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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

**MASTER DISCLOSURE STATEMENT  
PREPARED IN CONNECTION WITH  
DEBTOR'S FIRST AMENDED  
CHAPTER 11 PLAN OF  
REORGANIZATION**

Hearing Date: ~~July~~ December 10, 2012

Hearing Time: ~~1:30 p.m.~~ 10:00 a.m.

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1 THIS DISCLOSURE STATEMENT IS SUBMITTED FOR APPROVAL IN CONNECTION  
2 WITH DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION (THE  
3 "PLAN") FILED BY AMERICAN WEST DEVELOPMENT, INC. ("DEBTOR"). **THIS**  
4 **DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY**  
5 **COURT, ~~THE~~ SECURITIES AND EXCHANGE COMMISSION ("SEC")<sub>5</sub> OR ANY OTHER**  
6 **REGULATORY AUTHORITY.**

7 This Disclosure Statement has been prepared in accordance with section 1125 of title 11 of the  
8 United States Code (the "Bankruptcy Code") and Rule 3016(c) of the Federal Rules of Bankruptcy  
9 Procedure (the "Bankruptcy Rules") and not necessarily in accordance with federal or state securities  
10 laws or other laws governing disclosure outside the context of the Bankruptcy Code. This Disclosure  
11 Statement has neither been approved nor disapproved by the SEC, nor has the SEC passed judgment  
12 upon the accuracy or adequacy of the statements contained herein.

13 Capitalized terms utilized in this Disclosure Statement, if not defined herein, shall have the  
14 meaning used or defined in the Glossary of Defined Terms attached as **Exhibit "A"** to the Plan, the  
15 Bankruptcy Code or the Bankruptcy Rules, as applicable, unless the context hereof requires a different  
16 meaning.

17 This Disclosure Statement is being provided to Holders of Impaired Claims, in connection with  
18 the solicitation of their votes on the Plan, in order to provide adequate information to enable them to  
19 make reasonably informed decisions in the exercise of their rights to vote on the Plan. In making a  
20 decision in connection with the Plan, Holders of Impaired Claims must rely on their own examination  
21 of Debtor's financial situation and the terms of the Plan, including the merits and risks involved.  
22 **HOLDERS OF IMPAIRED CLAIMS ARE URGED TO REVIEW ALL OF THE TERMS AND**  
23 **CONDITIONS OF THE PLAN CAREFULLY, AND NOT TO RELY SOLELY ON THE**  
24 **SUMMARY IN THIS DISCLOSURE STATEMENT. HOLDERS OF IMPAIRED CLAIMS ALSO**  
25 **SHOULD CAREFULLY REVIEW THE VOTING INSTRUCTIONS SET FORTH IN ARTICLE VI,**  
26 **SECTION B OF THIS DISCLOSURE STATEMENT.**

27 **HOLDERS OF IMPAIRED CLAIMS AND ANY OTHER PARTIES IN INTEREST**  
28 **SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS**

1 PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH SUCH HOLDER  
2 AND PARTY SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS,  
3 FINANCIAL AND TAX ADVISORS AS TO ANY MATTERS CONCERNING SOLICITATION OF  
4 VOTES, THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

5 THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BASED  
6 UPON FINANCIAL AND OTHER INFORMATION DEVELOPED BY DEBTOR. ALTHOUGH  
7 DEBTOR HAS REASONABLY ENDEAVORED TO OBTAIN AND SUPPLY ALL MATERIAL  
8 INFORMATION, THE INFORMATION PROVIDED HAS NOT BEEN SUBJECT TO CERTIFIED  
9 AUDIT OR INDEPENDENT REVIEW EXCEPT WHERE EXPRESSLY INDICATED.  
10 ACCORDINGLY, DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT  
11 THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY OR IS  
12 COMPLETE. NO REPRESENTATION CONCERNING DEBTOR IS AUTHORIZED OTHER  
13 THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

14 Except as otherwise noted, the ballots being solicited (the “Ballots”) hereby will not be used by  
15 Debtor for any purpose other than to determine votes for acceptance or rejection of the Plan (and any  
16 permitted non-materially modified version thereof) under chapter 11 of the Bankruptcy Code.

17 The information presented in this Disclosure Statement includes forward-looking statements in  
18 addition to historical information. These statements involve known and unknown risks and relate to  
19 future events, future financial performance or projected business results. In some cases, you can  
20 identify forward-looking statements by terminology such as “may,” “will,” “should,” “expects,”  
21 “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “targets,” “potential” or “continue” or the  
22 negative of these terms or other comparable terminology. Forward-looking statements are only  
23 predictions. Actual events or results may differ materially from any forward-looking statement as a  
24 result of various factors, including those contained in the section entitled “Risk Factors” and other  
25 sections of this Disclosure Statement, including the documents incorporated by reference herein.  
26 Although Debtor believes that the expectations reflected in the forward-looking statements are  
27 reasonable, Debtor cannot guarantee future results, events, levels of activity, performance or  
28 achievements. Debtor expressly disclaims a duty to update any of the forward-looking statements.

1 AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER  
2 ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT  
3 CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY,  
4 STIPULATION, OR WAIVER, BUT RATHER (IF AT ALL) AS A STATEMENT MADE IN  
5 SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE  
6 ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE  
7 CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER  
8 LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY  
9 INTERESTS IN, DEBTOR OR ANY OF ITS AFFILIATES.

10 ARTICLE I

11 INTRODUCTION

12 The following introductory statements are qualified in their entirety by the more detailed  
13 information contained in the Plan and elsewhere in this Disclosure Statement.

14 On March 1, 2012 (the "Petition Date"), Debtor<sup>1</sup> filed a voluntary petition for relief under  
15 chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States  
16 Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").

17 On May 29, 2012, the Debtor filed its initial Chapter 11 Plan of Reorganization dated May 29,  
18 2012 (the "Initial Plan"). Although Debtor's Initial Plan was overwhelmingly accepted by Holders of  
19 Claims in each of the three Impaired Classes, the Bankruptcy Court entered an order denying  
20 confirmation of the Initial Plan based upon certain of the objections asserted by the Office of the  
21 United States Trustee ("OUST"). Debtor drafted the current Plan in order to address certain aspects of  
22 the Bankruptcy Court's ruling on the Initial Plan. See Article IV, Section F, infra.

23  
24  
25 <sup>1</sup> Prior to the Petition Date, the following former affiliates of Debtor merged with and into  
26 Debtor: Castlebay 1, Inc., Development Management, Inc., Fairmont 1, Inc., Glen Eagles 3, Inc.,  
27 Heritage 1, Inc., Inverness 5, Inc., Kensington 1, Inc., Kingsbridge 1, Inc., Promontory Estates, LLC,  
28 Promontory Point 4, Inc., Silverado Springs 1, Inc., Silverado Springs 2, Inc., Tradition, Inc., and Windsor 1, Inc.

1 Debtor builds, develops, markets and sells single family homes in master planned communities  
2 to various segments of the residential real estate market in Nevada.

3 Debtor commenced this chapter 11 case (the "Chapter 11 Case") in order to reorganize its  
4 financial affairs, restructure its institutional secured debt obligations and address certain legacy  
5 contingent liabilities that may have arisen during the 144-month period (or longer) that precedes the  
6 Petition Date in connection with the construction, marketing and sale of homes.

7 This Disclosure Statement was prepared by Debtor for use in conjunction with ~~Debtor's Chapter~~  
8 ~~11 Plan Of Reorganization (the "~~the ~~Plan")~~, a copy of which is attached as **Exhibit "A"** ~~to this~~  
9 ~~Disclosure Statement~~hereto. The Plan sets forth the means by which Debtor will use its Assets to  
10 satisfy its liabilities in accordance with the Bankruptcy Code. ~~This~~e purpose of this Disclosure  
11 Statement is to describe the Plan and provide adequate information to allow Creditors entitled to vote  
12 on the Plan to make an informed decision about how to cast their Ballot.

13 The balance of this Introduction will cover certain high level aspects of Debtor's financial  
14 condition and how the Plan will operate to reorganize Debtor's financial affairs. Following this  
15 Introduction, the remaining sections of this Disclosure Statement will discuss in greater detail Debtor's  
16 business and background, the history and anticipated course of Debtor's Chapter 11 Case, the operative  
17 provisions of the Plan, the Bankruptcy Code requirements that the Plan must satisfy (and the process  
18 for doing so), and certain other information that should be considered when evaluating the Plan,  
19 including risk factors and tax consequences.

20 **A. Plan Overview.**

21 The Plan separates Claims against Debtor into five (5) classes based on their level of priority  
22 under the Bankruptcy Code and the legal nature of the Claims. There is also one (1) class of Equity  
23 Interests. Administrative Claims and Priority Tax Claims are not classified because the Bankruptcy  
24 Code requires that they receive specific treatment. The Plan provides for a consensual restructuring of  
25 the Term Loan owed to the Secured Lenders pursuant to (and subject to the terms of) a pre-petition  
26 Restructuring Lock-Up and Settlement Letter Agreement (the "Lock-Up and Settlement Letter  
27 Agreement") with the Secured Lenders approved by order of the Bankruptcy Court pursuant to  
28 Bankruptcy Rule 9019 ("9019 Order").

1 The Plan also provides for Holders of Allowed Class 3 General Unsecured Claims (which  
 2 exclude Class 4 Construction Defect Claims and certain other Claims) to share Pro Rata in a  
 3 \$1,500,000 cash pool up to the Allowed principal amount of their Claim. Importantly, the Plan  
 4 provides that the Secured Lenders will waive their General Unsecured Deficiency Claims in Class 3 if  
 5 and only if the Holders of Class 3 General Unsecured Claims vote, as a Class, to accept the Plan.

6 Liability for Allowed Class 4 Construction Defect Claims, if any, will be channeled to the  
 7 Construction Defect Trust, the corpus of which will consist primarily of ~~\$1,500,000 in cash (which~~  
 8 ~~shall initially be used to make the aggregate Cash Out Payment), potential claims against insurance~~  
 9 ~~proceeds, and other causes of action contributed by Debtor and certain of its Affiliates.~~

- 10 (i) cash in the amount of either (x) \$1,500,000 (if at least eighty percent (80%) in number  
 11 of the Holders of Class 4 Construction Defect Claims actually vote to accept the Plan),  
 12 a portion of which shall initially be used to make any Cash Out Payments, or (y)  
 13 \$500,000 (if less than eighty percent (80%) in number of the Holders of Class 4  
 14 Construction Defect Claims actually vote to accept the Plan and the Cash Out Election  
 15 is therefore not available);
- 16 (ii) potential claims against insurance proceeds; and
- 17 (iii) other causes of action contributed by Debtor and certain of its Affiliates.

18 Debtor's existing Equity Interests will be canceled and the ownership of Reorganized Debtor  
 19 will be vested in the DIP Lender or its assignee(s), each of which is an existing Affiliate. In return, the  
 20 DIP Lender will provide \$10,000,000 in funding to make payments under the Plan, provide cash  
 21 funding for the Construction Defect Trust, and provide working capital for Reorganized Debtor. The  
 22 funding amount will not change regardless of the voting results for Class 4—if less than eighty percent  
 23 (80%) in number of the Holders of Class 4 Construction Defect Claims actually vote to accept the Plan,  
 24 then \$1,000,000 (of the \$10,000,000 in funding from the DIP Lender) that otherwise would have gone  
 25 into the Construction Defect Trust will instead go to Reorganized Debtor to provide Reorganized  
 26 Debtor with additional working capital.

27 **B. Debtor's Principal Assets and Indebtedness.**

28

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1 Debtor’s principal assets consist of (i) the Receivable owing from certain Affiliates for lot  
 2 development and home construction services performed by Debtor, (ii) insurance policies/proceeds,  
 3 and (iii) causes of action against third parties. Due to the economic downturn that has dramatically  
 4 affected the housing market in Las Vegas and across the country, the reduced sale prices for homes  
 5 has significantly impacted the collectible value of the Receivable. Debtor estimates that the  
 6 collectible value of the Receivable totals approximately \$49,635,000.

7 The Receivable (and all of Debtor’s other personal property assets) are collateral for the Term  
 8 Loan owed to the Secured Lenders, the principal balance of which totaled (1) \$177,506,450.25 as of  
 9 the Petition Date; (2) \$164,339,200.00 as of August 31, 2012; and (3) \$162,047,145.00 as of October 9,  
 10 2012. Debtor is jointly and severally liable for the Term Loan, as are the bulk of Debtor’s non-debtor  
 11 Affiliates. In addition, as of the Petition Date Debtor faces sd potential exposure to (i) Construction  
 12 Defect Claims, and (ii) Claims based on Price Promises and Price Guarantees related to the sale of  
 13 certain homes built by Debtor. Debtor has reached settlements with all of the Holders who timely  
 14 asserted Price Promise and Price Guarantee Claims, which have resulted in Allowed Class 3 General  
 15 Unsecured Claims in the aggregate amount of approximately \$1,800,000. Debtor’s exposure to ~~these~~  
 16 ~~types of~~ Construction Defect Claims ~~is~~ remains contingent and highly uncertain.

17 **C. Treatment of Claims and Interests.**

18 The Plan’s classification and treatment of Claims and Equity Interests is summarized below:

Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
Class 1	Other Priority Claims	Each Holder of an Allowed Priority Claim shall either: (i) be paid the Allowed amount of such Claim in Cash on the Effective Date; or (ii) receive such other treatment as is agreed to by the Holder of such Allowed Other	\$100,000

26 <sup>2</sup> ~~These~~ Except as otherwise noted, these amounts were compiled by combining the undisputed  
 27 Claims listed on Debtor’s bankruptcy Schedules. As such, these amounts are estimates only, and may  
 28 change as Proofs of Claims are Filed and as the adjudication or other resolution of pending contingent,  
 unliquidated and/or Disputed Claims occurs.

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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		Priority Claim, and Debtor or Reorganized Debtor, as the case may be.  <i>Other Priority Claims are not Impaired. Holders of Allowed Other Priority Claims are not entitled to vote and are conclusively determined to accept the Plan.</i>	
Class 2	Secured Claims	Assuming that the Bankruptcy Court has entered the 9019 Order and that it has become a Final Order, on the Effective Date, each Secured Lender, as a Holder of an Allowed Secured Claim, shall receive, in full satisfaction, settlement, release and exchange for its Allowed Secured Claim, payments from and performance by Reorganized Debtor under the New Secured Loan according to the terms and conditions of the New Secured Loan Documents. The New Secured Loan will be evidenced by the New Secured Notes, which will be executed by Reorganized Debtor and be payable to the order of each Secured Lender according to such Secured Lender's pro rata interest in the New Secured Loan. The New Secured Notes will be in the aggregate principal amount of \$49,635,000, maturing on December 31, 2015 (the " <u>Maturity Date</u> "). The New Secured Loan shall be secured by Liens on the Secured Lenders' collateral pursuant to the New Secured Loan Documents. Pursuant to the terms	<del>\$177,506,450.25</del> <u>\$162,047,145<sup>3</sup></u>

<sup>3</sup> This is the balance as of October 9, 2012. The balance as of the Petition Date was \$177,506,450.25, which has been reduced due to principal payments made since the Petition Date by non-Debtor borrowers.

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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		<p>of the Lock-Up and Settlement Letter Agreement, the Secured Lenders shall waive any respective entitlement to receive or recover from Debtor or Reorganized Debtor any interest accruing at the default rate under the Term Loan Documents prior to the Effective Date to the extent (and only to the extent) that such default rate interest would be triggered under the Term Loan Documents by the commencement of the Chapter 11 Case.</p> <p>The New Secured Notes provide that the Secured Lenders will receive interest on the principal amounts of the New Secured Notes at either (a) a fixed rate of interest based on reserve-adjusted LIBOR rate plus the Applicable Margin for interest periods of one (1), two (2), three (3) or six (6) months or (b) a variable rate of interest based on the “prime rate” as announced from time to time by California Bank &amp; Trust plus the Applicable Margin. If a fixed rate is selected, then upon expiration of the applicable interest period the variable rate will become applicable unless a new fixed rate interest period is selected in accordance with the New Secured Loan Documents. The variable rate will change with each change in the applicable “prime rate.” The New Secured Notes further provide that: (i) accrued interest shall be due and payable on the first Business Day of each month, beginning with the first day of the first month after the month in which the Effective Date occurs, with interest being calculated based</p>	



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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		<p>on the actual number of days that principal is outstanding over a year of 360 days; and (ii) the entire outstanding principal balance of the New Secured Notes plus any accrued and unpaid interest shall be immediately due and payable in one balloon payment on the Maturity Date. The New Secured Notes shall be secured, pursuant to the New Secured Loan Documents, by the Secured Lenders' collateral and shall be in a form acceptable to and approved by the Secured Lenders, which form is annexed as an exhibit to the Disclosure Statement. In the event of a default by Reorganized Debtor under the New Secured Loan Documents, the full amount of the obligation owed by Debtor's co-borrowers under the Term Loan shall, at the option of a designated percentage of the Secured Lenders, become immediately due and payable in full. In the event of any conflict between the New Secured Loan Documents and the Plan, the terms and conditions of the New Secured Loan Documents shall control.</p> <p>Upon the Effective Date: (i) Debtor's obligations as co-borrower under the Term Loan shall be deemed replaced by its obligations as borrower under the New Secured Loan; (ii) Debtor shall be deemed to be the sole owner of all of its re-vested assets, including the Receivable and contract rights under each of the Design-Build Agreements and the Marketing and Administrative Services Agreements, free and clear of all Liens and interests except the Secured Lenders' Liens</p>	

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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		and interests under the New Secured Loan Documents; and (iii) all Liens and security interests in the Receivable shall automatically be deemed to secure only Reorganized Debtor’s obligations to the Secured Lenders under the New Secured Loan Documents. In addition, the Term Loan provides that Reorganized Debtor may become a co-borrower thereunder under certain conditions as set forth therein.  <i>Secured Claims are Impaired and the Holder(s) of Allowed Secured Claims are entitled to vote to accept or reject the Plan.</i>	
Class 3	General Unsecured Claims	Unless otherwise agreed to by the Holder, each Holder of an Allowed Class 3 General Unsecured Claim shall receive on the Effective Date in full satisfaction, settlement, release and exchange of such	\$114,602,98,9572.25 <sup>3</sup> 54 <sup>4</sup>

~~<sup>3</sup> This \$146,021,972.25 amount includes the Secured Lenders’ Deficiency Claims totaling \$127,871,450.25, as to which the Secured Lenders have agreed to waive any distribution if Class 3 votes in favor of the Plan. In addition, this \$146,021,972.25 amount also includes over \$18,000,000 for other Class 3 Claims (i.e. exclusive of the Secured Lenders’ Deficiency Claims), which is the aggregate maximum of such Claims that Debtor estimates possibly could be asserted. Debtor believes that the actual aggregate amount of Allowed Class 3 Claims (other than the Secured Lenders’ Deficiency Claims) will be significantly lower than \$18,000,000.~~

<sup>4</sup> This \$114,698,572.54 amount is calculated as of October 9, 2012 and is comprised of (i) the Secured Lenders’ Deficiency Claims totaling \$112,412,145.37, as to which the Secured Lenders have agreed to waive any distribution if Class 3 votes in favor of the Plan, (ii) approximately \$1,834,028.94 in settled pricing commitment claims, and (iii) approximately \$452,398.23 in other claims that remain subject to review and potential dispute by Debtor. This amount excludes an intercompany payable owing to American West Home Ventures, Inc. (“AWHV”) in the amount of \$30,666,530 as of August 31, 2012, which will be eliminated in connection with the Plan. Debtor estimates that the distribution to Holders of Allowed Class 3 General Unsecured Claims will be between 66% and 82%, based upon (a) the assumption that Class 3 votes in favor of the Plan, thereby triggering the Secured Lenders’ waiver of their Deficiency Claims, (b) the prior payment of approximately \$350,000 in “critical vendor” claims, and (c) the resolution of any disputed Class 3 General Unsecured Claims. As of the Petition Date the Secured Lenders’ Deficiency Claims totaled \$127,871,450.25, the balance of which has been reduced due to principal payments made since the Petition Date by non-Debtor borrowers.

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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		<p>Allowed <u>Class 3</u> General Unsecured Claim, its Pro Rata share of one million five hundred thousand dollars (\$1,500,000), provided, however, that such Holder may not receive more than one hundred percent (100%) of the principal amount of its Allowed Claim.</p> <p>Holders of Allowed <u>Class 3</u> General Unsecured Claims are not entitled to interest on account of their claims. Distribution to Holders of Allowed <u>Class 3</u> General Unsecured Claims will be made pursuant to Section 8.2(b) of the Plan.</p> <p>On the Effective Date, assuming that Class 3 votes in favor of the Plan, the Secured Lenders shall waive any distribution on account of their Class 3 General Unsecured Claims, which are Deficiency Claims, as established or determined by the 9019 Order or otherwise.</p> <p><b><i><u>Class 3</u> General Unsecured Claims are Impaired and Holders of Allowed <u>Class 3</u> General Unsecured Claims are entitled to vote to accept or reject the Plan.</i></b></p>	
Class 4	Construction Defect Claims	Liability for payment of all <u>Class 4</u> Construction Defect Claims shall be the exclusive responsibility of the Construction	\$80,000,000 <sup>45</sup>

<sup>45</sup>~~This~~ \$80,000,000 ~~amount~~ is the aggregate maximum amount of Class 4 Construction Defect Claims that Debtor estimates could possibly ~~could~~ be asserted. Debtor believes the actual aggregate amount of Allowed Class 4 Construction Defect Claims will be significantly lower and is ~~not likely~~ very unlikely to exceed ~~approximately \$20,000,000~~ approximately \$8,000,000. Only seven (7) Claims alleging construction defect liability were filed as of the Bar Date, several of which appear to relate to home construction in which Debtor was not involved.

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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		Defect Trust and, except as provided in Section 2.3(d) of the Plan regarding <a href="#">Class 4</a> Construction Defect Claims for which the Cash Out Election is made, shall be processed, liquidated and paid pursuant to the terms and provisions of the Construction Defect Trust Distribution Procedures (“ <a href="#">TDP</a> ”), and the Construction Defect Trustee will determine, subject to the terms of the Construction Defect Trust Declaration and the <a href="#">TDP</a> , whether a <a href="#">Class 4</a> Construction Defect Claim is an Allowed Claim for purposes of distributions on account thereof from the Construction Defect Trust. Pursuant to a channeling injunction, the sole recourse of the Holder of a <a href="#">Class 4</a> Construction Defect Claim shall be against the corpus of the Construction Defect Trust, and such Holder shall have no rights whatsoever at any time to assert such <a href="#">Class 4</a> Construction Defect Claim against Debtor, the Estate, Reorganized Debtor or the Assets vested in Reorganized Debtor upon confirmation of the Plan. On the Effective Date, all Holders of <a href="#">Class 4</a> Construction Defect Claims shall be permanently and forever stayed, restrained and enjoined from taking any actions against Reorganized Debtor <del>or its Affiliates</del> , Debtor <del>or its Affiliates</del> , the Estate, the Assets, the Distribution Agent, <a href="#">and</a> the Professionals <del>and any of their Related Persons</del> or their respective assets and property for the purpose of, directly or indirectly, collecting, recovering or receiving	

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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		<p>payment of, on or with respect to any <u>Class 4</u> Construction Defect Claim. On the Effective Date, the Construction Defect Trust will be funded with (i) a Construction Defect Trust Contribution in the amount of \$1,500,000 in cash <u>(or \$500,000 if less than eighty percent (80%) in number of the Holders of Class 4 Construction Defect Claims actually vote to accept the Plan)</u>, plus (ii) various rights and causes of action that could augment the corpus of the Construction Defect Trust and the amount ultimately distributed to Holders of Allowed <u>Class 4</u> Construction Defect Claims.</p> <p>The Class 4 Ballot provided to Holders of <u>Class 4</u> Construction Defect Claims includes the option to make the Cash Out Election. Each Holder of a <u>Class 4</u> Construction Defect Claim who makes the Cash Out Election will <del>be</del> <u>subject to at least eighty percent (80%) in number of the Holders of Class 4 Construction Defect Claims actually voting to accept the Plan,</u> receive a one-time cash payment in an amount that will not be less than \$200 and is not likely to be greater than \$300 (the <u>actual</u> amount <del>depends will depend</del> on the number of Holders asserting <u>Class 4</u> Construction Defect Claims), regardless of whether any construction defects have arisen to date, in return for the Cash Out Release. <u>If the Plan is not accepted by at least eighty percent (80%) in number of the Holders of Class 4 Construction Defect Claims there shall be no Cash Out Election available and the Claims</u></p>	

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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		<p><u>of all Holders of Claims in Class 4 shall be processed, liquidated and paid pursuant to the terms and provisions of the TDP.</u></p> <p><u>Class 4 Construction Defect Claims</u> asserted by Holders who do not make the Cash Out Election will undergo further processing in accordance with the TDP. The remaining balance of the Construction Defect Trust Contribution (after payment of the Cash Out Payments, <u>if any</u>) will be used to fund the administration and distribution for these <u>Class 4 Construction Defect Claims</u>, with <u>sixty percent (60%-)</u> of the remaining balance to be earmarked for administration costs.</p> <p><u>Class 4 Construction Defect Claims are Impaired. Holders of Class 4 Construction Defect Claims who make the Cash Out Election will be deemed to have Allowed Claims for purposes of voting on the Plan and are entitled to vote to accept or reject the Plan. <del>The votes of Holders of Class 4 Construction Defect Claims who do not make the Cash Out Election must seek temporary allowance of their Claims will be tabulated for purposes of voting on the Plan in the amount of \$1.00 unless the Bankruptcy Court enters an order pursuant to Bankruptcy Rule 3018-(a) or they will not be entitled temporarily allowing any such Claim(s) in a different amount. Holders of Class 4 Construction Defect Claims who have not Filed a Proof of Claim</del></u></p>	

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Class	Description	Treatment	Estimated Amount of Claims <sup>2</sup>
		<p><u><i>and who do not vote will effectively be delegating to the Futures Representative their right to vote to accept or reject the Plan. The Futures Representative intends to vote in favor of the Plan on behalf of the Holders of Class 4 Construction Defect Claims who have not voted themselves, thereby granting the non-debtor release set forth in Section 12.4(b) of the Plan on behalf of such Holders.</i></u></p>	
Class 5	Bond Claims	<p>Paid in the ordinary course of Reorganized Debtor’s business.</p> <p><i>Bond Claims are not Impaired. Holders of Allowed Bond Claims are not entitled to vote and are conclusively deemed to have accepted the Plan.</i></p>	<p><del>\$17,744,349</del> <u>\$18,744,900 (as of September 30, 2012)</u></p>
Class 6	Old Equity Interests	<p>Upon the Effective Date, all Old Equity Interests shall be extinguished and cancelled. Holders of Old Equity Interests shall not receive or retain any property on account thereof under the Plan.</p> <p><i>Old Equity Interests are Impaired. The Holders of Old Equity Interests are not entitled to vote and are conclusively deemed to have rejected the Plan.</i></p>	N/A

For a more detailed description of the treatment of the foregoing Classes of Claims and Interests, see Article V, Section B below.

**D. Voting, Objection to Confirmation and Confirmation Hearing.**

Creditors holding Claims in Classes 2, 3 and 4 shall receive a Ballot to vote to accept or reject the Plan. The Voting Deadline to submit the Ballot is ~~September 11~~ January 4, 2012 2013 at 3:00 p.m. Prevailing Pacific Time. Ballots must be returned to The Garden City Group (“GCG”), Debtor’s

1 claims, noticing and balloting agent. For more information regarding voting, see Article VI, Section B  
2 below.

3 The Bankruptcy Court has established ~~September 11~~December 28, 2012 at 5:00 p.m.  
4 Prevailing Pacific Time as the deadline to object to the Plan. Any objection to the Plan raised after  
5 the objection deadline may not be considered by the Bankruptcy Court. The Bankruptcy Court will  
6 hold a hearing on Confirmation of the Plan starting at **10:00 a.m. on ~~September 25~~January 15, 2012**  
7 **at Courtroom 2, Foley Federal Building and U.S. Courthouse, 300 Las Vegas Boulevard, South,**  
8 **Las Vegas, Nevada 89101.** For more information regarding the Confirmation hearing and objections,  
9 see Article VI, Section C below.

10 **E. Effectiveness of the Plan.**

11 In order for the Plan to become effective, it must be confirmed by the Bankruptcy Court and  
12 certain other conditions must be satisfied. In order for the Bankruptcy Court to confirm the Plan, the  
13 Plan must satisfy certain requirements of the Bankruptcy Code. For more information regarding these  
14 requirements, see Article VI, Section D below.

15 Once the conditions to the Plan's effectiveness have occurred, the Plan will be implemented  
16 according to its terms. Reorganized Debtor will continue with its business operations as restructured  
17 pursuant to the Plan, with continued obligations for Bond Claims and under the New Secured Loan.  
18 Holders of Allowed Class 3 General Unsecured Claims will receive their Pro Rata share of a  
19 \$1,500,000 cash fund in accordance with the Plan. Class 4 Construction Defect Claims will be  
20 administered and paid out of the Construction Defect Trust via the ~~Cash Out Payment or TDP, for those~~  
21 ~~excepting only that if at least eighty percent (80%) in number of the Holders of Class 4~~ Construction  
22 Defect Claims ~~for which~~ actually vote to accept the Plan, then any Holders of Class 4 Construction  
23 Defect Claims who make the Cash Out Election ~~is not made, via the TDP by the Construction Defect~~  
24 ~~Trust will instead receive the Cash Out Payment.~~ For more information about these and other effects of  
25 the Plan, see Article V, Section B below.

26 **ARTICLE II**

27 **EXPLANATION OF CHAPTER 11**

28 **A. Overview of Chapter 11.**



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1 Chapter 11 is the principal reorganization chapter of the Bankruptcy Code pursuant to which a  
2 debtor may reorganize its business for the benefit of its creditors, equity holders, and other parties in  
3 interest. Debtor commenced the Chapter 11 Case on the Petition Date by filing a petition for voluntary  
4 relief under chapter 11 of the Bankruptcy Code.

5 The commencement of a chapter 11 case creates an “estate” comprising all the legal and  
6 equitable interests of a debtor in property wherever located by whomever held as of the date the  
7 petition is filed. Bankruptcy Code sections 1101, 1107 and 1108 provide that a debtor may continue to  
8 operate its business and remain in possession of its property as a “debtor in possession” unless the  
9 bankruptcy court for cause orders the appointment of a trustee. In the Chapter 11 Case, Debtor remains  
10 in possession of its property and continues to operate its business as a debtor in possession. See Article  
11 IV, Section A below.

12 The filing of a chapter 11 petition triggers the automatic stay provisions of the Bankruptcy  
13 Code. Bankruptcy Code section 362 provides, among other things, for an automatic stay of all  
14 attempts by creditors or other third parties to collect pre-petition claims from the debtor or otherwise  
15 interfere with its property or business. There are certain limited exceptions to the automatic stay,  
16 including for governmental authorities seeking to exercise regulatory or policing powers. Except as  
17 otherwise ordered by the bankruptcy court, the automatic stay remains in full force and effect until the  
18 effective date of a confirmed plan of reorganization.

19 **B. Confirmation of a Plan of Reorganization.**

20 Confirmation of a plan of reorganization is the primary goal of a chapter 11 case. ~~The~~ A  
21 plan sets forth the means for satisfying claims against and interests in a debtor’s estate. Unless a  
22 trustee is appointed, only a debtor may file a plan during the first 120 days of a chapter 11 case (the  
23 “Filing Period”), and the debtor will have 180 days to obtain acceptance of such plan by each  
24 Impaired Class (the “Solicitation Period”). However, Bankruptcy Code section 1121(d) permits the  
25 bankruptcy court to extend or reduce the Filing Period and Solicitation Period upon a showing of  
26 “cause.” The Filing Period and Solicitation Period may not be extended beyond 18 months and 20  
27 months, respectively, from the Petition Date. Because Debtor filed the Plan during the Filing  
28 Period, ordinarily no other creditor or party in interest would be permitted to file a plan until the

1 expiration of the Solicitation Period (including any extension(s) thereof). However, in order to  
2 ensure that maximum value is generated for the benefit of Debtor's Estate and its Creditors, Debtor,  
3 ~~on the Petition Date,~~ has voluntarily waived its exclusive right to propose a plan, which otherwise  
4 would have extended throughout the Filing Period and the Solicitation Period. To date, Debtor is  
5 the only party who has proposed a plan in the Chapter 11 Case.

6 ~~**B. — Plan of Reorganization.**~~

7 Although referred to as a plan of reorganization, a plan may provide anything from a complex  
8 restructuring of a debtor's business and its related obligations to a simple liquidation of a debtor's  
9 assets. In either event, once a confirmed plan becomes effective, the plan becomes binding on the  
10 debtor and all of its creditors and equity holders, and the prior obligations owed by the debtor to such  
11 parties are compromised and exchanged for the obligations specified in the plan. For a description of  
12 key components of the Plan, see Article V below.

13 After a plan of reorganization has been filed, the holders of impaired claims against and equity  
14 interests in a debtor are permitted to vote to accept or reject the plan, unless the plan does not provide  
15 for the impaired class to receive or retain any property on account of its claims or interests (as is the  
16 case with the Holders of Old Equity Interests in Class 6 of the Plan), in which case the class is deemed  
17 to reject the plan. Before soliciting acceptances of the proposed plan, Bankruptcy Code section 1125  
18 requires the debtor to prepare and file a disclosure statement containing adequate information (under  
19 the circumstances) of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to  
20 make an informed judgment about the plan. This Disclosure Statement is presented to Holders of  
21 Impaired Claims against Debtor to satisfy the requirements of Bankruptcy Code section 1125 in  
22 connection with Debtor's solicitation of votes on the Plan.

23 ~~**C. — Confirmation of a Plan of Reorganization.**~~

24 If all impaired classes of claims and equity interests accept or are deemed to accept a plan of  
25 reorganization, the bankruptcy court may confirm the plan if the bankruptcy court independently  
26 determines that the other requirements of Bankruptcy Code section 1129(a) have been satisfied.  
27 See Article VI, Section D. Classes of claims or equity interests that are not "impaired" under a plan of  
28 reorganization are conclusively presumed to have accepted the plan and thus are not entitled to vote.

1 Furthermore, classes that are to neither receive nor retain any property under the plan are conclusively  
2 deemed to have rejected the plan. See Article VI, Section A.

3 Accordingly, acceptances of a plan will generally be solicited only from those persons who hold  
4 claims or equity interests in an impaired class that will receive or retain value under the plan. **Except**  
5 **for Class 1 – Other Priority Claims and Class 5 – Bond Claims, which are not Impaired under**  
6 **the Plan and therefore are deemed to unanimously accept the Plan, and Class 6 – Old Equity**  
7 **Interests, which will neither receive nor retain anything under the Plan and therefore is deemed**  
8 **to unanimously reject the Plan, all Holders of Claims in other Classes are entitled to vote on the**  
9 **Plan.**

10 In general, a bankruptcy court also may confirm a plan of reorganization even though fewer  
11 than all the classes of impaired claims against and equity interests in a debtor accept such plan. For a  
12 plan of reorganization to be confirmed, despite its rejection by a class of impaired claims or equity  
13 interests, the plan must be accepted by at least one class of impaired claims (determined without  
14 counting the vote of insiders) and the proponent of the plan must show, among other things, that the  
15 plan does not “discriminate unfairly” and that the plan is “fair and equitable” with respect to each class  
16 of impaired claims or equity interests that has not accepted the plan. See Article VI, Section D(5).

17 The Plan has been structured by Debtor so that it will satisfy the foregoing requirements as to  
18 any rejecting Class of Impaired Claims or Equity Interests, and therefore can be confirmed, if  
19 necessary, over the objection of any (but not all) Classes of Claims or Equity Interests.

20 **ARTICLE III**

21 **BACKGROUND**

22 **A. Overview and History of Debtor’s Business Operations.**

23 AWDI was founded on July 31, 1984. Initially, AWDI was known as CKC Corporation, but  
24 shortly after its formation (on December 13, 1984) its name was changed to AWDI. The initial  
25 shareholders of AWDI were Lawrence Canarelli, E.A. Collins, M.M. Collins, and Frank Kocvara. By  
26 July 1, 1994, Lawrence Canarelli had become the sole shareholder of AWDI, and on October 6, 2003,  
27 Lawrence Canarelli transferred all of his interest in AWDI to the Canarelli Family Trust, of which he is  
28 currently the sole trustee.

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1 In January and February of 2012, AWDI and certain affiliated companies consummated a series  
2 of transactions to reorganize and recapitalize the company. In the initial series of transactions,  
3 Development Management, Inc. (“DMI”) and several housing entity affiliates were merged with and  
4 into AWDI with AWDI remaining as the surviving company following the mergers.

5 The mergers were effectuated in three phases. In the “phase 1” merger transaction DMI was  
6 merged into AWDI. In the “phase 2” merger transaction, several housing entities whose housing  
7 inventory had been fully liquidated were merged into AWDI. In the “phase 3” merger transaction,  
8 several inactive housing entities that were in the process of winding up affairs following dissolution  
9 were revived and merged into AWDI.

10 All of the merged companies were under identical or common ownership with AWDI. The  
11 mergers were effected on a “stock-for-stock” basis with the share consideration offered to the target  
12 companies’ shareholders determined by the relative valuations of AWDI and each such target company.

13 Following the consummation of the mergers, AWDI was recapitalized in accordance with the  
14 terms of a capital contribution agreement pursuant to which the shareholders of AWDI received  
15 additional shares of common stock in consideration of certain advances made by the shareholders to  
16 AWDI, or to third parties on its behalf, in repayment of certain debts previously incurred by AWDI.

17 ~~In~~ Since 2003, AWDI ~~became~~ has served as the licensed contractor for certain non-debtor  
18 parties.<sup>56</sup> AWDI continues to serve as the licensed contractor and homebuilder entity for certain non-  
19 debtor parties.<sup>67</sup>

20 AWDI built homes and developed lots, which were sold through respective affiliated non-debtor  
21 home seller entities.<sup>78</sup> Debtor received design-build and marketing/administrative services fee income

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23 <sup>56</sup> Prior to 2003, American West Homes, Inc. was the licensed general contractor, land owner  
24 and construction manager for various non-debtor land owning and home selling entities.

25 <sup>67</sup> Currently, Debtor is the contractor and homebuilder for the following non-debtor affiliates:  
26 Woodbridge 1, Inc., Silverado Summit LLC, Silverado Springs 3, LLC, Silverado Springs 2, LLC,  
Reserve 1, LLC, Newcastle 1, LLC, Lexington 1, LLC, Kingsbridge 2, LLC, Kensington 2, Inc.,  
Inverness 2010, LLC, Fairmont 2, LLC, Carmel Hills LLC, and Brookside I, LLC.

27 <sup>78</sup> Following is a list of the non-debtor affiliates for which Debtor built homes that were sold in  
28 2011: Fairmont 2, LLC, Kensington 2, Inc., Kingsbridge 1, Inc. (now merged with Debtor),  
(footnote continued)

1 associated with this activity of \$12,785,563 (for 2009), \$20,434,500 ~~and (for 2010)~~, \$11,192,544 ~~for the~~  
 2 ~~years ended December 31, 2009, 2010 and 2011, respectively~~(for 2011), and \$8,312,551 (year-to-date  
 3 through August 31, 2012). In addition, Debtor, through certain entities that merged into Debtor, closed  
 4 ~~home~~-sales of 75, 97, and 3 homes for the years ended December 31, 2009, 2010 and 2011,  
 5 respectively.<sup>9</sup> The revenues associated with these sales totaled \$42,858,242, \$39,725,420 and  
 6 \$1,011,875 for the years ended December 31, 2009, 2010 and 2011, respectively. Also, Debtor,  
 7 through certain entities that merged into Debtor, received income from land sales of \$5,852,000 and  
 8 \$3,494,850 for the years ended December 31, 2009 and 2010, respectively.

9 In its capacity as general contractor, AWDI acts as construction manager and performs certain  
 10 work to develop the raw land into a series of lots (after obtaining the required zoning and/or  
 11 entitlements) for land owners. AWDI typically operates as the general contractor for this development  
 12 work, which includes obtaining permits, paving, grading, excavation, engineering, installation of  
 13 utilities, and building pads. AWDI subcontracts with licensed subcontractors to perform all of this  
 14 required work. Once the lots are developed, the landowner sells the lots to a newly-organized home  
 15 seller entity that is specifically dedicated to the particular housing development/subdivision. The home  
 16 seller entities pay for the lots in full and assume the landowner's liability for the lot development  
 17 expense owed to AWDI upon transfer of the lots to the home seller entities.

18 The home seller entities also hire AWDI as a general contractor to construct the actual homes  
 19 pursuant to various Design-Build Agreements. AWDI subcontracts with licensed subcontractors to  
 20 perform all of the required work to construct a home, including procuring all materials. The agreements  
 21 with subcontractors typically provide for a fixed price for work performed and materials supplied.  
 22 Debtor does not manufacture any of the materials or other items used in the construction of the homes.

23 AWDI provides management services for certain of its affiliates, which generally includes  
 24 marketing and sales management for the sale of the homes built by AWDI and owned by the home

25 \_\_\_\_\_  
 26 Kingsbridge 2, LLC, Lexington 1, LLC, Newcastle 1, LLC, Reserve 1, LLC, Silver Springs 2, LLC,  
 27 Silver Springs 3, LLC, Windsor 1, Inc. (now merged with Debtor), and Woodbridge 1, Inc.

28 <sup>9</sup> All of the homes owned by merged entities were sold prior to the Petition Date—Debtor does not own any real property.

1 seller entities. Pursuant to its Marketing and Administrative Services Agreements with certain non-  
 2 debtor affiliates,<sup>810</sup> AWDI also provides administrative and marketing and sales support services for the  
 3 sale of the homes built by AWDI and owned by the home seller entities,<sup>911</sup> including, but not limited to  
 4 the maintenance of sales offices and model homes, advertising, accounting services, and architectural  
 5 services. AWDI also employs foremen who supervise its subcontractors and janitorial staff who  
 6 provide cleaning services in connection with closings. In addition, AWDI hires the real estate brokers  
 7 who in turn hire the real estate agents to market and sell the individual homes for the home seller  
 8 entities.

9 Only at the closing of a home sale is AWDI paid for all of the development work performed for  
 10 the landowners during the lot development phase, the construction work performed for the home seller  
 11 entities during the home construction phase, and its marketing and administrative services. The home  
 12 seller entities reimburse AWDI for its costs in performing the lot development work (which obligation  
 13 the home seller entities assume from the land owners when they build the lots). Pursuant to the Design-  
 14 Build Agreements, the home seller entities pay AWDI a flat fee of \$22,000 per home and reimburse  
 15 AWDI for its costs in performing the construction work for such home. Pursuant to the Marketing and  
 16 Administrative Services Agreements, the home seller entities pay AWDI a flat fee of \$44,000 per home.

17 **B. Financial Information and Capital Structure.**

18 **1. Financial Information.**

19 Debtor's book asset value was \$88,127,550, as of February 29, 2012, and \$88,944,336 as of  
 20 August 31, 2012. The book asset value as of August 31, 2012 consists of the following assets: (1)  
 21 ~~\$2,645,030~~—cash and cash equivalents (\$1,575,498); (2) ~~\$1,057,726~~—fixed and other assets  
 22 (\$177,714); (3) ~~\$66,410,315~~—work in process, excluding impairment reserve (\$67,679,783); (4)  
 23 ~~\$13,115,095~~—prepaid expenses (\$12,352,681); (5) ~~\$2,797,471~~—refundable deposits (\$2,903,675); ~~and~~

24 <sup>810</sup> Debtor is a party to Marketing and Administrative Services Agreements with the following  
 25 non-debtor affiliates: Woodbridge 1, Inc., Silverado Summit LLC, Silverado Springs 3, LLC, Silverado  
 26 Springs 2, LLC, Reserve 1, LLC, Newcastle 1, LLC, Lexington 1, LLC, Kingsbridge 2, LLC,  
 Kensington 2, Inc., Inverness 2010, LLC, Fairmont 2, LLC, Carmel Hills LLC, and Brookside I, LLC.

27 <sup>911</sup> Prior to its merger into AWDI, DMI had performed these functions since its formation in  
 28 2002.

1 (6) ~~\$2,101,912~~—capitalized model costs (\$2,644,768); and (7) Intercompany Receivable (\$1,610,216).  
 2 Upon the merger date of January 19, 2012, Debtor also recorded an impairment reserve of \$28,542,000.  
 3 ~~The~~ Thus, the book asset value less the impairment reserve was \$59,585,550 as of February 29, 2012  
 4 and \$60,402,336 as of August 31, 2012.

5 Debtor’s total liabilities were \$195,122,011.65, as of February 29, 2012, and  
 6 \$198,263,057 as of August 31, 2012. The total liabilities as of August 31, 2012 consist of the  
 7 following: (1) ~~\$177,506,450.25~~—Term Loan; ~~(2) \$20,910—(\$164,339,200)~~; ~~(2)~~ commissions payable (\$79,021);  
 8 ~~(3) \$16,488,263~~—amount drawn from AWHV revolving line of credit (\$30,666,530); (4)  
 9 ~~\$42,488~~—trade payables (\$250,428); ~~and (5) \$1,063,990—Price Promises or Price Guarantees~~ Accrued  
 10 professional fees and OUST fees (\$1,284,586); (6) Accrued Liabilities (\$124,799); and (7) DIP Loan  
 11 (\$1,518,493).

## 12 **2. Capital Structure.**

13 On August 16, 2007, the American West Group Borrowers<sup>+012</sup> and Lawrence D. Canarelli and  
 14 Heidi Canarelli, in their individual capacity, Lawrence D. Canarelli as Trustee of the Trust, Lawrence  
 15 D. and Heidi Canarelli as Trustees of Children’s Trusts (these trusts, together with the American West  
 16 Group Borrowers, shall be referred to as the “Borrowers”) entered into a Credit Agreement with certain  
 17 Lenders (as defined in the Credit Agreement). The maturity date under the Credit Agreement occurred  
 18 on October 6, 2009 and certain other events of defaults were asserted by the Lenders. A Forbearance  
 19 Agreement was entered into by the parties on October 7, 2009, pursuant to which the Lenders agreed  
 20 not to enforce their rights and remedies in the event of a default for a period of time.

21 On December 31, 2009, the Borrowers and Lenders<sup>+113</sup> amended, restated and replaced the  
 22 Credit Agreement with a Term Loan Credit Agreement (the “Term Loan”) to refinance the amounts  
 23 outstanding under the Credit Agreement and extend the time for repayment of such amounts. The total

24 <sup>+012</sup> The American West Group Borrowers include Debtor AWDI.

25 <sup>+113</sup> The lead banks are California Bank and Trust, as Administrative Agent and Lead Arranger,  
 26 and Wells Fargo Bank, National Association, as Syndication Agent. The original lender group, as of  
 27 December 31, 2009, was California Bank and Trust, Key Bank National Association, Wachovia Bank,  
 28 N.C., JP Morgan Chase Bank, N.A., Bank of America, N.A., Comerica Bank, U.S. Bank National  
 Association, and Wells Fargo Bank, National Association.

1 outstanding debt under the Term Loan ~~is approximately \$177,506,450.25~~ has been reduced from  
 2 \$177,506,450.25 as of the Petition Date to \$162,047,145 as of October 9, 2012, along with interest, fees  
 3 and charges accrued and accruing thereon and chargeable with respect thereto, due to principal  
 4 payments made since the Petition Date by non-Debtor borrowers. The interest rate under the Term  
 5 Loan is Floating (30-day LIBOR + 3.25%). The borrowings under the Credit Agreement had an initial  
 6 maturity date of October 6, 2011, with the potential for two additional one-year extensions at the  
 7 Borrowers' option, subject to certain conditions. The Borrowers exercised their option for the first one-  
 8 year extension through October 6, 2012 and their option for the second one-year extension through  
 9 October 6, 2013.

10 As security for borrowings under the Term Loan, the Borrowers granted the Lenders a security  
 11 interest in all of their personal property as well as certain real property (the encumbered real property  
 12 collateral is owned by non-debtors; Debtor does not own any real property).

13 ~~AWH Ventures, Inc.,~~ AWHV is a Nevada corporation (~~"AWHV"~~), is a and non-debtor party  
 14 that provides the internal treasury function for Debtor and non-debtor affiliated parties. In this capacity,  
 15 AWHV has advanced funds to Debtor as well as to other affiliated companies. All monies advanced by  
 16 AWHV are funded in the form of intercompany indebtedness and are documented by fully executed  
 17 promissory notes that reference a sum certain, accrue interest and have a stated maturity date.

18 There is currently a revolving line of credit pursuant to which AWHV advances money to  
 19 Debtor ~~and funds as required to help fund~~ operations as required. The revolving line of credit matures  
 20 on June 30, 2015. As of ~~January~~ August 31, 2012, the outstanding balance owed by AWDI to AWHV  
 21 under this line of credit was ~~\$10,451,885~~ \$30,666,530.

22 In the ordinary course of business, AWDI is required to post bonds (the "Surety Bonds") as  
 23 collateral to secure certain of its performance obligations under various contracts, principally in  
 24 connection with infrastructure improvements that AWDI is obligated to complete for various local  
 25 government units as a condition for obtaining permits and other approvals necessary for the  
 26 development of various residential projects. Fees are paid over time based upon how long it takes to  
 27 complete the bonded improvements. The bonds are released following the agency's review and  
 28



1 approval (usually conducted by an engineer) of the improvements. Following this approval, the agency  
2 will maintain the particular utility (e.g., storm drain).

3 Each bond is treated differently based on the secured improvements. AWDI does not accrue  
4 these fees, since they are paid when due. As of the Petition Date, the aggregate face amount of Debtor's  
5 bond obligations totaled approximately \$17,744,349; the amount as of September 30, 2012 was  
6 \$18,744,900.

7 **C. Events Leading to the Commencement of the Chapter 11 Case.**

8 **1. Downturn in the Housing Market.**

9 The homebuilding industry in the United States has, for quite some time, been experiencing a  
10 significant and sustained decrease in demand for new homes and an oversupply of new and existing  
11 homes available for sale. The negative impact of these demand and supply trends has been worsened by  
12 recent difficulties in the mortgage and the overall credit markets. Similar to the impact on all of its  
13 competitors, those difficulties have harmed Debtor's business by further increasing the supply of  
14 housing inventory, negatively impacting pricing conditions, decreasing the demand for homes and  
15 dampening customer confidence. Because the homebuilding industry is highly competitive and  
16 fragmented, home prices are extremely sensitive to adverse market conditions and there is a limited  
17 universe of homebuyers.

18 **a. The Las Vegas Housing Market**

19 As of ~~January~~ August 2012, the current median new home price in the Las Vegas region was  
20 ~~\$195,000, 203,385,~~ a ~~1.62.3%~~ increase from the same time one year earlier.

21 Las Vegas new and existing home prices have been predicted to mark the bottom during 2011  
22 with growth in 2012 to 2015. ~~Current~~ In early 2012, John Burns Real Estate Consulting ("JBREC")  
23 projections forecast one-year appreciation rates of 8.4%, 9.3% and 7.8% in years 2012, 2013 and 2014,  
24 respectively.

25 Early 2012 JBREC forecasts anticipated 4,000 new home sales (both single-family dwelling and  
26 multi-family products) in 2012 (23% decrease) and 4,000 sales in 2013.

27 The current median existing-home price in the Las Vegas region is \$1~~940,90000~~, a 1~~03.5%~~  
28 ~~decline~~ increase from the same time one year earlier. ~~It is anticipated that the median price will rebound~~

1 ~~in 2012.~~ This is a significant rebound from the median existing home price as of the Petition Date,  
2 which was only \$119,000.

3 ~~JBREC projects~~ In early 2012, JBREC projected that 53,900 existing homes ~~will~~ would be sold  
4 in Las Vegas in 2012, an 8% increase from the prior year. It is anticipated that resale home volume will  
5 increase as distressed properties at affordable prices continue to drive the market. Single-family  
6 dwelling permits are down 18% in 2011 from 2010 to 3,796 units but forecasts indicate that the number  
7 of permits may rise to 6,500 by 2014.

8 **b. Key Economic Indicators Likely to Influence the Las Vegas Housing**  
9 **Market**

10 The Las Vegas area unemployment rate ~~is currently 12.1~~ at the start of 2012 was 12.5%, an  
11 improvement from the ~~154.19%~~ reported during the same month of the prior year at the start of 2011.  
12 The unemployment rate in Las Vegas for 2010 as a whole was 15.2% ~~in Las Vegas.~~

13 The Las Vegas area economy lost 85,400 jobs in 2009 and 25,500 in 2010, followed by a gain of  
14 12,000 in 2011, and is forecasted to see improving growth thereafter at approximately ~~20,000~~ 10,000 to  
15 25,000 jobs per year through 2015.

16 ~~The current~~ As of the Petition Date, the conforming mortgage rate ~~is was~~ 3.95% due to  
17 continued government support of the Federal Housing Administration, Freddie Mac and Fannie Mae  
18 mortgage underwriting policies.

19 Population growth of 1.3% is expected for 2012. Population growth of 1.8% or better is  
20 expected in 2013 through 2014.

21 New home sale activity fell by nearly 50% annually in 2007, 2008 and 2009. The federal tax  
22 credit spurred new home sales early in 2010, boosting annual sales. In early 2012, JBREC is  
23 ~~forecasting~~ forecast 4,000 new transactions in 2012 as new homes continue to compete with the high  
24 levels of distressed resales in the market. New home sales are predicted to remain the same in 2013 and  
25 increase to 5,000 homes in 2014, but these numbers remain extremely low by historic measures.

26 Debtor ~~seeks~~ has used the breathing room afforded by the chapter 11 process to formulate a  
27 reorganization strategy that will allow Debtor to continue as a going concern for the benefit of all  
28 parties in interest.

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**2. Contingent Liabilities.**

The American West brand has a strong and well-deserved reputation in the industry for the quality and workmanship embodied in its residential home construction product. However, as is normal for the industry, Debtor deals with contingent liabilities arising from the construction of homes. The continuance of any and all litigation described below was automatically stayed on the Petition Date under Bankruptcy Code section 362.

**a. Bennett Litigation**

This case is against Debtor and one of Debtor’s dissolved affiliates, AWH, however only AWH is the proper defendant and the plaintiffs in this matter have not filed a Proof of Claim against Debtor’s estate. The case is primarily being handled by insurance defense counsel. The case was filed prior to the wind-down of AWH. The case is currently on appeal with the Nevada Supreme Court. Certain plaintiffs settled early in the case by accepting offers of judgment. The remaining plaintiffs’ claims were dismissed and fees were awarded to defendants because they did not accept offers of judgment. Only four homeowners remain and defense counsel has worked to perfect issues on appeal relating to the statute of repose and the tolling provisions related thereto. One of the plaintiffs has also lost their home to foreclosure; the attorney for that plaintiff tried to substitute the lender but the court rejected that attempt and that issue is on appeal as well. The trial judge issued a favorable albeit confusing opinion that is the subject of the appeal. As of the Petition Date, argument for the appeal was being scheduled but the appeal is now stayed.

**b. Backman Litigation**

This 45 house construction defect case is being defended by insurance counsel. Debtor and AWH are both named defendants, but AWH is the only proper defendant and the plaintiffs in this matter have not filed a Proof of Claim against Debtor’s estate. ~~There is currently~~ This Court approved a settlement with the plaintiffs ~~and a motion to approve such settlement is pending before this Court.~~

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**c. Carillo Litigation**

This case should fall completely within WRAP coverage. There are fourteen plaintiffs in this case. Debtor only received a Chapter 40 Notice<sup>1214</sup> and was authorized to send Chapter 40 Notices to all of the implicated trades on behalf of Debtor, only. The plaintiffs in this matter have not filed a Proof of Claim against Debtor’s estate.

**d. AAA Nevada Fire and Casualty Insurance Litigation**

This is a subrogation case with a claim for \$600,000 to \$700,000. Debtor has not received a Chapter 40 Notice on the claim. Debtor argued that the insurance company can have no greater rights than the homeowner and that since no Chapter 40 Notice was sent, the case should be dismissed. The trial judge rejected the argument and the petition for rehearing. As of the Petition Date, the plaintiffs had done little to prosecute the case. ~~A status conference is scheduled for September 10, 2012~~ other than file a Proof of Claim that is classified as a Class 4 Construction Defect Claim under the Plan.

**e. Birzneck Litigation**

This is a single family home construction defect case. Debtor contended in the Chapter 40 Notice process that there were no defects and rejected the claims. Plaintiff has not prosecuted the case since the answer was filed. ~~Debtor recently filed a Motion to Sever Claims, but Plaintiff did file a Proof of Claim that is classified as a Class 4 Construction Defect Claim under the Plan.~~ of Claim that is classified as a Class 4 Construction Defect Claim under the Plan.

**f. Ivy Litigation**

This case involves<sup>d</sup> the price promise commitment offered by Debtor. ~~It is Debtor’s strong belief that none of the homeowners in this litigation qualify for the price promise pursuant to its terms.~~

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<sup>1214</sup> By way of background, a “Chapter 40 Notice” is the required notice that a homeowner must submit to a contractor (or a contractor to another contractor or subcontractor) prior to commencing litigation for construction defects. It is part of the pre-litigation process required under Chapter 40 of the Nevada Revised Statutes, which was enacted in an effort to reduce the number of construction defect lawsuits being filed. If someone brings a lawsuit for construction defect and did not properly notify the contractor with a proper Chapter 40 notice prior to filing suit, then the case is subject to dismissal.

The key statute relating to notice for a single-family homeowner claim for construction defect is NRS 40.645, which requires that the claimant send a notice to the contractor which specifies “in reasonable detail the defects or any damages or injuries” etc. Once a Chapter 40 Notice is sent, if the contractor does not remedy the alleged defect, then the claimant may file a lawsuit.

1 ~~An answer has been filed but no formal discovery had been completed by the Petition Date.~~ On April  
2 12, 2012, this case was removed to this Court, ~~and designated~~ adversary case no. 12-01076-MKN.  
3 Debtor has since reached a settlement with the plaintiffs in this case, pursuant to which the plaintiffs  
4 have received Allowed Class 3 General Unsecured Claims under the Plan.

5 **g. Collins Litigation**

6 This is a construction defect case with 49 plaintiffs ~~and, in.~~ In proximity to the Petition Date,  
7 the complaint was amended to include Debtor as a defendant. The plaintiffs sought relief from stay,  
8 which was denied by the Bankruptcy Court. Plaintiffs filed a Proof of Claim that is classified as a Class  
9 4 Construction Defect Claim under the Plan. According to Debtor's records, Debtor was involved with  
10 the construction of homes owned by only nineteen (19) of the plaintiffs.

11 **h. Juarez Litigation**

12 This is a personal injury lawsuit against Debtor and one of its employees and is being defended  
13 by insurance counsel. The plaintiff in this matter has not filed a Proof of Claim against Debtor's estate.

14 **i. Stacy Litigation**

15 This ~~is~~ was a construction defect case, involving 67 homes, which were all built by AWH. As a  
16 result, Debtor was dismissed without prejudice. ~~There is currently a settlement with the plaintiffs and,~~  
17 ~~although~~ Although Debtor is no longer a party to this litigation, Debtor ~~filed a motion requesting~~  
18 obtained this Court's approval of ~~the a~~ settlement which includes proceeds from insurance policies  
19 under which Debtor is an insured, as is AWH.

20 **j. Colford Litigation**

21 This is a construction defect case, involving 53 homes, which were all built by AWH. As a  
22 result, Debtor was dismissed without prejudice. ~~There is currently a settlement with the plaintiffs and,~~  
23 ~~although~~ Although Debtor is no longer a party to this litigation, Debtor ~~will be filing a motion~~  
24 ~~requesting~~ obtained this Court's approval of ~~the a~~ settlement which includes proceeds from insurance  
25 policies under which Debtor is an insured, as is AWH.

26 **k. Lau Litigation**

27 This case involves ~~the a~~ price guarantee ~~commitment~~ offered by Debtor. The complaint was  
28 served on Debtor after Debtor initiated its Chapter 11 Case. ~~Accordingly, it may well be a nullity.~~ On

1 April 12, 2012, this case was removed to this Court, and designated adversary case no. 12-01075-  
2 MKN. Debtor has since reached a settlement with the plaintiff in this case, pursuant to which the  
3 plaintiff has received an Allowed Class 3 General Unsecured Claim under the Plan.

4 **ARTICLE IV**

5 **~~ANTICIPATED~~ COURSE OF THE CHAPTER 11 CASE**

6 Debtor commenced the Chapter 11 Case after having carefully developed the Initial Plan as an  
7 efficient and equitable means to reorganize its financial affairs. Debtor’s goal is to move the current  
8 Plan forward expeditiously so that it can emerge from chapter 11 during ~~2012~~early 2013. With ~~that~~  
9 ~~goal~~this same goal of a timely emergence from chapter 11 protection in mind, prior to the Petition  
10 Date, Debtor (i) entered into the Lock-Up and Settlement Letter Agreement with the Secured Lenders  
11 under which they agreed to support the Initial Plan, (ii) reached agreement with the Secured Lenders on  
12 the terms for Debtor’s use of cash collateral, and (iii) negotiated an agreement for post-petition  
13 financing from the DIP Lender. In addition, on the Petition Date, Debtor filed several motions and  
14 applications for relief. Debtor intends to proceed on a prompt, yet prudent, schedule towards  
15 Confirmation of the Plan in order to minimize the disruption to its operations and the administrative  
16 cost of the Chapter 11 Case. The following is a summary of ~~Debtor’s~~the course of events in the  
17 Chapter 11 Case to date, and the anticipated course of events as ~~it proceeds~~Debtor continues to  
18 proceed through the Chapter 11 Case.

19 **A. Continuation as Debtor In Possession.**

20 Following the commencement of the Chapter 11 Case, Debtor ~~will remain~~has remained in  
21 control over its assets and business as debtor in possession pursuant to Bankruptcy Code section 1108,  
22 and will continue to do so absent further order of the Bankruptcy Court. Debtor ~~will be is~~is authorized to  
23 continue to operate day-to-day in the ordinary course of business without Bankruptcy Court approval.  
24 However, Debtor ~~will be is~~is required to obtain Bankruptcy Court approval (i) for any transactions that  
25 are outside of the ordinary course of business, (ii) before making payment of any Claims that arose  
26 prior to the Petition Date, and (iii) as otherwise required under the Bankruptcy Code for certain specific  
27 types of actions or relief.

28 **B. Immediate “First Day” Relief Sought By Debtor.**

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1 Debtors in large, complex chapter 11 cases typically seek certain approvals and relief from the  
2 Bankruptcy Court immediately upon commencement of the case(s) in order to facilitate the transition  
3 from pre-petition to post-petition business operations. These requests are referred to as “first day”  
4 matters, and they commonly include requests related to certain regular business practices that may not  
5 be specifically authorized under the Bankruptcy Code, or as to which the Bankruptcy Code requires  
6 prior approval by the Bankruptcy Court, such as approval of the use of cash collateral, post-petition  
7 financing, uninterrupted payment of employee wages and benefits, procedures for utility deposits, and  
8 other procedural matters. Consistent with Debtor’s goal of achieving a prompt resolution to the  
9 Chapter 11 Case, Debtor filed several motions and applications for relief on the Petition Date. The  
10 matters necessitating immediate “first day” relief are summarized in this section.

11 **1. Motion to Approve Stipulation for Use of Cash Collateral.**

12 As described in greater detail herein, see Article III supra, Debtor faces a continuous need to  
13 compensate its various subcontractors for work in developing lots and constructing homes for sale, yet  
14 Debtor is not paid by the home selling entities for its services until the closing of each sale. Prior to the  
15 Petition Date, Debtor relied on advances from its affiliate, AWHV (funded with borrowings from the  
16 Secured Lenders under the Term Loan and advances from affiliated entities), to provide the liquidity  
17 necessary to bridge the gaps between outlaying expenses for development/construction and receiving  
18 payment for these services at home sale closings.

19 Once Debtor commenced its Chapter 11 Case, Debtor required the consent of the Secured  
20 Lenders or approval of the Court to use home sale proceeds that are paid to satisfy Debtor’s accounts  
21 receivable since they are the Secured Lenders’ cash collateral. Debtor does not have any other source  
22 of cash to fund its operations that is not the Secured Lenders’ cash collateral. If Debtor was unable to  
23 use the Secured Lenders’ cash collateral, Debtor would not have any ability to satisfy the expenses of its  
24 day-to-day operations, much less the additional expenses of its Chapter 11 Case.

25 Although Debtor negotiated the DIP Loan in order to provide additional post-petition liquidity,  
26 Debtor still primarily needs to rely on the use of cash collateral to maintain its operations and remain  
27 current on expenses. As set forth in the Initial Cash Budget filed with the Cash Collateral Stipulation,  
28 Debtor projected that it needsed to use more than \$10,800,000 of cash collateral (exclusive of its

1 existing cash as of the Petition Date and any DIP Loan borrowings) during the first thirteen (13) weeks  
2 following the Petition Date in order to meet its operating expenses and make interest-only adequate  
3 protection payments to the Pre-Petition Lenders. The Initial Cash Budget ~~is~~ was based on projected  
4 home sales and development expenses—if actual home sales and/or development expenses ~~do~~ did not  
5 match projections, then Debtor’s need to use cash collateral and/or borrow under the DIP Loan may  
6 differ from the amounts set forth in the Initial Cash Budget. In addition, Debtor estimates~~d~~ that it ~~will~~  
7 would incur approximately \$1,521,000 in expenses associated with the Chapter 11 Case during this  
8 same period. Thus, Debtor had an urgent and immediate need to use cash collateral.

9 With this necessity in mind, Debtor negotiated the Cash Collateral Stipulation with the Secured  
10 Lenders and filed a motion on the Petition Date seeking authorization to use the Secured Lenders’ cash  
11 collateral and provide adequate protection to the Secured Lenders on the terms set forth in the Cash  
12 Collateral Stipulation. Pursuant to Bankruptcy Rule 4001(b)(2), Debtor sought and was granted interim  
13 authorization to use cash collateral pending a final hearing on the Motion in order to avoid immediate  
14 and irreparable harm to the estate. Debtor subsequently obtained final approval for its use of cash  
15 collateral pursuant to the terms of the Cash Collateral Stipulation.

16 Pursuant to the Cash Collateral Stipulation (as subsequently supplemented by Debtor and the  
17 Secured Lenders for subsequent budget periods), Debtor has provided the Secured Lenders with certain  
18 forms of adequate protection, including: (a) monthly, on or before the first day of each month and  
19 continuing during the pendency of the Chapter 11 Case, adequate protection payments made by Debtor  
20 for the benefit of the Secured Lenders in an amount equal to the highest non-default rate of interest  
21 applicable from time to time to amounts outstanding under the Term Loan multiplied by \$49,635,000;  
22 (b) replacement liens; and (c) to the extent permitted by Bankruptcy Code section 507(b), superpriority  
23 claims against Debtor’s estate, subject and junior only to a carve-out and any superpriority claim and  
24 lien of the DIP Lender.

25 **2. Motion re: Employee Wages, Salaries and Benefits.**

26 Debtor employs approximately 71 full-time employees (the “Employees”) in the ordinary course  
27 of its business. Among other things, Debtor’s Employees (a) manage and monitor construction of new  
28 homes, (b) participate in major design and building decisions, (c) coordinate the activities of



1 subcontractors and suppliers, (d) review the work of subcontractors for quality and cost controls,  
2 (e) monitor compliance with zoning and building codes, (f) play a significant role in working with  
3 Debtor's homebuyers on the construction process and instructing buyers on post-closing home  
4 maintenance, and (g) manage Debtor's day to day business activities. Continued service by the  
5 Employees is essential to Debtor's ongoing operations.

6 As of the Petition Date, Debtor owed its Employees various sums for salaries and bonuses  
7 (collectively, the "Salary Obligations"). Debtor pays its Employees on a semimonthly payroll cycle on  
8 the 15th and the last day of each month. Each semimonthly payroll averages approximately \$296,000  
9 in the aggregate. As of the Petition Date, there was approximately \$56,000 in commissions accrued that  
10 were not reflected in the previous payroll. Debtor also withholds from its Employees' wages amounts  
11 for federal income, Social Security and Medicare taxes, and remits same to the appropriate taxing  
12 authorities. Additionally, in the ordinary course of its business and as is customary for most large  
13 companies, Debtor has established various employee benefit plans and policies that provide certain  
14 Employees with medical, vacation, employee savings, and other similar benefits (collectively, the  
15 "Employee Benefits").

16 Upon the commencement of the Chapter 11 Case, it became essential for the morale and  
17 maintenance of trust of the Employees to ensure payment of the Employees' prepetition Salary  
18 Obligations and continued access to Employee Benefits. Therefore, Debtor filed a motion seeking  
19 authority to, inter alia, (a) pay and/or honor the Salary Obligations and Employee Benefits described  
20 therein for its Employees, and (b) continue withholding amounts from Employees' paychecks for state  
21 and federal unemployment insurance, and to continue remitting such withholdings to the applicable  
22 state and federal taxing authorities. The aggregate of Salary Obligations and Employee Benefit  
23 contributions to be paid to or for the benefit of the Employees pursuant to the motion ~~will~~did not  
24 exceed \$11,725 per Employee per the priority cap provided in Bankruptcy Code section 507(a)(4). The  
25 Bankruptcy Court granted Debtor's motion and the relief requested therein.

26 **3. Motion for Order Authorizing Payment to Critical Vendors.**

27 In the ordinary course of its business, Debtor relies on third-party subcontractors and material  
28 suppliers (each, a "Critical Vendor," and collectively, the "Critical Vendors") to provide crucial off-site

1 and home construction services and materials, such as engineering services, slab/foundation, flooring,  
2 framing, drywall, plumbing, electrical, roofing, paving, HVAC, landscaping, and utility construction.  
3 Debtor does not employ its own construction workers but rather hires the aforementioned Critical  
4 Vendors to complete every aspect of its home building enterprise. Debtor has developed and continues  
5 to maintain longstanding relationships with its Critical Vendors who continue to meet Debtor's rigorous  
6 quality guidelines and cost controls. These Critical Vendors are so critical because they are liable for  
7 all warranty work that may result from their labors. Debtor has historically paid out very few  
8 construction defect claims because of the high quality work performed by Debtor's Critical Vendors. If  
9 Debtor were forced to find new subcontractors and materials providers for its projects mid-stream, those  
10 new vendors would not have the same history of providing high quality materials and services within  
11 the strict cost controls Debtor demands. Accordingly, any disruption in the services or materials such  
12 vendors provide would have a detrimental impact upon the quality of homes built by Debtor and impede  
13 the timely completion of projects in accordance with customers' specifications.

14 As of the Petition Date, Debtor owed certain of the Critical Vendors amounts for prepetition  
15 goods and services. Debtor was concerned that certain of the Critical Vendors, despite the protections  
16 of administrative priority status, might refuse to provide goods and services postpetition to Debtor if it  
17 did not pay all or part of the Critical Vendor Claims. In order to avoid the severe disruption to Debtor's  
18 business that this would cause, Debtor sought authorization to pay, in its discretion, all or part of the  
19 Critical Vendor Claims, in an aggregate amount not to exceed \$500,000, subject to certain conditions  
20 and procedures described in Debtor's motion.

21 The Bankruptcy Court granted the requested relief, which provides that the payment of any  
22 Critical Vendor Claim is conditioned on the express agreement of a Critical Vendor to continue to  
23 provide reasonable and customary price, service, quality, and payment terms to Debtor on a postpetition  
24 basis ("Customary Trade Terms"), or upon other terms more favorable to Debtor than Customary Trade  
25 Terms. If a Critical Vendor refuses to supply goods or services to Debtor on Customary Trade Terms  
26 (or fails to comply with other terms to which the parties have agreed), following its receipt of payment  
27 on the Critical Vendor Claim), Debtor may seek appropriate relief from the Court, including, without  
28 limitation, injunctive relief to compel performance. In addition, if a Critical Vendor refuses to comply

1 with the Customary Trade Terms (or fails to comply with other terms to which the parties have agreed),  
 2 any payment made to that Critical Vendor on account of that Critical Vendor's prepetition claim would  
 3 be deemed to have been in payment of any then outstanding postpetition obligations owed to that  
 4 Critical Vendor, and that Critical Vendor would be required to repay immediately to Debtor any  
 5 payment previously made to it on account of its prepetition claim pursuant to this Motion, to the extent  
 6 the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without  
 7 the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or otherwise.

8 A comprehensive matrix of the vendors that Debtor ~~expected to identify~~ identified as "Critical,"  
 9 was attached to Debtor's motion as Exhibit B (the "Critical Vendor Matrix"). The Critical Vendor  
 10 Matrix also includes sd a brief description of the goods and services that each vendor provides. Debtor  
 11 will maintain a summary list of all payments made to the Critical Vendors, and will provide updated  
 12 copies of such list on a monthly basis to the United States Trustee, ~~any official committees appointed in~~  
 13 ~~this Chapter 11 Case,~~ and to any other entity that the Court requires. The list of payments to Critical  
 14 Vendors will also be available on <http://www.awdevelopmentreorg.com>. Debtor subsequently filed a  
 15 motion to add one vendor to the original Critical Vendor list, which motion was granted by the  
 16 Bankruptcy Court.

17 **4. Motion to Honor Warranty Claims and Maintain Warranty Programs.**

18 Debtor acts as the developer and builder of certain single-family residential community/projects  
 19 owned by affiliated home selling entities. The American West brand has a strong and well-deserved  
 20 reputation in the industry for the quality and workmanship embodied in its residential home  
 21 construction product. Indeed, Debtor historically has paid out very few construction defect claims  
 22 because of the high quality work performed by Debtor's subcontractors and their commitment to  
 23 warrant the quality of their work.

24 In order to reinforce the strength of the American West brand and enhance the confidence of  
 25 home purchasers that they will receive a high quality product, Debtor provides an industry standard  
 26 post-closing warranty to each home buyer (the "Home Buyer's Limited Warranty Program"). Debtor's  
 27 warranty goes beyond the requirements of Nevada law, which imposes certain repair obligations for  
 28 defects in new residential homes. See, e.g., NRS 40.672. This warranty offers a mutual benefit—it

1 provides the home buyer with peace of mind regarding the home, and it enables Debtor to obtain  
2 favorable insurance coverage for rare but potentially devastating instances of widespread construction  
3 defect.

4 For several years prior to the Petition Date, AWDI ~~has~~ purchased insurance from the Zurich NA  
5 Construction Division, which offers an insurance program combining broad general liability coverage  
6 and comprehensive warranty protection for home builders and their clients. Zurich's Home Builders  
7 Protective Program ("HBPP") is designed for home builders with projects or revenues in excess of  
8 \$100 million who distinguish themselves by their quality assurance processes. Key to the HBPP is  
9 its expanded coverage for construction defect claims for as long as the builder is exposed to such claims  
10 under the applicable statutes of limitation. As one of the conditions for coverage under the HBPP,  
11 Debtor ~~contracted~~ with a non-related third party provider, Professional Warranty Service Corporation  
12 ("PWSC"), to participate in the Professional Warranty Program administered by PWSC. Under the  
13 Professional Warranty Program, Debtor ~~provides~~ each home buyer with a Home Builder's Limited  
14 Warranty (the "Limited Warranty") in the form developed by PWSC.

15 AWDI ~~enrolls~~ each home buyer under the HBPP and, after closing of a home, ~~provides~~  
16 a Limited Warranty and a Limited Warranty Coverage Validation Form (for execution by the  
17 homeowner). The Limited Warranty is transferable to any subsequent owner of the home during the  
18 10-year warranty period.

19 AWDI contracts with a non-debtor American West affiliate, Home Service Plus, Inc. ("HSP"),  
20 to provide post-closing Limited Warranty service, maintenance and repair support in Years 1 and 2 to  
21 the individual home buyers pursuant to a Warranty Services Agreement. HSP has been licensed as a  
22 general contractor since 2004. Pursuant to the Warranty Services Agreement, AWDI agrees to pay HSP  
23 a one-time flat fee of \$1,500 per home at closing, regardless of the amount of work that HSP might be  
24 required to perform and regardless of the size of the home or the lot on which it sits. In return, HSP  
25 agrees to perform all services covered by the Limited Warranty during the first two years after the  
26 closing.

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1 As the extent of Limited Warranty service requests is reduced as time passes following the sale  
2 closing, AWDI generally performs any services required under the Limited Warranty beginning in the  
3 third year after the sale.

4 The Bankruptcy Court granted Debtor’s requested relief to (a) honor and maintain the Home  
5 Builder’s Limited Warranty Program, and (b) continue, renew, replace, implement new, or terminate  
6 aspects of the Home Builder’s Limited Warranty Program consistent with past practices.

7 **5. Motion to Honor Pre-Petition Bond Obligations in the Ordinary Course of**  
8 **Business**

9 As general contractor, in the ordinary course of its business, Debtor is required to provide third  
10 parties with financial assurance in the form of surety bonds (“Surety Bonds”) to secure Debtor’s  
11 payment or performance of certain obligations under various contracts with local government units,  
12 principally in connection with infrastructure improvements, as a condition for obtaining permits and  
13 other approvals necessary for the development of residential projects. Each Surety Bond is treated  
14 differently based upon the improvements being secured by such bond.

15 Debtor incurs various bond obligations that are similar to tax assessments with fees paid over  
16 time in connection with the Surety Bonds based upon how long it takes to complete the bonded  
17 improvements, which typically requires a minimum of six (6) months. As of the Petition Date, the  
18 aggregate face amount of Debtor’s bond obligations totaled approximately \$17,744,349 (the amount as  
19 of September 30, 2012 was \$18,744,900). The Bond Obligations are payable in installments totaling  
20 approximately \$9,000 per month. As of the Petition Date, Debtor was current on the amounts owing on  
21 the Bond Obligations for the period prior to the Petition Date. The Surety Bonds are released once the  
22 respective government unit inspects and approves the improvements completed by Debtor. Subsequent  
23 to obtaining its approval and bond release, the local government unit will maintain the particular utility;  
24 e.g., a storm drain.

25 The Bond Obligations arguably constitute prepetition debt because the original issue dates of the  
26 bonds occurred prior to the Petition Date. However, failure to provide, maintain, timely renew or issue  
27 new bonds as needed in the ordinary course of business could jeopardize Debtor’s ability to conduct or  
28 continue its operations. Therefore, as is routinely done in residential home builder chapter 11 cases,

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1 Debtor sought authorization from the Bankruptcy Court to honor and pay the Bond Obligations by  
 2 making ongoing regular installment premium payments and posting collateral, as necessary, or  
 3 obtaining new surety bonds, all in the ordinary course of its business. The Bankruptcy Court granted  
 4 Debtor's motion.

5 **6. Motion re: ~~Future Claims~~ Futures Representative.**

6 ~~As described in greater detail herein, see Article III supra,~~ Debtor (like all residential home  
 7 builders) periodically faces claims for alleged construction defects. Claims against Debtor arising out  
 8 of allegations of construction defect in homes and developments built by Debtor are categorized as  
 9 follows: (i) claims currently in litigation; (ii) claims that have not yet been asserted in litigation but are  
 10 known to the claimants; and (iii) contingent, unliquidated claims of persons who have not yet asserted  
 11 claims because they do not yet have claims or have claims that are as yet unknown to them, but who  
 12 would be members of a potential class of claimants against Debtor for claims asserted at some point in  
 13 the future.

14 To resolve potential construction defect exposure in categories (ii) and (iii), Debtor requested  
 15 that the Bankruptcy Court appoint a ~~Future Claims~~ Futures Representative to represent that class of  
 16 homeowners in Clark County, Nevada, whose homes were built by Debtor or Debtor's subsidiaries and  
 17 may have construction defect claims against Debtor, but who have not yet brought those claims  
 18 ("Future Construction Defect Claimants") and are not barred from doing so by any applicable  
 19 limitations statute. The appointment of a future ~~claims~~ representative to act as the legal representative  
 20 for     and to protect the interests of     future construction defect claimants in the chapter 11 case of a  
 21 debtor facing potential class action tort litigation is well established. This course of action was  
 22 pioneered in the asbestos cases and ultimately codified as to asbestos claims under Bankruptcy Code  
 23 section 524(g), and was also followed in recent cases involving Catholic Church Dioceses.

24 The Bankruptcy Court granted Debtor's motion and appointed James L. Moore as the ~~Future~~  
 25 ~~Claims~~ Futures Representative ~~for in~~ the Chapter 11 Case. ~~Currently pending before the~~ The Court is  
 26 also granted an application to employ Field Law Ltd. as counsel for Mr. Moore. As authorized by the  
 27 Bankruptcy Court, ~~Field Law Ltd.~~ the Futures Representative filed proofs of claim in Debtor's case  
 28 on behalf of Future Construction Defect Claimants (the "FCR POC").

1 In connection with the Initial Plan, Debtor entered into a stipulation with the Futures  
2 Representative providing that the Futures Representative shall be entitled to vote the claims set forth in  
3 the FCR POC as follows:

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

15 The Bankruptcy Court approved the Debtor’s stipulation with the Futures Representative. In  
16 accordance therewith, the Futures Representative submitted a ballot voting to accept the Initial Plan on  
17 behalf of approximately 2,684 Non-Responding Home Owners. In connection with the current Plan,  
18 Debtor is seeking (1) to keep the voting stipulation with the Futures Representative in full force and  
19 effect, so that the Futures Representative will be entitled to submit a vote on the current Plan on behalf  
20 of Non-Responding Home Owners according to the same terms, and (2) clarify that a vote by the  
21 Futures Representative to accept the Plan on behalf of Non-Responding Home Owners will be effective  
22 to bind the Non-Responding Home Owners to the release set forth in Section 12.4(b) of the Plan.

23 **7. Utilities Motion.**

24 In the ordinary course of business, Debtor has relationships with various utilities or divisions  
25 thereof (the “Utility Providers”) for, among other things, electricity, natural gas, water,  
26 telecommunications, sewage, trash removal and other similar services (“Utility Services”). Debtor has  
27 estimated that its average monthly postpetition payments to the Utility Providers ~~will~~ aggregate  
28 approximately \$75,210.09. The Bankruptcy Code provides utility providers with certain protections

1 that, absent certain procedures and approvals by the Bankruptcy Court could jeopardize a debtor's  
2 ability to maintain continuous utility service.

3 Therefore, as is typical in nearly all commercial chapter 11 cases, Debtor filed a motion seeking  
4 an order of the Bankruptcy Court (a) prohibiting Utility Providers from altering, refusing or  
5 discontinuing service relationships or terms to Debtor except as set forth therein; (b) authorizing  
6 payment of ordinary course payments due to Utility Providers; (c) deeming Utility Providers adequately  
7 assured of future performance; and (d) establishing procedures for determining requests for additional  
8 adequate assurance. The Bankruptcy Court granted Debtor's motion.

9 **8. Motion re: Bank Accounts and Cash Management.**

10 Prior to the Petition Date, Debtor implemented a cash management system to facilitate the  
11 timely and efficient collection, management and disbursement of funds used in its business. (the "Cash  
12 Management System"). The Cash Management System utilized two primary accounts maintained at US  
13 Bank National Association, N.A. ("U.S. Bank"): an operating account funded principally from cost  
14 reimbursement and fee income from Debtor's non-debtor affiliate home selling entities and used to  
15 make non-payroll related disbursements, and a payroll account that is funded from the operating  
16 account and used to make payroll disbursements.

17 To avoid the operational and administrative paralysis that would necessarily result if Debtor  
18 closed its prepetition bank accounts that are integral to its Cash Management System and to ensure a  
19 smooth transition into chapter 11 as possible, Debtor sought authority from the Bankruptcy Court to  
20 maintain its Cash Management System, including its bank accounts. The Bankruptcy Court granted  
21 Debtor's motion and entered an order (a) authorizing the maintenance and continued use of Debtor's  
22 Cash Management System and business forms, (b) treating Debtor's pre-petition bank accounts as  
23 debtor-in-possession accounts (the "Bank Accounts"), (c) authorizing and directing U.S. Bank to use its  
24 commercially reasonable best efforts to continue to service and administer the bank accounts without  
25 interruption and to honor checks drawn on and transfers made from the bank accounts in the ordinary  
26 course of business, (d) to the extent permitted by any further order of the Court, authorizing and  
27 directing U.S. Bank to use its commercially reasonable best efforts to honor any debits made, drawn or  
28 issued in payment of prepetition claims on the Bank Accounts, (e) authorizing Debtor to pay post-



petition ordinary course bank fees, expenses and charges to U.S. Bank in connection with the Bank Accounts and/or Cash Management System; ~~and~~ (f) authorizing Debtor to pay U.S. Bank for outstanding prepetition fees, expenses and charges arising from Debtor's Cash Management System and/or the Bank Accounts so long as said amounts were incurred in the ordinary course and would otherwise have been paid in the ordinary course but for Debtor's bankruptcy filing; ~~and~~ (g) authorizing Debtor and U.S. Bank to continue to perform pursuant to the terms of any prepetition documents and agreements governing the Cash Management System and the Bank Accounts; ~~and~~ (h) reimbursing U.S. Bank for any claims arising before or after the Petition Date in connection with any customer checks deposited with U.S. Bank that have been dishonored or returned as a result of insufficient funds in Debtor's bank accounts; ~~and~~ (i) authorizing U.S. Bank to charge back to the Bank Accounts any amounts incurred by U.S. Bank resulting from returned checks or other returned items, regardless of whether such amounts were deposited prepetition or postpetition and regardless of whether the returned items related to prepetition or postpetition items.

**9. Bar Date Motion.**

On the Petition Date, Debtor anticipates ~~and~~ that there ~~may~~ might be as many as 8,000 potential claimants in this Chapter 11 Case, which raises ~~and~~ the ~~likelihood of potential for~~ a time-consuming claims reconciliation process. Debtor ~~would like~~ 's goal has always been to exit chapter 11 as soon as possible as part of an efficient financial reorganization, ~~and~~ ~~wishes~~ therefore wished to begin the claims analysis and reconciliation process as soon as possible. Accordingly, at the outset of the Chapter 11 Case Debtor sought approval to set a claims bar date, and for a comprehensive process for notice to creditors to minimize any confusion on the part of creditors and, hopefully, to achieve a resulting claims process that is as efficient as possible. The Bankruptcy Court granted Debtor's motion and set June 29, 2012, at 5:00 p.m. prevailing Pacific Time, as the Bar Date. Debtor ~~has~~ provided notice of the Bar Date in accordance with the approved procedures.

As of the Bar Date (including any extensions thereof granted for certain claimants), approximately 119 Claims had been filed against Debtor's Estate. Of these: (i) approximately 26 have been Allowed in Class 3 under the Plan pursuant to Price Promise or Price Guarantee settlements; (ii) approximately seven (7) concern Construction Defect Claims that would be administered by the

Construction Defect Trustee as Class 4 Construction Defect Claims under the Plan; (iii) one (1) is a trade claim that will receive treatment as a Class 3 General Unsecured Claim under the Plan to the extent Allowed; (iv) two (2) are subject to pending disputes that either will be resolved by settlement or order of the Bankruptcy Court, and if allowed to any extent would be classified as Class 3 General Unsecured Claims under the Plan; (v) the claim of Southwest Gas Corporation has been settled and any liability will be assumed by Reorganized Debtor pursuant to the settlement described in Section C(4) below; (vi) two (2) were filed by the Futures Representative on behalf of Future Construction Defect Claimants and will be administered under the Construction Defect Trust as Class 4 Construction Defect Claims under the Plan; and (vii) the remaining Claims have been withdrawn or disallowed.

**10. Application to Employ Garden City Group as Claims and Noticing Agent.**

The “Guidelines For A Claims Agent” issued by the Bankruptcy Court (the “Guidelines”) provide that the appointment of a claims, noticing, and balloting agent, pursuant to 28 U.S.C. § 156(c), is required if there are 1,000 or more creditors in a case and may be required by the Bankruptcy Court in other circumstances. Because Debtor anticipates<sup>ed</sup> that it could receive claims from several thousand parties, Debtor entered into a Bankruptcy Administration Agreement with The Garden City Group, Inc. (“GCG”) whereby GCG would serve as Debtor’s claims and noticing agent during the Chapter 11 Cases. Debtor filed an application with the Bankruptcy Court seeking approval for this arrangement, and the Bankruptcy Court granted Debtor’s application.

In its role as claims and noticing agent, GCG is charged with responsibility for maintaining a claims docket, providing notices in the Chapter 11 Case, and providing various related services. GCG also tabulated votes on the Initial Plan and is responsible for tabulating votes on the Plan.

**11. Motion for Order Establishing Certain Case Management, Notice and Administrative Procedures.**

Due to the large number of creditors and parties in interest in this Chapter 11 Case, Debtor sought approval for certain case management procedures that are similar to those implemented in other large chapter 11 cases. The Bankruptcy Court approved Debtor’s proposed procedures, which provide for (a) monthly omnibus hearing dates, (b) limitations on service requirements, (c) requests to obtain

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1 notice in the Chapter 11 Case, (d) motion, objection and reply deadlines, and (e) certain other notice and  
2 service requirements.

3 **C. Other Significant Requests for Court Approval.**

4 In addition to the “first day” matters, Debtor also filed certain other significant motions and  
5 applications for relief on or after the Petition Date, which ~~seek-sought~~ approval for the employment of  
6 professionals, post-petition financing, ~~and~~ the rejection of certain ~~price-promises-and-guaranties~~ Price  
7 Promises and Price Guaranties, and the approval of certain settlements. ~~These~~ Certain of these  
8 additional matters, which did not require attention with the same immediacy of the “first day” matters,  
9 but nevertheless are key components of Debtor’s reorganization process, are summarized below.

10 **1. Employment and Compensation of Professionals.**

11 The Bankruptcy Code has certain requirements for the employment and compensation of  
12 professionals at the expense of a debtor’s estate. In compliance with these requirements, Debtor filed  
13 applications for approval to employ the professionals listed below. Debtor also filed motions to  
14 approve procedures for allowance and payment of interim compensation to such professionals, and to  
15 approve the continued use of certain professionals who perform services in the ordinary course of  
16 Debtor’s business. The Court has entered orders approving the employment of professionals described  
17 in (a)-(c) below and the procedures for their compensation described in (d) below.

18 **a. Debtor’s Counsel—Fox Rothschild LLP**

19 Prior to the Petition Date, Debtor retained the law firm of Fox Rothschild LLP (“Fox  
20 Rothschild”) as its general bankruptcy and reorganization counsel. Based on the firm’s qualifications  
21 and prior experience in representing Debtor, Debtor sought to employ Fox Rothschild as its counsel in  
22 connection with the Chapter 11 Case. The Bankruptcy Court granted Debtor’s application pursuant to  
23 Bankruptcy Code sections 327, 329, 1107 and 1108. Fox Rothschild bills Debtor for its services on an  
24 hourly basis, plus reimbursement of necessary expenses incurred.

25 **b. Debtor’s Conflicts Counsel—Law Office of Nathan A. Schultz, P.C.**

26 Prior to the Petition Date, Fox Rothschild utilized the services of Nathan A. Schultz of the Law  
27 Firm of Nathan A. Schultz, P.C. (the “Schultz Firm”) on a contract basis in connection with its  
28 prepetition representation of Debtor. Debtor understands that Fox Rothschild will continue to utilize

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1 the services of Mr. Schultz on the same contract basis in connection with its representation of Debtor in  
2 the Chapter 11 Case. In addition, Debtor separately sought to employ the Schultz Firm as conflicts  
3 counsel in the event that there are matters arising in the Chapter 11 Case for which it is necessary  
4 and/or appropriate for Debtor to rely on counsel other than Fox Rothschild, whether by reason of  
5 potential conflict of interest concerns or otherwise. The Bankruptcy Court granted Debtor’s  
6 application to employ the Schultz Firm, which bills Debtor for its services on an hourly basis, plus  
7 reimbursement of necessary expenses incurred.

8 **c. Debtor’s Financial Advisor—Province Advisors, LLC.**

9 Since approximately March 28, 2011, Province Advisors, LLC (“Province”) has provided  
10 financial and restructuring advisory services to Debtor. With the additional financial reporting and  
11 other obligations that are imposed on a chapter 11 debtor, Debtor’s need for Province’s services has  
12 increased following the Petition Date. Debtor filed an application to employ Province pursuant to  
13 Bankruptcy Code sections 327, 328, 1107 and 1108, which application was granted by the Bankruptcy  
14 Court. Province bills Debtor for its services on an hourly basis, plus reimbursement of necessary  
15 expenses incurred.

16 **d. ~~Future Claims~~ Futures Representative – James L. Moore**

17 As described in Article IV(B)(6) above, Debtor requested that the Bankruptcy Court appoint a  
18 ~~Future Claims~~ Futures Representative to represent Future Construction Defect Claimants. The  
19 Bankruptcy Court granted Debtor’s motion and appointed James L. Moore as the ~~Future Claims~~ Futures  
20 Representative for the Chapter 11 Case. ~~Currently pending before the~~ The Court ~~is also granted~~ an  
21 application to employ Field Law Ltd. as counsel for Mr. Moore, ~~Field Law Ltd.~~

22 **e. Motion for Interim Compensation Procedures.**

23 The Bankruptcy Code and Bankruptcy Rules impose certain procedures and requirements  
24 governing the payment of compensation to professionals employed at the expense of the chapter 11  
25 estate, such as attorneys or financial professionals employed by Debtor or an official committee. It is  
26 customary in many chapter 11 cases for the debtor to seek Bankruptcy Court approval for certain  
27 interim compensation procedures in order to streamline the process and alleviate the financial burden  
28 on professionals of waiting long periods before or between payments of compensation.

1 Debtor filed a motion seeking approval for interim compensation procedures in the Chapter 11  
2 Case (the “Compensation Procedures”), which motion was granted by the Bankruptcy Court. The  
3 Compensation Procedures permit professionals to file monthly fee applications with the Bankruptcy  
4 Court for interim approval and allowance of compensation for services rendered and reimbursement of  
5 expenses incurred. If no objections are raised to a monthly application, then (upon the filing of a  
6 certificate of no objection) Debtor is authorized to pay to the applicable professional eighty percent  
7 (80%) of the fees and one hundred percent (100%) of the expenses. Professionals also may file  
8 quarterly fee applications, which will be set for hearing before the Bankruptcy Court with notice and an  
9 opportunity to object. Upon Bankruptcy Court approval of a quarterly fee application, Debtor is  
10 authorized to pay to the applicable professional any remaining unpaid fees and expenses approved by  
11 the Bankruptcy Court.

12 **2. Motion to Approve Post-Petition Financing.**

13 With the added expenses associated with its Chapter 11 Case, Debtor requires ~~an~~ additional  
14 financing in order to maintain its operations and remain current on expenses. Operationally, Debtor  
15 requires financing to ensure uninterrupted payment of expenses for the operation of its business,  
16 including payroll, marketing, leasing services, utilities and all other operational needs. The bulk of  
17 Debtor’s expenses are related to payments to subcontractors for vertical and horizontal construction.  
18 Debtor also needs to pay expenses associated with regulatory licenses and fees. Therefore, in order to  
19 ensure that Debtor ~~will~~ would have sufficient liquidity to withstand fluctuations in the home buying  
20 market, and to fund the costs of administering the Chapter 11 Case, Debtor ~~believes~~ estimated that it  
21 ~~may~~ might require up to \$10,000,000 in postpetition financing. With these funding requirements in  
22 mind, Debtor negotiated the DIP Loan with the DIP Lender, which provides for up to \$10,000,000 in  
23 postpetition borrowings on a revolving basis.

24 Debtor filed a motion seeking approval for the DIP Loan, which motion was granted by the  
25 Bankruptcy Court. The DIP Loan is secured by (i) a valid and duly perfected first priority Lien on  
26 Avoidance Actions and any other previously unencumbered assets of Debtor, and (ii) a valid and duly  
27 perfected junior Lien on the Secured Lenders’ collateral and any other assets of Debtor that are subject  
28 to a valid and perfected lien as of the Petition Date; provided that the DIP Lender’s lien shall be subject

1 and subordinate to the lien and security interest of the Pre-Petition Lenders in and to the Secured  
 2 Lenders' collateral, as well as any claims and obligations incurred by U.S. Bank from ordinary course  
 3 transactions under Debtor's Cash Management System and/or Bank Accounts. The DIP Lender's lien  
 4 also is subject to a carve-out for certain professionals' fees and other costs of administering the Chapter  
 5 11 Case.

6 The DIP Lender has agreed to convert the full balance of the DIP Loan (up to the Maximum  
 7 Commitment Amount of \$10,000,000 including all unpaid principal and accrued interest) to equity in  
 8 Reorganized Debtor pursuant to the Plan.<sup>1315</sup> The Court has entered an order approving the DIP Loan.

9 **3. ~~1.~~ Motion to Reject Price Promises and Price Guarantees.**

10 ~~As described in greater detail herein, see Article III supra, prior~~ Prior to the Petition Date  
 11 Debtor provided certain home purchasers with a Price Promise or Price Guarantee. Due to the dramatic  
 12 downturn in the residential housing market in Las Vegas, it ~~is no longer~~ was not economically viable  
 13 for Debtor to perform under the Price Promises and Price Guarantees. Accordingly, Debtor filed a  
 14 motion seeking authorization to reject the Price Promises and Price Guarantees pursuant to Bankruptcy  
 15 Code section 365. Several homeowners filed objections to the motion while some homeowners entered  
 16 into stipulations with Debtor to resolve their respective objections. The Bankruptcy Court granted  
 17 Debtor's motion and approved the stipulations Debtor entered into with certain homeowners.

18 **4. Southwest Gas Corporation Settlement.**

19 At various times prior to the Petition Date, Debtor and Southwest Gas Corporation ("Southwest  
 20 Gas") entered into certain Gas Main Extension Agreements (the "Extension Agreements") with respect  
 21 to certain residential developments. The Extension Agreements generally provide for Southwest Gas  
 22 to install gas distribution facilities at an estimated cost, with Debtor receiving a provisional  
 23 "allowance" to offset against the advance required by Debtor to cover the full estimated costs of the

24  
 25 <sup>1315</sup> Under an alternative plan, DIP Lender has committed to convert \$3,000,000 of the DIP  
 26 Loan (or the full amount of the DIP Loan if less than \$3,000,000 is outstanding) to equity in the  
 27 reorganized Debtor pursuant to any plan (other than the Plan) that (i) provides for any remaining  
 28 balance of the DIP Loan to be paid in full to DIP Lender, and (ii) is otherwise reasonably acceptable to  
 DIP Lender.

1 gas distribution facilities; which allowance is based on amounts of gas service and number of  
 2 residential customers and natural gas appliances installed per household, all as set forth in the  
 3 Extension Agreements. The allowance is available only for a specific period of time, upon the  
 4 expiration of which (the “Expiration Date”) Debtor is obligated to pay to Southwest Gas the balance of  
 5 the estimated costs (i.e. less any allowances earned prior to the Expiration Date).

6 On or about March 28, 2012, Southwest Gas filed a Proof of Claim identified as Claim No. 5  
 7 on Debtor’s Claims Register (the “Southwest Gas Claim”) in the amount of \$1,150,734.52 with respect  
 8 to alleged estimated cost balances under the Extension Agreements. Debtor and Southwest Gas  
 9 engaged in settlement discussions and negotiations concerning the Southwest Gas Claim, and reached a  
 10 settlement, which (generally speaking) provides (i) for Debtor to make a \$200,000 deposit with  
 11 Southwest Gas to satisfy any unpaid estimated cost balance owing by Debtor under an Extension  
 12 Agreement following the Expiration Date, (ii) for a five (5) year extension of the Expiration Date under  
 13 each of the Extension Agreements, (iii) the estimated cost balance under each of the Extension  
 14 Agreements as of July 31, 2012, which total \$1,114,685.22 in the aggregate; (iv) for assumption by  
 15 Reorganized Debtor as of the Plan Effective Date of all rights, benefits, defenses, obligations and  
 16 liabilities under the Extension Agreements (as modified by the settlement), and (v) that the Southwest  
 17 Gas Claim shall not be treated as an Allowed Claim in any class under the Plan, and Southwest Gas  
 18 shall not receive any Distribution pursuant to the Plan.

19 The Bankruptcy Court entered an order approving Debtor’s settlement with Southwest Gas.

20 **D. Compliance with Statutory Requirements.**

21 The Bankruptcy Code imposes certain reporting and compliance requirements on chapter 11  
 22 debtors in order to provide transparency and disclosure regarding their financial affairs both before and  
 23 during the course of the chapter 11 case. At the outset of the case, a debtor must: (1) file Schedules of  
 24 Assets and Liabilities; (2) file a Statement of Financial Affairs; (3) attend a meeting of creditors under  
 25 Bankruptcy Code section 341(a); and (4) provide certain initial financial information to the ~~Office of~~  
 26 ~~the United States Trustee (“OUST”)~~ OUST, followed by additional post-petition reporting to the OUST  
 27 on a monthly basis. With the goal of a smooth and expeditious resolution of the Chapter 11 Case,  
 28 Debtor has continued to fully and timely complied with these requirements, as described below.

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1           **1.       Schedules of Assets and Liabilities.**

2           For a chapter 11 debtor, the Schedules of Assets and Liabilities must include:

- 3                   • Schedule A: Real Property Assets
- 4                   • Schedule B: Personal Property Assets
- 5                   • Schedule D: Secured Claims
- 6                   • Schedule E: Priority Claims
- 7                   • Schedule F: Unsecured Claims
- 8                   • Schedule G: Executory Contracts and Unexpired Leases
- 9                   • Schedule H: Codebtors

10 Debtor filed its Schedules of Assets and Liabilities on the Petition Date, [and certain amendments](#)  
11 [thereafter](#), the contents of which are summarized below.

12                           **a.       Assets**

13           Debtor did not own any real property assets as of the Petition Date and none are listed on its  
14 Schedule A. Debtor listed approximately \$55,392,951.44 in personal property assets on Schedule B,  
15 which primarily consist of capitalized model costs, construction costs, indirect costs, offsite costs and  
16 prepaid expenses.

17                           **b.       Liabilities**

18           Debtor identified the following Creditors holding Secured Claims on Schedule D: Bank of  
19 America, N.A., California Bank & Trust, Comerica Bank, JP Morgan Chase Bank, N.A., Key Bank  
20 National Association, US Bank National Association, and Wells Fargo Bank National Association.

21           The Bankruptcy Code provides for certain unsecured claims existing on the petition date to  
22 receive priority above other unsecured claims, such as tax claims, employee wage claims (subject to  
23 certain limits) and consumer deposit claims. Debtor listed Claims in the amount of \$28,300.10 on  
24 Schedule E.

25           Schedule F consists primarily of: contingent liability on bond claims,  
26 contingent/unliquidated/disputed home warranty claims, contingent/unliquidated/disputed claims  
27 pending in litigation, and contingent/unliquidated/disputed claims based on the Price Promise or Price  
28 Guarantee.



**c. Executory Contracts and Unexpired Leases**

Bankruptcy Code section 365 authorizes a debtor in possession to assume, assume and assign, or reject executory contracts and unexpired leases, subject to certain conditions. Generally speaking, an “executory contract” is a contract under which material obligations remain to be performed by the debtor and the contract counter-party(ies). Debtor is a party to one unexpired lease of non-residential real property. The contracts listed on Schedule G consist primarily of agreements with subcontractors, possible Price Promises and Price Guarantees, and residential leases with affiliate companies that own model homes.

[Article IV of the Plan provides for treatment of executory contracts and unexpired leases.](#)

**2. Statement of Financial Affairs.**

The Statement of Financial Affairs contains a series of questions to be completed by the debtor regarding various financial and corporate matters. The debtor must provide information regarding its income, payments to creditors, pending litigation, shareholders, and officers and directors, among other items.

Debtor filed its Statements of Financial Affairs on the Petition Date. In response to Question 1, Debtor listed income of \$12,204,419.43 (development and management fees of \$11,192,544.43 and home selling revenues of \$1,011,875) for fiscal year ending December 31, 2011; \$63,654,770 (development and management fees of \$20,434,500, home selling revenues of \$39,725,420 and land sales of \$3,494,850) for fiscal year ending December 31, 2010; and \$61,495,806 (development and management fees of \$12,785,563, home selling revenues of \$42,858,242 and land sales of \$5,852,000) for fiscal year ending December 31, 2009. In response to Question 3(b), Debtor listed payments totaling approximately \$9,290,319 to Creditors within 90 days of the Petition Date. In response to Question 3(c), Debtor listed payments totaling approximately \$275,000 to insider Creditors within one year of the Petition Date. In response to Question 10(a), Debtor listed no transfers outside the ordinary course of business that occurred within two years of the Petition Date.

During the four years immediately preceding the Petition Date, the various Canarelli family trusts received shareholder distributions in the following amounts from the certain home selling entities that were subsequently merged with AWDI:

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- 1 • Canarelli Family Trust - \$21,106,645
- 2 • Alyssa Lawrence Graves Canarelli Irrevocable Trust - \$7,311,821
- 3 • Jeffrey Lawrence Graves Canarelli Irrevocable Trust - \$7,311,821
- 4 • Scott Lyle Graves Canarelli Irrevocable Trust - \$7,311,821
- 5 • Stacia Leigh Lemke Irrevocable Trust - \$7,311,821.

6 Generally, the trusts loaned the distributed funds back to AWDI through AWHV, a wholly  
 7 owned non-debtor subsidiary, which gave rise to a receivable owing from AWDI to AWHV. In  
 8 connection with the recent restructuring and merger of AWDI and certain other affiliated entities, the  
 9 trusts caused AWHV to contribute this receivable back to AWDI resulting in corresponding debt  
 10 reduction in the following amounts:

- 11 • Canarelli Family Trust - \$11,519,763
- 12 • Alyssa Lawrence Graves Canarelli Irrevocable Trust - \$3,990,704
- 13 • Jeffrey Lawrence Graves Canarelli Irrevocable Trust - \$3,990,704
- 14 • Scott Lyle Graves Canarelli Irrevocable Trust - \$3,990,704
- 15 • Stacia Leigh Lemke Irrevocable Trust - \$3,990,704

16 In addition, the trusts also funded Term Loan pay-downs in November and December 2011 in  
 17 the following amounts, which reduced AWDI's obligations to the Secured Lenders accordingly:

- 18 • Canarelli Family Trust - \$10,276,869
- 19 • Alyssa Lawrence Graves Canarelli Irrevocable Trust - \$3,560,138
- 20 • Jeffrey Lawrence Graves Canarelli Irrevocable Trust - \$3,560,138
- 21 • Scott Lyle Graves Canarelli Irrevocable Trust - \$3,560,138
- 22 • Stacia Leigh Lemke Irrevocable Trust - \$3,560,138

23 Thus, the combined amounts of these contributions in cash and debt relief provided by the trusts  
 24 to AWDI are:

- 25 • Canarelli Family Trust - \$21,796,632
- 26 • Alyssa Lawrence Graves Canarelli Irrevocable Trust - \$7,550,842
- 27 • Jeffrey Lawrence Graves Canarelli Irrevocable Trust - \$7,550,842
- 28 • Scott Lyle Graves Canarelli Irrevocable Trust - \$7,550,842

- Stacia Leigh Lemke Irrevocable Trust - \$7,550,842

For each trust, the total combined amount exceeds the four-year distribution amount.

**3. 341(a) Meeting.**

Pursuant to Bankruptcy Code section 341(a), the OUST conducts an initial meeting of creditors shortly after the commencement of a bankruptcy case. At the section 341(a) meeting, OUST personnel review the debtor’s Schedules of Assets and Liabilities and Statements of Financial Affairs, and creditors have the opportunity to ask questions of a debtor representative regarding the same. The 341(a) meeting for Debtor took place on April 12, 2012 and was closed by the OUST at the conclusion thereof.

**4. Office of the United States Trustee Reporting.**

At the outset of a chapter 11 case, the OUST requires the debtor in possession to provide certain initial information regarding insurance coverage and other matters. The OUST also requires the debtor in possession to provide monthly post-petition financial reporting in a format determined on a case-by-case basis. Debtor filed its first monthly operating report on or about April 20, 2012 and ~~the second on or about May 18, 2012~~ has continued to file monthly reports on a timely basis thereafter.

**E. Creditors Committee.**

Bankruptcy Code section 1102 directs the OUST to appoint a committee of creditors holding unsecured claims, and also authorizes the OUST to appoint additional committees of creditors or of equity security holders as the OUST deems appropriate. ~~To date, no creditors committee has been appointed.~~ Pursuant to Bankruptcy Code section 1103, a committee appointed under section 1102 may: (i) select and authorize the employment of one or more attorneys, accountants, or other agents, to represent or perform services for such committee; (ii) consult with the debtor in possession concerning the administration of the case; (iii) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor’s business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of the plan; (iv) participate in the plan process; (v) request the appointment of a trustee or examiner under Bankruptcy Code section 1104; and (vi) perform other services as are in the interests of those it represents. To date, no creditors committee has been appointed.

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~~If the OUST appoints any committee(s) pursuant to section 1102, Debtor will provide information regarding such committee(s), including any professional persons employed thereby.~~

**F. Plan Solicitation and Confirmation Process.**

As noted above, Debtor filed its Chapter 11 Case with the intent to proceed immediately down the path to presenting the Initial Plan to its Creditors for their acceptance or rejection and to the Bankruptcy Court for confirmation. Prior to the Petition Date, Debtor negotiated ~~a Restructuring, the~~ Lock-Up and Settlement Letter Agreement (~~the “Lock-Up and Settlement Letter Agreement”~~) with the Secured Lenders to ensure their support for the Initial Plan. The Bankruptcy Court ~~heretofore~~ thereafter entered ~~an order~~ the 9019 Order approving the Lock-Up and Settlement Letter Agreement, which order is now a final order. Debtor filed its Initial Plan on May 29, 2012. A hearing on confirmation of the Initial Plan took place on September 25, 2012. Although the Initial Plan was overwhelmingly accepted by Holders of Claims in each of the three Impaired Classes, the Bankruptcy Court entered an order denying confirmation of the Initial Plan based upon certain objections asserted by the OUST. The two primary grounds upon which the Bankruptcy Court denied confirmation of the Initial Plan were: (i) inadequate disclosure of (x) self-insured retention amounts under Debtor’s insurance policies, and (y) the terms of the Construction Defect Trust; and (ii) injunctions, exculpations and releases of non-debtor parties contained in Article XII of the Initial Plan that the Bankruptcy Court found to be impermissible under current Ninth Circuit law.

Debtor drafted the current Plan in order to address these two primary aspects of the Bankruptcy Court’s ruling on the Initial Plan. Attached to this Disclosure Statement as Exhibit H is a copy of the Construction Defect Trust Declaration and TDP, and attached to this Disclosure Statement as Exhibit J is a list of Debtor’s self-insured retention amounts. Expanded discussion of Debtor’s insurance matters can be found in Article VII, Section B of this Disclosure Statement. In addition, Debtor modified the injunction, exculpation and release provisions contained in Article XII of the Plan.

Debtor has targeted ~~July-December~~ 101, 2012 ~~for as the hearing on~~ approval of this Disclosure Statement, ~~September 25~~ January 15, 2012~~3~~ for the hearing on Confirmation of the Plan, and ~~October 46~~ January 30, 2012~~3~~ for the Plan Effective Date. In order to ensure that this process moves forward smoothly and expeditiously, Debtor seeks to establish certain procedures for providing notice of, and

1 soliciting votes on, the Plan. The Lock-Up and Settlement Letter Agreement and Debtor's proposed  
2 procedures regarding the Plan are summarized below.

3 **1. Lock-Up and Settlement Letter Agreement.**

4 As Debtor's only secured creditors and the holders, collectively, of the largest Claims as of the  
5 Petition Date, the Secured Lenders are a key constituency in the Chapter 11 Case. Debtor has had a  
6 constructive lending relationship with the Secured Lenders over the years, which has motivated  
7 Debtor's efforts to continue that constructive relationship through and after the conclusion of its current  
8 reorganization process. Therefore, Debtor engaged the Secured Lenders in discussions regarding the  
9 terms of a potential plan of reorganization in advance of the Petition Date. Debtor's goal was to reach  
10 agreement with the Secured Lenders on the outline of a plan of reorganization, including the key  
11 economic points for the treatment of their Secured Claims.

12 After careful diligence review and arms' length, good faith negotiations, Debtor and the  
13 Secured Lenders entered into the Lock-Up and Settlement Letter Agreement, which (among other  
14 things) is based upon the terms of the Plan. The Lock-Up and Settlement Letter Agreement sets forth  
15 the terms and conditions of the commitments that Debtor and the Secured Lenders have made  
16 regarding the Plan, the Confirmation process, and certain other aspects of the Chapter 11 Case.  
17 Generally speaking, the Lock-Up and Settlement Letter Agreement provides that Debtor will seek to  
18 confirm the Plan and that the Secured Lenders will vote to accept, and otherwise support, the Plan. The  
19 Lock-Up and Settlement Letter Agreement also provides that, pursuant to its approval by the  
20 Bankruptcy Court under Bankruptcy Rule 9019, (i) the Secured Lenders will receive allowed Secured  
21 Claims in the aggregate amount of \$49,635,000, and (ii) provided the Holders of Class 3 [General](#)  
22 [Unsecured](#) Claims vote, as a class, to accept the Plan, the Secured Lenders have agreed to waive any  
23 right to distribution on their General Unsecured Class 3 Deficiency Claims as of the Effective Date.  
24 The Lock-Up and Settlement Letter Agreement may be terminated by either party based upon the other  
25 party's uncured breach, or with the mutual written consent of both parties. The Lock-Up and  
26 Settlement Letter Agreement also may be terminated by Debtor if circumstances render the Plan not  
27 capable of being confirmed, or by the Secured Lenders if Debtor abandons the Plan or if the Chapter 11  
28 Case is converted to a case under chapter 7 of the Bankruptcy Code.

1 Debtor believes that negotiation of the Lock-Up and Settlement Letter Agreement was a key  
2 accomplishment in its efforts to reorganize because it will avoid the delay and expense of attempting to  
3 negotiate (or worse yet, litigate) with the Secured Lenders during the course of the Chapter 11 Case,  
4 and instead facilitate Debtor’s timely and cost-effective emergence from chapter 11 protection.

5 **2. Solicitation Procedures.**

6 Based on the large number of potential creditors in this Chapter 11 Case, and the likelihood that  
7 a large majority of such creditors ~~will~~would be consumer home purchasers rather than sophisticated  
8 business enterprises, Debtor developed certain customized procedures and forms for the solicitation of  
9 votes to accept or reject the Plan. Chief among these are the two separate disclosure statements that  
10 Debtor has prepared—the Home Owner Disclosure Statement (for parties with claims based on their  
11 purchase or ownership of a home built or owned by Debtor), and this Master Disclosure Statement (for  
12 other creditors and those home owners who wish to review additional, more detailed information than  
13 the Home Owner Disclosure Statement provides).

14 The two forms of Disclosure Statement, along with various other forms of notice and proposed  
15 ballot forms, are to be used in connection with certain Solicitation Procedures, which cover four main  
16 topics:

- 17 (a) Voting Eligibility: Establishment of the Voting Record Date, Identification of  
18 Claims Eligible to Vote, Identification of Eligible Holders, Determination of  
19 Amount of Claims for Voting Purposes and Reservation of Rights re: Estimation  
20 and/or Designation;
- 21 (b) Noticing: The Confirmation Hearing Notice, Notice of Non-Voting Status,  
22 Solicitation Packages, Disputed Claim Notice, Addresses, and Undeliverable  
23 Mail ~~and the Plan Supplement~~;
- 24 (c) Submission and Tabulation of Votes: Voting Deadline; Completion,  
25 Submission and Tabulation of Ballots, including, without limitation, tabulation  
26 and effect of votes submitted by the Futures Representative (see Article IV,  
27 Section B(6) above); and
- 28 (d) Confirmation Hearing: Confirmation Hearing and Objection Deadline.

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1 The Solicitation Procedures are attached as an exhibit to the Solicitation Procedures Order,  
2 which is included in the Master Disclosure Statement solicitation package. In addition, certain key  
3 provisions of the Solicitation Procedures are referenced in Article VI of this Master Disclosure  
4 Statement.

5 **ARTICLE V**

6 **SUMMARY OF THE PLAN**

7 THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND MEANS FOR  
8 IMPLEMENTATION OF THE PLAN AND OF THE CLASSIFICATION AND TREATMENT OF  
9 CLAIMS AND INTERESTS UNDER THE PLAN. IT IS QUALIFIED IN ITS ENTIRETY BY  
10 REFERENCE TO THE PLAN ITSELF, WHICH IS ANNEXED TO THIS DISCLOSURE  
11 STATEMENT AS **EXHIBIT "A"** AND WHICH SHALL CONTROL IN THE EVENT THAT IT  
12 VARIES FROM THE TERMS OF THIS DISCLOSURE STATEMENT.

13 THE PLAN, SUBJECT TO THE PROVISIONS OF THE BANKRUPTCY CODE, PROVIDES  
14 FOR THE TREATMENT OF ALL CREDITORS THAT HOLD CLAIMS ARISING PRIOR TO THE  
15 CONFIRMATION DATE OF THE PLAN, FOR THE PAYMENT OF ADMINISTRATIVE  
16 PRIORITY CLAIMS AND FOR THE TREATMENT OF EQUITY INTERESTS IN DEBTOR.

17 THE SUMMARIES OF THE PLAN AND OF OTHER DOCUMENTS REFERRED TO  
18 HEREIN DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE  
19 TERMS AND PROVISIONS OF THOSE DOCUMENTS. REFERENCE IS MADE TO THE PLAN  
20 AND THE OTHER DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF THEIR  
21 TERMS AND PROVISIONS.

22 SINCE THE PLAN DEALS WITH SOPHISTICATED LEGAL CONCEPTS, AND  
23 INCORPORATES THE DEFINITIONS AND REQUIREMENTS OF THE BANKRUPTCY CODE,  
24 YOU MAY WISH TO CONSULT WITH COUNSEL OF YOUR CHOICE IN MAKING YOUR  
25 DECISION REGARDING YOUR VOTE ON THE PLAN. TO THE EXTENT THAT THE TERMS  
26 OF THIS DISCLOSURE STATEMENT VARY FROM THE TERMS OF THE PLAN OR ANY  
27 OTHER OPERATIVE DOCUMENT, THE TERMS OF THE PLAN OR SUCH OTHER OPERATIVE  
28 DOCUMENT SHALL BE CONTROLLING.

1 ARTICLE XII OF THE PLAN, EFFECT OF CONFIRMATION OF THE PLAN, CONTAINS  
 2 DISCHARGES, INJUNCTIONS, RELEASES AND EXCULPATIONS THAT SHOULD BE READ  
 3 CAREFULLY BY ALL STAKEHOLDERS. ~~THE USE THEREIN OF “RELEASED PARTY” OR~~  
 4 ~~“RELEASEES” INCLUDES~~ BY VOTING IN FAVOR OF THE PLAN, CREDITORS WILL BE  
 5 CONSENTING TO THE RELEASE SET FORTH IN SECTION 12.4(b) OF THE PLAN, WHICH  
 6 EXTENDS TO CERTAIN NON-DEBTOR PARTIES, INCLUDING, AMONG OTHERS, CURRENT  
 7 AND FORMER OFFICERS AND DIRECTORS OF THE DEBTOR AND THE OTHER PERSONS  
 8 AND ENTITIES THAT FALL WITHIN THE DEFINITION OF RELATED ~~PARTY~~ PERSONS  
 9 PURSUANT TO ITEM 117 OF THE GLOSSARY OF DEFINED TERMS THAT APPEARS AS  
 10 EXHIBIT A TO THE PLAN.

11 **A. Overall Structure of the Plan.**

12 Under the Plan, Claims against and Equity Interests in Debtor are divided into Classes according  
 13 to their relative seniority and other criteria. If the Plan is confirmed by the Bankruptcy Court and  
 14 consummated, the Allowed Administrative Claims (unclassified), Allowed Priority Tax Claims  
 15 (unclassified) and Allowed Other Priority Claims (Class 1) will receive Distributions equal to the full  
 16 Allowed amount of the Claims as required by the Bankruptcy Code (unless otherwise agreed by the  
 17 Holder(s) of such Claim(s)). The Class 2 Secured Claims of the Secured Lenders will be restructured as  
 18 agreed by the Secured Lenders pursuant to the Lock-Up and Settlement Letter Agreement and the terms  
 19 of the New Secured Loan Documents. Class 3 Allowed General Unsecured Claims will entitle the  
 20 Holders thereof to a Pro Rata share in \$1,500,000 up to the allowed amount of their Claim without  
 21 interest. Class 4 Construction Defect Claims will be channeled exclusively to the Construction Defect  
 22 Trust and those for which the Cash Out Election has not been made will be administered, allowed and  
 23 paid by the Construct Defect Trustee pursuant to the TDP whereas ~~the Construct~~ if, but only if, at least  
 24 eighty percent (80%) in number of the Holders of Class 4 Construction Defect Claims actually vote to  
 25 accept the Plan, the Construction Defect Trustee shall make the Cash Out Payment within sixty (60)  
 26 days of the Effective Date to those who made the Cash Out Election. Class 5 Bond Claims are not  
 27 Impaired and will be paid in the ordinary course by Reorganized Debtor. Class 6 Old Equity Interests  
 28 will be canceled and will neither receive nor retain any property under the Plan.

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1 **B. Classification and Treatment of Claims and Interests Under the Plan.**

2 Bankruptcy Code section 1123 provides that a plan must classify the claims and interests of a  
3 debtor's creditors and interest holders. In accordance with Bankruptcy Code section 1123, the Plan  
4 divides Claims and Interests into Classes and sets forth the treatment for each Class (other than  
5 Administrative Claims and Priority Tax Claims which, pursuant to Bankruptcy Code section 1123(a)(1),  
6 need not be and have not been classified). Bankruptcy Code section 1122 requires that each Class  
7 contain only Claims or Interests that are substantially similar to the other Claims or Interests in such  
8 Class.

9 A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest  
10 falls within the description of that Class and is classified in other Classes to the extent that any portion  
11 of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also  
12 placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the  
13 extent that such Claim or Interest is an Allowed Claim in that Class and such Claim has not been paid,  
14 released or otherwise settled prior to the Effective Date.

15 **1. Unclassified Claims.**

16 **a. Administrative Claims.**

17 Administrative Claims are Claims for costs and expenses of administration, pursuant to  
18 Bankruptcy Code sections 503(b), 507(a)(2), 507(b) or 546(c)(2), including, but not limited to: (a) the  
19 actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date  
20 of preserving the Estate and operating the business of Debtor (such as wages, salaries, or commissions  
21 for services, and payments for goods and services); (b) the value of any goods received by Debtor  
22 within twenty (20) days before the Petition Date which goods have been sold to Debtor in the ordinary  
23 course of its business; (c) compensation and reimbursement of expenses for legal, financial advisory,  
24 accounting, and other services, including but not limited to, Allowed Professional Fees, pursuant to  
25 Bankruptcy Code sections 328, 330(a) or 331 or otherwise for the period commencing on the Petition  
26 Date and ending on the Effective Date; (d) all fees and charges assessed against the Estate, pursuant to  
27 chapter 123 of the Judicial Code and 28 U.S.C. § 1930; and (e) all Bankruptcy Court approved requests  
28

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1 for compensation or expense reimbursement for making a substantial contribution in the Chapter 11  
2 Case, pursuant to Bankruptcy Code sections 503(b)(3), (4) and (5).

3 The Holder of an Administrative Claim, other than (i) a Professional Fee Claim, or (ii) a  
4 liability incurred and paid in the ordinary course of business by Debtor, must File with the Bankruptcy  
5 Court and serve on Debtor and Debtor's counsel, notice of such Administrative Claim on or before the  
6 Administrative Claim Bar Date. Such notice must include, at minimum, (i) the name of the Holder of  
7 such Administrative Claim, (ii) the basis of the Administrative Claim, including why it is entitled to  
8 administrative priority under the Bankruptcy Code, and (iii) the amount of the Administrative Claim.  
9 Failure to File and serve such notice timely and properly shall result in the Administrative Claim being  
10 forever barred and discharged. [The Administrative Claim Bar Date does not require the Internal](#)  
11 [Revenue Service to file a request for payment by that date.](#)

12 Subject to the provisions of Bankruptcy Code sections 330(a), 331 and 503(b), each Holder of  
13 an Administrative Claim shall, either: (x) be paid from the Confirmation Funds in the Allowed amount  
14 of any such Administrative Claim on, or as soon as reasonably practicable after, the later of (i) the  
15 Effective Date, (ii) the date upon which such Administrative Claim becomes Allowed, or (iii) such date  
16 as is otherwise agreed to by Debtor or Reorganized Debtor, as the case may be, and the Holder of such  
17 Administrative Claim; or (y) have such Administrative Claim assumed by Reorganized Debtor, to be  
18 paid by Reorganized Debtor in Cash in the Allowed amount of any such Administrative Claim on, or as  
19 soon as reasonably practicable after, the later of (i) the date upon which such Administrative Claim  
20 becomes Allowed, (ii) the date on which such Administrative Claim becomes due in the ordinary  
21 course of business, or (iii) such date as is otherwise agreed by Debtor, Reorganized Debtor and the  
22 Holder of such Administrative Claim.

23 [Professional Fee Claims and US Trustee Fees.](#) Notwithstanding the foregoing or anything to the  
24 contrary in the Plan: (A) all final applications for the allowance and payment of Professional Fee  
25 Claims constituting amounts due for services rendered on or before the Effective Date shall be Filed no  
26 later than ninety (90) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court;  
27 (B) Debtor shall pay, or cause to be paid, all accrued US Trustee Fees on or before the Effective Date of  
28 the Plan; and following the Effective Date, Reorganized Debtor shall be responsible for timely payment

1 of all US Trustee Fees until such time as the Final Decree closing the Chapter 11 Case is entered and all  
2 US Trustee Fees due are paid in full; (C) Debtor or Reorganized Debtor (as applicable) shall File with  
3 the Bankruptcy Court and serve on the United States Trustee a quarterly financial report for each  
4 quarter (or portion thereof) that the Chapter 11 Case remains open in such format as reasonably may be  
5 required by the United States Trustee. US Trustee Fees are not subject to an allowance process.

6 **b. Priority Tax Claims.**

7 Priority Tax Claims are any Claims entitled to priority under Bankruptcy Code sections 502(i)  
8 or 507(a)(8). Priority tax claims do not include *ad valorem* tax claims if such claims under applicable  
9 state law are secured by a lien on a Debtor's assets.

10 The legal and equitable rights of the Holders of Priority Tax Claims are unaltered by the Plan.  
11 Each Holder of an Allowed Priority Tax Claim shall be entitled to receive, on account of such Allowed  
12 Priority Tax Claim in full satisfaction, settlement, release and discharge of and in exchange for such  
13 Allowed Priority Tax Claim, equal, quarterly, consecutive cash payments beginning on the Effective  
14 Date, and continuing until completed no later than five (5) years after the Petition Date totaling the  
15 principal amount of such Claim plus interest on any outstanding balance from the Petition Date. The  
16 rate of interest on such payments shall be determined under applicable nonbankruptcy law, pursuant to  
17 Bankruptcy Code section 511.

18 **2. Classified Claims.**

19 **a. Class 1 – Other Priority Claims.**

20 Class 1 consists of Priority Claims against Debtor which are Allowed Claims entitled to priority  
21 under Bankruptcy Code sections 507(a) other than under subsections (a)(2) through (a)(8) thereof. The  
22 legal and equitable rights of the Holders of Allowed Other Priority Claims are unaltered by the Plan.  
23 Each Holder of an Allowed Other Priority Claim shall, either: (i) be paid the Allowed amount of such  
24 Claim in Cash on the Effective Date; or (ii) receive such other treatment as is agreed to by the Holder  
25 of the Allowed Other Priority Claim, Debtor or Reorganized Debtor, as the case may be.

26 Class 1 Claims are not Impaired and the Holders of Allowed Other Priority Claims are  
27 conclusively deemed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f).  
28 Therefore, the Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

1                                   **b.       Class 2 - Secured Claims.**

2                   Class 2 consists of the Secured Claims of the Secured Lenders against Debtor.

3                   On the Effective Date, each Secured Lender, as a Holder of an Allowed Secured Claim, shall  
4 receive, in full satisfaction, settlement, release and exchange for its Allowed Secured Claim, payments  
5 from and performance by Reorganized Debtor under the New Secured Loan according to the terms and  
6 conditions of the New Secured Loan Documents. The New Secured Loan will be evidenced by the  
7 New Secured Notes, which will be executed by Reorganized Debtor and be payable to the order of  
8 each Secured Lender according to such Secured Lender's pro rata interest in the New Secured Loan.  
9 The New Secured Notes will be in the aggregate principal amount of \$49,635,000, maturing on  
10 December 31, 2015 (the "Maturity Date"). The New Secured Loan shall be secured by Liens on the  
11 Secured Lenders' collateral pursuant to the New Secured Loan Documents. Pursuant to the terms of  
12 the Lock-Up and Settlement Letter Agreement, the Secured Lenders shall waive any respective  
13 entitlement to receive or recover from Debtor or Reorganized Debtor any interest accruing at the  
14 default rate under the Term Loan Documents prior to the Effective Date to the extent (and only to the  
15 extent) that such default rate interest would be triggered under the Term Loan Documents by the  
16 commencement of the Chapter 11 Case.

17                   The New Secured Notes provide that the Secured Lenders will receive interest on the principal  
18 amounts of the New Secured Notes at either (a) a fixed rate of interest based on reserve-adjusted  
19 LIBOR rate plus the Applicable Margin for interest periods of one (1), two (2), three (3) or six (6)  
20 months or (b) a variable rate of interest based on the "prime rate" as announced from time to time by  
21 California Bank & Trust plus the Applicable Margin. If a fixed rate is selected, then upon expiration of  
22 the applicable interest period the variable rate will become applicable unless a new fixed rate interest  
23 period is selected in accordance with the New Secured Loan Documents. The variable rate will change  
24 with each change in the applicable "prime rate." The New Secured Notes further provide that: (i)  
25 accrued interest shall be due and payable on the first Business Day of each month, beginning with the  
26 first day of the first month after the month in which the Effective Date occurs, with interest being  
27 calculated based on the actual number of days that principal is outstanding over a year of 360 days; and  
28 (ii) the entire outstanding principal balance of the New Secured Notes plus any accrued and unpaid

1 interest shall be immediately due and payable in one balloon payment on the Maturity Date. The New  
2 Secured Notes shall be secured, pursuant to the New Secured Loan Documents, by the Secured  
3 Lenders' collateral and shall be in a form acceptable to and approved by the Secured Lenders, which  
4 form is annexed as an exhibit to the Disclosure Statement. In the event of a default by Reorganized  
5 Debtor under the New Secured Loan Documents, the full amount of the obligation owed by Debtor's  
6 co-borrowers under the Term Loan shall, at the option of a designated percentage of the Secured  
7 Lenders, become immediately due and payable in full. In the event of any conflict between the New  
8 Secured Loan Documents and the Plan, the terms and conditions of the New Secured Loan Documents  
9 shall control.

10 Upon the Effective Date: (i) Debtor's obligations as co-borrower under the Term Loan shall be  
11 deemed replaced by its obligations as borrower under the New Secured Loan; (ii) Reorganized Debtor  
12 shall be deemed to be the sole owner of all of Debtor's re-vested assets, including the Receivable and  
13 contract rights under each of the Design-Build Agreements and the Marketing and Administrative  
14 Services Agreements, free and clear of all Liens and interests except the Secured Lenders' Liens and  
15 interests under the New Secured Loan Documents; and (iii) all Liens and security interests in the  
16 Receivable shall automatically be deemed to secure only Reorganized Debtor's obligations to the  
17 Secured Lenders under the New Secured Loan Documents. In addition, the Term Loan provides that  
18 Reorganized Debtor may become a co-borrower thereunder under certain conditions as set forth  
19 therein.

20 Class 2 is Impaired. Holders of Allowed Class 2 Secured Claims are entitled to vote to accept  
21 or reject the Plan.

22 **c. Class 3 – General Unsecured Claims.**

23 Class 3 consists of General Unsecured Claims against Debtor.

24 Unless otherwise agreed to by the Holder, each Holder of an Allowed Class 3 General  
25 Unsecured Claim shall receive on the Effective Date in full satisfaction, settlement, release and  
26 exchange of such Allowed Class 3 General Unsecured Claim, its Pro Rata share of one million five  
27 hundred thousand dollars (\$1,500,000), provided however that such Holder may not receive more than  
28 one hundred percent (100%) of the principal amount of its Allowed Claim.

1 Holders of Allowed Class 3 General Unsecured Claims are not entitled to interest on account of  
2 their claims. Distribution to Holders of Allowed Class 3 General Unsecured Claims will be made  
3 pursuant to Section 8.2(b) of the Plan.

4 On the Effective Date, assuming that Class 3 votes in favor of the Plan, the Secured Lenders  
5 shall waive any distribution on account of their Class 3 General Unsecured Claims, which are  
6 Deficiency Claims, as established or determined by the heretofore entered 9019 Order or otherwise.

7 Class 3 General Unsecured Claims are Impaired under the Plan. Therefore, Holders of Allowed  
8 Class 3 General Unsecured Claims are entitled to vote to accept or reject the Plan.

9 **d. Class 4 – Construction Defect Claims.**

10 Class 4 consists of Construction Defect Claims against Debtor. On the Effective Date, liability  
11 of Debtor for all Class 4 Construction Defect Claims shall be assumed by, and channeled pursuant to  
12 an injunction of the Bankruptcy Court to, the Construction Defect Trust. ~~All~~ Except as otherwise set  
13 forth below with respect to the Cash Out Payments, if any, all Class 4 Construction Defect Claims shall  
14 be processed, liquidated, and paid pursuant to the terms and provisions of the TDP, and, ~~except for~~  
15 ~~those for which the Cash Out Election was made and as provided below in this Section 2.3(d) regarding~~  
16 ~~Class 4 Claims for which the Cash Out Election was not made,~~ the Construction Defect Trustee will  
17 determine, subject to the terms of the Construction Defect Trust Declaration and the TDP, whether a  
18 Class 4 Construction Defect Claim is an Allowed Claim for purposes of distributions on account  
19 thereof from the Construction Defect Trust. The sole recourse of the Holder of a Class 4 Construction  
20 Defect Claim shall be against the corpus of the Construction Defect Trust, and such Holder shall have  
21 no rights whatsoever at any time to assert such Class 4 Construction Defect Claim against Debtor, the  
22 Estate, Reorganized Debtor or the Assets vested in Reorganized Debtor upon confirmation of the Plan.  
23 Without limiting the foregoing, on the Effective Date, all Holders of Class 4 Construction Defect  
24 Claims shall be permanently and forever stayed, restrained, and enjoined from taking any actions  
25 against Reorganized Debtor ~~or its Affiliates~~, Debtor ~~or its Affiliates~~, the Estate, the Assets, the  
26 Distribution Agent, and the Professionals ~~and any of their Related Persons~~ or their respective assets and  
27 property for the purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or  
28 with respect to any Class 4 Construction Defect Claim. On the Effective Date, the Construction Defect

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1 Trust will be funded with the Construction Defect Trust Contribution. In addition, there will be  
 2 transferred to the Construction Defect Trust various rights and causes of action that could augment the  
 3 corpus of the Construction Defect Trust and the amount ultimately distributed to Holders of Allowed  
 4 Class 4 Construction Defect Claims.

5 The Class 4 Ballot provided to Holders of Class 4 Construction Defect Claims includes the  
 6 option for such Holders to make the Cash Out Election. ~~Each~~ So long as at least eighty percent (80%)  
 7 in number of the Holders of Class 4 Construction Defect Claims actually vote to accept the Plan, each  
 8 Holder of a Construction Defect Claim who makes the Cash Out Election shall: (i) be mailed a Cash  
 9 Out Payment by the Construction Defect Trust (funded from the Construction Defect Trust  
 10 Contribution) within sixty (60) days of the Effective Date at the address to which the Class 4 Ballot  
 11 was mailed unless a different address is provided on such Holder's completed Class 4 Ballot; (ii) not  
 12 have any further right to distribution on account of any Class 4 Construction Defect Claim from the  
 13 Construction Defect Trust, Debtor, Reorganized Debtor or otherwise; and (iii) grant the Cash Out  
 14 Release effective immediately upon receipt of the Cash Out Payment without any further action or  
 15 approval. The Class 4 Construction Defect Claim of any Holder who makes the Cash Out Election  
 16 shall be deemed Allowed in the amount of the Cash Out Payment without further approval of the  
 17 Bankruptcy Court or action on the part of Debtor, Reorganized Debtor, the Construction Defect Trust,  
 18 the Construction Defect Trustee or the Holder, and such Allowed Class 4 Construction Defect Claim  
 19 shall be deemed satisfied upon receipt by the Holder of the Cash Out Payment. If the Plan is not  
 20 accepted by at least eighty percent (80%) in number of the Holders of Class 4 Construction Defect  
 21 Claims, there shall be no Cash Out Election available and the Claims of all Holders of Class 4  
 22 Construction Defect Claims shall be processed, liquidated and paid pursuant to the terms and  
 23 provisions of the TDP.

24 ~~Class 4~~ Class 4 Construction Defect Claims are Impaired under the Plan. Holders of Class 4  
 25 Construction Defect Claims who make the Cash Out Election will be deemed to have Allowed Claims  
 26 for purposes of voting on the Plan and are entitled to vote to accept or reject the Plan. The votes of  
 27 Holders of Class 4 Construction Defect Claims who do not make the Cash Out Election ~~must seek~~  
 28 ~~temporary allowance of their Claims pursuant to Bankruptcy Rule 3018(a) or they will not be entitled~~

1 ~~to vote to accept or reject the Plan~~ will be tabulated for purposes of voting on the Plan in the amount of  
 2 \$1.00 unless the Bankruptcy Court enters an order pursuant to Bankruptcy Rule 3018(a) temporarily  
 3 allowing any such Claim(s). HOLDERS OF CLASS 4 CONSTRUCTION DEFECT CLAIMS  
 4 WHO HAVE NOT FILED A PROOF OF CLAIM AND WHO DO NOT VOTE WILL  
 5 EFFECTIVELY BE DELEGATING TO THE FUTURES REPRESENTATIVE THEIR RIGHT  
 6 TO VOTE TO ACCEPT OR REJECT THE PLAN. THE FUTURES REPRESENTATIVE  
 7 INTENDS TO VOTE IN FAVOR OF THE PLAN ON BEHALF OF THE HOLDERS OF  
 8 CLASS 4 CONSTRUCTION DEFECT CLAIMS WHO HAVE NOT VOTED THEMSELVES,  
 9 THEREBY GRANTING THE NON-DEBTOR RELEASE SET FORTH IN SECTION 12.4(B)  
 10 OF THE PLAN ON BEHALF OF SUCH HOLDERS.

11 **e. Class 5 – Bond Claims.**

12 Class 5 consists of all Bond Claims against Debtor. Bond Claims will be paid in the ordinary  
 13 course of Reorganized Debtor’s business.

14 Class 5 is not Impaired. Holders of Allowed Class 5 Bond Claims are conclusively deemed to  
 15 have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Therefore, the Holders of  
 16 Allowed Class 5 Bond Claims are not entitled to vote to accept or reject the Plan.

17 **f. Class 6 – Old Equity Interests.**

18 Class 6 consists of all Old Equity Interests. Holders of Class 6 Interests shall not receive or  
 19 retain any property on account of such Old Equity Interests under the Plan. Upon the Effective Date,  
 20 all Old Equity Interests shall be extinguished and canceled without further action by Debtor or notice to  
 21 Holders of Old Equity Interests being necessary.

22 Class 6 Interests are Impaired under the Plan. Because the Holders of Old Equity Interests are  
 23 deemed not to have accepted the Plan pursuant to Bankruptcy Code section 1126(g), such Holders are  
 24 therefore not required to vote on the Plan.

25 **C. Means of Implementation of Plan.**

26 **1. Plan Implementation.**

27 The Plan shall be implemented in all respects in a manner that is consistent with the terms and  
 28 conditions of the Operative Documents, the Lock-Up and Settlement Letter Agreement, the DIP

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1 Financing Order, and the requirements of section 1123(a) and other applicable provisions of the  
 2 Bankruptcy Code. Without limiting the generality of the foregoing, the New Capital Contribution shall  
 3 be used to fund the Plan and shall be distributed or applied in the manner necessary to: (i) provide all  
 4 required Confirmation Funds for Distribution pursuant to the Plan; (ii) fund the Construction Defect  
 5 Trust Contribution; (iii) satisfy the costs, expenses, required payments and entitlements outlined in the  
 6 Plan on the Effective Date, or pursuant to the TDP; and (iv) provide Reorganized Debtor and the  
 7 Construction Defect Trust with working capital and funding for operations and Plan needs. On the  
 8 Effective Date, that portion of the New Capital Contribution to be used for the Confirmation Funds  
 9 shall be turned over to the Distribution Agent for Distribution pursuant to the Plan and the Construction  
 10 Defect Trust Contribution shall be turned over to the Construction Defect Trustee.

11 On the Effective Date the DIP Lender shall make the New Capital Contribution by funding the  
 12 maximum amount of the DIP Loan by payment of Cash to Reorganized Debtor and the Construction  
 13 Defect Trust in an aggregate amount equal to the difference between (x) the maximum amount of the  
 14 DIP Loan of ten million dollars (\$10,000,000), and (y) the outstanding amount of the DIP Loan  
 15 advanced and paid to Debtor prior to the Effective Date. The DIP Lender shall, thereupon, forgive,  
 16 release and discharge the DIP Loan and Liens securing same in consideration of its receipt of the  
 17 Equity Interests in Reorganized Debtor pursuant to the Plan and ~~benefit for the protection of the~~  
 18 ~~permanent injunction to be issued against suit by Class 4 members~~ for the protection of the releases  
 19 granted by Creditors voting to accept the Plan. The amount of the New Capital Contribution will not  
 20 change regardless of the voting results for Class 4—if less than eighty percent (80%) in number of the  
 21 Holders of Class 4 Construction Defect Claims actually vote to accept the Plan, then \$1,000,000 (of the  
 22 \$10,000,000 in funding from the DIP Lender) that otherwise would have gone into the Construction  
 23 Defect Trust will instead go to Reorganized Debtor to provide Reorganized Debtor with additional  
 24 working capital.

25 **2. Issuance of Equity Interests.**

26 On the Effective Date, Old Equity Interests shall be extinguished, canceled, terminated and of  
 27 no force and effect thereafter. In consideration of the New Capital Contribution, one hundred percent  
 28 (100%) of the New Equity Interests in Reorganized Debtor shall be issued to the DIP Lender (subject

1 to a pledge thereof in favor of the Secured Lenders to secure any obligations of the borrowers under the  
2 Term Loan). The issuance of the New Equity Interests and the Distribution thereof shall be exempt  
3 from registration under applicable securities laws pursuant to Bankruptcy Code section 1145(a).

4 **3. Disposition of Assets and Equity Interests.**

5 On the Effective Date (as more fully set forth in Article XII of the Plan), without any further  
6 action, Reorganized Debtor will be vested with all of Debtor’s Assets, free and clear of all Claims,  
7 Liens and Old Equity Interests (except for Liens provided or authorized pursuant to the Plan).

8 **4. Assumption of Liabilities and Assumed Contracts.**

9 On the Effective Date, unless such Claims shall be paid on or prior to such date, Reorganized  
10 Debtor shall be deemed to have assumed any Claim that is an Administrative Claim, a Priority Tax  
11 Claim or a Priority Claim (including any such Claims that are Disputed Claims or with respect to  
12 which any applicable period for asserting a Claim has not expired).

13 The Plan provides that Debtor/Reorganized Debtor shall be deemed to have assumed each  
14 Assumed Contract as of the Effective Date. Exhibit E attached to this Disclosure Statement contains a  
15 list of Assumed Contracts and any proposed Cure amount associated therewith.

16 **5. Corporate Actions.**

17 **a. Adoption of Reorganized Debtor’s Bylaws.**

18 On the Effective Date and without further order of the Bankruptcy Court or need for corporate  
19 approval, Reorganized Debtor’s Bylaws shall supersede and replace all other corporate agreements and  
20 bylaws previously governing Debtor.

21 **b. Renaming Reorganized Debtor and Authority to Execute Operative**  
22 **Documents.**

23 The Confirmation Order shall, among other things, constitute an Order authorizing the  
24 managers, officers, and agents of Debtor and Reorganized Debtor to execute and deliver the Operative  
25 Documents, as applicable (to the extent they have not already been executed and delivered), including  
26 without limitation all documents necessary to, on or prior to the Effective Date, rename Reorganized  
27 Debtor, at the option and in the sole discretion of Reorganized Debtor, without requiring any further  
28

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1 corporate authorizations and notwithstanding the requirements under any applicable non-bankruptcy  
2 law.

3 **6. Directors and Officers.**

4 The current officers of AWDI shall continue in such positions after the Effective Date with  
5 Reorganized Debtor. [See Exhibit I attached to this Disclosure Statement.](#)

6 **7. Exemption from Certain Transfer Taxes and Further Transactions.**

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

11 **8. Final Decree.**

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

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

17 (b) All adversary proceedings and contested matters pending before the Bankruptcy  
18 Court have been resolved by a Final Order.

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

23 (d) All Distributions to be made to Holders of Allowed Claims or Allowed [Class 4](#)  
24 Construction Defect Claims shall have been made by the Distribution Agent, in accordance with the  
25 requirements of the Plan and to Holders of Allowed [Class 4](#) Construction Defect Claims by the  
26 Construction Defect Trustee pursuant to the TDP.

27 **9. Effectuating Documents, Further Transactions.**

28

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1 On and after the Effective Date, Debtor and its agents, officers and members, are authorized to  
2 and may issue, execute, deliver, file or record such contracts, securities, instruments, releases and other  
3 agreements or documents and take such actions as may be necessary or appropriate to effectuate,  
4 implement and further evidence the terms and conditions of the Plan in the name of and on behalf of  
5 Debtor, as applicable, without the need for any approvals, authorizations or consents except for those  
6 expressly required pursuant to the Plan.

7 **10. Post Effective Date Fees and Expenses.**

8 a. From and after the Effective Date, the Distribution Agent shall pay all Post  
9 Effective Date Fees from the Post Effective Date Fee Fund without the necessity of any approval by the  
10 Bankruptcy Court.

11 b. In the event, and to the extent, that there are not sufficient funds in the Post  
12 Effective Date Fee Fund from which to pay any of the Post Effective Date Fees, Reorganized Debtor  
13 shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy  
14 Court, pay any Post Effective Date Fees, which are not paid by the Distribution Agent from the Post  
15 Effective Date Fee Fund.

16 c. In order to seek payment of Post Effective Date Fees, each respective  
17 Professional will send its invoice to Reorganized Debtor and Distribution Agent, and Reorganized  
18 Debtor shall have ten (10) business days thereafter within which to notify the Professional and the  
19 Distribution Agent in writing that it objects to the invoice. If no objection is made within that time  
20 frame, Distribution Agent or Reorganized Debtor (as applicable) shall pay the invoice within thirty (30)  
21 days thereafter. In the event Reorganized Debtor objects and the parties are unable to resolve the  
22 objection, the Professional may bring the matter before the Bankruptcy Court for determination by  
23 motion after giving twenty-eight (28) days' notice.

24 **D. Construction Defect Trust.**

25 **1. Creation of the Construction Defect Trust and Appointment of the Construction**  
26 **Defect Trustee.**

1 a. On the Effective Date, the Construction Defect Trust will be created pursuant to  
2 the Construction Defect Trust Declaration, a copy of which is attached to this Disclosure Statement as  
3 Exhibit H.

4 b. The Construction Defect Trust shall be administered by the Construction Defect  
5 Trustee and the three (3) members of the Construction Defect Trust Advisory Board ~~who shall be~~  
6 ~~identified in the Construction Defect Trust Declaration no later than fourteen (14) days prior to the~~  
7 ~~Confirmation Hearing. The appointment of the initial Construction Defect Trustee, the Construction~~  
8 ~~Defect Trust Advisory Board and the terms of their .~~ The Construction Defect Trustee shall be James L.  
9 Moore, whose annual compensation shall be ~~subject to the approval of the Bankruptcy Court~~ \$100,000.  
10 The initial members of the Construction Defect Trust Advisory Board shall be David N. Keys for a five-  
11 year term, Lance W. Johns for a four-year term and Jerry McGuire for a three-year term. Entry of the  
12 Confirmation Order shall constitute approval of the foregoing.

13 c. The Construction Defect Trustee shall have and perform all of the rights, powers,  
14 and duties set forth in the Plan and the Construction Defect Trust Declaration.

15 d. On the Effective Date, DIP Lender shall transfer to the Construction Defect Trust  
16 the Construction Defect Trust Contribution, which shall include the Remaining Construction Defect  
17 Trust Fund, from which a portion equal to sixty percent (60%) of ~~which~~ the remaining balance after  
18 payment of any Cash Out Payments is earmarked to pay the reasonable costs and expenses associated  
19 with the administration of the Construction Defect Trust, including, but not limited to, reasonable costs  
20 and expenses to be incurred by the Construction Defect Trust in connection with the prosecution of  
21 Insurance Coverage Actions and Construction Defect Actions. Reorganized Debtor shall not be  
22 reimbursed for such transfer and shall have no further obligation to fund the Construction Defect Trust.

23 **2. Property of the Construction Defect Trust.**

24 The Construction Defect Trust will initially be funded with the Construction Defect  
25 Trust Contribution, which will be transferred to the Construction Defect Trust on the Effective Date by  
26 the DIP Lender. Notwithstanding any prohibition of assignability under applicable non-bankruptcy  
27 law, on the Effective Date, Reorganized Debtor shall be deemed to have automatically transferred to  
28 the Construction Defect Trust all of its right, title and interest in and to all of the Insurance Coverage

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1 Actions and Construction Defect Actions and the proceeds thereof, and any right, title or interest in  
 2 pursuing and receiving any and all Insurance Recoveries. In accordance with Bankruptcy Code section  
 3 1141, on the Effective Date, the transfer of the Insurance Coverage Actions, Insurance Recoveries and  
 4 Construction Defect Actions shall automatically vest in the Construction Defect Trust free and clear of  
 5 all Claims and interests for the benefit of the Holders of Allowed Class 4 Construction Defect Claims.  
 6 Notwithstanding the foregoing, Reorganized Debtor reserves the right, in its sole discretion, to retain  
 7 the Insurance Recoveries and pay the net proceeds of such recoveries (after the deduction of the  
 8 reasonable and necessary unreimbursed costs and expenses associated with obtaining such proceeds) to  
 9 the Construction Defect Trust if, after consultation with the Construction Defect Trustee, it is  
 10 determined that such retention better preserves such assets.

11 **ARTICLE VI**

12 **CONFIRMATION OF THE PLAN**

13 The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with  
 14 the technical requirements of Chapter 11, including, among other things, that (a) the Plan properly  
 15 classifies Claims and Equity Interests, (b) the Plan complies with applicable provisions of the  
 16 Bankruptcy Code, (c) Debtor has complied with applicable provisions of the Bankruptcy Code,  
 17 (d) Debtor has proposed the Plan in good faith and not by any means forbidden by law, (e) disclosure of  
 18 “adequate information” has been made as required by Bankruptcy Code section 1125, (f) the Plan has  
 19 been accepted by the requisite votes of Creditors in Impaired Classes (or the non-accepting Impaired  
 20 Classes have been successfully crammed-down under Bankruptcy Code section 1129(b)), (g) the Plan is  
 21 in the “best interests” of all Holders of Claims or Interests in each Impaired Class that has not  
 22 unanimously accepted the Plan, and (h) all fees and expenses payable under 28 U.S.C. § 1930, as  
 23 determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides  
 24 for the payment of such fees on the Effective Date.

25 **A. Voting Eligibility.**

26 Under the Bankruptcy Code, only Holders of Claims and Equity Interests in Classes that are  
 27 “Impaired” (as that term is defined in Bankruptcy Code section 1124) under the Plan are entitled to vote  
 28 to accept or reject the Plan. Generally speaking, a Class of Claims or Interests is Impaired if the Plan

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1 modifies the legal, equitable or contractual rights of Holders of Claims or Equity Interests in the Class  
2 (other than by curing defaults and reinstating debt). Under Bankruptcy Code section 1126(f), Classes of  
3 Claims and Equity Interests that are unimpaired are conclusively presumed to have accepted the Plan  
4 and are not entitled to vote on the Plan. Under Bankruptcy Code section 1126(g), Classes of Claims  
5 and Equity Interests whose Holders will neither receive nor retain any property under the Plan are  
6 deemed to have rejected the Plan and are not entitled to vote on the Plan. An Impaired Class of Claims  
7 will have accepted the Plan if (a) the Holders (other than any Holder designated under Bankruptcy Code  
8 section 1126(e)) of at least two-thirds (2/3) in amount of the Allowed Claims actually voting in such  
9 Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under  
10 Bankruptcy Code section 1126(e)) of more than one-half (1/2) in number of the Allowed Claims  
11 actually voting in such Class have voted to accept the Plan. As noted above, the Plan utilizes five  
12 Classes of Claims and one Class of Equity Interests. Classes 1 and 5 are not Impaired and are not  
13 entitled to vote to accept or reject the Plan. Classes 2, 3 and 4 are Impaired and are entitled to vote to  
14 accept or reject the Plan. Class 6 is deemed to reject the Plan.

15 The Solicitation Procedures approved pursuant to the Solicitation Order (and attached thereto as  
16 Exhibit “A”) establish criteria by which Holders of Claims in Classes 2, 3 and 4 will be entitled to vote  
17 to accept or reject the Plan and in what amount(s).

18 A Ballot to be used to accept or reject the Plan has been enclosed with all copies of this  
19 Disclosure Statement mailed to Holders of Claims in Classes 2, 3 and 4.

20 **B. Voting Instructions.**

21 THE PERIOD DURING WHICH BALLOTS WITH RESPECT TO THE PLAN WILL BE  
22 ACCEPTED BY DEBTOR WILL TERMINATE AT **3:00 P.M. PREVAILING PACIFIC TIME ON**  
23 **JANUARY 4, ON SEPTEMBER 11, 2012-2013** (THE “VOTING DEADLINE”). EXCEPT TO THE  
24 EXTENT DEBTOR SO DETERMINES OR AS PERMITTED BY THE BANKRUPTCY COURT,  
25 BALLOTS THAT ARE RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE  
26 ACCEPTED OR USED BY DEBTOR IN CONNECTION WITH DEBTOR’S REQUEST FOR  
27 CONFIRMATION OF THE PLAN (OR ANY PERMITTED MODIFICATION THEREOF).

28 TO BE COUNTED, YOUR BALLOT MUST BE COMPLETELY FILLED IN, SIGNED,

1 AND TRANSMITTED IN THE MANNER SPECIFIED IN THE BALLOT SO THAT IT IS  
2 RECEIVED BY THE VOTING DEADLINE. PLEASE FOLLOW CAREFULLY ALL  
3 INSTRUCTIONS CONTAINED IN THE BALLOT. ANY BALLOTS RECEIVED WHICH DO  
4 NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE  
5 COUNTED AS ACCEPTING THE PLAN.

6 If you have any questions about the procedure for voting, or if you did not receive a Ballot,  
7 received a damaged Ballot, or have lost your Ballot, or if you would like any additional copies of this  
8 Disclosure Statement, please contact GCG, at:

9 AW Bankruptcy Administration  
10 c/o GCG, Inc.  
11 PO Box 9748  
12 Dublin, OH 43017- 5648  
13 Telephone Hotline: (877) 604-9532

14 **BALLOTS MUST BE DELIVERED BY FIRST CLASS MAIL, OVERNIGHT DELIVERY**  
15 **OR HAND DELIVERY AT THE FOLLOWING ADDRESSES:**

16 By First Class Mail:  
17 AW Bankruptcy Administration  
18 c/o GCG, Inc.  
19 PO Box 9748  
20 Dublin, OH 43017- 5648

21 By Overnight Delivery or Hand Delivery:  
22 AW Bankruptcy Administration  
23 c/o GCG, Inc.  
24 5151 Blazer Parkway, Suite A  
25 Dublin, OH 43017-9306

26 In the event that Claims or Equity Interests may be (or have been) transferred among different  
27 parties, Bankruptcy Rule 3018 authorizes the Bankruptcy Court to fix a date (the “Voting Record  
28 Date”) upon which the Holder of a particular Claim or Equity Interest as of that Voting Record Date is  
identified as the party entitled to vote such Claim or Equity Interest to accept or reject the Plan. For  
example, if the Voting Record Date is Wednesday, and Party A (as the current Holder of Claim 1)  
transfers Claim 1 to Party B effective on Thursday, then Party A (and not Party B) is entitled to vote  
Claim 1 to accept or reject the Plan. Conversely, if the Voting Record Date was Friday instead, and  
Party A still transfers Claim 1 to Party B effective on Thursday, then Party B is entitled to vote Claim 1

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1 to accept or reject the Plan. Consistent with the provisions of Bankruptcy Rule 3018, Debtor is seeking  
2 to fix the Voting Record Date as 5:00 P.M., prevailing Pacific Time, on ~~AUGUST 10~~DECEMBER 3,  
3 2012.

4 **C. Confirmation Hearing.**

5 Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice, to hold a hearing  
6 on Confirmation of the Plan after the Ballots have been cast. Bankruptcy Code section 1128(b)  
7 provides that any party in interest may object to Confirmation of the Plan.

8 THE BANKRUPTCY COURT HAS SCHEDULED THE CONFIRMATION HEARING TO  
9 COMMENCE ON ~~SEPTEMBER 25~~JANUARY 15, 2012 AT 10:00 ~~Aa.Mm.~~ PREVAILING  
10 PACIFIC TIME BEFORE THE HONORABLE MIKE K. NAKAGAWA, UNITED STATES  
11 BANKRUPTCY JUDGE IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
12 DISTRICT OF NEVADA, IN COURTROOM 2, FOLEY FEDERAL BUILDING AND U.S.  
13 COURTHOUSE, 300 LAS VEGAS BOULEVARD SOUTH, LAS VEGAS, NEVADA 89101.

14 THE CONFIRMATION HEARING MAY BE ADJOURNED FROM TIME TO TIME BY THE  
15 BANKRUPTCY COURT WITHOUT FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT  
16 OF THE ADJOURNED DATE MADE AT THE CONFIRMATION HEARING OR ANY  
17 ADJOURNMENT THEREOF.

18 OBJECTIONS TO CONFIRMATION MUST BE FILED AND SERVED ON OR BEFORE  
19 ~~SEPTEMBER 11~~DECEMBER 28, 2012 AT 5:00 p.m. PREVAILING PACIFIC TIME IN  
20 ACCORDANCE WITH THE SOLICITATION ORDER. UNLESS OBJECTIONS ARE TIMELY  
21 SERVED AND FILED IN COMPLIANCE WITH THE SOLICITATION ORDER, THEY MAY NOT  
22 BE CONSIDERED BY THE BANKRUPTCY COURT.

23 At the Confirmation Hearing, the Bankruptcy Court will determine, among other things,  
24 whether the following Confirmation requirements specified in Bankruptcy Code section 1129 have  
25 been satisfied:

- 26 (a) The Plan complies with the applicable provisions of the Bankruptcy Code.
- 27 (b) Debtor has complied with the applicable provisions of the Bankruptcy Code.
- 28 (c) The Plan has been proposed in good faith and not by any means proscribed by

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1 law.

2 (d) Any payment made or promised by Debtor for services or for costs and  
3 expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and  
4 incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such  
5 payment made before the Confirmation of the Plan is reasonable or, if such payment is to be  
6 fixed after Confirmation of the Plan, such payment is subject to the approval of the Bankruptcy  
7 Court as reasonable.

8 (e) Each Holder of an Impaired Claim either has accepted the Plan or will receive or  
9 retain under the Plan on account of such Holder's Claims, property of a value, as of the  
10 Distribution Date, that is not less than the amount that such Holder would receive or retain if  
11 Debtor's Estate was liquidated on such date under chapter 7 of the Bankruptcy Code.

12 (f) Each Class of Claims has either accepted the Plan or is not Impaired under the  
13 Plan. As to Classes that are deemed to reject the Plan, see "Cramdown," Section D(5), below.

14 (g) Except to the extent that the Holder of a particular Claim has agreed to a  
15 different treatment of such Claim, the Plan provides that Allowed Administrative Claims,  
16 Allowed Priority Claims and Allowed Priority Tax Claims will be paid in full.

17 (h) At least one Class of Claims has accepted the Plan, determined without  
18 including any acceptance of the Plan by any insider holding a Claim in such Class.

19 (i) Confirmation of the Plan is not likely to be followed by the need for further  
20 financial reorganization or liquidation of Reorganized Debtor, unless such further  
21 reorganization or liquidation is proposed in the Plan.

22 (j) All fees payable under 28 U.S.C. § 1930 as determined by the Court at the  
23 Confirmation Hearing have been paid or the Plan provides for payment of all such fees on the  
24 Plan Effective Date.

25 (k) The Plan addresses payment of retiree benefits, if any, in accordance with  
26 Bankruptcy Code section 1114.

27 Debtor submits that, upon acceptance of the Plan by Class 2 (to which the Secured Lenders have  
28 agreed pursuant to (and subject to the terms of) the Lock-Up and Settlement Letter Agreement), the

1 Plan will satisfy all of the applicable statutory requirements of chapter 11 of the Bankruptcy Code  
2 (whether by virtue of the Plan's acceptance by, or satisfaction of the cram-down requirements for, all  
3 Impaired Classes), that Debtor has complied or will have complied with its obligations as debtor in  
4 possession, and that the Plan is being proposed and will be submitted to the Bankruptcy Court in good  
5 faith. Certain of the requirements for Confirmation of the Plan under Bankruptcy Code section 1129  
6 are discussed in greater detail below.

7 **D. Confirmation Requirements.**

8 **1. Classification.**

9 Bankruptcy Code section 1122 sets forth the requirements relating to classification of claims.  
10 Bankruptcy Code section 1122(a) provides that claims or equity interests may be placed in a particular  
11 class only if they are substantially similar to the other claims or equity interests in that class. Debtor  
12 believes that all Classes under the Plan satisfy the requirements of Bankruptcy Code section 1122(a)  
13 because none of the Classes under the Plan contain Claims or Equity Interests that are not substantially  
14 similar to each other.

15 **2. Acceptance by Impaired Classes.**

16 GCG will be responsible for tabulating all validly executed Ballots received prior to the Voting  
17 Deadline for purposes of determining whether each Impaired voting Class has accepted or rejected the  
18 Plan. Bankruptcy Rule 3018(b) prescribes the conditions that must be satisfied in order to count the  
19 ballots cast with respect to a plan prior to the commencement of a Chapter 11 case. The rule requires  
20 that for the ballot of a creditor to count (i) a Chapter 11 plan and a disclosure statement must be  
21 distributed to substantially all creditors of the same class, (ii) the time prescribed for voting on such a  
22 plan must not be unreasonably short, and (iii) the solicitation must be conducted in compliance with  
23 Bankruptcy Code section 1126, which section requires that the solicitation be conducted in compliance  
24 with all applicable nonbankruptcy laws, rules, or regulations or, if there are no such applicable laws,  
25 rules, or regulations, that the disclosure statement for such plan contains "adequate information."  
26 Under Bankruptcy Code section 1125, "adequate information" is defined as information of a kind and  
27 in sufficient detail to the extent it is reasonably practicable in light of the nature and history of a  
28 company and the condition of such company's books and records, that would enable a hypothetical

1 reasonable investor typical of holders of claims or equity interests of the relevant class to make an  
2 informed judgment about the plan.

3 Debtor submits that all the requirements of Bankruptcy Rule 3018(b) will be satisfied. Debtor  
4 is soliciting votes from the Voting Record Date Holders of Impaired Claims in Classes 2, 3 and 4  
5 pursuant to the Solicitation Order. Holders of Claims in Classes 1 and 5 are not Impaired and not  
6 entitled to vote to accept or reject the Plan. Holders of Old Equity Interests in Class 6 neither receive  
7 nor retain anything under the Plan and are deemed to reject the Plan. Debtor further submits that this  
8 Disclosure Statement contains adequate information within the meaning of Bankruptcy Code section  
9 1125 and that solicitation of votes in connection with the Plan will be in accordance with Bankruptcy  
10 Code section 1126 pursuant to the Solicitation Order. As noted above, Debtor has addressed the  
11 concerns articulated by the Bankruptcy Court regarding inadequate disclosure of self-insured retention  
12 amounts and the provisions of the Construction Defect Trust by: (i) attaching a copy of the  
13 Construction Defect Trust Declaration and the TDP to this Disclosure Statement as Exhibit H;  
14 (ii) attaching a list of Debtor's self-insured retention amounts to this Disclosure Statement as Exhibit J;  
15 and (iii) expanding the discussion of Debtor's insurance matters in Article VII, Section B below.

16 **3. Best Interests Test.**

17 In order for the Plan to be confirmed, the Bankruptcy Court must find with respect to any  
18 Impaired Class that has not unanimously voted to accept the Plan that any Holder of a Claim who votes  
19 to reject the Plan will receive or retain under the Plan on account of such Claim property that has a  
20 value, as of the Effective Date of the Plan, that is not less than the value of the distribution each such  
21 Holder would receive or retain if Debtor's Estate was liquidated on the Effective Date under chapter 7  
22 of the Bankruptcy Code. To make this finding, the Bankruptcy Court must: (a) evaluate the estimated  
23 Cash proceeds (the "Liquidation Proceeds") that a chapter 7 trustee would generate from liquidating  
24 Debtor's assets if the Chapter 11 Case was converted to a case under chapter 7 of the Bankruptcy  
25 Code; (b) evaluate the estimated distribution ("Liquidation Distribution") that each non-accepting  
26 Holder of a Claim or Interest would receive from the Liquidation Proceeds under the priority scheme  
27 dictated in, inter alia, Bankruptcy Code sections 725 and 726; and (c) compare each rejecting Holder's  
28 Liquidation Distribution to the distribution under the Plan ("Plan Distribution") that such Holder would

1 receive if the Plan is confirmed and consummated.

2 Allowed Claims in Classes 1 and 5 are not Impaired and therefore deemed to accept the Plan  
3 unanimately (thereby rendering the “best interests” test inapplicable). The Secured Lenders have  
4 agreed to vote their Allowed Claims in Class 2 to accept the Plan pursuant to (and subject to the terms  
5 of) the Lock-Up and Settlement Letter Agreement (thereby making the acceptance by Class 2  
6 unanimous and rendering the “best interests” test inapplicable).

7 Only a negligible (at best) Liquidation Distribution would be made to Holders of Allowed  
8 Claims in Class 3 (other than the Secured Lenders) given (i) the joint and several nature of the Secured  
9 Lenders’ Secured Claims, (ii) the size of the Secured Lenders’ unsecured Deficiency Claims, and (iii)  
10 the fact that the Secured Lenders’ settlement of the amount of their Secured Claims and, assuming  
11 Class 3 votes as a Class to accept the Plan, waiver of distribution on account of their unsecured  
12 Deficiency Claims pursuant to the Lock-Up and Settlement Letter Agreement would not be effective in  
13 a chapter 7 liquidation. ~~Class 4 Claims would be treated like Class 3 Claims in a chapter 7 liquidation  
14 and likewise would receive a negligible (at best) Liquidation Distribution.~~

15 Class 4 Construction Defect Claims would be treated like Class 3 General Unsecured Claims in  
16 a chapter 7 liquidation and for the same reasons would receive a negligible (at best) Liquidation  
17 Distribution. Moreover, the Plan provides a superior opportunity for recovery by Holders of Class 4  
18 Construction Defect Claims by (i) establishing the Construction Defect Trustee as a fiduciary with the  
19 dedicated duty to maximize returns to the Holders of Class 4 Construction Defect Claims as  
20 beneficiaries of the Construction Defect Trust; (ii) providing at least \$500,000 in cash (increasing up to  
21 \$1,500,000 in cash if at least eighty percent (80%) in number of the Holders of Class 4 Construction  
22 Defect Claims actually vote to accept the Plan) to fund the administration of the Construction Defect  
23 Trust; (iii) providing for the assignment to the Construction Defect Trust of the Insurance Coverage  
24 Actions, Insurance Recoveries and Construction Defect Actions, which will be pursued for the benefit  
25 of the Holders of Allowed Class 4 Construction Defect Claims; and (iv) making the Cash Out Election  
26 available (if at least eighty percent (80%) in number of the Holders of Class 4 Construction Defect  
27 Claims actually vote to accept the Plan), which affords the flexibility to choose an immediate cash  
28 disbursement rather than having any potential Class 4 Construction Defect Claims liquidated pursuant

1 to the TDP (or some other process if the Plan was not confirmed).

2 Although the Plan does not conclusively determine the availability of insurance coverage for  
3 Class 4 Construction Defect Claims or the applicability of any self-insured retention amounts, it does  
4 provide the Construction Defect Trustee with the authority and funding to address these issues in an  
5 organized and consolidated fashion on behalf of the Holders of Allowed Class 4 Construction Defect  
6 Claims. Without the establishment of the Construction Defect Trust, each Holder of Class 4  
7 Construction Defect Claim would be left to its own devices to pursue its Claim and obtain any  
8 recovery, potentially in competition with other Holders of similar Claims. Accordingly, Debtor and the  
9 Futures Representative have concluded that the Plan provides the best available opportunity for the  
10 satisfaction of Class 4 Construction Defect Claims.

11 No Liquidation Distribution would be made to Class 6 since Holders of Old Equity Interests are  
12 not entitled to receive anything when general unsecured claims are not paid in full (as would be the  
13 case in a chapter 7 liquidation).

14 Therefore, as more specifically demonstrated by the liquidation analysis attached hereto as  
15 **Exhibit “B,”** Debtor submits that the Plan satisfies the “best interests” test encompassed by  
16 Bankruptcy Code section 1129(a)(7).

17 **4. Feasibility of the Plan.**

18 Bankruptcy Code section 1129(a)(11) requires a finding that confirmation of a plan is not likely  
19 to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any  
20 successor-in-interest.

21 Based on the projections set forth in **Exhibit “C”** to this Disclosure Statement and the  
22 operational, business and other assumptions set forth therein, Debtor submits that Reorganized Debtor  
23 and the Construction Defect Trust will have the financial capability to satisfy their respective  
24 obligations following the Effective Date of the Plan, including the payment of all Cash distributions  
25 contemplated by the Plan. Therefore, Debtor submits that the Plan is feasible as required by  
26 Bankruptcy Code section 1129(a)(11).

27 **5. Confirmation Without Acceptance of All Impaired Classes - “Cramdown.”**

28

1 The Bankruptcy Code contains provisions which could enable the Bankruptcy Court to confirm  
2 the Plan, even though the Plan has not been accepted by all Impaired Classes, provided that the Plan  
3 has been accepted by at least one Impaired Class of Claims. Debtor believes that the Plan will be able  
4 to meet the statutory standards set forth in the Bankruptcy Code.

5 Bankruptcy Code section 1129(b)(1) states:

6 Notwithstanding section 510(a) of this title, if all of the applicable  
7 requirements of subsection (a) of this section other than paragraph (8) are met  
8 with respect to a plan, the court, on request of the proponent of the plan, shall  
9 confirm the plan notwithstanding the requirements of such paragraph if the  
10 plan does not discriminate unfairly, and is fair and equitable, with respect to  
each class of claims or interests that is impaired under, and has not accepted  
the plan.

11 This section makes clear that a plan must be confirmed notwithstanding the failure of an  
12 impaired class to accept the plan, so long as the plan “does not discriminate unfairly” and it is “fair and  
13 equitable” with respect to each rejecting class.

14 **a. No Unfair Discrimination.**

15 A plan does not “discriminate unfairly” if (a) the plan does not treat any rejecting class of  
16 claims or equity interests in a manner that is materially less favorable than the treatment afforded to  
17 another class with similar legal claims against or equity interests in a debtor, and (b) no class receives  
18 payments in excess of that which it is legally entitled to receive for its claims or equity interests.  
19 However, a plan also may satisfy this requirement even if classes of claims or equity interests that are  
20 of equal priority are receiving different treatment. The test does not require that the classes of equal  
21 priority receive identical treatment, but instead only that if there is a difference in treatment that such  
22 difference be “fair.”

23 While the Plan provides different treatment for the Holders of Class 3 General Unsecured  
24 Claims and Class 4 Construction Defect Claims, Debtor submits that this difference is fairly based on  
25 (1) the different nature of the claims, in that ~~General Unsecured Claims (generally speaking) do not~~  
26 ~~have long term contingencies with wide ranges of potential size and number of allowed claims (and~~  
27 ~~therefore are susceptible to prompt adjudication and payment as provided in the Plan), whereas most (if~~  
28 not all) Class 3 General Unsecured Claims will already have been liquidated and Allowed or

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1 Disallowed as of the Effective Date, whereas Class 4 Construction Defect Claims (generally speaking)  
 2 may have long term contingencies with wide ranges of potential size and number of ~~a~~Allowed claims  
 3 (and therefore are better suited for adjudication and payment over time out of the Construction Defect  
 4 Trust in accordance with the TDP although the voluntary Cash Out Election has also been made  
 5 available to all Class 4 members); ~~if at least eighty percent (2) 80%~~ if at least eighty percent (2) 80% in number of the Holders of Class  
 6 4 Construction Defect Claims actually vote to accept the Plan); (2) Class 3 General Unsecured Claims  
 7 (generally speaking) are not covered by insurance, whereas Class 4 Construction Defect Claims  
 8 (generally speaking) are at least partially covered by insurance; ~~and~~ (subject to any applicable self-  
 9 insured retention amount); (3) the Plan provides for funding of equal amounts (\$1,500,000 to each  
 10 Class) to be allocated for the benefit of Holders of ~~General Unsecured Claims and Construction Defect~~  
 11 ~~Claims. Moreover~~ Class 3 General Unsecured Claims and Class 4 Construction Defect Claims (as long  
 12 as at least eighty percent (80%) in number of the Holders of Class 4 Construction Defect Claims  
 13 actually vote to accept the Plan); and (4) regardless of whether eighty percent (80%) or more in number  
 14 of the Holders of Class 4 Construction Defect Claims actually vote to accept the Plan, the Construction  
 15 Defect Trust will also receive rights to Insurance Coverage Actions, Insurance Recoveries and  
 16 Construction Defect Actions. Moreover, the Cash Out Election, which is similar to the option offered  
 17 to a traditional unsecured convenience class, provides instant liquidity to those members of Class 4 that  
 18 make the Cash Out Election if at least eighty percent (80%) in number of the Holders of Class 4  
 19 Construction Defect Claims actually vote to accept the Plan. Finally, no Class of Claims will receive  
 20 payments or property with an aggregate value greater than the aggregate value of the Allowed Claims  
 21 in such Class. Therefore, Debtor submits that if there are any rejecting Classes of Claims, the Plan  
 22 nevertheless satisfies the “no unfair discrimination” requirement.

23 **b. Fair And Equitable Test.**

24 The Bankruptcy Code sets forth three different standards for establishing that a plan is “fair and  
 25 equitable” with respect to a rejecting class, depending on whether the class is comprised of secured or  
 26 unsecured claims or equity interests. In general, Bankruptcy Code section 1129(b) permits  
 27 confirmation notwithstanding non-acceptance by an impaired class if that class and all classes junior to  
 28 it are treated in accordance with the “absolute priority” rule, which requires either that the dissenting



1 class be paid in full, or if it is not, that no junior class receives or retains property under the plan. In  
2 addition, the “fair and equitable” standard has been interpreted to prohibit any class senior to a  
3 rejecting class from receiving under a plan more than one hundred percent (100%-) of its allowed  
4 claims.

5 Since Holders of Equity Interests in Class 6 are neither entitled to receive nor retain anything  
6 under the Plan on behalf of such Equity Interests, the Plan is fair and equitable as to Classes 3 and 4.  
7 Classes 1 and 5 are not Impaired, and therefore their treatment must be deemed to be fair and equitable.  
8 The Secured Lenders comprising Class 2 have unanimously agreed to support and vote in favor of the  
9 Plan pursuant to (and subject to the terms of) the Lock-Up and Settlement Letter Agreement.  
10 Therefore, Debtor submits that the Plan satisfies the “fair and equitable” requirement with respect to  
11 any rejecting Class(es).

12 **ARTICLE VII**

13 **CERTAIN RISK FACTORS TO BE CONSIDERED**

14 Although Debtor believes that the Plan is confirmable and feasible, there are some risks that  
15 should be considered. Certain specific risk factors are described below. Parties in interest should read  
16 and carefully consider the following factors, as well as the other information set forth in this Disclosure  
17 Statement (and the documents delivered together herewith and/or incorporated by reference herein),  
18 before deciding whether to vote to accept or to reject the Plan.

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19  
20  
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28

1 **A. The Extent of any Construction Defect(s) is Undetermined.**

2 ~~For the reasons set forth above, Debtor has not been~~ Other than a very small number of lawsuits  
3 pending as of the Petition Date and a handful of Claims filed as of the Bar Date, Debtor is not able to  
4 identify which (if any) homes may contain ~~any~~ construction defect(s). Debtor also is not able to predict  
5 or estimate the extent of defectiveness (if any) or the cost to remediate any such defectiveness. As a  
6 result, the number and amount of potential Class 4 Construction Defect Claims that could be asserted  
7 based on construction defects is uncertain and could vary within a very large range. The total amount  
8 of Class 4 Construction Defect Claims and the total liability for such claims will have a significant  
9 impact on recoveries for Holders of Class 4 Construction Defect Claims.

10 **B. Insurance Recoveries are Uncertain.**

11 The success of the Construction Defect Trust in recovering proceeds of insurance policies is  
12 uncertain. Debtor's insurance policies are subject to numerous terms and conditions, including  
13 deductibles or self-insured retention ("SIR") amounts that may be determined on a "per occurrence"  
14 basis. For the insurance policy in place as of the Petition Date, the applicable SIR is \$50,000 per  
15 occurrence up to an aggregate total of \$500,000. For certain prior years, the per occurrence SIR  
16 amounts per policy year are as high as \$3,000,000 with no aggregate limit. A chart identifying Debtor's  
17 per occurrence SIR amounts is attached hereto as Exhibit J. The insurers may contest claims made by  
18 the Construction Defect Trust on a number of grounds, including that insurance proceeds will not be  
19 made available unless and until actual payment in the amount of the applicable SIR has been made.  
20 The Construction Defect Trust may not have sufficient funds to pay any applicable SIR amount, and  
21 resolving any such disputes may involve significant expense and delay. The amount (or lack) of  
22 success in recovering insurance proceeds could have a significant impact on recoveries for Holders of  
23 Class 4 Construction Defect Claims.

24 **C. Litigation Recoveries and Results are Highly Speculative and Uncertain.**

25 The success of the Construction Defect Trust in pursuing claims and causes of action by way of  
26 litigation is highly speculative and uncertain. Litigation may be complex and involve significant  
27 expense and delay. Furthermore, even if the Construction Defect Trust were successful in obtaining a  
28 judgment or settlement of a claim or cause of action, it may be difficult or impossible to collect. The

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1 amount (or lack) of success in litigation could have a significant impact on recoveries for Holders of  
2 Class 4 Construction Defect Claims.

3 **D. Inherent Uncertainty of Financial Projections.**

4 Projections for Reorganized Debtor and the Construction Defect Trust are attached hereto as  
5 **Exhibits “C” and “D,”** respectively. These projections are based on numerous assumptions, including  
6 the timing, Confirmation and Consummation of the Plan in accordance with its terms, the anticipated  
7 future performance of Reorganized Debtor, industry performance, general business and economic  
8 conditions and other matters, many of which are beyond the control of Reorganized Debtor and the  
9 Construction Defect Trust and some or all of which may not materialize. In addition, unanticipated  
10 events and circumstances occurring subsequent to the date that this Disclosure Statement is approved by  
11 the Bankruptcy Court may affect the actual financial performance of the Construction Defect Trust or  
12 Reorganized Debtor’s operations.

13 These variations may be material and may adversely affect the ability of Reorganized Debtor to  
14 make payments with respect to post-Effective Date indebtedness, or the ability of the Construction  
15 Defect Trust to make distributions to Holders of Class 4 Construction Defect Claims. Because the  
16 actual results achieved throughout the periods covered by the projections may vary from the projected  
17 results, the projections should not be relied upon as a guaranty, representation or other assurance of the  
18 actual results that will occur.

19 Except with respect to the projections and except as otherwise specifically and expressly stated  
20 herein, this Disclosure Statement does not reflect any events that may occur subsequent to the date  
21 hereof and that may have a material impact on the information contained in this Disclosure Statement.  
22 Neither Debtor nor Reorganized Debtor intends to update the projections for the purposes hereof; thus,  
23 the projections will not reflect the impact of any subsequent events not already accounted for in the  
24 assumptions underlying the projections.

25  
26 **~~E. No Assurance of the Occurrence of the Effective Date.~~**

27 ~~Debtor firmly believes that its Affiliates are entitled to the protection of the permanent~~  
28 ~~injunction against suits by Class 4 members given their making the DIP Loan, converting that loan to~~

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~~equity if the Plan is confirmed and contributing their causes of action against subcontractors to the Construction Defect Trust to the corpus thereof. However, no assurance can be given that a final Bankruptcy Court Order extending the protections of said permanent injunction to the Affiliates will be extant since they are not debtor entities and, in such event, there is no assurance that said condition to the occurrence of the Effective Date would be waived.~~

**ARTICLE VIII**

**CERTAIN UNITED STATES FEDERAL INCOME TAX  
CONSIDERATIONS OF THE PLAN**

**A. Introduction.**

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, HOLDERS OF CLAIMS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY HOLDERS OF CLAIMS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON HOLDERS OF CLAIMS UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A summary description of certain material United States federal income tax consequences of the Plan is provided below. This description is for informational purposes only and, due to a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. Only the principal consequences of the Plan for Holders of Claims who are entitled to vote to accept or reject the Plan are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan. No rulings or determinations of the Internal Revenue Service (“IRS”) or any other tax authorities have been or will be sought or obtained with respect to any tax consequences of the Plan, and the discussion below is not binding upon the IRS or such other authorities. No representations are being

1 made regarding the particular tax consequences of the confirmation or implementation of the Plan as to  
2 any Holder of a Claim. No assurance can be given that the IRS would not assert, or that a court would  
3 not sustain, a different position from any discussed herein.

4 The discussion of United States federal income tax consequences below is based on the Internal  
5 Revenue Code of 1986, as amended (the “IRC”), the Treasury Regulations promulgated thereunder,  
6 judicial authorities, published positions of the IRS, and other applicable authorities, all as in effect on  
7 the date hereof and all of which are subject to change or differing interpretations (possibly with  
8 retroactive effect).

9 The following discussion does not address foreign, state or local tax consequences of the Plan,  
10 nor does it purport to address the United States federal income tax consequences of the Plan to special  
11 classes of taxpayers (e.g., banks and certain other financial institutions, insurance companies, tax-  
12 exempt organizations, Holders of Claims who are (or who hold their Claims through) pass-through  
13 entities, persons whose functional currency is not the United States dollar, foreign persons, dealers in  
14 securities or foreign currency, and persons holding claims that are a hedge against, or that are hedged  
15 against, currency risk or that are part of a straddle, constructive sale or conversion transaction). The  
16 following discussion assumes that Holders of Claims hold their Claims as capital assets for United  
17 States federal income tax purposes. Furthermore, the following discussion does not address United  
18 States federal taxes other than income taxes.

19 For purposes of the following discussion, a “United States person” is any of the following:

- 20 • an individual who is a citizen or resident of the United States;
- 21 • a corporation created or organized under the laws of the United States or any state or  
22 political subdivision thereof;
- 23 • an estate, the income of which is subject to federal income taxation regardless of its  
24 source; or
- 25 • a trust that (a) is subject to the primary supervision of a United States court and which  
26 has one or more United States fiduciaries who have the authority to control all  
27 substantial decisions of the trust, or (b) has a valid election in effect under applicable  
28 United States Treasury regulations to be treated as a United States person.

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1 As used herein, the term “U.S. Holder” means a Holder of a Claim that is a United States  
2 person, the term “non-U.S. person” means a person other than a United States person and the term  
3 “Non-U.S. Holder” means a Holder of a Claim that is a non-U.S. person.

4  **Holders of Claims are strongly urged to consult their own tax advisors regarding the**  
5  **United States federal, state, local and any foreign tax consequences of the transactions described**  
6  **herein or in the Plan.**

7  **B. Certain United States Federal Income Tax Consequences to Debtor.**

8  **1. Overview of Transaction Steps.**

9 Debtor is an S corporation for federal income tax purposes. The Plan involves the following:  
10 (i) the Old Equity Interests will be canceled; (ii) in exchange for the New Capital Contribution to  
11 Reorganized Debtor and the Construction Defect Trust, the DIP Lender will receive the Equity  
12 Interests in Reorganized Debtor; (iii) the Holders of the Secured Claims will receive, in full satisfaction  
13 of, and in exchange for, their Allowed Secured Claims, a New Secured Loan evidenced by the New  
14 Secured Loan Documents, including the New Secured Notes executed by Reorganized Debtor; (iv)  
15 each Holder of an Allowed [Class 3](#) General Unsecured Claim will receive, in full satisfaction, and in  
16 exchange for, its Allowed [Class 3](#) General Unsecured Claim, its Pro Rata share of \$1,500,000; and (v)  
17 the liability of Debtor for all [Class 4](#) Construction Defect Claims will be channeled to the Construction  
18 Defect Trust and the sole recourse of the Holders of [Class 4](#) Construction Defect Claims will be limited  
19 to the corpus of the Construction Defect Trust.

20  **2. Cancellation of Debt Income (“CODI”).**

21 In general, a debtor realizes gain from the cancellation of a debt at less than its face amount (or  
22 adjusted issue price, in the case of an obligation issued at a discount from its face amount). When the  
23 debtor is an S corporation, its taxable CODI is exempt from income tax at the corporate level. Instead,  
24 the CODI of the S corporation passes through and is taken into account ratably by its shareholders.

25 Taxpayers under the jurisdiction of a bankruptcy court, however, are generally not required to  
26 include any CODI in gross income. As a consequence of such exclusion, a debtor in a bankruptcy  
27 proceeding is required to reduce certain of its tax attributes by the amount of CODI that is excluded  
28 from gross income. Such CODI will reduce the debtor’s tax attributes in the following order: (i) net

1 operating losses (“NOLs”); (ii) general business credits; (iii) minimum tax credits; (iv) capital loss  
 2 carryovers; (v) basis of property; (vi) passive activity loss and credit carryovers; and (vii) foreign tax  
 3 credit carryover. As a result of the reduction in the debtor’s tax attributes, in general, the CODI is not  
 4 permanently excluded from taxation but, is instead, deferred for later recognition.

5 In the case of an S corporation, this bankruptcy exception for excluding CODI from gross  
 6 income, as well as the required reductions of the tax attributes, is applied at the corporate level rather  
 7 than at the shareholder level. Due to the pass-through tax status of an S corporation, an S corporation  
 8 rarely possesses certain of the tax attributes set forth above, such as operating and capital loss  
 9 carryovers. Consequently, the tax attribute that is most commonly reduced for an S corporation due to  
 10 the bankruptcy exception is the basis of its property. For purposes of reducing tax attributes, a special  
 11 definition of “net operating loss” is provided for S corporations which may apply to reduce certain  
 12 suspended losses and deductions at the shareholder level.

### 13 **3. Accrued Interest.**

14 Payments made on the debts owing to the Holders of Allowed Claims that are allocable to  
 15 accrued but unpaid interest may be deductible by Reorganized Debtor in accordance with its method of  
 16 accounting used for income tax purposes, to the extent, if any, that such accrued but unpaid interest has  
 17 not previously been deducted by Debtor. To the extent that Debtor has previously taken a deduction  
 18 for accrued but unpaid interest, any amounts so deducted that are paid will not give rise to any tax  
 19 deduction to Reorganized Debtor. If such interest amounts are not paid, then such amounts will give  
 20 rise to CODI that, in the instant case, would be eligible for the exclusion from gross income due to the  
 21 exception provided for taxpayers under the jurisdiction of a bankruptcy court. As a result, in such  
 22 cases, Debtor would ordinarily be required to reduce its tax attributes to the extent of such interest  
 23 previously deducted, not paid, and discharged in the bankruptcy proceeding.

### 24 **4. Consequences Relating to Construction Defect Trust.**

25 Pursuant to the Plan, on the Effective Date, the Construction Defect Trust will be funded by  
 26 Debtor with (i) a Construction Defect Trust Contribution in the amount of ~~\$1,500,000 in cash~~either  
 27 \$1,500,000 in cash (if the Holders of at least eighty percent (80%) in number of the Holders of Class 4  
 28 Construction Defect Claims actually vote to accept the Plan) or \$500,000 (if less than eighty percent

1 (80%) in number of the Holders of Class 4 Construction Defect Claims actually vote to accept the  
2 Plan), plus (ii) various rights and causes of action. The Construction Defect Trust is intended to be  
3 treated as a Qualified Settlement Fund (“QSF”) as that term is defined by Treas. Reg. Section 1.468-1.

4 The transfer of property to a QSF is treated as a sale or exchange of property. The amount of  
5 gain or loss from the deemed sale or exchange will be determined by the amount realized over the  
6 adjusted basis of the transferor. For purposes of property transferred to a QSF, the amount realized is  
7 deemed to be the fair market value of the property on the date the transfer is made to the QSF. Any  
8 gain or loss will be capital or ordinary, depending on whether the property was a capital asset in the  
9 hands of the debtor. If such property is a capital asset, the gain or loss will be long-term if the property  
10 has been held for more than one year.

11 Upon the transfer of the Cash and various rights and causes of action to the Construction Defect  
12 Trust, Reorganized Debtor would generally be entitled to a deduction equal to the fair market value of  
13 the transferred assets at the time of the transfer.

14 **C. Tax Consequences To Creditors.**

15 As indicated in Part A of Article VIII, what follows is a summary of certain United States  
16 federal income tax consequences of the transactions contemplated by the Plan to Holders of Allowed  
17 Claims who are entitled to vote to accept or reject the Plan. These consequences (including the  
18 character, timing and amount of income, gain or loss recognized) will depend upon, among other things:  
19 (1) the manner in which a Holder acquired a Claim; (2) the length of time the Claim has been held;  
20 (3) the Holder’s method of tax accounting; (4) whether the Holder of a Claim has taken a bad debt  
21 deduction with respect to the Claim (or any portion of the Claim) in the current or prior years; and  
22 (5) (a) whether the Claim was acquired at a discount, (b) whether the Holder of a Claim has previously  
23 included in income, for tax purposes, accrued but unpaid interest with respect to the Claim, (c) whether  
24 the Claim constitutes an installment obligation for United States federal income tax purposes and (d)  
25 whether the Claim constitutes a “security” for United States federal income tax purposes. Therefore,  
26 Holders of Claims should consult their own tax advisors for information that may be relevant to their  
27 particular situations and circumstances and the particular tax consequences to them of the transactions  
28 contemplated by the Plan.

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1           **1. Tax Consequences to Certain Holders of Allowed Claims.**

2                   **a. Class 2: Secured Claims.**

3           Holders of Secured Claims will receive, in satisfaction of their Allowed Secured Claims, a New  
4           Secured Loan including New Secured Notes executed by Reorganized Debtor and payable to the order  
5           of the Secured Lenders in the aggregate principal amount of \$49,635,000, maturing on December 31,  
6           2015.

7           In general the modification of the terms of a debt instrument will be treated as an exchange of  
8           the original debt instrument for a new debt instrument if the modification of the terms is considered  
9           “significant.” Whether or not any alteration, including any deletion or addition, in whole or in part, of  
10          a legal right or obligation of the issuer or a holder of a debt instrument, will be considered a significant  
11          modification of the terms of a debt instrument will depend on all of the facts and circumstances and the  
12          legal rights and obligations provided by the new debt instrument. In the event a modification of the  
13          terms of the debt instrument is treated as an exchange (e.g., where the modification is deemed to be  
14          “significant”), the holder of the debt instrument should recognize a gain or loss upon receipt of the new  
15          debt instrument in an amount equal to the difference, if any, between the amount realized on such  
16          exchange (i.e., the issue price of the new debt instrument) and the holder’s adjusted tax basis in the  
17          original debt instrument. A modification of the terms of a debt instrument that is not deemed to be a  
18          “significant” modification will not be treated as an exchange. In a case under the jurisdiction of a  
19          bankruptcy court, if the modification of the terms of a debt instrument occurs pursuant to a plan of  
20          reorganization, such modification is deemed to occur upon the effective date of the plan.

21                   **b. Class 3: Allowed General Unsecured Claim.**

22          Each Holder of Allowed Class 3 General Unsecured Claim will receive in satisfaction of its  
23          Allowed Class 3 General Unsecured Claim, its Pro Rata share of \$1,500,000. Pursuant to the Plan and  
24          in accordance with sections Bankruptcy Code sections 502(b)(2) and 506(b), Holders of Allowed Class  
25          3 General Unsecured Claims are not entitled to interest on account of their Allowed Claims. The  
26          following discussion assumes that the Allowed Class 3 General Unsecured Claims do not constitute  
27          “securities” for federal income tax purposes.

28          In general, each Holder of an Allowed Class 3 General Unsecured Claim will recognize gain or

1 loss in an amount equal to the difference, if any, between the amount of Cash received and the  
 2 recipient's adjusted tax basis in such Claim. Any gain or loss will be capital or ordinary, depending on  
 3 whether the Claim is a capital asset in the hands of the Holder. If such Claim is a capital asset, the gain  
 4 or loss will be long-term if the Claim has been held for more than one year.

5 With respect to any accrued but unpaid interest, a Holder of an Allowed Class 3 General  
 6 Unsecured Claim may recognize a deductible loss to the extent any accrued but unpaid interest was  
 7 previously included in the Holder's gross income.

8 **c. Class 4: Construction Defect Claim.**

9 Pursuant to the Plan, all Class 4 Construction Defect Claims will be the exclusive responsibility  
 10 of the Construction Defect Trust and will be processed, liquidated and paid pursuant to the terms and  
 11 provisions of the Construction Defect Trust Distribution Procedures. The assets of the Construction  
 12 Defect Trust on the Effective Date will consist of ~~\$1,500,000 in Cash~~ either \$1,500,000 in Cash (if at  
 13 least eighty percent (80%) in number of the Holders of Class 4 Construction Defect Claims actually  
 14 vote to accept the Plan) or \$500,000 (if less than eighty percent (80%) in number of the Holders of  
 15 Class 4 Construction Defect Claims actually vote to accept the Plan), plus various rights and causes of  
 16 action transferred to the Construction Defect Trust by Debtor.

17 The Construction Defect Trust is intended to be treated as a QSF. As such, the Construction  
 18 Defect Trust will be subject to tax on its income for any taxable year at a tax rate equal to the  
 19 maximum rate for estates and trusts in effect for that taxable year. A distribution of property, if any,  
 20 from the Construction Defect Trust to Holders of Allowed Class 4 Construction Defect Claims will be  
 21 treated as a sale or exchange of the distributed property by the Construction Defect Trust. The tax  
 22 treatment of any distribution from the Construction Defect Trust to Holders of Allowed Class 4  
 23 Construction Defect Claims, include whether a distribution to a Holder of Allowed Class 4  
 24 Construction Defect Claim is includable in the Holder's gross income, and, if includable, the character  
 25 of any such income, will be determined with respect to the nature of the underlying claim. In addition,  
 26 the Construction Defect Trust will be subject to certain information reporting requirements and  
 27 withholding requirements with respect to each distribution.

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1           **2.       General Tax Considerations for Certain Holders of Allowed Claims.**

2                   **a.       Bad Debt Deduction and Worthless Securities Deduction.**

3           In general, a Holder of an Allowed Claim that is not a security for purposes of Section 165(g)  
4 of the IRC who receives in exchange, pursuant to the Plan, an amount of consideration that is less than  
5 the Holder’s tax basis in the Allowed Claim, may be entitled, in the year of receipt (or in an earlier  
6 year), to a bad debt deduction under Section 166(a) of the IRC, or may be entitled to a loss deduction  
7 under Section 165(a) of the IRC in the year of receipt. Any such loss would be limited to the Holder’s  
8 tax basis in the Allowed Claim.

9           A Holder of stock or securities whose Allowed Claim is deemed to be wholly worthless may be  
10 entitled to a worthless securities deduction under Sections 165(g) and 165(a) of the IRC. The rules  
11 governing the timing and amount of such deductions place considerable emphasis on the facts and  
12 circumstances of the Holder, the obligor, and the instrument with respect to which a deduction is  
13 claimed. Any such loss would be limited to the Holder’s tax basis in the equity interest underlying its  
14 claim.

15                   **b.       Market Discount.**

16           If a Holder of an Allowed Claim purchased the underlying security or debt obligation at a price  
17 less than its issue price, the difference would constitute “market discount” for United States federal  
18 income tax purposes. Any gain recognized by a Holder on the exchange of its Allowed Claim on the  
19 Effective Date should be treated as ordinary income to the extent of any market discount that accrued  
20 on the underlying securities or debt obligations while in the hands of the Holder. Any additional  
21 accrued but unrecognized market discount should carry over to any securities or debt obligation  
22 received in a tax-free exchange pursuant to the Plan, and should be allocated among such securities or  
23 debt obligation based upon their relative fair market values as of the Effective Date. Any gain  
24 recognized by such Holder on a subsequent disposition of such securities or debt obligation received  
25 under the Plan may be treated as ordinary income to the extent of the accrued but unrecognized market  
26 discount as of the date of the exchange.

27                   **c.       Information Reporting and Backup Withholding.**

28           Certain payments, including payments in respect of accrued interest or OID, are generally

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1 subject to information reporting by the payor to the IRS. Moreover, such reportable payments are  
2 subject to backup withholding (at a rate of 28% through 2012) in certain circumstances. Under the  
3 backup withholding rules, a Holder of an Allowed Claim may be subject to backup withholding at the  
4 applicable rate with respect to certain distributions or payments pursuant to the Plan, unless the Holder  
5 (a) falls within certain exempt categories (which generally include corporations) or (b) provides a  
6 correct U.S. taxpayer identification and certifies under penalties of perjury that the Holder is a United  
7 States person, the taxpayer identification number is correct, and the Holder is not subject to backup  
8 withholding because of a failure to report all dividend and interest income.

9 **THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF**  
10 **CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE**  
11 **FOR CONSULTATION, ADVICE AND CAREFUL TAX PLANNING WITH AND FROM A**  
12 **TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES**  
13 **ONLY AND IS NOT TAX ADVICE NOR SHOULD IT BE CONSTRUED AS SUCH. THE**  
14 **POTENTIAL TAX CONSEQUENCES ARE, IN MANY CASES, UNCERTAIN AND WILL**  
15 **VARY DEPENDING ON THE PARTICULAR CIRCUMSTANCES OF A HOLDER OF**  
16 **CLAIM. ACCORDINGLY, HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR**  
17 **TAX ADVISERS ABOUT THE UNITED STATES FEDERAL, STATE, LOCAL AND**  
18 **APPLICABLE FOREIGN INCOME, AS WELL AS OTHER TAX, CONSEQUENCES OF THE**  
19 **PLAN THAT ARE OR MAY BE RELEVANT TO THEM.**

20 **ARTICLE IX**

21 **FURTHER INFORMATION**

22 If you have any questions or require further information about the voting procedures for voting  
23 your Claim, or about the packet of material you received, or if you wish to obtain an additional copy of  
24 the Plan, the Disclosure Statement, or any Exhibits to such documents (at your own expense, unless

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27 otherwise specifically required by Bankruptcy Rule 3017(d)), please contact GCG, at:

28 AW Bankruptcy Administration

c/o GCG, Inc.  
PO Box 9748  
Dublin, OH 43017- 5648  
Telephone Hotline: (877) 604-9532

Additional information about the Chapter 11 Case, including the full docket of all pleadings filed in the Chapter 11 Case, is available at <http://www.awdevelopmentreorg.com>.

**ARTICLE X**

**ALTERNATIVE TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Case will continue rather than be converted to a chapter 7 liquidation. In fact, Debtor believes that absent Confirmation of the Plan, the likely result could be that Debtor would cease operations and any value that could be generated from Debtor’s Assets would go to satisfy its obligations to the Secured Lenders under the Term Loan. If that were to occur, the Secured Lenders likely would receive a fraction of the face amount of their Secured Claims (due to the joint and several nature of such Claims), and Holders of other Claims likely would receive no recovery. See Article VI, Section D(3) above. This is true notwithstanding any reasonable fluctuation in the going concern value of Debtor’s business because (i) the Claims of the Secured Lenders are secured by all of Debtor’s assets, and (ii) the total amount owing to the Secured Lenders significantly exceeds even the book value of Debtor’s assets.

If the Plan is not confirmed, any other party in interest can formulate a different plan of reorganization. Such a plan of reorganization might involve either a reorganization and continuation of the business of Debtor, the sale of Debtor as a going concern or an orderly liquidation of Debtor’s Estate. With respect to an alternative plan of reorganization, Debtor has examined various other alternatives in connection with the process involved in the formulation and development of the Plan. Debtor believes that the Plan, as described herein, enables Holders of Claims to realize the best recoveries under the present circumstances. In a liquidation of Debtor under chapter 11, the properties and interests in property likely would be sold in a more orderly fashion and over a more extended period of time than in a liquidation under chapter 7, probably resulting in marginally greater recoveries. Further, if a trustee were not appointed, since one is not required in a chapter 11 case, the expenses for professional fees would most likely be lower than in a chapter 7 case. However, although

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1 preferable to a chapter 7 liquidation, Debtor believes that its liquidation under chapter 11 is a much less  
2 attractive alternative because the recovery realized by Holders of Allowed Claims under the Plan is  
3 likely to be greater than their recovery under a chapter 11 liquidation. This is particularly true with  
4 respect to Holders of Claims in Class 3 and Class 4 given the seniority and amount of the Claims of the  
5 Secured Lenders and their Deficiency Claims in excess of \$100,000,000 that would substantially dilute  
6 the recovery of Class 3 and Class 4 in a liquidation but will be waived if Class 3 votes to accept the  
7 Plan and the Plan is confirmed.

8 Alternatively, if no plan can be confirmed, Debtor’s Chapter 11 Case may be dismissed. In  
9 such event, Class 2 likely would receive all of the value generated from Debtor’s assets.  
10 Administrative Claims, Priority Claims, Claims in Classes 3, 4 and 5 and Old Equity Interests (Class 6)  
11 could be wiped out and receive no distribution.

12 DEBTOR BELIEVES THAT CONFIRMATION AND IMPLEMENTATION OF THE PLAN  
13 IS PREFERABLE BECAUSE IT IS EXPECTED TO PROVIDE GREATER RECOVERIES AND  
14 INVOLVE LESS DELAY AND UNCERTAINTY AND LOWER ADMINISTRATIVE COSTS.  
15 ACCORDINGLY, DEBTOR URGES HOLDERS OF CLAIMS IN CLASSES 2, 3 AND 4 TO VOTE  
16 TO ACCEPT THE PLAN BY SO INDICATING ON THEIR BALLOTS AND RETURNING THEM  
17 AS SPECIFIED IN THE NOTICE.

18 **ARTICLE XI**

19 **RECOMMENDATION AND CONCLUSION**

20 Debtor believes that the Plan provides the best possible recoveries for Creditors that can be  
21 achieved in any reasonable time frame and that possible alternatives are likely to result in delayed  
22 Distributions for all and diminished recoveries for other Holders of Claims or Interests. Therefore,  
23 Debtor urges all Holders of Claims in Classes 2, 3 and 4 to vote to accept the Plan.

24 DATED this 29<sup>th</sup> day of ~~May~~October 2012.

26 **AMERICAN WEST DEVELOPMENT, INC.,** a  
27 Nevada corporation

28 By \_\_\_\_\_

Robert M. Evans, President

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Respectfully submitted by:  
**FOX ROTHSCHILD LLP**

By [/s/Brett A. Axelrod](#)

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