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*Attorneys for D. Ray Strong, Liquidating Trustee*

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

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AXIS SURPLUS INSURANCE COMPANY,

Plaintiff,

ROBERT D. GERINGER; KIRBY D.  
COCHRAN; ROBERT CLAWSON;  
DOUGLAS W. CHILD; JEFF AUSTIN;  
WILLIAM H. DAVIDSON; WILLIAM K.  
WARWICK; WILLIAM GRUNDY; and  
KEITH GREEN,

Defendants.

**NOTICE OF ISSUANCE OF  
SUBPOENA TO AXIS INSURANCE  
COMPANY**

Civil Case No. 2:14-cv-00244-DAK

The Honorable Dale A. Kimball

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**PLEASE TAKE NOTICE** that Proposed intervenor, D. Ray Strong, as the post-confirmation estate representative of Castle Arch Real Estate Investment Company, LLC and affiliated debtor entities, and the Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust, the Castle Arch Opportunity Partners I, LLC Liquidating Trust, and the Castle Arch Opportunity Partners II, LLC Liquidating Trust, in the bankruptcy case styled as *In re*

*Castle Arch Real Estate Investment Company, LLC et al.*,<sup>1</sup> has served the Subpoena *duces tecum*, attached hereto as Exhibit A, upon AXIS Surplus Insurance Company.

DATED this 10th day of July, 2014.

**DORSEY & WHITNEY LLP**

/s/ Nathan Seim

Milo Steven Marsden

Peggy Hunt

Nathan Seim

*Attorneys for D. Ray Strong, Trustee*

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<sup>1</sup> Bankr. Case No. 11-35082 (Bankr. D. Utah).

# EXHIBIT A

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Utah

AXIS Surplus Insurance )

Plaintiff )

v. )

Geringer et al. )

Defendant )

Civil Action No. 2:14-cv-00244-DAK

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: AXIS Insurance Company

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A attached here to

Place: Dorsey & Whitney LLP, c/o Nathan Seim
136 South Main Street, Suite 1000
Salt Lake City, Utah 84101

Date and Time: Before July 28, 2014 at 4:00 p.m.

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/09/2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

D. Ray Strong, as the Liquidating Trustee and Proposed Intervenor, who issues or requests this subpoena, are:

Nathan Seim,
136 South Main Street, Suite 1000, Salt Lake City, Utah 84101, (801) 933-8956, seim.nathan@dorsev.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:14-cv-00244-DAK

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

- (2) **For Other Discovery.** A subpoena may command:
  - (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
  - (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

- (2) **Command to Produce Materials or Permit Inspection.**
  - (A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
  - (B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
    - (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
    - (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

- (3) **Quashing or Modifying a Subpoena.**
  - (A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
    - (i) fails to allow a reasonable time to comply;
    - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
    - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
    - (iv) subjects a person to undue burden.
  - (B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
    - (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

- (A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

- (B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

- (C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

- (D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

- (A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
  - (i) expressly make the claim; and
  - (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

- (B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

- (C) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## EXHIBIT A

### I. INSTRUCTIONS

1. General. You should produce all documents and other materials described below in your actual or constructive possession or custody, or subject to your control, as further described herein.

2. Privilege. If you claim attorney-client privilege or any other privilege or protection from production as to any of the requests below, you must provide a list of the subject documents, indicating the date prepared, author, recipient(s), subject, and the privilege or protection claimed, sufficiently identifying the documents to which you claim the privilege or protection attaches.

3. Rules of Construction. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request all documents that might otherwise be construed to be outside the scope hereof. The use of the singular form of any word includes the plural and vice versa.

4. Definitions. The following terms have the meaning set forth below for purposes of this request:

a. “Action” means the lawsuit commenced by you in the United States District Court for the District of Utah, styled as *Axis Surplus Insurance Co. v. Geringer et al.*, Civ. Case No. 2:14-cv-000244-DAK.

b. “CAREIC” means Castle Arch Real Estate Investment Company, LLC.

c. “Claim(s)” has the same definition set forth for such term in Section III.A. of the Policy.

d. “Conrath” means Larry Conrath, a current or former employee, agent or broker at HUB Int'l.

e. “Debtors” means Castle Arch Real Estate Investment Company, LLC; CAOP Managers, LLC; Castle Arch Kingman, LLC; Castle Arch Secured Development Fund, LLC; Castle Arch Smyrna, LLC; Castle Arch Star Valley, LLC; Castle Arch Opportunity Partners I, LLC; and Castle Arch Opportunity Partners II, LLC, including such Debtors’ officers, directors, employees, attorneys, receivers, accountants, agents, and/or representatives.

f. “Debtors’ Affiliates” means The Meadows at Star Valley Community Association; Castle Arch Opportunity Partners III, LLC; CALTO Managers, LLC; Castle Arch Lease-To-Own Income Fund, LLC; CASCA Managers, LLC; Castle Arch SoCal Avalar Opportunity Fund, LLC; The Meo-Castle Arch Managers, LLC; The Meo-Castle Arch Distress Asset Partners, LLC; Champion Castle Arch Partners, LLC; Castle Arch Asia, Ltd.; Castle Arch Sadat Opportunity Fund, LLC; Castle Arch Lindale, LLC; DPOP Managers; Distressed Property Opportunity Partners, LLC; REO Value Opportunity Partners, LLC; and REO Venture Group Opportunity Fund, LLC.

g. “Defendants” means the Defendants in the Action commenced by You.

h. “Document” or “Documents” includes all “writings and recordings” as defined by Rule 1001 of the Federal Rules of Evidence. If any tape, disk, card, wire, or other electronic or mechanical recording or transcript or any computer program is produced, you shall also produce such Documents as are necessary for the decoding, playing back, printing out, and/or interpretation thereof, and any other Documents which are necessary to convert such information into a useful and useable format. Documents also includes anything discoverable under Rule 26 of the Federal Rules of Civil Procedure and is used in the broadest and most liberal sense permitted by the Rules, including but not limited to all written, printed or recorded matter of any kind, whether printed, recorded or reproduced by any mechanical or electronic process, written or produced by hand or produced by or stored in a computer, regardless of origin or location, including, but not limited to, financial statements, books, records, reports, correspondence, letters, telegrams, telecopies, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, applications, booklets, brochures, catalogues, circulars, magazines, pamphlets, periodicals, bulletins, instructions, minutes, other communications (including, but not limited to, inter- and intra-office communications), purchase orders, bills of lading, bid tabulations, questionnaires, surveys, contracts, agreements, options to purchase, memoranda of agreements, assignments, licenses, books of account, orders, invoices, statements, bills, checks, vouchers, ledger sheets, accounts, journals, canceled checks, check stubs or receipts or checkbook registers, bank statements, bank passbooks, confirmations, statements of accounts, schematics, analyses, diaries, graphs, notes, notebooks, evaluations, charts, tables, working papers, plans, indices, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of accountants or consultants, data sheets, data processing cards, photographs, photographic negatives, phono-recordings, tape recordings, discs, wire recordings, transcripts of recordings, drawings, motion picture film, advertisements, press releases, drafts, marginal comments appearing on any such Documents, and all other written, recorded or printed matter of any kind, including, but not limited to, any information contained in any computer although not



yet in printed, or any other and all other data compilations from which information can be obtained and translated if necessary. This definition includes drafts of all “Documents” regardless of whether they were executed or not and all non-identical copies shall be considered a separate Document for purposes of the requests set forth herein.

i. “HUB Int’l” means HUB International Midwest Limited, including any predecessor or successor thereto, and all agents, brokers and employees thereof.

j. “Insured” has the same definition set forth for such term in the Policy.

k. “Policy” means that Private Equity and Venture Capital Fund Liability Insurance Policy, Policy No. EAN756858/01/2010, that AXIS issued to CAREIC commencing December 20, 2010, including all subsequent amendments, modifications or endorsements thereto.

l. “You” or “Your” means Axis Surplus Insurance Company, including its employees, agents or brokers; any entity managed, owned or controlled by Axis, including such entities’ employees, agents or brokers; or any entity which manages, owns or controls AXIS, including such entities’ employees, agents or brokers.

## **II. DOCUMENTS TO BE PRODUCED**

1. Any and all Documents, including but not limited to correspondence and emails, by You to, or received by You from, any of the Defendants from January 1, 2010 to present.
2. Any and all Documents, including but not limited to correspondence and emails, by You to, or received by You from, Conrath or HUB Int’l relating in any way to the Debtors, the Debtors’ Affiliates, the Defendants, or the Policy.
3. Any and all Documents, including but not limited to correspondence and emails, relating to the payment of any of the Policy proceeds to any Insured or any other party from January 1, 2010 to present.
4. Any and all Documents, including but not limited to correspondence and emails, relating to any agreements made with any Insured or any other party related to the Policy.
5. Any and all Documents concerning Claims that were submitted under the Policy, reported to You relating to the Policy, or that otherwise relate in any way to the Policy from January 1, 2010 to present.
6. To the extent not included above, any and all Documents, including but not limited to correspondence, emails, internal Documents or files relating to the Policy in any way from January 1, 2010 to present.

7. To the extent not included above, any and all Documents, including but not limited to correspondence, emails, internal Documents or files relating to the Debtors, the Debtors' Affiliates, or the Defendants in any way from January 1, 2010 to present.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of July, 2014, I caused a true and correct copy of the foregoing **NOTICE OF ISSUANCE OF SUBPOENA TO AXIS INSURANCE COMPANY** to be filed with the United States District Court for the District of Utah by using the CM/ECF system, which will automatically send email notifications of such filing to all counsel who have entered an appearance in this action.

/s/ Nathan S. Seim