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*Attorneys for Trustee for Castle Arch Opportunity  
Partners II Liquidating Trust*

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

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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;  
Debtors.

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 Only the Substantively Consolidated Debtors
- Affects only Castle Arch Opportunity Partners I, LLC
- Affects only Castle Arch Opportunity Partners II, LLC

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**MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH TRUSTEE AND  
WESTERN SHOWCASE HOMES INC.**

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D. Ray Strong, trustee (“**Trustee**”) of the Castle Arch Opportunity Partners II Liquidating Trust (the “**Trust**”), by and through his counsel of record, Durham Jones & Pinegar, hereby moves the Court (“**Motion**”) for approval of a settlement agreement attached hereto (the

“**Settlement Agreement**” Exhibit 1 hereto) between the Trustee, in his capacity as representative of the trust and not in his personal capacity and Western Showcase Homes Inc. (“**Western Showcase**”). This Motion is brought pursuant to Bankruptcy Rule 9019. In support of this motion, the Trustee states as follows:

**Background Facts on Settlement Agreements**

1. Castle Arch Opportunity Partners II (“Debtor”) filed a voluntary Chapter 11 petition (the “**Petition**”) on October 20, 2011. A plan of reorganization (“**Plan**”) was confirmed in Debtor’s case was subsequently on June 7, 2013. The Plan became effective on July 22, 2013. Pursuant to the Plan, the Trust was established and created as successor and assignee from the Debtor and D. Ray Strong was appointed as Trustee.

2. Western Showcase is a corporation existing and organized under the laws of the State of Nevada.

3. The Trustee, by himself and through his counsel, has conducted an investigation of the agreements and understandings between the Debtor and Western Showcase.

4. On or about January 8, 2011, Debtors and Western Showcase entered into a written contract (“**Contract**”). Douglas Child signed the Contract on behalf of the Debtor. Pursuant to the Contract, Western Showcase agreed to facilitate as broker the purchase, on behalf of CAOP II, certain manufactured homes. As part of the purchase price, CAOP II agreed to pay Western Showcase a 5% commission.

5. Pursuant to the Contract, CAOP II would be the owner of the homes purchased through Western Showcase. The Contract lists other obligations of Western Showcase and CAOP II including, after CAOP II’s purchase of any manufactured home, Western Showcase

was obligated to facilitate the sale of the home by obtaining purchase contracts to send to the CAOP II.

6. After executing the Contract and between January 1, 2011 and May 27, 2011, CAOP II and an affiliate Castle Arch Opportunity Partners I purchased at least twelve homes with a total investment of approximately \$700,224.38. Before the petition date, several homes had been sold and Debtors had recovered its investment in such homes. As of the Petition Date, the following homes remained unsold:

- a. Five homes purchased by CAOP II pursuant to a wire transfers from the Debtor of \$33,000 on April 6, 2011 and a wire transfer of \$237,443.07 on April 12, 2011 to Textron Financial Corporation;
- b. A home purchased by CAOP II pursuant to a wire transfer in the amount of \$90,227 from the Debtor on April 18, 2011 to The Homark Company, Inc.;
- c. A home purchased by CAOP II pursuant to a wire transfer from the Debtor in the amount of \$73,645 on April 18, 2011 to Fleetwood Homes;
- d. A home purchased by CAOP II pursuant to a wire transfer from the Debtor in the amount of \$120,309.31 on May 27, 2011 to Superior Homes, LLC (all homes described in subparagraphs a-d above collectively referred to as the “Manufactured Homes”).

7. Western Showcase was in possession of the Manufactured Homes on the Petition Date although CAOP II claimed the ownership interest in such homes. After the Petition Date, Western Showcase corresponded with the Trustee respecting the Manufactured Homes but none were sold according to the Contract.

8. On or about October 14, 2011, CAOP II sued Western Showcase pursuant to a filed complaint (the "Complaint") alleging breach of contract and or fraudulent transfer with respect to money transferred to obtain the Manufactured Homes (the "Adversary Proceeding"). In the Complaint, CAOP II alleges its damages from the alleged breach of contract and fraudulent transfer was no less than \$554,624.38 which represented the outstanding amount of CAOP's II investment in the Manufactured Homes. CAOP is the party plaintiff in the Complaint and Western Showcase is the party defendant (collectively the "Parties").

9. Western Showcase did not file an answer to the Complaint but has defended against the allegations in the complaint by alleging (among other defenses) 1) breach of contract by CAOP II in not fulfilling an alleged stated intention to purchase homes in greater volume, 2) breach of contract by CAOP II in failing to properly account for the costs in maintaining and bringing the Manufactured Homes to market, 3) inability to pay the amount sought by CAOP II in the complaint and an intention to commence a liquidation of the business to the extent CAOP II were to acquire a judgment pursuant to the complaint.

10. The Parties subsequently met to discuss the Complaint and defenses thereto. The Parties agreed to the settlement set forth below. The Trustee considered the financial position of Western as well as the defenses in reaching settlement.

11. The Parties through arms' length and good faith negotiations have reached the settlement attached hereto which resolves and compromises the claims and disputes which may exist between them including those in the Complaint, whether known or unknown, pursuant to the terms and conditions more fully set forth below.

### THE SETTLEMENT AGREEMENT

1. The attached Settlement Agreement settles claims and disputes between the Parties as set forth in the recitals set forth above.

2. Payment by Western Showcase. On or within 60 days after the approval of this Settlement Agreement by the Bankruptcy Court, Western Showcase shall pay the Trustee for the benefit of the Trust the sum of \$300,000.00 by certified funds or wire transfer. The Date payment is such form is received by the Trustee shall be the "Payment Date."

3. Transfer by Trust. On or within 5 days of the Payment Date, the Trust shall transfer to Western Showcase any interest that it holds in the Manufactured Homes. This transfer shall be accomplished in a form acceptable to Western Showcase and Western Showcase shall have the sole responsibility for the preparation any document necessary to accomplish such transfer.

4. Obligations of Paul Thomas. Paul Thomas shall cooperate with the Trustee in any adversary proceeding maintained by the Trustee against former insiders of the CAOP II or any of its affiliates by making himself available through subpoena served on him through his attorney Cotton, Driggs, Walch, Holley, Woloson & Thompson (no personal service required) for deposition and/or for testimony at any trial on such proceeding at the cost set forth under then applicable Federal Rules of Civil Procedure. To the extent the Trustee seeks to depose Paul Thomas in Utah, Trustee shall pay for travel costs, including flight and hotel accommodations. By the Payment Date, Western Showcase shall also deliver to the Trustee any document or record evidencing communications or relationships between former insiders of CAOP II and its affiliates and Western Showcase and its agents and representatives, including, but not limited to,

Paul Thomas. The date such documents are actually delivered to the possession of the Trustee shall be deemed the "Delivery Date."

5. Dismissal of Adversary. Within five business days of the Payment Date and Delivery Date, the Trustee shall dismiss the Adversary Proceeding.

6. Mutual Releases. The Parties agree to mutual releases as set forth in 6 and 7 of the Settlement Agreement attached hereto. The releases are effective upon the completion of the Parties obligations under the Settlement Agreement.

7. Other Rights, Obligations and Agreements. Other provisions governing the agreement, rights and obligations of the parties are set forth in paragraphs 8 through 20 of the attached Settlement Agreement.

#### **TRUSTEE'S ANALYSIS OF THE SETTLEMENT**

The Trustee believes that the stipulations are in the best interests of the Debtor's estate and creditors. The Court is required to review carefully any proposed settlement. As the Bankruptcy Appellate Panel of the Tenth Circuit has held,

The decision of a bankruptcy court to approve a settlement must be "an informed one based upon an objective evaluation of developed facts." *Reiss v. Hagmann*, 881 Md 890, 892 (10th Cir. 1989). In considering the propriety of the settlement it is appropriate for the court to consider the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views.

*Kopp v. All American Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022

(B.A.P. 10<sup>th</sup> Cir. 1997). The four factors are largely derived from *Protective Committee*

*Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25, 88 S.Ct. 1157, 1163

(1968).

The Trustee believes that the attached Settlement Agreement returns to the estate a value that is within the range of potential litigation results in the Adversary Proceeding. One of the issues which would be central to such litigation is whether Western Showcase is entitled to deduct from the sale proceeds of the Manufactured Homes the costs and expenses of bringing such homes to market. If the Court ruled that such expenses are allowed under the Contract, the Trustee would receive less than the settlement amount in damages according to the expenses asserted by Western Showcase. If the Court were to rule otherwise, the Trustee may recover more than the settlement amount subject to the risks and analysis set forth below. In addition, there are significant issues currently existing respecting the value of the remaining Manufactured Homes and legal issues surrounding whether Western Showcase would be liable for the investment value of the Manufactured Homes or, alternatively, liable for the current value of such homes which value may be less than the investment in such homes by the Debtor. All of the foregoing factors are risks in the Trustee's potential success in the Adversary Proceeding. Although the probability of overall success is high in the Trustee's view, a loss of any of the legal issues set forth above may serve to materially decrease the recovery sought under the complaint of approximately \$523,000.

If the Trustee were to pursue the Adversary Proceeding, the litigation would be fact intensive and centered around the disputed issues set forth above. The Trustee estimates that legal fees to resolve the Adversary Proceeding would probably exceed \$50,000. This money may or may not be recoverable were the Trustee to prevail under the Contract depending on the Court's interpretation of any attorney fee and cost provisions associated therewith. Thus, with respect to the litigation related factors of the *Kopexa Realty* decision, the Trustee believes that the settlement amounts fall a possible range of potential recovery. Accordingly, the attached

Settlement Agreement represents a fair compromise of the potential litigation over the issues, saving the estate the cost of litigation and reaching a result that may otherwise be ruled by the Court.

With respect to collection difficulties, the Trustee believes that Western Showcase might file bankruptcy based on its current financial position and if a judgment was obtained in the Adversary Proceeding (or even before a judgment in anticipation of one). The Trustee believes that any such proceeding might significantly decrease any potential recovery on the amount sought in the Adversary Proceeding. Accordingly, the Trustee believes that collectability would be a very significant issue in any judgment obtained against Western Showcase.

Because of the foregoing, the Trustee believes that the interests of creditors are served by the compromise set forth in the Settlement Agreement. The Trustee believes that the compromise from the settlement increases the percentage distribution to creditors and other claimants in this case. Thus, the settlement is in the interests of creditors.

WHEREFORE, the Trustee requests that the Court approve the Settlement Agreement as a compromise of claims under 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019(a).

DATED this 8<sup>th</sup> day of May, 2014.

DURHAM JONES & PINEGAR

By: /s/ Penrod W. Keith  
Penrod W. Keith (4860)  
111 East Broadway, Suite 900  
Salt Lake City, UT 84111  
Telephone: (801) 415-3000  
Facsimile: (801) 415-3500



**CERTIFICATE OF SERVICE**

**By Notice of Electronic Filing (CM/ECF)**

I hereby certify that on the 8<sup>th</sup> day of May, 2014, I electronically filed the foregoing **MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH TRUSTEE AND WESTERN SHOWCASE HOMES INC.** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served 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
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- Joseph M.R. Covey calendar@parrbrown.com
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- George B. Hofmann gbh@pkhlawyers.com, dh@pkhlawyers.com; aa@pkhlawyers.com
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- 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

**By U.S. Mail** – Regular first class United States mail, postage fully prepaid

I hereby certify that on the 8<sup>th</sup> day of May, 2014, I caused to be served a true and correct copy of the foregoing **MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH TRUSTEE AND WESTERN SHOWCASE HOMES INC.** on the following parties:

Western Showcase Homes, Inc.  
Attn: Paul Thomas, President  
8540 S Eastern Ave Suite 100  
Las Vegas, NV 89123

Ogonna Atamoh  
Cotton Driggs Walch Holley Woloson Thompson  
400 South Fourth Street, Suite 300  
Las Vegas, NV 89101

/s/ Kristin Hughes  
DURHAM, JONES & PINEGAR

# EXHIBIT 1

## **SETTLEMENT AGREEMENT**

This settlement agreement (this "Agreement") is entered into this \_\_\_ day of April, 2014, by and between Western Showcase Homes Inc. ("Western Showcase") and Paul Thomas, on the one hand, and D. Ray Strong, as the Chapter 11 Trustee (the "Trustee") for the Reorganized Debtor Castle Arch Opportunity Partners II, LLC and its successor trust the Castle Arch Opportunity Partners II Liquidating Trust, ("CAOP II" or "Debtor") and jointly administered debtors ("Debtors"), in the administratively consolidated 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"), on the other hand. All parties hereto will be referred together as the "Parties."

### **RECITALS**

#### *The Property Transaction*

A. Debtor filed a voluntary Chapter 11 petition (the "Petition") on October 20, 2011. A plan of reorganization ("Plan") was confirmed in Debtor's case was subsequently on June 7, 2013. The Plan became effective on July 22, 2013. Pursuant to the Plan, the Plaintiff was established and created as successor and assignee from the Debtor and D. Ray Strong was appointed as trustee.

B. Western Showcase is a corporation existing and organized under the laws of the State of Nevada.

C. The Trustee, by himself and through his counsel, has conducted an investigation of the agreements and understandings between the Debtor and Western Showcase.

D. On or about January 8, 2011, Debtors and Western Showcase entered into a written contract ("Contract"). Douglas Child signed the Contract on behalf of the Debtor. Pursuant to the Contract, Western Showcase agreed to facilitate as broker the purchase, on behalf of CAOP II, certain manufactured homes. As part of the purchase price, CAOP II agreed to pay Western Showcase a 5% commission.

E. Pursuant to the Contract, CAOP II would be the owner of the homes purchased through Western Showcase. The Contract lists other obligations of Western Showcase and CAOP II including, after CAOP II's purchase of any manufactured home, Western Showcase was obligated to facilitate the sale of the home by obtaining purchase contracts to send to the CAOP II.

F. After executing the Contract and between January 1, 2011 and May 27, 2011, CAOP II and an affiliate Castle Arch Opportunity Partners I purchased at least twelve homes with a total investment of approximately \$700,224.38. Before the petition date, several homes had been sold and Debtors had recovered its investment in such homes. As of the Petition Date, the following homes remained unsold:



DAS

- a. Five homes purchased by CAOP II pursuant to a wire transfers from the Debtor of \$33,000 on April 6, 2011 and a wire transfer of \$237,443.07 on April 12, 2011 to Textron Financial Corporation;
- b. A home purchased by CAOP II pursuant to a wire transfer in the amount of \$90,227 from the Debtor on April 18, 2011 to The Homark Company, Inc.;
- c. A home purchased by CAOP II pursuant to a wire transfer from the Debtor in the amount of \$73,645 on April 18, 2011 to Fleetwood Homes;
- d. A home purchased by CAOP II pursuant to a wire transfer from the Debtor in the amount of \$120,309.31 on May 27, 2011 to Superior Homes, LLC (all homes described in subparagraphs a-d above collectively referred to as the "Manufactured Homes").

G. Western Showcase was in possession of the Manufactured Homes on the Petition Date although CAOP II claimed the ownership interest in such homes. After the Petition Date, Western Showcase corresponded with the Trustee respecting the Manufactured Homes but none were sold according to the Contract.

H. On or about October 14, 2011, CAOP II sued Western Showcase pursuant to a filed complaint (the "Complaint") alleging breach of contract and or fraudulent transfer with respect to money transferred to obtain the Manufactured Homes. In the Complaint, CAOP II alleges its damages from the alleged breach of contract and fraudulent transfer was no less than \$554,624.38 which represented the outstanding amount of CAOP's II investment in the Manufactured Homes.

I. Western Showcase did not file an answer to the Complaint but has defended against the allegations in the complaint by alleging (among other defenses) 1) breach of contract by CAOP II in not fulfilling an alleged stated intention to purchase homes in greater volume, 2) breach of contract by CAOP II in failing to properly account for the costs in maintaining and bringing the Manufactured Homes to market, 3) inability to pay the amount sought by CAOP II in the complaint and an intention to commence a liquidation of the business to the extent CAOP II were to acquire a judgment pursuant to the complaint.

J. The Parties subsequently met to discuss the Complaint and defenses thereto. The Parties agreed to the settlement set forth below. The Trustee considered the financial position of Western as well as the defenses in reaching settlement.

K. The Parties through arms' length and good faith negotiations have reached the settlement set forth below which resolves and compromises the claims and disputes which may exist between them including those in the Complaint, whether known or unknown, 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. **Bankruptcy Court Approval; Best Efforts.** This Agreement is conditioned on, and is subject to, the Court's entry of an Order in the Bankruptcy Case approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019. The Trustee will promptly file a motion 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. **Payment by Western Showcase.** Within sixty (60) days of the Entry Date, Western Showcase agrees that it will pay to the estate of CAOP II by certified funds or wire transfer the sum of Three Hundred Thousand Dollars and 00/100 cents (\$300,000.00). The date such funds are actually received by the Trustee shall be referred to as the "Payment Date."

3. **Transfer of Property by the Trustee.** CAOP II shall transfer to Western Showcase within five (5) business days of the Payment Date, any interest that it holds in the Manufactured Homes. The Trustee shall cooperate with Western Showcase in executing any documents necessary to effect this transfer. If no documents are necessary in Western Showcase's opinion to effect the transfer, the transfer shall be deemed complete on the Payment Date. If documents are necessary to effect the transfer, Western Showcase shall have the sole responsibility for the preparation of such documents and presentation to the Trustee for execution in a timely manner.

4. **Dismissal of Adversary Proceeding With Prejudice.** Within five (5) business days of the Payment Date and Delivery Date (as defined below), the Trustee shall file a notice of dismissal of the Complaint dismissing such proceeding with prejudice. Western Showcase will stipulate to such dismissal as may be required by applicable law.

5. **Obligations of Paul Thomas.** Paul Thomas shall cooperate with the Trustee in any adversary proceeding maintained by the Trustee against former insiders of the CAOP II or any of its affiliates by making himself available through subpoena served on him through his attorney Cotton, Driggs, Walch, Holley, Woloson & Thompson (no personal service required) for deposition and/or for testimony at any trial on such proceeding at the cost set forth under then applicable Federal Rules of Civil Procedure. To the extent the Trustee seeks to depose Paul Thomas in Utah, Trustee shall pay for travel costs, including flight and hotel accommodations. By the Payment Date, Western Showcase shall also deliver to the Trustee any document or record evidencing communications or relationships between former insiders of CAOP II and its affiliates and Western Showcase and its agents and representatives, including, but not limited to, Paul Thomas. The date such documents are actually delivered to the possession of the Trustee shall be deemed the "Delivery Date."

6. **Release of Claims Against the Western Showcase and Paul Thomas.**

Effective upon receiving all consideration from Western Showcase and Paul Thomas provided for above, the Trustee releases and forever discharges Western Showcase and Paul Thomas (“WS Parties”) from any and all manner of actions, causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set off, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that the Trustee may have against the WS Parties from the beginning of time to the date hereof, or which may hereafter accrue against the WS Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited to claims relating to the Complaint *provided however*, the release provided under this paragraph is not a release of any claims or causes of action arising under or resulting from a default or breach of this Agreement.

7. **Release of Claims Against Trustee and Debtors.** Effective upon receiving all consideration from CAOP II provided for above, the WS Parties release and forever discharge the CAOP II, affiliated Debtors and related Reorganization Trusts and the Trustee and any one or all of the Trustee’s associates, affiliates, predecessors, successors, heirs, assigns, managers, subsidiaries, parents, officers, directors, partners, attorneys and agents, as well as the employees, agents, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the “Trustee Release Parties”) from any and all manner of actions, causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, expenses, set off, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that the WS Parties may have against the Trustee Release Parties from the beginning of time to the date of this Agreement, or which may hereafter accrue against the Trustee Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited to any defenses to the Complaint, whether made or asserted, and any and all claims that could be or have been asserted in the proceeding initiated by the Complaint *provided however*, the release provided under this paragraph is not a release of any claims or causes of action arising under or resulting from a default or breach of this Agreement.

8. **Representations and Warranties.** The WS 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 any proofs of claims or asserted any claims against any of the Debtors, other than the POC disclosed in this Agreement.

9. **Trustee Representation.** The Trustee represents that as the Court-authorized representative of the Debtors and the Debtors’ estates, he has full power and authority to enter into this Agreement on behalf of the Debtors and the Debtors’ estates.

10. **Default.** The WS Parties agree that they are in material default of this Agreement if (a) they fail to submit the payment by the Payment Date as set forth above; or (b) they fail to cooperate as set forth above. CAOP II agrees that it is in material default if it (a) fails to transfer the Manufactured Homes as set forth above or (b) fails to dismiss the Complaint as set forth above. Without limiting any of the Parties rights and remedies, in the event of any such material default, the aggrieved party shall be entitled to damages against the other party and such

damages shall include any and all costs of collection, interest, and reasonable fees and costs incurred by the aggrieved party.

11. **Attorneys' Fees and Costs.** Other than the event of default set forth above, 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.

12. **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 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.

13. **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.

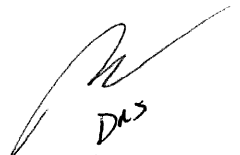
14. **Bankruptcy Court Jurisdiction.** Any claims or causes of action, whether legal or equitable, arising out of or based upon this Agreement or related documents, including but not limited to the interpretation and/or enforcement of this Agreement, shall be commenced in the Court. The Parties hereby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

15. **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.

16. **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 (or their respective counsel), and the language of the Agreement shall not be construed for or against any particular party.

17. **Voluntary Agreement.** This Agreement has been carefully read by the Parties and has been reviewed by the Parties' respective legal counsel (or, if not represented, such Parties had the opportunity to engage counsel to review the Agreement); 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.

18. **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.

19. **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.

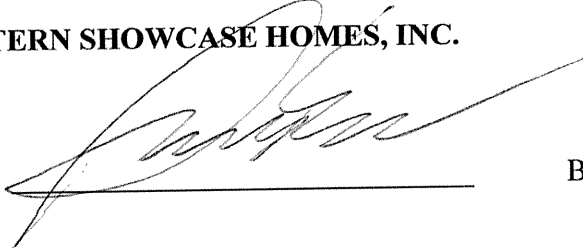
20. **Counterparts.** This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, will be deemed an original, with all such counterparts taken together constituting one and the 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.

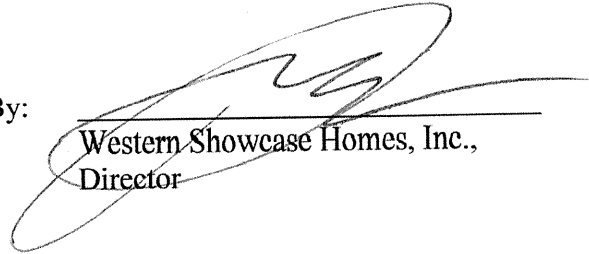
**WESTERN SHOWCASE HOMES, INC.**

**PAUL THOMAS**

By:



By:


  
Western Showcase Homes, Inc.,  
Director

Its:

RESIDUAL

**D. Ray Strong, Trustee of the Liquidating  
CAOP II and AFFILIATED DEBTORS**

By:

  
D. Ray Strong, Trustee of the Liquidating  
Trust of CAOP II and Estate Representative  
of Castle Arch Opportunity Partners II, LLC,  
Debtors and related Reorganization Trusts

