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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**CASE NO. 09-34356-HDH-11**
OPUS WEST CORPORATION, *et al.*[1],	§	
	§	
Debtors.	§	**JOINTLY ADMINISTERED**
	§	
	§	
OPUS WEST CORPORATION	§	
	§	
Plaintiff,	§	
	§	
OPUS CORPORATION, a Minnesota corporation; the OPUS FOUNDATION; the GERALD RAUENHORST 1982 IRREVOCABLE TRUST F/B/O GRANDCHILDREN and the GERALD RAUENHORST 1982 IRREVOCABLE TRUST F/B/O CHILDREN, MARK RAUENHORST, individually, KEITH P. BEDNAROWSKI, individually, and KEITH P. BEDNAROWSKI, LUZ CAMPA, and ADLER TRUST COMPANY, a South Dakota trust corporation, as Trustees thereof; Opus Real EstateVII, L.P. LUZ CAMPA; and ADLER MANAGEMENT, LLC	§	**ADV. NO. 10-03013-HDH**
	§	
Defendants.	§	

[1] The debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Opus West Corporation (1533); Opus West Construction Corporation (5917); Opus West LP (5535); Opus West Partners, Inc. (5537); and O.W. Commercial, Inc. (9134) (collectively, the "Debtors").

FIRST AMENDED COMPLAINT

TO THE HONORABLE HARLIN D. HALE
UNITED STATES BANKRUPTCY JUDGE:

Opus West Corporation ("Opus West" or "Plaintiff"), by and through its surviving officer, John Bittner, hereby files this its First Amended Complaint (the "Amended Complaint"), against Opus Corporation ("Opus Parent"), the Opus Foundation, the Gerald Rauenhorst 1982 Irrevocable Trust F/B/O Grandchildren, the Gerald Rauenhorst 1982 Irrevocable Trust F/B/O Children, Mark Rauenhorst (individually), Keith P. Bednarowski (individually) and Keith P. Bednarowski (as trustee), Opus Real Estate VII, LP, Luz Campa (as trustee), Luz Campa (individually), Adler Management, LLC and Adler Trust Company (as trustee), and alleges as follows:

INTRODUCTION

From a distance, the Rauenhorst family trusts seemingly ran a model family business. They built landmark buildings around the country, and then donated a portion of the earnings to charitable causes. They proudly touted to bankers and creditors that their business was "Built to Last," supporting such rhetoric with moving speeches by family patriarch Gerald Rauenhorst, who would proudly declare that the company had never missed a principal or interest payment in its more than 50 years of existence. They rewarded their employees with a lucrative stock incentive plan that, on paper, promised a comfortable retirement to legions of loyal employees. This helped the Rauenhorst family trusts build enormous good will with their employees and creditors, permitting the trusts to run the family business with little outside scrutiny.

The demise of Opus West has revealed all of this rhetoric to be nothing more than a carefully-cultivated myth, an appealing veneer specifically designed to hide the true guiding

ethos of the Rauenhorst business empire: to make sure the Rauenhorst family and their ultra-rich friends got rich and stayed rich. When the time came for the Rauenhorst family to prove they actually meant what they said, they simply packed up the hundreds of millions of dollars they had paid themselves and moved on, leaving hundreds of lenders, employees, and blue collar creditors with nothing but shattered trust, broken dreams, and bags full of empty promises. But this case is about far more than the Rauenhorst's empty rhetoric, which merely provides the backdrop for the unsettling truth about the Rauenhorst family trusts -- they treated Opus West as their own personal chattel by routinely engaging in self-dealing transactions, blindly siphoning tens of millions of dollars that left Opus West with almost non-existent levels of working capital, scheming to bankrupt Opus West to realize huge tax benefits, and ignoring the fiction of Opus West's separate legal existence whenever the Rauenhorst family might actually be exposed to the risk that would have accompanied actual arms-length dealings with Opus West.

The key to Defendants' behind-the-scenes efforts to get rich and stay rich was the domination and control they exercised at all times over Opus West and other affiliates of the family trusts. The instrumentalities for such control were Mark Rauenhorst (a beneficiary of the trusts) and Keith Bednarowski (a trustee for the trusts), both of whom served on the Opus West board and single-handedly dictated the company's operations. Board members served a purely "advisory" role, understanding it was their job to sign off on whatever Mark Rauenhorst and Bednarowski wanted. Defendants relied upon Mark Rauenhorst and Bednarowski to ensure that Opus West operated as a mere extension of the trusts. The corporate fiction truly was a fiction; it was routinely and uniformly ignored whenever it suited the purposes of the trusts.

Defendants used their domination and control to systematically strip Opus West of almost all its cash, which was then passed up to the trusts. This had the specifically-intended effect of

leaving Opus West in a constant state of financial desperation. Defendants placed Opus West in this precarious financial position so they could then exploit it, using its financial condition as an excuse to loan Opus West money at wildly inflated rates, and to engage in rampant self-dealing that enriched the trust beneficiaries, their trustees and their wealthy friends. Such self-dealing included so-called "Presidents' deals" in which the two trusts, their trustees (Bednarowski and Luz Campa), Mark Rauenhorst, and others cherry-picked Opus West's best deals for their own benefit, forcing Opus West to fund and guarantee loans, while they pocketed the substantial profits from property sales. Defendants also created investment funds that included the trust beneficiaries and their wealthy friends as investors, enabling those funds to regularly purchase Opus West properties at times when Opus West needed the cash to survive or to meet loan covenants. As fiduciaries of Opus West, Defendants Mark Rauenhorst and Bednarowski bear the heavy burden of showing that the inside sales that they authorized satisfy the "entire fairness" test. They cannot do so.

Perhaps Opus West could have survived Defendants' voracious appetite for self-dealing, if not for the family trusts' simultaneous desire to avoid the enemy of many of the ultra-rich -- taxes. Because the trusts despised the tax burden from their hundreds of millions in profit, they increased Opus West's dividend requirements from 60%, forcing it to upstream a massive 75% of pre-tax net income, on top of the initial 10% "charitable" contribution. Even more, Opus Corporation charged Opus West for various shared services Opus West was required to purchase from Opus Corporation.

Defendants required these enormous payments notwithstanding their knowledge that these payments left Opus West chronically undercapitalized. Thus, despite learning in the Fall of 2007 that Opus West would not be able to meet its loan covenants in 2008, the defendants

nonetheless forced Opus West to pay Opus Parent approximately $75 million in "dividends," which were then passed in large measure to the trusts. Moreover, in June 2008, Defendants agreed to "purchase" one of Opus West's best assets, forcing Opus West to retain the debt, while having equally cash-strapped Opus Corporation offer an unsecured promissory note as payment. Once payment on this note came due, instead of making the required payment, Defendants unilaterally informed Opus West that they were reversing the transaction, and Mark Rauenhorst "accepted" this deal on behalf of Opus West. The Defendants also refused to comply with the results of an audit showing that Opus West had overpaid Opus Corporation approximately $18.4 million. The trust defendants on Opus West's board ignored their fiduciary obligation to make decisions that were in the best interest of Opus West, instead choosing to make decisions in the best interests of the family trusts. Their motivation was simple – by forcing Opus West's bankruptcy, they realized hundreds of millions of capital losses, which they no doubt will use to offset profits over the past five years, thereby giving the family trusts a tax refund that could be worth hundreds of millions of dollars.

In this lawsuit, Plaintiff seeks to hold defendants responsible for their wrongful conduct on several grounds. First, because the family trusts dominated and controlled Opus West, routinely and uniformly ignoring the fiction of Opus West's separate legal existence whenever it furthered their own financial interests, the trusts should be held responsible under an alter ego or veil piercing theory for every penny of the hundreds of millions of dollars that Opus West owes to creditors. Second, because the Defendants breached fiduciary duties and/or aided and abetted such breaches in order to force Opus West's bankruptcy and thereby obtain a tax refund that could be worth hundreds of millions of dollars, the family trusts should be forced to disgorge any tax benefit they stand to reap. Third, Plaintiff seeks to recover the amounts that defendants

obtained through the purchase of Opus West's best assets in various self-dealing transactions, as well as other transactions that were tainted with self-dealing. Fourth, Plaintiff seeks to recover the dividend and charitable payments made over the last four years, because the distributions were made at times when Opus West either was insolvent or was operating with unreasonably small capital, and because Opus West received no value in return (particularly considering that Opus West was charged separately for any services provided by the parent). Finally, Plaintiff seeks to avoid preferential payments under the Bankruptcy Code.

I. JURISDICTION AND VENUE

1. On July 6, 2009 (the "Petition Date"), the Plaintiff filed its voluntary petition for relief under chapter 11 of the title 11 of the United States Code (the "Bankruptcy Code") thereby initiating the above-referenced bankruptcy case (the "Bankruptcy Case") and creating its bankruptcy estate (the "Estate").

2. Debtor's plan of reorganization was confirmed in January 2010. The confirmed plan became effective on March 12, 2010, and, pursuant to that plan, Plaintiff's affairs are now being managed by a Surviving Officer.

3. The Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157.

4. Venue is proper in the district pursuant to 28 U.S.C. § 1408 and 1409.

5. Nationwide service of process by first-class mail postage prepaid is available pursuant to Federal Rule of Bankruptcy Procedure 7004(b) and (d).

II. PARTIES

6. The Plaintiff is a Minnesota corporation headquartered in Phoenix, Arizona.

7. Opus Parent is a Minnesota corporation with its principal place of business in

Minnetonka, Minnesota. Opus Parent has been served and has made an appearance in this case.

8. The Opus Foundation is a citizen of Minnesota. The Opus Foundation has been served and has made an appearance in this case.

9. The Gerald Rauenhorst 1982 Irrevocable Trust F/B/O Grandchildren (the "Grandchildren Trust") is a citizen of Minnesota. The Grandchildren Trust has been served and has made an appearance in this case.

10. The Gerald Rauenhorst 1982 Irrevocable Trust F/B/O Children (the "Children's Trust," or, collectively with the Grandchildren's Trust, the "Trusts") is a citizen of Minnesota. The Children's Trust has been served and has made an appearance in this case.

11. Keith P. Bednarowski ("Bednarowski") is a citizen of Minnesota. Mr. Bednarowski has previously been sued in his capacity as Trustee, and he has answered and appeared in this case. Mr. Bednarowski has now been sued in his individual capacity. This Court has personal jurisdiction over Bednarowski because he will be served pursuant to Federal Rule of Bankruptcy Procedure 7004(f) for breaches of fiduciary duty that occurred pre-petition. *See In re L.D. Brinkman Holdings, Inc.*, 310 B.R. 686, 688 (N.D. Tex. 2004). While this basis alone is sufficient to establish personal jurisdiction over Bednarowski, certain of his misconduct relates to the State of Texas. Specifically, fellow Opus West board member Mark Rauenhorst, in his capacity as member of Opus West's executive committee, gave his authorization on at least four separate occasions for Opus West to sell properties located in Texas to an Opus investment fund (Defendant Opus Real Estate VII, L.P.) in which Bednarowski and the family trust managed by Bednarowski owned a financial interest. The deals contained terms that Opus West never granted to independent third parties. In his capacity as an Opus West board member, Bednarowski received notice that Rauenhorst had authorized these transactions, through a

standard memo distributed to all board members and the reviews of executive committee actions in Opus West's quarterly board meetings. In response, Bednarowski should have insisted that only independent directors consider these transactions (which first would have required the appointment of legitimately independent outside directors), and further should have insisted that Opus West retain an independent party to analyze the fairness of these transactions. In fact, he did neither, and now must prove the "entire fairness" of these transactions that relate directly to Texas. A breach of fiduciary duty claim such as this one acts as the personal actions of Bednarowski, and therefore would subject him to the personal jurisdiction of this Court, even apart from the nationwide service of process available in a bankruptcy adversary proceeding. Bednarowski may be served with the First Amended Complaint naming him in his individual capacity at his place of residence, 700 S. 2nd Street, Unit 61, Minneapolis, MN 55401.

12. Mark Rauenhorst is a citizen of Minnesota. This Court has personal jurisdiction over Rauenhorst because he will be served pursuant to Federal Rule of Bankruptcy Procedure 7004(f) for breaches of fiduciary duty that occurred pre-petition. *See In re L.D. Brinkman Holdings, Inc.*, 310 B.R. 686, 688 (N.D. Tex. 2004). While this basis alone is sufficient to establish personal jurisdiction over Rauenhorst, certain of his misconduct relates to the State of Texas. Specifically, in his capacity as member of Opus West's executive committee, Rauenhorst gave his authorization on at least four separate occasions for Opus West to sell properties located in Texas to an Opus investment fund (Defendant Opus Real Estate VII, L.P.) in which Rauenhorst owned a financial interest. The deals contained terms that Opus West never granted to independent third parties. Rauenhorst should have recused himself from any consideration of these transactions and insisted that only independent directors consider these transactions (which first would have required the appointment of legitimately independent outside directors), and

further should have insisted that Opus West retain an independent expert to analyze the fairness of these transactions. In fact, he did neither, and now must prove the "entire fairness" of these transactions that relate directly to Texas. A breach of fiduciary duty claim such as this one acts as the personal actions of Rauenhorst, and therefore would subject him to the personal jurisdiction of this Court, even apart from the nationwide service of process available in a bankruptcy adversary proceeding. Mr. Rauenhorst may be served with process at his residence at 1875 Meadowwoods Trail, Long Lake, MN 55356.

13. Opus Real Estate VII, LP ("ORE VII") is a citizen of Minnesota. This Court has personal jurisdiction over ORE VII because it will be served with process pursuant to Federal Rule of Bankruptcy Procedure 7004(f) for breaches of fiduciary duty that occurred pre-petition. *See In re L.D. Brinkman Holdings, Inc.*, 310 B.R. 686, 688 (N.D. Tex. 2004). While this basis alone is sufficient to establish personal jurisdiction over ORE VII, certain of its misconduct relates to the State of Texas. On at least four occasions, ORE VII purchased Opus West's properties located in Texas from Opus West, knowing that the transaction was approved by Mark Rauenhorst on behalf of Opus West, that Rauenhorst and Bednarowski had a personal financial interest in ORE VII, and that the transaction contained more than favorable terms that differed from ORE VII's transactions with independent third parties. Rauenhorst and Bednarowski now must show the "entire fairness" of these transactions that relate directly to Texas. The facts here strongly suggest that ORE VII willingly assisted Rauenhorst and Bendarowski in breaching their fiduciary duties to Opus West so that ORE VII could profit from such breaches. ORE VII is therefore subject to the specific personal jurisdiction of this Court. In addition, ORE VII has filed proofs claims in this bankruptcy case on behalf of the following special purpose entities in its portfolio that engaged in transactions with Opus West: Opus Real Estate AZ VII Chandler2

LLC; Opus Real Estate CA VII SG II LP; Opus Real Estate CA VII SG LP; Opus Real Estate TX VII HV LP; Opus Real Estate TX VII LC LP; and Opus Real Estate TX VII Ten West LP. By filing these proofs of claim, ORE VII has submitted itself to this Court's jurisdiction. Moreover, like the other members of the Opus family, ORE VII ignores the legal fiction of its special purpose entities whenever it suits ORE VII's purposes, and thus is also would be subject to this Court's jurisdiction on an alter ego or veil piercing theory. Thus, even apart from the availability of nationwide service of process in this adversary proceeding, ORE VII would be subject to this Court's personal jurisdiction. ORE VII may be served with process at CT Corporation, 380 Jackson St. #700, St. Paul, MN 55101.

14. Luz Campa ("Campa") is a citizen of Minnesota. Campa has been served and has made an appearance in this case in his capacity as a trustee. Campa is now being added to this lawsuit in his individual capacity. This Court has personal jurisdiction over Campa because he will be served pursuant to Federal Rule of Bankruptcy Procedure 7004(f) for breaches of fiduciary duty that occurred pre-petition. *See In re L.D. Brinkman Holdings, Inc.*, 310 B.R. 686, 688 (N.D. Tex. 2004). This basis alone is sufficient to establish personal jurisdiction over Campa.

15. Adler Management, LLC is a Minnesota citizen. This Court has personal jurisdiction over Adler Management, LLC because it will be served pursuant to Federal Rule of Bankruptcy Procedure 7004(f) for breaches of fiduciary duty that occurred pre-petition. *See In re L.D. Brinkman Holdings, Inc.*, 310 B.R. 686, 688 (N.D. Tex. 2004). This basis alone is sufficient to establish personal jurisdiction over Adler Management, LLC. It may be served with process by serving its registered agent, Luz Campa, at 10350 Bren Rd. W., Minnetoka, MN 55343.

16. The Adler Trust Company ("Adler Trust") is a trust corporation organized and existing under the laws of the State of South Dakota with its principal place of business in Sioux Falls, South Dakota. Adler Trust has been served and has made an appearance in this case.

III. FACTUAL BACKGROUND

A. The Trusts Dominate and Control Opus West and Opus Parent, Ignoring the Fiction of Opus West's Separate Legal Existence.

17. Opus Parent, established in 1953, is a full-service corporation involved in office, industrial, retail, multifamily, and institutional real-estate development. Over the years, Opus Parent's operations grew to encompass cities around the United States and Canada. Beginning in the 1980's, Opus Parent began establishing regionally based subsidiaries to provide such services to specific geographic areas (the "Subsidiaries"). The Subsidiaries include Opus East, L.L.C., Opus North Corporation, Opus Northwest, L.L.C., Opus South Corporation, Opus West Corporation, and O.R.E. Development Corp. Opus Parent's sister corporation, Opus L.L.C., owns Opus East, L.L.C. and Opus Northwest, L.L.C. The remaining Subsidiaries, including Opus West, either are wholly-owned by Opus Parent or were wholly-owned by Opus Parent prior to bankruptcy filings.

18. First established in 1979, Opus West, through its predecessors and affiliates, owned and/or developed more than 52.7 million square feet of real estate in Arizona, California, Texas, New Mexico and Utah. Opus West's assets, as of the Petition Date, included interests in approximately fifty (50) commercial and residential real estate projects located across its territory consisting of condominium, office, industrial, apartment, and retail projects in various stages of development.

19. From the outset, the Trusts controlled and dominated the activities of Opus West, ignoring corporate formalities and supposedly binding obligations whenever it suited their

purposes. The key to the Trusts' control and domination of Opus West centers around Trustee Keith Bednarowski and Mark Rauenhorst (beneficiary of the Children's Trust) serving as members of Opus West's board of directors. Although outsiders served on Opus West's board, they had no power to direct the company's operations. Indeed, before hiring "independent" board members, candidates were specifically told that their role would be purely advisory, and that they would have nothing to do with Opus West's operations. Bednarowski thus frequently described the Opus West board as having "no lead in their pencils." Bednarowski also insisted that he had no interest in serving as a trustee unless he could also continue serving as a board member of Opus Parent and participate in the day-to-day operations of Opus West. In other words, Bednarowski viewed the ability to control and manipulate the family business's operations as essential to his role as trustee.

20. Not surprisingly, Opus West board resolutions were Soviet-election style *fait accomplis*. Mark Rauenhorst and Bednarowski always got what they and the trusts wanted. In the past twenty years, other Opus West board meeting attendees could only recall a single instance more than fifteen years ago in which Bednarowski lost on a board issue. They could never recall Mark Rauenhorst losing a board issue. Typically, one of Opus Parent's Minnesota-based lawyers would draft the board resolutions in advance of meetings, and then would send them to Opus West for "rubber stamp" approval by its board. The outside board members never asked any probing questions about the company's financial performance or its operations. Instead, their role was simply to provide advisory knowledge about the local real estate markets where they lived.

21. The Opus West board meetings also failed to follow necessary corporate formalities in numerous ways: Opus West and Opus West Construction Corporation had a

common board meeting; no formal notices of board meetings were sent; there no minutes kept of the executive sessions of the board – the sessions during which virtually all decisions were made; and the board members were not given an opportunity to review the limited board minutes that Opus West recorded.

22. The trustee of the Children's Trust, Luz Campa, also was heavily involved in structuring Opus West's deals so as to achieve the maximum tax benefits for the Trusts. Campa had no position with Opus West, yet he regularly involved himself in the minutiae of Opus West's specific real estate transactions. Because the Trusts filed consolidated tax returns that included all capital gains or losses incurred by their direct and indirect subsidiaries, the Trusts were the only entities that had a financial interest in structuring Opus West's real estate transactions with potential tax implications in mind.

23. The Trusts also disregarded corporate formalities between themselves, Opus Parent and other entities. For example, Opus Parent's legal department frequently provided services for the Trusts. Adler Management, LLC, the investment advisor for the Trusts, had offices in the same building as Opus Parent and the other Minnesota-based Opus entities, such as the Opus Foundation. Adler Management also performed work for the Trusts as well as other members of the Opus family.

24. Companies in the Opus family operated like mere operating divisions of a single company, with consolidated taxes, payroll, information technology systems, enterprise resource planning software, human resources, legal departments, and other centralized functions. Significantly, the enterprise resource planning software gave Opus Parent unfettered access to Opus West's inventory, production, and financials, thus providing defendants with full awareness of Opus West's financial position at any given time.

25. Additionally, Opus West directly supplied Opus Parent with regular financial reporting, including quarterly balance sheets, income statements and income projections, and equity projections as well as monthly cash projections. As Opus West's financial health deteriorated, it began generating periodic weekly cash projections. Together with the ERP Software access, these reports provided Opus Parent with a "dash board" view of Opus West's financial condition.

26. Ultimately, the Trusts' control and domination of Opus West is best shown by the Trusts, the beneficiaries, and the trustees systematically draining Opus West's resources and routinely engaging in transactions that Opus West never would have consummated with an independent third party. These transactions are described in more detail below, but together they show a consistent pattern of Defendants treating Opus West as anything but a separate corporate entity. In short, when the Trusts or their trustees, beneficiaries or affiliates entered into a transaction with Opus West that might actually lose money, they would exploit their control of Opus West to undo a transaction or refuse to honor an obligation that would bind a true third party, thus disregarding the legal fiction of Opus West's separate corporate existence. They would also use their control over Opus West (exercised through Mark Rauenhorst and Bednarowski) to dictate the terms of financial transactions to benefit the Trusts and the beneficiaries. The Trusts simply cannot ignore Opus West's separate corporate existence whenever their own money or interests are at stake, but yet hide behind the corporate form as a defense from liability in this case.[2]

B. The Distribution Scheme.

27. Another way that Opus Parent asserted control over Opus West was through the

[2] The Trusts recently announced that they will directly manage the remaining regional subsidiaries, eliminating Opus Parent as an intermediate subsidiary. This announcement merely conforms the corporate structure to the reality that the Trusts have always directly controlled the regional subsidiaries.

issuance of financial directives. As a wholly-owned subsidiary of Opus Parent, Opus West was at the mercy of Opus Parent and fully subject to such directives. One such directive required Opus West to contribute 1% of its net income earnings directly to charity, and to send 9% of its net income directly to Opus Parent purportedly for Opus Parent to contribute to charity. Opus Parent mandated these contributions, even when Opus West clearly could not afford to make them.

28. Another Opus Parent directive, in effect until late 2005, required Opus West to distribute ***75% of its pre-tax net income*** (that remaining *after* the total 10% "charitable" contribution) to Opus Parent. In November of 2005, Opus Parent modified this policy, requiring Opus West to distribute ***35% of its pre-tax net income*** plus ***pro-forma taxes computed with respect to such pre-tax net income*** to Opus Parent (the "Distribution Policy"). *See* November 11, 2005 Memorandum detailing the Distribution Policy attached hereto as **Exhibit "A**." Essentially, the Distribution Policy still required Opus West to distribute approximately 75% of pre-tax net income remaining after the initial 10% "charitable" contribution, while allowing Opus West to take advantage of a lower capital gains tax rate. Opus Parent's Distribution Policy left Opus West with a paltry 22.5% of its pre-tax net income to service debt and conduct its business.

29. Opus Parent enforced the Distribution Policy by requiring Opus West to declare "dividends."[3] When Opus West declared a dividend due to Opus Parent, Opus West had to create pro-forma financials in order to estimate the amount of the dividend (the "Estimated Dividend"). Based upon these pro-forma financials, in December of each year, Opus West paid 80% of the Estimated Dividend immediately to Opus Parent. Later, after completion of

[3] Opus Parent is Opus West's sole shareholder, and as shown below, a large portion of the so-called "dividends" were made while Opus West was severely undercapitalized, insolvent, and generally unable to pay its debts as they came due.

customary annual audits, Opus West paid the remaining 20% of the Estimated Dividend to Opus Parent. The audits provided a final number in accordance with the Distribution Policy. Therefore, the 20% payment required by mid-March of each year included a "true up" to account for any shortfall or overpayment that may have been made with the estimated 80% December payment.[4]

C. Effect of Opus Parent's Required Distributions.

30. By specific design, Defendants set Opus West up to be constantly and chronically undercapitalized. Indeed, from 1995 to 2007 (including a March 2008 payment that was treated as a 2007 payment), Opus West paid Opus Parent a total of $322,183,000.00 in dividends.

31. From 2005 through the bankruptcy filing, Opus West was acutely undercapitalized. For example, working capital is a financial term that refers to a business's current assets compared to its current liabilities. The idea is that current assets should exceed current liabilities by a comfortable margin so that the business has a sufficient amount of capital available to invest in operations. The "current ratio" is a financial measure that reflects the current assets divided by the current liabilities. A current ratio below 1.0 raises serious questions about the health of a business. Opus West's current ratio (as calculated based on the information currently available) showed that current liabilities far exceeded current assets, with the situation becoming particularly desperate in 2007 and 2008:

Year	Current Ratio
2005	.34
2006	.48
2007	.11

[4] The yearly "true up" was also performed in connection with the required charitable contributions.

2008	.05

32. In other words, by 2007, Opus West's current liabilities exceeded its current assets by a factor of ten, and by 2008, Opus West's current liabilities exceeded its current assets by a factor of twenty.

33. Through the Distribution Policy, Opus Parent ensured that Opus West remained undercapitalized and completely beholden to Opus Parent for all needed working capital. From 2005 through 2008, the Distributions not only left Opus West significantly undercapitalized to operate in the cash-strapped commercial real estate market, but it often left Opus West with no cash to pay upcoming bills and debt-to-equity ratios that were far in excess of bank covenants.

34. To address this situation, Defendants manipulated Opus West's accounting to overstate its equity and understate its debt. Because Opus West needed money at almost every quarter end, Opus Parent first would loan Opus West money at extravagant interest rates (initially 33% interest, later dropping to 10%, still far above market rates). But because treating this loan as debt would not have addressed Opus West's noncompliance with debt-to-equity covenants, Opus Parent, with full knowledge of Opus West board members Bednarowski and Mark Rauenhorst, requested that the loan be falsely characterized as "equity" or as "subordinated debt," which effectively was counted as equity for purposes of the calculation of bank covenants. Without these sham loans -- which were never fully or fairly disclosed to lenders -- Opus West's lenders would have recognized its dire financial condition much earlier.

35. Opus West's loan agreements required its debt-to-equity ratio to be 4:1 in 2005. Opus West failed to meet this covenant in 2005, but its lenders granted it a waiver that required the debt-to-equity ratio to be 6:1 through December 31, 2007, with the required ratio dropping to

5:1 thereafter. In the Fall of 2007, Opus West's management advised Bednarowski and Mark Rauenhorst at a board meeting that Opus West would not be able to meet the debt-to-equity covenant in 2008. Indeed, even counting the sham loans that were mischaracterized as equity, Opus West's debt-to-equity ratio was 5.86:1 at the end of the third quarter of 2007. Having exorbitant debt-to-equity ratios is not surprising, given that Opus West had a staggering debt load of approximately ***$1.5 billion*** dollars at the time of the Petition Date.

36. Amazingly enough, a true portrayal of Opus West's financial condition paints an ever bleaker picture. As described herein, Defendants' engaged in a number of self-dealing transactions described that were not accurately described in Opus West's accounting records. A 2008 audit identified overstated earnings and debt that was not properly characterized on the company's books. The debt problem related to Defendants forcing Opus West to guarantee debt on projects that supposedly had been sold, whereas the earnings deficiency related to Defendants' exploiting their control over Opus West in deals that were not arms-length. If these transactions had been recorded accurately, Opus West's working capital situation would have been even direr and its debt-to-equity ratio would have been even higher.

37. As early as 2005, Defendants knew that Opus West's financial condition would not support continued blind compliance with the Distribution Policy. By the time of the 2007 year end distribution, Defendants had actual notice that enforcement of the Distribution Policy would put Opus West out of compliance with its debt-to-equity covenants and would lower its already anemic current ratio even further.[5] Nonetheless, between 2006 and 2008, Opus West

[5] At a October 2007 meeting, Gerald Rauenhorst stated his belief that the imminent real estate downturn would be the worst in U.S. history. Defendants thus were well aware of the distinct possibility of a sustained downtown in the real estate market.

made the following distributions to Opus Parent per the Distribution Policy[6] (collectively the "Dividend Distributions"):

Date of Transfer	Amount of Distribution
12/21/06	$53,663,000.00
3/15/07	$7,391,000.00
12/20/07	$48,042,000.00
3/17/08	$12,249,000.00
Total	**$121,345,000.00**

38. In addition to the Dividend Distributions, Opus West also made contributions of 9% of its net income directly to Opus Parent ostensibly for Opus Parent to contribute such income to charitable foundations closely related to Opus Parent and the Trust Parties, including, without limitation, the Opus Foundation. Between 2006 and 2008, Opus West made the following distributions to Opus Parent for "charitable contributions" (with the Dividend Distributions, the "Distributions"):

Date of Transfer	Amount of Transfer
2006	$9,506,000.00
2007	$15,466,000.00
Total	**$22,371,000.00**

39. Upon information and belief, most or all of the Distributions were almost immediately transferred by Opus Parent to the Trusts.

40. Defendants' Distribution Policy created, exacerbated and sustained Opus West's crippled cash position, leaving Opus West at the mercy of Opus Parent to loan Opus West sufficient funds to survive. Opus Parent kept Opus West dependent upon these loans, needing

[6] Distributions listed below do not include required charitable donations.

the loans while struggling to repay them amidst Opus Parent's other financial directives. Without them, Opus West was unable to pay its bills on time, meet its loan covenants, or carry out Opus Parent's directives. Insensitive to Opus West's plight, Opus Parent blindly continued its expectations that Opus West develop, construct, market and sell real estate across Arizona, California and Texas, as well as meet its operating obligations on approximately 22.5% of its pre-tax net income.

41. Moreover, between July 5, 2008 and July 6, 2009, Opus West paid a total of $17,591.629.01 to Opus Parent (the "Transfers"). These Transfers were allegedly for Opus West's "share" of insurance, shared services, business and franchise taxes, professional services. Each of these payments was made to Opus Parent as a creditor of Opus West for or on account of debts incurred prior to the receipt of each of the Transfers. On the date of each payment, Opus West was insolvent either by not being able to generally pay its debts as they came due, or being severely undercapitalized such that each of the payments left Opus West with insufficient capital to conduct the business it was expected to, and was engaged in, conducting. Also at the time of each of the Transfers, Opus Parent was in control of Opus West such as to be an "insider" of Opus West as such term is defined in 11 U.S.C. §101(31)(B).

42. To the extent the Transfers were in exchange for Opus West's use of shared services, Opus West, upon information and belief, did not receive equivalent value in exchange for those Transfers. Specifically, if Opus West had contracted for such services in an arms-length transaction, Opus West could have obtained the same, if not better, services at a lower cost. Upon information and belief, Opus Parent may have allowed Opus West to pay more than its share of the cost for shared services used by all operating subsidiaries in an effort to allow

Opus West, the highest revenue generating subsidiary, to subsidize the cost for other lower revenue-generating subsidiaries.

D. Defendants' Assurances Persuade Opus West's Employees and Lenders Not to Scrutinize Opus West's Financial Performance or Defendants' Self-Dealing Transactions.

43. Given Defendants' complete domination and control of Opus West, Opus West's management knew that any resistance to Defendants' actions would be futile. But Defendants' blatant self-dealing transactions did not cause an uproar because Defendants actively encouraged their employees and lenders to believe that Opus Parent and the Trusts would stand behind Opus West.

44. Opus Parent's annual golf outing for lenders illustrated Defendants' carefully orchestrated approach for issuing a "guarantee" without actually signing a guarantee. Attendees received gift bags that included shirts with themes like "Built to Last" and "Navigating the Currents." Every year, Gerald Rauenhorst gave the same speech in which he touted the fact that his companies had never missed a principal and interest payment in over 50 years.

45. Defendants also widely published the fact that Opus Parent had a $100 million line of credit. Defendants continually reassured Opus West that the industry is cyclical in nature, and that Defendants remained able and willing to assist Opus West when and if such assistance was needed. Such a promise of support is evidenced by a course of dealing between Opus Parent and Opus West as illustrated by Opus West's regular requests for funding and Opus Parent's provision of one capital contribution and numerous loans from 1998 through 2008. In fact, when Opus West would find itself cash-strapped, Opus Parent *demanded* that Opus West borrow funds necessary to pay all vendors on time from Opus Parent, at their exorbitant interest rates. Opus

West was unable to manage its own cash, being forced to pay the outrageous Distributions, and then "borrow" funds back when it needed to pay the bills or meet financial covenants.

46. Opus West understood that Defendants maintained access to capital for a "rainy day fund" that would be available in the event of an economic downturn. In fact, Opus Parent's promised "backing" of its Subsidiaries is evidenced by its contribution of roughly $60 million to Opus South Corporation ("Opus South") to bolster its real estate holdings and debt obligations and its issuance of a letter to Opus South's lenders, stating their future financial support for debts owed by Opus South. Without this pattern of assurances, Opus West's managements undoubtedly would have scrutinized Opus West's balance sheet and Defendants' self-dealing conduct much more closely.

E. Defendants' Self-Dealing Transactions: Built to [Put Everyone Else] Last.

Under Minnesota law (which applies since Opus West is a Minnesota corporation), the statute of limitations is six (6) years for a breach of fiduciary duty claim. *See Seaburg v. Caplan*, 2001 WL 856200 (Minn. App. July 31, 2001, review denied) (applying six-year limitations period in Minn St. § 541.05 to breach of fiduciary duty claim). At a minimum, Defendants' therefore are liable to Plaintiff for their breaches of fiduciary duty that occurred anytime between January 25, 2004 and January 25, 2010. Defendants Bednarowski and Rauenhorst engaged in a number of self-dealing transactions that constitute bad faith breaches of the duty of loyalty they owed to Opus West. The other defendants conspired and/or aided and abetted Bednarowski and Rauenhorst in their breaches of fiduciary duty.

F. Presidents' Deals.

47. The Presidents' Deals are perhaps the most egregious example of Defendants' blatant self-dealing transactions. Every quarter, the Presidents of Opus Parent, Opus West, and

the other regional subsidiaries held meetings. Trustees Bednarowski and Luz Campa attended the meetings, as did Mark Rauenhorst and the CFO of Opus Parent, Steve Polacheck.

48. At those quarterly meetings, any officer had the complete discretion to designate any project wholly owned by a subsidiary as a "Presidents' Deal." That simple designation meant that the meeting attendees could take a project from Opus West or the other subsidiaries without compensation. For a small equity contribution, the meeting attendees magically would become the equity owners of the property, stripping a subsidiary like Opus West of its equity, but leaving it saddled with millions of debt and the corresponding risk of default.

49. The meeting attendees had full knowledge about Opus West's properties, and they used that knowledge to their full advantage. For example, Opus West's primary business model was to build speculative properties and then sell the properties almost as soon as they were completed. But Bednarowski and Mark Rauenhorst did not want just any project – they wanted the very best projects, which typically had already been built and often had existing tenants. In certain instances, the meeting attendees were not able to sell the projects, and Opus West ended up being liable for the debt.

50. Of course, because Bednarowski and Mark Rauenhorst were board members of Opus West, they were duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich them at the expense of Opus West. In addition, Opus West's board created an executive committee with responsibility for approving loans and real estate transactions. Prior to August 2006, Opus West's president and outside director George Getz served as the only two members of the executive committee. Getz resigned from the executive committee, citing his well-founded concern about approving transactions he knew little about. Mark Rauenhorst replaced Getz, serving as an executive committee member from August 2006

until shortly before the bankruptcy filing in 2009. In that capacity, Mark Rauenhorst regularly signed resolutions authorizing transactions that served his personal interests and the Trusts' interests. The Opus West board received quarterly memos summarizing executive committee resolutions and discussed recent executive committee actions at quarterly board meetings, which also provided Bednarowski with knowledge that Opus West's executive committee had authorized transactions that Bednarowski knew promoted his own personal interests and the Trusts' interests and were contrary to Opus West's best interests.

51. The other Presidents' deal participants (who included Trustee Luz Campa and Opus Parent CFO Steve Polacheck) joined in the conspiracy by assisting Bednarowski and Mark Rauenhorst in their breaches of fiduciary duty to Opus West. Each participant is jointly and severally liable for all profits received over the last six years by each and every person or entity who participated in a Presidents' deal. Opus West does not presently know the names of all Presidents' deals during this time period, but the deals included properties commonly known as Chandler and Horizon. The Chandler deal was particularly egregious, because Opus West ended up responsible for the debt on property that it did not own.

52. In the Horizon Presidents' deal, the Trusts invested millions of dollars. For the Trusts' involvement, Mark Rauenhorst believed that the Trusts deserved an additional "unit," a term that referred to a standard equity unit in the Opus investment funds. Mark Rauenhorst therefore insisted – at a time when he was Chairman of Opus West and obligated to act in its best interests – that the Trusts be granted an additional unit in the Presidents' deal relating to Horizon Of course, that unit belonged to Opus West, the true owner of all profits in the Horizon project. As willing participants in the scheme to steal corporate opportunities from Opus West, the Trusts should be held jointly and severally liable for all profits generated by participants in the so-called

Presidents' deals. They also should be held responsible for the debt for which Opus West remains responsible, even though it no longer owned the underlying properties.

53. The participants in the Presidents' deals frequently sold their interest in the properties to one of the Opus investment funds. By selling an Opus West property to one of the Opus investment funds, the participants could avoid disclosing to Opus West management that the transaction was a "Presidents' deal," because the participants' ownership interest came in the form of ownership units in the fund. This also enabled the participants to diversify their holdings, since the Opus funds owned a diversified portfolio of properties. Defendant ORE VII and its predecessor assisted the participants by agreeing to allow them to run their scheme through ORE VII; by collecting fees for the management of properties that rightfully belonged to Opus West; and by negotiating the transaction documents in a way that sought to hide the illicit nature of the transactions from the outside world. Because the Trusts, Gerald Rauenhorst, Bednarowski, Luz Campa, and Mark Rauenhorst owned investment units in the Opus funds (including ORE VII), the entire Rauenhorst family enjoyed frequent opportunities to profit from the scheme to steal corporate opportunities from Opus West. In addition, Trustee Luz Campa and the Trusts' investment advisor, Adler Management, LLC, provided assistance in documenting the Presidents' deals.

54. Because the Trusts controlled ORE VII, and because the Trusts and their Trustees (Bendarowski and Campa) participated in and profited from the Presidents' deal transactions and participated in the ORE funds as investors, the Trusts and ORE VII plainly had knowledge of the scheme and provided active assistance, thereby making the Trusts and ORE VII jointly and severally liable for all profits obtained by any participant as a result of the Presidents' deals, all

fees or charges by ORE VII relating to Opus West's properties; and the debt that improperly remained with Opus West for properties that it no longer owned.

G. Sales of Assets to the Opus Investment Funds.

55. A significant portion of Opus West's property sales were made inside the Opus family. Because the Distribution Policy deprived Opus West of critical funds to operate its business, Opus West had only two options at each quarter end to continue operations: it could borrow money from Opus Parent at extravagant rates, or it could quickly sell a property to a member of the Opus family.

56. Defendant Opus Real Estate VII, L.P. ("ORE VII") is a fund that holds investments for Gerald Rauenhorst and the Trusts, along with twenty to thirty of their wealthy friends. Through the Presidents' deals, the Trusts, Mark Rauenhorst, and Bednarowski owned investment units in ORE VII. Upon information and belief, the Trusts also own additional investment units in ORE VII. Always willing to help a friend in need, ORE VII and other funds established by Defendants stood ready to buy properties on advantageous terms when Opus West inevitably needed more cash. Deals with the Opus investment funds were referred to as "Gerry deals," a reference to Opus founder Gerald Rauenhorst. A "Gerry deal" was the option of last resort for Opus West, because it was well-known the Gerald Rauenhorst and entities he controlled would give Opus West an even worse deal than the other members of the Opus family that purchased Opus West's assets in strong-armed deals. The large number of "Gerry deals" speaks volumes about Opus West's ongoing financial distress.

57. Beginning in April 2005, Opus West sold at least thirteen (13) properties to ORE VII or its predecessor fund, Opus Real Estate VI, L.P. From 2006 through 2008, ORE VII purchased at least four of Opus West's properties that were located in the State of Texas: Ten

West II; Highland Village Retail; Las Colinas I, and Las Colinas II. In these transactions, ORE VII and its predecessor fund insisted on terms that Opus West never granted to a third party, such as forcing Opus West to remain liable on the loan until ORE VII sold a property to a third party. ORE VII purchased the property without any independent third party appraisal or valuation. There were numerous other contractual terms that were not in line with an arms-length transaction, and that Opus West would have opposed if not for the fact that it was controlled and dominated by the Trusts. ORE VII acted with full knowledge that Mark Rauenhorst and Bednarowski had a substantial financial conflict of interest in authorizing Opus West's property sales to ORE VII, and that Rauenhorst and Bednarowski took no steps to ensure that an independent expert evaluated the fairness of such transactions to Opus West. ORE VII thus knew about and actively assisted Bednarowski and Mark Rauenhorst in breaching the fiduciary duties that they owed to Opus West.

58. Because Bednarowski and Mark Rauenhorst had a personal financial interest in ORE VII, they should have encouraged Opus West to retain truly independent directors, disclosed the true nature of these transactions to the independent directors of Opus West, and recused themselves from any consideration of whether the transactions should be approved. Instead, as Bednarowski knew, Mark Rauenhorst approved these transactions through executive committee resolutions. Bednarowski and Mark Rauenhorst therefore have the burden of showing the "entire fairness" of each and every transaction over the last six years in which ORE VII or any other company or entity controlled, owned, or affiliated with the Trusts purchased an asset from Opus West. Due to the presence of terms that Opus West would never have granted to an independent third party, Bednarowski and Mark Rauenhorst will not be able to meet this

burden, and ORE VII should be held jointly and severally liable for the harm caused by the breaches of fiduciary duty by Bednarowski and Mark Rauenhorst.[7]

H. Sales of Assets to Opus Corporation.

59. For tax reasons undoubtedly identified by Trustee Luz Campa and his team at Adler Management, Opus Parent decided that it should own some real property assets and hold them for long-term capital gains tax benefits. Because Bednarowski knew about Opus West's assets from his board service, he identified assets that Opus West was required to sell to Opus Parent. With Bednarowski's insider knowledge, he skillfully picked the best properties. Opus West was required to the book the deal as a sale for purposes of calculating higher distributions owed to Opus Parent, even though Opus West did not receive revenue from the sale until later, if ever. Mark Rauenhorst approved these transactions in his capacity as an executive committee member.

60. No taxes were paid by Opus Parent, so Bednarowski's only possible motive behind forcing these deals was to obtain a financial benefit for the Trusts. Once again, Bednarowski should have retained truly independent directors, presented them with any proposed deal with Opus Parent to Opus West's "independent" directors, and recused himself from consideration of the deal, just as Mark Rauenhorst should have recused himself from any involvement at the executive committee and board levels. Bednarowski and Mark Rauenhorst have the burden of showing that all sales between Opus Parent and Opus West were "entirely fair" to Opus West. To the extent he cannot meet that burden, Opus Parent and the Trusts plainly

[7]It will be interesting to see how Defendants described the opportunity to purchase the assets of Opus West to other wealthy investors in the ORE VII marketing materials. If such materials touted the opportunity to purchase Opus West's assets on favorable terms, then investors should have been aware that they were being invited to participate in Defendants' breaches of fiduciary duty.

conspired and/or aided and abetted Bednarowski and Mark Rauenhorst in breaching their duty of loyalty to Opus West.

I. The Chino Hills Transactions.

61. In June 2008, Opus West's current ratio was approaching zero, and it knew it could not meet its required debt-to-equity ratio. Given its situation – a direct result of Defendants' forced transfer payment policy – Opus West had no choice except to try to sell an asset quickly. Opus Parent exploited the situation by purchasing Opus West's largest asset at the time, The Shoppes at Chino Hills, located in Chino Hills, California (the "Chino Hills Development"). The Chino Hills Development contained a newly constructed, 379,817 square foot lifestyle shopping center, located in the most affluent city in Southern California's Inland Empire: Chino Hills. The development featured over 80 retailers, anchored by Barnes & Noble, XXI Forever, H&M, and grocer Trader Joes, as well as an impressive lineup of restaurants. Notably, Jacuzzi Brands Corporation decided to call the Chino Hills Development home for its world-wide corporate headquarters.

62. In June of 2008, shortly after Chino Hills' opening, Opus West sold the Chino Hills Development stock to Opus Sales Corporation (the "Buyer"), a holding corporation owned 100% by Opus Parent (the "Chino Hills Sale"). The sale agreement required the Buyer to pay the $170,073,000.00 purchase price as follows: a 10% cash payment, and the remainder of the consideration to be paid via an unsecured note in the amount of $43,065,700.00 payable to Opus West with a 7% annual interest rate (the "Additional Note"). The Additional Note would be paid with monthly interest payments and the principal was due 80% on December 20, 2008 and 20% on March 15, 2009. Not coincidentally, the payment dates for the Additional Note matched the dates that Defendants required Opus West to pay distributions. The remainder of the

consideration is comprised of a loan secured by the Chino Hills Development upon which Opus West was a guarantor. Opus West was required to remain liable on the guaranty despite the sale of the stock to the Buyer. No independent appraisal or fairness opinion was obtained for this deal. Mark Rauenhorst approved this transaction as a member of Opus West's executive committee, and Bednarowski received notice of this resolution through the normal board process.

63. Upon information and belief, Defendants Bednarowski and Mark Rauenhorst knew at the time of the initial transaction that Opus Parent did not have sufficient funds to pay the unsecured note. In fact, unbeknownst to Opus West at the time, Opus Parent had to draw down its line of credit merely to pay the 10% cash payment. Opus West would never have approved of a sale to a third party purchaser with the purchase price payment structured in this manner. A very low 10% down payment, coupled with the generous seller financed note and remaining liable on the guarantee would only have been acceptable from an investment grade purchaser, which Opus Parent clearly was not. Of course, Mark Rauenhorst and Bednarowski's control of Opus West ensured that Opus West would approve this one-sided transaction.

64. Unfortunately for Opus West, Opus Parent's greedy and irresponsible acts did not stop there. When the 80% principal payment of the Additional Note came due in December 2008, Opus Parent informed Opus West that it was simply unable (or unwilling) to fund this payment. As such, Opus Parent required Opus West to accept the stock of Shoppes at Chino Hills, Inc. in exchange for cancellation of the Additional Note (the "Chino Hills Buy-back"). Because of the drastic decrease in commercial real estate values between the time of the Chino Hills Sale and the Chino Hills Buy-back, the stock was then practically worthless, netting only $100 for Opus West in an auction. Moreover, Opus Parent had been receiving lease payments on the Property during the six months it supposedly owned Chino Hills, but Opus Parent never

returned those payments to Opus West. Mark Rauenhorst signed an executive committee resolution authorizing Opus West to accept the stock, and Bednarowski received notice of this resolution.

65. In a deal with a real third party, Opus Parent's options would have been to pay the Note; renegotiate the Note; or default on the Note. But because Defendants treated Opus West like their own chattel, they decided instead to reverse or undo the transaction unilaterally. By this time, Opus Parent had retained bankruptcy lawyers, and Opus Parent had no discernable motive for preferring an unwinding of the transaction as opposed to a default. But the Trusts had a motive – they wanted to avoid a bankruptcy filing for Opus Parent and push the note liability down to Opus West in an attempt to insulate the Trusts from liability. These decisions harmed Opus West and benefited Mark Rauenhorst and Bednarowski personally by seeking to protect the Trusts from potential liability, and thus constituted a breach of the duty of loyalty that Bednarowski and Mark Rauenhorst owed to Opus West. If Bednarowski and Mark Rauenhorst had honored their duty of loyalty to Opus West, they would have insisted that Opus Parent assume the debt, and that the Note transaction not be unwound. The Trusts conspired and/or aided and abetted Bednarowski and Mark Rauenhorst in their breaches of loyalty.

66. The aggregate effect of the Chino Hills Sale and the Chino Hills Buy-back resulted in Opus West bearing the risk of Opus Parent's purchase, depriving Opus West of the value of the Additional Note, $43,065,700.00 (plus any additional equity Opus West may have had), as well the ability to have the outstanding debt assumed by the buyer in a normal arms-length deal, resulting in a total loss of up to $150 million, plus the amount of the lease payments that Opus Parent received from June 2008 through December 2008. Furthermore, Defendants knew the drastic negative effect that the Chino Hills Buy-back would have on Opus West's

financial position. In fact, Opus West's management was relying on this payment as the key to survival.

J. The 2008 Audit - $18.4 Million Over-Contributed by Opus West to Opus Parent between 2000 and 2008.

67. In 2009, a routine audit of Opus West's 2008 financial records (the "2008 Audit"), revealed that since 2005, Opus West had over-contributed approximately $2.4 million to charity. Additionally, the 2008 Audit made clear that since 2005, Opus West had over-distributed approximately $16 million as dividends to Opus Parent. Opus West contributed all such amounts in compliance with the Distribution Policy; however, the audit company reviewed the Chino Hills Sale and, upon such review, determined that it could not be characterized as a sale, resulting in the reduction of available net income from which to pay Opus Parent a dividend. The discovery of the Chino Hills Sale caused the audit company to review other such transactions dating back to 2005, and such review determined that certain other transactions previously characterized as sales should be re-characterized as non-sale transactions, requiring restatements of revenue, and ultimately reducing the dividends owed by Opus West to Opus Parent from 2005 through 2008.

68. In prior years, when the "true up" of distributions at the end of the first quarter of each year showed that Opus West owed additional money to Opus Parent, Opus West was required to pay the additional funds to Opus West. But when an audit showed that Opus Parent actually owed $18.4 million (the "Excess Dividends") to Opus West, the results were ignored. As between Opus West and Opus Parent, it should have made no difference which liquidating entity ended up with the money. But it mattered deeply to the Trusts, who again desired to preserve some cash at the Opus Parent level in order to avoid a bankruptcy filing that might expose the Trusts to additional liability. Thus, with their own money potentially at risk, the

Trusts reverted to their standard approach to the legal fiction of Opus West's separate corporate existence: "Heads we win, Tails Opus West loses."

K. Management Contract Transfer.

69. In the Spring of 2009, when Opus West was plainly insolvent and soon would file for bankruptcy, Defendant Mark Rauenhorst advised Opus West of the unilateral decision to seize Opus West's property management business. Prior to 2008, many of the Subsidiaries had their own management companies (collectively, the "Subsidiary Management Companies") that entered into and fulfilled profitable management contracts with Opus properties and third party clients (the "Management Contracts"). Realizing that they could no longer receive these profits through the Distribution Policy, Opus Parent decided simply to take all of the management business.

70. Upon information and belief, in October of 2008, the Trusts orchestrated the formation of Opus Property Services, L.L.C. ("OPS") for the sole purpose of usurping the management business of Opus West and the other regional subsidiaries. Pursuant to a Memorandum dated April 13, 2009, Mark Rauenhorst directed that on April 30, 2009, OPS would acquire each of the remaining Subsidiary Management Companies (Opus South Management Corporation had ended its business in early April 2009, and so was not included in the transfer), including Opus West Management Corp. *See* Memorandum describing the acquisition attached hereto as **Exhibit "C."** Under this arrangement, OPS acquired the assets and limited liabilities of the Subsidiary Management Companies, including existing Management Contracts with Opus properties and third party clients, for little or no consideration. A substantial portion of the Management Contracts acquired by Opus Parent belonged to Opus West. Though Opus West was later paid a nominal amount for certain fixed assets taken by OPS

(information technology equipment, vehicles and furniture), Opus West Management Corp. was forced to pay OPS for employee PTO balances that had accrued prior to the transfer, and, upon information and belief, OPS did not assume responsibility for certain bonuses that were due to employees, so such bonuses remained the obligations of Opus West Management Corp.

71. Opus Parent devised this transfer scheme ostensibly to serve the best interest of the clients and the Subsidiary Management Companies. However, once Opus Parent had its hands on the management business, it then sold OPS, along with the Management Contracts, to Northmarq for a substantial profit, yet again benefiting at the expense of Opus West and depriving Opus West of the value of its asset. Upon information and belief, this money quickly was transferred to the Trusts. Thus, despite Opus West's clear insolvency at the time of this transfer, Mark Rauenhorst once again preferred his own personal financial interest in the Trusts over the duty of loyalty he owed to Opus West. The Trusts conspired and/or aided and abetted Mark Rauenhorst in his breaches of fiduciary duty.

L. Defendants' Scheme to Force Liquidation of Opus West's Assets for Tax Benefits

72. At some point in 2008, the Trusts decided that Opus West had more value to them dead than alive. The Trusts hated paying taxes on the hundreds of millions of dollars of distributions that they received indirectly from Opus West and the other regional subsidiaries. But, due to the substantial market decline, Opus West had hundreds of millions of unrealized losses on its properties by 2008. If those losses could be realized, the Trusts could apply those losses to offset reported profits from the last five years, earning the Trusts the right to a tax refund that could be worth hundreds of millions. That prospect proved far more appealing to the Trusts than having Opus Parent pay the Chino Hills Note payment, and allowing Opus West to survive the real estate market decline, albeit as a less profitable entity, causing the Trusts to miss

their window of opportunity to offset the huge capital gains they reported in the real estate boom that preceded the financial crisis.

73. When analyzed from a tax perspective, the decisions that Bednarowski and Mark Rauenhorst made or approved made considerably more sense for the Trusts. They understood that Opus West's ability to stay in business and reorganize depended on the receipt of approximately $43 million from the Chino Hills note and $18.4 million from the audit. By breaching their fiduciary duties, they could generate a tax refund that would be far larger than years of future returns that Opus West might generate in the badly damaged real estate market.

74. The failed attempt to negotiate with lenders underscores the extent to which Bednarowski and Mark Rauenhorst were working against the reorganization efforts of Opus West. Bednarowski and Mark Rauenhorst first forced Opus West to accept a board resolution delegating to Opus Parent all authority to negotiate with Opus West's lenders. Tellingly, the February 2009 initial resolution cited the need "to be efficient and practical" in light of the "overlapping relationships." The board resolution authorized Opus Parent to negotiate with lenders on behalf of Opus West, with no provision that Opus Parent update Opus West on developments or otherwise keep Opus West's directors informed.

75. With this resolution in hand, Opus Parent then proceeded to negotiate with Opus West's lenders in a manner that ignored Opus West's interests. Together with consultants and advisors retained by Opus Parent, Bednarowski and Rauenhorst put together a reorganization plan that completely ignored Opus West's loans, preferring instead to try to negotiate a deal that would provide Opus Parent money to pay down its line of credit. When Opus West's President discovered this plan, he asked Mark Rauenhorst to explain what was going on. Rauenhorst offered no defense, meekly explaining only that the banks probably weren't going to accept the

proposal anyway. Months later, Opus West's board adopting a written resolution that purported to fix the February 2009 resolution, granting authority and directing Opus West's board "to closely monitor all aspects of the Coordinated Negotiations from the perspective of . . . the Company's [Opus West's] best interest." This belated lip service cannot change the reality that Opus Parent negotiated with lenders solely from the perspective of the best interests of the Trusts and Opus Parent.

76. During the same February 2009 board meeting that gave Opus Parent complete control of negotiations with Opus West's lenders, the board also appointed two "tax officers" for Opus West, Margeret Bozesky and Timothy Smith. Ms. Bozesky works for Trustee Luz Campa at Adler Management. Upon information and belief, Mr. Smith also works for Campa, either at Adler Management or at another member of the Opus family. Because all tax is reported on a consolidated basis by the Trusts, Opus West had no need for its own tax officer, much less two of them. Mark Rauenhorst, Bednarowski and the Trusts orchestrated the appointment of these tax officers as part of their scheme to force the liquidation of Opus West's assets and realize huge tax benefits.

77. Also in the Spring of 2009, with the assistance of outside legal and financial advisors, Opus West's officers developed a reorganization plan that would have given ownership of Opus West to its lenders and management. The plan would have eliminated all existing equity, meaning that the Trusts would have been cut out and would have had no ability to control when and if Opus West realized tax losses. Staring this possibility in the face, Mark Rauenhorst chose to fire Opus West's President before he had the chance to implement such a plan to save Opus West. No board vote was ever taken on the reorganization proposal.

78. These events leave no doubt that Bednarowski and Mark Rauenhorst acted in bad

faith by betraying their duty of loyalty to Opus West in favor of their own self interest in promoting the interests of the Trusts. Upon information and belief, the Trusts were intimately involved in analyzing the tax implications of the unrealized losses at Opus West, and coordinating efforts with Bednarowski and Mark Rauenhorst.

79. Bednarowski and Mark Rauenhorst's breaches of fiduciary duties not only prevented Opus West from receiving approximately $60 million in cash and from having an opportunity to reorganize. The breaches also will enable the Trusts to reap the benefits of a massive tax rebate in the near future. Under well established Minnesota law, this Court may disgorge all benefit that is derived from a breach of fiduciary duty. *See, e.g., Pedro v. Pedro*, 463 N.W.2d 285, 289 (Minn. App. 1991). Here, Plaintiff respectfully submits that the Court should order the Trusts to give up the entire tax benefit that they will receive as a result of losses at Opus West.

80. Alternatively, Opus Parent required Opus West to send a fixed amount of its net income (40%) as payment for taxes. Opus Parent never paid taxes on these amounts, but instead passed all gains and losses on to the Trusts, who would consolidate the Opus West gains with the gains and losses of the other regional subsidiaries. Because Opus West generated substantial profits at a time when other regional subsidiaries accrued losses, Opus West over-contributed amounts that were purportedly owed for taxes. At an absolute minimum, Opus West should be entitled to receive back the portion of the tax distribution not actually used by the Trusts for payment of taxes on behalf of Opus West.

M. Governing Law.

81. Bankruptcy courts apply the choice-of-law rules of the forum in which they sit. *Woods-Tucker Leasing Corp. of Ga. V. Hutcheson-Ingram Dev. Co.*, 642 F.2d 744, 748 (5th Cir.

1981). For choice-of-law purposes, Plaintiff's claims may be divided into three categories: (1) Plaintiff's claims for breach of fiduciary duty and alter ego and/or veil piercing, which, because Opus West is a Minnesota corporation, are governed by Minnesota law under the "internal affairs" doctrine[8]; (2) Plaintiff's state law claims, which are governed by Arizona law (the location of Opus West's headquarters) under Texas's "most significant relationship" test; and (3) Plaintiff's claims under the federal bankruptcy code.

IV. CAUSES OF ACTION

Count One
Piercing the Corporate Veil (Opus Parent, Trusts, Bednarowski, Mark Rauenhorst)

82. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

83. The corporate form should be disregarded against Opus Parent, the Trusts, Bednarowski, and Mark Rauenhorst ("Alter Ego Defendants") because, as set forth in full herein, the facts here show that these defendants ignored the corporate fiction to favor their own personal interests over the interest of Opus West. Moreover, under the multi-factored test for considering whether the corporate veil should be pierced, there is more than sufficient evidence that 1) Alter Ego Defendants undercapitalized Opus West relative to its corporate undertaking; (2) Defendants failed to observe corporate formalities; (3) Opus West was insolvent at the time of numerous of Alter Ego Defendants' self-dealing transactions; (4) Alter Ego Defendants forced Opus West to pay crippling amounts of dividends; (5) Alter Ego Defendants repeatedly siphoned

[8] Plaintiff also alleges that certain defendants conspired or aided and abetted the breaches of fiduciary duty by Defendants Mark Rauenhorst and Keith Bednarowski. While the internal affairs doctrine does not apply to a conspiracy or aiding and abetting claim, *see ASARCO*, 382 B.R. 49,61-62 (S.D. Tex. 2007), the conduct giving rise to the conspiracy and aiding and abetting causes of action occurred primarily in Minnesota, where defendants are located. Thus, under the most significant relationship test, Minnesota law also applies to Plaintiff's conspiracy and aiding and abetting claim.

funds and assets from Opus West; (6) Alter Ego Defendants appointed non-functioning directors and officers to Opus West's board and management team; (7) there is an absence of proper corporate records; (8) Alter Ego Defendants used Opus West as a corporate façade for their individual interests, routinely engaging in unfair transactions that were in violation of the fiduciary duties owed by Bednarowski and Mark Rauenhorst, with assistance by the other defendants; and (9) there would be an element of unjustness or unfairness in allowing Alter Ego Defendants to retain hundreds of millions of dollars in dividends; allowing Alter Ego Defendants to reap a tax benefit of perhaps hundreds of millions of dollars, allowing Alter Ego Defendants to completely ignore the corporate fiction when it suit their personal goals; and leaving creditors with hundreds of millions of dollars unpaid despite such conduct.

84. As damages, Alter Ego Defendants should be held jointly and severally liable for all unpaid claims by creditors of Opus West. The exact amount of such remaining claims is in the process of being determined, but it undoubtedly will be in the hundreds of millions of dollars.

Count Two
Breach of Fiduciary Duty as to Presidents' Deals
Defendants Bednarowski and Mark Rauenhorst

85. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

86. Because Bednarowski and Mark Rauenhorst were board members of Opus West, they were duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich them at the expense of Opus West. They willfully breached their fiduciary duty of loyalty to Opus West by entering into Presidents' deals that were not in the best interest of Opus West, but instead furthered the personal financial interests of Bednarowski and Rauenhorst.

87. As a result of the breaches of fiduciary duty by Bednarowski and Mark Rauenhorst, Opus West suffered millions of dollars of damages, including the loss of profits that it should have been entitled to receive from such sales, and being left with debt for properties it no longer owned (which never would have happened in an arms length transaction). Bednarowski and Mark Rauenhorst therefore are jointly and severally liable for all profits that they and any other participant obtained as a result of any Presidents' club deal that occurred on or after January 25, 2004, as well as any debt from such deals for which Opus West remains liable.

Count Three
Conspiracy and/or Aiding or Abetting Breach of Fiduciary Duty as to Presidents' Deals
Defendants (Trusts, ORE VII, Luz Campa, Adler Management)

88. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

89. Because Bednarowski and Mark Rauenhorst were board members of Opus West, they were duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich them at the expense of Opus West. They willfully breached their fiduciary duty of loyalty to Opus West by entering into Presidents' deals that were not in the best interest of Opus West, but instead furthered the personal financial interests of Bednarowski and Rauenhorst.

90. As a result of the breaches of fiduciary duty by Bednarowski and Mark Rauenhorst, Opus West suffered millions of dollars of damages, including the loss of profits that it should have been entitled to receive from such sales, and being left with debt for properties it no longer owned and (which never would have happened in an arms length transaction). Bednarowski and Mark Rauenhorst therefore are jointly and severally liable for all profits that they and any other participant obtained as a result of any Presidents' club deal that occurred on

or after January 25, 2004, as well as any debt from such deals for which Opus West remains liable.

91. As alleged herein, the Trusts, ORE VII, Luz Campa, and Adler Management knowingly participated and assisted Bednarowski and Mark Rauenhorst in their breaches of fiduciary duty relating to Presidents' deals. As such, the Trusts, ORE VII, Luz Campa and Adler Management are jointly and severally liable for all profits that they and any other participant obtained as a result of any Presidents' club deal that occurred on or after January 25, 2004, as well as for any debt for which Opus West remained responsible for on such deals.

Count Four
Breach of Fiduciary Duty as to Sales to the Opus Funds
(Defendants Bednarowski and Mark Rauenhorst)

92. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

93. Under Minnesota law, "a director's dealings with his corporation and transactions between two corporations having a common director are subject to "rigorous scrutiny," requiring the director to establish the entire fairness of the transaction." *Westgor v. Grimm*, 318 N.W.2d 56, 59 (Minn.1982) (quoting *Pepper v. Litton*, 308 U.S. 295, 306, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939)). Failure to establish such entire fairness constitutes a breach of fiduciary duty. In regard to Opus West's transactions with the Opus funds, Bednarowski and Mark Rauenhorst had an even more significant conflict – through the investments of the Trusts and/or the Trusts' beneficiaries, they stood to gain personally from the sale on favorable terms of Opus West's assets to the Opus funds. Bednarowski and Mark Rauenhorst therefore have the burden of showing the "entire fairness" of every asset purchased by the Opus funds from Opus West on or after January 25, 2004.

94. While it is the burden of Bednarowski and Rauenhorst to establish the entire fairness of these transactions, it is unlikely that they can satisfy that burden as to most or all of the sales to the Opus funds during the relevant time period. The transactions routinely contained terms that Opus West never would have entered into with a true third party, such as the requirement that Opus West retain liability for assets it no longer owned. Further, because of Defendants' conduct in stripping Opus West of necessary cash and working capital, Opus West was forced to sell assets to Defendants simply to continue operating its business. Moreover, no appraisals or independent valuations of the sales were performed.

95. Because Bednarowski and Rauenhorst breached their fiduciary duty of loyalty to Opus West in approving or permitting Opus West's sales to the various Opus investment funds, Opus West suffered damages equal to the consideration it would have received if such sales had been "entirely fair" to Opus West. The profits that the Opus funds made in re-selling the properties also may be disgorged. Bednarowski and Rauenhorst are jointly and severally liable for all damages that Opus West suffered from entering into transactions with the various Opus investment funds (or any other self-dealing transaction between Opus West and one or more of Defendants' affiliates) that were not entirely fair to Opus West.

Count Five
Conspiracy and/or Aiding and Abetting Breach of Fiduciary Duty as to Sales to the Opus Funds (Defendant ORE VII, Trusts)

96. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

97. Under Minnesota law, "a director's dealings with his corporation and transactions between two corporations having a common director are subject to "rigorous scrutiny," requiring the director to establish the entire fairness of the transaction." *Westgor v. Grimm*, 318 N.W.2d

56, 59 (Minn.1982) (quoting *Pepper v. Litton*, 308 U.S. 295, 306, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939)). Failure to establish such entire fairness constitutes a breach of fiduciary duty. In regard to Opus West's transactions with the Opus funds, Bednarowski and Mark Rauenhorst had an even more significant conflict – through the investments of the Trusts and/or the Trusts' beneficiaries, they stood to gain personally from the sale on favorable terms of Opus West's assets to the Opus funds. Bednarowski and Mark Rauenhorst therefore have the burden of showing the "entire fairness" of every asset purchased by the Opus funds from Opus West on or after January 25, 2004.

98. While it is the burden of Bednarowski and Rauenhorst to establish the entire fairness of these transactions, it is unlikely that they can satisfy that burden as to most or all of the sales to the Opus funds during the relevant time period. The transactions routinely contained terms that Opus West never would have entered into with a true third party, such as the requirement that Opus West retain liability for assets it no longer owned. Further, because of Defendants' conduct in stripping Opus West of necessary cash and working capital, Opus West was forced to sell assets to Defendants simply to continue operating its business. Moreover, no appraisals or independent valuations of the sales were performed.

99. Bednarowski and Rauenhorst breached their fiduciary duty of loyalty to Opus West in approving or permitting Opus West's sales to the various Opus investment funds, causing Opus West to suffer damages equal to the consideration it would have received if such sales had been "entirely fair" to Opus West. Defendant ORE VII and the Trusts were well aware that Bednarowski and Rauenhorst were board members of Opus West; that ORE VII was purchasing assets from Opus West on terms that it could not have obtained in an independent, arms' length transaction; that no independent appraisals or valuations were performed in

connection with the deal. The profits that the Opus funds and the Trusts made in re-selling the properties also may be disgorged. As such, ORE VII and the Trusts knowingly participated in the breaches of fiduciary duty by Bednarowski and Rauenhorst, and ORE VII should be held jointly and severally liable for all damages suffered by Opus West for sales on or after January 25, 2004 that were not entirely fair to Opus West.

Count Six
Breach of Fiduciary Duty as to Sales to Opus Corporation
(Defendants Bednarowski and Mark Rauenhorst)

100. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

101. Under Minnesota law, "a director's dealings with his corporation and transactions between two corporations having a common director are subject to "rigorous scrutiny," requiring the director to establish the entire fairness of the transaction." *Westgor v. Grimm*, 318 N.W.2d 56, 59 (Minn.1982) (quoting *Pepper v. Litton*, 308 U.S. 295, 306, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939)). Failure to establish such entire fairness constitutes a breach of fiduciary duty. The properties sold to Opus Parent were hand-picked by Bednarowski, and the sales were done for the purposes of providing a tax benefit to the Trusts. Rauenhorst authorized these sales in executive committee resolutions. Bednarowski and Rauenhorst therefore have the burden of showing that Opus West's sales of assets to Opus Parent were "entirely fair" to Opus West as to every sale on or after January 25, 2004.

102. While it is the burden of Bednarowski and Rauenhorst to establish the entire fairness of these transactions, it is unlikely that they can satisfy that burden as to most or all of the sales to the Opus Parent during the relevant time period. Opus West's transactions with Defendants routinely contained terms that Opus West never would have entered into with a true

third party, such as the requirement that Opus West retain liability for assets it no longer owned. Further, because of Defendants' conduct in stripping Opus West of necessary cash and working capital, Opus West was forced to sell assets to Defendants simply to continue operating its business. Moreover, no appraisals or independent valuations of the sales were performed. The fact that the sales were motivated by tax issues for the Trusts also raises questions about whether there was any effort to ensure that the sales were fair to Opus West.

103. Because Bednarowski and Rauenhorst breached their fiduciary duty of loyalty to Opus West in approving or permitting Opus West's sales to Opus Parent, Opus West suffered damages equal to the consideration it would have received if such sales had been "entirely fair" to Opus West. The profits that the Opus Parent made in re-selling the properties also may be disgorged. Bednarowski and Rauenhorst are jointly and severally liable for all damages that Opus West suffered from entering into transactions with Opus Corporation that were not entirely fair to Opus West.

Count Seven
Conspiracy and/or Aiding and Abetting Breach of Fiduciary Duty as to Sales to Opus Corporation(Trusts, Opus Parent)

104. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

105. Under Minnesota law, "a director's dealings with his corporation and transactions between two corporations having a common director are subject to "rigorous scrutiny," requiring the director to establish the entire fairness of the transaction." *Westgor v. Grimm*, 318 N.W.2d 56, 59 (Minn.1982) (quoting *Pepper v. Litton*, 308 U.S. 295, 306, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939)). Failure to establish such entire fairness constitutes a breach of fiduciary duty. The properties sold to Opus Parent were hand-picked by Bednarowski, and the sales were done for

the purposes of providing a tax benefit to the Trusts. Rauenhorst authorized these sales in executive committee resolutions. Bednarowski and Rauenhorst therefore have the burden of showing that Opus West's sales of assets to Opus Parent were "entirely fair" to Opus West as to every sale on or after January 25, 2004.

106. While it is the burden of Bednarowski and Rauenhorst to establish the entire fairness of these transactions, it is unlikely that they can satisfy that burden as to most or all of the sales to the Opus Parent during the relevant time period. Opus West's transactions with Defendants routinely contained terms that Opus West never would have entered into with a true third party, such as the requirement that Opus West retain liability for assets it no longer owned. Further, because of Defendants' conduct in stripping Opus West of necessary cash and working capital, Opus West was forced to sell assets to Defendants simply to continue operating its business. Moreover, no appraisals or independent valuations of the sales were performed. The fact that the sales were motivated by tax issues for the Trusts also raises questions about whether there was any effort to ensure that the sales were fair to Opus West.

107. Because Bednarowski and Rauenhorst breached their fiduciary duty of loyalty to Opus West in approving or permitting Opus West's sales to Opus Parent, Opus West suffered damages equal to the consideration it would have received if such sales had been "entirely fair" to Opus West. The profits that Opus Parent made in re-selling the properties also may be disgorged. The transactions with Opus Corporation were done at the request of the Trusts, who desired to obtain tax benefits by having some capital gains accrue at the Opus Corporation level. Because the Trusts assisted and aided Bednarowski and Rauenhorst in their breaches of fiduciary duty in connection with sales to Opus Corporation, the Trusts and Opus Parent are jointly and

severally liable for all damages that Opus West suffered from entering into transactions with Opus Corporation that were not entirely fair to Opus West.

Count Eight
Breach of Fiduciary Duty as to Sale to Chino Hills
(Defendants Bednarowski and Mark Rauenhorst)

108. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

109. Under Minnesota law, "a director's dealings with his corporation and transactions between two corporations having a common director are subject to "rigorous scrutiny," requiring the director to establish the entire fairness of the transaction." *Westgor v. Grimm*, 318 N.W.2d 56, 59 (Minn.1982) (quoting *Pepper v. Litton*, 308 U.S. 295, 306, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939)). Failure to establish such entire fairness constitutes a breach of fiduciary duty. In regard to Opus West's sale of Chino Hills to an affiliate of Opus Parent, Bednarowski and Mark Rauenhorst had an even more significant conflict – the transaction occurred at a time when both Opus West and Opus Corporation were having significant financial problems, and Bednarowski and Mark Rauenhorst had a personal interest in the Trusts that motivated them to (1) realize capital losses at the Opus West level so that the Trust could offset past tax payments and obtain a rebate; and (2) keep liabilities a step removed from the Trusts. Bednarowski and Mark Rauenhorst therefore have the burden of showing the "entire fairness" of Opus West's sale of Chino Hills to an affiliate of Opus Parent.

110. While it is the burden of Bednarowski and Rauenhorst to establish the entire fairness of the Chino transaction, they cannot meet this burden. Opus West agreed to the sale only because it was desperate for any money due to Defendants' excessive distribution policy. The initial sales terms strongly favored Opus Parent, forcing Opus West to remain on the hook

for the debt and to accept an unsecured note from Opus Parent. Bednarowski and Rauenhorst also breached their duty of loyalty to Opus West by not disclosing the material financial struggles of Opus Parent, which meant, among other things, that Opus Parent had to draw down on its line of credit to pay the small down payment.

111. The unilateral decision to cancel the transaction was even more egregious than the initial deal terms. In substance, Bednarowski and Mark Rauenhorst ignored the separate legal existence of Opus West in this transaction, which had to have been motivated by the Trusts' desire to protect themselves from liability at the Opus Parent level, and, more importantly, their desire to realize losses for substantial tax benefits. Also, the decision plainly was not in the best interests of Opus West.

112. As a result of the breaches of fiduciary duty by Bednarowski and Rauenhorst, Opus West suffered damages of approximately $150 million, with the exact amount to be determined at trial.

Count Nine
Conspiracy and/or Aiding and Abetting Breach of Fiduciary Duty as to Sale to Chino Hills
(Trusts and Opus Parent)

113. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

114. Under Minnesota law, "a director's dealings with his corporation and transactions between two corporations having a common director are subject to "rigorous scrutiny," requiring the director to establish the entire fairness of the transaction." *Westgor v. Grimm*, 318 N.W.2d 56, 59 (Minn.1982) (quoting *Pepper v. Litton*, 308 U.S. 295, 306, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939)). Failure to establish such entire fairness constitutes a breach of fiduciary duty. In regard to Opus West's sale of Chino Hills to an affiliate of Opus Parent, Bednarowski and Mark

Rauenhorst had an even more significant conflict – the transaction occurred at a time when both Opus West and Opus Corporation were having significant financial problems, and Bednarowski and Mark Rauenhorst had a personal interest in the Trusts that motivated them to (1) realize capital losses at the Opus West level so that the Trust could offset past tax payments and obtain a rebate; and (2) keep liabilities a step removed from the Trusts. Bednarowski and Mark Rauenhorst therefore have the burden of showing the "entire fairness" of Opus West's sale of Chino Hills to an affiliate of Opus Parent.

115. While it is the burden of Bednarowski and Rauenhorst to establish the entire fairness of the Chino transaction, they cannot meet this burden. Opus West agreed to the sale only because it was desperate for any money due to Defendants' excessive distribution policies. The initial sales terms strongly favored Opus Parent, forcing Opus West to remain on the hook for the debt and to accept an unsecured note from Opus Parent. Bednarowski and Rauenhorst also breached their duty of loyalty to Opus West by not disclosing the material financial struggles of Opus Parent, which meant, among other things, that Opus Parent had to draw down on its line of credit to pay the small down payment.

116. The unilateral decision to cancel the transaction was even more egregious than the initial deal terms. In substance, Bednarowski and Mark Rauenhorst ignored the separate legal existence of Opus West in this transaction, which had to have been motivated by the Trusts' desire to protect themselves from liability at the Opus Parent level, and, more importantly, their desire to realize losses for substantial tax benefits. Also, the decision plainly was not in the best interests of Opus West.

117. As a result of the breaches of fiduciary duty by Bednarowski and Rauenhorst, Opus West suffered damages of approximately $150 million, with the exact amount to be

determined at trial. As alleged herein, the Trusts and Opus Parent assisted Bednarowski and Rauenhorst in breaching their fiduciary duties to Opus West in connection with the Chino Hills sale. The Trusts and Opus Parent therefore are jointly and severally liable for all damages suffered by Opus West in connection with the Chino Hills sale.

Count Ten
Breach of Fiduciary Duty as to Transfer of Management Company
(Mark Rauenhorst)

118. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

119. Because Mark Rauenhorst was a board member of Opus West at the relevant time, he was duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich himself at the expense of Opus West. In the Spring of 2009, when Opus West plainly was insolvent and soon would file for bankruptcy, Defendant Mark Rauenhorst advised Opus West of the unilateral decision to seize Opus West's property management business. Opus West received no compensation for the business, and only nominal compensation for certain real assets. Soon after the management business was seized, Defendants sold the business to Northmarq for an undisclosed profit. Upon information and belief, the proceeds of the Northmarq sale were transferred to the Trusts, thus providing a financial benefit to Rauenhorst.

120. Under Minnesota law, "a director's dealings with his corporation and transactions between two corporations having a common director are subject to "rigorous scrutiny," requiring the director to establish the entire fairness of the transaction." *Westgor v. Grimm*, 318 N.W.2d 56, 59 (Minn.1982) (quoting *Pepper v. Litton*, 308 U.S. 295, 306, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939)). Failure to establish such entire fairness constitutes a breach of fiduciary duty. While it is the burden of Rauenhorst to establish the entire fairness of the transfer of the

management company, he plainly cannot do so. Rauenhorst allowed the management company effectively to be stolen, without any meaningful compensation. The Trusts then realized a profit on the sale of the management company to Northmarq.

121. As a result of the breaches of fiduciary duty by Rauenhorst, Opus West suffered damages due to the loss of a valuable component of its business. As damages, Opus West is entitled to disgorge its proportional share of the proceeds that were generated from the Northmarq sale.

Count Eleven
Conspiracy and/or Aiding Breach of Fiduciary Duty
as to Transfer of Management Company(Trusts)

122. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

123. Because Mark Rauenhorst was a board member of Opus West at the relevant time, he was duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich himself at the expense of Opus West. In the Spring of 2009, when Opus West plainly was insolvent and soon would file for bankruptcy, Defendant Mark Rauenhorst advised Opus West of the unilateral decision to seize Opus West's property management business. Opus West received no compensation for the business, and only nominal compensation for certain real assets. Soon after the management business was seized, Defendants sold the business to Northmarq for an undisclosed profit. Upon information and belief, the proceeds of the Northmarq sale were transferred to the Trusts, thus providing a financial benefit to Rauenhorst.

124. Under Minnesota law, "a director's dealings with his corporation and transactions between two corporations having a common director are subject to "rigorous scrutiny," requiring the director to establish the entire fairness of the transaction." *Westgor v. Grimm*, 318 N.W.2d

56, 59 (Minn.1982) (quoting *Pepper v. Litton*, 308 U.S. 295, 306, 60 S.Ct. 238, 245, 84 L.Ed. 281 (1939)). Failure to establish such entire fairness constitutes a breach of fiduciary duty. While it is the burden of Rauenhorst to establish the entire fairness of the transfer of the management company, he plainly cannot do so. Rauenhorst allowed the management company effectively to be stolen, without any meaningful compensation. The Trusts then realized a profit on the sale of the management company to Northmarq.

125. As a result of the breaches of fiduciary duty by Rauenhorst, Opus West suffered damages due to the loss of a valuable component of its business. As damages, Opus West is entitled to disgorge its proportional share of the proceeds that were generated from the Northmarq sale.

126. Opus Parent was in the process of contemplating bankruptcy and/or proceeding with a liquidation outside of bankruptcy, leaving the Trusts as the only entities with the incentive to form of Opus Property Services, L.L.C. ("OPS") for the sole purpose of usurping the management business of Opus West and the other regional subsidiaries. Pursuant to a Memorandum dated April 13, 2009, Mark Rauenhorst directed that on April 30, 2009, OPS would acquire each of the remaining Subsidiary Management Companies, including Opus West Management Corp. The Trusts therefore conspired and/or aided and abetted Mark Rauenhorst in his breaches of fiduciary duty, rendering the Trusts jointly and severally liable for all damages suffered by Opus West.

Count Twelve
Breach of Fiduciary Duty: Scheme to Breach Fiduciary Duties that Would Destroy Opus West and Permit Trusts to Realize Substantial Tax Benefits
(Defendants Bednarowski and Mark Rauenhorst)

127. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

128. Because Bednarowski and Mark Rauenhorst were board members of Opus West, they were duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich them at the expense of Opus West. Instead, sometime during 2008, Bednarowski and Mark Rauenhorst, in conjunction with the Trusts and Luz Campa, realized that Opus West would be far more valuable to the Trusts dead than it would be alive, due to the ability to realize substantial capital losses that could be used to offset past gains that the Trusts paid taxes on. Bednarowski and Mark Rauenhorst then embarked on a plan to breach their duty of loyalty to Opus West and deprive of it of cash that might have enabled it to attempt to reorganize (which would have postponed the realization of tax losses).

129. Specifically, Bednarowski and Rauenhorst breached their duty of loyalty to Opus West by approving the Chino Hills transaction on terms unfair to Opus West; by purportedly reversing the transaction and depriving Opus West of payment on the note; by supporting Opus Parent in its refusal to reimburse Opus West for the Excess Dividends identified in the audit; and by transferring the management company to another entity without any meaningful compensation to Opus West. The malicious intent of Bednarowski and Rauenhorst is confirmed by other actions alleged herein, such as the board resolution granting Opus Parent the authority to negotiate with lenders on behalf of Opus West, when in fact Rauenhorst then proceeded to negotiate in a manner that was intended to pay down Opus Parent's line of credit and thus benefit the Trusts.

130. As a result of the breaches of fiduciary duty by Bednarowski and Rauenhorst, Opus West ran out of cash, filed for bankruptcy, and conducted an auction in which all of its assets were sold. This ensured that the Trusts would have hundreds in millions in capital losses to offset the record profits that the Trusts earned before the financial crash. Opus West is

entitled to disgorge all profits that are received as result of the actions of Bednarowski and Rauenhorst; namely, the large tax refund that the Trusts will receive as a result of the capital losses that they forced Opus West to realize. Bednarowski and Mark Rauenhorst are jointly and severally liable to Opus West for all such tax rebates that will be received by the Trusts.

Count Thirteen
Breach of Fiduciary Duty: Scheme to Breach Fiduciary Duties that Would Destroy Opus West and Permit Trusts to Realize Substantial Tax Benefits
(Trusts, Luz Campa, Adler Management)

131. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

132. Because Bednarowski and Mark Rauenhorst were board members of Opus West, they were duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich them at the expense of Opus West. Instead, sometime during 2008, Bednarowski and Mark Rauenhorst, in conjunction with the Trusts and Luz Campa, realized that Opus West would be far more valuable to the Trusts dead than it would alive, due to the ability to realize substantial capital losses that could be used to offset past gains that the Trusts paid taxes on. Bednarowski and Mark Rauenhorst then embarked on a plan to breach their duty of loyalty to Opus West and deprive of it of cash that might have enabled it to attempt to reorganize (which would have postponed the realization of tax losses).

133. Specifically, Bednarowski and Rauenhorst breached their duty of loyalty to Opus West by approving the Chino Hills transaction on terms unfair to Opus West; by purportedly reversing the transaction and depriving Opus West of payment on the note; by supporting Opus Parent in its refusal to reimburse Opus West for the Excess Dividends identified in the audit; and by transferring the management company to another entity without any meaningful compensation to Opus West. The malicious intent of Bednarowski and Rauenhorst is confirmed

by other actions alleged herein, such as the board resolution granting Opus Parent the authority to negotiate with lenders on behalf of Opus West, when in fact Rauenhorst then proceeded to negotiate in a manner that was intended to pay down Opus Parent's line of credit and thus benefit the Trusts.

134. As a result of the breaches of fiduciary duty by Bednarowski and Rauenhorst, Opus West ran out of cash, filed for bankruptcy, and conducted an auction in which all of its assets were sold. This ensured that the Trusts would have hundreds in millions in capital losses to offset the record profits that the Trusts earned before the financial crash. The Trusts, Luz Campa, and Adler Management actively assisted and encouraged Bednarowski and Rauenhorst to breach their fiduciary duties for the benefit of the Trusts. Opus West is entitled to disgorge all profits that are received as result of the actions of Bednarowski and Rauenhorst and the assistance and encouragement of the Trusts, Luz Campa, and Adler Management; namely, the large tax refund that the Trusts will receive as a result of the capital losses that they forced Opus West to realize. The Trusts, Luz Campa, and Adler Management are therefore liable to Opus West for the full amount of the future tax rebate that the Trusts will receive that is attributable to losses realized by Opus West in connection with property sales in 2009.

Count Fourteen
Breach of Fiduciary Duty, Refusal to Comply with Audit
(Defendants Bednarowski and Mark Rauenhorst)

135. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

136. Because Bednarowski and Mark Rauenhorst were board members of Opus West, they were duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich them at the expense of Opus West. They willfully breached their fiduciary duty of

loyalty to Opus West by encouraging Opus Parent not to return the Excess Dividends to Opus West for the following improper reasons: (1) so that Opus West would be forced to liquidate, thus selling all its assets and realizing hundreds of millions in capital losses that the Trusts could use to offset past gains and to obtain a massive tax refund; and (2) to enable Opus Parent to have enough money to avoid bankruptcy and thus provide additional protection from liability for the Trusts. These actions were intended to benefit Mark Rauenhorst personally as a beneficiary of the Trusts, and to further Bednarowski's competing duty as trustee to maximize the assets of the Trusts.

137. As a result of the breaches of fiduciary duty by Bednarowski and Rauenhorst, Opus West was harmed because it did not receive reimbursement for the approximately $18.4 million of Excess Dividends it paid. Bednarowski and Rauenhorst are jointly and severally liable for these damages.

Count Fifteen
Conspiracy and/or Aiding and Abetting Breach of Fiduciary Duty,
Refusal to Comply with Audit
(Trusts and Opus Parent)

138. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

139. Because Bednarowski and Mark Rauenhorst were board members of Opus West, they were duty bound to act only in the best interests of Opus West, and not to act in a way that would enrich them at the expense of Opus West. They willfully breached their fiduciary duty of loyalty to Opus West by encouraging Opus Parent not to return the Excess Dividends to Opus West for the following improper reasons: (1) so that Opus West would be forced to liquidate, thus selling all its assets and realizing hundreds of millions in capital losses that the Trusts could use to offset past gains and to obtain a massive tax refund; and (2) to enable Opus Parent to have

enough money to avoid bankruptcy and thus provide additional protection from liability for the Trusts. These actions were intended to benefit Mark Rauenhorst personally as a beneficiary of the Trusts, and to further Bednarowski's competing duty as trustee to maximize the assets of the Trusts.

140. As a result of the breaches of fiduciary duty by Bednarowski and Rauenhorst, Opus West was harmed because it did not receive reimbursement for the approximately $18.4 million of Excess Dividends it paid. The Trusts and Opus Parent knowingly assisted and encouraged Bednarowski and Rauenhorst to breach their fiduciary duties. The Trusts and Opus Parent therefore are jointly and severally liable for these damages.

Count Fifteen
(Constructive Fraudulent Transfer as to Present and Future Creditors)
(Arizona Law)

141. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

142. Opus West made each of the Distributions to Opus Parent without receiving reasonably equivalent value in exchange for the Distributions. In fact, Opus West never received any value in exchange for any of the Distributions.

143. Each of the Distributions occurred while Opus West was engaged in a business or a transaction for which its remaining assets were unreasonably small in relation to the business or a transaction to be conducted. Specifically, the Distributions left Opus West unable to meet the debt-to-equity covenants in its loans with its lenders. Further, the Distributions left Opus West with only approximately 22.5% of its pre-tax net income to purchase, develop, operate, market, and sell commercial real estate in a collapsing market.

144. Through implementation of the ERP Software, as well as the submission of all

financial reporting described herein, Opus Parent had actual knowledge that each of the Distributions left Opus West with an insufficient amount of capital to operate its business. Specifically, the ERP Software showed that after each of the Distributions the sum of Opus West's debts were greater than all of the Debtor's assets. Additionally, Opus Parent knew or reasonably should have known that the Distributions would cause Opus West to be unable to pay its debts as they became due. Thus, Opus West knew at the time the Distributions were made that Opus West was insolvent.

145. Thus, Opus West seeks avoidance of the Distributions pursuant to Arizona law, as incorporated through section 544(b) of the Bankruptcy Code.

Count Sixteen
Constructive Fraudulent Transfer as to Present Creditors
(Arizona Law)

146. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

147. Opus West made each of the Distributions to Opus Parent without receiving reasonably equivalent value in exchange for the Distributions. In fact, Opus West never received any value in exchange for any of the Distributions.

148. Upon implementation of the ERP Software Opus Parent had actual knowledge that each of the Distributions left Opus West severely undercapitalized.

149. Specifically, the ERP Software showed that after each of the Distributions the sum of Opus West's debts were greater than all of its assets. Accordingly, Opus West knew at the time the Distributions were made that Opus West was insolvent.

150. Thus, Opus West seeks avoidance of the Distributions pursuant to Arizona law, as incorporated through section 544(b) of the Bankruptcy Code.

Count Seventeen
Constructive Fraudulent Transfer
11 U.S.C. § 548(a)(1)(B)

151. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

152. Within two years of the Petition Date, Opus West made each of the Distributions to Opus Parent without receiving reasonably equivalent value in exchange for the Distributions. In fact, Opus West never received any value in exchange for any of the Distributions.

153. The Distributions occurred while Opus West was engaged in a business or a transaction for which its remaining assets were unreasonably small in relation to the business or a transaction to be conducted. For example, the Distributions left Opus West unable to meet the debt-to-equity covenants as set forth in its loans. Further, the Distribution left Opus West with only approximately 22.5% of its pre-tax net income to purchase, develop, operate, market, and sell commercial real estate in a collapsing market.

154. Because of the ERP Software and the historical and projected financial reporting, Opus Parent had actual knowledge that each of the Distributions left Opus West severely undercapitalized. Specifically, the ERP Software and financials showed that, after each of the Distributions, the sum of Opus West's debts exceeded all of the Debtor's assets. Accordingly, Opus West knew at the time the Distributions were made that Opus West was insolvent.

155. Opus Parent knew or reasonably should have known at the time it received each of the Distributions that such Distributions would make Opus West generally unable to pay its debts as they came due.

156. Thus, Opus West, as a debtor-in-possession, seeks avoidance of Opus Distributions pursuant to section 548(a)(1)(B) of the Bankruptcy Code.

Count Eighteen
Turnover of Property
11 U.S.C § 550(a)

157. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

158. Upon information and belief that after receiving each of the Distributions, Opus Parent transferred them to the Trust Parties and the Opus Foundation, the Trust Parties and the Opus Foundation are the initial transferees of the Distributions from Opus Parent.

159. As outlined above, the Distributions are avoidable pursuant to section 548 of the Bankruptcy Code.

160. Thus, Opus West, as a debtor-in-possession, seeks recovery of the Distributions or the value of the Distributions from Opus Parent, the Opus Foundation, the Trust Parties, or any other entity not named that may be an immediate or subsequent transferee of the Trust Parties, for the benefit of the estate.

Count Nineteen
Conversion

161. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

162. Opus West has the right to a refund of $18.4 million in Excess Dividends the 2008 Audit shows as overpaid to Opus Parent from 2005-2008. Upon information and belief, Opus Parent reviewed the 2008 Audit and knew that it had received the Excess Dividends. Upon such knowledge, Opus Parent recklessly and wantonly refused to return the Excess Dividends.

163. The Excess Dividends are personal property of Opus West that it is rightfully entitled to.

164. Upon information and belief, Opus Parent, or the Trust Parties, continued to wrongfully exercise control over the Excess Dividends by refusing to refund to Opus West the Excess Dividends.

165. As a result of Opus Parent's theft of the Excess Dividends, Opus West was deprived of the use of those funds which ultimately contributed to Opus West's bankruptcy filing. Further, Opus West was deprived of the value of those funds, which caused Opus West to default on the debt-to-equity covenants as set forth in its loans.

166. Thus, Opus West seeks actual damages in the amount of $18.4 million dollars, the amount of the Excess Dividends, exemplary damages, interests, costs and fees, including attorney's fees.

167. Additionally, Opus West seeks a constructive trust be imposed on the $18.4 million of Excess Dividends that Opus West over-contributed to Opus Parent because it is identifiable, Opus Parent's representations constituted actual fraud, and Opus Parent was unjustly enriched in the amount of $18.4 million.

Count Twenty
Conspiracy to Commit Conversion
(Mark Rauenhorst, Bednarowski, Trusts)

168. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

169. Opus West has the right to a refund of $18.4 million in Excess Dividends the 2008 Audit shows as overpaid to Opus Parent from 2005-2008. Upon information and belief, Opus Parent reviewed the 2008 Audit and knew that it had received the Excess Dividends. Upon such knowledge, Opus Parent recklessly and wantonly refused to return the Excess Dividends.

170. The Excess Dividends are personal property of Opus West that it is rightfully entitled to.

171. As directors of Opus West, Mark Rauenhorst and Bednarowski were aware of the Excess Actions, and their knowledge also must be imputed to the Trusts. They encouraged Opus Parent to keep the Excess Dividends, and refused to permit Opus West to exercise its right to recover the Excess Dividends.

172. As a result of Opus Parent's theft of the Excess Dividends – assisted by Mark Rauenhorst, Bednarowski, and Trusts -- Opus West was deprived of the use of those funds which ultimately contributed to Opus West's bankruptcy filing. Further, Opus West was deprived of the value of those funds, which caused Opus West to default on the debt-to-equity covenants as set forth in its loans.

173. Thus, Opus West seeks actual damages from Mark Rauenhorst, Bednarowski, and the Trusts in the amount of $18.4 million dollars, the amount of the Excess Dividends, exemplary damages, interests, costs and fees, including attorney's fees.

Count Twenty-One
Constructive Fraudulent Transfer as to Present and Future Creditors
(Arizona Law)

174. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

175. Opus West transferred the stock in connection with the Chino Hills Development to Opus Sales Corporation without receiving reasonably equivalent value in exchange. Specifically, Opus Parent encouraged Opus West to accept the Additional Note as partial payment for the Chino Hills Sale. However, at the time of the Chino Hills Sale, upon

information and belief, Opus Parent did not intend to allow its holding company to pay the Additional Note.

176. The Chino Hills Buy-back occurred while Opus West was engaged in a business or a transaction for which its remaining assets were unreasonably small in relation to the business or a transaction to be conducted. Specifically, the Chino Hills Buy-back caused Opus West to default on its loans with its lenders by breaching the debt-to-equity covenants. Additionally, because of the Distributions, Opus West was already left with only approximately 22.5% of its pre-tax net income to develop, market, and operate a real estate construction and development company in a collapsing real estate market.

177. Because of the ERP Software and the periodic financial reporting provided by Opus West, Opus Parent had actual knowledge that the Chino Hills Buy-back left Opus West severely undercapitalized.

178. Moreover, the ERP Software and the financials showed that after the Chino Hills Buy-back, the sum of Opus West's debts was greater than all of its assets.

179. Opus Parent knew or reasonably should have known that at the time of the Chino Hills Buy-back, Opus West would be generally unable to pay its debts as they came due.

180. Thus, Opus West seeks avoidance of the Chino Hills Buy-back pursuant to Arizona law, as incorporated by section 544(b) of the Bankruptcy Code.

Count Twenty-Two
Constructive Fraudulent Transfer as to Present Creditors
(Arizona Law)

181. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

182. Opus West sold the Chino Hills Development to Opus Sales Corporation without receiving reasonably equivalent value in exchange. Specifically, Opus Parent encouraged Opus West to accept the Additional Note as partial payment for the Chino Hills Sale. However, at the time of the Chino Hills Sale, upon information and belief, Opus Parent did not intend to allow its holding company to pay the Additional Note.

183. Because of the ERP Software and the periodic financial reporting provided by Opus West, Opus Parent had actual knowledge that the Chino Hills Buy-back left Opus West severely undercapitalized.

184. The ERP Software and the financials showed that after the Chino Hills Buy-back the sum of Opus West's debts was greater than all of its assets.

185. Further, Opus Parent knew or reasonably should have known at the time of the Chino Hills Buy-back, that Opus West would be generally unable to pay its debts as they came due.

186. Thus, Opus West seeks avoidance of the Chino Hills Buy-back pursuant to Arizona law, as incorporated by section 544(b) of the Bankruptcy Code.

Count Twenty-Three
Constructive Fraudulent Transfer
11 U.S.C. § 548(a)(1)(B)

187. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

188. Within two years of the Petition Date, Opus West transferred to Opus Sales Corporation stock in connection with the Chino Hills Development without receiving reasonably equivalent value in exchange. Specifically, Opus Parent encouraged Opus West to accept the Additional Note as partial payment for the Chino Hills Sale. However, at the time of the Chino

Hills Sale, upon information and belief, Opus Parent did not intend to allow its holding company to pay the Additional Note.

189. The Chino Hills Buy-back occurred while Opus West was engaged in a business or a transaction for which its remaining assets were unreasonably small in relation to the business or a transaction to be conducted. The Chino Hills Buy-back caused Opus West to default on its loans with its lenders because it caused them to breach their debt-to-equity covenants in its loans. Additionally, because of the Distributions, Opus West was already left with only 22.5% of its pre-tax net income to develop, market, and operate a real estate construction and development company in a collapsing real estate market.

190. Opus Parent's access to Opus West's financial data via the ERP Software is further evidence that Opus Parent had actual knowledge that the Chino Hills Buy-back left Opus West severely undercapitalized.

191. Specifically, the ERP Software and periodic financials provided by Opus West to Opus Parent showed that after the Chino Hills Buy-back the sum of Opus West's debts was greater than its assets.

192. Upon information and belief, Opus Parent knew or reasonably should have known at the time of the Chino Hills Buy-back that Opus West would be generally unable to pay its debts as they came due.

193. Thus, Opus West, as a debtor-in-possession, seeks avoidance of the Chino Hills Buy-back pursuant to section 548(a)(1)(B) of the Bankruptcy Code.

Count Twenty-Four
Turnover
11 U.S.C. § 550(a)

194. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

195. On or about June 26, 2008, Opus Parent's wholly owned holding company, Opus Sales Corporation, executed the Additional Note as part of the Chino Hills Sale. However, after the values of commercial property dropped in 2008, Opus Parent required Opus West to accept practically worthless stock in exchange for cancellation of the Additional Note, depriving Opus West of its right to payment of $43,065,700.00 under the Additional Note. Thus, Opus West was fraudulently deprived of $43,065,700.00.

196. As outlined above, the Chino Hills Buy-back is avoidable pursuant to section 548 of the Bankruptcy Code.

197. Thus, Opus West, as a debtor-in-possession, seeks recovery, for the benefit of the estate, of $43,065,700.00, the difference in value that it was deprived of, from Opus Parent, the Trust Parties, or any other entity not named that may be an immediate or subsequent transferee of the Trust Parties.

Count Twenty-Five
Tortious Interference with Contract

198. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

199. In 2008, Opus West Management Corp., a wholly-owned subsidiary of Opus West, was a party to numerous Management Contracts for properties Opus West developed as well as third party properties.

200. In April 30, 2009, Opus Parent intentionally interfered in those Management Contracts by forcing Opus West Management Corp. to transfer all of its management contracts to OPS.

201. Opus Parent's directives and intermeddling were the direct and proximate cause of Opus West's actual damages.

202. Opus West suffered actual damages because it was deprived of the value of the Management Contracts.

203. Thus, Opus West seeks actual damages in the amount of the Management Contracts, exemplary damages, plus interest, costs and fees, including attorney's fees.

204. Additionally, Opus West seeks a constructive trust be imposed on the value of the Management Contracts because the amount is traceable, and Opus Parent was unjustly enriched.

Count Twenty-Six
Constructive Fraudulent Transfer as to Present and Future Creditors
(Arizona Law)

205. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

206. Opus Parent directed Opus West and Opus West Management Corp. to transfer the Management Contracts to OPS without receiving reasonably equivalent value, in exchange.

207. The transfer of the Management Contracts occurred while Opus West was engaged in a business or a transaction for which its remaining assets were unreasonably small in relation to the business or a transaction to be conducted. Specifically, the transfer of the Management Contracts constituted a transfer of one of Opus West's only income-producing assets. Additionally, because of the Distributions, Opus West was already left with only approximately 22.5% of its pre-tax net income to develop, market, and operate a real estate construction and development company in a collapsing real estate market.

208. Due to Opus Parent's access to Opus West's financial data via the ERP Software, and through the provision of periodic financial reporting, Opus Corp had actual knowledge that

the transfer of the Management Contracts stripped Opus West of a much needed income producing asset without which Opus West was left severely undercapitalized.

209. The ERP Software and the financials showed that at the time the Management Contracts were transferred to OPS, the sum of Opus West's debts was greater than all of its assets.

210. Opus Parent knew or reasonably should have known that at the time of transfer of the Management Contracts Opus West would be generally unable to pay its debts as they came due.

211. Thus, Opus West seeks avoidance of the transfer of Management Contracts pursuant to Arizona law, as incorporated by section 544(b) of the Bankruptcy Code.

Count Twenty-Seven
Constructive Fraudulent Transfer as to Present Creditors
(Arizona Law)

212. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

213. Opus Parent directed the transfer of the Management Contracts to OPS without Opus West receiving reasonably equivalent value in exchange.

214. Due to Opus Parent's access to Opus West's financial data via the ERP Software and the financial reporting, Opus Parent had actual knowledge that at the time of the transfer of the Management Contracts that Opus West was severely undercapitalized.

215. Specifically, the ERP Software and the financials showed that, at the time of the transfer of the Management Contracts, the sum of Opus West's debts was greater than all of its assets.

216. Further, Opus Parent knew or reasonably should have known at the time of the transfer of the Management Contracts that Opus West would be generally unable to pay its debts as they came due.

217. Thus, Opus West seeks avoidance of the transfer of the Management Contracts pursuant to Article 24.001 *et seq.* of the Texas Business and Commerce Code, as incorporated through section 544(b) of the Bankruptcy Code.

Count Twenty-Eight
Constructive Fraudulent Transfer
11 U.S.C. § 548(a)(1)(B)

218. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

219. Within two years of the Petition Date, Opus Parent directed that Opus West Management Corp. transfer the Management Contracts to OPS without receiving reasonably equivalent value in exchange.

220. The transfer of the Management Contracts occurred while Opus West was engaged in a business or a transaction for which its remaining assets were unreasonably small in relation to the business or a transaction to be conducted. Specifically, the transfer of the Management Contracts stripped Opus West of one of its only income-producing assets. Further, because of the Distributions Opus West was already left with only approximately 22.5% of its pre-tax net income to develop, market, and operate a real estate construction and development company in a collapsing real estate market.

221. Opus Parent had actual knowledge that the transfer of the Management Contracts stripped Opus West of a much needed income-producing asset, without which it was left severely undercapitalized.

222. Specifically, the ERP Software and the financials showed that at the time of the transfer of the Management Contracts the sum of Opus West's debts was greater than its assets.

223. Opus Parent knew or reasonably should have known at the time of the transfer of the Management Contracts that Opus West would be generally unable to pay its debts as they came due.

224. Thus, Opus West, as a debtor-in-possession, seeks avoidance of the transfer of the Management Contracts pursuant to section 548(a)(1)(B) of the Bankruptcy Code.

Count Twenty-Nine
Turnover
11 U.S.C. § 550(a)

225. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

226. At the time of the transfer of the Management Contracts, the Management Contracts had a substantial value. Thus, Opus West was fraudulently deprived of such value.

227. As outlined above, the transfer of the Management Contracts to OPS is avoidable pursuant to section 548 of the Bankruptcy Code.

228. Thus, Opus West, as a debtor-in-possession, seeks recovery, for the benefit of the estate, the value of the Management Contracts when they were transferred to OPS, from OPS, Opus Parent, the Trust Parties, or any other entity not named that may be an immediate or mediate transferee of the Trust Parties. Between July 5, 2008 and July 6, 2009, Opus West paid a total of $4,390,005.41 to Opus Parent (the "Transfers"). These Transfers were allegedly for Opus West's share of insurance, shared services, business and franchise taxes, professional services. Each of these payments were made to Opus Parent as a creditor of Opus West for or on account of debts incurred prior to the receipt of each of the Transfers. On the date of each

payment, Opus West was insolvent either by not being able to generally pay its debts as they came due, or being severely undercapitalized such that each of the payments left Opus West with insufficient capital to conduct the business it was expected to, and was engaged in, conducting. Also at the time of each of the Transfers, Opus Parent was in control of Opus West such as to be an "insider" of Opus West as such term is defined in 11 U.S.C. §101(31)(B).

Count Thirty
(Avoidance of Preferential Transfers)
11 U.S.C. § 547

229. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

230. Opus West made each of the Preferential Payments to Opus Parent on account of debts owed by Opus West and incurred prior to Opus West making each of the Preferential Payments.

231. At the time of each of the Preferential Payments, Opus Parent was a creditor of Opus West within the meaning of 11 U.S.C. §101(10(A).

232. At the time of each of the Preferential Payments, Opus West was insolvent.

233. Each of the Preferential Payments was made within one year of the Petition Date, and at the time of each of the Preferential Payments, Opus Parent was in insider of Opus West as a person in control of Opus West.

234. The receipt of the Preferential Payments enabled Opus Parent to obtain more than if Opus West's bankruptcy case had been filed under Chapter 7 of the Bankruptcy Code, if the Preferential Payments had not been made, and Opus Parent had received payment on such debts for which the Preferential Payments were made under the Bankruptcy Code.

235. It is the intention of this Count to avoid and recover all transfers made to Opus

Parent by or on account of Opus West during the one year previous to the Petition Date. Opus West may learn of additional transfers during the course of litigation, and as such, Opus West reserves the right to amend this Complaint to include (a) further information regarding the Preferential Payments and/or (b) additional preferential payments that may become known to Opus West during this course of this proceeding, whether through formal discovery or otherwise.

236. As such, the Preferential Payments are avoidable pursuant to 11 U.S.C. §547(b).

Count Thirty-One
(Avoidance of Fraudulent Transfers)
11 U.S.C. § 548

237. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

238. In the alternative, and without waiving any of the foregoing allegations, to the extent that Opus West did not receive reasonably equivalent value in exchange for any of the Transfers ("Potentially Fraudulent Transfers") such transfers are avoidable under 11 U.S.C. §548.

239. On the date of each of the Potentially Fraudulent Transfers, or as a result of each of the Potentially Fraudulent Transfers, Opus West was insolvent. Specifically, Opus West was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with Opus West was unreasonably small capital.

240. In the alternative, Opus West intended to incur, or believed that it would incur, debts that would be beyond Opus West's ability to pay as such debts matured.

Count Thirty-Two
(Recovery of Preferential or Fraudulent Transfers)
11 U.S.C. § 550

241. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

242. Opus West is entitled to recover the Transfers pursuant to 11 U.S.C. §547(b), and any of the Potentially Fraudulent Transfers pursuant to 11 U.S.C. §548. The Transfers and the Potentially Fraudulent Transfers are defined herein as the "Avoided Transfers."

243. Opus Parent was the initial transferee of all of the Avoided transfers.

244. Pursuant to 11 U.S.C. §550(a), Opus West is entitled to recover from Opus Parent all Avoided Transfers, plus interest thereon to the date of payment and costs of this action incurred to pursue such relief.

245. The Children's Trust, the Grandchildren's Trust and/or the Opus Foundation were the immediate or mediate transferee of such initial transfer of the Avoided Transfers or the person(s) for whose benefit the Avoided Transfers were made.

246. Pursuant to 11 U.S.C. §550(b), Opus West is entitled to recover the Avoided Transfers from the Children's Trust, the Grandchildren's Trust, and the Opus Foundation, plus interest thereon to the date of payment and costs of this action incurred to pursue such relief.

Count Thirty-Three
(Disallowance of all Claims)
11 U.S.C. § 502(d) and (j)

247. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

248. Each of the Defendants herein are entities from which property is recoverable under 11 U.S.C. §550.

249. Each of the Defendants are either initial transferees, mediate or immediate transferees of the Avoided Transfers, avoided under 11 U.S.C. §547 and/or 548.

250. As of the date hereof, none of the Defendants have repaid the amount of the Avoided Transfers or turned over such property to Opus West for which the Defendants are liable under 11 U.S.C. §550.

251. Pursuant to 11 U.S.C. §502(d), any and all claims of the Defendants and or their assignees, against the Opus West estate must be disallowed until such time as such Defendant pays to Opus West an amount equal to the aggregate amount of the Avoided Transfers, plus interest and costs thereon.

252. Pursuant to 11 U.S.C. §502(j), any and all claims of the Defendants and/or their assignees, against Opus West's estate previously allowed by Opus West must be reconsidered and disallowed until such time as the Defendant pays to Opus West an amount equal to the aggregate amount of the Avoided Transfers, plus interest and costs thereon.

Count Thirty-Four
Unjust Enrichment/Quantum Meruit: Tax Benefits
(Trusts)

253. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

254. Opus Parent required Opus West to send a fixed amount of its net income (40%) as payment for taxes. Opus Parent never paid taxes on these amounts, but instead passed all gains and losses on to the Trusts, who would consolidate the Opus West gains with the gains and losses of the other regional subsidiaries.

255. Opus West performed valuable services for the Trusts, generating substantial profits at a time when other regional subsidiaries accrued losses, and over-contributing amounts that were purportedly owed for taxes. The Trusts would be unjustly enriched if they were allowed to retain that portion of Opus West's 40% distributions that was not actually used for

payment of taxes. It would be inequitable for the Trusts to retain that portion of the distributions that was not used for its intended purpose, particularly in light of the large number of creditors that Opus West cannot pay.

256. As damages, Opus West should be entitled to recover from the Trusts that portion of Opus West's tax distribution not actually used by the Trusts for payment of taxes on behalf of Opus West.

Count Thirty-Five
(Unjust Enrichment/Quantum Meruit: Excess Dividends)
(Opus Parent)

257. Opus West hereby incorporates by reference the foregoing paragraphs of this Amended Complaint.

258. The 2008 Audit showed that Opus West had paid $18.4 million in Excess Dividends. Opus West performed valuable services for Opus Parent in generating the profits that led to the Excess Dividends. Opus Parent would be unjustly enriched if it were allowed to keep the Excess Dividends. Further, it would be inequitable to allow Opus Parent to retain the Excess Dividends that it never should have received, particularly in light of the large number of unpaid creditor claims owed by Opus West.

259. As damages, Opus West is entitled to recover the $18.4 million in Excess Dividends from Opus Parent.

V. RESERVATION OF RIGHTS

260. Opus West reserves all of its rights to seek such other and further relief against Opus Parent and the Trust Parties as may be appropriate, including, but not limited to, recovery of a money judgment, issuance of a restraining order or other relief.

PRAYER

WHEREFORE PREMISES CONSIDERED, Opus West requests that Opus Parent and the Trust Parties be cited to appear and answer this Complaint and that upon trial of this Complaint, Opus West be awarded judgment as follows:

(a) avoidance of each of the Distributions as fraudulent transfers under Arizona law; and/or

(b) avoidance of each of the Distributions as fraudulent transfers pursuant to section 548 of the Bankruptcy Code;

(c) recovery of the Distributions from Opus Parent and/or the Trust Parties pursuant to section 550 of the Bankruptcy Code;

(d) avoidance of the Chino Hills Buy-back as a fraudulent transfer; and/or

(e) avoidance of the Chino Hills Buy-back as a fraudulent transfer pursuant to section 548 of the Bankruptcy Code;

(f) recovery from Opus Parent and/or the Trust Parties pursuant to section 550 of the Bankruptcy Code;

(g) avoidance of the transfer of the Management Contracts to Opus Management Corporation; and/or

(h) avoidance of the transfer of the Management Contracts to OPS pursuant to section 548 of the Bankruptcy Code;

(i) recovery of the Management Contracts from OPS pursuant to section 550 of the Bankruptcy Code.

(j) imposition of a constructive trust and equitable lien on the $18.4 million over-contributed to Opus Parent;

(k) actual damages for all causes of action alleged herein;

(l) exemplary damages;

(m) any costs and fees, including attorney's fees, incurred in bringing this action and such other relief as the Court may deem proper.

Dated: June 30, 2010

Respectfully submitted,

/s/ Christopher J. Akin

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2010, a true and correct copy of the foregoing was served via the court's ECF system.

/s/ Christopher J. Akin
Christopher J. Akin