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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11

12 **ANTELOPE VALLEY GROUNDWATER**
13 **CASES:**

- 14 Included Actions:
- 15 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC325201
 - 17 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Kern, Case No. S-1500-CV-254-
19 348
 - 20 Wm. Bolthouse Farms, Inc. v. City of
Lancaster
 - 21 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
22 Superior Court of California
County of Riverside, consolidated actions
23 Case Nos. RIC 353840, RIC 344436,
RIC 344668

Judicial Council Coordination
Proceeding No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

- (1) **NOTICE OF EX PARTE APPLICATION TO EXTEND ANAVERDE, LLC.'S TIME TO DISCLOSE EXPERT WITNESSES TO AUGUST 27, 2008;**
- (2) **MEMORANDUM OF POINTS AND AUTHORITIES;**
- (3) **DECLARATION OF MALISSA HATHAWAY MCKEITH**

DATE: June 25, 2008
TIME: 8:15 a.m.
DEPT: 17C

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 8:15 a.m. on June 25, 2008, in Department 17C, of the above entitled court, Anaverde LLC ("Anaverde") will move this Court for an order granting a 60-day extension of time to disclose expert witnesses. This request is based upon good cause as outlined in the attached pleadings and declarations of Malissa McKeith as well as any further discussions during oral arguments.

DATED: June 24, 2008

Respectfully submitted,

MALISSA HATHAWAY McKEITH
KIMBERLY A. HUANGFU
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: *Kimberly A. Huangfu*
KIMBERLY A. HUANGFU
Attorneys for ANAVERDE, LLC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Anaverde LLC ("Anaverde") is a residential developer owning approximately 1,500 acres of
3 property in the City of Palmdale. Due to the significant downturn in the real estate market in 2007-
4 2008, Empire Lands, the Administrative Manager of Anaverde, filed for Chapter 11 bankruptcy on
5 April 25, 2008. (Attached as Exhibit "B" is a true and correct copy of Empire Land, LLC's Case
6 Summary in Bankruptcy Petition No. 6:08-bk-14592-MJ). On June 19, 2008, the United States
7 Bankruptcy Court issued an order transferring the interests in Anaverde to a new owner and
8 Administrative Manager.
9

10 Anaverde has not served with the pending adjudication action until June 22, 2007. For the
11 next 11 months, a discovery stay precluded Anaverde from serving any discovery. That stay was
12 verbally lifted during the May 22, 2008 status conference.
13

14 The Lewis Firm's role in this case has been limited to participating in status conferences as a
15 result of Empire's financial constraints. We also were unable to retain consultants to participate in the
16 technical committee as Empire was unable to pay its vendors. (Declaration of Malissa McKeith,
17 Exhibit "A", ¶2). With entry of the bankruptcy order, Anaverde now is in a position to retain
18 litigation consultants to assist counsel in evaluating the water use and hydrology aspects of the
19 Anaverde site in preparation for hiring a litigation consultant and refining what opinion an expert will
20 ultimately provide. Anaverde will be serving document requests this week that may or may not
21 generate the technical information required to fully evaluate and develop its case. That information
22 (if complete) may then lead to the need to perform physical aquifer and other testing to measure water
23 levels, recharge rates, and safe yields in a sub-basin that appears to exist beneath Anaverde's
24 property. Over the past 30 days, Anaverde has attempted to preliminarily identify conflict-free
25 consultants and experts. Because of the number of parties in this case, we have yet to successfully
26 find a testifying expert. (Declaration of Malissa McKeith, Exhibit "A", ¶4).
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1 Even with a 60-day extension, Anaverde finds itself in a challenging situation. The first
2 electronically filed document was filed on September 22, 2005, and yet it was years later that
3 Anaverde was served. (Attached as Exhibit "D" is a true and correct copy of Los Angeles County
4 Waterworks No. 40's Notice of Acknowledgement of Receipt – Civil, dated May 16, 2007). Under
5 the circumstances, the impending trial date is highly unfair to parties, such as Anaverde, who were
6 served late and even after this Court already had heard testimony and made findings affecting the
7 rights of Anaverde relative to the basin boundaries. Unlike many of the attorneys who have worked
8 on this case for years, the late served parties have to play "catch up" on an accelerated schedule. Even
9 if Empire had been able to afford consultants sooner, it would have been hamstrung by the discovery
10 stay which was only recently lifted. Given the complexity of many of the issues involved in this
11 adjudication action, a six month preparation time for trial is extremely challenging under the best of
12 circumstances.
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14
15 Good cause exists for granting a 60-day extension at a minimum. Anaverde reserves its rights
16 to request that this Court entertain at an appropriate time the possibility of ordering issues at trial
17 allowing Anaverde to deal with its sub-basin claim later in the proceedings thus providing it more
18 time to properly prepare for the case.
19

20 DATED: June 24, 2008

Respectfully submitted,

MALISSA HATHAWAY McKEITH
KIMBERLY A. HUANGFU
LEWIS BRISBOIS BISGAARD & SMITH LLP

24 By: 
25 KIMBERLY A. HUANGFU
26 Attorneys for ANAVERDE, LLC.
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EXHIBIT “A”

DECLARATION OF MALISSA HATHAWAY MCKEITH

I, Malissa H. McKeith, declare and state as follows:

1. I am licensed to practice law in the State of California and I am the partner responsible for the Anaverde LLC litigation. The statements made are of my own personal knowledge and, if called as a witness, I would and could testify to the truth thereof.

2. Anaverde LLC was served on May 16, 2007. By that point, Empire Lands already had very minimal assets to deploy on counsel and consultants. Given the financial limitations and that the case was not at issue, our efforts were limited to attending status conferences. We were not able to participate in the technical committee since Empire could not afford to pay consultants to do so. Moreover, it is not clear that that Technical Committee was addressing issues relating to Anaverde's position.

3. Ultimately, Empire Lands filed for bankruptcy on April 25, 2008. An order of the bankruptcy court dated June 19, 2008, transferred the assets to Palmdale or its designee. The new owners will proceed with the Anaverde development; however, the bankruptcy proceedings have diverted the entire attention of management of Empire Land and the new owners, and hence we have had limited time to determine their intentions, budgets, and needs with regard to this litigation. (Attached as Exhibit "C" is a true and correct copy of the June 19, 2008 Order from the Bankruptcy Court.)

4. In order to properly prepare for trial, Anaverde will need to hire litigation consultants and, ultimately, a testifying expert. The undersigned has spent considerable time over the past 30-days in an effort to identify conflict free professionals and to obtain conflict waivers, where necessary, so that it can hire consultants as soon as monies are available. We also will be serving discovery this week. This technical discovery may or may not provide sufficient information to establish the geologic and hydraulic information necessary for an expert to reach a conclusion and hence it is

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possible that Anaverde will need to do actual physical onsite work in the form of aquifer testing. Doing so will be time consuming and costly depending upon the availability of drillers. Under the circumstances, attempting to fully develop this case over what amounts to a five month period of time is very difficult. In contrast to the newly served parties, the water supply agencies have been involved in this case for years and are at a substantial advantage.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on June 24, 2008, at Los Angeles, California.



Malissa Hathaway McKeith

EXHIBIT “B”

6:08-bk-14592-MJ Empire Land, LLC
Case type: bk **Chapter:** 11 **Asset:** Yes **Vol:** v **Judge:** Meredith A. Jury
Date filed: 04/25/2008 **Date of last filing:** 06/23/2008

Case Summary

Office: Riverside **Filed:** 04/25/2008
County: San Bernardino **Terminated:**
Fee: Paid **Discharged:**
Origin: 0 **Reopened:**
Previous Term: **Converted:**
Disposition: **Dismissed:**
Joint: n **Confirmation Hearing:**

Related adversary proceedings: 6:08-ap-01173-MJ
Pending Status: Awaiting 341 Meeting
Flags: JNTADMN, LEAD, PlnDue, DsclsDue, DEFER
Trustee: United States Trustee (RS) **City:** Riverside **Phone:** **Email:** ustprejon16.rs.ecf@usdoj.gov
Party 1: Empire Land, LLC (33-0993947)
 (Debtor)

Atty: Michael I. Gottfried	Represents party 1: Debtor	Phone: 310-557-0050 Fax: 310-557-0056 Email: mgottfried@lblawllp.com
Atty: Scotta E McFarland	Represents party 1: Debtor	Phone: 310-277-6910 Fax: 310-210-0760 Email: smcfarland@pszjlaw.com
Atty: Karen Rinehart	Represents party 1: Debtor	Phone: 213-430-6000 Fax: 213-430-6407 Email: krinehart@omm.com
Atty: Robert M Saunders	Represents party 1: Debtor	Phone: 310-277-6910 Fax: 310-201-0760 Email: rsaunders@pszjlaw.com
Atty: James Stang	Represents party 1: Debtor	Phone: 310-277-6910 Fax: 310-201-0760 Email: jstang@pszjlaw.com

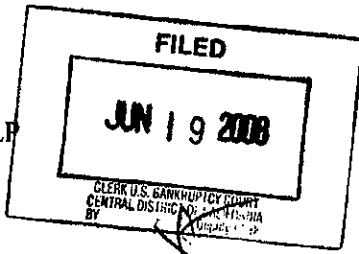
Location of Case File(s):

Volume: CS1
 The case file may be available.

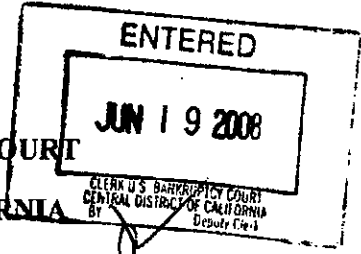
PACER Service Center			
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PACER Login:	lb2904	Client Code:	27175-00002
Description:	Case Summary	Search Criteria:	6:08-bk-14592-MJ
Billable Pages:	1	Cost:	0.08

EXHIBIT “C”

1 Richard M. Pachulski (CA Bar No. 90073)
2 James I. Stang (CA Bar No. 94435)
3 Robert M. Saunders (CA Bar No. 226172)
4 PACHULSKI STANG ZIEHL & JONES LLP
5 10100 Santa Monica Blvd., 11th Floor
6 Los Angeles, California 90067-4100
7 Telephone: 310/277-6910
8 Facsimile: 310/201-0760



9 Attorneys for Empire Land, LLC, et al.,
10 Debtors and Debtors in Possession



11 UNITED STATES BANKRUPTCY COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 RIVERSIDE DIVISION

14 In re:
15 EMPIRE LAND, LLC, et al.¹
16 Debtors.

17 Affects All Debtors
18 Affects EMPIRE LAND, LLC
19 Affects AVIAT HOMES, L.P.
20 Affects EMPIRE CONSTRUCTION, L.P.
21 Affects EMPIRE GLOBAL HOLDINGS, L.P.
22 Affects EMPIRE RESIDENTIAL
23 CONSTRUCTION, L.P.
24 Affects EMPIRE RESIDENTIAL SALES, L.P.
25 Affects PRESTIGE HOMES, L.P.
26 Affects WHEELER LAND, L.P.

Case No.: 6:08-14592 MJ
Chapter 11
[Jointly Administered with Case Nos. 08-14599, 08-14604, 08-14608, 08-14611, 08-14613, 08-14614 and 08-14615]

**ORDER APPROVING: (1)
ANAVERDE SETTLEMENT
AGREEMENT; AND (2)
ASSUMPTION AND ASSIGNMENT
OF RELATED CONTRACTS**

Date: June 19, 2008
Time: 11:00 a.m.
Place: 3420 Twelfth Street
Riverside, CA 92501-3819
Judge: Honorable Meredith A. Jury

¹ The Debtors are: Empire Land, LLC, a California limited liability company, Fed. Tax I.D. No. 33-0993947; Aviat Homes, L.P., a California limited partnership, Fed. Tax I.D. No. 20-1550852; Empire Construction, L.P., a California limited partnership, Fed. Tax I.D. No. 75-3022043; Empire Global Holdings, L.P., a California limited partnership, Fed. Tax I.D. No. 20-2080460; Empire Residential Construction, L.P., an Arizona limited partnership, Fed. Tax I.D. No. 200233121; Empire Residential Sales, L.P., an Arizona limited partnership, Fed. Tax I.D. No. 42-1545699; Prestige Homes, L.P., a California limited partnership, Fed. Tax I.D. No. 33-0952275; and Wheeler Land, L.P., a California limited partnership, Fed. Tax I.D. No. 20-1085149. The Debtors' address is 1809 S. Excise Avenue, Suite 208, Ontario, CA 91761.

1 This matter came for hearing on the Motion [Docket No. 24] of Empire Land, LLC and
2 Empire Construction, L.P. (together, the "Debtors") for an order (this "Order") approving that
3 certain Anaverde Settlement Agreement (the "Settlement Agreement," a copy of which is
4 attached to the Motion as Exhibit B),² and authorizing the assumption and assignment of certain
5 executory contracts relating thereto (as further identified on Exhibit 1 hereto, the "Assigned
6 Contracts"), pursuant to sections 105(a) and 365 of the Bankruptcy Code and Bankruptcy Rules
7 2002, 6006, 9014 and 9019(a). Having reviewed the Motion and related pleadings, the
8 declarations filed in support thereof, and all matters brought to the Court's attention at the June
9 19, 2008 hearing (the "Hearing") on the Motion, and after due and deliberate consideration, this
10 Court having found good and sufficient cause appearing therefor, the Court makes the following
11 findings of fact and conclusions of law:

12 **THE COURT HEREBY FINDS AND DETERMINES AS FOLLOWS:**

13 A. This Court has jurisdiction to hear and determine the Motion pursuant to 28
14 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant 28 U.S.C. § 157(b)(2). Venue is
15 proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

16 B. The statutory predicates for the relief requested in the Motion are sections 105(a)
17 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6006, 9014 and 9019(a).

18 C. Notice of the Motion (including, without limitation, notice of the proposed
19 assumption and assignment of the Assigned Contracts and the cure costs of assuming the
20 Assigned Contracts set forth on Exhibit 1 hereto (the "Cure Amounts")), and a reasonable
21 opportunity to object or be heard with respect to the Motion and the relief requested therein, has
22 been afforded to all interested persons or entities, including, but not limited to: (i) the Office of
23 the United States Trustee; (ii) the creditors holding the 20 largest unsecured claims against the
24 Debtors; (iii) the secured creditors of each of the Debtors, including but not limited to Cadim;
25 (iv) counsel for Palmdale; (v) counsel to the Debtors' Official Committee of Unsecured

26 _____
27 ² Capitalized terms not defined herein have the meaning ascribed to them in the Motion and/or the Settlement
28 Agreement, as applicable.

1 Creditors of Empire Land, LLC (the "Committee"); (vi) each of the counter-parties to the
2 Assigned Contracts; and (vii) all such other parties described in the proof of service filed with
3 this Court [Docket No. 24], including, without limitation, any other party that had filed a
4 request for special notice with this Court as of April 30, 2008.

5 D. As evidenced by the proof of service previously filed with this Court, proper,
6 timely, adequate and sufficient notice of the Motion and the hearing thereon has been provided
7 in accordance with sections 102(1) and 365 of the Bankruptcy Code and Bankruptcy Rules
8 2002, 6006, 9014 and 9019. The foregoing notice was good, sufficient and appropriate under
9 the circumstances, and no other or further notice of the Motion, the assumption and assignment
10 of the Assigned Contracts, and the Cure Amounts is required.

11 E. The legal and factual bases set forth in the Motion establish just cause for the
12 relief granted herein.

13 F. Based on the record before this Court, it appears (and the Debtors and Palmdale
14 both stipulate) that the terms of the Settlement Agreement are fair and reasonable, reflect the
15 Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are
16 supported by reasonably equivalent value and fair consideration.

17 G. The Debtors have full corporate power and authority to execute and deliver the
18 Settlement Agreement and all other documents contemplated thereby, and no further consents
19 or approvals are required for the Debtors to consummate the transactions contemplated by the
20 Settlement Agreement.

21 H. The assumption and assignment of the Assigned Contracts pursuant to the terms
22 of this Order is integral to the consummation of the Settlement Agreement and is in the best
23 interests of the Debtors and their estates, creditors and other parties in interest, reflects the
24 Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and is
25 supported by reasonably equivalent value and fair consideration.

26 I. The respective Cure Amounts set forth on Exhibit 1 annexed hereto and
27 incorporated herein by reference as if fully set forth in this Order are the sole amounts necessary
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1 under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all
2 monetary defaults and pay all actual pecuniary losses under the Assigned Contracts.

3 J. Palmdale or its designee will have, promptly following the Closing: (i) cured
4 and/or provided adequate assurance of cure of any default existing prior to the Closing Date
5 under any of the Assigned Contracts, within the meaning of section 365(b)(1)(A) of the
6 Bankruptcy Code; and (ii) provided compensation or adequate assurance of compensation to
7 any party for actual pecuniary loss to such party resulting from a default prior to the Closing
8 Date under any of the Assigned Contracts, within the meaning of section 365(b)(1)(B) of the
9 Bankruptcy Code.

10 K. Palmdale has provided adequate assurance of future performance under the
11 relevant Assigned Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the
12 extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

13 L. Empire Land, LLC is the true and beneficial owner of, and holds title free and
14 clear of all liens, claims, encumbrances and other interests (other than the encumbrances granted
15 to Palmdale pursuant to the DIP Financing and to Cadim pursuant to the CW Loan Documents)
16 to, the Empire Membership Interest. On and before the Closing, neither Empire Land, LLC nor
17 any of its Related Parties, will, or will cause (directly or indirectly) to, transfer or encumber the
18 Empire Membership Interest (except as such Empire Membership Interest is already
19 encumbered pursuant to the DIP Financing and the CW Loan Documents).

20 M. This Order constitutes a final and appealable order within the meaning of 28
21 U.S.C. § 158(a). Notwithstanding Bankruptcy Rule 6006(d), and to the extent necessary under
22 Bankruptcy Rule 9014 and Rule 62 of the Federal Rules of Civil Procedure, as made applicable
23 by Bankruptcy Rule 7062, the Court expressly finds that there is no just reason for delay in the
24 implementation of this Order, and expressly directs entry of judgment as set forth herein.

25 Based upon the foregoing findings, stipulations, and conclusions, and upon the record
26 made before this Court at the Hearing, and good and sufficient cause appearing therefor;

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1 **IT IS HEREBY ORDERED** that:

2 **Approval of the Motion and Settlement Agreement**

3 1. The Motion is hereby granted.

4 2. Any objections to the Motion that have not previously been withdrawn or
5 resolved as set forth herein are hereby overruled.

6 3. The Settlement Agreement, as amended and modified herein, and all other
7 ancillary documents, and all of the terms and conditions thereof, are hereby approved.

8 4. The Debtors, including but not limited to, their respective directors, officers,
9 employees and agents, are authorized and directed to take any and all further actions necessary
10 or appropriate to (i) consummate the transactions contemplated by the Settlement Agreement
11 pursuant to and in accordance with the terms and conditions of the Settlement Agreement and
12 this Order, and (ii) execute and deliver, perform under, consummate, implement and close fully
13 the Settlement Agreement, together with all additional instruments and documents that may be
14 reasonably necessary or desirable to implement the Settlement Agreement (including the
15 assumption and assignment of the Assigned Contracts), including any other ancillary
16 documents, or as may be reasonably necessary or appropriate to the performance of the
17 obligations as contemplated by the Settlement Agreement and such other ancillary documents.

18 5. Effective upon the Closing Date, the Empire Membership Interest, which
19 includes the interest identified in the LLC Agreement as the interest of "ELL" and all of
20 Empire's right, title and interest in Anaverde, including, without limitation, all voting,
21 management and distribution rights, whether as Administrative Member (as defined in the LLC
22 Agreement) or otherwise, shall be, and hereby is, deemed terminated and resigned.

23 6. Effective as of the Closing, the resignation and termination of Empire Land, LLC
24 as the Administrative Member (as defined in the LLC Agreement) shall be approved on a final
25 basis and shall not be subject to reinstatement.

26 7. Notwithstanding anything to the contrary in the Settlement Agreement, any of
27 the exhibits or schedules thereto, or any ancillary documents executed or to be executed in
28 connection therewith, the Settlement Agreement shall be amended and modified as follows:

- 1 i. The Palmdale Indemnified Parties shall be required to bring any and all
2 Claims (collectively, the "Palmdale Settlement Agreement Claims") : (1)
3 for any breach of a representation, warranty or covenant under the
4 Settlement Agreement by an Empire Releasing Party; (2) that a Palmdale
5 Releasing Party could assert against the Debtors arising under or in
6 connection with any matter for which the Debtors would have been
7 responsible under Section 10.16 of the LLC Agreement or under
8 paragraph 1 of Exhibit 8.1A; and (3) for indemnification that arises under
9 and pursuant to Section 9 of the Settlement Agreement, including,
10 without limitation, any claim that could be asserted against an Empire
11 Releasing Party arising under or in connection with any matter for which
12 the Debtors would have been responsible under Section 10.16 of the LLC
13 Agreement, by no later than the earlier of (x) the 30th day prior to the
14 hearing on the Debtors' confirmation of a plan of reorganization or
15 liquidation (as such 30 day deadline and the confirmation hearing date
16 may be extended or continued) or (y) 12 months after the Closing (the
17 "Palmdale Claims Bar Date"). The Debtors shall provide the Palmdale
18 Indemnified Parties, through their counsel, with at least 60 days advance
19 notice of any intended hearing date on plan confirmation.
- 20 ii. The Palmdale Indemnified Parties shall be forever barred and enjoined
21 from asserting any and all Palmdale Settlement Agreement Claims
22 against the Empire Releasing Parties after the Palmdale Claims Bar Date;
23 provided, however, that any Palmdale Settlement Agreement Claim that
24 has been filed with the Court on or prior to the Palmdale Claims Bar Date
25 shall continue to survive pending final adjudication of such claim.
- 26 iii. Notwithstanding anything to the contrary in this Court's bar date order,
27 entered on June 3, 2008 [Docket No. 126], the Palmdale Indemnified
28 Parties shall not be required to comply with the bar date deadlines set

1 forth therein, but instead shall be required to file the Palmdale Settlement
2 Agreement Claims by the Palmdale Claims Bar Date as provided herein.

3 iv. In the event that the Palmdale Indemnified Parties timely file one or more
4 Palmdale Settlement Agreement Claims, for voting purposes only under
5 the Debtors' plan of reorganization or liquidation, such claim(s) shall be
6 entitled to one vote and, for calculating the amount of such claim(s) in a
7 class, shall be calculated at the greater of \$1 or the amount of any
8 noncontingent, liquidated and undisputed portion of such claim(s).

9 v. Although the Debtors do not believe that they have any ownership or
10 beneficial interest in the insurance policy issued by American
11 International Specialty Lines Insurance Co., policy no. GL 933-28-60
12 (the "Policy"), effective as of the Palmdale Claims Bar Date, all of the
13 Debtors' rights, claims and interests in and to such Policy, and any and
14 all extensions thereto, and including the transfer of any proceeds and
15 refunds that the Debtors may be entitled to thereunder or in connection
16 therewith, if any, shall be deemed transferred and assigned to Anaverde.

17 Limitation on the Palmdale Releasing Parties' Indemnity Obligations

18 d. The obligation of the Palmdale Releasing Parties to indemnify and hold
19 harmless or otherwise be liable to the Empire Indemnified Parties as provided in the
20 Settlement Agreement shall be modified as follows:

21 i. The Empire Indemnified Parties shall be required to bring any and all
22 Claims: (1) for any breach of a representation, warranty or covenant
23 under the Settlement Agreement by a Palmdale Releasing Party; (2) that
24 an Empire Indemnified Party could assert against the Palmdale Releasing
25 Parties arising under or in connection with any matter for which the
26 Debtors would have been responsible under Section 10.16 of the LLC
27 Agreement or under paragraph 1 of Exhibit 8.1A; and (3) for
28 indemnification that arises under and pursuant to Section 9 of the

1 Settlement Agreement, including, without limitation, any claim that could
2 be asserted against a Palmdale Releasing Party arising under or in
3 connection with any matter for which the Palmdale Releasing Parties
4 would have been responsible under Section 10.16 of the LLC Agreement,
5 other than for any such claims arising from the post-Closing business
6 operations at the Project) that relate to or arise from liabilities or claims
7 that arose prior to April 25, 2008 (the "Prepetition Claims"), against the
8 Palmdale Releasing Parties by no later than September 2, 2008 (the
9 "Prepetition Claims Deadline").

10 ii. The Empire Indemnified Parties shall be forever barred and enjoined
11 from asserting any and all Prepetition Claims against the Palmdale
12 Releasing Parties after the Prepetition Claims Deadline; provided,
13 however, that any Prepetition Claim that has been filed with the Court on
14 or prior to the Prepetition Claims Deadline shall continue to survive
15 pending final adjudication of such claim.

16 iii. The Empire Indemnified Parties shall be required to bring any and all
17 Claims under and pursuant to the Settlement Agreement (other than for
18 any such claims arising from the post-Closing business operations at the
19 Project) that relate to or arise from liabilities or claims that arose on or
20 after April 25, 2008 through and including Closing (the "Postpetition
21 Claims"), against the Palmdale Releasing Parties by no later than 80 days
22 after the entry of an order confirming the Debtors' plan (the "Postpetition
23 Claims Deadline").

24 iv. The Empire Indemnified Parties shall be forever barred and enjoined
25 from asserting any and all Postpetition Claims against the Palmdale
26 Releasing Parties after the Postpetition Claims Deadline; provided,
27 however, that any Postpetition Claim that has been filed with the Court
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1 on or prior to the Postpetition Claims Deadline shall continue to survive
2 pending final adjudication of such claim.

3 v. For clarity purposes, the Palmdale Releasing Parties shall not be deemed
4 to release or indemnify the Empire Indemnified Parties for liabilities or
5 claims arising from any post-Closing business operations at the Project
6 that are caused by or result or arise from the actions, inactions or
7 omissions of the Empire Indemnified Parties.

8 Ownership Representation and Limit on Release

9 e. At, and effective upon, Closing, Miller and Previti will jointly and
10 severally represent and warrant to Palmdale and Anaverde that on and prior to the
11 Closing, they have not caused, and they are not aware of, any transfer or encumbrance
12 (other than the encumbrances granted to Palmdale pursuant to the DIP Financing and to
13 Cadim pursuant to the CW Loan Documents) of the Empire Membership Interest (the
14 "Ownership Representation"). The Ownership Representation shall survive Closing and
15 shall be, and is hereby deemed, expressly excluded from any and all releases set forth
16 and provided to Miller and Previti by the Palmdale Releasing Parties in the Settlement
17 Agreement (including any exhibits or schedules thereto, and any ancillary documents
18 executed or to be executed in connection therewith).

19 Assignment of the Assigned Contracts

20 8. At Closing, the Debtors are authorized to assume and assign the Assigned
21 Contracts to Palmdale or its designee. The payment of the applicable Cure Amounts (if any)
22 shall: (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate
23 for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c)
24 together with the assignment to Palmdale or its designee, as applicable, constitute adequate
25 assurance of future performance thereof. Palmdale or its designee, as applicable, shall then be
26 deemed to have assumed the Assigned Contracts and pursuant to section 365(f) of the
27 Bankruptcy Code, the assignment by the Debtors of such contract shall not be a default
28 thereunder. After the payment of all relevant Cure Amounts, neither the Debtors nor Palmdale

1 or its designee, as applicable, shall have any further liabilities to the non-Debtor parties to the
2 Assigned Contracts other than Palmdale's or its designee's, as applicable, obligations under the
3 Assigned Contracts that become due and payable after the Closing Date.

4 9. Any provisions in any Assigned Contract that prohibit or condition the
5 assignment of such Assigned Contract or allow the party to such Assigned Contract to
6 terminate, recapture, impose any penalty, condition on renewal or extension or modify any term
7 or condition upon the assignment of such Assigned Agreement, constitute unenforceable anti-
8 assignment provisions that are void and of no force and effect. All other requirements and
9 conditions under section 365 of the Bankruptcy Code for the assumption by the Debtors, as
10 applicable, and the assignment to Palmdale or its designee, as applicable, of the Assigned
11 Contracts have been satisfied. Upon the Closing, in accordance with section 365 of the
12 Bankruptcy Code, Palmdale or its designee, as applicable, shall be fully and irrevocably vested
13 with all right, title and interest of the Debtors under the Assigned Contracts.

14 10. Upon the Closing and the payment of the relevant Cure Amounts, if any,
15 Palmdale or its designee, as applicable, shall be deemed to be substituted for the Debtors as a
16 party to the applicable Assigned Contracts and the Debtors shall be relieved, pursuant to section
17 365(k) of the Bankruptcy Code, from any and all liability under the Assigned Contracts.

18 11. Upon the payment of the applicable Cure Amount, if any, (a) each Assigned
19 Contract shall constitute a valid and existing interest in the property subject to such Assigned
20 Contract, (b) none of the Debtors' rights will have been released or waived under any such
21 Assigned Contracts, (c) the Assigned Contracts will remain in full force and effect, and (d) no
22 default shall exist under the Assigned Contracts nor shall there exist any event or condition
23 which, with the passage of time or giving of notice, or both, would constitute such a default.

24 12. Palmdale has provided adequate assurance of future performance under the
25 relevant Assigned Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the
26 extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

27 13. There shall be no rent accelerations, assignment fees, increases (including
28 advertising rates) or any other fees charged to Palmdale or its designee, as applicable, as a result

1 of the assumption and assignment of the Assigned Contracts. Pursuant to sections 105(a) and
2 365 of the Bankruptcy Code, all parties to the Assigned Contracts are forever barred and
3 permanently enjoined from raising or asserting against Palmdale or its designee any assignment
4 fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or
5 related to the Assigned Contracts existing as of the Closing Date or arising by reason of the
6 Closing.

7 **Other Provisions**

8 14. Pursuant to Bankruptcy Rules 7062, 9014 and 6006(d), this Order shall be
9 effective immediately upon entry, and the parties to the Settlement Agreement are authorized to
10 consummate the transactions contemplated by the Settlement Agreement immediately upon
11 entry of this Order.

12 15. This Order and the Settlement Agreement shall be binding in all respects upon
13 the Debtors and their estates, all creditors of (whether known or unknown), and holders of
14 equity interests in, any Debtor, all non-Debtor counterparties to the Assigned Contracts,
15 Palmdale, and all of their respective successors and assigns including, but not limited to, any
16 subsequent trustee appointed in any of the Debtors' Chapter 11 cases or upon conversion to
17 Chapter 7 under the Bankruptcy Code, and shall not be subject to rejection.

18 16. Nothing contained in any order of any type or kind entered in (i) the Debtors'
19 Chapter 11 cases or (ii) any related proceeding subsequent to entry of this Order, shall conflict
20 with or derogate from the provisions of the Settlement Agreement or the terms of this Order.

21 17. The Settlement Agreement and any related agreements, documents or other
22 instruments may be modified, amended or supplemented by the parties thereto and in
23 accordance with the terms hereof, without further order of the Court, provided that any such
24 modification, amendment or supplement does not have a material adverse effect on the Debtors'
25 estates.

26 18. To the extent there are any inconsistencies between the terms of this Order and
27 the Settlement Agreement (including all ancillary documents executed in connection therewith),
28 the terms of this Order shall control.

1 19. All time periods set forth in this Order shall be calculated in accordance with
2 Bankruptcy Rule 9006(a).

3 20. The failure specifically to include any particular provision of the Settlement
4 Agreement in this Order shall not diminish or impair the effectiveness of such provision, it
5 being the intent of the Court that the Settlement Agreement be approved on a final basis in its
6 entirety.

7 21. The Court shall retain jurisdiction with respect to all matters arising from or
8 related to the implementation of this Order.

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10 Dated: June 19, 2008

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12 UNITED STATES BANKRUPTCY JUDGE
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EXHIBIT 1

ANAVERDE CONSTRUCTION & SERVICE AGREEMENTS

Service	Contractor	Date of Agreement	Date of Amendment	Address #1	Address #2	Cure Amount
Dry Utility Consultants	BJ Palmer & Associates, Inc.	8/16/2004	3/16/2007	28245 Avenue Crocker, Suite 106 1304 Olympic Blvd.	Valencia, CA 91355	\$55,000
Civil Engineering - Water	Brockmeier Engineers, Inc	2/4/2003	3/23/2004	1304 Olympic Blvd.	Santa Monica, CA 90404	\$18,274.89 ¹
Civil Engineering - Water	Brockmeier Engineers, Inc	2/3/2003	3/23/2004	1304 Olympic Blvd.	Santa Monica, CA 90404	See above
Civil Engineering - Water	Brockmeier Engineers, Inc	12/15/2003	3/23/2004	1304 Olympic Blvd.	Santa Monica, CA 90404	See above
Civil Engineering - Water	Brockmeier Engineers, Inc	12/15/2003	9/21/2005	1304 Olympic Blvd.	Santa Monica, CA 90404	See above
Fire Station	Claremont Environmental Design Group	9/27/2004	7/7/2006	480 North Indian Hill Blvd.	Claremont, CA 91711	\$47,656
School - Legal Counsel	COX CASTLE AND NICHOLSON	12/20/2002	8/9/2004	12049 Century Park East, 28th floor	Los Angeles, CA 90067-3284	\$13,666.16
12 Acre Park and DWR improvements	Dessero Construction	12/6/2006	1/12/2007	12621 East Imperial Highway, Suite B-111	Santa Fe Springs, CA 90670	\$350,000
Sewer System	Foster, Terry A.	4/7/2005	2/28/2006	P. O. Box 90167	Palmdale, CA 93590	\$100,000 ²
Sewer System	Foster, Terry A.	3/15/2006	4/26/2006	P. O. Box 90167	Palmdale, CA 93590	See above
Rough Grading	Foster, Terry A.	5/24/2006	3/19/2007	P. O. Box 90167	Palmdale, CA 93590	See above
Soil Engineering	GeoTek	4/12/2006	2/21/2007	4130 Flat Rock Drive, Suite 140	Riverside, CA 92505	\$41,885

¹ Total cure amount for all of the Brockmeier Engineers' contracts is \$18,274.89.

² Total cure amount for all of the Terry A. Foster contracts is \$100,000.

Service	Contractor	Date of Agreement	Date of Amendment	Address #1	Address #2	Cure Amount
COORDINATE PROCESSING	Glenn Lukos Associates	2/11/2003	6/16/2006	29 Orchard	Lake Forest, CA 92630	\$3,505.23 ³
Other Design & Cons.	Glenn Lukos Associates	11/8/2005	6/6/2006	29 Orchard	Lake Forest, CA 92630	See above
Sewer System	Griffin Dewatering Corporation	11/23/2004	9/15/2005	536 E. Maitland Street	Ontario, CA 91761	\$89,979.63 ⁴
Sewer System	Griffin Dewatering Corporation	3/31/2006	5/24/2006	536 E. Maitland Street	Ontario, CA 91761	See above
Traffic	Meyer, Mohaddes Associates, Inc.	2/10/2003	1/30/2004	707 Wilshire Blvd., Ste. 4810	Los Angeles, CA 90017-3610	\$50,000 ⁵
Traffic	Meyer, Mohaddes Associates, Inc.	8/6/2004	2/28/2006	707 Wilshire Blvd., Ste. 4810	Los Angeles, CA 90017-3610	See above.
Storm Drain Consultant	Pacific Advanced Civil Engineering, Inc.	8/20/2004	10/18/2004	17520 Newhope Street, #200	Fountain Valley, CA 92708	\$0
Storm Drain Consultant	Pacific Advanced Civil Engineering, Inc.	11/22/2005	7/31/2006	17520 Newhope Street, #200	Fountain Valley, CA 92708	\$0

³ Total cure amount for all of the Glenn Lukos Associates contracts is \$3,505.23.

⁴ Total cure amount for all of the Griffin Dewatering Corporation contracts is \$89,979.63.

⁵ Total cure amount for all of the Meyer Mohaddes Associates, Inc. contracts is \$50,000.

EXHIBIT “D”

