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9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re

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

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

Chapter 11

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

**DECLARATION OF ROBERT M. EVANS
IN SUPPORT OF CONFIRMATION OF
DEBTOR'S FIRST AMENDED CHAPTER
11 PLAN OF REORGANIZATION (DATED
OCTOBER 15, 2012), INCLUDING THE:**

- (1) MEMORANDUM OF LAW IN
SUPPORT OF CONFIRMATION OF
DEBTOR'S FIRST AMENDED PLAN
OF REORGANIZATION; AND,
- (2) DEBTOR'S REPLY TO THE
ACTING UNITED STATES
TRUSTEE'S OBJECTION TO
DEBTOR'S FIRST AMENDED PLAN
OF REORGANIZATION

Debtor.

[Relates to Docket Nos. 814 & 815]

Hearing Date: January 15, 2013

Hearing Time: 10:00 a.m.

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1 ROBERT M. EVANS, being duly sworn, deposes and declares under the penalty of
2 perjury:

3 1. I am over the age of 18, am mentally competent, have personal knowledge of the
4 facts in this matter, except where stated as based upon information and belief, and if called upon to
5 testify, could and would do so.

6 2. I am the President of American West Development, Inc. ("AWDI," or "Debtor"),
7 debtor and debtor in possession in the above-referenced chapter 11 bankruptcy case (the "Chapter
8 11 Case"). I have served as the President of Debtor throughout the Chapter 11 Case. In my
9 capacity as President, I am very familiar with debtor's business and financial affairs. In the course
10 of my work for Debtor, I have worked with and relied upon the books and records of Debtor (and
11 will continue to do so), including financial statements, operational reports, correspondence, legal
12 documents and other business records that were prepared by Debtor's staff, communicated to
13 Debtor, and obtained by Debtor in the ordinary course of its business.

14 3. I make this declaration in support of confirmation of Debtor's First Amended
15 Chapter 11 Plan of Reorganization (Dated October 15, 2012) [Docket No.714] (the "Plan").¹
16 Without limitation, I make this declaration in support of the concurrently filed "Memorandum of
17 Law in Support of Confirmation of Debtor's First Amended Plan of Reorganization (Dated
18 October 15, 2012)" (the "Memorandum in Support of Confirmation") and "Debtor's Reply to the
19 Acting United States Trustee's Objection to Debtor's First Amended Plan of Reorganization" (the
20 "Reply to the UST Opposition"). I make the following statements based upon my personal
21 knowledge, and my review and understanding of the business records of AWDI. Capitalized
22 terms used but not defined herein have the meaning set forth in the Memorandum in Support of
23 Confirmation and/or the Reply to the UST Opposition.

24 4. The Plan represents the culmination of Debtor's restructuring efforts, and of this
25 Chapter 11 Case. At all times Debtor's goal has been to reorganize its financial affairs, to preserve
26 value and provide fair and equitable treatment to creditors of Debtor's estate. The Plan

27 _____
28 ¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan, the Memorandum in Support of Confirmation, or the Memorandum in Support of Reply to the UST Opposition, as applicable.

1 accomplishes this goal by restructuring the Term Loan owed to the Secured Lenders, providing
2 \$1,500,000 in cash to satisfy Class 3 General Unsecured Claims (which is estimated to result in a
3 recovery that may approach 80% due to Debtor’s successful restructuring of the Term Loan and the
4 waiver of the Secured Lenders’ deficiency claim), providing the opportunity to all home owners to
5 receive the Cash Out Payment, and establishing the Construction Defect Trust to administer Class
6 4 Construction Defect Claims for those home owners who do not make the Cash Out Election.

7 5. The Plan sets forth specific means for its implementation. As set forth therein, the
8 Plan will be implemented in all respects in a manner consistent with the terms and conditions of the
9 Operative Documents, the Lock-Up and Settlement Letter Agreement, the DIP Financing Order,
10 and the requirements of § 1123(a) (and other applicable provisions) of the Bankruptcy Code.
11 Without limiting the generality of the foregoing, the New Capital Contribution will be used to fund
12 the Plan and will be distributed or applied in the manner necessary to: (i) provide all required
13 Confirmation Funds for Distribution pursuant to the Plan; (ii) fund the Construction Defect Trust
14 Contribution; (iii) satisfy the costs, expenses, required payments and entitlements outlined in the
15 Plan on the Effective Date, or pursuant to the TDP; and (iv) provide Reorganized Debtor with
16 working capital and funding for operations and Plan needs.

17 6. Reorganized Debtor will have only one class of equity securities, none of which are
18 non-voting.

19 7. The exculpation, release and injunctive provisions in Article XII of the Plan (i) are
20 integral to the overall objectives of the Plan, (ii) are essential to the formulation and successful
21 implementation of the Plan, (iii) are being provided for valuable consideration and have been
22 negotiated in good faith and at arms’-length, (iv) confer substantial and material benefit on the
23 Estate, and (v) are in the best interests of Debtor, its Estate and other parties in interest.

24 8. Debtor is seeking confirmation of the Plan in good faith in order to equitably and
25 efficiently restructure its financial affairs. I believe that Debtor’s good faith is evidenced by its
26 request for the appointment of a Future Claims Representative, its voluntary waiver of exclusivity,
27 and by the overwhelming support of each voting Class received in favor of the Plan.

28 9. Exhibit “I” attached to the Master Disclosure Statement contains the disclosures

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1 required by § 1129(a)(5) of the Bankruptcy Code. As set forth in the Master Disclosure Statement,
2 I am the current officer of AWDI and I will continue in my position as President of the
3 Reorganized Debtor after the Effective Date.

4 10. Debtor is not subject to regulation of the type set forth in Bankruptcy Code
5 § 1129(a)(6), and the Plan does not propose any rate changes.

6 11. I reviewed the Liquidation Analysis prepared by Debtor and its financial advisors.
7 *See Master Disclosure Statement, Exhibit 'B'*. I believe that Debtor's liquidation analysis
8 accurately projects that all unsecured creditors would receive substantially less than the recovery
9 provided by the Plan (or nothing) if Debtor is liquidated under chapter 7 of the Bankruptcy Code.

10 12. I believe that, as of the Effective Date, there will be adequate funds available to
11 satisfy the obligations under the Plan for which Debtor is responsible. Exhibit "C" attached to the
12 Master Disclosure Statement contains the revised financial projections for Reorganized Debtor,
13 which were updated to reflect actual results through August 31, 2012. As set forth therein, the
14 New Capital Contribution will ensure that Debtor has sufficient funding to make the aggregate
15 Cash Out Payment and other payments and contributions required for the Plan to become effective.

16 13. In addition, I believe that the Construction Defect Trust will have sufficient funding
17 to administer the Construction Defect Trust and make payment on Allowed Class 4 Claims for
18 which the Holders did not make the Cash-Out Election. Exhibit "D" attached to the Master
19 Disclosure Statement contains the financial projections for the Construction Defect Trust.

20 14. I believe that the Reorganized Debtor will have ample means to satisfy its post-
21 Effective Date obligations. As indicated in the financial projections, Reorganized Debtor will
22 obtain the benefit of additional working capital from the balance of the New Capital Contribution
23 remaining after funding the Plan Effective Date payments, and Reorganized Debtor will be able to
24 service the New Secured Loan and satisfy its other post-Effective Date liabilities in the ordinary
25 course of its business operations.

26 15. It is my understanding that Debtor has no retiree benefits within the meaning of
27 § 1129(a)(13) of the Bankruptcy Code.

28 16. Debtor is not a non-profit corporation.

1 17. I understand and hereby reaffirm that Debtor, through the Plan does not seek to
2 subject 28 U.S.C. § 1930(a)(6) fees to any allowance procedure process. Notably, to the best of my
3 knowledge, throughout the pendency of the Chapter 11 Case Debtor has routinely and without fail
4 timely remitted all UST fees. Moreover, as of the date of my execution of this Declaration, I
5 understand that there are no outstanding UST fees due by Debtor. Finally, I anticipate that on the
6 Effective Date Debtor will have available to it the sum of approximately \$2,500,000, which funds I
7 believe will be more than sufficient to fund all outstanding and accruing UST fees.

8 18. Debtor took great pains to remove all provisions for non-consensual third-party
9 releases and injunctions from the Plan. The Debtor intended for the changes reflected in Article
10 XII of the Plan to be directly responsive to the very specific grounds upon which the Court denied
11 confirmation of the May Plan.

12 19. I understand the UST has challenged Debtor's good faith in proposing the Plan
13 based upon allegations that the Futures Representative has not performed his duties with "sufficient
14 vigor." I have experienced the diligence of the Futures Representative firsthand—Debtor provided
15 the Futures Representative with access to Debtors' construction documents upon request, Debtor
16 negotiated a stipulation with the Futures Representative regarding voting on the Plan, and Debtor
17 discussed with the Futures Representative the reasons why the treatment of Construction Defect
18 Claims under the Plan was the best available under the circumstances.

19 20. During these discussions, the Futures Representative questioned why the Plan
20 provides for the amount of funding to the Construction Defect Trust to depend on the voting results
21 for the Plan (rather than providing for the full \$1,500,000 amount in all circumstances). We
22 explained that (i) the DIP Lender insisted that it receive sufficient consideration (in the form of
23 widespread consensual releases from Construction Defect Claimants) in return for funding the full
24 \$1,500,000 amount, but (ii) Debtor successfully convinced the DIP Lender to increase the
25 minimum funding for the Construction Defect Trust from \$200,000 (as originally proposed by the
26 DIP Lender) to the \$500,000 amount provided for in the Plan.

27 21. The Futures Representative cannot change the difficult realities of Debtor's
28 financial condition—he can only review the relevant information and analyze whether the Plan

1 provides fair and equitable treatment for his future claimant constituency under the circumstances.
2 The fact that the Futures Representative ultimately concluded to support the Plan does not impugn
3 Debtor’s good faith in proposing the Plan—it reinforces it.

4 22. I also understand the UST has challenged whether the Plan is feasible based, in part,
5 upon a misreading of the Liquidation Analysis. In the Liquidation Analysis, Debtor contrasted
6 (i) the Construction Defect Trust, which will receive cash funding of \$1,500,000 and which will be
7 administered by a Construction Defect Trustee and a Construction Defect Trust Advisory Board
8 with specific expertise in the residential homebuilding industry, and (ii) a chapter 7 liquidation,
9 where no cash funding would be provided specifically to administer Construction Defect Claims,
10 and which would be administered by a chapter 7 trustee who might not have any experience in the
11 residential homebuilding industry. Based upon this comparison, I believe the Plan provides a clear
12 advantage over a chapter 7 liquidation by ensuring that there will be specific funds dedicated to the
13 adjudication of Construction Defect Claims, which will be administered by well-qualified
14 fiduciaries.

15 23. I understand that the UST has challenged the ability of the Futures Representative to
16 vote on behalf of Construction Defect Claimants who chose not to return a ballot voting to accept
17 or reject the Plan, ability that was approved on due notice to the UST and other parties pursuant to
18 the Amended Disclosure Statement Order. I also understand that the UST has challenged the time
19 provided to creditors to object to the Plan, which also was approved on due notice to the UST and
20 other parties pursuant to the Amended Disclosure Statement Order. I believe that reversal of the
21 Amended Disclosure Statement Order at this juncture would threaten to undo the months of
22 progress that Debtor has made towards its imminent successful reorganization. Moreover, I
23 believe that doing so would serve no benefit to the Estate, but instead would result in significant
24 additional expense that would be to the detriment of the Estate and its creditors. I believe that the
25 Plan amply provides the Construction Defect Trust with a reasonable probability of success by: (a)
26 vesting it with valuable (though as yet unliquidated) assets in the form of Insurance Recoveries,
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1 Construction Defect Actions² and Insurance Coverage Actions; (b) appointing well-qualified
2 fiduciaries to administer these assets and determine the interests of all beneficiaries; (c)
3 establishing clear and appropriate procedures to govern the administration process; and (d) funding
4 the Construction Defect Trust with \$1,500,000 in initial liquidity. All of these well-founded
5 attributes of the Construction Defect Trust ensure that the Plan provides Construction Defect
6 Claimants with the best available opportunity to have their claims treated in a fair and equitable
7 manner. I am not aware of any better alternative for Construction Defect Claimants.

8 24. Debtor has a very low historic incidence of construction defects in the homes that it
9 constructs, which is reinforced by the fact that only seven Construction Defect Claims have been
10 asserted by Construction Defect Claimants in this Chapter 11 Case, which relate to no more than
11 twenty-five (25) homes constructed by Debtor.³

12 25. I verify under penalty of perjury of the laws of the United States of America that the
13 foregoing statement is true and correct to the best of my information, knowledge and belief.

14 Executed this 8th day of January 2013.

15 **AMERICAN WEST DEVELOPMENT, INC.**

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17 By /s/Robert M. Evans
18 ROBERT M. EVANS, President
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26 ² One specific example of a Construction Defect Action is Debtor's claims against its former
27 plumbing contractor, Interstate Plumbing, which are the subject of the proof of claim in the amount
28 of not less than \$5 million filed by Debtor in the Interstate Plumbing chapter 7 bankruptcy case.

³ This excludes proofs of claim filed by the Futures Representative.