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Proposed Attorneys for D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, LLC; CAOP
MANAGERS, LLC; CASTLE ARCH
OPPORTUNITY PARTNERS I, LLC;
CASTLE ARCH OPPORTUNITY
PARTNERS II, LLC; CASTLE ARCH
KINGMAN, LLC; CASTLE ARCH
SECURED DEVELOPMENT FUND, LLC;
and CASTLE ARCH SMYRNA, LLC,

Debtors.

Bankruptcy Case No. 11-35082
Bankruptcy Case No. 11-35237
Bankruptcy Case No. 11-35240
Bankruptcy Case No. 11-35242
Bankruptcy Case No. 11-35243
Bankruptcy Case No. 11-35246
Bankruptcy Case No. 11-35241
(Jointly Administered)

(Chapter 11)

The Honorable Joel T. Marker

[FILED ELECTRONICALLY]

**MOTION BY D. RAY STRONG, CHAPTER 11 TRUSTEE FOR
CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC,
SEEKING APPROVAL OF PROPOSED CASH MANAGEMENT PLAN**

D. Ray Strong, the duly appointed Chapter 11 trustee for Castle Arch Real Estate Investment Company, LLC (the “Trustee”), by and through proposed counsel Dorsey & Whitney LLP and pursuant to 11 U.S.C. §§ 105(a), 345, 363(b), 364(b) and 503(b) and Federal Rules of Bankruptcy Procedure 2002, 4001(c), 6004 and 9014, hereby requests this Court’s approval of the Trustee’s proposed cash management plan. In support hereof, the Trustee respectfully states, as follows.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

Petition Date and Appointment of Trustee

2. On October 17, 2011 (the “Petition Date”), Castle Arch Real Estate Investment Company (“CAREIC”), filed a petition seeking relief under Chapter 11 of the Bankruptcy Code.

3. On October 20, 2012, six entities with which the Debtor is affiliated, CAOP Managers, LLC (“CAOP Managers”); Castle Arch Opportunity Partners I, LLC (“CAOP I”); Castle Arch Opportunity Partners II, LLC (“CAOP II”); Castle Arch Kingman, LLC (“CAK”); Castle Arch Secured Development Fund, LLC (“CASDF”); and Castle Arch Smyrna, LLC (“CAS”) (collectively, the “CAREIC Affiliates”), also filed petitions seeking relief under Chapter 11 of the Bankruptcy Code.

4. After the Petition Date, CAREIC and the CAREIC Affiliates (collectively, the “Debtors”), whose respective Chapter 11 cases are being jointly administered, continued to operate their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

5. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC.

Emergency Motion for Use of Cash and Order

6. On May 14, 2012, the Trustee filed his *Emergency Motion by D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC, Seeking Approval of Proposed Use of Cash on an Interim Basis* [Docket No. 219] (the “Emergency Motion”), seeking interim use of cash pursuant to an Interim Budget, attached as Exhibit 1 to Emergency Motion.

7. On or about May 21, 2012, the Court entered an *Order Granting Emergency Motion by D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC, Seeking Approval of Proposed Use of Cash on an Interim Basis* [Docket No. 233], granting the Emergency Motion and the Trustee’s interim use of cash as provided for therein. The Trustee’s use of cash pursuant to the Order granting the Emergency Motion expires on June 30, 2012.

Trustee’s Early Investigation

8. Since his appointment and since the filing of Emergency Motion, the Trustee has engaged in an investigation of the Debtors. All statements made herein are based on this early investigation, including the Debtors’ books and records reviewed to date. The Trustee reserves the right to amend any statement herein after further investigation.

9. The Trustee has discovered the following relevant to this Motion:

Corporate Organization

10. The Debtors are limited liability companies. CAREIC is a California limited liability company which is domesticated in Utah, and the CAREIC Affiliates, other than CAOP Managers, are Nevada limited liability companies. CAOP Managers is a Utah limited liability company. As of the Petition Date, all of the Debtors operate out of an office located in Salt Lake City, Utah.

11. The Debtors are engaged in the business of real estate investment, management, and, perhaps, other ventures.

12. CAREIC wholly owns all membership interests in CASDF, CAOP Managers, and CAOP II. CAREIC holds membership interests in the other CAREIC Affiliates as follows: 87% of CAS; 72% of CAK; and 42% of CAOP I.

13. CAREIC is the manager of all of the CAOP Affiliates—pursuant to Operating Agreements, it directly manages CAOP Managers, CAK, CASDF and CAS; and it indirectly manages CAOP I and CAOP II, through its management of CAOP Managers.

14. As a result of his appointment as trustee for CAREIC, the Trustee manages all of the CAREIC Affiliates. Therefore, services provided as and for the CAREIC Trustee and on behalf of the CAREIC estate will necessarily involve management of and services for the CAREIC Affiliates.

Common Management and Inability to Allocate Services in All Instances

15. The Trustee has been incurring and will be required to incur time attending to the management of CAREIC and, in turn, each of the CAREIC Affiliates, such as attending to bank accounts, securing documents and assets, paying post-petition debts as they become due,

communicating with investors, preparation and review of monthly court reports, and attending to issues that arise as a result of day-to-day operations. Some operational expenses, examples of which are described in ¶ 22 below, can be attributed to a specific Debtor. But, some cannot either because of the common management of the Debtors and/or because the services would benefit some or all estates. Also, as to certain services it would be inefficient for the Trustee and his proposed professionals to attempt to attribute time to a specific Debtor. These services and expenses are referred to herein collectively herein as the “Common Expenses.” Common Expenses that would be difficult if not impossible in some cases to allocate include but are not limited to the following: services of Glen Martinsen; rent expense; office supply expense; website maintenance; and time spent securing bank accounts, documents and, in some instances, property of the estate.

16. Although in the early stages of investigation, the Trustee’s initial analysis indicates that prior to the Petition Date, the Debtors had common management who did not always recognize the legal separate corporate existence of each of the Debtors. As a result, in some instances, it is difficult (and inefficient) if not impossible for the Trustee and his proposed professionals to allocate their time and expenses to any one of the Debtors. Examples of situations where allocation is difficult and/or impossible include:

(a) The Debtors engaged in numerous activities prior to the Trustee’s appointment that the Trustee, as manager of all Debtors, has been evaluating and will continue to evaluate in determining the best course of action in these cases, including use of cash, commingling of activities, and intercompany transfers that affect numerous Debtors; and

(b) Prior to the Trustee's appointment, the Debtors were involved in litigation with numerous parties. Some of those cases involve numerous, if not all Debtors, inter-related facts, and overlapping claims and defenses.

Management Specific to CAREIC Affiliates

17. Some of the CAREIC Affiliates will have greater Common Expenses and require more management services than others based on issues specific to their respective estates known to or reasonably anticipated by the Trustee at this time. While the Trustee cannot estimate the percentage of time spent managing any one of the CAREIC Affiliates with any certainty, based on Common Expenses and time spent to date and his initial investigation of each of the CAREIC Affiliates, the Trustee has determined that, to the extent time can be attributed to a specific entity, the following applies:

(a) CAOP Managers. The Trustee anticipates that management specific to CAOP Managers will be minimal because, prior to the Trustee's appointment, CAREIC primarily treated this entity as a pass-through entity. Based on information known at this time, management of CAOP Managers likely will be limited to time spent and expenses defined above as the Common Expenses. Although, as the Trustee has identified one agreement for the collection of a non-performing loan that calls for CAOP Managers to collect the amounts owed.

(b) CAOP I. Based on information known at this time, the Trustee anticipates that, with the exception of CAOP II, Common Expenses attributable to and management specific to CAOP I will be more significant than for any of the other CAREIC Affiliates as a result of the nature of CAOP I's investments, its ongoing operations, and time necessary to investigate and evaluate the same. For example, CAOP I has ventures with CONIX, Inc. ("CONIX") and Black

Star Financial (“Black Star”) that have been managed by CARIEC through CAOP Managers. These ventures will require management, investigation and evaluation by the Trustee as manager of CAOP Managers and, in turn, CAOP I. Issues related to these ventures arose during the hearing to appoint the Trustee and, as a result, require investigation by the Trustee. The Trustee has already commenced that investigation and he will be required to report to the Court and parties in interest in an appropriate manner. Additionally, significant overlapping and complex claims and litigation have been filed against CAOP I by Longview that will require the Trustee and his professionals significant amount of time to analyze and evaluate.

(c) CAOP II. Based on information known at this time, the Trustee anticipates that, with the exception of CAOP I, Common Expenses attributable to and management specific to CAOP II will be more significant than for any of the other CARIEC Affiliates as a result of the nature of CAOP II’s investments, its ongoing operations, and time necessary to investigate and evaluate the same. For example, CAOP II has ventures with CONIX and Black Star which have been managed by CARIEC through CAOP Managers. These ventures will require management, investigation and evaluation by the Trustee as manager of CAOP Managers and, in turn, CAOP I. Issues related to these ventures arose during the hearing to appoint the Trustee and, as a result, require investigation by the Trustee. The Trustee has already commenced that investigation and he will be required to report to the Court and parties in interest in an appropriate manner. Additionally, significant overlapping and complex claims and litigation have been filed against CAOP I by Longview that will require the Trustee and his professionals significant amount of time to analyze and evaluate.

(d) CAK, CAS and CASDF. Based on information known at this time, the Trustee anticipates that management specific to CAK, CAS and CASDF will involve Common Expenses as well as management specific to the assets currently held by these entities. A significant amount of time will involve investigating the activities and transactions involving the various real estate parcels purchased, transfers of properties, active and valid entitlements, and various intercompany transfers associated with the Kingman and Smyrna properties.

Cash Management/Known and Anticipated Expenses

18. At the time of the Trustee's appointment, the following Debtors had bank accounts at Zions Bank: CAREIC; CAS; CAOP I; and CAOP II (the "DIP Accounts"). The other Debtors did not have bank accounts. CAREIC's DIP Account had a negative balance. The other DIP Accounts had funds on deposit as follows: CAS, \$13,446.10; CAOP I, \$156,444.66; and CAOP II, \$445,135.05.

19. The Trustee now has control of and/or has closed all of the DIP Accounts, and has opened accounts that he controls for each of the Debtors who have funds at Preferred Bank (the "Trustee Accounts"). Funds on deposit in the DIP Accounts that had funds on the date of his appointment have been transferred to the appropriate Trustee Account. At least one deposit related to tax refunds has been made into CAREIC's DIP Account since the Trustee's appointment, and he is making arrangements to have those funds transferred to CAREIC's Trustee Account so that he can close the CAREIC DIP Account.

20. Deposits for each of the Debtors who have in-coming income, specifically, CAOP I, CAOP II, CAOP Managers and CAS, are being deposited into the Trustee Account opened for that Debtor.

21. While the Trustee has only just begun his examination of the Debtors' books and records, his initial review indicates that the Debtors' management of cash prior to his appointment was irregular. For instance, cash deposits were not necessarily being made to the entity to which such cash appears to have been owed. The Trustee is attempting to correct these irregularities. The source and payee of all in-coming cash is now being verified prior to deposit to be sure that monies are being attributed to the Debtor to which they are owed and being deposited in the correct Trustee Account.

22. In addition, since the filing of the Emergency Motion and his Interim Budget, the Trustee is continuing to discover the Debtors' true operating expenses, some of which were not outlined in the Interim Budget. For example, recently, the Trustee learned that the general liability insurance for the Debtors' raw land terminated late May 2012 for lack of payment and he is attempting to get the policy reinstated or to get new insurance. Given the state of the Debtors' books and records, the Trustee cannot be sure at this time whether he knows of each and every operating expense of each of the Debtors. The Trustee has identified the following known management costs, which are included in the Common Expenses discussed above:

(a) Office Expense. The Debtors have voluminous books and records located at a corporate office located in Salt Lake City, Utah. These books and records have now been secured by the Trustee and the Trustee has determined that they are essential for management of all of the Debtors. Maintenance of the books and records at the corporate office will be the most efficient and economical way of managing the Debtors at this time and, therefore, expenses related to maintaining that office for the benefit of all Debtors must be paid for the time being.

(b) Securing Documents. The Trustee has informed all professionals and employees of his appointment and the need to preserve and turn over property of the estate. Securing property, most of which is documentation related to some or all of the Debtors, has been time-consuming and has resulted in costs attributable to each of the Debtors.

(c) Glen Martinsen. The Trustee has terminated the employment of all prior management, other than Glen Martinsen. The Trustee has determined that Mr. Martinsen's services are necessary to allow him to most efficiently and economically manage the Debtors, including in matters related to day-to-day operations, bookkeeping, certain operating accounting tasks, and other assignments as needed and requested by the Trustee. Mr. Martinsen's compensation is an annual salary of \$90,000.00, health insurance coverage, and reimbursement of certain miscellaneous expenses, such as his cell phone. The costs associated with Mr. Martinsen's employment are necessary for the management of all of the Debtors.

(d) Insurance. The Trustee is required to pay for insurance related to the Debtors' property.

(e) Fees and Administration Expenses. The Trustee needs to pay quarterly fees to the Office of the United States Trustee for each of the Debtors as required under applicable law (the "UST Fees"), and there will be costs related to administering each of the Debtor's estates, such as costs associated with noticing of motions relevant to all Debtors, payment of corporate renewal fees, and management of a website by Strong Connexions, LLC for the benefit of all of the Debtors' creditors and parties interest. Jason Strong, who is the Trustee's brother, is a principal of this company.

(f) Taxes. The Trustee anticipates that some or all of the Debtors will have post-petition tax obligations that will require payment.

RELIEF REQUESTED

23. Use of cash by the Trustee since the Court's entry of the Order on the Emergency Motion has been pursuant to the approved Interim Budget which expires on June 30, 2012.

24. Commencing on July 1, 2012, therefore, it will be necessary for the Trustee to use cash of the Debtors as set forth herein to manage and operate the Debtors, including by paying actual and ordinary operating expenses, so as to preserve the Debtors and maximize their value for the benefit of creditors and parties in interest.

25. Accordingly, pursuant to this Motion, the Trustee requests approval of the cash management plan set forth below to govern use of the Debtors' cash until the earlier of the time when the Debtors' jointly administered cases are substantively consolidated, if at all, the effective date of any confirmed Chapter 11 plan, or the entry of any order of this Court providing otherwise.

26. The Trustee's proposed cash management plan is based on (a) assessment of monthly management fees under 11 U.S.C. §§ 105(a), 363(b) and 503(b), and (b) for certain of the Debtors, borrowing money when necessary pursuant to 11 U.S.C. §§ 105(a), 364(b) and 503(b). Each of these concepts is discussed below.

27. The Trustee requests that the relief requested be reevaluated by the Court on a quarterly basis, if necessary. In so doing, the cash management plan approved by the Court will not expire except in the event that the Debtors are substantively consolidated, a plan is confirmed or the Court orders otherwise. The Trustee will schedule a hearing with the Court on a quarterly

basis to provide a report on Management Fees that have accrued and loans that have been made, and to request any adjustments to the plan as deemed necessary by the Trustee, either to reduce the Management Fee or loan caps, or to increase the same. Notice of such hearing will be limited to creditors and those investors who specifically have requested notice in this case.

28. The Trustee further requests waiver of the stay of this Order pursuant to Federal Rule of Bankruptcy Procedure 6004(h).

Fixed Management Fees

29. As discussed above, the Trustee has determined that prior to his appointment, the CAREIC Affiliates did not have independent management, but instead relied solely on CAREIC for management. Under this arrangement, some or all of the CAREIC Affiliates should have or did pay CAREIC or CAOP Managers (a pass through entity that was managed by CAREIC) a management fee. This was true for all CAREIC Affiliates, including CAOP I and CAOP II, of which CAOP Managers, and by extension CAREIC, is manager.

30. The Trustee has determined that each of the Debtors has actual expenses that must be paid to, among other things, allow for the management of operations, preserve and protect the assets of the Debtors' respective estates, and to allow for proper administration of the estates for the benefit of all creditors and parties in interest, including the Common Expenses outlined above. Based on the management structure of the Debtors, most of the time and expense related to management will be done by the Trustee as trustee for CAREIC.

31. Accordingly, the Trustee proposes that he, on behalf of CAREIC's estate and as manager of each of the CAREIC Affiliates, assess each CAREIC Affiliate a fixed monthly

management fee to account for expenses and management, including those expenses outlined above (the "Management Fees").

32. The Trustee proposes that the Management Fees be assessed monthly, on the first day of each month, as follows:

CAOP Managers	\$ 2,000.00
CAOP I	\$13,000.00
CAOP II	\$13,000.00
CAK	\$ 7,000.00
CAS	\$ 7,000.00
CASDF	\$ 4,000.00

33. The amount of the Management Fees for each of the CAREIC Affiliates is, in the Trustee's business judgment, a reflection of the estimated actual and necessary expenses of each of the CAREIC Affiliates, including its Common Expenses, based on the analysis set forth above.

34. The proposed Management Fees are conservative and, upon information and belief, are less than any fees that appear to have been proposed by prior management. *See generally*, Docket No. 119 (explaining prior cash management).

35. The Trustee shall keep an accounting of all Management Fees assessed in the books and records of CAREIC and of each CAREIC Affiliate. On the first day of each month, if the relevant CAREIC Affiliate is able to pay the Management Fee, the Trustee will transfer the approved Management Fee for that Affiliate to the Trustee Account for CAIREC. If the CAREIC Affiliate does not have sufficient funds to pay the Management Fee, the Trustee will accrue the Management Fee as an accounts receivable from the CAREIC Affiliate in CAREIC's books and records and as accounts payable to CAREIC on the CAREIC Affiliate's books and records.

36. Actual expenses that are specific to a Debtor will be shown in the books and records as an expense of that Debtor. In evaluating the Management Fee at the end of each quarter, to the extent necessary, such expenses will be considered.

37. The Management Fees assessed as provided for herein shall be an allowed administrative expense claim under 11 U.S.C. § 503(b) entitled to priority 11 U.S.C. § 507(a)(2) in the case of the CAREIC Affiliate to which the Management Fee pertains.

38. In the event that the Trustee discovers that he has underestimated or overestimated time and expense related to a particular CAREIC Affiliate, an evaluation of the existing management fees will be performed on a quarterly basis and any adjustments will be presented to the Court.

39. Nothing herein (a) affects in any way any rights, claims or defenses that might exist in any of the Debtors' cases, including any rights to setoff or recoupment that may exist; (b) prevents any party with standing from challenging in this Court the reasonableness of the Management Fees assessed; or (c) limits or otherwise affects any rights, claims, interests, or defenses that may exist under any contract or operating agreement of any of the Debtors.

Loans

40. CAOP Managers, CAK and CASDF (collectively, the "Borrowers") may not have sufficient cash to pay ordinary expenses and UST Fees as they become due.

41. Thus, the Trustee, as manager of the Borrowers, proposes that he be authorized under 11 U.S.C. § 364(b), to borrow cash as needed on behalf of the Borrowers from CAOP I and CAOP II, up to the following amounts:

CAOP Managers	\$ 5,000.00
CAK	\$20,000.00
CASDF	\$15,000.00

42. The Trustee in an exercise of his business judgment and based on information available to him at this time believes that these potential loan amounts are sufficient to allow him to meet operational expenses associated with each of the Borrowers, exclusive of Management Fees. The Trustee reserves the right, however, to request additional loans for any one Borrower in the event that unforeseen expenses exist for that Borrower that are greater than the amount for the Borrower stated above.

43. Given the relatively small amount in question, the Trustee requests that he be excused from the credit agreement requirements set forth in Federal Rule of Bankruptcy Procedure 4001(c).

44. The amount of any loan made by CAOP I or CAOP II would be from equal portions of cash drawn from the Trustee Accounts for CAOP I and CAOP II.

45. Any outstanding loan balance will accrue interest at a rate of 4.0%.

46. Cash borrowed by the Trustee on account of the Borrowers, together with any resulting accrual of interest, will be recorded as a loan payable in the books and records being maintained by the Trustee for the relevant Borrower, and as a loan in the books and records being maintained by the Trustee for CAOP I and CAOP II.

47. As set forth in 11 U.S.C. § 364(b), loans made by CAOP I and CAOP II as provided for herein, shall be allowable as an administrative expense claim under 11 U.S.C.

