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FEDERAL DEPOSIT INSURANCE CORPORATION

L. WILLIAM SEIDMAN
CHAIRMAN
FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

ON

LINCOLN SAVINGS AND LOAN ASSOCIATION OF CALIFORNIA

BEFORE THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

10:00 A.M.
October 17, 1989
Room 2128, Rayburn House Office Building

Good morning, Mr. Chairman and members of the Committee. I am pleased to be here today to provide information relating to the Lincoln Savings and Loan Association of California.

The FDIC is vitally interested in Lincoln Savings. As the insurer of thrifts, and as the manager of the Resolution Trust Corporation ("RTC"), we are especially anxious to see that losses relating to Lincoln are reduced to a minimum. We have recently filed suit to recover monies we believe are due Lincoln's estate and the RTC. (A copy of the complaint is being provided as an Attachment.)

You have requested us to address four specific concerns. These are: (1) the financial condition of the institution at the time FDIC was appointed conservator; (2) FDIC's assessment of the prior management of the institution; (3) practices by prior management that contributed to the institution's failure; and (4) FDIC's analysis of the supervisory history of Lincoln Savings with an emphasis on how future supervisory efforts can be improved. Before addressing these specific areas, we would like to provide some background with respect to the FDIC's involvement in Lincoln.

Lincoln Savings was placed in conservatorship on April 14, 1989. At that time a team headed by the FDIC was placed in Lincoln as part of the overall plan to conserve assets within the thrift industry and to prepare insolvent thrifts for eventual sale or dissolution. Prior to that date the Federal Home Loan Bank Board was responsible for the regulation and oversight of Lincoln. Lincoln was placed in conservatorship after a finding by the Bank Board that it was operating in an unsafe and unsound manner. Subsequently, Lincoln was found to be insolvent.

Upon entering Lincoln, our goal--as it was in each conservatorship--was to:

- o Establish control and oversight of the institution
- o Promote confidence and maintain customer services
- o Evaluate the institution's condition and identify and account for losses
- o Recommend viable alternatives for cost controls and for the least cost resolution of the case

1. THE FINANCIAL CONDITION OF THE INSTITUTION AT THE TIME FDIC WAS APPOINTED CONSERVATOR

In summary, at the time we became conservator, we found Lincoln to be insolvent due to substantial reserves for losses that had to be recorded. Lincoln was insolvent on a liquidity basis as well because it was unable to meet its obligations as they came due. In accordance with normal practice, upon being appointed conservator, we reviewed Lincoln's financial statements to adjust them as required and to provide appropriate valuation reserves on a going concern basis. We also made a preliminary estimate of the range of loss on a liquidation basis (i.e. estimated loss to the RTC).

Lincoln's major problems included (1) a portfolio of non-earning loans; (2) a real estate investment portfolio, consisting primarily of investments in raw land; (3) investments in high-yield and privately-placed bonds and equities with significant credit quality problems and interest-rate risk; and (4) a \$1.5 billion mismatch between interest-bearing and interest-earning assets, resulting in a severe liquidity problem.

When Lincoln was placed into conservatorship, the books for the year ending December 31, 1988 had not been closed pending completion of the independent audit by Touche Ross & Company, Certified Public Accountants. Regulatory financial statements,

as of February 28, 1989, had been submitted in late March to the State of California Department of Savings and Loan and the Federal Home Loan Bank Board. The last internal Statement of Condition for Lincoln Savings and Loan Association before the conservatorship was as of February 28, 1989.

The attached Table shows the adjustments we made for valuation reserves. Column D is a balance sheet on a consolidated basis prepared by prior management as of February 28, 1989. Column E adjusts for appropriate reserves, losses and income reversals. These adjustments were based upon estimates of value of Lincoln's assets made by the FDIC using all information available at that time. As part of this process, the loan loss reserve had to be increased by \$289 million. The reserves against carrying values of real estate assets were increased by \$432 million. Based upon these, and other adjustments reflected in the Table, Lincoln was insolvent by approximately \$800 million at the time we were appointed conservator. As more information becomes available -- such as new appraisals -- reserves and other adjustments will be updated accordingly.

Lincoln's consolidated loan portfolio on April 14th consisted of only about \$70 million in traditional single family mortgage loans and consumer loans, \$370 million in secured commercial loans and \$1 billion in acquisition, development and

construction ("ADC") loans. Lincoln also was committed to an additional \$560 million in ADC loan disbursements.

Approximately \$250 million (15 percent) of Lincoln's loan portfolio was composed of loans made to purchasers of real estate from Lincoln and Lincoln subsidiaries.

The April 14 loan records reflected \$60 million in non-accrual loans (i.e. loans on which interest income was not recognized until actual receipt by Lincoln). A review of all loans made it clear there were a number of additional loans that should be carried on a non-accrual basis. An additional \$250 million in loans was therefore changed to non-accrual status.

Investments in real estate approximated \$1.0 billion. This level of investment was the result of an aggressive internal land acquisition and development program. Many of these investments were large, as demonstrated by six projects, three with an investment of over \$50 million each, and three in excess of \$100 million each. The strategy was to acquire large parcels of raw, vacant land to be zoned and subsequently developed in master-planned communities providing a variety of land uses.

As of April 14, Lincoln's real estate investments in Arizona, Colorado, and Texas were approximately \$700 million, \$100 million, and \$150 million, respectively. The investments

in Arizona were made during the period from 1985 to 1987 when the real estate market was strong. Substantially all the investments in Colorado and Texas were acquired during late 1984 and 1985, the peak of those real estate markets. The emphasis with each project was upon development activities. Few formal business plans addressing the ultimate disposition of the property were in place. As the level of investment in real estate grew, the lack of marketing plans, coupled with a deteriorating real estate market, made it difficult to generate sales sufficient to cover the carrying costs of these assets. Despite these facts, only minimal reserves against carrying values of assets existed. There were few current appraisals and market studies.

On April 14, 1989, Lincoln's investment portfolio included a myriad of securities, including high yield bonds with a cost of \$646 million, and equity investments with a cost of \$429 million. Approximately \$500 million of these investments were in illiquid private placement securities. These securities possess a higher probability of default than rated bonds and sometimes are difficult to sell.

Lincoln's portfolio also included mortgage-backed and U. S. government securities with a book value of \$1.85 billion. While these securities were liquid, \$1.76 billion was pledged as collateral against various borrowings and other transactions.

Approximately \$830 million of these securities were pledged against borrowings in which the declaration of bankruptcy by Lincoln's subsidiaries constituted default. As a result, this collateral was liquidated by the various brokerage houses, preventing an orderly liquidation of these assets.

Lincoln subsidiaries contain interests in operating entities; American Founders Life Insurance Company, Young Smith and Peacock brokerage firm, the Phoenician Resort and Crescent Hotel. Evaluation of these entities is being done using both internal records, outside experts, actuarial firms, and investment bankers. This process has been hampered for some of the entities by the holding company, American Continental Corporation ("ACC"), withholding subsidiary records in their possession on April 14. On September 29, we obtained a court order giving us access to the records of the subsidiaries and we will be examining them once access is obtained.

Lincoln Savings and Loan was experiencing a severe liquidity crisis on the date of conservatorship. It was unable to meet its obligations as they became due because of deposit outflows, losses and a lack of liquid assets.

Further, in a well-laid plan designed to make it more difficult for the regulators to carry out their duties as

conservator, the parent holding company, ACC, had filed for bankruptcy for itself and 11 of Lincoln's subsidiaries the day before Lincoln was placed in conservatorship. The bankruptcy filings removed the subsidiaries as a source of funds and no contingency plans for funding existed. On April 17th, Lincoln Savings was the first of only two institutions in the nation to enter the newly established Joint Lending Program of the Federal Reserve, the Federal Home Loan Bank and the Federal Savings and Loan Insurance Corporation.

As we previously stated, in accordance with our normal practice, a review was conducted to estimate the loss that would be involved in a liquidation of Lincoln. This estimate differs from our accounting adjusted estimate in that it takes into account liquidation and litigation costs, holding and sales costs and other factors involved in liquidation. That estimate shows an anticipated loss in the range of \$1.5 billion to \$2.0 billion. The estimate will be adjusted with further review of information as it becomes available.

2. AND 3. FDIC'S ASSESSMENT OF THE PRIOR MANAGEMENT OF LINCOLN AND PRACTICES OF PRIOR MANAGEMENT THAT CONTRIBUTED TO LINCOLN'S FAILURE

Prior to the FDIC's appointment as conservator of Lincoln, much of Lincoln's top management occupied dual positions as

employees of both ACC and Lincoln. Their salaries were apportioned on a set percentage basis between ACC and Lincoln. Immediately prior to the date of the conservatorship, many of these dual status managers resigned their Lincoln positions and became full-time ACC employees. These resignations continued for several days after the conservatorship when Lincoln employees were interviewed by the FDIC and its agents. The FDIC sought to determine who performed what roles and whether any remaining Lincoln employees were culpable of wrongdoing or would cooperate in the FDIC's investigation.

Through the interview process, and by working with remaining employees, the FDIC found evidence of culpable behavior on the part of an inner circle of Lincoln's former management. Some of those individuals have been named as defendants in the RICO and fraud case filed by the RTC.

On September 15th, the RTC, acting as conservator for Lincoln, filed a lawsuit against Charles H. Keating, Jr. and other corporate officers and insiders charging that they devised a number of complex and interrelated schemes to divert assets of Lincoln to their personal benefit, ultimately contributing to Lincoln's insolvency. The money which the defendants siphoned out of Lincoln came primarily from depositors whose accounts are

insured by the federal government. The suit seeks actual damages of \$1.1 billion -- and portions could be tripled under racketeering statutes.

The RTC's complaint alleges the former management of Lincoln contributed significantly to its insolvency by structuring sham transactions which enabled them to siphon cash out of Lincoln for their personal benefit. Lincoln relied upon high cost brokered deposits to sustain rapid growth. Investments focused largely on high-risk assets with uncertain earning power such as raw land or other speculative investments such as corporate equities and junk bonds. Certain of those investments were used by Lincoln's management to structure certain inside transactions which were reported as though they created large profits. However, when the transactions were properly analyzed, gains reported by Lincoln were illusory and had to be reversed.

We believe that linked transactions were instituted in which certain parties received benefits to enable Lincoln to report sham profits. As a result of their improper inflation of Lincoln's and ACC's books, the insiders of Lincoln's former management were able to fund excessive salaries and dividends from ACC and reap fraudulent profits on the sale of ACC stock.

Many of these major transactions appear to have been orchestrated directly by Mr. Keating and a few insiders,

completely avoiding the use of underwriting staffs employed by the association. Many major loans were made on a non-recourse basis and with inadequate security.

We believe that the schemes used by the defendants involved both intentional fraudulent misdeeds and negligent activity. Elaborate misrepresentations, including sophisticated accounting abuses, were used to deceive the public about the true nature of the business being funded by Lincoln's depositors. The deception employed numerous false statements constituting wire fraud, mail fraud, bank fraud and securities fraud. Because the defendants employed a pattern of such activity in furtherance of their fraudulent schemes, the RTC has sought additional relief under the anti-racketeering laws of Arizona and the United States. This which would entitle the RTC to treble damages as an additional remedy designed to deter future misconduct by others, and to provide a more adequate remedy for the overall losses which are anticipated.

The schemes which caused Lincoln's failure required the contributions of many individuals. Certain Lincoln directors and officers, while perhaps not themselves directly engaged in fraud, owed a duty of care to Lincoln which they breached by failing to look out for Lincoln's best interests and exercise independent judgement. Consequently, the complaint also seeks damages for the negligent conduct on the part of these individuals.

The RTC has not completed its investigation of Lincoln. We believe that substantial additional investigation is warranted and may result in the filing of additional civil actions or allegations, including fraud actions. Some of the areas of additional investigation and potential causes of action which we believe warrant further review relating to Lincoln include:

1. Liability of accountants.
2. Liability of appraisers in appraising the real estate held, sold and purchased by Lincoln, its direct and indirect subsidiaries and holding companies.
3. Liability of attorneys in their counseling of and advice to ACC and Lincoln.
4. Liability of investment brokers and securities brokers.
5. Liability of borrowers, including possible straw borrowers, and kick-backs or side deals which those borrowers may have received.
6. Additional fraudulent or sham real estate transactions not included in the RICO Complaint.

7. Transactions relating to investments in and sales of securities and junk bonds.
8. The fraudulent sale, transfer or diversion of corporate assets or opportunities of Lincoln.
9. Additional transactions relating to the diversion of Lincoln's assets for the personal benefit of insiders and their associates as well as for use in making political contributions.

4a. FDIC'S ANALYSIS OF THE SUPERVISORY HISTORY OF LINCOLN SAVINGS

The FDIC did not attempt to evaluate past supervisory activities except to review reports which might be useful in our role as conservator. However, certain information can be gained from two examinations of Lincoln prior to conservatorship.

The earlier Report of Examination, dated March 12, 1986, completed jointly by the San Francisco Federal Home Loan Bank and the California Department of Savings and Loan found the following:

- (1) \$1.2 billion in direct investments violate the limitation on direct investments by \$599,900,000.

(2) Serious deficiencies in policies and procedures for investment in corporate debt and equity securities, including lack of diversification, poor underwriting and absence of written underwriting standards, evidence of high risk and disregard of prudent investment.

(3) Numerous deficiencies in real estate investment underwriting standards such as appraisals, lack of feasibility studies and cash-flow projections, and high levels of concentrations.

(4) Numerous deficiencies in real estate loan funding, including heavy concentrations in raw land in Arizona, heavy concentrations in loans to one borrower, real estate loans granted without proper underwriting standards and numerous documentation deficiencies.

(5) Non-compliance with generally accepted appraisal standards.

(6) Substantial and well-defined weaknesses resulting in substandard loan classifications that total \$47,100,000.

(7) Eight loans to one group totalling \$79,000,000 reclassified from loans to joint ventures and the reversal of \$2.8 million in recognized income.

(8) Failure to follow the Association's Community Reinvestment Act plan.

(9) Reversal of improperly capitalized interest and improperly capitalized expenses.

(10) Inadequate and non-existent records.

(11) Improper and speculative trading in options and forward commitments.

(12) Engaging in real property transactions with affiliate persons without receiving approval of the Principal Supervisory Agent.

While our mission did not include evaluating Lincoln's supervisory history, in order to respond to the question addressed to us by the Committee, I asked our professional examination staff to review the 1986 Report of Examination of Lincoln and to indicate how we might have reacted to the findings if it had been an institution under our supervision. They told me that the March 12, 1986 Report of Examination depicted an institution that warranted immediate enforcement action. Ownership of the association had changed about one year before and this Report documents that the institution had been transformed from a traditional association to a high-growth,

risky operation. My staff indicated that had we made such findings in one of our own institutions, we would have sought an immediate cease-and-desist order to stop the hazardous operations.

A new examination was undertaken by the Federal Home Loan Bank Board and reported on July 11, 1988. This examination revealed a large increase in classified assets when compared with classifications from the previous March 12, 1986 examination as shown by the following:

<u>Examination Date</u>	<u>3-12-86</u>	<u>7-11-88</u>
Substandard	39,600,000	706,501,099
Doubtful	-0-	34,365,375
Loss	<u>7,500,000</u>	<u>59,635,377</u>
Total	47,100,000	800,501,851

The Report of Examination dated July 11, 1988 stated that:

"While the institution met its regulatory capital requirement at the examination date, the specific losses identified coupled with the requirement to reverse certain transactions render the institutions ability to meet its future net worth requirement questionable. In any event it is the recommendation of this examination that an individual minimum net worth requirement be established for Lincoln. This

recommendation is based upon the level of problem assets, the volume of activity in assets possessing a higher degree of inherent risk than that of the more traditional financing of single-family dwellings and concentrations within these categories." (emphasis added)

The Report also stated: "The level of problem assets is significant at over 12 percent of total assets and four and one-half times capital. Further exacerbating the situation and risk to capital are the concentrations as well as the numerous investments that are illiquid and where the future performance of the assets is not within the control of management."

Based on the opinion of our professional supervisory staff, immediate supervisory action was warranted.

Our review upon becoming conservator less than one year later found Lincoln insolvent by approximately \$800 million. Thus, either the 1988 Report did not reveal the true condition of Lincoln or large losses were taken during the intervening period as a result of the manner in which the thrift had been operating.

4b. FUTURE SUPERVISORY EFFORTS

The FDIC knows of no fool-proof solutions for preventing another thrift crisis or for preventing a recurrence of the

Lincoln Savings and Loan losses. What we can offer, however, are three fundamental principles of sound supervision that have served well over our 55-year history.

First, and this should come as no surprise, the FDIC believes the industry must be well capitalized. Capital is the industry's natural shock absorber. Well-capitalized institutions are better able to absorb losses, adjust to changing environments and take advantage of opportunities as they arise. Adequate capital levels also instill confidence in the public, permit healthy growth, and cushion the government from insurance losses. We believe owners of institutions who stand to gain from the success of an institution should have enough of their own capital at risk so that they stand to feel the loss if the institution fails. Clearly, the recent thrift crisis has shown that an undercapitalized industry is a destabilized industry. There is no better way to instill stability than to require owners to maintain reasonable capital in the institution. Nothing in recent history indicates that capital levels in thrifts, or banks, are too high under present standards.

Second, financial institutions must be required to adhere to proper accounting standards which reveal true financial condition. The practice of "papering over" losses or inflating

profits through accounting changes leads inevitably to costly reality at a future time.

Further, misleading accounting allows institutions with no real capital to operate on accounting-created illusory capital -- thus in effect eliminating capital standards and allowing unlimited growth. The use of accounting gimmicks in the early 1980s proved a very expensive lesson indeed for the American taxpayers.

Third, a supervisory staff and program must be in place that is tough, fair, responsive, industry independent and free of political pressures. The importance of the regulators' independence cannot be overstated.

Effective supervision protects the public. It also protects financial institutions that are coinsurers in the fund and are operating in a safe-and-sound manner. Such supervision need not be adversarial, but it must be "uninfluencable."

FIRREA has reduced the likelihood of the recurrence of cases similar to Lincoln. It provides for improved capital standards, tougher operating standards and stiffer penalties for those managers who would violate their positions of trust. The new law provides for stronger regulatory oversight of the industry

with an independent Office of Thrift Supervision as the primary Federal regulator and the FDIC as the backup Federal supervisor.

While much has been done to try to avoid the problems of the past by recent legislation, as always the most important factor to carry out the insurer's mandate is the existence of a professionally trained, competent and independent supervisory staff. That staff must be authorized to carry out its mandate of supervision of financial institutions without fear of outside influence. If Lincoln teaches us anything, it tells us that this group of government employees must be free to take action necessary to maintain safety and soundness. They are the essential thin blue line protecting the financial system and the taxpayer from billion dollar insurance losses.

LINCOLN SAVINGS AND LOAN ASSOCIATION
FINANCIAL INFORMATION
(\$-000's)

Preliminary
Unaudited

Comparative Consolidated Statements
of Financial Condition

	A February 29, 1984	B February 28, 1986	C June 30, 1988	D February 28, 1989 ^a	E FDIC Estimated Value at February 28, 1989
ASSETS					
Cash and Cash Equivalents	\$ 14,456	\$ 867,723	\$ 154,125	\$ 145,143	\$ 145,143
Investment Securities, net	25,451	712,875	1,709,164	1,931,805	1,850,327
Mortgage-Backed Securities	211,771	1,889	1,379,198	1,432,316	1,432,404
Loans and Other Receivables, net	668,074	929,944	1,405,431	1,521,083	1,232,147
Real Estate Inventories, net	65,356	632,143	907,161	1,009,481	605,157
Property, Buildings and Equipment, net	15,921	41,961	330,106	364,316	285,053
Prepaid Expenses and Other Assets	23,130	43,423	86,618	98,099	97,173
Excess of Cost over Net Assets Acquired	98,443	104,389	102,290	96,996	53,245
	<u>\$1,122,602</u>	<u>\$3,334,347</u>	<u>\$6,074,093</u>	<u>\$6,599,239</u>	<u>\$5,700,649</u>
LIABILITIES AND SHAREHOLDER'S EQUITY					
Time & Savings Deposits	\$ 833,187	\$1,411,182	\$2,173,531	\$2,409,065	\$2,409,065
Brokered Deposits	0	1,074,390	1,545,648	1,861,546	1,861,546
Accounts Payable and Other Liabilities	20,615	81,609	402,668	446,798	502,557
Borrowings	217,208	618,829	1,689,851	1,682,315	1,693,565
	<u>1,071,010</u>	<u>3,186,010</u>	<u>5,811,698</u>	<u>6,399,724</u>	<u>6,466,733</u>
Shareholder's Equity	51,592	148,337	262,395	199,515	(766,084)
	<u>\$1,122,602</u>	<u>\$3,334,347</u>	<u>\$6,074,093</u>	<u>\$6,599,239</u>	<u>\$5,700,649</u>

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ATTACHMENT A

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MICHELLE LIGGET
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HELEN M. NIEBLING
MARY A. HALL
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MEDEMA HOMES OF UTAH, INC.
UNITED LEASING CORPORATION OF DELAWARE
AMERICAN CONTINENTAL MORTGAGE COMPANY
AMERICAN CONTINENTAL RESOURCES CORPORATION
CONTINENTAL FIRE & CASUALTY COMPANY
TATUM PLACE, INC.
AMERICAN CONTINENTAL PROPERTIES, INC.
PARK DRIVE APARTMENTS, INC.
A.C.C. REAL ESTATE, INC.
DUNLAP APARTMENTS, INC.
AMERICAN CONTINENTAL FINANCE CORPORATION
AMERICAN CONTINENTAL FINANCE CORPORATION II
CONTINENTAL HOME FINANCE CORPORATION
AMERICAN HOME FINANCE CORPORATION
AMERICAN HOME FINANCE CORPORATION II
AMERICAN HOME FINANCE CORPORATION III

ATTACHMENT B

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Resolution Trust Corporation,
as Conservator for Lincoln
Savings and Loan Association, F.A.

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

RESOLUTION TRUST CORPORATION,)	
AS CONSERVATOR FOR LINCOLN)	Civil Action
SAVINGS AND LOAN ASSOCIATION,)	
F.A.,)	No.
)	
Plaintiff,)	
)	
v.)	COMPLAINT WITH JURY TRIAL
)	DEMAND
CHARLES H. KEATING, JR.;)	
CHARLES H. KEATING, III;)	
JUDY J. WISCHER;)	
ROBERT J. KIELTY;)	
ROBERT M. WURZELBACHER, JR.;)	
ANDREW F. LIGGET;)	
ROBERT J. HUBBARD, JR.;)	
ANDRE A. NIEBLING;)	
MARK S. SAUTER;)	
GARY W. HALL;)	
WILLIAM J. KEATING;)	

COMPLAINT

Plaintiff Resolution Trust Corporation, as Conservator for Lincoln Savings and Loan Association, F.A., for its claims for relief against defendants, states:

I. THE PARTIES.

A. The Plaintiff.

1. The Resolution Trust Corporation ("RTC") is an agency and instrumentality of the United States created by the United States Congress pursuant to Title V of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183 (1989). Congress created the RTC to contain, manage, and deal expeditiously with problems of savings and loan associations ("thrifts"). Pursuant to Section 501(a) of FIRREA, adding Section 21A to the Federal Home Loan Bank Act, 12 U.S.C. § 1421 et seq., the RTC has succeeded (a) to all rights, titles, powers, privileges, and assets of the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Lincoln Savings and Loan Association, F.A., and (b) to all rights, titles, powers, and privileges of that institution and of its shareholders, members, accountholders, depositors, officers, and directors with respect to that institution and its assets. Pursuant to Section 501(a) of FIRREA, Federal Deposit Insurance Corporation ("FDIC") is authorized to perform all responsibilities of the RTC. Paragraphs 2 through 11 describe the manner in which the RTC became empowered to prosecute the claims set forth in this Complaint.

2. The FSLIC was a corporate instrumentality and, for purposes of Title 28 of the United States Code, an agency of the United States created by the United States Congress. 12 U.S.C. §§ 1725(a), 1730(k)(1)(A). The FSLIC operated at the direction of the Federal Home Loan Bank Board ("FHLBB"). 12 U.S.C. §§ 1437(b), 1725(a), 1725(c). The FSLIC was created in the midst of the Great Depression for the purpose of stabilizing the nation's thrift industry and promoting economical home financing.

3. Pursuant to 12 U.S.C. §§ 1464(d)(6)(A) and 1729(c), the FHLBB had the authority to appoint the FSLIC as conservator or receiver for any thrift insured by the FSLIC and chartered under state law if the FHLBB determined that the statutory grounds, or any one of them, existed.

4. On April 14, 1989, the FHLBB found that Lincoln Savings and Loan Association ("Old Lincoln"), an insured thrift chartered under the laws of the State of California, was in an unsafe and unsound condition to transact business and had experienced a substantial dissipation of its assets and earnings due to violations of law, rules, or regulations and unsafe and unsound practices. Therefore, pursuant to FHLBB Resolution No. 89-1328P, in accordance with 12 U.S.C. §§ 1464(d)(6)(A) and 1729(c)(1)(B)(i)(I), the FHLBB appointed the FSLIC as Conservator for Old Lincoln. On the same date, the FHLBB designated the FDIC as the managing agent ("Managing Agent") for the Conservator.

5. On August 2, 1989, the FHLBB replaced the Conservator with the FSLIC as Receiver for Old Lincoln pursuant to

FHLBB Resolution No. 89-2163P and in accordance with 12 U.S.C. §§ 1464(d)(6)(A)(i), 1464(d)(6)(D), and 1729(c)(1)(B)(i)(I). The FHLBB also found that Old Lincoln was insolvent, at least as of April 14, 1989, and continuing thereafter, in that its assets were less than its obligations to its creditors and others. The FHLBB then directed the FSLIC as Receiver to liquidate Old Lincoln. The FHLBB, pursuant to Resolutions Nos. 89-2164P through 89-2165P, also directed the FSLIC to organize a new federal mutual thrift to be known as Lincoln Savings and Loan Association, F.A. ("New Lincoln"), authorized the chartering of New Lincoln and insurance of accounts at it, and authorized the FSLIC as Receiver for Old Lincoln to enter into a purchase and assumption transaction with New Lincoln by executing an Acquisition Agreement with New Lincoln.

6. Due to the insolvency of Old Lincoln and by virtue of the purchase and assumption transaction described in paragraph 5, New Lincoln is insolvent. On August 2, 1989, the FHLBB, therefore, pursuant to Resolution No. 89-2169P and in accordance with 12 U.S.C. § 1464(d)(6)(B) appointed the FSLIC as Conservator for New Lincoln, effective upon consummation of the transactions described in the resolutions identified in paragraph 5, and designated the FDIC as Managing Agent for the Conservator.

7. On August 3, 1989, the FSLIC as Receiver took possession of Old Lincoln and, immediately thereafter, executed an Acquisition Agreement between the FSLIC, as Receiver for Old Lincoln, and New Lincoln. Pursuant to this Agreement, New Lincoln purchased all of the Receiver's right, title, and interest in and

to Old Lincoln's assets, including each of its first-tier subsidiaries ("Lincoln Subsidiaries"), in consideration for assuming substantially all of Old Lincoln's liabilities. As a result, New Lincoln acquired the claims and choses in action which form the bases for this Complaint. The conservatorship for New Lincoln then was implemented, and the FDIC commenced acting as the Managing Agent for the Conservator.

8. By virtue of the foregoing matters, on August 3, 1989, upon the effectiveness of its appointment as Conservator for New Lincoln, the Conservator succeeded by operation of law to all the assets, rights, titles, powers, and privileges of New Lincoln and its members, directors, and officers, pursuant to 12 U.S.C. § 1729(b), by virtue of 12 U.S.C. § 1729(c)(1)(B)(i)(II), and 12 C.F.R. § 547.7, and also became authorized to institute, prosecute, and maintain any legal proceedings in which New Lincoln, its creditors, or its members have an interest, pursuant to 12 C.F.R. § 548.2(f). As Managing Agent for the Conservator, the FDIC exercised the foregoing rights and powers on behalf of the FSLIC.

9. In accordance with Sections 212(a) and 501(a) of FIRREA, the RTC, as the successor in interest to the rights, titles, powers, privileges, and assets, including claims, of Old Lincoln, New Lincoln, and the FSLIC as their Conservators, is the real party in interest to this action and is entitled to recover damages for injuries sustained by Old Lincoln.

10. The RTC, as the statutory successor to the FSLIC, appears as plaintiff in its capacity as Conservator for New Lincoln

to recover damages sustained by Old Lincoln and New Lincoln as a consequence of the conduct alleged herein.

11. Pursuant to Sections 212(a) and 501(a) of FIRREA, the RTC itself has authority to sue and has succeeded to the FSLIC's authority to sue.

12. At all times pertinent hereto and prior to August 9, 1989, the FHLBB, through its Agency Group, was the known agent of the FSLIC with respect to all communications, contracts, negotiations, applications, and other dealings involving the defendants and the ACC Enterprise (as defined, infra).

B. The Defendants.

13. Certain defendants in this action were directors, de facto directors, officers, de facto officers, affiliates, affiliated persons, and/or controlling persons of Old Lincoln, the Lincoln Subsidiaries, Old Lincoln's parent holding companies, First Lincoln Financial Corporation ("First Lincoln") and American Continental Corporation ("ACC"), and subsidiaries of ACC. ACC owns all of the issued and outstanding voting securities of First Lincoln, which, in turn, owns all of the issued and outstanding voting securities of Old Lincoln. ACC is a publicly held corporation, but is controlled and dominated by its principal shareholder Charles H. Keating, Jr. through his immediate family members and other associates. The immediate family of Charles H. Keating, Jr. ("Keating Family"), as defined in 12 C.F.R. § 561.30, holds in excess of fifty percent of the issued and outstanding

voting securities of ACC and controlled the affairs of Old Lincoln and the Lincoln Subsidiaries prior to April 14, 1989.

14. On April 13, 1989, ACC sought the protection of the United States Bankruptcy Court for the District of Arizona by filing a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101 et seq. Since April 13, 1989, therefore, ACC has benefited from the automatic stay provided in 11 U.S.C. § 362(a); but for that stay, ACC would have been named as a defendant herein, and the RTC may seek relief from that stay pursuant to 11 U.S.C. § 362(d) in order to join ACC as a defendant and to litigate its claims against ACC in this forum.

15. Defendant Charles H. Keating, Jr. ("Keating Jr.") is a citizen of the State of Arizona residing at 6447 North Palo Christi, Paradise Valley, Arizona 85253. Keating Jr. is an attorney and, according to the pertinent corporate books and records, held the following formal positions as director or officer of ACC, its affiliates and affiliated persons, and/or Lincoln Subsidiaries (collectively, "Affiliates") during the indicated time periods:

- ACC, President, 1982-1983;
- ACC, Chairman of the Board/President, 1984;
- ACC, Chairman of the Board/CEO, 1985-1987;
- ACC, Director, 1982-1987, 1989;
- American Continental Resources Corporation, Director, 1985;
- American Continental Properties, Inc., Director, 1986;
- The Crescent Hotel Group, President, 1987-1989;
- The Crescent Hotel Group, Director, 1985-1986, 1988-1989;
- Continental Fidelity Life Insurance Company, Director, 1985-1986;
- Crescent Holdings, Inc., President, 1987-1988;
- Crescent Holdings, Inc., Director, 1987-1988;
- American Founders Life Insurance Company, Director, 1986;

Crescent Hotels Operating Corporation, Director, 1987-1988;
Crescent Hotels Operating Corporation, Director, 1987-1988;
The Phoenix Resort Corporation, President, 1987-1988;
The Phoenix Resort Corporation, Director, 1987-1988;
The Phoenix Crescent Corporation, President, 1987-1988;
The Phoenix Crescent Corporation, Director, 1987-1988;
Crescent Regional Corporation, President, 1988;
Crescent Regional Corporation, Director, 1987-1988;
Crescent of Washington Corporation, President, 1988;
Crescent of Washington Corporation, Director, 1987-1988.

Keating Jr., therefore, was an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29. By virtue of his dominance of ACC, moreover, Keating Jr. controlled Old Lincoln and the Lincoln Subsidiaries. At all times pertinent hereto, Keating Jr. was a de facto director and officer of Old Lincoln.

16. Defendant Charles H. Keating, III ("Keating III") is a citizen of the State of Arizona residing at 6513 East Exeter Boulevard, Scottsdale, Arizona 85251. According to the pertinent corporate books and records, Keating III held the following formal positions as director or officer of ACC, Old Lincoln, and the following Affiliates during the indicated time periods:

ACC, Vice President, 1982-1984;
ACC, Executive President, 1985-1986;
ACC, Executive Vice President and Treasurer, 1987;
ACC, Director, 1982-1987, 1989;
Medema Homes of Utah, Inc., Director, 1986-1987;
American Continental Mortgage Company, President, 1987-1988;
American Continental Mortgage Company, Director, 1987-1988;
American Continental Resources Corporation, Director, 1985-1986;
Park Drive Apartments, Inc., Vice President, 1984-1987;
Park Drive Apartments, Inc., Director, 1984-1987;
A.C.C. Real Estate, Inc., Director, 1984-1987;
American Continental Finance Corporation, Director, 1987;
American Continental Finance Corporation II, Vice President, 1987;

American Continental Finance Corporation II, Director,
 1987;
 American Home Finance Corporation, Director, 1987;
 American Home Finance Corporation II, President, 1987;
 American Home Finance Corporation II, Director, 1987;
 American Home Finance Corporation III, Director, 1987;
 Lincoln, Chairman of the Board, 1984-1986;
 Lincoln, Director, 1984-1987;
 Insurance West, Inc., Vice President/Secretary and
 Treasurer, 1984-1985;
 SSFLC, Secretary and Treasurer, 1989;
 SSFLC, Director, 1989;
 AMCOR Funding Corporation, Executive Vice President,
 1987-1989;
 AMCOR Funding Corporation, Director, 1987-1989;
 Phoenician Financial Corporation, President, 1984-1985;
 Phoenician Financial Corporation, Vice President, 1985;
 Phoenician Financial Corporation, Treasurer, 1989;
 Phoenician Financial Corporation, Director, 1984-1987,
 1989;
 Phoenician Commercial Properties, Inc., Vice President,
 1987-1988;
 Phoenician Commercial Properties, Inc., President,
 1988-1989;
 Phoenician Commercial Properties, Inc., Director, 1989;
 Provident Mortgage Corporation, Vice President, 1989;
 Provident Mortgage Corporation, Director, 1989;
 AMCOR Investments Corporation, Vice President, 1984-1985;
 AMCOR Investments Corporation, President, 1985-1987;
 AMCOR Investments Corporation, Chairman of the Board,
 1988-1989;
 AMCOR Investments Corporation, Director, 1985-1987,
 1988-1989;
 Crescent Lending Corporation, President, 1987-1989;
 Crescent Lending Corporation, Director, 1987-1989;
 LINFIN Corporation, President, 1987-1989;
 LINFIN Corporation, Director, 1987-1989;
 Castle Meadows, Inc., Vice President, 1988-89;
 Castle Meadows, Inc., Director, 1989;
 CRESFIN Corporation, Vice President, 1987-1988;
 CRESFIN Corporation, President and Secretary, 1989;
 CRESFIN Corporation, Director, 1987-1989;
 Estrella Star Real Estate Corporation, Chairman of the
 Board, 1988-1989.
 Estrella Star Real Estate Corporation, Director,
 1988-1989;
 P.F.C. Phoenician Funding Corporation, N.V., Managing
 Director, 1987;
 Continental Fidelity Life Insurance Group, Director,
 1986;
 AMCON Insurance Group, Director, 1986-1987;

Rancho Estrella Real Estate Corporation, Vice President,
1987;
Rancho Estrella Real Estate Corporation, Chairman of
the Board and Vice President, 1988;
American Founders Life Insurance Company, Assistant Vice
President, 1987-1988;
American Founders Life Insurance Company, Director,
1987-1988.

Keating III, therefore, was an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29. At all times pertinent hereto, Keating III was either a director or a de facto director and a de facto officer of Old Lincoln.

17. Defendant Judy J. Wischer ("Wischer") is a citizen of the State of Arizona residing at 6216 North 47th Place, Paradise Valley, Arizona 85253. Wischer is a certified public accountant and, according to the pertinent corporate books and records, held the following formal positions as director or officer of Old Lincoln and the following Affiliates during the indicated time periods:

ACC, Executive Vice President and Treasurer, 1982-1984;
ACC, President, 1985;
ACC, President and Chief Operating Officer, 1986-1987;
ACC, Director, 1982-1987, 1989;
Medema Homes of Utah, Inc., Director, 1979;
United Leasing Corp. of Delaware, 1982-1987;
American Continental Mortgage Company, Secretary, 1980;
American Continental Mortgage Company, Treasurer,
1987-1988;
American Continental Mortgage Company, Director, 1978,
1980, 1982-1988;
American Continental Resources Corporation, Director,
1983-1984, 1987;
Continental Fire and Casualty Company, Treasurer, 1983;
Continental Fire and Casualty Company, Director, 1983;
First Lincoln Financial Corporation, Secretary and Chief
Financial Officer, 1988;
First Lincoln Financial Corporation, Director, 1988;
American Continental Properties, Inc., Director,
1984-1985, 1987;
A.C.C. Real Estate, Inc., Vice President, 1979;

A.C.C. Real Estate, Inc., Vice President and Treasurer,
 1980;
 A.C.C. Real Estate, Inc., Director, 1979-1980;
 American Continental Finance Corporation, Vice
 President, 1984-1987;
 American Continental Finance Corporation II, Vice
 President, 1984-1986;
 American Continental Finance Corporation II, Chairman
 of the Board, 1987;
 Continental Home Finance Corporation, Vice President,
 1982-1985;
 Continental Home Finance Corporation, President, 1987;
 Continental Home Finance Corporation, Director,
 1982-1987;
 American Home Finance Corporation, Executive Vice
 President & Treasurer, 1982;
 American Home Finance Corporation, Vice President,
 1983-1985, 1987;
 American Home Finance Corporation, Director, 1982;
 American Home Finance Corporation II, Executive Vice
 President, 1982;
 American Home Finance Corporation II, Vice President,
 1983-1985;
 American Home Finance Corporation II, Treasurer, 1987;
 American Home Finance Corporation III, Vice President,
 1983-1985;
 American Home Finance Corporation III, Director,
 1983-1985;
 Lincoln, Chairman of the Board, President, and Chief
 Executive Officer, 1984;
 Lincoln, President, 1985-1986;
 Lincoln, Director, 1984-1989;
 Insurance West, Inc., Director, 1984-1989;
 SSFLC, Director, 1984, 1986-1989;
 AMCOR Funding Corporation, Secretary, 1984;
 AMCOR Funding Corporation, Secretary and Treasurer, 1985;
 AMCOR Funding Corporation, Director, 1984-1988;
 Phoenician Financial Corporation, Vice President and
 Treasurer, 1984-1985;
 Phoenician Financial Corporation, Treasurer, 1986-1987;
 Phoenician Financial Corporation, Director, 1984-1986;
 Phoenician Commercial Properties, Inc., President,
 1984-1985;
 Phoenician Commercial Properties, Inc., Director, 1984;
 AMCOR Investments Corporation, President and Chief
 Executive Officer, 1984;
 AMCOR Investments Corporation, President, 1985;
 AMCOR Investments Corporation, Director, 1984-1986;
 The Crescent Hotel Group of Michigan, Inc., Director,
 1985-1986;
 First Lincoln Financial Services, Inc., Treasurer,
 1984-1985;

First Lincoln Financial Services, Inc., Director,
1984-1986;
P.F.C. Phoenician Funding Corporation, N.V., Managing
Director, 1985-1987;
Continental Fidelity Life Insurance Company, Director,
1984-1985.

Wischer, therefore, was an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29. At all times pertinent hereto, Wischer was either a director or de facto director and an officer or a de facto officer of Old Lincoln.

18. Defendant Robert J. Kielty ("Kielty") is a citizen of the State of Arizona residing at 8714 North 65th Street, Paradise Valley, Arizona 85253. Kielty is an attorney and, according to the pertinent corporate books and records, held the following formal positions as director or officer of Old Lincoln and the following Affiliates during the indicated time periods:

ACC, Secretary and General Counsel, 1982;
ACC, Secretary, 1983;
ACC, Senior Vice President, Secretary and General
Counsel, 1984-1987;
ACC, Secretary, 1989;
ACC, Director, 1982-1987, 1989;
Medema Homes of Utah, Inc., Director, 1979, 1981;
United Leasing Corp. of Delaware, President and
Secretary, 1982-1983;
United Leasing Corp. of Delaware, President, 1984-1986;
United Leasing Corp. of Delaware, President and Chairman
of the Board, 1987;
United Leasing Corp. of Delaware, Director, 1982-1985,
1987;
American Continental Mortgage Company, Vice President
and Secretary, 1982-1985;
American Continental Mortgage Company, Secretary, 1986;
American Continental Mortgage Company, Director,
1982-1983, 1985-1988;
American Continental Resources Corporation, Director,
1983;
Continental Fire and Casualty Company, Vice President
and Secretary, 1983;
Continental Fire and Casualty Company, Director, 1983;
American Continental Properties, Inc., Director, 1986;

A.C.C. Real Estate, Inc., Vice President and Secretary,
 1979-1981;
 A.C.C. Real Estate, Inc., Director, 1979-1981, 1984-1987;
 American Continental Finance Corporation, Vice President,
 1983-1986;
 American Continental Finance Corporation, Director,
 1983-1987;
 American Continental Finance Corporation II, Vice
 President, 1984-1986;
 American Continental Finance Corporation II, Director,
 1984-1987;
 Continental Home Finance Corporation, Secretary,
 1982-1987;
 Continental Home Finance Corporation, Director,
 1982-1987;
 American Home Finance Corporation, Vice President,
 1982-1985;
 American Home Finance Corporation II, Vice President,
 1983-1985;
 American Home Finance Corporation III, Director,
 1983-1985;
 American Home Finance Corporation III, Vice President,
 1983-1987;
 Lincoln, Vice President, 1985-1987;
 Lincoln, Director, 1984-1985, 1987-1989;
 Insurance West, Inc., Secretary, 1984-1987;
 Insurance West, Inc., Director, 1984;
 SSFLC, Director, 1984, 1986;
 AMCOR Funding Corporation, President, 1984-1987;
 AMCOR Funding Corporation, Director, 1984-1986;
 Phoenician Financial Corporation, Vice President, 1984;
 Phoenician Financial Corporation, President and Vice
 President, 1985;
 Phoenician Financial Corporation, President, 1986-1987;
 Phoenician Financial Corporation, Director, 1984-1986;
 AMCOR Investments Corporation, Vice President, 1984-1985;
 AMCOR Investments Corporation, Director, 1985-1986;
 The Crescent Hotel Group of Michigan, Inc., Secretary,
 1985-1987;
 The Crescent Hotel Group of Michigan, Inc., Director,
 1985-1986;
 First Lincoln Financial Services, Inc., President, 1987;
 First Lincoln Financial Services, Inc., Director,
 1984-1987;
 P.F.C. Phoenician Funding Corporation, N.V., Managing
 Director, 1985-1986;
 Continental Fidelity Life Insurance Company, Director,
 1984-1988;
 AMCON Insurance Group, Director, 1986-1988.

Kielty, therefore, was an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29. At all times pertinent hereto, Kielty was either a director or a de facto director and officer or de facto officer of Old Lincoln.

19. Defendant Robert M. Wurzelbacher, Jr. ("Wurzelbacher") is a citizen of the State of Arizona residing at 2214 East Bethany Home Road, Phoenix, Arizona 85016. According to the pertinent corporate books and records, Wurzelbacher held the following formal positions as director or officer of the following Affiliates during the indicated time periods:

- ACC, Vice President, 1984;
- ACC, Senior Vice President, 1985-1987;
- ACC, Director, 1982-1987;
- American Continental Mortgage Company, Director, 1984-1985;
- American Continental Resources Corporation, President, 1984-1987;
- American Continental Resources Corporation, Director, 1984-1987;
- Continental Fire and Casualty Company, Director, 1983;
- Tatum Place, Inc., President, 1984-1987;
- Tatum Place, Inc., Director, 1984-1987;
- American Continental Properties, Inc., President, 1984-1987;
- American Continental Properties, Inc., Director, 1984-1987;
- Park Drive Apartments, Inc., President, 1984-1987;
- Park Drive Apartments, Inc., Director, 1984-1987;
- Dunlap Apartments, Inc., President, 1984-1987;
- Dunlap Apartments, Inc., Director, 1984-1987;
- SSFLC, Director, 1989;
- AMCOR Funding Corporation, Secretary, 1989;
- AMCOR Funding Corporation, Director, 1989;
- Phoenician Financial Corporation, President, 1989;
- Phoenician Financial Corporation, Director, 1989;
- Phoenician Commercial Properties, Inc., Vice President, 1985-1988;
- Phoenician Commercial Properties, Inc., Vice President, Secretary and Treasurer, 1989;
- Phoenician Commercial Properties, Inc., Director, 1984-1989;
- Provident Mortgage Corporation, Secretary, 1989;

Provident Mortgage Corporation, Director, 1989;
 AMCOR Investments Corporation, Chairman of the Board
 and CEO, 1987;
 AMCOR Investments Corporation, CEO, 1988-1989;
 AMCOR Investments Corporation, Director, 1987-1989;
 Crescent Lending Corporation, Secretary, 1989;
 Crescent Lending Corporation, Director, 1989;
 Castle Meadows, Inc., Vice President, 1987-1988;
 Castle Meadows, Inc., President, Vice President and
 Secretary, 1989;
 Castle Meadows, Inc., Director, 1989;
 The Crescent Hotel Group, Vice President, 1984-1986;
 The Crescent Hotel Group, President and Vice President,
 1987;
 The Crescent Hotel Group, Secretary and Treasurer, 1989;
 The Crescent Hotel Group, Director, 1984-1989;
 CRESFIN Corporation, President and CEO, 1989;
 CRESFIN Corporation, Director, 1989;
 The Crescent Hotel Group of Michigan, Inc., Treasurer,
 1984;
 The Crescent Hotel Group of Michigan, Inc., Vice
 President and Treasurer, 1985-1986;
 The Crescent Hotel Group of Michigan, Inc., Chairman of
 the Board, President, Vice President and Treasurer,
 1987;
 The Crescent Hotel Group of Michigan, Inc., Chairman of
 the Board, 1988-1989;
 The Crescent Hotel Group of Michigan, Inc., Director,
 1985-1989;
 Phoenician Construction Corporation, President and
 Treasurer, 1987-1989;
 Phoenician Construction Corporation, Director, 1987-1989;
 Estrella Star Real Estate Corporation, Chairman of the
 Board and CEO, 1987-1988;
 Estrella Star Real Estate Corporation, CEO, 1989;
 Estrella Star Real Estate Corporation, Director,
 1987-1989;
 AMCOR Continental, Inc., Director, 1988;
 Continental Fidelity Life Insurance Company, Director,
 1985-1989;
 AMCON Insurance Group, Director, 1986-1988;
 Rancho Estrella Real Estate Corporation, Chairman of the
 Board and CEO, 1987-1988;
 Rancho Estrella Real Estate Corporation, Director,
 1987-1988.

Wurzelbacher, therefore, was an affiliated person of Old Lincoln
 within the meaning of 12 C.F.R. § 561.29. At all time pertinent

hereto, Wurzelbacher was a de facto director and a de facto officer of Old Lincoln.

20. Defendant Andrew F. Ligget ("Ligget") is a citizen of the State of Arizona residing at 10301 North 48th Place, Paradise Valley, Arizona 85253. Ligget was a certified public accountant and, according to the pertinent corporate books and records, held the following formal positions as director or officer of Old Lincoln and the following Affiliates during the indicated time periods:

- ACC, Vice President, 1984;
- ACC, Chief Financial Officer, 1985-1987;
- ACC, Director, 1989;
- Lincoln, Director, 1985-1989;
- Provident Mortgage Corporation, Secretary and Treasurer, 1988;
- Provident Mortgage Corporation, Vice President and Treasurer, 1989;
- Provident Mortgage Corporation, Director, 1989;
- AMCOR Investments Corporation, Vice President, 1984-1985;
- Oxford Financial Corporation, Treasurer, 1985-1986.

Ligget, therefore, was an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29. At all times pertinent hereto, Ligget was either a director or a de facto director and a de facto officer of Old Lincoln.

21. Defendant Robert J. Hubbard, Jr. ("Hubbard") is a citizen of the State of Arizona residing at 4723 Saguaro Place, Paradise Valley, Arizona 85253. Hubbard is an attorney and, according to the pertinent corporate books and records, held the following formal positions as director or officer of Old Lincoln and the following Affiliates during the indicated time periods:

- ACC, Vice President, 1982-1987;
- ACC, Director, 1982-1986, 1989;

Park Drive Apartments, Inc., Director, 1988;
Lincoln, President, 1986;
Lincoln, Director, 1985-1987;
Insurance West, Inc., Vice President, 1986-1989;
Insurance West, Inc., Director, 1986-1989;
SSFLC, President, 1989;
SSFLC, Director, 1989;
AMCOR Funding Corporation, President, 1989;
AMCOR Funding Corporation, Director, 1989;
Phoenician Financial Corporation, Secretary, 1989;
Phoenician Financial Corporation, Director, 1989;
Phoenician Commercial Properties, Inc., Director, 1989;
Provident Mortgage Corporation, Director, 1989;
AMCOR Investments Corporation, Secretary and Treasurer,
1989;
AMCOR Investments Corporation, Director, 1989;
Crescent Lending Corporation, Treasurer, 1989;
Crescent Lending Corporation, Director, 1989;
LINFIN Corporation, Vice President and Treasurer, 1989;
LINFIN Corporation, Director, 1989;
Castle Meadows, Inc., Director, 1989;
The Crescent Hotel Group, President, 1989;
The Crescent Hotel Group, Director, 1989;
CRESFIN Corporation, Director, 1989;
Continental Fidelity Life Insurance Company, Vice
President, 1987;
Continental Fidelity Life Insurance Company, President
and Vice President, 1988;
Continental Fidelity Life Insurance Company, President,
1989;
Continental Fidelity Life Insurance Company, Director,
1986-1989;
AMCON Insurance Group, Vice President, 1986;
AMCON Insurance Group, President and Vice President,
1987;
AMCON Insurance Group, Chairman of the Board and
President, 1988;
AMCON Insurance Group, Director, 1986-1988;
Crescent Holdings, Inc., Vice President, 1988;
Crescent Holdings, Inc., Director, 1988;
American Founders Life Insurance Company, President and
Chief Executive Officer, 1987;
American Founders Life Insurance Company, Chairman of the
Board, President and Chief Executive Officer,
1988-1989;
American Founders Life Insurance Company, Director,
1986-1989;
Crescent Hotels Operating Corporation, Director, 1988;
The Phoenix Resort Corporation, Director, 1988;
The Phoenix Crescent Corporation, Vice President, 1988;
The Phoenix Crescent Corporation, Director, 1988;

Crescent Regional Corporation, Director, 1988;
Crescent of Washington Corporation, Director, 1988.

Hubbard, therefore, was an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29. At all times pertinent hereto, Hubbard was a de facto director and a de facto officer of Old Lincoln.

22. Defendant Andre A. Niebling ("Niebling") is a citizen of the State of Arizona residing at 6000 Berneil Lane, Paradise Valley, Arizona 85253. Niebling is a certified public accountant and, according to the pertinent corporate books and records, held the following formal positions as director or officer of Old Lincoln and the following Affiliates during the indicated time periods:

ACC, Vice President, 1982-1984;
ACC, Senior Vice President and Treasurer, 1985-1986;
ACC, Director, 1982-1986;
American Continental Mortgage Company, Chairman of the Board, 1984-1985;
American Continental Mortgage Company, President, 1986;
American Continental Finance Corporation, President, 1984-1985;
American Continental Finance Corporation, Director, 1984-1986;
American Continental Finance Corporation II, Chairman of the Board, 1984;
American Continental Finance Corporation II, Director, 1984-1986;
Continental Home Finance Corporation, Director, 1984-1986;
Continental Home Finance Corporation, Chairman of the Board and President, 1984-1985;
American Home Finance Corporation, President, 1986;
American Home Finance Corporation, Director, 1984-1986;
American Home Finance Corporation II, President, 1984-1986;
American Home Finance Corporation II, Director, 1984-1986;
American Home Finance Corporation III, Chairman of the Board and President, 1984-1985;
American Home Finance Corporation III, President, 1986;

American Home Finance Corporation III, Director,
 1984-1986;
 Lincoln, Executive Vice President and Vice President,
 1984;
 Lincoln, Chairman of the Board, Chief Executive Officer
 and Vice President, 1985-1986;
 Lincoln, Chairman of the Board, Chief Executive Officer
 and Vice President, 1985;
 Lincoln, Chairman of the Board and Chief Executive
 Officer, 1986-1987;
 Lincoln, Chairman of the Board, 1988;
 Lincoln, Chairman of the Board, 1987;
 Lincoln, Director, 1984-1987;
 Insurance West, Inc., Director, 1981-1984;
 SSFLC, Director, 1984, 1986-1987;
 AMCOR Funding Corporation, Vice President, 1984-1987;
 AMCOR Funding Corporation, Director, 1984-1987;
 Phoenician Financial Corporation, Vice President and CFO,
 1984-1985;
 Provident Mortgage Corporation, Treasurer, 1984-1987;
 Provident Mortgage Corporation, Director, 1984-1987;
 Crescent Lending Corporation, President, 1985-1987;
 Crescent Lending Corporation, Director, 1985-1987;
 LINFIN Corporation, President, 1985-1987;
 LINFIN Corporation, Director, 1985-1987;
 CRESFIN Corporation, President, 1986-1987;
 CRESFIN Corporation, Director, 1986-1987;
 First Lincoln Financial Services, Inc., President,
 1984-1987;
 First Lincoln Financial Services, Inc., Director,
 1984-1987;
 P.F.C. Phoenician Funding Corporation, N.V., Managing
 Director, 1985-1987;
 Continental Fidelity Life Insurance Company, Director,
 1984-1985;
 American Founders Life Insurance Company, Assistant Vice
 President, 1987;
 American Founders Life Insurance Company, Director,
 1986-1987.

Niebling, therefore, was an affiliated person of Old Lincoln within
 the meaning of 12 C.F.R. § 561.29. During his service described
 above, Niebling was either a director or a de facto director and
 an officer or a de facto officer of Old Lincoln.

23. Defendant Mark S. Sauter ("Sauter") is a citizen of
 the State of Ohio residing at 4980 Springs Grove Avenue,

Cincinnati, Ohio 45231. Sauter is an attorney and, according to the pertinent corporate books and records, held the following formal positions as director or officer of Old Lincoln and the following Affiliates during the indicated time periods:

United Leasing Corporation of Delaware, Director, 1986;
Lincoln, Vice President, Corporate Counsel and Assistant Secretary, 1984;
Lincoln, Vice President and Assistant Secretary, 1985;
Lincoln, Vice President, Secretary and Assistant Secretary, 1986;
Lincoln, Vice President, Secretary and General Counsel, 1987;
Insurance West, Inc., Secretary, 1986-1987;
SSFLC, Director, 1986-1987;
AMCOR Funding Corporation, Assistant Secretary, 1985;
AMCOR Funding Corporation, Secretary and Assistant Secretary, 1985;
AMCOR Funding Corporation, Secretary, 1986-1987;
AMCOR Funding Corporation, Director, 1986-1987;
Phoenician Financial Corporation, Secretary, 1984-1987;
Phoenician Financial Corporation, Director, 1984-1987;
Phoenician Commercial Properties, Inc., Secretary, 1985-1987;
Phoenician Commercial Properties, Inc., Director, 1985-1986;
Crescent Lending Corporation, Vice President and Secretary, 1985-1987;
Crescent Lending Corporation, Director, 1985-1987;
LINFIN Corporation, Vice President and Secretary, 1985-1987;
LINFIN Corporation, Director, 1985-1987;
The Crescent Hotel Group, Secretary, 1984-1987;
The Crescent Hotel Group, Director, 1984-1986;
CRESFIN Corporation, Vice President and Secretary, 1986-1987;
CRESFIN Corporation, Director, 1986-1987;
Oxford Financial Corporation, Vice President and Secretary, 1984-1987;
Oxford Financial Corporation, Director, 1984-1987;
The Crescent Hotel Group of Michigan, Inc., Secretary, 1984-1985;
The Crescent Hotel Group of Michigan, Inc., Director, 1985-1987;
First Lincoln Financial Services, Inc., Vice President, 1985;
First Lincoln Financial Services, Inc., Vice President and Assistant Secretary, 1986-1987;

First Lincoln Financial Services, Inc., Director,
1986-1987;
P.F.C. Phoenician Funding Corporation, N.V., Managing
Director, 1986-1987;
Continental Fidelity Life Insurance Company, Director,
1984;
Continental Fidelity Life Insurance Company, Secretary,
1987;
Continental Fidelity Life Insurance Company, Vice
President and Secretary, 1984-1986;
AMCON Insurance Group, Secretary, 1986-1987.

Sauter, therefore, was an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29. During his tenure described above, Sauter was a de facto director and an officer or a de facto officer of Old Lincoln.

24. Defendant Gary W. Hall ("Hall") is a citizen of the State of Arizona residing at 6326 North 38th Street, Paradise Valley, Arizona 85018. Hall is a medical doctor and, according to the pertinent corporate books and records, was a director of ACC at all relevant times and, therefore, was an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29. At all times pertinent hereto, Hall was a de facto director and a de facto officer of Old Lincoln.

25. Defendant William J. Keating ("W. J. Keating") is a citizen of the State of Michigan. W. J. Keating is an attorney and, according to the pertinent corporate books and records, was a director of ACC from approximately February 27, 1986 through approximately March 25, 1987, and, therefore, was an affiliated person of Old Lincoln throughout such time within the meaning of 12 C.F.R. § 561.29. During his service as a director of ACC, W. J. Keating also was a de facto director of Old Lincoln.

26. Keating Jr. is the father of Keating III and father-in-law of Wurzelbacher, Hubbard, and Hall. Keating Jr. and W. J. Keating are brothers.

27. The individual defendants' spouses ("Spousal Defendants") are named herein as defendants because the wrongful acts and omissions of which plaintiff complains were done by the defendants named in paragraphs 15 through 22, inclusive, and 24 for the benefit of and on behalf of their marital communities. The Spousal Defendants are:

- (a) Mary Elaine Keating, wife of Keating Jr.;
- (b) Krista K. Keating, wife of Keating III;
- (c) George J. Wischer, husband of Wischer;
- (d) Elizabeth A. Kielty, wife of Kielty;
- (e) Elizabeth (Keating) Wurzelbacher, wife of Wurzelbacher;
- (f) Helen M. Niebling, wife of Niebling;
- (g) Kathleen M. (Keating) Hubbard, wife of Hubbard;
- (h) Michelle Ligget, wife of Ligget; and
- (i) Mary A. (Keating) Hall, wife of Hall.

28. Defendant First Lincoln is a corporation incorporated and existing under the laws of the State of California with its principal place of business in the State of Arizona.

29. Defendant Medema Homes of Utah, Inc. is a corporation incorporated and existing under the laws of the State of Utah with its principal place of business in the State of Arizona.

30. Defendant United Leasing Corporation of Delaware is a corporation incorporated and existing under the laws of the State of Delaware with its principal place of business in the State of Arizona.

31. Defendant American Continental Mortgage Company is a corporation incorporated and existing under the laws of the State of Colorado with its principal place of business in the State of Arizona.

32. Defendant American Continental Resources Corporation is a corporation incorporated and existing under the laws of the State of Arizona with its principal place of business in the State of Arizona.

33. Defendant Continental Fire and Casualty Company is a corporation incorporated and existing under the laws of the State of Arizona with its principal place of business in the State of Arizona.

34. Defendant Tatum Place, Inc. is a corporation incorporated and existing under the laws of the State of Arizona with its principal place of business in the State of Arizona.

35. Defendant American Continental Properties, Inc. is a corporation incorporated and existing under the laws of the State of Arizona with its principal place of business in the State of Arizona.

36. Defendant Park Drive Apartments, Inc. is a corporation incorporated and existing under the laws of the State

of Florida with its principal place of business in the State of Arizona.

37. Defendant A.C.C. Real Estate, Inc. is a corporation incorporated and existing under the laws of the State of Washington with its principal place of business in the State of Arizona.

38. Defendant Dunlap Apartments, Inc. is a corporation incorporated and existing under the laws of the State of Arizona with its principal place of business in the State of Arizona.

39. Defendant American Continental Finance Corporation is a corporation incorporated and existing under the laws of the State of Delaware with its principal place of business in the State of Arizona.

40. Defendant American Continental Finance Corporation II is a corporation incorporated and existing under the laws of the State of Delaware with its principal place of business in the State of Arizona.

41. Defendant Continental Home Finance Corporation is a corporation incorporated and existing under the laws of the State of Delaware with its principal place of business in the State of Arizona.

42. Defendant American Home Finance Corporation is a corporation incorporated and existing under the laws of the State of Delaware with its principal place of business in the State of Arizona.

43. Defendant American Home Finance Corporation II is a corporation incorporated and existing under the laws of the State

of Delaware with its principal place of business in the State of Arizona.

44. Defendant American Home Finance Corporation III is a corporation incorporated and existing under the laws of the State of Delaware with its principal place of business in the State of Arizona.

45. The corporate defendants identified in paragraphs 28 through 44, inclusive, are subsidiaries of ACC ("ACC Subsidiaries").

46. The individual defendants described in paragraphs 15 through 21, inclusive, are individuals or entities capable of holding legal or beneficial interests in property and, therefore, each such defendant is a person as defined by 18 U.S.C. § 1961(3).

47. From February 22, 1984 until April 14, 1989, defendants Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Hall, Sauter, and other culpable or negligent persons not named as defendants herein constituted a majority of the members, both formal and de facto, of the Board of Directors of Old Lincoln and, therefore, controlled and dominated Old Lincoln and its business affairs and interests. During this period of time, these individuals also engaged in conduct designed to conceal and did conceal acts of racketeering, fraud, conspiracy, breaches of fiduciary duties, and breaches of contract and the bases for claims and causes of action based on such misconduct.

48. For purposes of the claims pertaining to the Arizona Racketeering Act, any persons, including the defendants and others whose identities may as yet be unknown, who have conspired or attempted to commit the offenses described herein or solicited or facilitated them, all in accordance with A.R.S. § 13-1001-1004, will be jointly and severally liable as though they were principal defendants. The provisions of A.R.S. § 13-2301.D.4. explicitly include "preparatory offenses" as acts of racketeering subject to relief under the Arizona Racketeering Act.

II. JURISDICTION AND VENUE.

49. This action arises under the provisions of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970), 18 U.S.C. § 1961 et seq., and, therefore, federal subject matter jurisdiction exists pursuant to 18 U.S.C. §§ 1964(a) and (c) and 28 U.S.C. § 1331.

50. This action also arises under the laws of the United States and is brought by the RTC as the statutory successor to the rights, titles, powers, privileges and assets of New Lincoln and to the FSLIC as Conservator; therefore, federal subject matter jurisdiction also exists pursuant to 28 U.S.C. §§ 1331 and 1345, and 12 U.S.C. § 1441A(1)(1), as added by § 501(a) of FIRREA.

51. At all times relevant herein, the defendants did business, engaged in tortious conduct, transacted their affairs, and/or resided within the State of Arizona.

52. Venue is proper in the District of Arizona pursuant to 18 U.S.C. §§ 1965(a) and (b) and 28 U.S.C. §§ 1391(b) and (c).

III. SUMMARY OF PLAINTIFF'S ACTION.

53. This Complaint details numerous fraudulent and illegal acts and breaches of fiduciary duties committed by Old Lincoln's and ACC's directors and officers, including Old Lincoln's de facto directors and officers. The transactions reflecting these matters are set forth commencing with Section IV of this Complaint. The following paragraphs summarize the misconduct of various defendants.

A. The Scheme and Artifice To Defraud Old Lincoln and the Regulatory Authorities.

54. Beginning in 1983, Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, and Hubbard (the "Racketeering Defendants") conceived a fraudulent scheme to divert funds from a federally insured thrift to their own use and benefit. Niebling, Sauter and Hall joined in and advanced the scheme envisioned by the Racketeering Defendants. The implementation of this scheme involved concealing from the regulatory authorities, first, the true intentions for acquiring Old Lincoln and, next, the actual operation of the thrift. They did this to avoid compliance with the regulatory restrictions and supervisory oversight which are required in order to maintain the integrity of deposit insurance. To advance their scheme, the Racketeering Defendants and their allies engaged in a pattern of deception to mask prohibited and sham transactions from regulatory scrutiny. Old Lincoln suffered damages, and ultimately New Lincoln will suffer damages,

as a result of this fraudulent scheme and artifice. The RTC as Conservator for New Lincoln is entitled to recover those damages.

55. The initial components of the Racketeering Defendants' scheme included the following matters:

- (a) Prior to 1984, the Racketeering Defendants controlled an association of approximately seventeen corporations that comprised an enterprise ("the ACC Enterprise").
- (b) Keating Jr. and the other Racketeering Defendants operated the ACC Enterprise for their personal benefit and for the personal benefit of their associates.
- (c) The primary focus of the ACC Enterprise was speculative real estate transactions.
- (d) In or about 1983, Keating Jr., the other Racketeering Defendants, and their associates required additional funds to expand the ACC Enterprise's speculative real estate transactions.
- (e) To obtain a source of funds, the Racketeering Defendants, acting through the ACC Enterprise, targeted Old Lincoln and its insured deposit base for purchase.
- (f) Utilizing ACC, a constituent of the ACC Enterprise, the Racketeering Defendants acquired Old Lincoln by making material misrepresentations to the FHLBB.
- (g) Upon its acquisition, Old Lincoln became an indirect subsidiary of ACC.

56. Once ACC acquired Old Lincoln, the Racketeering Defendants, directly and indirectly, managed the affairs of the ACC Enterprise to divert Old Lincoln's deposits and assets to themselves. They committed various illegal, fraudulent, and

imprudent acts in order to accomplish and then to conceal this diversion, including:

- (a) Submitting false and misleading business plans to the FHLBB;
- (b) Exceeding regulatory limits on risky direct investments;
- (c) Concealing direct investment regulation violations by backdating documents;
- (d) Forging certain documents in an effort to support misrepresentations;
- (e) Misrepresenting the nature of certain investments as loans when in fact they were prohibited direct investments by Old Lincoln;
- (f) Misrepresenting the effects of a Tax Preparation and Allocation Agreement ("Tax Plan") and using it to cause Old Lincoln, in violation of applicable law, regulations, and policies governing thrift holding companies, to transfer approximately \$94,800,000 from Old Lincoln to ACC;
- (g) Concealing the existence of large illegal cash payments from Old Lincoln to ACC under the Tax Plan;
- (h) Undertaking sham transactions devoid of economic substance;
- (i) Misrepresenting the true value of Old Lincoln's assets to create an artificial appearance of profitability and stability;
- (j) Causing Old Lincoln to make fraudulent loans;
- (k) Effecting the fraudulent transfer of ownership of securities to ACC;
- (l) Causing Old Lincoln to pledge \$15,000,000 in assets as security for a loan to the ACC Employee Stock Option Plan to fund purchases of insider stock holdings; and
- (m) Using Old Lincoln's assets to pay the Racketeering Defendants and other insiders excessive compensation and to fund the

personal, political, and charitable convictions of Keating Jr.

B. Breaches of Fiduciary Duties by Old Lincoln's Directors and Officers.

57. Defendants' breaches of their fiduciary duties were pervasive. Their breaches involved diverting enormous sums of cash from Old Lincoln to ACC, extending loans to insiders, making imprudent loans and investments, manipulating transactions to enhance the interests of ACC and its insiders to the detriment of Old Lincoln, wasting Old Lincoln's assets, and appropriating corporate opportunities.

58. A recurring element in the transactions described in Section IV was the operation of the Tax Plan, which defendants caused Old Lincoln to execute. The Tax Plan corrupted an otherwise permissible arrangement, i.e. requiring a holding company's subsidiaries to advance to it cash to cover their actual tax liabilities, to create a device to siphon cash from Old Lincoln to ACC on the basis of deferred tax liabilities, even though no taxes currently were payable by or on behalf of Old Lincoln.

59. To make the Tax Plan work for the immediate financial benefit of the Racketeering Defendants, the Keating Family, and ACC, it was imperative for Old Lincoln and the Lincoln Subsidiaries to engage in a series of sham transactions devoid of economic substance. Only in this fashion could the defendants generate for Old Lincoln consolidated "book income" which purportedly justified the diversion of cash from Old Lincoln to ACC under the Tax Plan. The defendants generally employed sham real

estate transactions and accounting gimmickry to accomplish this purpose. It was characteristic of these transactions that "straw borrowers" would be used, that the borrowers would not be at risk on the loans extended by Old Lincoln and the Lincoln Subsidiaries, and that Old Lincoln would finance, directly or indirectly, their down payments. Ultimately, Old Lincoln sustained Tax Plan related losses in excess of \$125,000,000 as a result of transactions such as those.

60. The misconduct of the Racketeering Defendants and other directors and officers (both formal and de facto) also included their self-dealing with the Hotel Pontchartrain Limited Partnership. For their own benefit, these defendants procured capital contributions by and loans from Old Lincoln to Lincoln Subsidiaries which permitted the partnership's acquisition of the Hotel Pontchartrain and the continuation of the partnership's operation of the hotel, despite its continuing and serious operating losses. For example, at a time when the limited partnership had a substantial negative net worth, believed to be approximately a negative \$20,000,000, and when its single asset, the hotel, was encumbered with secured indebtedness approximately equal to or in excess of its appraised value, these defendants procured a \$20,000,000 unsecured loan, on favorable below-market terms, from one of the Lincoln Subsidiaries which was funded by Old Lincoln. Losses sustained on the transactions relating to the Hotel Pontchartrain Limited Partnership have exceeded or will exceed \$21,600,000.

61. A classic example of the financial imprudence of Old Lincoln's directors and officers is the financing of the purchase of Crowder Water Ranch by C.V. Nalley:

- (a) They sold a one-third interest in the Crowder Water Ranch to C.V. Nalley for \$20,000,000 on September 30, 1986.
- (b) On the same date, they caused a Lincoln Subsidiary to release C.V. Nalley's personal guarantees on loans to one borrower, and they further caused another Lincoln Subsidiary to purchase for \$3,500,000 all of C.V. Nalley's stock in one of those borrowers which, at the time of the purchase, was either insolvent or nearly insolvent.
- (c) They extended to C.V. Nalley non-recourse financing in the amount of \$15,000,000 when he closed the purchase of the Crowder Water Ranch.
- (d) When C.V. Nalley failed to honor his commitments under the loan agreement, first with respect to his obligation to make an annual principal and interest payment in 1987 and then with respect to his obligation to make an annual principal and interest payment in 1988, they caused Old Lincoln and the Lincoln Subsidiaries to agree to repurchase this interest in the Crowder Water Ranch by forgiving the \$15,000,000 in non-recourse indebtedness and by paying him \$7,500,000 in cash.

The losses realized on this series of transactions are approximately \$14,000,000.

62. To avoid compliance with lawful limitations on Old Lincoln's direct investments, defendants engaged in a variety of transactions to disguise what otherwise were and were intended to be investments by Old Lincoln. An example is the Continental Ranch transaction with R.A. Homes, Inc. Defendants caused a Lincoln Subsidiary to sell the residential portion of Continental Ranch to

R. A. Homes, Inc., and to finance the acquisition in a sham transaction devoid of economic substance. Old Lincoln provided the funds for financing this transaction. Subsequent to the purported sale and financing, they caused Old Lincoln and the Lincoln Subsidiaries to exercise control of that project just as though they were the sole owner of or a joint venturer on that project.

63. The Racketeering Defendants and their allies engineered a number of transactions with Wolfswinkel Group, Inc. involving a project near Tucson known as Rancho Vistoso, and these transactions combine a number of the serious acts of misconduct addressed by this Complaint:

- (a) The Rancho Vistoso loans were closed in contravention of a specific federal regulation requiring each real estate loan to be supported by an adequate appraisal prior to loan approval or disbursement.
- (b) Old Lincoln was forced to sell a legitimate profit participation in the Rancho Vistoso loans for a purported \$15,000,000 in a transaction that was unlawfully financed and which occurred without the requisite regulatory approval.
- (c) After selling the profit participation to ACC, ACC sold it back to the borrower, who financed the re-acquisition with proceeds of illusory transactions with Lincoln Subsidiaries.
- (d) Old Lincoln, moreover, was caused by ACC to record a profit on the sale of the profit participation to ACC, thereby forcing it to advance cash to ACC in the approximate amount of \$6,000,000.

In sum, the Rancho Vistoso transactions amounted to a variety of illegal and imprudent transactions which have caused or will cause Old Lincoln damages in excess of \$76,000,000.

64. In addition to real estate transactions, defendants manipulated a number of stock sales and purchases which have resulted or will result in damages in excess of \$22,000,000. One of those transactions, involved the appropriation of a corporate opportunity for the benefit of ACC and a concurrent detriment to Old Lincoln in the approximate amount of \$11,000,000. Keating Jr., the Keating Family, and their business associates engaged in an even more elaborate series of insider stock transactions and profited by selling their stock in ACC to the ACC Employee Stock Ownership Plan. This insider trading placed Old Lincoln's assets at risk. These transactions will result in a loss to Old Lincoln in excess of \$11,000,000.

65. All told, the defendants caused Old Lincoln to engage in numerous fraudulent, illegal, and imprudent transactions. As a result of those transactions, Old Lincoln was rendered insolvent, and New Lincoln has sustained or will sustain total damages in excess of \$1,100,000,000.

C. Defendants' Motives for Illegal, Fraudulent, and Imprudent Transactions.

66. The Racketeering Defendants set out to acquire a source of cash for the speculative business ventures and cash needs of the ACC Enterprise. This included speculative real estate projects and investments in junk bonds and in companies involved in hostile takeovers. Therefore, the Racketeering Defendants sought to acquire a thrift to secure a source of funds.

67. Traditionally, thrifts use deposit funds to make loans, and they derive income by collecting interest and fees. More recently, however, thrifts also have used deposits and other funds to make investments in real estate, service corporation subsidiaries, and/or equity securities. Such non-loan investments are referred to as "direct investments." Federal regulations have limited the percentage of assets which a federally chartered thrift could use for direct investments. In late 1983 through early 1985, however, no such percentage limit applied to state chartered thrifts in California, even though federally insured. Therefore, the Racketeering Defendants targeted and acquired Old Lincoln.

68. After acquiring Old Lincoln, the Racketeering Defendants' paramount motive was to divert the resources of Old Lincoln to the ACC Enterprise in furtherance of their plans and in disregard for other regulatory restrictions concerning safety and soundness and Old Lincoln's obligations to its depositors and other creditors. In addition, the Racketeering Defendants used transactions involving Old Lincoln in an effort to manipulate and to inflate artificially the price of ACC's stock for the ultimate benefit of the Keating Family and other insiders, including sales of their stock in ACC for its Employee Stock Ownership Plan.

69. The Racketeering Defendants meant to finance the ACC Enterprise's large speculative real estate and business ventures with direct funding by Old Lincoln. They also meant to cause Old Lincoln to increase the ACC Enterprise's cash flow through the payment of dividends by Old Lincoln to ACC. To accommodate their

objective of using Old Lincoln's deposit base to fund directly projects of the ACC Enterprise, the Racketeering Defendants caused many of ACC's operations to be transferred to Old Lincoln. As subsidiaries of such, ACC Enterprise operations could be funded through capital contributions and loans from Old Lincoln.

70. The Racketeering Defendants soon met with obstacles to these objectives. By duly promulgated regulation, the FHLBB imposed specific percentage limitations on direct investments by all federally insured thrifts. In addition, under the terms of ACC's acquisition of control of Old Lincoln, the Racketeering Defendants soon found that their ability to move money from Old Lincoln to ACC through the payment of dividends was limited due to regulatory restrictions. Thereafter, the Racketeering Defendants undertook to circumvent the applicable limitations on direct investments and to inflate the apparent profitability of Old Lincoln to satisfy the ACC Enterprise's cash flow needs.

71. In early 1985, over the strenuous objection of Keating Jr., the FHLBB implemented the "direct investment rule," which is codified at 12 C.F.R § 563.9-8. Adoption of this lawful regulation was intended to limit risks to federally insured, state chartered thrifts arising from investments in such assets as equity securities and speculative real estate. Old Lincoln's compliance with this regulation would have thwarted the Racketeering Defendants' purposes for the ACC Enterprise's acquisition of Old Lincoln. Accordingly, after acquiring Old Lincoln the Racketeering Defendants were motivated to cause Old Lincoln to engage in sham

transactions for the purpose of causing direct investments to appear as loans.

72. Because of their reliance on speculative real estate investments, the Racketeering Defendants had to devise a method of diverting cash to ACC from Old Lincoln. Regulatory restrictions on paying dividends forced them to find another source of cash. As a result, the Racketeering Defendants relied on the Tax Plan to divert cash to ACC from Old Lincoln even though Old Lincoln had not yet earned cash on the transactions by which the Racketeering Defendants were causing Old Lincoln to book income. This made the ACC Enterprise dependent upon generating "book income" at Old Lincoln. Accordingly, the Racketeering Defendants were also motivated to cause Old Lincoln to engage in sham transactions for the purpose of artificially inflating its "book income" in violation of 12 C.F.R. §§ 563.18(b), 563.23-1(f) and 563.23-3(c). In turn, the "book income" inflation led to payments under the Tax Plan which were illegal under 12 U.S.C. § 1730a(d)(4) and 12 C.F.R. § 584.3(a)(4).

73. The illegal, fraudulent, and imprudent transactions described in this Complaint were the product of the foregoing motives.

IV. FACTS UNDERLYING CLAIMS FOR RELIEF.

A. The ACC Enterprise.

74. As is more particularly set forth below, there existed an enterprise known as the ACC Enterprise, which engaged, inter alia, in the businesses of speculative real estate finance

and of speculative real estate acquisition, development, and construction.

75. Prior to 1984, the ACC Enterprise included, but was not limited to, all or part of the following entities:

- American Continental Corporation
- Medema Homes of Utah, Inc.
- United Leasing Corporation of Delaware
- American Continental Mortgage Company
- American Continental Resources Corporation
- Continental Fire & Casualty Company
- Tatum Place, Inc.
- American Continental Properties, Inc.
- Park Drive Apartments, Inc.
- A.C.C. Real Estate, Inc. (formerly, Keating Homes)
- Dunlap Apartments, Inc.
- American Continental Finance Corporation
- American Continental Finance Corporation II
- Continental Home Finance Corporation
- American Home Finance Corporation
- American Home Finance Corporation II
- American Home Finance Corporation III

76. The ACC Enterprise identified in paragraph 74, constitutes an association in fact and is an "enterprise" as defined by 18 U.S.C. § 1961(4) and Ariz. Rev. Stat. § 13-2301(D)(2). Indeed, ACC, through its authorized agents, has admitted the existence of the ACC Enterprise in proceedings pending before the United States District Court for the District of Arizona:

. . . . ACC, Lincoln Savings and Loan Association ("Lincoln") and the eleven Lincoln service company subsidiaries were one business enterprise (collectively the "ACC Enterprise").

Supplemental Memorandum in Support of Motion of American Continental Corporation To Withdraw Reference from Bankruptcy Court; Declaration of James J. Feder, August 10, 1989, In Re:

American Continental Corporation, CIV 89-1116-PHX-CLH, at p. 3. Moreover, ACC has admitted to this Court the practical and legal effects of this association:

The ACC Enterprise is one business enterprise, intertwined financially and legally.

Id. at 13.

B. Acquisition and Maintenance of Control of Old Lincoln through a Scheme and Artifice To Defraud Old Lincoln and the Regulatory Authorities.

1. The Regulatory Structure Protecting the Deposit Base Targeted by the ACC Enterprise.

77. The Racketeering Defendants sought to acquire an insured thrift in order to exploit an existing deposit base and the potential for expansion of that deposit base for further exploitation. As described below, that deposit base and its potential for expansion were made possible by the federal deposit insurance system.

78. Old Lincoln was a thrift which was incorporated, organized, and chartered under the laws of the State of California. As a thrift chartered by the State of California, Old Lincoln was subject to regulation and examination by the CDSL.

79. Old Lincoln's deposit accounts were insured pursuant to 12 U.S.C. § 1726. The insurance of deposit accounts materially benefited Old Lincoln in obtaining deposit funds for its investment use.

80. The examination and supervision of individual federally insured thrifts was conducted by the FHLBB and the FSLIC,

in part, through twelve regional offices which had delegated powers from the FHLBB and the FSLIC. 12 C.F.R. Part 501. Supervisory authority was vested in the President of each Federal Home Loan Bank and certain bank employees known as Supervisory Agents. Old Lincoln was located in the region supervised by the Eleventh District Office of the Supervisory Agent ("Supervisory Agent").

81. To achieve the purposes of the federal deposit insurance system, the FHLBB and the FSLIC adopted an extensive series of operating regulations, policies, procedures, and requirements. They covered such matters as appraisals; loan application underwriting, and documentation; investments, both directly and indirectly through subsidiary service corporations; transactions with affiliated persons; and certain aspects of corporate governance. They applied to each insured thrift institution, regardless of the origin of its charter, because of the overwhelming federal interests related to the safety and soundness of the federal deposit insurance system.

82. The system of federal regulation of thrifts began with the passage of the Federal Home Loan Bank Act of 1932, the Home Owners' Loan Act of 1933, and the National Housing Act of 1934. These Acts and regulations adopted thereunder, along with compatible state regulations, permitted thrifts and their owners/members to operate in a profit-oriented environment, but did not permit unrestricted operations. Accordingly, each insured thrift and its owners/members, by virtue of their acceptance of the benefits provided by federal deposit insurance, necessarily must

have recognized that depositors' interests and protection were paramount and, therefore, controlled and limited the size, nature, and terms of transactions. In short, each insured thrift and its owners/members were required to recognize that they operated with and placed at risk the funds of the thrift's depositors and, ultimately, the federal deposit insurance fund.

83. As a condition of the insurance of its deposits, Old Lincoln was required, inter alia, to comply with all federal regulations; to adhere to safe and sound management and financial practices; to maintain books and records accurately reflecting all its business transactions and to make them available to federal examiners who conducted periodic examinations to monitor Old Lincoln's and the Lincoln Subsidiaries' compliance with regulations and adherence to safe and sound practices; and to maintain a minimum net worth and other reserves for the protection of depositors and the insurance fund. 12 U.S.C. § 1726(b).

84. The system of federal and state regulation which applied to Old Lincoln and the Lincoln Subsidiaries was necessary to serve the fundamental, unique purposes of the federal deposit insurance system, including:

- (a) Protecting depositors who entrust their savings to thrift institutions;
- (b) Promoting stability in the financial system; and
- (c) Providing sufficient liquidity to fund an economical system of home financing.

These purposes could not be achieved without adherence to regulatory requirements.

2. Targeting of Old Lincoln.

85. In 1983, Old Lincoln was a profitable thrift with capital reserves in excess of regulatory requirements. It was primarily engaged in the business of residential lending for the purchase or refinancing of one to four unit dwellings. Old Lincoln had been one of the leading institutions in the area of affirmative lending in mortgage deficient areas. Old Lincoln relied almost exclusively on retail deposits gathered through a community oriented branch system, primarily servicing Orange County, California, to fund its lending operations. Wholesale brokered deposits accounted for only 2.7 percent of its liabilities prior to ACC's acquisition.

86. In 1983 and continuing thereafter, the Racketeering Defendants, the Keating Family, certain other defendants, and their associates needed funds to expand the ACC Enterprise's operations for their personal benefit.

87. The Racketeering Defendants determined that the ACC Enterprise should acquire and maintain control of a federally insured thrift in order to fund the operations of the ACC Enterprise.

88. The Racketeering Defendants then targeted Old Lincoln for purchase by the ACC Enterprise.

89. To achieve their goal of exploiting Old Lincoln's existing insured deposit base and its potential for expansion, the Racketeering Defendants conceived a scheme and artifice to defraud

the very regulatory system which made Old Lincoln an attractive prize.

90. The Racketeering Defendants conducted the affairs of the ACC Enterprise through a pattern of racketeering activity to acquire Old Lincoln and to maintain control of Old Lincoln, as more fully described below. The Racketeering Defendants also received income derived from a pattern of racketeering activity and invested it in the operations of the ACC Enterprise, as more fully described below.

3. Acquisition of Old Lincoln.

91. ACC, a constituent of the ACC Enterprise, was used as the instrumentality to acquire Old Lincoln.

92. ACC's acquisition of Old Lincoln required the review and approval of the regulatory authorities.

93. ACC made numerous factual representations to induce approval of ACC's proposed acquisition of Old Lincoln. In soliciting regulatory approval, ACC submitted a written application, as required by federal law, providing specific information detailing the intended manner of operating Old Lincoln. ACC, through its representatives, made false representations regarding the intended manner of operating Old Lincoln, including, but not limited to, the following:

- (a) ACC would maintain Old Lincoln's existing management.
- (b) ACC would continue Old Lincoln's residential lending and operating focus.
- (c) ACC would maintain Old Lincoln's required minimum net worth levels for twenty years.

These factual representations were material to the regulatory authorities' decision to approve ACC's acquisition of control of Old Lincoln on the terms proposed by ACC.

94. Further, the Racketeering Defendants fraudulently omitted from their statement of intended operation of Old Lincoln their plan to cease traditional savings and loan operations and to concentrate exclusively on high risk activities unrelated to home financing.

95. The factual representations made by ACC to the FHLBB were false. ACC knew the representations to be false, but, at the direction of the Racketeering Defendants, made them to deceive and to mislead the regulatory authorities to induce approval of the acquisition. At the time when ACC made the representations, the Racketeering Defendants sought to acquire control of Old Lincoln for the purpose of effecting direct investments in the ACC Enterprise and diverting the deposits and assets of Old Lincoln to their personal use and benefit.

96. In reliance upon ACC's representations, the Supervisory Agent approved ACC's application for acquisition of control of Old Lincoln on the terms proposed by ACC. Thereafter, ACC acquired Old Lincoln on or about February 22, 1984, by paying \$51,000,000 for First Lincoln, which owned 100% of the stock of Old Lincoln. First Lincoln had and has no function other than to hold the stock of Old Lincoln. With its acquisition of First Lincoln, therefore, ACC deliberately acquired an indirect subsidiary, Old

Lincoln, knowing that it operated in the highly regulated environment described above.

97. Had the Racketeering Defendants truthfully represented their intentions regarding the operations of Old Lincoln, the Supervisory Agent would not have approved ACC's acquisition of control application, or would have approved it only subject to certain appropriate operating restrictions, and the Racketeering Defendants would not have acquired control of Old Lincoln on the same basis as it was acquired.

4. Expansion of the ACC Enterprise To Include Old Lincoln and Its Subsidiaries.

98. Upon its acquisition and thereafter, Old Lincoln and its related entities became part of an expanded ACC Enterprise. During the period beginning in February of 1984 through April 13, 1989, this expanded ACC Enterprise included the following entities:

American Continental Corporation
Medema Homes of Utah, Inc.
United Leasing Corporation of Delaware
American Continental Mortgage Company
American Continental Resources Corporation
Continental Fire & Casualty Company
First Lincoln Financial Corporation
Tatum Place, Inc.
American Continental Properties, Inc.
Park Drive Apartments, Inc.
A.C.C. Real Estate, Inc.
Dunlap Apartments, Inc.
American Continental Finance Corporation
American Continental Finance Corporation II
Continental Home Finance Corporation
American Home Finance Corporation
American Home Finance Corporation II
American Home Finance Corporation III
Lincoln Savings & Loan Association
Reliable Title Company
Insurance West, Inc.
SSFLC
AMCOR Funding Corporation

Phoenician Commercial Properties, Inc.
 Provident Mortgage Corporation
 AMCOR Investments Corporation
 Crescent Lending Corporation
 LINFIN Corporation
 Castle Meadows, Inc.
 The Crescent Hotel Group
 CRESFIN Corporation
 Oxford Financial Corporation
 YSP Holdings, Inc.
 Tammany Highlands, Inc.
 American Northwood, Inc.
 The Crescent Hotel Group of Michigan, Inc.
 Phoenician Construction Corporation
 Estrella Star Real Estate Corporation
 The Uplands Company
 The Uplands Wastewater Company
 AMCOR Continental, Inc.
 Crescent Hotel Limited Partnership
 First Lincoln Financial Services, Inc.
 Young, Smith & Peacock, Inc.
 P.F.C. Phoenician Funding Corporation, N.V.
 Continental Fidelity Life Insurance Company
 AMCON Insurance Group
 Rancho Estrella Real Estate Corporation
 Crescent Holdings, Inc.
 American Founders Life Insurance Company
 Crescent Hotels Operating Corporation
 The Phoenix Resort Corporation
 The Phoenix Crescent Corporation
 Crescent Regional Corporation
 Crescent of Washington Corporation
 Hotel Pontchartrain Limited Partnership

99. This expanded ACC Enterprise continued as an association in fact and is an "enterprise" as defined by U.S.C. § 1961(4) and Ariz. Rev. Stat. § 13-2301(D)(2).

100. The affairs of this expanded ACC Enterprise were conducted by the Racketeering Defendants and others to manipulate, control and victimize Old Lincoln, as set forth below:

5. Maintaining Control of Old Lincoln.

101. As a result of its acquisition of control of Old Lincoln, ACC became a thrift holding company. 12 U.S.C. § 1730a(a)(1)(D). As a thrift holding company, ACC was required by law to submit to the FSLIC and the FHLBB requested information concerning its operations. 12 U.S.C. § 1730a(b)(2). As such a holding company, ACC was also subject to examination by the FSLIC. 12 U.S.C. § 1730a(b)(4). In addition, as a thrift holding company, ACC was subject to FHLBB and FSLIC regulation and was prohibited from engaging in certain transactions with Old Lincoln and the Lincoln Subsidiaries pursuant to 12 U.S.C. §1730a(d) and 12 C.F.R. Part 584. Proposed transactions between a thrift holding company and its thrift or any affiliates of the thrift either were prohibited in their entirety or required that prior approval of the appropriate Supervisory Agent be sought and obtained. 12 C.F.R. §§ 563.41, 563.43, 584.3.

102. As a result of ACC's acquisition of control of Old Lincoln, the directors and officers of ACC became controlling persons of Old Lincoln. 12 C.F.R. § 561.28. They, along with Old Lincoln's own directors and officers, became affiliated persons with respect to Old Lincoln and its affairs. 12 C.F.R. § 561.29.

103. Contrary to the representations made to acquire control of Old Lincoln, the Racketeering Defendants deliberately redirected the management and operation of Old Lincoln, as follows:

- (a) ACC installed new management at Old Lincoln.
- (b) ACC caused Old Lincoln to redirect its operations from the financing of one to four

family residential properties into investments in, and loans for, large speculative real estate projects, unimproved real estate, government and mortgage-backed securities, and low grade corporate debt ("junk bonds") and equity securities.

- (c) ACC caused Old Lincoln to increase its investment activity outside the State of California.
- (d) ACC caused Old Lincoln to begin soliciting brokered "jumbo" deposits (deposits of \$100,000 or more).

104. After the Racketeering Defendants acquired control of Old Lincoln, they sought to maintain control and to minimize the legitimate exercise of regulatory and supervisory authority. The efforts to accomplish these purposes inextricably involved a continuing pattern of deceiving public officials.

105. Old Lincoln submitted operating plans on August 8 and again on November 19, 1984, in which it made representations to the Supervisory Agent concerning management's intentions for operating Old Lincoln.

106. Old Lincoln failed to conform its operations to the August 8 and November 19, 1984 operating plans. Instead, Old Lincoln instigated high risk investment programs, including the acquisition of junk bonds, at great risk to the thrift.

107. The regulatory authorities learned of certain of these activities and convened a meeting with Old Lincoln's management on February 5, 1985. Old Lincoln's management agreed to consider extricating the thrift from its junk bond investments.

However, these representations were false and made only to avoid regulatory criticism and intervention.

108. Knowing that their deliberately implemented unsafe, unsound, and fraudulent lending and operating practices would compel regulatory intervention in Old Lincoln's affairs and wrest control of the thrift from them, the Racketeering Defendants caused the ACC Enterprise to conceal from the regulatory authorities the unsafe, unsound, and fraudulent practices which they had caused Old Lincoln to pursue.

109. The Racketeering Defendants caused Old Lincoln to submit false financial statements, reports, and other financial data to the regulatory authorities. As set forth more particularly below, these financial reports were false in that:

- (a) They grossly overstated Old Lincoln's income.
- (b) They concealed the poor financial condition of Old Lincoln.
- (c) They concealed fraudulent loans to insiders and affiliates.
- (d) They concealed the dangerously low and, later, the non-existent level of regulatory capital.

110. Unaware of their false nature, the regulatory authorities relied on these material misrepresentations and deferred the exercise of regulatory powers to deprive the Racketeering Defendants of control of Old Lincoln.

111. The Racketeering Defendants also made and caused others to make misleading statements to public officials in order

to forestall regulatory intervention into the affairs of Old Lincoln.

112. In furtherance of the scheme to defraud Old Lincoln and the regulatory authorities and to maintain control of Old Lincoln, Keating Jr. and his associates enlisted Jack D. Atchison, managing partner of the Phoenix office of Arthur Young & Company ("AY"), on behalf of the ACC Enterprise and the Racketeering Defendants, to transmit a letter dated March 17, 1987 (the "AY Letter") to a public official.

113. The AY Letter supported claims advanced by those in control of Old Lincoln that "FHLBB examiners were unreasonable in their decision making and that at times their conduct bordered on 'harassment'." AY suggested in its letter that the regulatory authorities were biased against Old Lincoln.

114. The AY letter made misrepresentations concerning Old Lincoln's operations and condition:

After its acquisition, Lincoln acquired parcels of prime real estate in Arizona and other growth states, increased its construction lending, and sought other nontraditional investments. Since this strategy was put in place, Lincoln has realized aggregate after-tax earnings of more than \$141,000,000. (Emphasis added).

115. The AY Letter made misrepresentations concerning the validity of the regulatory authorities' criticisms of Old Lincoln, as well as the purported successes of Old Lincoln under the direction of the Racketeering Defendants.

Moreover, because Lincoln does not concentrate on single family residential lending, it does not fit the pattern for member institutions that the present FHLBB leadership has espoused publicly and as reflected in recent regulations. This fact has, based on my observations, led to unusually antagonistic positions and actions by the FHLBB towards Lincoln. This is difficult to fully understand because Lincoln's strategies have thus far proved successful and have turned an association headed for failure into a strong and viable financial entity. (Emphasis added).

116. The AY Letter made misrepresentations concerning the validity of an examination of Old Lincoln conducted by the FHLBB:

Based on the draft reports presented to Lincoln, I believe the results will indicate Lincoln fails to meet the minimum net worth requirement as determined by the FHLBB staff. I don't believe the facts and circumstances will, if objectively viewed, support such a conclusion. Thus, the final report will in all likelihood be detrimental and inappropriately so.

117. The above-described representations contained in the AY Letter were false. Jack D. Atchison made these representations to forestall the regulatory authorities' intervention into the affairs of Old Lincoln and their wresting control of Old Lincoln from the Racketeering Defendants.

118. The exercise of the Racketeering Defendants' political influence and the AY Letter were designed to delay the regulatory authorities' issuance of a report of Old Lincoln's

condition. Specifically, the Racketeering Defendants used baseless accusations of regulatory bias against Old Lincoln to bring an ongoing examination to a halt and to attempt to win concessions from the regulatory authorities.

119. An ongoing examination of Old Lincoln was discontinued and special examination conditions and procedures were implemented for a new examination. To address the Racketeering Defendants' meritless complaints, the examination process was repeated in its entirety. The new examination, gained through the improper use of political influence, protracted the examination process and afforded the Racketeering Defendants additional time in which to exacerbate their frauds on Old Lincoln and the regulatory authorities.

6. Operation of Old Lincoln

120. After the Racketeering Defendants acquired control of Old Lincoln, they and ACC caused Old Lincoln to conduct many of its operations using the Lincoln Subsidiaries. Old Lincoln's investments in and loans to the Lincoln Subsidiaries were part of the fraudulent, illegal and imprudent transactions in which it engaged at the direction of the Racketeering Defendants.

121. ACC's management dictated whether or not and to what extent Old Lincoln would engage in a transaction. After ACC's management decided that Old Lincoln would engage in a transaction, they would determine the extent to which various aspects of a given transaction would be allocated among Old Lincoln and the Lincoln Subsidiaries.

122. Real estate investments and subsequent sales frequently had the following aspects:

- (a) Old Lincoln would finance, through deposits originated by its California branch network, the acquisition of property by a Lincoln Subsidiary.
- (b) After holding the property, the Lincoln Subsidiary would sell the property to a third party, such as a developer.
- (c) In connection with the sale, the selling Lincoln Subsidiary or an affiliate would finance a portion of the purchase price by taking a note.
- (d) Another Lincoln Subsidiary would engage in a transaction with a buyer of the property (such as a loan to the buyer or purchase of certain assets of the buyer), thereby directly or indirectly providing all or a portion of the down payment.
- (e) The selling Lincoln Subsidiary would often subsequently sell a participation interest in the note to Old Lincoln.

Therefore, Old Lincoln and two or more of the Lincoln Subsidiaries were frequently involved, whether directly or indirectly, in the same transaction.

123. In order to operate Old Lincoln in the foregoing fashion, and in furtherance of their scheme and artifice to defraud, the Racketeering Defendants and ACC caused Old Lincoln to make capital investments in and to extend loans to the Lincoln Subsidiaries.

- (a) Old Lincoln's capital investments in the Lincoln Subsidiaries exceeded \$285,000,000.
- (b) Old Lincoln's extensions of credit to the Lincoln Subsidiaries exceeded \$1,040,000,000.

Accordingly, the Racketeering Defendants and ACC caused Old Lincoln to place at risk more than \$1,325,000,000 in the Lincoln Subsidiaries. These transactions were an integral part of the fraudulent, illegal and imprudent transactions directed by the Racketeering Defendants.

124. Defendants' acts and omissions described herein directly and proximately caused Old Lincoln to sustain substantial damages in respect to its investments in and loans to the Lincoln Subsidiaries, all in furtherance of the scheme and artifice to defraud Old Lincoln. Although the RTC has not been able to determine the exact amount of Old Lincoln's losses directly and proximately caused by virtue of the foregoing, those losses exceed \$180,000,000. In addition, the operation of Old Lincoln by the Racketeering Defendants and their allies directly and proximately caused losses to it in excess of (a) \$85,000,000 with respect to the Old Lincoln transactions described below, (b) \$125,000,000 with respect to illegal tax sharing payments, and (c) \$745,000,000 with respect to breaches of a net worth maintenance agreement. Consequently, New Lincoln's actual damages will exceed \$1,100,000,000 as a result of the scheme and artifice to defraud Old Lincoln described in this Complaint.

C. The Fraudulent Tax Plan.

1. Overview of the Fraudulent Tax Plan.

125. In furtherance of their scheme to divert the assets of Old Lincoln to their use and benefit, the Racketeering Defendants devised and implemented a fraudulent arrangement

between ACC and Old Lincoln ostensibly for the payment by Old Lincoln to ACC of Old Lincoln's share of taxes for the ACC Enterprise on a consolidated corporate basis. Under the arrangement, commonly known as a tax sharing agreement, ACC then would pay the net taxes for the consolidated group. The Racketeering Defendants, however, deceitfully employed an unlawful method of calculating Old Lincoln's payments to ACC which resulted in Old Lincoln's making payments to ACC even though Old Lincoln had no tax liability at the time. As a result, throughout the time the fraudulent Tax Plan was in effect, none of the money paid by Old Lincoln to ACC was ever paid by ACC in taxes. The true but hidden purpose of the arrangement was to allow ACC to siphon funds from Old Lincoln for the enrichment of ACC, the Racketeering Defendants, and the Keating Family. During the years 1984 through 1987, ACC appropriated \$94,800,000 from Old Lincoln under the fraudulent Tax Plan; ACC also effected a related transaction in 1988 which will result in losses in excess of \$8,000,000; and Old Lincoln further lost the benefit of the use of its own funds which were not owed for taxes, and sustained additional damages as a result. Ultimately, Old Lincoln's damages resulting from the fraudulent Tax Plan exceeded \$125,000,000.

126. Implementation of the Tax Plan depended upon concealing from the regulatory authorities the true and fraudulent purpose of the Tax Plan and misrepresenting the effects which the Tax Plan would have on the condition of Old Lincoln. Through a

scheme of deception, the Racketeering Defendants ultimately obtained approval conditioned on two basic prohibitions.

127. First, Old Lincoln could pay no more to ACC than Old Lincoln's actual, independent tax liability. Second, Old Lincoln could make no payments to ACC on account of Old Lincoln's independent tax liability prior to the time when its tax payments would actually be due to the government. The Racketeering Defendants, through their agents, misrepresented that ACC and Old Lincoln would abide by these conditions and that the Tax Plan would not provide for any payments violating these prohibitions.

128. The Racketeering Defendants caused Old Lincoln to make tax payments to ACC on the basis of Old Lincoln's book income, which included deferred income, rather than its taxable income. This impermissible method of calculation resulted in the direct loss of \$94,800,000 of Old Lincoln's funds paid to ACC purportedly for taxes. None of that money was ever paid to the Internal Revenue Service ("IRS") on behalf of Old Lincoln. The money, instead, was used for the benefit of ACC and the Racketeering Defendants. ACC has since become insolvent and declared itself bankrupt.

129. The Racketeering Defendants exacerbated the fraud by engaging in sham transactions which, although generating no taxable income for Old Lincoln, were used in conjunction with a misapplication of accounting principles to trigger purported prepayments of Old Lincoln's deferred tax liabilities to ACC. Those sham transactions were designed to cause Old Lincoln to

generate artificial book profits. The artificial book profits, in turn, increased the amount of the unlawful tax payments to ACC. Under proper accounting principles, however, no income should have been recognized by Old Lincoln. Because of the prepayment to ACC of deferred tax liability, Old Lincoln lost the use of funds not then due for taxes. None of the money paid by Old Lincoln to ACC would have been owed for taxes even at a later date.

2. **Deceit upon the Regulatory Authorities
To Obtain Approval of Fraudulent Tax Plan.**

130. On March 14, 1986, ACC and Old Lincoln entered into the Tax Plan, formally known as a Tax Preparation and Allocation Agreement, which called for Old Lincoln to make payments to ACC for Old Lincoln's taxes and for ACC to file a consolidated tax return and to pay to the IRS whatever income taxes were currently due for the ACC Enterprise.

131. Tax sharing agreements are intercompany agreements, permitted under the Internal Revenue Code, through which related companies filing consolidated tax returns may agree upon the manner in which the various companies contribute to the total tax due for all the companies on a consolidated basis.

132. A tax sharing plan between a thrift and its holding company may involve payments from the thrift to the holding company. A tax sharing plan between a thrift and a holding company, however, is permissible from a regulatory and supervisory standpoint only if the payments are structured so that the thrift pays no more to the holding company than it would have paid

independently to the taxing authorities and if it makes those payments to the holding company no earlier than it would have made independently to the taxing authorities. In addition, federal law expressly prohibits an insured thrift from making any "loan, discount or extension of credit to any affiliate," including its holding company without specific regulatory approval. 12 U.S.C. § 1730a(d)(4) and 12 C.F.R. § 584.3(a)(4).

133. The federal statute and regulation prohibiting insured thrifts from making any loan, discount, or extension of credit to an affiliate has long and consistently been interpreted by the FHLBB to prohibit tax sharing payments by an insured thrift in excess of the amount which would be owed on a "stand alone" basis or in advance of the time when such payments would be due to the taxing authorities. This position has been expressed in published opinions of the FHLBB's Office of General Counsel dated June 1, 1971; February 22, 1974; November 7, 1975; and August 31, 1987.

134. On or about January 16, 1986, during a telephone conversation with the Supervisory Agent, Keating Jr. and Wischer disclosed ACC's intention to enter into a tax sharing agreement with Old Lincoln. The Supervisory Agent instructed Keating Jr. and Wischer that a tax sharing agreement is a transaction with an affiliate requiring approval pursuant to 12 C.F.R. § 584.3. Keating Jr. and Wischer stated that they had not intended to seek supervisory approval for the Tax Plan.

135. On or about January 23, 1986, in response to the regulatory authorities' request, Niebling and Sauter, on behalf of the Racketeering Defendants and the ACC Enterprise, forwarded an application (the "Application") via the United States Postal Service to the Supervisory Agent seeking approval of the Tax Plan by and between ACC and Old Lincoln.

136. The Application, consisting of a four-page letter dated January 23, 1986, described the proposed arrangement. It contained false statements intended to mislead the Supervisory Agent into believing that the proposed arrangement would have no adverse financial impact on Old Lincoln.

137. The Application was signed by Niebling, as Chief Executive Officer of Old Lincoln, and attested by Sauter, as Corporate Counsel. The Application makes the following misrepresentations in describing purported "benefits" of the proposed transaction:

The Agreement is straightforward and to the FHLBB should be a non-event. It merely contemplates Lincoln's payment to AMCC [American Continental Corporation] of the portion of AMCC's tax burden attributable to Lincoln. Instead of paying its share of the consolidated group's taxes directly to the Internal Revenue Service, as it could in absence of an Agreement, Lincoln will make the payment to AMCC, which then takes over responsibility for making such payments to the I.R.S. The Agreement has absolutely no impact on AMCC's and Lincoln's tax burdens or benefits. (Emphasis added).

138. The above-quoted representations were false and misleading. The paragraph clearly states that Old Lincoln would merely pay the same amount to ACC as it would pay to the IRS on a

pass through basis. In fact, the Racketeering Defendants intended the payments made to ACC under the Tax Plan to be much greater than Old Lincoln would have paid to the IRS during comparable time periods and on an overall, permanent basis.

139. The statement that "the Agreement . . . to the FHLBB should be a non-event" was knowingly false and deceptive given the regulatory restrictions applying to unsecured loans from an insured thrift to a holding company, because the intentions of the Racketeering Defendants were that Old Lincoln would advance deferred tax liabilities to ACC and that ACC would use these funds without any consideration to Old Lincoln until the funds became payable to the IRS, if indeed they ever became payable to the IRS.

140. The statement that "(t)he Agreement has absolutely no impact on AMCC's and Old Lincoln's tax burdens or benefits" was false since the Racketeering Defendants required Old Lincoln to pay more money sooner to ACC than it would have paid to the IRS and because ACC clearly benefitted from this advance of cash which was not due to the IRS.

141. Prior to execution of the Tax Plan, ACC and Old Lincoln were expressly admonished in a letter dated March 7, 1986, and in various telephone conversations, that any tax sharing arrangement could not permissibly call for Old Lincoln to make payments to ACC significantly before the time such payments would be due to the taxing authorities. The Supervisory Agent further stated that even a timing differential of monthly payments to ACC for quarterly tax liabilities was impermissible.

142. After ACC and Old Lincoln submitted the Application for approval of the proposed Tax Plan, the Supervisory Agent responded by letter dated March 7, 1986. The letter clearly delineated the applicable restrictions on tax sharing arrangements between holding companies and insured thrifts. The letter criticized the structure of the proposed arrangement and requested that, within thirty days, a revised agreement be submitted, for review and approval, that complied with the following five requirements:

- (a) Calculation of Old Lincoln's tax liability on a separate entity basis, including all applicable tax deductions and credits;
- (b) No prepayment of estimated taxes;
- (c) Reimbursements from ACC for any tax loss;
- (d) No transfer of Old Lincoln Savings' deferred tax liability to ACC; and
- (e) The allocation of any tax benefits that may arise as a result of filing on a consolidated basis.

(Emphasis added.)

143. On March 14, 1986, ACC and Old Lincoln responded with a letter from Sauter transmitting a revised and executed Tax Plan. Sauter's transmittal letter made the following misrepresentations describing the revised Tax Plan:

Per our telephone conversations and Sidney Mar's March 7, 1986 correspondence, I am enclosing a revised Tax Preparation and Allocation Agreement which addresses the five points raised in the March 7 letter. The revised Agreement deletes the provisions cited as being objectionable and adds the language requested.

(Emphasis added.) This representation was intentionally false, concealed the true intentions of the Racketeering Defendants, and induced the Supervisory Agent to believe that there would be no transfer of deferred tax liability from Old Lincoln to ACC.

144. The Racketeering Defendants knew that the representations made in the March 14, 1986, correspondence were false at the time they were made, that the Tax Plan had not been revised to comply with the regulatory policies as expressed in the letter of March 7, 1986 from the Supervisory Agent, that Old Lincoln would pay more to ACC than it would pay to the IRS if it were filing on a separate entity basis, and that regulatory authorities would rely on their misrepresentations.

145. In the March 14, 1986, letter, the Racketeering Defendants, through their agents, specifically represented that they had revised the Tax Plan to delete provisions which might have permitted payments to ACC in advance of the time they would have been due to the taxing authorities in the absence of the Tax Plan. This material representation was false.

146. Based upon the false representations conveyed by telephone and in writing through the United States mail in the March 14, 1986, letter, the Tax Plan that Old Lincoln and ACC had executed was conditionally approved in a letter from the Supervisory Agent to Old Lincoln's Board of Directors dated April 2, 1986. The letter recited the FHLBB's understanding, based upon representations of Sauter and others, that, under the revised

Tax Plan, Old Lincoln would pay no more than it would have paid on a separate entity basis.

147. Subsequent to the fraudulently obtained approval of the Tax Plan, the Racketeering Defendants and their agents utilized the book income reported by Old Lincoln in order to generate unlawful payments from Old Lincoln to ACC pursuant to the Tax Plan at a time when Old Lincoln was not allowed to pay proposed dividends to ACC. The Tax Plan, therefore, was used as a vehicle to circumvent other regulatory restrictions on the receipt of cash from Lincoln. The unlawful tax payments made by Old Lincoln to ACC ultimately totalled \$94,800,000.

148. During the years 1984 through 1987, Old Lincoln would have recognized no current taxable income had it filed on a separate entity basis. Nevertheless, Old Lincoln made payments to ACC of \$94,800,000 based on book income consisting entirely of deferred tax liability. No portion of the \$94,800,000 in payments made by Old Lincoln to ACC under the Tax Plan would have been due the IRS had Old Lincoln filed on a separate entity basis.

149. ACC and the Racketeering Defendants unlawfully received and used the \$94,800,000 in payments from Old Lincoln to ACC under the Tax Plan. ACC used the money to promote the purposes of the ACC Enterprise for the benefit of the Racketeering Defendants.

150. The following transactions are examples of the numerous transactions that resulted in or had the primary purpose of artificially inflating book income of Old Lincoln and triggering

improper payments by Old Lincoln to ACC pursuant to the Tax Plan. The effect of the improper payments described below was to dissipate unlawfully Old Lincoln's assets and to enrich ACC and the Racketeering Defendants.

3. Hidden Valley Scheme and Artifice To Defraud - Tax Plan Aspects.

151. In late 1986 through 1988, the Racketeering Defendants, conducting the affairs of the ACC Enterprise, intentionally structured a series of the "Hidden Valley" land transactions in order to overstate Old Lincoln's income and, therefore, to trigger unlawful payments to ACC under the Tax Plan, thereby falsely portraying Old Lincoln as a profitable institution.

152. Between mid 1985 and May 1988, AMCOR Investments Corporation ("Investments"), a wholly owned subsidiary of Old Lincoln and part of the ACC Enterprise, acquired 8,576 acres of undeveloped land referred to as the Hidden Valley Ranch ("Hidden Valley") for approximately \$26,584,750. The Hidden Valley property is south of Investments' Estrella project and purportedly was suitable for residential development in conjunction with or subsequent to development of Estrella. Estrella itself was to be a residential development of Investments containing approximately 20,000 acres.

153. Within a remarkably short time (starting in October 1986) Investments began selling the same undeveloped property. Between October 31, 1986, and June 30, 1988, Investments sold ten parcels of this property (consisting of approximately 6,643 of the

8,576 acres total) for a total of approximately \$110,403,000 and claimed an aggregate "profit" of approximately \$82,074,000 from the sales.

154. The claimed \$82,074,000 profit was attributed to Old Lincoln, since Investments was its wholly owned subsidiary.

155. Old Lincoln's recorded "profit" of \$82,074,000 allowed the Racketeering Defendants to use the Tax Plan to upstream approximately \$31,000,000 to ACC for their and ACC's benefit and to portray falsely that Old Lincoln had realized an \$82,074,000 profit.

156. In reality, Investments' sales were sham transactions devoid of economic substance. Substantially all funds for the purchases were provided by Old Lincoln, either directly or indirectly. More specifically, Old Lincoln and Investments funded loans to the purchasers in an amount equal to 75% of the purchase price. The balance of the purchase price, i.e. 25%, was ostensibly paid by the "purchasers." In truth, Old Lincoln financed substantially all of the down payments by directly or indirectly furnishing money to the purchasers utilizing one or more of the following techniques:

- (a) Old Lincoln funded loans to third parties who then turned over the funds for the down payment to a purchaser.
- (b) Old Lincoln guaranteed loans obtained from third parties by a purchaser to fund the down payment and paid the loan fees charged to the straw purchaser.
- (c) Old Lincoln or Investments purchased or financed the purchase of other property from

the purchaser on or near the date of the purported Hidden Valley sale.

- (d) Old Lincoln funded a line of credit to the purchaser on or near the date of the purported Hidden Valley sale.
- (e) Old Lincoln or Investments agreed to repurchase the property or to exchange it for other property owned by Old Lincoln and the Lincoln Subsidiaries.

A business can only claim full accrual profit recognition, which Old Lincoln did, if its sales of real estate conform to the requirements of Statement of Financial Accounting Standards No. 66, Accounting for Sales of Real Estate ("SFAS No. 66") issued by the Financial Accounting Standards Board in October of 1982. SFAS No. 66, the applicable standard at all pertinent times, was violated by the Racketeering Defendants and ACC in causing Old Lincoln to report income on the sham Hidden Valley transactions.

157. Each of the Hidden Valley transactions was fraudulent and damaged Old Lincoln. Each transaction created phantom profits which were used to effect unlawful payments from Old Lincoln to ACC. Because the transactions were not true sales, the straw buyers "paid" prices well in excess of market prices, thereby increasing the quantum of fraud. Finally, the Racketeering Defendants placed Old Lincoln at financial risk by causing Old Lincoln and certain Lincoln Subsidiaries to make loans to the straw buyers to fund the sham transactions. These loans never will be repaid.

158. Each of the ten Hidden Valley transactions is more specifically described below.

- (a) Garcia Purchase. In early 1987, Mr. E.C. Garcia, the holder of 20% of the common stock of E.C. Garcia and Company, Inc. ("Garcia Co."), approached the Racketeering Defendants in an effort to obtain financing for Mr. Garcia's planned acquisition of the remaining 80% of the common stock of Garcia Co. As an express condition to Old Lincoln's providing such financing, the Racketeering Defendants required Garcia Co. to purchase or arrange for the purchase of a 1,000 acre Hidden Valley parcel for \$14,000,000.
- (1) As Garcia Co. was unwilling or unable to purchase the Hidden Valley parcel, Mr. Garcia arranged for Westcontinental Mortgage and Investment Corporation ("Westcon") to purchase such parcel and thereby satisfy the demand of the Racketeering Defendants that the Hidden Valley parcel be purchased from Investments, in violation of 18 U.S.C. § 215.
 - (2) On March 30, 1987, Old Lincoln loaned Mr. Garcia \$20,200,000. A significant portion of that loan was used by Mr. Garcia to complete his acquisition of 100% of the Garcia Co. stock. However, Garcia Co. simultaneously loaned \$3,500,000 of excess proceeds from that loan to Westcon to permit Westcon to make the down payment for its acquisition from Investments of the Hidden Valley parcel. Also on that day, Investments sold the Hidden Valley parcel to Westcon for \$14,000,000. The \$3,500,000 cash down payment for such acquisition was made using the funds loaned to Westcon by Garcia Co. and Westcon executed a \$10,500,000 non-recourse promissory note for the remaining 75% of the purchase price.
 - (3) At the time that Investments made its \$10,500,000 non-recourse loan to Westcon, Westcon had total assets of \$87,000 and a net worth of \$31,000. An appraisal performed on March 27, 1987, valued the acquired property at \$8,500,000, or approximately 81% of the amount of the loan to Westcon. The loan required Westcon to make only annual payments. No

payments have ever been made by Westcon on that loan.

- (4) Proper accounting treatment of the sale by Investments to Westcon of the Hidden Valley parcel would prohibit present recognition of any gain by Investments. Nonetheless, the Racketeering Defendants and other defendants caused Investments and Old Lincoln to recognize gain at the time of the purported sale, causing Old Lincoln to overstate its 1987 income by approximately \$11,067,000 and to make unlawful payments to ACC under the Tax Plan.

(b) Continental/Adobe Purchase. On July 30, 1987, Investments purportedly sold a 600 acre parcel of Hidden Valley to Continental/Adobe Joint Venture ("Continental") for \$9,900,000. The purchase price was paid to Investments with a \$2,475,000 cash down payment and the proceeds of a \$7,425,000 non-recourse loan requiring annual payments.

- (1) At the time the loan was made, no appraisal was done for the property that was security for the loan, in violation of 12 C.F.R. § 563.17-1(c). When an appraisal was obtained four months later, that appraisal fixed the market value of the property purchased by Continental at a mere \$5,400,000, almost one-half of the purchase price and approximately 73% of the amount of the loan to Continental.
- (2) At the time of Continental's acquisition of the Hidden Valley property, it entered into an agreement with Investments that granted Continental the right to return such property to Investments at a future date in exchange for other property owned by Investments. This "land-parking" arrangement was not a sale of Hidden Valley property, but constituted an anticipated sale of property from another Investments project. When Continental predictably exercised its exchange right in March 1988 to return the Hidden Valley property to Investments, the Racketeering Defendants and others hastily arranged for R.A. Homes, Inc. ("R.A. Homes") to assume

Continental's obligations to Investments under the loan made by Investments to finance Continental's acquisition of the Hidden Valley property.

- (3) R. A. Homes assumed Continental's obligations under the non-recourse note to Old Lincoln by entering into an assumption and modification agreement. When R.A. Homes entered into this arrangement, the outstanding amount of such loan was 137% of the appraised value of the Hidden Valley parcel, and R. A. Homes, an illiquid real estate investor, had total liabilities that were 59 times greater than its capital base.
 - (4) Not surprisingly, the R. A. Homes loan is now delinquent.
 - (5) Proper accounting treatment of the purported sale by Investments to Continental of the Hidden Valley parcel would prohibit present recognition of any gain by Investments or Old Lincoln. Nonetheless, the Racketeering Defendants and other defendants caused Old Lincoln and Investments to recognize gain from such transactions, to overstate Old Lincoln's income by \$7,776,000, and to transfer funds unlawfully to ACC under the Tax Plan.
- (c) **Richmond American Homes Purchase.** On August 31, 1987, Investments purportedly sold a 963 acre parcel of Hidden Valley to Richmond American Homes, Inc. ("Richmond") for \$16,862,062. The purchase price was paid to Investments with a \$4,215,515 cash down payment and the proceeds of a \$12,646,547 20%-recourse loan.
- (1) At the time the loan was made, no appraisal was done for the property that was security for the loan, in violation of 12 C.F.R. § 563.17-1(c)(1). No loan fees were assessed by Old Lincoln. The cash down payment made to Investments by Richmond was, as described below, indirectly provided by Old Lincoln.

- (2) Also on August 31, 1987, Old Lincoln extended to Hamilton Homes ("Hamilton") a \$14,997,000 non-recourse loan to purchase five parcels or 51.3 acres of land in California. Hamilton purchased such land from Richmond. The loan from Old Lincoln to Hamilton represented 100% of the purchase price that Richmond and Hamilton had arranged and was more than three times greater than the appraised fair market value of such parcels in their then current condition. No payments were ever made by Hamilton on this loan, and Hamilton's obligations under such loan have since been assumed by a third party that negotiated a significant restructuring of such loan.
- (3) The loan to Hamilton was made solely for the purpose of providing Richmond indirectly with the cash it needed to make the \$4,215,515 down payment to Investments for the purchase of the Hidden Valley parcel. As a result, proper accounting treatment would prohibit Old Lincoln from recording the \$13,193,000 profit that it recorded on the sale of Hidden Valley property to Richmond. Further, proper accounting treatment requires Old Lincoln's recognition of at least \$1,500,000 of loss that has already resulted from the loan to Hamilton. Nonetheless, the Racketeering Defendants and other defendants caused Old Lincoln and Investments to recognize gain and to postpone recognition of loss from such transactions and to overstate Old Lincoln's 1987 income by more than \$13,000,000. Consequently, Old Lincoln made unlawful payments to ACC under the Tax Plan.
- (d) M.D.C. Purchase. On September 30, 1987, Investments purportedly sold a 630 acre parcel of Hidden Valley to M.D.C. Land Corporation ("M.D.C."), an affiliate of Richmond, for \$11,021,565. This parcel was the identical parcel that Investments sold to U.S. Home in October of 1986 and that Investments reacquired in November of 1987. (See subparagraph (j), infra.) The purchase price was paid to Investments with a \$2,775,391 cash down payment

and the proceeds of a \$8,266,174 20%-recourse loan. Investments recorded a gain of \$8,587,000 on this sale.

- (1) At the time the loan was made, no appraisal was done for the property that was security for the loan, in violation of 12 C.F.R. § 563.17-1(c)(1). When an appraisal was completed subsequently, that appraisal fixed the market value of the property purchased by M.D.C. at approximately \$5,670,000, or approximately 69% of the amount of the loan to M.D.C.
 - (2) Also on September 30, 1987, M.D.C. affiliates sold to Investments parcels from four different locations for an aggregate price of approximately \$16,306,000. Investments paid cash for these properties. These transactions were entered into solely for the purpose of providing M.D.C. and its parent corporation with the cash needed to make the down payment to Investments for the purchase of the Hidden Valley parcel.
 - (3) Also on September 30, 1987, Lincoln issued a \$75,000,000 line of credit to M.D.C. Holdings, Inc., an affiliate of M.D.C.
 - (4) Proper accounting treatment of these simultaneous transactions by Investments with affiliated entities of M.D.C. would prohibit present recognition of any gain by Investments on the purported sale of Hidden Valley property. Nonetheless, the Racketeering Defendants and other defendants caused Investments and Old Lincoln to recognize gain at the time of the purported sale, causing Old Lincoln to overstate its 1987 income by \$8,587,000 and to make unlawful payments to ACC under the Tax Plan.
- (e) Hamilton Purchase. On December 29, 1987, Investments purportedly sold a 425 acre parcel of Hidden Valley to Hamilton for \$6,800,000. The purchase price was paid to Investments with a \$1,700,000 cash down payment and the proceeds of a \$5,100,000 non-recourse loan. Investments recorded a gain of \$2,397,000 on this sale.

- (1) At the time the loan was made, an appraisal had been completed indicating that the loan was 1.3 times greater than the value of the property that was security for the loan. No loan fees were collected.
 - (2) To make the cash down payment to Investments, Hamilton used the proceeds of a concurrent \$1,700,000 loan from Saudi European Bank ("Saudi Bank"), a bank in which AMCOR Funding Corporation, another Lincoln Subsidiary, possessed an interest. Old Lincoln paid to Saudi Bank all fees charged to Hamilton in connection with such loan.
 - (3) In addition, Old Lincoln made an unsecured loan to Hamilton on November 15, 1987.
 - (4) Proper accounting treatment of the purported sale of Hidden Valley property to Hamilton would prohibit present recognition of any gain by Investments or Old Lincoln. Nonetheless, the Racketeering Defendants and other defendants caused Investments and Old Lincoln to recognize gain at the time of the purported sale, causing Old Lincoln to overstate its income by \$2,397,000 and to make unlawful payments to ACC under the Tax Plan.
- (f) **Emerald Homes Purchase.** On September 23, 1987, Old Lincoln funded a \$25,000,000 unsecured line of credit loan to Emerald Homes, L.P. ("Emerald"). On September 29, 1987, Investments purportedly sold approximately 580 acres of Hidden Valley property to Emerald for \$9,572,544. The purchase price was paid to Investments with a \$2,393,136 cash down payment and the proceeds of a \$7,179,408 non-recourse loan.
- (1) No appraisal was done for the property that was security for the loan, in violation of 12 C.F.R. § 563.17-1(c)(1), and no loan fees were assessed. The previously established \$25,000,000 line of credit from Old Lincoln was funded and available for Emerald to draw upon to make the \$2,393,136 cash down payment.

- (2) Also on or about September 30, 1987, Emerald sold to Investments parcels from four different locations for an aggregate purchase price of \$14,646,500.
- (3) Proper accounting treatment of these virtually simultaneous transactions by Investments with Emerald would prohibit present recognition of any gain by Investments. Nonetheless, the Racketeering Defendants and other defendants caused Investments and Old Lincoln to recognize gain at the time of the purported sale, causing Old Lincoln to overstate its 1987 income by \$7,349,000 and to make unlawful payments to ACC under the Tax Plan.

(g) HVPLP Purchase. On January 29, 1988, Investments purportedly sold a 445 acre parcel of Hidden Valley to Hidden Valley Properties Limited Partnership ("HVPLP") for \$6,000,000. The purchase price was paid to Investments with a \$1,500,000 cash down payment and the proceeds of a \$4,500,000 non-recourse loan. Investments recorded a \$4,427,000 gain from this transaction.

- (1) At the time the loan was made, no appraisal was done for the property that was security for the loan, in violation of 12 C.F.R. § 563.17-1(c)(1), and no loan fees were assessed.
- (2) At the time the loan was made, HVPLP did not have \$1,500,000 in cash available to it to make the cash down payment to Investments. HVPLP was so thinly capitalized that, other than the parcel of Hidden Valley property obtained from Investments, the only asset on its balance sheet was \$100 of cash. The general partner of HVPLP is also financially incapable of meeting the HVPLP's obligations pursuant to the loan.
- (3) ACC provided the funds that enabled HVPLP to make the down payment on the transaction. On January 28, 1988, ACC purchased property from the Sun Olive, Ltd. Partnership for \$4,200,000. The property appraised for \$2,753,000 on June

25, 1988. The sole general partner of Sun Olive, Ltd. Partnership was Phil Gordon, the sole general partner of HVPLP. The cash down payment made by ACC to Sun Olive was \$1,897,000 which was used by HVPLP to make the down payment to Investments.

(4) Proper accounting treatment of this transaction would prohibit present recognition of any gain by Investments on the purported sale to HVPLP of Hidden Valley property. Nonetheless, the Racketeering Defendants and other defendants caused Investments and Old Lincoln to recognize gain at the time of the purported sale, causing Old Lincoln to overstate its 1988 income by \$4,427,000 and to make unlawful payments to ACC under the Tax Plan.

(h) **National Realty Purchase.** On June 29, 1988, Investments purportedly sold two parcels totalling 1,500 acres of Hidden Valley to National Realty Limited Partners ("NRLP") for \$24,000,000. The purchase price was paid to Investments with a \$6,000,000 cash down payment and the proceeds of a \$18,000,000 non-recourse loan. Investments recorded a \$17,946,000 gain on the purported sale of these two parcels.

(1) Also on or about June 29, 1988, Old Lincoln made a series of loans to Southmark Corporation and certain of its affiliates. NRLP is an affiliate of Southmark. These loans were violations of 12 C.F.R. § 563.9-3 regarding the limitation on loans to any single borrower and its affiliates.

(2) Because the cash down payment made to Investments was indirectly provided by Old Lincoln, proper accounting treatment of the purported sale by Investments to NRLP would prohibit present recognition of any gain by Investments on such transaction. Nonetheless, the Racketeering Defendants and other defendants caused Investments and Old Lincoln to recognize gain at the time of such purported sale, causing Old Lincoln to overstate its 1988 income by \$17,946,000 and to make unlawful payments to ACC under the Tax Plan.

(i) Gascon Development Purchase. On June 30, 1988, Investments purportedly sold a 500 acre parcel of Hidden Valley to Gascon Development, Inc. ("Gascon") for \$8,000,000. The purchase price was paid to Investments with a \$2,000,000 cash down payment and the proceeds of a \$6,000,000 non-recourse loan. Investments recorded a \$6,006,000 gain on this purported sale.

(1) No loan fees were assessed to Gascon, and Investments provided Gascon with a second mortgage loan to permit Gascon to make the \$2,000,000 down payment. Although this second mortgage loan was secured by an irrevocable letter of credit issued by Saudi Bank, Investments entered into an agreement obligating itself to indemnify Saudi Bank with respect to such letter of credit.

(2) Proper accounting treatment of this purported sale would prohibit present recognition of any gain by Investments. Nonetheless, the Racketeering Defendants and other defendants caused Investments and Old Lincoln to recognize gain at the time of such purported sale, causing Old Lincoln to overstate its 1988 income by \$6,006,000 and to make unlawful payments to ACC under the Tax Plan.

(j) U.S. Home Purchase. On October 31, 1986, Investments purportedly sold a 425 acre parcel of Hidden Valley to U.S. Home Corporation ("U.S. Home") for \$4,250,000. The purchase price was paid to Investments with a \$856,000 cash down payment and the proceeds of a \$3,400,000 non-recourse loan requiring only annual interest payments.

(1) The sales agreement permitted U.S. Home to trade the Hidden Valley parcel for a tract of land in Estrella Phase I.

(2) Old Lincoln on a consolidated basis with Investments recorded profit of approximately \$3,326,000 on this transaction.

(3) On February 27, 1987, U.S. Home purchased 795 acres in Estrella Phase II from Investments for \$18,661,000, paying

\$3,732,000 in cash and executing a note for \$14,929,000.

- (4) Then, on November 4, 1987, Investments reacquired the 425 acre Hidden Valley parcel from U.S. Home by paying \$942,000 in cash and cancelling the \$3,400,000 note executed by U.S. Home on October 31, 1986.
- (5) The exchange option in favor of U.S. Home, Investments' continuing involvement in the project, the non-recourse nature of the financing, and the other matters recited above made the U.S. Home purchase a sham transaction under SFAS No. 66. Nonetheless, the Racketeering Defendants and other defendants caused Old Lincoln to overstate its 1986 income by approximately \$3,326,000 and to make unlawful payments to ACC under the Tax Plan.

159. In implementing the Hidden Valley scheme and artifice, certain defendants, as directors and officers of Old Lincoln, also violated their statutory, contractual, and fiduciary duties described in paragraph 346.

**4. Crowder Water Ranch Scheme
and Artifice - Tax Plan Aspects.**

160. Between September of 1986 and January of 1989, the Racketeering Defendants, conducting the affairs of the ACC Enterprise, caused Old Lincoln and Investments to engage in a series of sham transactions with C. V. Nalley ("Nalley") designed to overstate Old Lincoln's income and, therefore, to trigger unlawful payments to ACC under the Tax Plan, thereby falsely portraying Old Lincoln as a profitable institution.

161. From April of 1985 through August of 1986, Investments purchased or leased 13,542 acres referred to as the

Crowder Water Ranch, for approximately \$11,727,372 at an average cost of \$866 per acre. Within a remarkably short period of time, Investments "sold" a one-third interest in the Crowder Water Ranch to Nalley for \$20,000,000 on September 30, 1986. The average per acre purchase price was \$4,431. As a result of this sale, Investments claimed a profit of \$15,070,000 in 1986.

162. The claimed \$15,070,000 profit was attributed to Old Lincoln, since Investments was a wholly-owned subsidiary of Old Lincoln. This "profit" allowed the Racketeering Defendants to use the Tax Plan to upstream \$6,040,000 to ACC for their benefit and to portray falsely that Old Lincoln had realized a \$15,070,000 profit.

163. In reality, the sale of the one-third interest in the Crowder Water Ranch to Nalley was a sham transaction void of economic substance designed solely to achieve the Racketeering Defendants' fraudulent purposes, including overstating Old Lincoln's profits and diverting funds to ACC under the Tax Plan.

164. Nalley paid \$5,000,000 in cash (a substantial part of which was indirectly funneled to Nalley from Old Lincoln) and executed a non-recourse Note for \$15,000,000. On November 30, 1987, Investments repurchased an eight and one-third percent interest (8-1/3%) in this property from Nalley for \$10 and by agreeing to defer Nalley's first annual payment (due December 1, 1987) of principal and interest until December 1, 1988. On January 25, 1989, Investments repurchased Nalley's remaining interest in the property by paying him \$7,500,000 and forgiving his Note for

\$15,000,000 and all accrued interest. The repurchase agreements avoided recognition of a loss on Nalley's loan.

165. The Crowder Water Ranch transaction is more specifically described below:

- (a) During the period from April of 1985 through August of 1986, Investments acquired the Crowder Water Ranch. The bulk of this acreage originally was owned by the Crowder-Weisser Cattle Co. Investments made its initial purchase by buying the property of that concern on April 23, 1985, for approximately \$10,000,000. One of the Crowder-Weisser partners, Rob Crowder, assisted Investments in purchasing the remaining acreage from sixteen individuals. This acreage, consisting of 3,423 acres, was purchased by him at an average price of \$401 per acre through a series of sixteen transactions from July of 1985 through January of 1986. He then sold the same acreage to Investments at \$500 per acre in a series of transactions from March through August of 1986.
- (b) As a result of the foregoing transactions, Investments assembled the total acreage, consisting of both property held in fee and property held by lease. When its acquisitions were completed at the end of August, 1986, the average cost per acre paid by Investments was \$866.
- (c) On September 30, 1986, Investments agreed to sell a one-third interest in the Crowder Water Ranch to Nalley. The total purchase price was \$20,000,000, resulting in an average price per acre of \$4,431. This transaction represents nearly a ten fold increase in the average price per acre over what Investments had paid for certain acreage just one month earlier. No land development justified the dramatic inflation of value, nor was the value supported by any appraisal.
- (d) On September 30, 1986, Old Lincoln and the Lincoln Subsidiaries engaged in the following additional transactions with Nalley:
 - (1) LINFIN Corporation ("LINFIN"), a wholly-owned subsidiary of Old Lincoln, released

Nalley from three personal guarantees of indebtedness of Continental Southern, Inc. to LINFIN; at that time, in excess of \$3,400,000 was owed to LINFIN.

- (2) Phoenician Financial Corporation ("PFC"), another wholly-owned subsidiary of Old Lincoln, purchased for \$3,500,000 Nalley's stock in Continental Southern, Inc; at that time, Continental Southern, Inc. was insolvent or, at best, had insignificant net worth.
 - (3) As a result, Old Lincoln and the Lincoln Subsidiaries, at the behest of the Racketeering Defendants, bestowed a financial benefit of nearly \$7,000,000 on Nalley for very little in return.
- (e) When the purchase transaction closed on November 7, 1986, the \$20,000,000 consideration was paid in the form of \$5,000,000 in cash and a non-recourse note executed in favor of Investments in the amount of \$15,000,000. (Investments subsequently assigned this note to LINFIN.) As a result of Investments' booking of profit in the amount of \$15,100,000, or approximately the amount of the note from the borrower, ACC extracted from Old Lincoln tax sharing payment for the quarter ending December 31, 1986, of \$6,040,000.
- (f) In view of the transactions by and among Nalley, LINFIN, and PFC on September 30, 1986, and of the non-recourse nature of Nalley's November 7, 1986, note to Investments, the Crowder Water Ranch transaction was a sham which should not have qualified for profit recognition.
- (g) Under the loan documents, Nalley was to make no payment of principal or interest until December 1, 1987, at which time a principal and interest payment in the amount of \$1,762,000 was due.
- (h) Nalley never made any payments on the \$15,000,000 loan. Thus, the only cash ever paid to Old Lincoln was the initial \$5,000,000 down payment, and even this payment was

substantially financed, directly or indirectly, by Old Lincoln's other transactions with Nalley on September 30, 1986.

- (i) Purportedly, just before the December 1, 1987, interest and principal payment was due, the parties negotiated an extension of this payment obligation. An agreement purportedly was reached on November 30, 1987, to extend until December 1, 1988, Nalley's obligation to pay the first year's principal and interest. In exchange for this agreement, Nalley deeded an eight and one-third percent (8-1/3%) interest in the ranch to Investments, thereby reducing his total interest in the ranch to twenty-five percent (25%). His obligation under the \$15,000,000 note, however, was not reduced.
- (j) On December 1, 1988, Nalley's deferred first annual principal and interest payment was due, as well as his second annual payment of principal and interest. These payments were not made when due. Nalley was then allegedly making assertions to the effect that Keating Jr. had made misrepresentations to him. On information and belief, Nalley first demanded that his entire interest in the ranch be repurchased, but this was rejected. On information and belief, his next effort was to couple a demand for repurchase of his interest with a threat that he would divulge information embarrassing to the Keating Family.
- (k) On January 23, 1989, Nalley and Investments entered into a Reformation of Amendment to Note pursuant to which Investments recorded income as follows:
 - (1) \$3,100,000 in interest income (consisting of the aggregate of the first and second years' interest);
 - (2) \$1,200,000 as an "extension fee" (apparently in recognition of the forbearance granted with respect to the December 1, 1987 and December 1, 1988 payments); and
 - (3) \$700,000 in other income which was booked in connection with a repurchase transaction two days later.

This Reformation of Amendment to Note apparently was intended to document the forbearance previously extended to Nalley.

(1) On January 25, 1989, at a time of plummeting real estate values in Arizona, as noted above, Investments repurchased Nalley's remaining twenty-five percent (25%) interest in the ranch. The terms of this purchase required Investments to pay to Nalley \$7,500,000 in cash and to take back his interest in the ranch in satisfaction of the outstanding balance of the \$15,000,000 note, which was still \$15,000,000. As a result of this transaction, Nalley received substantial personal benefit, and Investments suffered a corresponding detriment.

(1) First, Nalley was relieved from any obligation on a note in the amount of \$15,000,000 and received \$7,500,000 in cash; this exceeded his initial cash down payment by \$2,500,000.

(2) Second, by the end of January 1989, Investments ended up holding exactly the same property interest which it held on September 30, 1986. While Investments again became the record holder of the ranch, Old Lincoln had advanced \$6,040,000 to ACC under the Tax Plan. Accordingly, Investments was out \$2,500,000 (less the time value of Nalley's \$5,000,000 over twenty-seven months), and Old Lincoln was out \$6,040,000. In addition, Old Lincoln had lost the benefit of Nalley's guaranties of other indebtedness and, through PFC, had paid Nalley \$3,500,000 for stock that he owned in one of the debtors. ACC, on the other hand, had Old Lincoln's \$6,040,000 and was in a position to claim that the ranch was worth \$7,819 per acre, although the average cash price per acre was \$866 -- a nine hundred percent "gain" from August of 1986 through January of 1989 based on a series of land "flips" in a sham transaction.

166. In implementing the Crowder Water Ranch fraud, certain defendants, as directors and officers of Old Lincoln, also

violated their statutory, contractual, and fiduciary duties described in paragraph 346.

**5. Rancho Vistoso Scheme and
Artifice - Tax Plan Aspects.**

167. Beginning in 1985, Old Lincoln made a series of loans to the Wolfswinkel Group, Inc. ("WGI") in excess of \$115,000,000. The loans were ostensibly made to enable WGI to acquire and develop 7,626 acres near Tucson, Arizona called Rancho Vistoso. One of the various terms of the loans entitled Old Lincoln to a 50% "net profits interest" in the proceeds of the sale of any parcels within Rancho Vistoso after the first \$2,000,000 in profits.

168. In May of 1987, the Racketeering Defendants, conducting the affairs of the ACC Enterprise, intentionally caused Old Lincoln to sell its 50% net profits interest in the Rancho Vistoso loans in a sham transaction designed to overstate Old Lincoln's income and, therefore, to trigger unlawful payments to ACC under the Tax Plan, thereby falsely portraying Old Lincoln as a profitable institution.

169. The Racketeering Defendants caused ACC to purchase Old Lincoln's 50% net profits interest in the Rancho Vistoso loans for \$15,000,000. Consequently, a profit of \$15,000,000 was attributed to Old Lincoln. ACC gave Old Lincoln a promissory note in the amount of \$13,500,000 plus cash in the sum of \$1,500,000.

170. Old Lincoln's recorded profit of \$15,000,000 allowed the Racketeering Defendants to use the Tax Plan to upstream

\$6,000,000 to ACC for their benefit and to overstate Old Lincoln's 1987 profit by \$15,000,000.

171. The Racketeering Defendants, conducting the affairs of the ACC Enterprise, intentionally caused Investments to provide ACC with the funds necessary to pay off its promissory note to Old Lincoln and, hence, to satisfy ACC's obligation to Old Lincoln resulting from its purchase of the 50% net profits interest in the Rancho Vistoso loans. The Racketeering Defendants caused Investments and an indirect Lincoln Subsidiary, American Founders Life Insurance Company ("AFSL"), to purchase 393 acres of Rancho Vistoso for \$15,000,000. In turn, the Racketeering Defendants caused WGI to purchase from ACC the 50% net profits interest originally owned by Old Lincoln. ACC used the proceeds of the sale of the 50% net profits interest to pay its \$13,500,00 note to Old Lincoln.

172. In reality, the sale of Old Lincoln's 50% net profits interest in the Rancho Vistoso loans was a sham transaction devoid of economic substance that was designed to overstate Old Lincoln's profits and to enable the Racketeering Defendants to divert funds to ACC under the Tax Plan.

173. The Rancho Vistoso transaction is more specifically described below:

- (a) Between January of 1985 and August of 1986, Old Lincoln made five loans to WGI totalling nearly \$71,000,000. By July 11, 1988, total loans to WGI exceeded \$115,000,000. The initial loans were made to finance the acquisition of approximately 7,626 acres of unimproved land near Tucson, Arizona, which was to be developed into a planned community called Rancho Vistoso.

- (b) Collateral for the loan consisted of deeds of trust for the land and a pledge of stock of a water company which was purchased to serve the proposed development. The loans carried a fixed interest rate of 13% and were guaranteed by Conley Wolfswinkel ("Wolfswinkel"), the principal of WGI, but only up to 50% of the amount outstanding. Furthermore, Old Lincoln retained a 50% "net profits interest" in the proceeds of the sale of the property.
- (c) At the direction of the Racketeering Defendants, Old Lincoln entered into the Rancho Vistoso loan without the benefit of any adequate underwriting. The first loan, for \$50,900,000 ("Rancho Vistoso I"), was considered and "approved" by Old Lincoln's Board of Directors on January 21, 1985, after the loan had already been disbursed. Moreover, the loan was approved without an appraisal. An appraisal for the property, dated January 31, 1985, was only received by Old Lincoln on May 20, 1985. In addition, the loan application was dated January 31, ten days after it was approved. Furthermore, the loan file contains no escrow instructions, preliminary title report, or water company stock certificates which were supposedly pledged as collateral. No credit report or analysis of WGI or Wolfswinkel personally are in the file. Accordingly, in making the Rancho Vistoso I loan Old Lincoln, at the direction of the Racketeering Defendants, completely and deliberately disregarded the specific requirements governing prudent loan underwriting.
- (d) The second loan, for \$11,377,662 ("Rancho Vistoso II"), was made on April 30, 1985, and was based on an inadequate letter appraisal for the property which stated a value of \$11,000,000, thus creating a loan to value ratio of 103%.
- (e) Wolfswinkel's financial statements showed insufficient net worth to make his personal guarantee meaningful. Furthermore, the terms of the loans reveal that WGI was putting very little of its own capital into the project. The loans provided for an interest reserve for the first half of the term of the loan, thus eliminating the need for WGI to make interest

payments for that period. Furthermore, the loans were structured so that WGI received full credit for the profits of early sales, which effectively resulted in providing funding for interest payments for the second half of the loan term. The loans to WGI, therefore, were imprudent since WGI did not have to provide funds to service them.

- (f) The Rancho Vistoso loans were renegotiated on August 20, 1986. The total amount of the loans was increased to \$83,700,000: \$58,700,000 to pay off the prior loans, and \$25,000,000 to finance infrastructure improvements on the property. The interest rate was changed from a fixed 13% to prime plus 3%, and interest payments, which had been due each month under the original loan, were changed to quarterly payments. However, Old Lincoln retained its 50% interest in the profits of the venture.
- (g) Again the Racketeering Defendants and other defendants deliberately failed to conduct appropriate underwriting. Old Lincoln obtained a credit report one month after the new loan was made, there was no credit analysis or verification of WGI's finances in the file, the loan settlement statement was incomplete, and the underwriting did not include a specific repayment analysis.
- (h) In May 1987, Old Lincoln sold its 50% profit participation in Rancho Vistoso to ACC for \$15,000,000. ACC paid Old Lincoln \$1,500,000 in cash and gave Old Lincoln a \$13,500,000 note for the balance. This transaction was illegal in two respects. Accepting a note from ACC violated 12 U.S.C. § 1730a(d)(4) and 12 C.F.R. § 584.3, which prohibit an insured institution from making loans to its parent company. Furthermore, the sale of Old Lincoln's "equity kicker" to ACC, its holding company, was a prohibited affiliated person transaction and was concealed from the FHLBB.
- (i) In October 1987, Investments, WGI, Old Lincoln, and ACC engaged in a series of transactions which made no economic sense. They did, however, result in a paper gain which ACC used to cause Old Lincoln to transfer approximately \$6,000,000 to ACC under the Tax Plan.

- (1) Investments and AFSL purchased 393 acres of the Rancho Vistoso land from WGI for an inflated price of \$15,000,000, a per acre price of \$38,863. (WGI's average purchase price of the land between January 1985 and August 1986 was approximately \$9,000 per acre.) Even though the purchased land was part of the collateral for the loan, instead of simply reducing the loan balance, Investments paid WGI \$15,000,000 in cash.
 - (2) WGI then purchased the 50% profit participation from ACC for \$14,000,000.
 - (3) ACC then paid off the note it issued to Old Lincoln. Old Lincoln treated the entire \$15,000,000 sale price of the profit participation as income in 1987.
- (j) The net effect of this transaction was that Old Lincoln, through Investments and AFSL, obtained 393 acres of land of questionable value at an exorbitant price, which it held as collateral anyway, and ACC diverted \$6,000,000 from Old Lincoln under the Tax Plan.
- (k) At about the same time, the Rancho Vistoso loans were once again restructured. The amount was increased to \$95,919,268, which included paying off \$63,118,268 of existing debt and payment of loan fees and contingent interest to Old Lincoln. The balance of approximately \$30,000,000 was for working capital for WGI and to fund future development. Currently, the outstanding balance of that loan exceeds \$80,000,000.

174. In implementing the Rancho Vistoso fraud, certain defendants, as directors and officers of Old Lincoln, also violated their statutory, contractual, and fiduciary duties described in paragraph 346.

6. Continental Ranch Scheme
and Artifice - Tax Plan Aspects.

175. On September 30, 1986, the Racketeering Defendants, conducting the affairs of the ACC Enterprise, caused Investments to engage in a sham transaction that triggered an unlawful payment from Old Lincoln to ACC under the Tax Plan and falsely portrayed Old Lincoln as a profitable institution.

176. In 1984, Investments purchased approximately 2,900 acres of land in Pima County, Arizona for nearly \$21,500,000. On September 30, 1986, Investments sold 1,300 acres of Continental Ranch to R. A. Homes for \$25,000,000. As a result of this sale, Investments claimed a profit of \$8,121,000.

177. The claimed profit of \$8,121,000 was attributed to Old Lincoln, since Investments was a wholly-owned subsidiary of Old Lincoln.

178. Old Lincoln's recorded profit of \$8,121,000 allowed the Racketeering Defendants to use the Tax Plan to upstream \$3,250,000 to ACC for their benefit and to portray falsely that Old Lincoln had realized a profit of \$8,121,000.

179. In reality, the sale of the 1,300 acres of Continental Ranch to R. A. Homes was a sham transaction devoid of economic substance and designed, in part, to overstate Old Lincoln's profits to enable the Racketeering Defendants to divert funds to ACC under the Tax Plan.

180. The Continental Ranch transaction is more fully described in paragraphs 220 through 229 (Section IV.D.4) of this Complaint.

7. The Racketeering Defendants' Attempts To Conceal the Fraud Practiced under the Tax Plan.

181. The Racketeering Defendants continued to cause Old Lincoln to make unlawful Tax Plan payments to ACC until the third quarter of 1988 when the regulatory authorities discovered the unlawful payments and ordered that they cease. In addition, the regulatory authorities advised ACC that the previous unlawful payments would have to be returned to Old Lincoln.

182. Wischer, Niebling, and other agents of ACC and the Racketeering Defendants continued the Racketeering Defendants' pattern of deceit upon the regulatory authorities. When confronted with the illegality of the Tax Plan, they represented that Old Lincoln would receive current taxable income during 1988 which would justify all of the unlawful Tax Plan payments made from 1984 through 1987. These representations were made to conceal further the Racketeering Defendants' fraudulent activities.

183. During 1988, the Racketeering Defendants directed several transactions in an effort to generate current taxable income to Old Lincoln in an attempt to justify the unlawful payments and to conceal the fraud effected through the Tax Plan.

184. To generate current taxable income, the Racketeering Defendants caused AMCOR Funding Corporation ("Funding"), a Lincoln Subsidiary, to engage in a transaction devoid of economic

substance. Funding traded its ownership interests in two business entities and \$8,750,000 for an approximate 20% ownership interest in General Oriental Investments Limited ("GOIL").

185. Prior to this "trade," both Funding and GOIL possessed ownership interests in two companies: General Oriental Securities Limited Partnership ("GOSLP") and Grand Union Acquisition Corporation ("GUAC").

186. Prior to the "trade," Funding possessed the following interests:

- 18.314% interest in GOSLP
- 25% of the common stock of GUAC
- 37.5% of the preferred stock of GUAC

187. Prior to the "trade", GOIL possessed the following interests:

- 58% interest in GOSLP
- 25% interest in GUAC

These were the primary assets of GOIL.

188. On September 2, 1988, Funding transferred all of its interests in GOSLP and GUAC plus \$8,750,000 to GOIL. In return, GOIL transferred to Funding 28,630,000 shares of GOIL, giving Funding an effective 20.3% ownership interest in GOIL.

189. The Racketeering Defendants caused Funding to calculate a "gain" on the transaction by using a value of \$9.50 per share for the GOIL stock that Funding received. Consequently, Funding purportedly incurred taxable income on the transaction totalling \$116,831,000.

190. The GOIL-Funding "trade" was a sham transaction designed solely to generate current taxable income for Old Lincoln, through Funding, and thereby to conceal the fraud practiced under the Tax Plan. In addition, this effort to conceal the Racketeering Defendants' fraudulent activities resulted in a further waste of Old Lincoln's assets.

191. The GOIL-Funding "trade" had no economic substance. By trading its interests in GOSLP and GUAC for an interest in GOIL, whose primary assets were its interests in GOSLP and GUAC, Funding merely exchanged its direct ownership in GOSLP and GUAC for an indirect ownership in the very same entities. Indeed, the only substantive impact of the "trade" was to dilute Funding's holdings in GOSLP and GUAC and to waste \$8,750,000 of Funding's liquid assets.

192. The table below illustrates that the "trade" actually diluted Funding's effective interest in GOSLP and GUAC.

	<u>Interest before "Trade"</u>	<u>Interest after "Trade"</u>	<u>Percentage Change</u>
GOSLP	18.314%	15.2628%	-3.0512%
GUAC Common	25.0%	10.0%	-15.0%
GUAC Preferred	37.5%	7.5%	-30.0%

In addition, Funding paid \$8,750,000 to GOIL for these diluted ownership interests.

193. No gain should have been realized on the GOIL-Funding "trade." The assets transferred and the assets effectively received consisted largely of the same asset: interests in GOSLP and GUAC. Of the approximate \$115,000,000 gain recognized on the

supposed sale of GOSLP interests, approximately five-sixths, or \$95,000,000, is attributable to the 15.2628% interest in GOSLP which Funding held both before and after the exchange. Yet, the Racketeering Defendants structured the transaction to recognize all of this gain for tax purposes. Moreover, the \$9.50 per share valuation of GOIL stock was excessive and was utilized to drive up the "gain" to be recognized and, consequently, to increase Old Lincoln's current taxable income. Both immediately before and after the GOIL-Funding "trade," the stock of GOIL traded publicly at prices between \$7.50 per share and \$8.25 per share.

194. As a direct and proximate result of the implementation of the Tax Plan, the unlawful payments made by Old Lincoln to ACC thereunder, and the Racketeering Defendants' attempts to conceal their fraud, Old Lincoln was damaged in an amount in excess of \$125,000,000.

D. Fraudulent Loans for the Benefit of Insiders and Affiliated Persons.

195. As a result of the transactions described below, New Lincoln has sustained, or can be expected to sustain, damages in excess of \$243,000,000.

1. Hotel Pontchartrain Scheme and Artifice - Insider Loans.

196. From December of 1984 through June of 1987, the Racketeering Defendants, conducting the affairs of the ACC Enterprise, caused Old Lincoln, The Crescent Hotel Group ("Crescent"), The Crescent Hotel Group of Michigan, Inc. ("CHG/M"), Hotel Pontchartrain Limited Partnership ("HPLP"), Lincoln

Commercial Properties ("LCP"), later known as Phoenician Financial Corporation ("PFC"), and Phoenician Commercial Properties ("PCP") to engage in a series of abusive and fraudulent transactions regarding the Hotel Pontchartrain in Detroit, Michigan. Crescent, PFC, and PCP are direct Lincoln Subsidiaries; CHG/M is an indirect Lincoln Subsidiary; HPLP is an affiliated person of Old Lincoln.

197. The Racketeering Defendants caused Old Lincoln indirectly to make loans to themselves, other defendants, their associates, insiders and affiliated persons for the acquisition and operation of the Hotel Pontchartrain. The Racketeering Defendants knew that applicable laws and regulations prohibited Old Lincoln from making these loans. Therefore, the Racketeering Defendants concealed from the regulatory authorities the nature of the transactions pertaining to the Hotel Pontchartrain.

198. To conceal the origin of loans to insiders and affiliated persons, the Racketeering Defendants caused certain of the Lincoln Subsidiaries to make the unlawful loans. Old Lincoln provided the funds necessary to enable the Lincoln Subsidiaries to make unlawful loans of approximately \$58,000,000 to HPLP. Of these loans, in excess of \$20,000,000 is unsecured and in default. Hence, Old Lincoln has sustained or can be expected to sustain losses in excess of \$20,000,000 as a result of the abuse and self-dealing by the Racketeering Defendants and other defendants.

199. To conceal the unlawful loans, the Racketeering Defendants caused the formation of HPLP to serve as the loan recipient. The Racketeering Defendants, members of the Keating

Family, other defendants, their associates, and other insiders and affiliated persons were limited partners of HPLP and personally benefitted from loans funded by Old Lincoln.

200. On December 31, 1984, CHG/M purchased for \$19,000,000 the Hotel Pontchartrain. Old Lincoln provided these funds. To facilitate the purchase, the Racketeering Defendants caused Old Lincoln to transfer \$19,500,000 to Crescent in the form of a nominal capital contribution. In turn, the Racketeering Defendants caused Crescent to transfer the necessary \$19,500,000 to CHG/M, again, as a nominal capital contribution.

201. The Racketeering Defendants, conducting the affairs of the ACC Enterprise, caused LCP and CHG/M to enter into a Loan Agreement on March 30, 1985. LCP loaned \$38,000,000 to CHG/M, the record owner of Hotel Pontchartrain.

202. The Racketeering Defendants caused Old Lincoln to provide the funds to LCP necessary for the loan to CHG/M by transferring \$38,000,000 to LCP in the form of a nominal capital contribution.

203. HPLP was formed to buy the Hotel Pontchartrain, to assume the \$38,000,000 loan made to the CHG/M, and to achieve tax benefits for the individual limited partners. The individuals acquired their limited partnership interests for minimal cash sums and planned to derive sizeable tax benefits from the limited partnership.

204. On March 30, 1985, the Racketeering Defendants, caused HPLP to purchase the Hotel Ponchartrain from CHG/M for

\$36,677,207. As a result of this sale, CHG/M claimed a profit of \$9,500,000 which was attributed to Old Lincoln, and this subsequently allowed the Racketeering Defendants to use the Tax Plan to upstream \$3,800,000 to ACC for their benefit.

205. Beginning in January of 1986, the Racketeering Defendants, conducting the affairs of the ACC Enterprise, caused CHG/M to make cash advances to HPLP, and it ultimately transferred \$10,446,055 to HPLP.

206. Subsequently, the name of LCP was changed to PFC, as noted above. On December 2, 1986, the Racketeering Defendants caused PFC to extend a \$20,000,000 unsecured line of credit to HPLP to be drawn upon and used for various purposes:

- (a) Some loan proceeds were used to repay \$10,446,055 in advances made by CHG/M to HPLP.
- (b) Other loan proceeds were used to service the debt of HPLP secured by a first mortgage on the Hotel Pontchartrain.
- (c) Some proceeds were used to pay losses incurred in continuing to operate the Hotel Pontchartrain, thereby maintaining sizeable tax benefits to the Racketeering Defendants, the Keating Family, and other affiliated persons.

207. The Racketeering Defendants, also caused PFC to extend and fund a \$20,000,000 line of credit to HPLP upon terms which were unfavorable to PFC, but which were beneficial to the Racketeering Defendants. The Racketeering Defendants deliberately caused PFC to extend and fund the \$20,000,000 line of credit to HPLP without underwriting the loan or assessing the borrower's ability to repay the loan. The Racketeering Defendants did this

in order to help them continue the unprofitable operations of the Hotel Pontchartrain, to stave off the imminent financial collapse of HPLP, and thereby to continue to generate sizeable tax benefits for the Racketeering Defendants, the Keating Family, and other insiders.

208. On January 16, 1986, HPLP obtained loans totalling \$42,000,000 from San Jacinto Mortgage Company ("San Jacinto") and Credit Lyonnais. A \$38,000,000 loan from San Jacinto was secured by a first mortgage on the Hotel Pontchartrain, thereby taking out the interest of LCP. This refinancing was part of a scheme to conceal the unlawful affiliated person transactions from the regulatory authorities. As compensation for assisting in this deception, Southmark Corporation ("Southmark"), the parent of San Jacinto, received major concessions from Old Lincoln, a significant creditor of Southmark. As further compensation for its complicity in the plan to deceive the regulatory authorities, San Jacinto received fees rightfully belonging to LCP and CHG/M in the approximate amount of \$1,600,000.

209. The Hotel Pontchartrain transaction is more specifically described below:

- (a) In December of 1984, the Hotel Pontchartrain was purchased by CHG/M, a wholly-owned subsidiary of PCP, itself a wholly owned subsidiary of Old Lincoln. The purchase price was approximately \$19,500,000.
- (b) In March 1985, Keating Jr., the Keating Family, and various ACC Enterprise insiders formed the HPLP for the purpose of acquiring the Hotel Pontchartrain from CHG/M. The general partner of HPLP is CHG/M. HPLP was an affiliated

person with respect to Old Lincoln by reason of each of the following separate matters:

- (1) The general partner in HPLP was CHG/M, which, as noted above, was a wholly-owned subsidiary of PCP, itself a wholly-owned subsidiary of Old Lincoln, and CHG/M's officers and directors included persons who then were officers of Old Lincoln, such as Ray C. Fidel and M. Virginia Novak; these circumstances made HPLP an affiliated person within the meaning of 12 C.F.R. § 561.29(d)(2).
- (2) Limited partners in HPLP included Keating Jr., Keating III, Hall, Hubbard, and Wurzelbacher; these men were all members of the same immediate family, within the meaning of 12 C.F.R. § 561.30; these men were affiliated persons of Old Lincoln, within the meaning of 12 C.F.R. §§ 561.28, 561.29(a) and 561.29(c), because Keating Jr. was a controlling person of ACC which, in turn controlled Old Lincoln, because Keating III and Hubbard were directors of Old Lincoln (as well as directors of ACC), and because Hall and Wurzelbacher were directors of ACC; collectively, these men held 19.305 percent of HPLP, thereby making HPLP an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29(d)(3).
- (3) Limited partners in HPLP, in addition to Keating Jr., Keating III, Hall, Hubbard, and Wurzelbacher, also included Wischer, Kielty, Ligget, Niebling, Sheldon K. Weiner ("Weiner") and Ronald M. Stoll ("Stoll"); each of these additional persons were affiliated persons of Old Lincoln, within the meaning of 12 C.F.R. §§ 561.28, 561.29(a), and 561.29(c), because Wischer and Niebling were directors of Old Lincoln (as well as directors of ACC), Niebling was Old Lincoln's chief executive officer, Ligget was a director of Old Lincoln (as well as chief financial officer of ACC), Kielty was a director of ACC, Weiner was executive vice president of Old Lincoln (as well as a director of ACC), and Stoll was a vice president of Old Lincoln;

collectively, these persons, including the Keating Family members who also were affiliated persons, held 29.7 percent of HPLP, thereby making HPLP an affiliated person of Old Lincoln within the meaning of 12 C.F.R. § 561.29(d)(3).

Accordingly, by reason of each of the foregoing separate matters, transactions between Old Lincoln and the Lincoln Subsidiaries on one hand, and HPLP, on the other hand, were subject to the affiliated person transaction requirements set forth at 12 C.F.R. §§ 563.41 and 563.43 and to the conflict of interest standards set forth in 12 C.F.R. § 571.7.

- (c) Limited partners in HPLP derived tax benefits typical of tax advantaged real estate limited partnerships formed prior to the 1986 amendments to the Internal Revenue Code; in this case, for the years 1985 through 1987, the Keating Family obtained the right to claim total tax losses of approximately \$5,475,000, and other affiliated persons of Old Lincoln obtained the right to claim total tax losses of approximately \$3,935,000 for an aggregate total of \$9,410,000; of this aggregate total, Keating Jr. acquired tax losses of approximately \$2,200,000 for those three years; given the unreasonably high salaries which defendants paid to themselves (in Keating Jr.'s case in excess of \$5,100,000 in cash for those three years), these tax benefits were tremendously beneficial to defendants.
- (d) Old Lincoln provided \$30,000,000 in financing for HPLP's acquisition of the Hotel Pontchartrain on a non-recourse basis through one of its affiliates, LCP (now known as PCP); this same affiliate provided a loan with recourse against HPLP (but not the limited partners) in the amount of \$8,000,000 to renovate the Hotel Pontchartrain; the non-recourse loan was secured by a first deed of trust, and the recourse loan was secured by a second deed of trust.
- (e) Total capital of HPLP was \$10,101,000, allocated as follows: CHG/M, the general partner, contributed \$101,000, and the limited partners contributed \$10,000,000; each limited partner, however, was only required to invest

\$10,000 in cash for each partnership unit and to execute a promissory note in the amount of \$190,000 for the balance of the purchase price of each unit; moreover, if the partnership operated at a deficit, the limited partners were neither required nor obligated to make additional capital contributions.

(f) HPLP obtained a questionable appraisal indicating that the value of the Hotel Pontchartrain, after the planned renovations, would be \$37,000,000. Old Lincoln extended credit to HPLP in an amount in excess of the appraised value (\$38,000,000 in total loans compared to an inflated appraised value of \$37,000,000) and was required to place CHG/M, one of the Lincoln Subsidiaries, at risk as a general partner. In contrast, the limited partners acquired the tax benefits described above and ownership of the Pontchartrain for a total cash investment of \$10,000 per partnership unit.

(g) Fully aware of their obligations under 12 C.F.R. §§ 563.41, 563.43, and 571.7 to obtain approval for any loan by Old Lincoln or PCP to HPLP, the officers and directors of ACC, Old Lincoln, PCP, and CHG/M embarked on the following scheme to evade regulations and conceal the Hotel Pontchartrain transactions from the FSLIC.

(1) Old Lincoln made a capital contribution of \$38,000,000 to PCP, one of its wholly-owned subsidiaries.

(2) PCP then made the two loans described above to CHG/M, for total loans of \$38,000,000 to CHG/M.

(3) Shortly thereafter, CHG/M sold the Hotel Pontchartrain to HPLP in consideration for: (a) HPLP's assuming all of CHG/M's obligations under these two loans (including the obligation to pay a total of \$600,000 in loan origination fees), and (b) an additional \$490,000 in cash. This transaction permitted CHG/M to book approximately \$9.5 million in income, although it had held the Pontchartrain for only a short period of time.

- (4) CHG, another wholly-owned subsidiary of Old Lincoln, agreed to provide management services to HPLP for managing the Hotel Pontchartrain at rates based on the gross receipts earned by the hotel.
- (h) The result of these transactions was that HPLP, one-third owned by affiliated persons of Old Lincoln and itself an affiliate of Old Lincoln, was: (1) the recipient of \$38 million worth of loans from PCP, one of the Lincoln Subsidiaries, and (2) the beneficiary of services to be provided by Crescent, another of the Lincoln Subsidiaries.
- (i) Aware that these transactions, which constitute flagrant violations of federal law and involve obvious conflicts of interest, would create significant problems for Old Lincoln upon regulatory review, the officers and directors of Old Lincoln, ACC, CHG/M, Crescent, and PCP arranged for HPLP to obtain a \$35 million loan from San Jacinto and an \$8 million loan from Credit Lyonnais. The proceeds of these two loans were used to pay off the two loans from PCP that were originally obtained by CHG/M and then assumed by HPLP. In order to induce San Jacinto to make its \$35 million loan, however, PCP had to agree to assign to San Jacinto the right to receive one-half of the \$600,000 loan origination fee due to PCP from HPLP and PCP had to agree to forfeit the other half of such fee. In addition, Crescent agreed to an estimated \$1,000,000 reduction in the service fees due to it from HPLP. The officers and directors of Old Lincoln, ACC, CHG/M, Crescent, and PCP knew that such concessions by the Lincoln subsidiaries in favor of an affiliated person of Old Lincoln required the approval of the FHLBB. Knowingly failing to apply for approval for such concessions constitutes a fraudulent concealment of a prohibited transaction from the FSLIC and the FHLBB in direct violation of regulations designed to protect Old Lincoln and the FSLIC insurance fund. Defendants' conduct resulted in \$1,600,000 in damages to Old Lincoln.
- (j) Despite the significant financial concessions made by the Lincoln Subsidiaries to HPLP in order to obtain the San Jacinto financing and approximately \$10,500,000 advanced by CHG/M to

meet certain ongoing expenses of the partnership, by December of 1986 the net worth of HPLP had become negative, and it was desperate for cash to meet the operating and remodeling expenses of the Hotel. At that time HPLP's negative net worth was approximately \$20,000,000.

- (k) On December 2, 1986, PFC, another Lincoln Subsidiary, provided HPLP with a \$20,000,000 unsecured revolving line of credit loan. The amount of this loan, when added to San Jacinto's first mortgage loan, was significantly in excess of the value of the Hotel Pontchartrain, HPLP's only tangible asset. An appraisal dated one year earlier, the latest appraisal available to Old Lincoln, indicated a value of approximately \$44,400,000 for the Hotel Pontchartrain. If one assumes the unlikely proposition that this was a reliable appraisal when rendered and remained indicative of value one year later, the appraised value barely exceeded the prior outstanding indebtedness, let alone justified an unsecured loan of \$20,000,000 to an insolvent borrower. This unsecured loan, moreover, had extremely favorable terms, as no interest or principal was due for five years and as the interest rate was ten percent. These terms, even assuming repayment in full of this loan, resulted in a yield that was below Old Lincoln's cost of funds. Accordingly, Old Lincoln, through PCP, not only extended a grossly imprudent loan, it also subsidized the transaction.
- (l) The officers and directors of Old Lincoln, ACC, PFC, and CHG/M knew that the \$20,000,000 unsecured loan required regulatory approval. Their knowing failure to obtain approval for such a loan constitutes a fraudulent concealment of a prohibited transaction in direct violation of regulations designed to protect Old Lincoln and the federal deposit insurance fund.
- (m) On September 11, 1988, the \$20,000,000 unsecured loan to HPLP by PFC was classified as substandard by Old Lincoln's management. Consequently, the fraud described above can be expected to result in at least \$20,000,000 in further damages.

210. In implementing the Hotel Pontchartrain scheme and artifice, certain defendants, as directors and officers of Old Lincoln, also violated their statutory, contractual, and fiduciary duties described in paragraph 346.

2. Rancho Vistoso Scheme and Artifice -
Straw Borrower and Insider Loan Aspects.

211. Plaintiff incorporates herein, by reference, paragraphs 167 through 174 inclusive, of this Complaint.

212. The Racketeering Defendants caused the sale of Old Lincoln's 50% net profits interest in the Rancho Vistoso loans to cause Old Lincoln to make unlawful payments to ACC under the Tax Plan. This unlawful Tax Plan payment, however, was only one aspect of the fraud and self-dealing engaged in with respect to Rancho Vistoso.

213. The Racketeering Defendants wanted the ACC Enterprise to purchase and develop Rancho Vistoso for their personal benefit. They intended to exercise their control of Old Lincoln, a constituent of the ACC Enterprise, to cause Old Lincoln to fund the ACC Enterprise's purchase and development of Rancho Vistoso for their personal benefit.

214. The Racketeering Defendants knew that they were restricted by applicable laws and regulations from causing Old Lincoln to loan funds directly to constituents of the ACC Enterprise in order to develop Rancho Vistoso. To circumvent the applicable laws and regulations limiting such direct investments

by Old Lincoln, the Racketeering Defendants utilized undisclosed agents to obtain loans from Old Lincoln to enable the ACC Enterprise to purchase and develop Rancho Vistoso for their personal benefit.

215. WGI was the undisclosed agent of the Racketeering Defendants and fraudulently obtained and concealed loans for the ACC Enterprise's purchase and development of Rancho Vistoso. In fact, WGI acted as a "straw borrower" to enable the Racketeering Defendants, through the ACC Enterprise, to obtain and conceal unlawful loans to purchase and develop Rancho Vistoso for their personal benefit.

216. The purchase and development of Rancho Vistoso was actually a speculative real estate development project of the ACC Enterprise, engaged in at the direction of and for the personal benefit of the Racketeering Defendants. New Lincoln can expect to sustain substantial losses on the Rancho Vistoso loans.

**3. Crowder Water Ranch Scheme
and Artifice - Diversion
of Funds to C. V. Nalley.**

217. Plaintiff incorporates herein by reference paragraphs 160 through 166, inclusive, of this Complaint.

218. The Racketeering Defendants caused the sale of an undivided one-third interest in the Crowder Water Ranch to Nalley to cause Old Lincoln to make unlawful payments to ACC under the Tax Plan. However, Old Lincoln also incurred damage as a result of this transaction beyond the amount of the unlawful payment made to ACC under the Tax Plan.

219. To compensate Nalley for his complicity and participation in this fraudulent transaction, the Racketeering Defendants caused Old Lincoln, through Investments, to pay him \$7,500,000. They also caused Old Lincoln, through LINFIN and PFC, to release Nalley from liabilities on personal guarantees and to pay him \$3,500,000. The payments of \$11,000,000 to Nalley and the releases of liabilities constituted fraudulent wastes of Old Lincoln's assets and damaged Old Lincoln.

**4. Continental Ranch/R.A. Homes
Scheme and Artifice - Straw
Borrower and Insider Loan Aspects.**

220. In 1984 Investments purchased 2,900 acres of land in Pima County, Arizona, for nearly \$21,500,000. The Racketeering Defendants intended for Continental Ranch to be a development project of the ACC Enterprise funded with direct investments from Old Lincoln.

221. By September of 1986, Old Lincoln was subject to the direct investment rule and under pressure from the regulatory authorities to diversify its portfolio to comply with limitations on a thrift's direct investments. In addition, ACC suffered from a cash shortage and required an infusion of funds. To rectify these problems, the Racketeering Defendants caused Investments to engage in a sham transaction with R.A. Homes regarding Continental Ranch.

222. Thus, on September 30, 1986, Investments "sold" to R.A. Homes 1,300 acres of Continental Ranch for \$25,000,000. R.A. Homes made a down payment of \$5,000,000 and gave Investments a non-

recourse note for \$20,000,000. Old Lincoln provided \$3,500,000 of the down payment by extending and funding a line of credit to R.A. Homes.

223. The Racketeering Defendants used the "sale" to R.A. Homes to conceal Old Lincoln's direct investment in the Continental Ranch development project. By way of the sale to R.A. Homes, the Racketeering Defendants sought to show the regulatory authorities that Old Lincoln had lessened its direct investment in the Continental Ranch development in compliance with regulations governing direct investments by thrifts.

224. In fact, the Racketeering Defendants, notwithstanding the "sale" to R.A. Homes, continued to conduct all aspects of the development of the entire 2,900 acres of the Continental Ranch and, contrary to its representations to the regulatory authorities, had not lessened Old Lincoln's direct investment in the Continental Ranch development project. R.A. Homes acted to conceal the extent of Investments' involvement and participation in the Continental Ranch development project.

225. As described in paragraphs 175 through 180 of this Complaint, the Racketeering Defendants also used the "sale" to R.A. Homes to effect an infusion of cash to ACC from Old Lincoln under the Tax Plan.

226. The Continental Ranch transactions are more fully explained as follows:

- (a) Old Lincoln, through Investments, purchased approximately 2,900 acres in Pima County, Arizona, in 1984 for approximately \$21,000,464. This tract of property has become known as the

Continental Ranch project which is to encompass a master-planned community with approximately 1,600 acres of residential development west of the Santa Cruz River and 550 acres of industrial development to the east of this river, with the balance of the acreage involved to be used for streets and otherwise considered unsalable; the project is approximately seven miles northwest of Tucson.

- (b) On or about September 30, 1986, R. A. Homes purchased from Investments 1,300 acres of Continental Ranch for \$25,000,000. The sales price was paid partially in cash and partially with a note. Cash paid at closing was \$5,000,000, and a non-recourse note bearing interest at an annual rate of 10% in the amount of \$20,000,000 was executed at closing.
- (c) Prior to the sale of the 1,300 acres to R.A. Homes, Investments had completed substantial elements of the infrastructure for the residential portion of the project.
- (d) At the closing of the sale, Old Lincoln recorded book profit of \$8,121,000. This profit recognition permitted ACC to compel Old Lincoln to advance to it approximately \$3,250,000 under the Tax Plan. Contrary to the position taken by Old Lincoln at ACC's direction, full accrual profit recognition was inappropriate with respect to the sale of the 1,300 acres to R.A. Homes:
 - (1) In the first place, Old Lincoln provided a portion of the funding of the cash paid at closing through a September 23, 1986, \$3,000,000 unsecured revolving line of credit for the borrower.
 - (2) Collection of additional amounts from this borrower was highly uncertain, because of the non-recourse nature of the note and because of the substantial continuing involvement of Investments in the project; in fact, without the benefit of any executed contract between R.A. Homes and Investments, Investments continued to manage the portion of the project purchased by R.A. Homes, negotiated contracts for sales of individual parcels, including sales of land holdings to

merchant builders and other investors, and supervised completion of the infrastructure installation.

Accordingly, under SFAS No. 66, full accrual profit recognition for this transaction was completely improper.

- (e) As a consequence of the foregoing transaction, Old Lincoln has lost, or can expect to lose, approximately \$20,000,000 in addition to the approximately \$3,250,000 taken by ACC through the Tax Plan.
- (f) In manufacturing this sham transaction, however, Old Lincoln did not give up control of the project, for it continued to manage and develop the project as if there had been no sale to R.A. Homes.

227. In implementing the Continental Ranch scheme and artifice, certain defendants, as directors and officers of Old Lincoln, also violated their statutory, contractual, and fiduciary duties described in paragraph 346.

228. In addition to the Hidden Valley and Continental Ranch transactions, Old Lincoln engaged in various other transactions with R.A. Homes. One of them in particular, a \$30,000,000 unsecured subordinated loan, demonstrates the manner in which ACC forced Old Lincoln to prejudice its financial interests to the benefit of ACC's financial interests. This \$30,000,000 loan and related circumstances are described below.

- (a) On or about April 8, 1987, ACC and R.A. Homes entered into a Line of Credit Agreement pursuant to which ACC agreed to disburse the aggregate principal amount of \$2,000,000 to R.A. Homes. Disbursements made under the Line of Credit Agreement were repayable in accordance with the terms of that agreement and of the Note dated the same date.

- (b) The original maturity date of the Note executed pursuant to the Line of Credit Agreement was May 1, 1988. As of May 1, 1988, however, ACC and R.A. Homes agreed pursuant to Amendment No. 1 to the Note to extend the maturity date of the Note from May 1, 1988 until May 1, 1989.
- (c) After ACC and R.A. Homes executed the above referenced Agreement and Note, the Racketeering Defendants caused Old Lincoln to enter into a Loan Agreement dated as of June 30, 1987, with R.A. Homes. The terms of the Old Lincoln Loan Agreement required Old Lincoln to loan on an unsecured and fully subordinated basis \$30,000,000 to R.A. Homes.
- (d) Repayment of the \$30,000,000 to R.A. Homes was fully subordinated to that borrower's obligation to repay the \$2,000,000 loan from ACC:
- (1) In the first instance, this is evidenced by the definitions of "Indebtedness" and of "Senior Indebtedness" set forth in Sections 1.17 and 1.41, respectively, of the Old Lincoln Loan Agreement; these and related provisions made the ACC loan senior in right of payment to the Old Lincoln loan to the same borrower.
 - (2) In fact, the prior indebtedness to ACC was recognized in § 8.9 of the Old Lincoln Loan Agreement dealing with defaults on other indebtedness.
 - (3) Moreover, the Old Lincoln Loan Agreement obligates Old Lincoln to hold as trustee and to pay over any funds received by it from R.A. Homes that are payable to another lender whose right of payment is senior to that of Old Lincoln.
- (e) The foregoing transactions demonstrate ACC's diversion of assets and opportunities of Old Lincoln to the personal benefit of ACC and its insiders, including the Racketeering Defendants and the Keating Family. In short, ACC prejudiced the ability of Old Lincoln to expect full repayment of its \$30,000,000 subordinated loan by explicitly subordinating its right to repayment to the right of ACC to repayment of its loan on a priority basis. As a result,

defendants, as officers and directors, breached their duties of care and of loyalty to Old Lincoln and used the dominance of ACC's control over Old Lincoln to prejudice the interests of Old Lincoln and its depositors.

229. In implementing the R.A. Homes scheme and artifice, certain defendants, as directors and officers of Old Lincoln, also violated their statutory, contractual, and fiduciary duties described in paragraph 346.

E. Manipulation of Stock Transactions as a Scheme and Artifice To Defraud Old Lincoln and To Benefit Insiders.

230. As a result of the transactions described below, New Lincoln has sustained, or can be expected to sustain, damages in excess of \$22,000,000.

1. Diversion to ACC of Profits from the Sale of Memorex Stock.

231. The Racketeering Defendants devised and implemented a scheme to injure Old Lincoln's investment in a Lincoln Subsidiary, Funding; this included diverting profits derived from the appreciation of stock owned by Funding to ACC.

232. The Racketeering Defendants caused Funding to sell its stock in Memorex International, N.V. ("Memorex") to a third party at an artificially low price. Subsequently, the Racketeering Defendants caused Funding to relinquish, for no consideration, an option to repurchase the Memorex stock to enable ACC, instead, to buy the Memorex stock from the third party at an artificially low price. ACC later sold the stock at a substantial profit and received the profits that rightfully belonged to Funding. As a

result of the scheme devised and implemented by the Racketeering Defendants, Old Lincoln was damaged.

233. In recognition of its obligation under 12 C.F.R. § 584.3 to obtain FHLBB approval before engaging in certain transactions with an affiliated person, Old Lincoln forwarded to the FHLBB, on behalf of Funding an April 29, 1987, an application for approval of a sale by Funding to ACC of the common stock of Edgcomb Corporation ("Edgcomb"), Playtex Holdings, Inc. ("Playtex"), and Memorex.

234. To support the purported fairness of these proposed transactions, Old Lincoln's application enclosed two letters obtained from Drexel Burnham Lambert, Incorporated ("Drexel"). The first of Drexel's letters provided the market value per share each of Playtex and Edgcomb common stock. The second Drexel letter estimated the aggregate market value of the 79,275 shares of Memorex common stock held by Funding to be \$2,800,000.

235. On May 1, 1987, responding to Old Lincoln's April 29, 1987, application, the FHLBB forwarded to the Board of Directors of Old Lincoln its approval of the proposed sale by Funding to ACC of the Playtex and the Edgcomb common stock.

236. Regulatory approval of the sale by Funding to ACC of the common stock of Memorex was withheld pending the FHLBB's receipt of documentation from Drexel supporting its estimate of the market value of Memorex common stock.

237. In continuing recognition of its obligation to obtain approval for any sale by Funding to ACC of Memorex common

stock, on May 19, 1987, Old Lincoln renewed its request for such approval. This request referred to an analysis of Memorex common stock value that was to be prepared by Drexel and forwarded by Drexel to FHLBB.

238. The Drexel analysis of Memorex common stock was never sent to the FHLBB. In a telephone communication with the FHLBB, a representative of Old Lincoln told the FHLBB that it could not provide the valuation information at that time, despite its earlier agreement, because the information was "confidential." FHLBB approval of a sale by Funding to ACC of Memorex common stock or any interest therein was never pursued thereafter by Old Lincoln, Funding, or ACC.

239. Old Lincoln, Funding, and ACC were fully aware of the obligation to obtain FHLBB approval for any sale by Funding to ACC of Memorex common stock. Nonetheless, because of their inability to induce Drexel to substantiate its estimated value of Memorex common stock for the FHLBB, the officers and directors of Old Lincoln, Funding, and ACC, in violation of 12 C.F.R. § 584.2(a), embarked on the following fraudulent scheme to evade their obligation, under 12 C.F.R. § 584.3(a), to obtain approval of a transaction with an affiliate.

240. Following negotiations between Garcia Co. and Keating Jr. and Wischer, on June 30, 1987, Funding entered into a Stock Purchase Agreement with Garcia Co. pursuant to which Funding sold to Garcia Co. 79,275 shares of Memorex common stock for an aggregate purchase price of \$1,000,000. Section 6 of the Stock

Purchase Agreement granted Funding the option to repurchase all of the 79,275 shares of Memorex common stock for \$4,250,000 on or before December 30, 1988.

241. There is no evidence that the \$1,000,000 purchase price was fair to Funding. In fact, such price was \$1,800,000 less than the market value which Old Lincoln represented in its April application.

242. On October 21, 1987, after further negotiations between Keating Jr. and Garcia Co. and while Funding's option to purchase from Garcia Co. all 79,275 shares of Memorex common stock from Garcia Co. was still exercisable, Keating Jr. arranged for ACC to purchase the stock for \$2,000,000.

243. After the sale to ACC on October 26, 1987, Keating Jr. arranged for Funding to execute a document indicating Funding's consent to Garcia Co.'s sale to ACC of the Memorex stock that was subject to Funding's option described above. Funding's consent does not recite any consideration passing from ACC to Funding in exchange for consent. Necessary regulatory approval was neither sought nor obtained permitting Funding to relinquish to ACC Funding's valuable right to repurchase the Memorex stock from Garcia Co.

244. As a result of these transactions, Funding had received on June 30, 1987, only \$1,000,000 for stock which was valued at \$2,800,000 in April of 1987. ACC paid a mere \$2,000,000 for such stock on October 21, 1987. ACC subsequently sold all of such stock by the end of April, 1988, for \$13,300,000, capturing

for itself approximately \$11,300,000 in profits that rightfully belonged to Lincoln or to Funding.

245. The scheme undertaken by the Racketeering Defendants, the officers and directors of Old Lincoln, Funding, and ACC to transfer Memorex stock to ACC, including knowingly concealing the transfer from the FHLBB and failing to seek FHLBB approval for the transfer by Funding to ACC of its right to purchase Memorex common stock from Garcia Co., constitutes a fraudulent circumvention of the FHLBB approval process and a violation of 12 C.F.R. § 584.2(a).

246. As a result of such fraudulent scheme, Old Lincoln suffered damages equal to the difference between the price at which ACC bought the Memorex stock from Garcia Co., \$2,000,000, and at least the aggregate price at which such shares were subsequently sold by ACC, \$13,300,000.

2. Abuse of the ACC Employee Stock Ownership Plan for the Benefit of the Keating Family and Other Insiders.

247. On or about January 1, 1984, the Board of Directors of ACC created the ACC Employee Stock Ownership Plan ("ESOP") by the execution of an Employee Stock Ownership Trust Agreement effective as of that date. This agreement established an employee stock ownership plan within the definition of "health, welfare or retirement plan" included in the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et. seq. The ESOP replaced an earlier Employee Stock Incentive Plan established in 1978. The

ACC ESOP also was determined to be a tax exempt qualified plan by the IRS on or about September 23, 1985.

248. The initial members of the ESOP Plan Administrative Committee were Keating Jr. and Wischer, but in 1985 composition of the ESOP Plan Administrative Committee was changed to Margaret W. Wong, Richard M. Bertsch, and James T. Millican, II. The ESOP Plan Administrative Committee is responsible for decisions concerning plan assets, but frequently acted under the direction of Keating Jr. and the ACC Board of Directors.

249. The ESOP Plan Trustee, which was authorized by the Plan Administrative Committee to enter into and execute all "operative documents" for the ESOP, was and remains the First National Bank of Minneapolis.

250. Both ACC and its ESOP have utilized various programs to repurchase over \$72,000,000 of ACC's common and preferred stock from the Keating Family, other affiliated persons, Drexel, and persons closely associated with ACC. One of those programs used Old Lincoln's assets for the benefit of the Keating Family and various affiliated persons. This program involved ESOP stock purchases in the total amount of \$23,000,213. The ESOP financed these purchases by borrowing a total of \$23,000,000, including a loan of \$3,000,000 from Valley National Bank. At least \$15,000,000 of the ESOP indebtedness was facilitated by the issuance of a letter of credit from Bankers Trust Company of New York and the pledge of at least \$15,000,000 of assets owned by Old Lincoln to collateralize the indebtedness. Under this program, the Keating

Family sold ACC stock to the ESOP for total consideration of \$6,120,736 in 1985, and other defendants sold ACC stock to the ESOP for total consideration of \$1,462,500. Thus, certain defendants directly received \$7,999,396 from the ESOP, which was only able to afford these purchases through assets of Old Lincoln that were pledged to collateralize the indebtedness necessary to fund the purchases. The affiliated persons who benefitted directly from this program and the payments received by them from April through November of 1985 were:

<u>Affiliated Person</u>	<u>Shares Sold</u>	<u>Total Price</u>
Keating Jr.	200,000	\$ 1,650,000
Mary Elaine Keating	150,000	1,162,500
Maureen Keating	88,548	689,896
Hall	250,000	1,950,000
Hubbard	121,000	878,250
Wurzelbacher	25,000	206,250
Niebling	100,000	825,000
Kielty	80,000	637,500
		<u>\$ 7,999,396</u>

As part of this program, Continental Homes, Inc. ("Continental") sold 51,107 shares of ACC stock to the ESOP for \$455,720; this purchase was part of another scheme for Keating Jr. to benefit indirectly to the extent of approximately \$1,500,000 through the transactions described below. Approximately \$11,000,000 in New Lincoln's assets remain at risk with respect to the financing of the foregoing transactions.

251. Keating Jr. purchased land in Maricopa County, Arizona, from Medema Homes of Utah, Inc. ("Medema"), a direct subsidiary of ACC; this land subsequently became the residence of

Keating Jr. and his wife Mary Elaine. This land purchase was financed by a note executed between him and Medema in the amount of approximately \$1,500,000.

252. Continental, another direct subsidiary of ACC, was purchased by Donald Loback, Robert Wade, and Kathy Wade. Continental subsequently acquired all interest in Keating Jr.'s indebtedness to Medema.

253. In or about February of 1984, Keating Jr. loaned \$50,000 interest free to Loback; the proceeds of said loan were used by Loback to purchase ACC stock. The loan was to become due on or about July 1, 1986.

254. On or about October 7, 1985, Keating Jr. privately transferred 39,162 shares of ACC stock, valued at \$327,979, to reduce his indebtedness to Continental. On or about November 28, 1985, Keating Jr. directed the ESOP to purchase the same ACC stock from Continental for \$337,772. Said purchase was directed by Keating Jr. for his own economic benefit.

255. On or about March 27, 1986, Keating Jr. privately transferred 121,171 shares of ACC stock to Continental. This stock was valued by him at \$12.125 per share and was used to offset \$1,469,198 of his indebtedness to Continental. On or about July 3, 1986, Keating Jr. directed the ACC treasury to purchase the same 121,171 shares of ACC stock from Continental at \$12.43 per share, for a total amount of \$1,506,156.

256. On or about December 10, 1985, Loback sold 9,550 shares of ACC stock to the ESOP for \$94,306. Said ESOP purchase was directed by Keating Jr.

257. ACC now is insolvent, and its common stock is next to worthless. Thus, the ESOP's investment in ACC's securities is next to worthless, and it is, or will become, unable to repay the indebtedness assumed by it to finance the foregoing transactions. As a result, the pledge of Old Lincoln's assets will be foreclosed, and New Lincoln will suffer a complete loss.

258. From 1985 through 1986, Keating Jr., Donald Loback, Robert Wade, Kathy Wade, and Continental participated and agreed to participate in the above transfers, purchases, and sales of ACC stock. Said stock sales, purchases, and transfers placed at risk and wasted Old Lincoln's assets and personally benefitted Keating Jr., the Keating Family, and other defendants, especially Kielty and Niebling. Said stock transactions were directed by Keating Jr. pursuant to a plan and in a manner that was for his own, his family's, and other defendants' personal benefit. As a result of those sales in violation of fiduciary responsibilities, New Lincoln can be expected to sustain monetary damages in excess of \$11,000,000.

**3. Violation of 18 U.S.C. § 1954
in Furtherance of the Scheme
and Artifice To Defraud.**

259. Keating Jr. qualifies as an administrator, officer, trustee, custodian, counsel, agent, or employee of the ACC ESOP under 18 U.S.C. § 1954(1).

260. Keating Jr. qualifies as an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by the ESOP under 18 U.S.C. § 1954(2).

261. In furtherance of the above-described scheme and artifice to defraud Old Lincoln, Keating, Jr. conducted and participated in the affairs of the ACC Enterprise by engaging in criminal activity. As described above, Keating, Jr. received money or value because of his actions, decisions, or other duties relating to matters concerning the ACC ESOP and violated 18 U.S.C. § 1954.

F. Conducting the Business and Affairs of the ACC Enterprise To Siphon and Divert the Profits and Assets of Old Lincoln to Benefit the Keating Family and other Insiders.

262. Keating Jr. used Old Lincoln's resources to promote his own personal, financial, political, ideological, and religious convictions. Keating Jr.'s diversion of depositors' money from Old Lincoln to ACC for his personal purposes grossly abused and wasted Old Lincoln's assets. Examples of this waste for the personal purposes of Keating Jr. include the following:

- (a) Paying himself and his immediate family members excessive cash compensation;
- (b) Using Old Lincoln's assets to leverage ACC's ESOP so that it could purchase stock of ACC to the benefit of Keating Jr. and his immediate family; and
- (c) Providing a source of funds for contributions that served Keating Jr.'s personal and financial interests and goals, thereby using depositor's money to promote the interests of Keating Jr. beyond the levels which his own personal resources permitted.

Using Old Lincoln's resources to fund ACC's payments of this nature to promote Keating Jr.'s personal agenda constituted a breach of fiduciary duties owed to Old Lincoln.

263. The acts of which the RTC complains in paragraph 262 constituted an abuse and waste of corporate assets, thereby resulting in breaches of Keating Jr.'s fiduciary duties to Old Lincoln and in a detriment to its depositors. The compensation paid to Keating Jr. and the Keating Family was unreasonable in amount; therefore, these payments violated 12 C.F.R. § 563.17(b).

264. By reason of the foregoing, Old Lincoln sustained damages in an amount in excess of \$5,000,000.

**G. Use of the U.S. Mails and Wires
in Furtherance of the
Scheme and Artifice To Defraud.**

265. In furtherance of the above-described scheme and artifice to defraud Old Lincoln, the Racketeering Defendants conducted and participated in the business and affairs of the ACC Enterprise by directly or indirectly causing the ACC Enterprise to engage in the following conduct to deceive the regulatory authorities:

- (a) On or about December 6, 1983, the Racketeering Defendants caused a letter dated December 6, 1983, regarding Amendment No. 1 to the Application of ACC for approval to acquire Old Lincoln, to be mailed to the Supervisory Agent via the United States Postal Service.
- (b) On or about December 7, 1983, the Racketeering Defendants caused a letter dated December 7, 1983, regarding ACC's Preliminary Prospectus with respect to Exchangeable Preferred Stock, to be mailed to the Supervisory Agent via the United States Postal Service.

- (c) On or about January 4, 1984, the Racketeering Defendants caused a letter dated January 4, 1984, regarding ACC's H-(g) Application, to be mailed to the Supervisory Agent and FHLBB via the United States Postal Service.
- (d) On or about January 4, 1984, the Racketeering Defendants caused a letter dated January 4, 1984, regarding a revision to Application by ACC to acquire Old Lincoln, to be mailed to the Supervisory Agent via the United States Postal Service.
- (e) On or about January 4, 1984, the Racketeering Defendants caused a letter dated January 4, 1984, regarding amendments to ACC's proposed acquisition of Old Lincoln, to be mailed to the Supervisory Agent via the United States Postal Service.
- (f) On or about January 16, 1984, the Racketeering Defendants caused a letter dated January 16, 1984, regarding undertakings of ACC and its non-insured subsidiaries with respect to securities activities, to be mailed to the Supervisory Agent and the FHLBB via the United States Postal Service.
- (g) On or about January 26, 1984, the Racketeering Defendants caused a letter dated January 26, 1983 (sic) regarding amendments to the January 4, 1984 Amendment H-(g) application, to be mailed to the Supervisory Agent and the FHLBB via the United States Postal Service.
- (h) On or about February 3, 1984, the Racketeering Defendants caused a letter dated February 3, 1984, regarding ACC's filing of Notice of Filing of Application for Holding Company Acquisition and the Publisher's Affidavit of Publication, to be mailed to the Supervisory Agent via the United States Postal Service.
- (i) On or about February 7, 1984, the Racketeering Defendants caused a letter dated February 7, 1984, regarding amendments to the H-(e)1 of ACC for approval of acquisition of Old Lincoln, to be mailed to the Supervisory Agent via the United States Postal Service.
- (j) On or about February 17, 1984, the Racketeering Defendants caused a letter dated February 17,

1984, regarding revised stipulations of Continental American Securities, Inc., to be mailed to the Supervisory Agent via the United States Postal Service.

- (k) On or about February 22, 1984, the Racketeering Defendants caused a letter dated February 22, 1984, regarding stipulations in connection with ACC's acquisition of Old Lincoln, to be transmitted electronically to the Supervisory Agent via a telecopy machine utilizing interstate telephone wires.
- (l) On or about February 28, 1984, the Racketeering Defendants caused a letter dated February 28, 1984, regarding documentation of the agreement between the Supervisory Agent and ACC pertaining to ACC's acquisition of Old Lincoln, to be mailed to the Supervisory Agent via the United States Postal Service.
- (m) On or about February 28, 1984, the Racketeering Defendants caused a letter dated February 28, 1984, acknowledging work completed on ACC's acquisition of Old Lincoln, to be mailed to the Supervisory Agent via the United States Postal Service.
- (n) On or about March 14, 1984, the Racketeering Defendants caused an application by Old Lincoln to be mailed to the Supervisory Agent and the FHLBB via the United States Postal Service.
- (o) On or about March 22, 1984, the Racketeering Defendants caused a letter dated March 22, 1984, responding to Item 2(a) of a letter dated February 21, 1984 from the FHLBB to ACC, to be mailed to the Supervisory Agent via the United States Postal Service.
- (p) On or about May 31, 1984, the Racketeering Defendants caused a letter dated May 31, 1984, regarding projected income statements for 1985 for ACC and ACC Continental Mortgage Company, to be mailed to the Supervisory Agent via the United States Postal Service.
- (q) On or about June 27, 1984, the Racketeering Defendants caused a letter dated June 27, 1984, summarizing the incurrence of additional debt by ACC for the acquisition of Old Lincoln, to

be mailed to the Supervisory Agent via the United States Postal Service.

- (r) On or about May 5, 1987, the Racketeering Defendants caused Old Lincoln's revised Thrift Financial Report - Statement of Condition as of February 28, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (s) On or about April 20, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of March 31, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (t) On or about May 20, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of April 30, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (u) On or about June 19, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of May 31, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (v) On or about July 20, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of June 30, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (w) On or about August 20, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of July 31, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (x) On or about September 22, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of August 31, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.

- (y) On or about October 20, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of September 30, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (z) On or about November 20, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of October 31, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (aa) On or about December 20, 1987, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of November 30, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (bb) On or about January 20, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of December 31, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (cc) On or about March 29, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Financial Condition as of December 31, 1987, to be transmitted electronically to the Supervisory Agent using interstate telephone lines.
- (dd) On or about February 19, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of January 31, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (ee) On or about March 21, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of February 27, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (ff) On or about April 19, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as

of March 31, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.

- (gg) On or about May 20, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of April 30, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (hh) On or about June 21, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of May 31, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (ii) On or about July 20, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of June 30, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (jj) On or about August 19, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of July 31, 1988 to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (kk) On or about September 20, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of August 31, 1988 to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (ll) On or about October 20, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of September 30, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (mm) On or about November 21, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of October 31, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.

- (nn) On or about December 19, 1988, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of November 30, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (oo) On or about January 20, 1989, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of December 31, 1988, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (pp) On or about February 21, 1989, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of January 31, 1989, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.
- (qq) On or about March 21, 1989, the Racketeering Defendants caused Old Lincoln's Thrift Financial Report - Statement of Condition as of February 28, 1989, to be transmitted electronically to the Supervisory Agent using interstate telephone wires.

266. In furtherance of the above-described artifice and scheme to defraud, the Racketeering Defendants conducted and participated in the affairs of the ACC Enterprise by directly or indirectly causing the ACC Enterprise to engage in the following conduct with respect to the Hidden Valley transactions:

- (a) On or about September 23, 1988, the Racketeering Defendants caused \$693,593.60 to be transferred from Account #032-25601 at Old Lincoln, in Phoenix, Arizona to Investments' Account #0310000001 at Old Lincoln, Irvine, California, using interstate telephone wires.
- (b) On or about September 23, 1988, the Racketeering Defendants caused \$108,000.00 to be transferred from Account #032-25601 at Old Lincoln, in Phoenix, Arizona to Investments' Account #0310000001 at Old Lincoln, Irvine, California, using interstate telephone wires.

- (c) On or about September 23, 1988, the Racketeering Defendants caused \$288,463.42 to be transferred from Account #032-25601 at Old Lincoln, Phoenix, Arizona to Investments' Account #0310000001 at Old Lincoln, Irvine, California, using interstate telephone wires.
- (d) On or about September 23, 1988, the Racketeering Defendants caused \$451,206.40 to be transferred from Account #032-25601 at Old Lincoln, Phoenix, Arizona to Investments' Account #0310000001 at Old Lincoln, Irvine, California, using interstate telephone wires.
- (e) On or about September 23, 1988, the Racketeering Defendants caused \$340,000.00 to be transferred from Account #032-25601 at Old Lincoln, Phoenix, Arizona to Investments' Account #0310000001 at Old Lincoln, Irvine, California, using interstate telephone wires.
- (f) On or about September 23, 1988, the Racketeering Defendants caused \$450,000.00 to be transferred from Account #032-25601 at Old Lincoln, Phoenix, Arizona to Investments' Account #0310000001 at Old Lincoln, Irvine, California, using interstate telephone wires.
- (g) On or about September 23, 1988, the Racketeering Defendants caused \$5,382,507.00 to be transferred from Account #032-25601 at Old Lincoln, Phoenix, Arizona to Investments' Account #0310000001 at Old Lincoln, Irvine, California, using interstate telephone wires.

267. In furtherance of the above-described scheme and artifice to defraud, the Racketeering Defendants conducted and participated in the affairs of the ACC Enterprise by directly or indirectly causing the ACC Enterprise to engage in the following conduct with respect to the Crowder Water Ranch transactions:

- (a) On or about January 25, 1989, the Racketeering Defendants caused \$4,330,630.87 to be transferred from Investments' Account #0310000001 at Lincoln, Irvine, California, to Account #8840118882 at Trust Company Bank, Atlanta, Georgia, using interstate telephone wires.

- (b) On or about January 25, 1989, the Racketeering Defendants caused \$3,169,369.13 to be transferred from Investments' Account #0310000001 at Lincoln, Irvine, California to Lincoln Savings, Phoenix, Arizona, using interstate telephone wires.

268. In furtherance of the above-described scheme and artifice to defraud, the Racketeering Defendants conducted and participated in the affairs of the ACC Enterprise by directly or indirectly causing the ACC Enterprise to engage in the following conduct with respect to the Rancho Vistoso transactions:

- (a) On or about December 13, 1985, the Racketeering Defendants caused \$2,543,517.00 to be transferred from Old Lincoln to Account #022-248509 at Arizona Bank, Tucson, Arizona, using interstate telephone wires.
- (b) On or about December 31, 1985, the Racketeering Defendants caused \$1,948,000.19 to be transferred from Old Lincoln to Account #601-710-1163 at United Bank of Arizona, Tucson, Arizona, using interstate telephone wires.
- (c) On or about January 8, 1986, the Racketeering Defendants caused \$45,948.85 to be transferred from Old Lincoln to Account #022-708843-45 at Arizona Bank, Tucson, Arizona, using interstate telephone wires.
- (d) On or about March 3, 1986, the Racketeering Defendants caused \$718,815.66 to be transferred from Old Lincoln to Account #701-710-1163 at United Bank of Arizona, Tucson, Arizona, using interstate telephone wires.
- (e) On or about October 7, 1986, the Racketeering Defendants caused \$137,518.00 to be transferred from Old Lincoln to Account #6485701186 at United Bank, Phoenix, Arizona, using interstate telephone wires.
- (f) On or about October 31, 1986, the Racketeering Defendants caused \$8,055,433.60 to be transferred from Old Lincoln to Account #246-12500 at First Interstate Bank of Arizona,

Phoenix, Arizona, using interstate telephone wires.

- (g) On or about March 2, 1987, the Racketeering Defendants caused \$165,727.14 to be transferred from Old Lincoln to Account #701-710-1163 at Valley National Bank, Phoenix, Arizona, using interstate telephone wires.
- (h) On or about October 30, 1987, the Racketeering Defendants caused \$3,324,405.26 to be transferred from Old Lincoln to Account #6479401072 at Western Savings & Loan Association, Mesa, Arizona, using interstate telephone wires.
- (i) On or about October 30, 1987, the Racketeering Defendants caused \$109,652.35 to be transferred from Old Lincoln to Account #2078-14552 at First Interstate Bank, Tucson, Arizona, using interstate telephone wires.
- (j) On or about November 3, 1987, the Racketeering Defendants caused \$641,503.88 to be transferred from Old Lincoln to Account #6479401072 at Western Savings & Loan Association, Mesa, Arizona, using interstate telephone wires.
- (k) On or about November 3, 1987, the Racketeering Defendants caused \$2,280.00 to be transferred from Old Lincoln to Account #2078-14552 at First Interstate Bank, Tucson, Arizona, using interstate telephone wires.
- (l) On or about March 25, 1988, the Racketeering Defendants caused \$1,208,944.76 to be transferred from Old Lincoln to Account #2034-5866 at Valley National Bank, Tucson, Arizona, using interstate telephone wires.
- (m) On or about April 7, 1988, the Racketeering Defendants caused \$154,893.00 to be transferred from Old Lincoln to Account #6165101245 at United Bank of Arizona, Tucson, Arizona, using interstate telephone wires.
- (n) On or about June 17, 1988, the Racketeering Defendants caused \$475,203.00 to be transferred from Old Lincoln to Account #2002-1108 at Valley National Bank of Tucson, Arizona, using interstate telephone wires.

- (o) On or about September 30, 1988, the Racketeering Defendants caused \$18,916.44 to be transferred from Old Lincoln to Account #2078-14552 at First Interstate Bank, Tucson, Arizona, using interstate telephone wires.
- (p) On or about October 3, 1988, the Racketeering Defendants caused \$4,225.80 to be transferred from Old Lincoln to Account #2078-14552 at First Interstate Bank, Tucson, Arizona, using interstate telephone wires.
- (q) On or about October 4, 1988, the Racketeering Defendants caused \$357,313.96 to be transferred from Old Lincoln to Account #207006150 at First Interstate Bank, Tucson, Arizona, using interstate telephone wires.
- (r) On or about October 4, 1988, the Racketeering Defendants caused \$324,104.14 to be transferred from Old Lincoln to Account #1357001328, Arizona Commerce Bank, Tucson, Arizona, using interstate telephone wires.
- (s) On or about December 16, 1988, the Racketeering Defendants caused \$634,730.69 to be transferred from LINFIN Corporation Account #031-0000015 to Old Lincoln, using interstate telephone wires.
- (t) On or about December 29, 1988, the Racketeering Defendants caused \$154,893.00 to be transferred from Old Lincoln to Account #6485-701186 at Citibank, Tucson, Arizona, using interstate telephone wires.
- (u) On or about March 20, 1989, the Racketeering Defendants caused \$9,887,850.81 to be transferred from Old Lincoln to Account #38151031 at Citibank, Tucson, Arizona, for further credit to Account #7873-01001 at Citibank, Delaware, New Castle, Delaware, using interstate telephone wires.
- (v) On or about March 21, 1989, the Racketeering Defendants caused \$6,130.50 to be transferred from Old Lincoln to Account #012776359 at the Arizona Bank, Tucson, Arizona, using interstate telephone wires.
- (w) On or about March 31, 1989, the Racketeering Defendants caused \$154,893.00 to be transferred

from Old Lincoln to Account #6485701186 at Citibank, Tucson, Arizona, using interstate telephone wires.

269. In furtherance of the above-described scheme and artifice to defraud, the Racketeering Defendants conducted and participated in the affairs of the ACC Enterprise by directly or indirectly causing the ACC Enterprise to engage in the following conduct with respect to the Hotel Pontchartrain transactions:

- (a) On or about January 23, 1987, the Racketeering Defendants caused \$335,000.00 to be paid from PFC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-052-087 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (b) On or about February 3, 1987, the Racketeering Defendants caused \$380,023.21 to be paid from PFC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-052-087 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (c) On or about February 5, 1987, the Racketeering Defendants caused \$150,000.00 to be paid from PFC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-052-087 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (d) On or about March 2, 1987, the Racketeering Defendants caused \$500,000.00 to be paid from PFC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-052-087 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (e) On or about March 9, 1987, the Racketeering Defendants caused \$200,000.00 to be paid from

PFC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-052-087 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.

- (f) On or about June 4, 1987, the Racketeering Defendants caused \$400,000.00 to be paid from PFC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-052-087 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (g) On or about June 29, 1987, the Racketeering Defendants caused \$12,950,426.90 to be paid from PFC to Crescent Lending Corporation ("CLC") by using interstate telephone wires to cause said sum to be transferred from Account No. 50-052-087 at Bankers Trust Company, New York, New York to Account No. 50-055-798 at Bankers Trust Company, New York, New York.
- (h) On or about June 30, 1987, the Racketeering Defendants caused \$402,889.12 to be paid from PFC to CLC by using interstate telephone wires to cause said sum to be transferred from Account No. 50-052-087 at Bankers Trust Company, New York, New York to Account No. 50-055-798 at Bankers Trust Company, New York, New York.
- (i) On or about July 2, 1987, the Racketeering Defendants caused \$480,000 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (j) On or about August 4, 1987, the Racketeering Defendants caused \$490,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Valley National Bank, Phoenix, Arizona to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (k) On or about September 1, 1987, the Racketeering Defendants caused \$400,000.00 to be paid from

CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.

- (l) On or about October 1, 1987, the Racketeering Defendants caused \$450,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (m) On or about November 4, 1987, the Racketeering Defendants caused \$450,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 0158-2321 at Valley National Bank, Phoenix, Arizona to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (n) On or about November 12, 1987, the Racketeering Defendants caused \$150,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (o) On or about December 3, 1987, the Racketeering Defendants caused \$400,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (p) On or about December 16, 1987, the Racketeering Defendants caused \$150,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.

- (q) On or about January 7, 1988, the Racketeering Defendants caused \$600,000 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (r) On or about January 15, 1988, the Racketeering Defendants caused \$490,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (s) On or about January 29, 1988, the Racketeering Defendants caused \$110,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 0158-9566 at Valley National Bank, Phoenix, Arizona to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (t) On or about February 1, 1988, the Racketeering Defendants caused \$450,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (u) On or about March 3, 1988, the Racketeering Defendants caused \$500,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (v) On or about April 4, 1988, the Racketeering Defendants caused \$200,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to

Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.

- (w) On or about April 25, 1988, the Racketeering Defendants caused \$50,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (x) On or about May 4, 1988, the Racketeering Defendants caused \$260,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (y) On or about June 1, 1988, the Racketeering Defendants caused \$240,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (z) On or about June 13, 1988, the Racketeering Defendants caused \$245,000 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (aa) On or about June 29, 1988, the Racketeering Defendants caused \$365,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 50-055-798 at Bankers Trust Company, New York, New York to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.
- (bb) On or about July 29, 1988, the Racketeering Defendants caused \$260,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be

transferred from Account No. 031900011900 at Old Lincoln, in Phoenix, Arizona to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.

(cc) On or about August 31, 1988, the Racketeering Defendants caused \$260,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 031900011900 at Old Lincoln, in Phoenix, Arizona to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.

(dd) On or about September 21, 1988, the Racketeering Defendants caused \$90,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 031900011900 at Old Lincoln, in Phoenix, Arizona to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.

(ee) On or about September 30, 1988, the Racketeering Defendants caused \$260,000.00 to be paid from CLC to Hotel Pontchartrain by using interstate telephone wires to cause said sum to be transferred from Account No. 031900011900 at Old Lincoln, in Phoenix, Arizona to Account No. 104-1434 at the National Bank of Detroit, Detroit, Michigan.

270. In furtherance of the above-described scheme and artifice to defraud, the Racketeering Defendants conducted and participated in the affairs of the ACC Enterprise by directly or indirectly causing the ACC Enterprise to engage in the following conduct respecting the ACC ESOP:

(a) On or about January 21, 1988, the Racketeering Defendants caused \$75,662.50 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.

- (b) On or about February 24, 1988, the Racketeering Defendants caused \$65,988.89 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (c) On or about March 21, 1988, the Racketeering Defendants caused \$53,961.11 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (d) On or about April 21, 1988, the Racketeering Defendants caused \$61,669.44 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (e) On or about May 23, 1988, the Racketeering Defendants caused \$64,877.78 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (f) On or about June 21, 1988, the Racketeering Defendants caused \$61,322.22 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (g) On or about July 21, 1988, the Racketeering Defendants caused \$65,933.33 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (h) On or about August 22, 1988, the Racketeering Defendants caused \$73,100.00 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account

#402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.

- (i) On or about September 21, 1988, the Racketeering Defendants caused \$73,225.00 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (j) On or about October 21, 1988, the Racketeering Defendants caused \$71,662.50 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (k) On or about November 8, 1988, the Racketeering Defendants caused \$1,250,000.00 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (l) On or about November 21, 1988, the Racketeering Defendants caused \$74,478.47 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (m) On or about December 21, 1988, the Racketeering Defendants caused \$66,850.00 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (n) On or about January 23, 1989, the Racketeering Defendants caused \$82,600.00 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.

- (o) On or about February 21, 1989, the Racketeering Defendants caused \$69,881.25 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account #402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.
- (p) On or about March 21, 1989, the Racketeering Defendants caused \$69,662.50 to be transferred from Old Lincoln to First Minneapolis, Minneapolis, Minnesota, Trust Teller Account (1)#402-8054-353, for further credit to ACC Account #20429-0, using interstate telephone lines.

V. CLAIMS FOR RELIEF.

A. COUNT I - Violation of 18 U.S.C. § 1962(c) by Conducting or Participating in the Conduct of the Affairs of the ACC Enterprise through a Pattern of Racketeering Activity.

271. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 270, inclusive, of this Complaint for Count I against the Racketeering Defendants.

272. At all times relevant herein, the ACC Enterprise was an enterprise engaged in and affecting interstate commerce.

273. The Racketeering Defendants knowingly executed and attempted to execute a scheme and artifice to defraud a federally insured financial institution or obtained the monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally insured financial institution by means of false or fraudulent pretenses, representations, or promises in violation of 18 U.S.C. § 1344.

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274. The Racketeering Defendants conducted or participated directly or indirectly in conducting the ACC Enterprise's affairs in a scheme and artifice to defraud Old Lincoln, in order to deprive it of money or property rights. The scheme and artifice to defraud had the purpose or effect of diverting and wasting the assets of Old Lincoln for the benefit of the Racketeering Defendants. The scheme and artifice had the purpose or effect of seriously prejudicing Old Lincoln's expectation and ability to meet its obligations to depositors and other substantial creditors, of damaging Old Lincoln's investments in the Lincoln Subsidiaries, of impairing its ability to collect loans to the Lincoln Subsidiaries, and of impeding the regulatory authorities in the performance of their duties. In furtherance of the scheme and artifice, the Racketeering Defendants used or caused to be used the United States mails and telephone wires as described herein with the specific intent to defraud Old Lincoln, the FSLIC, and other regulatory authorities. Each use of the United States mails described herein was in furtherance of the scheme and artifice and each such use was in violation of and indictable under the provisions of 18 U.S.C. § 1341. Each use of the telephone wires described herein was in furtherance of the scheme and artifice and each such use was in violation of and indictable under the provisions of 18 U.S.C. § 1343. The uses of the mails and wires as described herein were undertaken, inter alia, to effect fraudulent transactions and to deceive regulatory authorities in order to facilitate or prevent the detection of the frauds

perpetrated on Old Lincoln, the FSLIC, and other regulatory authorities.

275. Keating Jr. received money or value because of actions, decisions, or other duties relating to matters concerning the ACC ESOP in violation of 18 U.S.C. § 1954.

276. The Racketeering Defendants conducted financial transactions involving proceeds of unlawful activities with the knowledge that the property involved represented the proceeds of unlawful activity in violation of 18 U.S.C. § 1956. They conducted such financial transactions with the intent to promote unlawful activity, to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds, and to avoid transaction reporting requirements under state and federal law. The unlawful activities generating such proceeds were: bank fraud in violation of 18 U.S.C. § 1344; and the acceptance by an officer of a financial institution of an illegal gratuity or gift in violation of 18 U.S.C. § 215.

277. The Racketeering Defendants knowingly engaged in monetary transactions in criminally derived property derived from unlawful activity in violation of 18 U.S.C. § 1957. The unlawful activities generating such proceeds were: bank fraud in violation of 18 U.S.C. § 1344; and the acceptance by an officer of a financial institution of an illegal gratuity or gift in violation of 18 U.S.C. § 215.

278. As described above, the Racketeering Defendants were employed by or associated with the ACC Enterprise.

279. The Racketeering Defendants conducted and participated directly and indirectly in the conduct of the ACC Enterprise's affairs through a pattern of racketeering activity as set forth in paragraphs 53 through 270, supra, in violation of 18 U.S.C. § 1962(c).

280. By reason of the Racketeering Defendants' violation of 18 U.S.C. § 1962(c), New Lincoln has been injured in its business or property as more fully set forth above. The Racketeering Defendants are jointly and severally liable for such damages.

281. Pursuant to the provisions of 18 U.S.C. § 1964(c), the RTC is entitled to recover threefold the damages sustained as a result of the above-described violations of 18 U.S.C. § 1962(c). The RTC is also entitled to recover the costs of this action, including reasonable attorneys' fees.

**B. COUNT II - Violation of 18 U.S.C.
§ 1962(b) by Acquiring or Maintaining an
Interest in and Control of Old Lincoln
through a Pattern of Racketeering Activity.**

282. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 281, inclusive, of this Complaint for Count II against the Racketeering Defendants.

283. At all times relevant herein the ACC Enterprise and Old Lincoln were enterprises as defined by 18 U.S.C. § 1961(4) and were engaged in and affecting interstate commerce.

284. The Racketeering Defendants, through a pattern of racketeering activity as set forth in paragraphs 53 through 270, supra, acquired or maintained directly or indirectly an interest in and control of Old Lincoln in violation of 18 U.S.C. § 1962(b).

285. By reason of the Racketeering Defendants' violation of 18 U.S.C. § 1962(b), New Lincoln has been injured in its business or property as more fully set forth above. The Racketeering Defendants are jointly and severally liable for said damages.

286. Pursuant to the provisions of 18 U.S.C. § 1964(c), the RTC is entitled to recover threefold the damages sustained as a result of the above-described violations of § 1962(b). The RTC is also entitled to recover the costs of this action, including reasonable attorneys' fees.

C. COUNT III - Violation of 18 U.S.C. § 1962(a) by Receiving Income Derived from a Pattern of Racketeering Activity and Investing It in Operation of the ACC Enterprise.

287. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 286, inclusive, of this Complaint for Count III against the Racketeering Defendants.

288. At all times relevant herein, the ACC Enterprise was an enterprise engaged in and affecting interstate commerce.

289. The Racketeering Defendants received income derived from the pattern of racketeering activity set forth in paragraphs 53 through 270, supra, and invested directly or indirectly such

income in the establishment or operation of the ACC Enterprise in violation of 18 U.S.C. § 1962(a).

290. By reason of the Racketeering Defendants' violation of 18 U.S.C. § 1962(a), the RTC as Conservator for New Lincoln has been injured in its business or property as more fully set forth above. The Racketeering Defendants are jointly and severally liable for said damages.

291. Pursuant to the provisions of 18 U.S.C. § 1964(c), the RTC is entitled to recover threefold the damages sustained as a result of the above-described violations of 18 U.S.C. § 1962(a). The RTC is also entitled to recover the costs of this action, including reasonable attorneys' fees.

**D. COUNT IV - Violation of 18 U.S.C.
§ 1962(d) by Conspiring To Violate RICO.**

292. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 291, inclusive, of this Complaint for Count IV against the Racketeering Defendants.

293. The Racketeering Defendants conspired to violate the provision of 18 U.S.C. § 1962(a), (b), or (c) and thereby violated 18 U.S.C. § 1962(d).

294. The Racketeering Defendants agreed to and did undertake the conduct necessary to realize the purposes of the conspiracy.

295. The conduct of the Racketeering Defendants described in paragraphs 53 through 270, supra, of this Complaint was

undertaken in furtherance of the conspiracy to realize the common goals and purposes of the conspiracy.

296. By reason of the Racketeering Defendants' violation of 18 U.S.C. § 1962(d), New Lincoln has been injured in its business or property as more fully set forth above. The Racketeering Defendants are jointly and severally liable for said damages.

297. Pursuant to the provisions of 18 U.S.C. § 1964(c), the RTC is entitled to recover threefold the damages sustained as a result of the above-described violations of 18 U.S.C. § 1962(d). The RTC is also entitled to recover the costs of this action, including reasonable attorneys' fees.

**E. COUNT V - Commission of Racketeering
 Under A.R.S. § 13-2301.D.4**

298. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 270, inclusive, of this Complaint for Count V against the Racketeering Defendants.

299. The Racketeering Defendants violated the felony statutes of the State of Arizona.

300. The Racketeering Defendants committed racketeering as defined by A.R.S. § 13-2301.D.4. by committing acts for financial gain which are chargeable or indictable under the laws of the State of Arizona and punishable by imprisonment for more than one year.

301. The Racketeering Defendants committed crimes involving the following:

- (a) Theft under A.R.S. § 13-1801 et seq.;
- (b) False statements or publications concerning land for sale or lease or sale of subdivided lands or sale and mortgaging of unsubdivided lands;
- (c) A scheme or artifice to defraud under A.R.S. §§ 13-2310, 2311;
- (d) Receiving or concealing racketeering proceeds in violation of A.R.S. § 13-2317.A.

302. The Racketeering Defendants, pursuant to a scheme or artifice to defraud, knowingly obtained a benefit by means of false and fraudulent pretenses, representations, or material omissions in violation of A.R.S. § 13-2310.A.

303. The Racketeering Defendants, pursuant to a scheme or artifice to defraud and deceive, knowingly falsified, concealed, and covered up material facts by tricks, schemes, or devices and made and used false writings and documents knowing such writings and documents contained false, fictitious, or fraudulent statements and entries in matters related to the business conducted by departments and agencies of the State of Arizona and the State of California, including the CDSL, in violation of A.R.S. § 13-2311. Specifically, these defendants concealed their frauds in reporting Old Lincoln's condition and transactions to state and federal authorities.

304. The Racketeering Defendants acquired or maintained an interest in, transferred, transported, received, or concealed

the existence and nature of racketeering proceeds knowing or with reason to know that they were the proceeds of an offense in violation of A.R.S. § 13-2317.A.

305. The Racketeering Defendants committed theft in violation of A.R.S. § 13-1802.A.1. by knowingly controlling the property of Old Lincoln with the intent of depriving Old Lincoln of its property.

306. The Racketeering Defendants committed theft in violation of A.R.S. § 13-1802.A.2. by knowingly converting for an unauthorized term the property of Old Lincoln and its depositors entrusted to defendants or placed in defendants' possession for a limited, authorized term.

307. The Racketeering Defendants obtained the property of Old Lincoln by means of material misrepresentations with intent to deprive Old Lincoln of its property in violation of A.R.S. § 13-1802.A.3.

308. By reason of the racketeering perpetrated by the Racketeering Defendants, New Lincoln has been injured in its business or property as more fully set forth above. The Racketeering Defendants are jointly and severally liable for said damages.

309. Pursuant to the provisions of A.R.S. § 13-2314.A., the RTC is entitled to recover threefold the damages sustained as a result of the above-described racketeering. The RTC is also entitled to recover the costs of this action, including reasonable attorneys' fees.

F. COUNT VI - Illegal Control of
an Enterprise in Violation of
A.R.S. § 13-2312.A.

310. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 309, inclusive of this Complaint for Count VI against the Racketeering Defendants.

311. At all times relevant herein, the ACC Enterprise and Old Lincoln were enterprises within the meaning of A.R.S. § 13-2301.D.2.

312. The Racketeering Defendants possessed control, as defined by A.R.S. § 13-2301.D.1., over the ACC Enterprise and Old Lincoln and exercised substantial direction over the affairs of the ACC Enterprise and Old Lincoln.

313. The Racketeering Defendants acquired or maintained illegal control of the ACC Enterprise and Old Lincoln, through racketeering in violation of A.R.S. § 13-2312.A.

314. By reason of the Racketeering Defendants' violation of A.R.S. § 13-2312.A., New Lincoln has been injured in its business or property as more fully set forth above. The Racketeering Defendants are jointly and severally liable for said damages.

315. Pursuant to the provisions of A.R.S. § 13-2314, the RTC is entitled to recover threefold the damages sustained as a result of the above-described violations of A.R.S. § 13-2312.A. The RTC is also entitled to recover the costs of this action, including reasonable attorneys' fees.

G. COUNT VII - Conducting or Participating in the Affairs of an Enterprise through Racketeering in Violation of A.R.S. § 13-2312.B.

316. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 315, inclusive, of this Complaint for Count VII against the Racketeering Defendants.

317. At all times relevant herein, the ACC Enterprise and Old Lincoln were enterprises within the meaning of A.R.S. § 13-2301.D.2.

318. The Racketeering Defendants at all times relevant herein were employed or associated with the ACC Enterprise and Old Lincoln and conducted or participated in the conduct of the affairs of ACC Enterprise and Old Lincoln through racketeering.

319. By reason of the Racketeering Defendants' violation of A.R.S. § 13-2312.B., New Lincoln has been injured in its business or property as more fully set forth above. The Racketeering Defendants are jointly and severally liable for said damages.

320. Pursuant to the provisions of A.R.S. § 13-2314, the RTC is entitled to recover threefold the damages sustained as a result of the above-described violations of A.R.S. § 13-2312.B. The RTC is also entitled to recover the costs of this action, including reasonable attorneys' fees.

H. COUNT VIII - Common Law Fraud.

321. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 270, inclusive of this Complaint for Count VIII against Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, and Hall.

322. The factual misrepresentations described in paragraphs 53 through 270 above were false at the time that they were made. They were made to induce the FSLIC, through FHLBB, to approve ACC's application for control of Old Lincoln, to approve the Tax Plan, and to refrain from intervening in the affairs and operations of Old Lincoln in order to stop unsafe, unsound, imprudent, and fraudulent transactions. They were also made to induce Old Lincoln to engage in fraudulent loans and transactions with the ACC Enterprise's constituents, insiders, and "straw borrowers" for the benefit of defendants and other insiders.

323. The factual misrepresentations described above were material in that Old Lincoln was induced to make loans to and engage in transactions with the ACC Enterprise's constituents, insiders, and "straw borrowers" for the benefit of defendants and other insiders.

324. The factual misrepresentations described above were made with the intent to deceive and defraud Old Lincoln.

325. At all times relevant herein, Old Lincoln justifiably and reasonably relied upon the factual misrepresentations by making loans to and engaging in transactions

with the ACC Enterprise's constituents, insiders, and "straw borrowers" for the benefit of defendants and other insiders.

326. As a direct and proximate result of Old Lincoln's reliance on the factual misrepresentations described above, Old Lincoln was injured in its business or property as more fully set forth above, and the RTC as Conservator for New Lincoln is entitled to recover said damages.

327. The conduct of Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, and Hall, described herein, evidences an evil mind, was intentional, knowing, malicious, done in reckless disregard for the rights of Old Lincoln, and done with intent to injure Old Lincoln substantially, without just cause or excuse, so that the RTC is entitled to recover punitive damages.

328. Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, and Hall are jointly and severally liable for said actual and punitive damages.

I. COUNT IX - Civil Conspiracy.

329. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 270, inclusive of this Complaint for Count IX against Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, and Hall.

330. Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, and Hall agreed to accomplish unlawful purposes. Specifically, these defendants

entered into a civil conspiracy to defraud Old Lincoln by inducing Old Lincoln to make loans to and engage in transactions with the ACC Enterprise's constituents, insiders, and "straw borrowers" for the benefit of defendants and other insiders.

331. The conduct described in paragraphs 53 through 270 of this Complaint was undertaken in furtherance of the conspiracy to realize the common goals and purposes of the conspiracy.

332. As a direct and proximate result of the acts committed pursuant to and in furtherance of the conspiracy described herein, Old Lincoln was injured in its business and property as set forth above.

333. The conspiracy and conduct of Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, and Hall evidences an evil mind, was intentional, knowing, malicious, done in reckless disregard for the rights of Old Lincoln, and done with intent to injure Old Lincoln substantially, without just cause or excuse, so that the RTC is entitled to recover punitive damages.

334. Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, and Hall are jointly and severally liable for said actual and punitive damages.

J. COUNT X - Breach of Net Worth Maintenance Agreement.

335. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 270, inclusive, of this Complaint for Count X against Keating Jr.,

Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Hall, and W. J. Keating.

336. As part of its application to acquire control of Old Lincoln and in consideration for approval of that application, ACC covenanted to maintain Old Lincoln's regulatory capital for a period of twenty years at the minimum levels required for insured thrift institutions. Those levels are set forth in 12 C.F.R. § 563.13.

337. Old Lincoln was the direct and intended beneficiary of ACC's covenant; in fact, as the target of the acquisition, Old Lincoln had an immediate stake in ACC's performance of its covenant so that it could retain its then existing ability to meet obligations to depositors and other creditors.

338. The terms of the net worth maintenance covenant were in full force and effect at all times relevant herein.

339. ACC breached the net worth maintenance covenant, thereby damaging Old Lincoln.

340. Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Hall, W. J. Keating and other controlling persons of ACC caused ACC to breach the net worth maintenance covenant by their acts and omissions set forth in this Complaint. These acts and omissions rendered Old Lincoln insolvent.

341. By reason of ACC's breaches of the terms of the net worth maintenance covenants, resulting from the misconduct of Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget,

Hubbard, Niebling, Hall, W.J. Keating, and other controlling persons of ACC, Old Lincoln has sustained damages in excess of \$745,000.000.

K. COUNT XI - Alter Ego.

342. Plaintiff adopts and incorporates by reference herein each and every allegation contained in this Complaint for Count XI against Keating Jr., First Lincoln, Medema Homes of Utah, Inc., United Leasing Corporation of Delaware, American Continental Mortgage Company, American Continental Resources Corporation, Continental Fire and Casualty Company, Tatum Place, Inc., American Continental Properties, Inc., Park Drive Apartments, Inc., A.C.C. Real Estate, Inc., Dunlap Apartments, Inc., American Continental Finance Corporation, American Continental Finance Corporation II, Continental Home Finance Corporation, American Home Finance Corporation, American Home Finance Corporation II, and American Home Finance Corporation III.

343. At all times relevant herein, the following entities were the alter egos and mere instrumentalities of Keating Jr. and of each other and as such are jointly and severally liable for the acts and omissions of Keating Jr. as set forth in this Complaint:

American Continental Corporation
Medema Homes of Utah, Inc.
United Leasing Corporation of Delaware
American Continental Mortgage Company
American Continental Resources Corporation
Continental Fire & Casualty Company
Tatum Place, Inc.
American Continental Properties, Inc.
Park Drive Apartments, Inc.
A.C.C. Real Estate, Inc.
Dunlap Apartments, Inc.
American Continental Finance Corporation

American Continental Finance Corporation II
Continental Home Finance Corporation
American Home Finance Corporation
American Home Finance Corporation II
American Home Finance Corporation III
First Lincoln Financial Corporation

L. COUNT XII - Breach of Fiduciary Duties

344. Plaintiff adopts and incorporates by reference herein each and every allegation contained in paragraphs 1 through 270, inclusive, of this Complaint for Count XII against Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, Hall, and W. J. Keating.

345. Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, Hall, and W. J. Keating either were officers, directors, de facto directors, or de facto officers of Old Lincoln or of ACC, or were controlling persons of Old Lincoln at all times relevant hereto.

346. Under applicable federal and state law, the members, including de facto members, of the respective Boards of Directors of Old Lincoln and of ACC, and the officers, including de facto officers, of Old Lincoln owed statutory, contractual, and fiduciary duties to Old Lincoln:

- (a) Because Old Lincoln was an institution insured by the FSLIC, directors and officers were obligated to comply with federal regulations with respect to adherence to safe and sound managerial and financial practices and to maintenance of adequate reserves, including, but not limited to, the following:
 - (1) 12 C.F.R. § 563.9-3(b), requiring a thrift to limit its loans to one borrower and its affiliates;
 - (2) 12 C.F.R. § 563.9-8, placing restrictions on direct investments by insured thrifts;

- (3) 12 C.F.R. § 563.13(a), requiring a thrift to establish and maintain the required level of statutory reserves;
- (4) 12 C.F.R. § 563.13(b), requiring a thrift to establish and maintain the required level of net worth;
- (5) 12 C.F.R. § 563.17(a), requiring a thrift to maintain safe and sound management and to pursue financial policies consistent with economical home financing;
- (6) 12 C.F.R. § 563.17(b), requiring a thrift not to exceed reasonable levels of compensation for its management;
- (7) 12 C.F.R. § 563.17-1(c), requiring a thrift to establish and maintain accounting and other records sufficient to provide an accurate and complete record of all business transacted by it;
- (8) 12 C.F.R. § 563.17-1(c)(1), requiring a thrift to obtain required documentation for loans secured by real estate;
- (9) 12 C.F.R. § 563.17-1(c)(1), requiring a thrift to obtain adequate appraisal reports regarding security property prior to approval of loan applications;
- (10) 12 C.F.R. § 563.17-1(c)(1), requiring a thrift to obtain signed financial statements and/or credit reports disclosing the financial ability of loan applicants;
- (11) 12 C.F.R. § 563.18, prohibiting false or misleading statements of any material facts and omissions of any material facts in any communications with or reports to the FHLBB;
- (12) 12 C.F.R. § 563.23-1(f), requiring accurate disclosure of the book value of real estate and then, if sold, the price at which it is sold;
- (13) 12 C.F.R. § 563.23-3(c), requiring preparation of financial statements and reports to the FSLIC on the basis of generally accepted accounting principles;

- (14) 12 C.F.R. § 563.41, prohibiting real property transactions with affiliated persons without obtaining full disclosure of all material facts and otherwise complying with applicable law;
- (15) 12 C.F.R. § 571.7, generally prohibiting conflict of interest transactions; and
- (16) 12 C.F.R. § 584.3 and 12 U.S.C. § 1730a(d)(4), prohibiting extensions of credit to affiliated persons.

(b) Because Old Lincoln was an institution chartered by the State of California, directors and officers were obligated to conduct its business and affairs in conformity with California law, including, but not limited to, the rules and regulations of the California Department of Savings and Loan.

(c) As members, including de facto members, of Old Lincoln's and ACC's Boards of Directors and of various committees established by these Boards, and as officers, including de facto officers, of Old Lincoln, the defendants had contractual duties, fiduciary duties, and statutory duties to manage and administer diligently the business and affairs of Old Lincoln, including, but not limited to, the duties to assure compliance with applicable laws, rules, and regulations; to prevent self-dealing and waste of corporate assets; to exercise due diligence in the selection, retention, supervision, evaluation and compensation of officers and employees, in the delegation of matters to officers and employees, and in the review of loan and investment transactions which did not conform to previously approved internal loan underwriting and investment standards; to establish standards for reviewing, documenting, and administering commercial loans and real estate investments; to monitor the performance of the commercial loan and real estate investment portfolios; and to develop and maintain a system of internal controls and documentation to promote sound managerial and financial practices. Such duties included, but were not limited to, the following:

- (1) Approving extensions of credit and investments which were prudent and rejecting imprudent ones;
- (2) Adopting adequate internal standards, guidelines, limitations, and policies for making loans and investments;

- (3) Conducting independent reviews of loans and loan administration and of investments and investment management;
- (4) Monitoring the activities of officers and employees charged with reviewing and documenting loans and investments;
- (5) Maintaining loan, investment, executive, audit, and compensation committees which effectively performed the functions delegated or delegable to such committees;
- (6) Developing and maintaining a system of internal controls and documentation sufficient to promote sound managerial and financial practices and to minimize losses on loan and investment transactions;
- (7) Complying with all applicable laws, rules, and regulations; and
- (8) Avoiding and preventing conflicts of interests, usurpations of corporate opportunities, wastes of assets, and self-dealing.

Defendants Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, Hall, and W. J. Keating breached the foregoing duties to Old Lincoln, as described in this Complaint.

347. These defendants were obligated to discharge their duties with respect to Old Lincoln, including the management of assets, in good faith and with the degree of diligence, care, and skill which prudent persons would exercise in like positions.

348. These defendants assumed the contractual duty to administer diligently and honestly the business of Old Lincoln and to refrain from permitting violations of statutes and regulations, waste of corporate assets, and self-dealing.

349. These defendants breached their duties by failing to comply with the applicable statutory, contractual, and fiduciary duties described above.

350. Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, Hall, and W. J. Keating are strictly liable for the losses sustained by Old Lincoln in connection with transactions which violated the foregoing regulations.

M. COUNT XIII - Gross Negligence

351. Plaintiff adopts and incorporates herein each and every allegation contained in paragraphs 1 through 270, inclusive, and in paragraphs 344 through 350, inclusive, of this Complaint for Count XIII against Keating, Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, Hall, and W. J. Keating.

352. Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, Hall, and W. J. Keating directed and/or permitted the improvident and improper use or investment of Old Lincoln's assets. This misconduct and the acts and omissions set forth in Count XII of this Complaint constituted gross negligence causing Old Lincoln to sustain injury.

353. Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Ligget, Hubbard, Niebling, Sauter, Hall, and W. J. Keating are strictly liable for the losses sustained by Old Lincoln as a result of their gross negligence.

N. **COUNT XIV - Joint and Several
Liability of the Spousal Defendants.**

354. Plaintiff adopts and incorporates by reference herein each and every allegation in this Complaint for Count XIV against Mary Elaine Keating, Krista K. Keating, Elizabeth A. Kielty, Elizabeth Wurzelbacher, Kathleen M. Hubbard, Helen M. Niebling, Michelle Ligget, George J. Wischer, and Mary A. Hall.

355. The defendants named in paragraphs 15 through 22 inclusive, and 24 committed wrongful acts and omissions, as alleged in this Complaint, causing damage to the RTC as Conservator for New Lincoln. Such wrongful acts and omissions were for the benefit of and on behalf of the Spousal Defendants' marital communities.

356. The Spousal Defendants are jointly and severally liable for the acts and omissions of their respective spouses.

357. The RTC is entitled to recover damages against the Spousal Defendants for the wrongful acts and omissions of their spouses.

O. **COUNT XV - Constructive Trust.**

358. Plaintiff adopts and incorporates by reference herein each and every allegation contained in this Complaint for Count XV against Keating Jr., Keating III, Wischer, Kielty, Wurzelbacher, Hubbard, Ligget, Niebling, Sauter, Mary Elaine Keating, Krista K. Keating, George J. Wischer, Elizabeth A. Kielty, Elizabeth Wurzelbacher, Kathleen M. Hubbard, Michelle Ligget, Helen M. Niebling, First Lincoln Financial Corporation, Medema Homes of Utah, Inc., United Leasing Corporation of Delaware, American

Continental Mortgage Company, American Continental Resources Corporation, Continental Fire and Casualty Company, Tatum Place, Inc., American Continental Properties, Inc., Park Drive Apartments, Inc., A.C.C. Real Estate, Inc., Dunlap Apartments, Inc., American Continental Finance Corporation, American Continental Finance Corporation II, Continental Home Finance Corporation, American Home Finance Corporation, American Home Finance Corporation II, and American Home Finance Corporation III.

359. Keating Jr., Keating III, Kielty, Wurzelbacher, Hubbard, Ligget, Niebling, and Sauter breached fiduciary duties, engaged in self-dealing, and violated applicable common law duties, statutes, and regulations, as described above. Their acts and omissions have resulted in the appropriation of assets, funds, and profits rightfully belonging to Old Lincoln. These defendants have acquired property through conduct in violation of A.R.S. §§ 13-2301.D.4. and 2312. By virtue of A.R.S. § 13-2314.E., these defendants are involuntary trustees of the property of Old Lincoln and hold such property, its proceeds, and its fruits in constructive trust for the benefit of the RTC.

360. On the basis of information and belief, the RTC further alleges that the defendants named in paragraph 358 of this Complaint wrongfully have retained Old Lincoln's assets or have utilized Old Lincoln's assets to obtain other assets controlled, directly or indirectly, by them.

361. The RTC is entitled to the imposition of a constructive trust on and a tracing of all assets wrongfully

obtained, utilized, or held by the defendants named in paragraph 358 of this Complaint, directly or indirectly, as a result of their conduct and breaches of various duties as set forth in this Complaint.

VI. DAMAGES.

362. As a direct and proximate result of the wrongful acts and omissions set forth in Counts I, II, III, IV, V, VI, VII, VIII, IX, XI, XII, XIII, XIV, and XV, inclusive, of the claims for relief, Old Lincoln was damaged in an amount in excess of \$390,000,000.

363. As a direct and proximate result of the wrongful acts and omissions set forth in Count X of the claims for relief, Old Lincoln was damaged in an amount in excess of \$745,000,000.

VII. PRAYERS FOR RELIEF.

364. The Resolution Trust Corporation, as Conservator for New Lincoln, prays that the following relief be granted:

- (a) Actual damages under Counts I, II, III, IV, V, VI, VII, VIII, IX, XI, XII, XIII, XIV, and XV in favor of the plaintiff in an amount presently undetermined but in excess of \$390,000,000;
- (b) Treble the actual damages under Counts I, II, III, IV, V, VI, VII, XI, and XIV, inclusive, totalling in excess of \$1,170,000,000 to be assessed in favor of the plaintiff pursuant to 18 U.S.C. § 1964(c) and A.R.S. § 13-2314;
- (c) Actual damages, under Count X in favor of the plaintiff in an amount presently undetermined but in excess of \$745,000,000;
- (d) Attorneys' fees and expenses under Counts I, II, III, IV, V, VI, VII, XI, and XIV, inclusive, to be assessed in favor of the

plaintiff pursuant to 18 U.S.C. § 1964(c) and A.R.S. § 13-2314;

- (e) Punitive damages under Counts VIII and IX to be assessed in favor of the plaintiff in an amount which is reasonably calculated by the Court or jury to deter defendants and others from engaging in conduct like that which precipitated plaintiff's claims and that said sum be in an amount not less than \$100,000,000;
- (f) The costs of this action be assessed against all defendants in favor of the plaintiff;
- (g) The Order of this Court:
 - (1) that a constructive trust be imposed, and a trustee be appointed, with respect to those assets, funds, or profits, obtained, utilized, held or acquired, directly or indirectly, by those defendants named in paragraph 358 of this Complaint with respect to the assets and funds of Old Lincoln, and in connection therewith, such assets and funds, together with any profits derived therefrom, should be traced;
 - (2) that those defendants named in paragraph 358 of this Complaint be required to account for all assets, funds or profits obtained, utilized, held or acquired in connection with the transactions set forth herein and any other transactions with Old Lincoln;
 - (3) that the Court enter a preliminary injunction and permanent injunction against those defendants named in paragraph 358 of this Complaint restraining and enjoining them jointly and individually, or their agents, during the pendency of this action, directly or indirectly, from transferring, selling, conveying, assigning, dissipating, concealing, converting, exchanging, encumbering, hypothecating, pledging, leasing, impairing, or otherwise disposing in any manner of any assets without the prior written approval of an authorized representative of the RTC, except, in the case of the individual defendants, for

\$3,000 per month which may be expended for the purposes of living expenses; and .

(4) that those defendants named in paragraph 358 of this Complaint be ordered to file with the Court within ten days of the end of each month a verified accounting of all expenditures made by them during the previous month; and

(h) Such other and further relief as may be deemed just and proper by this Court.

VIII. JURY DEMAND.

Pursuant to Rule 38, Fed. R. Civ. P., the RTC hereby demands a trial by jury.

Respectfully submitted,

MORRISON, HECKER, CURTIS, KUDER & PARRISH

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