

**THIS PROPOSED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION FOR USE IN CONNECTION WITH THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN OF LIQUIDATION DESCRIBED HEREIN. ACCORDINGLY, THE FILING AND DISSEMINATION OF THIS PROPOSED DISCLOSURE STATEMENT ARE NOT INTENDED AND SHOULD NOT IN ANY WAY BE CONSTRUED AS A SOLICITATION OF VOTES ON THE PLAN, NOR SHOULD THE INFORMATION CONTAINED HEREIN BE RELIED UPON FOR ANY PURPOSE BEFORE A DETERMINATION BY THE BANKRUPTCY COURT THAT THE PROPOSED DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION.**

Peggy Hunt (Utah State Bar No. 6060)  
Nathan S. Seim (Utah State Bar No. 12654)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

*Attorneys for D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC and Substantively Consolidated Debtors*

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

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In re:

CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC; CAOP MANAGERS, LLC; CASTLE ARCH KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; CASTLE ARCH SMYRNA, LLC; CASTLE ARCH STAR VALLEY, LLC; *and*

CASTLE ARCH OPPORTUNITY PARTNERS I, LLC; CASTLE ARCH OPPORTUNITY PARTNERS II, LLC,

Debtors.

Case Nos. 11-35082, 11-35237,  
11-35243, 11-35242 and 11-35246  
(Substantively Consolidated)

Case Nos. 11-35241 and 11-35240  
(Jointly Administered)

(Chapter 11)  
The Honorable Joel T. Marker

- Affects All Debtors
- Affects Only the Substantively Consolidated Debtors
- Affects only Castle Arch Opportunity Partners I, LLC
- Affects only Castle Arch Opportunity Partners II, LLC

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**FIRST AMENDED DISCLOSURE STATEMENT FOR FIRST AMENDED CHAPTER 11 TRUSTEE'S PLAN OF LIQUIDATION DATED FEBRUARY 25, 2013**

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## IMPORTANT

THIS DISCLOSURE STATEMENT IS SUBMITTED TO CREDITORS OF AND EQUITY INTERESTS IN CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, INC., CAOP MANAGERS, LLC, CASTLE ARCH OPPORTUNITY PARTNERS, I, LLC, CASTLE ARCH OPPORTUNITY PARTNERS II, LLC, CASTLE ARCH KINGMAN, LLC, CASTLE ARCH SECURED DEVELOPMENT FUND, LLC AND CASTLE ARCH SMYRNA, LLC ENTITLED TO VOTE ON THE PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE HEREIN DESCRIBED, AND CONTAINS INFORMATION THAT MAY AFFECT YOUR DECISION TO ACCEPT OR REJECT THE PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE. THIS DISCLOSURE STATEMENT IS INTENDED TO PROVIDE ADEQUATE INFORMATION AS REQUIRED BY THE BANKRUPTCY CODE AS TO THE PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE. ALL CREDITORS AND HOLDERS OF EQUITY INTERESTS ARE URGED TO READ THE DISCLOSURE STATEMENT AND ATTACHMENTS WITH CARE AND IN THEIR ENTIRETY.

ON MARCH 27, 2013, THE BANKRUPTCY COURT APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE. SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN OF LIQUIDATION DESCRIBED HEREIN AND ATTACHED AS EXHIBIT A IS BEING SOUGHT FROM CREDITORS AND HOLDERS OF EQUITY INTERESTS WHOSE CLAIMS AGAINST AND INTERESTS IN THE DEBTORS ARE IMPAIRED UNDER THE PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE. CREDITORS AND HOLDERS OF EQUITY INTERESTS ENTITLED TO VOTE ON THE PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE ARE URGED TO VOTE IN FAVOR OF THE PLAN AND TO RETURN THE BALLOT INCLUDED WITH THIS DISCLOSURE STATEMENT UPON COMPLETION IN THE ENVELOPE PROVIDED.

### I.

#### INTRODUCTION

##### A. Purpose of this Document

D. Ray Strong, the duly appointed Chapter 11 Trustee (“Trustee”) for the “Consolidated Legacy Debtors” Castle Arch Real Estate Investment Company, LLC (“CAREIC”), CAOP Managers, LLC (“CAOP Managers”), Castle Arch Kingman, LLC (“CAK”), Castle Arch Secured Development Fund, LLC (“CASDF”), Castle Arch Smyrna, LLC (“CAS”), and Castle Arch Star Valley, LLC (“CASV”); and in that capacity as manager of the “CAOP Debtors,” Castle Arch Opportunity Partners I, LLC (“CAOP I”) and Castle Arch Opportunity Partners II, LLC (“CAOP II”) (collectively, the CAOP Debtors with the Consolidated Legacy Debtors are

the “Debtors”), submits this Disclosure Statement under Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016.

The purpose of this Disclosure Statement is to disclose information adequate to enable those who are entitled to vote for the confirmation of the Trustee’s Plan of Liquidation (the “Plan”) to arrive at a reasonably informed decision in exercising their rights to vote to accept or reject the Plan. A copy of the Plan is attached as **Exhibit A** to this Disclosure Statement.

Capitalized terms used but not defined in this Disclosure Statement shall have the meanings assigned to them in Article I of the Plan or in the Bankruptcy Code and Bankruptcy Rules.

The Trustee has promulgated the Plan consistent with the provisions of the Bankruptcy Code. The purpose of the Plan is to provide an expeditious and maximum Distribution to holders of Allowed Claims against and Allowed Equity Interests in each of the Debtors given the assets and anticipated funds available. The Trustee believes that the Plan is the most efficient means for accomplishing that purpose.

This Disclosure Statement is not intended to replace a careful review and analysis of the Plan, including the specific treatment of Claims and Equity Interests under the Plan. It is submitted as an aid and supplement to your review of the Plan to explain the terms of the Plan. Every effort has been made to explain fully various aspects of the Plan and the effect on holders of Claims against and Equity Interests in the Debtors. If any questions arise, the Trustee urges you to contact his counsel to attempt to resolve your questions. You may, of course, wish to consult your own counsel.

**B. Deadlines for Voting and Objecting to Plan; Date of Plan Confirmation Hearing**

**1. Time and Place of the Confirmation Hearing**

The hearing to determine whether the Plan will be confirmed will commence on May 30, 2013 at 2:00 p.m. (Mountain Time), referred to in the Plan as the “Confirmation Hearing,”

before The Honorable Joel T. Marker, in Courtroom 341 of the United States Bankruptcy Court for the District of Utah, located at 350 South Main Street, Salt Lake City, Utah 84101.

## **2. Deadline for Voting For or Against the Plan**

If you are entitled to vote to accept or reject the Plan,<sup>1</sup> it is in your best interest to timely vote on the enclosed Ballot. Please (a) carefully review the Ballot and instructions thereon, (b) complete and execute the Ballot indicating a vote to either accept or reject the Plan, and (c) return the executed Ballot in the enclosed envelope to counsel for the Trustee: Peggy Hunt or Nathan Seim, Dorsey & Whitney LLP, 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101. *Your Ballot must be received by May 13, 2013, or it will not be counted.*

## **3. Deadline for Objecting to Confirmation of the Plan**

Objections to confirmation of the Plan must be filed with the Court and served upon the following Persons by **no later than May 13, 2013**:

Counsel for the Trustee of the Consolidated Legacy Debtors: Peggy Hunt, Dorsey & Whitney LLP, 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101;

Counsel for CAOP I: Gregory J. Adams, McKay Burton & Thurman, 170 South Main Street, Suite 800, Salt Lake City, UT 84101;

Counsel for CAOP II: Penrod W. Keith, Durham Jones & Pinegar, 111 East Broadway, Suite 900, P O Box 4050, Salt Lake City, UT 84110-4050;

Counsel for the Committee, Lon A. Jenkins, Jones Waldo Holbrook & McDonough, 170 South Main Street, Suite 1500, Salt Lake City, Utah 84101; and

Counsel for the United States Trustee: John T. Morgan, Office of the United States Trustee, Ken Garff Building, 405 South Main Street, Suite 300, Salt Lake City, Utah 84111.

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<sup>1</sup> See Plan, Article III; *see also* Part V of this Disclosure Statement (discussing who may vote).

#### **4. Identity of Person to Contact for More Information Regarding the Plan**

Any interested party desiring further information about the Plan should contact counsel for the Trustee, whose contact information is listed on the upper left corner of the first page of this document.

#### **C. Disclaimers**

**NO SOLICITATION OF VOTES HAS BEEN OR MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT AND SECTION 1125 OF THE BANKRUPTCY CODE, AND NO PERSON HAS BEEN AUTHORIZED TO USE ANY INFORMATION CONCERNING THE DEBTORS TO SOLICIT ACCEPTANCES OR REJECTIONS OF THE PLAN OTHER THAN THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. NO PARTY SHOULD RELY ON ANY INFORMATION RELATING TO THE DEBTORS OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED AND REFERRED TO THEREIN.**

**EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS, NO REPRESENTATION CONCERNING THE DEBTORS, THEIR ASSETS, PAST OPERATIONS, OR CONCERNING THE PLAN IS AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT A DECISION WITH RESPECT TO THE PLAN. ANY REPRESENTATIONS MADE TO SECURE ACCEPTANCE OR REJECTION OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD BE REPORTED TO COUNSEL FOR THE TRUSTEE.**

**UNLESS ANOTHER TIME IS SPECIFIED, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF. NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE CONCERNING THE DISCLOSURE STATEMENT AND THE PLAN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE OF THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.**

**WHILE THE INFORMATION PROVIDED HEREIN IS BELIEVED RELIABLE, THE TRUSTEE MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION.**

**DISTRIBUTION OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS ANY REPRESENTATION OR WARRANTY AT ALL, EITHER EXPRESS OR IMPLIED, BY THE TRUSTEE OR HIS PROFESSIONALS THAT THE PLAN IS FREE FROM RISK OR THAT THE ACCEPTANCE OF THE PLAN WILL RESULT IN A RISK-FREE DISTRIBUTION OF ASSETS.**

**THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR THE COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT AND THE PLAN ATTACHED SHOULD BE READ IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN. FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS, THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT, BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN, WHICH CONTROLS IN CASE OF ANY INCONSISTENCY.**

## **II.**

### **BACKGROUND**

#### **A. Pre-Petition Corporate Organization and Management of the Debtors**

##### **1. CAREIC and the Debtor Affiliates**

###### **(a) Organization and Corporate Offices**

CAREIC is a limited liability company that was organized in the State of California in April 2004 to invest in real estate. According to documents prepared by the Debtors, CAREIC caused numerous affiliated entities to be formed in which it owned an interest, including each of the other Debtors (the “Debtor Affiliates”) as well as certain non-debtor affiliates (the “Non-Debtor Affiliates”) (the Debtor Affiliates and the Non-Debtor Affiliates are defined in the Plan as the “CAREIC Affiliates”).<sup>2</sup> The Non-Debtor Affiliates are discussed in this Part II, Section (A)(2) below.

Each of the Debtor Affiliates was a Nevada limited liability company, other than CAOP Managers, which was a Utah limited liability company. While some members of the Debtors’ pre-petition management team, discussed below, operated out of separate offices, as of the Petition Date, all of the Debtors primarily operated out of a single corporate office located in Salt Lake City, Utah.

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<sup>2</sup> See Plan, Article I.



**(b) Equity Securities of the Debtors**

Except for CAOP Managers and CASV, all of the Debtors issued Equity Securities to “Investors” in the form of “Preferred Units” to raise funds for their respective businesses, and also issued “Common Units” either to CAREIC or to CAREIC and to Investors and others. Some of the Equity Securities issued by the Consolidated Legacy Debtors are “Insider Equity Interests” which are Equity Securities held by “Insiders” of the Debtor, including its former management. Private Placement Memoranda issued by the Debtors who issued Equity Securities state that Preferred Units are non-voting Equity Securities with rights of redemption and to dividends, while Common Units are voting Equity Securities and are subordinated in payment to holders of Preferred Units. A summary of the Equity Securities issued for the Consolidated Legacy Debtors prior to the Petition Date, excluding Insider Equity Interests, is attached as **Exhibit B** to this Disclosure Statement.<sup>3</sup> A summary of the Equity Securities issued for each of the CAOP Debtors prior to the Petition Date is attached as **Exhibit C** to this Disclosure Statement, and a summary of Insider Equity Interests is attached as **Exhibit D** to this Disclosure Statement.

Based on the Debtors’ Lists of Equity Security Holders filed in each of the Bankruptcy Cases, on the Petition Date, CAREIC owned all of the membership interests in CAOP Managers and CASV. CAREIC also owned all of the Common Units of CASDF and CAOP II, 72% of CAK’s Common Units, 87% of CAS’s Common Units, and at least 36% of CAOP I’s Common Units.<sup>4</sup>

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<sup>3</sup> Equity Securities shown on Exh. B are listed as they existed on the Petition Date and do not account for the substantive consolidation of the Consolidated Legacy Debtors. Further discussion of the effect of consolidation is set forth in this paragraph below, as well as *infra* at Part II, Section (B)(5).

<sup>4</sup> See Exh. E (Consolidation Findings and Conclusions ¶15).

As a result of the Bankruptcy Court's entry of the Consolidation Order discussed in Part II, Section (B)(1) below, all of the Consolidated Legacy Debtors have been substantively consolidated and, therefore, now exist as the single "Legacy Consolidated Estate." Thus, CAREIC's ownership of the membership interests and Common Units of the Consolidated Legacy Debtors has been eliminated, and holders of Equity Interests in any one of the Consolidated Legacy Debtors are now in the Legacy Consolidated Estate.<sup>5</sup> Additionally, the Legacy Consolidated Estate now owns all of the Common Units of CAOP II, as well as a percentage ownership of CAOP I.

**(c) Management of the Debtors**

Prior to the Petition Date, CAREIC was managed by compensated Directors and Officers comprised principally of Kirby D. Cochran ("Cochran"), Robert D. Geringer ("Geringer"),<sup>6</sup> Douglas W. Child ("Child"), and Jeff Austin. William Warwick and William H. Davidson, as well as several other Persons served as Directors of CAREIC at various times prior to the Petition Date. Furthermore, CAREIC employed David Hunt of The Hunt Law Firm, PC (the "Hunt Firm") in various roles, and also had employees and independent contractors who were principally involved in raising funds from Investors. CAREIC and its management team, in turn, managed all of the Debtor Affiliates as well as other Non-Debtor Affiliates discussed below.

**2. The Non-Debtor Affiliates**

In addition to the Debtor Affiliates, CAREIC or its Insiders caused numerous other limited liability companies to be formed prior to the Petition Date, defined above as the "Non-Debtor Affiliates," including the following:

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<sup>5</sup> See discussion *infra* at Part II, Section (B)(5).

<sup>6</sup> Geringer resigned as an Officer and Director prior to the Petition Date.

The Meadows at Star Valley Community Association  
Castle Arch Opportunity Partners III, LLC  
Castle Arch Lease-To-Own Income Fund, LLC  
CALTO Managers, LLC  
CASCA Managers, LLC  
Castle Arch SoCal Avarar Opportunity Fund, LLC  
The Meo-Castle Arch Managers, LLC  
The Meo-Castle Arch Distress Asset Partners, LLC  
Champion Castle Arch Partners, LLC  
Castle Arch Asia, Ltd.  
Castle Arch Sadat Opportunity Fund, LLC  
Castle Arch Lindale, LLC  
DPOP Managers  
Distressed Property Opportunity Partners, LLC  
REO Value Opportunity Partners, LLC  
REO Venture Group Opportunity Fund, LLC

Based on corporate records, CAREIC or Insiders of CAREIC managed the Non-Debtor Affiliates. As with the Debtor Affiliates, some of the Non-Debtor Affiliates raised funds through the issuance of Equity Securities to Investors in the form of Preferred Units, and some also issued Common Units either to CAREIC or to CAREIC and to Investors and others. As a whole, at the time of the Trustee's appointment, the Non-Debtor Affiliates were not operating. Some of the Non-Debtor Affiliates had caused Investors to be paid some distribution, some had not, and some never operated.

As a result of CAREIC's use of Cash, discussed in this Part II, Section (B)(4) below, one or more of the Debtors may have Claims and Causes of Action, including Avoidance Actions, against those Investors in Non-Debtor Affiliates who were paid prior to the Petition Date. These potential Claims and Causes of Action require further investigation and analysis.

**B. The Consolidated Legacy Debtors - Background**

**1. Post-Petition Substantive Consolidation of the Consolidated Legacy Debtors**

Upon his appointment, the Trustee engaged in an extensive investigation of the Debtors, and while that investigation continues, he has determined that although organized as separate

entities, the Consolidated Legacy Debtors are in fact “a mere instrumentality or alter ego of [each other], with no independent existence of [their] own[.]”<sup>7</sup> Thus, the Trustee filed a *Motion to Substantively Consolidate CAOP Managers, LLC; Castle Arch Kingman, LLC; Castle Arch Smyrna, LLC; Castle Arch Secured Development Fund, LLC; Castle Arch Star Valley, LLC; and Castle Arch Real Estate Investment Company, LLC* (the “Consolidation Motion”)<sup>8</sup> and his *Declaration in Support of the Consolidation Motion* (the “Consolidation Declaration”).<sup>9</sup> On January 31, 2013, the Bankruptcy Court held an evidentiary hearing on the Consolidation Motion and received into evidence, among other things, the Trustee’s testimony as set forth in the Consolidation Declaration.<sup>10</sup> At the close of evidence, the Bankruptcy Court granted the Trustee’s Consolidation Motion, and on February 8, 2013, the Court entered its *Order Granting Chapter 11 Trustee’s Consolidation Motion* (the “Consolidation Order”),<sup>11</sup> together with *Findings of Fact and Conclusions of Law in Support of the Consolidation Order* (the “Consolidation Findings and Conclusions”),<sup>12</sup> a copy of which is attached hereto as **Exhibit E**.

The Consolidation Findings and Conclusions, which are incorporated herein, set forth very specific facts about the business operations and entangled affairs of the Consolidated Legacy Debtors prior to the Petition Date. The discussion that follows is a description of the Consolidated Legacy Debtors’ pre-petition business, but the Consolidation Findings and

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<sup>7</sup> *Federal Deposit Ins. Corp. v. Hogan (In re Gulfco Investment Corp.)*, 593 F.2d 921, 928-29 (10th Cir. 1979) (relying on *Fish v. East*, 114 F.2d 177, 191 (10th Cir. 1940)).

<sup>8</sup> Consolidated Legacy Debtor Docket No. 537; see *Memorandum in Support of Consolidation Motion*, Consolidated Legacy Debtor Docket No. 538.

<sup>9</sup> *Declaration of D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC, in Support of Motion to Substantively Consolidate CAOP Managers, LLC; Castle Arch Kingman, LLC; Castle Arch Smyrna, LLC; Castle Arch Secured Development Fund, LLC; Castle Arch Star Valley, LLC; and Castle Arch Real Estate Investment Company, LLC*, Consolidated Legacy Debtors Docket No. 578.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* Docket No. 590.

<sup>12</sup> *Id.* Docket No. 591.

Conclusions should be consulted for a more detailed discussion of these issues. The effect of substantive consolidation is set forth in Part II, Section (B)(5) below.

## **2. Nature of the Legacy Business**

Prior to the Petition Date, the Consolidated Legacy Debtors were involved in what the Trustee refers to as the “Legacy Business.” The Legacy Business principally involved the acquisition and development of raw land. In filings made with the Securities and Exchange Commission in 2006, CAREIC provided the following description of its business:

We are a residential and commercial land development company with target properties located primarily in the Western United States. Our principal activities are securing acquisition rights to properties, obtaining zoning and other entitlements for the properties, securing financing for the purchase of properties, improving the properties’ infrastructure and amenities, and selling the properties. . . . Our officers may also consider other opportunities, such as located properties we believe are priced at a value and later reselling them without making improvements.

. . . .

We do not intend to market properties to the general public. Currently, our management intends to sell improved property directly to buyers that they locate through contacts rather than commission based brokers. Our management team’s contacts include hundreds of past and present as well as future anticipated business associates and friends. In some cases the contacts may be affiliated with each other or member of our management team.<sup>13</sup>

Some of the Consolidated Legacy Debtors purchased real property, and work was performed in an effort to entitle and develop some of the land. Relevant to this Disclosure Statement are the property acquisitions which one or more of the Consolidated Legacy Debtors still owned or held an interest in as of the Petition Date: (a) real property comprising a total of approximately 535 acres, including associated surface rights and water-use rights, located in Mohave County, Arizona known as the “Kingman Property”; (b) real property comprising a total of approximately 484 acres, including associated water and surface rights, located in Rutherford

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<sup>13</sup> CAREIC Form 10-KSB and Annual Report, Fiscal Year Ended December 31, 2005, at pp. 4-5. See Exh. E (Consolidation Findings and Conclusion ¶ 36).

County, Tennessee known as the “Smyrna Property”; (c) real property comprising a total of approximately 39 acres located in Lincoln County, Wyoming known as the “Star Valley Property”; and (d) real property comprising a total of approximately 348 acres and water rights comprising a total of approximately 616 acres located in Tooele County, Utah known as the “Tooele Property.”<sup>14</sup> But, despite spending tens of millions of dollars prior to the Petition Date in purchasing and attempting to entitle and develop these properties, almost all remained undeveloped, and the Trustee has determined that there are no entitlements currently in place. At this time, the only real property that was developed to a point that developed units could be sold as of the Petition Date is the Star Valley Property.

In addition to the above-noted properties, the Trustee continues to investigate other aspects of the Legacy Business, including potential Claims and rights held by the Consolidated Estate related to (x) deposits or payments made on certain other real properties, including property located in Tyler, Texas, Firebaugh and Coalinga, California, Mesquite, Nevada and others; (y) certain real property located in Heber, Utah; and (z) deposits on loans related to property acquisitions and other matters which were not funded.

### **3. Pre-Petition Capitalization and Operating Loss**

With the exception of relatively limited revenues from the sale of certain property holdings, none of the Consolidated Legacy Debtors had any operating revenue. Rather, operations were primarily funded by monies raised from investors in a series of public offerings and the issuance of Equity Securities discussed in this Part II, Section (A)(1)(b) above. A summary of Equity Securities issued for each of the Consolidated Legacy Debtors as of the

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<sup>14</sup> Consolidated Legacy Debtors Docket No. 29 (Amended Schedule A).

Petition Date is set forth in **Exhibit B** to this Disclosure Statement.<sup>15</sup> Additionally, each of the Debtors' public offerings is summarized on a document attached as **Exhibit F**, entitled "*Timeline of Castle Arch Entity Formations and Investment Offerings*" (the "Timeline").<sup>16</sup> Generally, the Trustee has determined that as investor Cash was consumed and additional Cash was needed, CAREIC caused new securities offerings to be made, initially through CAREIC alone, and then later through the other Debtors that CAREIC caused to be formed.<sup>17</sup> As shown on the chart entitled "*Monthly Cash Balances by Debtors*," attached hereto as **Exhibit G**, it appears that from an analysis of monthly cash balances and the securities offerings made, CAREIC caused the other Consolidated Legacy Debtors, and later the CAOP Debtors, to be formed primarily as vehicles through which to obtain Investor funds.<sup>18</sup>

According to the Debtors' records, the Consolidated Legacy Debtors raised a total of \$73,593,717.00, net of redemptions, from Investors during the period of May 2004, when CAREIC made its initial Series A offering, through the Petition Date.<sup>19</sup> Limited funds were paid to some holders of some of the Consolidated Legacy Debtors' Preferred Units prior to the Petition Date, but on a whole, Investors receiving Preferred Units have not obtained a significant return on their investment.

The Consolidated Legacy Debtors continually operated at a loss. Most of the Cash obtained from Investors was used to purchase and invest in property, raise new funds from Investors, and to pay executive compensation, payroll and other administrative expenses. From

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<sup>15</sup> Equity Securities shown on Exh. B are listed as they existed on the Petition Date and do not account for the substantive consolidation of the Consolidated Legacy Debtors. Further discussion of the effect of consolidation is set forth *infra* at Part II, Section (B)(5).

<sup>16</sup> See, Exh. E (Consolidation Findings and Conclusions ¶¶ 33-39).

<sup>17</sup> *Id.* ¶¶ 33-39 & 46-59 (describing use of cash and timing of offerings); Exh. F (Timeline).

<sup>18</sup> Exh. E (Consolidation Findings and Conclusions ¶ 37).

<sup>19</sup> *Id.* ¶ 34 (referencing the Debtor's Master Tracking Sheet that was maintained to track investor funds); Exh. F (Timeline).

the Debtors' records, it appears that at least 25% of monies raised from Investors were used to fuel its fundraising machine and to pay management.<sup>20</sup>

#### **4. Use of Cash and Intercompany Transfers**

The Consolidated Legacy Debtors' pre-petition use of Cash and accounting of such Cash is set forth in detail in the Consolidation Findings and Conclusions.<sup>21</sup> Generally, however, the Consolidated Legacy Debtors' Cash was used collectively, as if part of one big "piggy bank," with funds from the account of whichever entity had Cash on deposit being transferred, commingled, and used by the entity in need of Cash at any given time. In other words, entities with Cash at the time would fund the cash requirements and needs of the entities without sufficient Cash.<sup>22</sup> Complicating matters is that real property was purchased using not only commingled funds but, often, cash on deposit in bank accounts of numerous Consolidated Legacy Debtors, even if the funding entities had no ownership or interest in the property.

The rampant intercompany transfers of Cash appear to have been recorded in the Consolidated Legacy Debtors' accounting records by journal entries. Yet, there are thousands of these intercompany and Cash entries, often with a single transfer being booked to several accounts, including through commingled "Intercompany" general ledger accounts which recorded intercompany receivables and payables of multiple Debtors.<sup>23</sup> Due to the complexity of the booked entries and the Trustee's opinion that the book entries may not always be accurate or reflect the true nature of the transaction booked, the Trustee concluded that an accounting of the respective intercompany Claims would require him to engage in an analysis and tracing of all Cash transactions and underlying supporting invoices and documents commencing from 2004

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<sup>20</sup> Exh. E (Consolidation Findings and Conclusions ¶ 42).

<sup>21</sup> *Id.* ¶¶ 46-59.

<sup>22</sup> *Id.* ¶ 58.

<sup>23</sup> *Id.* ¶¶ 55-56.



through the time of his appointment.<sup>24</sup> Such an investigation would be very expensive and time-consuming and would likely consume a large part of any Distribution to parties in interest in this case.

Thus, the Trustee sought substantive consolidation of the Consolidated Legacy Debtors so as to avoid this expense and eliminate the thousands of intercompany Claims and potential litigation regarding the same. The effect of consolidation is set forth below.

### **5. Effect of Substantive Consolidation**

Substantive consolidation occurs when the court “pierce[s] the several corporate veils and disregard[s] the existence of the separate corporate entities.”<sup>25</sup> The effect of substantive consolidation is that separate legal entities are treated as “if they were merged into a single survivor left with all the cumulative assets and liabilities (save for inter-entity liabilities, which are erased). The result is that claims of creditors against separate debtors morph to claims against the consolidated survivor.”<sup>26</sup> Thus, as a result of the Bankruptcy Court’s entry of the Consolidation Order, at this time, the following applies:

- All of the assets of each of the Consolidated Legacy Debtors are part of the single Legacy Consolidated Estate;
- All Claims against any one of the Consolidated Legacy Debtors are Claims against the single Legacy Consolidated Estate;
- Intercompany Claims and Causes of Action as between each of the Consolidated Legacy Debtors have been eliminated in their entirety, including but not limited to (a) Claims arising as a result of the thousands of intercompany transfers recorded in the Consolidated Legacy Debtors’ books and records, (ii) Causes of Action, including Avoidance Actions, related to the acquisition of real property with commingled Cash and

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<sup>24</sup> *Id.* ¶¶ 56-57.

<sup>25</sup> *Fed. Deposit Ins. Corp. v. Hogan (In re Gulfco Inv. Corp.)*, 593 F.2d 921, 928-29 (10th Cir. 1979) (relying on *Fish v. East*, 114 F.2d 177, 191 (10th Cir. 1940)).

<sup>26</sup> *In re Owens Corning, Inc.*, 419 F.3d 195, 205 (3d Cir. 2005); accord *In re George Love Farming, LC*, 366 B.R. 170, 180 (Bankr. D. Utah 2007) (Thurman, C.J.).

through intercompany transfers, and (iii) Causes of Action related to and the supposed Claim arising from a \$10 million guaranty that CAREIC allegedly afforded to CASDF;

- Intercompany Liens, such as the Liens purported to be held by CASDF against the Kingman Property titled in the name of CAREIC and CAK, have been eliminated in their entirety;
- Holders of Preferred Units in any one of the Consolidated Legacy Debtors are now holders of Equity Interests with Preferred Unit priority as against the Legacy Consolidated Estate;
- Holders of Common Units in any one of the Consolidated Legacy Debtors, other than the Common Units held by CAREIC in any of the other Consolidated Legacy Debtors, are now holders of Equity Interests with Common Unit priority as against the Legacy Consolidated Estate; and
- Common Units or membership interests held by CAREIC in all of the other Consolidated Legacy Debtors are now eliminated in their entirety.

## **6. Assets of the Consolidated Legacy Debtors as of the Petition Date**

According to the respective Schedules of the Consolidated Legacy Debtors, and based on the Trustee's on-going investigation, the Legacy Consolidated Estate's primary assets include the following:<sup>27</sup>

- Real Property: On the Petition Date,<sup>28</sup> the Legacy Consolidated Estate held title to: (a) The Kingman Property, totaling approximately 447.43 acres; (b) The Smyrna Property; and (c) The Star Valley Property.
- Interest in the Tooele Property Including Water Rights: CAREIC paid significant sums relating to acquisition costs associated with the Tooele Property which includes water rights. Within one year of the Petition Date, CAREIC caused the Tooele Property to be transferred to CAOP I (the "Tooele Property Transfer").<sup>29</sup> Thus, the Legacy Consolidated Estate has Claims and Causes of Action, including Avoidance Actions, related to the Tooele Property Transfer against CAOP I, but at this time the viability of those Claims and Actions is not certain.

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<sup>27</sup> Because the Trustee's investigation is on-going and there may be assets that are yet to be discovered, this disclosure is made purely for the purpose of disclosing assets known at this time, and in so doing, the Trustee is not waiving any additional rights, Claims, Causes of Action or defenses that may exist.

<sup>28</sup> The right to purchase or ownership of some of the real property obtained was lost prior to the Petition Date as a result of CAREIC's alleged default of certain obligations.

<sup>29</sup> Consolidated Legacy Debtors Docket No. 29 (Amended Statement of Financial Affairs ¶ 10).

- Interest in Western Credit Service Company: CAREIC may also hold Claims and Causes of Action for loans made to, or its Equity Securities in Western Credit Service Company, LLC (“WCSC”), d/b/a as FloBridge Group, L.L.C., FloBridge Microloan Company, L.L.C., and/or Flobridge Microloan Company II, L.L.C., an entity that upon information and belief is connected to Cochran. Furthermore, CAREIC maintains that it may have a Claim against WCSC for consulting fees.<sup>30</sup>
- Insurance Policies: The Consolidated Estate has rights or potential rights under at least the following two insurance policies that still have value for the Estates:
  - A Private Equity and Venture Capital Fund Liability Policy issued by Axis Surplus Insurance Company. Coverage under this Policy is limited to \$1 million, but it is a “wasting policy” covering costs of defense of the Directors and Officers as well as the Debtors. The Trustee has made demand on the insurer under this Policy.
  - A Private Company Management Liability Policy issued by Rockhill Insurance Company (“Rockhill”). Rockhill has made payments under the Policy pursuant to settlement of certain litigation defined below as the “Longview Action,” and at this time, the only remaining Claims of the Legacy Consolidated Estate are for payment of the Consolidated Legacy Debtors’ “Costs of Defense” incurred in the Longview Action.<sup>31</sup>
- General—Claims and Causes of Action: Collection and litigation Claims and Causes of Action, including without limitation (a) Avoidance Actions against numerous third parties and Insiders, including without limitation Claims discussed below and in the respective Consolidated Legacy Debtors’ Schedules, (b) Claims and Causes of Action against those related to the Firebaugh and Coalinga Properties, including contract rights under certain Reassignment and Assumption of Purchase Sale Agreements, (c) general Claim objections, any counterclaims, and Causes of Action to avoid or invalidate Liens, (d) Claims related to the Star Valley Property transactions, and (e) any Claims and Causes of Action pertaining to the any of the cases disclosed in Part II, Section (D) below, including the California Tax Refund Claim.
- Insiders and Former Persons Affiliated With Management/Employees/Fundraisers/Persons Facilitating Fraud—Claims and Causes of Action: Claims and Causes of Action exist against CAREIC’s Directors and Officers, and perhaps others, related to pre-petition management of CAREIC and the CAREIC Affiliates. Among other things, and without limitation, the Trustee maintains that the Directors and Officers, and some being directed by management or raising investor funds for compensation, received excessive compensation and expense reimbursement, engaged in mismanagement, breached their fiduciary duties of loyalty and care, and possibly

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<sup>30</sup> See Consolidated Legacy Debtors Docket No. 29 (Amended Schedule B).

<sup>31</sup> See *infra* Part III, Section (D)(1).

engaged in fraud, including securities fraud. To the extent that any such Persons have Allowed Claims or Interests, such Claims or Interests may be subject to subordination.

- CAOP Debtors—Claims and Causes of Action: Intercompany Claims and Causes of Action of the Legacy Consolidated Estate against the CAOP Debtors for Management Fees and other Claims and Causes of Action, including but not limited to Claims and Causes of Action against CAOP I related to the Tooele Property Transfer discussed above.
- Former Professionals—Claims and Causes of Action. The Consolidated Legacy Debtors retained numerous professionals and paid retainers to some professionals prior to the Petition Date. Claims and Causes of Action may exist against the professionals, including Claims related to proofs of Claim filed, and the Legacy Consolidated Estate also has Claims against those professionals who have not turned over the pre-petition retainers.
- Former Receiver—Claims and Causes of Action. The Trustee maintains that the Receiver appointed prior to the Petition Date<sup>32</sup> is required to repay all funds he paid to himself or those he employed without Court authorization, subject only to any Claim that may be found to be an Allowed Claim against the Consolidated Estate.
- Non-Debtor Affiliates and Investors—Claims and Causes of Action: Potential intercompany Claims and Causes of Action against the Non-Debtor Affiliates for, among other things, transfers and Management Fees, and against Investors in those Affiliates who were paid monies of the Consolidated Legacy Debtor on their investments.
- Equity: Equity Interests in numerous CAREIC Affiliates, including the CAOP Debtors and Non-Debtor Affiliates.

## C. The CAOP Business—Background

### 1. General Business Model of the CAOP Debtors

With the national downturn in the real estate market, CAREIC's management determined that it should develop a business model to profit from investments in distressed real estate, referred to by the Trustee herein as the "CAOP Business." The CAOP Business was operated by CAREIC through CAOP I and CAOP II, referred to herein and in the Plan as the "CAOP Debtors," as well as a limited number of other Non-Debtor Affiliates.

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<sup>32</sup> See *infra* Part II, Sections (D)-(E).

The CAOP Debtors were managed by CAREIC, theoretically through CAOP Managers, but CAOP Managers was in fact CAREIC's alter ego. In reality, CAREIC caused funds to be raised from Investors through the CAOP Debtors, and the CAOP Debtors then loaned to or invested the funds with third parties who claimed to generate profits by investing in or purchasing and selling distressed real property. Prior to the Petition Date, the CAOP Debtors primarily made loans to or invested funds with CONIX, Inc. ("CONIX"), Real Estate Foreclosure Specialists, Western Showcase Manufactured Homes, and Wholesale Foreclosures/AZ PROP I LLC (collectively, the "REO Entities"). In addition, as discussed below, Cash held by the CAOP Debtors as of the Petition Date was placed by the CAOP Debtors after the Petition Date with BlackStar Financial, Inc. ("Blackstar"), through Blackcastle, LLC (the "BlackStar/Blackcastle Investment"). The BlackStar/Blackcastle Investment is outlined in the Trustee's *Preliminary Statement of Investigation* filed with the Bankruptcy Court (the "BlackStar Report") and is incorporated herein by reference.<sup>33</sup>

## **2. The Businesses of the CAOP Debtors**

### **(a) CAOP I**

Prior to the Petition Date, CAOP I made loans to or invested with some or all of the REO Entities.<sup>34</sup> It also acquired a home located in Laveen, Arizona.<sup>35</sup> Additionally, as of the Petition Date, CAOP I held title to certain real property located in Tooele County, Utah which is defined in this Part II, Section (B)(2) above as the "Tooele Property."<sup>36</sup> The Tooele Property was transferred to CAOP I by CAREIC within one year of the Petition Date and is the "Tooele

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<sup>33</sup> Consolidated Legacy Debtors Docket No. 256.

<sup>34</sup> See CAOP I Docket No. 16 (Amended Schedule B).

<sup>35</sup> *Id.* (Amended Schedule A).

<sup>36</sup> *Id.*

Property Transfer” discussed in this Part II, Section (B)(6) above. The Legacy Consolidated Estate may have Claims and Causes of Action, including Avoidance Actions, against CAOP I related to the Tooele Property Transfer, but at this time the merits of those Claims and Causes of Action are not certain.

According to CAOP I’s Schedules, its only assets on the Petition Date were Cash, its investments and loans noted above, retainers paid to numerous legal professionals, potential Claims against CONIX and its former FINRA broker, defined in Part III, Section (D)(1) below as “Longview,” and intercompany Claims.<sup>37</sup> After the Petition Date and prior to the Trustee’s appointment, CAREIC caused CAOP I to invest its Cash in the Blackstar/Blackcastle Investments.

CAOP I’s Schedules state that the only Claims against it are for disputed and contingent registered agent fees, one undisputed trade debt, a disputed and unliquidated Claim by Longview, and intercompany Claims.<sup>38</sup> At this time, CAOP I’s scheduled Claim against Longview noted above, and Longview’s scheduled Claim against CAOP I, have been resolved as a result of the Longview Settlement discussed in Part III, Section (D)(1) below.

**(b) CAOP II**

Prior to the Petition Date, CAOP II made loans to or invested with some or all of the REO Entities.<sup>39</sup> According to CAOP II’s Schedules, its only assets as of the Petition Date were these investments and loans, Cash, retainers paid to numerous legal professionals, potential Claims against CONIX, its former FINRA broker-dealer, defined below in Part III, Section

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<sup>37</sup> *Id.* (Amended Schedule B).

<sup>38</sup> *Id.* (Amended Schedules E-F).

<sup>39</sup> *See* CAOP II Docket No. 11 (Amended Schedule B).

(D)(1) as “Longview,” and intercompany Claims.<sup>40</sup> After the Petition Date and prior to the Trustee’s appointment, CAREIC caused CAOP II to invest its Cash in the Blackstar/Blackcastle Investments.

CAOP II’s Schedules state that the only Claims against it are for disputed registered agent fees, a disputed and unliquidated Claim by Longview, and intercompany Claims.<sup>41</sup> At this time, CAOP II’s scheduled Claim against Longview noted above, and Longview’s scheduled Claim against CAOP II, have been resolved as a result of the Longview Settlement discussed in Part III, Section (D)(1) below.

### **3. Capitalization of the CAOP Debtors and Lack of Revenues**

The CAOP Debtors were primarily capitalized by raising funds from Investors through a series of private offerings and the issuance of Equity Securities discussed in this Part II, Section (A)(1)(b) above. A summary of the Equity Securities issued for each of the CAOP Debtors is set forth in **Exhibit C** of this Disclosure Statement, and the public offerings are described in the Timeline attached as **Exhibit F**.<sup>42</sup>

### **4. Substantive Consolidation of the CAOP Debtors is Not Appropriate**

Upon his appointment, the Trustee engaged in an extensive investigation of the Debtors, and this investigation continues. As part of this investigation, the Trustee examined, among other things, the CAOP Debtors’ businesses, the timing of their respective securities offerings, and their books and records. Based on this investigation, the Trustee has determined that, unlike the Consolidated Legacy Debtors, the substantive consolidation of the CAOP Debtors is

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<sup>40</sup> *Id.* (Amended Schedules A-B).

<sup>41</sup> *Id.* (Amended Schedules E-F).

<sup>42</sup> *See also* Exh. G. (tracking monthly cash of the enterprise with the securities offerings made).

not warranted and would not be equitable under the circumstances for at least four primary reasons.

*First*, the nature of the Legacy Business, based on real estate acquisition and development, is wholly separate from the nature of the CAOP Business, based on the investment in distressed properties or pools of distressed properties. *Second*, based on information known to the Trustee at this time, the Legacy Consolidated Estate only owns 36% of CAOP I's Common Units.<sup>43</sup> *Third*, and perhaps most significantly, although there are intercompany transfers and Claims associated with the CAOP Debtors, these issues are not nearly as pervasive or complicated as those involving the Consolidated Legacy Debtors due, in part, to the CAOP Debtors' different business model and to the fact that the CAOP Debtors had not engaged in business nearly as long as the Consolidated Legacy Debtors on the Petition Date.<sup>44</sup> Thus, the significant forensic accounting and litigation expense required to "unscramble" the affairs of the CAOP Debtors will not, as it would with the Consolidated Legacy Debtors, greatly threaten any recovery to parties in interest in the CAOP Debtors' respective Bankruptcy Cases.<sup>45</sup> Finally, *fourth*, substantive consolidation is an equitable remedy, and given all of the known facts and circumstances, including the believed separate nature of the assets held by the CAOP Debtors, consolidation of the CAOP Debtors with the Consolidated Legacy Debtors would not be fair. Accordingly, given all of these factors, the Trustee does not plan to seek substantive consolidation of the CAOP Debtors.

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<sup>43</sup> See *infra* at Part II, Section (A)(1)(b) (discussing ownership).

<sup>44</sup> See Exhs. F (Timeline) & G (chart) (both exhibits show that the securities offerings related to the CAOP business, or the "Distressed Property Model," did not commence until March 2009, when CAOP I made its Series A offering, with CAOP II's Series A offering taking place in October 2009).

<sup>45</sup> See Exh. E (Consolidated Findings and Conclusions ¶¶ 46-56, 61, & 107(h) (required expense to unscramble would greatly threaten any recovery to parties in interest in the Consolidated Legacy Debtors' respective Bankruptcy Cases).



While there are potential intercompany claims between the CAOP Debtors, and there also exist intercompany Claims between the CAOP Debtors and the Legacy Consolidated Estate (for example, the Legacy Consolidated Estate's Claims against the CAOP Debtors for Management Fees, and the Claims between the Legacy Consolidate Estate and CAOP I related to the Tooele Property Transfer discussed in Part II, Section (B)(6) above), the Trustee believes that these relatively contained conflicts can be efficiently resolved through the Conflict Resolution Procedures described in Part IV, Section E below.

## **5. Known Assets of the CAOP Debtors**

### **(a) CAOP I**

According to CAOP I's Schedules, and based on the Trustee's on-going investigation, CAOP I's primary assets include the following:<sup>46</sup>

- Cash and profits related to the Blackstar/Blackcastle Investment;
- Interests in joint ventures, investments and notes receivable with certain of the REO Entities and Blackstar;
- Title in the Tooele Property, that is subject to Claims and Causes of Action of the Consolidated Estate related to the Tooele Property Transfer;
- Net sale proceeds from the sale of a home located in Laveen, Arizona;
- Claims and Causes of Action against numerous third parties, including Insiders, CONIX and perhaps other REO Entities; and
- Intercompany Claims against the Consolidated Estate, and, potentially, CAOP II, and certain Non-Debtor Affiliates and Investors in those Affiliates.

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<sup>46</sup> Because the Trustee's investigation is on-going and there may be assets that are yet to be discovered, this disclosure is made purely for the purpose of disclosing assets known at this time, and in so doing, the Trustee is not waiving any additional rights, Claims, Causes of Action or defenses that may exist.

(b) **CAOP II**

According to CAOP II's Schedules, and based on the Trustee's on-going investigation, CAOP II's primary assets include the following:<sup>47</sup>

- Cash and profits related to the Blackstar/Blackcastle Investment;
- Interests in joint ventures, investments and notes receivable with certain of the REO Entities and Blackstar;
- Claims and Causes of Action against numerous third parties, including Insiders, CONIX and perhaps other REO Entities; and
- Intercompany Claims against the Consolidated Estate and, potentially, CAOP I and certain Non-Debtor Affiliates and Investors in those Affiliates.

**D. Pre-Petition Litigation**

Prior to the Petition Date, the Debtors were parties to the litigation noted below:<sup>48</sup>

1. *CAREIC v. J. Stuart Schultz d/b/a Landmark*, Case No. 100903991 (Utah 3<sup>rd</sup> Dis. Ct.): Contract and tort action which has now been dismissed as a result of the "Longview Settlement" discussed in Part III, Section (D)(1) below.
2. *CAREIC v. Longview Financial Holdings, Inc.*, Case No. 100903551 (Utah 3<sup>rd</sup> Dis. Ct.): Debt collection action which has now been dismissed as a result of the "Longview Settlement" discussed in Part III, Section (D)(1) below.
3. *CAREIC v. California Franchise Tax Board*: Action to recover approximately \$85,000 tax refund from the State of California. CAREIC's request for this refund was denied by the California Franchise Tax Board, and CAREIC has filed an appeal of that decision (the "California Tax Refund Claim"). The Trustee is pursuing the California Tax Refund Claim.<sup>49</sup>
4. *CAREIC v. Anagram Investments, Inc. et al.*, Case No. 0505003 (Utah 4<sup>th</sup> Dis. Ct.) (the "Anagram Action"): This action, which was filed by CAREIC in 2005, was not listed by the Debtors in their Statement of Financial Affairs, and the Trustee is investigating this Action. It is believed that CAREIC obtained a judgment against the defendants.

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<sup>47</sup> *Id.*

<sup>48</sup> See Consolidated Legacy Debtors Docket No. 29 (Amended Statement of Financial Affairs ¶ 4).

<sup>49</sup> The amount of the California Tax Refund Claim is based on CAREIC's Amended Schedules and Statement of Financial Affairs, but the amount may be more.

5. *St. Paul Fire & Marine Insurance Co. v. Metropolitan Real Estate et al.*, Case No. 2:09-cv-238 (D. Utah): Declaratory judgment action which is stayed as a result of the Bankruptcy Cases. Plaintiff insurer seeks a judgment that it does not have any duty to defend defendants in the Anagram Action noted in paragraph 4 above. The District Court recently entered an Order dismissing this action despite the application of the automatic stay, and the Trustee intends to seek to have the case reinstated.
6. *Jerry Sharkos and Co. v. CAREIC*, Case No. 2011L 000086 (Ill. Cir. Ct., DuPage County): Contract action which is stayed as a result of the Bankruptcy Cases. A proof of Claim has been filed against CAREIC related to this action.
7. *Longview Financial Group, Inc. et al. v. CAREIC et al.*, Case No. 600904/2010 (NY Civ. Sup. Ct.): This is the “Longview Action” which has been dismissed as a result of the “Longview Settlement,” both of which are discussed in Part III, Section (D)(1) below.
8. *The Hunt Law Firm v. CAREIC*, Case No. 100700353 (Utah 2<sup>nd</sup> Dis. Ct.) (the “Hunt Firm Lawsuit”): Debt collection action which is stayed as a result of the Bankruptcy Cases. A proof of Claim has been filed against CAREIC related to this lawsuit.
9. *Mohave Engineering Assoc. Inc. v. CAREIC*, Case No. 110412446 (Utah 3<sup>rd</sup> Dis. Ct.): Debt collection action which is stayed as a result of the Bankruptcy Cases.
10. *Feola v. CAREIC*, Case No. BC432108 (Cal. Superior Ct., Los Angeles County): Action by Andrew Feola (“Feola”) to recover amounts alleged due for services. After the Petition Date, judgment was entered against CAREIC in this matter in the amount of \$282,197.32. Feola has filed a proof of Claim against CAREIC for the amount of the judgment.
11. *Higa v. CAREIC*, Case No. BC455351 (Cal. Superior Ct., Los Angeles County): Contract action which is stayed as a result of the Bankruptcy Cases. A proof of Claim has been filed against CAREIC related to this action.

**E. Factors Contributing to the Filing of the Bankruptcy Cases**

Many factors may have contributed to the filing of the Debtors’ Bankruptcy Cases, including at least the following: (1) as pertains to the Legacy Business, the national decline in real estate market; (2) at least potential mismanagement and breaches of fiduciary duties of former management and the Board of Directors; (3) an interruption in the Debtors’ ability to solicit Investors as a result of an information inquiry by the Securities and Exchange

Commission in 2009; (4) the commencement of the “Longview Action” in the State of New York by the Debtors’ FINRA broker-dealer discussed in Part III, Section (D)(1) below.

In June 2010, the Hunt Firm commenced the action described in this Part II, Section (D) above as the “Hunt Firm Lawsuit” against CAREIC. On September 9, 2011, the court in the Hunt Firm Lawsuit appointed Trent Waddoups as Receiver (the “Receiver”). The Receiver seized the Debtors’ books and records, and ultimately caused each of the Debtors to file their respective Chapter 11 petitions in the Bankruptcy Court, thus commencing the Debtors’ Bankruptcy Cases.

**F. The Bankruptcy Cases and Appointment of the Trustee**

On October 17, 2011, the Receiver caused CAREIC to file its Chapter 11 Bankruptcy Case, and Chapter 11 petitions for each of the Debtor Affiliates were filed by the Receiver on October 20, 2011, thus commencing their respective Bankruptcy Cases. Each of these dates is referred to in the Plan as the “Petition Date.”

After the Petition Date, the Debtors continued to operate their business as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, initially through the Receiver and then through some members of CAREIC’s former management, professionals, consultants and/or employees. To the best of the Trustee’s information and belief, no private offerings were made to Investors after the Petition Date.

An Official Committee of Unsecured Creditors (the “Committee”) for CAREIC was formed, and is currently comprised of the following Persons who assert a Claim against CAREIC, and in some instances other Debtor Affiliates: Jerry Sharko’s & Co., Inc.; Feola; Dr.

Nolan & Kimberly Higa; Longview; and NetChemistry.<sup>50</sup> Shortly after its formation, the Committee filed a motion seeking the appointment of a Chapter 11 Trustee,<sup>51</sup> and after the commencement of an evidentiary hearing, the Debtors stipulated to the appointment of a trustee for CAREIC.<sup>52</sup> On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 trustee of CAREIC, and since that time, the Trustee has managed all of the Debtors in the Bankruptcy Cases.<sup>53</sup>

**G. The Trustee and the Plan**

Since his appointment, the Trustee has engaged in an on-going investigation of the Debtors' respective Estates for the purpose of complying with his duties under Section 1106 of the Bankruptcy Code and to facilitate his administration of the Estates in a manner to maximize the value of the Debtors' assets for the benefit of holders of Allowed Claims and Allowed Equity Interests. A report of the Trustee's administration of the Estates since his appointment on May 3, 2012, is set forth in Part III of this Disclosure Statement.

As part of his duties, the Trustee has formulated the proposed Plan attached to this Disclosure Statement as **Exhibit A**. The Trustee maintains that the proposed Plan is the most effective means for administering the Debtors' assets and making a Distribution in a timely fashion to the holders of Allowed Claims and Allowed Equity Interests as described in the Plan. A summary of the Plan as to each of the Debtors is set forth in Part IV of this Disclosure Statement.

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<sup>50</sup> Child's accounting firm and Geringer were originally named as Committee Members, but they since resigned. See Consolidated Legacy Debtors Docket Nos. 48 & 82. The Trustee is also informed that Longview has also resigned from the Committee.

<sup>51</sup> Consolidated Legacy Debtors Docket No. 58.

<sup>52</sup> *Id.* Docket No. 208.

<sup>53</sup> *Id.* Docket No. 215.

### III.

#### **THE TRUSTEE'S POST-PETITION ADMINISTRATION OF THE ESTATES**

##### **A. Actions by Trustee**

The Trustee was appointed on May 3, 2012. Since that time, the Trustee has administered the assets of the Estates so as to most effectively and efficiently maximize their value for the benefit of holders of Allowed Claims and Allowed Equity Interests, including, among other things, taking the following material actions:

- Taking possession and control of the Debtors' operations, documentation, assets, and bank accounts;
- Identifying, organizing, and investigating the Debtors' documentation and electronic files;
- Demanding turnover of documentation and information from over 18 parties, including the preparation of turnover letters, motions for Bankruptcy Rule 2004 examinations, and other informal document requests;
- Employing Professionals Dorsey & Whitney LLP (Counsel), Berkeley Research Group, LLC (Accountants), and Commerce Real Estate Solutions (Real Estate Brokers) to aid the Trustee in effectively and efficiently administering the Estates;
- Meeting with and/or discussing issues related to the Bankruptcy Cases with at least the following: Debtors' Professionals, Committee Professionals, former management, former employees, CONIX, Blackstar, Western Showcase Homes, and various former Professionals of the Debtors, including counsel, real estate brokers, a water rights consultant, and accountants;
- Addressing and winding-down the Debtors' on-going operations, including attending to cash management, day-to-day accounting, daily mail review, closing the Debtors' Salt Lake City, Utah office, terminating employees, and other related administration;
- Preparing and maintaining a website to provide documentation and information to interested parties;
- Responding to numerous inquiries by creditors and Investors;
- Evaluating cash needs and obtaining the Cash Management Orders approving interim cash management plans;

- Investigating the Debtors' historical financial statements, general ledgers, intercompany transactions, and cash activity;
- Evaluating real property owned by the Consolidated Legacy Debtors, including title related issues, water rights, mineral rights, existing entitlements, site visits, Lien issues, and existing market conditions;
- Marketing real properties for sale, facilitating due diligence by interested parties, and analyzing potential purchase offers;
- Engaging in negotiations and selling certain real property located in Arizona owned by CAOP I;
- Analyzing and administering assets owned by the CAOP Debtors, including investments or loans with the REO Entities and Blackstar;
- Coordinating and evaluating loan payoffs for various properties owned by the CAOP Debtors resulting in proceeds of over \$500,000;
- Examining, reconciling, and tracking CONIX sales and loan activity involving over 77 properties beginning in May 2009;
- Analyzing, reconciling, and tracking Blackstar sales activity involving over 64 properties beginning in February 2012;
- Preparing and filing with the Bankruptcy Court the Blackstar Report;
- Evaluating Longview's alleged Claims asserted in an amount in excess of \$9 million, including an analysis of documents and information obtained from the Debtors, Longview, and other third parties;
- Obtaining information about the Longview Action pending in the State of New York, including background and status of the same, and litigating against Longview's motion for relief from the automatic stay and removal of the Longview Action to federal court;
- Analyzing the Debtors' insurance policies, including negotiating coverage issues with Rockhill relating to the Longview Action and the related Bankruptcy Court litigation, and making demand on the Axis policy;
- Engaging in extensive discussions with Longview related to its alleged Claims, negotiating and preparing the global Longview Settlement, including negotiation with Rockhill for insurance coverage related to the same and Costs of Defense of the Longview Action, and ultimately negotiating and obtaining the Longview Settlement, securing approval of the Longview Settlement from the Bankruptcy Court, and consummating the Longview Settlement by, among other things, obtaining dismissal

of all actions filed against the Debtors and by the Debtors related to Longview prior to the Petition Date, including the Longview Action;<sup>54</sup>

- Evaluating actions that were filed by the Debtors before the Trustee's appointment, and in some instances, meeting with the defendants in those actions to determine if settlement is possible;
- Engaging in an analysis of Claims as well as all proofs of Claim filed in the Bankruptcy Cases, informing alleged creditors of potential objections to Claims, and attempting to negotiate settlements relating to the allowance or disallowance of such Claims;
- Engaging in litigation related to the proof of Claim filed by Geringer which asserts a Claim in an amount in excess of \$7 million;
- Analyzing and, when appropriate, continuing litigation that had been commenced by the Debtors as debtors in possession against a limited number of Persons prior to his appointment;
- Examining and analyzing Claims and Causes of Action, including Avoidance Actions, against numerous Persons;
- Examining issues related to Professionals employed prior to his appointment, seeking turnover of retainers, and, in one instance, engaging in litigation and ultimately settlement of an administrative expense claim asserted by CAREIC's former counsel;
- Engaging in litigation in response to the Receiver's demand for payment, including demanding a surcharge of amounts that the Receiver paid himself and others without Court approval;
- Preparing and finalizing the 2011 income tax returns for each of the Debtors, including filings with the Internal Revenue Service and various state taxing authorities;
- Preparing over 1,300 K-1s for Investors;
- Addressing other tax related matters including an audit by the Internal Revenue Service for the 2010 tax year, recovery efforts of an overpayment to the Franchise Tax Board in California for approximately \$100,000, and responding to inquiries and tax notices from various taxing authorities;
- Cooperating with the Committee and Office of the United States Trustee with regard to the administration of the Estates;

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<sup>54</sup> See *infra* at Part III, Section (D)(1) (discussing the Longview Action and the Longview Settlement).



- Investigating and preparing the Consolidation Motion, as well as all evidence in support, litigating the same, and obtaining the Consolidation Order; and
- Formulating the Plan and drafting the same and the Disclosure Statement.

Through the Trustee's administration of the Estates, assets have been preserved and liquidated in a manner intended to maximize returns for holders of Allowed Claims and Allowed Equity Interests under the Plan.

**B. Status of Certain Real Property Assets—Marketing and Listing Prices**

The Trustee has employed Commerce Real Estate Solutions ("CRES") as his real estate broker to assist in analyzing the value of real properties held by the Estates and to list and market the properties for sale.<sup>55</sup> Other than the Star Valley Property, the real properties are comprised of raw land, and through investigation, including meeting with civil engineers and city planning officials with knowledge of the properties, the Trustee has determined that the properties are not entitled or developed.

Through CRES, the Trustee has listed the real properties for sale at the following listing prices:

- The Kingman Property — \$2.1 million;
- The Tooele Property — \$6.6 million (\$3.5 million being for the land, and \$3.1 million for approximately 616 acre feet of water);
- The Smyrna Property – \$4.8 million; and
- The Star Valley Property – \$500,000.00.

CRES has been actively marketing the properties for sale, and some interest has been shown by potential purchasers. But, to maximize their value, these properties will require time to market

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<sup>55</sup> See *supra* at Part II, Section (B)(2) (discussing properties).

and sell—a liquidation-style sale will significantly reduce any return because, given that they are not entitled or developed, the properties require pre-purchase due diligence.

**C. Status of the CAOP Debtors’ Blackstar/Blackcastle Investments**

As discussed in Part II, Section (C) above, after the Petition Date and prior to the Trustee’s appointment, the CAOP Debtors invested their Cash with Blackstar through the Blackstar/Blackcastle Investments. The Trustee has investigated Blackstar, and has issued his Blackstar Report in conjunction therewith,<sup>56</sup> and the Blackstar Report is incorporated in this Disclosure Statement by reference.

The Blackstar/Blackcastle Investments were made by the CAOP Debtors in February and March 2012, and approximately \$1.8 million was invested with Blackstar as part of the Blackstar/Blackcastle Investments. These funds were used to purchase approximately 64 homes or condominiums at auction. Based on information provided to the Trustee to date, the Trustee understands that most of these properties have been sold. Blackstar is required to continue to provide periodic reporting on the Blackstar/Blackcastle Investments, and while it has provided reports to the Trustee, it has not been as diligent in doing so in the last quarter. The Trustee is working with Blackstar to obtain these reports and to wind down the joint venture so as to obtain a distribution for the benefit of the CAOP Debtors’ respective Estates.

**D. Post-Petition Litigation**

**1. Longview Litigation and Settlement**

Prior to the Petition Date, Longview Financial Group, Inc. and Longview Financial Holding, Inc. (collectively, “Longview”), which served as the Debtors’ FINRA broker-dealer for the sale of its Equity Securities for a period of time, commenced an action in a New York state court against all of the Debtors, Directors and Officers, seeking damages for, among other things,

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<sup>56</sup> Consolidated Legacy Debtors Docket No. 256.

breach of contract, tort, and fraud (the “Longview Action”). The defendants asserted Counterclaims against Longview, some of which were dismissed prior to the Petition Date. After the Petition Date, Longview filed proofs of Claim against each of the Debtors for Claims in amounts in excess of \$9 million based on the claims asserted in the Longview Action, and sought relief from the automatic stay under Section 362(a) of the Bankruptcy Code to continue litigation of the Longview Action in New York. The Trustee opposed Longview’s motion for relief from the automatic stay, and removed the Longview Action to federal court.

While the Trustee believes that the Claims asserted in the Longview Action were without merit, he determined that settlement was merited in light of the amount at stake and the Debtors’ potential liability, the complexity of the litigation involved, and the costs and risks of litigation. In addition, settlement was desirable in light of the nature and policy limits of the Debtors’ insurance policy with Rockhill discussed above in Part II, Section (B)(6).

Through the Trustee’s efforts, a global Settlement Agreement dated November 9, 2012 (the “Longview Settlement”), was reached and this Settlement was approved by the Bankruptcy Court by its *Order Granting Motion for Order Approving Settlement Agreement with Longview Financial Holding, Inc., Longview Financial Group, Inc., Rockhill Insurance Company and Other Parties Pursuant to Federal Rule of Bankruptcy Procedure 9019*,<sup>57</sup> entered on December 13, 2012. Through the Longview Settlement, Rockhill paid \$1 million to Longview, multiple lawsuits were dismissed, thus significantly conserving the Estates’ resources, and Longview’s Claims against the Debtors’ Estates were significantly reduced. Specifically, under the Settlement Agreement: (a) all Claims, actions and judgments existing between Longview and the Debtors have been dismissed or withdrawn; (b) all equity ownership in Longview held by the

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<sup>57</sup> Consolidated Legacy Debtors Docket No. 519.

Debtors, and all equity ownership in the Debtors held by Longview, have been cancelled; (c) Longview received an Allowed General Unsecured Claim against the Legacy Consolidated Estate in the total amount of \$309,571.66, an Allowed General Unsecured Claim against CAOP I in the amount of \$60,341.85 and an Allowed General Unsecured Claim against CAOP II in the amount of \$15,086.49; and (d) Longview is deemed to accept the Plan. The Estates' "Costs of Defense" related to the Longview Litigation will be paid by Rockhill. The Trustee is in the process of submitting the Estates' Cost of Defense Claims to Rockhill.

## **2. Geringer Claim Objection**

Geringer, a former CAREIC Director and Officer, filed a proof of Claim against CAREIC asserting a general unsecured Claim in the amount of \$8,550,891.72 for (a) monies he maintains are owed for unpaid compensation and expense reimbursement, (b) rent he claims CAREIC was obligated to pay him for his Beverley Hills, California office after he resigned from the company, and (c) reimbursement of monies pursuant to alleged indemnity rights related to real properties located in Firebaugh and Coalinga, California.<sup>58</sup> The Trustee objected to the proof of Claim,<sup>59</sup> and after engaging in discovery, Geringer filed an amended proof of Claim reducing the amount to \$7,775,019.64.<sup>60</sup> The Trustee has objected to Geringer's amended proof of Claim,<sup>61</sup> arguing that it must be disallowed in its entirety with the exception of approximately \$91,000.00 of wages, and a trial was held on February 28 and March 1, 2013 in the Bankruptcy Court. At the conclusion of the Trial, the Bankruptcy Court requested that the parties submit proposed findings of fact and conclusions of law for consideration. As part of this litigation, the Trustee has expressly reserved all rights, claims and defenses that he may bring on behalf of the

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<sup>58</sup> See CAREIC Claims Docket, Proof of Claim No. 27-1.

<sup>59</sup> See Consolidated Legacy Debtors Docket No. 307 (Trustee's Objection to Proof of Claim 27-1).

<sup>60</sup> See CAREIC Claims Docket, Proof of Claim No. 27-2.

<sup>61</sup> See Consolidated Legacy Debtors Docket No. 585 (Objection to Amended Proof of Claim).

Debtors or any of the Debtor Affiliates, including the right to (a) modify, amend, or supplement his objection to Geringer's claim as more evidence becomes available; (b) file an adversary proceeding relating to the facts set forth in Geringer's claim and in the Trustee's objection to the claim or otherwise, including an action to recover transfers made by any of the Debtors to Geringer; (c) offset any amounts determined to be an Allowed Claim with Claims that the Debtors may have against Geringer; and (d) seek subordination of any Claim that is determined to be an Allowed Claim by the Bankruptcy Court after trial so that it will not be paid until after Investors have been paid in full.<sup>62</sup>

### **3. Other Litigation**

The Trustee has engaged in an initial analysis of all proofs of Claim filed against the Estates, including those filed by Insiders. Based thereon, the Trustee has commenced filing objections to proofs of Claim, including objections to Claims asserted by Insiders William Davidson and Geringer, various Claims that had insufficient documentation, and proofs of Claim filed by holders of Equity Securities, which Claims must be reclassified as Equity Interests. Other Claim objections will likely be filed prior to any Confirmation Hearing.

The Trustee has also reviewed certain adversary proceedings that were commenced by the Debtors after the Petition Date and since his appointment. His analysis of those matters is ongoing, but he has determined that, unless a settlement can be reached with such parties, he will be required to amend the Complaints that were filed by the Debtors.

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<sup>62</sup> *Id.* at p. 26.

## IV.

### **SUMMARY OF PLAN AND TREATMENT OF ALLOWED CLAIMS AND EQUITY INTERESTS**

#### **A. Introduction**

This summary of the Plan is qualified in its entirety by reference to the Plan, a copy of which is attached as **Exhibit A** to this Disclosure Statement. You are encouraged to read the Plan in its entirety. The Plan, together with the “Liquidating Trust Agreements” incorporated in the Plan as part of the “Plan Documents Supplement,” provide for the treatment of Allowed Claims and Allowed Equity Interests, as more fully discussed below, and establishes a method of Distribution to holders of Allowed Claims and Allowed Equity Interests as provided for in the Plan and applicable Liquidating Trust Agreement.

Generally, and as discussed in greater detail in this Part IV, Section (C) below, the Plan as to the Consolidated Legacy Debtors is implemented by:

- Administration of the “Legacy Consolidated Estate” by the Trustee as estate representative, to the extent necessary, pursuant to Article VI, Section 6.6.1 of the Plan, including primarily Distribution of “Reserved Funds” to holders of Allowed unclassified Claims against the Consolidated Legacy Debtors and holders of Allowed Claims in Classes A3, and if so elected by the Trustee, to holders of Allowed Secured Tax Claims and Allowed Secured Claims in Classes A1 and A2;
- Creation of the “Legacy Trust” as provided for in Article VI, Sections 6.6.1 and 6.7.1 of the Plan;
- Transfer of all “Legacy Trust Assets,” i.e., all assets of the Legacy Consolidated Estate, except the Consolidated Legacy Debtors’ Reserved Funds, to the Legacy Trust pursuant to the Plan and the “Legacy Trust Agreement,” with the Legacy Trust Assets being liquidated by the Legacy Trust and the “Net Legacy Liquidation Proceeds” being administered as provided for in Article VI, Section 6.6.1 of the Plan;
- Distribution of the Net Legacy Liquidation Proceeds to the “Legacy Trust Beneficiaries” in accordance with the Plan and the Legacy Trust Agreement; and
- Dissolution of the Consolidated Legacy Debtors to the extent necessary.

The Estates of the CAOP Debtors have not been substantively consolidated, and thus their Estates remain separate for all purposes, including voting, allowance of Claims and Equity Interests, and Distribution. Generally, and as discussed in greater detail below, the Plan as to the CAOP Debtors is implemented by:

- Administration of the CAOP Debtors' respective Estates after the Effective Date by the Trustee as estate representative of each, to the extent necessary, pursuant to Article VI, Sections 6.6.2 and 6.7.2 of the Plan, including primarily Distribution of "Reserved Funds" to holders of Allowed unclassified Claims against the CAOP Debtors and holders of Allowed Claims in Classes B3 and C3, and if so elected by the Trustee, to holders of Allowed Secured Tax Claims and Allowed Secured Claims in Classes B1, B2, C1 and C2;
- Creation of the "CAOP I Trust" and the "CAOP II Trust" (collectively, the "CAOP Trusts") as provided for in Article VI, Sections 6.7.2(a) and 6.7.2(b) of the Plan;
- Transfer of "CAOP I Trust Assets" or "CAOP II Trust Assets," as applicable, *i.e.*, all assets of the CAOP Debtors' respective Estates, except their respective Reserved Funds, to the applicable CAOP Trust pursuant to the Plan and the applicable "CAOP Trust Agreement," with the CAOP I Trust Assets and the CAOP II Trust Assets being liquidated by the applicable CAOP Trust, and the CAOP I Trust Assets or the CAOP II Trust Assets, as applicable, being administered as provided for in Article VI, Sections 6.7.2(a) and 6.7.2(b) of the Plan;
- Distribution of "Net CAOP I Trust Assets" to the "CAOP I Trust Beneficiaries" in accordance with the Plan and the CAOP I Trust Agreement;
- Distribution of "Net CAOP II Trust Assets" to the "CAOP II Trust Beneficiaries" (*i.e.*, holders of CAOP II Preferred Interests) in accordance with the Plan and CAOP II Trust Agreement; and
- Dissolution of the CAOP Debtors to the extent necessary.

**B. The Effective Date and Retention of Jurisdiction**

If the Court confirms the Plan, and in the absence of any applicable stay, and if all other conditions set forth in the Plan are satisfied, the Plan will take effect on the Effective Date, which is the later of: (1) 45 days after the Confirmation Date, or (2) the day on which all conditions to the Effective Date of the Plan as set forth in Article IX, Section 9.2 of the Plan

have been satisfied or waived. Notice of the Effective Date of the confirmed Plan will be filed with the Bankruptcy Court and provided to holders of Allowed Claims against and Allowed Equity Interests in the Debtors.

As set forth more fully in Article X of the Plan, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of and related to the Bankruptcy Cases, the Legacy Consolidated Estate, the respective Estates of the CAOP Debtors, the Plan and the Liquidating Trusts to the fullest extent permitted by law.

**C. Post-Confirmation Administration of the Legacy Consolidated Estate**

**1. The Post-Confirmation Legacy Consolidated Estate**

As set forth in Article VI, Sections 6.1.1, 6.6.1 and 6.7.1 of the Plan, the Legacy Consolidated Estate will exist on and after the Effective Date primarily for the purpose of establishing the Legacy Trust, and making Distributions of the Consolidated Legacy Debtors' Reserved Funds to holders of Allowed Claims in accordance with the Plan. Reserved Funds are Cash of the Consolidated Legacy Debtors and any other assets of the Legacy Consolidated Estate that are not transferred to the Legacy Trust as Legacy Trust Assets.

The Legacy Consolidated Estate will be administered by the Trustee as estate representative in accordance with the Plan, and as specifically provided for in Article VI, Section 6.6.1 of the Plan. Unless otherwise agreed, costs incurred by the post-Effective Date Legacy Consolidated Estate (the "Post-Effective Date Estate Administration Costs") shall be paid from the Reserved Funds.

As soon as feasible after the Effective Date, the Trustee will wind down administration of the Legacy Consolidated Estate by making Distributions to all Allowed Claims entitled to payment from the Reserved Funds under the Plan, and paying any Post-Effective Date Estate Administration Costs, unless the Person holding a Claim for such Costs has agreed to be paid as



a Legacy Trust Beneficiary. Reserved Funds held by the Legacy Consolidated Estate, if any, remaining after the Trustee's administration of the Legacy Consolidated Estate will be transferred to the Legacy Trust as a Legacy Trust Asset. As part of his wind-down of the Legacy Consolidated Estate, the Trustee may take any action related to any Non-Debtor Affiliate that he determines, in his sole discretion, to be necessary and appropriate, including managing, winding-down, dissolving or filing bankruptcy petitions for any Non-Debtor Affiliates. After the Trustee, in his sole discretion, has completed his administration of the Legacy Consolidated Estate, he may dissolve the Consolidated Legacy Debtors if deemed necessary by the Trustee.

## **2. The Legacy Trust**

As set forth in Article VI, Section 6.7.1 of the Plan, on the Effective Date, the Legacy Trust will be established pursuant to the Plan and the Legacy Trust Agreement, and the Legacy Trust Assets, *i.e.*, all assets of the Legacy Consolidated Estate other than the Reserved Funds, will be transferred to the Legacy Trust. The Legacy Trust Assets will be liquidated in an orderly fashion by the Legacy Trustee in accordance with the Legacy Trust Agreement and proceeds thereof administered in accordance with the Plan and the Legacy Trust Agreement. Generally, Net Legacy Liquidation Proceeds will be paid according to priority to those holding a beneficial interest in the Legacy Trust (the "Legacy Trust Beneficiaries") pursuant to Article VI, Sections 6.1.1 and 6.6.1 of the Plan. Thus, (1) holders of Allowed Administrative Expense Claims and holders of Claims for Post-Effective Date Administration Costs who have agreed that their Allowed Claims will not be paid from the Consolidated Legacy Debtors' Reserved Funds will be paid first until the Claims are paid in full; (2) holders of Allowed General Unsecured Claims in Class A4 of the Plan will be paid next until their Claims are paid in full; and (3) after all of those prior Claims are paid in full, holders of Allowed Legacy Preferred Interests in Class A5 of the Plan will receive a Pro Rata share of any remaining Net Legacy Liquidation Proceeds.

Distributions to the Legacy Trust Beneficiaries are to be made directly from the Legacy Trust pursuant to and in accordance with the Plan and the Legacy Trust Agreement.

The Legacy Trust will be governed pursuant to the Plan and the Legacy Trust Agreement to be included in the Plan Documents Supplement, and will be managed by the Legacy Trustee as provided for in the Legacy Trust Agreement. The Legacy Trustee, on behalf of the Legacy Trust, has the discretion to retain and compensate Professionals, compensate the Legacy Trustee, and compensate the Debtors' Professionals for any assistance or information requested of them by the Legacy Trust. The costs of administering the Legacy Trust will be as set forth in the Legacy Trust Agreement, but generally all costs of administration of the Legacy Trust will be paid prior to Distribution to Legacy Trust Beneficiaries under the Plan and the Legacy Trust Agreement.

**D. Post-Confirmation Administration of the CAOP Debtors**

**1. No Consolidation**

As discussed above in Part II, Section (C)(4) and as provided for in Article VI, Section 6.3 of the Plan, the CAOP Debtors are not substantively consolidated, and the Trustee is not seeking consolidation, and thus, their respective Estates remain separate for all purposes. Thus, holders of Allowed Claims against and Allowed Equity Interests in either CAOP I or CAOP II retain their Claims and Equity Interests against the relevant CAOP Debtor for all purposes, including for purposes of voting on the Plan, allowance of Claims or Equity Interests, and Distribution through the Plan.

**2. The Post-Confirmation Estates**

As set forth in Article VI, Sections 6.1.2, 6.6.2 and 6.7.2 of the Plan, the Estates of CAOP I and CAOP II will exist on and after the Effective Date primarily for the purpose of establishing the CAOP I Trust or the CAOP II Trust as applicable, and making Distributions of the CAOP

Debtors' respective Reserved Funds to holders of Allowed Claims in accordance with the Plan. Reserved Funds include Cash, and any other assets of the applicable CAOP Debtor's Estate that are not transferred to the applicable CAOP Trust.

The CAOP I Estate and the CAOP II Estate will be administered separately by the Trustee as estate representative in accordance with the Plan, and as specifically provided for in Article VI, Section 6.6.2 of the Plan. Unless otherwise agreed, costs incurred by the post-Effective Date CAOP Debtors' Estates, defined in the Plan as the "Post-Effective Date Estate Administration Costs," shall be paid from the Reserved Funds of the applicable CAOP Debtor Estate.

As soon as feasible after the Effective Date, the Trustee will wind down administration of the CAOP Debtors' respective Estates by making Distributions to all Allowed Claims entitled to payment from the Reserved Funds under the Plan, and paying any Post-Effective Date Estate Administration Costs. Reserved Funds held by either the CAOP I Estate or the CAOP II Estate, if any, remaining after the Trustee's administration of the applicable Estate will be transferred to the relevant CAOP Trust as a CAOP I Trust Asset or CAOP II Trust Asset, as applicable. After the Trustee, in his sole discretion, has completed his administration of either of the CAOP Debtors' respective Estates, he may dissolve the applicable CAOP Debtor if deemed necessary by the Trustee.

### **3. The CAOP Trusts**

#### **(a) The CAOP I Trust**

As set forth in Article VI, Section 6.7.2(a) of the Plan, on the Effective Date, the CAOP I Trust will be established pursuant to the Plan and the CAOP I Trust Agreement, and the CAOP I Trust Assets, *i.e.*, all assets of the CAOP I Estate, other than the Reserved Funds, will be transferred to the CAOP I Trust. The CAOP I Trust Assets will be liquidated in an orderly

fashion by the CAOP I Trustee in accordance with the CAOP I Trust Agreement and proceeds thereof administered in accordance with the Plan and the CAOP I Trust Agreement. Generally, Net CAOP I Trust Assets will be paid to those holding a beneficial interest in the CAOP I Trust, namely holders of Allowed General Unsecured Claims and Allowed CAOP I Interests in Class B5 (the “CAOP I Trust Beneficiaries”), and such holders will receive a Pro Rata share of the Net CAOP I Trust Assets. Distributions to the CAOP I Trust Beneficiaries are to be made directly from the CAOP I Trust pursuant to and in accordance with the Plan and the CAOP I Trust Agreement.

The CAOP I Trust will be governed pursuant to the Plan and the CAOP I Trust Agreement to be included in the Plan Documents Supplement, and will be managed by the CAOP I Trustee as provided for in the CAOP I Trust Agreement. The CAOP I Trustee, on behalf of the CAOP I Trust, has the discretion to retain and compensate Professionals, compensate the CAOP I Trustee, and compensate the Debtors’ Professionals for any assistance or information requested of them by the CAOP I Trust. The costs of administering the CAOP I Trust will be as set forth in the CAOP I Trust Agreement, but generally all costs of administration of the CAOP I Trust will be paid prior to Distributions to CAOP I Trust Beneficiaries under the Plan and the CAOP I Trust Agreement.

**(b) The CAOP II Trust**

As set forth in Article VI, Section 6.7.2(b) of the Plan, on the Effective Date, the CAOP II Trust will be established pursuant to the Plan and the CAOP II Trust Agreement, and the CAOP II Trust Assets, *i.e.*, all assets of the CAOP II Estate, other than the Reserved Funds, will be transferred to the CAOP II Trust. The CAOP II Trust Assets will be liquidated in an orderly fashion by the CAOP II Trustee in accordance with the CAOP II Trust Agreement and proceeds thereof administered in accordance with the Plan and the CAOP II Trust Agreement. Generally,

Net CAOP II Trust Assets will be paid to those holding a beneficial interest in the CAOP II Trust, namely holders of Allowed General Unsecured Claims and Allowed CAOP II Preferred Interests in Class C5 (the “CAOP II Trust Beneficiaries”), and such holders will receive a Pro Rata share of the Net CAOP II Trust Assets with Distributions. Distributions to the CAOP II Trust Beneficiaries are to be made directly from the CAOP II Trust pursuant to and in accordance with the Plan and the CAOP II Trust Agreement.

The CAOP II Trust will be governed pursuant to the Plan and the CAOP II Trust Agreement to be included in the Plan Documents Supplement, and will be managed by the CAOP II Trustee as provided for in the CAOP II Trust Agreement. The CAOP II Trustee, on behalf of the CAOP II Trust, has the discretion to retain and compensate Professionals, compensate the CAOP II Trustee, and compensate the Debtors’ Professionals for any assistance or information requested of them by the CAOP II Trust. The costs of administering the CAOP II Trust will be as set forth in the CAOP II Trust Agreement, but generally all costs of administration of the CAOP II Trust will be paid prior to Distributions to CAOP II Trust Beneficiaries under the Plan and the CAOP II Trust Agreement.

**E. Appointment of Conflicts Referee**

Pursuant to Article VI, Section 6.8 of the Plan and the Liquidating Trust Agreements included in the Plan Documents Supplement and incorporated herein, a Person shall be appointed to serve as a “Conflicts Referee” to resolve disputes, if any, existing on the Effective Date or that may be discovered or may arise after the Effective Date (1) as between the Legacy Trust and either CAOP Trust, including without limitation, issues related to Claims for Management Fees,<sup>63</sup> the Tooele Property Transfer and any and all other intercompany Claims and Causes of

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<sup>63</sup> See *infra* Part IV, Section (G).

Action as between the Legacy Trust and either of the CAOP Trusts, or (2) as between the CAOP Trusts. The Liquidating Trust Agreements govern the appointment of the Conflicts Referee, and the identity of the Conflicts Referee shall be disclosed as part of the disclosures made in the Plan Documents Supplement filed prior to the Confirmation Hearing. The Conflicts Referee shall have the authority to act as set forth in the Liquidating Trust Agreements, and shall resolve disputes pursuant to the “Conflict Resolution Procedures” established in the Liquidating Trust Agreements. Generally, through the Liquidating Trust Agreements, the Legacy Consolidated Trust and the CAOP Trusts will agree to be governed by mediation procedures related to the resolution of intercompany Claims and disputes, with the Conflicts Referee making binding recommendations to the parties for the resolution of the Claims and disputes. The Bankruptcy Court will retain jurisdiction to approve the Conflicts Referee’s recommendations, or resolve further disputes.

**F. Assignment of Individual Claims**

From his investigation to date, the Trustee has determined that there may exist numerous claims, rights and causes of action against the Debtors, insiders of the Debtors and/or Persons who managed the Debtors or raised funds from Investors on the Debtors’ behalf, including types of actions that are defined as “Causes of Action” under the Plan, that may be held by Persons in their own right as either creditors of or Investors in the Debtors, which may not necessarily be property of the Estates within the meaning of Section 541 of the Bankruptcy Code (collectively, the “Individual Claims”). For purposes of illustration only, and without making any admissions or waiving any rights on behalf of the Estates or limiting the types of Individual Claims that might exist, the Trustee believes that such Individual Claims might include certain common law Claims, Claims under securities fraud laws, and breach of contract actions. The Trustee believes that these Individual Claims, if held by creditors or Investors and not the Estates, are the result of

acts and omissions that injured most if not all similarly situated creditors or Investors, and that it is most efficient, economical and equitable that these Individual Claims be brought and liquidated by the Liquidating Trusts for the benefit of all Beneficiaries of those Trusts.

Thus, the Plan provides that except as specifically set forth below, upon the confirmation, all holders of Individual Claims unconditionally agree, regardless of whether they voted to accept or reject the Plan, that the Individual Claims be assigned to the relevant Liquidation Trust and that the Individual Claims be Legacy Trust Assets, CAOP I Trust Assets or CAOP II Trust Assets, as applicable. The pertinent Liquidation Trust Trustee will liquidate the Individual Claims for the benefit of the Legacy Trust Beneficiaries, CAOP I Trust Beneficiaries or the CAOP II Trust Beneficiaries, as applicable, and make Distributions in accordance with the Plan and the applicable Liquidation Trust Agreement.

Persons who vote to accept or reject the Plan may elect to “opt-out” of this unconditional assignment of Individual Claims to the extent that they hold any such Claims. To do so, such Persons must affirmatively make this election by marking the appropriate box on their Ballot. Persons who opt-out of the unconditional assignment of Individual Claims will receive no distribution from the net litigation proceeds obtained by the applicable Liquidation Trust with regard to prosecution of the Individual Claims.

**G. Treatment of Management Fees**

Both prior to and after the Petition Date, CAREIC managed the CAREIC Affiliates and, as a result, CAREIC may have Claims for Management Fees. In addition, after the Trustee’s appointment, the Bankruptcy Court entered its Cash Management Order, authorizing the Trustee to charge Management Fees on behalf of the CAREIC Estate as against each of the other Debtor’s respective Estates attributed to the Trustee’s estimated costs of managing the other Debtors as the CAREIC Trustee. As a result of the substantive consolidation of the Consolidated

Legacy Debtors, Management Fees, if any, owed to CAREIC by CAK, CAOP Managers, CAS, CASDF and CASV are intercompany Claims that have been extinguished, and any Claims for Management Fees owed by any other CAREIC Affiliate, are now Claims of the Legacy Consolidated Estate.<sup>64</sup>

At this time, the Trustee has determined that the Legacy Consolidated Estate holds Claims against the CAOP I Estate, the CAOP II Estate, and possibly against certain Non-Debtor Affiliates, for Management Fees as follows:

- Pre-Petition Management Fees: Management Fees arising out of the period prior to the Petition Date.
  - While undetermined at this time, it is possible that the Legacy Consolidated Estate may hold General Unsecured Claims against the CAOP Estates for the Pre-Petition Management Fees *or* that the CAOP Estates may hold General Unsecured Claims against the Legacy Consolidated Estate for the Pre-Petition Management Fees. To the extent that such Claims exist, they are preserved and are either Legacy Trust Assets or CAOP Trust Assets, as applicable. In the event that it is determined that such Claims exist, allowance or disallowance of the Claims will be determined by the Conflicts Referee in accordance with the Conflict Resolution Procedures at any time prior to the final administration of the applicable Liquidating Trusts.
  - It is also possible that the Legacy Consolidated Estate has Claims against certain Non-Debtor Affiliates for Pre-Petition Management Fees, and to the extent that such Claims are discovered, the Claims are preserved and are deemed to be Legacy Trust

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<sup>64</sup> See Part II, Section (B)(5) (discussing effect of substantive consolidation).



Assets. The Legacy Trustee may assert Claims for Pre-Petition Management Fees against any Non-Debtor Affiliate at any time prior to the final administration of the Legacy Trust. At this time, however, the Trustee does not believe that these potential Claims have value inasmuch as it does not appear that Non-Debtor Affiliates were operating as of the Petition Date.

- DIP Management Fees: Management Fees arising for the period when the Debtors were being managed as Chapter 11 debtors in possession, commencing on the Petition Date and incurred up until the date of the Trustee's appointment.

- According to the Debtors' books and records, during this period, CAREIC, as Debtor in possession, booked the CAOP Debtors' DIP Management Fees monthly, and generally the DIP Management Fees were accrued, with relatively limited Cash being paid to CAREIC on account of the DIP Management Fees. Accordingly, the Legacy Consolidated Estate holds an Administrative Expense Claim against the CAOP I Estate and against the CAOP II Estate for the unpaid DIP Management Fees. The basis for the amount of the DIP Management Fees that was booked each month by CAREIC could be subject to dispute and, therefore, the amount of the Consolidated Legacy Estate's Administrative Expense Claim for the DIP Management Fees as against each of the CAOP Debtors is unknown at this time. Claims for the DIP Management Fees are Reserved Funds of the Legacy Consolidated Estate, and must be presented to the Conflicts Referee for allowance or disallowance in accordance with the Conflict Resolution Procedures no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.

- The Trustee is not currently aware of Claims for DIP Management Fees that the Consolidated Legacy Estate might have against any Non-Debtor Affiliate, but such Claims, to the extent that they may be determined to exist, are preserved as Legacy Trust Assets and may be asserted by the Legacy Trustee at any time prior to the final administration of the Legacy Trust.

- Trustee Period Management Fees: Management Fees arising during the period that the Debtors have been managed by the Trustee, commencing on the date that the Trustee was appointed through and including the Effective Date.

- The amount of Trustee Period Management Fees charged to CAOP I and CAOP II by the Consolidated Legacy Estate for this period is currently established under and paid monthly pursuant to the Bankruptcy Court's Cash Management Order. But, when he requested that the Cash Management Order be entered, the Trustee made clear that the proposed monthly Management Fees were estimates, and that management services actually performed for a particular Debtor may ultimately be either more or less than those estimated. At this time, the Trustee believes that the Consolidated Legacy Estates' Claims against the CAOP I Estate and the CAOP II Estate for the Trustee Period Fees are actually greater than the estimated Management Fees that have been paid in accordance with the Cash Management Order because the management of the CAOP Debtors has been more time consuming than estimated. Accordingly, the Trustee believes that the Legacy Consolidated Estate may have an Administrative Expense Claim against each of the CAOP Estates for the difference between the Trustee Period Management Fees actually incurred and the amount of Trustee Period Management Fees that have been paid (the "True Up Claims"). A range of the amount of the True Up

Claims has been estimated by the Trustee and is included in the Plan projections for each of the Debtors attached hereto as **Exhibit H**,<sup>65</sup> **Exhibit I**,<sup>66</sup> and **Exhibit J**.<sup>67</sup> The True Up Claims are Reserved Funds of the Legacy Consolidated Estate, and must be presented to the Conflicts Referee for allowance or disallowance in accordance with the Conflict Resolution Procedures no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.

○ The Trustee, in his capacity as trustee for CAREIC, has been required to provide relatively limited managerial services related to Non-Debtor Affiliates, and thus the Legacy Consolidated Estate may have Claims for Trustee Period Management Fees against these Non-Debtor Affiliates. These Claims are preserved and are Legacy Trust Assets, but at this time, it does not appear that they have value. Claims for Trustee Period Management Fees against Non-Debtor Affiliates may be asserted by the Legacy Trustee at any time prior to the final administration of the Legacy Trust.

#### **H. Treatment of Unclassified Claims and Applicable Bar Dates**

Article IV of the Plan addresses unclassified Claims against the Legacy Consolidated Estate and each of the CAOP Debtors for which treatment is mandated under the Bankruptcy Code. These types of Claims include Administrative Expense Claims under Sections 503(b) and 507(a)(1) of the Bankruptcy Code, and Priority Tax Claims under Section 507(a)(8) of the Bankruptcy Code. As set forth in Article II, Section 2.1 and Article IV, Section 4.1 of the Plan, unclassified Claims are not considered impaired, and holders of these Claims do not vote on the

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<sup>65</sup> Plan Projection for Consolidated Legacy Debtors, Post-Petition Intercompany Receivables – CAOPs (range of \$0.000 to \$300,000.00).

<sup>66</sup> Plan Projection for CAOP I, Post-Petition Intercompany Payable – Consolidated Legacy Debtors (range of \$0.00 to \$200,000.00).

<sup>67</sup> Plan Projection for CAOP II, Post-Petition Intercompany Payable – Consolidated Legacy Debtors (range of \$0.00 to \$100,000.00).

Plan because they are automatically entitled to specific treatment as set forth in the Bankruptcy Code. As such, the Trustee has not placed the unclassified Claims in a Class, and a description and the respective treatment of these unclassified Claims in Article IV of the Plan as required under the Bankruptcy Code is set forth below. The description below pertains to unclassified Claims as they may exist against the Legacy Consolidated Estate, CAOP I or CAOP II.

**1. Administrative Expense Claims – General**

Administrative Expense Claims are Claims for the costs or expenses of administering the Debtors' Bankruptcy Cases and the assets of the estates, including the costs of the Trustee and his Professionals and Post-Petition Management Fees. Such Claims are allowed under Section 503(b)(3) of the Bankruptcy Code and afforded priority under Section 507 of the Bankruptcy Code.

Treatment of Allowed Administrative Expense Claims is set forth in Article IV, Section 4.2 of the Plan, and a summary of such treatment is set forth in the chart in this Part IV, Section (H)(3) below.

**(a) Deadlines for Filing Administrative Expense Claims**

To facilitate a timely and efficient administration of the Legacy Consolidated Estate and the Estates of CAOP I and CAOP II, the Plan requires the holders of certain types of Administrative Expense Claims to be filed by the following deadlines:

**(i) Administrative Expense Claims Bar Date - Non-Professionals**

To the extent that Administrative Expense Claims are alleged by Persons other than Professionals, requests for payment of Administrative Expense Claims against the Legacy Consolidated Estate or either of the CAOP Debtors must be filed and served on the Trustee, counsel for each of the Debtors, counsel for the Trustee and the United States Trustee **no later than thirty (30) days after the Effective Date**, which shall be the "Administrative Expense

Claim Bar Date.” Any holder of an Administrative Expense Claim to whom the Administrative Expense Claim Bar Date applies who fails to file a request seeking to have its Claim allowed on or before said Bar Date shall be forever barred from seeking the allowance of its Administrative Expense Claim or any other Claim, and the Trustee, the Debtors, the Estates, the Legacy Consolidated Estate and the Liquidating Trusts shall be discharged of any obligation on such Claim or any other Claim related to the Administrative Expense Claim.

**(ii) Professional Administrative Expense Claim Bar Date**

All Professionals requesting compensation or reimbursement of expenses under Sections 327, 328, 330, 331 and 503(b) of the Bankruptcy Code for services rendered before the Effective Date shall file with the Court and serve on the Trustee, counsel for the Debtors, counsel for the Committee and the United States Trustee an application for final allowance of compensation and reimbursement of expenses **no later than forty-five (45) days after the Effective Date**, which shall be the “Professional Administrative Expense Claim Bar Date.” Any Professional who fails to file a request seeking to have its Claim allowed on or before said Bar Date shall be forever barred from seeking the allowance of its Administrative Expense Claim or any other Claim, and the Trustee, the Debtors, the Estates, the Legacy Consolidated Estate and the Liquidating Trusts shall be discharged of any obligation on such Claim or any other Claim related to the Professional’s Administrative Expense Claim.

**2. Priority Tax Claims**

A Priority Tax Claim is that portion of any General Unsecured Claim for unpaid taxes which is entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

Treatment of Allowed Priority Tax Claims is set forth in Article IV, Section 4.3 of the Plan, and a summary of such treatment is set forth in the chart in this Part IV, Section (H)(3) below.

### 3. Summary of Treatment of Unclassified Claims

The following is a general summary of the treatment of unclassified Claims against the Legacy Consolidated Estate and the Estates of CAOP I and CAOP II provided for in Article IV of the Plan:

Type of Claim	Treatment	Estimated Distribution Percentage
<p><b>Administrative Expense Claims</b> (Plan, Art. IV, § 4.2)</p>	<p>Except as otherwise agreed to by the Trustee and the holder of an Allowed Administrative Expense Claim, each such holder shall be paid in full in Cash on the later of: (i) the Effective Date, or (ii) within fifteen (15) Business Days of the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim.</p> <p>To the extent that the holder of an Allowed Administrative Expense Claim does not receive a Distribution on the later of the Effective Date or within fifteen (15) Business Days of the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, such holder of the Allowed Administrative Expense Claim shall receive a beneficial interest in the Legacy Trust on account of such Claim and will receive a Distribution in accordance with this Plan and the Legacy Trust Agreement. No Distributions shall be made to holders of Allowed Claims or Allowed Interests in Classes A4-A6, until holders of Allowed Administrative Expense Claims holding a beneficial interest in the Legacy Trust have been paid in full.</p>	<p>100%</p>
<p><b>Priority Tax Claims</b> (Plan, Art. IV, § 4.3)</p>	<p>At the sole election of the Trustee, the holder of an Allowed Priority Tax Claim shall be paid either (i) upon such terms as may be agreed to between the Trustee and such holder of an Allowed Priority Tax Claim, (ii) in full in Cash on the later of the Effective Date or within fifteen (15) Business Days of the date that such Allowed Priority Tax Claim becomes an Allowed Priority Tax Claim, or (iii) in deferred Cash payments to be agreed upon by the Trustee and the holder of the Allowed Priority Tax Claim, not to exceed a period of 5 years after the Petition Date.</p>	<p>100%</p>

**I. Treatment of Classified Claims and Equity Interests**

Article V of the Plan separately classifies different types of Claims against and the Equity Interests in the Legacy Consolidated Estate, the CAOP I Estate and the CAOP II Estate in accordance with the Bankruptcy Code. As discussed in Articles II and V of the Plan, holders of Claims or Equity Interests within a particular Class of the Plan may or may not be entitled to vote on the Plan. A summary of voting rights is included in this Part IV, Sections (I)(8)-(10) below.

If the Plan is confirmed by the Bankruptcy Court, each holder of a Claim or Equity Interest in a particular Class will receive the same treatment as the other holders of Claims or Equity Interests in that Class, whether or not such holder voted to accept the Plan. Moreover, upon confirmation, the Plan will be binding on all holders of Claims and Equity Interests, regardless of whether such holders voted to accept the Plan. Such treatment will be in full satisfaction, release and discharge of such holder's respective Claim against or Equity Interest in a Debtor, except as otherwise provided in the Plan. Inclusion in a Class, however, does not preclude holders of Allowed Claims or Allowed Equity Interests in that Class from agreeing to or accepting less favorable treatment by settlement or otherwise.

**1. Classes A1, B1 and C1 - Allowed Secured Tax Claims**

Secured Tax Claims are the Claims of Government Units against any one of the Debtors to the extent of the value of any interest in Collateral securing such Claims. Such Claims, if any, against the Consolidated Legacy Debtors are included in Class A1, against CAOP I are included in Class B1, and against CAOP II are included in Class C1 of the Plan. The treatment of Allowed Secured Tax Claims, if any, is set forth in Article V, Sections 5.1.1, 5.2.1 and 5.3.1 of

the Plan, and a summary of such treatment is set forth in the charts provided in this Part IV, Sections (I)(8)-(10) below.

**2. Classes A2, B2 and C2 - Allowed Secured Claims**

Secured Claims are Claims against a Debtor to the extent of the value of any interest in Collateral securing such Claims. Such Claims, if any, against the Consolidated Legacy Debtors are included in Class A2, against CAOP I are included in Class B2, and against CAOP II are included in Class C2 of the Plan. The treatment of Allowed Secured Claims, if any, is set forth in Article V, Sections 5.1.2, 5.2.2 and 5.3.2 of the Plan, and a summary of such treatment is set forth in the charts provided in this Part IV, Sections (I)(8)-(10) below.

**3. Classes A3, B3 and C3 - Allowed Priority Unsecured Claims**

With the exception of unclassified Administrative Expense Claims and Priority Tax Claims, discussed in Part IV, Section (H) above, Priority Unsecured Claims are Claims against a Debtor entitled to priority of payment pursuant to Section 507(a) of the Bankruptcy Code. Such Claims, if any, against the Consolidated Legacy Debtors are included in Class A3, against CAOP I are included in Class B3, and against CAOP II are included in Class C3 of the Plan. The treatment of Allowed Priority Unsecured Claims, if any, is set forth in Article V, Sections 5.1.3, 5.2.3 and 5.3.3 of the Plan, and a summary of such treatment is set forth in the charts provided in this Part IV, Sections (I)(8)-(10) below.

**4. Classes A4, B4 and C4 - Allowed General Unsecured Claims**

General Unsecured Claims are Claims against the Debtors that are *not* (a) Secured Tax Claims, (b) Secured Claims, or (c) Claims entitled to priority of payment under Section 507 of the Bankruptcy Code, including an Administrative Expense Claim, Priority Tax Claim and a Priority Unsecured Claim. These Claims, if any, against the Consolidated Legacy Debtors are included in Class A4, against CAOP I are included in Class B4, and against CAOP II are



included in Class C4 of the Plan. The treatment of Allowed General Unsecured Claims, if any, is set forth in Article V, Sections 5.1.4, 5.2.4 and 5.3.4 of the Plan, and a summary of such treatment is set forth in the charts provided in this Part IV, Sections (I)(8)-(10) below.

**5. Classes A5, B5 and C5 - Allowed Legacy Preferred Interests, Allowed CAOP I Preferred Interests and Allowed CAOP II Preferred Interests**

A Legacy Preferred Interest is an Equity Interest based on a Preferred Unit in any one of the Consolidated Legacy Debtors. Pursuant to Article I, Section 1.1 of the Plan, an Equity Interest is limited to the “Investor Interest.” Legacy Preferred Interests are included in Class A5 of the Plan. The treatment of Allowed Legacy Preferred Interests is set forth in Article V, Section 5.1.5 of the Plan, and a summary of such treatment is set forth in the chart provided in this Part IV, Section (I)(8) below.

A CAOP I Preferred Interest is an Equity Interest based on a Preferred Unit in CAOP I, which again is limited to the Investor Interest, and such Interests are included in Class B5 of the Plan. The treatment of Allowed CAOP I Preferred Interests is set forth in Article V, Section 5.2.5 of the Plan, and a summary of such treatment is set forth in the chart provided in this Part IV, Section (I)(9) below.

A CAOP II Preferred Interest is an Equity Interest based on a Preferred Unit in CAOP II, also limited to the Investor Interest, and such Interests are included in Class C5 of the Plan. The treatment of Allowed CAOP II Preferred Interests is set forth in Article V, Section 5.3.5 of the Plan, and a summary of such treatment is set forth in the chart provided in this Part IV, Section (I)(10) below.

**6. Classes A6, B6 and C6 - Allowed Legacy Common Interests, Allowed CAOP I Common Interests and Allowed CAOP II Common Interests**

A Legacy Common Interest is an “Equity Interest” issued as a Common Unit in any one of the Consolidated Legacy Debtors. Pursuant to Article I, Section 1.1 of the Plan, an Equity

Interest is limited to the “Investor Interest.” Legacy Common Interests are included in Class A6 of the Plan. The treatment of Allowed Legacy Common Interests is set forth in Article V, Section 5.1.6 of the Plan, and a summary of such treatment is set forth in the chart provided in this Part IV, Section (I)(8) below.

A CAOP I Common Interest is an Equity Interest issued as a Common Unit in CAOP I, which again is limited to the Investor Interest, and such Interests are included in Class B6 of the Plan. The treatment of Allowed CAOP I Common Interests is set forth in Article V, Section 5.2.6 of the Plan, and a summary of such treatment is set forth in the chart provided in this Part IV, Section (I)(9) below.

A CAOP II Common Interest is an Equity Security issued as a Common Unit in CAOP II, also limited to the Investor Interest, and such Interests are included in Class C6 of the Plan. The treatment of Allowed CAOP II Common Interests is set forth in Article V, Section 5.3.6 of the Plan, and a summary of such treatment is set forth in the chart provided in this Part IV, Section (I)(10) below.

**7. Summary of Treatment of Classified Claims Against and Equity Interests in the Legacy Consolidated Estate**

The following is a general summary of the treatment of classified Claims and Equity Interests in the Plan as it relates to the Legacy Consolidated Estate:

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
<b>Class A1 – Allowed Secured Tax Claims</b> (Plan, Art. V, § 5.1.1)	Holders of Allowed Secured Tax Claims shall retain their respective Liens on Collateral on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Tax Claims in the Collateral shall remain unaltered by the Plan even if the Collateral is a Legacy Trust Asset transferred to the Legacy Trust. Unless the Trustee or	100%	Unimpaired —Deemed to accept Plan and no right to vote.

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	<p>the Legacy Trust and the holder of the Allowed Secured Tax Claim agree to different treatment, each holder of an Allowed Secured Tax Claim shall be treated as follows at the sole discretion of the Trustee or the Legacy Trust: (i) All Collateral securing the Allowed Secured Tax Claim shall be surrendered to the holder of the Allowed Tax Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the Legacy Trust and in full and complete settlement, release and discharge of such Allowed Secured Tax Claim; <i>provided, however,</i> that if the property securing an Allowed Secured Tax Claim has been lost or destroyed, the Trustee or the Legacy Trust shall provide notice of such fact to the holder of the Allowed Secured Tax Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision; (ii) The holder of the Allowed Secured Tax Claim shall be paid in Cash the full amount of such Claim, in full and complete settlement, release and discharge thereof, either (x) on the Effective Date from the Reserved Funds, or (y) in regular installments in accordance with Section 1129(9)(D) from the assets of the Legacy Trust at intervals to be agreed to by the Legacy Trustee and the holder of the Allowed Secured Tax Claim; or (iii) the Trustee or the Legacy Trust shall sell the Collateral securing the Allowed Secured Tax Claim, and pay the holder of the Allowed Secured Tax Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Tax Claim becomes an Allowed Secured Claim.</p>		
<p><b>Class A2 – Allowed Secured Claims</b> (Plan, Art. V, § 5.1.2)</p>	<p>Holders of Allowed Secured Claims shall retain their respective Liens on Collateral on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Claims in the Collateral shall remain unaltered by the Plan even if the Collateral is a Legacy Trust Asset transferred to the Legacy Trust. Unless the Trustee or the Legacy Trust and the holder of the Allowed Secured Claim agree to different treatment, each holder of an Allowed Secured Claim shall be treated as follows at the sole discretion of the Trustee or the Legacy Trust: (i) All Collateral securing the Allowed</p>	<p>100%</p>	<p>Unimpaired – Deemed to accept Plan and no right to vote.</p>

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	<p>Secured Claim shall be surrendered to the holder of the Allowed Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the Legacy Trust and in full and complete settlement, release and discharge of such Allowed Secured Claim; <i>provided, however</i>, that if the property securing an Allowed Secured Claim has been lost or destroyed, the Trustee or the Legacy Trust shall provide notice of such fact to the holder of the Allowed Secured Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision; (ii) the holder of the Allowed Secured Claim shall be paid as soon as practicable after the Effective Date the full amount of its Allowed Secured Claim in Cash from the assets of the Legacy Trust in full and complete settlement, release and discharge of such Claim; (iii) the Trustee or the Legacy Trust shall sell the Collateral securing the Allowed Secured Claim, and pay the holder of the Allowed Secured Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Claim becomes an Allowed Secured Claim; or (iv) notwithstanding any contractual provision or applicable law that entitles the holder of an Allowed Secured Claim to demand or receive payment of such Claim prior to the stated maturity of such Claim from and after the occurrence of a default, reinstate such Allowed Secured Claim and render it unimpaired in accordance with Section 1124(2) of the Bankruptcy Code.</p>		
<p><b>Class A3 – Allowed Priority Unsecured Claims</b> (Plan, Art. V, § 5.1.3)</p>	<p>The legal, equitable and contractual rights of holders of Allowed Priority Unsecured Claims shall remain unaltered by the Plan. Unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed Priority Unsecured Claim shall receive on account of and in full and complete settlement, release and discharge of such Claim, payment in full in Cash from the Reserved Funds in the amount of such Allowed Priority Unsecured Claim on the later of (i) the Effective Date, or (ii) within fifteen (15) Business Days of the date such Unsecured Priority Claim becomes an Allowed Claim.</p>	100%	Unimpaired – Deemed to accept Plan and no right to vote.

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
<b>Class A4 – Allowed General Unsecured Claims</b> (Plan, Art. V, § 5.1.4)	Each holder of an Allowed General Unsecured Claim shall receive a beneficial interest in the Legacy Trust on the Effective Date on account of its Allowed Claim in accordance with this Plan and the Legacy Trust Agreement. Unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed General Unsecured Claim will receive, on account of such Claim and in full and complete settlement, release and discharge of such Claim, a Distribution of a Pro Rata share of the Net Legacy Liquidation Proceeds in accordance with the Legacy Trust Agreement.	1.0% or greater <sup>68</sup>	Impaired – Right to vote.
<b>Class A5 – Allowed Legacy Preferred Interests</b> (Plan, Art. V, § 5.1.5)	Each holder of an Allowed Legacy Preferred Interest shall receive a beneficial interest in the Legacy Trust on the Effective Date on account of its Allowed Legacy Preferred Interest in accordance with this Plan and the Legacy Trust Agreement. Unless the Trustee and the holder of such Allowed Legacy Preferred Interest agree to different treatment, and provided that Allowed Claims in Class A4 are paid in full, each holder of an Allowed Legacy Preferred Interest will receive on account of that Interest and in full and complete settlement, release and discharge of such Interest, a Distribution of a Pro Rata share of the Net Legacy Liquidation Proceeds in accordance with the Legacy Trust Agreement.	1.0% or greater <sup>69</sup>	Impaired – Right to vote.
<b>Class A6 – Allowed Legacy Common Interests</b> (Plan, Art. V, § 5.1.6)	Each holder of an Allowed Legacy Common Interest in this Class shall not receive a beneficial interest in the Legacy Trust or any Distribution under the Plan or the Legacy Trust. In the unlikely event that all holders of Allowed Legacy Preferred Interests in Class A5 hereof receive Distributions paying such Allowed Interests in full, the Plan and the Legacy Trust Agreement shall be deemed amended to provide holders of Allowed Legacy Common Interests a beneficial interest in the Legacy Trust and each holder of an Allowed Legacy Common Interest will receive on	0.00%	Deemed to reject Plan – no right to vote.

<sup>68</sup> See Exh. H (Plan Projections for Consolidated Legacy Debtors).

<sup>69</sup> *Id.*

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	account of that Interest and in full and complete settlement, release and discharge of such Interest, a Distribution of a Pro Rata share of the Net Legacy Liquidation Proceeds.		

**8. Summary of Treatment of Classified Claims Against and Equity Interests in CAOP I**

The following is a general summary of the treatment of classified Claims and Equity Interests in the Plan as it relates to the CAOP I Estate:

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
<b>Class B1 – Allowed Secured Tax Claims</b> (Plan, Art. V, § 5.2.1)	Holders of Allowed Secured Tax Claims shall retain their respective Liens on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Tax Claims shall remain unaltered by the Plan even if the Collateral is a CAOP I Trust Asset transferred to the CAOP I Trust. Unless the Trustee or the CAOP I Trust and the holder of the Allowed Secured Tax Claim agree to different treatment, each holder of an Allowed Secured Tax Claim shall be treated as follows at the sole discretion of the Trustee or the CAOP I Trust: (i) All Collateral securing the Allowed Secured Tax Claim shall be surrendered to the holder of the Allowed Tax Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the CAOP I Trust and in full and complete settlement, release and discharge of such Allowed Secured Tax Claim; <i>provided, however,</i> that if the property securing an Allowed Secured Tax Claim has been lost or destroyed, the Trustee or the CAOP I Trust shall provide notice of such fact to the holder of the Allowed Secured Tax Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision; (ii) The holder of the Allowed	100%	Unimpaired —Deemed to accept Plan and no right to vote.

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	<p>Secured Tax Claim shall be paid in Cash the full amount of such Claim, in full and complete settlement, release and discharge thereof, either (x) on the Effective Date from the Reserved Funds, or (y) in regular installments in accordance with Section 1129(9)(D) from the assets of the CAOP I Trust at intervals to be agreed to by the CAOP I Trustee and the holder of the Allowed Secured Tax Claim; or</p> <p>(iii) The CAOP I Trust shall sell the Collateral securing the Allowed Secured Tax Claim, and pay the holder of the Allowed Secured Tax Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Tax Claim becomes an Allowed Secured Claim.</p>		
<p><b>Class B2 – Allowed Secured Claims</b> (Plan, Art. V, § 5.2.2)</p>	<p>Holders of Allowed Secured Claims shall retain their respective Liens on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Claims shall remain unaltered by the Plan even if the Collateral is a CAOP I Trust Asset transferred to the CAOP I Trust. Unless the Trustee or the CAOP I Trust and the holder of the Allowed Secured Claim agree to different treatment, each holder of an Allowed Secured Claim shall be treated as follows at the sole discretion of the Trustee or the CAOP I Trust:</p> <p>(i) All Collateral securing the Allowed Secured Claim shall be surrendered to the holder of the Allowed Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the CAOP I Trust and in full and complete settlement, release and discharge of such Allowed Secured Claim; <i>provided, however</i>, that if the property securing an Allowed Secured Claim has been lost or destroyed, the Trustee or the CAOP I Trust shall provide notice of such fact to the holder of the Allowed Secured Claim, the delivery of which notice shall constitute</p>	<p>100%</p>	<p>Unimpaired – Deemed to accept Plan and no right to vote.</p>

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	<p>“surrender” of the property securing the Allowed Secured Claim for purposes of this provision; (ii) the holder of the Allowed Secured Claim shall be paid as soon as practicable after the Effective Date the full amount of its Allowed Secured Claim in Cash from the assets of the CAOP I Trust in full and complete settlement, release and discharge of such Claim; (iii) the CAOP I Trust shall sell the Collateral securing the Allowed Secured Claim, and pay the holder of the Allowed Secured Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Claim becomes an Allowed Secured Claim; or (iv) notwithstanding any contractual provision or applicable law that entitles the holder of an Allowed Secured Claim to demand or receive payment of such Claim prior to the stated maturity of such Claim from and after the occurrence of a default, reinstate such Allowed Secured Claim and render it unimpaired in accordance with Section 1124(2) of the Bankruptcy Code.</p>		
<p><b>Class B3 – Allowed Priority Unsecured Claims</b> (Plan, Art. V, § 5.2.3)</p>	<p>The legal, equitable and contractual rights of holders of Allowed Priority Unsecured Claims shall remain unaltered by the Plan. Unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed Priority Unsecured Claim shall receive on account of and in full and complete settlement, release and discharge of such Claim, payment in full in Cash from the Reserved Funds in the amount of such Allowed Priority Unsecured Claim on the later of (i) the Effective Date, or (ii) within fifteen (15) Business Days of the date such Unsecured Priority Claim becomes an Allowed Claim.</p>	100%	Unimpaired – Deemed to accept Plan and no right to vote.
<p><b>Class B4 – Allowed General</b></p>	<p>On the Effective Date, unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed General Unsecured</p>	1.0% or greater <sup>70</sup>	Impaired – Right to vote.

<sup>70</sup> See Exh. I (Plan Projections for CAOP I).



Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
<b>Unsecured Claims</b> (Plan, Art. V, § 5.2.4)	Claim will receive, on account of such Claim and in full and complete settlement, release and discharge of such Claim, at the Trustee's discretion (i) a Pro Rata Distribution on account of its Allowed General Unsecured Claim in Cash from CAOP I's Reserved Funds after satisfaction of all Allowed unclassified Claims and all Allowed Claims in Classes B1, B2 and B3, if any, and (ii) if such Allowed Claim is not paid in full from the Reserved Funds, a beneficial interest in the CAOP I Trust based on the unpaid portion of such holder's Allowed Claim and a Distribution of a Pro Rata share of the Net CAOP I Trust Assets in accordance with the CAOP I Trust Agreement.		
<b>Class B5 – Allowed CAOP I Preferred Interests</b> (Plan, Art. V, § 5.2.5)	Each holder of an Allowed CAOP I Preferred Interest shall receive a beneficial interest in the CAOP I Trust on the Effective Date in accordance with the CAOP I Trust Agreement. Unless the Trustee and the holder of such Allowed CAOP I Preferred Interest agree to different treatment, and provided that Allowed Claims in Class B4 are paid in full, each holder of an Allowed CAOP I Preferred Interest will receive on account of that Interest and in full and complete settlement, release and discharge of such Interest, a Distribution of a Pro Rata share of the Net CAOP I Trust Assets. Distributions of the Net CAOP I Trust Assets to holders of Allowed CAOP I Preferred Interests through the Plan and the CAOP I Trust shall be made based on a Distribution of \$1 in Cash for every one Preferred Unit held by such holder.	1.0% or greater <sup>71</sup>	Impaired – Right to vote.
<b>Class B6 – Allowed CAOP I Common Interests</b> (Plan, Art. V, § 5.2.6)	Each holder of Allowed CAOP I Common Interest in this Class shall not receive a beneficial interest in the CAOP I Trust or any Distribution under the Plan or the CAOP I Trust. In the unlikely event that all holders of Allowed CAOP I Preferred Interests in Class B5 hereof receive Distributions paying such Allowed Interests in full, the Plan and the CAOP I Trust Agreement	0.00%	Deemed to reject Plan – no right to vote.

<sup>71</sup> *Id.*

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	shall be deemed amended to provide each holder of an Allowed CAOP I Common Interest a beneficial interest in the CAOP I Trust and for Net CAOP I Assets to be Distributed Pro Rata to each such holder in accordance with the CAOP I Trust Agreement and in full and complete settlement, release and discharge of such Interest.		

**9. Summary of Treatment of Classified Claims Against and Equity Interests in CAOP II**

The following is a general summary of the treatment of classified Claims and Equity

Interests in the Plan as it relates to the CAOP II Estate:

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
<b>Class C1 – Allowed Secured Tax Claims</b> (Plan, Art. V, § 5.3.1)	Holders of Allowed Secured Tax Claims shall retain their respective Liens on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Tax Claims shall remain unaltered by the Plan even if the Collateral is a CAOP II Trust Asset transferred to the CAOP II Trust. Unless the Trustee or the CAOP II Trust and the holder of the Allowed Secured Tax Claim agree to different treatment, each holder of an Allowed Secured Tax Claim shall be treated as follows at the sole discretion of the Trustee or the CAOP II Trust: (i) All Collateral securing the Allowed Secured Tax Claim shall be surrendered to the holder of the Allowed Tax Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the CAOP II Trust and in full and complete settlement, release and discharge of such Allowed Secured Tax Claim; <i>provided, however,</i> that if the property securing an Allowed Secured Tax Claim has been lost or destroyed, the Trustee or the CAOP II Trust shall provide notice of such fact to the holder	100%	Unimpaired —Deemed to accept Plan and no right to vote.

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	<p>of the Allowed Secured Tax Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision; (ii) the holder of the Allowed Secured Tax Claim shall be paid in Cash the full amount of such Claim, in full and complete settlement, release and discharge thereof, either (x) on the Effective Date from the Reserved Funds, or (y) in regular installments in accordance with Section 1129(9)(D) from the assets of the CAOP II Trust at intervals to be agreed to by the CAOP II Trustee and the holder of the Allowed Secured Tax Claim; or (iii) the CAOP II Trust shall sell the Collateral securing the Allowed Secured Tax Claim, and pay the holder of the Allowed Secured Tax Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Tax Claim becomes an Allowed Secured Claim.</p>		
<p><b>Class C2 – Allowed Secured Claims</b> (Plan, Art. V, § 5.3.2)</p>	<p>Holders of Allowed Secured Claims shall retain their respective Liens on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Claims shall remain unaltered by the Plan even if the Collateral is a CAOP II Trust Asset transferred to the CAOP II Trust. Unless the Trustee or the CAOP II Trust and the holder of the Allowed Secured Claim agree to different treatment, each holder of an Allowed Secured Claim shall be treated as follows at the sole discretion of the Trustee or the CAOP II Trust: (i) All Collateral securing the Allowed Secured Claim shall be surrendered to the holder of the Allowed Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the CAOP II Trust and in full and complete settlement, release and discharge of such Allowed Secured Claim;</p>	<p>100%</p>	<p>Unimpaired – Deemed to accept Plan and no right to vote.</p>

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	<p><i>provided, however,</i> that if the property securing an Allowed Secured Claim has been lost or destroyed, the Trustee or the CAOP II Trust shall provide notice of such fact to the holder of the Allowed Secured Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision; (ii) the holder of the Allowed Secured Claim shall be paid as soon as practicable after the Effective Date the full amount of its Allowed Secured Claim in Cash from the assets of the CAOP II Trust in full and complete settlement, release and discharge of such Claim; (iii) the CAOP II Trust shall sell the Collateral securing the Allowed Secured Claim, and pay the holder of the Allowed Secured Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Claim becomes an Allowed Secured Claim; or (iv) notwithstanding any contractual provision or applicable law that entitles the holder of an Allowed Secured Claim to demand or receive payment of such Claim prior to the stated maturity of such Claim from and after the occurrence of a default, reinstate such Allowed Secured Claim and render it unimpaired in accordance with Section 1124(2) of the Bankruptcy Code.</p>		
<p><b>Class C3 – Allowed Priority Unsecured Claims</b> (Plan, Art. V, § 5.3.3)</p>	<p>The legal, equitable and contractual rights of holders of Allowed Priority Unsecured Claims shall remain unaltered by the Plan. Unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed Priority Unsecured Claim shall receive on account of and in full and complete settlement, release and discharge of such Claim, payment in full in Cash from CAOP II’s Reserved Funds in the amount of such Allowed Priority</p>	<p>100%</p>	<p>Unimpaired – Deemed to accept Plan and no right to vote.</p>

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
	Unsecured Claim on the later of (i) the Effective Date, or (ii) within fifteen (15) Business Days of the date such Unsecured Priority Claim becomes an Allowed Claim.		
<b>Class C4 – Allowed General Unsecured Claims</b> (Plan, Art. V, § 5.3.4)	On the Effective Date, unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed General Unsecured Claim will receive, on account of such Claim and in full and complete settlement, release and discharge of such Claim, at the Trustee’s discretion (i) a Pro Rata Distribution on account of its Allowed General Unsecured Claim in Cash from CAOP II’s Reserved Funds after satisfaction of all Allowed unclassified Claims and all Allowed Claims in Classes C1, C2 and C3, if any, and (ii) if such Allowed Claim is not paid in full from the Reserved Funds, a beneficial interest in the CAOP II Trust based on the unpaid portion of such holder’s Allowed Claim and a Distribution of a Pro Rata share of the Net CAOP II Trust Assets in accordance with the CAOP II Trust Agreement.	1.0% or greater <sup>72</sup>	Impaired – Right to vote.
<b>Class C5 – Allowed CAOP II Preferred Interests</b> (Plan, Art. V, § 5.3.5)	Each holder of an Allowed CAOP II Preferred Interest shall receive a beneficial interest in the CAOP II Trust on the Effective Date in accordance with the CAOP II Trust Agreement. Unless the Trustee and the holder of such Allowed CAOP II Preferred Interest agree to different treatment, and provided that Allowed Claims in Class C4 are paid in full, each holder of an Allowed CAOP II Preferred Interest will receive on account of that Interest and in full and complete settlement, release and discharge of such Interest, a Distribution of a Pro Rata share of the Net CAOP II Trust Assets.	1.0% or greater <sup>73</sup>	Impaired – Right to vote.
<b>Class C6 – Allowed CAOP II Common</b>	Each holder of Allowed CAOP II Common Each holder of Allowed CAOP II Common Interest in this Class shall not receive a	0.00%	Deemed to reject Plan – no right to

<sup>72</sup> See Exh. J (Plan Projections for CAOP II).

<sup>73</sup> *Id.*

Type of Claim or Equity Interest	Treatment	Estimated Distribution Percentage	Voting Rights
<b>Interests</b> (Plan, Art. V, § 5.3.6)	beneficial interest in the CAOP II Trust or any Distribution under the Plan or the CAOP II Trust. In the unlikely event that all holders of Allowed CAOP II Preferred Interests in Class C5 hereof receive Distributions paying such Allowed Interests in full, the Plan and the CAOP II Trust Agreement shall be deemed amended to provide each holder of an Allowed CAOP II Common Interest a beneficial interest in the CAOP II Trust and for Net CAOP II Assets to be Distributed Pro Rata to each such holder in accordance with the CAOP II Trust Agreement and in full and complete settlement, release and discharge of such Interest.		vote.

**J. Treatment of Executory Contracts and Unexpired Leases, and the Deadline to File Claims Related to Rejected Contracts or Leases**

As set forth in Article VIII, Section 8.1 of the Plan, any executory contracts or unexpired leases shall be deemed rejected as of the Effective Date. Entry of the Confirmation Order shall constitute the approval, pursuant to Section 365(a) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected as of the Effective Date of the Plan. Any Claims arising from the rejection of an executory contract or unexpired lease *must be filed prior to the expiration of the “Contract Rejection Claim Bar Date” as provided in Article VIII, Section 8.2 of the Plan. Failure to do so will result in such Claim being forever barred and being unenforceable against the Debtors, the Estates, the Trustee, the Liquidating Trust and the Liquidating Trustees.*

**K. Preservation of Causes of Action and Defenses**

Retained Claims and Actions are preserved in the broadest possible sense pursuant to Article VI, Section 6.9 of the Plan. Thus, except to the extent rights, Claims, Causes of Action, defenses, and counterclaims are expressly and specifically released in connection with the Plan

or in any settlement agreement approved by the Bankruptcy Court during the Bankruptcy Cases, (1) any and all rights, Claims, Causes of Action, defenses, and counterclaims accruing to or assertable by the Debtors or the Trustee on behalf of the Estates, shall remain assets of the Estates and may be asserted by the Trustee on behalf of the Estates as the estate representative thereof after the Effective Date or be transferred to a Liquidating Trust as a Liquidating Trust Asset and asserted by a Liquidating Trustee on behalf of a Liquidating Trust, and (2) neither the Debtors, the Trustee nor a Liquidating Trust waives, relinquishes or abandons (nor shall it be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estates or is assertable by the Estates or a Liquidating Trust: (a) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Schedules or Statement of Financial Affairs for any Debtor, the Disclosure Statement, the Plan, a Liquidation Trust Agreement, any of the documents in the Plan Documents Supplement or any other document filed with the Bankruptcy Court, (b) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to the Trustee or a Debtor, and (c) whether or not a defendant in any litigation relating to such right, Claim, Cause of Action, defense or counterclaim filed a proof of Claim or Interest in the Bankruptcy Case, filed a notice of appearance or any other pleading or notice in the Bankruptcy Case, voted for or against the Plan, or received or retained any consideration under the Plan.

Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise applicable principle of law or equity, including without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, laches or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a right, Claim, Cause of Action, defense,

or counterclaim, or potential right, Claim, Cause of Action, defense, or counterclaim, in the Schedules or Statement of Financial Affairs for any Debtor, the Disclosure Statement, the Plan, a Liquidation Trust Agreement, any of the documents in the Plan Documents Supplement or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Trustee's or a Liquidating Trust's right to commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, or counterclaims that the Trustee, the Debtors and/or the Estates has or may have as of the Confirmation Date. The Trustee as the estate representative of the Estates on and after the Effective Date or a Liquidating Trustee as a representative of a Liquidating Trust may commence, prosecute, defend against, recover on account of, and settle all rights, Claims, Causes of Action, defenses, and counterclaims in their sole discretion in accordance with the best interests, and for the benefit of, the post-Effective Date Estates and the Liquidating Trusts.

**L. Non-Discharge of Debtors and Injunction**

Pursuant to Section 1141 of the Bankruptcy Code, the Debtors do not receive a discharge because this is a liquidating Plan. But, under Article XI, Section 11.1 of the Plan, all applicable stays and injunctions provided for in Sections 105 and 362(a) of the Bankruptcy Code remain in place until the Effective Date. After the Effective Date, Article VI, Section 6.10 of the Plan provides for an injunction of certain actions and claims against the Debtors as follow:

**HOLDERS OF CLAIMS, RIGHTS, CAUSES OF ACTION OR INTERESTS  
AGAINST ANY ONE DEBTOR MAY NOT PURSUE (1) PROPERTY OF THE  
ESTATES, WHETHER EXISTING PRIOR TO OR AFTER THE EFFECTIVE DATE,  
THE LEGACY CONSOLIDATED ESTATE, OR ANY OF THE LIQUIDATING TRUSTS  
OTHER THAN THROUGH SEEKING ALLOWANCE OF ITS CLAIM, IF ANY, FOR**



**DISTRIBUTION IN ACCORDANCE WITH THE PLAN; OR (2) THE TRUSTEE AND HIS AGENTS.**

**PURSUANT TO SECTION 1141(d)(3) OF THE BANKRUPTCY CODE, THE PLAN PROVIDES THAT THE CONFIRMATION ORDER SHALL NOT DISCHARGE CLAIMS AGAINST THE DEBTORS. HOWEVER, NO HOLDER OF A CLAIM OR EQUITY INTEREST MAY RECEIVE ANY PAYMENT FROM OR SEEK RECOURSE AGAINST ANY ASSETS THAT ARE PROPERTY OF THE ESTATES WHETHER EXISTING PRIOR TO OR AFTER THE EFFECTIVE DATE, THE LEGACY CONSOLIDATED ESTATE, OR ANY OF THE LIQUIDATING TRUSTS, EXCEPT FOR THOSE ASSETS REQUIRED TO BE DISTRIBUTED TO SUCH HOLDER AS EXPRESSLY PROVIDED FOR IN THE PLAN.**

**AS OF THE EFFECTIVE DATE, ALL PERSONS ARE PRECLUDED FROM ASSERTING AGAINST ANY PROPERTY OF THE ESTATES, THE LEGACY CONSOLIDATED ESTATE AND ANY OF THE LIQUIDATING TRUSTS AND ASSETS THAT ARE DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE PLAN OR ANY OF THE LIQUIDATING TRUSTS ANY CLAIMS, RIGHTS, CAUSES OF ACTION, LIABILITIES OR INTERESTS BASED UPON ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED PRIOR TO THE EFFECTIVE DATE, OTHER THAN AS EXPRESSLY PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, REGARDLESS OF THE FILING, LACK OF FILING, ALLOWANCE OR DISALLOWANCE OF ANY CLAIM OR EQUITY INTEREST AND REGARDLESS OF WHETHER SUCH PERSON HAS VOTED TO ACCEPT THE PLAN.**

**EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE EFFECTIVE DATE, ALL PERSONS THAT HAVE HELD, CURRENTLY HOLD OR MAY HOLD A DEBT, RIGHT, CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY OR INTEREST AGAINST OR IN THE DEBTORS THAT WOULD BE DISCHARGED UPON CONFIRMATION OF THE PLAN ON THE EFFECTIVE DATE BUT FOR THE PROVISIONS OF SECTION 1141(d)(3) OF THE BANKRUPTCY CODE SHALL BE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS ON ACCOUNT OF SUCH DEBT, RIGHT, CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY OR INTEREST: (i) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING ON ACCOUNT OF SUCH DEBT, RIGHT, CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY OR INTEREST AGAINST ASSETS OR PROCEEDS THEREOF THAT ARE PROPERTY OF THE ESTATES, THE LEGACY CONSOLIDATED ESTATE OR THE LIQUIDATING TRUSTS AND WHICH ARE TO BE DISTRIBUTED UNDER THE PLAN AND/OR THE LIQUIDATING TRUSTS, OTHER THAN TO ENFORCE ANY RIGHT TO A DISTRIBUTION WITH RESPECT TO SUCH ASSETS OR THE PROCEEDS THEREOF AS PROVIDED UNDER THE PLAN; (ii) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST ANY ASSETS TO BE DISTRIBUTED TO CREDITORS OR EQUITY INTERESTS UNDER THE PLAN AND/OR THE LIQUIDATING TRUST, OTHER THAN AS PERMITTED UNDER SUBPARAGRAPH (i) ABOVE; AND (iii) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE AGAINST ANY ASSETS TO BE**

**DISTRIBUTED UNDER THE PLAN AND THE LIQUIDATING TRUSTS, OTHER THAN AS PERMITTED BY THE PLAN AND/OR THE LIQUIDATING TRUSTS, PROVIDED THAT NOTHING CONTAINED HEREIN SHALL LIMIT THE RIGHTS OF ANY DISTRIBUTEE UNDER THE PLAN FROM TAKING ANY ACTIONS IN RESPECT OF PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED TO IT UNDER THE PLAN AND/OR THE LIQUIDATING TRUSTS.**

**M. Releases and Limitation of Liability**

The Trustee, as representative of the post-confirmation Estates and as the Legacy Trustee and CAOP Trustee, reserves all rights to prosecute after the Confirmation Date any and all Claims and Causes of Action held by the Estates.

Except as otherwise expressly provided in the Plan, on and after the Effective Date, the Debtors; the Trustee and his employees, officers, directors, agents or representatives; the Committee and its employees, officers, directors, agents or representatives; any Professionals; and the Estates, shall not have or incur any liability to any Person for any authorized act taken or authorized omission made in good faith in connection with or related to the Bankruptcy Cases or the Estates, including the objections to or estimations of Claims or Equity Interests, disposition of assets, or formulating, determining not to solicit acceptances or rejections to, or confirming the Plan, or any contract, instrument, release, or other agreement or document created in connection with the Plan or otherwise.

Consistent with Section 1125(e) of the Bankruptcy Code, to the extent acceptances or rejections of the Plan have been solicited, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Debtors, the Trustee and Professionals are not liable on account of such solicitation or participation or for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan.

**N. Binding Nature of the Plan**

As set forth in Article XI, Section 11.10 of the Plan and pursuant to Section 1142(a) of the Bankruptcy Code, once confirmed, the Plan is binding on all creditors and interest holders, regardless of whether or not holders of Claims or Interests voted for the Plan, and if such parties did vote, regardless of whether they voted for or against the Plan.

**O. Revesting of Property**

The Plan expressly provides in Article XI, Section 11.10 that no assets of the Estates will revest with the Debtors as a result of confirmation of the Plan.

**P. Tax Consequences**

**HOLDERS OF CLAIMS AND EQUITY INTERESTS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.**

The following disclosure of possible tax consequences is intended solely for the purpose of alerting readers about possible tax issues the Plan may present for the Debtors and the Estates. The Trustee CANNOT and DOES NOT represent that the tax consequences contained below are the only tax consequences of the Plan because the tax laws involve many complicated rules which make it difficult to state completely and accurately all the tax implications of any action.

The Plan will not affect the Debtors' tax liability, as the Debtors are limited liability companies and are therefore "pass-through" Entities for tax purposes. For tax purposes, any tax liability will impact individual members of the Debtors.

The following discussion summarizes certain anticipated United States federal income tax consequences of the Plan to Debtors, the Liquidating Trusts and certain Entities holding Claims or Equity Interests (for purposes of this discussion collectively, "Holders") entitled to vote to accept or reject the Plan. This discussion is provided for information

purposes only and is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), Treasury regulations promulgated hereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof, and all of which are subject to change, possibly with retroactive effect, that could adversely affect the United States federal income tax consequences described below.

This discussion does not address all aspects of United States federal income taxation that may be relevant to a particular Holder in light of its particular facts and circumstances, or to certain Holders subject to special treatment under the Tax Code (for example, governmental entities and entities exercising governmental authority, non-United States taxpayers, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, persons holding a Claim as part of a hedge, straddle, constructive sale, conversion transaction or other integrated transaction, Holders that are or hold their Claims or Equity Interests through a partnership or other pass-through Entity, and Persons that have a functional currency other than the United States dollar). This discussion assumes that Holders hold their Claims or Equity Interests as capital assets for United States federal income tax purposes (generally, property held for investment). This discussion does not address any aspects of state, local, non-United States, taxation or United States federal taxation other than income taxation. Furthermore, this discussion generally does not address the United States federal income tax consequences to Holders that are unimpaired under the Plan or Holders that are not entitled to receive or retain any property under the Plan.

For federal income tax purposes, the Debtors, the Estates, the Liquidating Trusts, the Liquidating Trustees and the Holders of Allowed Claims or Allowed Equity Interests in Classes A4, B4, C4, A5, B5 and C5 of the Plan (for purposes of this discussion the “Trust Beneficiaries”)

shall treat the applicable Liquidating Trust as a liquidating trust within the meaning of Treasury Income Tax Regulation Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124. For federal income tax purposes, the transfer of the Liquidating Trust Assets to the respective Liquidating Trusts under the Plan is treated as a deemed transfer to the Trust Beneficiaries in satisfaction of all Claims followed by a deemed transfer of those Assets by the Beneficiaries to the Liquidating Trust. For federal income tax purposes, the Beneficiaries will be deemed to be the grantors and owners of the Liquidating Trust and its Liquidating Trust Assets. For federal income tax purposes, the Liquidating Trust will be taxed as a grantor trust within the meaning of IRC Sections 671-677 (a non-taxable pass-through tax entity) owned by the Trust Beneficiaries. Each Liquidating Trust will file federal income tax returns as a grantor trust under IRC Section 671 and Treasury Income Tax Regulation Section 1.671-4 and report, but not pay tax on, the Liquidating Trust's tax items of income, gain, loss deductions and credits ("Tax Items"). The Trust Beneficiaries will report such Tax Items on their federal income tax returns and pay any resulting federal income tax liability. The Debtors, the Estates, the Liquidating Trusts and the Trust Beneficiaries will use consistent valuations of the Liquidating Trust Assets transferred to the applicable Liquidating Trust for all federal income tax purposes, such valuations to be determined jointly by the Trust Beneficiaries and the Liquidating Trustee of the applicable Liquidating Trust.

The tax treatment of Holders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan may vary, depending upon, among other things: (1) whether the Claim (or portion thereof) constitutes a Claim for principal or interest; (2) the type of consideration received by the Holder in exchange for the Claim or Equity Interest and whether the Holder receives Distributions under the Plan in

more than one taxable year; (3) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to United States federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (4) the manner in which the Holder acquired the Claim or Equity Interest; (5) the length of time that the Claim or Equity Interest has been held; (6) whether the Claim or Equity Interest was acquired at a discount; (7) whether the Holder has taken a bad debt deduction with respect to the Claim or Equity Interest (or any portion thereof) in the current or prior years; (8) whether the Holder has previously included accrued but unpaid interest with respect to the Claim or Equity Interest; (9) the method of tax accounting of the Holder; (10) whether the Claim or Equity Interest is an installment obligation for United States federal income tax purposes; (11) whether the Claim or Equity Interest, and any instrument received in exchange therefor, is considered a "security" for United States federal income tax purposes; and (12) whether the "market discount" rules are applicable to the Holder. Therefore, each Holder should consult its tax advisor for information that may be relevant to its particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

A substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final Distribution under the Plan. Events occurring after the date of this Disclosure Statement, such as additional tax legislation, Court decisions or administrative changes, could affect the United States federal income tax consequences of the Plan and the transactions contemplated thereunder. There can be no assurance that the Internal Revenue Service (“IRS”) will not take a contrary view with respect to one or more of the issues discussed below. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of

the Plan, and no opinion of counsel has been or will be obtained by the Trustee with respect thereto. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any Holder. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a Court would not sustain, a different position from any discussed herein.

**THIS DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN UNITED STATES FEDERAL TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THIS DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND APPLICABLE NON- U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN. TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, CREDITORS AND EQUITY INTEREST HOLDERS ARE HEREBY NOTIFIED THAT: (I) ANY DISCUSSION OF UNITED STATES FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY CREDITORS AND EQUITY SECURITY HOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON SUCH HOLDERS UNDER THE TAX CODE; (II) SUCH DISCUSSION IS NOT BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE TRUSTEE OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (III) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**



**Q. Risk Factors**

Consummation of the Plan as proposed and described herein is subject to a number of risks. These risks include, but are not limited to, the following: (a) there is no assurance of success in, and/or recovery from the Claims and Causes of Action that have been or may be commenced by the Trustee; and (b) Claims that the Trustee maintains are Disputed Claims may be Allowed in full.

In addition, there are certain risks inherent in the Chapter 11 process. If certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm the Plan even if creditors accept the Plan. Although the Trustee believes that the Plan meets such standards, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court were to determine that such requirements were not met, it could require the Trustee to re-solicit acceptances, which could delay and/or jeopardize confirmation of the Plan. The Trustee believes that the solicitation of votes on the Plan will comply with Section 1126(b) of the Bankruptcy Code and that the Bankruptcy Court will confirm the Plan. The Trustee, however, can provide no assurance that modifications of the Plan will not be required to obtain confirmation of the Plan, or that such modifications will not require a re-solicitation of acceptances.

**V.**

**CONFIRMATION REQUIREMENTS AND VOTING PROCEDURES**

**A. Feasibility of the Plan**

The Bankruptcy Code requires that in order to confirm the Plan, the Court must find that confirmation of the Plan is not likely to be followed by a further liquidation (the “Feasibility Test”). For the liquidating Plan to meet the Feasibility Test, the Court must find that the Trustee possesses the resources necessary to meet the obligations under the Plan.

The Trustee believes that the structure set forth in the Plan, as discussed above, provides a feasible framework for the recovery of Claims and assets of the Estates and an orderly, phased liquidation of the Estates, and that confirmation of the Plan is not likely to be followed by any further liquidation. The Legacy Consolidated Estate and the CAOP Debtors' respective Estates will have sufficient Reserved Funds to make all Distributions required by the Plan. Furthermore, even after setting aside the Reserved Funds, there will exist sufficient Legacy Trust Assets, CAOP I Trust Assets and CAOP II Trust Assets to fund the respective Liquidating Trust Agreements and make Distributions therefrom to the Legacy Trust Beneficiaries, the CAOP I Trust Beneficiaries and the CAOP II Trust Beneficiaries, as applicable and as provided for in the Plan. The Trustee's estimated Plan projections are set forth in the documents attached hereto as **Exhibit H** (Consolidated Legacy Debtors), **Exhibit I** (CAOP I), and **Exhibit J** (CAOP II). These projections are expressly "estimated." The Trustee makes clear that high and low ranges "have been provided in an effort to estimate sources of cash, potential distributions of cash, and claims[]" based on his knowledge of the value of existing assets and the potential amount of claims that have been asserted at this time, but that "[a]ctual results could be materially different than projected." **Exhibits H-J**, n.1. However, while results may be different, the Trustee strongly believes that the Plan is feasible based on the non-contingent assets known to him at this time.

**B. Liquidation Analysis—Effect of a Denial of Confirmation of the Plan/Chapter 7 Liquidation**

The Trustee has determined that the Debtors cannot be reorganized due to a number of factors, including at least the following: the expense involved in entitling and developing the real properties described in this Disclosure Statement; the lack of Cash necessary to fund those expenses; the countless intercompany transfers and Claims existing as between the Debtors; and

the fact that the Legacy Business and the CAOP Businesses primarily were funded by Investor funds which the Trustee will not solicit further. In short, the Debtors must be liquidated and the Plan is a liquidating Plan.

If Persons entitled to vote for the Plan choose not to accept it, the Bankruptcy Cases will likely be converted to separate cases under Chapter 7 of the Bankruptcy Code. While conversion to Chapter 7 would – like the proposed Plan – effect a liquidation of the Estates’ assets, conversion will result in a delay of Distribution of Cash to holders of Allowed Claims and Allowed Equity Interests. Additionally, the Trustee anticipates that Distributions will be greatly diminished in Chapter 7 for numerous reasons, including but not limited to the fact that (1) a sale of the real properties in Chapter 7 likely will not serve to maximize the value of the properties in question, (2) assets obtained through the Plan process, such as the assignment of the Individual Claims, likely could not be realized in a Chapter 7 liquidation, (3) the benefit of the Trustee’s knowledge of the Debtors and the Castle Arch enterprise obtained from his approximately nine months of intensive investigation could potentially be greatly diminished if the three remaining Estates are administered by new and separate Chapter 7 trustees; (4) if new trustees were appointed, there would exist significant new layers of administrative expense as well as delay. For these reasons, the Trustee urges those entitled to vote to accept the Plan inasmuch as the Plan anticipates a Distribution to holders of Allowed Claims and Allowed Equity Interests of each of the Estates.<sup>74</sup>

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<sup>74</sup> See Exhs. H-J (Plan projections).

**C. Voting Rights and Procedures**

**1. Who May Object to Confirmation of the Plan**

Any party in interest may object to confirmation of the Plan, but as set forth below, not every party in interest is entitled to vote to accept or reject the Plan.

**2. Who May Vote to Accept or Reject the Plan**

Article III of the Plan sets forth who may vote to accept or reject the Plan. Generally, under Section 1126 of the Bankruptcy Code, only those holders of Claims or Equity Interests that are “impaired” within the meaning of Section 1125 of the Bankruptcy Code and which are retaining or receiving any property under the Plan are entitled to vote. Furthermore, only holders of Claims and Equity Interests in voting Classes whose Claims or Equity Interests have been “Allowed” or Allowed for purposes of voting have a right to vote. Holders of Claims or Equity Interests who are unimpaired or who will retain or receive no property under the Plan are not entitled to vote.

**(a) Holders of Claims**

As set forth in Article III of the Plan, each holder of an Allowed General Unsecured Claim in Classes A4, B4 and C4 of the Plan are entitled to vote. For voting purposes, such holders shall be entitled to vote on the Plan in the amount as follows: (i) the amount of any Allowed Claim; (ii) the amount set forth on a filed proof of Claim which has not been objected to, disqualified, suspended, reduced or estimated and temporarily allowed for voting purposes prior to computation of the vote on the Plan; or (iii) for those creditors who are holders of “Disputed Claims,” in the amount temporarily Allowed pursuant to an Order of the Bankruptcy Court for purposes of voting on the Plan. Creditors holding Disputed Claims are required to affirmatively request that their Claim be temporarily allowed for voting purposes to be entitled to vote.

**(b) Holders of Equity Interests**

As set forth in Article III of the Plan, each holder of an Allowed Equity Interest in Classes A5, B5 and C5 of the Plan are entitled to vote. For voting purposes, such holders shall be entitled to vote on the Plan in the amount of total Preferred Units held comprising: (i) the amount of Allowed Legacy Preferred Interest, Allowed CAOP I Preferred Interest or Allowed CAOP II Preferred Interest, as applicable, held; (ii) the amount set forth on a filed proof of Interest which has not been objected to, disqualified, suspended, reduced or estimated and temporarily allowed for voting purposes prior to computation of the vote on the Plan; or (iii) for those holders who are holders of “Disputed Equity Interests,” in the amount temporarily Allowed pursuant to an order of the Bankruptcy Court for purposes of voting on the Plan. Those holding Disputed Equity Interests are required to affirmatively request that their Interest be temporarily allowed for voting purposes to be entitled to vote.

**3. Who May Not Vote**

Each holder of a Claim or Equity Interest that is in an unimpaired Class or which retains or receives no property under the Plan is not entitled to vote to accept or reject the Plan. As set forth in Article III of the Plan, each holder of a Claim or Equity Interest in Classes A1-A3, A6, B1-B3, B6, C1-C3 and C6 of the Plan are not entitled to vote to accept or reject the Plan.

**4. Voting Procedures**

All voting procedures are described in the Bankruptcy Court’s Order *(i) Approving Disclosure Statement for Chapter 11 Trustee’s Plan of Liquidation, (ii) Establishing Voting Record Date, (iii) Approving Solicitation Procedures, Forms of Ballots, and Manner of Notice, and (iv) Fixing the Deadline for Filing Objections to the Confirmation of the Plan*, entered on March 27, 2013. Such voting procedures will include deadlines for those holders of Disputed

Claims or Disputed Equity Interests to obtain an Order estimating their Claim or Equity Interest for voting purposes.

**5. Vote Required for Class Acceptance**

The Bankruptcy Code defines acceptance of a plan by a class of Claims as the acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half in number of the allowed Claims of the Class actually voting to accept or reject the proposed Plan.

**6. Nonconsensual Confirmation**

If any impaired Class entitled to vote does not accept the Plan, or if any impaired class is deemed to have rejected the Plan, the Trustee reserves the right (a) to confirm the Plan under section 1129(b) of the Bankruptcy Code, and (b) to amend the Plan to the extent necessary to obtain entry of a Confirmation Order.

*The Trustee urges all those entitled to vote to do so*

*by submitting your executed Ballot prior to any voting deadline.*

*The Trustee also urges all those entitled to vote to vote to accept the Plan.*

Dated: February 25, 2013.

*/s/ D. Ray Strong*

\_\_\_\_\_  
D. Ray Strong, Chapter 11 Trustee

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*

\_\_\_\_\_  
Peggy Hunt

Nathan S. Seim

*Attorneys for Chapter 11 Trustee*

# **EXHIBIT A**

Peggy Hunt (Utah State Bar No. 6060)  
Nathan S. Seim (Utah State Bar No. 12654)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

*Attorneys for D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC and Substantively Consolidated Debtors*

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

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In re:

CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC; CAOP MANAGERS, LLC; CASTLE ARCH KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; CASTLE ARCH SMYRNA, LLC; CASTLE ARCH STAR VALLEY, LLC; *and*

CASTLE ARCH OPPORTUNITY PARTNERS I, LLC; CASTLE ARCH OPPORTUNITY PARTNERS II, LLC,

Debtors.

Case Nos. 11-35082, 11-35237,  
11-35243, 11-35242 and 11-35246  
(Substantively Consolidated)

Case Nos. 11-35241 and 11-35240  
(Jointly Administered)

(Chapter 11)  
The Honorable Joel T. Marker

- Affects All Debtors
- Affects Only the Substantively Consolidated Debtors
- Affects only Castle Arch Opportunity Partners I, LLC
- Affects only Castle Arch Opportunity Partners II, LLC

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**FIRST AMENDED CHAPTER 11 TRUSTEE'S PLAN OF LIQUIDATION DATED  
FEBRUARY 25, 2013**

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D. Ray Strong, the duly appointed Chapter 11 Trustee (“Trustee”) of the “Consolidated Legacy Debtors,” Castle Arch Real Estate Investment Company, LLC (“CAREIC”), CAOP Managers, LLC (“CAOP Managers”), Castle Arch Kingman, LLC (“CAK”) Castle Arch Secured Development Fund, LLC (“CASDF”), Castle Arch Smyrna, LLC (“CAS”), and Castle Arch Star Valley, LLC (“CASV”), and in that capacity as manager of Castle Arch Opportunity Partners I, LLC (“CAOP I”) and Castle Arch Opportunity Partners II, LLC (“CAOP II”) (collectively, the “CAOP Debtors” and the CAOP Debtors collectively with the Consolidated Legacy Debtors, the “Debtors”), proposes this Plan of Liquidation (the “Plan”) under Section 1121(c) of title 11 of the United States Code (the “Bankruptcy Code”).

On October 17th and 20th, 2011, the Debtors commenced the above-captioned Bankruptcy Cases by filing voluntary petitions under Chapter 11 of the Bankruptcy Code. The Trustee was appointed on May 3, 2012. Sent to you in the same envelope as this document is the Disclosure Statement that has been approved by the Bankruptcy Court and that is provided to help you understand the Plan. All holders of Claims and Equity Interests are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. The Disclosure Statement for the Plan contains a summary of the Plan and discusses the Debtors’ history, assets and liabilities. Reading the summary of the Plan contained in the Disclosure Statement, however, is not a substitute for reading the Plan. As the provisions of the Plan control, all holders of Claims and Equity Interests are encouraged to carefully read the Plan. No solicitation materials, other than the Disclosure Statement, the Disclosure Statement Exhibits, any Exhibits attached to this Plan and the related materials transmitted with the Disclosure Statement or Plan have been approved by the Bankruptcy Court for use in soliciting acceptances or rejections to the Plan.

## ARTICLE I

### DEFINITIONS, CONSTRUCTION OF TERMS, SUPPLEMENTAL DOCUMENTS

**1.1. Defined Terms.** For purposes of this Plan, the following terms shall have the meanings specified in this Section 1.1 (such meanings to be equally applicable to both the singular and the plural, and the masculine, feminine and neuter, regardless of how stated):

“Administrative Expense Claim” shall mean a Claim that is allowed under Section 503(b) of the Bankruptcy Code and that is entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, without limitation: (a) fees and expenses of Professionals allowed pursuant to an Order of the Bankruptcy Court; and (b) all fees and charges assessed against the Estates pursuant to 28 U.S.C. § 1930.

“Administrative Expense Claim Bar Date” shall have the meaning attributed to this phrase in Article IV, Section 4.2(d) of the Plan.

“Allowed . . . Claim” shall mean a Claim against a Debtor:

(a) as is listed in the Schedules filed in such Debtor’s Bankruptcy Case, provided that the Claim is not listed in the Schedules as disputed, contingent or unliquidated;

(b) as is stated in a proof of Claim which is filed before the expiration of the applicable Bar Date and either (i) no objection to the allowance thereto, or application to estimate, equitably subordinate or otherwise limit recovery, has been made on or before any applicable deadline set forth in this Plan, or (ii) if an objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery has been interposed, the extent to which such Claim has been Allowed (whether in whole or in part) by a Final Order either as a result of suit or by settlement agreement;

(c) as is arising from the recovery of property under Section 550 or 553 of the Bankruptcy Code to the extent allowed under Section 502(h) of the Bankruptcy Code;

(d) as is allowed pursuant to a Final Order or a settlement agreement authorized to be entered into in this Plan; or

(e) that is a Post-Effective Date Estate Administration Claim that is allowed pursuant to a Final Order.

“Allowed . . . Interest” shall mean an Equity Interest in a Debtor:

(a) as is designated in the List of Equity Security Holders filed in such Debtor’s Bankruptcy Case, provided that such Equity Interest is not listed as disputed or contingent;

(b) as stated in a proof of Equity Interest which is filed prior to the expiration of the Equity Security Bar Date and to which no objection to the allowance thereof has been interposed; or

(c) as is allowed pursuant to a Final Order or a settlement agreement authorized to be entered into in this Plan.

“Avoidance Actions” shall mean Causes of Action arising or held by any of the Estates under Sections 502, 510, 541, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code, or under related or incorporated state or federal statutes and common law, including fraudulent transfer laws.

“Ballot” shall mean each of the ballot forms for voting to accept or reject this Plan distributed to all those Persons entitled to vote on the Plan as provided for in Articles II, III and V hereof.

“Bankruptcy Case” shall mean the Chapter 11 case of a particular Debtor pending in the Bankruptcy Court.

“Bankruptcy Cases” shall mean collectively the above-captioned Chapter 11 cases pending in the Bankruptcy Court that are being jointly administered by the Bankruptcy Court, including the Bankruptcy Cases of the Consolidated Legacy Debtors administered under Bankruptcy Case No. 11-35082.

“Bankruptcy Code” shall mean title 11 of the United States Code, as amended from time to time, as applicable to the Bankruptcy Cases.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Utah in which the Bankruptcy Cases are pending and, to the extent of any reference under 28 U.S.C. § 157, the unit of such District Court specified pursuant to 28 U.S.C. § 151.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075, and any local rules of the Bankruptcy Court.

“Bar Date” shall mean any deadline to file an application for allowance of or proof of Claims or Equity Interests established in the Bankruptcy Cases or in this Plan, including without limitation the Claim Bar Date, the Equity Security Bar Date, the Administrative Expense Claim Bar Date, the Professional Administrative Expense Claim Bar Date, and the Contract Rejection Claim Bar Date.

“Business Day” shall mean any day other than a Saturday, Sunday or legal holiday recognized in the State of Utah.

“CAK” shall mean Castle Arch Kingman, LLC, a Consolidated Legacy Debtor.

“CAOP I” shall mean Castle Arch Opportunity Partners I, LLC, a debtor in the jointly administered Bankruptcy Cases under Case No. 11-35240.

“CAOP I Common Interest” shall mean an Equity Interest that is issued as common stock or units in CAOP I.

“CAOP I Preferred Interest” shall mean an Equity Interest that is based on a Preferred Unit in CAOP I.

“CAOP I Trust” shall mean the CAOP I Liquidating Trust established by the CAOP I Trust Agreement.

“CAOP I Trust Agreement” shall mean the CAOP I Liquidating Trust Agreement included in the Plan Documents Supplement.

“CAOP I Trust Assets” shall mean all assets of CAOP I, other than its Retained Funds, transferred to the CAOP I Trust on the Effective Date and administered by the CAOP I Trust.

The CAOP I Trust Assets expressly includes the Individual Claims defined in Section 6.4 of Article VI of this Plan.

“CAOP I Trust Beneficiaries” shall mean holders of Allowed General Unsecured Claims and Allowed CAOP I Preferred Interests provided beneficial interests in the CAOP I Trust pursuant to the Plan and the CAOP I Trust Agreement.

“CAOP I Trustee” shall mean D. Ray Strong, the Person who is the trustee of the CAOP I Trust pursuant to the CAOP I Trust Agreement.

“CAOP II” shall mean Castle Arch Opportunity Partners II, LLC, a debtor in the jointly administered Bankruptcy Cases under Case No. 11-35241.

“CAOP II Common Interest” shall mean an Equity Interest that is issued as common stock or units in CAOP II.

“CAOP II Preferred Interest” shall mean an Equity Interest that is based on a Preferred Unit in CAOP II.

“CAOP II Trust” shall mean the CAOP II Liquidating Trust established by the CAOP II Trust Agreement.

“CAOP II Trust Agreement” shall mean the CAOP II Liquidating Trust Agreement included in the Plan Documents Supplement.

“CAOP II Trust Assets” shall mean all assets of CAOP II, other than its Retained Funds, transferred to the CAOP II Trust on the Effective Date and administered by the CAOP II Trust. The CAOP II Trust Assets expressly includes the Individual Claims defined in Section 6.4 of Article VI of this Plan.

“CAOP II Trust Beneficiaries” shall mean holders of Allowed General Unsecured Claims and Allowed CAOP II Preferred Interests provided beneficial interests in the CAOP II Trust pursuant to the Plan and the CAOP II Trust Agreement.

“CAOP II Trustee” shall mean D. Ray Strong, the Person who is the trustee of the applicable CAOP II Trust pursuant to the CAOP II Trust Agreement.

“CAOP Debtors” shall mean collectively CAOP I and CAOP II.

“CAOP Managers” shall mean Castle Arch Opportunity Partners Managers, LLC or CAOP Managers, LLC, a Consolidated Legacy Debtor.

“CAOP Trust Agreements” shall mean collectively, the CAOP I Liquidating Trust Agreement and the CAOP II Liquidating Trust Agreement included in the Plan Documents Supplement.

“CAOP Trusts” shall mean collectively the CAOP I Trust and the CAOP II Trust.

“CAREIC” shall mean Castle Arch Real Estate Investment Company, LLC, a Consolidated Legacy Debtor.

“CAREIC Affiliate” shall mean the Debtor Affiliates and Non-Debtor Affiliates, and includes without limitation all Entities (a) for which CAREIC served as manager prior to the Petition Date, and/or (b) of which CAREIC is a controlling Equity Security Holder.

“CAS” shall mean Castle Arch Smyrna, LLC, a Consolidated Legacy Debtor.

“CASDF” shall mean Castle Arch Secured Development Fund, LLC, a Consolidated Legacy Debtor.

“CASV” shall mean Castle Arch Star Valley, LLC, a Consolidated Legacy Debtor.

“Cash” shall mean lawful currency of the United States of America (including wire transfers, cashier’s checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks and money orders).

“Cash Management Order” shall mean that *Order Granting Emergency Motion by D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC Seeking Approval of Proposed Use of Cash on an Interim Basis* [Docket No. 233], that *Order Granting Motion By D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC Seeking Approval of Proposed Cash Management Plan* [Docket No. 258] and any other Order related to the management of Cash by the Trustee or Management Fees entered by the Bankruptcy Court prior to the Confirmation Hearing.

“Causes of Action” shall mean, without limitation, any and all actions, causes of action, defenses, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, Claims or proceedings to recover money or property and demands of any nature whatsoever, whether known or unknown, in law, equity or otherwise, including, without limitation, Avoidance Actions, actions for subordination of any kind, including under 11 U.S.C. §§ 506 and 510, actions under common law, including but not limited to actions for disgorgement, fraud of any kind, bad faith, breach of any duty, mismanagement, unjust enrichment, breach of contract, negligence, any Claim arising from or relating to any Equity Securities, and any Claim that any Investor may have arising under state or federal securities laws.

“Claim” shall mean a claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without limitation (i) any right to payment, whether or not such right is reduced to judgment, and whether or not such right is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) any right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to



judgment, or is fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

“Claim Bar Date” shall mean: (i) February 21, 2012 with respect to a Claim asserted against any of the Debtors other than a Claim of a Governmental Unit; and (ii) April 16, 2012 with respect to a Claim of a Governmental Unit (including any District) against any of the Debtors.

“Class” shall mean those classes designated in Article V of this Plan.

“Collateral” shall mean any property or interest in property of any one of the Debtors’ Estates subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

“Committee” shall mean the Official Unsecured Creditors’ Committee that was appointed in CAREIC’s Bankruptcy Case, Case No. 11-35082.

“Committee Member” shall mean those Persons who have been appointed as members of the Committee.

“Committee Professionals” shall mean those Professionals employed by the Committee.

“Confirmation Date” shall mean the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket in the Bankruptcy Cases.

“Confirmation Hearing” shall mean May 13, 2013 at 2:00 p.m. (Mountain Time), or any date to which the Bankruptcy Court continues said date on the record without the need for further notice.

“Confirmation Order” shall mean the order of the Bankruptcy Court confirming the Plan pursuant to the provisions of the Bankruptcy Code, any Findings of Fact and Conclusions of Law related to the same, and any supplementary orders of the Bankruptcy Court issued in furtherance of the Plan.

“Conflicts Referee” shall mean the Person appointed pursuant to the Liquidating Trust Agreements and as referenced in Article VI, Section 6.8 of this Plan.

“Consolidated Legacy Debtors” shall mean CAREIC, CAK, CAOP Managers, CAS, CASDF and CASV.

“Consolidation Order” shall mean the *Order Granting Chapter 11 Trustee’s Motion to Substantively Consolidate CAOP Managers, LLC; Castle Arch Kingman, LLC; Castle Argh Smyrna, LLC; Castle Arch Secured Development Fund, LLC; Castle Arch Star Valley, LLC; and*

*Castle Arch Real Estate Investment Company, LLC* entered by the Bankruptcy Court in the Bankruptcy Cases on February 8, 2013 as Docket No. 590.

“Contingent or Unliquidated Claim” shall mean any Claim for which a proof of Claim has been filed with the Bankruptcy Court but which was not filed in a sum certain, or which has not occurred and is dependent upon a future event that has not occurred or may never occur, and which has not been Allowed.

“Contract Rejection Claim Bar Date” shall have the meaning attributed to it in Article VIII, Section 8.2 of the Plan.

“Debtor” shall mean CAK, CAOP I, CAOP II, CAOP Managers, CAREIC, CAS CASDF, or CASV.

“Debtor Affiliate” shall mean a Debtor, other than CAREIC.

“Debtors” shall mean collectively CAK, CAOP I, CAOP II, CAOP Managers, CAREIC, CAS, CASDF and CASV.

“Disallowed . . . Claim” shall mean a Claim against a Debtor:

(a) that is listed in the Schedules in such Debtor’s Bankruptcy Case as unliquidated, disputed or contingent for which no proof of Claim has been filed prior to a Bar Date;

(b) that is for interest after the Petition Date;

(c) that is disallowed under Section 502(d) of the Bankruptcy Code;

(d) that is asserted in an amount greater than an amount fixed pursuant to a Final Order or pursuant to a settlement agreement that is authorized to be entered into in this Plan; or

(e) that is disallowed as provided for in any Final Order.

“Disallowed . . . Interest” shall mean an Equity Interest in a Debtor:

(a) that is not listed on the List of Equity Security Holders filed in such Debtor’s Bankruptcy Case, or that is designated in such List of Equity Security Holders as an Equity Interest that is disputed or contingent for which no proof of Interest has been filed prior to the Equity Security Bar Date;

(b) that is asserted in an amount greater than the Investor Interest of the holder of the Equity Interest;

(c) that is asserted in an amount greater than an amount fixed pursuant to a Final Order or pursuant to a settlement agreement that is authorized to be entered into in this Plan; or

(d) that is disallowed as provided for in any Final Order.

“Disclosure Statement” shall mean the disclosure statement relating to the Plan, including, without limitation, all Exhibits and schedules thereto, in the form approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code and any amendments thereto.

“Disclosure Statement Exhibit” shall mean the Exhibits attached to the Disclosure Statement, if any, which are incorporated in the Disclosure Statement and this Plan by reference.

“Disputed . . . Claim” shall mean a Claim against a Debtor which is not an Allowed Claim, including without limitation, any Claim:

(a) that is listed in the Schedules as unliquidated, disputed or contingent;

(b) for which no proof of Claim has been filed prior to an applicable Bar Date and that is listed in the Schedules of such Debtor as unliquidated, disputed or contingent;

(c) if a proof of Claim has been filed, a Claim as to which a timely objection, adversary proceeding, request for estimation, or request to equitably subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, has been made, or which is otherwise disputed by the Trustee in accordance with applicable law, which objection, adversary proceeding, request for estimation, action to limit recovery or dispute has not been withdrawn or determined by Final Order; or

(d) a Claim which is a Contingent or Unliquidated Claim.

“Disputed . . . Interest” shall mean an Equity Interest in a Debtor that is not an Allowed Interest, including without limitation, an Equity Interest that is in an amount greater than an Investor Interest and an Equity Interest in a Debtor:

(a) designated as disputed or contingent in the List of Equity Security Holders filed in a Debtor’s Bankruptcy Case;

(b) to which an objection to the allowance thereof has been filed on or before the date set forth in Article VII, Section 7.1 of the Plan; or

(c) which is disallowed by Final Order.

“Disputed Claims Reserve” shall have the meaning set forth in Article VII, Section 7.4.1 of the Plan.

“Distribution” shall mean any distribution to a holder of an Allowed Claim or Allowed Equity Interest under the Plan or a Liquidating Trust Agreement.

“Distribution Record Date” shall mean the Confirmation Date.

“Effective Date” shall mean the date which is 45 days after the Confirmation Date, or if such date is not a Business Day, the next succeeding Business Day; *provided, however*, that if, as of such date, all conditions precedent to the occurrence of the Effective Date set forth in Article IX, Section 9.2 of the Plan have not been satisfied or waived, then the first Business Day immediately following the day upon which all such conditions have been satisfied or waived.

“Equity Interest” means an Equity Security in a Debtor limited to the Investor Interest.

“Equity Security” shall have the meaning set forth in Section 101(16) of the Bankruptcy Code with regard to CAREIC or any CAREIC Affiliate, and includes Consolidated Legacy Debtor Common Interests, Consolidated Legacy Debtor Preferred Interests, CAOP I Common Interests, CAOP I Preferred Interests, CAOP II Common Interests, and CAOP II Preferred Interests.

“Equity Security Bar Date” shall mean April 20, 2012, the date set by the Bankruptcy Court for Equity Security Holders to file a proof of Equity Interest against a Debtor.

“Equity Security Holder” shall have the meaning set forth in Section 101(17) of the Bankruptcy Code.

“Estate” or “Estates” shall mean (a) the bankruptcy estate created for each Debtor in these Bankruptcy Cases pursuant to Section 541 of the Bankruptcy Code, (b) collectively, the bankruptcy estates created for each of the Debtors pursuant to Section 541 of the Bankruptcy Code, and (c) the Legacy Consolidated Estate.

“Final Decree” shall mean a Final Order of the Court closing any one or all of the Bankruptcy Cases.

“Final Order” shall mean an order or judgment which has not been reversed, stayed, modified or amended and, as to which (i) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending, or (ii) if appeal, review, reargument or certiorari of the order has been sought, the order has been affirmed or the request for review, reargument or certiorari has been denied and the time to seek a further appeal, review, reargument or certiorari has expired, and as a result of which such order shall have become final and nonappealable in accordance with applicable law; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

“General Unsecured Claim” shall mean a Claim that is not (a) a Secured Tax Claim, (b) a Secured Claim, or (c) a Claim entitled to priority of payment under Section 507 of the Bankruptcy Code, including an Administrative Expense Claim, Priority Tax Claim and a Priority Unsecured Claim.

“Governmental Unit” shall have the meaning attributed to it in Section 101(27) of the Bankruptcy Code.

“Insider” shall have the meaning attributed to it in Section 101(31) of the Bankruptcy Code and all applicable law interpreting the same, including but not limited to officers and directors of any Debtor, and any Person who managed or controlled any Debtor, whether before or after the Petition Date prior to the appointment of the Trustee.

“Investor” shall mean a Person who has obtained Equity Securities in a Debtor or CAREIC Affiliate.

“Investor Interest” shall mean the interest of an Equity Security Holder against a Debtor, limited to the amount of the Equity Security Holder’s unpaid Principal Investment with that Debtor, less any Cash received by such Holder.

“Legacy Common Interest” shall mean an Equity Interest that is issued as common stock or units in any one of the Consolidated Legacy Debtors.

“Legacy Consolidated Estate” shall mean the Estate of the Consolidated Legacy Debtors as a result of the Consolidation Order.

“Legacy Preferred Interest” shall mean an Equity Interest that is based on a Preferred Unit in any one of the Consolidated Legacy Debtors.

“Legacy Trust” shall mean the Trust established pursuant to the Plan and that certain Legacy Trust Agreement.

“Legacy Trust Agreement” shall mean the Legacy Liquidating Trust Agreement included in the Plan Documents Supplement establishing the Legacy Trust.

“Legacy Trust Assets” shall mean all assets of the Consolidated Legacy Debtors, other than the Retained Funds, but including Assigned Litigation Claims, transferred to the Legacy Trust on the Effective Date and administered by the Legacy Trust. The Legacy Trust Assets expressly includes the Individual Claims defined in Section 6.4 of Article VI of this Plan.

“Legacy Trust Beneficiaries” shall mean (a) holders of Allowed Administrative Expense Claims and holders of Claims for Post-Effective Date Administration Costs who have agreed that their Claims will not be paid from Consolidated Legacy Debtors’ Reserved Funds, (b) holders of Allowed General Unsecured Claims against the Consolidated Legacy Debtors, and (c) holders of

Allowed Legacy Preferred Interests, provided beneficial interests in the Legacy Trust pursuant to the Plan and the Legacy Trust Agreement.

“Legacy Trustee” shall mean D. Ray Strong, the Person who is the trustee of the Legacy Trust pursuant to the Legacy Trust Agreement.

“Lien” shall have the meaning set forth in Section 101(37) of the Bankruptcy Code; *except that* a Lien that has been avoided in accordance with Section 544, 545, 546, 547, 548, 549 or 553 of the Bankruptcy Code or that is not allowed under Section 506 of the Bankruptcy Code shall not constitute a Lien.

“Liquidating Trust Agreements” shall mean collectively the Legacy Trust Agreement, the CAOP I Trust Agreement, and the CAOP II Trust Agreement.

“Liquidating Trust Asset” shall mean any asset of a Debtor transferred to any of the Liquidating Trusts.

“Liquidating Trustee” shall mean collectively D. Ray Strong, as the Legacy Trustee, the CAOP I Trustee and the CAOP II Trustee under the Liquidating Trust Agreements.

“Liquidating Trusts” shall mean collectively the Legacy Trust, the CAOP I Trust, and the CAOP II Trust.

“Management Fees” shall mean those fees and expenses incurred by CAREIC, CAOP Managers, or the Legacy Consolidated Estate for management of any CAREIC Affiliate that are authorized by any agreement or order, or allowed under any applicable law.

“Net CAOP I Trust Assets” shall mean the CAOP I Trust Assets, *less* any and all fees, costs and expenses of the CAOP I Trust, including without limitation the fees of the CAOP I Trustee and any professional employed by the CAOP I Trustee, the costs of administering the CAOP I Trust Assets, and any taxes required to be paid by the CAOP I Trust.

“Net CAOP II Trust Assets” shall mean the CAOP II Trust Assets, *less* any and all fees, costs and expenses of the CAOP II Trust, including without limitation the fees of the CAOP II Trustee and any professional employed by the CAOP II Trustee, the costs of administering the CAOP II Trust Assets, and any taxes required to be paid by the CAOP II Trust.

“Net Legacy Liquidation Proceeds” shall mean:

(a) as to Allowed General Unsecured Claims in Class A4 of the Plan, the proceeds from the liquidation of the Legacy Trust Assets, *less* (i) payment in full of all Allowed Professional Administrative Expense Claims and Post-Effective Date Estate Claims against the Legacy Consolidated Estate, and (ii) payment of any and all fees, costs and expenses of the Legacy Trust, including without limitation the fees of the Legacy Trustee and any professional

employed by the Legacy Trustee, any and all costs of administering and liquidating the Legacy Trust Assets, and any taxes required to be paid by the Legacy Trust;

(b) as to Allowed Legacy Preferred Interests in Class A5 of the Plan, the proceeds from the liquidation of the Legacy Trust Assets, *less* (i) payment in full of all Allowed Professional Administrative Expense Claims and Post-Effective Date Estate Claims against the Legacy Consolidated Estate, (ii) payment of any and all fees, costs and expenses of the Legacy Trust, including without limitation the fees of the Legacy Trustee and any professional employed by the Legacy Trustee any and all costs of administering and liquidating the Legacy Trust Assets, and any taxes required to be paid by the Legacy Trust, and (iii) payment in full of all Allowed General Unsecured Claims in Class A4 of the Plan; and

(c) as to Allowed Legacy Common Interests in Class A6, the proceeds from the liquidation of the Legacy Trust Assets, *less* (i) payment in full of all Allowed Professional Administrative Expense Claims and Post-Effective Date Estate Claims against the Legacy Consolidated Estate, (ii) payment of any and all fees, costs and expenses of the Legacy Trust, including without limitation the fees of the Legacy Trustee and any professional employed by the Legacy Trustee, any and all costs of administering and liquidating the Legacy Trust Assets, and any taxes required to be paid by the Legacy Trust, (iii) payment in full of all Allowed General Unsecured Claims in Class A4 of the Plan, and (iv) payment in full of all Allowed Legacy Preferred Interests in Class A5 of the Plan.

“Non-Debtor Affiliate” shall mean a CAREIC Affiliate that is not a Debtor.

“Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated association or organization, Governmental Unit or political subdivision thereof.

“Petition Date” shall mean October 17, 2011 as to CAREIC and CASV, and October 20, 2011 as to CAK, CAOP I, CAOP II, CAOP Managers, CAS and CASDF.

“Plan” shall mean this Plan of Liquidation as to any of the Debtors, including, without limitation, any and all Exhibits annexed hereto, any and all documents incorporated herein by reference, the Plan Documents Supplement, either in their present form or as they may be altered, amended, or modified at any time prior to or as part of the Confirmation Hearing.

“Plan Documents Supplement” shall mean the compilation of the forms and documents as specified in and required to be filed with the Bankruptcy Court in accordance with Section 1.3 of this Article I of the Plan.

“Post-Effective Date Estate Administration Claims” shall mean the actual, necessary and reasonable fees and costs of the Trustee as estate representative related to administering the Legacy Consolidated Estate or the Estate of either CAOP Debtor as required under Article VI, Sections 6.6.1 and 6.6.2 of the Plan, including fees and costs incurred by the Trustee or professionals employed by the Trustee after the Effective Date. For the sake of clarity, these

Post-Effective Date Estate Administration Costs are not the fees and costs associated with any of the Liquidating Trusts.

“Preferred Unit” shall mean a preferred unit provided as an Equity Security by any one of the Debtors to an Equity Security Holder.

“Principal Investment” shall mean the total Cash remitted by an Equity Security Holder to a Debtor prior to the Petition Date to obtain an Equity Security in the Debtor.

“Priority Tax Claims” shall mean any Claim of a Governmental Unit entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

“Pro Rata” shall mean with reference to any Distribution on account of any Allowed Claim or an Allowed Equity Interest in any Class, a Distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim or Allowed Equity Interest bears to the aggregate amount of all Allowed Claims or Allowed Equity Interests in the applicable Class.

“Priority Unsecured Claims” shall mean any Claim that is entitled to priority under Section 507(a) of the Bankruptcy Code, other than Priority Tax Claims and Administrative Expense Claims.

“Professional Administrative Expense Claim Bar Date” shall have the meaning attributed to this phrase in Article IV, Section 4.2(e) of the Plan.

“Professionals” shall mean (a) the Trustee, or (b) those Persons employed pursuant to an order of the Bankruptcy Court in accordance with Sections 327 and 1103 of the Bankruptcy Code and to be compensated for services pursuant to Sections 327, 328, 329, 330, 331 and 503 of the Bankruptcy Code, including but not limited to Committee Professionals, Professionals employed by the Debtors, and Professionals employed by the Trustee.

“Reserved Funds” shall mean Cash of a Debtor existing on the Effective Date or assets or proceeds of any asset of a Debtor expressly excluded as a Liquidating Trust Asset.

“Retained Claims and Actions” shall have the meaning set forth in Article VI, Section 6.9 of the Plan.

“Schedules” shall mean the schedules of assets and liabilities filed by a Debtor under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules may have been or may be supplemented or amended from time to time.

“Secured Claim” shall mean any Claim, other than a Secured Tax Claim, that is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with Section 506(a) of the Bankruptcy Code, or, in the event that such Claim is a claim of setoff under Section 553 of the Bankruptcy Code, to the extent of such setoff.



“Secured Tax Claim” shall mean a Claim of a Government Unit against a Debtor to the extent of the value of any interest in Collateral securing such Claim, as determined by the Bankruptcy Court pursuant to Section 506(a) of the Bankruptcy Code.

“Trustee” shall mean D. Ray Strong in his capacity as Chapter 11 Trustee of CAREIC or the Consolidated Legacy Debtors, and as manager of the CAREIC Affiliates, and as estate representative of the Debtors after the Confirmation Date.

## **1.2. Rules of Construction.**

The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the terms of this Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular Section, sub-Section or clause contained in the Plan.

## **1.3. Plan Documents Supplement.**

The forms of the following documents are or will be contained in a separate Plan Documents Supplement that will be filed with the Bankruptcy Court as provided herein and incorporated in this Plan by reference:

### **1.3.1. The Legacy Trust Agreement.**

The Legacy Trust Agreement will be filed with the Bankruptcy Court by the Trustee and served on counsel for the Debtors, the Committee and the United States Trustee, at least twenty (20) days prior to the commencement of the Confirmation Hearing.

### **1.3.2. The CAOP Trust Agreements.**

The CAOP Trust Agreements will be filed with the Bankruptcy Court by the Trustee and served on counsel for the Debtors, the Committee and the United States Trustee, at least twenty (20) days prior to the commencement of the Confirmation Hearing.

### **1.3.3. Exhibits.**

All Exhibits to the Plan, whether now attached or incorporated by reference at the Confirmation Hearing, and all documents contained in the Plan Documents Supplement as may be amended from time to time are incorporated into and are a part of the Plan as if set forth in full herein.

## ARTICLE II

### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

#### **2.1. Unclassified Claims.**

Pursuant to Section 1123(a)(1) of the Bankruptcy Code, Allowed Administrative Expense Claims and Allowed Priority Tax Claims are not placed into Classes that are entitled to vote to accept or reject this Plan; instead, such Claims are “unclassified,” and the holders of such Claims do not vote on the Plan because they are entitled to specific treatment under the Bankruptcy Code. As such, the Trustee has not placed these Claims in a Class. The respective treatment of these Claims under the Plan for each Debtor is set forth in Article IV of the Plan.

#### **2.2. Classified Claims.**

Pursuant to Section 1123(a)(1) of the Bankruptcy Code, the Plan must classify, with certain exceptions discussed below, all Claims and Equity Interests, and such classification is for all purposes relating to the Plan, including voting on, confirmation of, and distributions pursuant to the Plan. A Claim or Equity Interest is classified in a particular Class only to the extent that: (a) the Claim or Equity Interest falls with the description of that Class; and (b) it has not already been paid, released or otherwise satisfied before the Effective Date. An Allowed Claim or Allowed Equity Interest may be apportioned and classified in more than one Class to the extent if portions of the Claim or Equity Interest fall within the description of several different Classes.

##### **2.2.1. The Consolidated Legacy Debtors.**

Pursuant to the Consolidation Order, the previously separate Estates of the Consolidated Legacy Debtors are substantively consolidated and are treated as the single Legacy Consolidated Estate. Accordingly, holders of Allowed Claims against or Allowed Equity Interests in any one of the Consolidated Legacy Debtors are treated for all purposes, including but not limited to for allowance, voting on and Distribution under the Plan or the Legacy Trust, as being Claims against or Equity Interests in the Legacy Consolidated Estate. Treatment of Allowed Claims against and Allowed Equity Interests in the Consolidated Legacy Debtors is provided for in Article V, Section 5.1 of the Plan.

##### **2.2.2. The CAOP Debtors.**

As set forth in Article VI, Section 6.3 of the Plan, the Estates of the CAOP Debtors will not be substantively consolidated. Accordingly, holders of Allowed Claims against or Allowed Equity Interests in any one CAOP Debtor shall have their Claims or Equity Interests allowed and treated for all purposes, including but not limited to for allowance, voting on and Distribution under the Plan or a CAOP Trust, as against that CAOP Debtor’s particular Estate. Treatment of Allowed Claims against and Allowed Equity Interests in CAOP I is provided for in Article V, Section 5.2 of the Plan. Treatment of Allowed Claims against and Allowed Equity Interests in CAOP II is provided for in Article V, Section 5.3 of the Plan.

**2.3. Summary of Classes.**

Other than the unclassified Claims discussed in Section 2.1 of this Article II of the Plan, Claims and Equity Interests are classified herein as follows:

<b><u>CONSOLIDATED LEGACY DEBTORS</u></b>		
Class A1	Allowed Secured Tax Claims	Unimpaired-Nonvoting
Class A2	Allowed Secured Claims	Unimpaired-Nonvoting
Class A3	Allowed Priority Unsecured Claims	Unimpaired-Nonvoting
Class A4	Allowed General Unsecured Claims	Impaired-Voting
Class A5	Allowed Legacy Preferred Interests	Impaired-Voting
Class A6	Allowed Legacy Common Interests	Impaired-Nonvoting

<b><u>CAOP I</u></b>		
Class B1	Allowed Secured Tax Claims	Unimpaired-Nonvoting
Class B2	Allowed Secured Claims	Unimpaired-Nonvoting
Class B3	Allowed Priority Unsecured Claims	Unimpaired-Nonvoting
Class B4	Allowed General Unsecured Claims	Impaired-Voting
Class B5	Allowed CAOP I Preferred Interests	Impaired-Voting
Class B6	Allowed CAOP I Common Interests	Impaired-Nonvoting

<b><u>CAOP II</u></b>		
Class C1	Allowed Secured Tax Claims	Unimpaired-Nonvoting
Class C2	Allowed Secured Claims	Unimpaired-Nonvoting
Class C3	Allowed Priority Unsecured Claims	Unimpaired-Nonvoting

Class C4	Allowed General Unsecured Claims	Impaired-Voting
Class C5	Allowed CAOP II Preferred Interests	Impaired-Voting
Class C6	Allowed CAOP II Common Interests	Impaired-Nonvoting

### **ARTICLE III**

#### **VOTING ON, ACCEPTANCE, AND REJECTION OF THE PLAN**

##### **3.1. Voting Classes and Acceptance of Plan.**

Each holder of an Allowed Claim in Classes A4, B4 and C4 of the Plan and each holder of an Allowed Equity Interest in Classes A5, B5 and C5 of the Plan are entitled to vote to accept or reject the Plan as a member of an impaired Class which will retain or receive property under the Plan. A Person holding an Allowed Claim or Allowed Equity Interest in more than one Class is entitled to vote in each Class. Persons who are holders of Allowed Claims or Allowed Equity Interests in voting Classes should vote on a duly executed and delivered Ballot as provided in such order as is entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

##### **3.2. Non-Voting Classes.**

Classes A1-A3, B1-B3 and C1-C3 are not impaired under the Plan and, therefore, under Section 1126(f) of the Bankruptcy Code, holders of Allowed Claims in these Classes, if any, are deemed to accept the Plan. Accordingly, the Trustee will not solicit votes on the Plan from the holders of Allowed Claims in these Classes, if any.

Holders of Allowed Legacy Common Interests in the Consolidated Legacy Debtors, holders of Allowed CAOP I Common Interests, and holders of Allowed CAOP II Common Interests in Classes A6, B6 and C6 are not entitled to receive or retain any property under the Plan and, therefore, under Section 1126(g) of the Bankruptcy Code, holders of Allowed Equity Interests in these Classes are deemed to have rejected the Plan. Accordingly, the Trustee will not solicit votes on the Plan from the holders of Allowed Equity Interests in these Classes.

##### **3.3. Voting Rights of Holders of Disputed Claims.**

Pursuant to Bankruptcy Rule 3018(a), a Disputed Claim or Disputed Equity Interest will not be counted for purposes of voting on the Plan to the extent it is Disputed, unless the Court enters an order temporarily allowing the Disputed Claim for voting purposes under Bankruptcy Rule 3018(a). Such disallowance for voting purposes is without prejudice to the holder's right to seek to have its Disputed Claim or Disputed Equity Interest be determined to be an Allowed Claim or Allowed Equity Interest for purposes of Distribution under the Plan and a Liquidating Trust.

### **3.4. Nonconsensual Confirmation.**

If any impaired Class entitled to vote shall not accept the Plan pertinent to the Consolidated Legacy Debtors, CAOP I or CAOP II by the requisite statutory majorities provided in Section 1126(c) or (d) of the Bankruptcy Code, as applicable, or if any impaired Class is deemed to have rejected the Plan, the Trustee reserves the right (a) to confirm the Plan under Section 1129(b) of the Bankruptcy Code as to the Consolidated Legacy Debtors, CAOP I or CAOP II, as applicable, (b) to amend the Plan in accordance with Article XI, Section 11.7 of this Plan, to the extent necessary to obtain entry of a Confirmation Order as to the Consolidated Legacy Debtors, CAOP I or CAOP II, as applicable, and/or (c) to convert the applicable Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code.

## **ARTICLE IV**

### **TREATMENT OF UNCLASSIFIED CLAIMS –ALLOWED ADMINISTRATIVE EXPENSE CLAIMS AND ALLOWED PRIORITY TAX CLAIMS**

#### **4.1. Unclassified Claims.**

As discussed in Article II, Section 2.1, under Section 1123(a)(1) of the Bankruptcy Code, Allowed Administrative Expense Claims and Allowed Priority Tax Claims are not classified for the purposes of voting on, or receiving distributions under, the Plan. The holders of all such Claims do not vote on the Plan and are instead treated separately in accordance with applicable law as set forth in this Article IV.

#### **4.2. Administrative Expense Claims.**

(a) General. Except as otherwise agreed to by the holder of an Allowed Administrative Expense Claim and except as specifically provided for in this paragraph and in subsections (c) and (d) below, each such holder of an Allowed Administrative Expense Claim against a Debtor shall be paid in full in Cash on the later of: (i) the Effective Date, or (ii) within fifteen (15) Business Days of the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim.

(b) Legacy Consolidated Estate Administrative Claims—Beneficial Interest in Legacy Trust. Subsection (a) above applies to holders of Allowed Administrative Expense Claims against the Legacy Consolidated Estate. But, absent objection hereto, to the extent that the holder of an Allowed Administrative Expense Claim does not receive a Distribution on the later of the Effective Date or within fifteen (15) Business Days of the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, such holder of the Allowed Administrative Expense Claim agrees to and shall receive a beneficial interest in the Legacy Trust on account of such Claim and will receive a Distribution in accordance with this Plan and the Legacy Trust Agreement. No Distributions shall be made to holders of Allowed Claims or Allowed Interests in Classes A4-A6, until holders of Allowed Administrative Expense Claims holding a beneficial interest in the Legacy Trust have been paid in full.

(c) U.S. Trustee's Fees. The United States Trustee's quarterly fees shall be paid in full without prior approval pursuant to 28 U.S.C. § 1930 on or before the Effective Date from the Reserved Funds of the Legacy Consolidated Estate and the CAOP Debtors' respective Estates. Any dispute related to the amount of the fees shall be resolved by the Court at the Confirmation Hearing. Any post-Confirmation fees arising after the Effective Date shall be paid by the Legacy Trustee or a CAOP Trustee, as applicable, as a cost of administration of the relevant Liquidating Trust.

(d) Administrative Expense Bar Date and Procedures. Other than applications for allowance of Administrative Expense Claims made by Professionals and Committee Members, any and all applications for the allowance of Administrative Expense Claims shall be filed with the Bankruptcy Court and served on the Trustee, counsel for the Debtors, counsel for the Committee and the United States Trustee no later than thirty (30) days after the Effective Date, which shall be the "Administrative Expense Claim Bar Date." *Any holder of an Administrative Expense Claim to which the Administrative Expense Claim Bar Date applies who fails to file a request seeking to have its Claim allowed on or before said Administrative Expense Claim Bar Date shall be forever barred from seeking the allowance of its Administrative Expense Claim or any other Claim, and the Trustee, the Debtors, the Estates, the Legacy Consolidated Estate, the Liquidating Trustee, and the Liquidating Trusts shall be discharged of any obligation on such Claim or any other Claim related to the Administrative Expense Claim.*

(e) Professionals and Committee Members—Bar Dates and Procedures. Any and all applications for the allowance of Administrative Expense Claims made by or on behalf of Professionals or Committee Members under Sections 327, 328, 330, 331 and 503(b) of the Bankruptcy Code for services rendered before the Effective Date shall be filed with the Bankruptcy Court and served on the Trustee, counsel for the Debtors, counsel for the Committee and the United States Trustee no later than forty-five (45) days after the Effective Date, which shall be the "Professional Administrative Expense Claim Bar Date." *Any Professional to which this Professional Administrative Expense Claim Bar Date applies who fails to file a request to have its Claim allowed on or before said Professional Administrative Expense Bar Date shall be forever barred from seeking the allowance of its Administrative Expense Claim or any other Claim, and the Trustee, the Debtors, the Estates, the Legacy Consolidated Estate, the Liquidating Trustee, and the Liquidating Trusts shall be discharged of any obligation on such Claim or any other Claim related to the Administrative Expense Claim.*

#### **4.3. Priority Tax Claims.**

At the sole election of the Trustee, the holder of Allowed Priority Tax Claims against a Debtor shall be paid either (a) upon such terms as may be agreed to between the Trustee and such holder of an Allowed Priority Tax Claim, (b) in full in Cash from Reserved Funds of the applicable Debtor on the later of the Effective Date or within fifteen (15) Business Days of the date that such Priority Tax Claim becomes an Allowed Priority Tax Claim, or (c) in deferred Cash payments from Reserved Funds of the applicable Debtor to be agreed upon by the Trustee

and the holder of the Allowed Priority Tax Claim, not to exceed a period of five (5) years after the Petition Date.

## ARTICLE V

### TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

#### 5.1. Consolidated Legacy Debtors.

##### 5.1.1. Class A1 – Allowed Secured Tax Claims.

(a) Classification: Class A1 consists of all Allowed Secured Tax Claims against the Consolidated Legacy Debtors and the Legacy Consolidated Estate.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Holders of Allowed Secured Tax Claims shall retain their respective Liens on Collateral on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Tax Claims in the Collateral shall remain unaltered by the Plan even if the Collateral is a Legacy Trust Asset transferred to the Legacy Trust. Unless the Trustee or the Legacy Trust and the holder of the Allowed Secured Tax Claim agree to different treatment, each holder of an Allowed Secured Tax Claim shall be treated as follows at the sole discretion of the Trustee or the Legacy Trust:

(i) All Collateral securing the Allowed Secured Tax Claim shall be surrendered to the holder of the Allowed Tax Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the Legacy Trust and in full and complete settlement, release and discharge of such Allowed Secured Tax Claim; *provided, however*, that if the property securing an Allowed Secured Tax Claim has been lost or destroyed, the Trustee or the Legacy Trust shall provide notice of such fact to the holder of the Allowed Secured Tax Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision;

(ii) The holder of the Allowed Secured Tax Claim shall be paid in Cash the full amount of such Claim, in full and complete settlement, release and discharge thereof, either (x) on the Effective Date from the Reserved Funds, or (y) in regular installments in accordance with Section 1129(9)(D) from the assets of the Legacy Trust at intervals to be agreed to by the Legacy Trustee and the holder of the Allowed Secured Tax Claim; or

(iii) The Trustee or the Legacy Trust shall sell the Collateral securing the Allowed Secured Tax Claim, and pay the holder of the Allowed Secured Tax Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on

the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Tax Claim becomes an Allowed Secured Claim.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited

#### **5.1.2. Class A2 – Allowed Secured Claims.**

(a) Classification: Class A2 consists of all Allowed Secured Claims against the Consolidated Legacy Debtors and the Legacy Consolidated Estate.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Holders of Allowed Secured Claims shall retain their respective Liens on Collateral on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Claims in the Collateral shall remain unaltered by the Plan even if the Collateral is a Legacy Trust Asset transferred to the Legacy Trust. Unless the Trustee or the Legacy Trust and the holder of the Allowed Secured Claim agree to different treatment, each holder of an Allowed Secured Claim shall be treated as follows at the sole discretion of the Trustee or the Legacy Trust:

(i) All Collateral securing the Allowed Secured Claim shall be surrendered to the holder of the Allowed Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the Legacy Trust and in full and complete settlement, release and discharge of such Allowed Secured Claim; *provided, however*, that if the property securing an Allowed Secured Claim has been lost or destroyed, the Trustee or the Legacy Trust shall provide notice of such fact to the holder of the Allowed Secured Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision;

(ii) The holder of the Allowed Secured Claim shall be paid as soon as practicable after the Effective Date the full amount of its Allowed Secured Claim in Cash from the assets of the Legacy Trust in full and complete settlement, release and discharge of such Claim;

(iii) The Trustee or the Legacy Trust shall sell the Collateral securing the Allowed Secured Claim, and pay the holder of the Allowed Secured Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Claim becomes an Allowed Secured Claim; or



(iv) Notwithstanding any contractual provision or applicable law that entitles the holder of an Allowed Secured Claim to demand or receive payment of such Claim prior to the stated maturity of such Claim from and after the occurrence of a default, reinstate such Allowed Secured Claim and render it unimpaired in accordance with Section 1124(2) of the Bankruptcy Code.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited

### **5.1.3. Class A3 – Priority Unsecured Claims.**

(a) Classification: Class A3 consists of all Allowed Priority Unsecured Claims against the Consolidated Legacy Debtors and the Legacy Consolidated Estate.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: The legal, equitable and contractual rights of holders of Allowed Priority Unsecured Claims shall remain unaltered by the Plan. Unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed Priority Unsecured Claim shall receive on account of and in full and complete settlement, release and discharge of such Claim, payment in full in Cash from the Reserved Funds in the amount of such Allowed Priority Unsecured Claim on the later of (i) the Effective Date, or (ii) within fifteen (15) Business Days of the date such Unsecured Priority Claim becomes an Allowed Claim.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited.

### **5.1.4. Class A4 – General Unsecured Claims.**

(a) Classification: Class A4 consists of all Allowed General Unsecured Claims against the Consolidated Legacy Debtors and the Legacy Consolidated Estate.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Each holder of an Allowed General Unsecured Claim shall receive a beneficial interest in the Legacy Trust on the Effective Date on account of its Allowed Claim in accordance with this Plan and the Legacy Trust Agreement. Unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed General Unsecured Claim will receive, on account of such Claim and in full and complete settlement, release and

discharge of such Claim, a Distribution of a Pro Rata share of the Net Legacy Liquidation Proceeds in accordance with the Legacy Trust Agreement.

(d) Voting: This Class is impaired and pursuant to Section 1126 of the Bankruptcy Code, each holder of an Allowed Claim in this Class shall be entitled to vote to accept or reject the Plan and will be solicited to vote for the Plan.

#### **5.1.5. Class A5 – Allowed Legacy Preferred Interests.**

(a) Classification: Class A5 consists of all Allowed Legacy Preferred Interests.

(b) Allowance: Equity Interests in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Each holder of an Allowed Legacy Preferred Interest shall receive a beneficial interest in the Legacy Trust on the Effective Date on account of its Allowed Legacy Preferred Interest in accordance with this Plan and the Legacy Trust Agreement. Unless the Trustee and the holder of such Allowed Legacy Preferred Interest agree to different treatment, and provided that Allowed Claims in Class A4 are paid in full, each holder of an Allowed Legacy Preferred Interest will receive on account of that Interest and in full and complete settlement, release and discharge of such Interest, a Distribution of a Pro Rata share of the Net Legacy Liquidation Proceeds in accordance with the Legacy Trust Agreement. Distributions of the Net Legacy Liquidation Proceeds to holders of Allowed Legacy Preferred Interests through the Plan and the Legacy Trust shall be made based on a Distribution of \$1 in Cash for every one Preferred Unit held by such holder.

(d) Voting: This Class is impaired and pursuant to Section 1126 of the Bankruptcy Code, each holder of an Allowed Equity Interest in this Class shall be entitled to vote to accept or reject the Plan and will be solicited to vote for the Plan.

#### **5.1.6. Class A6 – Allowed Legacy Common Interests.**

(a) Classification: Class A6 consists of all Allowed Legacy Common Interests.

(b) Allowance: Equity Interests in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Each holder of an Allowed Legacy Common Interest in this Class shall not receive a beneficial interest in the Legacy Trust or any Distribution under the Plan or the Legacy Trust. In the unlikely event that all holders of Allowed Legacy Preferred Interests in Class A5 hereof receive Distributions paying such Allowed Interests in full, the Plan and the Legacy Trust Agreement shall be deemed amended to provide holders of Allowed Legacy Common Interests a beneficial interest in the Legacy Trust and each holder of an Allowed

Legacy Common Interest will receive on account of that Interest and in full and complete settlement, release and discharge of such Interest, a Distribution of a Pro Rata share of the Net Legacy Liquidation Proceeds. Distributions of the Net Legacy Liquidation Proceeds to holders of Allowed Legacy Common Interests through the Plan and the Legacy Trust shall be made based on a Distribution of \$1 in Cash for every one Common Unit held by such holder.

(d) Voting: This Class is impaired, but because the holders of Allowed Legacy Common Interests are not receiving a Distribution under the Plan, each holder thereof is deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code and is thus not entitled to vote to accept or reject the Plan. Accordingly, the Trustee will not solicit votes for the Plan from this Class.

## **5.2. CAOP I.**

### **5.2.1. Class B1 – Allowed Secured Tax Claims.**

(a) Classification: Class B1 consists of all Allowed Secured Tax Claims against CAOP I.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Holders of Allowed Secured Tax Claims shall retain their respective Liens on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Tax Claims shall remain unaltered by the Plan even if the Collateral is a CAOP I Trust Asset transferred to the CAOP I Trust. Unless the Trustee or the CAOP I Trust and the holder of the Allowed Secured Tax Claim agree to different treatment, each holder of an Allowed Secured Tax Claim shall be treated as follows at the sole discretion of the Trustee or the CAOP I Trust:

(i) All Collateral securing the Allowed Secured Tax Claim shall be surrendered to the holder of the Allowed Tax Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the CAOP I Trust and in full and complete settlement, release and discharge of such Allowed Secured Tax Claim; *provided, however*, that if the property securing an Allowed Secured Tax Claim has been lost or destroyed, the Trustee or the CAOP I Trust shall provide notice of such fact to the holder of the Allowed Secured Tax Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision;

(ii) The holder of the Allowed Secured Tax Claim shall be paid in Cash the full amount of such Claim, in full and complete settlement, release and discharge thereof, either (x) on the Effective Date from the Reserved Funds, or (y) in regular installments in accordance with Section 1129(9)(D) from the assets of the CAOP I Trust at intervals to be agreed to by the CAOP I Trustee and the holder of the Allowed Secured Tax Claim; or

(iii) The CAOP I Trust shall sell the Collateral securing the Allowed Secured Tax Claim, and pay the holder of the Allowed Secured Tax Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Tax Claim becomes an Allowed Secured Claim.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited.

### **5.2.2. Class B2 – Allowed Secured Claims.**

(a) Classification: Class B2 consists of all Allowed Secured Claims against CAOP I.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Holders of Allowed Secured Claims shall retain their respective Liens on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Claims shall remain unaltered by the Plan even if the Collateral is a CAOP I Trust Asset transferred to the CAOP I Trust. Unless the Trustee or the CAOP I Trust and the holder of the Allowed Secured Claim agree to different treatment, each holder of an Allowed Secured Claim shall be treated as follows at the sole discretion of the Trustee or the CAOP I Trust:

(i) All Collateral securing the Allowed Secured Claim shall be surrendered to the holder of the Allowed Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the CAOP I Trust and in full and complete settlement, release and discharge of such Allowed Secured Claim; *provided, however*, that if the property securing an Allowed Secured Claim has been lost or destroyed, the Trustee or the CAOP I Trust shall provide notice of such fact to the holder of the Allowed Secured Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision;

(ii) The holder of the Allowed Secured Claim shall be paid as soon as practicable after the Effective Date the full amount of its Allowed Secured Claim in Cash from the assets of the CAOP I Trust in full and complete settlement, release and discharge of such Claim;

(iii) The CAOP I Trust shall sell the Collateral securing the Allowed Secured Claim, and pay the holder of the Allowed Secured Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x)

the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Claim becomes an Allowed Secured Claim; or

(iv) Notwithstanding any contractual provision or applicable law that entitles the holder of an Allowed Secured Claim to demand or receive payment of such Claim prior to the stated maturity of such Claim from and after the occurrence of a default, reinstate such Allowed Secured Claim and render it unimpaired in accordance with Section 1124(2) of the Bankruptcy Code.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited.

### **5.2.3. Class B3 – Priority Unsecured Claims.**

(a) Classification: Class B3 consists of all Allowed Priority Unsecured Claims against CAOP I.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: The legal, equitable and contractual rights of holders of Allowed Priority Unsecured Claims shall remain unaltered by the Plan. Unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed Priority Unsecured Claim shall receive on account of and in full and complete settlement, release and discharge of such Claim, payment in full in Cash from the Reserved Funds in the amount of such Allowed Priority Unsecured Claim on the later of (i) the Effective Date, or (ii) within fifteen (15) Business Days of the date such Unsecured Priority Claim becomes an Allowed Claim.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited.

### **5.2.4. Class B4 – General Unsecured Claims.**

(a) Classification: Class B4 consists of all Allowed General Unsecured Claims against CAOP I.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: On the Effective Date, unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed General Unsecured Claim

will receive, on account of such Claim and in full and complete settlement, release and discharge of such Claim, at the Trustee's discretion (i) a Pro Rata Distribution on account of its Allowed General Unsecured Claim in Cash from CAOP I's Reserved Funds after satisfaction of all Allowed unclassified Claims and all Allowed Claims in Classes B1, B2 and B3, if any, and (ii) if such Allowed Claim is not paid in full from the Reserved Funds, a beneficial interest in the CAOP I Trust based on the unpaid portion of such holder's Allowed Claim and a Distribution of a Pro Rata share of the Net CAOP I Trust Assets in accordance with the CAOP I Trust Agreement.

(d) Voting: Claims in this Class are impaired and pursuant to Section 1126 of the Bankruptcy Code, each holder of an Allowed Claim in this Class shall be entitled to vote to accept or reject the Plan and will be solicited to vote for the Plan.

#### **5.2.5. Class B5 – Allowed CAOP I Preferred Interests.**

(a) Classification: Class B5 consists of all Allowed CAOP I Preferred Interests.

(b) Allowance: Equity Interests in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Each holder of an Allowed CAOP I Preferred Interest shall receive a beneficial interest in the CAOP I Trust on the Effective Date in accordance with the CAOP I Trust Agreement. Unless the Trustee and the holder of such Allowed CAOP I Preferred Interest agree to different treatment, and provided that Allowed Claims in Class B4 are paid in full, each holder of an Allowed CAOP I Preferred Interest will receive on account of that Interest and in full and complete settlement, release and discharge of such Interest, a Distribution of a Pro Rata share of the Net CAOP I Trust Assets. Distributions of the Net CAOP I Trust Assets to holders of Allowed CAOP I Preferred Interests through the Plan and the CAOP I Trust shall be made based on a Distribution of \$1 in Cash for every one Preferred Unit held by such holder.

(d) Voting: This Class is impaired and pursuant to Section 1126 of the Bankruptcy Code, each holder of an Allowed Equity Interest in this Class shall be entitled to vote to accept or reject the Plan and will be solicited to vote for the Plan.

#### **5.2.6. Class B6 – Allowed CAOP I Common Interests.**

(a) Classification: Class B6 consists of all Allowed CAOP I Common Interests.

(b) Treatment: Each holder of Allowed CAOP I Common Interest in this Class shall not receive a beneficial interest in the CAOP I Trust or any Distribution under the Plan or the CAOP I Trust. In the unlikely event that all holders of Allowed CAOP I Preferred Interests in Class B5 hereof receive Distributions paying such Allowed Interests in full, the Plan and the CAOP I Trust Agreement shall be deemed amended to provide each holder of an

Allowed CAOP I Common Interest a beneficial interest in the CAOP I Trust and for Net CAOP I Assets to be Distributed Pro Rata to each such holder in accordance with the CAOP I Trust Agreement and in full and complete settlement, release and discharge of such Interest. Distributions of the Net CAOP I Trust Assets to holders of Allowed CAOP I Common Interests through the Plan and the CAOP I Trust shall be made based on a Distribution of \$1 in Cash for every one Common Unit held by such holder.

(c) Voting: This Class is impaired, but because the holders of Allowed CAOP I Interests are not receiving a Distribution under the Plan, each holder of a CAOP I Common Interest is deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code and is thus not entitled to vote to accept or reject the Plan. Accordingly, the Trustee will not solicit votes for the Plan from this Class.

### **5.3. CAOP II.**

#### **5.3.1. Class C1 – Allowed Secured Tax Claims.**

(a) Classification: Class C1 consists of all Allowed Secured Tax Claims against CAOP II.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Holders of Allowed Secured Tax Claims shall retain their respective Liens on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Tax Claims shall remain unaltered by the Plan even if the Collateral is a CAOP II Trust Asset transferred to the CAOP II Trust. Unless the Trustee or the CAOP II Trust and the holder of the Allowed Secured Tax Claim agree to different treatment, each holder of an Allowed Secured Tax Claim shall be treated as follows at the sole discretion of the Trustee or the CAOP II Trust:

(i) All Collateral securing the Allowed Secured Tax Claim shall be surrendered to the holder of the Allowed Tax Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the CAOP II Trust and in full and complete settlement, release and discharge of such Allowed Secured Tax Claim; *provided, however*, that if the property securing an Allowed Secured Tax Claim has been lost or destroyed, the Trustee or the CAOP II Trust shall provide notice of such fact to the holder of the Allowed Secured Tax Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision;

(ii) The holder of the Allowed Secured Tax Claim shall be paid in Cash the full amount of such Claim, in full and complete settlement, release and discharge thereof, either (x) on the Effective Date from the Reserved Funds, or (y) in regular installments in accordance with Section 1129(9)(D) from the assets of the CAOP II Trust at intervals to be agreed to by the CAOP II Trustee and the holder of the Allowed Secured Tax Claim; or

(iii) The CAOP II Trust shall sell the Collateral securing the Allowed Secured Tax Claim, and pay the holder of the Allowed Secured Tax Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x) the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Tax Claim becomes an Allowed Secured Claim.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited.

### **5.3.2. Class C2 – Allowed Secured Claims.**

(a) Classification: Class C2 consists of all Allowed Secured Claims against CAOP II.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Holders of Allowed Secured Claims shall retain their respective Liens on and after the Effective Date, and the legal, equitable and contractual rights of holders of Allowed Secured Claims shall remain unaltered by the Plan even if the Collateral is a CAOP II Trust Asset transferred to the CAOP II Trust. Unless the Trustee or the CAOP II Trust and the holder of the Allowed Secured Claim agree to different treatment, each holder of an Allowed Secured Claim shall be treated as follows at the sole discretion of the Trustee or the CAOP II Trust:

(i) All Collateral securing the Allowed Secured Claim shall be surrendered to the holder of the Allowed Secured Claim as soon as practicable after the Effective Date, without representation or warranty by or recourse against the Estate or the CAOP II Trust and in full and complete settlement, release and discharge of such Allowed Secured Claim; *provided, however*, that if the property securing an Allowed Secured Claim has been lost or destroyed, the Trustee or the CAOP II Trust shall provide notice of such fact to the holder of the Allowed Secured Claim, the delivery of which notice shall constitute “surrender” of the property securing the Allowed Secured Claim for purposes of this provision;

(ii) The holder of the Allowed Secured Claim shall be paid as soon as practicable after the Effective Date the full amount of its Allowed Secured Claim in Cash from the assets of the CAOP II Trust in full and complete settlement, release and discharge of such Claim;

(iii) The CAOP II Trust shall sell the Collateral securing the Allowed Secured Claim, and pay the holder of the Allowed Secured Claim in full and complete settlement, release and discharge of such Claim from the sale proceeds thereof on the later of (x)



the closing date for such sale, or (y) fifteen (15) Business Days after the Secured Claim becomes an Allowed Secured Claim; or

(iv) Notwithstanding any contractual provision or applicable law that entitles the holder of an Allowed Secured Claim to demand or receive payment of such Claim prior to the stated maturity of such Claim from and after the occurrence of a default, reinstate such Allowed Secured Claim and render it unimpaired in accordance with Section 1124(2) of the Bankruptcy Code.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited.

### **5.3.3. Class C3 – Priority Unsecured Claims.**

(a) Classification: Class C3 consists of all Allowed Priority Unsecured Claims against CAOP II.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: The legal, equitable and contractual rights of holders of Allowed Priority Unsecured Claims shall remain unaltered by the Plan. Unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed Priority Unsecured Claim shall receive on account of and in full and complete settlement, release and discharge of such Claim, payment in full in Cash from CAOP II's Reserved Funds in the amount of such Allowed Priority Unsecured Claim on the later of (i) the Effective Date, or (ii) within fifteen (15) Business Days of the date such Unsecured Priority Claim becomes an Allowed Claim.

(d) Voting: Claims in this Class are unimpaired and, therefore, holders of such Claims in this Class are presumed to vote in favor of the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Accordingly, holders of Claims in this Class are not entitled to vote to accept or reject the Plan, and their vote will not be solicited.

### **5.3.4. Class C4 – General Unsecured Claims.**

(a) Classification: Class C4 consists of all Allowed General Unsecured Claims against CAOP II.

(b) Allowance: Claims in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: On the Effective Date, unless the Trustee and the holder of such Claim agree to different treatment, each holder of an Allowed General Unsecured Claim will receive, on account of such Claim and in full and complete settlement, release and discharge of such Claim, at the Trustee's discretion (i) a Pro Rata Distribution on account of its Allowed General Unsecured Claim in Cash from CAOP II's Reserved Funds after satisfaction of all Allowed unclassified Claims and all Allowed Claims in Classes C1, C2 and C3, if any, and (ii) if such Allowed Claim is not paid in full from the Reserved Funds, a beneficial interest in the CAOP II Trust based on the unpaid portion of such holder's Allowed Claim and a Distribution of a Pro Rata share of the Net CAOP II Trust Assets in accordance with the CAOP II Trust Agreement.

(d) Voting: This Class is impaired and pursuant to Section 1126 of the Bankruptcy Code, each holder of an Allowed Claim in this Class shall be entitled to vote to accept or reject the Plan and will be solicited to vote for the Plan.

#### **5.3.5. Class C5 – Allowed CAOP II Preferred Interests.**

(a) Classification: Class C5 consists of all Allowed CAOP II Preferred Interests.

(b) Allowance: Equity Interests in this Class shall be Allowed or Disallowed in accordance with Article VII of the Plan and all applicable law.

(c) Treatment: Each holder of an Allowed CAOP II Preferred Interest shall receive a beneficial interest in the CAOP II Trust on the Effective Date in accordance with the CAOP II Trust Agreement. Unless the Trustee and the holder of such Allowed CAOP II Preferred Interest agree to different treatment, and provided that Allowed Claims in Class C4 are paid in full, each holder of an Allowed CAOP II Preferred Interest will receive on account of that Interest and in full and complete settlement, release and discharge of such Interest, a Distribution of a Pro Rata share of the Net CAOP II Trust Assets. Distributions of the Net CAOP II Trust Assets to holders of Allowed CAOP II Preferred Interests through the Plan and the CAOP II Trust shall be made based on a Distribution of \$1 in Cash for every one Preferred Unit held by such holder.

(d) Voting: This Class is impaired and pursuant to Section 1126 of the Bankruptcy Code, each holder of an Allowed Equity Interest in this Class shall be entitled to vote to accept or reject the Plan and will be solicited to vote for the Plan.

#### **5.3.6. Class C6 – Allowed CAOP II Common Interests.**

(a) Classification: Class C6 consists of all Allowed CAOP II Common Interests.

(b) Treatment: Each holder of Allowed CAOP II Common Interest in this Class shall not receive a beneficial interest in the CAOP II Trust or any Distribution under the

Plan or the CAOP II Trust. In the unlikely event that all holders of Allowed CAOP II Preferred Interests in Class C5 hereof receive Distributions paying such Allowed Interests in full, the Plan and the CAOP II Trust Agreement shall be deemed amended to provide each holder of an Allowed CAOP II Common Interest a beneficial interest in the CAOP II Trust and for Net CAOP II Assets to be Distributed Pro Rata to each such holder in accordance with the CAOP II Trust Agreement and in full and complete settlement, release and discharge of such Interest. Distributions of the Net CAOP II Trust Assets to holders of Allowed CAOP II Common Interests through the Plan and the CAOP II Trust shall be made based on a Distribution of \$1 in Cash for every one Common Unit held by such holder.

(c) Voting: This Class is impaired, but because the holders of Allowed CAOP II Interests are not receiving a Distribution under the Plan, each holder of a CAOP II Common Interest is deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code and is thus not entitled to vote to accept or reject the Plan. Accordingly, the Trustee will not solicit votes for the Plan from this Class.

## ARTICLE VI

### IMPLEMENTATION OF THE PLAN

#### **6.1. General Means of Implementation.**

The Plan will be implemented and consummated through means contemplated by Section 1123(a)(5)(B) and Section 1123(b) of the Bankruptcy Code, including but not limited by the following:

##### **6.1.1. The Consolidated Legacy Debtors.**

(a) Administration of the Legacy Consolidated Estate by the Trustee as estate representative, to the extent necessary, pursuant to Section 6.6.1 of this Article VI of the Plan.

(b) Creation of the Legacy Trust.

(c) Assignment by creditors and Investors of all "Individual Claims" as defined in Section 6.4 of Article VI of this Plan to the Legacy Trust for prosecution for the benefit of all Legacy Trust Beneficiaries as provided for in Sections 6.4 and 6.9 of this Article VI of the Plan, except to the extent that any holder of an Individual Claim may elect to opt-out of this assignment.

(d) Transfer of the Legacy Trust Assets to the Legacy Trust pursuant to the Plan and the Legacy Trust Agreement, with the Legacy Trust Assets being liquidated by the Legacy Trust and administered as provided for in Sections 6.6.1 and 6.7.1 of this Article VI of the Plan and the Legacy Trust Agreement for the purpose of disbursing Net Legacy Liquidation Proceeds to the Legacy Trust Beneficiaries in accordance with the Plan and the Legacy Trust Agreement.

- (e) Dissolution of the Consolidated Legacy Debtors to the extent necessary.

#### **6.1.2. The CAOP Debtors.**

- (a) The respective Estates of the CAOP Debtors are not substantively consolidated hereunder.
- (b) Administration of the respective Estates of the CAOP Debtors by the Trustee as estate representative for each, to the extent necessary, pursuant to Section 6.6.2 of this Article VI of the Plan.
- (c) Creation of the CAOP Trusts.
- (d) Assignment by creditors and Investors of all “Individual Claims” as defined in Section 6.4 of Article VI of this Plan to the relevant CAOP Trust for prosecution for the benefit of the CAOP I Trust Beneficiaries or the CAOP II Trust Beneficiaries, as applicable, as provided for in Sections 6.4 and 6.9 of this Article VI of the Plan, except to the extent that any holder of an Individual Claim may elect to opt-out of this assignment.
- (e) Transfer of the CAOP I Trust Assets to the CAOP I Trust pursuant to the Plan and the CAOP I Trust Agreement, with such CAOP I Trust Assets being administered as provided for in Sections 6.6.2 and 6.7.2 of this Article VI of the Plan and the CAOP I Trust Agreement for the purpose of disbursing the Net CAOP I Trust Assets to CAOP I Trust Beneficiaries in accordance with the Plan and the CAOP I Trust Agreement.
- (f) Transfer of the CAOP II Trust Assets to the CAOP II Trust pursuant to the Plan and the CAOP II Trust Agreement, with such CAOP II Trust Assets being administered as provided for in Sections 6.6.2 and 6.7.2 of this Article VI of the Plan and the CAOP II Trust Agreement for the purpose of disbursing the Net CAOP II Trust Assets to CAOP II Trust Beneficiaries in accordance with the Plan and the CAOP II Trust Agreement.
- (g) Dissolution of each of the CAOP Debtors to the extent necessary.

#### **6.2. Transfer of Assets of the Consolidated Legacy Estate to the Legacy Trust**

On the Effective Date, all of the assets of the Legacy Consolidated Estate, except the Consolidated Legacy Debtors’ Reserved Funds (*i.e.*, the Legacy Trust Assets), shall be transferred to the Legacy Trust, and will be managed, liquidated and accounted for on a consolidated basis in accordance with the Plan and the Legacy Trust Agreement.

#### **6.3. No Consolidation of CAOP Debtors and Transfer of Assets to CAOP Trusts.**

The CAOP Debtors are not substantively consolidated by the Plan or otherwise. Each Debtor retains its Estate for the purpose of allowance, voting, treatment and Distributions on account of Allowed Claims against and Allowed Equity Interests in the applicable CAOP

Debtor. Thus, all holders of Claims against and Equity Interests in either of the CAOP Debtors shall retain such Claim or Interest against that Debtor, unless otherwise expressly stated in the Plan.

On the Effective Date, all of the assets of each of the CAOP Debtors, except the Reserved Funds of each Debtor (*i.e.*, the CAOP I Trust Assets or the CAOP II Trust Assets), shall be transferred to the applicable CAOP Trust. The assets of each CAOP Trust will be separately managed and accounted for in accordance with the Plan and the applicable CAOP Trust Agreement. The allowance, voting, treatment and distributions on account of Allowed Claims and Allowed Equity Interests shall be as set forth in the Plan and each of the CAOP Trust Agreements on an individual Estate basis.

#### **6.4. The Assignment of Individual Claims to the Liquidation Trusts**

From his investigation to date, the Trustee has determined that there may exist numerous claims, rights and causes of action against the Debtors, insiders of the Debtors and/or Persons who managed the Debtors or raised funds from Investors on the Debtors' behalf, including types of actions that are defined as "Causes of Action" under the Plan, that may be held by Persons in their own right as either creditors of or Investors in the Debtors, which may not necessarily be property of the Estates within the meaning of Section 541 of the Bankruptcy Code (collectively, the "Individual Claims"). Except as expressly set forth in this Section 6.4 below, upon confirmation of the Plan, all holders of the Individual Claims unconditionally agree, regardless of whether they voted to accept or reject the Plan, that the Individual Claims are assigned to the relevant Liquidation Trust and that the Individual Claims are Legacy Trust Assets, CAOP I Trust Assets or CAOP II Trust Assets, as applicable, with such Assets being liquidated and Distributions made in accordance with the Plan and the applicable Liquidation Trust Agreement.

Persons who vote to accept or reject the Plan may elect to "opt-out" of this unconditional assignment of Individual Claims to the extent that they hold any such Claims. To do so, such Persons must affirmatively make this election by marking the appropriate box on their Ballot opting out of the unconditional assignment. Persons who opt-out of the unconditional assignment of Individual Claims will receive no distribution from the net litigation proceeds obtained by the applicable Liquidation Trust with regard to prosecution of the Individual Claims.

#### **6.5. Claims for Management Fees**

Both prior to and after the Petition Date, CAREIC managed the CAREIC Affiliates and, as a result, CAREIC may have Claims for Management Fees. In addition, after the Trustee's appointment, the Bankruptcy Court entered its Cash Management Order, authorizing the Trustee to charge Management Fees on behalf of the CAREIC Estate as against each of the other Debtor's respective Estates attributed to the Trustee's estimated costs of managing the other Debtors as the CAREIC Trustee. As a result of the substantive consolidation of the Consolidated Legacy Debtors, Management Fees, if any, owed to CAREIC by CAK, CAOP Managers, CAS, CASDF and CASV are intercompany Claims that have been extinguished, and any Claims for Management Fees owed by any other CAREIC Affiliate, are now Claims of the Legacy

Consolidated Estate. At this time, it appears that the Legacy Consolidated Estate holds Claims against the CAOP I Estate, the CAOP II Estate, and possibly against certain Non-Debtor Affiliates, for Management Fees and the treatment of such Management Fees is as follows:

#### **6.5.1. Pre-Petition Management Fees.**

“Pre-Petition Management Fees” are Management Fees arising out of the period prior to the Petition Date. While undetermined at this time, it is possible that the Legacy Consolidated Estate may hold General Unsecured Claims against the CAOP Estates for the Pre-Petition Management Fees or that the CAOP Estates may hold General Unsecured Claims against the Legacy Consolidated Estate for the Pre-Petition Fees. Such Claims, to the extent that they exist, are General Unsecured Claims that are preserved herein and are either Legacy Trust Assets or CAOP Trust Assets, as applicable. In the event that it is determined that such Claims exist, allowance or disallowance of the Claims will be determined by the Conflicts Referee in accordance with the Conflict Resolution Procedures at any time prior to the final administration of the applicable Liquidating Trusts. To the extent that Claims for Post-Petition Management Fees are discovered as against any Non-Debtor Affiliate, such Claims are preserved herein and are deemed to be Legacy Trust Assets. The Legacy Trustee may assert Claims for Pre-Petition Management Fees against any Non-Debtor Affiliate at any time prior to the final administration of the Legacy Trust.

#### **6.5.2. DIP Management Fees.**

“DIP Management Fees” are Management Fees arising for the period when the Debtors were being managed as Chapter 11 debtors in possession, commencing on the Petition Date and incurred up until the date of the Trustee’s appointment. Claims for DIP Management Fees are Reserved Funds of the Consolidated Legacy Estate, and to the extent that they are Allowed Claims against a CAOP Debtor, they are Allowed Administrative Expense Claims against the relevant CAOP Debtor. Claims for DIP Management Fees against either CAOP I or CAOP II must be presented to the Conflicts Referee for allowance or disallowance in accordance with the Conflict Resolution Procedures no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Claims for DIP Management Fees against Non-Debtor Affiliates are Legacy Trust Assets and may be asserted by the Legacy Trustee at any time prior to the final administration of the Legacy Trust.

#### **6.5.3. Trustee Period Fees.**

“Trustee Period Management Fees” are Management Fees arising during the period that the Debtors have been managed by the Trustee, commencing on the date that the Trustee was appointed through and including the Effective Date. Claims for Trustee Period Management Fees, including the “True Up Claims” defined in Part 4, Section (G) of the Disclosure Statement, are Reserved Funds of the Legacy Consolidated Estate, and to the extent that they are Allowed Claims against a CAOP Debtor, they are Allowed Administrative Expense Claims against the relevant CAOP Debtor. Claims for Trustee Period Management Fees against either CAOP I or

CAOP II must be presented to the Conflicts Referee for allowance or disallowance in accordance with the Conflict Resolution Procedures no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Claims for Trustee Period Fees against Non-Debtor Affiliates are Legacy Trust Assets and may be asserted by the Legacy Trustee at any time prior to the final administration of the Legacy Trust.

**6.6. Post-Confirmation Acts by Trustee as Estate Representative.**

**6.6.1. The Consolidated Legacy Debtors.**

(a) The Trustee shall have authority to take actions on behalf of the Consolidated Legacy Debtors and the Legacy Consolidated Estate on and after the Effective Date as the estate representative, and without limiting any rights, in conjunction therewith he may do the following:

(i) Present Claims for DIP Management Fees and Trustee Period Management Fees, as defined in Article VI, Section 6.5 above, to the Conflicts Referee;

(ii) accept and deposit the Management Fees payable to the Legacy Consolidated Estate together with any other Cash of the Legacy Consolidated Estate, which shall be the Reserved Funds of the Legacy Consolidated Estate as of the Effective Date;

(iii) pay holders of Allowed unclassified Claims in Article IV and Allowed Claims in Class A3 of the Plan, if any, in accordance with the Plan from the Reserved Funds;

(iv) elect to pay any Allowed Secured Tax Claims or Allowed Secured Claims that in his sole discretion he determines should be paid from the Reserved Funds pursuant to Article V, Sections 5.1.1 and 5.1.2 of the Plan;

(v) establish and maintain a Disputed Claims Reserve as required in Article VII of the Plan, if necessary;

(vi) after notice filed in the Bankruptcy Case and no objection thereto, pay Post-Effective Date Estate Administration Claims as an Allowed Claim of the Legacy Consolidated Estate, including those incurred for management, wind-down or dissolution of any CAREIC Affiliate as discussed in subsection (c) of this Section below;

(vii) retain all Retained Claims and Actions, as defined in Article VI, Section 6.9 of the Plan, necessary to finalize implementation of the Plan as to any Disputed Claims to be paid from the Reserved Funds;

(viii) take all steps necessary to establish the Legacy Trust; and

(ix) take all steps necessary to effect a transfer of the assets of the Legacy Consolidated Estate to the Legacy Trust as provided for herein and in the Legacy Trust Agreement.

(b) As soon as feasible after the Effective Date, the Trustee as estate representative shall wind down administration of the Legacy Consolidated Estate by paying all Allowed Claims from the Reserved Funds, paying any Allowed Post-Effective Date Estate Administration Claims unless the Person incurring such a Claim has agreed to be paid as a Legacy Trust Beneficiary, and transferring any remaining Reserved Funds held by the Legacy Consolidated Estate that, in the Trustee's sole discretion are no longer necessary for administration of the Legacy Consolidated Estate and subject to Article VII, Section 7.4 (concerning Disputed Claims Reserves), to the Legacy Trust as a Legacy Trust Asset.

(c) As part of his wind-down of the Legacy Consolidated Estate, the Trustee as estate representative, may take any action related to any Non-Debtor Affiliate that he determines, in his sole discretion, to be necessary and appropriate, including managing, winding-down, dissolving or filing bankruptcy petitions for any Non-Debtor Affiliates.

(d) After all Reserved Funds of the Consolidated Legacy Debtors have been Distributed under the Plan, including by transfer to the Legacy Trust as a Legacy Trust Asset, and Non-Debtor Affiliates are in the Trustee's sole discretion attended to under subsection (c) of this Section, the Consolidated Legacy Debtors may be dissolved in accordance with the Confirmation Order and applicable state law.

#### **6.6.2. The CAOP Debtors.**

(a) The Trustee shall have authority to take actions on behalf of the CAOP Debtors and the CAOP Debtors' respective Estates on and after the Effective Date as estate representative, and without limiting any rights, in conjunction therewith he may do the following:

(i) establish, if necessary, accounts for Reserved Funds of the CAOP Debtors;

(ii) pay holders of Allowed unclassified Claims provided for in Article IV and Allowed Claims in Classes B3 and C3 of the Plan, if any, in accordance with the Plan;

(iii) elect to pay any Allowed Secured Tax Claims or Allowed Secured Claims of either of the CAOP Debtors that in his sole discretion he determines should be paid from the Reserved Funds held for that CAOP Debtor pursuant to Article V, Sections 5.2.1, 5.2.2, 5.3.1 and 5.3.2 of the Plan;

(iv) establish and maintain a Disputed Claims Reserve as required in Article VII of the Plan, if necessary;



(v) after notice filed in the Bankruptcy Case and no objection thereto, pay Post-Effective Date Estate Administration Claims as an Allowed Claim of a CAOP Estate;

(vi) retain all Retained Claims and Actions, as defined in Article VI, Section 6.9 of the Plan, necessary to finalize implementation of the Plan as to any Disputed Claims to be paid from the Reserved Funds;

(vii) take all steps necessary to establish the CAOP Trusts; and

(viii) take all steps necessary to effect a transfer of the assets of each of the CAOP Debtors to the applicable CAOP Trust in accordance with the Plan and the CAOP Trust Agreements.

(b) As soon as feasible after the Effective Date, the Trustee as estate representative shall wind down administration of the CAOP I Estate and the CAOP II Estate by paying all Allowed Claims from the Reserved Funds of each Estate, paying any Allowed Post-Effective Date Estate Administration Claims against a CAOP Debtor's Estate, and transferring any remaining Reserved Funds held by an Estate that, in the Trustee's sole discretion are no longer necessary for administration of the Estate and subject to Article VII, Section 7.4 (concerning Disputed Claims Reserves), to the applicable CAOP Trust as either a CAOP I Trust Asset or a CAOP II Trust Asset.

(c) After all Reserved Funds of the CAOP Debtors have been paid under the Plan, including by transfer to the applicable CAOP Trust as a CAOP Trust Asset, the CAOP Debtors may be dissolved in accordance with the Confirmation Order and applicable state law.

## **6.7. Post-Effective Date Entities.**

### **6.7.1. The Legacy Trust.**

The Legacy Trust is created and governed pursuant to the Plan and the Legacy Trust Agreement included in the Plan Documents Supplement, and will be managed by the Legacy Trustee as provided for in the Legacy Trust Agreement. The Legacy Trustee, on behalf of the Legacy Trust, has the discretion to retain and compensate professionals, compensate the Legacy Trustee, and compensate the Debtors' Professionals for any assistance or information requested of them by the Legacy Trust. The Legacy Trust Agreement provides for all expense reserves necessary for administration of the Legacy Trust. The Legacy Trust may execute any documents or take any actions necessary or appropriate to effectuate the transactions contemplated under this Plan.

The Legacy Trust is funded on the Effective Date with the Legacy Trust Assets, including without limitation Cash and non-Cash proceeds, real and personal property, and all Retained Claims and Actions as defined in Section 6.9 of this Article VI, including but not limited to Individual Claims that are assigned as defined in Section 6.4 of this Article VI of the Plan.

Distributions to the Legacy Trust Beneficiaries are to be made directly from the Legacy Trust pursuant to and in accordance with this Plan and the Legacy Trust Agreement. In the event that there are Net Legacy Litigation Proceeds available after Distributions to all holders of Allowed Legacy Preferred Interests have been made in accordance with the Plan, the Plan will be deemed amended as set forth in Section 5.1.6 above to allow for Distributions to holders of Allowed Legacy Common Interests.

### **6.7.2. The CAOP Trusts.**

#### **6.7.2(a) The CAOP I Trust**

The CAOP I Trust is established and governed pursuant to this Plan and the CAOP I Trust Agreement included in the Plan Documents Supplement. The CAOP I Trust is managed by the CAOP I Trustee as provided for in the CAOP I Trust Agreement. The CAOP I Trustee, on behalf of the CAOP I Trust, has discretion to retain and compensate professionals, compensate the CAOP I Trustee, and compensate the Debtors' Professionals for any assistance or information requested of them by the CAOP I Trust. The CAOP I Trust Agreement provides for all expense reserves necessary for administration of the CAOP I Trust. The CAOP I Trust may execute any documents or take any actions necessary or appropriate to effectuate the transactions contemplated under this Plan.

The CAOP I Trust is funded on the Effective Date with the CAOP I Trust Assets, including without limitation Cash and non-Cash proceeds, real and personal property, and all Retained Claims and Actions as defined in Section 6.9 of this Article VI, including but not limited to Individual Claims that are assigned as defined in Section 6.4 of this Article VI of the Plan.

Distributions to CAOP I Trust Beneficiaries from the CAOP I Trust are to be made directly to such Beneficiaries by such Trust pursuant to and in accordance with this Plan and the CAOP I Trust Agreement.

#### **6.7.2(b) The CAOP II Trust**

The CAOP II Trust is established and governed pursuant to this Plan and the CAOP II Trust Agreement included in the Plan Documents Supplement. The CAOP II Trust is managed by the CAOP II Trustee as provided for in the CAOP II Trust Agreement. The CAOP II Trustee has discretion to retain and compensate professionals, compensate the CAOP II Trustee, and compensate the Debtors' Professionals for any assistance or information requested of them by the CAOP II Trust. The CAOP II Trust Agreement provides for all expense reserves necessary for administration of the CAOP II Trust. The CAOP II Trust may execute any documents or take any actions necessary or appropriate to effectuate the transactions contemplated under this Plan.

The CAOP II Trust is funded on the Effective Date with the CAOP II Trust Assets (*i.e.*, all assets of CAOP II on the Effective Date with the exception of the Reserved Funds), including without limitation Cash and non-Cash proceeds, real and personal property, and all Retained

Claims and Actions as defined in Section 6.9 of this Article VI, including but not limited to Individual Claims that are assigned as defined in Section 6.4 of this Article VI of the Plan.

Distributions to CAOP II Trust Beneficiaries from the CAOP II Trust are to be made directly to such Beneficiaries by such Trust pursuant to and in accordance with this Plan and the CAOP II Trust Agreement.

**6.8. Conflicts Referee.**

A Person shall be appointed pursuant to this provision and the Liquidating Trust Agreements to serve as a “Conflicts Referee” to resolve disputes, if any, existing on the Effective Date or that may be discovered or may arise after the Effective Date (a) as between the Legacy Consolidated Estate or the Legacy Trust *and* the CAOP I Estate, the CAOP II Estate or either CAOP Trust, or (b) as between the CAOP Estates or the CAOP Trusts. The Liquidating Trust Agreements, as incorporated herein, govern the appointment of the Conflicts Referee, and the Conflicts Referee shall have the authority to act as set forth in the Liquidating Trust Agreements. Disputes shall be resolved by the Conflicts Referee pursuant to the “Conflict Resolution Procedures” established in the Liquidating Trust Agreements.

**6.9. Preservation of Causes of Action and Defenses—Retained Claims and Actions.**

Except to the extent rights, Claims, Causes of Action, defenses, and counterclaims are expressly and specifically released in connection with the Plan or in any settlement agreement approved by the Bankruptcy Court during the Bankruptcy Cases, (a) any and all rights, Claims, Causes of Action, defenses, and counterclaims accruing to or assertable by the Debtors or the Trustee on behalf of the Estates, shall remain assets of the Estates and may be asserted by the Trustee on behalf of Estates as the estate representative thereof after the Effective Date or be transferred to a Liquidating Trust as a Liquidating Trust Asset and asserted by a Liquidating Trustee on behalf of a Liquidating Trust, and (b) neither the Debtors, the Trustee nor a Liquidating Trust waives, relinquishes or abandons (nor shall it be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estates or is assertable by the Estates or a Liquidating Trust, including the Individual Claims: (i) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Schedules or Statement of Financial Affairs for any Debtor, the Disclosure Statement, the Plan, a Liquidation Trust Agreement, any of the documents in the Plan Documents Supplement or any other document filed with the Bankruptcy Court, (ii) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to the Trustee or a Debtor, and (iii) whether or not a defendant in any litigation relating to such right, Claim, Cause of Action, defense or counterclaim filed a proof of Claim or Interest in the Bankruptcy Case, filed a notice of appearance or any other pleading or notice in the Bankruptcy Case, voted for or against the Plan, or received or retained any consideration under the Plan.

Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise applicable principle of law or equity, including without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, laches or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a right, Claim, Cause of Action, defense, or counterclaim, or potential right, Claim, Cause of Action, defense, or counterclaim, in the Schedules or Statement of Financial Affairs for any Debtor, the Disclosure Statement, the Plan, a Liquidation Trust Agreement, any of the documents in the Plan Documents Supplement or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Trustee's or a Liquidating Trust's right to commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, or counterclaims that the Trustee, the Debtors and/or the Estates has or may have as of the Confirmation Date. The Trustee as the estate representative of the Estates on and after the Effective Date or a Liquidating Trustee as a representative of a Liquidating Trust may commence, prosecute, defend against, recover on account of, and settle all rights, Claims, Causes of Action, defenses, and counterclaims in their sole discretion in accordance with the best interests, and for the benefit of, the post-Effective Date Estates and the Liquidating Trusts.

**6.10. Non-Discharge of Debtors and Injunction.**

**THIS PLAN PROVIDES FOR AN INJUNCTION OF CERTAIN ACTIONS AND CLAIMS AGAINST THE DEBTORS. HOLDERS OF CLAIMS, RIGHTS, CAUSES OF ACTION OR INTERESTS AGAINST ANY ONE DEBTOR MAY NOT PURSUE (a) PROPERTY OF THE ESTATES, WHETHER EXISTING PRIOR TO OR AFTER THE EFFECTIVE DATE, THE LEGACY CONSOLIDATED ESTATE, OR ANY OF THE LIQUIDATING TRUSTS OTHER THAN THROUGH SEEKING ALLOWANCE OF ITS CLAIM, IF ANY, FOR DISTRIBUTION IN ACCORDANCE WITH THIS PLAN; OR (b) THE TRUSTEE AND HIS AGENTS.**

**PURSUANT TO SECTION 1141(d)(3) OF THE BANKRUPTCY CODE, THE CONFIRMATION ORDER SHALL NOT DISCHARGE CLAIMS AGAINST THE DEBTORS. HOWEVER, NO HOLDER OF A CLAIM OR EQUITY INTEREST MAY RECEIVE ANY PAYMENT FROM OR SEEK RECOURSE AGAINST ANY ASSETS THAT ARE PROPERTY OF THE ESTATES WHETHER EXISTING PRIOR TO OR AFTER THE EFFECTIVE DATE, THE LEGACY CONSOLIDATED ESTATE, OR ANY OF THE LIQUIDATING TRUSTS, EXCEPT FOR THOSE ASSETS REQUIRED TO BE DISTRIBUTED TO SUCH HOLDER AS EXPRESSLY PROVIDED FOR IN THE PLAN.**

**AS OF THE EFFECTIVE DATE, ALL PERSONS ARE PRECLUDED FROM ASSERTING AGAINST ANY PROPERTY OF THE ESTATES, THE LEGACY CONSOLIDATED ESTATE AND ANY OF THE LIQUIDATING TRUSTS AND ASSETS THAT ARE DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE PLAN OR ANY OF THE LIQUIDATING TRUSTS ANY CLAIMS, RIGHTS, CAUSES OF ACTION, LIABILITIES OR INTERESTS BASED UPON ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT**

**OCCURRED PRIOR TO THE EFFECTIVE DATE, OTHER THAN AS EXPRESSLY PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, REGARDLESS OF THE FILING, LACK OF FILING, ALLOWANCE OR DISALLOWANCE OF ANY CLAIM OR EQUITY INTEREST AND REGARDLESS OF WHETHER SUCH PERSON HAS VOTED TO ACCEPT THE PLAN.**

**EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE EFFECTIVE DATE, ALL PERSONS THAT HAVE HELD, CURRENTLY HOLD OR MAY HOLD A DEBT, RIGHT, CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY OR INTEREST AGAINST OR IN THE DEBTORS THAT WOULD BE DISCHARGED UPON CONFIRMATION OF THE PLAN ON THE EFFECTIVE DATE BUT FOR THE PROVISIONS OF SECTION 1141(d)(3) OF THE BANKRUPTCY CODE SHALL BE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS ON ACCOUNT OF SUCH DEBT, RIGHT, CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY OR INTEREST: (i) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING ON ACCOUNT OF SUCH DEBT, RIGHT, CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY OR INTEREST AGAINST ASSETS OR PROCEEDS THEREOF THAT ARE PROPERTY OF THE ESTATES, THE LEGACY CONSOLIDATED ESTATE OR THE LIQUIDATING TRUSTS AND WHICH ARE TO BE DISTRIBUTED UNDER THE PLAN AND/OR THE LIQUIDATING TRUSTS, OTHER THAN TO ENFORCE ANY RIGHT TO A DISTRIBUTION WITH RESPECT TO SUCH ASSETS OR THE PROCEEDS THEREOF AS PROVIDED UNDER THE PLAN; (ii) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST ANY ASSETS TO BE DISTRIBUTED TO CREDITORS OR EQUITY INTERESTS UNDER THE PLAN AND/OR THE LIQUIDATING TRUST, OTHER THAN AS PERMITTED UNDER SUBPARAGRAPH (i) ABOVE; and (iii) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE AGAINST ANY ASSETS TO BE DISTRIBUTED UNDER THE PLAN AND THE LIQUIDATING TRUSTS, OTHER THAN AS PERMITTED BY THE PLAN AND/OR THE LIQUIDATING TRUSTS, PROVIDED THAT NOTHING CONTAINED HEREIN SHALL LIMIT THE RIGHTS OF ANY DISTRIBUTEE UNDER THE PLAN FROM TAKING ANY ACTIONS IN RESPECT OF PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED TO IT UNDER THE PLAN AND/OR THE LIQUIDATING TRUSTS.**

## **ARTICLE VII**

### **OBJECTIONS TO CLAIMS AND EQUITY INTERESTS AND DISTRIBUTION**

#### **7.1. Objections to Claims and Equity Interests.**

Unless otherwise extended by an order entered by the Bankruptcy Court, objections to the allowance of Claims and Equity Interests shall be filed and served upon the Persons asserting

such Claims and Equity Interests as follows: (a) for known Priority Tax Claims, Secured Tax Claims, Secured Claims, Priority Unsecured Claims, General Unsecured Claims, and Equity Interests, no later than ninety (90) days after the Effective Date; (b) for any and all Claims to which the Administrative Claims Bar Date, the Professional Administrative Claims Bar Date or the Contract Rejection Claims Bar Date applies, thirty (30) days after the expiration of the respective Bar Date; and (c) for any other Claim or Equity Interest that is not one to which the Administrative Claims Bar Date, the Professional Administrative Claims Bar Date or the Contract Rejection Claims Bar Date applies, thirty (30) days after the Trustee is provided notice of such Claim or Equity Interest. Nothing in this provision is meant to be waiver of any defenses held by the Estates or a Liquidating Trust, including the application of a Bar Date.

The Trustee or the Liquidating Trustee, as applicable (a) holds all Retained Claims and Actions as set forth in Article VI, Section 6.9 of the Plan; (b) is responsible for filing objections to any and all Claims that are Disputed Claims asserted against the Estates or a Liquidating Trust; (c) has authority to settle and compromise any objection to a Disputed Claim or a Disputed Equity Interest, if appropriate, including any adversary proceedings without further order of the Bankruptcy Court, provided that the total Cash settlement amount does not exceed \$10,000 in amount; and (d) may assert any and all Claims, rights of action, Causes of Action, counterclaims and defenses held by the Estates or the Liquidating Trust after the Effective Date as they existed prior to the Effective Date. Providing a Ballot to the holder of a Claim or Equity Interest or making a Distribution to the holder of a Claim or Equity Interest shall not be considered to be a waiver or release by the Debtors, the Trustee, a Liquidating Trust or any of the Estates of any Claims against the holder of the Claim or Equity Interest.

## **7.2. Disputed Claims and Equity Interests.**

On the Effective Date or thereafter, no Distributions shall be made unless a Claim is an Allowed Claim or an Equity Interest is an Allowed Equity Interest. Except as may otherwise be agreed with respect to any Disputed Claim, no payment or Distribution will thereafter be made with respect to all or any portion of a Disputed Claim or a Disputed Equity Interest until such Claim is an Allowed Claim or such Equity Interest is an Allowed Equity Interest entitled to a Distribution under the Plan. Distributions to each holder of a Disputed Claim or Disputed Equity Interest (to the extent that such Claim or Equity Interest, or any portion thereof, ultimately becomes an Allowed Claim or Equity Interest) must be made in accordance with the Plan.

## **7.3. Estimation of Claims.**

Before the Effective Date, a Debtor or the Trustee, and after the Effective Date, the Trustee or a Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall have jurisdiction to estimate such Claim at any time, including, without limitation, to establish the amount of the Claim for voting purposes, the amount of a Disputed Cash Reserve, or during any litigation concerning or an objection to such Claim, including the subordination of such Claim. The Trustee shall be entitled to request that the Bankruptcy Court determine either the Allowed amount of such Claim, a maximum limitation on such Claim for any given purpose,

and whether the Claim may be subordinated. If the Bankruptcy Court determines the maximum limitation of such Claim, such determination shall not preclude any additional proceedings objecting to allowance of or Distribution on such Claim in accordance with the Plan and a Liquidating Trust Agreement. If the Bankruptcy Court determines the Allowed amount of such Claim, the amount so determined shall be deemed the amount of the Claim for all purposes under this Plan. All such proceedings are cumulative and not exclusive remedies.

#### **7.4. Disputed Claims Reserves of Estates.**

##### **7.4.1. Establishment.**

Prior to any Distribution of Reserved Funds of any Debtor under the Plan on account of Allowed Claims, the Trustee shall establish, if necessary and in an amount based on his sole discretion, Reserved Funds for Disputed Claims against the Legacy Consolidated Estate, the CAOP I Estate, and the CAOP II Estate (collectively, the “Disputed Claims Reserves”). No Disputed Claims Reserve is necessary if there are no Disputed Claims against an Estate on the Effective Date. For the sake of clarity, the Disputed Claims Reserves provided for herein apply only to Reserved Funds, and not to Liquidating Trust Assets. Treatment of Cash reserves for Disputed Claims and Disputed Equity Interests held by a Legacy Trust Beneficiary, a CAOP I Trust Beneficiary or a CAOP II Trust Beneficiary are governed by the applicable Liquidating Trust Agreement.

##### **7.4.2. Distribution Upon Allowance of Disputed Claim.**

Within fifteen (15) Business Days of a Disputed Claim becoming an Allowed Claim against a Debtor, the holder of such Claim shall be paid in accordance with the Plan from the Disputed Claims Reserve for that Debtor’s Estate. The amount of Cash released from the Disputed Claims Reserve to make such a Distribution shall be calculated so that the holder of the newly Allowed Claim receives a Distribution equal to the total percentage Distributions made prior to the date that its Claim was Allowed to the holders of other Allowed Claims in the same Class. No holder of a Disputed Claim shall have any right to interest on such Disputed Claim or fees and costs related to such Disputed Claims unless required under the Plan.

##### **7.4.3. Release of Cash from Disputed Claims Reserves.**

If a Disputed Claim, or any portion thereof, is a Disallowed Claim, the Cash in the applicable Disputed Claims Reserve allocated for such Disputed Claim shall be released from the Disputed Claims Reserve. If a Disputed Victim Claim, or any portion thereof becomes an Allowed Claim in an amount that is less than the Cash held in the applicable Disputed Claims Reserve for such Claim, the excess Cash related to such Claim shall be released from the Disputed Claims Reserve. If any Cash exists in a Disputed Claims Reserve after all Disputed Claims have been determined, the Cash shall be used by the Trustee as Reserved Funds for the applicable Debtor, or if Reserved Funds are no longer necessary to implement the Plan, transferred to the applicable Liquidating Trust as a Liquidating Trust Asset.

## **7.5. Method of Distribution Under the Plan.**

### **7.5.1. General.**

Distributions under the Plan shall be made by the Trustee. For the sake of clarity, this Section 7.5 does not apply to Distributions under a Liquidating Trust. The method of Distribution for a Liquidating Trust is governed by the applicable Liquidating Trust Agreement.

### **7.5.2. Mailing.**

All Distributions under the Plan shall be mailed by first class mail, postage prepaid, to the respective addresses of holders of Allowed Claims as listed on the Distribution Record Date (i) on the respective proofs of Claim filed by such holders, including amendments thereto, (ii) on any written notices of address changes delivered to the Trustee after the date of the filing of any applicable proof of Claim, or (iii) at the addresses reflected on the Schedules if no proof of Claim is filed and the Trustee has not received a written notice of change of address.

### **7.5.3. Form of Distributions.**

Any Distribution of Cash made by the Trustee pursuant to the Plan shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Trustee; *provided, however*, that after the occurrence of the Effective Date, the Trustee is not obligated to make any Cash Distribution under the Plan unless the amount exceeds ten dollars (\$10.00); *provided, further*, that Cash equal to 100% of the Distributions to which the holder of a Claim would be entitled under the Plan if the payment to such holder was less than or equal to ten dollars (\$10.00) shall be maintained in a reserve (the “Small Payment Reserve”) for the benefit of such holder until an aggregate of at least ten dollars (\$10.00) is payable to such holder and at such time the holder shall receive a payment equal to 100% of the Distributions to which it would otherwise be entitled. To the extent that a final Distribution would require a Distribution of ten dollars (\$10.00) or less to a holder of an Allowed Claim, such amount shall be deemed forfeited, and shall be redistributed to holders of Allowed Claims who are to receive a final Distribution in excess of ten dollars (\$10.00) on account of their Allowed Claim. If, in the sole discretion of the Trustee, excess Cash exists as of the time of a final Distribution that is so *de minimis* in amount that it cannot be reasonably redistributed to holders of Allowed Claims, the Trustee may transfer the Cash to the applicable Liquidating Trust.

### **7.5.4. Distributions to be on Business Days/Timeliness.**

Any payment or Distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Any Distribution required to be made on the Effective Date shall be deemed timely if made as soon as practicable after the Effective Date and, in any event, within thirty (30) Business Days after the Effective Date.



#### **7.5.5. Distributions to Holders as of the Distribution Record Date.**

As of the close of business on the Distribution Record Date, the claim dockets of each Debtor will be deemed closed. The Trustee shall have no obligation to recognize any transfer of any Claims or Equity Interests occurring, arising or filed with the Bankruptcy Court after the close of business on the Distribution Record Date, and shall instead be entitled to recognize and deal for all purposes under the Plan with only those holders of record as of the close of business on the Distribution Record Date.

#### **7.5.6. Compliance with Tax Requirements.**

In connection with the Plan, to the extent applicable, the Trustee shall comply with all withholding and reporting requirements imposed on it by a Governmental Unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

#### **7.6. Unclaimed Funds.**

If (a) at the time a Distribution to holders of Allowed Claims is to be made under this Plan, the Trustee is unable to deliver the portion of such Distribution due to a holder of an Allowed Claim, (b) any amount paid to the holder of an Allowed Claim is returned as undeliverable and the Trustee is unable, with reasonable effort, to ascertain a correct address for the holder entitled thereto within thirty (30) days of its return, or (c) any check Distributed in payment of an Allowed Claim is neither returned nor negotiated within three (3) months of the date Distributed, in every such case, the Allowed Claim shall be deemed reduced to zero in amount and the holder thereof shall have no further right to payment against or Distribution from any Debtor, any Estate, the Legacy Consolidated Estate, the Trustee or any Liquidating Trust in any way. The Cash that, but for this Section, would have been payable to the holders of such Allowed Claims shall, to the extent applicable, revert to the applicable Estate as Reserved Funds and be available for application or Distribution in accordance with the terms of the Plan. In regard to locating holders of Allowed Claims whose Distributions or notices are properly mailed but nevertheless returned, the Trustee shall be required to take no more steps other than to compare the returned mail against addresses held for the holder of the Claim through filed documents or correspondence and conduct a general internet search for an alternative address.

### **ARTICLE VIII**

#### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### **8.1. Executory Contracts and Unexpired Leases.**

Unless expressly stated in this Plan, any executory contracts or unexpired leases of a Debtor shall be deemed rejected as of the Effective Date. Entry of the Confirmation Order shall constitute the approval, pursuant to Section 365(a) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected as of the Effective Date of the Plan.

**8.2. Rejection Damage Claims And Contract Rejection Claim Bar Date.**

If the rejection of an executory contract or unexpired lease pursuant to this Article VIII results in a Claim for damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a filed proof of Claim, shall be forever barred and shall not be enforceable against the applicable Estate or Liquidating Trust or its respective properties or agents, successors, or assigns, unless a proof of Claim is filed with the Bankruptcy Court and served on the Trustee on or before thirty (30) days following the Confirmation Date, which shall be the "Contract Rejection Claim Bar Date." Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which proofs of Claim are timely filed will be treated as General Unsecured Claims subject to the provisions of the Plan. The Trustee shall have the right to object to any rejection damage Claims.

**ARTICLE IX**

**CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVE DATE**

**9.1. Conditions to Confirmation.**

Confirmation of the Plan shall not occur unless and until each of the conditions set forth below has been satisfied or duly waived by the Trustee:

- (a) The Plan Documents Supplement has been filed in the form and substance acceptable to the Bankruptcy Court.
- (b) The Court shall have entered the Confirmation Order.

**9.2. Conditions to Effective Date.**

The Effective Date of the Plan as to any Debtor shall not occur unless and until each of the conditions set forth below has been satisfied or waived by the Trustee:

- (a) The Confirmation Order, in form and substance reasonably acceptable to the Trustee, has been entered by the Bankruptcy Court and the same is a Final Order.
- (b) All actions, other documents and agreements necessary to implement the Plan, including with limitations the documents in the Plan Documents Supplement, have been executed, delivered, and, if necessary, properly recorded, and have become effective.
- (c) The respective Estates shall have sufficient Cash to meet all Cash funding obligations under the Plan required to be made on the Effective Date.

**9.3. Waiver of Conditions.**

The Trustee in his sole discretion may waive one or more of the conditions precedent to the effectiveness of the Plan set forth in Section 9.2 above, except that the Trustee may not waive

the condition that the Estate will have sufficient Cash to meet all payment and funding obligations under the Plan on the Effective Date.

## **ARTICLE X**

### **RETENTION OF JURISDICTION**

Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code, notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of and related to the Bankruptcy Cases, the assets and liabilities of the respective Estates existing both prior to and after entry of the Consolidation Order, the Liquidating Trusts, and the Plan to the fullest extent permitted by law, including, but not limited to:

1. Allowing, disallowing, determining, liquidating, classifying, estimating or establishing the priority or secured or unsecured status of any Claim not otherwise Allowed under the Plan, including but not limited to resolving any request for payment of any Administrative Expense Claim or Claims for Post-Effective Date Estate Administration Costs, resolving any objection to the allowance or priority of Claims, and resolving any dispute as to the subordination of any Claim or Interest;
2. Allowing, disallowing, determining, liquidating, or classifying any Equity Interest not otherwise Allowed under the Plan, including but not limited to resolving any request for payment of the same or any disallowance of the same;
3. Approving compromises and settlements under Bankruptcy Rule 9019 to the extent required under or included in the Plan;
4. Hearing and determining any and all Retained Claims and Actions, Claims, Causes of Action or rights that have been or may be asserted or commenced by the Trustee or a Liquidating Trust;
5. Hearing and determining disputes related to recommendations of the Conflicts Referee and approving recommendations of the Conflicts Referee;
6. Hearing and determining all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Sections 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;
7. Hearing and determining any and all adversary proceedings, motions, applications, requests for disgorgement and contested or litigated matters arising out of, arising under or related to the Bankruptcy Cases;
8. Effectuating performance of and payment under the provisions of any settlement agreement entered into on behalf of the Estate or a Liquidating Trust and payment

under any Final Order and judgment obtained in any Causes of Action or related to any Claims or Causes of Action asserted against any Person;

9. Entering such Orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order, including any Plan Supplement Documents;

10. Hearing and determining all matters and disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Disclosure Statement, the Plan and the Confirmation Order, including but not limited to disputes arising under agreements, documents or instruments executed in connection with the Plan set forth in the Plan Supplement Documents or otherwise;

11. Modifying the Plan and/or any documents executed in conjunction with the Plan at the request of the Trustee and as provided by applicable law, including without limitation to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purpose and the intent of the Plan;

12. Issuing injunctions, entering and implementing other orders, or taking such other actions as may be necessary or appropriate to restrain interference by any Person with implementation, consummation, or enforcement of the Plan, a Liquidating Trust or the Confirmation Order;

13. Entering and implementing orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

14. Enforcing all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Bankruptcy Cases;

15. Determining any Claim or liability to a Governmental Unit which may be asserted as a result of the transactions contemplated herein;

16. Hearing and determining all matters concerning state, local, and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code, including but not limited to Claims and Causes of Action related to the California Tax Refund Claim, defined in Part II, Section (D) of the Disclosure Statement;

17. Hearing and determining any and all matters relating to the administration of the Estates by the Trustee either prior to or after the Effective Date;

18. Hearing and determining any and all matters relating to the administration of the Liquidating Trusts or arising as a result of a Claim or Causes of Action asserted by a Liquidating Trust, including the Individual Claims; and

19. Entering Final Decrees and closing the Bankruptcy Cases.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

#### **11.1. Continuation of Injunctions or Stays Until Effective Date.**

All injunctions or stays provided for in the Bankruptcy Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Thereafter, the injunction provided for in Article VI, Section 6.10 of the Plan shall apply.

#### **11.2. Notice of Effective Date.**

As soon as practicable after the occurrence of the Effective Date, but no later than ten (10) Business Days thereafter, the Trustee shall file and serve on each holder of an alleged Claim and each Equity Security Holder a written notice of the occurrence of the Effective Date.

#### **11.3. Limitation of Liability.**

Except as otherwise expressly provided in the Plan, on and after the Effective Date, the Debtors; the Trustee and his employees, officers, directors, agents or representatives; the Committee and its employees, officers, directors, agents or representatives; any Professionals; and the Estates, shall not have or incur any liability to any Person for any authorized act taken or authorized omission made in good faith in connection with or related to the Bankruptcy Cases or the Estates, including the objections to or estimations of Claims or Equity Interests, disposition of assets, or formulating, determining not to solicit acceptances or rejections to, or confirming the Plan, or any contract, instrument, release, or other agreement or document created in connection with the Plan or otherwise.

Consistent with Section 1125(e) of the Bankruptcy Code, to the extent acceptances or rejections of the Plan have been solicited, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Debtors, the Trustee and Professionals are not liable on account of such solicitation or participation or for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan.

#### **11.4. Execution of Documents and Corporate Action.**

The Trustee may execute such documents or take such other action as is necessary to effectuate the transactions provided for in this Plan, and to wind-down or dissolve any of the Debtors or any CAREIC Affiliate.

#### **11.5. Default of Plan.**

In the event of any default of the provisions of this Plan, a Creditor or party in interest aggrieved by such default may provide written notice to the Trustee. The written notice of default must describe with specificity the nature of the default alleged and the steps required to cure such default. The Trustee shall have thirty (30) Business Days after receipt of notice of default to cure such default. If the Trustee does not cure such default within thirty (30) Business Days after receipt of a notice of default, then a Creditor or party in interest aggrieved by such default may apply to the Bankruptcy Court to compel compliance with the applicable provisions of the Plan. The Bankruptcy Court, after notice and a hearing, shall determine whether a default occurred, and if a default occurred, whether such default has been cured. Upon finding a material default, the Bankruptcy Court may issue such orders as may be appropriate, including an order compelling compliance with the pertinent provisions of the Plan.

#### **11.6. Setoffs and No Waiver.**

Except as otherwise provided in this Plan, nothing contained in this Plan shall constitute a waiver or release by a Debtor, the Trustee and an Estate of any rights of setoff any Estate may have against any Person. The failure of the Debtors, the Trustee or any other Person to object to any Claim or Equity Interest either in whole or in part for purposes of voting on the Plan shall not be deemed a waiver of any right to object to such Claim, in whole or in part.

#### **11.7. Amendment or Modification of the Plan.**

Alterations, amendments or modifications of the Plan may be proposed in writing by the Trustee at any time prior to the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code, and the Trustee shall have complied with Section 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time before or after the Confirmation Date and before substantial consummation, provided that the Plan, as altered, amended or modified, satisfies the requirements of Sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under Section 1129 of the Bankruptcy Code. A holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder. The Trustee may, without notice to holders of Claims or Equity Interests insofar as it does not materially and adversely affect the interests of any such holders, correct any defect or omission in the Disclosure Statement, this Plan, or the Plan Supplement Documents.

### **11.8. Revocation or Withdrawal of the Plan.**

The Trustee reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans of liquidation. If the Trustee revokes or withdraws the Plan, or if confirmation or consummation does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the allowing, fixing or limiting to an amount certain any Claim, Equity Interest or Class of Claims or Equity Interests, rejection or assumption of any executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan) shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute a waiver or release of any Claims by or against any Estate, the Debtors or any other party, (ii) prejudice in any manner the rights of the Debtors or Trustee in any further proceedings involving the Debtors or the Estates, or (iii) constitute an admission of any sort by the Debtors, Trustee, or Estates.

The Trustee reserves his right to seek confirmation of the Plan in fewer than all of the Bankruptcy Cases. In other words, if the Bankruptcy Court determines that a cram-down of the Plan pursuant to Section 1129(b) of the Bankruptcy Code is legally impermissible in regard to a particular Debtor and its Estate, then the Trustee may withdraw the Plan in regard to that particular Debtor, its Estate and its Bankruptcy Case and the Trustee may then proceed to seek confirmation of the Plan as to those Bankruptcy Cases in which the cram down provisions of Section 1129(b) of the Bankruptcy Code may validly be exercised.

### **11.9. Severability.**

If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court may, upon the request of the Trustee, alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable according to its terms.

### **11.10. Effect of Confirmation - Binding Effect and No Revesting of Property.**

On the Confirmation Date, the provisions of the Plan and all rights, duties and obligations hereunder shall be binding upon and inure to the benefit of the Debtors, the Trustee, the Estates, the Liquidating Trustee, the Liquidating Trusts, all holders of Claims against or Equity Securities in the Debtors, all parties of interest in the Bankruptcy Cases, and any successors and assigns. The Plan shall be binding whether or not a holder of a Claim or Equity Security is impaired and whether or not such holders have voted or have voted to accept the Plan. Furthermore, the rights,

duties and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person.

Notwithstanding Section 1141(b) of the Bankruptcy Code, the confirmation of the Plan does not vest all property of the Estates with the Debtors. Property of the Estates after confirmation of the Plan, including all Retained Claims and Action, shall remain vested with post-confirmation Estates provided for herein, unless such property is a Liquidating Trust Asset. All such Liquidating Trust Assets shall be property of the Estates until the Effective Date whereupon it will be transferred to the applicable Liquidating Trust.

**11.11. Dissolution of Committee.**

On the Effective Date, the Committee shall be disbanded and its Committee Members shall be released and discharged from all rights and duties arising from, or related to, the Bankruptcy Cases; provided, however, the Committee and the Committee Professionals shall continue in effect following the Effective Date for the limited purpose of submitting applications for allowance of Administrative Expense Claims of Committee Members and Committee Professionals and for reviewing and, to the extent appropriate, objecting to applications for allowance of Administrative Expense Claims of other Professionals and Non-Professionals in the Bankruptcy Cases.

**11.12. Post-Confirmation Administration - Fees, Reports, Final Decree.**

On and after the Effective Date, the Trustee shall no longer be required to file monthly operating reports with the United States Trustee, but shall provide any quarterly reports requested by the United States Trustee. Furthermore, the Trustee's employment of any professional after the Effective Date will not require approval of the Bankruptcy Court, and the Trustee may pay post-Effective Date fees and costs without application to the Bankruptcy Court.

Until the entry of a Final Decree, the Trustee shall:

(a) Pay the costs of administering the Estates, including Post-Effective Date Estate Administration Costs, and any fees due pursuant to 28 U.S.C. §1930;

(b) File status reports related to the consummation of the Plan when, in his discretion, such reports would be beneficial to the Court and to holders of Claims and Equity Interests; and

(c) Once the Estates and the Liquidating Trusts have been fully administered, as referred to in Bankruptcy Rule 3022, file a final report and account of all receipts and disbursements, and serve that report via ECF with notice of said report served on Persons entitled to notice in the Bankruptcy Cases. Any such report shall include a request that the Bankruptcy Court enter a Final Decree in the Bankruptcy Cases. Such final report and request for Final Decree may be filed separately for each Estate.



**11.13. Notices.**

All notices, requests and demands to or upon the Trustee or a Liquidating Trustee shall only be effective if in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by e-mail, when received and confirmed, addressed as follows:

To the Trustee or the Legacy Trustee:

Peggy Hunt  
Nathan S. Seim  
Dorsey and Whitney LLP  
136 S. Main St., Suite 1000  
Salt Lake City, Utah 84101  
[hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

To the CAOP I Trustee:

Gregory J. Adams  
McKay Burton & Thurman  
170 South Main Street, Suite 800  
Salt Lake City, Utah 84101  
[gadams@mbt-law.com](mailto:gadams@mbt-law.com)

To the CAOP II Trustee:

Penrod W. Keith  
Durham Jones & Pinegar  
111 East Broadway, Suite 900  
P O Box 4050  
Salt Lake City, Utah 84110-4050  
[pkeith@djplaw.com](mailto:pkeith@djplaw.com)

**11.14. Governing Law.**

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without giving effect to the principles of conflicts of law of such jurisdiction.

**11.15. No Admissions.**

Except as specifically provided in the Plan, nothing contained in the Plan shall be deemed or construed in any way as an admission by the Debtors, the Trustee or the Estates with respect

to any matter set forth in the Plan, including the amount or allowability of any Claim or Equity Security, or the value of any property of the Estates.

**11.16. Headings.**

Headings are used in the Plan for convenience and reference only, and shall not constitute a part of the Plan for any other purpose.

**11.17. Inconsistency.**

In the event of any inconsistency between the Plan and the Disclosure Statement, or any other instrument or document created or executed pursuant to the Plan, the terms of the Plan shall govern.

**ARTICLE XII**

**REQUEST FOR CONFIRMATION**

The Trustee hereby requests that the Court confirm the Plan pursuant to Section 1129(a) or, if necessary, Section 1129(b) of the Bankruptcy Code.

DATED: February 25, 2013.

/s/ D. Ray Strong  
D. Ray Strong, *Trustee*

**DORSEY & WHITNEY LLP**

/s/Peggy Hunt  
Peggy Hunt  
Nathan S. Seim  
*Attorneys for Chapter 11 Trustee*