



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
February 14, 2013

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

AMERICAN WEST DEVELOPMENT,
INC., a Nevada corporation,

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

Debtor.

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

Chapter 11

**ORDER CONFIRMING DEBTOR'S
FIRST AMENDED CHAPTER 11 PLAN
OF REORGANIZATION (DATED
OCTOBER 15, 2012)**

Confirmation Hearing Date: January 15, 2013
Confirmation Hearing Time: 10:00 a.m.

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1 On January 15, 2013, the Court held a hearing (the “Confirmation Hearing”) regarding
 2 confirmation of Debtor’s First Amended Chapter 11 Plan of Reorganization [Docket No. 714]
 3 (the “Plan”),¹ which was proposed by American West Development, Inc. (“AWDI” or “Debtor”),
 4 debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the “Chapter 11
 5 Case”). The record of the Confirmation Hearing reflects all appearances that were made at the
 6 Confirmation Hearing.

7 The Court has reviewed and considered:

- 8 • the Plan, as corrected in accordance with the Errata to Debtor’s First Amended
 9 Chapter 11 Reorganization [Docket No. 784];
- 10 • the Declaration of Robert M. Evans filed in Support of Confirmation of Debtor’s
 11 First Amended Chapter 11 Plan of Reorganization [Docket No. 816] (the “Evans
 12 Declaration”);
- 13 • the Master Disclosure Statement Prepared In Connection With Debtor’s First
 14 Amended Chapter 11 Plan of Reorganization Dated October 15, 2012 [Docket No.
 15 721], as corrected in accordance with the Errata to Master Disclosure Statement
 16 Prepared in Connection with Debtor’s First Amended Chapter 11 Plan of
 17 Reorganization [Docket No. 720] (the “Master Disclosure Statement”);
- 18 • the Short Form Home Owner Disclosure Statement Prepared In Connection With
 19 Debtor’s First Amended Chapter 11 Plan of Reorganization Dated October 15, 2012
 20 [Docket No. 716] (the “Home Owner Disclosure Statement” and together with the
 21 Master Disclosure Statement, the “Disclosure Statements”);
- 22 • the Amended Order: (I) Approving (A) Adequacy of First Amended Master
 23 Disclosure Statement, (B) Adequacy and Use of First Amended Home Owner
 24 Disclosure Statement as Summary of First Amended Plan, (C) Procedures and
 25 Schedule for the Solicitation, Submission and Tabulation of Votes, (D) Form and
 26

27 ¹ Capitalized terms used but not defined in this Order shall have the meaning ascribed to
 28 such terms in the Plan.

1 Scope of Notices, and (E) Form of Ballots and Related Documents; (II) Scheduling
 2 Confirmation Hearing and Related Deadlines; and (III) Granting Related Relief
 3 [Docket No. 791] (the "Solicitation Procedures Order")

- 4 • the Affidavit of Service dated December 20, 2012 [Docket No. 808] regarding
 5 solicitation;
- 6 • the Declaration of Jeffrey S. Stein of the Garden City Group, Inc. Reporting and
 7 Certifying the Methodology for the Tabulation of Votes on and Results of Voting
 8 With Respect to Debtor's First Amended Chapter 11 Plan of Reorganization [Docket
 9 No. 817] (the "Voting Report");
- 10 • the Omnibus Declaration of Robert M. Evans in Support of First Day Motions
 11 [Docket No. 56];
- 12 • the Acting United States Trustee's Objection to Debtor's First Amended Chapter 11
 13 Plan of Reorganization [Docket No. 812] (the "UST Objection");
- 14 • the Memorandum of Law in Support of Confirmation of Debtor's First Amended
 15 Chapter 11 Plan of Reorganization (Dated October 15, 2012) [Docket No. 814];
- 16 • Debtor's Reply to the Acting United States Trustee's Objection to Debtor's First
 17 Amended Chapter 11 Plan of Reorganization [Docket No. 815];
- 18 • the Declaration of Future Claims Representative James L. Moore In Support of
 19 Debtor's Reply to Acting United States Trustee's Objection to Debtor's First
 20 Amended Chapter 11 Plan of Reorganization [Docket No. 818];
- 21 • the Reply to the Acting United States Trustee's Objection to Debtor's First Amended
 22 Chapter 11 Plan of Reorganization filed by California Bank & Trust [Docket No.
 23 819];
- 24 • all documents referenced by Electronic Case Filing ("ECF") number in the Order on
 25 United States Trustee's Objections to Confirmation of Debtor's First Amended
 26 Chapter 11 Plan of Reorganization [Docket No. 848] (the "February 8 Order");
- 27 • all other pleadings and evidence that were submitted before or at the Confirmation
 28 Hearing;

- the record in this Chapter 11 Case;
- the testimony of James L. Moore given at the Confirmation Hearing; and
- the arguments and representations of counsel at the Confirmation Hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon its review and consideration of the foregoing materials, the Court makes the following findings of facts and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52, which are in addition to the findings and conclusions set forth in the February 8 Order:²

A. Venue and Jurisdiction. This matter is a core proceeding over which the Court has jurisdiction under 28 U.S.C. §§ 157(b) and 1334(a). Venue for this proceeding is proper under 28 U.S.C. §§ 1408 and 1409. This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(L).

B. Judicial Notice. The Court takes judicial notice of the docket in the Chapter 11 Case maintained by the Clerk of the Court and/or its duly appointed agent, including all pleadings and other documents Filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Court during the Chapter 11 Case, including the hearing to consider the adequacy of the Disclosure Statements and the Confirmation Hearing.

C. Burden of Proof. Debtor, as proponent of the Plan, has the burden of proving that the requirements for confirmation set forth in Bankruptcy Code section 1129 have been satisfied by a preponderance of the evidence. Debtor has met its burden.

D. Notice and Due Process. Debtor provided notice of the Confirmation Hearing, and the time fixed for filing objections to confirmation of the Plan by serving the Confirmation Hearing Notice as set forth in the Affidavit of Service filed in the Chapter 11 Case. Service of the Confirmation Hearing Notice provided reasonable and adequate notice of these matters and complied in all regards with due process. Service of the Confirmation Hearing Notice also complied with the applicable provisions of (i) the Bankruptcy Code; (ii) the Bankruptcy Rules,

² The findings and conclusions set forth in the February 8 Order are incorporated herein. Any finding of fact constitutes a finding of fact even if it is stated as a conclusion of law, and any conclusion of law constitutes a conclusions of law even if it is stated as a finding of fact.

1 including Bankruptcy Rules 2002, 3017, and 3018; (iii) the Local Bankruptcy Rules of the United
2 States Bankruptcy Court for the District of Nevada; and (iv) the Orders of this Court, including the
3 Solicitation Procedures Order.

4 E. Objections: Other than the UST Objection, no objections to confirmation of the Plan
5 were Filed, timely or otherwise. The UST Objection is overruled pursuant to the February 8 Order.

6 F. Good Faith Solicitation. Based upon the record in the Chapter 11 Case: (i) the
7 solicitation of acceptances or rejections of the Plan was made in good faith and in compliance with
8 the Solicitation Procedures Order, all applicable provisions of the Bankruptcy Rules (including
9 Bankruptcy Rules 3017 and 3018), all applicable provisions of the Bankruptcy Code (including
10 sections 1125 and 1126), and all other applicable laws, rules and regulations, and (ii) Debtor, the
11 Estate, the Secured Lenders, the Futures Representative and the foregoing parties' respective
12 members, officers, directors, employees, affiliates, advisors, professionals and agents have acted in
13 "good faith" within the meaning of Bankruptcy Code section 1125(e) and the Bankruptcy Rules in
14 connection with their respective activities relating to the solicitation of acceptances of the Plan and
15 their participation in the activities described in Bankruptcy Code section 1125 and, accordingly,
16 such parties are entitled to the protections afforded by Bankruptcy Code section 1125(e) and the
17 exculpation provisions set forth in Article XII, Section 12.3 of the Plan.

18 G. Acceptances of the Plan. As evidenced by the Voting Report, the only Classes
19 entitled to vote on the Plan, Classes 2, 3 and 4, have each accepted the Plan within the meaning of
20 Bankruptcy Code section 1126(c). The tabulation of votes in Class 4 properly includes the votes
21 cast by the Futures Representative on behalf of non-responding Holders of Class 4 Construction
22 Defect Claims in accordance with the Solicitation Procedures Order. Classes 1 and 5 are not
23 impaired under the Plan and are conclusively deemed to accept the Plan pursuant to Bankruptcy
24 Code section 1126(f). Class 6 Old Equity Interests are deemed to reject the Plan because the
25 Holders of such Interests neither receive nor retain anything under the Plan.

26 H. Exculpation, Discharge, Releases and Injunctions. Based upon the facts and
27 circumstances presented, the exculpation, discharge, release and injunctive provisions in Article
28 XII, Sections 12.1, 12.2, 12.3, 12.4 and 12.5 of the Plan are fair, equitable, reasonable and integral

1 elements of the restructuring of Debtor and the resolution of the Chapter 11 Case, are in the best
2 interests of Debtor and the Estate, and are supported by good and valuable consideration, the
3 adequacy of which is hereby confirmed. These provisions are hereby approved and shall be
4 effective and binding upon all persons and entities as provided in the Plan.

5 I. Construction Defect Trust. The Construction Defect Trust is an essential element of
6 the Plan and entry into the Construction Defect Trust Declaration is in the best interests of Debtor,
7 the Estate and creditors. Upon execution, the Construction Defect Trust Declaration shall be valid,
8 binding and enforceable in accordance with its terms.

9 J. Compliance with the Requirements of Section 1129. The Plan complies with all
10 applicable requirements of Bankruptcy Code section 1129.

11 1. Bankruptcy Code section 1129(a)(1). The Plan complies with all application
12 sections of the Bankruptcy Code, including sections 1122 and 1123.

13 a. Bankruptcy Code Section 1122. Each Claim placed in a particular Class
14 under the Plan is substantially similar to the other Claims in such Class.

15 b. Bankruptcy Code section 1123(a). The Plan satisfies the mandatory
16 requirements of section 1123(a).

17 i. Bankruptcy Code section 1123(a)(1). Article II, Section 2.3 of the
18 Plan classified all claims, other than Administrative Claims and
19 Priority Tax Claims.

20 ii. Bankruptcy Code section 1123(a)(2). Article II, Section 2.3 of the
21 Plan specifies that Class 1 and Class 5 are unimpaired.

22 iii. Bankruptcy Code section 1123(a)(3). Article II, Section 2.3 of the
23 Plan specifies that Class 2, Class 3 and Class 4 are impaired, and
24 specify the treatment of the claims in each of those Classes.

25 iv. Bankruptcy Code section 1123(a)(4). Section 2.3 of the Plan
26 satisfies section 1123(a)(4) by providing the same treatment to
27 each Claim that is classified in each particular Class under the
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Plan, unless the Holder of a Claim has agreed to less favorable treatment.

- v. Bankruptcy Codes section 1123(a)(5). As set forth in Article V, Section 5.1, the Plan provides adequate and appropriate means for its implementation.
 - vi. Bankruptcy Code section 1123(a)(6). Reorganized Debtor will have only one class of equity securities, none of which are non-voting.
 - vii. Bankruptcy Code section 1123(a)(7). The continuance of the current officer of Debtor in such position after the Effective Date with Reorganized Debtor is consistent with the interests of creditors and with public policy, and satisfies Bankruptcy Code section 1123(a)(7).
- c. The Plan contains permissive provisions that the Court finds are appropriate pursuant to Bankruptcy Code section 1123(b), including the following:
- i. Assumption of Executory Contracts and Unexpired Leases. Article IV, Sections 4.2 and 4.3 provide for the assumption of the Assumed Contracts. The assumption of the Assumed Contracts is in accordance with the requirements of Bankruptcy Code section 365, and is expressly authorized by Bankruptcy Code section 1123(b)(2). Debtor has exercised reasonable business judgment in determining to assume the Assumed Contracts. There are no cure payments associated with the Assumed Contracts or any defaults or other amounts that must be paid in connection with the assumption of the Assumed Contracts. Debtor has demonstrated adequate assurance of future performance with respect to the Assumed Contracts, to the extent required. The assumption of

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each of the Assumed Contracts under the Plan shall be binding on Reorganized Debtor, the Estate, and each non-debtor party to each Assumed Contract.

- ii. Rejection of Executory Contracts and Unexpired Leases. Article IV, Sections 4.3 and 4.4 of the Plan provides for the rejection of all Executory Contracts other than the Assumed Contracts pursuant to the Plan. The rejection of such Executory Contracts pursuant to the Plan satisfies the requirements of Bankruptcy Code section 365, and is expressly authorized by Bankruptcy Code section 1123(b)(2). Debtor has exercised reasonable business judgment in determining to reject such Executory Contracts. The rejection of each Executory Contract that is rejected under the Plan shall be binding on Debtor, Reorganized Debtor, the Estate, and each non-debtor party to such Executory Contract.
- iii. Retention of Jurisdiction. Article XI, Section 11.1 of the Plan provides that the Court shall retain jurisdiction after the Effective Date to the fullest extent provided by law including the jurisdiction to enter appropriate orders in aid of implementation of the Plan and/or the Confirmation Order; to allow, disallow, determine, liquidate, classify, establish the priority or secured or unsecured status of, estimate, limit or subordinate any Claim; and over the other matters set forth in Section 11.1 of the Plan. This provision is reasonable, appropriate and in the best interests of Debtor and the Estate, and not inconsistent with the Bankruptcy Code.
- iv. Exculpation/Releases/Injunctions. Article XII, Sections 12.3, 12.4 and 12.5 of the Plan provide for exculpation, releases and

1 injunctions, all of which comply with applicable Ninth Circuit
2 precedent under the facts and circumstances of this Chapter 11
3 Case. The exculpation set forth in section 12.3 of the Plan is
4 consistent with the relief offered under section 1125(e) of the
5 Bankruptcy Code. Similarly, the releases by Debtor and its Estate
6 set forth in Section 12.4(a) are fairly and judiciously constructed
7 to provide finality to the Plan process without excusing willful,
8 fraudulent or grossly negligent conduct. The releases by Holders
9 of Claims and Interests set forth in section 12.4(b) and the Cash
10 Out Release referenced in section 12.4(c) are entirely voluntary,
11 which was clearly disclosed in the Ballot and the Confirmation
12 Notice. As such, the releases set forth in sections 12.4 and 12.5 of
13 the Plan are appropriately and consensually given in exchange for
14 the consideration provided to Holders of Allowed Claims who
15 vote in favor of the Plan. The circumstances presented in this
16 Chapter 11 Case, including the Construction Defect Claims,
17 warrant the Court using its authority to issue the channeling
18 injunction and other injunctive relief embodied in the Plan. The
19 exculpation, release and injunctive provisions in Article XII of the
20 Plan (i) are integral to the overall objectives of the Plan, (ii) are
21 essential to the formulation and successful implementation of the
22 Plan, (iii) are being provided for valuable consideration and have
23 been negotiated in good faith and at arms'-length, (iv) confer
24 substantial and material benefit on the Estate, and (v) are in the
25 best interests of Debtor, its Estate and other parties in interest.

- 26 2. Bankruptcy Code section 1129(a)(2). Debtor, as proponent of the Plan, has
27 complied with all of the Bankruptcy Code's applicable provisions. The Plan
28 therefore satisfies Bankruptcy Code section 1129(a)(2).

- 1 3. Bankruptcy Code section 1129(a)(3). Debtor has proposed the Plan in good faith
2 and not by any means forbidden by law. The Plan therefore satisfies Bankruptcy
3 Code section 1129(a)(3).
- 4 4. Bankruptcy Code section 1129(a)(4). Article II, Section 2.2(B)(3) of the Plan
5 provides that Professional Fee Claims will be paid under the Plan after approval
6 of the final fee applications of the professionals asserting those Professional Fee
7 Claims. Article II, Section 2.2(A) and (B) provides that other Administrative
8 Claims will paid only after they are “Allowed” as set forth in the Plan. The Plan
9 therefore complies with Bankruptcy Code section 1129(a)(4).
- 10 5. Bankruptcy Code section 1129(a)(5). Exhibit I to the Master Disclosure
11 Statement contains the disclosures required by section 1129(a)(5). The
12 appointments disclosed therein are consistent with the interests of creditors and
13 public policy.
- 14 6. Bankruptcy Code section 1129(a)(6). Debtor is not subject to any rate regulation
15 and the Plan does not propose any rate changes. Therefore, the requirements of
16 section 1129(a)(6) are not applicable to the Plan.
- 17 7. Bankruptcy Code section 1129(a)(7). Each Holder of a Claim that is in an
18 Impaired Class under the Plan (a) has accepted the Plan, or (b) will receive or
19 retain under the Plan property of a value, as of the Effective Date, that is not less
20 than such Holder would receive or retain if Debtor were liquidated under Chapter
21 7 of the Bankruptcy Code. Although certain Holders of Claims in Class 4 voted
22 to reject the Plan, none of these Holders has filed an objection to confirmation.
23 Moreover, Debtor’s liquidation analysis credibly and sufficiently demonstrates
24 that these creditors would receive substantially less in a chapter 7 case than they
25 will recover pursuant to the Plan. The requirements of section 1129(a)(7)
26 therefore have been satisfied.
- 27 8. Bankruptcy Code section 1129(a)(8). Classes 2, 3 and 4 are impaired under the
28 Plan and have voted to accept the Plan. Classes 1 and 5 are unimpaired, and are

1 therefore deemed to accept the Plan. The requirements of section 1129(a)(8) are
2 thus satisfied as to all Classes of Claims.

3 9. Bankruptcy Code section 1129(a)(9). The Plan satisfies the requirements of
4 Bankruptcy Code section 1129(a)(9).

- 5 a. Article II, Section 2.2 of the Plan complies with the requirements of As
6 Bankruptcy Code sections 1129(a)(9)(A) and (B) with respect to the
7 treatment of Administrative Claims.
- 8 b. Article II, Section 2.2 of the Plan complies with Bankruptcy Code section
9 1129(a)(9)(B) with respect to the treatment of Other Priority Claims.
- 10 c. Article II, Section 2.2 of the Plan complies with Bankruptcy Code
11 sections 1129(a)(9)(C)(i) and (ii) with respect to the treatment of Priority
12 Tax Claim.
- 13 d. Bankruptcy Code Section 1129(a)(9)(D) is not applicable to the Plan
14 because there are no secured tax claims against Debtor's estate.

15 10. Bankruptcy Code section 1129(a)(10). As set forth in the Voting Report, Classes
16 2, 3 and 4 each accepted the Plan, without including any Ballots completed by
17 insiders. The Plan therefore satisfies Bankruptcy Code section 1129(a)(10).

18 11. Bankruptcy Code section 1129(a)(11). Based upon the projections attached as
19 Exhibits C and D to the Master Disclosure Statement, confirmation of the Plan is
20 not likely to be followed by either the liquidation or need for further financial
21 reorganization of Reorganized Debtor. The Plan therefore satisfies Bankruptcy
22 Code section 1129(a)(11).

23 12. Bankruptcy Code section 1129(a)(12). Article II, Section 2.2 of the Plan
24 provides for the payment of fees payable under 28 U.S.C. § 1930 until such time
25 as the Final Decree closing the Chapter 11 Case is entered and all such fees due
26 are paid in full. The Plan does not seek to subject 28 U.S.C. § 1930(a)(6) fees to
27 any allowance procedure or process. The Plan therefore satisfies Bankruptcy
28 Code section 1129(a)(12).

1 13. Bankruptcy Code section 1129(a)(13). The requirements of Bankruptcy Code
2 section 1129(a)(13) are not applicable to Debtor or the Plan. Debtor has no
3 retiree benefits within the meaning of section 1129(a)(13).

4 14. Bankruptcy Code section 1129(a)(14). The requirements of Bankruptcy Code
5 section 1129(a)(14) are not applicable to Debtor or the Plan. Debtor is not
6 required by any judicial or administrative order to pay a domestic support
7 obligation.

8 15. Bankruptcy Code section 1129(a)(15). The requirements of Bankruptcy Code
9 section 1129(a)(15) are not applicable to Debtor or the Plan. Debtor is not an
10 individual.

11 16. Bankruptcy Code section 1129(a)(16). The Plan complies with applicable non-
12 bankruptcy law. Debtor is not a non-profit corporation. Therefore, the Plan
13 complies with Bankruptcy Code section 1129(a)(16).

14 K. Bankruptcy Code section 1129(b). Classes 1 and 5 are deemed to accept the Plan.
15 Classes 2, 3 and 4 voted to accept the Plan. Therefore, Bankruptcy Code section
16 1129(b) is only applicable with respect to Class 6 Old Equity Interests. The Plan
17 satisfies the requirements of Bankruptcy Code section 1129(b)(2)(C) because: (a) as
18 demonstrated by the Liquidation Analysis, Old Equity Interests do not have value,
19 (b) there are no junior interests to Old Equity Interests, and (c) no Holder of a Claim is
20 receiving more than the value of such Claim. Therefore, section 1129(b) is satisfied to
21 the extent that it is applicable.

22 **THEREFORE, IT HEREBY IS ORDERED THAT:**

23 1. Plan Confirmation. The UST Objection is overruled pursuant to the February 8
24 Order. The Plan is approved and confirmed. The New Secured Loan Documents, the Construction
25 Defect Trust Declaration, Reorganized Debtor's Bylaws and Certificate of Incorporation, the
26 identity and affiliation of the individuals to serve after confirmation as referenced in Bankruptcy
27 Code section 1129(a)(5)(A)(i), and the other documents attached as Exhibits to the Master
28 Disclosure Statement are deemed part of the Plan, are incorporated into the Plan and hereby

1 approved. Each provision of the Plan is authorized and approved and shall have the same validity,
2 binding effect and enforceability as every other provision of the Plan, regardless of whether or not
3 such provision is referenced in this Order.

4 2. Binding Effect. The provisions of the Plan and this Order shall bind Debtor,
5 Reorganized Debtor, the Construction Defect Trustee, and all creditors of Debtor, regardless of
6 whether the Claims of these entities are impaired under the Plan, whether these entities have voted
7 to accept or reject the Plan, and whether these entities have Filed proofs of Claim or are deemed to
8 have Filed proofs of Claim in the Chapter 11 Case.

9 3. Authorization to Implement Plan. Debtor and Reorganized Debtor may execute and
10 deliver any and all documents and instruments and take any and all actions necessary or desirable to
11 implement the Plan, this Order, the Construction Defect Trust Declaration, the New Secured Loan
12 Documents, and any other transaction contemplated under those documents or the Plan. To
13 effectuate those transactions and the Plan, the officers and directors of Debtor and Reorganized
14 Debtor are authorized – without further notice or application to or order of this Court – to execute,
15 deliver, file, or record any documents and to take any other actions that those officers may
16 determine to be necessary or desirable to implement the Plan, regardless of whether such actions or
17 documents are specifically referenced in the Plan or this Order. To the extent that, under applicable
18 non-bankruptcy law, any of these actions require the consent or approval of the directors or officers
19 of Debtor or Reorganized Debtor, this Order constitutes such consent or approval.

20 4. Vesting of Property in Reorganized Debtor. Except as otherwise expressly provided
21 herein or in the Plan, on the Effective Date, but retroactive to the Confirmation Date, without any
22 further action, Reorganized Debtor will be vested with all of Debtor's Assets, wherever situated,
23 free and clear of all Claims, Liens and Old Equity Interests (except for Liens provided or authorized
24 pursuant to this Plan and Permitted Encumbrances). Without limiting the generality of the
25 foregoing, on and after the Effective Date, Reorganized Debtor shall be vested with all of Debtor's
26 Assets, wherever situated, free and clear of any Claims based on any form of successor liability or
27 similar or related theory of liability. On and after the Effective Date, Reorganized Debtor shall be
28 free of any restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate its

1 business and may use, acquire or dispose of its assets free of any restrictions imposed by the
2 Bankruptcy Code and the Bankruptcy Rules and without supervision or approval by the Bankruptcy
3 Court, other than the obligations set forth in this Plan or the Confirmation Order. Without limiting
4 the generality of the foregoing and except as otherwise expressly provided herein or in the
5 Confirmation Order, any Causes of Action will be preserved and retained solely for Reorganized
6 Debtor's commencement, prosecution, use and benefit.

7 5. New Secured Loan. Debtor is authorized to execute and deliver to the
8 Administrative Agent, for the benefit of the Secured Lenders, the New Secured Loan Documents
9 and any other documents necessary or appropriate in connection therewith.

10 6. Administrative Claim Deadlines. The deadlines, procedures and other provisions
11 regarding the assertion, allowance and treatment of Administrative Claims set forth in Article II,
12 Section 2.2 of the Plan, to the extent not previously approved and adopted by an order of this Court,
13 are hereby approved and adopted.

14 7. Federal Tax Matters. Notwithstanding any provision to the contrary in the Plan or
15 this order, nothing shall: (a) affect the ability of the Internal Revenue Service (the "IRS") to pursue
16 any non-Debtor to the extent allowed by nonbankruptcy law for any liabilities that may be related to
17 any federal tax liabilities of Debtor or Reorganized Debtor; (b) affect the rights of the IRS to assert
18 setoff or recoupment and such rights are expressly preserved; (c) discharge any claim of the IRS of
19 the type described in section 1141(d)(6) of the Bankruptcy Code; (d) require the IRS to file a
20 request for payment of Administrative Claim by the Administrative Claim Bar Date as a condition
21 of its being paid under section 2.2(a) of the Plan; and (e) impair the ability of the IRS to collect
22 interest on its administrative tax claims in accordance with applicable non-bankruptcy law.

23 Additionally, notwithstanding any provisions to the contrary in the Plan or this Order, nothing shall
24 relieve Debtor or Reorganized Debtor from filing or causing to be filed all required federal tax
25 returns in accordance with the provisions of the Internal Revenue Code and otherwise comply with
26 the Internal Revenue Code.

27 8. Insurance Matters. The following matters previously agreed by and between Debtor,
28 on the one hand, and Zurich American Insurance Company, Steadfast Insurance Company, and their

1 affiliate insurers (collectively, "Zurich"), on the other hand, shall remain in full force and effect
2 with respect to the Plan: (a) no debt or obligation owed to Zurich by any non-debtor, including but
3 not limited to obligations owed to Zurich by American West Homes, Inc., shall impair, decrease, or
4 otherwise affect any insurance policy or proceeds payable under such policy; (c) Zurich shall not
5 assert that the Construction Defect Trust, the Debtor, the Reorganized Debtor, or the Estate is liable
6 or responsible for debts owed to Zurich by non-debtor American West Homes, Inc. or any other
7 non-debtor; (d) Zurich shall not assert that any non-debtor is liable or responsible for debts owed to
8 Zurich by Debtor; and (e) Zurich agrees not to assert that the Construction Defect Trust, the Debtor,
9 the Reorganized Debtor, or the Estate are jointly-and-severally liable for amounts owed by
10 American West Homes, Inc. or any other non-debtor.

11 9. Assumption of Executory Contracts and Unexpired Leases. As of the Effective
12 Date, pursuant to Article IV, Sections 4.1 and 4.2 of the Plan, each of the Assumed Contracts shall
13 be deemed assumed and shall be in full force and effect.

14 10. Rejection of Executory Contracts and Unexpired Leases. As of the Effective Date,
15 pursuant to Article IV, Sections 4.3 and 4.4 of the Plan, each of the Executory Contracts to be
16 rejected under the Plan shall be deemed rejected as of such date. The deadlines, procedures and
17 other provisions regarding Claims based upon the rejection of an Executory Contract set forth in
18 Article IV, Section 4.4 of the Plan are hereby approved and adopted.

19 11. Preservation of Causes of Action. Pursuant to Bankruptcy Code section 1123(b) and
20 Article XII, Section 12.12 of the Plan, Debtor as Reorganized Debtor shall retain and reserve the
21 right to enforce all rights to commence and pursue Causes of Action whether arising prior to or after
22 the Petition Date, and whether pending as of or Filed after the Effective Date, in any court or other
23 tribunal. Unless a Cause of Action is expressly waived, relinquished, released, compromised or
24 settled in the Plan or any Final Order, Debtor on behalf of itself and as Reorganized Debtor
25 expressly reserves all Causes of Action for later adjudication and, therefore, no preclusion doctrine,
26 including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion,
27 claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to any Causes of
28 Action upon Confirmation or the Effective Date. No Person or Entity may rely on the absence of a

1 specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as an
2 indication that Debtor or Reorganized Debtor will not pursue any and all available Causes of Action
3 against such Person or Entity. Debtor and Reorganized Debtor expressly reserve all rights to
4 prosecute any and all Causes of Action against any Person or Entity, except as otherwise expressly
5 provided in the Plan.

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

22 13. Trustee. As of the Effective Date, James L. Moore is approved and appointed as the
23 Construction Defect Trustee, and David N. Keys, Lance W. Johns and Jerry McGuire are approved
24 and appointed as members of the Construction Defect Advisory Board to administer the
25 Construction Defect Trust pursuant to the Plan and the Construction Defect Trust Declaration. The
26 Construction Defect Trustee shall have all of the rights, powers and duties set forth in the Plan and
27 the Construction Defect Trust Agreement.
28

1 14. Objections to Claims. Notwithstanding Local Bankruptcy Rule 3007(d), the
2 deadline for objections to Claims against Debtor shall be as set forth in Article 7, Section 7.3 of the
3 Plan.

4 15. Exculpation. The provisions of Article XII, Section 12.3 of the Plan are hereby
5 approved. Without limiting the generality of the foregoing: (a) none of the Exculpated Parties shall
6 have or incur any liability to any Holder of a Claim against or Interest in Debtor, or any other party-
7 in-interest, or any of their successors or assigns, for any act, omission, transaction or other
8 occurrence in connection with, relating to, or arising out of the Chapter 11 Case, the pursuit of
9 confirmation of this Plan, or the Consummation of this Plan, except and solely to the extent such
10 liability is based on fraud, gross negligence or willful misconduct; the Exculpated Parties shall be
11 entitled to reasonably rely upon the advice of counsel with respect to any of their duties and
12 responsibilities under the Plan or in the context of the Chapter 11 Case; (b) no Holder of a Claim
13 against or Interest in Debtor, or any other party-in-interest, shall have any right of action against the
14 Exculpated Parties, for any act, omission, transaction or other occurrence in connection with,
15 relating to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the
16 Consummation of the Plan or the administration of the Plan, except to the extent arising from fraud;
17 and (c) the Reorganized Debtor shall indemnify the Futures Representative for any liability that the
18 Futures Representative incurs as a result of the performance of his duties in such capacity, except
19 and solely to the extent such liability is based on fraud, gross negligence or willful misconduct.

20 16. Discharge and Plan Injunction. The provisions of Article XII, Section 12.1 and 12.2
21 of the Plan are hereby approved. Without limiting the generality of the foregoing: (a) in conjunction
22 with Bankruptcy Code Section 1141, except as otherwise provided for herein or in the Plan, the
23 rights afforded herein and the treatment of all Claims and Equity Interests under the Plan shall be in
24 exchange for and in complete satisfaction, discharge and release of Claims and Equity Interests of
25 any nature whatsoever against Debtor, and of the Assets of the Estate, including any interest
26 accrued on such Claims from and after the Petition Date; (b) except as provided herein,
27 confirmation discharges Debtor and Reorganized Debtor from all Claims or other debts that arose
28 before the Effective Date, and all debts of the kind specified in Bankruptcy Code sections 502(g),

1 502(h) or 502(i), whether or not: (X) a Proof of Claim based on such a debtor has been filed , or
2 deemed to have been filed, under Bankruptcy Code sections 501 or 1111(a); (Y) a Claim based on
3 such debtor is Allowed under Bankruptcy Code section 502; or (Z) the Holder of a Claim based on
4 such debt has accepted the Plan; (c) except as otherwise provided in the Plan, (I) on the Effective
5 Date, all Claims against Debtor which arose before the Effective Date shall be satisfied, discharged
6 and released in full, (II) on the Effective Date, the rights and interests of all Holders of Old Equity
7 Interests shall be terminated, cancelled and be of no force and effect, and (III) all Persons shall be
8 precluded from asserting against Debtor, Reorganized Debtor, its successors, or any of its Assets,
9 any other or further Claims or Equity Interests based upon any act or omission, transaction or other
10 activity of any kind or nature that occurred before the Effective Date, as well as any debt of a kind
11 specified in Bankruptcy Code sections 502(g), 502(h) or 502(i), irrespective of whether (X) a Proof
12 of Claim based on such a debtor has been filed, or deemed to have been filed, under Bankruptcy
13 Code sections 501 or 1111(a), (Y) such Claim is Allowed under Bankruptcy Code section 502, or
14 (Z) the Holder of the Claim has accepted the Plan; (d) nothing contained in (a) through (c) of this
15 section shall discharge any claim of the IRS of the type described in section 1141(d)(6) of the
16 Bankruptcy Code; (e) upon the Effective Date, Bankruptcy Code section 1141 shall become
17 applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent
18 permitted by Bankruptcy Code section 1141(a). In accordance with Bankruptcy Code section 1141,
19 all of Debtor's Assets, except such Assets being transferred to the Construction Defect Trust on the
20 Effective Date pursuant to the terms of the Plan, shall be vested in Reorganized Debtor free and
21 clear of all Claims, Liens and Interests of Creditors and Equity Interest Holders, except for the
22 Liens granted to the Secured Lenders hereunder and pursuant to the terms of the New Secured Loan
23 Documents; (f) upon the Effective Date, all Persons and Entities shall be permanently enjoined by
24 the Plan and this Order from (I) commencing or continuing any action, employing any process,
25 asserting or undertaking any act to collect, recover, or offset, directly or indirectly, any Claim, right,
26 cause of action, liabilities or interest in or against any assets distributed or to be distributed under
27 the Plan, or vested in Reorganized Debtor, based upon any act, omission, transaction or other
28 activity that occurred before the Effective Date, (II) creating, perfecting or enforcing any Lien or

1 encumbrance against any Assets distributed or to be distributed under the Plan other than as
2 permitted under the Plan or the New Secured Loan Documents, (III) without limiting the generality
3 of the foregoing, asserting any Claims against Reorganized Debtor based on successor liability or
4 similar or related theory, except to the extent a Person or Entity holds an Allowed Claim under the
5 Plan and is entitled to a distribution and/or Lien under the Plan in accordance with its terms, and to
6 enforce its rights to such distribution and/or Lien under the Plan; and (g) on and after the Effective
7 Date, each Holder of any Claim against or Interest in Debtor is permanently enjoined from taking or
8 participating in any action that would interfere with or otherwise hinder Debtor or Reorganized
9 Debtor from implementing this Plan, the Confirmation Order or any Operative Documents in
10 accordance with the terms thereof.

11 17. Estate Release. The releases contained in Article XII, Section 12.4(a) of the Plan are
12 hereby approved. Without limiting the generality of the foregoing: (a) effective as of the Effective
13 Date, for good and valuable consideration provided by each of the Released Parties, the adequacy of
14 which is hereby confirmed, to the fullest extent permissible under applicable law, Debtor, in its
15 individual capacity and as Debtor-In-Possession, as the case may be, Debtor's Estate, and each of
16 its Related Persons (collective, the "Releasing Parties") shall, and shall be deemed to, completely,
17 conclusively, absolutely, unconditionally, irrevocable, and forever release, waive, void, extinguish
18 and discharge each and all of the Released Parties (and each such Released Party so released shall
19 be deemed forever released, waived, and discharged by the Releasing Parties) and each Released
20 Party's respective assets and Related Persons of and from any and all Claims, causes of action,
21 litigation claims, avoidance actions and any other debts, obligations, rights, suits, damages, actions,
22 remedies, judgments and liabilities whatsoever, whether known or unknown, foreseen or
23 unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing as of the
24 Effective Date or thereafter arising, in law, at equity, whether for tort, contract, or otherwise, based
25 in whole or in part any act or omission, transaction, event or other occurrence or circumstances
26 existing or taking place prior to or on the Effective Date arising from or related in any way in whole
27 or in part to Debtor, Reorganized Debtor or their respective Assets and Estate, the Chapter 11 Case,
28 the Disclosure Statement, the Plan or the solicitation of votes on the Plan that such Releasing Party

1 would have been legally entitled to assert (whether individually or collectively) or that any Holder
2 of a Claim or Equity Interest would have been legally entitled to assert for or on behalf of Debtor or
3 its Estate (whether directly or derivatively) against any of the Released Parties; provided, however,
4 that the foregoing provisions of this release shall not operate to waive or release (I) any Causes of
5 Action expressly set forth and preserved by this Plan; (II) any Causes of Action arising from actual
6 or intentional fraud or willful misconduct as determined by Final Order of the Bankruptcy Court or
7 any other court of competent jurisdiction; and/or (III) the rights of such Releasing Party to enforce
8 the Plan and the contracts, instruments, releases, and other agreements or documents delivered
9 under or in connection with the Plan or assumed pursuant to the Plan or assumed pursuant to Final
10 Order of the Bankruptcy Court. The foregoing release shall be effective as of the Effective Date
11 without further notice to or Order of the Bankruptcy Court, act or action under applicable law,
12 regulation, order or rule or the vote, consent, authorization or approval of any Person.

13 18. Releases by Holders of Claims and Interests. The releases contained in Article XII,
14 Section 12.4(b) of the Plan are hereby approved. Without limiting the generality of the foregoing,
15 effective as of the Effective Date, for good and valuable consideration, to the fullest extent
16 permissible under applicable law, each Holder of a Claim or Equity Interest that has indicated, via
17 voting to accept the Plan, its agreement to grant the release contained in Section 12.4(b) of the Plan,
18 including all Holders of Construction Defect Claims for whom the Futures Representative cast a
19 Ballot, shall, and shall be deemed to, completely, conclusively, absolutely, unconditionally,
20 irrevocably and forever release, waive, void, extinguish and discharge the Released Parties, other
21 than the Futures Representative with respect to any Ballot cast by the Futures Representative, from
22 any and all Claims, Causes of Action, Avoidance Actions and any other obligations, rights, suits,
23 damages, judgments, debts, remedies and liabilities whatsoever, including any Claims or Causes of
24 Action that could be asserted on behalf of or against Debtor, whether known or unknown, foreseen
25 or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or
26 hereafter arising, in law, equity or otherwise, that such Holder of a Claim or Equity Interest would
27 have been legally entitled to assert in its own right (whether individually, derivatively or
28 collectively), based in whole or in part upon any act or omission, transaction, agreement, event or

1 other occurrence taking place on or before the Effective Date, in any way relating or pertaining to
2 (w) the purchase or sale, or the rescission of a purchase or sale, of any security of Debtor, (x)
3 Debtor, Reorganized Debtor or their respective assets, property and Estate, (y) the Chapter 11 Case,
4 and (z) the negotiation, formulation and preparation of the Plan, the Disclosure Statement, or any
5 related agreements, instruments or other documents provided, however, that these releases will have
6 no effect on the liability of any Released Party arising from any act, omission, transaction,
7 agreement, event or other occurrence constituting willful misconduct, gross negligence, fraud or
8 criminal conduct as determined by a Final Order or a final order of a court of competent jurisdiction
9 other than the Bankruptcy Court; provided further, however, the foregoing shall not constitute a
10 waiver or release of any right of the Holder of an Allowed Claim or Equity Interest, or party to an
11 Assumed Contract to payment under this Plan or otherwise on account of such Allowed Claim or
12 any of the rights of any parties in respect of Assumed Contracts under or in connection with this
13 Plan or prior order of the Bankruptcy Court; provided further, however, that nothing in the Plan or
14 this order confirming the Plan shall release, waive, void, extinguish, discharge, modify, alter or
15 limit in any way (i) any and all obligations, debts and liabilities of any non-Debtor Person or Entity
16 to the Secured Lenders, or (ii) any and all rights and remedies held by the Secured Lenders against
17 any non-Debtor Person or Entity or their respective assets; provided further, however, that nothing
18 in the Plan shall enjoin, alter, diminish or impair the rights of the Construction Defect Trust with
19 respect to any Insurance Recovery, any Insurance Coverage Action, or any Construction Defect
20 Action, with the Construction Defect Trust being, and deemed to be, for all purposes of insurance
21 and indemnity, the successor Debtor in respect of all Construction Defect Claims and all Insurance
22 Recoveries.

23 19. Binding Effect of Releases. The Releases set forth in Article XII of the Plan shall be
24 binding upon and shall inure to the benefit of any chapter 7 trustee in the event the Chapter 11 Case
25 is converted to a case under chapter 7 of the Bankruptcy Code.

26 20. Injunction Against Releasors. The injunction set forth in Article XII, Section 12.5(a)
27 of the Plan is granted. Without limiting the generality of the foregoing, all of the Releasors, along
28 with any of their successors or assigns, are permanently enjoined, from and after the Effective Date,

1 from (i) commencing or continuing in any manner any action or other proceeding of any kind
2 against the Released Parties in respect of any Released Liabilities, (ii) enforcing, attaching,
3 collecting or recovering by any manner or means of any judgment, award, decree or order against
4 the Released Parties or their respective assets in respect of any Released Liabilities, (iii) creating,
5 perfecting or enforcing any encumbrance of any kind against the Releasees or any of their
6 respective Related Persons in respect of any Released Liabilities, or (iv) asserting any right of
7 setoff, subrogation or recoupment of any kind against any obligation due from the Released Parties
8 or against the property or interests in property of the Released Parties, in respect of any Released
9 Liabilities; provided, however, that nothing contained herein shall preclude such Releasors from
10 exercising their rights pursuant to and consistent with the terms hereof and the contracts,
11 instruments, releases and other agreements and documents delivered under or in connection with
12 this Plan; provided, further, that nothing contained herein shall be deemed to enjoin any Releasor
13 from taking any action against any Released Party based on the release exceptions contained in
14 Section 12.4 of the Plan.

15 21. Injunction Against Interference with Plan. The injunction set forth in Article XII,
16 Section 12.5(c) of the Plan is granted. Without limiting the generality of the foregoing, upon the
17 Effective Date, all Holders of Claims against or Interests in Debtor and its Related Persons and any
18 of its successors or assigns shall be enjoined from taking any actions to interfere with the
19 implementation or Consummation of the Plan.

20 22. Injunction Channeling Construction Defect Claims. The injunction set forth in
21 Article XII, Section 12.5(d) of the Plan is granted. Without limiting the generality of the foregoing,
22 upon the Effective Date, pursuant to Bankruptcy Code section 105, all Persons and Entities shall be
23 permanently and forever stayed, restrained and enjoined from taking any of the following actions
24 against or affecting Reorganized Debtor, Debtor, the Estate, the Assets, the Distribution Agent, the
25 Professionals and their respective assets and property for the purpose of, directly or indirectly,
26 collecting, recovering or receiving payment of, on or with respect to any Construction Defect
27 Claims, regardless of when such Claims are deemed to arise, all of which will be channeled to the
28 Construction Defect Trust, including, but not limited to: (1) commencing, conducting or continuing

1 in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including a
2 judicial, arbitral, administrative or other proceeding); (2) enforcing, levying, attaching, collecting or
3 otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award,
4 decree or order; (3) creating, perfecting or otherwise enforcing in any manner, directly or indirectly,
5 any encumbrance; (4) asserting any setoff, right of subrogation or recoupment of any kind; and (5)
6 proceeding in any manner in any place with regard to any matter that is subject to resolution
7 pursuant to the Construction Defect Trust, except in conformity and compliance therewith.

8 Notwithstanding anything to the contrary, nothing in the Plan shall enjoin, alter, diminish, or impair
9 the rights of the Construction Defect Trust with regard to any insurance company and/or with
10 respect to any Insurance Coverage Action, Insurance Recoveries or Construction Defect Action,
11 with the Construction Defect Trust being, and deemed to be, for all purposes of insurance and
12 indemnity, the successor to Debtor in respect of all Construction Defect Claims and other recoveries
13 from any insurance company, including Insurance Recoveries.

14 23. Cash Out Release. The Cash Out Release is approved and shall take effect and
15 become binding as to any Holder of a Construction Defect Claim who makes the Cash Out Election
16 immediately upon receipt of the Cash Out Payment without any further action or approval.

17 24. Exemption from Certain Transfer Taxes. As provided in Article V, Section 5.6 of
18 the Plan, pursuant to Bankruptcy Code section 1146(a), the issuance or exchange of any security, or
19 the making or delivery of any instrument of transfer under, in furtherance, or in connection with the
20 Plan, including, but not limited to, any deeds, bills of sale, assignments or other instruments of
21 transfer, shall not be subject to any stamp tax, real estate transfer tax or similar tax.

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

25 26. Retention of Jurisdiction. The Court shall retain jurisdiction as provided in Article XI
26 the Plan. Without limiting the generality of the foregoing, the Court shall retain jurisdiction to enter
27 appropriate orders in aid of implementation of the Plan pursuant to Bankruptcy Code section 1142.
28

1 27. Final Decree. Notwithstanding Local Bankruptcy Rule 3022 or any other applicable
 2 law, a final decree shall be entered only upon motion and Debtor shall not request entry of the Final
 3 Decree with respect to the Chapter 11 Case, unless and until: (a) the New Capital Contribution has
 4 been disbursed to Reorganized Debtor and the Construction Defect Trustee to be distributed in
 5 accordance with this Plan and the TDP, as applicable, and the New Equity Interests have been
 6 issued in accordance with this Plan; (b) all adversary proceedings and contested matters pending in
 7 the Chapter 11 Case have been resolved by entry of a Final Order; (c) all Claims have either:
 8 (i) become Allowed Claims and been paid in accordance with the treatment to be given such
 9 Allowed Claims pursuant to this Plan; (ii) been disallowed by a Final Order or deemed to be a
 10 Disallowed Claim, in accordance with the terms of this Plan or the Bankruptcy Code; or (iii) been
 11 assumed by Reorganized Debtor; and (d) all Distributions to be made under this Plan shall have
 12 been made (i) to Holders of Allowed Claims in accordance with the requirements of this Plan by the
 13 Distribution Agent; and (ii) to Holders of Allowed Construction Defect Claims in accordance with
 14 the TDB by the Construction Defect Trustee.

15 28. Additional Matters. Debtor, Reorganized Debtor, the Secured Lenders and the DIP
 16 Lender have acted in good faith. The Distributions and/or consideration received by the DIP
 17 Lender and Reorganized Debtor shall not be subject to avoidance, turnover or disgorgement in any
 18 subsequent insolvency proceeding by any Person or Entity. The Liens securing the New Secured
 19 Loan constitute valid first priority Liens, subject only to any Permitted Encumbrances, and shall not
 20 be subject to avoidance, turnover or disgorgement in any subsequent insolvency proceeding by any
 21 Person or Entity.

22 Prepared and respectfully submitted by:

23 **FOX ROTHSCHILD LLP**

24 By /s/ Brett A. Axelrod

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

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

- The Court has waived the requirement of approval in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

ATHANASIOS AGELAKOPOULOS, OFFICE OF THE UNITED STATES TRUSTEE	APPROVED
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DONALD F. ENNIS, SNELL & WILMER LLP	APPROVED
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MITCHELL STIPP, FIELD LAW	APPROVED
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- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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