

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 D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC and Substantively Consolidated Debtors

**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 KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; 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

- 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

CHAPTER 11 TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH DAVID S. HUNT, P.C., THE HUNT LAW CORPORATION, P.C. AND DAVID HUNT UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

D. Ray Strong, the duly appointed Chapter 11 Trustee for the consolidated bankruptcy estates of 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, the “Legacy Debtors”), and in that capacity as Manager for Castle Arch Opportunity Partners I, LLC and Castle Arch Opportunity Partners II, LLC (together, the “CAOP Debtors” and, collectively with the Legacy Debtors, the “Debtors”), by and through his undersigned counsel, hereby moves this Court for entry of an Order approving the Settlement Agreement, attached hereto as Exhibit A (the “Settlement Agreement”), entered into by and among David Hunt (“Hunt”), David S. Hunt, P.C. (“Hunt P.C.”), doing business as The Hunt Law Corporation, P.C. (the “Hunt Firm” and, collectively with Hunt and Hunt P.C., the “Hunt Parties”), on the one hand, and the Trustee on behalf of the Debtors, on the other hand (collectively with the Hunt Parties, the “Parties”). This Motion is supported by the Declaration of D. Ray Strong, Chapter 11 Trustee (the “Strong Declaration”). In further support hereof, the Trustee states as follows:

JURISDICTION AND VENUE

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

BACKGROUND

General

2. On October 17, 2011, CAREIC filed a petition seeking relief under Chapter 11 of the Bankruptcy Code.

3. On October 20, 2011, each of the other Debtors, other than Castle Arch Star Valley, LLC, filed petitions under Chapter 11 of the Bankruptcy Code.

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

5. On February 8, 2013, the Court entered an Order substantively consolidating the Legacy Debtors [Docket No. 590].

The Hunt Party Claims

6. On or about June 18, 2010, the Hunt Firm filed a lawsuit against CAREIC in the Second Judicial District Court for Davis County, State of Utah, styled as *The Hunt Law Corporation, P.C. v. Castle Arch Real Estate Investment Company, LLC*, Case No. 100700353 (the "Utah State Court Proceeding").

7. On April 12, 2011, a judgment was entered in the Utah State Court Proceeding in favor of the Hunt Firm and against CAREIC for unpaid legal fees in the amount of \$285,112.00 (the "Utah State Court Judgment").

8. On or about May 10, 2011, the Hunt Firm domesticated the Utah State Court Judgment in the Superior Court of the State of Arizona for Mohave County, which filing commenced Case No. 2011-00768 (the "Arizona State Court Proceeding").

9. On or about May 19, 2011, the Hunt Firm recorded the Utah State Court Judgment with the Mohave County, Arizona Recorder's Office, Entry No. 2011026987 (the "Judgment Lien").

10. On or about February 21, 2012, the Hunt Firm filed a Proof of Claim against CAREIC, designated as Claim No. 35-1 on the Claims Docket in CAREIC's case, asserting a secured claim against CAREIC in the amount of \$293,876.69 (the "Original POC") based on the Judgment Lien.

11. On November 20, 2012, the Hunt Firm filed an amended Proof of Claim against CAREIC, designated as Claim No. 35-2 on the Claims Docket in CAREIC's case, asserting a secured claim in the amount of \$307,449.99 and a general unsecured claim in the amount of \$28,903.00 (together with the Original POC, the "POC").

12. The Hunt Parties have also indicated that they intend to assert an administrative expense claim against the Debtors' estates (the "Alleged Administrative Claim").¹

The Disputes of the Parties

13. Since his appointment, the Trustee has engaged in an investigation of the Debtors' respective estates, which has included an analysis of the extent and validity of the claims made by the Hunt Firm in the POC and the Alleged Administrative Claim. Additionally, the Trustee has investigated and analyzed potential claims that may exist against the Hunt Parties. Based on this investigation, the Trustee has determined that the claims asserted by the Hunt Parties in their POC are subject to dispute, the Alleged Administrative Claim to be asserted by the Hunt Parties is without merit, and the Debtors' estates may have claims against the Hunt Parties.²

14. The Hunt Parties contend that their claims set out in the POC are factually and legally meritorious, and that their Alleged Administrative Claim has reasonable grounds. The Hunt Parties further contend after discussions with the Trustee and his counsel that there is little, if any, legal or factual basis for claims that may be asserted against them by the Trustee. The Hunt Parties also believe that their claims, if allowed, may not be paid in full.

¹ Strong Declaration ¶ 4.

² *Id.* ¶ 5.

15. Without admitting or denying any liability, and taking due consideration of the costs of litigation and the financial standing of both Parties, the Parties have agreed to enter into the Settlement Agreement.

REQUESTED RELIEF

16. The Parties have entered into arms'-length and good-faith negotiations to avoid the costs, expense and uncertainty of litigation and collection relating to the disputes existing amongst them.³ Therefore, the Trustee requests that the Court grant this Motion and approve the Settlement Agreement.

TERMS OF SETTLEMENT AGREEMENT

17. The material terms of the Settlement Agreement are as follows:

(a) Upon the Court's entry of an Order granting this Motion and approving the Settlement Agreement (the "Entry Date"), the POC will be disallowed in its entirety, and the Hunt Parties will not receive any distribution in this bankruptcy case or from any liquidating trust pursuant to the Trustee's Plan of Liquidation or otherwise, including on any Alleged Administrative Claim.

(b) Within five (5) business days of the Entry Date, the applicable Hunt Parties will file a Notice of Dismissal in the Utah State Court Proceeding, requesting dismissal of such action with prejudice.

(c) Within five (5) business days of the Entry Date, the applicable Hunt Parties will file a Notice of Dismissal in the Arizona State Court Proceeding, requesting dismissal of such action with prejudice.

³ *Id.* ¶ 6.

(d) Within five (5) business days of the Entry Date, the applicable Hunt Parties will file a release of lien, releasing the Judgment Lien. The Hunt Parties will send the Trustee's counsel a copy of the filed release of lien within five (5) business days of receiving it.

(e) The Hunt Parties will continue to cooperate with the Trustee in his administration of the Debtors' estates, including but not limited to (i) providing reasonably requested information to the Trustee concerning the Debtors and their business affairs; and (ii) reasonably cooperating with the Trustee in discovery or trial related to any litigation that the Trustee or any post-confirmation entity has or may commence on behalf of the Debtors' estates.

(f) The Parties will provide a mutual release of claims against each other as set forth in the Settlement Agreement.⁴

APPLICABLE LAW AND ANALYSIS

Federal Rule of Bankruptcy Procedure 9019 provides: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."⁵ The Trustee respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

Settlements and compromises "are favored in bankruptcy."⁶ "The purpose behind compromises is to allow the trustee and creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims."⁷ In determining whether to approve a proposed settlement, the Court is not required to conduct a "mini-trial" to decide the questions of

⁴ See generally Settlement Agreement.

⁵ Fed. R. Bankr. P. 9019(a).

⁶ *Korngold v. Loyd (In re Southern Med. Arts Cos.)*, 343 B.R. 250, 255 (B.A.P. 10th Cir. 2006) (quoting 10 COLLIER ON BANKRUPTCY ¶ 9019.01, at 9019-2 (Alan N. Resnick & Henry J. Sommer eds., 15th rev. ed. 2006)).

⁷ *Southern Med. Arts*, 343 B.R. at 255 (quoting *Martin v. Kane (In re A&C Props.)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986)).

law or fact raised by the settlement.⁸ Rather, the Court must determine whether the settlement is fair, equitable, and in the best interests of the Debtor's estate.⁹ The Court should approve the Settlement Agreement unless it falls "below the lowest point in the range of reasonableness."¹⁰

The Bankruptcy Appellate Panel for the Tenth Circuit established the following four factors (referred to as the "Kopexa Factors") that bankruptcy courts should consider in determining the propriety of a settlement for purposes of approval under Bankruptcy Rule 9019:

- (1) the probable success of the underlying litigation on the merits;
- (2) the possible difficulty in collection of a judgment;
- (3) the complexity and expense of the litigation; and
- (4) the interest of creditors in deference to their reasonable views.¹¹

As discussed below, an evaluation of the *Kopexa* Factors shows that the Settlement Agreement is fair, equitable, and in the best interests of the Legacy Debtors' estate and creditors.

A. Probability of Success of Litigation on the Merits

The first *Kopexa* Factor requires the Court to consider the probable success of the underlying litigation on the merits. To avoid the costs, expense and uncertainty of litigation, the Trustee has engaged in arms'-length and good-faith settlement negotiations with the Hunt

⁸ *Comm. of Unsecured Creditors v. Interstate Cigar Dist., Inc. (In re Interstate Cigar Co.)*, 240 B.R. 816, 822 (Bankr. E.D.N.Y. 1999) (quoted with approval in *Armstrong v. Rushton (In re Armstrong)*, 2002 WL 471332 at *3, Case No. UT-10-039 (B.A.P. 10th Cir., Mar. 28, 2002)).

⁹ See *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1967); *Southern Med. Arts*, 343 B.R. at 255-56 (discussing adopting *Trailer* standard under Bankruptcy Code).

¹⁰ *In re Carson*, 82 B.R. 847, 853 (Bankr. S.D. Ohio 1987) (quoting *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 822 (1983)).

¹¹ *C.K. Williams, Inc. v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); see *Am. Employers' Ins. Co. v. King Resources Co.*, 556 F.2d 471, 478-79 (10th Cir. 1977) (applying 10-factor test for approval of settlement); see also *Southern Med. Arts*, 343 B.R. at 257 n.5 (recognizing that the *Kopexa* Factors collapse and take into consideration the 10-point test established in *King Resources*).

Parties.¹² Although the Trustee believes he may be successful in obtaining an Order disallowing the claims asserted by the Hunt Parties and in obtaining judgment against the Hunt Parties, the Trustee has determined, in the exercise of his business judgment, that resolution of all disputes amongst the Parties through settlement is appropriate and in the best interests of creditors and the Debtors' respective estates given (1) the inherent risk that the Trustee may not be successful in disallowing claims, obtaining judgment and/or collecting a judgment against the Hunt Parties; (2) the time and costs associated with litigating the disputes, especially given the complexity and factual nature of the disputes; (3) the entire disallowance of the POC asserted against the Legacy Debtors and the release afforded preventing any claim based on the Alleged Administrative Claim or otherwise; and (4) the relatively quick resolution of the disputes through settlement, which allows the Trustee to focus the estates' resources on confirming and implementing the Trustee's proposed Plan of Liquidation.¹³ As such, this factor weighs in favor of settlement.

B. Possible Difficulty in Collection of Judgment

The second *Kopexa* Factor requires the Court to consider the possible difficulty in collecting any judgment against the Hunt Parties. Based on his investigation, the Trustee believes that even if he were successful in obtaining a judgment against the Hunt Parties, collection of that judgment may be difficult. This factor has had significant weight in the Trustee's decision to enter into the Settlement Agreement.¹⁴ Therefore, this factor also supports approval of the Settlement Agreement.

¹² Strong Declaration ¶ 6.

¹³ *Id.* ¶ 7.

¹⁴ *Id.* ¶ 8.

C. Complexity and Expense of Litigation

The third *Kopexa* Factor requires the Court to consider the complexity and expense of any litigation. As stated above, given the complex and factual nature of the various disputes amongst the Parties, litigation of all disputes likely would be lengthy and expensive.¹⁵ By entering into the Settlement Agreement, the Trustee believes he has obtained a favorable and fair result for the Debtors' estates relating to the Hunt Parties without incurring expensive and unnecessary litigation costs.¹⁶ Thus, settlement should be favored over litigation.

D. Interest of Creditors

The final *Kopexa* Factor looks at the interests of creditors in deference to their reasonable views. In the Trustee's business judgment, settlement of all the disputes amongst the Parties pursuant to the above terms is in the best interests of creditors and the Debtors' respective estates.¹⁷ By engaging in good-faith and arms'-length negotiations with the Hunt Parties, the Trustee has avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Debtors for distribution to creditors and, possibly, investors under the Trustee's proposed Plan of Liquidation.¹⁸ Therefore, the last factor also weighs in favor of settlement.

CONCLUSION

For the reasons set forth above, the Trustee respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

¹⁵ *Id.* ¶ 9.

¹⁶ *Id.*

¹⁷ *Id.* ¶ 10.

¹⁸ *Id.*

DATED this 23rd day of May, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
Peggy Hunt
Nathan S. Seim
*Attorneys for D. Ray Strong,
Chapter 11 Trustee*

EXHIBIT A

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this 14th day of May, 2013, by and between David S. Hunt ("Hunt"), David S. Hunt, P.C., a Utah professional corporation ("Hunt P.C."), doing business as The Hunt Law Corporation, P.C. (the "Hunt Firm" and, collectively with Hunt and Hunt P.C., the "Hunt Parties"), on the one hand, and D. Ray Strong, as the Chapter 11 Trustee (the "Trustee") for the consolidated bankruptcy estates of 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, the "Legacy Debtors"), and in that capacity, as manager of Castle Arch Opportunity Partners I, LLC and Castle Arch Opportunity Partners II, LLC (collectively with the Legacy Debtors, the "Debtors"), 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"), on the other hand. The Trustee, the Debtors and the Hunt Parties will be referred collectively as the "Parties."

RECITALS

General

- A. On October 17, 2011, CAREIC filed a petition seeking relief under Chapter 11 of the Bankruptcy Code.
- B. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC.
- C. On February 8, 2013, the Court entered an Order substantively consolidating the Legacy Debtors [Docket No. 590].

The Claims and Disputes of the Parties and Settlement Negotiations

- D. On or about June 18, 2010, the Hunt Firm filed a lawsuit against CAREIC in the Second Judicial District Court for Davis County, State of Utah, styled as *The Hunt Law Corporation, P.C. v. Castle Arch Real Estate Investment Company, LLC*, Case No. 100700353 (the "Utah State Court Proceeding").
- E. On April 12, 2011, a judgment was entered in the Utah State Court Proceeding in favor of the Hunt Firm and against CAREIC for unpaid legal fees in the amount of \$285,112.00 (the "Utah State Court Judgment").
- F. On or about May 10, 2011, the Hunt Firm domesticated the Utah State Court Judgment in the Superior Court of the State of Arizona for Mohave County, which filing commenced Case No. 2011-00768 (the "Arizona State Court Proceeding").

G. On or about May 19, 2011, the Hunt Firm recorded the Utah State Court Judgment with the Mohave County Arizona Recorder's Office, Entry No. 2011026987 (the "Judgment Lien").

H. On or about February 21, 2012, the Hunt Firm filed a proof of claim in the Bankruptcy Case, designated as Claim No. 35-1 on CAREIC's claims docket, asserting a secured claim against CAREIC in the amount of \$293,876.69 (the "Original POC").

I. On November 20, 2012, the Hunt Firm filed an amended proof of claim in the Bankruptcy Case, designated as Claim No. 35-2 on CAREIC's claims docket, asserting a secured claim in the amount of \$307,449.99 and a general unsecured claim in the amount of \$28,903.00 (together with the Original POC, the "POC"). Neither the Hunt Parties nor any person or entity affiliated with the Hunt Parties has filed a proof of claim against any of the Debtors, except the POC specifically identified herein.

J. The Trustee has investigated potential claims that the Debtors may have against the Hunt Parties and his potential ability to collect any judgment that he might obtain for the benefit of the Debtors' estates.

K. To determine the cost/benefit of litigating the validity and priority of the Hunt Parties' judgment and POC, the Hunt Parties have analyzed *inter alia* the estate of the Legacy Debtors, considering accruing administrative claims, claims that Hunt believes are or should be secured claims with priority over his secured claim, and claims that the Hunt Parties believe exist between the estate of the Legacy Debtors and other entities comprising the Debtors.

L. The Parties have entered into arms' length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigation and collection, and without admitting liability or any wrong doing by any Party, the Parties have agreed to resolve and compromise the claims and disputes which may exist between them, 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.” In the event that the Court does not issue an Order approving this Agreement and/or if such an Order is appealed and reversed, then: (a) this Agreement shall be null and void and shall be of no force or effect; (b) nothing contained in this Agreement or in any motion or proceeding (including any hearing before the Court) by the Trustee seeking approval of this Agreement can be used in any manner or in any proceeding (including courts or claims in arbitration) by any of the Parties; and (c) to the degree possible, while acknowledging that time may render appeals moot, the Parties shall be in the same position they were in as though this Agreement had never been executed.

2. **Disallowance of POC.** Effective on the Entry Date, the Hunt Parties agree that the POC will be disallowed in its entirety. The Court’s Order approving this Agreement shall provide that the POC is disallowed in its entirety without further notice or hearing. For the sake of clarity, the Parties agree that the POC will be disallowed in its entirety for all purposes related to the Bankruptcy Case, including but not limited to voting on the Trustee’s Plan of Liquidation and receiving distributions in the Bankruptcy Case or from any Liquidating Trust pursuant to the Trustee’s Plan of Liquidation or otherwise. The Hunt Parties agree that they will not file or cause any affiliated party to file any other proofs of claim against any of the Debtors.

3. **Dismissal of Utah State Court Proceeding With Prejudice.** No later than five (5) business days of the Entry Date, the applicable Hunt Parties will file a Motion for Dismissal pursuant to Utah Rule of Civil Procedure 41(a)(2) in the Utah State Court Proceeding, requesting dismissal of such action with prejudice. The Trustee will stipulate to such dismissal as may be required by applicable law. The applicable Hunt Parties agree to co-operate in the filing of the request for dismissal and to take all reasonable additional steps necessary to effectuate the dismissal.

4. **Dismissal of Arizona State Court Proceeding With Prejudice.** Within five (5) business days of the Entry Date, the applicable Hunt Parties will file a Notice of Dismissal in the Arizona State Court Proceeding, requesting dismissal of such action with prejudice. The Trustee will stipulate to such dismissal as may be required by applicable law. The applicable Hunt Parties agree to take all reasonable additional steps necessary to effectuate the dismissal.

5. **Release of Judgment Lien.** No later than five (5) business days of the Entry Date, the applicable Hunt Parties will file a release of lien, in the form attached hereto as Exhibit A, in an effort to release the Judgment Lien. The Hunt Parties will send the Trustee’s counsel a copy of the filed release of lien within five (5) business days of receiving it. The applicable Hunt Parties agree to take all reasonable additional steps necessary to effectuate release of the Judgment Lien.

6. **Cooperation by the Hunt Parties.** The Hunt Parties agree to continue to cooperate with the Trustee in his administration of the Bankruptcy Case and the Debtors’ estates, including but not limited to (a) providing reasonably requested information to the Trustee concerning the Debtors and their business affairs; and (b) reasonably cooperating with the

Trustee in discovery or trial related to any litigation that the Trustee or any post-confirmation entity has or may commence on behalf of the Debtors' estates.

7. **Release of Claims Against the Hunt Parties.** Effective on the Entry Date, the Debtors, their bankruptcy estates and the Trustee release and forever discharge the Hunt Parties, and any one or all of the Hunt Parties' 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 "**Hunt 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, or expenses, set off, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that the Trustee may have, or may acquire from any other party against the Hunt Release Parties from the beginning of time to the date hereof, or which may hereafter accrue against the Hunt Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement, or which may hereafter accrue against the Hunt Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement; *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. **Release of Claims Against Trustee and Debtors.** Effective on the Entry Date, the Hunt Parties release and forever discharge the Debtors, the Debtors' bankruptcy estates, 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 Hunt 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 and all claims asserted in the POC; *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.

9. **Representations and Warranties.** The Hunt Parties represent and warrant that (a) they have full power and authority to enter into this Agreement, (b) 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, (c) the declaration provided to the Trustee regarding the financial status of the Hunt Parties and all other financial information that has been provided by the Hunt Parties to the Trustee as part of the Parties' settlement negotiations (the "**Hunt Financials**") are complete, true and correct, and (d) they have not filed any proofs of claim or asserted any claims against any of the Debtors, other than the POC disclosed in this Agreement. Notwithstanding and in addition to the remedies for default as set forth in ¶ 12

below, the Parties expressly agree that if the Hunt Financials are determined to be materially incomplete or incorrect, than this Agreement shall be void and of no force and effect.

10. **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.

11. **Denial of Liability.** The Parties hereto deny any liability to one another and state that they are entering into this Agreement in order to resolve issues between them without litigation and the expenses related thereto.

12. **Default.** The Hunt Parties agree that they are in material default of this Agreement if (a) they fail to take all reasonable steps necessary to effectuate the dismissal of the Utah State Court Proceeding and the Arizona State Court Proceeding as set forth in ¶¶ 3 and 4 above or fail to take all reasonable steps necessary to effectuate the release of the Judgment Lien as set forth in ¶ 5 above; (b) they fail to cooperate with the Trustee as set forth in ¶ 6 above; (c) they file or cause any affiliated party to file a claim against any of the Debtors or otherwise take any action to assert an interest in assets of any of the Debtors; or (d) the representations and warranties set forth above are intentionally and materially false or incomplete. Without limiting any of the Trustee's rights and remedies, including those set forth in ¶ 9 above, in the event of any such material default, the Trustee shall be entitled to damages against the Hunt Parties, and such damages shall include any and all costs of collection, interest, and reasonable fees and costs incurred by the Debtors' estates.

13. **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.

14. **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.

15. **Binding Effect.** This Agreement shall be binding upon each of the Parties and their respective successors-in-interest, heirs and/or assigns, executors, affiliates, administrators, personal representatives, estates and to all persons or entities claiming by, through or under them, including but not limited to any successor to the Trustee, the Debtors or their bankruptcy estates and including any representative or other liquidating agent that may be appointed for the Debtors by Order of the Court or pursuant to any plan of reorganization confirmed by the Court. 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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.


DAVID S. HUNT


David S. Hunt


DAVID S. HUNT, P.C.
doing business as
THE HUNT LAW CORPORATION, P.C.


David S. Hunt, President

LEGACY DEBTORS


D. Ray Strong, Chapter 11 Trustee for
Castle Arch Real Estate Investment
Company, LLC and the Legacy Debtors

CASTLE ARCH OPPORTUNITY
PARTNERS I, LLC


D. Ray Strong, Chapter 11 Trustee for
Castle Arch Real Estate Investment
Company, LLC and, in that capacity, Manager

CASTLE ARCH OPPORTUNITY
PARTNERS II, LLC



D. Ray Strong, Chapter 11 Trustee for
Castle Arch Real Estate Investment
Company, LLC and, in that capacity, Manager

EXHIBIT A

When Recorded Return to:

Peggy Hunt
Natham Seim
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, Utah 84101

RELEASE OF JUDGMENT LIEN

The Hunt Law Corporation, P.C., whose address is 66 Exchange Place, Salt Lake City, Utah 84111, hereby releases the judgment lien or any other lien, right or interest created by the filing of that certain *Notice of Filing Foreign Judgment*, which document was filed with the Mohave County Recorder's Office on or about May 19, 2011 as Entry No. 2011026987.

DATED this ___ day of May, 2013.

THE HUNT LAW CORPORATION, P.C.

By: David S. Hunt
Its: President

STATE OF UTAH

ss:

COUNTY OF _____

On the ___ day of May, 2013, _____ personally appeared before me and executed the foregoing Release of Lien, who duly acknowledged to me that he/she executed the same as the authorized representative for and on behalf of _____.

Notary Public for Utah
My commission expires: _____

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on May 23, 2013, I electronically filed the foregoing **CHAPTER 11 TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH DAVID S. HUNT, P.C., THE HUNT LAW CORPORATION, P.C. AND DAVID HUNT UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** 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,
madisyn@pearsonbutler.com;kylie@pearsonbutler.com;maryann@pearsonbutler.com;geoff@pearsonbutler.com
- Andrew B. Clawson andrew@abclawutah.com,
len@pearsonbutler.com;maryann@pearsonbutler.com;kylie@pearsonbutler.com;madisyn@pearsonbutler.com
- Victor P Copeland vpc@pkhlawyers.com, dh@pkhlawyers.com
- T. Edward Cundick tec@princeyeates.com,
nancyw@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
- Mary Margaret Hunt hunt.peggy@dorsey.com,
long.candy@dorsey.com;smith.ron@dorsey.com;slc.lit@dorsey.com
- Lon A. Jenkins lajenkins@joneswaldo.com,
ecf@joneswaldo.com;hdoherty@joneswaldo.com;rpavlisin@joneswaldo.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 tr 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
- Jeremy C. Sink jeremy@mbt-law.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com;docket@rqn.com
- D. Ray Strong trstrong@brg-expert.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

/s/ Nathan S. Seim