

The below described is **SIGNED**.



Dated: August 1, 2014

JOEL T. MARKER
U.S. Bankruptcy Judge

Prepared and Submitted by:

Peggy Hunt (Utah State Bar No. 6060)
Nathan S. Seim (Utah State Bar No. 12654)

DORSEY & WHITNEY LLP

136 South Main Street, Suite 1000

Salt Lake City, UT 84101-1685

Telephone: (801) 933-7360

Facsimile: (801) 933-7373

Email: hunt.peggy@dorsey.com

seim.nathan@dorsey.com

Attorneys for the Consolidated Legacy Debtors Liquidating Trust

Penrod W. Keith (4860)

pkeith@djplaw.com

DURHAM JONES & PINEGAR, P.C.

111 East Broadway, Suite 900

P.O. Box 4050

Salt Lake City, UT 84110-4050

Telephone: (801) 415-3000

Facsimile: (801) 415-3500

Attorneys for Trustee for Castle Arch Opportunity

Partners II Liquidating Trust

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

In re

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, LLC; CAOP
MANAGERS, LLC; CASTLE ARCH
KINGMAN, LLC; CASTLE ARCH
SECURED DEVELOPMENT FUND, LLC;
and CASTLE ARCH SMYRNA, LLC;
CASTLE ARCH STAR VALLEY, LLC; *and*

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

Case Nos. 11-35082, 11-35237, 11-35243,
11-35242 and 11-35246
(Substantively Consolidated)

Case Nos. 11-35241 and 11-35240
(Jointly Administered)

(Chapter 11)

The Honorable Joel T. Marker

THIS DOCUMENTS RELATES TO:

- Affects All Debtors
- Affects the Substantively

Debtors.	<p>Consolidated Debtors</p> <ul style="list-style-type: none"><input type="checkbox"/> Affects only Castle Arch Opportunity Partners I, LLC<input checked="" type="checkbox"/> Affects Castle Arch Opportunity Partners II, LLC
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ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN THE LEGACY TRUST AND CAOP II TRUST DETERMINING TREATMENT OF PREPETITION INTERCOMPANY CLAIMS

The matter before the Court is the Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 and Conflict Resolution Procedures for Order Approving Settlement Agreement Between the Legacy Trust and the CAOP II Trust Determining Treatment of Prepetition Intercompany Claims (Docket No. 943, the “Motion”) which Motion seeks approval of the Settlement Agreement attached hereto as Exhibit 1 (the “Settlement Agreement”) entered into between the Consolidated Legacy Debtors Liquidating Trust (“Legacy Trust”) and the Castle Arch Opportunity Partners II, Liquidating Trust (“CAOP II Trust”) with such agreement being recommended, acknowledged and approved by Weston L. Harris, the duly appointed Conflicts Referee under the Order Confirming Chapter 11 Trustee’s First Amended Chapter 11 Plan of Liquidation Dated February 25, 2013 as Modified (Docket No. 705).

The Motion and all supporting documents were filed with the Court and served through the Court’s CM/ECF system upon all parties that receive electronic notice in this case. In addition, a Notice of the Motion and Opportunity for Hearing (Docket No. 946 – the “Notice”) that provided for, among other things, notice of the proposed hearing on the Motion was served upon all parties in interest as set forth by the current mailing matrix as set forth in the certificate

of service attached to the Notice and the Supplement Certificate of Service filed with this Court (Docket No. 947). No objection or other response was filed with this Court.

The Court has considered the Motion, the Declaration of D. Ray Strong, Liquidating Trust (Docket No. 944), the Declaration of Weston L. Harris, Conflicts Referee, (Docket No. 945), the Notice, all applicable certificates of services as set forth above, and applicable law. Based thereon and for good cause shown it is hereby

ORDERED that the Motion is granted and that the Settlement Agreement, attached hereto as **Exhibit 1**, is approved and authorized; it is further

ORDERED that notice of the Motion was sufficient, proper and in accordance with the Bankruptcy Code and Rules of Bankruptcy Procedure and no further notice of the Motion is necessary; it is further

ORDERED that the Legacy Trust shall have an Allowed General Unsecured Claim against the CAOP II Trust in the total amount of \$42,661 ("Settlement Amount"); it is further

ORDERED that the mutual releases between the Legacy Trust and CAOP II Trust shall be effective according to the terms set forth in the Settlement Agreement; it is further

ORDERED that all other terms of the Settlement Agreement are approved and effective and the parties thereto can perform all according to the provisions therein.

----- **END OF DOCUMENT** -----

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing **ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN THE LEGACY TRUST AND CAOP II TRUST DETERMINING TREATMENT OF PREPETITION INTERCOMPANY CLAIMS** shall be served to the parties and in the manner designated below:

By Electronic Service: I certify that the parties of record in this case as identified below, are registered CM/ECF users and will be served notice of entry of the foregoing Order through the CM/ECF system:

- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com, debbie@princeyeates.com; docket@princeyeates.com
- Troy J. Aramburu taramburu@swlaw.com, jpollard@swlaw.com; docket_slc@swlaw.com
- Jeffrey M. Armington armington.jeff@dorsey.com
- Julie A. Bryan julie@crslaw.com, diana@crslaw.com; josh@crslaw.com
- Mona Lyman Burton mburton@hollandhart.com, ckelly@hollandhart.com; intaketeam@hollandhart.com; slclitdocket@hollandhart.com
- Leonard J. Carson len@pearsonbutler.com, kylie@pearsonbutler.com
- Andrew B. Clawson andrew@abclawutah.com, len@pearsonbutler.com; maryann@pearsonbutler.com; daneise@pearsonbutler.com
- Victor P. Copeland vpc@pkhlawyers.com, js@pkhlawyers.com
- Joseph M.R. Covey calendar@parrbrown.com
- T. Edward Cundick tec@princeyeates.com, heidi@princeyeates.com; docket@princeyeates.com
- Anna W. Drake annadrake@att.net
- David R. Hague dhague@fabianlaw.com, dromero@fabianlaw.com
- George B. Hofmann gbh@pkhlawyers.com, dh@pkhlawyers.com; aa@pkhlawyers.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com; stauffer.erin@dorsey.com; slc.lit@dorsey.com
- Lon A. Jenkins jenkins.lon@dorsey.com, daniels.heidi@dorsey.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Michael L. Labertew michael@labertewlaw.com
- Christopher J. Martinez martinez.chris@dorsey.com, stauffer.erin@dorsey.com
- Adelaide Maudsley maudsley@chapman.com, jemery@chapman.com
- John T. Morgan jr john.t.morgan@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Rinehart.Peshell@usdoj.gov; Suzanne.Verhaal@usdoj.gov
- Oliver K. Myers myersok@msn.com
- Knute A. Rife KARife@RifeLegal.com
- Nathan Seim seim.nathan@dorsey.com

- Jeremy C. Sink jeremy@mbt-law.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com; docket@rqn.com
- D. Ray Strong rstrong@brg-expert.com
- Gerald H. Suniville gsuniville@vancott.com, docketing@vancott.com
- Marca Tanner marca.tanner@gmail.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Kim R. Wilson bankruptcy_krw@scmlaw.com
- Brock N. Worthen bworthen@swlaw.com

Clerk of the U.S. Bankruptcy Court

EXHIBIT 1

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this, 7th day of July 2014, by and between the Castle Arch Opportunity Partners II Liquidating Trust ("CAOP II Trust") as successor in interest to Castle Arch Opportunity Partners II, LLC ("CAOP II"), on the one hand, and the Consolidated Legacy Debtors Liquidating Trust ("Legacy Trust") as successor in interest to Castle Arch Real Estate Investment Company, LLC ("CAREIC"), CAOP Managers, LLC, Castle Arch Kingman, LLC, Castle Arch Smyrna, LLC, Castle Arch Secured Development Fund, LLC and Castle Arch Star Valley, LLC (collectively with CAREIC, the "Legacy Debtors"), on the other hand, with CAOP II and the Legacy Debtors as Chapter 11 debtors jointly administered in the bankruptcy case styled as *In re Castle Arch Real Estate Investment Company, LLC et al.*, Case No. 11-35082 (the "Bankruptcy Case"), filed in the United States Bankruptcy Court for the District of Utah (the "Court"). CAOP II Trust and Legacy Trust will be referred together as the "Parties" or the "Trusts."

RECITALS

Background Facts

A. CAREIC filed a voluntary Chapter 11 petition on October 17, 2011. CAOP II and certain of the Legacy Debtors filed voluntary Chapter 11 petitions on October 20, 2011. Prior to the filing of the Chapter 11 petitions, the Legacy Debtors had claims against CAOP II, including for "Management Fees," and CAOP II had claims against the Legacy Debtors (the "Prepetition Intercompany Claims").

B. A plan of reorganization ("Plan") was confirmed for the Legacy Debtors and for CAOP II by *Order Confirming Chapter Trustee's First Amended Plan of Liquidation Dated February 25, 2013, As Modified* entered by the Court on or about June 7, 2013 (the "Confirmation Order"). As part of the Confirmation Order, the Liquidating Trust Agreement for the Legacy Debtors and the Liquidating Trust Agreement for CAOP II (collectively, the "Liquidating Trust Agreements") were approved. The Plan became effective on July 22, 2013, and as of that date (1) the CAOP II Trust and the Legacy Trust were created, (2) D. Ray Strong ("Trustee") was appointed as the Liquidating Trustee of the Trusts, (3) Weston L. Harris was appointed as the "Conflicts Referee" for the Trusts, (4) all claims of CAOP II against the Legacy Debtors, including the Prepetition Intercompany Claims, preserved under the Plan were transferred to the CAOP II Trust, and (5) all claims of the Legacy Debtors against CAOP II, including the Prepetition Intercompany Claims, preserved under the Plan were transferred to the Legacy Trust.

C. Pursuant to the Plan and the Liquidating Trust Agreements, "Conflict Resolution Procedures" (the "Procedures") exist for resolving "Intercompany Claims," as that term is defined in the Plan and the Liquidating Trust Agreements, including the Prepetition Intercompany Claims held by each of the Trusts against the other.

D. Pursuant to the *Order Granting Chapter 11 Trustee's Ex Parte Motion for Order Extending Claims Bar Date As to All Intercompany Claims* entered on March 27, 2013, the Plan and the Confirmation Order, deadlines for CAOP II and the Legacy Debtors to file proofs of claim for their respective Prepetition Intercompany Claims against each other was extended, and pursuant to a Tolling Agreement dated October 4, 2013 executed by the Trusts, all deadlines and statutes of limitation related to Intercompany Claims have been tolled.

E. The Trustee has investigated the Prepetition Intercompany Claims of CAOP II and the Legacy Debtors and has prepared the table attached hereto as **Exhibit 1** ("Claim Table"), which refers to all Claims other than those that may exist for the prepetition period related to management of the Debtors by former management and insiders. The Claim Table is based on the books and records of CAOP II and the Legacy Debtors as reconciled by actual cash transferred between the entities.

F. In accordance with the Procedures, the Trustee has provided the Claim Table and information respecting the basis for the Claims Table to the Parties through counsel. The attorneys for each of the Trusts have analyzed the Claim Table and the information provided by the Trustee. The attorneys for each of the Trusts agree with the Prepetition Intercompany Claims shown in the Claims Table with the exception of the of the entry for "Net Non-Cash Transactions." With respect to the Net Non-Cash Transactions (which represents the Management Fee shown on CAREIC's books for administering CAOP II assets), the Parties disagree on the amount that should be allowed that Fee. CAREIC asserts that the stated Management Fee is supported by certain controlling documents and/or the administrative and management resources that were actually attributed to CAOP II. CAOP II asserts that it is ambiguous and inconsistent in the documents as to the Management Fee which was or should be charged for management or whether a Management Fee is supportable at all.

G. Both Parties agree that litigation over the amount of the prepetition Management Fee would be expensive and would potentially accrue more in discovery costs alone than the amount in controversy.

H. Thus, pursuant to the Procedures, the Parties have entered into arms' length and good faith settlement embodied herein below to avoid the costs, expenses and uncertainty of litigation, and the Parties have agreed to resolve and compromise disputes related to Prepetition Intercompany Claims which may exist between them pursuant to the terms and conditions more fully set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and based upon the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Conflicts Referee, Bankruptcy Court Approval; Best Efforts.** This Agreement is conditioned on, and is subject to, the approval of the Conflicts Referee in the first instance and

then the Court's entry of an Order in the Bankruptcy Case approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019. After and conditioned upon receiving approval from the Conflicts Referee, the Parties will promptly file a joint motion in the Bankruptcy Case seeking Court approval of this Agreement, and the Parties each agree to use their best efforts to secure Court approval of this Agreement in accordance with all applicable law. The date that the Court enters an Order approving this Agreement shall be referred to herein as the "Entry Date."

2. **Allowed General Unsecured Claim of Legacy Trust.** By executing this Agreement, the Parties agree that the Legacy Trust shall hold an "Allowed General Unsecured Claim" against CAOP II, as that term is defined in the Plan, in the amount of \$42,661.00 (the "New POC Amount") and that the Order approving this Agreement shall provide that the Legacy Trust's Allowed General Unsecured Claim against CAOP II is allowed in the New POC Amount without further notice or hearing or filing of any claim. The New POC Amount will apply for all purposes in the Bankruptcy Case, including distribution under the Plan and the CAOP II Trust Agreement as a holder of an Allowed General Unsecured Claim against CAOP II and, if applicable, a beneficiary of the CAOP II Trust.

3. **Release.** Effective on the Entry Date, or in the event of any appeal upon the entry of a final order approving this Agreement, with the sole exception of the Legacy Trust's Allowed General Unsecured Claim in the New POC Amount as provided for in ¶ 2 above, the Parties and their respective post-confirmation estates mutually release and forever discharge the other from any and all manner of actions, causes of action in law or in equity, suits, claims or any other demands of any nature whatsoever that may exist between them related to Prepetition Intercompany Claims. To the extent that any claim is asserted by either of the Parties against the other after the Entry Date, such claim will be deemed to be a "Disallowed Claim" as that term is defined in the Plan. Notwithstanding the foregoing, the Parties hereto do not release each other from any claim, right or cause of action not specifically and necessarily embodied in the transfers set forth and included in the Claim Table attached hereto as Exhibit 1. For the sake of clarity this release expressly does not apply to any claims that may exist between the Legacy Trust and the CAOP II Trust related to claims against former management and insiders of the Debtors and the division of any proceeds obtained therefrom on account of claims against former management and insiders of the Debtors.

4. **Representations and Warranties.** The Parties represent and warrant that they have full power and authority to enter into this Agreement, that there has been no assignment or other transfer of a claim, cause of action or other liability which might affect or impair the releases set forth in this Agreement, and that they have not filed at this time and will not in the future file any proofs of claims or assert any claims against each other, except as set forth in this Agreement.

5. **Attorneys' Fees and Costs.** The Parties agree that they will bear their own respective attorneys' fees and costs incurred in connection with entering into, obtaining Court approval of, and implementing this Agreement.

6. **Effectuation of Agreement.** The Parties agree to perform any other or further acts, and execute and deliver any other or further documents, as may be necessary or appropriate

to implement this Agreement, including without limitation executing any documents necessary to obtain approval of this Agreement from the Court. Except as specifically required by any Order entered by the Court, the Trustee may execute any documents necessary to effectuate this Agreement without further notice and hearing.

7. **Binding Effect.** This Agreement shall be binding upon each of the Parties and their respective successors-in-interest, heirs and/or assigns. All representations and warranties made herein shall survive execution of this Agreement and shall at all times subsequent to the execution of this Agreement remain binding and fully enforceable.

8. **Bankruptcy Court Jurisdiction.** Any claims or causes of action, whether legal or equitable, arising out of or based upon this Agreement or related documents, including but not limited to the interpretation and/or enforcement of this Agreement, shall be commenced in the Court. The Parties hereby consent to the jurisdiction, venue and process of the Court.

9. **Governing Law.** This Agreement is made pursuant to, and shall be governed by, the laws of the State of Utah and, where applicable, federal bankruptcy law.

10. **Construction of Agreement.** This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with governing law. This Agreement has been negotiated by each of the Parties through their respective counsel, and the language of the Agreement shall not be construed for or against any particular party.

11. **Voluntary Agreement.** This Agreement has been carefully read by the Parties and has been reviewed by the Parties' respective legal counsel; the contents hereof are known and understood by the Parties; and each of the Parties acknowledges that such Party is under no duress or undue influence and that each of the Parties executes this Agreement as its own free and voluntary act.

12. **Integration and Amendments.** This Agreement shall constitute the entire agreement and understanding of and between the Parties in relation to matters described herein, and no statements, representations, inducements or promises other than as expressly set forth herein have been given or received by any of the Parties (nor by their respective agents, employees, attorneys or representatives) in return for the same. All negotiations, oral conversations, statements, representations and/or agreements leading up to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims or defenses in relation to any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the terms of this Agreement. Any amendment to this Agreement must be in writing, signed by duly authorized representatives of the Parties hereto, and specifically state the intent of the Parties to amend this Agreement.

13. **Severability.** To the extent that any portion of this Agreement is held unenforceable by a court, tribunal or arbiter of competent jurisdiction, the remainder of this Agreement shall remain binding and enforceable, provided that the primary purposes of the Agreement are not frustrated.

14. **Counterparts.** This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, will be deemed an original, with all such counterparts taken together constituting one and the same instrument. Delivery by facsimile, encrypted e-mail or e-mail file attachment of any such executed counterpart to this Agreement will be deemed the equivalent of the delivery of the original executed agreement or instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

ACKNOWLEDGED AND RECOMMENDED BY

Weston L. Harris
Weston L. Harris, Conflicts Referee

LEGACY TRUST

D. Ray Strong
D. Ray Strong as the Legacy Trustee

CAOP II Trust

D. Ray Strong
D. Ray Strong as CAOP II Trustee

LEGACY TRUST / CAOPII TRUST
Intercompany Transaction Analysis (Summary)

	<u>Owed To LegacyTrust</u>	<u>Owed To CAOPII Trust</u>
Intercompany Account Activity		
Net Cash Transfers	\$ -	\$ 163,156
Net Investor Activity	-	-
Net Cash Transactions - Reconciled With Cash Activity In Database	130,668	-
Net Cash Transactions - Unreconciled With Cash Activity In Database	9,059	-
Net Non-Cash Transactions ¹	132,179	-
Total Intercompany Account Activity	<u>\$ 271,906</u>	<u>\$ 163,156</u>
Net Amount Owed To Legacy Trust Related To Intercompany Account Activity	<u>\$ 108,750</u>	
Proposed 50% Adjustment For Net Non-Cash Transactions Pursuant To Proposed Settlement Agreement ¹	(66,089)	
Total Amount Owed To Legacy Trust	<u>\$ 42,661</u>	

Notes

1. "Net Non-Cash Transactions" relate to one QuickBooks entry dated October 17, 2011 in the amount of \$132,178.86 with the description of "Record CAOP II 4% Annual Recurring Mgt Fee."