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[Proposed] Counsel for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

AMERICAN WEST DEVELOPMENT,
INC., a Nevada corporation,

Debtor.

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

Chapter 11

**APPLICATION FOR ORDER
AUTHORIZING RETENTION AND
EMPLOYMENT OF FOX ROTHSCHILD
LLP AS DEBTOR’S REORGANIZATION
COUNSEL, EFFECTIVE AS OF THE
PETITION DATE**

Hearing Date: April 10, 2012
Hearing Time: 9:30 a.m.

American West Development, Inc. (“AWDI” or “Debtor”), as debtor and debtor in possession in the above-referenced chapter 11 bankruptcy case (the “Chapter 11 Case”), respectfully submits this application (the “Application”) for an order pursuant to sections 327(a), 329, 1107 and 1108 of title 11 of the United States Code, §§ 101 *et. seq.* (the “Bankruptcy Code”), Rules 2014(a), 2016 and 5002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014 of the Local Rules of Bankruptcy Procedure for the District of Nevada (the “Local Rules”), authorizing Debtor to retain and employ the law firm of Fox Rothschild LLP, a limited liability partnership (“Fox Rothschild” or the “Firm”) as reorganization counsel for Debtor, effective as of March 1, 2012 (the “Petition Date”), and in support of the Application respectfully represents as follows:

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I.

INTRODUCTION

1
2
3 1. On March 1, 2012 (the “Petition Date”), Debtor filed a voluntary petition for relief
4 under chapter 11 of the Bankruptcy Code in this Court.

5 2. Debtor has continued and is operating and managing its business as debtor in possession
6 pursuant to Bankruptcy Code sections 1107 and 1108.

7 3. No request has been made for the appointment of a trustee or examiner, and no statutory
8 committee has been appointed. See id.

9 4. The factual background relating to Debtor’s commencement of this Chapter 11 Case is
10 set forth in detail in the Omnibus Declaration of Robert M. Evans Filed in Support of First Day
11 Motions (“Omnibus Declaration”), which is incorporated herein for all purposes by this reference.

12 5. Debtor, as debtor and Debtor in possession, wishes to employ Fox Rothschild as its
13 attorneys. Debtor selected Fox Rothschild because the Firm has considerable experience in
14 reorganization matters and is qualified to represent Debtor in this Chapter 11 Case. Omnibus
15 Declaration, ¶ 103.

16 6. Fox Rothschild was retained by Debtor prior to the Petition Date. A copy of the
17 retention agreement is attached to the Verified Statement of Brett A. Axelrod (the “Axelrod Verified
18 Statement”), filed contemporaneously herewith and in support hereof, as **Exhibit 1** thereto and is
19 incorporated herein for all purposes by this reference. In the twelve (12) months prior to the Petition
20 Date, Fox Rothschild provided Debtor with a variety of legal services, including significant services
21 surrounding and relating to Debtor’s extensive efforts to reach a consensual restructuring agreement
22 with its secured lenders and then in preparation for the Chapter 11 Case. According to
23 Fox Rothschild’s books and records, Fox Rothschild received approximately \$2,651,422.01 in the
24 twelve (12) months prior to the Petition Date. Additionally, Debtor provided Fox Rothschild with the
25 filing fee of \$1,046.00 to file this Chapter 11 Case. See Omnibus Declaration, ¶ 104; Axelrod Verified
26 Statement, ¶ 5.

27 7. On February 1, 2012, Debtor provided Fox Rothschild with an advance payment of
28 \$200,000.00 to establish a retainer to pay for legal services rendered or to be rendered in connection

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1 with Debtor’s restructuring efforts. Omnibus Declaration, ¶ 105; Axelrod Verified Statement, ¶ 6. The
2 retainer remains unapplied and is held by Fox Rothschild according to its internal standard procedures
3 in the same manner Fox Rothschild holds retainers for each of its other clients. Fox Rothschild intends
4 to hold the retainer for the duration of the Chapter 11 Case and apply the retainer against fees and
5 expenses as may be allowed by the Court after submission of Fox Rothschild’s fee applications, with
6 any balance to be returned to Debtor subsequent to the Court’s consideration of and ruling on Fox
7 Rothschild’s final fee application in these proceedings. Axelrod Verified Statement, ¶ 7.

8 8. All fees and expenses for services rendered prior to the Petition Date were paid prior to
9 the Petition Date. Fox Rothschild has no claims against Debtor for any unpaid fees and expenses
10 incurred prior to the Petition Date. Axelrod Verified Statement, ¶ 8.

11 9. Fox Rothschild is not aware of any connection of the Firm, its partners, or employees
12 with the Office of the United States Trustee or its employees. Axelrod Verified Statement, ¶ 9.

13 10. Accordingly, Debtor believes that the appointment of Fox Rothschild as Debtor’s
14 general bankruptcy and reorganization counsel is in the best interest of Debtor and its estate. Omnibus
15 Declaration, ¶ 106.

16 **II.**

17 **JURISDICTION AND VENUE**

18 11. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. § 1334.
19 This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court
20 pursuant to 28 U.S.C. §§ 1408 and 1409.

21 **III.**

22 **RELIEF REQUESTED**

23 12. By this Application, Debtor seeks an order pursuant to Bankruptcy Code sections
24 327(a), 329, 1107 and 1108, Bankruptcy Rules 2014(a), 2016 and 5002 and Local Rule 2014
25 authorizing the retention and employment of Fox Rothschild as general bankruptcy and reorganization
26 counsel to Debtor for the purpose of prosecution of this Chapter 11 Case, as described below, effective
27 as of the Petition Date, in accordance with Fox Rothschild’s normal hourly rates and reimbursement
28 policies.

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1 13. Debtor has selected Fox Rothschild as its general bankruptcy and reorganization
2 counsel because of Fox Rothschild’s extensive experience and knowledge in the field of debtors’ and
3 creditors’ rights and business reorganizations under chapter 11 of the Bankruptcy Code and familiarity
4 with the facts and circumstances surrounding this Chapter 11 Case. As such, Fox Rothschild is
5 uniquely qualified to represent Debtor’s interests with respect to Debtor’s business and financial affairs
6 and the potential legal issues that may arise in this Chapter 11 Case. Omnibus Declaration, ¶ 107.

7 14. Accordingly, Debtor believes that Fox Rothschild is both well qualified and able to
8 represent its interests in this Chapter 11 Case in an efficient and timely manner and that such
9 representation is in the best interests of Debtor, its estate, and constituents. Omnibus Declaration, ¶
10 108.

11 **IV.**

12 **RETENTION OF FOX ROTHSCHILD**

13 15. Debtor seeks Court approval to retain Fox Rothschild at the expense of Debtor’s
14 estate to provide the legal services described herein that will be required to represent Debtor in this
15 Chapter 11 Case. Omnibus Declaration, ¶ 109.

16 **A. Scope of Employment.**

17 16. The professional services that Fox Rothschild will render to Debtor may include, but
18 shall not be limited to, the following:

- 19 a. Advising Debtor of its rights and obligations and performance of its
20 duties during administration of this Chapter 11 Case;
- 21 b. Attending meetings and negotiations with other parties in interest on
22 Debtor’s behalf in this Chapter 11 Case;
- 23 c. Taking all necessary action to protect and preserve Debtor’s estate
24 including: the prosecution of actions, the defense of any actions taken
25 against Debtor, negotiations concerning all litigation in which Debtor is
26 involved, and objecting to claims filed against the estate which are
27 believed to be inaccurate;
- 28 d. Negotiating and preparing a plan of reorganization, disclosure statement
and all papers and pleadings related thereto and in support thereof and
attending court hearings related thereto;
- e. Representing Debtor in all proceedings before this Court or other courts
of jurisdiction in connection with this Chapter 11 Case; including,
preparing and/or reviewing all motions, answers and orders necessary to

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- protect Debtor’s interests;
- f. Assisting Debtor in developing legal positions and strategies with respect to all facets of these proceedings;
- g. Preparing on Debtor’s behalf necessary applications, motions, answers, orders and other documents; and
- h. Performing all other legal services for Debtor, as may be necessary.

See Axelrod Verified Statement, ¶ 10.

B. Professional Compensation.

17. Subject to the Court’s approval under Bankruptcy Code sections 330(a) and 331, compensation to Fox Rothschild will be payable from Debtor’s estate, which shall be liable for such compensation, on an hourly basis, plus reimbursement of actual, necessary expenses and other charges incurred by the Firm.

18. As is the case with respect to rates charged in non-bankruptcy matters, Fox Rothschild’s rates are subject to periodic adjustment to reflect economic and other conditions. Fox Rothschild’s current hourly rates applicable to the principal attorneys and paraprofessionals proposed to represent Debtor are:

Professional	Hourly Rate
Charles D. Axelrod – Counsel	\$750
Brett A. Axelrod - Partner	\$630
David Jaffe - Partner	\$550
Anne M. Loraditch - Partner	\$495
Micaela Rustia Moore – Sr. Associate	\$410
Patricia Kois - Paralegal	\$265
Robin I. Solomon - Paralegal	\$265
Heidi Semmer - Paralegal	\$185

Axelrod Verified Statement, ¶ 11.

19. Other attorneys and paraprofessionals will render services to Debtor, as needed. Generally, Fox Rothschild’s hourly rates are in the following ranges:

Professional	Hourly Rate
Partners	\$340 to \$750
Counsel	\$310 to \$750
Associates	\$210 to \$500
Legal Assistants/Paralegals	\$100 to \$295

Axelrod Verified Statement, ¶ 12.

20. As this Chapter 11 Case proceeds, additional Fox Rothschild partners, “counsel,” associates and paraprofessionals may be assigned to work on this case. It may also be likely that Fox Rothschild’s representation of Debtor will require the active participation of attorneys from other departments in the Firm, in addition to the bankruptcy and restructuring lawyers assigned to this Chapter 11 Case, as listed above. To the fullest extent possible, lawyers having the requisite expertise who already has knowledge with respect to the areas and/or the matters involved will be assigned. Consistent with the ranges of hourly rates described above, the hourly rates of the other partners, “counsel,” associates and paraprofessionals in the Firm that hereafter may act for Debtor may be higher or lower than those of the persons listed above. Axelrod Verified Statement, ¶ 13.

21. In addition, Debtor understands that Fox Rothschild, from time to time, utilizes the services of outside attorneys employed on a contract basis. Omnibus Declaration, ¶ 110; Axelrod Verified Statement, ¶ 14. Prior to the Petition Date, Fox Rothschild utilized the services of Nathan A. Schultz of the Law Office of Nathan A. Schultz, P.C. (the “Schultz Firm”) in connection with its representation of Debtor. Axelrod Verified Statement, ¶ 14. Debtor understands that Fox Rothschild anticipates continuing to utilize the services of the Schultz Firm on the same contract basis in connection with its representation of Debtor in the Chapter 11 Case. Omnibus Declaration, ¶ ; Axelrod Verified Statement, ¶ 14. Fox Rothschild bills Debtor for Mr. Schultz’s time as legal services, not as an expense, at an hourly rate (\$500) that is commensurate with the rates of Fox Rothschild attorneys of similar seniority and experience. Axelrod Verified Statement, ¶ 14. Debtor is also seeking to employ the Schultz Firm directly as conflicts counsel pursuant to a separate application (which contains all of the requisite disclosures on behalf of Mr. Schultz and the Schultz Firm). Mr. Schultz will separately track and bill time and expenses incurred in his contract capacity and in his capacity as conflicts counsel, subject to approval by this Court. Omnibus Declaration, ¶ 110.

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- a. Fox Rothschild, its partners, of counsel and associates:
 - i. are not creditors or insiders of Debtor;
 - ii. are not and were not, within two years before the date of this application, a director, officer, or employee of Debtor, as specified in subparagraph (c) of 11 U.S.C. § 101(14); and
 - iii. do not hold an interest materially adverse to the interest of the estate or of any class of creditors or equity holders except as stated herein.

- b. Fox Rothschild does not represent or otherwise have other material connections with any persons or entities other than as disclosed in Exhibit 2 and Exhibit 3 attached to the Axelrod Verified Statement, with the most relevant material connections described in the subparagraphs immediately below. Fox Rothschild will supplement these disclosures in the event further material connections are discovered regarding persons or entities that later become identified as parties in interest in this Chapter 11 Case.
 - 1. Fox Rothschild currently represents Wells Fargo Bank, N.A. (“Wells Fargo”), in matters unrelated to Debtor or this Chapter 11 Case. Wells Fargo is part of Debtor’s prepetition secured lender group and may be the current owner, through foreclosure, of homes that were built by Debtor. Fox Rothschild has open and unrelated matters in offices other than Las Vegas where the Firm represents and intends to continue to represent Wells Fargo as a client representing less than 1% of the Firm’s revenues. Fox Rothschild has not represented, nor will it represent, Wells Fargo in any matter involving Debtor. Therefore, Fox Rothschild maintains that no conflict exists.

 - 2. Fox Rothschild currently represents JP Morgan Chase (“Chase”) in matters unrelated to Debtor or this Chapter 11 Case. Chase is part of Debtor’s prepetition secured lender group and may be the current owner, through foreclosure, of homes that were built by Debtor. Fox Rothschild has open and unrelated matters in offices other than Las Vegas where the Firm represents and intends to continue to represent Chase as a client representing less than 1% of the Firm’s revenues. Fox Rothschild has not represented, nor will it represent, Chase in any matter involving Debtor. Therefore, Fox Rothschild maintains that no conflict exists.

 - 3. Fox Rothschild currently represents Bank of New York Mellon (“Mellon Bank”) in matters unrelated to Debtor or this Chapter 11 Case. Mellon Bank may be the current owner, through foreclosure, of homes that were built by Debtor. Fox Rothschild has open and unrelated matters in offices other than Las Vegas where the Firm represents and intends to continue to represent Mellon Bank as a client representing less than 1% of the Firm’s revenues. Fox Rothschild has not represented, nor will it represent, Mellon Bank in

any matter involving Debtor. Therefore, Fox Rothschild maintains that no conflict exists.

4. Fox Rothschild currently represents Jewelers of Las Vegas, of which Mr. Benjamin Yerushalmi is the principal. Mr. Yerushalmi may be the current owner of a home that was built by Debtor. Fox Rothschild has not represented, nor will it represent, Mr. Yerushalmi in any matter involving Debtor. Therefore, Fox Rothschild maintains that no conflict exists.

Axelrod Verified Statement, ¶¶ 25-26.

26. To the best of Ms. Axelrod’s knowledge, Fox Rothschild has not previously represented Debtor or its owners, officers or directors other than as described herein and in the Axelrod Verified Statement. See Axelrod Verified Statement, ¶ 28.

27. Fox Rothschild has conducted a thorough search using its computerized conflicts check system, based on the information received to date from Debtor, and Fox Rothschild attorneys have made diligent efforts to search the Firm’s records and assemble pertinent information for purposes of the Axelrod Verified Statement with respect to Fox Rothschild’s connection with Debtor’s creditors, parties in interest and its respective attorneys and accountants, whose number exceed 13,000 different entities. If Debtor supplements this information, Fox Rothschild will run an updated conflict search and file a supplement to the Axelrod Verified Statement. Axelrod Verified Statement, ¶ 29.

28. Fox Rothschild has, from time to time, represented parties adverse to certain creditors in this Chapter 11 Case on unrelated matters. Axelrod Verified Statement, ¶ 30.

29. From time to time, because of the nature of Fox Rothschild’s practice, Fox Rothschild may be engaged by one or more of Debtor’s creditors in matters entirely unrelated to Debtor. Fox Rothschild represents clients in litigation, transactions, insolvency and other matters throughout the United States. Any such matter will not relate directly or indirectly to the representation of Debtor in this Chapter 11 Case. Axelrod Verified Statement, ¶ 31.

VI.

NOTICE

30. Notice of this Application has been served on (i) the Office of the United States Trustee; (ii) Debtor’s secured creditor(s) or its counsel; (iii) Debtor’s 20 largest unsecured creditors; (iv) those

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1 governmental agencies required to receive notice under Bankruptcy Rule 5003(e); and (v) any parties
2 who have requested notice in this Chapter 11 Case. In light of the nature of the relief requested herein,
3 Debtor submits that no other or further notice need be provided.

4 **VII.**

5 **NO PRIOR APPLICATION**

6 31. No previous application for the relief requested herein has been made to this Court or
7 any other court.

8 **VIII.**

9 **CONCLUSION**

10 32. WHEREFORE, Debtor respectfully requests entry of an order authorizing the relief
11 requested herein, substantially in the form attached hereto as Exhibit A, and granting Debtor such other
12 and further relief as is just and proper.

13 DATED this 1st day of March 2012.

14 **AMERICAN WEST DEVELOPMENT, INC.**, a Nevada
15 Corporation

16 By /s/Robert M. Evans
17 Robert M. Evans, President

18 Respectfully submitted by:

19 **FOX ROTHSCHILD LLP**

20 By /s/Brett A. Axelrod

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28 *[Proposed] Counsel for Debtor*

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EXHIBIT A

PROPOSED FORM OF ORDER

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[Proposed] Counsel for Debtor

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

AMERICAN WEST DEVELOPMENT,
INC., a Nevada corporation,

Debtor.

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

Chapter 11

**ORDER AUTHORIZING RETENTION
AND EMPLOYMENT OF FOX
ROTHSCHILD LLP AS DEBTOR'S
REORGANIZATION COUNSEL,
EFFECTIVE AS OF THE PETITION
DATE**

Hearing Date:
Hearing Time:

The Court, having reviewed and considered the Application for an Order Authorizing Retention and Employment of Fox Rothschild LLP ("Fox Rothschild") as Debtor's Reorganization

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1 Counsel, Effective as of the Petition Date (the “Application”),¹ filed on March 1, 2012 (the “Petition
 2 Date”) by American West Development, Inc. (“AWDI” or “Debtor”), as debtor and debtor in
 3 possession in the above-referenced chapter 11 bankruptcy case (the “Chapter 11 Case”), and (ii) the
 4 Verified Statement of Brett A. Axelrod Pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. P. 2014 and
 5 2016 Filed in Support of Application for an Order Authorizing Retention and Employment of Fox
 6 Rothschild LLP as Debtor’s Reorganization Counsel, Effective as of the Petition Date (the “Axelrod
 7 Verified Statement”), and (iii) the Omnibus Declaration of Robert M. Evans Filed in Support of First
 8 Day Motions (the “Omnibus Declaration”); and with all other findings set forth in the record at the
 9 hearing noted above incorporated herein, pursuant to Fed. R. Bankr. P. 7052; and it appearing that this
 10 Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334; it appearing
 11 that venue of this Chapter 11 Case and the Application in this District is proper pursuant to 28 U.S.C.
 12 §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. §
 13 157(b); the Court hereby finds (1) notice of the Application was good and sufficient as provided
 14 therein and under the circumstances; (2) Fox Rothschild (a) does not represent any other entity having
 15 an interest materially adverse to the interests of the Debtor in connection with this Chapter 11 Case,
 16 (b) is a “disinterested person” within the meaning of 11 U.S.C. § 101(14), and (c) being employed as
 17 Debtor’s general bankruptcy and reorganization counsel is necessary and in the best interests of
 18 Debtor and its estate; and (3) good cause exists to approve the retention and employment of Fox
 19 Rothschild.

20 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- 21 1. The Application is GRANTED in all respects.
- 22 2. Pursuant to 11 U.S.C. §§ 327 and Rule 2014(a) of the Federal Rules of Bankruptcy
 23 Procedure, Debtor is authorized to retain and employ Fox Rothschild as general bankruptcy and
 24 reorganization counsel for Debtor, effective as of the Petition Date, to perform the services set forth in
 25 the Application and under the terms of the retention agreement attached as Exhibit 1 to the Axelrod
 26 Verified Statement.

27 ¹ All capitalized terms not otherwise defined herein shall have the same meaning ascribed in the
 28 Application.

1 3. Fox Rothschild shall be compensated from the Debtor’s estate in accordance with the
2 procedures set forth in the Application, 11 U.S.C. §§ 330 and 331, the Bankruptcy Rules, the Local
3 Bankruptcy Rules and Orders of this Court.

4 4. Fox Rothschild is disinterested as that term is defined in Bankruptcy Code section
5 101(14), as modified by Bankruptcy Code section 1107(b), and used in Bankruptcy Code section
6 327(a).

7 5. The terms of this Order shall be immediately effective and enforceable upon its entry.

8
9 Prepared and respectfully submitted by:

10 **FOX ROTHSCHILD LLP**

11 By _____
12 BRETT A. AXELROD, ESQ.
13 Nevada Bar No. 5859
14 MICAELA RUSTIA MOORE, ESQ.
15 Nevada Bar No. 9676
16 3800 Howard Hughes Parkway, Suite 500
17 Las Vegas, Nevada 89169
18 *[Proposed] Counsel for Debtor*

19 APPROVED/DISAPPROVED:

20 **OFFICE OF THE UNITED STATES TRUSTEE**

21 By _____
22 Athanasios Agelakopoulos
23 Trial Attorney for August B. Landis
24 Assistant United States Trustee
25 Foley Federal Building
26 300 Las Vegas Boulevard South, Suite 4300
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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

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

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

ATHANASIOS AGELAKOPOULOS, OFFICE OF THE UNITED STATES TRUSTEE	[INSERT, AS APPLICABLE]
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<u>Approved / Disapproved</u>	
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- I certify that this is a case under Chapter 7 or 13, that I has served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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