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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

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE PUBLIC SALE OF
CERTAIN OFFICE EQUIPMENT AND PERSONAL PROPERTY PURSUANT TO 11
U.S.C. § 363(b) and (f), FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004
AND LOCAL RULE 6005-1**

D. Ray Strong, the duly appointed Chapter 11 Trustee for Castle Arch Real Estate
Investment Company, LLC (“CAREIC”), hereby moves this Court for entry of an Order

approving the public sale of certain office equipment and other personal property pursuant to 11 U.S.C. § 363(b) and (f), Federal Rule of Bankruptcy Procedure 6004, and Local Rule 6005-1.

JURISDICTION AND VENUE

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

BACKGROUND

General

1. Between October 17, 2011 and October 20, 2011, CAREIC and 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 (collectively with CAREIC, the “Debtors”), each filed a petition seeking relief under Chapter 11 of the Bankruptcy Code (the October 17th and October 20th Petition Dates of the Debtors will be referred together as the “Petition Date”).

2. The Debtors’ respective Chapter 11 cases are being jointly administered.

3. On May 3, 2012, the Trustee was appointed the Chapter 11 Trustee of CAREIC [Docket No. 215].

The Property To Be Sold

4. Prior to the Petition Date, CAREIC maintained an office in Kaysville, Utah. In June 2011, a state court receiver was appointed to manage the affairs of the Debtors. As a result of the appointment, the receiver moved the documentation, computer, office equipment and furniture to an office suite located at 8 East Broadway, Salt Lake City, Utah 84111. In

December 2011, after the Debtors filed bankruptcy, the documentation, office furniture and equipment was moved to an office suite in the same building referenced as Suite 212 (the “Office Premises”), which was used by all the Debtors.

5. The Trustee has determined that certain personal property located at the Office Premises, including but not limited to furniture, printers, a copy machine, a telephone system and other various items of personal property (collectively, the “Property”) constitute property of CAREIC’s estate, and in his business judgment, the Property should be sold at public auction.

6. At present, the Property is located at the Office Premises, but the Trustee intends to close the Office Premises by no later than the end of the month, and the Property will be moved by the proposed Auctioneer (as defined below) on or about November 26, 2012 to the Auctioneer’s place of business.

The Auctioneer And Proposed Sale

7. Erkelens & Olson (the “Auctioneer”) has inspected the Property for the Trustee, and the Trustee proposes that the Auctioneer be authorized to sell the Property at public auction.

8. To the best of the Trustee’s knowledge, the Auctioneer (a) has no connection with the Trustee or any employees of the Trustee’s firm; (b) does not hold or represent an interest adverse to the Debtors’ estates; and (c) is a disinterested person as that term is defined in 11 U.S.C. § 101.

9. The Auctioneer has been appointed by the Court as a standing auctioneer pursuant to Federal Rule of Bankruptcy Procedure 6005 and Local Rule 6005-1, and as such, the Auctioneer is an experienced, active and licensed auctioneering firm that maintains appropriate insurance policies and has posted a bond with the Office of the United States Trustee.

10. As is customary for auctions of this type, the Trustee has agreed to pay the Auctioneer, subject to Court approval, a 15% commission of the gross sale proceeds of the Property, as well as reasonable costs associated with moving the Property for sale, which costs the Auctioneer will deduct from the gross sale proceeds prior to remitting the net sale proceeds to the Trustee.

11. The Property will be marketed by the Auctioneer prior to its sale according to its standard procedures, including by notifying persons on its contact list of the auction.

12. The Trustee proposes that the Auctioneer conduct a public sale of the Property on December 15, 2012 at 10:00 a.m. at 430 West 300 North, Salt Lake City, Utah. The Trustee also proposes that multiple items of a similar type may be sold in bulk at the auction if such process will maximize the value of the Property.

13. At the conclusion of the auction, the Auctioneer will give the Trustee (1) the net sale proceeds; and (2) an itemized statement of the Property sold, as well as the purchase price for each item, which auction statement will be filed with the Court and transmitted to the Office of the United States Trustee as required by Federal Rule of Bankruptcy Procedure 6004(f).

RELIEF REQUESTED

14. By this Motion, the Trustee seeks entry of an Order authorizing the public sale of the Property pursuant to 11 U.S.C. § 363(b) and (f), Federal Rule of Bankruptcy Procedure 6004, and Local Rule 6005-1.

15. Furthermore, in the event that no objections are filed to this Motion and the Court grants this Motion, the Trustee requests that the 14-day stay of the Court's Order set forth in

Federal Rule of Bankruptcy Procedure 6004(h) be waived to allow the Trustee to sell the Property on the scheduled December 15, 2012 auction date.

I. THE SALE OF THE PROPERTY OUT OF THE ORDINARY COURSE OF BUSINESS IS WARRANTED

16. The Bankruptcy Code provides that the “trustee, after notice and a hearing, may use, sell, lease, other than in the ordinary course of business, property of the estate.”¹

17. In order to approve a sale of a debtor’s assets outside the ordinary course of business, the trustee must show that:

- a. a sound business reason exists for the sale;
- b. there has been adequate and reasonable notice to interested parties, including full disclosure of the sale terms and the Debtor’s relationship with the buyer;
- c. the sale price is fair and reasonable; and
- d. the proposed buyer is proceeding in good faith.²

18. The Trustee has met all four parts of this test, and accordingly, he respectfully requests that the Court grant the relief requested in this Motion by authorizing the proposed public sale of the Property.

Sound Business Purpose

19. Courts show great deference to a trustee’s decisions.³

¹ 11 U.S.C. § 363(b)(1).

² See *In re Med. Software Solutions*, 286 B.R. 431, 439–40 (Bankr. D. Utah 2002).

³ See, e.g., *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981).

20. The Trustee has made an independent business decision based on his experience, knowledge of the case, and evaluation of the Property that a public sale of the Property is the best way to (a) economically market and sell the Property so as to maximize its value for the benefit of CAREIC's estate and creditors; (b) produce a good faith purchaser; and (c) reduce the costs and time that would normally be associated with selling the Property through individual, private sales.

Notice of the Proposed Sale Is Appropriate

21. Adequate and reasonable notice of the proposed public sale will be made to all interested parties.

22. Upon the filing of this Motion, a Notice of Hearing will be served on (a) the Creditors' Committee and all creditors in the above-captioned cases;(b) all parties who have requested electronic notice in this case; and (c) the Office of the United States Trustee. The Notice of Hearing will provide, among other things, notice of the hearing on this Motion and a general description of the Property.

23. Furthermore, once approved, the public auction will be appropriately marketed by the Auctioneer in accordance with its customary procedures, and the Trustee will post a notice of the sale on his website. These notice procedures are fair, reasonable, and afford notice as required under 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure 6004.

Fair and Reasonable Price

24. In his business judgment, the Trustee believes that the sale price of the Property will be fair and reasonable and will obtain the highest and best price for the sale of the Property.

25. The public sale of the Property will be held after appropriate marketing by the Auctioneer, and the auction procedures will create competitive bidding that assures the Property is sold to the highest and best bidder. As such, the auction process helps ensure that the estate will obtain a purchase price that is fair and reasonable.

Good Faith Purchaser

26. The auction process also helps to ensure that the Property will be sold to a good faith purchaser.

27. Although the Bankruptcy Code does not define “good faith,” the Tenth Circuit has determined in the context of 11 U.S.C. § 363(m) that a “good faith” purchaser is “one that buys in good faith, and for value.”⁴ Actions that destroy a purchaser’s good faith include “fraud, collusion between the purchaser and other bidders or trustee, or an attempt to take grossly unfair advantage of other bidders.”⁵

28. Here, the Trustee proposes to employ the Auctioneer, a disinterested and Court-approved standing auctioneering firm, to sell the Property at a public sale. As such, the auction process will solicit open, competitive bidding after full notice, and the Auctioneer will be required to file with the Court and transmit to the Office of the United States Trustee a detailed accounting statement of the auction, including the items of Property sold and the purchase price for such items. These procedures will make certain that the Property is sold to good faith purchasers for a fair and reasonable value.

⁴ *Tompkins v. Frey (In re Bel Air Assocs., Ltd.)*, 706 F.2d 301, 304 (10th Cir. 1983).

⁵ *Id.* at 305 n.11 (citation omitted); *see also In re Lotspeich*, 328 B.R. 209 (10th Cir. BAP 2005).

II. THE SALE OF THE PROPERTY FREE AND CLEAR OF ALL INTERESTS IS WARRANTED

29. The Bankruptcy Code provides that a trustee may sell estate property free and clear of interests if:

- (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.⁶

30. Because § 363(f) is in the disjunctive, the satisfaction of any of the requirements enumerated therein will warrant the Trustee's proposed sale of the Property free and clear of all interests.

31. The Trustee is not aware of any liens or interests in the Property. However, to the extent any interests are asserted in the Property, the Trustee believes that any holder of a purported interest in the Property will be adequately protected as such purported interest would attach to the sale proceeds of the Property.

32. Accordingly, the Trustee requests that the Court grant this Motion and authorize the sale of the Property free and clear of any interests pursuant to 11 U.S.C. §§ 363(b) and (f).

⁶ 11 U.S.C. § 363(f)

CONCLUSION

WHEREFORE, for all of the reasons set forth above, the Trustee respectfully requests that the Court enter an Order granting this Motion and authorizing the Trustee's public sale of the Property pursuant to 11 U.S.C. § 363(b) and (f), Federal Rule of Bankruptcy Procedure 6004, and Local Rule 6005-1. Furthermore, in the event that no objections are filed to this Motion and the Court grants the Motion, the Trustee requests that the 14-day stay of the Court's Order set forth in Federal Rule of Bankruptcy Procedure 6004(h) be waived to allow the Trustee to sell the Property on the scheduled December 15, 2012 auction date.

DATED this 9th day of November, 2012.

DORSEY & WHITNEY LLP

/s/ Nathan S. Seim

Peggy Hunt
Nathan S. Seim
*Attorneys for D. Ray Strong, Chapter 11
Trustee for Castle Arch Real Estate
Investment Company, LLC*

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*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
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Bankruptcy Case No. 11-35246
Bankruptcy Case No. 11-35241
(Jointly Administered)

(Chapter 11)

The Honorable Joel T. Marker

**DECLARATION OF D. RAY STRONG, CHAPTER 11 TRUSTEE, IN SUPPORT OF
MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE PUBLIC SALE OF
CERTAIN OFFICE EQUIPMENT AND PERSONAL PROPERTY PURSUANT TO 11
U.S.C. § 363(b) and (f), FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004
AND LOCAL RULE 6005-1**

The undersigned, being of lawful age, hereby declares, verifies and states as follows:

1. Between October 17, 2011 and October 20, 2011, Castle Arch Real Estate Investment Company, LLC (“CAREIC”), as well as 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 (collectively with CAREIC, the “Debtors”), each filed a petition seeking relief under Chapter 11 of the Bankruptcy Code (the October 17th and October 20th Petition Dates of the Debtors will be referred together as the “Petition Date”).
2. The Debtors’ respective Chapter 11 cases are being jointly administered.
3. On May 3, 2012, I was appointed the Chapter 11 Trustee in CAREIC’s case [Docket No. 215].
4. This Declaration is based upon my personal knowledge of the facts set forth herein. I submit this Declaration in support of the *Motion for Entry of an Order Authorizing the Public Sale of Certain Office Equipment and Personal Property Pursuant to 11 U.S.C. § 363(b) and (f), Federal Rule of Bankruptcy Procedure 6004 and Local Rule 6005-1* (the “Motion”).
5. Prior to the Petition Date, CAREIC maintained an office in Kaysville, Utah. In June 2011, a state court receiver was appointed to manage the affairs of the Debtors. As a result of the appointment, the receiver moved the documentation, computer, office equipment and furniture to an office suite located at 8 East Broadway, Salt Lake City, Utah 84111. In December 2011, after the Debtors filed bankruptcy, the documentation, office furniture and equipment was moved to an office suite in the same building referenced as Suite 212 (the “Office Premises”), which was used by all the Debtors.

6. In my investigation of CAREIC's bankruptcy estate, I have determined that certain personal property located at the Office Premises, including but not limited to furniture, printers, a copy machine, a telephone system and other various items of personal property (collectively, the "Property") constitute property of CAREIC's estate, and in my business judgment, the Property should be sold at public auction.

7. At present, the Property is located at the Office Premises, but I intend to close the Office Premises by no later than the end of November 2012. I also intend for the Property to be moved by the proposed Auctioneer (as defined below) on or about November 26, 2012 to the Auctioneer's place of business.

8. Erkelens & Olson (the "Auctioneer") has inspected the Property, and in my business judgment, a public sale of the Property by the Auctioneer is in the best interest of CAREIC's bankruptcy estate.

9. To the best of my knowledge, and upon information and belief, the Auctioneer (a) has no connection with me or any employees of my firm; (b) does not hold or represent an interest adverse to the Debtors' estates; and (c) is a disinterested person as that term is defined in 11 U.S.C. § 101.

10. I understand that the Auctioneer has been appointed by the Court as a standing auctioneer pursuant to Federal Rule of Bankruptcy Procedure 6005 and Local Rule 6005-1, and as such, I believe and understand that the Auctioneer is an experienced, active and licensed auctioneering firm that maintains appropriate insurance policies and has posted a bond with the Office of the United States Trustee.

11. As is customary for auctions of this type, I have agreed to pay the Auctioneer, subject to Court approval, a 15% commission of the gross sale proceeds of the Property, as well as reasonable costs associated with moving the Property for sale, which costs the Auctioneer will deduct from the gross sale proceeds prior to remitting the net sale proceeds to me for the benefit of the estate.

12. I am informed that the Property will be marketed by the Auctioneer prior to its sale according to its standard procedures, including by notifying persons on its contact list of the auction.

13. I am also informed that the Auctioneer will be conducting a bankruptcy auction on December 15, 2012 at 10:00 a.m. at 430 West 300 North, Salt Lake City, Utah. In my business judgment, the public sale of the Property at this bankruptcy auction is in the best interest of CAREIC's bankruptcy estate.

14. I have made an independent business decision based on my experience, knowledge of the case, and evaluation of the Property that a public sale of the Property is the best way to (a) economically market and sell the Property so as to maximize its value for the benefit of CAREIC's estate and creditors; (b) produce a good faith purchaser; and (c) reduce the costs and time that would normally be associated with selling the Property through individual, private sales.

15. I believe that adequate and reasonable notice of the proposed public sale will be made to all interested parties because, after the filing of the Motion, a Notice of Hearing will be served on (a) the Creditors' Committee and all creditors in the above-captioned cases; (b) all parties who have requested electronic notice in this case; and (c) the Office of the United States

Trustee. The Notice of Hearing will provide, among other things, notice of the hearing on the Motion and a general description of the Property.

16. Additionally, once approved, I understand that the public auction will be appropriately marketed by the Auctioneer in accordance with its customary procedures, and I will post a notice of the sale on the Castle Arch Trustee website.

17. In my business judgment, the sale price of the Property will be fair and reasonable and will obtain the highest and best price for the sale of the Property.

18. I believe that the auction procedures will create competitive bidding that assures the Property is sold to the highest and best bidder.

19. In my business judgment, the auction process also helps to ensure that the Property will be sold to a good faith purchaser. I am informed that the Auctioneer is a disinterested and Court-approved standing auctioneering firm, which seeks to maximize the value of the Property. I also believe that the auction process will solicit open, competitive bidding after full notice, and at the conclusion of the auction, the Auctioneer will file with the Court and transmit to the Office of the United States Trustee a detailed accounting statement of the auction, including the items of Property sold and the purchase price for such items. Therefore, in my business judgment, the above auction procedures assure that the Property is sold to good faith purchasers for a fair and reasonable value.

20. I am not aware of any liens or interests in the Property. However, to the extent any interests are asserted in the Property, I believe that any holder of a purported interest in the Property will be adequately protected as such purported interest would attach to the sale proceeds of the Property.

21. It is important that the sale take place on the scheduled auction date so as to avoid further costs of administering the Property, including storage costs, and therefore, to the extent necessary, I request that the 14-day stay applicable under Federal Rule of Bankruptcy Procedure 6004(h) be waived in this case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 9 day of November, 2012.



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