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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

D. RAY STRONG, as Liquidating Trustee of
the Consolidated Legacy Debtors Liquidating
Trust and the Castle Arch Opportunity Partners
I, LLC Liquidating Trust,

Plaintiff,

v.

ROBERT D. GERINGER; ROBERT D.
GERINGER, P.C.; and FINE ARTS
ENTERTAINMENT, INC.,

Defendants.

COMPLAINT
(Related to Case No. 2:14-cv-00788-TC)

Case No. 2:15-cv-00837-BSJ

Judge: Bruce S. Jenkins

Demand for Jury

Plaintiff D. Ray Strong (the “Trustee”), as the (i) post-confirmation estate representative of Castle Arch Real Estate Investment Company, LLC (“CAREIC”), CAOP Managers, LLC (“CAOP Managers”), Castle Arch Kingman, LLC (“CAK”), Castle Arch Smyrna, LLC (“CAS”), Castle Arch Secured Development Fund, LLC (“CASDF”), Castle Arch Star Valley, LLC (“CASV”) and Castle Arch Opportunity Partners I, LLC (“CAOP I”) (collectively, the “Debtors”), and (ii) Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust and the Castle Arch Opportunity Partners I, LLC Liquidating Trust (together, the “Trusts”), as

appointed in such capacities in the bankruptcy case styled as *In re Castle Arch Real Estate Investment Company, LLC et al.*, Case No. 11-35082 (the “Bankruptcy Case”), filed in the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”), alleges and avers as follows:

I. NATURE OF THE CASE

1. This is a case brought by the Trustee on behalf of the Debtors and Trusts against Robert Geringer (“Geringer”) and his entities to recover the tens of millions of dollars that the Debtors’ investors and creditors lost because of Geringer’s unlawful and fraudulent conduct and operation of the Debtors.

2. Prior to filing their Chapter 11 bankruptcy petitions in October 2011, the Debtors had raised approximately \$70 million from investors. Geringer and the other members of CAREIC’s management (collectively, “Management”), told investors this money would be used to prudently acquire, entitle and develop real estate. This was not true.

3. Indeed, Geringer—the President of CAREIC and the person in charge of the Debtors’ real estate operations—recklessly moved forward with accelerated investment in raw land long after it was clear that the real estate market was collapsing, and most national production home builders had drastically curtailed, or entirely stopped land purchases. For instance, by October 25, 2006, Pulte Homes (a national home builder) had announced that “the U.S. housing market was impacted by lack of consumer confidence, decreased housing affordability, and large supplies of resale and new home inventories and related pricing pressures.” As a result, Pulte said, it was “adjust[ing its] approach to land acquisition and construction practices, *continuing to shorten our land pipeline, reduce production volumes,*

and balance home price and profitability with sales pace. We are slowing down planned land purchases and reducing our total number of controlled lots owned and under option.”

4. Similarly, on September 6, 2006, KB Homes (another national home builder) announced that it had experienced “an increasingly challenging housing market . . . [and] the supply of new and resale home inventories has built up in recent months. . . .” Further, KB Homes said that “further intensifying the unfavorable conditions in the housing market is the weaker than expected demand for new homes.” As a result, KB said it was taking action to reduce overhead, curtail land acquisitions, and “monetize non-strategic land positions.”

5. Notwithstanding these conditions, Geringer continued to close substantial land purchases in, among other places, Kingman, Arizona and Smyrna, Tennessee. Not surprisingly, by the time the Debtors were forced to file bankruptcy, Geringer and the Debtors had entirely failed to successfully entitle, develop, or sell – with the exception of one small parcel in Star Valley, Wyoming – the real property acquired.

6. Despite his failure to successfully complete any real estate project for the Debtors, Geringer was paid handsomely throughout the course of the Debtors’ existence. Geringer brought no value to the Debtors, and was paid essentially for wasting investors’ money on projects that he knew, or should have known, were either completely infeasible or so high risk that a prudent real estate developer would never have pursued them. Indeed, over the course of its existence, CAREIC generated almost no revenues from operations. Rather, it was funded almost exclusively by money raised from investors.

7. Investor funds were primarily raised through private placement memoranda (“PPMs”) and other marketing materials. These materials did not disclose the true facts about

the Debtors' operations and financial results. Nor did they adequately disclose the actual characteristics and risks of the real estate "projects" in which investors were solicited to invest.

8. On information and belief, other numerous material misrepresentations and omissions occurred in face-to-face investor solicitation meetings.

9. Additionally, Geringer caused, or failed to stop, the Debtors from selling securities illegally through unlicensed brokers-dealers.

10. To facilitate fundraising efforts, Geringer and Management caused several "investment-specific" entities to be created. Geringer and Management represented to investors through PPMs or otherwise that their investment in one of these investment-specific entities would be used to fund the project that entity had ostensibly been formed to pursue. In fact, Management co-mingled investment funds from all entities and treated these investment-specific entities as their private piggy banks, whose funds could be used at the whim of Management.

11. In short, while Geringer and Management controlled the Debtors, they raised money by defrauding investors, they operated the Debtors in a way that consistently breached their fiduciary duties of care, loyalty, and disclosure, and they failed to comply with basic standards for operating, managing and monitoring the real estate development projects in which they were engaged.

II. PRIOR BANKRUPTCY PROCEEDINGS

12. On October 17, 2011, a Receiver appointed by a Utah State Court filed a voluntary Chapter 11 bankruptcy petition for CAREIC in the Bankruptcy Court,¹ and on

¹ Bankr. Case No. 11-35082.

October 20, 2011, the Receiver also filed Chapter 11 petitions for each of the other Debtors,² other than CASV (collectively, these dates are referred to as the “Petition Date”).

13. On May 3, 2012, the Bankruptcy Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC,³ and in that capacity, the Trustee managed, either directly or indirectly, each of the other Debtors.

14. On February 8, 2013, the Bankruptcy Court entered an Order substantively consolidating all of the Debtors, other than CAOP I, with CAREIC (the “Consolidation Order”).⁴ The consolidated entities of CAREIC, CAOP Managers, CAS, CAK, CASDF and CASV are referred collectively herein as the “Legacy Debtors.”

15. In conjunction with the Consolidation Order, the Bankruptcy Court entered detailed *Findings of Fact and Conclusions of Law*, a copy of which is attached hereto as **Exhibit 1** (the “Consolidation Findings and Conclusions”),⁵ finding and concluding as follows:

- a. The Legacy Debtors were all managed by CAREIC’s single management team on a consolidated basis, and they had no corporate existence outside of the CAREIC corporate family.⁶
- b. Bank accounts opened for the Legacy Debtors were controlled by CAREIC’s management team.⁷

² Bankr. Case Nos. 11-35237 (CAOP Managers), 11-35242 (CAK), 11-35243 (CASDF), 11-35246 (CAS), and 11-35240 (CAOP I). These bankruptcy cases are being jointly administered or are substantively consolidated with CAREIC’s bankruptcy case in Case No. 11-35082.

³ Bankruptcy Case Docket No. 215 (Order of Appointment).

⁴ *Id.* at Docket No. 590.

⁵ *Id.* at Docket No. 591.

⁶ See Exh. 1 (Consolidation Findings and Conclusions, ¶¶ 17-32, & ¶ 107(c) – (f)).

⁷ *Id.* ¶ 25 see also *id.* ¶¶ 47- 59 (discussing bank accounts and intermingling of cash).

- c. The primary source of the Debtors' cash was not operations, but cash raised from investors through a series of public offerings.⁸
- d. The raising of cash fit a pattern—as cash was consumed and additional cash was needed, Management caused new securities offerings to be made, initially through CAREIC, and later through the other Debtors.⁹ Thus, the formation of the Debtors was “a vehicle by which to obtain additional investor funds[.]”¹⁰
- e. Cash raised from investors of each of the Legacy Debtors was “used indiscriminately by the Debtors to fund whatever entity was in need of cash at any given time.”¹¹ Cash was used “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.”¹²
- f. The Legacy Debtors’ “assets and affairs are hopelessly commingled [and] it was not uncommon for funds obtained from investors in one of the Legacy Debtors to be deposited into a bank account of another one of the Legacy Debtors[.]”¹³ Furthermore, “it was not uncommon for one Legacy Debtor’s cash to be used to directly pay the expenses of another Legacy Debtor.”¹⁴ Finally, “in addition to significant commingling and intercompany transfers of cash . . . assets were purchased as part of very convoluted intercompany transactions.”¹⁵
- g. “A large portion of the Legacy Debtors’ business focused on fundraising[.]”¹⁶ with approximately 25% of all investor funds being used for executive compensation and fundraising expenses, such as finders’ fees and commissions.¹⁷

⁸ See *id.* ¶¶ 33-34 (“With the exception of relatively limited revenues from the sale of certain property holdings, neither CAREIC nor any of the Legacy Debtors had any operating revenue.”), ¶ 46 (Legacy Debtors “had relatively little revenues generated from operations, but rather operating costs . . . were funded by monies raised from the sale of securities to investors.”), & Consolidation Findings and Conclusions Exh B (Timeline of Castle Arch Entity Formations and Investment Offerings).

⁹ *Id.* ¶ 35; see *id.* ¶¶ 36-39 (providing detail of this pattern), ¶ 107(d), & Consolidation Findings and Conclusions, Bankruptcy Docket No. 591, Exhs. E-G (showing use of cash and public offerings).

¹⁰ *Id.* ¶ 107(d).

¹¹ *Id.* ¶ 25; see also *id.* ¶¶ 46-59 & ¶107(b).

¹² *Id.* ¶ 58.

¹³ *Id.* ¶ 50.

¹⁴ *Id.* ¶ 53.

¹⁵ *Id.* ¶ 61; see *id.* ¶¶ 64-91 (providing examples).

¹⁶ *Id.* ¶ 41; see *id.* ¶¶40-45.

- h. Almost all of the real properties that the Legacy Debtors purchased and owned as of the filing of the Bankruptcy Cases remained undeveloped, with no entitlements in place.¹⁸

16. On June 7, 2013, the Bankruptcy Court entered an *Order Confirming Chapter 11 Trustee's First Amended Plan of Liquidation Dated February 25, 2013 as Modified* (the "Confirmation Order")¹⁹ which, among other things: (i) confirmed the *Second Amended Chapter 11 Trustee's Plan of Liquidation Dated February 25, 2013* (the "Confirmed Plan")²⁰; (ii) approved the Liquidating Trust Agreements for each of the Trusts; (iii) appointed the Trustee as the post-confirmation estate representative for each of the Debtors; and (iv) appointed the Trustee as the Liquidating Trustee for the Trusts.

17. Pursuant to the Confirmed Plan and the Liquidating Trust Agreements: (i) the assets of the Legacy Debtors and CAOP I were transferred to the respective Trusts, including all "Claims" and "Causes of Action" (as defined in Section 1.1 of the Confirmed Plan), as well as all "Individual Claims" (i.e., individual claims of investors as defined in Section 6.4 of the Confirmed Plan).

18. Through this Complaint, the Trustee, as the Liquidating Trustee of the Trusts, brings the Debtors' Claims and Causes of Action against Defendants, as well as the Individual Claims of investors, to assist in making a return to the Debtors' creditors and investors.

¹⁷ *Id.* ¶ 42.

¹⁸ *Id.* ¶ 45.

¹⁹ Bankruptcy Case Docket No. 705.

²⁰ *Id.* at Docket No. 701.

III. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction of this proceeding pursuant to 28 U.S.C. §§ 1331 and 1334(b) because this Complaint states claims on behalf of the Liquidating Trusts arising under Title 11 of the United States Code, and this civil proceeding is a proceeding arising under Title 11, or arising in or related to the Debtors' Bankruptcy Case.

20. Geringer, directly and indirectly, singly and in concert, has made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails in connection with the transactions, acts, and courses of business alleged herein, certain of which have occurred within the District of Utah.

21. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1409(a) because: (a) certain of the transactions, acts, practices and courses of business alleged in this Complaint took place in the District of Utah; and (b) the Debtors' Bankruptcy Case is pending in the Bankruptcy Court for the District of Utah, and this is a proceeding arising under Title 11, or arising in or related to the Debtors' Bankruptcy Case under Title 11.

IV. PARTIES

22. Plaintiff is the estate representative for the Debtors and the Liquidating Trustee for the Trusts. Pursuant to this Complaint, the Trustee is bringing: (a) the Debtors' Claims and Causes of Action against Defendants; and (b) the Individual Claims and Causes of Action of the Debtors' investors against Defendants.

23. Defendant Geringer is a resident of the State of California. Geringer served as CAREIC's President and was a member of CAREIC's Board of Directors from its inception in

2004 until he resigned in July 2009. Under CAREIC’s Amended Operating Agreement, Geringer—as President—had “general charge of the business, affairs, and property of the Company and general supervision over its officers, employees, and agents.” Additionally, and as concluded by the Bankruptcy Court, “[b]ecause Geringer was the only one with real estate experience, and at Geringer’s own request, Cochran [CAREIC’s CEO] granted Geringer ‘the authority to bind the corporation with regard to any contracts, liabilities, obligations or other matters relating to the operation of Castle Arch or with regard to the acquisition, disposition or encumbrance of any properties.’”²¹

24. Upon information and belief, Robert D. Geringer, P.C. is a California corporation that is solely owned and managed by Geringer, and which received funds from the Debtors.

25. Upon information and belief, Fine Arts Entertainment, Inc. is a California corporation that is solely owned and managed by Geringer, and which received funds from the Debtors.

V. GENERAL ALLEGATIONS

A. The Debtors’ Corporate and Capital Structure

26. On or about April 1, 2004, Geringer and three other parties formed CAREIC.

27. In addition, during CAREIC’s existence, Geringer and Management formed several other entities (*e.g.*, CAS, CAK and CASDF), claiming that these entities were created to develop specific projects or to exploit specific investment opportunities.

28. Over the course of CAREIC’s existence, Management raised approximately \$70 million from investors to fund the operations of CAREIC or the other Debtors.

²¹ *Id.* at Docket No. 665 (Memorandum Decision) at p. 3.

29. At all times, CAREIC owned all or substantially all of the membership interests of each of these entities, and CAREIC and the Debtors were fully, completely and exclusively controlled by Geringer and Management.

B. Geringer's Breaches of Fiduciary Duty.

30. Geringer had fiduciary duties to all of the Debtors and their shareholders as a result of his position as President, director, and agent of CAREIC and the Debtors.

31. These duties required Geringer to use an appropriate standard of care, skill and diligence in his work for CAREIC and the other Debtors, to remain loyal to the Debtors, to prefer the interests of the Debtors over his own, and to fully and accurately disclose material facts to investors. During his tenure with CAREIC and the Debtors, Geringer breached his fiduciary duties.

32. As a result, despite raising approximately \$70 million from investors, Geringer and Management did not – with the exception of one small parcel in Star Valley, Wyoming – complete entitlement of any of the Debtors' real estate projects, and Geringer and Management did not sell any substantial part of any of the Debtors' real estate projects.

1. Breaches of Fiduciary Duties Relating to Specific Real Estate Projects

33. Geringer breached his fiduciary duties of care, loyalty and disclosure in regards to the Debtors' real estate operations in Kingman, Arizona; Tooele, Utah; and Smyrna, Tennessee.

(a) Kingman Project

34. Geringer breached his fiduciary duties with respect to the real estate project in Kingman, Arizona by, among other things: (a) using irrational sales assumptions and pro forma

metrics that contradicted known data, and failing to disclose to investors accurate forecasts; (b) wasting corporate assets (investor money) on an infeasible project without sufficient funding and resources; and (c) engaging in co-mingled and self-dealing transactions that were not disclosed to investors.

35. By contract dated August 31, 2005, Geringer secured purchase rights to several thousand acres of raw land in Kingman, Arizona for the purpose of developing a 2,100 acre master planned community with up to two 18-hole golf courses (the “Kingman Project”).

36. Geringer caused the closing of various parcels of raw land comprising the Kingman Project as follows:

Date	Acres	Price
January 13, 2006	216	\$5,625,000
February 2, 2006	21	454,405
April 26, 2006	216	5,625,000
March 9, 2007	40	1,100,000
March 27, 2008	380	\$1,600,108 in cash and \$8,257,371.00 in debt

37. In conjunction with these land purchases, Geringer caused the Debtors to pay \$202,000 to purchase mineral rights, and another \$500,000 to Nicklaus Design, LLC relating to potential golf courses.

1. Irrational and Unsupported Pro Forma Assumptions in CAK PPM

38. In May of 2006 – after spending nearly \$13 million on the Kingman Project – Management issued the CAK Series A Private Placement Memorandum (the “CAK PPM”), pursuant to which approximately \$10 million was raised from investors.

39. Included in the CAK PPM was a pro forma model given to investors showing Management's underwriting and projections for the Kingman Project (the "Kingman Pro Forma"). Management's determination that investor funds should be spent on the Kingman Project was based on, among other things, the following assumptions: (a) a straight line 5% sales price escalator throughout the life of the Kingman Project; and (b) an absorption sales rate of approximately 992 finished lots per year.

40. The straight line 5% sales inflation figure was irrational and optimistically high for the Kingman Project, which figure unrealistically inflated sales figures, expected profits and return on investment.

41. Moreover, at the time of issuing the Kingman Pro Forma to investors, Geringer knew, or should have known, that the projected absorption sales rate was unrealistic. Indeed, in the five years prior to the CAK PPM, the average number of new single family home permits issued by the City of Kingman was 451 per year – less than half of the 992 projected by the Kingman Pro Forma.

42. In other words, to reach the projections of Geringer and Management, Kingman City's new home demand had to rise more than 100% (from 451 permits per year to 992 permits per year), and CAREIC had to capture 100% of that increase in new home demand.

43. Geringer also received market studies from hired professionals showing that the sales absorption assumptions were illogical and not based on sound data, but Geringer ignored such studies and failed to disclose the existence of the studies to investors.

44. Geringer had a fiduciary duty to use proper and accurate assumptions and forecasts in pursuing the Kingman Pro Forma.

45. Geringer also had a fiduciary duty to disclose to investors: (a) accurate projections relating to the Kingman Project; (b) the existence of sound reports contradicting the Kingman Pro Forma; and (c) updated and revised projections relating to the Kingman Project as the project deteriorated.

46. By not taking these actions, Geringer breached his fiduciary duties of care, loyalty and disclosure.

2. Wasting Corporate Assets on an Infeasible Project

47. The CAK PPM, which sought to raise \$30 million for the Kingman Project, stated that the “project can be self-sustaining with the initial \$30 million in equity and \$15 million in debt financing in year two.”

48. Management, however, was only successful in raising approximately \$10 million from investors – only one-third of the amount needed to sustain the Kingman Project.

49. Notwithstanding the insufficient funding for the Kingman Project, Geringer continued to sink money into the project doomed to fail. For instance, in March 2008 – after the unsuccessful CAK Series A offering – Geringer spent an additional \$1.1 million of investor cash for 40 acres of raw land. Then, again in March 2008, Geringer spent \$1.6 million and committed the debtors to an additional \$8.2 million in seller-financed debt to acquire another 380 acres of raw desert.

50. Presumably to assist in funding the land purchase “after the fact,” Management issued its Series B PPM in September 2008, which sought investor money in the amount of \$15 million. Only \$50,000 was raised in that offering. Even if the offering had been successful, CAREIC still would have been \$20 million short of the amount needed to sustain the project.

51. In short, Geringer caused the Debtors to spend cash, or incur debt, of about \$23 million on a project that was doomed from the start due to insufficient funding and resources.

52. Geringer had a fiduciary duty to ensure that the Debtors had sufficient funds and resources to take on a project as large as the Kingman Project before committing millions of dollars of investor capital into land purchases and development.

53. By the end of the May 2006 CAK Series A offering, Geringer knew, or should have known, that the Debtors would not be able to raise the necessary \$30 million from investors necessary to sustain the Kingman Project.

54. Notwithstanding this fact, Geringer continued to sink millions of dollars into the large Kingman Project, and committed the Debtors to millions of dollars of additional debt, with no legitimate hope of the project being successful.

55. Geringer also failed to inform investors of, and update projections based on, the lack of funding necessary to develop the Kingman Project. Because of this, Geringer breached his fiduciary duties of care, loyalty and disclosure.

3. *Engaging in Co-Mingled, Undisclosed, and Self-Dealing Transactions*

56. Between March 2008 and May 2009, Management caused CAK to enter into three separate promissory notes in favor of CASDF, purportedly secured by various tracts of land comprising the Kingman Property.

57. The asserted purpose of the three notes was to allow CAK to obtain funds from CASDF to assist with the Kingman Project.

58. In reality, however, Management did not use the “loaned funds” from CASDF for the Kingman Project. Instead, Management used the funds for, among other purposes,

CAREIC's general operations and obligations, as well as repayment of loans that Geringer and another member of Management made relating to CAS.

59. Geringer had a fiduciary duty not to encumber, or not to allow the encumbrance of, the Kingman Project with liens and debt that did not directly benefit the project. At a minimum, Geringer had a duty to disclose the unrelated debt to investors, and to update the Kingman Pro Forma to account for the additional debt. Because this was not done, Geringer breached his fiduciary duties of care, loyalty and disclosure to investors.

(b) Tooele Property

60. Geringer also breached his fiduciary duties with respect to the real estate project in Tooele, Utah by, among other things: (a) failing to disclose known annexation issues to investors; (b) wasting corporate assets (investor money) to purchase land and water rights despite actual knowledge of annexation limitations that made the project infeasible; (c) using irrational sales assumptions and pro forma metrics that contradicted known data, and failing to disclose to investors accurate forecasts; and (d) encumbering the project with millions of dollars of debt that solely benefitted a different project and entity, and failing to disclose the unrelated project debt to investors.

1. Carelessly Proceeding with Project Despite Insurmountable and Known Annexation Issues

61. As early as June 2005, Geringer knew that it was highly unlikely that he would be able to successfully annex the proposed real estate project into Tooele City. In particular, Geringer knew that: (a) there would be multiple hurdles for any annexation into Tooele City; (b) only lands west of Canyon Road were in Tooele City's 5–10 year annexation plan at that time; (c) lands east of Canyon Road were not even identified as part of Tooele City's

annexation plan; and (d) the city was adverse to annexing any additional land due to a large amount of existing undeveloped land within the city's boundaries.

62. Geringer had been informed that annexation was highly unlikely by Tooele City staff, professional planning and design services firms, other people knowledgeable about the Tooele area, and the Tooele City Council.

63. Indeed, by October of 2005, Geringer knew that the very parcels he would seek to annex had been overwhelmingly turned down only 5 or 6 years before because of limited planning and no benefit to the City.

64. By this time, Geringer also knew that in the absence of annexation, the density of the proposed real estate project would be limited to one lot per every 5 acres which, upon information and belief, would make the project completely economically infeasible.

65. Despite this knowledge, on September 1, 2005 and October 27, 2005, Geringer closed on the purchase of about 264 acres of real property in Tooele, Utah (the "264 Acres") for approximately \$7.2 million.

66. In addition, in October 2005, Geringer closed on the purchase of about 449 acre-feet of water to be used in connection with the development (the "449 Acre Water").

67. Management closed on the purchase of an additional 76 acres of real property in June of 2006 (the "76 Acres"), and in July 2006, Geringer closed on the purchase of an additional 7 acres of real property in Tooele (the "7 Acres" and, collectively with the 264 Acres and the 76 Acres, the "Tooele Property").

68. Within one month thereafter, Geringer *admitted* to CAREIC's legal counsel that he knew Tooele City would not annex CAREIC's project into the City. Notwithstanding this,

Geringer continued to spend money to acquire real estate and water in the Tooele area. For instance, in November 2008, Geringer closed on the purchase of an additional 167 acre-feet of water for the Tooele Property (collectively with the 449 Acre Water, the “Tooele Water”).

69. In total, Geringer and Management spent \$13,352,192 of investor funds for the Tooele Property and Water, despite actual knowledge that annexation into Tooele City was highly unlikely which, upon information and belief, made the project economically infeasible.

70. As a steward of third-party investor capital, and serving as a professional real estate manager of that capital, Geringer breached his fiduciary duties by carelessly spending over \$13 million in investor funds on the Tooele Project without first taking proper steps to resolve known annexation issues, which issues would directly affect lot yield, profits and the economic viability of the project.

71. Geringer also breached his fiduciary duties by failing to disclose these facts to investors, misrepresenting material information regarding the status of the Tooele project, and failing to disclose material information to investors regarding annexation issues and lot yield.

72. CAREIC’s May 25, 2007 PPM (the “CAREIC May 2007 PPM”), pursuant to which money was raised from investors for the Tooele project, never mentions any of these facts. Instead, the PPM misrepresents material facts concerning the status of and prospects for annexation as follows:

In the twelve month period ended December 31, 2006, we incurred \$18,608 in entitlement costs in the form of government filing fees, engineering fees and legal fees in connection with planning and approvals, Tooele zoning entitlements, conceptual and master land use plan, noise assessment study, and annexation requests. We are currently attempting to induce Tooele’s City council to approve annexation of our properties into the city of Tooele. If this occurs, we will have substantially completed the entitlement process.

73. The CAREIC May 2007 PPM also misrepresents facts concerning how many homes could be entitled, saying: “We expect to complete entitlements for 900 to 1,000 single-family homes on the properties, including multi-family residences, in the next two years.”

74. At the time this statement was made, Geringer knew, or should have known, that the number of possible units on the property would be much less.

2. *Irrational and Unsupported Sales Assumptions*

75. In connection with the Tooele Project, Management created a document entitled “*Tooele Pro Forma Assumptions*” (the “Tooele Pro Forma”), which sets forth Management’s financial underwriting related to the Tooele project.

76. According to the Tooele Pro Forma, Management’s determination that investor funds should be spent on the project was based on, among other things, the following assumptions: (a) \$9.4 million land purchase price for 347 acres; (b) lot densities of 4 dwelling units per acre, thereby generating 1,388 finished lots; (c) 1.1 million in entitlement expenses; and (d) sales forecasts of 58 finished lots per month commencing in April 2008, with project sellout in March 2010, thereby suggesting an annual absorption rate of almost 700 finished lots per year.

77. However, as early as May 14, 2005 – before the first dollar had been spent – Geringer knew the absorption rate the pro forma was based upon was unrealistically optimistic.

78. An internal memorandum prepared by CAREIC personnel stated that in 2004, Tooele City had only issued 195 single family building permits for the entire year, and that as of May 2005, Tooele City had only issued permits for 52 single family units.

79. Put another way, to economically justify the Tooele Project, Management forecasted that: (a) Tooele City's new home demand was going to rise almost four fold (from 195 permits to 700 permits per year); and (b) CAREIC was going to capture 100% of that entire expansion in new home demand.

80. Geringer had a duty to use proper and accurate assumptions and forecasts in pursuing the Tooele Project.

81. Geringer breached his fiduciary duties by using irrational sales assumptions that were not backed by any third-party market share or market study data.

82. Additionally, the sales forecast was dependent upon the Tooele Project being annexed into the City of Tooele, which Geringer knew from the outset was not likely.

83. Yet, upon information and belief, no adjustments were made to the Tooele Pro Forma, and investors were never informed that CAREIC's forecasts were completely without a rational basis.

84. Geringer had a fiduciary duty to update project metrics, lot yield and sales forecasts as the project progressed, and to disclose such information to investors prior to sinking investor money into a project doomed to fail. By not doing so, Geringer breached his fiduciary duties of care, loyalty, and disclosure.

3. *Encumbering the Tooele Property with \$3.72 million in Debt Related to CAK*

85. On March 27, 2006, CAREIC obtained a \$5,380,295 loan from ANB Financial, which loan was secured by the 264 Acres (the "ANB Loan").

86. However, the proceeds of the ANB Loan were not used for acquisition or development of the Tooele Property. Instead, \$1.5 million was used to pay off a prior loan

(which had been used to purchase property in Kingman), and the remaining \$3.7 million was used to purchase additional property relating to the Kingman Project.

87. Geringer had a fiduciary duty not to encumber, or not to allow the encumbrance of, the Tooele Project with millions of dollars of debt that did not benefit the project in any way. At the very least, Geringer had a fiduciary duty to update the Tooele Pro Forma relating to the Tooele property with the additional burdensome debt, and to disclose the new metrics and projections to investors. By not doing so, Geringer breached his fiduciary duty.

(c) Smyrna Property

88. Geringer breached his fiduciary duties with respect to the real estate project in Smyrna, Tennessee by, among other things: (a) ignoring known land and development issues and proceeding with land purchases and development despite insurmountable obstacles, and failing to disclose such issues to investors; (b) using false and improper data to analyze the project's feasibility and profitability; (c) using false and fraudulent estimates for lot demand, and providing false information to investors; (d) proceeding with lot purchases and development despite insufficient funds and resources; and (e) engaging in self-dealing.

1. Ignoring Pre-purchase Due Diligence

89. In September and October of 2006, Geringer assigned to CAREIC two contracts in which he had entered to purchase a total of 643 acres of real property outside of Smyrna, Tennessee (the "Smyrna Property"). The contracts required the purchaser to pay, at closing, approximately \$7.4 million just to acquire the property.

a. *Management's Knowledge of Insurmountable Obstacles to Development*

90. Upon information and belief, no later than September 2006, Geringer began investigating whether the Smyrna Property was viable for real estate development.

91. No later than December 2006, Geringer received a report from Ragan-Smith Engineers (“RSE”). Geringer had commissioned the report to investigate various issues with the Smyrna Property (the “RSE Report”).

92. The RSE Report put Geringer on notice that much of the Smyrna Property was undevelopable because of its geographic features, including the following:

- a. the land was “moderately steep” with maximum slopes ranging from 15% to 25% and comprising 36.7 acres of the total;
- b. there were two prominent streams on the property, and approximately 22.4 acres were within the FEMA recognized flood plain;
- c. an additional 14.7 acres was required for stream buffers; and
- d. an additional 120.79 acres were required for roads and detention ponds.

93. Of the 643 acres CAREIC had under contract, only 316.5 were developable, and as a result, the maximum number of lots theoretically possible on the entire property was no more than 1,295.

94. The RSE Report also put Geringer on notice of serious problems and expense with obtaining water and sanitary sewer services to the Smyrna Property, including:

- a. The property had no sewer services at the time. If a Septic Tank Effluent Pump system was used to address this problem, it would consume an additional 129.5 acres, further reducing the maximum possible number of lots to 919;
- b. An alternative gravity sewer system would not be built by the Town of Smyrna for 5 to 10 years. Constructing a portion of that system (excluding on site collection) would cost CAREIC at least \$2,725,000 in 2006 dollars;

- c. A new water storage reservoir and booster pump would be required to meet domestic and fire flow demands, at a cost of an additional \$1,500,000 to CAREIC in 2006 dollars.

95. Finally, the RSE Report put Geringer on notice that to achieve minimum lot sizes (and maximum density), the Smyrna Property would have to be annexed to the Town of Smyrna. Since there were several parcels of land between the City limits and the Smyrna Property, annexation was unlikely for at least 4-5 years.

96. In February 2007, Geringer received the results of a *Sinkhole Review* he had commissioned with regard to the Smyrna Property.

97. The Sinkhole Review put Geringer on notice of other problems with the Smyrna Property, including:

- a. Several exposed joints and sinkholes were identified which, the Review concluded, “are not likely to support structural elements due to the need to accept water during storm events”;
- b. Several karst features (caves) were found on the Smyrna Property. The area covered by these features “would not feasibly support structural elements,” and would require protection from trespassers;
- c. The majority of the 147 acre parcel had essentially no onsite soil that would be acceptable for use as engineered fill. As a result, utility placement and landscaping would be difficult, and an off-site borrow source would be necessary to develop the property.

98. The RSE Report had previously noted that finding suitable off-site soils of a magnitude to complete development was questionable.

99. The issues raised in the Sinkhole Review further directly affected the residential lot yield for the Smyrna Property, and in turn the revenues and profits that could be generated from sales of lots from the project.

100. By written report dated August 7, 2007, RSE advised Geringer that the proposed off-site sewer extension needed for the Smyrna Property would cost \$7.5 million, plus \$775,700 in engineering fees, for a total sewer cost of \$8.3 million.

101. On August 13, 2007, RSE provided Geringer with a Phase One Environmental Report (the "Phase One Report"), which put Geringer on notice that the Smyrna Property had significant numbers of sink holes and karst features, and that a wetland delineation report needed to be conducted to assure compliance with regulatory wetland requirements.

b. Geringer Analysis Ignores Known Facts

102. On or about December 8, 2006, Geringer performed his first complete internal analysis of the development of the Smyrna Property (the "December 2006 Analysis").

103. The December 2006 Analysis states that it "conservatively estimates" that the project would generate sales proceeds of approximately \$64.8 million, with \$43.5 million in acquisition and development costs, yielding a profit of \$24.9 million. However, this conclusion assumed that:

- a. annexation, rezoning, lot development, and off-site development work would require about 18-24 months (not the 4 to 5 years that RSE had advised);
- b. lot sales would begin in the second year of the project (*i.e.*, 3 years before annexation was achieved);
- c. the project would generate at least 1600 lots for sale (not the 919 that RSE had advised were possible).

104. The assumptions contained in Geringer's December 2006 Analysis are directly contradicted by facts known to Geringer at the time. In violation of his fiduciary duty of care, Geringer completely disregarded material information concerning the economic viability of the

Smyrna Property for development that Geringer knew about at the time, in performing his analysis, and in closing the purchase of the Smyrna Property.

105. Geringer revised his analysis of the Smyrna Property at least twice (in February 2007 and June 2007) before closing the purchase of the property on August 15, 2007.

106. In each of these revised analyses, Geringer made further assumptions that were contradicted by facts he knew at the time.

107. For instance, in the February 12, 2007 Revision, Geringer assumed that off-site work would require only 12–18 months (rather than the 18–24 months stated in the December 2006 Analysis), and assumed that the Property would yield 2,000 lots for sale (rather than the 1,600 stated in the December 2006 Analysis).

108. Both of these assumptions were directly contradicted by facts known to Geringer at the time. In violation of his fiduciary duty of care, Geringer completely disregarded material information concerning the economic viability of the Smyrna Property for development that he knew about at the time, in generating the February 2007 Revision, and in proceeding to close the purchase of the Smyrna Property.

109. Similarly, on June 5, 2007, Geringer generated a further revision to the December 2006 Analysis (the “June 2007 Revision”). The June 2007 Revision assumed that:

- a. off-site sewer costs for the project would be no more than \$5 million, and that CAREIC would receive \$3 million in Smyrna Town sewer credits;
- b. CAREIC would deliver and sell 250 finished lots between September 2008 and September 2009; and
- c. CAREIC would thereafter deliver and sell 50 finished lots per quarter until 2017.

110. Each of these assumptions was unrealistic, or was contradicted by facts known to Geringer at the time.

111. For instance, no later than August 7, 2007, Geringer knew that: (a) mandatory off-site sewer improvements would cost \$8.3 million, as compared to the \$5 million assumed in the June 2007 Revision, and represented to investors; (b) the Town of Smyrna had not agreed to any binding sewer reimbursement credits; (c) on-site environmental conditions were present on the Smyrna Property, which could materially impact developable acreage and substantially increase development costs; and (d) on-site streams and wetlands needed further analysis to determine lot yield and project feasibility.

112. Notwithstanding all these facts, on August 15, 2007, Geringer closed the purchase of the Smyrna Property, rather than conducting further investigation to assure the viability of the Smyrna Project.

113. In so doing, Geringer breached his fiduciary duty of care in relation to the Smyrna Property. Upon receiving information about the Smyrna Project, a prudent manager would have inquired further into these conditions to determine the likely impact on developable acreage, development cost increases, and potential no-build zones for on-site environmental conditions that could not be feasibly remediated. Instead of doing this, Geringer purchased the Smyrna Property without conducting additional and basic due diligence, and continued to raise money from investors while misrepresenting, or failing to disclose, material facts relating to the project.

114. As a result, Geringer spent some \$7.9 million of investor funds to acquire real estate that the Debtors had no realistic prospect of successfully developing.

2. False and Fraudulent Estimates of Demand for Lots

115. A material part of Geringer's case for the acquisition, development, and further investment in the Smyrna Project was his assertion that major production builders were committed to make substantial purchases of production lots in the Smyrna Project.

116. For instance, Geringer's files contain three letters purportedly from Beazer Homes dated December 21, 2006, July 12, 2007, and July 30, 2008. Each of these letters states that Beazer Homes is prepared to purchase 126 production lots each year.

117. On information and belief, none of these letters is genuine.

118. On information and belief, none of the letters represented an actual authorized expression of interest from Beazer, but each was instead the result of a conspiracy between Geringer and a former officer of Beazer Homes who had been business associates prior to the Smyrna Project.

119. Each of these letters reiterates exactly the same purchase commitment despite drastic deterioration changes in the condition of the housing market between December 2006 and July 2008.

120. In addition, these alleged commitments to new purchases of production lots are directly contradicted by Beazer Homes' own statements in press releases and other public documents dated no later than November 2006, which stated that Beazer was not making commitments for new land acquisition.

3. Proceeding Despite Insufficient Capital and Resources

121. By August 2007, the purchase price for the real estate involved in the Smyrna Project was approximately \$7.9 million. In addition, by August of 2007, Geringer knew that,

before he could begin to develop the property, CAREIC would have to spend an additional \$8.3 million to construct an off-site sewer improvement.

122. At that time, however, CAREIC had been able to raise only \$4.1 million for the Smyrna Project through CAS's Series A Private Placement Memorandum, so that additional funds had to be borrowed from third parties to close the purchase of the real estate.

123. In fact, CAREIC was able to fund only \$1.3 million of the \$7.9 million purchase price for the real estate. For the rest of the purchase price, CAREIC borrowed approximately \$1.8 million from a hard-money lender on unfavorable terms (12% interest, 6 month maturity, 20% default rate) (the "Hard Money Loan"), and an additional \$1.8 million from Geringer and another member of Management on the same terms (the "Insider Loans").

124. The Hard Money Loan and the Insider Loans were both secured by Trust Deeds on the Smyrna Property.

125. With these encumbrances on the Smyrna Property, there was insufficient collateral value to support financing of the \$8.3 million off-site sewer improvement that was required before CAREIC could develop and sell lots from the Smyrna Project.

126. Faced with these facts, a prudent real estate development professional would have abandoned the project as economically infeasible, and would have returned to investors the money raised for the project.

127. Instead, in breach of his fiduciary duty of care, Geringer proceeded to close on the Smyrna Project and expended some \$7.9 million of investor funds on the project that never had a chance of being successfully developed.

4. Self-dealing

128. Geringer also breached his fiduciary duty of loyalty to CAREIC by acquiring rights to the Smyrna Project in his individual name, and upon information and belief, assigned those rights to CAREIC in exchange for a fee of \$150,000.00.

2. Lack of Board Oversight.

129. Geringer breached his fiduciary duty by failing to devote sufficient time and attention to the Debtors, failing to properly inform himself of the activities of the Debtors and Management, and failing to implement or enforce clear and appropriate duties and responsibilities for CAREIC's Management.

130. Geringer also breached his fiduciary duties by failing to properly oversee the activities of CAREIC, and by failing to exercise ordinary care in reviewing and assuring the accuracy of offering materials used to solicit investments in the Debtors, PPMs, and materials filed with the SEC.

131. As a result, among other things: (a) Management co-mingled money amongst the Debtors and misused investor funds as one big "piggy bank"; (b) Management solicited investments in CAREIC and the other Debtors by means of offering documents that omitted material information; (c) the Debtors' securities were illegally sold by unlicensed finders and brokers; (d) the Debtors' securities were sold to unaccredited investors; (e) the Debtors' core business activities were not appropriately pursued; and (f) executives were allowed to waste corporate assets on activities that did not benefit the Debtors without check or repercussion.

132. In short, Geringer failed at his basic duties to inform himself of the actions of the Debtors and Management.

3. Lack of Officer Diligence.

133. Geringer had a fiduciary duty to devote sufficient time and attention to the Debtors to allow him to sufficiently perform his tasks as President and a Director with due care, skill, and diligence. Geringer did not do this.

134. For instance, by attempting to manage all of the Legacy Debtors' large real estate projects, Geringer was unable to devote enough diligence and care to any of these projects, causing them to fail.

135. This is especially true since, at the time Geringer was attempting to develop all of the large real estate projects at the same time, Geringer maintained an active law practice in California and pursued numerous other business ventures.

136. As a result of Geringer's failure to devote sufficient attention to the Debtors, the Debtors breached a variety of securities laws in connection with their capital raising activities, the Debtors operated in a way that was highly imprudent and did not protect investor capital, and the Debtors' real estate activities were not competently pursued.

4. Lack of Internal Control and Reporting Procedures

137. In May of 2008, CAREIC's auditors informed Management that CAREIC's system of internal financial controls was deficient and suffered from several "reportable conditions," as that term is defined under the standards of the American Institute of Certified Public Accountants.

138. CAREIC's auditors notified Management that, among other things, Management:

- a. allowed inaccurate and inconsistent subscription agreements and offering documents;

b. allowed individuals to subscribe to and purchase investments offered as private placements to accredited investors, even though they had answered the Company's investor suitability questionnaire to indicate that they were not accredited;

c. did not have adequate policies and procedures related to significant functions, including back office, accounting, personnel, payroll, and executive functions;

d. allowed one officer to hold ultimate control over multiple critical functions;

e. allowed Geringer to negotiate contract terms related to property acquisitions and financing arrangements, independently and outside of CAREIC, with the result that neither CAREIC nor any of its executives had any input on the terms, structure or purchase price;

f. allowed expense reports without receipts or other adequate documentation to assure that the claimed expenses were actually incurred; and

g. did not require pre-approval at the management level of significant expense reimbursement requests, including expense requests from non-employees.

139. Geringer, as President and a director of CAREIC, breached his fiduciary duties by allowing these conditions to occur, and by failing to take remedial actions after becoming aware of these conditions.

5. Reckless Spending of Investor Funds.

140. The Bankruptcy Court concluded that approximately 25% of all investor funds solicited by the Legacy Debtors were used for executive compensation and fundraising expenses.²²

141. This amount of compensation and fundraising expenses was clearly excessive in light of the Debtors' complete lack of operating revenue, and Geringer and Management's complete lack of success in achieving the Debtors' core business plans.

²² Exh. 1 (Consolidation Findings and Conclusions ¶ 42).

142. Geringer breached his fiduciary duty by receiving and allowing these excessive amounts of compensation, without an adequate or sufficient basis.

(a) *Executive Compensation.*

143. Even though the Debtors never generated substantial revenue from operations, let alone profits, Geringer and Management paid themselves salaries that would only have been appropriate in highly profitable corporation.

144. For example, despite Geringer's abject failure in developing any real estate project or providing any real value to the Debtors, Geringer and CAREIC's other Officers were paid between \$15,000 and \$25,000 per month in salary.

145. Additionally, the Debtors inappropriately "reimbursed" Geringer and other Management for so-called office expenses that were excessive, and included costs that were not related to CAREIC's business or operations.

146. CAREIC also inappropriately paid a number of people, including persons affiliated with Geringer and Management, who either provided no services to CAREIC, or who should not otherwise have been involved in the Company.

147. CAREIC also paid salaries to sales employees who had ceased producing for CAREIC, and who were in fact devoting their time to other ventures that were not directly related to CAREIC.

(b) *Inappropriate and Wasteful Retreats*

148. Although the Debtors had no operating revenue, Management caused the Debtors to pay for "retreats" to destinations like Maui, Hawaii, Palm Springs, California, and Sun Valley, Idaho, for themselves and other employees of the Debtors.

149. These retreats, and the amounts spent on them, were inappropriate and excessive in light of the Debtors' financial condition and business operations. These retreats were, in essence, free personal vacations for Management at the Debtors' expense.

150. Geringer breached his fiduciary duties to the Debtors and investors by wasting, or allowing the waste of, the Debtors' resources (investor money) on exuberant compensation and perks, lavish retreats, and personal endeavors.

6. Operating CAOP I

151. CAREIC operated and managed CAOP I, and as a result, Geringer had fiduciary obligations to CAOP I.

152. Geringer breached his fiduciary duties in operating and managing CAOP I by, among other things, using CAOP I funds, or allowing CAOP I funds to be used, to pay debts of the Legacy Debtors and Management, in contradiction to disclosures made to CAOP I investors.

153. For instance, and as set forth above, CAREIC obtained a multi-million dollar loan from ANB Financial. Though virtually all the proceeds from the ANB Loan were used for the Kingman Project, the loan was secured by certain parcels of the Tooele project, and by the personal guaranties of Geringer and other members of Management.

154. The ANB Loan went into default, and Management negotiated a settlement with the successor loan holder, pursuant to which the debt was settled for about \$3 million.

155. Management caused CAOP I to pay the settlement amount directly to the new loan holder and effectively "loan" \$2.9 million to CAREIC for the ANB Loan, which also released Geringer and other members of Management from their personal guaranties.

156. No loan documents or notes were executed to document this “loan” from CAOP I to CAREIC until months later, and CAOP I investors were not informed that their money – which was supposed to be used for investing in distressed properties – had been used to pay obligations of CAREIC and certain of its Management, including Geringer.

157. As a result, Geringer breached his fiduciary duties of care, loyalty and disclosure in operating CAOP I.

7. Involvement of Banned Persons in Sales of CAREIC Securities

158. Since at least 2003, a person named Robert Clawson (“Clawson”) has been subject to a “statutory disqualification” within the meaning of 15 U.S.C. §78c(a)(39), and has been permanently barred from associating with any broker or dealer, or functioning as “a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.”

159. Geringer knew, or should have known, that Clawson was subject to this statutory disqualification.

160. Despite this knowledge, Geringer allowed CAREIC to employ Clawson: (a) to be a de facto member of CAREIC’s Board; (b) to be intimately involved with the Debtors’ securities and offering materials; (c) to solicit investments from investors in the Debtors’ securities; and (d) to be involved in many other facets of the Debtors’ operations and money-raising scheme.

161. Geringer breached his fiduciary duty by involving Clawson, or allowing Clawson to be involved in, the Debtors' operations, including the sales of securities, and by concealing that information from the Debtors' investors.

8. Illegal Sales of the Debtors' Securities By Unlicensed Broker Dealers

162. Geringer also breached his fiduciary duty by allowing the Debtors' securities to be sold illegally through unlicensed finders and broker-dealers.

(a) Unlicensed Sales Employees.

163. The CAREIC Officer with principal responsibility for supervising and effecting the Debtors' sales of their securities was Jeff Austin ("Austin"). Austin had no other significant responsibilities with the Debtors, and performed no other substantial duties for the Debtors prior to November of 2010.

164. Despite Austin's role as head of the Debtors' securities sales, Austin was never licensed with the SEC or any state securities regulator as a broker or dealer.

165. Similarly, CAREIC's Regional Vice President for Business Development (Eastern Region) was William Grundy ("Grundy"). In this position, Grundy regularly and actively solicited investors, routinely advised investors on the merits of investing in the Debtors, and regularly effected transactions in securities for the Debtors, for which he received compensation, including but not limited to bonuses and incentive rewards.

166. Grundy did not obtain his Series 62 securities license until February 1, 2008, and did not obtain his Series 63 securities license until June 30, 2008.

167. CAREIC hired Keith Green ("Green") to be CAREIC's Regional Vice President for Business Development (Western Region). In this position, Green regularly and actively

solicited investors, routinely advised investors on the merits of investing in the Debtors, and regularly effected transactions in securities for the Debtors, for which he received compensation, including but not limited to bonuses and incentive rewards.

168. Although Green took the Series 62 or 63 license examinations, he did not pass. As a result, Green has never been licensed as a securities broker-dealer.

169. Geringer knew, or should have known, that Austin, Grundy and Green were unlicensed, that their principal duties and responsibilities were the sales of the Debtors' securities, and that they were paid compensation for these sales. Despite this knowledge, Geringer allowed Austin, Grundy, and Green to illegally sell the Debtors' securities.

(b) Sales By Other Non-Licensed Persons

170. In addition to sales by unlicensed employees, Geringer allowed significant sales of the Debtors' securities through unlicensed finders.

171. Unlicensed finders regularly and actively solicited investors to purchase the Debtors' securities, routinely advised investors on the merits of investing in the Debtors, and regularly effected transactions in securities for the Debtors, for which they received transaction-based compensation.

172. Geringer knew, or should have known, that CAREIC's securities were being sold by unlicensed finders, for which they received transaction-based compensation.

173. Despite this knowledge, and in breach of his fiduciary duty, Geringer did not take effective action to stop these illegal sales.

C. Material Misrepresentations and Omissions In Securities Offerings and Documents Filed with the SEC

1. The Company's Securities Offerings

174. In May 2004—one month after it was organized—the Debtors began raising money from investors. Over the course of CAREIC's existence, the Debtors raised approximately \$70 million through a series of so-called "private placements" pursuant to materially false or misleading PPMs. Geringer reviewed and commented on the Debtors' misleading PPMs.

(a) CAREIC Securities

175. CAREIC offered and sold investors approximately \$38.4 million in securities of CAREIC. CAREIC offered and sold the securities in Series A, B, C, D and E.

176. The PPMs for each of these offerings contained material misrepresentations and omissions. However, this Complaint focuses on and asserts claims solely relating to CAREIC's \$7.1 million Series E offering, which began no earlier than June 1, 2008.

(b) Securities of Special Purpose Entities

177. In addition to offering and selling securities in CAREIC, Management also offered and sold to the public the securities of several purportedly "single-purpose" or "project-specific" entities.

178. The offering materials for each of these special purpose entities also contained numerous material misrepresentations and omissions. However, this Complaint focuses on and asserts claims solely relating to the following offerings and offering documents:

- a. CAS PPM, dated June 25, 2007, pursuant to which \$4.1 million was raised; and
- b. CASDF PPM, dated February 1, 2008, pursuant to which \$8.4 million was raised.

2. Material Omissions Common to All Relevant Securities Offerings

179. CAREIC's \$7.1 million Series E offering, the CAS PPM, and the CASDF PPM (collectively, the "Relevant Securities Offerings"), failed to disclose at least the following adverse material facts:

(a) Management's Lack of Success or Experience.

180. None of the Relevant Securities Offerings disclosed that:

- a. Over the course of its existence, CAREIC had – with the exception of one small parcel in Star Valley, Wyoming – failed to successfully develop, entitle, or sell a single piece of real estate, let alone “thousands of acres.”
- b. CAREIC had no track record of real estate development, much less a record of success.
- c. No member of Management, other than Geringer, had any real estate entitlement or development experience prior to joining Castle Arch.

(b) Management's Breaches of Fiduciary Duty

181. The Relevant Securities Offerings also failed to disclose that Geringer and Management had breached and were breaching their fiduciary duties by pursuing real estate projects that were (as described more fully above) known to be infeasible, based on irrational and unsupported assumptions, and based on false and fraudulent estimates of demand.

182. The Relevant Securities Offerings failed to disclose that the CAREIC Board was failing to properly oversee the activities of CAREIC, failing to exercise ordinary care in reviewing and assuring the accuracy of offering materials used to solicit investments in the Debtors, PPMs, and materials filed with the SEC, all as more fully described above.

183. The Relevant Securities Offerings failed to disclose that: (a) Geringer operated unchecked by the Board to pursue infeasible and risky development projects; and (b)

Management failed to properly segregate and account for the funds of the Debtors resulting in co-mingling and misuse of investor funds.

184. The Relevant Securities Offerings failed to disclose that Management was not devoting sufficient attention to the Debtors, and that Management was otherwise breaching their fiduciary duties, all as set forth in greater detail above.

(c) *Involvement of a Statutorily Banned Person in Debtors' Business and Securities*

185. The Relevant Securities Offerings failed to disclose that Clawson, CAREIC's Managing Director of Business Development, and a de facto officer and member of CAREIC's Board (a) had been permanently banned by the SEC from dealing in securities such as those sold by the Debtors; (b) was intimately involved with the Debtors' securities and PPMs, including the drafting thereof; and (c) was soliciting investments in the Debtors.

186. At the time of the Relevant Securities Offerings, all of these material adverse facts were known to, or recklessly disregarded by, Geringer.

3. CAS PPM

187. Among others, the CAS PPM made the following misrepresentations or omissions of material facts:

(a) *Use of Investment Proceeds*

188. The CAS PPM represented to investors that investments in CAS would be used to fund and support the business operations of the Smyrna Project. In particular, the CAS Series A PPM states:

[CAS] was organized . . . as a residential and commercial land development company to develop approximately 1,700 residential lots on approximately 640 acres of land located in the Greater Nashville area of middle Tennessee.

* * * *

Our principal activity is exploitation of the acquisition rights to approximately 640 acres of property in the Smyrna Tennessee area, obtaining zoning and other entitlements for the property, securing financing for the purchase of the property, improving the property's infrastructure and amenities, and selling the property.

* * * *

We intend to use the net sale proceeds of this offering for land acquisition.

189. The CAS PPM failed to disclose that Management had previously used funds raised for similar single-purpose entities indiscriminately to fund whatever entity was in need of cash at the time, rather than to advance the business operations of the subject entity.

190. The CAS PPM failed to disclose that funds invested in CAS would in fact be used for purposes unrelated to CAS's business operations, as need might arise.

191. In fact, Geringer and Management used proceeds from the CAS PPM to close on the purchase of the Tooele Water, a purpose unrelated to the business operations of CAS, without disclosing this information to investors.

(b) Infeasibility of the Smyrna Project

192. The CAS PPM represents that Geringer's and Management's "conservative sales targets are estimated to be approximately \$88.2 million with an estimated \$50.3 million in acquisition, development, and selling costs."

193. The CAS PPM fails to disclose that Geringer's and Management's "conservative" sales targets were based on the assumption that the property would yield 1,700 saleable lots, despite the fact that CAREIC's engineers had advised Geringer that no more than 1,295 were theoretically possible on the property.

194. At the time the CAS PPM was published, all of these adverse material facts were known to, or recklessly disregarded by, Geringer.

4. CASDF PPM

195. The CASDF PPM made, among others, the following misrepresentations or omissions of material facts:

(a) *Omission of Involvement of Clawson in Offering Materials.*

196. The CASDF PPM does not disclose that CASDF was designed by Clawson, or that Clawson drafted and oversaw the drafting of the CASDF PPM.

(b) *Omissions Regarding CAREIC's Inability to Backstop Losses.*

197. The CASDF PPM represents that as CASDF's Manager, CAREIC "*intends to back the Fund's investment and allocate its assets to cover Fund losses, if any.*"

198. However, the CASDF PPM fails to disclose that CAREIC's own financial condition was so precarious at the time of the CASDF offering, that CAREIC did not have any practical ability to backstop CASDF losses.

199. The CASDF PPM failed to disclose that in early 2008, CAREIC's financial statements reflected that CAREIC had only \$3.2 million in current assets, as compared to \$8.7 million in current liabilities.

(c) *Misrepresentations and Omissions Concerning Properties.*

200. The CASDF PPM fails to disclose that the Kingman Project was infeasible and based on irrational forecasts.

201. The CASDF PPM fails to disclose that the Debtors had insufficient funding and resources to tackle a project as large as Kingman.

202. The CASDF PPM falsely represents that the Smyrna property is in "the final stages of the entitlement process."

203. In fact, at the time of the CASDF PPM, the Smyrna Property had not been annexed into the Town of Smyrna; no zoning applications had been approved to increase lot yield; no sewer or water services were available, and such services required several million dollars to complete; and no substantial entitlement work had been completed.

204. The CASDF PPM describes the Tooele Property as one of the projects to which CASDF might allocate funds “secured with senior lien positions using the land as collateral.”

205. However, the CASDF PPM fails to disclose that: (a) the Tooele Property was already encumbered with a \$5.3 million ANB Loan, which was secured by the 264 Acres of Tooele Property; (b) virtually all of the ANB Loan proceeds were used on issues relating to the Kingman Project, as opposed to improving Tooele; and (c) as a result, funds allocated to the Tooele Property could not be secured with a senior lien.

206. At the time the CASDF PPM was published, all of these adverse material facts were known to, or recklessly disregarded by, Geringer.

5. CAREIC Series E PPM.

207. The CAREIC Series E PPM made, among others, the following misrepresentations or omissions of material facts:

(a) Omissions Concerning Lack of Internal Controls and Reliability of Financial Statements.

208. In May 2008, CAREIC’s auditors formally informed CAREIC that its system of internal financial controls was deficient and suffered from several “reportable conditions,” as that term is defined by the standards of the American Institute of Certified Public Accountants.

209. CAREIC’s auditors notified Management that, among other things, Management:

- a. allowed inaccurate and inconsistent subscription agreements and offering documents;
- b. allowed individuals to subscribe to and purchase investments offered as private placements to accredited investors, even though they had answered the Company's investor suitability questionnaire to indicate that they were not accredited;
- c. did not have adequate policies and procedures related to significant functions, including back office, accounting, personnel, payroll, and executive functions;
- d. allowed one officer to hold ultimate control over multiple critical functions;
- e. allowed Geringer to negotiate contract terms related to property acquisitions and financing arrangements, independently and outside of CAREIC, with the result that neither CAREIC nor any of its executives had any input on the terms, structure or purchase price;
- f. allowed expense reports without receipts or other adequate documentation to assure that the claimed expenses were actually incurred; and
- g. did not require pre-approval at the management level of significant expense reimbursement requests, including expense requests from non-employees.

210. The CAREIC Series E PPM failed to disclose that CAREIC's auditors believed that CAREIC's system of internal financial controls was deficient and suffered from several "reportable conditions."

211. Nor did CAREIC otherwise disclose this material adverse fact. To the contrary, in its next two quarterly reports on Form 10-Q, CAREIC reported that it had evaluated the effectiveness and design of its system of internal control and had concluded that the system was effective "as of the end of the period covered by [each] report."

(b) Misrepresentations and Omissions Concerning Properties.

212. The CAREIC Series E PPM represents that since its inception, CAREIC has "purchased or [has] purchase rights to land parcels located in California, Arizona, Tennessee, Texas, Wyoming and Utah."

213. The PPM fails to state, however, that at the time of the Series E PPM, Geringer and CAREIC had lost all of CAREIC's properties and purchase rights to the land parcels in California and Texas as a result of poor management, breaches of fiduciary duty, and/or lack of funds and resources.

214. With respect to the Smyrna Project, the CAREIC Series E PPM states: "We have three letters of commitment from major production builders in the area to move forward in purchasing the finished lots from Castle Arch."

215. Upon information and belief, this statement is false. CAREIC did not have letters of commitment from separate home builders to purchase finished lots, and the letters it purportedly had from Beazer Homes were, on information and belief, not genuine.

216. The CAREIC Series E PPM falsely represents that the Smyrna property is in "the final stages of the entitlement process."

217. In fact, at the time of the CAREIC Series E PPM, the Smyrna property had not been annexed into the Town of Smyrna; no zoning applications had been approved to increase lot yield; no sewer or water services were available, and such services required several million dollars to complete; and no substantial entitlement work had been completed.

218. The CAREIC Series E PPM fails to disclose that the Tooele Property was already encumbered with a \$5.3 million ANB Loan, which was secured by the 264 Acres of Tooele Property, and that virtually all of the ANB Loan proceeds were used on issues relating to the Kingman Project, as opposed to improving Tooele.

219. At the time the CAREIC Series E PPM was published, all of these adverse material facts were known to, or recklessly disregarded by, Geringer.

D. Fraudulent Transfers

220. Prior to the Petition Date, the Debtors made significant transfers of funds to the Defendants.

221. Attached hereto as **Exhibit 2** is a summary prepared from the Debtors' books and records in the Trustee's custody and control of transfers of cash made by the Debtors noted thereon to Defendants prior to the Petition Date (collectively, these transfers are referred herein as the "Transfers").

222. Upon information and belief, the noted Debtors made the Transfers to Defendants as compensation, including salary, consulting fees, expenses, and bonuses.

223. Each of the Transfers is a transfer of an interest of the named Debtors in property.

224. Upon information and belief, the Transfers were made by the Debtors, or the obligations of the Debtors to make the Transfers to Defendants, were made with actual intent to hinder, delay or defraud the Debtors' creditors and investors.

225. Upon information and belief, the Transfers were made by the Debtors, or the obligations of the Debtors to make the Transfers to Defendants, were for services for which the Debtors received less than a reasonably equivalent value in exchange for such Transfers or obligations.

226. Each of the Defendants is an insider of the Debtors.

227. At all relevant times, the Debtors were insolvent.

228. At all applicable times, the relevant Debtors had at least one unsecured creditor.

E. The Geringer Proof of Claim

229. Geringer filed a Proof of Claim in CAREIC's Bankruptcy Case, originally asserting a general unsecured claim in the amount of \$8,550,891.72 (the "Geringer Claim"). The Trustee objected to the Geringer Claim, and the Bankruptcy Court conducted an evidentiary trial on the Claim. By Memorandum Decision,²³ the Bankruptcy Court disallowed the Geringer Claim in its entirety, other than for the general unsecured amount of \$243,146.00.

VI. CLAIMS AGAINST DEFENDANTS

FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty)—Geringer

230. The Trustee incorporates each of the preceding allegations by reference.

231. As President and a Director of CAREIC, Geringer owed fiduciary duties of care, loyalty and disclosure to CAREIC, the Debtors, and their shareholders, which required him to: (a) exercise sound business judgment, in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of CAREIC and the Debtors; (b) use his ingenuity, influence, and energy, and to employ all the resources of the Debtors, to preserve and enhance the property and earning power of the Debtors, even if the interests of the Debtors are in conflict with his own personal interests, as well as to disclose all conflicts of interest that might affect his duties and responsibilities to CAREIC, the Debtors, and their shareholders; and (c) fully and accurately disclose all material facts to investors relating to the Debtors, their operations, management and real estate projects, as well as any other material fact that may influence an investor's decision to invest in the Debtors.

²³ Bankruptcy Case Docket 665.

232. As set forth in Part V.B.1.(a), Geringer breached his fiduciary duties of care, loyalty and disclosure relating to the Kingman Project by, among other things: (a) using irrational sales assumptions and pro forma metrics that contradicted known data, and failing to disclose to investors accurate forecasts; (b) wasting corporate assets (investor money) on an infeasible project without sufficient funding and resources; and (c) engaging in co-mingled and self-dealing transactions that were not disclosed to investors.

233. As set forth in Part V.B.1.(b), Geringer breached his fiduciary duties of care, loyalty and disclosure relating to the Tooele Property and project by, among other things: (a) failing to disclose known annexation issues to investors; (b) wasting corporate assets (investor money) to purchase land and water rights despite actual knowledge of annexation limitations that made the project infeasible; (c) using irrational sales assumptions and pro forma metrics that contradicted known data, and failing to disclose to investors accurate forecasts; and (d) encumbering, or allowing the encumbrance of, the project with millions of dollars of debt that solely benefitted a different project and entity, and failing to disclose the unrelated project debt to investors.

234. As set forth in Part V.B.1.(c), Geringer breached his fiduciary duties of care and disclosure relating to the Smyrna Property and project by, among other things: (a) ignoring known land and development issues and proceeding with land purchases and development despite insurmountable obstacles, and failing to disclose such issues to investors; (b) using false and improper data to analyze the project's feasibility and profitability; (c) using false and fraudulent estimates for lot demand, and providing false information to investors; (d)

proceeding with lot purchases and development despite insufficient funds and resources; and (e) engaging in self-dealing transactions.

235. As stated in Part V.B.2. and V.B.3., Geringer breached his fiduciary duties of care by, among other things: (a) failing to devote sufficient time and attention to the Debtors; (b) failing to properly inform himself of the activities of the Debtors and Management; (c) failing to implement or enforce clear and appropriate duties and responsibilities for Management, or to set clear limits on executive authority; and (d) failing to exercise ordinary care in reviewing and assuring the accuracy of offering materials used to solicit investments in the Debtors, PPMs, and materials filed with the SEC.

236. Geringer breached his fiduciary duties of care, loyalty, and disclosure by causing, or allowing the “reportable conditions” in the Bouwhuis Letter to occur, and failing to disclose and remedy such conditions thereafter, as set forth in Part V.B.4.

237. As set forth in Part V.B.5., Geringer breached his fiduciary duties of care and loyalty by causing, or allowing the Debtors to: (a) pay Management salaries and perks in excess of industry norms, without an adequate or sufficient basis, especially since the Debtors achieved no profits, and Management did not provide the Debtors with commensurate time and value for the payments; (b) pay persons as employees of the Debtors, even though such persons were hired to assist Management in their personal endeavors; and (c) waste money (investor funds) on lavish retreats for Management and others, even though the Debtors did not have sufficient funds to pay for the retreats.

238. As set forth in Part V.B.6., Geringer breached his fiduciary duties of care, loyalty and disclosure relating to CAOP I by, among other things, using or allowing CAOP I

funds to pay debts of the Legacy Debtors and Management, in contradiction to disclosures made to CAOP I investors.

239. Geringer breached his fiduciary duties of care and disclosure by allowing Clawson to be heavily involved in the Debtors' operations and the origination and sales of the Debtors' securities, as set forth in Part V.B.7.

240. Geringer breached his fiduciary duties of care and disclosure by causing, or allowing the bulk of the Debtors' securities to be illegally sold to the public, including to unaccredited investors, by unlicensed broker-dealers using materially misleading information, as set forth in Part V.B.8.

241. Geringer's above conduct constitutes gross negligence, and violates his fiduciary duties.

242. The Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is further entitled to attorneys' fees, costs, and interest to the extent allowed by law.

243. Because Geringer's conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

SECOND CLAIM FOR RELIEF

(Violation of Utah, Nevada and California Securities Law—Utah Code Ann. § 61-1-22, NRS § 90.660 and California Corporations Code § 25504)—Geringer

244. The Trustee incorporates each of the preceding allegations by reference.

245. With respect to investors who purchased the Debtors' securities pursuant to the Relevant Securities Offerings, Geringer had a duty to fully and accurately disclose, or to ensure

the disclosure of, all material facts that a reasonable investor would deem important in making the decision to invest in the Debtors' securities.

246. Geringer did not fulfill his duty, but instead made, disseminated, approved, and/or allowed false statements or omissions of material fact in connection with investors' purchases of the Debtors' securities pursuant to the Relevant Securities Offerings.

247. Each of the Relevant Securities Offerings failed to disclose, among other things, the following adverse material facts: (a) Management's lack of experience and success in real estate entitlement and development, as set forth in Part V.C.2.(a); (b) Management's breaches of fiduciary duty, as set forth in Part V.C.2.(b); and (c) Clawson's involvement with the Debtors and their securities, as set forth in Part V.C.2.(c) (collectively, the "Relevant Securities Offerings Material Omissions").

248. The CAS Series A PPM made material misrepresentations and omissions concerning, among other things: (a) use of investment funds, as set forth in Part V.C.3.(a); and (b) the infeasibility of the Smyrna project, as set forth in Part V.C.3.(b) (collectively, the "CAS Series A Material Misrepresentations and Omissions").

249. The CASDF PPM made material misrepresentations and omissions concerning, among other things: (a) omissions of Clawson's involvement in the offering materials, as set forth in Part V.C.4.(a); (b) omissions of CAREIC's inability to backstop losses, as set forth in Part V.C.4.(b); and (c) misrepresentations and omissions concerning the Debtors' properties and projects, as set forth in Part V.C.4.(c) (collectively, the "CASDF Material Misrepresentations and Omissions").

250. The CAREIC Series E PPM made material misrepresentations and omissions concerning, among other things: (a) omissions of lack of internal controls and reliability of financial statements, as set forth in Part V.C.5.(a); and (b) misrepresentations and omissions concerning the Debtors' properties and projects, as set forth in Part V.C.5.(b) (collectively, the "CAREIC Series E Material Misrepresentations and Omissions").

251. Geringer is a control person of the Debtors, as set forth in the applicable statutes and, therefore, is jointly and severally liable for the damages sustained by the Debtors' investors in purchasing the securities in the three above-mentioned offerings.

252. Geringer and Management: (a) employed a device, scheme or artifice to defraud; (b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in an act, practice, or course of business that operated as a fraud or deceit upon the Debtors' investors in the above offerings.

253. Geringer acted with scienter, either with an actual intent to defraud or in reckless disregard of the truth or falsity of the statements in the above offerings.

254. The Debtors' investors reasonably relied upon the accuracy of the representations in making their decisions to invest, and would not have made the investments at the price paid, if at all, had they known the truth of the material misrepresentations and omissions in the above offerings.

255. As the result of the material misrepresentations and omissions in the above offerings, the investors in such offerings have been damaged.

256. Accordingly, the Trustee is entitled to an award of damages on behalf of the investors of the relevant offerings in an amount to be proven at trial. The Trustee is also entitled to attorneys' fees, costs, and interests to the extent allowed by the applicable statutes.

257. Because Geringer's conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

THIRD CLAIM FOR RELIEF

(Securities Fraud Under Section 10(b) of the Securities Act of 1934 (15 U.S.C. § 78j) and Rule 10b-5 (17 CFR 240.10b-5))—Geringer

258. The Trustee incorporates each of the preceding allegations by reference.

259. With respect to investors who purchased the Debtors' securities pursuant to the Relevant Securities Offerings, Geringer had a duty to fully and accurately disclose, or ensure the disclosure of, all material facts that a reasonable investor would deem important in deciding whether to buy the Debtors' securities.

260. Geringer made, or permitted to be made, material misrepresentations, and omitted to make material statements in connection with investors' purchases of securities pursuant to the Relevant Securities Offerings. Such material misrepresentations and omissions include:

- a. the Relevant Securities Offerings Material Omissions;
- b. the CAS Series A Material Misrepresentations and Omissions;
- c. the CASDF Material Misrepresentations and Omissions; and
- d. the CAREIC Series E Material Misrepresentations and Omissions.

261. Geringer, as a control person of the Debtors, is responsible for the above material misrepresentations and omissions, which are attributed to him.

262. With respect to the above material misrepresentations and omissions, Geringer and Management: (a) employed a device, scheme or artifice to defraud; (b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in an act, practice, or course of business that operated as a fraud or deceit upon investors in such offerings.

263. Geringer acted with scienter, either with an actual intent to defraud or in reckless disregard of the truth or falsity of the above material misrepresentations and omissions.

264. The investors in the relevant offerings reasonably relied upon the accuracy of the representations in making their decisions to invest, and would not have made the investments at the price paid, if at all, had they known the truth of the material misrepresentations and omissions.

265. As the result of the material misrepresentations and omission of material facts, the investors in the above offerings have been damaged.

266. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is also entitled to attorneys' fees, costs, and interests to the extent allowed by law.

267. Because Geringer's conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

FOURTH CLAIM FOR RELIEF

*(Control Person Liability Under Section 20(a) of the Exchange Act of 1934 (15 U.S.C. § 78t(a))
–Geringer*

268. The Trustee incorporates each of the preceding allegations by reference.

269. As set forth above, Geringer and Management violated Section 10(b) of the Securities Act of 1934 (15 U.S.C. § 78j) and Rule 10b-5 (17 CFR 240.10b-5), or permitted persons over whom they had control to violate those provisions.

270. At all material times, Geringer acted as a controlling person within the meaning of Section 20(a) of the Exchange Act.

271. By virtue of his executive positions with each of the Debtors, Geringer had possession, direct or indirect, of the power to direct or cause the direction of the management and policies of CAREIC and the Debtors.

272. Specifically, Geringer served as CAREIC’s President and was a member of CAREIC’s Board of Directors from its inception in 2004 until he resigned in July 2009. Geringer was also responsible for all the Debtors’ real estate projects and had “general charge of the business, affairs, and property of the Company and general supervision over its officers, employees, and agents.”

273. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is also entitled to attorneys’ fees, costs, and interests to the extent allowed by law.

274. Because Geringer’s conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

FIFTH CLAIM FOR RELIEF
(Common Law Fraud)—Geringer

275. The Trustee incorporates each of the preceding allegations by reference.

277. With respect to investors who purchased the Debtors' securities pursuant to the Relevant Securities Offerings, Geringer made, disseminated, approved and/or allowed false statements or omissions of material fact in connection with the investors' purchase of the Debtors' securities.

290. As a control person of the Debtors, such material misrepresentations and omissions are attributed to Geringer.

296. Such material misrepresentations and omissions include:

- a. the Relevant Securities Offerings Material Omissions;
- b. the CAS Series A Material Misrepresentations and Omissions;
- c. the CASDF Material Misrepresentations and Omissions; and
- d. the CAREIC Series E Material Misrepresentations and Omissions.

297. At the time Geringer made or allowed these misrepresentations, Geringer knew that the statements were false, or at a minimum, made or allowed the statements recklessly and without regard for the truth.

298. Geringer intended that the Debtors' investors would rely upon the statements, and made or allowed the misrepresentations with the intent of inducing the investors to purchase the Debtors' securities and invest funds.

299. The investors in the relevant offerings reasonably relied upon the statement and have made substantial payments to the Debtors as a result of the misrepresentations.

300. The investors suffered damages as a result of the misrepresentations.

301. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is also entitled to attorneys' fees, costs, and interests to the extent allowed by law.

302. Because Geringer's conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

SIXTH CLAIM FOR RELIEF
(Negligent Misrepresentation)—Geringer

303. The Trustee incorporates each of the preceding allegations by reference.

304. With respect to investors who purchased the Debtors' securities pursuant to the Relevant Securities Offerings, Geringer made, disseminated, approved and/or allowed false statements or omissions of material fact in connection with the investors' purchase of the Debtors' securities.

317. As a control person of the Debtors, such material misrepresentations are attributed to Geringer.

323. Such false statements include:

- a. the Relevant Securities Offerings Material Omissions;
- b. the CAS Series A Material Misrepresentations and Omissions;
- c. the CASDF Material Misrepresentations and Omissions; and
- d. the CAREIC Series E Material Misrepresentations and Omissions.

324. At the time the material representations were made, the statements were untrue.

325. Geringer failed to use reasonable care in making or allowing these representations, and was in a better position than the investors to know the true facts.

326. Geringer intended that the investors would rely upon the statements, and made or allowed the representations with the intent of inducing the investors to purchase the Debtors' securities and invest funds.

327. The relevant investors reasonably relied upon the statements and invested substantial sums of money in the Debtors as a result of the misrepresentations.

328. The investors suffered damages as a result of the misrepresentations.

329. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is also entitled to attorneys' fees, costs, and interests to the extent allowed by law.

330. Because Geringer's conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

SEVENTH CLAIM FOR RELIEF
(Civil Conspiracy)—Geringer

331. The Trustee incorporates each of the preceding allegations by reference.

332. With respect to investors who purchased the Debtors' securities pursuant to the Relevant Securities Offerings, Geringer and Management constitute a combination of two or more persons, who acted together to defraud investors.

333. Geringer and Management agreed to a course of action to cover up the true nature of their scheme to defraud.

334. As an overt act in furtherance of the conspiracy, Geringer and Management intentionally misrepresented the true state of the Debtors' business affairs to investors, or allowed such misrepresentations to occur.

335. Such false statements include:

- a. the Relevant Securities Offerings Material Omissions;
- b. the CAS Series A Material Misrepresentations and Omissions;
- c. the CASDF Material Misrepresentations and Omissions; and
- d. the CAREIC Series E Material Misrepresentations and Omissions.

337. The Trustee is entitled to an award of damages in an amount to be proven at trial. The Trustee is also entitled to attorneys' fees, costs, and interest to the extent allowed.

338. Because Geringer's conduct was sufficiently willful and malicious, the Trustee is further entitled to an award of punitive damages.

EIGHTH CLAIM FOR RELIEF

*(Violation of State RICO Laws—Utah Code Ann. § 76-10-1605(1)–(2) and
NRS § 207.470)—Geringer*

339. The Trustee incorporates each of the preceding allegations by reference.

340. With respect to investors who purchased the Debtors' securities pursuant to the Relevant Securities Offerings, Geringer and Management engaged in a repeated pattern of unlawful activity by fraudulently and illegally selling, or allowing the sale of, securities to investors through unlicensed brokers and by means of material misrepresentations and omissions.

341. Under the veil of a legitimate business, Geringer used or allowed the Debtors to defraud investors and engage in broader misconduct.

342. Geringer's common purpose in engaging in or allowing such repeated and fraudulent conduct was to induce investors to place monies into the Debtor enterprise so that he could profit from the scheme.

343. Specifically, Geringer and Management engaged in a scheme or artifice to defraud money from investors by means of false or fraudulent pretenses, representations, and promises, including but not limited to:

- a. the Relevant Securities Offerings Material Omissions;
- b. the CAS Series A Material Misrepresentations and Omissions;
- c. the CASDF Material Misrepresentations and Omissions; and
- d. the CAREIC Series E Material Misrepresentations and Omissions.

344. Geringer also sold, or allowed the Debtors' securities to be illegally sold to investors through unlicensed broker-dealers.

345. The acts of fraud and racketeering activity identified herein constitute a "pattern of racketeering activity" because the acts alleged were related to each other by virtue of a common purpose and common result of fraudulently and illegally soliciting investments in the Debtor enterprise from investors, or allowing such activity to occur.

346. Geringer committed or caused to be committed a series of overt acts in furtherance of the Debtor enterprise and the conspiracy to affect the objects thereof, including but not limited to defrauding, and causing or allowing the Debtors' securities to be illegally sold by unlicensed broker-dealers to investors.

347. As the result of Geringer's acts, investors have been damaged.

348. Accordingly, the Trustee is entitled to an award of damages in an amount to be proven at trial, including treble damages as allowed by the applicable statutes.

NINTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under 11 U.S.C. § 544(b) and Utah Code Annotated §§ 25-6-5(1)(a) and 25-6-8)—All Defendants

349. The Trustee incorporates each of the preceding allegations by reference.

350. At all times hereto, the relevant Debtors had at least one unsecured creditor.

351. Each of the Transfers was a transfer of an interest of the Debtors in property.

352. The Transfers to each Defendant as set forth on **Exhibit 2** were made or were based on obligations incurred with actual intent to hinder, delay or defraud the relevant Debtors' creditors.

353. Each of the Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 544(b) and Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8.

TENTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under 11 U.S.C. § 544(b) and Utah Code Annotated §§ 25-6-5(1)(b) and 25-6-8)—All Defendants

354. The Trustee incorporates each of the preceding allegations by reference.

355. At all times hereto, the relevant Debtors had at least one unsecured creditor.

356. Each of the Transfers was a transfer of an interest of the Debtors in property.

357. The relevant Debtors did not receive reasonably equivalent value in exchange for each of the Transfers to each Defendant as set forth on **Exhibit 2**, or any obligation of the Debtors to make the Transfers.

358. At the time the Transfers were made or the obligations were incurred, the relevant Debtors: (a) were engaged or were about to engage in a business or a transaction for which the remaining assets of the Debtors were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that they would incur debts beyond their ability to pay as they became due.

359. Each of the Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 544(b) and Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8.

ELEVENTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under 11 U.S.C. §544(b) and Utah Code Ann. §§ 25-6-6(1) and 25-6-8)—All Defendants

360. The Trustee incorporates each of the preceding allegations by reference.

361. At all times hereto, the relevant Debtors had at least one unsecured creditor.

362. Each of the Transfers was a transfer of an interest of the Debtors in property.

363. The relevant Debtors did not receive reasonably equivalent value in exchange for each of the Transfers to each Defendant as set forth on **Exhibit 2**, or any obligation of the Debtors to make the Transfers.

364. The relevant Debtors were insolvent at the time the Transfers or any obligations to make the Transfers were made, or became insolvent as a result of the Transfers.

365. Each of the Transfers and/or obligations is avoidable by the Trustee under 11 U.S.C. § 544(b) and Utah Code Ann. §§ 25-6-6(1) and 25-6-8.

TWELFTH CLAIM FOR RELIEF

(Recovery of Avoided Transfers Under 11 U.S.C. §§ 550 and 551)—All Defendants

366. The Trustee incorporates each of the preceding allegations by reference.

367. Each of the Transfers is avoidable under 11 U.S.C. § 544(b) and Utah Code Ann. §§ 25-6-5, 25-6-6, and 25-6-8.

368. The Trustee may recover from each of the Defendants and preserve for the benefit of the respective Trusts each of the Transfers as relating to each of the Defendants under 11 U.S.C. §§ 550 and 551.

THIRTEENTH CLAIM FOR RELIEF

(Disallowance of Claims—11 U.S.C. § 502)—All Defendants

369. The Trustee incorporates each of the preceding allegations by reference.

370. To the extent any of the Defendants assert a claim against the Debtors, such claims, to the extent not asserted, cannot be asserted and are barred under applicable law, the Confirmed Plan and Confirmation Order.

371. Each of the Transfers made to each of the Defendants are avoidable by the Trustee under 11 U.S.C. § 544.

372. The Geringer Claim, and any other claim that may be asserted by the other Defendants and determined to be an allowed claim, must be disallowed under 11 U.S.C. § 502(d), unless the applicable Defendants have paid the amount for which they are liable for the avoidable Transfers made to them.

FOURTEENTH CLAIM FOR RELIEF

(Subordination – 11 U.S.C. § 510(c))—All Defendants

373. The Trustee incorporates each of the preceding allegations by reference.

374. As set forth in all of the facts stated herein, the Defendants have engaged in wrongful behavior and acted in bad faith in relation to the Debtors.

375. The Defendants' actions have harmed the Debtors' creditors and investors, all of whom are beneficiaries under the Trusts.

376. The Geringer Claim, or any other claim that may be asserted by Defendants and determined to be allowed claims, must be subordinated pursuant to 11 U.S.C. § 510(c) and all applicable principles of equitable subordination incorporated by that section to all beneficiaries of the Trusts.

FIFTEENTH CLAIM FOR RELIEF

(Constructive Trust)—All Defendants

377. The Trustee incorporates each of the preceding allegations by reference.

378. Each of the Transfers to Defendants was comprised of property of the Debtors and was made by the respective Debtors improperly or was based on illegal or fraudulent obligations or actions.

379. Each of the Transfers can be traced to the wrongful behavior of the Debtors, through Geringer and Management.

380. Allowing Defendants to retain any of the Transfers would unjustly enrich the Defendants and would be inequitable.

381. An injustice would result if the Defendants were allowed to keep their respective Transfers.

382. A constructive trust for the benefit of the respective Trusts must be imposed in the amount of the Transfers made to each of the Defendants.

SIXTEENTH CLAIM FOR RELIEF

(Unjust Enrichment and Disgorgement)—All Defendants

383. The Trustee incorporates each of the preceding allegations by reference.

384. Each of the Transfers to the Defendants were comprised of property of the Debtors.

385. The Transfers to each of the Defendants conferred a benefit upon the relevant Defendant.

386. Upon information and belief, each Defendant knowingly benefited from the Transfers made.

387. Allowing Defendants to retain the Transfers made to each of them would unjustly enrich the Defendants and would be inequitable.

388. Absent return of the Transfers, the Trusts will be damaged by Defendants' unjust enrichment and may have no adequate remedy at law.

389. Defendants must disgorge the total amount of the Transfers applicable to them for the benefit of the respective Trusts.

VII. PRAYER FOR RELIEF

WHEREFORE, the Trustee respectfully prays for relief as follows:

A. On the First Claim for Relief, an award of actual and punitive damages in an amount to be proven at trial.

B. On the Second Claim for Relief, an award of actual and punitive damages in an amount to be proven at trial, plus interest as set forth in the applicable statutes.

C. On the Third Claim for Relief, an award of actual and punitive damages in an amount to be proven at trial.

D. On the Fourth Claim for Relief, an award of actual and punitive damages in an amount to be proven at trial.

E. On the Fifth Claim for Relief, an award of actual and punitive damages in an amount to be proven at trial.

F. On the Sixth Claim for Relief, an award of actual and punitive damages in an amount to be proven at trial.

G. On the Seventh Claim for Relief, an award of actual and treble damages in an amount to be proven at trial.

H. On the Eighth Claim for Relief, an award of actual and treble damages in an amount to be proven at trial.

- I. On the Ninth Claim for Relief, avoidance of the Transfers.
- J. On the Tenth Claim for Relief, avoidance of the Transfers.
- K. On the Eleventh Claim for Relief, avoidance of the Transfers.
- L. On the Twelfth Claim for Relief, recovery of the avoided Transfers.
- M. On the Thirteenth Claim for Relief, disallowance of the Geringer Claim and any other Claims asserted by the Defendants.
- N. On the Fourteenth Claim for Relief, subordination of the Geringer Claim and any other Claim of the Defendants that has been or may be determined to be an allowed Claim.
- O. On the Fifteenth Claim for Relief, the imposition of a constructive trust on the Transfers made to Defendants.
- P. On the Sixteenth Claim for Relief, a judgment for unjust enrichment and a judgment ordering the disgorgement of the Transfers.
- Q. For pre-judgment interest, attorneys' fees, and costs of suit to the extent allowed by applicable federal or state law.
- R. For any other relief as the Court deems appropriate.

VIII. JURY DEMAND

Plaintiff requests a jury for all issues and causes of action that are triable by a jury.

DATED this 24th day of November, 2015.

DORSEY & WHITNEY LLP

/s/ Milo Steven Marsden
Milo Steven Marsden
Peggy Hunt
Nathan S. Seim
Attorneys for D. Ray Strong, Liquidating Trustee

EXHIBIT 1

The below described is **SIGNED**.



Dated: February 08, 2013

JOEL T. MARKER
U.S. Bankruptcy Judge

Prepared and Submitted By:

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

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

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

Debtors.

Bankruptcy Case No. 11-35082
Bankruptcy Case No. 11-35237
Bankruptcy Case No. 11-35243
Bankruptcy Case No. 11-35242
Bankruptcy Case No. 11-35246
(Substantively Consolidated)

Bankruptcy Case No. 11-35241
Bankruptcy Case No. 11-35240
(Jointly Administered)

(Chapter 11)

The Honorable Joel T. Marker

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ORDER GRANTING CHAPTER 11 TRUSTEE’S 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

An evidentiary hearing was held by this Court on January 31, 2013 on the *Chapter 11 Trustee’s 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”)¹ filed by D. Ray Strong, duly appointed Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC (the “Trustee”). Appearances were made by Peggy Hunt and Nathan S. Seim, Dorsey & Whitney LLP, on behalf of the Trustee; Lon A. Jenkins, Jones Waldo Holbrook & McDonough, P.C., on behalf of the Official Committee of Unsecured Creditors for Castle Arch Real Estate Investment Company, LLC (the “Creditors’ Committee”); John T. Morgan on behalf of the Office of the United States Trustee; Andrew B. Clawson, Pearson Butler Carson & Cook, PLLC, on behalf of Castle Arch Secured Development Fund, LLC; Michael L. Labertew, Labertew & Associates, LLC, on behalf of Castle Arch Smyrna, LLC, Castle Arch Kingman, LLC and CAOP Managers, LLC; and Richard Dance, *pro se*.

At the hearing, the Court admitted into evidence Trustee’s Exhibits A-JJJ based on the uncontested proffer of the Trustee’s testimony as set forth in the *Declaration of D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC, in Support of Motion*

¹ Docket No. 537.

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 (Exhibit Admission) (the “Document Declaration”).² Furthermore, the Court accepted the uncontested proffer of the Trustee’s testimony as stated in the *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* (the “Trustee Declaration”),³ as well as the uncontested proffer of testimony of Nathan S. Seim stated on the record.

Based on the Consolidation Motion; the *Memorandum of Law in Support of Chapter 11 Trustee’s 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*⁴; the *Notice of Chapter 11 Trustee’s 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 and Notice of Hearing* (the

² Docket No. 579. Pursuant to the Court’s *Order Granting Ex Parte Motion for Leave to File Documents Conventionally*, Docket No. 575, the Trustee filed the Document Declaration electronically, but given their volume, the Exhibits attached to the Document Declaration were filed with the Court conventionally. As stated on the record, Exh. K was amended by the Trustee after it was filed, and the Court admitted amended Exh. K, substituting it for Exh. K attached to the Document Declaration.

³ Docket No. 578.

⁴ Docket No. 538.

“Notice of Hearing”⁵; the *Certificate of Service* attached to the Notice of Hearing; the Document Declaration; the Trustee Declaration; the evidence presented and received at the hearing, including Exhibits A-JJJ noted above, as well as the testimony of the Trustee and Nathan Seim; the representations and arguments of counsel; the applicable law; and for good cause appearing, the Court granted the Consolidation Motion on the record at the hearing and made limited findings of fact and conclusions of law on the record, which are incorporated herein by this reference.

Pursuant to Federal Rule of Bankruptcy Procedure 7052 and this Court’s Local Rules, the Court now enters these Findings of Fact and Conclusions of Law in support of its *Order Granting Chapter 11 Trustee’s 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* entered concurrently herewith. To the extent that any Findings of Fact are Conclusions of Law, they are adopted as such, and to the extent that any Conclusions of Law are Findings of Fact, they are adopted as such.

I.

JURISDICTION AND NOTICE

Jurisdiction

1. On October 17, 2011 (the “CAREIC Petition Date”), Castle Arch Real Estate Investment Company, LLC (“CAREIC”) filed a petition seeking relief under Chapter 11 of the Bankruptcy Code, and on October 20, 2011 (together, the October 20, 2011 and the CAREIC

⁵ Docket No. 544.

Petition Date are referred to herein as the “Petition Date”), CAOP Managers, LLC (“CAOP Managers”), Castle Arch Kingman, LLC (“CAK”), Castle Arch Secured Development Fund, LLC (“CASDF”), Castle Arch Smyrna, LLC (“CAS”), Castle Arch Opportunity Partners I, LLC (“CAOP I”) and Castle Arch Opportunity Partners II, LLC (“CAOP II”) (collectively with CAREIC, the “Debtors”) also filed Chapter 11 petitions.

2. This Court has subject matter jurisdiction over the Consolidation Motion pursuant to 11 U.S.C. § 105 and 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

3. This Court has personal jurisdiction over CAREIC, CAOP Managers, CAK, CAS and CASDF, and over Castle Arch Star Valley, LLC (“CASV”), a non-debtor (collectively, the “Legacy Debtors”). The Trustee, as the trustee of CAREIC and as manager of the other Legacy Debtors, controls the Legacy Debtors, which Legacy Debtors, through the Trustee, have consented to the jurisdiction of this Court.

Notice And Lack Of Objection

4. Based on the evidence presented at the hearing, the mailing matrix attached to the Notice of Hearing⁶ is a true and correct listing of all known parties in interest.

5. All parties in interest, including all known creditors and interest holders, were (a) served with the Notice of Hearing, which also provided notice of the relief sought in the Consolidation Motion; and (b) provided an opportunity to be heard.

6. No objections to the Consolidation Motion were filed with the Court.

⁶ Docket No. 544, Certificate of Service, Exh. A.

7. The Trustee has presented a letter dated January 12, 2013 from Lindy L. Conner stating that Ms. Conner opposes the Consolidation Motion.⁷ However, Ms. Conner did not appear at the hearing on the Consolidation Motion, and based on the evidence,⁸ the Court finds that any objection being made by Ms. Conner has been withdrawn.

II.

PROCEDURAL HISTORY

The Entities In Question And The Trustee's Appointment And Investigation

8. In the Consolidation Motion, the Trustee seeks to substantively consolidate only the "Legacy Debtors"— defined above as a collective reference to CAREIC, CAOP Managers, CAK, CASDF, CAS and non-debtor CASV—but not Debtors CAOP I and CAOP II (together, CAOP I and CAOP II are the "CAOP Debtors").⁹

9. After the Petition Date, the Debtors continued to operate their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

10. On February 14, 2012, the Creditors' Committee in CAREIC's Chapter 11 case filed a *Motion to Appoint a Chapter 11 Trustee Under 11 U.S.C. § 1104 or, in the Alternative, to Convert Case Under 11 U.S.C. § 1112* (the "Trustee Motion"),¹⁰ which Trustee Motion was opposed by the Debtors and certain parties in interest. After an evidentiary hearing, the Debtors

⁷ Exh. EEE.

⁸ See Trustee Declaration ¶¶ 105-108.

⁹ Trustee Declaration ¶ 5.

¹⁰ Docket No. 58.

represented to the Court that they were stipulating to the appointment of a Chapter 11 trustee in CAREIC's case. The Court accepted the stipulation, finding:

Given the fact that the testimony was that the affiliates have really never had any separate operating boards, I think it makes sense, since counsel are here for the affiliates, that they advise whoever they're reporting to that there shouldn't be any substantial transactions pending a review of the whole landscape by the trustee in the CAREIC case.¹¹

11. On April 30, 2012, the Court entered its *Order for Appointment of Trustee*,¹² ordering the United States Trustee to appoint a qualified person to serve as trustee, and on May 3, 2012, the Court entered its *Order Approving Appointment of Trustee*,¹³ appointing Mr. Strong as the Chapter 11 Trustee for CAREIC.

12. The Trustee is a highly qualified, certified and licensed forensic accountant, with more than 18 years of experience providing investigative accounting, bankruptcy and litigation services, including significant experience serving as a fiduciary.¹⁴

13. The Trustee, together with his Court-appointed professionals, acting at his direction, have conducted an investigation of the Debtors, CASV and other affiliated non-debtor entities, including by (a) reviewing the Debtors' books and records; (b) reviewing public records related to the Debtors, including filings with the Securities and Exchange Commission (the "SEC"), relevant state governmental entities and this Court; (c) interviewing or deposing numerous persons, including members of former management; (d) discussing the Debtors and their respective cases with counsel for Creditors' Committee, former counsel for CAREIC,

¹¹ Exh. DDD (Transcript dated April 26, 2012, p. 8, lns. 13-20).

¹² Docket No. 208.

¹³ Docket No. 215.

¹⁴ Trustee Declaration ¶ 1 & Exh. A.

counsel for entities who represent the Debtors other than CAREIC, and creditors and investors; and (e) investigating the nature, extent and value of the real property owned by the Legacy Debtors, including by reviewing land records, and meeting with city officials and engineers. This investigation is still on-going.¹⁵

III.

FACTS IN SUPPORT OF CONSOLIDATION

A.

Debtors' Corporate Organization

14. CAREIC is a California limited liability company domesticated in Utah; CAOP Managers and CASV are Utah limited liability companies, with CASV being domesticated in Wyoming; and CAK, CASDF and CAS are Nevada limited liability companies.¹⁶

15. CAREIC owns all or substantially all of the membership interests of each of the other Legacy Debtors.¹⁷

16. Since their organization, CAREIC has served as the sole manager of CAK, CAS, CASDF, CASV and CAOP Managers.¹⁸

¹⁵ Trustee Declaration ¶ 11.

¹⁶ Trustee Declaration ¶ 12.

¹⁷ Exh. D (Common Units Owned by CAREIC).

¹⁸ Trustee Declaration ¶ 14.

B.

Common Management, Offices, Bank Accounts, Accounting and Reporting

17. Prior to the Petition Date, all of the Debtors, as well as numerous affiliated non-Debtor entities (collectively, the “Castle Arch Entities”), such as CASV, were managed by a single paid management team. Thus, CAREIC’s Board of Directors and Officers also managed the other Debtors and Castle Arch Entities.¹⁹

18. The CAREIC Board of Directors met periodically and kept minutes of its meetings, many of which are unsigned, but no separate Board meetings for any of the Legacy Debtors were held inasmuch as any business of these entities was dealt with in CAREIC Board meetings.²⁰

19. CAREIC employees, such as accountants, performed accounting and many other administrative services for all of the Debtors and Castle Arch Entities on a consolidated basis.²¹

20. While some of the individual members of CAREIC’s management team maintained offices in their respective places of residence, many of the administrative services,

¹⁹ Trustee Declaration ¶ 15; *see also, e.g.*, Exhs. WW-AAA (Form 10-KSB, Annual Report for the fiscal year ending Dec. 31, 2005, Part III, Item 9; Form 10-KSB, Annual Report of the fiscal year ending Dec. 31, 2006, Part III, Item 9; Form 10-KSB, Annual Report for the fiscal year ending Dec. 2007, Part III, Item 9; Form 10-KSB, Annual Report for the fiscal year ending Dec. 31, 2008, Part III, Item 9).

²⁰ Trustee Declaration ¶ 16; *see also, e.g.*, Exh. BBB (Transcript dated April 19, 2012, p. 172 at Ins. 4-10 (testimony of David Hunt that: “No CAREIC subsidiary or affiliated entity ever had any functioning board . . . Only one functioning board I knew of in the CAREIC family of companies, and that was CAREIC’s board.”)).

²¹ Trustee Declaration ¶ 17; *see also, e.g.* Exh. BBB (Transcript dated April 19 2012, pp. 244-45 (testimony of Glenn Martinsen that CAREIC affiliates pay CAREIC a management fee for all the services provided to them as “administrative expense” is conducted at the CAREIC level)).

such as accounting and bookkeeping, were conducted for all entities on a consolidated basis by a single group of employees out of a single office located in Utah.²²

21. Private Placement Memoranda issued by the Legacy Debtors to prospective investors represented that CAREIC would manage and control the relevant Legacy Debtor.²³

22. For example, a Private Placement Memorandum issued for CASDF consistently states throughout that CAREIC, not CASDF, would be managing investor funds,²⁴ and that:

As of the date of this offering, CAREIC owns all common units of [CASDF] and members of CAREIC's management team effectively control [CASDF].

....

As of February 1, 2008, we had only limited cash in connection with start-up activities. CAREIC currently provides all of our management functions and will cover our working capital requirements and has sufficient cash available to do so during the next 12 months.

....

Our business is managed by CAREIC which manages and controls our affairs and has responsibility and final authority in almost all matters affecting our business. These duties include dealings with members and holders of our Preferred Units[,] accounting, tax and legal matters, communications and filings with regulatory agencies and all other needed management and operational duties. Additionally, because five officers and directors own a controlling interest in CAREIC, they may be deemed to control our activities through CAREIC. As our only Manager, CAREIC has complete authority and responsibility for:

²² Trustee Declaration ¶ 18.

²³ See, e.g., Exhs. FFF-JJJ (CAK Private Placement Memorandum dated May 22, 2006; CAS Private Placement Memorandum dated June 25, 2007; CASDF Private Placement Memorandum dated Feb. 1, 2008; CAS Private Placement Memorandum dated Feb. 1, 2008; CAK Private Placement Memorandum dated Sept. 15, 2008); see also, e.g., Exhs. WW-AAA (SEC filings assumed that CAREIC controlled all Legacy Debtors).

²⁴ Exh. HHH (CASDF Private Placement Memorandum dated Feb. 1, 2008, pp. 7, 13-15, 17, 23-29 & 35).

- underwriting and originating our investments;
- deciding what agreements we enter into and whether we enter into participations with other investors;
- managing our investments; and
- managing all our other operations.

Holders of our Preferred Units have no right to participate in the management and control of our business or affairs. CAREIC has complete responsibility for the selection, evaluation and negotiation of our investments. CAREIC provides all managerial, executive, supervisory and administrative services for our operations, including managing the investments we hold. Our books and records are maintained by CAREIC, and are audited by independent certified public accountants.²⁵

23. Also, CASDF's Operating Agreement, which was attached to this Private Placement Memorandum, states that CAREIC "shall direct, manage and control the business of [CASDF] to the best of its ability and shall have full and complete authority, power and discretion to make any and all decisions and to any and all things which [CAREIC] shall deem to be reasonably required to accomplish the business and objections of [CASDF]."²⁶

24. Despite requiring CAREIC to handle all operations of CASDF,²⁷ neither the Private Placement Memorandum nor CASDF's Operating Agreement make any provision for how much CAREIC is to be compensated for its services.²⁸

²⁵ *Id.*, pp. 7, 21, 23; *see also id.*, p. 20 ("[CASDF] does not have any directors, officers or employees. Rather, all of [CASDF's] operations are performed by our Manager CAREIC's employees, officers and consultants.") & p. 24 (listing CAREIC's many responsibilities and stating: "CAREIC directs our investments into real estate projects, and manages our investment portfolio and our operations.").

²⁶ *Id.* at Exh. "A" (Operating Agreement) at p. 4.

²⁷ *Id.*, pp. 23-24 & Exh "A" (Operating Agreement) at pp. 4-7 (containing comprehensive listing of CAREIC responsibilities).

²⁸ *See generally, id.*

25. Bank accounts were opened for the Debtors and many of the Castle Arch Entities, and all of these bank accounts were controlled by CAREIC's management. The use of these funds is discussed in greater detail in ¶¶ 46–59 below, but generally cash raised from investors, which was the primary source of the Legacy Debtors' cash, was used indiscriminately by the Debtors to fund whatever entity was in need of cash at any given time.²⁹

26. Reporting required to be made to the SEC was done on a consolidated basis.³⁰

27. Separate accounting records and General Ledgers were maintained for each of the Legacy Debtors.³¹

28. However, large volumes of transactions between the Legacy Debtors were being accounted for and reported in numerous, and often, commingled intercompany General Ledger accounts.³²

29. Furthermore, often the book entries do not identify the applicable Legacy Debtor to which the transaction relates, and transactions are summarized by very general or inadequate descriptions or do not reflect the true nature of the transaction booked.³³

²⁹ Trustee Declaration ¶ 21.

³⁰ Trustee Declaration ¶ 22 & Exhs. WW-AAA (Form 10-KSB, Annual Report for the fiscal year ending Dec. 31, 2005; Form 10-KSB, Annual Report of the fiscal year ending Dec. 31, 2006; Form 10-KSB/A No. 1, dated Dec. 31, 2006; Form 10-KSB, Annual Report for the fiscal year ending Dec. 2007; Form 10-KSB, Annual Report for the fiscal year ending Dec. 31, 2008).

³¹ Trustee Declaration ¶ 23 & Exhs. MM and RR-VV (General Ledgers and Intercompany Accounts).

³² Trustee Declaration ¶ 24 & Exhs. MM and RR-VV (General Ledgers & Intercompany Accounts).

³³ Trustee Declaration ¶ 25.

30. Additionally, there are large “bulk” summarized transactions within CAREIC’s commingled intercompany accounts with very little information regarding the numerous underlying transactions.³⁴

31. There also is evidence that services provided to several Legacy Debtors were being invoiced on a consolidated basis, and the payment of those services was only being accounted for by CAREIC, and not allocated to the individual Legacy Debtor who received the services or benefit.³⁵

32. Finally, CAREIC consolidated debts of the other Legacy Debtors in its notes payable schedules and analyses.³⁶

C.

Legacy Debtor Formation and Fundraising

33. With the exception of relatively limited revenues from the sale of certain property holdings, neither CAREIC nor any of the other Legacy Debtors had any operating revenue.³⁷ Rather, operations were primarily funded by monies raised from investors in a series of public offerings, each of which is summarized on Exhibit B, entitled “*Timeline of Castle Arch Entity Formations and Investment Offerings*” (the “Timeline”).³⁸

³⁴ Trustee Declaration ¶ 26.

³⁵ Trustee Declaration ¶ 27 & Exh. EE (Example Of Invoices That Were Not Allocated To Intercompany Accounts On CAREIC General Ledger).

³⁶ Trustee Declaration ¶ 28 & Exh. FF (CAREIC Notes Payable Schedules Including Debt For All Debtors).

³⁷ Trustee Declaration ¶ 30.

³⁸ Trustee Declaration ¶ 30 & Exh. B (Timeline) (showing summary of offerings made and total placements); *see also, e.g.*, Exh. WW (Form 10-KSB, Annual Report for the fiscal year ending December 31, 2005, Part II, Item 6 (zero revenues, operations “funded by capital funding”)); Exh. XX (Form 10-KSB, Annual Report of the fiscal year ending December 31, 2006, Part II, Item 6 (net revenues of \$48,041 from sale of limited amount of land owned, but,

34. According to the Debtors' records, the Debtors raised a total of \$73,593,717.00 (as reported in the Debtors' Master Tracking Sheet maintained to track investor funds), net of redemptions, from investors during the period of May 2004, when CAREIC made its initial Series A offering, through the Petition Date.³⁹

35. The Trustee's charts graphing cash and public offerings set forth in Exhibits E, F and G (collectively, the "Cash Charts") and the Timeline demonstrate a pattern. As 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.⁴⁰ Paragraphs 36 through 39 below provide a brief summary of this pattern.

36. When initially organized in April 2004, CAREIC raised funds from investors for the purposes of acquiring and developing real property primarily located in the Western United States.⁴¹

"our operations are currently funded by capital funding"); Exh. ZZ (Form 10-KSB, Annual Report for the fiscal year ending December 2007, Part II, Item 6 (zero revenues)); Exh. AAA (Form 10-KSB, Annual Report for the fiscal year ending December 31, 2008, Part II, Item 7 ("We had revenues of \$1,980,000 from the sale of raw land, at cost, from our Kingman Arizona raw land holdings These revenues were not derived from our primary business target of selling property that we have improved Due to our limited revenues or operations are currently funded by capital funding.")).

³⁹ Trustee Declaration ¶ 31, Exh. B (Timeline), Exh. C (Schedule of Net Investor Funds Raised (this number is \$73,626,718 in the Debtors' General Ledger)) & Exh. LL (Master Tracking Sheet).

⁴⁰ As seen on the Cash Charts, the Legacy Debtors primarily engaged in securities offerings from April 2004 through approximately April 2008 in an effort to raise money for the "Legacy Model" of purchasing and developing raw land. Trustee Declaration ¶ 33 n. 23 & Exhs. E-G (Cash Charts). But, with the downturn in the economy and the crash of the real estate market, CAREIC caused the CAOP Debtors to be formed in 2009, *see id.* & Exh. B (Timeline), and commenced its "Distressed Property Model" of investing in distressed properties. *Id.*

⁴¹ Trustee Declaration ¶ 34, Exh. B (Timeline) & Exh. E (Monthly Investor Funds Raised By Debtor); *see also* Exhs. WW & XX (Form 10-KSB, Annual Reports for the fiscal years ending Dec. 31, 2005 & Dec. 31, 2006, Part I, Item 1 ("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 the properties, improving the properties' infrastructure and amenities, and selling the properties.")).

37. However, after four separate securities offerings during the period of April 2004 through June 2005 that raised approximately \$31 million, additional funding was required because, while property rights had been purchased, the property had not been developed and there was a virtual lack of revenues to fund operations.⁴² Thus, CAREIC caused new “Castle Arch” entities to be formed as additional vehicles through which funds could be raised, referred to by the Trustee as the “Legacy Model” – a business model involving the Legacy Debtors that focused on acquiring and developing real property.⁴³

38. CAREIC caused CAK to be organized in April 2006, and through a \$30 million securities offering in May 2006, approximately \$10 million was ultimately raised.⁴⁴ As cash again diminished, CAREIC caused CAS to be formed in January 2008, and CAS raised a total of approximately \$4.5 million through two securities offerings made in June 2007 and February 2008.⁴⁵ In January 2008, when cash reserves again began to dip, CAREIC caused CASDF to be organized, and CASDF made a securities offering in February 2008, raising approximately \$8.4

⁴² Trustee Declaration ¶ 35, Exh. B (Timeline) & Exhs. E-G (Cash Charts); *see also* Exhs. WW (Form 10-KSB, Annual Report for the fiscal year ending December 31, 2005, Part II, Item 6 (zero revenues, operations “funded by capital funding”)) & Exh. XX (Form 10-KSB, Annual Report of the fiscal year ending December 31, 2006, Part II, Item 6 (net revenues of \$48,041 from sale of limited amount of land owned, but, “our operations are currently funded by capital funding”)).

⁴³ Trustee Declaration ¶ 35, Exh. B (Timeline) & Exhs. E-G (Cash Charts).

⁴⁴ Trustee Declaration ¶ 36, Exh. B (Timeline) & Exhs. E-G (Cash Charts).

⁴⁵ *Id.*

million.⁴⁶ In April 2008, when funds were again low, CAREIC made a final fifth securities offering, raising approximately \$7.1 million.⁴⁷

39. In 2009, after the crash of the real estate market and the financial crisis, which likely made fundraising under the Legacy Model difficult,⁴⁸ CAREIC caused the CAOP Debtors to be formed to raise funds for what the Trustee refers to as the “Distressed Property Model.” Under this business model, funds raised from investors were used to invest in distressed properties or pools of distressed properties through, in many instances, joint ventures with third parties.⁴⁹ Fundraising through this Distressed Property Model continued up to the Petition Date, with some investment of these funds being made after the Petition Date.⁵⁰

D.

Fundraising Purpose

40. Consistent with the Legacy Model, real properties or rights to purchase real property were obtained by the Legacy Debtors,⁵¹ referred to generally herein as the “Kingman Property,” which is real property or options to purchase real property located in Mohave County, Arizona; the “Tooele Property,” which is real property and related water rights located in Tooele County, Utah; the “Smyrna Property,” which is real property located in Rutherford County,

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ CAK made a second Series B securities offering in September 2009 for \$15 million, but it only managed to raise approximately \$50,000. Trustee Declaration ¶ 37, Exh. B (Timeline) & Exhs. E-G (Cash Charts).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Trustee Declaration ¶ 38.

Tennessee; and the “Star Valley Property,” which is real property located in Lincoln County, Wyoming.⁵²

41. Despite the purchase of these properties and attempted development, a large portion of the Legacy Debtors’ business focused on fundraising.⁵³

42. In particular, according to the face of the Debtors’ books and records as of the Petition Date, of the approximately \$73 million that they raised from investors: (a) in excess of \$8 million was used for executive compensation and related expenses; and (b) in excess of \$10 million was used to pay fundraising expenses, including “finders’ fees,” commissions and other associated costs.⁵⁴ These two expense groupings alone account for approximately 25% of all funds raised by the Debtors from investors since 2004.⁵⁵

43. The Debtors initially raised funds from investors through the sale of securities by non-licensed finders. Eventually, management became concerned about this practice, and it thereafter commenced a time-consuming and expensive search for a FINRA licensed broker-dealer to sell the Debtors’ and Castle Arch Affiliates’ securities. This resulted in the ill-fated relationship with the “Longview” entities, the costly litigation for which has now been settled.⁵⁶

44. The Debtors’ securities sales were also subject to a SEC inquiry in June 2009, which was also time consuming and costly. CAREIC employed counsel to assist it with this

⁵² Trustee Declaration ¶ 39.

⁵³ Trustee Declaration ¶ 40.

⁵⁴ Trustee Declaration ¶ 40 & Exh. NN (CAREIC Profit and Loss Statement as of Oct. 16, 2011); *see also* Exhs. OO-QQ (Profit and Loss Statements as of Oct. 16, 2011 for other Legacy Debtors).

⁵⁵ Trustee Declaration ¶ 40.

⁵⁶ Trustee Declaration ¶ 41; *see* Docket No. 519 (Order approving settlement).

investigation, and it shut down virtually all fundraising operations while management focused on responding to the inquiry.⁵⁷

45. Despite spending tens of millions prior to the Petition Date in purchasing and attempting to develop properties, almost all of the real properties that the Legacy Debtors purchased and currently own remained undeveloped, and there are no entitlements currently in place. The only real property that was developed to a point that developed units could be sold as of the Petition Date was the Star Valley Property.⁵⁸

E.

Use of Investor Funds And Payments

46. The Legacy Debtors had relatively little revenues generated from operations, but rather operating costs (including significant executive compensation and expenses) were funded by monies raised from the sale of securities to investors.⁵⁹

47. CAREIC had several bank accounts in its name prior to the Petition Date.⁶⁰

48. When CAREIC caused a new entity to be formed, it typically caused at least one bank account to be opened in the name of the new entity. Thus, each of the Legacy Debtors had at least one bank account.⁶¹

⁵⁷ Trustee Declaration ¶ 42.

⁵⁸ Trustee Declaration ¶ 43.

⁵⁹ Trustee Declaration ¶ 44.

⁶⁰ Trustee Declaration ¶ 45.

⁶¹ Trustee Declaration ¶ 46.

49. From the face of the Debtors' accounting records, it appears that funds obtained from investors in one of the Legacy Debtors were primarily deposited into a bank account held in the name of that Legacy Debtor.⁶²

50. However, it was not uncommon for funds obtained from investors in one of the Legacy Debtors to be deposited into a bank account of another one of the Legacy Debtors. When this occurred, the single transaction spawned multiple book entries in the relevant Legacy Debtors' General Ledger accounts, including entries in intercompany receivable and/or intercompany payable accounts of the Legacy Debtors involved.⁶³

51. Sometimes, investor money deposited with an incorrect Legacy Debtor was never returned to the Legacy Debtor in which the investment had been made.⁶⁴ In the Trustee's example of an instance where a cash investment in CASDF was retained by CAREIC, the deposit of the investor's cash was recorded in a commingled intercompany account on CAREIC's General Ledger and resulted in several journal entries on CASDF's General Ledger reporting the amount as a draw on the purported "Third CAK Loan" (as defined below).⁶⁵ In reality, these funds were retained by CAREIC and no loan or draw was made by CASDF to CAK.⁶⁶

⁶² Trustee Declaration ¶ 47.

⁶³ Trustee Declaration ¶ 48; *see also, e.g.*, Exhs. MM (CAREIC Intercompany Accounts) & RR-VV (General Ledgers).

⁶⁴ Trustee Declaration ¶ 49 & Exh. V (chart titled "CASDF Investor Money Deposited Into CAREIC Bank Account (Investor Money Never Transferred to CASDF)").

⁶⁵ Trustee Declaration ¶ 49 & Exh. V; *see discussion infra* at ¶¶ 76–82 (discussing Third CAK Note).

⁶⁶ Trustee Declaration ¶ 49.

52. Sometimes, money invested with one Legacy Debtor was deposited directly into CAREIC's bank account, but unlike the Trustee's example above, the money was then subsequently transferred by CAREIC to the relevant Legacy Debtor in which the investment had been made.⁶⁷ These single transactions resulted in multiple book entries by both CAREIC, the entity that received the investor's money, and the Legacy Debtor who should have received the investor's money, including entries in CAREIC's General Ledger account for "Intercompany Payable," and entries in the General Ledger account for "Intercompany Receivable" of the Legacy Debtor who should have received the investor's money in the first instance.⁶⁸

53. Furthermore, it was not uncommon for one Legacy Debtor's cash to be used to directly pay the expenses of another Legacy Debtor.⁶⁹ This occurred in regard to the purchases of real properties and the servicing of debt,⁷⁰ and it also occurred in making payments to investors.⁷¹ In the example provided by the Trustee, the source of payments to CASDF investors included not only monies raised by earlier investors in CASDF, but also from cash held by CAREIC and the CAOP Debtors.⁷²

⁶⁷ Trustee Declaration ¶ 50, Exh. W (chart titled "CASDF Investor Money Deposited Into CAREIC Bank Account (Investor Money Subsequently Transferred to CASDF)"); Exh. X (chart titled "CAK Investor Money Deposited Into CAREIC Bank Account (Investor Money Subsequently Transferred to CAK)") & Exh. Y (chart titled "CAS Investor Money Deposited Into CAREIC Bank Account (Investor Money Subsequently Transferred to CAS)").

⁶⁸ Trustee Declaration ¶ 50.

⁶⁹ Trustee Declaration ¶ 51.

⁷⁰ *Id.*; see also discussion *infra* at ¶¶ 64–91.

⁷¹ Trustee Declaration ¶ 51; see also Exh. C (Schedule of Net Investor Funds Raised (Redemptions/Adjustment) (showing redemptions paid to investors)).

⁷² Trustee Declaration ¶ 51, Exh. CC (excerpt of CASDF's General Ledger showing examples of transfers from CAREIC and CAOP Debtors to cover interest payments to CASDF's investors) (Account 10820, dates 06/05/09 (\$20,000 by CAREIC); 07/09/09 (\$19,866.17 by CAREIC); 08/04/09 (\$19687.19 by CAREIC); dated 09/01/09

54. Also, the Trustee has provided an example of one interest payment made to a CASDF investor to illustrate that certain redemptions and interest payments for CASDF were also being made directly by CAREIC and recorded as an intercompany transaction.⁷³ In the Trustee's example, the transaction resulted in recorded entries in the General Ledgers of CASDF and CAREIC, as an "Intercompany Payable" by CASDF and as an "Intercompany Receivable" by CAREIC.⁷⁴

55. Intercompany transfers of cash appear to have been recorded in the Legacy Debtors' accounting records by journal entries.⁷⁵ 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.⁷⁶

56. Given the number of intercompany transfers and the weaving of these transfers through multiple General Ledger accounts that are often times commingled, significant time and expense would be required to "unscramble" the intercompany transfers and transactions of the Legacy Debtors from the journal entries alone.⁷⁷

(\$20,000 by CAREIC); 10/02/09 (\$20,000 by CAREIC); 11/02/09 (\$19,767.19 by CAREIC); 12/03/09 (\$22,267.19 by "CAOP"); 12/15/09 (2 payments of \$20,000 each by CAOP II); 01/19/10 (\$10,000 by unknown Debtor); 02/03/10 (\$23,000 by "CAOP"); 03/05/10 (\$17,000 by CAREIC)) & Exh. Z (chart titled "CASDF Investor Redemption/Interest Paid By CAREIC").

⁷³ Trustee Declaration ¶ 52 & Exh. Z (chart titled "CASDF Investor Redemption/Interest Paid By CAREIC").

⁷⁴ *Id.* The "Intercompany Receivable" account included in the CAREIC General Ledger was a commingled account with activity of other Legacy Debtors. Trustee Declaration ¶ 52, n.39.

⁷⁵ Trustee Declaration ¶ 53.

⁷⁶ *Id.*, Exh. M (CAREIC Intercompany Ledger) & Exhs. RR-VV (General Ledgers).

⁷⁷ Trustee Declaration ¶ 53.

57. Also, 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, a true and accurate accounting of the respective intercompany claims would require the Trustee to analyze all cash transactions and underlying supporting invoices and documents commencing from 2004 through the time of his appointment.⁷⁸

58. Finally, the Trustee has concluded and it is uncontroverted that, on a whole, the 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.⁷⁹

59. Accordingly, if the Legacy Debtors were to remain recognized as separate legal entities, it is the Trustee's opinion that to obtain a true and correct account of the respective intercompany claims, he would initially need to independently analyze and trace the numerous intercompany transactions based on a review of booked entries and actual use of cash. 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.⁸⁰

⁷⁸ Trustee Declaration ¶ 54.

⁷⁹ Trustee Declaration ¶ 55.

⁸⁰ Trustee Declaration ¶ 56.

F.

Commingling Of Assets And Debts

60. When organized in April 2004, CAREIC intended to purchase and develop real properties. But, because of its virtual lack of revenues and need for new cash to fund operations, CAREIC ultimately caused new entities to be formed to raise funds.⁸¹ Once these new Legacy Debtors were created, it appears that the intent of pre-petition management was that CAREIC would acquire undeveloped land, or the right to purchase undeveloped land, and then transfer its acquisitions to the separately organized Legacy Debtors for development. However, this is not actually what occurred.⁸²

61. Based on the evidence, the Legacy Debtors' affairs would be very difficult to "unscramble" in light of the fact that, in addition to the significant commingling and intercompany transfers of cash discussed above, assets were purchased as part of very convoluted intercompany transactions.⁸³

62. If the Legacy Debtors were to remain recognized as separate legal entities, great time and expense, including significant litigation expense, would be required to unwind these real estate transactions, and any attempt to do so and account for the numerous intercompany

⁸¹ See discussion *supra* at ¶¶ 33–45 (discussing formation and fundraising purpose).

⁸² Trustee Declaration ¶ 57.

⁸³ See Trustee Declaration ¶ 58; see also discussion *infra* at ¶¶ 64–91 (providing examples of convoluted and commingled intercompany transactions).

transfers would, in addition to the required independent cash analysis discussed above,⁸⁴ likely consume a large part of any distribution to parties in interest in this case.

63. The Trustee has provided several examples which support the Court's findings and conclusions, discussed in subparagraphs (1) through (3) below.

(1) The CAK Notes Issued to CASDF

64. The Trustee has provided evidence of three Promissory Notes issued by CAK to CASDF, and the transactions related thereto, to illustrate the tangled nature of the Legacy Debtors' affairs.⁸⁵ In many cases, these Promissory Notes and related book entries do not reflect the true nature of the transactions/loans documented by former management.⁸⁶ Each of these Promissory Notes and the related transactions are discussed immediately in subparts (a)-(c) below.

(a) The First CAK Note

65. Based on the evidence, including the summary of the transactions set forth in Exhibit H, titled "*CASDF/CAK Loan #1 (\$1,280,000)/Lingenfelter Option # 2 – Kingman Land Purchase (380 Acres)*" (the "First Loan Chart") and the documents attached to the First Loan Chart as Exhibits H1 through H20, all of which summarize transactions related to the purchase of 380 acres of the Kingman Property, it appears that: (a) the 380 acres purchased were titled in the name of CAREIC; but, (b) the total purchase price of approximately \$9.5 million was financed by a Promissory Note that CAREIC issued to the seller in the principal amount of approximately

⁸⁴ See discussion *supra* at ¶¶ 56–59 (discussing need for independent cash analysis outside of Debtors' accounting records).

⁸⁵ See Trustee Declaration ¶¶ 57-78 & Exhs. H-N, including all sub-Exhibits thereto.

⁸⁶ *Id.*

\$8.2 million, with the balance of the purchase price being paid in cash from contributions made by numerous, primarily non-CAREIC sources.⁸⁷

66. The portion of the cash that was contributed for the purchase of the 380 acres, together with other monies transferred by CASDF to CAREIC for operations, form the basis of a Promissory Note dated March 25, 2008 between CAK and CASDF in the principal amount of \$1,280,000.00, which states that it is secured by a different parcel of Kingman Property than the 380 acres (the “First CAK Note”).⁸⁸

67. As to the contribution of cash for CAREIC’s purchase of the 380 acres, the evidence shows that: (a) \$840,109.00 was transferred directly by CASDF to the title company on or about the date of closing; and (b) the remaining \$760,000.00 was paid on or about the date of closing by CAREIC from funds that were deposited into its commingled operating account by other Legacy Debtors, including (i) a transfer of cash from CAREIC’s money market account (that likely included commingled Debtor funds as a result of earlier intercompany transfers) to its commingled operating account, (ii) a transfer of cash from CAS, and (iii) a transfer of cash from CAK.⁸⁹

68. The \$840,109.00 that was transferred by CASDF for CAREIC’s purchase of the 380 acres, plus a series of cash transfers that CASDF made to CAREIC’s commingled operating

⁸⁷ Trustee Declaration ¶¶ 60-61 & Exh. H (First Loan Chart), including Exhs. H-1 – H-20.

⁸⁸ Trustee Declaration ¶ 61 & Exh. H (First Loan Chart), including Exhs. H-10 – H-20.

⁸⁹ Trustee Declaration ¶ 62 Exh. H (First Loan Chart), including Exhs. H-10 – H-13 & H-16 – H-20.

account totaling \$440,000.00 and used for CAREIC's operations, are the basis of the \$1,280,000.00 principal amount of the First CAK Note that CAK issued to CASDF.⁹⁰

69. Thus, while the First CAK Note purports to document a loan from CASDF to CAK,⁹¹ it in fact represents monies that CASDF transferred to or for the benefit of CAREIC.⁹²

70. The March 25, 2008 date on the face of the First CAK Note⁹³ does not coincide with the fact that CASDF's transfers totaling \$440,000.00 actually took place from March 31, 2008 through April 22, 2008, after the First CAK Note was allegedly issued.⁹⁴

71. Finally, adding to the confusion is the fact that, although the First CAK Note is documented as a money purchase secured transaction, the property that the funds were used to purchase—the 380 acres—do not collateralize the First CAK Note. Rather, the First CAK Note states that it is secured by 40.09 acres of Kingman Property that had been purchased in 2007 in CAK's name.⁹⁵

(b) The Second CAK Note

72. Transactions related to a second Promissory Note dated July 2, 2008 issued by CAK to CASDF in the principal amount of \$3,200,000.00 (the "Second CAK Note")⁹⁶ are summarized on Exhibit I, a chart titled "CASDF/CAK Loan #2 (\$3,200,000)" (the "Second Loan").

⁹⁰ Trustee Declaration ¶ 63 & Exh. H (First Loan Chart), including H-10 – H-13 & H-16 – H-20.

⁹¹ See Exh. H-15 (First CAK Note).

⁹² Trustee Declaration ¶ 64 & Exh. H (First Loan Chart), including H-10 – H-13 & H-16 – H-20.

⁹³ See Exh. H-15 (First CAK Note).

⁹⁴ Trustee Declaration ¶ 65 & Exh. H (First Loan Chart), including Exhs. H-10 – H-13 & H-16 – H-20.

⁹⁵ Trustee Declaration ¶ 65 & Exh. H (First Loan Chart), including Exh. H-14 (First Mortgage).

⁹⁶ See Exh. I-8 (Second CAK Note).

Chart).⁹⁷ CAREIC's purchase of 120 acres of the Kingman Property allegedly pledged as collateral by CAK for the Second CAK Note is summarized on Exhibit J, a chart titled "*CASDF/CAK Loan #2 (\$3,200,000)—Purchase of Property Used to Collateralize Loan*" (the "Property Chart").⁹⁸

73. Based on the evidence summarized in Exhibits I and J, including Exhibits I-1 through I-14 and Exhibits J-1 through J-22, it appears that: (a) the Second CAK Note purports to create an obligation by CAK to CASDF for monies that were transferred as part of a mortgage; but in fact, (b) the monies that were transferred from CASDF's bank accounts were either (i) not transferred to CAK, but directly to CAREIC, or (ii) were transferred to CAK which then transferred them to pay CAREIC's operating expenses or to pay obligations of CAS.⁹⁹

74. The \$3.2 million principal amount of the Second CAK Note is based on the following transfers, some of which occurred after the July 2, 2008 date stated on the Second CAK Note: (a) two transfers made in May 2008 from a CASDF account to CAREIC's commingled operating account in the total amount of \$750,000.00; (b) one transfer made in August 2008 from a CASDF account in the total amount of \$450,000.00 to CAREIC's savings account which was then transferred to CAREIC's commingled operating account; and (c) a transfer of \$2 million on July 10, 2008 (after the date of the Second CAK Note) from CASDF to CAK, which CAK then transferred as follows: (i) on July 11, 2008, \$1.5 million was transferred

⁹⁷ Trustee Declaration ¶ 66 & Exh. I (Second Loan Chart).

⁹⁸ Trustee Declaration ¶ 67 & Exh. J (Property Chart, box marked "A" (describing CAREIC's acquisition of a total of 120 acres of land used as collateral)); *see also* Exh. I (Second Loan Chart, box marked "A" (describing total 120 acres of land used as collateral)).

⁹⁹ Trustee Declaration ¶ 68, Exh. I (Second Loan Chart) & Exh. J (Property Chart).

by CAK to CAREIC accounts, which were then used by CAREIC to pay its operational expenses and obligations of CAS purportedly owed to Director William Davidson, (ii) also on July 11th, \$400,000.00 was transferred by CAK to Geringer Capital Inc. to pay for loans that such entity purportedly made to CAS, and (iii) later, in October 2008, the remaining \$100,000.00 was transferred by CAK to CAREIC's commingled operating account for its operations.¹⁰⁰

75. Additionally, although the Second CAK Note was issued by CAK, the 120 acres of Kingman Property pledged to CASDF to secure that Note is in fact titled in CAREIC's name.¹⁰¹ Furthermore, a significant portion of the funds used by CAREIC to purchase at least 120 acres of this Kingman Property was obtained from loan proceeds that CAREIC obtained from other multiple non-CAREIC sources, including third-party lenders who issued loans collateralized by the Tooele Property, rather than by the Kingman Property it was purchasing.¹⁰²

(c) The Third CAK Note

76. Numerous transactions resulting in a third Promissory Note dated June 30, 2009 issued by CAK to CASDF in the principal amount of \$3,325,893.00 (the "Third CAK Note") are set forth on Exhibit K, a chart titled "CASDF/CAK Loan #3 (\$3,325,893)" (the "Third Loan Chart").¹⁰³

77. Based on the Third Loan Chart, as well as Exhibits K-1 through K-20, it appears that (a) the Third CAK Note purports to create an obligation for monies that CASDF transferred

¹⁰⁰ Trustee Declaration ¶ 69, Exh. I (Second Loan Chart) & Exhs. I-1 – I-14.

¹⁰¹ See Exh. I (Second Loan Chart, Box marked "A" (describing total 120 acres of land used as collateral)) & Exh. J (Property Chart, Boxes marked "A" (describing CAREIC's acquisition of 120 acres of land used as collateral)).

¹⁰² Trustee Declaration ¶ 70, Exh. I (Second Loan Chart), including Exhs. I-1 – I-11, & Exh. J (Property Chart), including Exhs. J-1 – J-22.

¹⁰³ Trustee Declaration ¶ 71 & Exh. K (Third Loan Chart).

to CAK; but in fact, (b) the monies that were transferred from CASDF's bank accounts (i) were not transferred to CAK, but directly from CASDF to CAREIC, (ii) were transferred by CASDF directly to a third party who apparently was owed money by CAS, or (iii) were monies invested by CASDF investors that were directly deposited in CAREIC's operating account. Of the CASDF monies transferred to CAREIC, most were used for CAREIC's operations, and some were used to purchase the water rights associated with the Tooele Property.¹⁰⁴

78. The Third CAK Note, dated June 30, 2009, in most instances well after all of CASDF's transfers to CAK had been made, appears to have been used to "paper" these earlier transactions.¹⁰⁵

79. The Third CAK Note claims to be secured by four separate tracks of land, identified on the Third Loan Chart in the boxes marked "A," "B," "C," and "D." While the Third CAK Note was issued to CASDF by CAK,¹⁰⁶ the land purporting to collateralize the Note is, with the exception of 40.56 acres identified in box "C," titled in CAREIC's name. Those 40.56 acres are titled in CAK's name.¹⁰⁷

80. Although this purported collateral is titled in CAREIC and CAK's name, with the exception of the "Green Land" in CAREIC's name (shown in box "A" of the Third Loan Chart), which was paid for from CAREIC's commingled operating account,¹⁰⁸ the purchases of the

¹⁰⁴ Trustee Declaration ¶ 72, Exh. K (Third Loan Chart) & Exhs. K-1 – K-20.

¹⁰⁵ Trustee Declaration ¶ 73, Exh. K (Third Loan Chart) & Exh. K-5 (Third CAK Note).

¹⁰⁶ See Exh. K-5 (Third CAK Note).

¹⁰⁷ Trustee Declaration ¶ 74, Exh. K (Third Loan Chart) & Exh. K-1 – K-20.

¹⁰⁸ See Exh. L (CASDF/CAK Loan # 3 (\$3,325,893) (A) Purchase of Green Property Used to Collateralize Loan).

“Lingenfelter Option #2” noted in box “B” of the Third Loan Chart, the “Water Tower Property” noted in box “C” and the 60 acres from the Lingenfelter Option #1 noted in box “D” of the Third Loan Chart are convoluted and utilized funds from other Legacy Debtors.¹⁰⁹

81. Exhibit M, a chart titled “*CASDF/CAK Loan #3 (\$3,325,893) (B) Purchase of Lingenfelter Option # 2*” (the “Option Purchase Chart”), and Exhibits M-1 through M-17 attached thereto, summarize CAREIC’s acquisition of the Lingenfelter Option #2, noted in box “B” of the Third Loan Chart.¹¹⁰ Although titled in CAREIC’s name and purportedly pledged by CAK for the Third CAK Loan to CASDF, cash used to purchase the Lingenfelter Option #2 was obtained as set forth on the Option Purchase Chart, including from monies transferred to CAREIC by CAS and CAK, and the proceeds that CASDF paid directly to the title company as part of the First CAK Note discussed above.¹¹¹

82. Exhibit N, a chart titled “*CASDF/CAK Loan #3 (\$3,325,893) (C) Purchase of Water Tower Property*” (the “Water Tower Chart”), and Exhibits N-1 through N-9 attached thereto, summarize CAK’s acquisition of the Water Tower Property, noted in box “C” of the Third Loan Chart.¹¹² As set forth thereon, although titled in CAK’s name and pledged as collateral for the Third CAK Loan to CASDF, cash used to purchase the Water Tower Property appears to have primarily been paid directly from the proceeds of a loan between Robhana, Inc.

¹⁰⁹ Trustee Declaration ¶ 75.

¹¹⁰ Trustee Declaration ¶¶ 76-77.

¹¹¹ Trustee Declaration ¶ 77, Exh. M (Option Purchase Chart) & Exhs. M-1 – M-17.

¹¹² Trustee Declaration ¶¶ 76 & 78.

and CAS, and in part by CAREIC. Thus, it does not appear that CAK contributed much, if any, money for the purchase of the Water Tower Property that was titled in its name.¹¹³

(2) Acquisition of the Smyrna Property

83. A second example of the tangled affairs of the Legacy Debtors is demonstrated by the purchase of the Smyrna Property, discussed immediately below.¹¹⁴

84. As summarized in Exhibit O, a chart titled “*Smyrna, TN – 486 Acres (\$5,600,000)*” (the “Smyrna Chart”), and Exhibits O-1 through O-36, which provide the details of the acquisition of certain parcels of the Smyrna Property,¹¹⁵ although the Smyrna Property is titled in CAS’s name, the purchase of this Property involved a complicated series of transfers and monies obtained from a conglomeration of sources, many of which were never even transferred to CAS, but rather were paid directly to the title company by, among others, CAK and CAREIC, or by CAREIC after transfers of cash to it by CAS.¹¹⁶

85. Also, a significant portion of the monies used to pay for the purchase of the Smyrna Property came from loans made to CAS from CAREIC Board members Bill Davidson and Robert Geringer, as well as from an entity called “Robhana, Inc.” (collectively, the “CAS Loans”).¹¹⁷

¹¹³ Trustee Declaration ¶ 78, Exh. N (Water Tower Chart) & Exhs. N-1 – N-9.

¹¹⁴ Trustee Declaration ¶ 79.

¹¹⁵ Trustee Declaration ¶ 80.

¹¹⁶ Trustee Declaration ¶ 81, Exh. O (Smyrna Chart) & Exhs. O-1 – O-36.

¹¹⁷ Trustee Declaration ¶ 82 & Exh. O (Smyrna Chart).

86. With the exception of the CAS Loan to Robhana, Inc.,¹¹⁸ the majority of cash used to repay the CAS Loans was paid directly to the lenders by Legacy Debtors other than CAS.¹¹⁹ Even in the case of the CAS Loan to Robhana, Inc., CAREIC and CAK contributed cash, not insignificant, to repay the lender, including a payment made by CAREIC directly to Robhana, Inc.¹²⁰

(3) Acquisition of Certain Tooele Water Rights

87. The Trustee also uses the purchase of certain water rights related to the Tooele Property (the “Water Rights”) to demonstrate the entangled nature of the Legacy Debtors’ affairs.¹²¹

88. Exhibit S, a chart titled “*Tooele, UT Water Rights – 155.93 Acre Feet* (\$2,353,562)” (the “Tooele Chart”), which summarizes the acquisition of 155.93 acre feet of approximately 616 total acre feet of Water Rights owned, together with Exhibits S-1 through S-18, which provide the documents used by the Trustee to create the Tooele Chart,¹²² demonstrates that although the Water Rights were titled in CAREIC’s name, the purchase of these Water Rights involved the collection of funds from numerous sources, including by the other Legacy

¹¹⁸ Trustee Declaration ¶ 83, Exh. R (CAS Loan Payments – Robhana, Inc.) & Exh. R-10 – R-12.

¹¹⁹ Trustee Declaration ¶ 83, Exh. P (CAS Loan Payments – Bill Davidson), Exhs. P-1 – P-14, Exh. Q (CAS Loan Payments – Robert Geringer) & Exhs. Q-1 – Q-14.

¹²⁰ Trustee Declaration ¶ 83, Exh. R (CAS Loan Payments – Robhana, Inc. (\$1,800,000)) & Exhs. R-1 – R-12.

¹²¹ Trustee Declaration ¶ 84.

¹²² Trustee Declaration ¶ 85.

Debtors, the majority of which were transferred to CAREIC's commingled operating account and paid to the title company handling the purchase transaction.¹²³

89. Also, of the total purchase price of approximately \$2.3 million, \$540,000.00 of the funds used by CAREIC to pay for the Water Rights were sourced from loans that certain individuals, primarily insiders, made to CAREIC (the "Water Loans").¹²⁴

90. Although loans to CAREIC, these Water Loans are recorded as notes payable of CAS in its General Ledger.¹²⁵ In addition, all of the Water Loans apparently made for CAREIC's purchase of the Water Rights state that they are collateralized by the Water Rights, as well as the Smyrna Property titled in CAS's name.¹²⁶

91. Jeff Austin, a former CAREIC Board member and Officer, made one of the Water Loans in the principal amount of \$100,000.00.¹²⁷ This loan was accounted for and, ultimately, repaid as follows: (a) Austin's Water Loan to CAREIC for purchase of the Water Rights was recorded as a notes payable in CAS's General Ledger; and (b) the majority of this Water Loan was repaid from funds that CAREIC obtained from a loan it obtained from Saggiani Properties,

¹²³ Trustee Declaration ¶ 86, Exh. S (Tooele Chart) & Exhs. S-1 – S-18.

¹²⁴ Trustee Declaration ¶ 87, Exh. S (Tooele Chart), Exh. S-6 (transactions with Kirby Cochran), Exh. S-7 (20% Secured Promissory Note issued by CAREIC to Jeff Austin and accounting records), Exh. S-8 (20% Secured Promissory Note issued by CAREIC to Kimberlee Higa and accounting records), Exh. S-9 (20% Secured Promissory Note issued by CAREIC to Nolan Higa and accounting records), & Exh. S-10 (20% Secured Promissory Note issued by CAREIC to Bill Davidson and accounting records).

¹²⁵ Trustee Declaration ¶ 88, Exh. S (Tooele Chart) & Exh. S-11 – S-16 (excerpts of CAREIC's General Ledgers and journals, bank records and receipts).

¹²⁶ Trustee Declaration ¶ 88, Exh. S (Tooele Chart) & Exhs. S-6 – S-10 (promissory notes).

¹²⁷ Trustee Declaration ¶ 89, Exh. S (Tooele Chart) & Exh. S-7 (20% Secured Promissory Note issued by CAREIC to Jeff Austin and accounting records).

LLC, which loan states that it is collateralized by a portion of the Smyrna Property owned by CAS.¹²⁸

G.

CASV

92. CAREIC caused CASV to be organized as a Utah limited liability company in December, 2009, and it was domesticated to do business in the State of Wyoming in January, 2010.¹²⁹

93. CAREIC is the sole member and manager of CASV and at all times controlled CASV.¹³⁰

94. CASV was not an entity that offered securities for sale, and it appears to have had no capital.¹³¹

95. Rather, CAREIC's funds were deposited in bank accounts held in CASV's name, these CASV accounts were controlled by CAREIC, and the accounts and transactions involving the accounts were listed on CAREIC's General Ledger as if they were its own.¹³² Doug Child, CAREIC's Chief Financial Officer and a Board member prior to the Petition Date ("Child"), has

¹²⁸ Trustee Declaration ¶ 89, Exh. S (Tooele Chart), Exh. T (CAREIC Loan Payments – Jeff Austin) & Exhs. T-1 – T-7.

¹²⁹ Trustee Declaration ¶ 90.

¹³⁰ Trustee Declaration ¶ 91.

¹³¹ Trustee Declaration ¶ 92.

¹³² Trustee Declaration ¶ 93 & Exh. BB (Star Valley Bank Accounts Included in CAREIC General Ledger as of October 16, 2011).

testified that these bank accounts were established and used by CAREIC after threat of a tax levy, and that the bank accounts in CASV's name were CAREIC's accounts.¹³³

96. CASV's only other asset appears to be the Star Valley Property.¹³⁴

97. As summarized on Exhibit U, a chart titled "*Thayne, WU (Star Valley Property) – 40 Acres (\$800,100)*" (the "Star Valley Chart"), as well as Exhibits U-1 through U-18, although CAREIC and, primarily, CAK, provided funds to purchase the Star Valley Property, the seller of the Star Valley Property issued a Warranty Deed to Sierra Construction and Excavation, Inc. in June 2007, which then assigned the Deed to CAREIC.¹³⁵ In April 2008, CAREIC executed a Warranty Deed, transferring the Star Valley Property to Child. Concurrent with this transfer in 2008, Child obtained a loan from the Bank of Star Valley, claimed to be secured by the Star Valley Property (the "Child-BSV Loan"). In December 2009, CAREIC caused CASV to be organized and Child transferred the Star Valley Property to it by Quit Claim Deed, and CASV guaranteed the Child-BSV Loan.¹³⁶

98. At no time did CASV have any capital to fund the Child-BSV Loan or to pay any other obligations related to the Star Valley Property.¹³⁷

99. CASV did not file a bankruptcy petition.¹³⁸

¹³³ Exh. BBB (Transcript dated April 19, 2012, pp. 89-93).

¹³⁴ Trustee Declaration ¶ 94.

¹³⁵ Trustee Declaration ¶ 95, Exh. U (Star Valley Chart) & Exhs. U-1 – U-18.

¹³⁶ *Id.*

¹³⁷ Trustee Declaration ¶ 96.

¹³⁸ Trustee Declaration ¶ 97.

100. But, CAREIC has listed its 100% interest in CASV and the Star Valley Property as its assets.¹³⁹ CAREIC has also listed the Bank of Star Valley and the Lincoln County Treasurer as secured creditors.¹⁴⁰

101. Also, in its Statement of Financial Affairs, CAREIC lists a Chase account ending in the number 5597 as one of its closed bank accounts, when in fact this was a bank account held in the name of CASV.¹⁴¹

102. In CAREIC's Schedules, it states that CASV was "never operated"¹⁴² and Child has testified that CASV was not an operating company.¹⁴³

103. The Bank of Star Valley and the Lincoln County Treasurer have been served with notice of the Consolidation Motion, and they have not objected to the relief sought therein.¹⁴⁴

104. Based on these facts, CASV and CAREIC were at all times one and the same. Consolidation of CASV is not only necessary to prevent injustice, but given the facts, no creditor can say that it has relied on the separateness of CASV.¹⁴⁵

105. The Bank of Star Valley and Lincoln County have filed proofs of claim against CAREIC.¹⁴⁶

¹³⁹ Trustee Declaration ¶ 98 & Exh. HH (CAREIC's Schedules A & B).

¹⁴⁰ Trustee Declaration ¶ 98 & Exh. HH (CAREIC's Schedule D).

¹⁴¹ Trustee Declaration ¶ 99 & Exh. HH (CAREIC's Statement of Financial Affairs).

¹⁴² Trustee Declaration ¶ 100 & Exh. HH (CAREIC's Schedule B at ¶ 13).

¹⁴³ Exh. BBB (Transcript dated April 19, 2012, p. 89, lns. 11-15).

¹⁴⁴ Trustee Declaration ¶ 101; *see* Notice of Hearing, Docket No. 544, at Certificate of Service, Exh. A.

¹⁴⁵ Trustee Declaration ¶ 102.

¹⁴⁶ *See* CAREIC Claim Docket, Claim Nos. 23 & 34.

H.

Benefit And Other Conclusions

106. In determining the advantages, disadvantages and equities involved in substantively consolidating the Legacy Debtors, the Trustee and his Court-appointed professionals, at his direction, have reviewed all potential assets known as of this time and all claims that were scheduled by the Legacy Debtors or have been filed, as reflected on the Court's respective claims dockets for each of the Legacy Debtors, that have not been disallowed or re-characterized as equity as of this time.¹⁴⁷

107. Based on this analysis, as well as all of the facts set forth above, the Trustee has concluded, in an appropriate exercise of his business judgment, that substantive consolidation of the Legacy Debtors is in the best interests of all parties in interest, and in fact is necessary to prevent injustice.¹⁴⁸ This conclusion is supported by the evidence described above and at least for the following reasons:

- (a) The Legacy Debtors' assets and affairs are hopelessly commingled;
- (b) Cash of the Legacy Debtors was used indiscriminately to fund whichever entity was in need of cash at the time;
- (c) The Legacy Debtors were all managed by the same Board of Directors and Officers, and were provided administrative services on a consolidated basis;

¹⁴⁷ Trustee Declaration ¶ 103.

¹⁴⁸ Trustee Declaration ¶¶ 2 & 104.

(d) CAREIC caused all of the other Legacy Debtors to be formed, and in the case of CAK, CAS and CASDF, they were created by CAREIC as a vehicle by which to obtain additional investor funds;

(e) CASV was treated as if it were CAREIC in CAREIC's books and records, as well as the Statements and Schedules that CAREIC filed in this case;

(f) None of the Legacy Debtors had any corporate existence outside of the CAREIC corporate family;

(g) Based on Private Placement Memoranda issued and other representations to the public, such as filings with the SEC, all of the Legacy Debtors consistently represented themselves as being controlled by CAREIC; and

(h) Certain significant forensic accounting and litigation expense that would be required (plus the potential cost of any separately appointed fiduciaries and their professionals), to "unscramble" the Legacy Debtors, to the extent possible, would greatly threaten any recovery by parties in interest in these cases.¹⁴⁹

IV.

CONCLUSIONS OF LAW

Authority To Order Substantive Consolidation

108. Substantive consolidation is an extraordinary remedy, arising out of federal common law for the purpose of advancing the equitable powers of the bankruptcy courts.¹⁵⁰

¹⁴⁹ Trustee Declaration ¶ 104.

¹⁵⁰ See 11 U.S.C. § 105(a); *In re Owens Corning, Inc.*, 419 F.3d 195, 205, 208 & 216 (3d Cir. 2005); see also *In re George Love Farming, LC*, 366 B.R. 170, 180 (Bankr. D. Utah 2007) (Thurman, J.) (recognizing same).

The result is that “claims of creditors against separate debtors morph to claims against the consolidated survivor.”¹⁵¹

109. The Court of Appeals for the Tenth Circuit has stated:

The power to consolidate authorizes the court to pierce the several corporate veils and to disregard the existence of the separate corporate entities. Thus where a corporation is a mere instrumentality or alter ego of the bankrupt corporation, with no independent existence of its own, equity would favor disregarding the separate corporate entities. It is, of course, proper to disregard a separate legal entity when such action is necessary to avoid fraud or injustice.¹⁵²

110. “The bankruptcy court’s power of substantive consolidation has been considered part of the bankruptcy court’s general equitable powers since the passage of the Bankruptcy Act of 1898.”¹⁵³

111. This power is widely accepted under the Bankruptcy Code, including by this Court.¹⁵⁴

¹⁵¹ *Owens Corning*, 419 F.3d at 205.

¹⁵² *Federal Deposit Ins. Corp. v. Hogan (In re Gulfeo Inv. Corp.)*, 593 F.2d 921, 928-29 (10th Cir. 1979) (relying on *Fish v. East*, 114 F.2d 177, 191 (10th Cir. 1940)); see *George Love Farming*, 366 B.R. at 179–80.

¹⁵³ *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 763 (9th Cir. 2000) (citing in part *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215, 219 (1941)).

¹⁵⁴ See, e.g., *Owens Corning*, 419 F.3d at 206-209 (discussing history and concluding that although extraordinary, “[n]o court has held that substantive consolidation is not authorized”); *Bonham*, 229 F.3d at 765 (same); *Gulfeo Inv. Corp.*, 593 F.2d at 921 (recognizing power); *Fish*, 114 F.2d at 177 (same); *George Love Farming*, 366 B.R. at 180 (same); see also *In re Horsley*, No. 99-30458 JAB, 2001 WL 1682013, at *3 (Bankr. D. Utah Aug. 17, 2001) (Boulden, J.) (stating that the ability to order substantive consolidation was “implied from the bankruptcy court’s general equitable powers”); *Heller v. Langenkamp (In re Tureaud)*, 59 B.R. 973, 975-77 (N.D. Okla. 1986) (affirming order consolidating individual debtor with non-debtor entities controlled by the debtor); *In re Mansfield Corp.*, Bankr. Case No. 02-28236 (Bankr. D. Utah) (Boulden, J.), Order Substantively Consolidating Cases [Docket No. 245].

Substantive Consolidation Of The Legacy Debtors Is Appropriate

112. “The propriety of ordering substantive consolidation is primarily a factual question and is determined by a balancing of interests” of those seeking consolidation and those opposing it, if any.¹⁵⁵

113. In *Fish v. East*, the Tenth Circuit set forth the following ten factors to consider in a consolidation analysis:

- (1) The parent corporation owns all or majority of the stock of the subsidiary;
- (2) The parent and subsidiary corporations have common directors or officers;
- (3) The parent corporation finances the subsidiary;
- (4) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;
- (5) The subsidiary has grossly inadequate capital;
- (6) The parent corporation pays the salaries or expenses or losses of the subsidiary;
- (7) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation;
- (8) In the papers of the parent corporation, and in the statements of its officers, the subsidiary is referred to as such or as a department or division;
- (9) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take direction from the parent corporation; and
- (10) The formal legal requirements of the subsidiary as a separate and independent corporation are not observed.¹⁵⁶

¹⁵⁵ *Matter of Baker & Getty Fin. Servs., Inc.*, 78 B.R. 139, 142 (Bankr. N.D. Ohio 1987); see *In re F.A. Potts & Co.*, 23 B.R. 569 (Bankr. E.D. Pa. 1982).

¹⁵⁶ *Fish*, 114 F.2d at 191.

114. Later, in *Gulfco*, the Tenth Circuit again recognized these “*Fish*” factors for substantive consolidation.¹⁵⁷

115. More recently, in *In re Horsley*, this Court stated: “The *Gulfco/Fish* criteria can be reduced into two general components: (1) the extent to which the entity to be substantively consolidated was managed or controlled by the debtor, and (2) whether the entity to be substantively consolidated had an economic existence independent from the Debtor.”¹⁵⁸

116. Finally, as recognized by numerous courts, the degree of difficulty and expense involved with segregating and ascertaining individual assets and liabilities of each of the entities is particularly relevant.¹⁵⁹ Thus, substantive consolidation is proper where the assets of the entities in question are “hopelessly commingled,”¹⁶⁰ or where difficult accounting problems caused by intercompany debt are “so strong that the great expense (in order to bring about an unscrambling) threaten[s] recovery.”¹⁶¹

117. Based on this law and its application to the Findings of Fact set forth above, substantive consolidation of the Legacy Debtors is appropriate.

118. Thus, the Legacy Debtors are substantively consolidated.

¹⁵⁷ 593 F.2d at 928–29.

¹⁵⁸ *In re Horsley*, 2001 WL 1682013, at *4.

¹⁵⁹ See, e.g., *Gulfco*, 593 F.2d at 929–30 (recognizing consolidation is appropriate where intercompany debt create difficult accounting problems); accord *In re Introgen Therapeutics, Inc.*, 429 B.R. 570, 582 (Bankr. W.D. Tex. 2010) (noting that this is one of the factors in the “traditional test”); *In re Raymond Prof'l Group*, 421 B.R. 891, 913 (Bankr. N.D. Ill. 2009); *In re BLI Farms*, 312 B.R. 606, 621 (E.D. Mich. 2004); *In re Donut Queen*, 41 B.R. 706, 709 (Bankr. E.D.N.Y. 1984) (citing *In re Vecco Constr. Indus., Inc.*, 4 B.R. 407, 410 (Bankr. E.D. Va. 1980)).

¹⁶⁰ *Gulfco*, 593 F.2d at 928 (discussing *Fish*).

¹⁶¹ *Id.* at 930.

Nunc Pro Tunc Consolidation Of CASV

119. In addition, substantive consolidation of CASV as of the CAREIC Petition Date is appropriate.

120. The Court has considered the test for *nunc pro tunc* consolidation set forth in *In re Auto-Train Corp.*,¹⁶² and concludes that the Trustee has shown that *nunc pro tunc* consolidation of CASV achieves benefit and avoids harm.

121. Furthermore, in accordance with the test for *nunc pro tunc* consolidation in *In re Baker & Getty Fin. Services, Inc.*,¹⁶³ such consolidation is appropriate because CAREIC treated CASV as if it were CAREIC, and creditors and parties in interest have dealt with CASV and CAREIC as if they were the same.

122. Accordingly, CASV is substantively consolidated with the other Legacy Debtors as of the CAREIC Petition Date.

End of Document

¹⁶² 810 F.2d 270 (D.C. Cir. 1987).

¹⁶³ 974 F.2d 712 (6th Cir. 1992).

EXHIBIT 2

LEGACY TRUST
Transfer Analysis (Robert Geringer)

Trans Date	Clear Date	Reference	Payee/Payor	Amount
06/06/08	06/11/08	7213	Geringer, Robert	\$ (16,500.00)
07/01/08	07/09/08	7287	Geringer, Robert	(16,500.00)
07/10/08	07/18/08	7316	Geringer, Robert	(8,850.46)
07/31/08	08/06/08	7376	Geringer, Robert	(16,500.00)
08/11/08	08/20/08	7420	Geringer, Robert	(9,750.57)
08/20/08	08/26/08	7447	Geringer, Robert	(7,977.14)
09/02/08	09/08/08	7497	Geringer, Robert	(16,500.00)
10/01/08	10/08/08	8078	Geringer, Robert	(24,771.08)
11/01/08	11/06/08	8139	Geringer, Robert	(16,500.00)
12/16/08	12/23/08	8237	Geringer, Robert	(10,000.00)
01/28/09	02/04/09	8292	Geringer, Robert	(14,213.28)
02/06/09	02/11/09	8358	Geringer, Robert	(12,500.00)
03/02/09	03/06/09	8384	Geringer, Robert	(3,600.00)
04/01/09	04/07/09	8483	Geringer, Robert	(3,600.00)
04/30/09	05/08/09	8542	Geringer, Robert	(3,600.00)
07/02/09	07/20/09	8630	Geringer, Robert	(8,957.17)
03/10/06	03/22/06	5996	Geringer, Robert D.	(1,217.44)
04/06/07	04/06/07	WIRE	Geringer, Robert D.	(135,000.00)
04/09/07	04/09/07	WIRE	Geringer, Robert D.	(50,000.00)
11/05/07	11/15/07	7573	Geringer, Robert D.	(76,107.98)
01/15/08	01/24/08	7779	Geringer, Robert D.	(8,740.19)
Total Legacy Debtor Transfers				\$ (461,385.31)

LEGACY TRUST**Transfer Analysis (Robert D. Geringer P.C.)**

Trans Date	Clear Date	Reference	Payee/Payor	
10/08/04	10/08/04	WIRE	Geringer, Robert D. P.C.	\$ (50,000.00)
10/08/04	10/18/04	5030	Geringer, Robert D. P.C.	(10,000.00)
10/28/04	11/05/04	1047	Geringer, Robert D. P.C.	(10,000.00)
12/01/04	12/09/04	5084	Geringer, Robert D. P.C.	(10,000.00)
12/22/04	01/10/05	5113	Geringer, Robert D. P.C.	(10,000.00)
01/25/05	01/31/05	5144	Geringer, Robert D. P.C.	(10,000.00)
02/11/05	02/18/05	5167	Geringer, Robert D. P.C.	(15,707.07)
02/16/05	02/22/05	5177	Geringer, Robert D. P.C.	(20,000.00)
02/25/05	03/04/05	5190	Geringer, Robert D. P.C.	(10,000.00)
03/22/05	03/28/05	5225	Geringer, Robert D. P.C.	(15,000.00)
03/25/05	03/31/05	5234	Geringer, Robert D. P.C.	(25,000.00)
04/08/05	04/15/05	5260	Geringer, Robert D. P.C.	(3,777.45)
04/25/05	05/02/05	5273	Geringer, Robert D. P.C.	(25,000.00)
05/10/05	05/16/05	5295	Geringer, Robert D. P.C.	(4,174.22)
05/25/05	05/31/05	5306	Geringer, Robert D. P.C.	(25,000.00)
06/13/05	06/20/05	5331	Geringer, Robert D. P.C.	(2,522.94)
06/20/05	06/24/05	5338	Geringer, Robert D. P.C.	(10,000.00)
06/24/05	07/05/05	5343	Geringer, Robert D. P.C.	(35,000.00)
07/05/05	07/18/05	5517	Geringer, Robert D. P.C.	(1,233.76)
07/22/05	07/28/05	5540	Geringer, Robert D. P.C.	(35,000.00)
07/31/05	09/19/05	5624	Geringer, Robert D. P.C.	(5,053.37)
08/05/05	08/12/05	5560	Geringer, Robert D. P.C.	(541.86)
08/25/05	09/01/05	5583	Geringer, Robert D. P.C.	(35,000.00)
10/01/05	10/07/05	5633	Geringer, Robert D. P.C.	(35,000.00)
10/25/05	10/31/05	5685	Geringer, Robert D. P.C.	(35,000.00)
11/04/05	11/10/05	5710	Geringer, Robert D. P.C.	(8,464.56)
11/23/05	12/01/05	5762	Geringer, Robert D. P.C.	(35,000.00)
11/30/05	12/05/05	5775	Geringer, Robert D. P.C.	(10,530.20)
12/23/05	12/30/05	5819	Geringer, Robert D. P.C.	(35,000.00)
01/23/06	01/30/06	5881	Geringer, Robert D. P.C.	(1,864.33)
01/25/06	02/06/06	5894	Geringer, Robert D. P.C.	(35,000.00)
02/24/06	03/06/06	5970	Geringer, Robert D. P.C.	(648.37)
02/24/06	03/06/06	5972	Geringer, Robert D. P.C.	(35,000.00)
03/24/06	04/05/06	6033	Geringer, Robert D. P.C.	(25,000.00)
04/26/06	05/04/06	6111	Geringer, Robert D. P.C.	(25,000.00)
05/25/06	06/02/06	6163	Geringer, Robert D. P.C.	(25,000.00)
06/01/06	06/14/06	6204	Geringer, Robert D. P.C.	(2,085.11)
06/26/06	07/03/06	6242	Geringer, Robert D. P.C.	(25,000.00)
07/10/06	07/24/06	6303	Geringer, Robert D. P.C.	(2,829.53)
07/25/06	08/02/06	6360	Geringer, Robert D. P.C.	(24,275.00)
08/29/06	09/07/06	6440	Geringer, Robert D. P.C.	(17,300.00)
09/22/06	10/02/06	6497	Geringer, Robert D. P.C.	(9,701.36)
09/25/06	10/04/06	6505	Geringer, Robert D. P.C.	(17,300.00)
10/25/06	11/02/06	6562	Geringer, Robert D. P.C.	(17,300.00)
10/25/06	11/02/06	6580	Geringer, Robert D. P.C.	(5,011.68)
11/27/06	12/06/06	6618	Geringer, Robert D. P.C.	(17,300.00)
12/27/06	01/08/07	6653	Geringer, Robert D. P.C.	(17,300.00)
01/10/07	01/19/07	6678	Geringer, Robert D. P.C.	(10,828.12)
01/30/07	02/05/07	6700	Geringer, Robert D. P.C.	(17,300.00)

Trans Date	Clear Date	Reference	Payee/Payor	
02/21/07	03/05/07	6728	Geringer, Robert D. P.C.	(17,300.00)
02/21/07	03/05/07	6721	Geringer, Robert D. P.C.	(602.36)
03/26/07	04/09/07	6767	Geringer, Robert D. P.C.	(17,300.00)
04/19/07	05/02/07	6793	Geringer, Robert D. P.C.	(11,702.08)
04/25/07	05/03/07	6799	Geringer, Robert D. P.C.	(17,300.00)
05/17/07	06/04/07	6819	Geringer, Robert D. P.C.	(403.72)
05/23/07	06/04/07	6823	Geringer, Robert D. P.C.	(17,300.00)
06/25/07	07/09/07	6875	Geringer, Robert D. P.C.	(17,300.00)
07/10/07	07/20/07	6901	Geringer, Robert D. P.C.	(11,479.76)
07/25/07	08/03/07	6921	Geringer, Robert D. P.C.	(17,300.00)
08/27/07	09/04/07	6960	Geringer, Robert D. P.C.	(17,300.00)
09/26/07	10/04/07	7524	Geringer, Robert D. P.C.	(17,300.00)
09/27/07	10/04/07	7527	Geringer, Robert D. P.C.	(12,176.73)
10/25/07	11/05/07	7561	Geringer, Robert D. P.C.	(17,300.00)
11/26/07	12/05/07	7651	Geringer, Robert D. P.C.	(17,300.00)
12/21/07	01/02/08	7715	Geringer, Robert D. P.C.	(10,954.26)
12/26/07	01/07/08	7723	Geringer, Robert D. P.C.	(17,300.00)
01/28/08	02/07/08	7802	Geringer, Robert D. P.C.	(16,500.00)
02/27/08	03/05/08	7875	Geringer, Robert D. P.C.	(16,500.00)
02/27/08	03/05/08	7876	Geringer, Robert D. P.C.	(10,000.00)
03/06/08	03/06/08	WIRE	Geringer, Robert D. P.C.	(10,000.00)
04/21/08	04/30/08	7007	Geringer, Robert D. P.C.	(6,398.72)
04/28/08	05/07/08	7083	Geringer, Robert D. P.C.	(20,000.00)
04/28/08	05/07/08	7082	Geringer, Robert D. P.C.	(16,500.00)
04/29/08	05/05/08	7062	Geringer, Robert D. P.C.	(10,000.00)
05/16/08	05/21/08	7122	Geringer, Robert D. P.C.	(16,500.00)
05/16/08	05/21/08	7123	Geringer, Robert D. P.C.	(20,000.00)
06/06/08	06/11/08	7214	Geringer, Robert D. P.C.	(20,000.00)
07/01/08	07/09/08	7289	Geringer, Robert D. P.C.	(20,000.00)
07/31/08	08/06/08	7377	Geringer, Robert D. P.C.	(20,000.00)
09/02/08	09/08/08	7498	Geringer, Robert D. P.C.	(20,000.00)
10/01/08	10/08/08	8079	Geringer, Robert D. P.C.	(20,000.00)
11/01/08	11/06/08	8140	Geringer, Robert D. P.C.	(20,000.00)
12/09/08	12/11/08	8211	Geringer, Robert D. P.C.	(20,000.00)
03/03/09	03/18/09	8391	Geringer, Robert D. P.C.	(10,000.00)
04/01/09	04/07/09	8484	Geringer, Robert D. P.C.	(10,000.00)
04/30/09	05/08/09	8543	Geringer, Robert D. P.C.	(10,000.00)

Total Legacy Debtor Payments **\$ (1,408,066.56)**

LEGACY TRUST**Transfer Analysis Based on Payroll Records (Robert Geringer)**

Trans Date	Clear Date	Reference	Payee/Payor	Amount
08/04/06		10046	Geringer, Robert D.	\$ (725.00)
09/01/06		10052	Geringer, Robert D.	(7,700.00)
10/01/06		10058	Geringer, Robert D.	(7,700.00)
11/01/06		10064	Geringer, Robert D.	(7,700.00)
12/01/06		10070	Geringer, Robert D.	(7,700.00)
01/01/07		10076	Geringer, Robert D.	(7,700.00)
02/01/07		10082	Geringer, Robert D.	(7,700.00)
03/01/07		10090	Geringer, Robert D.	(7,700.00)
04/01/07		10096	Geringer, Robert D.	(7,700.00)
05/01/07		10102	Geringer, Robert D.	(7,700.00)
06/01/07		10109	Geringer, Robert D.	(7,700.00)
07/01/07		10116	Geringer, Robert D.	(7,700.00)
08/01/07		10123	Geringer, Robert D.	(7,700.00)
09/01/07		10130	Geringer, Robert D.	(7,700.00)
10/01/07		10142	Geringer, Robert D.	(7,700.00)
11/01/07		10151	Geringer, Robert D.	(7,700.00)
12/01/07		10160	Geringer, Robert D.	(7,700.00)
01/01/08		10168	Geringer, Robert D.	(7,700.00)
02/01/08		10175	Geringer, Robert D.	(8,500.00)
03/01/08		10184	Geringer, Robert D.	(8,500.00)
04/01/08		10197	Geringer, Robert D.	(8,500.00)
06/01/08		6	Geringer, Robert D.	(8,500.00)
06/10/08		19	Geringer, Robert D.	(8,500.00)
07/01/08		34	Geringer, Robert D.	(8,500.00)
08/05/08		62	Geringer, Robert D.	(8,500.00)
09/04/08		99	Geringer, Robert D.	(8,500.00)
10/03/08		130	Geringer, Robert D.	(8,500.00)
11/05/08		161	Geringer, Robert D.	(8,500.00)
03/05/09		274	Geringer, Robert D.	(8,900.00)
04/06/09		312	Geringer, Robert D.	(8,900.00)
05/05/09		336	Geringer, Robert D.	(8,900.00)
Total Transfers				\$ (243,325.00)

LEGACY TRUST**Transfer Analysis (Fine Arts Entertainment, Inc.)**

Trans Date	Clear Date	Reference	Payee/Payor	Amount
03/24/06	04/05/06	6034	Fine Arts Entertainment, Inc.	\$ (10,000.00)
04/26/06	05/04/06	6112	Fine Arts Entertainment, Inc.	(10,000.00)
05/25/06	06/02/06	6164	Fine Arts Entertainment, Inc.	(10,000.00)
06/26/06	07/03/06	6243	Fine Arts Entertainment, Inc.	(10,000.00)
07/25/06	08/02/06	6318	Fine Arts Entertainment, Inc.	(10,000.00)
08/22/06	09/07/06	6407	Fine Arts Entertainment, Inc.	(10,000.00)
10/04/06	10/10/06	6532	Fine Arts Entertainment, Inc.	(10,000.00)
10/25/06	11/02/06	6563	Fine Arts Entertainment, Inc.	(10,000.00)
11/27/06	12/06/06	6619	Fine Arts Entertainment, Inc.	(10,000.00)
12/27/06	01/08/07	6654	Fine Arts Entertainment, Inc.	(10,000.00)
01/30/07	02/05/07	6699	Fine Arts Entertainment, Inc.	(10,000.00)
02/21/07	03/05/07	6732	Fine Arts Entertainment, Inc.	(10,000.00)
03/26/07	04/09/07	6768	Fine Arts Entertainment, Inc.	(10,000.00)
04/25/07	05/03/07	6802	Fine Arts Entertainment, Inc.	(10,000.00)
05/23/07	06/04/07	6824	Fine Arts Entertainment, Inc.	(10,000.00)
06/25/07	07/09/07	6876	Fine Arts Entertainment, Inc.	(10,000.00)
07/25/07	08/03/07	6922	Fine Arts Entertainment, Inc.	(10,000.00)
08/27/07	09/04/07	6961	Fine Arts Entertainment, Inc.	(10,000.00)
09/26/07	10/04/07	7523	Fine Arts Entertainment, Inc.	(10,000.00)
10/25/07	11/05/07	7562	Fine Arts Entertainment, Inc.	(10,000.00)
11/26/07	12/06/07	7652	Fine Arts Entertainment, Inc.	(10,000.00)
12/26/07	01/07/08	7722	Fine Arts Entertainment, Inc.	(10,000.00)
01/28/08	02/07/08	7801	Fine Arts Entertainment, Inc.	(10,000.00)

Total Legacy Debtor Transfers **\$ (230,000.00)**