without in any way limiting the provisions set forth in Section 9.1,  
14 Debtor reserves any and all of its rights as against all Persons and Entities in the event the Effective  
15 Date does not occur on or before June 1, 2013.

16 9.3 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the  
17 Chapter 11 Case under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the  
18 Confirmation Date, shall remain in full force and effect until the Effective Date unless the Bankruptcy  
19 Court shall order otherwise, provided however that the injunction under Bankruptcy Code section 105  
20 that channels all liability for Construction Defect Claims to the Construction Defect Trust shall remain  
21 in full force and effect in perpetuity.

22 **ARTICLE X**

23 **CONDITIONS TO EFFECTIVE DATE**

24 10.1 Conditions to Occurrence of Effective Date. Each of the following is a condition  
25 precedent to the occurrence of the Effective Date, unless waived in writing by Debtor:

26 (a) ~~Debtor shall have timely Filed the Plan Supplement on or before the Plan~~  
27 ~~Supplement Filing Date;~~

28 (a) [reserved];

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

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

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

13 (e) The Bar Date shall have passed;

14 (f) The Construction Defect Trust Declaration shall have been executed and  
15 delivered;

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

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

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

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

26 (k) To the extent Confirmation Funds are insufficient to satisfy the Allowed  
27 Administrative Claims and Allowed Other Priority Claims in full, Reorganized Debtor shall have  
28

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1 assumed or paid the remaining amounts unless otherwise agreed by the Holder of such Allowed  
2 Administrative Claim and Allowed Other Priority ~~Claims~~-Claim;

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

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

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

7 10.2 Notice of Effectiveness. When all the conditions contained in Section 10.1 have been  
8 completed, Debtor shall File with the Bankruptcy Court and serve upon all Creditors and all potential  
9 Holders of Administrative Claims known to Debtor (whether or not disputed), a notice of the  
10 occurrence of the Effective Date of the Plan. ~~The Such~~ notice ~~of Effective Date of Plan~~ shall include  
11 notice of the Administrative Claim Bar Date.

12 **ARTICLE XI**

13 **RETENTION OF JURISDICTION**

14 11.1 Retention of Jurisdiction. Except to the extent otherwise expressly set forth herein, the  
15 Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case following the Confirmation Date for  
16 the following purposes, it being expressly intended that such retention of jurisdiction shall in all cases  
17 hereafter set forth, extend to any actions or proceedings commenced prior or subsequent to the  
18 Confirmation Date and/or the Effective Date whether by Debtor, Reorganized Debtor or the parties  
19 specified herein:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (s) Without limiting the generality of any of the foregoing, to hear and determine  
10 matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 345,  
11 505 and 1146;

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

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

16 11.2 Jurisdiction Unaffected. The occurrence of the Effective Date and/or the entry of a Final  
17 Decree shall not divest the Bankruptcy Court of any jurisdiction otherwise retained under this Article  
18 XI or the Confirmation Order.

19 11.3 Failure or Inability of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy  
20 Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction  
21 over any matter arising under, arising in or related to the Chapter 11 Case, including any of the matters  
22 set forth in the Plan, the Plan shall not prohibit or limit the exercise of jurisdiction by any other court of  
23 competent jurisdiction with respect to such matter.

24 11.4 New Secured Loan Documents. Any issues or disputes with respect to the New Secured  
25 Loan Documents arising after the Effective Date may be resolved pursuant to the applicable provisions  
26 thereof.

27 11.5 Term Loan. Notwithstanding anything contained in this Plan, nothing herein shall confer  
28 on the Bankruptcy Court jurisdiction to hear or determine any claims, causes of action or disputes

1 arising under or in connection with the Term Loan or the Term Loan Documents, as ~~it~~ they may be  
2 amended from time to time.

3 **ARTICLE XII**

4 **EFFECT OF CONFIRMATION OF PLAN**

5 12.1 Discharge.

6 (a) IN CONJUNCTION WITH BANKRUPTCY CODE SECTION 1141, EXCEPT  
7 AS OTHERWISE PROVIDED FOR HEREIN, THE RIGHTS AFFORDED HEREIN AND THE  
8 TREATMENT OF ALL CLAIMS AND EQUITY INTERESTS HEREIN SHALL BE IN EXCHANGE  
9 FOR AND IN COMPLETE SATISFACTION, DISCHARGE AND RELEASE OF CLAIMS AND  
10 EQUITY INTERESTS OF ANY NATURE WHATSOEVER AGAINST DEBTOR, AND OF THE  
11 ASSETS OF THE ESTATE, INCLUDING ANY INTEREST ACCRUED ON SUCH CLAIMS FROM  
12 AND AFTER THE PETITION DATE.

13 (b) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT  
14 AS PROVIDED IN THE CONFIRMATION ORDER, CONFIRMATION DISCHARGES DEBTOR  
15 AND REORGANIZED DEBTOR FROM ALL CLAIMS OR OTHER DEBTS THAT AROSE  
16 BEFORE THE EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN  
17 BANKRUPTCY CODE SECTIONS 502(g), 502(h) OR 502(i), WHETHER OR NOT: (X) A PROOF  
18 OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO HAVE BEEN  
19 FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(a); (Y) A CLAIM BASED ON  
20 SUCH DEBT IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502; OR (Z) THE HOLDER  
21 OF A CLAIM BASED ON SUCH DEBT HAS ACCEPTED THE PLAN.

22 (c) EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, (I) ON THE  
23 EFFECTIVE DATE, ALL CLAIMS AGAINST DEBTOR WHICH AROSE BEFORE THE  
24 EFFECTIVE DATE SHALL BE SATISFIED, DISCHARGED AND RELEASED IN FULL, (II) ON  
25 THE EFFECTIVE DATE, THE RIGHTS AND INTERESTS OF ALL HOLDERS OF OLD EQUITY  
26 INTERESTS SHALL BE TERMINATED, CANCELED AND BE OF NO FORCE AND EFFECT,  
27 AND (III) ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST DEBTOR,  
28 REORGANIZED DEBTOR, ITS SUCCESSORS, OR ANY OF ITS ASSETS, ANY OTHER OR

1 FURTHER CLAIMS OR EQUITY INTERESTS BASED UPON ANY ACT OR OMISSION,  
2 TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED  
3 BEFORE THE EFFECTIVE DATE, AS WELL AS ANY DEBT OF A KIND SPECIFIED IN  
4 BANKRUPTCY CODE SECTIONS 502(g), 502(h) OR 502(i), IRRESPECTIVE OF WHETHER  
5 (X) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO  
6 HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(a), (Y) SUCH  
7 CLAIM IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502, OR (Z) THE HOLDER OF  
8 THE CLAIM HAS ACCEPTED THE PLAN.

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

11 12.2 Binding Effect of Plan/Injunction.

12 (a) UPON THE EFFECTIVE DATE, BANKRUPTCY CODE SECTION 1141  
13 SHALL BECOME APPLICABLE WITH RESPECT TO THE PLAN AND THE PLAN SHALL BE  
14 BINDING ON ALL PARTIES TO THE FULLEST EXTENT PERMITTED BY BANKRUPTCY  
15 CODE SECTION 1141(a). IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1141, ALL  
16 OF DEBTOR'S ASSETS, EXCEPT SUCH ASSETS BEING TRANSFERRED TO THE  
17 CONSTRUCTION DEFECT TRUST ON THE EFFECTIVE DATE PURSUANT TO THE TERMS  
18 OF THIS PLAN, SHALL BE VESTED IN REORGANIZED DEBTOR FREE AND CLEAR OF ALL  
19 CLAIMS, LIENS AND INTERESTS OF CREDITORS AND EQUITY INTEREST HOLDERS,  
20 EXCEPT FOR THE LIENS GRANTED TO THE SECURED LENDERS HEREUNDER AND  
21 PURSUANT TO THE TERMS OF THE NEW SECURED LOAN DOCUMENTS.

22 (b) UPON THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES SHALL BE  
23 PERMANENTLY ENJOINED BY THE PLAN FROM (I) COMMENCING OR CONTINUING ANY  
24 ACTION, EMPLOYING ANY PROCESS, ASSERTING OR UNDERTAKING AN ACT TO  
25 COLLECT, RECOVER, OR OFFSET, DIRECTLY OR INDIRECTLY, ANY CLAIM, RIGHTS,  
26 CAUSES OF ACTION, LIABILITIES OR INTERESTS IN OR AGAINST ANY ASSETS  
27 DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE PLAN, OR VESTED IN REORGANIZED  
28 DEBTOR, BASED UPON ANY ACT, OMISSION, TRANSACTION OR OTHER ACTIVITY THAT

1 OCCURRED BEFORE THE EFFECTIVE DATE, (II) CREATING, PERFECTING OR ENFORCING  
2 ANY LIEN OR ENCUMBRANCE AGAINST ANY ASSETS DISTRIBUTED OR TO BE  
3 DISTRIBUTED UNDER THE PLAN OTHER THAN AS PERMITTED UNDER THE PLAN AND  
4 UNDER THE NEW SECURED LOAN DOCUMENTS, AND (III) WITHOUT LIMITING THE  
5 GENERALITY OF THE FOREGOING, ASSERTING ANY CLAIMS AGAINST REORGANIZED  
6 DEBTOR BASED ON SUCCESSOR LIABILITY OR SIMILAR OR RELATED THEORY, EXCEPT  
7 TO THE EXTENT A PERSON OR ENTITY HOLDS AN ALLOWED CLAIM UNDER THE PLAN  
8 AND IS ENTITLED TO A DISTRIBUTION AND/OR LIEN UNDER THE PLAN IN  
9 ACCORDANCE WITH ITS TERMS, AND TO ENFORCE ITS RIGHTS TO SUCH DISTRIBUTION  
10 AND/OR LIEN UNDER THE PLAN.

11 (c) ON AND AFTER THE EFFECTIVE DATE, EACH HOLDER OF ANY  
12 CLAIM AGAINST OR INTEREST IN DEBTOR IS PERMANENTLY ENJOINED FROM TAKING  
13 OR PARTICIPATING IN ANY ACTION THAT WOULD INTERFERE OR OTHERWISE HINDER  
14 DEBTOR OR REORGANIZED DEBTOR FROM IMPLEMENTING THIS PLAN, THE  
15 CONFIRMATION ORDER OR ANY OPERATIVE DOCUMENTS IN ACCORDANCE WITH THE  
16 TERMS THEREOF.

17 12.3 Exculpation. None of the Exculpated Parties shall have or incur any liability to any  
18 Holder of a Claim against or Interest in Debtor, or any other party-in-interest, ~~or any of their Related~~  
19 ~~Persons~~, or any of their successors or assigns, for any act, omission, transaction or other occurrence in  
20 connection with, relating to, or arising out of the Chapter 11 Case, the pursuit of confirmation of this  
21 Plan, or the Consummation of this Plan, except and solely to the extent such liability is based on fraud,  
22 gross negligence or willful misconduct. The Exculpated Parties shall be entitled to reasonably rely  
23 upon the advice of counsel with respect to any of their duties and responsibilities under this Plan or in  
24 the context of the Chapter 11 Case. No Holder of a Claim against or Interest in Debtor, or any other  
25 party-in-interest, ~~including their respective Related Persons~~, shall have any right of action against the  
26 Exculpated Parties ~~or any of their Related Persons~~, for any act, omission, transaction or other  
27 occurrence in connection with, relating to, or arising out of, the Chapter 11 Case, the pursuit of  
28 confirmation of this Plan, the Consummation of this Plan or the administration of this Plan, except to

1 the extent arising from fraud. The Reorganized Debtor shall indemnify the Futures Representative for  
2 any liability that the Futures Representative incurs as a result of the performance of his duties in such  
3 capacity, except and solely to the extent such liability is based on fraud, gross negligence or willful  
4 misconduct.

5 12.4 Releases.

6 (a) RELEASES BY DEBTOR AND ESTATE. EFFECTIVE AS OF THE  
7 EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF  
8 THE RELEASED PARTIES, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, TO THE  
9 FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, DEBTOR, IN ITS INDIVIDUAL  
10 CAPACITY AND AS DEBTOR-IN-POSSESSION, AS THE CASE MAY BE, DEBTOR'S ESTATE,  
11 AND EACH OF ITS RELATED PERSONS (COLLECTIVELY, THE "RELEASING PARTIES")  
12 SHALL, AND SHALL BE DEEMED TO, COMPLETELY, CONCLUSIVELY, ABSOLUTELY,  
13 UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASE, WAIVE, VOID,  
14 EXTINGUISH AND DISCHARGE EACH AND ALL OF THE RELEASED PARTIES (AND EACH  
15 SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FOREVER RELEASED,  
16 WAIVED AND DISCHARGED BY THE RELEASING PARTIES) AND ~~THEIR~~ EACH RELEASED  
17 PARTY'S RESPECTIVE ASSETS AND RELATED PERSONS OF AND FROM ANY AND ALL  
18 CLAIMS, CAUSES OF ACTION, LITIGATION CLAIMS, AVOIDANCE ACTIONS AND ANY  
19 OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, REMEDIES,  
20 JUDGMENTS AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN,  
21 FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT,  
22 MATURED OR UNMATURED, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER  
23 ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, OR OTHERWISE,  
24 BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT OR  
25 OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR  
26 ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY IN WHOLE OR IN  
27 PART TO DEBTOR, REORGANIZED DEBTOR OR THEIR RESPECTIVE ASSETS AND  
28 ESTATE, THE CHAPTER 11 CASE, THE DISCLOSURE STATEMENT, THIS PLAN OR THE

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1 SOLICITATION OF VOTES ON THIS PLAN THAT SUCH RELEASING PARTY WOULD HAVE  
 2 BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY)  
 3 OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR OTHER ENTITY WOULD  
 4 HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF DEBTOR OR ITS  
 5 ESTATE (WHETHER DIRECTLY OR DERIVATIVELY) AGAINST ANY OF THE RELEASED  
 6 PARTIES; PROVIDED, HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS RELEASE  
 7 SHALL NOT OPERATE TO WAIVE OR RELEASE (I) ANY CAUSES OF ACTION EXPRESSLY  
 8 SET FORTH IN AND PRESERVED BY THIS PLAN ~~OR ANY PLAN SUPPLEMENT~~; (II) ANY  
 9 CAUSES OF ACTION ARISING FROM ACTUAL OR INTENTIONAL FRAUD OR WILLFUL  
 10 MISCONDUCT AS DETERMINED BY FINAL ORDER OF THE BANKRUPTCY COURT OR  
 11 ANY OTHER COURT OF COMPETENT JURISDICTION; AND/OR (III) THE RIGHTS OF SUCH  
 12 RELEASING PARTY TO ENFORCE THIS PLAN AND THE CONTRACTS, INSTRUMENTS,  
 13 RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN  
 14 CONNECTION WITH THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED  
 15 PURSUANT TO FINAL ORDER OF THE BANKRUPTCY COURT. THE FOREGOING RELEASE  
 16 SHALL BE EFFECTIVE AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR  
 17 ORDER OF THE BANKRUPTCY COURT, ACT OR ACTION UNDER APPLICABLE LAW,  
 18 REGULATION, ORDER OR RULE OR THE VOTE, CONSENT, AUTHORIZATION OR  
 19 APPROVAL OF ANY PERSON.

20 (b) Releases by Holders of Claims and Interests. Effective as of the Effective Date,  
 21 for good and valuable consideration, to the fullest extent permissible under applicable law, each Holder  
 22 of a Claim or Equity Interest that has indicated, via voting to accept the Plan, its agreement to grant the  
 23 release contained in this Section 12.4- including all Holders of Construction Defect Claims for whom  
 24 the Futures Representative casts a Ballot, shall, and shall be deemed to, completely, conclusively,  
 25 absolutely, unconditionally, irrevocably and forever release, waive, void, extinguish and discharge the  
 26 Released Parties- other than the Futures Representative with respect to any Ballot cast by the Futures  
 27 Representative, from any and all Claims, Causes of Action, Avoidance Actions and any other  
 28 obligations, rights, suits, damages, judgments, debts, remedies and liabilities whatsoever, including any

1 Claims or Causes of Action that could be asserted on behalf of or against Debtor, whether known or  
 2 unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or  
 3 unmatured, existing or hereafter arising, in law, equity or otherwise, that such ~~h~~Holder of a Claim or  
 4 Equity Interest would have been legally entitled to assert in its own right (whether individually,  
 5 derivatively or collectively), based in whole or in part upon any act or omission, transaction, agreement,  
 6 event or other occurrence taking place on or before the Effective Date, in any way relating or pertaining  
 7 to (w) the purchase or sale, or the rescission of a purchase or sale, of any security of Debtor, (x) Debtor,  
 8 Reorganized Debtor or their respective assets, property and Estate, (y) the Chapter 11 Case, and (z) the  
 9 negotiation, formulation and preparation of the Plan, the Disclosure Statement, or any related  
 10 agreements, instruments or other documents ~~including, without limitation, all the documents included in~~  
 11 ~~the Plan Supplement~~; provided, however, that these releases will have no effect on the liability of any  
 12 Released Party arising from any act, omission, transaction, agreement, event or other occurrence  
 13 constituting willful misconduct, gross negligence, fraud or criminal conduct as determined by a Final  
 14 Order or a final order of a court of competent jurisdiction other than the Bankruptcy Court; provided  
 15 further, however, the foregoing shall not constitute a waiver or release of any right of the Holder of an  
 16 Allowed Claim or Equity Interest, or party to an Assumed Contract to payment under this Plan or  
 17 otherwise on account of such Allowed Claim or any of the rights of any parties in respect of Assumed  
 18 Contracts under or in connection with this Plan or prior order of the Bankruptcy Court; provided  
 19 further, however, that ~~except with respect to the provisions of Section 12.5(d) hereof applicable to~~  
 20 ~~Construction Defect Claims~~, nothing in the Plan or any order confirming the Plan shall release, waive,  
 21 void, extinguish, discharge, modify, alter or limit in any way (i) any and all obligations, debts and  
 22 liabilities of any non-Debtor Person or Entity to the Secured Lenders, or (ii) any and all rights and  
 23 remedies held by the Secured Lenders against any non-Debtor Person or Entity or their respective  
 24 assets; provided further, however, that nothing in the Plan shall enjoin, alter, diminish or impair the  
 25 rights of the Construction Defect Trust with respect to any Insurance Recovery, any Insurance Coverage  
 26 Action, or any Construction Defect Action, with the Construction Defect Trust being, and deemed to be,  
 27 for all purposes of insurance and indemnity, the successor Debtor in respect of all Construction Defect  
 28 Claims and all Insurance Recoveries. ~~The Releases set forth in this Article XII shall be binding upon~~



1 ~~and shall inure to the benefit of any chapter 7 trustee in the event the Chapter 11 Case is converted to a~~  
2 ~~case under chapter 7 of the Bankruptcy Code.~~

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

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

9 12.5 Injunctions.

10 (a) Injunction Against Releasors. All of the Releasors, along with any of their  
11 successors or assigns, are permanently enjoined, from and after the Effective Date, from  
12 (i) commencing or continuing in any manner any action or other proceeding of any kind against the  
13 ~~Releasees or any of their respective Related Persons~~ Released Parties in respect of any Released  
14 Liabilities, (ii) enforcing, attaching, collecting or recovering by any manner or means of any judgment,  
15 award, decree or order against the ~~Releasees or any of their respective Related Persons~~ Released Parties  
16 in respect of any Released Liabilities, (iii) creating, perfecting or enforcing any encumbrance of any  
17 kind against the ~~Releasees or any of~~ Released Parties or their respective ~~Related Persons~~ assets in  
18 respect of any Released Liabilities, or (iv) asserting any right of setoff, subrogation or recoupment of  
19 any kind against any obligation due from the ~~Releasees or any of their respective Related Persons~~  
20 Released Parties or against the property or interests in property of the ~~Releasees or any of their~~  
21 ~~respective Related Persons~~ Released Parties, in respect of any Released Liabilities; provided, however,  
22 that nothing contained herein shall preclude such Releasors from exercising their rights pursuant to and  
23 consistent with the terms hereof and the contracts, instruments, releases and other agreements and  
24 documents delivered under or in connection with this Plan; provided, further, that nothing contained  
25 herein shall be deemed to enjoin any Releasor from taking any action against any ~~Releasee or any of its~~  
26 ~~Related Persons~~ Released Party based on the release exceptions contained in Section 12.4 of this Plan.

27 (b) ~~— Injunction Protecting Exculpation of Releasees [reserve]. All Holders of Claims~~  
28 ~~against or interests in Debtor and any other parties in interest, along with any of their Related Persons~~

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1 ~~and any of their successors or assigns are permanently enjoined, from and after the Effective Date, from~~  
2 ~~(i) commencing or continuing in any manner any action or other proceeding of any kind against~~  
3 ~~Releasees or any of their respective Related Persons in respect of any potential liability for which~~  
4 ~~exculpation is granted pursuant to Section 12.3 of this Plan, (ii) enforcing, attaching, collecting or~~  
5 ~~recovering by any manner or means of any judgment, award, decree or order against Releasees or any~~  
6 ~~of their respective Related Persons in respect of any potential liability for which exculpation is granted~~  
7 ~~pursuant to Section 12.3 of this Plan, (iii) creating, perfecting or enforcing any encumbrance of any~~  
8 ~~kind against Releasees or any of their respective Related Persons in respect of any potential liability for~~  
9 ~~which exculpation is granted pursuant to Section 12.3 of this Plan, or (iv) asserting any right of setoff,~~  
10 ~~subrogation or recoupment of any kind against any Releasee or any of their respective Related Persons~~  
11 ~~or against the property or interests in property any Releasee or any of their respective Related Persons,~~  
12 ~~in respect of any potential liability for which exculpation is granted pursuant to Section 12.3 of this~~  
13 ~~Plan; provided further, however, that except with respect to the provisions of Section 12.5(d) hereof~~  
14 ~~applicable to Construction Defect Claims, nothing in the Plan or any order confirming the Plan shall~~  
15 ~~release, waive, void, extinguish, discharge, modify, alter or limit in any way (i) any and all obligations,~~  
16 ~~debts and liabilities of any non Debtor Person or Entity to the Secured Lenders, or (ii) any and all rights~~  
17 ~~and remedies held by the Secured Lenders against any non Debtor Person or Entity; provided, however,~~  
18 ~~that nothing contained herein shall preclude any Holder or other party in interest from exercising its~~  
19 ~~rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases and other~~  
20 ~~agreements and documents delivered under or in connection with this Plan.~~

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

25 (d) Injunction Channeling Construction Defect Claims. Upon the Effective Date,  
26 pursuant to Bankruptcy Code section 105, all Persons and Entities shall be permanently and forever  
27 stayed, restrained and enjoined from taking any of the following actions against or affecting  
28 Reorganized Debtor ~~or its Affiliates~~, Debtor ~~or its Affiliates~~, the Estate, the Assets, the Distribution

1 Agent, the Professionals and ~~any of their Related Persons or~~ their respective assets and property for the  
2 purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to  
3 any Construction Defect Claims, regardless of when such Claims are deemed to arise, all of which will  
4 be channeled to the Construction Defect Trust, including, but not limited to:

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

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

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

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

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

16 Notwithstanding anything to the contrary, nothing in this Plan shall enjoin, alter, diminish, or impair  
17 the rights of the Construction Defect Trust with regard to any insurance company and/or with respect  
18 to any Insurance Coverage Action, Insurance Recoveries or Construction Defect Action, with the  
19 Construction Defect Trust being, and deemed to be, for all purposes of insurance and indemnity, the  
20 successor to Debtor in respect of all Construction Defect Claims and other recoveries from any  
21 insurance company, including Insurance Recoveries.

22 12.6 Adequate Protection Liens; Cash Collateral Orders.

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

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

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1           12.7 DIP Loan and Liens. As of the Effective Date, the DIP Loan shall be fully paid or  
2 otherwise satisfied through issuance of the New Equity Interests, the DIP Lending Order shall terminate  
3 and all Liens granted under the DIP Lending Order, as well as Debtor's obligations under the DIP Loan  
4 and DIP Lending Order, shall be deemed to be terminated, discharged, eliminated and of no further  
5 force and effect.

6           12.8 Termination of Debt Instruments. On the Effective Date, all instruments evidencing  
7 indebtedness of Debtor held by Holders of Claims that are Impaired by this Plan or have been paid in  
8 full pursuant hereto shall be deemed canceled as against Debtor (or in the case of the New Secured  
9 Loan, replaced by the New Secured Notes and related New Secured Loan Documents), but not against  
10 any non-Debtor Person or Entity.

11           12.9 Judgments Void. Any judgment obtained before or after the Effective Date in any court  
12 other than the Bankruptcy Court shall be null and void as a determination of liability of Debtor and/or  
13 Reorganized Debtor with respect to any debt treated by the Plan.

14           12.10 Revesting of Assets in Reorganized Debtor. Except as otherwise expressly provided  
15 herein or in the Confirmation Order, on the Effective Date, but retroactive to the Confirmation Date,  
16 without any further action, Reorganized Debtor will be vested with all of Debtor's Assets, wherever  
17 situated, free and clear of all Claims, Liens and Old Equity Interests (except for Liens provided or  
18 authorized pursuant to this Plan and Permitted Encumbrances). Without limiting the generality of the  
19 foregoing, on and after the Effective Date, Reorganized Debtor shall be vested with all of Debtor's  
20 Assets, wherever situated, free and clear of any Claims based on any form of successor liability or  
21 similar or related theory of liability. On and after the Effective Date, Reorganized Debtor shall be free  
22 of any restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate its business and  
23 may use, acquire or dispose of its assets free of any restrictions imposed by the Bankruptcy Code and  
24 the Bankruptcy Rules and without supervision or approval by the Bankruptcy Court, other than the  
25 obligations set forth in this Plan or the Confirmation Order. Without limiting the generality of the  
26 foregoing and except as otherwise expressly provided herein or in the Confirmation Order, any Causes  
27 of Action will be preserved and retained solely for Reorganized Debtor's commencement, prosecution,  
28 use and benefit.

1           12.11 Discharge of Statutory Committee/Futures Representative. Upon the Effective Date,  
2 the Futures Representative and the members of any Statutory Committee shall be discharged from  
3 their duties as such. Notwithstanding the foregoing, the Futures Representative and any Statutory  
4 Committee shall be entitled to appear and be heard regarding final applications for allowance of  
5 Professional Fee Claims.

6           12.12 Preservation of Causes of Action. Pursuant to Bankruptcy Code section 1123(b), Debtor  
7 as Reorganized Debtor shall retain and reserve the right to enforce all rights to commence and pursue  
8 Causes of Action whether arising prior to or after the Petition Date, and whether pending as of or Filed  
9 after the Effective Date, in any court or other tribunal. Unless a Cause of Action is expressly waived,  
10 relinquished, released, compromised or settled in the Plan or any Final Order, Debtor on behalf of itself  
11 and as Reorganized Debtor expressly reserves all Causes of Action for later adjudication and, therefore,  
12 no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel,  
13 issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to  
14 any Causes of Action upon Confirmation or the Effective Date. No Person or Entity may rely on the  
15 absence of a specific reference in the Plan, ~~any Plan Supplement~~, or the Disclosure Statement to any  
16 Cause of Action against them as an indication that Debtor or Reorganized Debtor will not pursue any  
17 and all available Causes of Action against such Person or Entity. Debtor and Reorganized Debtor  
18 expressly reserve all rights to prosecute any and all Causes of Action against any Person or Entity,  
19 except as otherwise expressly provided in the Plan.

20           12.13 Maintenance of Administrative Claim Status Post Discharge. Notwithstanding any  
21 discharge granted to Debtor, Allowed Administrative Claims shall maintain their administrative priority  
22 status under Bankruptcy Code section 507(a)(2) until paid in full.

23           12.14 No Limitation on Effect of Confirmation. Nothing contained in the Plan or the  
24 Disclosure Statement will limit, waive or restrict in any way the effect of Confirmation as set forth in  
25 Bankruptcy Code section 1141; provided, however, nothing shall affect the ability of the Internal  
26 Revenue Service to pursue any non-debtor to the extent allowable under non-bankruptcy law for any  
27 liabilities that may be related to any federal tax liabilities of the Debtor or the Reorganized Debtor;  
28 provided further, however, that except with respect to the provisions of Section 12.5(d) hereof

1 applicable to Construction Defect Claims, nothing in the Plan or any order confirming the Plan shall  
2 release, waive, void, extinguish, discharge, modify, alter or limit in any way (i) any and all obligations,  
3 debts and liabilities of any non-Debtor Person or Entity to the Secured Lenders, or (ii) any and all rights  
4 and remedies held by the Secured Lenders against any non-Debtor Person or Entity or their respective  
5 assets. Confirmation will bind Debtor, Reorganized Debtor, all Creditors, Equity Interest Holders and  
6 other parties in interest to the provisions of the Plan, whether or not the Claim or Equity Interest of such  
7 Creditor or Equity Interest Holder is Impaired under the Plan and whether or not such Creditor or  
8 Equity Interest Holder has accepted the Plan and whether or not a ~~p~~Proof of Claim or Equity Interest  
9 has been Filed or deemed to have been Filed under Bankruptcy Code sections 501 or 1111(a), or such  
10 Claim or Equity Interest is Allowed under Bankruptcy Code section 502.

11 **ARTICLE XIII**

12 **MISCELLANEOUS PROVISIONS**

13 13.1 Modification of this Plan.

14 (a) Subject to the Lock-Up and Settlement Letter Agreement, Debtor may alter,  
15 amend or modify the Plan at any time before the entry of the Confirmation Order, provided that the  
16 Plan, as altered, amended or modified, satisfies the conditions of Bankruptcy Code sections 1122 and  
17 1123, and Debtor shall have complied with Bankruptcy Code section 1125. However, the Bankruptcy  
18 Court may require a new ~~d~~Disclosure ~~s~~Statement and/or re-voting on the Plan if Debtor modifies the  
19 Plan before Confirmation.

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

25 (c) Subject to the Lock-Up and Settlement Letter Agreement, a Holder of a Claim  
26 that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified,  
27 if the proposed alteration, amendment or modification does not materially and adversely change the  
28 treatment of the Claim of such Holder. Subject to the Lock-Up and Settlement Letter Agreement, prior

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1 to the Effective Date, Debtor may make appropriate technical, non-material modifications to the Plan or  
2 the Disclosure Statement without further order or approval of the Bankruptcy Court, provided that such  
3 technical modifications do not adversely affect the treatment of Holders of Claims or Equity Interests.

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

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

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

14 13.2 Notices. Except as otherwise set forth in Section 13.3 below, all notices, requests,  
15 elections or demands in connection with this Plan, including any change of address of any Holder of a  
16 Claim for the purposes of receiving any Distributions under this Plan, shall be in writing and shall be  
17 delivered personally or by facsimile, electronic mail or overnight courier (confirmed by first class mail  
18 or express mail) or mailed by first class mail. Such notice shall be deemed to have been given when  
19 received or, if mailed by first class mail, seven (7) days after the date of mailing, or if express mailed,  
20 the next Business Day following the date of mailing and addressed to the following:

21 (a) If to Debtor, to:

22 American West Development, Inc.  
23 250 Pilot Road, Suite 140  
24 Las Vegas, Nevada 89119  
25 Attention: Robert M. Evans  
26 Email: BobEvans@AmericanWestHomes.com  
27 Facsimile: (702) 736-7970

28 with copies to:

Fox Rothschild LLP  
3800 Howard Hughes Parkway, Suite 500

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

Las Vegas, Nevada 89169  
Attention: Brett A. Axelrod, Esq.  
Email: baxelrod@foxrothschild.com  
Facsimile: (702) 597-5503

(b) If to Secured Lenders, to:

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

with copies to:

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

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

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

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

(b) Post-Confirmation Date Service List—Additional Persons Entitled to Notice. Except as set forth in Section 13.2 hereof, from and after the date the Confirmation Order becomes a Final Order, notices of appearances and demands for service of process Filed with the Bankruptcy Court prior to such date shall no longer be effective, and no further notices, other than the Notice of Confirmation Order, shall be required to be sent to such parties, unless such parties File a new notice of

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1 appearance and demand for service of process dated subsequent to the Effective Date, which subsequent  
2 notice and demand must be Filed with the Bankruptcy Court and served upon the Persons and Entities  
3 listed in Section 13.2 above.

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

9 13.4 Requisite Secured Lenders' Approval. Wherever the approval of the Secured Lenders  
10 with respect to the Term Loan or New Secured Loan is referred to anywhere in this Plan, the Entity  
11 seeking such approval shall be entitled to direct the request for approval solely to the Secured Lenders  
12 pursuant to the requirements of Section 13.2 hereof, and the Secured Lenders shall then be responsible  
13 for determining and communicating whether or not such approval has or has not been obtained. Any  
14 written statement by the Secured Lenders specifically referring to such approval to any other Person or  
15 Entity concerning any consent or approval of the Secured Lenders required hereunder which is signed  
16 by the Person to whom notices directed to the Secured Lenders must be addressed pursuant to Section  
17 13.2 hereof may be relied upon by such Person or Entity.

18 13.5 Headings. The headings used in this Plan are inserted for convenience only and neither  
19 constitutes a portion of this Plan nor in any manner affect the provisions of this Plan.

20 13.6 Exhibits. ~~All exhibits and documents included in the Plan Supplement are incorporated~~  
21 ~~into and are a part of this Plan, as if set forth in full in this Plan. Except as otherwise provided in this~~  
22 ~~Plan, such exhibits and documents included in the Plan Supplement shall be Filed with the Bankruptcy~~  
23 ~~Court on or before the Plan Supplement Filing Date. Debtor reserves the right to submit amended or~~  
24 ~~revised versions of the Plan Supplement up to the Confirmation Date. After the exhibits and documents~~  
25 ~~are Filed, copies of such exhibits and documents shall be made available upon written request to~~  
26 ~~Debtor's counsel at the address above or by downloading such exhibits and documents from the~~  
27 ~~Bankruptcy Court's website at <http://www.nvb.uscourts.gov>. To the extent any exhibit or document is~~



1 ~~inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy Court, the non-~~  
2 ~~exhibit or non-document portion of this Plan shall control.~~

3 . [reserve].

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

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

23 13.9 Conflicts.

24 (a) To the extent that any provision of the Disclosure Statement, ~~the Plan~~  
25 ~~Supplement (other than~~ any amendments to the Plan, the Operative Documents or any New Secured  
26 Loan Documents), or any ~~other~~ order (other than the Confirmation Order) referenced in this Plan (or  
27 any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with  
28

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1 or is in any way inconsistent with any provision of this Plan, this Plan shall govern and control, unless  
2 expressly set forth herein.

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

9 13.10 Computation of Time. In computing any period of time prescribed or allowed by this  
10 Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

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

15 13.12 Successors and Assigns. The rights and obligations of any Person or Entity named or  
16 referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and  
17 assigns of such Person or Entity.

18 13.13 Good Faith. Confirmation of the Plan will constitute a finding that the Plan has been  
19 proposed in good faith and in compliance with all applicable provisions of the Bankruptcy Code.

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

1 Effective Date shall continue to be entitled to administrative priority under Bankruptcy Code section  
2 507(a)(1) in any such subsequent chapter 7 case to which ~~this case~~ the Chapter 11 Case is converted.

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

6 DATED this ~~29th~~ 15th day of ~~May~~ October, 2012.

7 **AMERICAN WEST DEVELOPMENT, INC.**  
8 a Nevada corporation

9 By /s/Robert M. Evans  
10 Robert M. Evans, President

11 Respectfully submitted by:

12 **FOX ROTHSCHILD LLP**

13 By: /s/ Brett A Axelrod  
14 BRET A. AXELROD, ESQ.  
15 Nevada Bar No. 5859  
16 MICAELA RUSTIA MOORE, ESQ.  
17 Nevada Bar No. 9676  
18 3800 Howard Hughes Parkway, Suite 500  
19 Las Vegas, Nevada 89169

20 *Counsel for Debtor*  
21  
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28

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**EXHIBIT A**

**GLOSSARY OF DEFINED TERMS**

1  
2  
3 1. “9019 Motion” means the motion seeking Bankruptcy Court approval of the Lock-Up  
4 and Settlement Letter Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

17 13. ~~12.~~ "Bankruptcy Code" means Title 11 of the United States Code, as amended from time  
18 to time, as applicable to the Chapter 11 Case.

19 14. ~~13.~~ "Bankruptcy Court" means the United States Bankruptcy Court for the District of  
20 Nevada, or such other court as may from time to time have jurisdiction over the Chapter 11 Case.

21 15. ~~14.~~ "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as heretofore  
22 or hereafter amended, and the general, local and chambers rules and orders of the Bankruptcy Court.

23 16. ~~15.~~ "Bar Date" means the date or dates established by order of the Bankruptcy Court, or  
24 the Bankruptcy Code or the Bankruptcy Rules by which all Persons (except Holders of Claims that  
25 appear in the Schedules not scheduled as disputed, contingent or unliquidated, but only with respect to  
26 such Claims) asserting a Claim against Debtor (except the Administrative Claims, which are governed  
27 by the Administrative Claim Bar Date, and the Construction Defect Claims, which are governed by the  
28

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

3 17. ~~16.~~ “Bond Claims” means any Claim against Debtor, relating to or arising under any  
4 municipal bond assessments, infrastructure improvement bonds, special improvement districts or  
5 associated maintenance charges.

6 18. ~~17.~~ “Business Day” means any day, other than a Saturday, Sunday, or “legal holiday”, as  
7 defined in Bankruptcy Rule 9006(a).

8 19. ~~18.~~ “Cash” means legal tender of the United States of America, which may be conveyed  
9 by check or wire transfer.

10 20. ~~19.~~ “Cash Collateral” has the meaning set forth in Bankruptcy Code section 363(a).

11 21. ~~20.~~ “Cash Collateral Orders” means any and all interim and Final Orders entered by the  
12 Bankruptcy Court, permitting Debtor to use the Cash Collateral of the Secured Lenders.

13 22. ~~21.~~ “Cash Collateral Stipulation” means that Stipulated Agreement Between Debtor and  
14 its Pre-Petition Secured Lenders Regarding (I) Use of Cash Collateral; and (II) Adequate Protection  
15 filed in the Chapter 11 Case on March 1, 2012 as Docket No. 12.

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

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

27 25. ~~24.~~ “Cash Out Payment” means a one-time Cash payment to each Holder of a Construc-  
28 tion Defect Claim who makes the Cash Out Election, which Cash Out Payment shall be equal to (x) the

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

3 26. ~~25.~~ “Cash Out Release” means the form of release to be granted by each Holder of a  
4 Construction Defect Claim who makes the Cash Out Election, which Cash Out Release shall, in return  
5 for the Cash Out Payment, comprehensively release Debtor, Reorganized Debtor, the Construction  
6 Defect Trust and any Affiliate of the foregoing from any and all liability for any and all Construction  
7 Defect Claims.

8 27. ~~26.~~ “Causes of Action” means any Claim, Avoidance Action, cause of action, contro-  
9 versy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment,  
10 account, defense, offset, power, privilege, license and franchise of any kind or character whatsoever,  
11 known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected,  
12 liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or  
13 derivatively, whether arising before, on or after the Petition Date, including through the Effective Date,  
14 in contract or in tort, in law or in equity, or pursuant to any other theory of law.

15 28. ~~27.~~ “Chapter 11 Case” shall have the meaning given to it in the Preamble of the Plan.

16 29. ~~28.~~ “Claim” has the meaning set forth in Bankruptcy Code section 101(5).

17 30. ~~29.~~ “Claims Objection Deadline” means the deadline for filing objections to Claims as set  
18 forth in Section 7.3 of the Plan.

19 31. ~~30.~~ “Claims Register” means the official register of Claims and Interests maintained in  
20 the Chapter 11 Case.

21 32. ~~31.~~ “Class” means a class of Claims or Interests pursuant to Bankruptcy Code section  
22 1122(a) and as described in Article II of the Plan.

23 33. ~~32.~~ “Confirmation” means the entry by the Bankruptcy Court of the Confirmation Order  
24 in the Chapter 11 Case.

25 34. ~~33.~~ “Confirmation Date” means the date upon which the clerk of the Bankruptcy Court  
26 enters the Confirmation Order on the docket of the Chapter 11 Case.

27 35. ~~34.~~ “Confirmation Funds” means all funds required to be disbursed, or deposited and held  
28 for later disbursement upon allowance or other Bankruptcy Court authorization, on or as of the

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

7 36. ~~35.~~ “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider  
8 confirmation of the Plan pursuant to Bankruptcy Code section 1129, as such hearing may be adjourned  
9 or continued from time to time.

10 37. ~~36.~~ “Confirmation Order” means the order entered by the Bankruptcy Court confirming  
11 the Plan in accordance with the Bankruptcy Code.

12 38. ~~37.~~ “Construction Defect Actions” means the Causes of Action that Debtor may have  
13 against any subcontractor or other Person or Entity who installed defective materials in a home built and  
14 sold by Debtor, directly or indirectly, any insurer of any such subcontractor or any other Person or  
15 Entity, any retailer, wholesaler, distributor, manufacturer or provider of defective materials that was  
16 installed in a home built or sold by Debtor, directly or indirectly, and/or any insurer of any such retailer,  
17 wholesaler, distributor, manufacturer or provider.

18 39. ~~38.~~ “Construction Defect Advisory Board” means the advisory board to be established  
19 pursuant to the Construction Defect Trust Declaration and with which the Construction Defect Trustee  
20 shall consult regarding matters that will have a material impact on the value of the Construction Defect  
21 Trust, which matters shall be set forth in detail in the Construction Defect Trust Declaration.

22 40. ~~39.~~ “Construction Defect Claim” means (i) any threatened or pending civil action or  
23 statutory pre-litigation Claim against Debtor relating to construction defects, warranty claims, or  
24 third party indemnity claims relating to, or arising from, ownership on the Confirmation Date of a  
25 home constructed by Debtor, including without limitation, those civil actions with case numbers A-11-  
26 638731-D, A-11-633888-D, 08-A-558243, and A-11-642932-D, pending in the Eighth Judicial District  
27 Court for Clark County, Nevada on the Petition Date; (ii) a related or similar Claim for which a Proof of  
28 Claim is Filed or which Debtor listed in the Schedules Filed in the Chapter 11 Case.

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1           41.   ~~40.~~ “Construction Defect Claim Bar Date” means the deadline for filing Proofs of Claim  
2 for Construction Defect Claims, which shall be governed by the Construction Defect Trust and its  
3 related TDP.

4           42.   ~~41.~~ “Construction Defect Trust” means the trust established pursuant to the Construction  
5 Defect Trust Declaration.

6           43.   ~~42.~~ “Construction Defect Trust Contribution” means a portion of the New Capital  
7 Contribution in the amount of either (i) one million five hundred thousand dollars (\$1,500,000), or  
8 (ii) two hundred thousand dollars (\$200,000), which will be (a) contributed to the Construction Defect  
9 Trust, and (b) allocated between the Total Cash Out Fund and the Remaining Construction Defect Trust  
10 Fund according to the Cash Out Election Ratio if at least eighty percent (80%) in number of the Holders  
11 of Class 4 Construction Defect Claims actually vote to accept the Plan.

12           44.   ~~43.~~ “Construction Defect Trust Declaration” means the declaration of trust to be entered  
13 into by Debtor, the Construction Defect Trustee and the Construction Defect Advisory Board. The  
14 Construction Defect Trust Declaration shall be in substantially the form Filed with the Bankruptcy  
15 Court as part of the ~~Plan~~-Disclosure Supplement.

16           45.   ~~44.~~ “Construction Defect Trustee” means the Person selected to serve as the initial trustee  
17 of the Construction Defect Trust, and any successor trustee thereof.

18           46.   ~~45.~~ “Consummation” means the occurrence of the Effective Date.

19           47.   ~~46.~~ “Contingent Claim” means a Claim which is contingent, unmatured or unliquidated  
20 on or immediately before the Confirmation Date.

21           48.   ~~47.~~ “Creditor” means a Holder of a Claim.

22           49.   ~~48.~~ “Cure” means the payment of Cash by Debtor, or the distribution of other property  
23 and the performance of any other obligations as the parties may agree or the Bankruptcy Court may  
24 order necessary to cure defaults under Executory Contracts Debtor is authorized to assume under  
25 Bankruptcy Code section 365(a) or under the Plan.

26           50.   ~~49.~~ “Cure Request Bar Date” means the deadline for Filing requests for payment of Cure,  
27 which shall be fifteen (15) days prior to the date of the Confirmation Hearing.

28

1           51.    ~~50.~~ “Debtor in Possession” means Debtor, as debtor in possession in the Chapter 11 Case,  
2 exercising ~~the Debtor’s~~ rights and operating ~~the Debtor’s~~ business pursuant to Bankruptcy Code  
3 sections 1107 and 1108, respectively.

4           52.    ~~51.~~ “Debtor” means American West Development, Inc.

5           53.    ~~52.~~ “Deficiency Claim” means the difference between the amount of a Secured Lender’s  
6 Allowed Claim and the value of the collateral which secures such Secured Lender’s Allowed Claim.

7           54.    ~~53.~~ “Design-Build Agreements” means various Design-Build Agreements between  
8 Debtor, certain affiliated land-owning entities and certain affiliated home-selling entities.

9           55.    ~~54.~~ “DIP Financing Order” means the order of the Bankruptcy Court approving and  
10 authorizing the DIP Loan on an interim basis and any Final Order entered with respect thereto.

11          56.    ~~55.~~ “DIP Lender” means the Entity that made the DIP Loan.

12          57.    ~~56.~~ “DIP Loan” means the postpetition loan in the amount of up to ten million dollars  
13 (\$10,000,000) made by DIP Lender to Debtor pursuant to the DIP Financing Order.

14          58.    ~~57.~~ “Disallowed Claim” or “Disallowed,” when used in connection with the term  
15 “Claim,” means any Claim or portion thereof that has been disallowed by a Final Order of the  
16 Bankruptcy Court or scheduled as disputed, contingent or unliquidated that is not superseded by a  
17 timely filed Proof of Claim.

18          59.    ~~58.~~ “Disclosure Statement” means the solicitation materials and disclosure statements,  
19 including all exhibits and schedules thereto, as amended, supplemented or modified from time to time,  
20 that are found by the Bankruptcy Court under the circumstances of the Chapter 11 Case to contain  
21 adequate information to solicit acceptances and rejections of the Plan.

22          60.    ~~59.~~ “Disclosure Statement Order” means that certain Order: (I) Approving (A) Adequacy  
23 of Master Disclosure Statement, (B) Adequacy and Use of Home Owner Disclosure Statement as ~~Plan~~  
24 Summary of First Amended Plan, (C) Procedures and Schedule for the Solicitation, Submission and  
25 Tabulation of Votes, (D) Form and Scope of Notices, and (E) Form of Ballots and Related Documents;  
26 (II) Scheduling Confirmation Hearing and Related Deadlines; and (III) Granting Related Relief, entered  
27 by the Bankruptcy Court, as the order may be amended from time to time.

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1 61. ~~60.~~ “Disputed Claim” means: (a) any Claim or portion of a Claim (including any  
2 Administrative Claim, Priority Tax Claim or Other Priority Claim) listed in the Schedules as disputed,  
3 contingent or unliquidated; or (b) any Claim, as to which an objection to the allowance thereof has been  
4 Filed with the Bankruptcy Court within any time limitation fixed by the Bankruptcy Code, the  
5 Bankruptcy Rules, the Plan or an order of the Bankruptcy Court, which objection has not been settled,  
6 withdrawn or determined, in whole or in part, by a Final Order.

7 62. ~~61.~~ “Distribution” means any distribution made by the Distribution Agent on account of  
8 Allowed Claims under the Plan pursuant to the terms of the Plan or by the Construction Defect Trustee  
9 of the Construction Defect Trust pursuant to the TDP in respect of Construction Defect Claims.

10 63. ~~62.~~ “Distribution Agent” means Debtor, or the Person or Entity chosen by Debtor to  
11 make or to facilitate Distributions pursuant to the Plan or, with respect to Construction Defect Claims,  
12 the Construction Defect Trustee.

13 64. ~~63.~~ “Distribution Record Date” means August 10, 2012 unless the Bankruptcy Court  
14 establishes a different date for the Distribution Record Date in the Confirmation Order.

15 65. ~~64.~~ “Effective Date” means the first Business Day after the date on which the conditions  
16 specified in Article X of the Plan have been satisfied in full or waived.

17 66. ~~65.~~ “Entity” has the meaning as set forth in Bankruptcy Code section 101(15).

18 67. ~~66.~~ “Equity Interest” means the same as “Interest.”

19 68. ~~67.~~ “Estate” means the estate of Debtor that was created by the commencement of the  
20 Chapter 11 Case pursuant to Bankruptcy Code section 541, and shall be deemed to include any and all  
21 Assets of Debtor, whether real, personal or mixed, rights, Causes of Action, avoidance powers or  
22 extensions of time that Debtor or the estate shall have had effective as of the Petition Date or thereafter,  
23 whether by virtue of Bankruptcy Code sections 544, 545, 546, 547, 548, 549 or 550 or otherwise.

24 69. ~~68.~~ “Exculpated Party” means each of: (a) Debtor and its Estate; (b) the Secured  
25 Lenders; (c) ~~each member of any Statutory Committee;~~ (d) Reorganized Debtor; (e) the DIP Lender;  
26 (e) the Distribution Agent; (f) the ~~Distribution Agent~~ Construction Defect Trustee; (g) the Futures  
27 Representative; and (h) Professionals; ~~and (i) the respective Related Persons of each of the foregoing.~~

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1           70.    ~~69.~~ “Executory Contract” means an executory contract or unexpired lease to which  
2 Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365 or under  
3 the Plan.

4           71.    ~~70.~~ “File” means to duly and properly file with the Bankruptcy Court as reflected on the  
5 Bankruptcy Court’s docket or the Claims Register in the Chapter 11 Case or, in the case of Class 4  
6 Claims, duly and properly filed with the Trustee of the Construction Defect Trust.

7           72.    ~~71.~~ “Final Decree” means an order of the Bankruptcy Court closing the Chapter 11 Case  
8 pursuant to Bankruptcy Code section 350.

9           73.    ~~72.~~ “Final Order” means an order or judgment entered by the Bankruptcy Court: (a) that  
10 has not been reversed, stayed, modified, amended, revoked, varied or set aside, and as to which (i) any  
11 right to appeal or seek certiorari, review, reargument, stay or rehearing has been waived, or (ii) the time  
12 to appeal or seek certiorari, review, reargument, stay or rehearing has expired and no appeal or petition  
13 for certiorari, review, reargument, stay or rehearing is pending; or (b) as to which an appeal has been  
14 taken or petition for certiorari, review, reargument, stay or rehearing has been filed, and (i) such appeal  
15 or petition for certiorari, review, reargument, stay or rehearing has been resolved by the highest court to  
16 which the order or judgment was appealed or from which certiorari, review, reargument, stay or  
17 rehearing was sought, and (ii) the time to appeal further or seek certiorari, review, reargument, stay or  
18 rehearing has been waived or expired and no such further appeal or petition for certiorari, review,  
19 reargument, stay or rehearing is pending, provided, however, that no order or judgment shall fail to be a  
20 “Final Order” hereunder solely because of the possibility that a motion pursuant to Bankruptcy Code  
21 sections 502(j) or 1144, Rules 59 or 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule  
22 9024 may be Filed with respect to such order or judgment.

23           74.    ~~73.~~ “Futures Representative” means James L. Moore, the representative of potential  
24 Holders of Construction Defect Claims for which damage or loss has not yet become manifest, duly  
25 appointed by the Bankruptcy Court.

26           75.    ~~74.~~ “General Unsecured Claims” means any Claim against Debtor that is not an  
27 (a) Administrative Claim, (b) Priority Tax Claim, (c) Other Priority Claim, (d) Secured Claim,  
28 (e) Construction Defect Claim, or (f) Bond Claim.

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1           76.   ~~75.~~ “Holder” means any Person or Entity that is the record or beneficial owner of a Claim  
2 or Interest in the Chapter 11 Case; provided that the Holder of a Construction Defect Claim arising in  
3 connection with a particular home constructed by Debtor shall be the owner of legal record of such  
4 residence (a) as of the Voting Record Date for purposes of voting to accept or reject the Plan and  
5 making (and receiving) the Cash Out Election, and (b) as of the Distribution Record Date for purposes  
6 of further participation in the Construction Defect Trust by any Holder of a Construction Defect Claim  
7 that does not make the Cash Out Election.

8           77.   ~~76.~~ “Impaired” means with respect to any Class of Claims or Interests, a Class of Claims  
9 or Interests that is impaired within the meaning of Bankruptcy Code section 1124.

10          78.   ~~77.~~ “Insurance Coverage Actions” means any rights to indemnification, reimbursement,  
11 contribution or other payment under any of Debtor’s existing insurance policies, including Debtor’s  
12 director and officer liability insurance policies, as of the Effective Date, that may provide coverage with  
13 respect to Construction Defect Claims.

14          79.   ~~78.~~ “Insurance Recovery” means (a) the right to pursue and receive the benefits and  
15 proceeds of any insurance policy issued to, owned by, or otherwise providing coverage to Debtor,  
16 including any insurance policy owned by any third party on which Debtor is named as an additional  
17 insured, with respect to Construction Defect Claims; (b) the right to pursue and receive recovery from  
18 or as a result of any Insurance Coverage Action; (c) the right to pursue and receive recovery from or as  
19 a result of any Claim, Cause of Action or right of Debtor or Reorganized Debtor against any insurance  
20 company concerning insurance coverage for or relating to Construction Defect Claims, or enforcement  
21 of any extracontractual or statutory remedies and relief relating to any insurance providing coverage for  
22 Construction Defect Claims, including, without limitation, any Insurance Coverage Actions or any other  
23 litigation, arbitration, mediation and informal negotiations, whether past, pending or not yet initiated,  
24 including, without limitation, consequential, contractual, extracontractual and statutory damages, or  
25 other proceeds, distributions, awards or benefits; (d) the right to pursue and receive recovery from or as  
26 a result of any Claim, Cause of Action or right of Debtor or Reorganized Debtor to pursue insurance  
27 recovery related to Construction Defect Claims through available administrative or other means from  
28 any insurance company that is insolvent or has been liquidated, or is otherwise subject to statutory or

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1 legal protections against litigation; and (e) the right to pursue and receive any other recovery from an  
 2 insurance company, in its capacity as such, with respect to Construction Defect Claims.

3 80. ~~79.~~ “Interest” means any: (i) equity or other ownership interest in any Person or Entity,  
 4 including, but not limited to, all issued and outstanding or reserved for issuance, common stock,  
 5 preferred stock, membership interests, warrants, options or other ownership rights or rights to purchase  
 6 or receive additional shares of stock or membership interests in any Person or Entity, and/or any other  
 7 instrument or document to the extent that it directly or indirectly evidences, creates or reserves any  
 8 equity or ownership interest in any Person or Entity giving rise to any Claim or Interest, (ii) equity  
 9 security, including all membership interests together with any warrants, options or contractual rights to  
 10 purchase or acquire such equity securities at any time and all rights arising with respect thereto and  
 11 (iii) partnership, limited liability company or similar interest.

12 81. ~~80.~~ “Interest Holder” means the Holder of an Interest or Equity Interest.

13 82. ~~81.~~ “Key Transaction Documents” means the Plan, the Disclosure Statement, the Ballots,  
 14 the New Secured Loan Documents, and Reorganized Debtor’s Bylaws or amended certificates of  
 15 incorporation, ~~and any and all Plan implementation documents filed with the Plan Supplement.~~

16 83. ~~82.~~ “LIBOR Rate” means the London Inter-Bank Market Offered Rate, as more  
 17 specifically defined in the New Secured Loan Documents.

18 84. ~~83.~~ “Lien” has the meaning set forth in Bankruptcy Code section 101(37).

19 85. ~~84.~~ “Lock-Up and Settlement Letter Agreement” means that certain Restructuring, Lock-  
 20 Up and Settlement Letter Agreement entered into by Debtor and the Secured Lenders, approved by the  
 21 9019 Order, to be implemented through the Plan, and establishing, among other things, the Allowed  
 22 amounts of each Secured Lender’s Secured Claim at the values of each Secured Lender’s collateral,  
 23 which collateral Debtor believes is worth an aggregate amount of \$49,635,000, on a net present value  
 24 basis, and providing that the Secured Lenders will waive their rights to receive any Distribution on  
 25 account of their Class 3 General Unsecured Claims under the Plan, provided that the Holders of Class 3  
 26 Claims vote as a Class to accept the Plan.

27 86. ~~85.~~ “Marketing and Administrative Services Agreement” means various Marketing and  
 28 Administrative Services Agreements between Debtor and certain affiliated home-selling entities.



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1           87.   ~~86.~~ “Maturity Date” means December 31, 2015, as defined in Section 2.3(b) of the Plan.

2           88.   ~~87.~~ “New Capital Contribution” means the aggregate sum in a maximum amount of ten  
3 million dollars (\$10,000,000) from the DIP Lender for, among other things, providing Reorganized  
4 Debtor with the amount of Cash required for all Confirmation Funds, working capital for Reorganized  
5 Debtor to fund operations, and any Plan needs, including the Construction Defect Trust Contribution.  
6 The aggregate sum of the New Capital Contribution may be increased, with the mutual written  
7 agreement of Debtor, the DIP Lender and the Secured Lenders. The New Capital Contribution shall be  
8 paid to Reorganized Debtor on the Effective Date by way of the DIP Lender funding the maximum  
9 amount of the DIP Loan by payment of Cash to Reorganized Debtor and the Construction Defect Trust  
10 in an amount equal to the difference between (x) the maximum amount of the DIP Loan of ten million  
11 dollars (\$10,000,000), and (y) the outstanding balance of the DIP Loan on the Effective Date and,  
12 contemporaneously therewith, forgiving, releasing and discharging the DIP Loan and Liens securing  
13 same in consideration of its receipt of the New Equity Interests in Reorganized Debtor.

14           89.   ~~88.~~ “New Equity Interests” means those Interests of Reorganized Debtor to be authorized  
15 and issued to the DIP Lender pursuant to the Plan on the Effective Date in exchange for the New  
16 Capital Contribution.

17           90.   ~~89.~~ “New Secured Loan” means the refinanced (restructured) secured loan pursuant to the  
18 terms of the Plan to be evidenced by the New Secured Loan Documents.

19           91.   ~~90.~~ “New Secured Loan Documents” means the New Secured Notes and related docu-  
20 ments in form and substance acceptable to and approved by the Secured Lenders, evidencing, securing  
21 and providing for the terms and conditions of the New Secured Loan, to be executed by and between  
22 the Secured Lenders and Reorganized Debtor on or as of the Effective Date, which are attached as  
23 exhibits to the Disclosure Statement, with any ~~material~~ modifications or additional documents in form  
24 and substance acceptable to and approved by the Secured Lenders, ~~to be included and Filed as part of~~  
25 ~~the Plan Supplement.~~

26           92.   ~~91.~~ “New Secured Loan Payment Terms” means the payment terms of the New Secured  
27 Notes, as summarized in Section 2.3 of the Plan.

28



1           93.    ~~92.~~ “New Secured Notes” means the promissory notes in form and substance acceptable  
2 to and approved by the Secured Lenders to be issued by Reorganized Debtor to the Secured Lenders  
3 evidencing the New Secured Loan, as summarized in Section 2.3 of the Plan.

4           94.    ~~93.~~ “Notice of Confirmation” means that certain notice, pursuant to Bankruptcy Rule  
5 3020(c)(2), notifying Holders of Claims and Interests that the Bankruptcy Court has confirmed the Plan.

6           95.    ~~94.~~ “Old Equity Interests” means Equity Interests in Debtor.

7           96.    ~~95.~~ “Operative Document” means any contract, instrument, release, settlement agreement  
8 or other agreement or document, if any, that is reasonably necessary to effectuate and implement the  
9 transactions provided for in the Plan, including the Key Transaction Documents.

10          97.    ~~96.~~ “Other Priority Claims” means any Claim entitled to priority under Bankruptcy Code  
11 sections 507(a) other than under subsections (a)(2) and (a)(8) thereof.

12          98.    ~~97.~~ “Other Secured Claims” means any Secured Claim other than a Claim with respect to  
13 the Term Loan.

14          99.    ~~98.~~ “Permitted Encumbrances” means (i) Liens for *ad valorem* taxes not yet due and  
15 payable, (ii) easements, restrictions, conditions and limitations of record that affected the title to any of  
16 Debtor’s real properties as of the Petition Date, (iii) any Liens securing Other Secured Claims that are  
17 reinstated or assumed by Reorganized Debtor, and (iv) as such term is defined in the New Secured Loan  
18 Documents.

19          100.   ~~99.~~ “Person” means any individual, corporation, partnership, limited liability company,  
20 joint venture, association, trust or organization, or other “person” as defined in Bankruptcy Code  
21 section 101(41), as well as any governmental agency, governmental unit or political subdivision.

22          101.   ~~100.~~ “Petition Date” means March 1, 2012.

23          102.   ~~101.~~ “Plan” means this Debtor’s First Amended Chapter 11 Plan of Reorganization to  
24 which this Exhibit A is attached, ~~including all documents referenced therein and all exhibits,~~  
25 ~~supplements, appendices and schedules thereto~~, either in its present form or as the same may be altered,  
26 amended or modified from time to time pursuant to the Bankruptcy Code or Final Order.

27          ~~102. — “Plan Supplement” means a compilation of documents supplementing and giving effect~~  
28 ~~to the terms of the Plan, which shall be: (a) Filed no later than the Plan Supplement Filing Date, and~~

1 ~~(b) in a form and substance acceptable to Debtor and Secured Lenders. The Plan Supplement shall~~  
2 ~~include: (i) a Schedule of Assumed Contracts and Debtor's proposed respective Cure amounts (if any),~~  
3 ~~(ii) any of the Operative Documents and New Secured Loan Documents not attached to the Disclosure~~  
4 ~~Statement, (iii) the Construction Defect Trust Declaration, and (iv) any information required for~~  
5 ~~Confirmation of the Plan pursuant to the terms of the Bankruptcy Code, including a list of individuals~~  
6 ~~referenced in Bankruptcy Code section 1129(a)(5)(A)(i).~~

7 ~~103. "Plan Supplement Filing Date" means fourteen (14) days prior to the date of the~~  
8 ~~Confirmation Hearing.~~

9 103. [reserve]

10 104. [reserve]

11 105. ~~104.~~ "Post Effective Date Fee Fund" means a sum of two million eighty thousand dollars  
12 (\$2,080,000) to be paid to the Distribution Agent on the Effective Date from the New Capital  
13 Contribution, which shall be part of the Confirmation Funds and used by the Distribution Agent to pay  
14 any Post Effective Date Fees.

15 106. ~~105.~~ "Post Effective Date Fees" means the reasonable fees and expenses of Debtor's  
16 Professionals incurred by Debtor and/or Reorganized Debtor after the Effective Date, including those  
17 fees and expenses incurred for legal, financial advisory, accounting and other services rendered in  
18 connection with the implementation, Consummation and performance of the Plan and which are  
19 necessary to complete the administration of, conclude and close the Chapter 11 Case.

20 107. ~~106.~~ "Price Guarantee" means, in summary, that pricing incentive offered by Debtor from  
21 2006 through 2008 to certain home purchasers to receive a credit against their purchase of a  
22 replacement home from Debtor equal to the difference between the price paid for their original home  
23 and the value of the replacement home (if less) on the fifth (5th) anniversary of the date of the original  
24 home purchase, under certain express conditions.

25 108. ~~107.~~ "Price Promise" means, in summary, that three-year pricing incentive offered by  
26 Debtor from 2006 through 2008 to certain home purchasers who paid the current asking base price, at  
27 the time of the original home purchase, to receive a purchase price refund, under certain express  
28 conditions.

1           109. ~~108.~~ “Priority Tax Claims” means any Claim that is entitled to priority under Bankruptcy  
2 Code sections 502(i) or 507(a)(8). Priority Tax Claims do not include *ad valorem* tax Claims if such  
3 Claims under applicable state law are Secured by a Lien on Debtor’s Assets.

4           110. ~~109.~~ “Pro Rata” means, with respect to an amount of Cash or other consideration to be  
5 paid or distributed on a particular date to a Holder of an Allowed Claim, that such Distribution shall be  
6 made in accordance with the ratio, as of such date, of the amount such Allowed Claim is to the  
7 aggregate of the amounts of Claims in the Class to which such Allowed Claim belongs.

8           111. ~~110.~~ “Professional” means a Person or Entity: (a) employed pursuant to a Bankruptcy  
9 Court order in accordance with Bankruptcy Code sections 327 or 1103 and to be compensated for  
10 services rendered prior to or on the Effective Date, pursuant to Bankruptcy Code sections 327, 328, 329,  
11 330 or 331; (b) awarded compensation and reimbursement by the Bankruptcy Court, pursuant to  
12 Bankruptcy Code section 503(b)(4); or (c) employed by the Futures Representative pursuant to an  
13 order of the Bankruptcy Court.

14           112. ~~111.~~ “Professional Fee Claim” means any Claim for compensation or reimbursement of  
15 fees and expenses as may be requested by (i) the Futures Representative, or (ii) a Professional to the  
16 extent such Professional is required to apply to the Bankruptcy Court for payment of such Claim  
17 pursuant to Bankruptcy Code sections 326, 328, 330 or 331 and the terms of the Plan.

18           113. ~~112.~~ “Professional Fees” means all reasonable fees and expenses incurred by Profession-  
19 als or the Futures Representative and allowed by the Bankruptcy Court.

20           114. ~~113.~~ “Proof of Claim” means a proof of claim for a Claim which has been Filed.

21           115. ~~114.~~ “Proof of Interest” means a proof of interest for an Interest which has been Filed.

22           116. ~~115.~~ “Receivable” means the right of Debtor to receive deferred payments due from cer-  
23 tain affiliates, representing amounts due for lot development, unit construction and other services for  
24 which Debtor has acted as general contractor pursuant to agreements memorialized as (i) various  
25 Marketing and Administrative Services Agreements, and (ii) various Design-Build Agreements.

26           117. ~~116.~~ “Rejected Contract” means any Executory Contract that has been rejected prior to  
27 Confirmation, or is the subject of a pending motion for rejection or has been designated in the ~~Plan~~  
28 ~~Supplement (or in any other contract, instrument, stipulation, settlement, release or other agreement or~~

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1 ~~document entered into in connection with the Plan)~~ Disclosure Statement as a contract or lease that is  
2 not to be an Assumed Contract, or is otherwise rejected pursuant to the Plan.

3 118. ~~117.~~ “Related Persons” means, with respect to any Person, such Person’s predecessors,  
4 successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and  
5 Subsidiaries, and each of their respective current and former officers, directors, principals, employees,  
6 shareholders, members (including ex officio members), partners, agents, financial advisors, attorneys,  
7 accountants, investment bankers, investment advisors, consultants, representatives and other  
8 professionals, and any Person claiming by or through any of them.

9 119. ~~118.~~ “Released Liabilities” means, with respect to a given Releasor, all claims, obliga-  
10 tions, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities based on any  
11 act, omission, transaction, event or other occurrence (other than rights to enforce the terms of the Plan  
12 or any related document or agreement), whether known or unknown, foreseen or unforeseen, then  
13 existing or thereafter arising, in law, equity or otherwise that arose prior to the Effective Date and relate  
14 to Debtor, the Plan or the Chapter 11 Case, which could have been asserted by such Releasor (or on  
15 behalf of Debtor or its Estate) against any ~~Releasee or any of its Related Persons~~ Released Party.

16 120. ~~119.~~ “Released Party” means each of: (a) Debtor and its Estate; (b) ~~each member of any~~  
17 ~~Statutory Committee~~ Reorganized Debtor; (c) ~~Reorganized Debtor;~~ (d) the DIP Lender; (~~ed~~) the  
18 Distribution Agent; (~~fe~~) the Futures Representative; (f) Professionals; (~~g~~) ~~Professionals~~; (~~h~~) the Secured  
19 Lenders; and (ih) the respective Related Persons of each of the foregoing.

20 ~~120.— “Releasees” means each of: (a) Debtor and its Estate; (b) each member of any Statutory~~  
21 ~~Committee; (c) Reorganized Debtor; (d) the DIP Lender; (e) the Distribution Agent; (f) the Futures~~  
22 ~~Representative; (g) Professionals; (h) the Secured Lenders; and (i) the respective Related Persons of~~  
23 ~~each of the foregoing.~~

24 121. “[reserve]”.

25 122. ~~121.~~ “Releasing Parties” shall have the meaning given to it in Section 12.4(a) of the Plan.

26 123. ~~122.~~ “Releasors” means each of: (a) Debtor and its Estate; (b) ~~each member of any~~  
27 ~~Statutory Committee;~~ (c) ~~Reorganized Debtor;~~ (dc) the DIP Lender; (ed) the Distribution Agent; (fe) the  
28

1 Futures Representative; (~~g~~f) Professionals; and (~~h~~g) the respective Related Persons of each of the  
2 foregoing.

3 124. “Remaining Construction Defect Trust Fund” shall mean a portion of the Construction  
4 Defect Trust Contribution calculated in accordance with the Cash Out Election Ratio as the remainder  
5 of (x) the Construction Defect Trust Contribution, less (y) the Total Cash Out Fund, sixty percent  
6 (60%) of which Remaining Construction Defect Trust Fund shall be earmarked first to be used to  
7 administer the Construction Defect Trust. If less than eighty percent (80%) in number of the Holders of  
8 Class 4 Construction Defect Claims actually vote to accept the Plan, there shall be no Total Cash Out  
9 Fund and the Cash Out Election Ratio shall be inapplicable.

10 125. ~~124.~~ “Reorganized Debtor” means, on or after the Effective Date, Debtor as reorganized  
11 debtor.

12 126. ~~125.~~ “Reorganized Debtor’s Bylaws” means the amended and restated agreements that  
13 will govern Reorganized Debtor as of the Effective Date, the form of which is attached as an exhibit to  
14 the Disclosure Statement.

15 127. ~~126.~~ “Schedule of Assumed Contracts” means the schedule of Assumed Contracts and  
16 Debtor’s proposed respective Cure amounts, if any, which is attached as an exhibit to the Disclosure  
17 Statement.

18 128. ~~127.~~ “Schedule of Disputed Claims” means the non-exhaustive list of Claims whose  
19 amounts are disputed, which is attached as an exhibit to the Disclosure Statement.

20 129. ~~128.~~ “Schedules” means the schedules of Assets and liabilities, the list of Holders of  
21 Interests and the statements of financial affairs Filed by Debtor under Bankruptcy Code section 521 and  
22 Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation Date.

23 130. ~~129.~~ “Secured” means, when referring to a Claim: (a) secured by a Lien on any Assets,  
24 which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy  
25 Court order, or that is subject to setoff pursuant to Bankruptcy Code section 553, to the extent of the  
26 value of the Creditor’s interest in the Estate’s interest in such property or to the extent of the amount  
27 subject to setoff, as applicable, as determined pursuant to Bankruptcy Code section 506(a); or (b) a  
28 Claim deemed or treated under the Plan as a Secured Claim.

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1           131.   ~~130.~~ “Secured Lenders” means, collectively, the “Lenders,” as defined in the Term Loan  
2 Documents and the New Secured Loan Documents.

3           132.   ~~131.~~ “Statutory Committee” means, collectively, any committee appointed in the Chapter  
4 11 Case pursuant to Bankruptcy Code section 1102.

5           133.   ~~132.~~ “TDP” means the Construction Defect Trust Distribution Procedures ~~promulgated~~  
6 ~~by the Construction Defect Trustee in consultation with~~ attached as Exhibit 1 to the Construction Defect  
7 Trust ~~Advisory Board~~ Declaration.

8           134.   ~~133.~~ “Term Loan” means the secured loan the Secured Lenders provided to Debtor before  
9 the Petition Date pursuant to the Term Loan Documents, which Term Loan, notwithstanding the  
10 commencement of the Chapter 11 Case, remains outstanding as to other co-borrowers of Debtor  
11 thereunder.

12           135.   ~~134.~~ “Term Loan Documents” means the agreement, instruments and documents  
13 governing the Term Loan, including, without limitation, that certain Term Loan Credit Agreement  
14 among California Bank & Trust (individually and as Administrative Agent and as Lead Arranger),  
15 Wells Fargo Bank, National Association (individually and as Syndication Agent), the Secured Lenders,  
16 certain borrowers (including Debtor) and certain guarantors dated as of December 31, 2009, as amended  
17 from time to time, and including exhibits thereto.

18           136.   ~~135.~~ “Total Cash Out Fund” means a portion of the Construction Defect Trust Contribu-  
19 tion calculated according to the Cash Out Election Ratio.

20           137.   ~~136.~~ “US Trustee Fees” means fees payable pursuant to 28 U.S.C. § 1930.

21           138.   ~~137.~~ “Voting and Claims Agent” means The Garden City Group, in its capacity as  
22 solicitation, notice, claims and balloting agent for Debtor.

23           ~~138.— “Voting Deadline” means the deadline established by an order of the Bankruptcy Court~~  
24 ~~for voting to accept or reject the Plan.~~

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

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

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