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

10 In re

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

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

26 Debtor.

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

Chapter 11

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

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

5 **DISCLAIMER**

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

10 THIS PLAN AND THE EXHIBITS APPENDED HERETO, AND THE ACCOMPANYING  
11 DISCLOSURE STATEMENT AND EXHIBITS APPENDED THERETO, REMAIN SUBJECT TO  
12 APPROVAL BY THE BANKRUPTCY COURT AND HAVE NOT BEEN AUTHORIZED BY THE  
13 BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS  
14 PLAN.

15 **ARTICLE I**

16 **DEFINITIONS AND RULES OF INTERPRETATION**

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

26 1.2 Rules of Interpretation. Any term used in this Plan that is not defined in this Plan, either  
27 in this Article I or elsewhere, but that is defined in the Bankruptcy Code or the Bankruptcy Rules, has  
28 the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules. For purposes of



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

27 1.3 Appendices and Operative Documents. All appendices to the Plan and the Operative  
28 Documents are incorporated into and are a part of this Plan as if set forth in full herein.

1 **ARTICLE II**

2 **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

3 2.1 Introduction.

4 (a) All Claims and Interests, except Administrative Claims (including Professional  
5 Fee Claims) and Priority Tax Claims, are placed in the Classes set forth below. In accordance with  
6 Bankruptcy Code section 1123(a)(1), Administrative Claims and Priority Tax Claims are not required to  
7 be, and have not been, placed in any Class under the Plan.

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

15 2.2 Unclassified Claims.

16 (a) Administrative Claims.

17 (1) Deadline to File Administrative Claims. The Holder of an Administrative  
18 Claim, other than (i) a Professional Fee Claim, or (ii) a liability incurred and paid in the ordinary course  
19 of business by Debtor, must File with the Bankruptcy Court and serve on Debtor and Debtor's counsel,  
20 notice of such Administrative Claim on or before the Administrative Claim Bar Date. Such notice must  
21 include, at a minimum, (i) the name of the Holder of such Administrative Claim, (ii) the basis of the  
22 Administrative Claim, including why it is entitled to administrative priority under the Bankruptcy  
23 Code, and (iii) the amount of the Administrative Claim. Failure to File and serve such notice timely and  
24 properly shall result in the Administrative Claim being forever barred and discharged.

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

27 (A) be paid from the Confirmation Funds in the Allowed amount of  
28 such Administrative Claim on, or as soon as reasonably practicable after, the later of (i) the Effective

1 Date, (ii) the date upon which such Administrative Claim becomes Allowed, or (iii) such date as is  
2 otherwise agreed to by Debtor or Reorganized Debtor, as the case may be, and the Holder of such  
3 Administrative Claim; or

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

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

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

16 (B) Debtor shall pay, or cause to be paid, all accrued US Trustee  
17 Fees on or before the Effective Date; and following the Effective Date, Reorganized Debtor shall be  
18 responsible for timely payment of all US Trustee Fees until such time as the Final Decree closing the  
19 Chapter 11 Case is entered and all US Trustee Fees due are paid in full.

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

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

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

4 2.3 Classified Claims and Interests.

5 (a) Class 1: Other Priority Claims.

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

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

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

16 (b) Class 2: Secured Claims.

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

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

1 respective entitlement to receive or recover from Debtor or Reorganized Debtor any interest accruing at  
2 the default rate under the Term Loan Documents prior to the Effective Date to the extent (and only to  
3 the extent) that such default rate interest would be triggered under the Term Loan Documents by the  
4 commencement of the Chapter 11 Case.

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

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

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

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

10 (c) Class 3: General Unsecured Claims.

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

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

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

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

24 (d) Class 4: Construction Defect Claims.

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

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

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

19 The Class 4 Ballot provided to Holders of Construction Defect Claims includes the  
20 option for such Holders to make the Cash Out Election. Each Holder of a Construction Defect Claim  
21 who makes the Cash Out Election shall: (i) receive a Cash Out Payment, which shall consist of a check  
22 in the amount of its Allowed Construction Defect Claim mailed by the Construction Defect Trust  
23 (funded from the Construction Defect Trust Contribution) within sixty (60) days of the Effective Date  
24 to the address to which the Class 4 Ballot was mailed unless a different address is provided on such  
25 Holder's completed Class 4 Ballot; (ii) not have any further right to distribution on account of any  
26 Construction Defect Claim from the Construction Defect Trust, Debtor, Reorganized Debtor or  
27 otherwise; and (iii) grant the Cash Out Release effective immediately upon receipt of the Cash Out  
28 Payment without any further action or approval.

1                    *Impairment and Voting:* Class 4 Claims are Impaired under the Plan. Therefore,  
2 Holders of Class 4 Construction Defect Claims who make the Cash Out Election will be deemed to  
3 have Allowed Claims for purposes of voting on the Plan and are entitled to vote to accept or reject this  
4 Plan. Holders of Class 4 Construction Defect Claims that do not make the Cash Out Election must seek  
5 temporary allowance of their claims pursuant to Bankruptcy Rule 3018(a) or they will not be entitled to  
6 vote to accept or reject this Plan.

7                    (e)      Class 5: Bond Claims.

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

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

11                   *Impairment and Voting:* Class 5 is not Impaired and the Holders of Allowed Bond  
12 Claims are conclusively deemed to have accepted this Plan, pursuant to Bankruptcy Code section  
13 1126(f). Therefore, the Holders of Class 5 are not entitled to vote to accept or reject this Plan.

14                   (f)      Class 6: Old Equity Interests.

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

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

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

23                   2.4      Retention of Defenses Regarding Claims. Except as otherwise provided in (a) this Plan,  
24 and (b) the DIP Financing Order, nothing shall affect Debtor's rights and defenses, both legal and  
25 equitable, with respect to any Claims.

26                   2.5      Disputed, Contingent and Unliquidated Claims and Interests. Any Claim or Interest that  
27 has been or is hereafter listed in the Schedules as disputed, contingent or unliquidated, and for which no  
28 Proof of Claim or Proof of Interest has been timely Filed by the Bar Date, is not considered Allowed



1 and shall be expunged without further action by Debtor and without any further notice to or action,  
2 order or approval of the Bankruptcy Court.

3 **ARTICLE III**

4 **ACCEPTANCE OR REJECTION OF THIS PLAN**

5 3.1 Acceptance by an Impaired Class. In accordance with Bankruptcy Code section 1126(c)  
6 and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall be  
7 deemed to have accepted this Plan if this Plan is accepted by the Holders of at least two-thirds (2/3) in  
8 dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have  
9 timely and properly voted to accept or reject this Plan.

10 3.2 Summary of Classes Voting on this Plan.

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

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

18 3.3 Elimination of Vacant Classes. Any Class of Claims that does not contain any Allowed  
19 Claims as of the Voting Record Date or any Claims temporarily Allowed under Bankruptcy Rule 3018  
20 or otherwise shall be deemed eliminated from the Plan for purposes of voting to accept or reject the  
21 Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to  
22 Bankruptcy Code section 1129(a)(8).

23 3.4 Tabulation of Votes. The Voting and Claims Agent will tabulate all votes on this Plan  
24 for the purpose of determining whether this Plan has been accepted by each Impaired Class entitled to  
25 vote.

26 3.5 Nonconsensual Confirmation. If any Impaired Class of Claims entitled to vote shall not  
27 accept the Plan by the requisite statutory majorities provided in Bankruptcy Code section 1126(c),  
28 Debtor reserves the right, subject to the Lock-Up and Settlement Letter Agreement, to amend the Plan

1 in accordance with Section 12.1 hereof or undertake to have the Bankruptcy Court confirm the Plan  
2 under Bankruptcy Code section 1129(b) or both. With respect to any Impaired Classes of Claims that  
3 are deemed to reject the Plan, Debtor shall request that the Bankruptcy Court confirm the plan under  
4 Bankruptcy Code section 1129(b).

5 **ARTICLE IV**

6 **EXECUTORY CONTRACTS**

7 4.1 Executory Contracts. Debtor/Reorganized Debtor shall be deemed to have assumed each  
8 Assumed Contract as of the Effective Date. The Confirmation Order shall constitute an order of the  
9 Bankruptcy Court under Bankruptcy Code sections 365 and 1123(b)(2) approving the Assumed  
10 Contract assumptions by Debtor/Reorganized Debtor, as of the Effective Date.

11 4.2 Cure of Defaults for Assumed Executory Contracts.

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

24 (b) If a counterparty objects to any Cure or any other matter related to assumption,  
25 absent an agreement being reached by Debtor and the objecting counterparty, the Bankruptcy Court  
26 shall determine the Allowed amount of such Cure and any related issues. If there is a dispute regarding  
27 such Cure, the ability of Debtor or Reorganized Debtor to provide “adequate assurance of future  
28 performance” within the meaning of Bankruptcy Code section 365, or any other matter pertaining to

1 assumption, then Cure shall occur as soon as reasonably practicable after entry of an order resolving  
2 such dispute, approving such assumption, or as may be agreed upon by Debtor or Reorganized Debtor  
3 and the counterparty to the Assumed Contract. Any counterparty to an Assumed Contract that fails to  
4 object timely to the proposed assumption of such Executory Contract will be deemed to have consented  
5 to such assumption. Debtor and Reorganized Debtor reserve the right either to reject or nullify the  
6 assumption of any Executory Contract no later than thirty (30) days after a Final Order determining the  
7 Cure or any request for adequate assurance of future performance required to assume such Executory  
8 Contract.

9 (c) Assumption of any Assumed Contract pursuant to this Plan or otherwise shall  
10 result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary,  
11 including defaults with respect to provisions restricting the change in control or ownership interest  
12 composition or other bankruptcy-related defaults, arising under any Assumed Contract at any time prior  
13 to the effective date of assumption. Any Proofs of Claim Filed with respect to an Assumed Contract  
14 that has been assumed shall be deemed disallowed and expunged, without further notice to or action,  
15 order or approval of the Bankruptcy Court, upon payment by Reorganized Debtor of the required Cure  
16 amount.

17 4.3 Rejection of Executory Contracts.

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

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

25 4.4 Filing of Rejection Claims. Any Person or Entity who believes they are entitled to assert  
26 a Claim against Debtor by virtue of the rejection of a Rejected Contract pursuant to this Article IV or a  
27 Final Order entered after the Confirmation Date, may File a Claim not later than twenty (20) days after  
28 the date the rejection order was entered or such later time as may be set forth for the Filing of such

1 Claim in said Final Order. If such Claim is not so Filed, it shall be forever barred from assertion against  
2 Debtor and Reorganized Debtor. Nothing in this Section 4.4 shall affect the right of any party-in-  
3 interest to object to any Claim which has been improperly Filed or not Filed on a timely basis.

4 4.5 Modifications, Amendments, Supplements, Restatements or Other Agreements.

5 (a) Unless otherwise provided in the Plan Supplement, each Assumed Contract that  
6 is assumed shall include all modifications, amendments, supplements, restatements or other agreements  
7 that in any manner affect such Assumed Contract, and all Executory Contracts related thereto, if any,  
8 including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal,  
9 and any other interests, unless any of the foregoing agreements has been previously rejected or  
10 repudiated or is rejected or repudiated under this Plan.

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

15 4.6 Reservation of Rights. Neither the exclusion nor inclusion of any contract or lease in the  
16 Plan Supplement, nor anything contained in this Plan, shall constitute an admission by Debtor or  
17 Reorganized Debtor that any such contract or lease is, in fact, an Executory Contract or that Debtor or  
18 Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or  
19 lease is or was an Executory Contract at the time of assumption or rejection, Debtor and/or Reorganized  
20 Debtor shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the  
21 treatment of such contract or lease under the Plan.

22 4.7 Warranty Program. Except as set forth in the Plan Supplement, from and after the  
23 Effective Date, Reorganized Debtor shall assume the Warranty Program.

24 4.8 Price Promises and Price Guarantees. To the extent the Price Promises and Price  
25 Guarantees are Executory Contracts, the Bankruptcy Court has authorized that they be treated as  
26 Rejected Contracts. Any Holder of an Allowed Claim whose Claim arises from the rejection of a Price  
27 Promise or Price Guarantee shall have the rights set forth in Section 4.3(b) of this Plan. A party to a  
28

1 Price Promise or Price Guarantee agreement may file a claim for damages based on the rejection up to  
2 the bar date of June 29, 2012 at 5:00 p.m. prevailing Pacific Time.

3 **ARTICLE V**

4 **PLAN IMPLEMENTATION**

5 5.1 Plan Implementation.

6 This Plan shall be implemented in all respects in a manner that is consistent with the terms and  
7 conditions of the Operative Documents, the Lock-Up and Settlement Letter Agreement, DIP Financing  
8 Order, and the requirements of section 1123(a) and other applicable provisions of the Bankruptcy Code.  
9 Without limiting the generality of the foregoing, the New Capital Contribution shall be used to fund this  
10 Plan and shall be distributed or applied in the manner necessary to: (i) provide all required Confirmation  
11 Funds for Distribution pursuant to this Plan; (ii) fund the Construction Defect Trust Contribution;  
12 (iii) satisfy the costs, expenses, required payments and entitlements outlined herein on the Effective  
13 Date, or pursuant to the TDP; and (iv) provide Reorganized Debtor and the Construction Defect Trust  
14 with working capital and funding for operations and Plan needs. On the Effective Date, that portion of  
15 the New Capital Contribution to be used for the Confirmation Funds shall be turned over to the  
16 Distribution Agent for Distribution pursuant to this Plan and the Construction Defect Trust Contribution  
17 shall be turned over to the Construction Defect Trustee.

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

27 5.2 Issuance of Equity Interests. On the Effective Date, Old Equity Interests shall be  
28 extinguished, canceled, terminated and be of no force and effect thereafter. In consideration of the New

1 Capital Contribution, one hundred percent (100%) of the New Equity Interests in Reorganized Debtor  
2 shall be issued to the DIP Lender (subject to a pledge thereof in favor of the Secured Lenders to secure  
3 any obligations of the borrowers under the New Secured Loan).

4 5.3 Disposition of Assets and Equity Interests. On the Effective Date (as more fully set forth  
5 in Article XII of this Plan), without any further action, Reorganized Debtor will be vested with all of  
6 Debtor's Assets, free and clear of all Claims, Liens and Old Equity Interests (except for Liens provided  
7 or authorized pursuant to this Plan).

8 5.4 Satisfaction of Allowed Claims. On and after the Effective Date, unless such Claims  
9 shall be paid on or prior to such date, (i) to the extent not satisfied with Confirmation Funds,  
10 Reorganized Debtor shall be responsible for satisfying Allowed Administrative Claims and Allowed  
11 Class 1 Other Priority Claims pursuant and subject to the treatment thereof as set forth in this Plan and  
12 the Confirmation Order; (ii) Reorganized Debtor shall satisfy Allowed Class 2 Secured Claims and  
13 Allowed Class 5 Bond Claims pursuant and subject to the treatment thereof as set forth in this Plan and  
14 the Confirmation Order; (iii) the Distribution Agent shall satisfy Allowed Class 3 General Unsecured  
15 Claims from the Confirmation Funds; and (iv) the Construction Defect Trust shall be deemed to have  
16 assumed Debtor's obligations on account of Class 4 Construction Defect Claims, in each case including  
17 obligations (if any) on account of such Claims that are Disputed Claims or with respect to which any  
18 applicable period for asserting a Claim has not expired.

19 5.5 Corporate Actions.

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

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

1 the option and in the sole discretion of Reorganized Debtor, without requiring any further corporate  
2 authorizations and notwithstanding the requirements under any applicable non-bankruptcy law.

3 5.6 Exemption from Certain Transfer Taxes and Further Transactions. Pursuant to  
4 Bankruptcy Code section 1146(a), the issuance or exchange of any security, or the making or delivery  
5 of any instrument of transfer under, in furtherance, or in connection with this Plan, including, but not  
6 limited to, any deeds, bills of sale, assignments or other instruments of transfer, shall not be subject to  
7 any stamp tax, real estate transfer tax or similar tax.

8 5.7 Final Decree. Notwithstanding otherwise applicable law, Debtor shall not request entry  
9 of the Final Decree with respect to the Chapter 11 Case, unless and until:

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

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

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

19 (d) All Distributions to be made under this Plan shall have been made (i) to Holders  
20 of Allowed Claims in accordance with the requirements of this Plan by the Distribution Agent; and  
21 (ii) to Holders of Allowed Construction Defect Claims in accordance with the TDB by the Construction  
22 Defect Trustee.

23 5.8 Effectuating Documents, Further Transactions. On and after the Effective Date, Debtor  
24 and its agents, officers and members, are authorized to and may issue, execute, deliver, file or record  
25 such contracts, securities, instruments, releases and other agreements or documents and take such  
26 actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and  
27 conditions of this Plan in the name of and on behalf of Debtor, as applicable, without the need for any  
28 approvals, authorizations or consents except for those expressly required pursuant to this Plan.

1           5.9     Post Effective Date Fees and Expenses.

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

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

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

19   **ARTICLE VI**

20   **THE CONSTRUCTION DEFECT TRUST**

21          6.1     Creation of the Construction Defect Trust and Appointment of the Construction Defect  
22 Trustee.

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

25          (b)     The Construction Defect Trust shall be administered by the Construction Defect  
26 Trustee, who shall be identified in the Construction Defect Trust Declaration no later than fourteen (14)  
27 days prior to the Confirmation Hearing. The appointment of the initial Construction Defect Trustee and  
28 the terms of its compensation shall be subject to the approval of the Bankruptcy Court.



1 (c) The Construction Defect Trustee shall have and perform all of the rights, powers  
2 and duties set forth in this Plan and the Construction Defect Trust Declaration.

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

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

28

1           6.3     Purpose of the Construction Defect Trust. The Construction Defect Trust shall  
2 be established for the primary purpose of (a) liquidating its assets in accordance with  
3 Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or  
4 business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of  
5 the Construction Defect Trust, and (b) liquidating, resolving, paying and satisfying all Construction  
6 Defect Claims pursuant to claims liquidation procedures established by the Construction Defect  
7 Trustee, after consultation with and approval by the Construction Defect Trust Advisory Board.  
8 Accordingly, the Construction Defect Trustee shall, in an expeditious but orderly manner, disburse the  
9 Cash Out Payments to Holders of Construction Defect Claims who make the Cash Out Election,  
10 liquidate and convert to Cash the Insurance Coverage Actions, Insurance Recoveries and Construction  
11 Defect Actions, make timely distributions to the other Holders of Allowed Construction Defect Claims  
12 of Cash and property, and not unduly prolong the duration of the Construction Defect Trust. The  
13 Construction Defect Trustee shall not be deemed a successor-in-interest of Debtor or Reorganized  
14 Debtor for any purpose other than as specifically set forth herein or in the Construction Defect Trust  
15 Declaration. The Construction Defect Trust is intended to qualify and shall be treated as a “qualified  
16 settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and the Construction Defect Trustee  
17 shall be the “administrator” of the Construction Defect Trust pursuant to Treas. Reg. § 1.468B-2(k)(3).  
18 No election shall be made to treat the Construction Defect Trust as a grantor trust for U.S. federal  
19 income tax purposes. Accordingly, the Construction Defect Trust shall be treated as a taxable entity for  
20 federal income tax purposes.

21           6.4     Powers of the Construction Defect Trustee. The Construction Defect Trustee shall have  
22 the power to administer the assets of the Construction Defect Trust in a manner consistent with the  
23 Construction Defect Trust Declaration, and the Construction Defect Trustee, in consultation with the  
24 Construction Defect Trust Advisory Board, shall be the Estate representative designated to prosecute  
25 any and all Insurance Coverage Actions and Construction Defect Actions transferred to the  
26 Construction Defect Trust, and to object to and resolve objections to Construction Defect Claims  
27 pursuant to the claims liquidation procedures established by the Construction Defect Trustee, after  
28 consultation with and approval by the Construction Defect Trust Advisory Board. Without limiting the

1 generality of the foregoing, the Construction Defect Trustee shall (a) hold, administer and prosecute the  
2 assets of the Construction Defect Trust and any proceeds thereof; (b) have the power and authority to  
3 retain, as an expense of the Construction Defect Trust, attorneys, advisors, other professionals and  
4 employees as may be appropriate to perform the duties required of the Construction Defect Trustee  
5 hereunder or in the Construction Defect Trust Declaration and the TDP; (c) object to Construction  
6 Defect Claims and prosecute and resolve such objections; (d) otherwise resolve all Construction Defect  
7 Claims; (e) make distributions as provided in the Construction Defect Trust Declaration; and  
8 (f) provide periodic reports and updates regarding the status of the administration of the Construction  
9 Defect Trust. The Construction Defect Trustee shall be deemed a Distribution Agent under the Plan  
10 when making distributions to holders of Construction Defect Trust Interests pursuant to the  
11 Construction Defect Trust Declaration. Further, the Construction Defect Trustee shall be deemed the  
12 Distribution Agent in Article VIII with respect to the filing, prosecution and resolution of objections to  
13 Construction Defect Claims.

14           6.5     Construction Defect Trust Advisory Board. On the Effective Date, the Construction  
15 Defect Trust Advisory Board shall be created pursuant to the Construction Defect Trust Declaration.  
16 The initial members of the Construction Defect Trust Advisory Board shall be those individuals  
17 identified no later than fourteen (14) days prior to the Confirmation Hearing. The Construction Defect  
18 Trust Advisory Board shall consult with and advise the Construction Defect Trustee regarding the  
19 administration of the Construction Defect Trust and the liquidation and resolution of Construction  
20 Defect Claims in accordance with the provisions of this Plan and the Construction Defect Trust  
21 Declaration.

22           6.6     Cooperation Between Construction Defect Trustee and Disbursing Agent

23           (a)     The right to control the Insurance Coverage Actions, Insurance Recoveries and  
24 the Construction Defect Actions, including negotiations relating thereto and settlements thereof, shall be  
25 vested in the Construction Defect Trust on and after the Effective Date. Notwithstanding the foregoing,  
26 to enable the Construction Defect Trustee to perform its duties under the Construction Defect Trust  
27 Declaration and the Plan, Reorganized Debtor shall cooperate with the Construction Defect Trustee in  
28 pursuing the Insurance Coverage Actions, Insurance Recoveries and the Construction Defect Actions,

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

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

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

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

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

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

1 Construction Defect Trust Advisory Board, shall determine, in its discretion, and in accordance with  
2 the TDP.

3 **ARTICLE VII**

4 **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

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

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

25 7.3 Claim Objection Deadline. As soon as practicable, but in no event later than thirty (30)  
26 days after the Effective Date (subject to being extended by the order of the Bankruptcy Court upon  
27 motion of Reorganized Debtor without notice or a hearing), objections to Claims shall be Filed with the  
28 Bankruptcy Court and served upon the Holders of each of the Claims to which objections are made.

1 Notwithstanding anything to the contrary in this Plan, Construction Defect Claims shall be liquidated,  
2 resolved, paid and satisfied by the Construction Defect Trust, rather than by objection in the Bankruptcy  
3 Court, unless the Construction Defect Trustee Files an objection to any Construction Defect Claim in  
4 the Bankruptcy Court within thirty (30) days after the Effective Date.

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

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

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

24 **ARTICLE VIII**

25 **PROVISIONS CONCERNING PLAN DISTRIBUTIONS**

26 8.1 Distributions on Account of Claims Allowed as of the Effective Date. Distributions  
27 under this Plan on account of Claims, other than General Unsecured Claims and Construction Defect  
28

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1 Claims for which no Cash Out Election is made, Allowed on or before the Effective Date, shall be made  
2 on the Effective Date, or on the first date thereafter as is reasonably practicable.

3 8.2 Distributions on Account of Claims Allowed After the Effective Date.

4 (a) Payments and Distributions on Disputed Administrative and Priority Claims.

5 Except as otherwise provided in this Plan, or any Final Order in the Chapter 11 Case, any Disputed  
6 Administrative Claim or Disputed Priority Claim that becomes Allowed after the Effective Date shall  
7 be satisfied from the Confirmation Funds or, to the extent there are no available Confirmation Funds  
8 from which to pay such Claim, the obligation to satisfy such Claims will be assumed by Reorganized  
9 Debtor in the ordinary course of business in accordance with the terms and conditions of any controlling  
10 agreements, course of dealing, course of business or industry practice.

11 (b) Special Rules for Distributions to Holders of General Unsecured Claims. After

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

19 (c) Special Rules for Distributions to Holders of Disputed Claims. Except as

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

27  
28



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

4 8.3 Manner of Payment Under this Plan. Distributions of Cash to be made by the  
5 Distribution Agent pursuant to this Plan shall be made, at the discretion of the Distribution Agent, by  
6 check drawn on the Distribution Agent's bank account or by wire transfer from a domestic bank.

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

11 8.5 [reserved]

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

18 8.7 Delivery of Distributions.

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

26 (b) Distribution Agent. The Distribution Agent shall make all Distributions required  
27 under this Plan, whereas the Construction Defect Trustee shall make all distributions under the  
28

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1 Construction Defect Trust Declaration pursuant to the TDP or the Cash Out Election, as the case may  
2 be.

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

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

1           8.9     Disputed Distributions. In the event of any dispute between or among Holders of Claims  
 2 as to the right of any Holder of a Claim to receive or retain any Distribution to be made to such Holder  
 3 under this Plan, the Distribution Agent, in lieu of making such Distribution to such Holder, may make it  
 4 instead into an escrow account for payment as ordered by the Bankruptcy Court or as the interested  
 5 parties to such dispute may otherwise agree among themselves. Any such Holder who fails to raise  
 6 such dispute by filing an appropriate request for relief with the Bankruptcy Court prior to the issuance  
 7 of such disputed Distribution by the Distribution Agent shall be deemed to have forever waived any  
 8 right to dispute such Distribution or to enjoin, impair or otherwise restrict the use of any such  
 9 Distribution.

10           8.10    Setoffs. The Distribution Agent may, but shall not be required to, set-off against any  
 11 Distributions to be made pursuant to this Plan to a Holder of an Allowed Claim, Claims of any nature  
 12 whatsoever that Debtor may have, or may have had, against such Holder that have not been previously  
 13 released, but neither the failure to do so, nor the allowance of any Claim held by such Holder, shall  
 14 constitute a waiver or release by the Distribution Agent of any such Claim Debtor may have, or may  
 15 have had, against such Holder.

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

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

22   **ARTICLE IX**

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

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

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

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

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

23 **ARTICLE X**

24 **CONDITIONS TO EFFECTIVE DATE**

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

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

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

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

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

13 (e) The Bar Date shall have passed;

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

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

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

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

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

26 (k) To the extent Confirmation Funds are insufficient to satisfy the Allowed  
27 Administrative Claims and Allowed Priority Claims in full, Reorganized Debtor shall have assumed or  
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1 paid the remaining amounts unless otherwise agreed by the Holder of such Allowed Administrative and  
2 Allowed Priority Claims Claim;

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

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

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

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

11 **ARTICLE XI**

12 **RETENTION OF JURISDICTION**

13 11.1 Retention of Jurisdiction. Except to the extent otherwise expressly set forth herein, the  
14 Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case following the Confirmation Date for  
15 the following purposes, it being expressly intended that such retention of jurisdiction shall in all cases  
16 hereafter set forth, extend to any actions or proceedings commenced prior or subsequent to the  
17 Confirmation Date and/or the Effective Date whether by Debtor, Reorganized Debtor or the parties  
18 specified herein:

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27

28



1 11.5 Term Loan. Notwithstanding anything contained in this Plan, nothing herein shall confer  
2 on the Bankruptcy Court jurisdiction to hear or determine any claims, causes of action or disputes  
3 arising under the Term Loan, as it may be amended from time to time.

4 **ARTICLE XII**

5 **EFFECT OF CONFIRMATION OF PLAN**

6 12.1 Discharge.

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

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

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

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

10 12.2 Binding Effect of Plan/Injunction.

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

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

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

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

16 12.3 Exculpation. None of the Exculpated Parties shall have or incur any liability to any  
17 Holder of a Claim against or Interest in Debtor, or any other party-in-interest, or any of their Related  
18 Persons, or any of their successors or assigns, for any act, omission, transaction or other occurrence in  
19 connection with, relating to, or arising out of the Chapter 11 Case, the pursuit of confirmation of this  
20 Plan, or the Consummation of this Plan, except and solely to the extent such liability is based on fraud,  
21 gross negligence or willful misconduct. The Exculpated Parties shall be entitled to reasonably rely  
22 upon the advice of counsel with respect to any of their duties and responsibilities under this Plan or in  
23 the context of the Chapter 11 Case. No Holder of a Claim against or Interest in Debtor, or any other  
24 party-in-interest, including their respective Related Persons, shall have any right of action against the  
25 Exculpated Parties or any of their Related Persons, for any act, omission, transaction or other  
26 occurrence in connection with, relating to, or arising out of, the Chapter 11 Case, the pursuit of  
27 confirmation of this Plan, the Consummation of this Plan or the administration of this Plan, except to  
28 the extent arising from fraud.

1 12.4 Releases.

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

1 DIRECTLY OR DERIVATIVELY) AGAINST ANY OF THE RELEASED PARTIES; PROVIDED,  
2 HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS RELEASE SHALL NOT OPERATE  
3 TO WAIVE OR RELEASE (I) ANY CAUSES OF ACTION EXPRESSLY SET FORTH IN AND  
4 PRESERVED BY THIS PLAN OR ANY PLAN SUPPLEMENT; (II) ANY CAUSES OF ACTION  
5 ARISING FROM ACTUAL OR INTENTIONAL FRAUD OR WILLFUL MISCONDUCT AS  
6 DETERMINED BY FINAL ORDER OF THE BANKRUPTCY COURT OR ANY OTHER COURT  
7 OF COMPETENT JURISDICTION; AND/OR (III) THE RIGHTS OF SUCH RELEASING PARTY  
8 TO ENFORCE THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER  
9 AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THIS  
10 PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO FINAL  
11 ORDER OF THE BANKRUPTCY COURT. THE FOREGOING RELEASE SHALL BE EFFECTIVE  
12 AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR ORDER OF THE  
13 BANKRUPTCY COURT, ACT OR ACTION UNDER APPLICABLE LAW, REGULATION,  
14 ORDER OR RULE OR THE VOTE, CONSENT, AUTHORIZATION OR APPROVAL OF ANY  
15 PERSON.

16 (b) Releases by Holders of Claims and Interests. Effective as of the Effective Date,  
17 for good and valuable consideration, to the fullest extent permissible under applicable law, each Holder  
18 of a Claim or Equity Interest that has indicated, via voting to accept the Plan, its agreement to grant the  
19 release contained in this Section 12.4 shall, and shall be deemed to, completely, conclusively, abso-  
20 lutely, unconditionally, irrevocably and forever release, waive, void, extinguish and discharge the  
21 Released Parties from any and all Claims, Causes of Action, Avoidance Actions and any other obli-  
22 gations, rights, suits, damages, judgments, debts, remedies and liabilities whatsoever, including any  
23 Claims or Causes of Action that could be asserted on behalf of or against Debtor, whether known or  
24 unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unma-  
25 tured, existing or hereafter arising, in law, equity or otherwise, that such holder of a Claim or Equity  
26 Interest would have been legally entitled to assert in its own right (whether individually, derivatively or  
27 collectively), based in whole or in part upon any act or omission, transaction, agreement, event or other  
28 occurrence taking place on or before the Effective Date, in any way relating or pertaining to (w) the

1 purchase or sale, or the rescission of a purchase or sale, of any security of Debtor, (x) Debtor,  
2 Reorganized Debtor or their respective assets, property and Estate, (y) the Chapter 11 Case, and (z) the  
3 negotiation, formulation and preparation of the Plan, the Disclosure Statement, or any related  
4 agreements, instruments or other documents including, without limitation, all the documents included in  
5 the Plan Supplement; provided, however, that these releases will have no effect on the liability of any  
6 Released Party arising from any act, omission, transaction, agreement, event or other occurrence  
7 constituting willful misconduct, gross negligence, fraud or criminal conduct as determined by a Final  
8 Order; provided further, however, the foregoing shall not constitute a waiver or release of any right of  
9 the Holder of an Allowed Claim or Equity Interest, or party to an Assumed Contract to payment under  
10 this Plan or otherwise on account of such Allowed Claim or any of the rights of any parties in respect of  
11 Assumed Contracts under or in connection with this Plan or prior order of the Bankruptcy Court;  
12 provided further, however, that except with respect to the provisions of Section 12.5(d) hereof  
13 applicable to Construction Defect Claims, nothing in the Plan or any order confirming the Plan shall  
14 release, waive, void, extinguish, discharge, modify, alter or limit in any way (i) any and all obligations,  
15 debts and liabilities of any non-Debtor Person or Entity to the Secured Lenders, or (ii) any and all rights  
16 and remedies held by the Secured Lenders against any non-Debtor Person or Entity; provided further,  
17 however, that nothing in the Plan shall enjoin, alter, diminish or impair the rights of the Construction  
18 Defect Trust with respect to any Insurance Recovery, any Insurance Coverage Action, or any  
19 Construction Defect Action, with the Construction Defect Trust being, and deemed to be, for all  
20 purposes of insurance and indemnity, the successor Debtor in respect of all Construction Defect Claims  
21 and all Insurance Recoveries. The Releases set forth in this Article XII shall be binding upon and shall  
22 inure to the benefit of any chapter 7 trustee in the event the Chapter 11 Case is converted to a case  
23 under chapter 7 of the Bankruptcy Code.

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

27 12.5 Injunctions.

28

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

18 (b) Injunction Protecting Exculpation of Releasees. All Holders of Claims against or  
19 Interests in Debtor and any other parties-in-interest, along with any of their Related Persons and any of  
20 their successors or assigns are permanently enjoined, from and after the Effective Date, from  
21 (i) commencing or continuing in any manner any action or other proceeding of any kind against  
22 Releasees or any of their respective Related Persons in respect of any potential liability for which  
23 exculpation is granted pursuant to Section 12.3 of this Plan, (ii) enforcing, attaching, collecting or  
24 recovering by any manner or means of any judgment, award, decree or order against Releasees or any  
25 of their respective Related Persons in respect of any potential liability for which exculpation is granted  
26 pursuant to Section 12.3 of this Plan, (iii) creating, perfecting or enforcing any encumbrance of any  
27 kind against Releasees or any of their respective Related Persons in respect of any potential liability for  
28 which exculpation is granted pursuant to Section 12.3 of this Plan, or (iv) asserting any right of setoff,

1 subrogation or recoupment of any kind against any Releasee or any of their respective Related Persons  
 2 or against the property or interests in property any Releasee or any of their respective Related Persons,  
 3 in respect of any potential liability for which exculpation is granted pursuant to Section 12.3 of this  
 4 Plan; provided further, however, that except with respect to the provisions of Section 12.5(d) hereof  
 5 applicable to Construction Defect Claims, nothing in the Plan or any order confirming the Plan shall  
 6 release, waive, void, extinguish, discharge, modify, alter or limit in any way (i) any and all obligations,  
 7 debts and liabilities of any non-Debtor Person or Entity to the Secured Lenders, or (ii) any and all rights  
 8 and remedies held by the Secured Lenders against any non-Debtor Person or Entity; provided, however,  
 9 that nothing contained herein shall preclude any Holder or other party-in-interest from exercising its  
 10 rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases and other  
 11 agreements and documents delivered under or in connection with this Plan.

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

16 (d) Injunction Channeling Construction Defect Claims. Upon the Effective Date,  
 17 pursuant to Bankruptcy Code section 105, all Persons and Entities shall be permanently and forever  
 18 stayed, restrained and enjoined from taking any of the following actions against or affecting  
 19 Reorganized Debtor or its Affiliates, Debtor or its Affiliates, the Estate, the Assets, the Distribution  
 20 Agent, the Professionals and any of their Related Persons or their respective assets and property for the  
 21 purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to  
 22 any Construction Defect Claims, regardless of when such Claims are deemed to arise, all of which will  
 23 be channeled to the Construction Defect Trust, including, but not limited to:

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

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



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

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

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

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

13 12.6 Adequate Protection Liens; Cash Collateral Orders.

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

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

20 12.7 DIP Loan and Liens. As of the Effective Date, the DIP Loan shall be fully paid or  
21 otherwise satisfied through issuance of the New Equity Interests, the DIP Lending Order shall terminate  
22 and all Liens granted under the DIP Lending Order, as well as Debtor’s obligations under the DIP Loan  
23 and DIP Lending Order, shall be deemed to be terminated, discharged, eliminated and of no further  
24 force and effect.

25 12.8 Termination of Debt Instruments. On the Effective Date, all instruments evidencing  
26 indebtedness of Debtor held by Holders of Claims that are Impaired by this Plan or have been paid in  
27 full pursuant hereto shall be deemed canceled as against Debtor (or in the case of the New Secured  
28

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(702) 597-5503 (fax)

1 Loan, replaced by the New Secured Notes and related New Secured Loan Documents), but not against  
2 any non-Debtor Person or Entity.

3 12.9 Judgments Void. Any judgment obtained before or after the Effective Date in any court  
4 other than the Bankruptcy Court shall be null and void as a determination of liability of Debtor and/or  
5 Reorganized Debtor with respect to any debt treated by the Plan.

6 12.10 Revesting of Assets in Reorganized Debtor. Except as otherwise expressly provided  
7 herein or in the Confirmation Order, on the Effective Date, but retroactive to the Confirmation Date,  
8 without any further action, Reorganized Debtor will be vested with all of Debtor's Assets, wherever  
9 situated, free and clear of all Claims, Liens and Old Equity Interests (except for Liens provided or  
10 authorized pursuant to this Plan and Permitted Encumbrances). Without limiting the generality of the  
11 foregoing, on and after the Effective Date, Reorganized Debtor shall be vested with all of Debtor's  
12 Assets, wherever situated, free and clear of any Claims based on any form of successor liability or  
13 similar or related theory of liability. On and after the Effective Date, Reorganized Debtor shall be free  
14 of any restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate its business and  
15 may use, acquire or dispose of its assets free of any restrictions imposed by the Bankruptcy Code and  
16 the Bankruptcy Rules and without supervision or approval by the Bankruptcy Court, other than the  
17 obligations set forth in this Plan or the Confirmation Order. Without limiting the generality of the  
18 foregoing and except as otherwise expressly provided herein or in the Confirmation Order, any Causes  
19 of Action will be preserved and retained solely for Reorganized Debtor's commencement, prosecution,  
20 use and benefit.

21 12.11 Discharge of Statutory Committee/Futures Representative. Upon the Effective Date,  
22 the Futures Representative and the members of any Statutory Committee shall be discharged from  
23 their duties as such. Notwithstanding the foregoing, the Futures Representative and any Statutory  
24 Committee shall be entitled to appear and be heard regarding final applications for allowance of  
25 Professional Fee Claims.

26 12.12 Preservation of Causes of Action. Pursuant to Bankruptcy Code section 1123(b), Debtor  
27 as Reorganized Debtor shall retain and reserve the right to enforce all rights to commence and pursue  
28 Causes of Action whether arising prior to or after the Petition Date, and whether pending as of or Filed

1 after the Effective Date, in any court or other tribunal. Unless a Cause of Action is expressly waived,  
 2 relinquished, released, compromised or settled in the Plan or any Final Order, Debtor on behalf of itself  
 3 and as Reorganized Debtor expressly reserves all Causes of Action for later adjudication and, therefore,  
 4 no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel,  
 5 issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to  
 6 any Causes of Action upon Confirmation or the Effective Date. No Person or Entity may rely on the  
 7 absence of a specific reference in the Plan, any Plan Supplement, or the Disclosure Statement to any  
 8 Cause of Action against them as an indication that Debtor or Reorganized Debtor will not pursue any  
 9 and all available Causes of Action against such Person or Entity. Debtor and Reorganized Debtor  
 10 expressly reserve all rights to prosecute any and all Causes of Action against any Person or Entity,  
 11 except as otherwise expressly provided in the Plan.

12           12.13 Maintenance of Administrative Claim Status Post Discharge. Notwithstanding any  
 13 discharge granted to Debtor, Allowed Administrative Claims shall maintain their administrative priority  
 14 status under Bankruptcy Code section 507(a)(2) until paid in full.

15           12.14 No Limitation on Effect of Confirmation. Nothing contained in the Plan or the  
 16 Disclosure Statement will limit, waive or restrict in any way the effect of Confirmation as set forth in  
 17 Bankruptcy Code section 1141. Confirmation will bind Debtor, Reorganized Debtor, all Creditors,  
 18 Equity Interest Holders and other parties in interest to the provisions of the Plan, whether or not the  
 19 Claim or Equity Interest of such Creditor or Equity Interest Holder is Impaired under the Plan and  
 20 whether or not such Creditor or Equity Interest Holder has accepted the Plan and whether or not a proof  
 21 of Claim or Equity Interest has been Filed or deemed to have been Filed under Bankruptcy Code  
 22 sections 501 or 1111(a), or such Claim or Equity Interest is Allowed under Bankruptcy Code section  
 23 502.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

#### 26           13.1 Modification of this Plan.

27           (a) Subject to the Lock-Up and Settlement Letter Agreement, Debtor may alter,  
 28 amend or modify the Plan at any time before the entry of the Confirmation Order, provided that the

1 Plan, as altered, amended or modified, satisfies the conditions of Bankruptcy Code sections 1122 and  
2 1123, and Debtor shall have complied with Bankruptcy Code section 1125. However, the Bankruptcy  
3 Court may require a new disclosure statement and/or re-voting on the Plan if Debtor modifies the Plan  
4 before Confirmation.

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

10 (c) Subject to the Lock-Up and Settlement Letter Agreement, a Holder of a Claim  
11 that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified,  
12 if the proposed alteration, amendment or modification does not materially and adversely change the  
13 treatment of the Claim of such Holder. Subject to the Lock-Up and Settlement Letter Agreement, prior  
14 to the Effective Date, Debtor may make appropriate technical, non-material modifications to the Plan or  
15 the Disclosure Statement without further order or approval of the Bankruptcy Court, provided that such  
16 technical modifications do not adversely affect the treatment of Holders of Claims or Equity Interests.

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

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

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

27 13.2 Notices. Except as otherwise set forth in Section 13.3 below, all notices, requests,  
28 elections or demands in connection with this Plan, including any change of address of any Holder of a

1 Claim for the purposes of receiving any Distributions under this Plan, shall be in writing and shall be  
2 delivered personally or by facsimile, electronic mail or overnight courier (confirmed by first class mail  
3 or express mail) or mailed by first class mail. Such notice shall be deemed to have been given when  
4 received or, if mailed by first class mail, seven (7) days after the date of mailing, or if express mailed,  
5 the next Business Day following the date of mailing and addressed to the following:

6 (a) If to Debtor, to:

7 American West Development, Inc.  
8 250 Pilot Road, Suite 140  
9 Las Vegas, Nevada 89119  
10 Attention: Robert M. Evans  
11 Email: BobEvans@AmericanWestHomes.com  
12 Facsimile: (702) 736-7970

13 with copies to:

14 Fox Rothschild LLP  
15 3800 Howard Hughes Parkway, Suite 500  
16 Las Vegas, Nevada 89169  
17 Attention: Brett A. Axelrod, Esq.  
18 Email: baxelrod@foxrothschild.com  
19 Facsimile: (702) 597-5503

20 (b) If to Secured Lenders, to:

21 California Bank & Trust  
22 c/o CB&T Real Estate Finance  
23 2929 North Central Avenue, Suite 1200  
24 Phoenix, Arizona 85012  
25 Attention: Bruce Weyers  
26 Email: Bruce.Weyers@nbarizona.com  
27 Facsimile: (602) 230-1345

28 with copies to:

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

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

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

4 13.3 Limitation of Notice. Debtor shall give the following notice with regard to the following  
5 matters, which notice shall be deemed to be good and sufficient notice of such matters, with no  
6 requirement for any additional or further notice:

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

10 (b) Post-Confirmation Date Service List—Additional Persons Entitled to Notice.  
11 Except as set forth in Section 13.2 hereof, from and after the date the Confirmation Order becomes a  
12 Final Order, notices of appearances and demands for service of process Filed with the Bankruptcy  
13 Court prior to such date shall no longer be effective, and no further notices, other than the Notice of  
14 Confirmation Order, shall be required to be sent to such parties, unless such parties File a new notice of  
15 appearance and demand for service of process dated subsequent to the Effective Date, which subsequent  
16 notice and demand must be Filed with the Bankruptcy Court and served upon the Persons and Entities  
17 listed in Section 13.2 above.

18 (c) Subordination. Nothing in this Plan shall in any way be deemed to have  
19 Impaired, altered or otherwise affected the rights of Debtor or Reorganized Debtor to enforce any right  
20 of subordination that may exist by agreement or otherwise, including under Bankruptcy Code section  
21 510; provided, however, that neither Debtor nor Reorganized Debtor have any subordination right or  
22 remedy against the Secured Lenders as of the Effective Date.

23 13.4 Requisite Secured Lenders' Approval. Wherever the approval of the Secured Lenders  
24 with respect to the Term Loan or New Secured Loan is referred to anywhere in this Plan, the Entity  
25 seeking such approval shall be entitled to direct the request for approval solely to the Secured Lenders  
26 pursuant to the requirements of Section 13.2 hereof, and the Secured Lenders shall then be responsible  
27 for determining and communicating whether or not such approval has or has not been obtained. Any  
28 written statement by the Secured Lenders specifically referring to such approval to any other Person or

1 Entity concerning any consent or approval of the Secured Lenders required hereunder may be relied  
2 upon by such Person or Entity.

3 13.5 Headings. The headings used in this Plan are inserted for convenience only and neither  
4 constitutes a portion of this Plan nor in any manner affect the provisions of this Plan.

5 13.6 Exhibits. All exhibits and documents included in the Plan Supplement are incorporated  
6 into and are a part of this Plan, as if set forth in full in this Plan. Except as otherwise provided in this  
7 Plan, such exhibits and documents included in the Plan Supplement shall be Filed with the Bankruptcy  
8 Court on or before the Plan Supplement Filing Date. Debtor reserves the right to submit amended or  
9 revised versions of the Plan Supplement up to the Confirmation Date. After the exhibits and documents  
10 are Filed, copies of such exhibits and documents shall be made available upon written request to  
11 Debtor's counsel at the address above or by downloading such exhibits and documents from the  
12 Bankruptcy Court's website at <http://www.nvb.uscourts.gov>. To the extent any exhibit or document is  
13 inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy Court, the  
14 non-exhibit or non-document portion of this Plan shall control.

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

28

1           13.8 Waiver or Estoppel. Each Holder of a Claim or an Interest shall be deemed to have  
2 waived any right to assert any argument, including the right to argue that its Claim or Interest should be  
3 Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an  
4 agreement made with Debtor or its counsel, or any other Entity, if such agreement was not disclosed in  
5 this Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the  
6 Confirmation Date.

7           13.9 Conflicts.

8           (a) To the extent that any provision of the Disclosure Statement, the Plan  
9 Supplement (other than any amendments to the Plan, the Operative Documents or any New Secured  
10 Loan Documents), or any other order (other than the Confirmation Order) referenced in this Plan (or  
11 any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with  
12 or is in any way inconsistent with any provision of this Plan, this Plan shall govern and control, unless  
13 expressly set forth herein.

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

20           13.10 Computation of Time. In computing any period of time prescribed or allowed by this  
21 Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

22           13.11 Governing Law. Except to the extent that the Bankruptcy Code or any other federal law  
23 is applicable, and except as otherwise provided by the New Secured Loan Documents, the rights and  
24 obligations arising under this Plan shall be governed by, and construed and enforced in accordance  
25 with, the laws of the State of Nevada.

26           13.12 Successors and Assigns. The rights and obligations of any Person or Entity named or  
27 referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and  
28 assigns of such Person or Entity.



1 13.13 Good Faith. Confirmation of the Plan will constitute a finding that the Plan has been  
2 proposed in good faith and in compliance with all applicable provisions of the Bankruptcy Code.

3 13.14 Post Confirmation Conversion or Dismissal. A Creditor or party in interest may bring  
4 a motion to convert or dismiss the Chapter 11 Case under Bankruptcy Code section 1112(b), after the  
5 Plan is confirmed, if there is a default in performance of the Plan or if cause exists under Bankruptcy  
6 Code section 1112(b). If the Bankruptcy Court orders the Chapter 11 Case converted to a case under  
7 chapter 7 of the Bankruptcy Code after the Plan is confirmed, then all property that had been Assets,  
8 and that has not been disbursed or distributed pursuant to the Plan, will revert in the chapter 7 estate,  
9 and the automatic stay will be reimposed upon the revested property only to the extent that relief from  
10 stay was not previously granted by the Bankruptcy Court during the Chapter 11 Case. In addition, any  
11 Allowed Administrative Claims which are not paid on the Effective Date shall continue to be entitled  
12 to administrative priority under Bankruptcy Code section 507(a)(1) in any such subsequent chapter 7  
13 case to which this case is converted.

14 13.15 Post Confirmation Quarterly Fees. US Trustee Fees continue to be payable to the Office  
15 of the United States Trustee post-confirmation until such time as the Chapter 11 Case is converted,  
16 dismissed or closed pursuant to Final Decree.

17 DATED this 29th day of May 2012.

18 **AMERICAN WEST DEVELOPMENT, INC.**  
19 a Nevada corporation

20 By s/ Robert M. Evans  
21 Robert M. Evans, President

22 Respectfully submitted by:

23 **FOX ROTHSCHILD LLP**

24 By: /s/Brett A. Axelrod  
25 BRETT A. AXELROD, ESQ.  
26 Nevada Bar No. 5859  
27 MICAELA RUSTIA MOORE, ESQ.  
28 Nevada Bar No. 9676  
3800 Howard Hughes Parkway, Suite 500  
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1 **EXHIBIT A**

2 **GLOSSARY OF DEFINED TERMS**

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

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

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

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

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

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

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

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

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

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

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

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

13           12.       “Bankruptcy Code” means Title 11 of the United States Code, as amended from time to  
14 time, as applicable to the Chapter 11 Case.

15           13.       “Bankruptcy Court” means the United States Bankruptcy Court for the District of  
16 Nevada, or such other court as may from time to time have jurisdiction over the Chapter 11 Case.

17           14.       “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as heretofore or  
18 hereafter amended, and the general, local and chambers rules and orders of the Bankruptcy Court.

19           15.       “Bar Date” means the date or dates established by order of the Bankruptcy Court, or the  
20 Bankruptcy Code or the Bankruptcy Rules by which all Persons (except Holders of Claims that appear  
21 in the Schedules not scheduled as disputed, contingent or unliquidated, but only with respect to such  
22 Claims) asserting a Claim against Debtor (except the Administrative Claims, which are governed by the  
23 Administrative Claim Bar Date, and the Construction Defect Claims, which are governed by the  
24 Construction Defect Claim Bar Date) must File a Proof of Claim or forever be barred from asserting a  
25 Claim against Debtor or its property, voting on the Plan, and sharing in Distributions under the Plan.

26           16.       “Bond Claims” means any Claim against Debtor, relating to or arising under any  
27 municipal bond assessments, infrastructure improvement bonds, special improvement districts or  
28 associated maintenance charges.

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1 17. "Business Day" means any day, other than a Saturday, Sunday, or "legal holiday", as  
2 defined in Bankruptcy Rule 9006(a).

3 18. "Cash" means legal tender of the United States of America, which may be conveyed by  
4 check or wire transfer.

5 19. "Cash Collateral" has the meaning set forth in Bankruptcy Code section 363(a).

6 20. "Cash Collateral Orders" means any and all interim and Final Orders entered by the  
7 Bankruptcy Court, permitting Debtor to use the Cash Collateral of the Secured Lenders.

8 21. "Cash Collateral Stipulation" means that Stipulated Agreement Between Debtor and its  
9 Pre-Petition Secured Lenders Regarding (I) Use of Cash Collateral; and (II) Adequate Protection filed  
10 in the Chapter 11 Case on March 1, 2012 as Docket No. 12.

11 22. "Cash Out Election" means the election made by a Holder of a Class 4 Construction  
12 Defect Claim to receive a Cash Out Payment in lieu of any other or further Distribution from the  
13 Construction Defect Trust.

14 23. "Cash Out Election Ratio" means a ratio calculated wherein (x) the numerator is the total  
15 aggregate number of Holders of Construction Defect Claims who make the Cash Out Election, and  
16 (y) the denominator is the total aggregate number of Holders of Construction Defect Claims.

17 24. "Cash Out Payment" means a one-time Cash payment to each Holder of a Construction  
18 Defect Claim who makes the Cash Out Election, which Cash Out Payment shall be equal to (x) the  
19 Total Cash Out Fund, divided by (y) the total aggregate number of Holders of Construction Defect  
20 Claims who make the Cash Out Election.

21 25. "Cash Out Release" means the form of release to be granted by each Holder of a  
22 Construction Defect Claim who makes the Cash Out Election, which Cash Out Release shall, in return  
23 for the Cash Out Payment, comprehensively release Debtor, Reorganized Debtor, the Construction  
24 Defect Trust and any Affiliate of the foregoing from any and all liability for any and all Construction  
25 Defect Claims.

26 26. "Causes of Action" means any Claim, Avoidance Action, cause of action, controversy,  
27 demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account,  
28 defense, offset, power, privilege, license and franchise of any kind or character whatsoever, known,

1 unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or  
2 unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether  
3 arising before, on or after the Petition Date, including through the Effective Date, in contract or in tort,  
4 in law or in equity, or pursuant to any other theory of law.

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

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

7 29. “Claims Objection Deadline” means the deadline for filing objections to Claims as set  
8 forth in Section 7.3 of the Plan.

9 30. “Claims Register” means the official register of Claims and Interests maintained in the  
10 Chapter 11 Case.

11 31. “Class” means a class of Claims or Interests pursuant to Bankruptcy Code section  
12 1122(a) and as described in Article II of the Plan.

13 32. “Confirmation” means the entry by the Bankruptcy Court of the Confirmation Order in  
14 the Chapter 11 Case.

15 33. “Confirmation Date” means the date upon which the clerk of the Bankruptcy Court  
16 enters the Confirmation Order on the docket of the Chapter 11 Case.

17 34. “Confirmation Funds” means all funds required to be disbursed, or deposited and held  
18 for later disbursement upon allowance or other Bankruptcy Court authorization, on or as of the  
19 Effective Date (i) to Holders of Allowed Professional Fee Claims, other Allowed Administrative  
20 Claims, Allowed Priority Claims to be paid in Cash on the Effective Date, any Allowed Priority Tax  
21 Claims other than Priority Tax Claims to be paid in deferred payments pursuant to the Plan, (ii) to the  
22 DIP Lender to fully pay and satisfy the DIP Loan, (iii) to the United States Trustee for US Trustee Fees  
23 due as of the Effective Date, and (iv) for any other Distributions and payment of costs and expenses in  
24 connection with consummating the Plan.

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

28

1 36. “Confirmation Order” means the order entered by the Bankruptcy Court confirming the  
2 Plan in accordance with the Bankruptcy Code.

3 37. “Construction Defect Actions” means the Causes of Action that Debtor may have against  
4 any subcontractor or other Person or Entity who installed defective materials in a home built and sold  
5 by Debtor, directly or indirectly, any insurer of any such subcontractor or any other Person or Entity,  
6 any retailer, wholesaler, distributor, manufacturer or provider of defective materials that was installed in  
7 a home built or sold by Debtor, directly or indirectly, and/or any insurer of any such retailer, whole-  
8 saler, distributor, manufacturer or provider.

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

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

20 40. “Construction Defect Claim Bar Date” means the deadline for filing Profs of Claim for  
21 Construction Defect Claims, which shall be governed by the Construction Defect Trust and its related  
22 TDP.

23 41. “Construction Defect Trust” means the trust established pursuant to the Construction  
24 Defect Trust Declaration.

25 42. “Construction Defect Trust Contribution” means a portion of the New Capital  
26 Contribution in the amount of one million five hundred thousand dollars (\$1,500,000), which will be  
27 (a) contributed to the Construction Defect Trust, and (b) allocated between the Total Cash Out Fund  
28 and the Remaining Construction Defect Trust Fund according to the Cash Out Election Ratio.

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1 43. "Construction Defect Trust Declaration" means the declaration of trust to be entered into  
2 by Debtor, the Construction Defect Trustee and the Construction Defect Advisory Board. The  
3 Construction Defect Trust Declaration shall be in substantially the form Filed with the Bankruptcy  
4 Court as part of the Plan Supplement.

5 44. "Construction Defect Trustee" means the Person selected to serve as the initial trustee of  
6 the Construction Defect Trust, and any successor trustee thereof.

7 45. "Consummation" means the occurrence of the Effective Date.

8 46. "Contingent Claim" means a Claim which is contingent, unmatured or unliquidated on or  
9 immediately before the Confirmation Date.

10 47. "Creditor" means a Holder of a Claim.

11 48. "Cure" means the payment of Cash by Debtor, or the distribution of other property and  
12 the performance of any other obligations as the parties may agree or the Bankruptcy Court may order  
13 necessary to cure defaults under Executory Contracts Debtor is authorized to assume under Bankruptcy  
14 Code section 365(a) or under the Plan.

15 49. "Cure Request Bar Date" means the deadline for Filing requests for payment of Cure,  
16 which shall be fifteen (15) days prior to the date of the Confirmation Hearing.

17 50. "Debtor in Possession" means Debtor, as debtor in possession in the Chapter 11 Case,  
18 exercising the rights and operating the business pursuant to Bankruptcy Code sections 1107 and 1108,  
19 respectively.

20 51. "Debtor" means American West Development, Inc.

21 52. "Deficiency Claim" means the difference between a Secured Lender's Allowed Claim  
22 and the value of the collateral which secures such Secured Lender's Allowed Claim.

23 53. "Design-Build Agreements" means various Design-Build Agreements between Debtor,  
24 certain affiliated land-owning entities and certain affiliated home-selling entities.

25 54. "DIP Financing Order" means the order of the Bankruptcy Court approving and  
26 authorizing the DIP Loan on an interim basis and any Final Order entered with respect thereto.

27 55. "DIP Lender" means the Entity that made the DIP Loan.

28

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1 56. "DIP Loan" means the postpetition loan in the amount of up to ten million dollars  
2 (\$10,000,000) made by DIP Lender to Debtor pursuant to the DIP Financing Order.

3 57. "Disallowed Claim" or "Disallowed," when used in connection with the term "Claim,"  
4 means any Claim or portion thereof that has been disallowed by a Final Order of the Bankruptcy Court  
5 or scheduled as disputed, contingent or unliquidated that is not superseded by a timely filed Proof of  
6 Claim.

7 58. "Disclosure Statement" means the solicitation materials and disclosure statements,  
8 including all exhibits and schedules thereto, as amended, supplemented or modified from time to time,  
9 that are found by the Bankruptcy Court under the circumstances of the Chapter 11 Case to contain  
10 adequate information to solicit acceptances and rejections of the Plan.

11 59. "Disclosure Statement Order" means that certain Order: (I) Approving (A) Adequacy of  
12 Master Disclosure Statement, (B) Adequacy and Use of Home Owner Disclosure Statement as Plan  
13 Summary, (C) Procedures and Schedule for the Solicitation, Submission and Tabulation of Votes,  
14 (D) Form and Scope of Notices, and (E) Form of Ballots and Related Documents; (II) Scheduling  
15 Confirmation Hearing and Related Deadlines; and (III) Granting Related Relief, entered by the  
16 Bankruptcy Court, as the order may be amended from time to time.

17 60. "Disputed Claim" means: (a) any Claim or portion of a Claim (including any  
18 Administrative Claim, Priority Claim or Other Priority Claim) listed in the Schedules as disputed,  
19 contingent or unliquidated; or (b) any Claim, as to which an objection to the allowance thereof has been  
20 Filed with the Bankruptcy Court within any time limitation fixed by the Bankruptcy Code, the  
21 Bankruptcy Rules, the Plan or an order of the Bankruptcy Court, which objection has not been settled,  
22 withdrawn or determined, in whole or in part, by a Final Order.

23 61. "Distribution" means any distribution made by the Distribution Agent on account of  
24 Allowed Claims under the Plan pursuant to the terms of the Plan or by the Construction Defect Trustee  
25 of the Construction Defect Trust pursuant to the TDP in respect of Construction Defect Claims.

26 62. "Distribution Agent" means Debtor, or the Person or Entity chosen by Debtor to make or  
27 to facilitate Distributions pursuant to the Plan or, with respect to Construction Defect Claims, the  
28 Construction Defect Trustee.

1 63. "Distribution Record Date" means August 10, 2012 unless the Bankruptcy Court estab-  
2 lishes a different date for the Distribution Record Date in the Confirmation Order.

3 64. "Effective Date" means the first Business Day after the date on which the conditions  
4 specified in Article X of the Plan have been satisfied in full or waived.

5 65. "Entity" has the meaning as set forth in Bankruptcy Code section 101(15).

6 66. "Equity Interest" means the same as "Interest."

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

12 68. "Exculpated Party" means each of: (a) Debtor and its Estate; (b) the Secured Lenders;  
13 (c) each member of any Statutory Committee; (d) Reorganized Debtor; (e) the DIP Lender; (f) the  
14 Distribution Agent; (g) the Futures Representative; (h) Professionals; and (i) the respective Related  
15 Persons of each of the foregoing.

16 69. "Executory Contract" means an executory contract or unexpired lease to which Debtor is  
17 a party that is subject to assumption or rejection under Bankruptcy Code section 365 or under the Plan.

18 70. "File" means to duly and properly file with the Bankruptcy Court as reflected on the  
19 Bankruptcy Court's docket or the Claims Register in the Chapter 11 Case or, in the case of Class 4  
20 Claims, duly and properly filed with the Trustee of the Construction Defect Trust.

21 71. "Final Decree" means an order of the Bankruptcy Court closing the Chapter 11 Case  
22 pursuant to Bankruptcy Code section 350.

23 72. "Final Order" means an order or judgment entered by the Bankruptcy Court: (a) that  
24 has not been reversed, stayed, modified, amended, revoked, varied or set aside, and as to which (i) any  
25 right to appeal or seek certiorari, review, reargument, stay or rehearing has been waived, or (ii) the time  
26 to appeal or seek certiorari, review, reargument, stay or rehearing has expired and no appeal or petition  
27 for certiorari, review, reargument, stay or rehearing is pending; or (b) as to which an appeal has been  
28 taken or petition for certiorari, review, reargument, stay or rehearing has been filed, and (i) such appeal

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1 or petition for certiorari, review, reargument, stay or rehearing has been resolved by the highest court to  
2 which the order or judgment was appealed or from which certiorari, review, reargument, stay or  
3 rehearing was sought, and (ii) the time to appeal further or seek certiorari, review, reargument, stay or  
4 rehearing has been waived or expired and no such further appeal or petition for certiorari, review,  
5 reargument, stay or rehearing is pending, provided, however, that no order or judgment shall fail to be a  
6 “Final Order” hereunder solely because of the possibility that a motion pursuant to Bankruptcy Code  
7 sections 502(j) or 1144, Rules 59 or 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule  
8 9024 may be Filed with respect to such order or judgment.

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

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

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

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

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

28

1           78.     “Insurance Recovery” means (a) the right to pursue and receive the benefits and  
2 proceeds of any insurance policy issued to, owned by, or otherwise providing coverage to Debtor,  
3 including any insurance policy owned by any third party on which Debtor is named as an additional  
4 insured, with respect to Construction Defect Claims; (b) the right to pursue and receive recovery from  
5 or as a result of any Insurance Coverage Action; (c) the right to pursue and receive recovery from or as  
6 a result of any Claim, Cause of Action or right of Debtor or Reorganized Debtor against any insurance  
7 company concerning insurance coverage for or relating to Construction Defect Claims, or enforcement  
8 of any extracontractual or statutory remedies and relief relating to any insurance providing coverage for  
9 Construction Defect Claims, including, without limitation, any Insurance Coverage Actions or any other  
10 litigation, arbitration, mediation and informal negotiations, whether past, pending or not yet initiated,  
11 including, without limitation, consequential, contractual, extracontractual and statutory damages, or  
12 other proceeds, distributions, awards or benefits; (d) the right to pursue and receive recovery from or as  
13 a result of any Claim, Cause of Action or right of Debtor or Reorganized Debtor to pursue insurance  
14 recovery related to Construction Defect Claims through available administrative or other means from  
15 any insurance company that is insolvent or has been liquidated, or is otherwise subject to statutory or  
16 legal protections against litigation; and (e) the right to pursue and receive any other recovery from an  
17 insurance company, in its capacity as such, with respect to Construction Defect Claims.

18           79.     “Interest” means any: (i) equity or other ownership interest in any Person or Entity,  
19 including, but not limited to, all issued and outstanding or reserved for issuance, common stock,  
20 preferred stock, membership interests, warrants, options or other ownership rights or rights to purchase  
21 or receive additional shares of stock or membership interests in any Person or Entity, and/or any other  
22 instrument or document to the extent that it directly or indirectly evidences, creates or reserves any  
23 equity or ownership interest in any Person or Entity giving rise to any Claim or Interest, (ii) equity  
24 security, including all membership interests together with any warrants, options or contractual rights to  
25 purchase or acquire such equity securities at any time and all rights arising with respect thereto and  
26 (iii) partnership, limited liability company or similar interest.

27           80.     “Interest Holder” means the Holder of an Interest or Equity Interest.  
28

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

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

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

7 84. “Lock-Up and Settlement Letter Agreement” means that certain Restructuring, Lock-Up  
8 and Settlement Letter Agreement entered into by Debtor and the Secured Lenders, approved by the  
9 9019 Order, to be implemented through the Plan, and establishing, among other things, the Allowed  
10 amounts of each Secured Lender’s Secured Claim at the values of each Secured Lender’s collateral,  
11 which collateral Debtor believes is worth an aggregate amount of \$49,635,000, on a net present value  
12 basis, and providing that the Secured Lenders will waive their rights to receive any Distribution on  
13 account of their Class 3 General Unsecured Claims under the Plan, provided that the Holders of Class 3  
14 Claims vote as a Class to accept the Plan.

15 85. “Marketing and Administrative Services Agreement” means various Marketing and  
16 Administrative Services Agreements between Debtor and certain affiliated home-selling entities.

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

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

3 88. “New Equity Interests” means those Interests of Reorganized Debtor to be authorized  
4 and issued to the DIP Lender pursuant to the Plan on the Effective Date in exchange for the New  
5 Capital Contribution.

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

8 90. “New Secured Loan Documents” means the New Secured Notes and related documents  
9 in form and substance acceptable to and approved by the Secured Lenders, evidencing, securing and  
10 providing for the terms and conditions of the New Secured Loan, to be executed by and between the  
11 Secured Lenders and Reorganized Debtor on or as of the Effective Date, which are attached as exhibits  
12 to the Disclosure Statement, with any material modifications or additional documents in form and  
13 substance acceptable to and approved by the Secured Lenders, to be included and Filed as part of the  
14 Plan Supplement.

15 91. “New Secured Loan Payment Terms” means the payment terms of the New Secured  
16 Notes, as summarized in Section 2.3 of the Plan.

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

20 93. “Notice of Confirmation” means that certain notice, pursuant to Bankruptcy Rule  
21 3020(c)(2), notifying Holders of Claims and Interests that the Bankruptcy Court has confirmed the Plan.

22 94. “Old Equity Interests” means Equity Interests in Debtor.

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

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

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1 97. "Other Secured Claims" means any Secured Claim other than a Claim with respect to the  
2 Term Loan.

3 98. "Permitted Encumbrances" means (i) Liens for *ad valorem* taxes not yet due and  
4 payable, (ii) easements, restrictions, conditions and limitations of record that affected the title to any of  
5 Debtor's real properties as of the Petition Date, (iii) any Liens securing Other Secured Claims that are  
6 reinstated or assumed by Reorganized Debtor, and (iv) as such term is defined in the New Secured Loan  
7 Documents.

8 99. "Person" means any individual, corporation, partnership, limited liability company, joint  
9 venture, association, trust or organization, or other "person" as defined in Bankruptcy Code section  
10 101(41), as well as any governmental agency, governmental unit or political subdivision.

11 100. "Petition Date" means March 1, 2012.

12 101. "Plan" means this Debtor's Chapter 11 Plan of Reorganization to which this Exhibit A is  
13 attached, including all documents referenced therein and all exhibits, supplements, appendices and  
14 schedules thereto, either in its present form or as the same may be altered, amended or modified from  
15 time to time pursuant to the Bankruptcy Code or Final Order.

16 102. "Plan Supplement" means a compilation of documents supplementing and giving effect  
17 to the terms of the Plan, which shall be: (a) Filed no later than the Plan Supplement Filing Date, and  
18 (b) in a form and substance acceptable to Debtor and Secured Lenders. The Plan Supplement shall  
19 include: (i) a Schedule of Assumed Contracts and Debtor's proposed respective Cure amounts (if any),  
20 (ii) any of the Operative Documents and New Secured Loan Documents not attached to the Disclosure  
21 Statement, (iii) the Construction Defect Trust Declaration, and (iv) any information required for  
22 Confirmation of the Plan pursuant to the terms of the Bankruptcy Code, including a list of individuals  
23 referenced in Bankruptcy Code section 1129(a)(5)(A)(i).

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

26 104. "Post Effective Date Fee Fund" means a sum of two million eighty thousand dollars  
27 (\$2,080,000) to be paid to the Distribution Agent on the Effective Date from the New Capital  
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1 Contribution, which shall be part of the Confirmation Funds and used by the Distribution Agent to pay  
2 any Post Effective Date Fees.

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

8 106. "Price Guarantee" means, in summary, that pricing incentive offered by Debtor from  
9 2006 through 2008 to certain home purchasers to receive a credit against their purchase of a  
10 replacement home from Debtor equal to the difference between the price paid for their original home  
11 and the value of the replacement home (if less) on the fifth (5th) anniversary of the date of the original  
12 home purchase, under certain express conditions.

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

17 108. "Priority Tax Claims" means any Claim that is entitled to priority under Bankruptcy  
18 Code sections 502(i) or 507(a)(8). Priority Tax Claims do not include *ad valorem* tax Claims if such  
19 Claims under applicable state law are Secured by a Lien on Debtor's Assets.

20 109. "Pro Rata" means, with respect to an amount of Cash or other consideration to be paid or  
21 distributed on a particular date to a Holder of an Allowed Claim, that such Distribution shall be made in  
22 accordance with the ratio, as of such date, of the amount such Allowed Claim is to the aggregate of the  
23 amounts of Claims in the Class to which such Allowed Claim belongs.

24 110. "Professional" means a Person or Entity: (a) employed pursuant to a Bankruptcy Court  
25 order in accordance with Bankruptcy Code sections 327 or 1103 and to be compensated for services  
26 rendered prior to or on the Effective Date, pursuant to Bankruptcy Code sections 327, 328, 329, 330  
27 or 331; (b) awarded compensation and reimbursement by the Bankruptcy Court, pursuant to  
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1 Bankruptcy Code section 503(b)(4); or (c) employed by the Futures Representative pursuant to an  
2 order of the Bankruptcy Court.

3 111. "Professional Fee Claim" means any Claim for compensation or reimbursement of fees  
4 and expenses as may be requested by (i) the Futures Representative, or (ii) a Professional to the extent  
5 such Professional is required to apply to the Bankruptcy Court for payment of such Claim pursuant to  
6 Bankruptcy Code sections 326, 328, 330 or 331 and the terms of the Plan.

7 112. "Professional Fees" means all reasonable fees and expenses incurred by Professionals  
8 or the Futures Representative and allowed by the Bankruptcy Court.

9 113. "Proof of Claim" means a proof of claim for a Claim which has been Filed.

10 114. "Proof of Interest" means a proof of interest for an Interest which has been Filed.

11 115. "Receivable" means the right of Debtor to receive deferred payments due from certain  
12 affiliates, representing amounts due for lot development, unit construction and other services for which  
13 Debtor has acted as general contractor pursuant to agreements memorialized as (i) various Marketing  
14 and Administrative Services Agreements, and (ii) various Design-Build Agreements.

15 116. "Rejected Contract" means any Executory Contract that has been rejected prior to  
16 Confirmation, or is the subject of a pending motion for rejection or has been designated in the Plan  
17 Supplement (or in any other contract, instrument, stipulation, settlement, release or other agreement or  
18 document entered into in connection with the Plan) as a contract or lease that is not to be an Assumed  
19 Contract, or is otherwise rejected pursuant to the Plan.

20 117. "Related Persons" means, with respect to any Person, such Person's predecessors,  
21 successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and  
22 Subsidiaries, and each of their respective current and former officers, directors, principals, employees,  
23 shareholders, members (including ex officio members), partners, agents, financial advisors, attorneys,  
24 accountants, investment bankers, investment advisors, consultants, representatives and other  
25 professionals, and any Person claiming by or through any of them.

26 118. "Released Liabilities" means, with respect to a given Releasor, all claims, obligations,  
27 suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities based on any act,  
28 omission, transaction, event or other occurrence (other than rights to enforce the terms of the Plan or

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1 any related document or agreement), whether known or unknown, foreseen or unforeseen, then existing  
2 or thereafter arising, in law, equity or otherwise that arose prior to the Effective Date and relate to  
3 Debtor, the Plan or the Chapter 11 Case, which could have been asserted by such Releasor (or on behalf  
4 of Debtor or its Estate) against any Releasee or any of its Related Persons.

5 119. "Released Party" means each of: (a) Debtor and its Estate; (b) each member of any  
6 Statutory Committee; (c) Reorganized Debtor; (d) the DIP Lender; (e) the Distribution Agent; (f) the  
7 Futures Representative; (g) Professionals; (h) the Secured Lenders; and (i) the respective Related  
8 Persons of each of the foregoing.

9 120. "Releasees" means each of: (a) Debtor and its Estate; (b) each member of any Statutory  
10 Committee; (c) Reorganized Debtor; (d) the DIP Lender; (e) the Distribution Agent; (f) the Futures  
11 Representative; (g) Professionals; (h) the Secured Lenders; and (i) the respective Related Persons of  
12 each of the foregoing.

13 121. "Releasing Parties" shall have the meaning given to it in Section 12.4(a) of the Plan.

14 122. "Releasors" means each of: (a) Debtor and its Estate; (b) each member of any Statutory  
15 Committee; (c) Reorganized Debtor; (d) the DIP Lender; (e) the Distribution Agent; (f) the Futures  
16 Representative; (g) Professionals; and (h) the respective Related Persons of each of the foregoing.

17 123. "Remaining Construction Defect Trust Fund" shall mean a portion of the Construction  
18 Defect Trust Contribution calculated in accordance with the Cash Out Election Ratio as the remainder  
19 of (x) the Construction Defect Trust Contribution, less (y) the Total Cash Out Fund, sixty percent  
20 (60%) of which Remaining Construction Defect Trust Fund shall be earmarked first to be used to  
21 administer the Construction Defect Trust.

22 124. "Reorganized Debtor" means, on or after the Effective Date, Debtor as reorganized  
23 debtor.

24 125. "Reorganized Debtor's Bylaws" means the amended and restated agreements that will  
25 govern Reorganized Debtor as of the Effective Date, the form of which is attached as an exhibit to the  
26 Disclosure Statement.

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1 126. "Schedule of Assumed Contracts" means the schedule of Assumed Contracts and  
2 Debtor's proposed respective Cure amounts, if any, which is attached as an exhibit to the Disclosure  
3 Statement.

4 127. "Schedule of Disputed Claims" means the non-exhaustive list of Claims whose amounts  
5 are disputed, which is attached as an exhibit to the Disclosure Statement.

6 128. "Schedules" means the schedules of Assets and liabilities, the list of Holders of Interests  
7 and the statements of financial affairs Filed by Debtor under Bankruptcy Code section 521 and  
8 Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation Date.

9 129. "Secured" means, when referring to a Claim: (a) secured by a Lien on any Assets, which  
10 Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court  
11 order, or that is subject to setoff pursuant to Bankruptcy Code section 553, to the extent of the value of  
12 the Creditor's interest in the Estate's interest in such property or to the extent of the amount subject to  
13 setoff, as applicable, as determined pursuant to Bankruptcy Code section 506(a); or (b) a Claim deemed  
14 or treated under the Plan as a Secured Claim.

15 130. "Secured Lenders" means, collectively, the "Lenders," as defined in the Term Loan  
16 Documents.

17 131. "Statutory Committee" means, collectively, any committee appointed in the Chapter 11  
18 Case pursuant to Bankruptcy Code section 1102.

19 132. "TDP" means the Construction Defect Trust Distribution Procedures promulgated by the  
20 Construction Defect Trustee in consultation with the Construction Defect Trust Advisory Board.

21 133. "Term Loan" means the secured loan the Secured Lenders provided to Debtor before the  
22 Petition Date pursuant to the Term Loan Documents, which Term Loan, notwithstanding the  
23 commencement of the Chapter 11 Case, remains outstanding as to other co-borrowers of Debtor  
24 thereunder.

25 134. "Term Loan Documents" means the agreement, instruments and documents governing  
26 the Term Loan, including, without limitation, that certain Term Loan Credit Agreement among  
27 California Bank & Trust (individually and as Administrative Agent and as Lead Arranger), Wells Fargo  
28 Bank, National Association (individually and as Syndication Agent), the Secured Lenders, certain

1 borrowers (including Debtor) and certain guarantors dated as of December 31, 2009, as amended from  
2 time to time, and including exhibits thereto.

3 135. "Total Cash Out Fund" means a portion of the Construction Defect Trust Contribution  
4 calculated according to the Cash Out Election Ratio.

5 136. "US Trustee Fees" means fees payable pursuant to 28 U.S.C. § 1930.

6 137. "Voting and Claims Agent" means The Garden City Group, in its capacity as  
7 solicitation, notice, claims and balloting agent for Debtor.

8 138. "Voting Deadline" means the deadline established by an order of the Bankruptcy Court  
9 for voting to accept or reject the Plan.

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

13 140. "Warranty Program" means all warranty obligations or customer programs established  
14 by Debtor for the benefit of its customers, as modified from time to time, whether or not such  
15 obligations or programs were or have been terminated according to their terms before the Petition Date  
16 or during the Chapter 11 Case.

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