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18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 DONNA A. RUTHE, an individual; TODAY'S
21 REALTY, INC., a Nevada Corporation; CDR
22 INVESTMENTS, LLC, a Nevada Limited Liability
23 Company; DONNA A. RUTHE as attorney in fact
24 for: CHARLES L. RUTHE, in his individual and in
25 representative capacities as trustee for the
26 CHARLES L. RUTHE TRUST and on behalf of his
27 Individual Retirement Account; CALOGERO S.
28 GRANIERI in his representative capacity as trustee
for RICHARD F. ACOVINO IRREVOCABLE
TRUST; FRANK E. GRANIERI, in his
representative capacity as trustee for the FRANK E.
GRANIERI REVOCABLE LIVING TRUST; and
RICHARD ACOVINO, an individual,

Plaintiffs,

vs.

ASPEN FINANCIAL SERVICES, INC., a Nevada
corporation; ASPEN FINANCIAL SERVICES,
LLC, a Nevada Limited Liability Company;
JEFFREY B. GUINN, an individual; DOES I
through X, inclusive; and ROE BUSINESS
ENTITIES I through X, inclusive,

Defendants.

Case No.

Dept. No.

COMPLAINT

**REQUEST FOR TRANSFER
TO BUSINESS COURT**

Date of Hearing: N/A

**EXEMPT FROM ARBITRATION:
Amount in Dispute in Excess of
\$50,000.00; Action for Injunctive and
Declaratory Relief**

FILED

APR 14 5 05 PM '09

E. J. [Signature]
CLERK OF THE COURT

A587791

XIII

1 Plaintiffs, Donna A. Ruthe, an individual, Today's Realty, Inc., a Nevada Corporation
2 ("Today's Realty"), CDR Investments, LLC, a Nevada Limited Liability Company ("CDR
3 Investments"), and Donna A. Ruthe as attorney in fact for Charles L. Ruthe, in his individual and
4 in representative capacities as trustee for the Charles L. Ruthe Trust ("Ruthe Trust") and on behalf
5 of his individual retirement account ("Ruthe IRA"); Calogero S. Granieri, Trustee in his
6 representative capacity as trustee for the Richard F. Acovino Irrevocable Trust ("Acovino Trust");
7 Frank E. Granieri in his representative capacity as trustee for the Frank E. Granieri Revocable Living
8 Trust ("Granieri Trust"); and Richard Acovino, individually (collectively, "Plaintiff"), by and
9 through its attorneys, the law firm of Solomon Dwiggins & Freer, Ltd., hereby complain and allege
10 against Defendants Aspen Financial Services, Inc., a Nevada corporation, Aspen Financial Services,
11 LLC, a Nevada Limited Liability Company, and Jeffrey B. Guinn, an individual (collectively,
12 "Aspen" or "Defendant") as follows:

13 **I. PARTIES**

14 1. At all relevant times herein, Plaintiff Donna A. Ruthe, an individual, was a resident of
15 Clark County, Nevada.

16 2. At all relevant times herein, Plaintiff Today's Realty was a Nevada corporation
17 authorized to conduct business in Clark County, Nevada.

18 3. At all relevant times herein, Plaintiff CDR Investments was a Nevada limited liability
19 company authorized to conduct business in Clark County, Nevada.

20 4. Plaintiff Donna A. Ruthe is the authorized attorney in fact for Charles L. Ruthe, an
21 individual, who at all relevant times is a resident of Clark County, Nevada.

22 5. Plaintiff Donna A. Ruthe is the authorized attorney in fact for Charles L. Ruthe in his
23 representative capacities as Trustee of the Charles L. Ruthe Trust, a trust formed under the laws of
24 Nevada, and which is administered out of Clark County, Nevada, and for his individual retirement
25 account, which at all relevant times is a validly existing individual retirement account with business
26 interests in Clark County, Nevada.

27 6. Plaintiff Donna A. Ruthe is the authorized attorney in fact for Richard Acovino, Trustee
28 of the Acovino Trust, a trust formed under the laws of Nevada, and which is administered out of

1 Clark County, Nevada.

2 7. Plaintiff Donna A. Ruthe is the authorized attorney in fact for Calogero S. Granieri,
3 Trustee of the Granieri Trust, a trust formed under the laws of Nevada, and which is administered
4 out of Clark County, Nevada.

5 8. Plaintiff Donna A. Ruthe is the authorized attorney in fact for Richard Acovino, an
6 individual who at all relevant times herein was a resident of Clark County, Nevada.

7 9. Upon information and belief, Defendant Aspen Financial Services, Inc., is a Nevada
8 domestic corporation that at all relevant times herein was duly authorized to conduct business in
9 Clark County, Nevada.

10 10. Upon information and belief, Defendant Aspen Financial Services, LLC, is a Nevada
11 limited liability company authorized to conduct business in Clark County, Nevada.

12 11. Upon information and belief, Defendant Jeffrey B. Guinn ("Guinn"), is a resident of
13 Clark County, Nevada and was the majority owner/investor in Aspen, and served as Aspen's
14 president, manager and/or chief executive officer at all relevant times herein.

15 12. The true names and capacities, whether individual, corporate, associate or otherwise, of
16 Defendant named and identified herein as Does I through X, inclusive, are currently unknown to
17 Plaintiff. Plaintiff, therefore, sue said Defendant by such fictitious names and will amend its
18 Complaint to show their true names and capacities upon ascertaining the same. Upon information
19 and belief, each of the Defendant sued herein as Doe has some responsibility for the damages to
20 Plaintiff as a result of the matters herein alleged.

21 13. The true names of Defendant Roe Business Entities I through X, inclusive, are currently
22 unknown to Plaintiff. Plaintiff, therefore, sue said Defendant by such fictitious names and will
23 amend its Complaint to show their true names upon ascertaining the same. Upon information and
24 belief, each of the Defendant sued herein as Roe Business Entity has some responsibility for the
25 damages to Plaintiff as a result of the matters herein alleged.

26 14. Through its wrongful acts and omissions, as set forth herein, Defendant have
27 subordinated Plaintiff's interests to Aspen's interests, and in so doing, Aspen has breached its
28 statutory, contractual, and fiduciary duties owing to Plaintiff.

II. JURISDICTION AND VENUE

15. The Court has jurisdiction over this matter since all actions described herein occurred within Clark County, Nevada. Venue is proper in Clark County because the activities giving rise to the causes of action took place in Clark County and the causes of action arose therein.

III. GENERAL ALLEGATIONS

A. OVERVIEW OF ASPEN'S OPERATIONS AND BUSINESS PRACTICES

16. Aspen is an maker, broker and servicer of loans in Nevada within the context of Nevada Revised Statutes Chapter 645B and Nevada Administrative Code 645B.

17. Plaintiff is informed and believes that Aspen's business practice of arranging and brokering loans involves various borrowers approaching Aspen to request loans for the purpose of acquiring and/or developing real estate situated in Clark County, Nevada. In response to these requests, Aspen solicits local investors (such as Plaintiff) to invest in these various loans brokered by Aspen.

18. In depositing funds with Aspen, the lenders place their trust and confidence in Aspen because Aspen represents itself as having special expertise and knowledge in the area of arranging, brokering and servicing loans for real estate acquisition and/or development.

19. Due to the large principal amounts of the loans Aspen arranges, brokers and services (typically exceeding a million dollars and frequently exceeding ten million dollars) the investment from one lender is generally not sufficient to fund an entire loan. Aspen therefore combines the deposits from several lenders into one loan package that is then loaned to the borrowers.

20. As there may be numerous lenders on one loan, the borrowers grant the lenders pro rata fractional interests in the loan agreement, promissory note evidencing the loans, and recorded deed of trust on the subject property as security for the loans. The loans are also generally secured by individual guarantees from principals of the borrowers.

21. In consideration for arranging and brokering such loans, Aspen received "points" from the loan proceeds paid out of escrow from the borrower's proceeds, typically approximating 3% of the of the principal balance of the loan.

22. When a loan matures and the principal amount is repaid by the borrowers, Aspen often

1 provides the lenders, frequently verbally, with the option to reinvest or “roll-over” their deposited
2 funds in another loan investment package arranged and brokered by Aspen.

3 23. As a condition of the initial deposit of funds with Aspen for investment, Aspen requires
4 each lender to execute a standard Loan Servicing Agreement (effective for the initial and any future
5 loans the lender participates in with Aspen) authorizing Aspen to service loans it arranges and
6 brokers and to protect and enforce the lender’s rights with respect to such loans.

7 24. In exchange for acting as a servicer of the loans, Aspen receives a servicing fee from the
8 interest payments paid by borrowers to lenders. Thus, upon investing with Aspen, the lenders must
9 consider whether Aspen is a trustworthy loan servicer at the same time the lenders are considering
10 whether to invest with Aspen, as the two functions are made indivisible by Aspen.

11 25. With respect to each loan participated in by a lender, Aspen requires the lender to execute
12 a “Special Power of Attorney” authorizing Aspen to service a particular loan in accordance with the
13 terms of the Loan Servicing Agreement. The Special Power of Attorney consists of a revocable
14 power of attorney and purports to have been approved by the Commissioner of Mortgage Lending.
15 Additionally, the Special Power of Attorney expressly states (as required by NRS § 645B.330) that
16 such power “shall not be effective to authorize any transaction that subordinates the priority of the
17 recorded deed of trust that secures the Loan (the “Deed of Trust”) to any other monetary
18 encumbrance, unless accompanied by a writing executed by Lender that consents to such
19 subordination.”

20 26. However, concurrent with the execution of each Special Power of Attorney, Aspen also
21 requires the lender to execute a separate “Subordination Addendum,” which modifies the Special
22 Power of Attorney and purports to grant Aspen a “durable irrevocable power of attorney” authorizing
23 Aspen “to subordinate the lien position of Lenders ... to a deed of trust in favor of another lender
24 making a loan enabling the Borrower to construct improvements upon the [subject] Property.”
25 Unlike the Special Power of Attorney, the Subordination Agreement does not purport to have been
26 approved by the Commissioner of Mortgage Lending.

27 27. From 2001 through 2007, Plaintiff was solicited by and deposited funds with Aspen for
28 various loans arranged, brokered and serviced by Aspen (“Aspen Loans”). Plaintiff presently has

1 invested substantial sums on at least twenty six (26) loans arranged, brokered and serviced by Aspen.
2 Plaintiff's corresponding percentage interests in the various Aspen Loans are set forth in **Exhibit A**,
3 attached hereto.

4 28. Pursuant to the terms of the Loan Servicing Agreements executed by and between
5 Plaintiff and Aspen, Plaintiff appointed Aspen as its agent "to service each Note, to protect the
6 interest of Lender in and enforce the rights of Lender under each Note, Deed of Trust and any other
7 Loan Documents."¹ Aspen accepted such appointment as agent for Plaintiff and "agree[d] to
8 exercise diligent and good faith efforts in the execution of its duties as agent...."

9 29. Plaintiff has recently become aware of certain representations, acts and/or omissions by
10 Aspen relating to the arranging, brokering and servicing of Plaintiff's loans indicating that Aspen has
11 materially breached its statutory, fiduciary and contractual duties owing to Plaintiff.

12 30. Plaintiff has requested that Aspen provide her with further information and Plaintiff has
13 attempted to investigate the representations, acts and/or omissions by Aspen with respect to the
14 various loans. However, Aspen has refused to fully disclose information to Plaintiff and has
15 obstructed Plaintiff's efforts to obtain further information.

16 31. A review of the limited information to which Plaintiff has been made privy to reveals
17 substantial causes for concern, as set forth below. Plaintiff intends to amend this Complaint upon
18 the receipt of further information.

19 **B. THE MILANO RESIDENCES, LLC LOAN (#60-00277-1)**

20 32. Beginning in or about 2005, Aspen arranged, brokered and refinanced loans with Milano
21 Residences, LLC ("Milano") for the development of a 100 unit condominium project on property
22 situated near the intersection of Cactus and Bermuda in Clark County, Nevada ("Milano Property").
23 Milano is owned and managed by Susan Mardian ("Mardian"), who Plaintiff is informed and
24 believes is a long-time friend of Defendant Guinn and a partner with Guinn in other business
25 transactions.

26
27 ¹ Recital B of the Loan Servicing Agreement defines "Loan Documents" as "the Note,
28 the Deed of Trust and any other agreements, security instruments and other documents executed in
connection therewith."

1 33. Pursuant to the construction contract entered into between Milano and its general
2 contractor, Dayside Construction, Inc. ("Dayside"), dated April 25, 2005, the cost of the
3 condominium project was not to exceed \$9,771,530.00 and was to be substantially completed no
4 later than 240 days after the "commencement date," defined as "two weeks after receipt of [the]
5 Building Permit" from Clark County.

6 34. As of March 6, 2006, Aspen was then servicing first and second priority loans with
7 Milano in the respective amounts of \$17.7 million and \$5 million.

8 35. On or about March 6, 2006, Mardian requested that Aspen arranged a refinance of its then
9 existing \$5 million second priority loan.

10 **(1) Aspen's Solicitation of Today's Realty as an Investor in the Milano Loan**

11 36. In connection with Mardian's loan request, on March 14, 2006, Milano, by and through
12 Mardian as its manager, executed a Loan Agreement, Promissory Note and Deed of Trust for a new
13 second priority loan in the principal amount of \$10 million to be financed for a period of eighteen
14 months ("Milano Loan") in favor of "Exhibit A" lenders, which were to be solicited by Aspen. In
15 conjunction with the Milano Loan, Mardian also executed a personal Guaranty guaranteeing
16 Milano's performance under the respective loan documents.

17 37. In paragraph 1.02 of the Deed of Trust, Milano represented, *inter alia*, that as of March
18 14, 2006, "all costs arising from construction of any improvements and the purchase of all equipment
19 located on [the Milano Property] have been paid" and "the proceeds of the indebtedness advanced
20 by Beneficiary and evidenced by the Note are to be used only for the purposes of acquiring [the
21 Milano Property] and reimbursement of capital improvements made to [the Milano Property]."

22 38. However, on March 15, 2006, the day after Milano and Mardian had made such
23 representations, Mardian caused Joshua Tree, LLC ("Joshua Tree"), a Nevada limited liability
24 company likewise owned and managed by Mardian, to record a \$3 million third priority deed of trust
25 on the Milano Property. Plaintiff is informed and believes no consideration was given by Joshua
26 Tree in exchange for the deed of trust placed upon the Milano Property.

27 39. On or about March 16, 2006, Aspen solicited Plaintiff Today's Realty for participation
28 as an "Exhibit A" lender in the \$10 million Milano Loan. In the Milano Loan solicitation package

1 presented to Today's Realty, Aspen represented that the loan proceeds would be used to refinance
2 Aspen's then-existing second priority loan (without reference to the principal balance of such loan)
3 and "other costs related to the project, loan fees and interest reserves for both the 1st and 2nd
4 Mortgages." Aspen further represented that it was also servicing the first mortgage on the project
5 in the amount of \$17,700,000 and that the "combined [loan to value ratio] on the project including
6 both the 1st and 2nd mortgages is 91% of the appraised value of \$30.3 million."

7 40. In soliciting the Loan, Aspen did not disclose details concerning the construction contract
8 entered into between Milano and Dayside, including the contract price or the anticipated date of
9 completion. Rather, Aspen represented to Today's Realty that the "Site has been inspected by
10 Aspen" and that the project consisted of "a 100 Unit Condominium Project [that] is under
11 construction."

12 41. On March 24, 2006, in reliance upon Aspen's representations concerning the Milano
13 Loan and Aspen's promise under the Loan Servicing Agreement to service the Milano Loan and
14 protect and enforce Today's Realty's rights and interests, Today's Realty deposited funds with Aspen
15 and invested as an "Exhibit A" lender in the Milano Loan.

16 42. On March 28, 2006, Aspen (in its capacity as agent for Today's Realty and the other
17 "Exhibit A" lenders of the Milano Loan) executed escrow instructions authorizing the close of
18 escrow and directing the disbursement of the Milano Loan proceeds.

19 43. However, unknown to Today's Realty, undisclosed by Aspen, and contrary to the
20 representations made by Aspen, Plaintiff is informed and believes that the condominium project was
21 not under construction as of the close of escrow because the Clark County had not issued a building
22 permit for the project. Indeed, based upon a recent review of Clark County permit records, Plaintiff
23 is informed and believes that Dayside Construction did not receive a building permit for the Milano
24 Property until May 18, 2006.

25 44. Additionally, unknown to Today's Realty, undisclosed by Aspen, and contrary to the
26 representations made by Aspen, in the escrow instructions executed by Aspen, Aspen directed that
27 the escrow agent disburse loan proceeds in the amount of \$1.1 million directly to Joshua Tree. At
28 no time prior or subsequent to the disbursement of the Milano Loan proceeds did Aspen disclose to

1 Today's Realty the relationship between Joshua Tree and Milano or that Aspen had authorized
2 disbursement of such proceeds to Joshua Tree.

3 45. Consequently, by the at the closing of the Milano Loan and the disbursement of the
4 "Exhibit A" lenders' proceeds Aspen knew and failed to disclose to Today's Realty: (1) Joshua Tree
5 was owned and controlled by Mardian; (2) Mardian had recorded the Joshua Tree deed of trust on
6 the Milano Property the day after she executed the Milano Loan documents; and (3) Aspen
7 authorized and directed the escrow agent to disburse Milano Loan proceeds directly to Joshua Tree
8 to pay a third priority trust deed that was subordinate to the refinanced second priority trust deed and
9 did not represent a payment for acquiring the Milano Property or reimbursing capital improvements
10 made to the Milano Property.

11 **(2) Aspen's Failure to Notify Today's Realty of Material Events Concerning the Milano Loan**
12 **and Failure to Require Additional Deposits By Milano**

13 46. Pursuant to the Loan Agreement and other loan documents executed by Milano, it agreed
14 to maintain a funds account for the loan proceeds ("Funds Account"), governed by a Deposit
15 Account Control Agreement and Disbursement Agreement, and agreed to deposit additional sums
16 into the Funds Account as necessary to enable Milano to perform and satisfy all of its covenants
17 under the loan documents and to maintain the 91% loan to value ratio.

18 47. Milano further agreed pursuant to the terms of the Milano Loan Agreement that, should
19 the "Exhibit A" lenders determine the amounts held in the Funds Account were insufficient for such
20 purposes, then it would deposit the deficiency amount within seven (7) business days of the lenders'
21 written demand.

22 48. Pursuant to the Loan Servicing Agreement, Aspen agreed to protect and enforce Today's
23 Realty's rights and interest as an "Exhibit A" lender under the Loan Agreement and further agreed
24 to "promptly notify [Today's Realty] of the occurrence and nature" of any event of default by Milano
25 under the Milano Loan documents. Aspen received consideration for the performance of such
26 services.

27 49. Plaintiff is informed and believes the Milano Property was supposed to be fully
28

1 constructed, marketed and sold on or before June 2007.²

2 50. However, on or prior to April 20, 2007, Aspen was notified by Milano that its original
3 contractor had been replaced, that the project had been delayed and that construction would not be
4 underway until May 1, 2007. Aspen failed to inform Today's Realty of this development and the
5 resulting delay in the completion of the project.

6 51. On July 25, 2007, Aspen received a Nevada Construction Services Project Draw Request
7 Report that notified Aspen the project was 25% over budget, with 50% of the \$18 million project
8 budget having been disbursed but only a calculated completion of 25%. Aspen failed to notify
9 Today's Realty of these material facts and failed to demand that Milano deposit additional funds into
10 the Funds Account to bring construction and interest reserves to acceptable level under the terms of
11 the Milano Loan documents.

12 **(3) Aspen's Failure to Monitor Liens on the Property, Failure to Notify Today's Realty of the**
13 **Existence of Liens Upon the Milano Property, and Failure to Enforce Today's Realty's**
14 **Rights Regarding the Existence of Such Liens**

15 52. Additionally, Plaintiff is informed and believes that pursuant to the Milano Loan
16 Agreement, Milano agreed to keep the property free and clear of any claim of lien on the property
17 and agreed that an event of default would occur in the event that such claim of lien was not
18 discharged or otherwise satisfied within twenty (20) days.

19 53. Pursuant to the Loan Servicing Agreement, Aspen agreed to protect and enforce Today's
20 Realty's rights and interest as an "Exhibit A" lender under the Loan Agreement and further agreed
21 to notify Today's Realty of any default on the property. Aspen received consideration for the
22 performance of such services.

23 54. On or about May 10, 2007, the prior general contractor for Milano, Dayside Construction,
24 Inc., recorded a Mechanic's Lien on the property in the amount of \$381,661.40 ("Dayside Lien").

25 55. On or about May 17, 2007, Peri Formwork Systems, Inc. recorded a Mechanic's Lien on
26

27 ² Plaintiff's information and belief is based upon both the terms of the construction
28 contract dated April 25, 2005, and correspondence from Mardian to "Aspen Financial First and
Second Trust Deed Investors" dated on January 28, 2009.

1 the property in an amount Plaintiff is informed and believes to be approximately \$196,849.14
2 (“Periforms Lien”).

3 56. As of May 30, 2007, the Dayside Lien remained on the subject property, thereby
4 rendering Milano in default under the Loan Agreement.

5 57. As of June 7, 2007, the Periforms Lien remained on the subject property, thereby
6 rendering Milano in default under the Loan Agreement.

7 58. On or about November 14, 2007, Peri Formwork Systems, Inc. recorded a *lis pendens* on
8 the subject property (“Periforms *Lis Pendens*”).

9 59. As of November 24, 2007, the Periforms *Lis Pendens* remained on the subject property,
10 thereby rendering Milano in default under the Loan Agreement.

11 60. Aspen knew or should have known of the recordation of the Dayside Lien, the Periforms
12 Lien, and the Periforms *Lis Pendens*. Aspen failed to timely notify Today’s Realty of the existence
13 of such liens and encumbrances and that the Milano Loan was in default under the Milano Loan
14 Agreement.

15 **(4) Aspen’s Failure to Notify Today’s Realty of the Conditions Precedent for Granting a Loan**
16 **Extension and Improper Retention of Loan Extension Proceeds**

17 61. Plaintiff is informed and believes that pursuant to the Milano Loan Agreement, Milano
18 possessed a conditional right to extend the term of the Milano Loan for up to six months, but only
19 upon, *inter alia*: (a) no default or event of default had occurred under the loan documents; (b) the
20 “Exhibit A” lenders had determined that no material adverse change had occurred in the financial
21 condition of Milano or Mardian, as guarantor; (c) the “Exhibit A” lenders had determined that the
22 interest reserve portion allocated to the disbursement budget is sufficient to pay interest over the
23 extended term as it accrues or Milano deposited sufficient additional funds to redress such shortfall;
24 and (d) Milano paid to the “Exhibit A” lenders an extension fee equal to 0.5% of the principal
25 balance of the loan.

26 62. On or about August 14, 2007, Milano provided Aspen written notice that it was
27 requesting a six month extension of the Milano Loan from October 1, 2007, to April 1, 2008. At that
28 time, Milano also provided to Aspen a check payable to Aspen for a “loan extension fee” in the

1 amount of \$50,000.00.

2 63. On or about August 31, 2007, Aspen, through Guinn, executed a consent to loan
3 extension on the Milano Loan.

4 64. On August 31, 2007, Aspen sent Today's Realty an "extension notice" letter stating that
5 Milano had exercised its right to a six month extension of the loan and notified Today's Realty that
6 the new maturity date on the loan was April 1, 2008.

7 65. Aspen failed to inform Today's Realty that Milano's right to seek a six month extension
8 was conditioned upon the aforementioned events or conditions which had not occurred or been
9 satisfied.

10 66. Aspen failed to inform Today's Realty that Milano had been in default under the loan
11 documents, including Milano's failure to remove the Dayside Lien and Periforms Lien, prior to its
12 request for extension and that it remained in default at the time Aspen consented to the extension on
13 behalf of the "Exhibit A" lenders.

14 67. Aspen failed to inform Today's Realty that the construction on the Milano Property was
15 behind schedule and over budget.

16 68. Aspen failed to require Milano to replenish the interest and construction reserve balances
17 in the Funds Account as a condition to the loan extension.

18 69. Aspen never informed Today's Realty that Milano had paid a \$50,000.00 extension fee
19 in violation of the Loan Agreement.

20 70. Aspen never paid Today's Realty its pro rata share of Milano's extension fee in violation
21 of the Loan Agreement.

22 **(5) Aspen's Failure to Enforce the Loan to Value Ratio Covenants on the Milano Property**
23 **and Improper Subordination of Today's Realty's Deed of Trust by an additional \$1.5**
24 **Million**

25 71. As a condition precedent to the Loan Agreement, Milano agreed to maintain a combined
26 first and second mortgage loan to value ratio of 91% on the property, and agreed that it would
27 deposit additional funds into the Funds Account sufficient to keep the loan to value ration no greater
28 than 91%. Additionally, to protect this loan to value ratio covenant, Milano agreed that every six

1 months the Exhibit A lenders could retain an appraiser at Milano's expense to appraise the property,
2 whereupon the Exhibit A lenders could demand deposit upon five days' notice into the Funds
3 Account to bring the loan to value ratio to the required percentage to the extent of any deficient
4 equity.

5 72. Pursuant to the Loan Servicing Agreement, Aspen agreed to protect and enforce Today's
6 Realty's rights and interest as an "Exhibit A" lender under the Loan Agreement and received
7 consideration for such services.

8 73. Pursuant to the terms of the Loan Agreement, on or about October 1, 2006, the "Exhibit
9 A" lenders possessed the right to request an appraisal on the property at Milano's expense and to
10 demand that Milano deposit additional funds into the Funds Account in the event the loan to value
11 ratio increased above 91%. Aspen failed to notify Today's Realty of this right and Plaintiff is
12 informed and believes that Aspen failed to exercise this right on behalf of Today's Realty.

13 74. Plaintiff is informed and believes that as of October 2006, the condominium market in
14 Clark County began to decline, as evidenced by GLVAR statistics showing that since March 2006,
15 the median value for condominiums sold in Clark County had declined by approximately -2.4%, with
16 the number of sales declining by -31.7% and the number of units available for sale increasing by
17 40%.

18 75. On or about December 29, 2006, Aspen authorized the refinance of the first deed of trust
19 without informing Today's Realty that the amount of first deed of trust had increased from \$17.7
20 million to \$19.2 million and without receiving Today's Realty's consent to a subordination of its
21 interest by another \$1.5 million in indebtedness.

22 76. Additionally, Plaintiff is informed and believes that the substantial majority of the \$1.5
23 million in additional indebtedness was incurred to allow payment, unknown and undisclosed to
24 Today's Realty but with Aspen's knowledge and consent, to Joshua Tree on its then-existing third
25 deed of trust, thereby impermissibly subordinating Today's Realty's second deed of trust interest in
26 favor of the holder of a third deed of trust.

27 77. Aspen did not notify Today's Realty of the subordination to additional indebtedness and
28 did not provide Today's Realty with an updated appraisal on the property. Based on March 2006

1 appraisal Aspen previously supplied Today's Realty, the newly refinanced first deed of trust in the
2 amount of \$19.2 million would have placed the combined loan to value ratio for the first and
3 second mortgages at approximately 96%, in violation of the 91% loan to value ratio covenant.

4 78. Pursuant to the terms of the Loan Agreement, on or about April 1, 2007, the "Exhibit A"
5 lenders possessed the right to request an appraisal on the property at Milano's expense and to
6 demand that Milano deposit additional funds into the Funds Account in the event the loan to value
7 ratio increased above 91%. Aspen failed to notify Today's Realty of this right and Plaintiff is
8 informed and believes that Aspen failed to exercise this right on behalf of Today's Realty.

9 79. Plaintiff is informed and believes that as of April 2007, the condominium market in Clark
10 County continued to exhibit weakness, as evidenced by GLVAR statistics showing that, based upon
11 year-over-year comparisons, the median value for condominiums sold in Clark County had declined
12 by -2.5% and the number of sales had declined -47.2% while the number of available units for sale
13 had increased +63.5%.

14 80. On August 31, 2007, Aspen knew or should have known the condition of the real estate
15 market in Clark County and failed to request an appraisal on the Milano Property at Milano's
16 expense and to demand that Milano deposit additional funds into the Funds Account to bring the loan
17 to value ratio current to 91% when it authorized and consented to Milano's aforementioned six
18 month loan extension.

19 81. Pursuant to the terms of the Loan Agreement, on or about October 1, 2007, the "Exhibit
20 A" lenders possessed the right to request an appraisal on the property at Milano's expense and to
21 demand that Milano deposit additional funds into the Funds Account in the event the loan to value
22 ratio increased above 91%. Aspen failed to notify Today's Realty of this right and Plaintiff is
23 informed and believes that Aspen failed to exercise this right on behalf of Today's Realty.

24 82. Plaintiff is informed and believes that as of October 2007, the condominium market in
25 Clark County had substantially deteriorated, as evidenced by GLVAR statistics showing that, in the
26 intervening eighteen months since April 2006, the median value for condominiums sold in Clark
27 County had declined by -14.6%, with the number of sales declining by -66.8% and the number of
28 available units increasing by 68.2%.

1 83. On February 19, 2009, Aspen informed Today's Realty in a written letter to the "Exhibit
2 A" lenders that it had obtained a current appraisal on the subject property and that value of the
3 subject property had declined from \$30.3 million to a value of \$3.81 million as of January 2009.

4 84. On or about March 23, 2009, Aspen represented to counsel for Plaintiff that other than
5 the 2009 appraisal, no other appraisal for the Milano property had been performed for the benefit of
6 the "Exhibit A" lenders since the March 2006 appraisal.

7 85. Thus, at no point during the term of the loan or the six month extension did Aspen notify
8 Today's Realty of its rights to enforce the 91% loan to value ratio and Aspen failed to enforce such
9 loan to value ratio covenant, all to the detriment of Today's Realty.

10 **(6) Aspen's Failure to Halt Disbursement of Loan Proceeds from the Funds Account**

11 86. In addition to having power to request additional deposits into the Funds Account under
12 the Milano Loan Agreement, Today's Realty also possessed a perfected security interest in the Funds
13 Account managed by Nevada Construction Services as disbursement agent.

14 87. Pursuant to the Milano Loan Agreement, Today's Realty, as an "Exhibit A" lender
15 possessed the right to require Milano to deposit funds into the Funds Account necessary to retain
16 sufficient interest reserves and construction reserves balances to guarantee performance during the
17 life of the loan.

18 88. As of August 27, 2007, the interest reserve portion of the Funds Account reached \$0,
19 while \$4.9 million in the Funds Account.

20 89. Aspen failed to notify Today's Realty that the interest reserve balance reached \$0. Aspen
21 failed to demand that Milano replenish the interest reserve balance in the Funds Account and failed
22 to halt the disbursement of funds from the Funds Account until Milano replenished such reserves.
23 Rather, Aspen continued to authorize disbursement from the Funds Account for Milano's benefit
24 until the account reached \$0 in or about December 2008.

25 90. On March 10, 2008, Aspen notified Today's Realty that Milano could no longer meet its
26 obligations under the Milano Loan. Shortly thereafter, in April 2008, Aspen received a financial
27 statement from Milano and Mardian that displayed the net value of Milano as negative nine million
28 dollars (-\$9,000,000). At the time of receiving this information, in excess of \$2 million remained

1 in the Funds Account.

2 91. Aspen failed to notify Today's Realty that \$2 million remained in the Funds Account and
3 failed to halt the disbursement of funds upon receipt of Milano's notice of intent to breach the
4 Milano Loan and upon receipt of notice that Milano's financial condition had suffered a material
5 adverse change. Rather, Aspen continued to authorize disbursement from the Funds Account for
6 Milano's benefit until the account reached \$0 in or about December 2008.

7 **(7) Aspen Has Prevented Today's Realty From Further Investigating Milano Loan Issues**

8 92. On February 19, 2009, Aspen notified Today's Realty and the other "Exhibit A" lenders
9 that Milano was walking away from the project. Further, for the first time, Aspen notified Today's
10 Realty that despite having loaned Milano \$29.2 million on property, including the Milano Loan, for
11 the construction on the project, the current value of the property is only \$3.8 million.

12 93. Upon subsequent investigation, Plaintiff is informed and believes that construction on
13 the Milano Property is only 50-60% complete and will take another \$9 million in construction costs
14 before the property is marketable as condominium units.

15 94. Moreover, Plaintiff's recent investigation of documents recorded at the Clark County
16 Recorder's office reveal that of the \$29.9 million in loans brokered and serviced by Aspen, it appears
17 that Aspen authorized the disbursement of as much as \$11.5 million directly to Joshua Tree through
18 the continued recordation of deeds of trust by Joshua Tree and reconveyances upon the funding of
19 loans brokered by Aspen.

20 95. In connection with researching these issues and requesting additional answers, Plaintiff
21 requested that Aspen make available its entire file concerning the Milano Loan and to produce copies
22 of documents within such file.

23 96. In addition to its general fiduciary duties to maintain records and provide information to
24 Plaintiff as Plaintiff's agent, Aspen expressly acknowledged in the Loan Servicing Agreement that
25 it "has no rights in such executed originals of the Loan Documents³," further acknowledged its
26

27 ³ "Loan Documents" is defined under the Loan Servicing Agreement as "the Note, the
28 Deed of Trust and any other agreements, security instruments and other documents executed in
connection therewith"

1 appointment as Plaintiff's "agent to hold the executed originals of the Loan Documents on its
2 behalf," and agrees to "maintain full and accurate records of its receipts, maintenance and
3 disbursements of all Payments."

4 97. However, Aspen has only permitted Plaintiff's counsel to review portions of the Milano
5 file and asserts that Plaintiff is not entitled to review the remaining portions of the Milano file or
6 various Aspen Loan files.

7 98. Further, Aspen has failed and refused to produce copies of the selected documents which
8 Plaintiff's counsel were permitted to review and tag for copying.

9 99. Additionally, on March 26, 2009, Plaintiff called Nevada Construction Services ("NCS")
10 to inquire about the Funds Account disbursements for the Milano Loan. NCS informed Plaintiff that
11 it would not disclose any information without the prior approval from Aspen. Later that day, NCS
12 contacted Plaintiff, and stated that Aspen expressly refused to authorize NCS to disclose such
13 information to Plaintiff.

14 100. Accordingly, despite its fiduciary and contractual duties, Aspen is denying Plaintiff
15 access to her own documents and is actively preventing Plaintiff from acquiring information from
16 other agents ultimately acting on Plaintiff's behalf.

17 **C. PLAINTIFF HAS SUBSTANTIAL INSECURITY CONCERNS REGARDING THE OTHER**
18 **ASPEN LOANS**

19 101. Plaintiff has substantial concerns relating to Aspen's representations, acts and/or
20 omissions with respect to their other Aspen Loans, particularly in light of Aspen's apparent refusal
21 (1) to enforce or protect Plaintiff's respective rights under the various loan agreements, promissory
22 notes, and deeds of trust; and (2) act with the fidelity, honesty and good faith required of an agent
23 pursuant to the principal-agent relationship established pursuant to the various Loan Servicing
24 Agreements and related documents.

25 102. Plaintiff has requested to review Aspen's files related to the other Aspen Loans and
26 has requested the production of documents relevant thereto. However, Aspen has failed and refused
27 to make available adequate files concerning these other loans and has permitted Plaintiff's counsel
28 only a cursory review of limited documents concerning such transactions. Due to the limitations

1 imposed by Aspen upon Plaintiff's review, Plaintiff cannot adequately determine to what extent
2 whether Aspen has similarly breached its duties owing to Plaintiff on the other Aspen Loans.
3 However, Plaintiff's cursory review of records has revealed a number of serious and substantial
4 concerns, including the following:

5 **(1) Monarch Ridge Project, LLC Loan (#60-00313-5)**

6 103. In or about May 2007, Aspen provided a letter of instruction to Equity Title of
7 Nevada regarding Monarch Ridge Project 60-00313-5, a second trust deed for \$5,221,000 in which
8 Plaintiffs Ruthe Trust, Ruthe IRA and CDR Investments are investors ("Monarch Loan"). In its
9 letter of instruction on the Monarch Loan, Aspen instructed Equity Title of Nevada to distribute
10 \$900,000 to "Coronado South, LLC" as "Seller Proceeds" from the net loan proceeds. Aspen failed
11 to disclose to Plaintiffs Ruthe Trust, Ruthe IRA and CDR Investments that \$900,000, or 17.2% of
12 the loan proceeds, were going to Coronado South, LLC, an entity of which Guinn is a member.

13 104. To the contrary, on or about May 16, 2007, and as part of its solicitation of the
14 Monarch Loan, Aspen presented a Loan Officer Analysis to Plaintiffs Ruthe Trust, Ruthe IRA, and
15 CDR Investments that represents that the loan proceeds "will be used to payoff the remaining
16 balance on the existing second mortgage (60-00283-1)."

17 105. At the time of the undisclosed \$900,000 transfer to one of Guinn's entities, Guinn and
18 Todd Stratton were business partners in one or more entities, including Monarch Ridge Estates, LLC,
19 in which Guinn and Stratton were co-managers.

20 **(2) Aspen Self Storage, LLC Loan (#60-00292-2)**

21 **(a) Disbursement of Loan Proceeds to Joshua Tree**

22 106. As it did in the Milano Loan transaction, Plaintiff is informed and believes that Aspen
23 may have similarly authorized disbursement of loan proceeds to Joshua Tree in connection with a
24 loan to Aspen Self Storage, LLC ("Aspen Self Storage"), a Nevada entity likewise controlled and
25 owned by Mardian.

26 107. On July 26, 2006, Aspen Self Storage, LLC, by and through Mardian, executed a loan
27 agreement, promissory note, and deed of trust for a \$2 million loan with a term of 18 months to be
28 brokered by Aspen pursuant to the terms of a loan agreement and promissory note ("Aspen Self

1 Storage Loan”) and secured by a deed of trust on property situated near the intersection of Cactus
2 and Bermuda in Clark County, Nevada (“Aspen Self Storage Property”).

3 108. On that same day, July 26, 2006, Mardian caused Joshua Tree to record a deed of trust
4 on the Aspen Self Storage Property. Plaintiff is informed and believes that the Joshua Tree deed of
5 trust recorded on this property was without consideration.

6 109. At or about that same time, Plaintiff Ruthe IRA, deposited funds with and/or
7 otherwise authorized reallocation of previously invested funds brokered by Aspen for investment in
8 the Aspen Self Storage Loan.

9 110. On August 4, 2006, escrow closed on the Aspen Self Storage Loan.

10 111. Plaintiff is informed and believes that Aspen, without Ruthe IRA’s knowledge or
11 permission, authorized and directed disbursement of some or all of the Aspen Self Storage Loan
12 proceeds to Joshua Tree in a manner similarly done in the Milano Loan transaction.

13 (b) Loan Extension on the Aspen Self Storage Loan

14 112. Plaintiff is likewise informed and believe that pursuant to the Loan Agreement, Aspen
15 Self Storage possessed a right to extend the term of the Aspen Self Storage Loan for up to six
16 months, which right was conditioned upon, *inter alia*: (1) no default or event of default having
17 occurred under the loan documents; (2) the “Exhibit A” lenders determining that no material adverse
18 change had occurred in the financial condition of Aspen Self Storage or Mardian, as guarantor; (3)
19 the “Exhibit A” lenders determining that the interest reserve portion allocated to the disbursement
20 budget is sufficient to pay interest over the extended term as it accrues or Milano deposits sufficient
21 additional funds to redress such shortfall; and (4) Milano paying to the “Exhibit A” lenders an
22 extension fee equal to 0.5% of the principal balance of the loan.

23 113. On or about May 21, 2007, Mardian presented to Aspen a signed financial statement
24 dated May 21, 2007, that set forth the net value of Aspen Self Storage as only \$416,059.

25 114. On or about December 10, 2007, Aspen Self Storage provided Aspen written notice
26 that it was requesting a six month extension of the Milano Loan from February 1, 2008, through
27 August 1, 2008. At that time, Aspen Self Storage also provided to Aspen a check made payable to
28 Aspen for a “loan extension fee” in the amount of \$10,000.

115. On or about January 22, 2008, Aspen, through Guinn, executed a consent to loan extension on the Aspen Self Storage Loan.

116. On December 21, 2007, Aspen sent Ruthe IRA an "extension notice" letter stating that Aspen Self Storage had exercised its right to a six month extension of the loan and notified Today's Realty that the new maturity date on the loan was August 1, 2008.

117. Aspen failed to inform Ruthe IRA that Aspen Self Storage's right to seek a six month extension was conditioned upon several events or conditions which had not occurred or been satisfied.

118. Aspen failed to inform Ruthe IRA that Aspen Self Storage's net asset value had declined to only \$400,000, rendering the Aspen Self Storage lenders under-secured on the project at the time of the extension request and at the time Aspen consented to the extension on behalf of the "Exhibit A" lenders.

119. Aspen never informed Ruthe IRA that Aspen Self Storage had paid a \$10,000 extension fee to Aspen.

120. Aspen never paid Ruthe IRA its pro rata share of Aspen Self Storage's extension fee.

(3) Celebrate Homes 46, LLC, Loan (#10-0325-9), Celebrate Investments, LLC Loan (#10-00337-1), Celebrate Investments, LLC Loan (#60-00302-4), and Celebrate Properties, LLC Loan (#10-00326)

121. Plaintiff Ruthe Trust is an investor in Celebrate Homes 46, LLC (#10-00325-9) ("Celebrate Homes 46 Loan").

122. Plaintiff Ruthe Trust is an investor in the 1st priority loan for Celebrate Investments (#10-00337-1) ("Celebrate Investment #1 Loan"). Plaintiffs Ruthe Trust, Acovino Trust, Charles L. Ruthe and Donna A. Ruthe, Donna A. Ruthe and Richard Acovino, Ruthe IRA and CDR Investments are investors in the 2nd priority loan for Celebrate Investments (#60-00302-4) ("Celebrate Investment #2 Loan," collectively, "Celebrate Investments #1 and #2").

123. Plaintiff Ruthe Trust is an investor in the Celebrate Properties (#10-00326) ("Celebrate Properties Loan").

124. Each of the aforementioned Plaintiffs executed a separate standardized special power

1 of attorney form for each of the loans serviced by Aspen.

2 125. Each special power of attorney expressly limited the authority of Aspen and was “not
3 ... effective to authorize the use or release of money in which the Lender owns a beneficial interest
4 for any purpose except for the provision of the services described above relating to the Loan unless
5 accompanied by written authorization executed by Lender for the use or release of the money for the
6 other purpose.”

7 126. As a holder of a perfected security interest in the Funds Account for its respective
8 loan for which the aforementioned Plaintiffs had invested, each Plaintiff held a respective “beneficial
9 interest” in such Funds Account.

10 127. From a review of a portion of the Nevada Construction Project Draw Request
11 Reports, it appears that prior to March 23, 2007, interest reserve draws in the amount of \$19,416.72
12 were paid monthly to investors in the Celebrate Homes 46 Loan. On March 23, 2007, the balance
13 of the interest reserve for the Celebrate Homes 46 Loan was \$5,519.08, or \$13,897.64 short of the
14 previous \$19,416.72 payments made to the investors.

15 128. On or about May 2, 2007, Aspen instructed Nevada Construction Services to transfer
16 \$13,862.08 from Celebrate Investments #1 and #2 to the Celebrate Homes 46 Loan.

17 129. On or about June 5, 2007, Aspen instructed Nevada Construction Services to transfer
18 \$19,416.72 from Celebrate Investments #1 and #2 to the Celebrate Homes 46 Loan.

19 130. On or about July 3, 2007, Aspen instructed Nevada Construction Services to transfer
20 \$19,416.72 from Celebrate Investments #1 and #2 to the Celebrate Homes 46 Loan.

21 131. On or about August 2, 2007, Aspen instructed Nevada Construction Services to
22 transfer \$19,416.72 from Celebrate Investments #1 and #2 to the Celebrate Homes 46 Loan.

23 132. On or about August 2, 2007, Aspen instructed Nevada Construction Services to
24 transfer \$19,416.72 from Celebrate Investments #1 and #2 to the Celebrate Homes 46 Loan.

25 133. On or about September 11, 2007, Aspen instructed Nevada Construction Services
26 to transfer \$5,700 from Celebrate Investments #1 and #2 to the Celebrate Properties Loan.

27 134. Accordingly, Plaintiff is informed and believes improper transfers from one account
28 to another were performed without Plaintiff’s knowledge or consent and in violation of the special

1 power of attorney. Further, Plaintiff is informed and believes that these transfers effectively
2 (a) transfer Funds Accounts from which Plaintiff holds a greater percentage issue to Funds Accounts
3 in which Plaintiff possesses a lesser percentage or no interest, and (b) allowed Aspen to continue
4 disbursing interest payments on the various Celebrate Loans after some loans would otherwise
5 become non-performing.”.

6 **(4) Golshan Weber AGA Kahrobai (#80-00064-0)**

7 135. Section 7.18 of the Loan Agreements states:

8 Borrower shall have the right to extend the term of the Loan for a period not to
9 exceed six months from its original maturity date. . . (b) On or before the original
10 maturity date, borrower shall pay Lender an extension fee in immediately available
11 funds on the amount of one half of one percent (0.5%) of the total of (I) the
12 outstanding disbursed principal of the Loan and (ii) the undisbursed principal balance
13 of the Loan (both as determined on the original maturity date).

14 136. Aspen violated its duties and obligations to Plaintiff by failing to pay the lenders a
15 pro rata distribution of the extension fees. For example, on or about March 1, 2008, Kevin Golshan,
16 Geraldine Weber, AGA, LLC, Ebrahim Kahrobai, Masoud I. Kahrobaie and Lancaster Real Estate
17 Holdings, LLC presented Aspen with an application for modification of terms of note to extend the
18 maturity date of the loan from March to September 2008 and an extension fee check in the amount
19 of \$49,450. On or about August 29, 2008, Kevin Golshan, Geraldine Weber, AGA, LLC, Ebrahim
20 Kahrobai, Masoud I. Kahrobaie and Lancaster Real Estate Holdings, LLC presented Aspen with a
21 second application for modification of terms of note to extend the loan from September 2008 to
22 March 2009 and an extension check in the amount of \$98,900. Aspen failed to disclose to Plaintiff
23 Ruthe Trust the payment of these extension fees and Aspen failed to pay Ruthe Trust a pro rata
24 payment of these loan extension fees.

25 **(5) Coronado Eastern, LLC Loan (#80-00065-1)**

26 137. Additionally, it appears Aspen did not obtain extension fees for loans in which Guinn
27 owned an interest in the borrowing entity. Specifically, in or about March 2008, Coronado Eastern,
28 LLC (80-00065-1), which is 50% owned by Jeff Guinn through his Trust, presented Aspen with an

1 application for modification of terms of note extending the maturity date of the loan from April to
2 October 2008 with no accompanying extension check to Aspen.

3 138. In our about October 2008, Coronado Canyons (60-00321-3), of which Jeff Guinn
4 is a principal, presented Aspen with an application for modification of terms of note to extend the
5 maturity date of the loan from November 2008 to May 2009. No accompanying extension check to
6 Aspen was located within the loan filed present to Plaintiff's counsel for review.

7 **(6) Aspen's Misrepresentation to Plaintiff as to the Use of Loan Proceeds**

8 139. On March 23, 2009, during a limited on-site inspection of documents at Aspen's
9 offices, Aspen denied Plaintiff's counsel access to any construction reserve files related to the
10 Plaintiff's loans, except for Milano Loan.

11 140. In response to a demand to make these files available, on April 2, 2009, Aspen, by
12 and through a letter drafted by its counsel, notified Plaintiff that "Milano is the only loan with a
13 construction draw file, as none of the other loans was a construction loan."

14 141. Such notification contradicts the prior representations made by Aspen to Plaintiff in
15 soliciting the Aspen Loans for investment. For example:

- 16 i. On or about May 8, 2007, Aspen presented Plaintiff Ruthe Trust and Ruthe IRA with a
17 Loan Officer Analysis for a 2nd mortgage with Coronado Horizon/Boulder, LLC (Loan
18 60-00322-4), an entity in which Guinn possesses either a direct or indirect ownership
19 interest, which states that a portion of the loan proceeds would be used to fund the
20 "construction reserve." Aspen also presented Ruthe Trust and Ruthe IRA with a Loan
21 Summary and Investors Authorization form which classifies the loan type as
22 "Construction."
- 23 ii. On or about March 16, 2007, Aspen presented Plaintiffs CDR Investments, LLC and the
24 Frank Granieri Trust with a Loan Officer Analysis for a 1st and 2nd mortgage with
25 Coronado Eastern, LLC (Loans 80-00065-1 and 60-00317-1), yet another entity in which
26 Guinn owns a direct and/or indirect ownership interest, which states that a portion of the
27 loan proceeds would be used to "payoff the existing construction loan on the project,
28 costs and fees related to the transaction" and "if necessary tenant improvements." Aspen

1 also presented Plaintiffs CDR Investments, LLC and the Frank Granieri Trust with a
2 Loan Summary and Investors Authorization form which lists the loan type as
3 “Construction.”

4 iii. On April 10, 2007, Aspen presented Plaintiff Ruthe Trust with a Loan Summary and
5 Investors Authorization form for a 2nd mortgage with Christopher Homes Ridges, LLC
6 (Loan 60-00320-2), which states the loan proceeds would be used for “Construction” and
7 further represented that the loan collateral is “in various stages of construction and
8 development.”

9 iv. On April 17, 2007, Aspen presented Plaintiffs Ruthe Trust, CDR Investments, LLC, and
10 Ruthe IRA with a Loan Summary and Investors Authorization form, which classified the
11 collateral as “85 single family residential lots in various stages of construction or
12 development” and listed the loan type as “Construction.”

13 142. Moreover, substantially all of Plaintiff’s other Aspen Loans at a minimum funded the
14 interest reserve accounts for construction loans on the respective property. As such, as to the other
15 Aspen Loans Plaintiff necessarily obtained an interest in the progress and financing contained in the
16 construction reserve files for the construction loans. Thus, Aspen’s misrepresentations and attempts
17 to deny Plaintiff’s access to the construction reserve files is unreasonable and unfounded.

18 143. Further, many of the appraisals Aspen provided to Plaintiff while soliciting the Loans,
19 and which Aspen used to calculate the Loan to Value ratio, are based upon the value of the subject
20 property with the completed residential/commercial structures, forming a material inducement to
21 Plaintiff for the purpose of making such a loan, *i.e.* the amounts in the construction and interest
22 reserves.

23 **(7) Aspen’s Directions to Escrow Companies to Withhold Documents from Plaintiff**

24 144. In or about November 2008, Plaintiff contacted Chicago Title and Lawyers Title to
25 request information concerning the escrow accounts for transactions in which Aspen had authorized
26 partial reconveyances of property securing the Coronado Horizon Loan (Loan No.60-00322-4) in
27 which Plaintiffs Ruthe Trust and Ruthe IRA had invested. On that same day, both title companies
28 informed Ms. Ruthe that Aspen instructed them not to provide the requested escrow documents to

1 her.

2 145. Further, on December 10, 2008, Aspen, through a letter written by its counsel,
3 threatened to take action against Ms. Ruthe if she persisted in requesting such documents from
4 escrow companies.

5 **(8) Aspen's overcharge of loan service fees on partially performing loans**

6 146. On numerous occasions, Aspen failed to reduce their monthly fee for servicing
7 Plaintiff's Loans despite a reduction in the interest payments made on such Loans to Plaintiff. For
8 example, prior to receiving partial payments, Plaintiff Today's Realty, Inc. received monthly
9 payments in the amount of \$1,218.75 from the Milano Loan and Aspen charged a monthly service
10 fee of \$31.25. In or about March 2008, Aspen reduced Plaintiff Today's Realty, Inc. future monthly
11 payments on the Milano Loan to \$302.08 but failed to reduce its \$31.25 service fee charge.

12 **(9) Aspen's Failure to Render an Account and Supporting Detail.**

13 147. In or about October 2008, Aspen began requesting that Plaintiff pay additional fees
14 and costs on the Aspen Loans for purported expenses, including "attorney's fees," "appraisal fees,"
15 and "accounting fees," on account that the substantial majority of the Aspen Loans were non-
16 performing.

17 148. On November 10, 2008, Plaintiff, by and through her counsel, requested that Aspen
18 account for the expenditure of such "fees" and "costs" it attempted to pass on to Plaintiff and
19 requested supporting detail for such fees and costs incurred.

20 149. Aspen has failed and refused to either account for such fees and costs or provide
21 supporting detail for such alleged fees and costs purportedly incurred on Plaintiff's behalf.

22 **(10) Aspen's Failure to Provide Lists of Names and Addresses of Other Lenders on Loans**

23 150. For each of the Aspen Loans, Aspen and the respective Plaintiff executed a Mortgage
24 Investment Disclosure Form, wherein Aspen, through Guinn, notifies Plaintiff that the loan servicing
25 agreement executed by and between Aspen and such Plaintiff "should address issues such as: ... (6)
26 The right to obtain the names, addresses and phone numbers of other persons with beneficial
27 interests in the loan."

28 151. However, Aspen's Loan Servicing Agreements do not contain any provision

1 concerning the production of names, addresses and phone numbers of other persons with beneficial
2 interests in the loan.

3 152. On April 8, 2008, Plaintiff sent a letter to Aspen requesting “the most recent list of
4 all current lenders on each of the [then] Nonperforming Loans, their most recent addresses and all
5 telephone numbers” for the purpose of contacting those individuals and organizing “a lender
6 meeting, with Aspen representatives present, in order to collectively discuss, evaluate, and make an
7 informed decision about how to proceed on those [Nonperforming] loans.”

8 153. In response, Sean Corrigan, the President of Aspen, telephoned Ms. Ruthe and stated
9 that, although Aspen possessed this information, it was not obligated to give Ms. Ruthe such
10 information, it would not give Ms. Ruthe such information, such information was public record and
11 she could go “get it herself.”

12 **FIRST CLAIM FOR RELIEF**

13 154. Plaintiff incorporates by reference the allegations contained in all preceding
14 paragraphs of this Complaint.

15 155. As Plaintiff's agent, Defendant owes fiduciary duties to Plaintiff, including (but not
16 by way of limitation) full disclosure, due diligence, fairness, loyalty, avoidance of self-dealing,
17 upmost good faith, and, more specifically, the duty to use its best efforts to protect, service and
18 collect Plaintiff's share of the Aspen Loans.

19 156. Defendant has breached these duties as set forth above.

20 157. As a direct and proximate result of Defendant's acts and omissions, which were done
21 with oppression, fraud, and/or malice entitling Plaintiff to an award of actual damages and punitive
22 damages, Plaintiff has suffered damages in an amount in excess of \$50,000.

23 158. It has been necessary for Plaintiff to retain the services of Solomon Dwiggins & Freer
24 to bring this action, and Plaintiff is entitled to an award of attorney's fees and costs.

25 **SECOND CLAIM FOR RELIEF**

26 159. Plaintiff incorporates by reference the allegations contained in all preceding
27 paragraphs of this Complaint.

28 160. Defendant executed numerous promissory notes, deeds of trusts, contracts, loans,

1 assignments, transfers, exchanges, and/or other transactions ("Subject Agreements") with or on
2 behalf of Plaintiff.

3 161. These Subject Agreements imposed various duties upon Defendant including, *inter*
4 *alia*, the duties to safeguard and enforce Plaintiff's rights under the Subject Agreements, pay all sums
5 due to Plaintiff under the Subject Agreements, properly manage and account for the assets of
6 Plaintiff, to keep adequate books and records, and make such books and records available for
7 inspection by Plaintiff.

8 162. As set forth herein, Defendant breached its duty owing to Plaintiff under the
9 Subject Agreements.

10 163. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
11 has suffered damages in an amount in excess of \$50,000.

12 164. It has been necessary for Plaintiff to retain the services of Solomon
13 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
14 costs.

15 **THIRD CLAIM FOR RELIEF**

16 165. Plaintiff incorporates by reference the allegations contained in all preceding
17 paragraphs of this Complaint.

18 166. Each Subject Agreement executed by Defendant contained an implied
19 covenant of good faith and fair dealing.

20 167. Additionally, there existed a relationship of trust and reliance between
21 Plaintiff on one side, and Defendant, on the other side arising from its fiduciary duties owing to
22 Plaintiff as set forth herein.

23 168. Defendant contractually and/or tortiously breached the implied covenant of
24 good faith and fair dealing as set forth above.

25 169. Plaintiff is informed and believes and thereon alleges that the tortious conduct
26 of Defendant, as set forth herein, is intentional, malicious, express or implied, fraudulent, oppressive
27 and in violation of the rights of Plaintiff under the Subject Agreements. As a result of the acts and
28 omissions of Defendant, which were done with malice, express or implied, Plaintiff is entitled to an

1 award of punitive damages.

2 170. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
3 has suffered damages in an amount in excess of \$50,000.

4 171. It has been necessary for Plaintiff to retain the services of Solomon
5 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
6 costs.

7 **FOURTH CLAIM FOR RELIEF**

8 172. Plaintiff incorporates by reference the allegations contained in all preceding
9 paragraphs of this Complaint.

10 173. Defendant owed Plaintiff a duty to exercise a reasonable degree of care in
11 pursuing the duties and rights under the Subject Agreements and in servicing the Loans as Plaintiff's
12 agent.

13 174. Defendant breached this duty of care owing to Plaintiff as described herein.

14 175. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
15 has suffered damages in an amount in excess of \$50,000.

16 176. It has been necessary for Plaintiff to retain the services of Solomon Dwiggins
17 & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and costs.

18 **FIFTH CLAIM FOR RELIEF**

19 177. Plaintiff incorporates by reference the allegations contained in all preceding
20 paragraphs of this Complaint.

21 178. Defendant owed Plaintiff a manifest duty to exercise a reasonable degree of
22 care in pursuing compliance with the duties and rights under the Subject Agreements and in
23 servicing the Loans as Plaintiff's agent.

24 179. Defendant consciously and intentionally failed to perform its duty in reckless
25 disregard of the consequences to the Plaintiff.

26 180. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
27 has suffered damages in an amount in excess of \$50,000.

28 181. It has been necessary for Plaintiff to retain the services of Solomon Dwiggins

1 & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and costs.

2 **SIXTH CLAIM FOR RELIEF**

3 182. Plaintiff incorporates by reference the allegations contained in all preceding
4 paragraphs of this Complaint.

5 183. At the time Defendant and Plaintiff entered into their respective Loan
6 Servicing Agreements, Aspen represented that it would protect and enforce Plaintiff's rights in the
7 respective Aspen Loans in which Plaintiff had invested.

8 184. At the time Defendant solicited Plaintiff as lenders in the Aspen Loans, Aspen
9 represented that the loans would be used for the purposes stated in solicitation materials.

10 185. Defendant either (i) had an insufficient basis upon which to make its
11 representations contained in the Loan Servicing Agreements and loan solicitation materials; (ii) knew
12 or had reason to believe such representations were false when made; or (iii) learned after making
13 such representations that they were false, and failed to advise Plaintiff of such falsity.

14 186. Defendant intended to induce Plaintiff to rely and act upon such
15 representations.

16 187. Plaintiff justifiably and reasonably relied upon Aspen's representations.

17 188. As a result of Aspen's concealment and suppression of material facts, Plaintiff
18 has sustained damages in excess of \$50,000.00.

19 189. It has been necessary for Plaintiff to retain the services of Solomon
20 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
21 costs.

22 **SEVENTH CLAIM FOR RELIEF**

23 190. Plaintiff incorporates by reference the allegations contained in all preceding
24 paragraphs of this Complaint.

25 191. Defendant, either explicitly or tacitly agreed with or conspired, and aided and
26 abetted Milano and other borrowing entities to defraud Plaintiff by seizing upon the power of serving
27 as agent of Plaintiff to intentionally harm Plaintiff and benefit itself as demonstrated herein.

28 192. Plaintiff is informed and believe and thereon allege that the conduct of

1 Defendant, as set forth herein, is intentional, malicious, express or implied, fraudulent, oppressive
2 and in violation of the rights of Plaintiff under the terms of the Subject Agreements.

3 193. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
4 has suffered damages in an amount in excess of \$50,000.

5 194. It has been necessary for Plaintiff to retain the services of Solomon
6 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
7 costs.

8 **EIGHTH CLAIM FOR RELIEF**

9 195. Plaintiff incorporates by reference the allegations contained in all preceding
10 paragraphs of this Complaint.

11 196. At the time Defendant and Plaintiff entered into their respective Loan
12 Servicing Agreements and Special Power of Attorney agreements, Aspen represented that it would
13 protect and enforce Plaintiff's rights in the respective Aspen Loans in which Plaintiff had invested.

14 197. At the time Defendant solicited Plaintiff as lenders in the Aspen Loans, Aspen
15 represented that the loans would be used for the purposes stated in solicitation materials.

16 198. The disbursement of the loan proceeds in conformity with the representations
17 made in the loan solicitation materials and Aspen's protection and enforcement of Plaintiff's rights
18 in the respective Aspen Loans was material to Plaintiff.

19 199. Defendant either (i) had an insufficient basis upon which to make its
20 representations contained in the Loan Servicing Agreements and loan solicitation materials; (ii) knew
21 or had reason to believe such representations were false when made; or (iii) learned after making
22 such representations that they were false, and failed to advise Plaintiff of such falsity.

23 200. Defendant intended to induce Plaintiff to rely and act upon such
24 representations.

25 201. Plaintiff justifiably and reasonably relied upon Defendant's representations.

26 202. As a result of Defendant's false representations, Plaintiff is entitled to rescind
27 the Loan Servicing Agreements Plaintiff entered into with Defendant.

28 203. It has been necessary for Plaintiff to retain the services of Solomon

1 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
2 costs.

3 **NINTH CLAIM FOR RELIEF**

4 204. Plaintiff incorporates by reference the allegations contained in all
5 preceding paragraphs of this Complaint.

6 205. In light of the allegations contained in this Complaint, Plaintiff is entitled to
7 a full and complete accounting from Defendant in regard to any of its transactions or activities which
8 have affected or may affect Plaintiff's interests under the Subject Agreements.

9 206. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
10 has suffered damages in an amount in excess of \$50,000.

11 207. It has been necessary for Plaintiff to retain the services of Solomon
12 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
13 costs.

14 **TENTH CLAIM FOR RELIEF**

15 208. Plaintiff incorporates by reference the allegations contained in all preceding
16 paragraphs of this Complaint.

17 209. Plaintiff provided contributions to Defendant for the sole purpose of funding
18 the development of the properties that were the subject of the Loans. Despite the known limitations
19 on its use of Plaintiff's contributions, Defendant exercised dominion and control over such
20 contributions such that it deprives Plaintiff of the ownership, possession, and benefits of its monies.

21 210. As a direct and proximate result of Defendant acts and omissions, which were
22 done with oppression, fraud, and/or malice entitling Plaintiff to an award of actual damages and
23 punitive damages, Plaintiff has suffered damages in an amount in excess of \$50,000.

24 211. It has been necessary for Plaintiff to retain the services of Solomon Dwiggins
25 & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and costs.

26 **ELEVENTH CLAIM FOR RELIEF**

27 212. Plaintiff incorporates by reference the allegations contained in all preceding
28 paragraphs of this Complaint.

1 213. Under NRS.32.010, a receiver should be appointed to take charge of the
2 Aspen Loans being serviced by the Defendant, the proceeds of the Aspen Loans Aspen has in its
3 possession held on behalf of the lenders, and/or the balance of any funds in the Funds Accounts for
4 the Loan Agreements.

5 214. It has been necessary for Plaintiff to retain the services of Solomon Dwiggins
6 & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and costs.

7 **TWELFTH CLAIM FOR RELIEF**

8 215. Plaintiff incorporates by reference the allegations contained in all preceding
9 paragraphs of this Complaint.

10 216. Plaintiff, in expectation that such money would be used to further the
11 development of the properties that were the subject of the Loans, contributed money to Defendant.

12 217. On information and belief, the money was not used to fund the development
13 of property, but was instead used by Defendant for its own gain.

14 218. Defendant has been unjustly enriched to the detriment of Plaintiff. To permit
15 Defendant to retain the benefit of Plaintiff's investment funds without making just compensation
16 therefor would result in an unjust and unconscionable investment.

17 219. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
18 has suffered damages in an amount in excess of \$50,000.

19 220. It has been necessary for Plaintiff to retain the services of Solomon Dwiggins
20 & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and costs.

21 **THIRTEENTH CLAIM FOR RELIEF**

22 221. Plaintiff incorporates by reference the allegations contained in all preceding
23 paragraphs of this Complaint.

24 222. Defendant have wrongfully exercised ownership and dominion over Plaintiff's
25 assets and has retained control of such assets and other proceeds for its own benefit.

26 223. The Defendant has an equitable duty to convey Plaintiff's share of such
27 monies to the Plaintiff to avoid being unjustly enriched.

28 224. In equity, a constructive trust in favor of Plaintiff should be imposed over their

1 rightful share of all monies, and the benefits thereof, that pertained to the Subject Agreements which
2 are in possession or control of Defendant or in the possession or control of any other entity or
3 individual because of Defendant's self dealing, mismanagement, and other bad acts. Plaintiff is
4 entitled to an equitable decree that Defendant and such entity or individuals hold such monies in a
5 constructive trust for Plaintiff's benefit because such an action is essential to the effectuation of
6 justice.

7 225. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
8 has suffered damages in an amount in excess of \$50,000.

9 226. It has been necessary for Plaintiff to retain the services of Solomon
10 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
11 costs.

12 **FOURTEENTH CLAIM FOR RELIEF**

13 227. Plaintiff incorporates by reference the allegations contained in all preceding
14 paragraphs of this Complaint.

15 228. A present, ripe, and justiciable controversy exists between Plaintiff, on the one
16 hand, and, on the other hand, Defendant, with regard to said Defendant's self dealing and
17 mismanagement pursuant to its duties as Plaintiff's agent.

18 229. Defendant's malicious attempts to deny Plaintiff access to its own records and
19 interest in the Subject Agreements and to convert that interest to their own use made this litigation
20 necessary. Plaintiff should have declaratory relief to this effect: that Plaintiff is entitled to a
21 complete inspection of the Loan Documents, that Plaintiff is entitled to its fair share of monies
22 Defendant wrongfully converted to its own use and that any such proceeds in the hands of Defendant
23 or other entity(s) or individual(s) are held in constructive trust for the benefit of the Plaintiff.

24 230. Plaintiff also desires and is entitled to a binding judicial declaration of its
25 rights under NRS § 30.040, and/or a judicial amendment to the Subject Agreements, pursuant to its
26 equity interest therein.

27 231. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
28 has suffered damages in an amount in excess of \$50,000.

1 232. It has been necessary for Plaintiff to retain the services of Solomon
2 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
3 costs.

4 **FIFTEENTH CLAIM FOR RELIEF**

5 233. Plaintiff incorporates by reference the allegations contained in all preceding
6 paragraphs of this Complaint.

7 234. If Plaintiff is not allowed to inspect the Loan Documents Defendant holds as
8 their agent, then Plaintiff will be irreparably harmed and will have no adequate remedy at law to wit:
9 thoroughly and accurately analyze, forecast, and/or protect the value of Plaintiff's substantial interests
10 in the respective loan agreements, promissory notes and deeds of trust.

11 235. Plaintiff will be immediately and irreparably harmed unless the Court issues
12 a preliminary injunction ordering that Defendant allow the Plaintiff to immediately inspect and copy
13 of Aspen's documents relating to the loans and Aspen's servicing thereof, and a permanent
14 injunction ordering future inspection of the Loan Documents upon Defendant receiving reasonable
15 notice of such inspection.

16 236. The continued decrease in value of Plaintiff's interests in the Loans described
17 in this Complaint are imminent.

18 237. Absent the requested preliminary injunction, the irreparable harm which
19 would be suffered by Plaintiff would greatly outweigh the harm which such injunctions might cause
20 Defendant, namely, making the Loan Documents available for Plaintiff's inspection.

21 238. Granting the requested preliminary injunction will not disserve the public
22 interest.

23 239. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
24 has suffered damages in an amount in excess of \$50,000.

25 240. It has been necessary for Plaintiff to retain the services of Solomon
26 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
27 costs.

28

1 **SIXTEENTH CLAIM FOR RELIEF**

2 241. Plaintiff incorporates by reference the allegations contained in all preceding
3 paragraphs of this Complaint.

4 242. Defendant defrauded Plaintiff by making misrepresentations to Plaintiff and
5 seizing upon the power of serving as agent of Plaintiff to intentionally harm Plaintiff and benefit
6 itself as demonstrated herein.

7 243. Defendant made material misrepresentations with the fraudulent intent and
8 purpose to induce Plaintiff into acting on such misrepresentations.

9 244. Plaintiff relied to their detriment on Defendant's intentional
10 misrepresentations by way of the Subject Agreements.

11 245. Plaintiff's reliance was reasonable and foreseeable.

12 246. Plaintiff is informed and believes and thereon alleges that the conduct of
13 Defendant, as set forth herein, is intentional, malicious, express or implied, fraudulent, oppressive
14 and in violation of the rights of Plaintiff under the terms of the Subject Agreements.

15 247. As a direct and proximate result of Defendant's acts and omissions, Plaintiff
16 has suffered damages in an amount in excess of \$50,000.

17 248. It has been necessary for Plaintiff to retain the services of Solomon
18 Dwiggins & Freer to bring this action, and Plaintiff is entitled to an award of attorney's fees and
19 costs.

20 **SEVENTEENTH CLAIM FOR RELIEF**

21 249. Plaintiff incorporates by reference the allegations contained in all preceding
22 paragraphs of this Complaint.

23 250. Aspen, misrepresented, concealed and suppressed material facts in its dealings
24 with Plaintiff, which material facts Aspen had a duty to disclose to Plaintiff.

25 251. Aspen was under a duty to disclose to the Plaintiff the facts it concealed and
26 suppressed.

27 252. Aspen misrepresented, suppressed and concealed the facts alleged in order to
28 defraud Plaintiff.

1 253. Plaintiff was unaware of the concealed, suppressed or true facts that were
2 misrepresented, and would have acted differently if they had been informed of the concealed,
3 suppressed material facts.

4 254. As a result of Aspen's concealment and suppression of material facts, Plaintiff
5 has sustained damages in excess of \$50,000.00.

6 255. Aspen's fraudulent misrepresentation, suppression and concealment were done
7 maliciously and constituted a reckless disregard of Plaintiff's rights, thereby justifying an award of
8 exemplary and punitive damages to Plaintiff.

9 256. It has been necessary for Plaintiff to retain the services of Solomon
10 Dwiggins & Freer to bring this action, and Plaintiff are entitled to an award of attorney's fees and
11 costs.

12 **EIGHTEENTH CLAIM FOR RELIEF**

13 257. Plaintiff incorporates by reference the allegations contained in all preceding
14 paragraphs of this Complaint.

15 258. As to the acts and allegations regarding the wrongful acts and breach of
16 obligations not arising from contract, Defendant has been guilty of oppression, fraud, or malice,
17 express or implied, thereby entitling Plaintiff to an award of punitive damages, in an amount to be
18 proved at trial.

19 259. To discourage such conduct by Defendant in the future, Plaintiff should be
20 awarded exemplary damages for the wrongful acts and breach of obligations not arising from
21 contract, in an amount to be determined at trial.

22 **WHEREFORE**, Plaintiff respectfully request judgment against Defendant as follows:

23 1. For an injunction ordering Defendant to allow the immediate inspection of Loan
24 Documents by Plaintiff pertaining to its rights and interests in the Loans and related documents;

25 2. For judgment declaring the rights, duties and legal relations of Plaintiff and Defendant
26 with regard to Plaintiff's rights to inspect the Loan Documents as provided in the Loan Servicing
27 Agreements and related documents;

28 3. For damages in excess of \$50,000, plus prejudgment interest on those damages;

EXHIBIT "A"

<u>LOAN</u>	<u>LOAN NO.</u>	<u>INVESTOR</u>	<u>INVESTOR'S INTEREST</u>	<u>TOTAL AMOUNT OF LOAN</u>
Aspen Self Storage	60-00292-2	Charles L. Ruthe IRA	.165%	\$2,000,000.00
Canyons Edge Homes	20-00080-4	Charles L. Ruthe Trust CDR Investments, LLC	.03354% .00220%	\$13,815,000.00
Canyons Edge Homes	60-00260-6	Charles L. Ruthe IRA Charles L. Ruthe Trust CDR Investments, LLC	5.5959% 7.0834% 4.4271%	\$5,950,000.00
Canyons Edge Homes	60-00304-2	Charles L. Ruthe IRA Richard F. Acovino Irr Trust Frank E. Granieri Trust	.04864% .006947% .006742%	\$7,195,000.00
Celebrate Homes 46	10-00325-9	Charles L. Ruthe Trust	.11392%	\$1,345,500.00
Celebrate Investments	10-00337-1	Charles L. Ruthe Trust	.00000005%	\$18,196,000.00
Celebrate Investments (33 acres)	60-00302-4	Charles L. Ruthe IRA Charles L. Ruthe Trust Donna A. Ruthe or Richard Acovino Richard F. Acovino Irr. Trust CDR Investments, LLC	.03164% .00672% .00769% .00759% .00650%	\$7,900,000.00
Celebrate Properties (2.69 acres)	10-00326-0	Charles L. Ruthe Trust	.12218%	\$1,755,000.00
Centennial Lamb (17.38 acres)	60-00323-5	Charles L. Ruthe Trust Richard F. Acovino Irr Trust Frank E. Granieri Trust	.03340% .00824% .00154%	\$4,850,000.00

<u>LOAN</u>	<u>LOAN NO.</u>	<u>INVESTOR</u>	<u>INVESTOR'S INTEREST</u>	<u>TOTAL AMOUNT OF LOAN</u>
Centennial Lamb (9.57 acres)	60-00324-8	Charles L. Ruthe Trust	13.5397%	\$2,585,000.00
Christopher Homes Ridges	60-00320-2	Charles L. Ruthe Trust	.05132%	\$5,700,000.00
City Crossing 9	10-00338-8	Charles L. Ruthe Trust	.02208%	\$7,000,000.00
City Crossing 10	10-00343-3	Charles L. Ruthe Trust	.02208%	\$4,832,000.00
Coronado Canyons	60-00321-3	Charles L. Ruthe Trust	.001455%	\$5,910,000.00
Coronado Eastern, LLC	60-00317-1	CDR Investments, LLC Frank E. Granieri Trust	.02308% .05217%	\$2,300,000.00
Coronado Eastern, LLC	80-00065-1	Charles L. Ruthe IRA	.4818%	\$19,550,000.00
Coronado Horizon Boulder	60-00322-4	Charles L. Ruthe IRA Charles L. Ruthe Trust	1.6284% 2.5680%	\$2,960,000.00
Flamingo TC	60-00294-6	Charles L. Ruthe IRA Charles L. Ruthe Trust Donna A. Ruthe or Richard Acovino CDR Investments, LLC	.01217% .03140% .00182% .01128%	\$21,850,000.00
Golshan Weber AGA Kahrobai	80-00064-0	Charles L. Ruthe Trust	2.2750%	\$9,890,000.00
Grand Teton Residential	60-00318-2	Charles L. Ruthe IRA Charles L. Ruthe Trust CDR Investments, LLC	3.6514% 13.6301% .3352%	\$2,600,000.00
HDB LLC	60-00301-7	Charles L. Ruthe IRA Charles L. Ruthe Trust	.04476% .03409%	\$5,585,000.00
HK Investments	60-00311-3	Charles L. Ruthe IRA	5.1667%	\$600,000.00

<u>LOAN</u>	<u>LOAN NO.</u>	<u>INVESTOR</u>	<u>INVESTOR'S INTEREST</u>	<u>TOTAL AMOUNT OF LOAN</u>
Milano Residences	60-00277-1	Today's Realty Inc.	1%	\$10,000,000.00
Monarch Ridge Project	60-00313-5	Charles L. Ruthe IRA Charles L. Ruthe Trust CDR Investments, LLC	2.8730% 4.4305% 4.4305%	\$5,221,000.00
Pay Dirt Development	60-00272-6	Charles L. Ruthe Trust	13.2645%	\$577,100.00
Phillips Homes Mountains Edge	60-00326-0	Donna A. Ruthe or Richard Acovino	.4259%	\$3,145,000.00
Rising Sun Land Development	60-00310-4	CDR Investments, LLC	1.6374%	\$1,141,000.00