

The below described is SIGNED.

Dated: June 20, 2013

JOEL T. MARKER
U.S. Bankruptcy Judge



Prepared and Submitted By:

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

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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

ORDER GRANTING 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

The matter before the Court is the *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* [Docket No. 691] (the "Motion"), which seeks approval of the Settlement Agreement, attached hereto as Exhibit A (the "Settlement Agreement"), entered into by and among the Trustee, David S. Hunt, P.C., The Hunt Law Corporation, P.C. and David Hunt. The Motion was served through the Court's CM/ECF system upon all parties that receive electronic notice in this case. In addition, a *Notice of Motion and Notice of Opportunity for Hearing* [Docket No. 694] (the "Notice") that provided for, among other things, notice of the scheduled hearing on the Motion and notice of the deadline of June 12, 2013, for filing responses to the Motion, was properly served on all parties in interest in this case, and no further notice is required. No responses to the Motion have been filed or received by the Trustee or his counsel.

The Court has considered the Motion, the *Declaration of D. Ray Strong in Support of the Motion* [Docket No. 692], the Notice, the *Certificate of Service* attached to the Notice, and applicable law. Based thereon, and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**; and
2. The Settlement Agreement, attached hereto as Exhibit A, is **APPROVED**.

End of Order

EXHIBIT A

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this ^{19th} 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

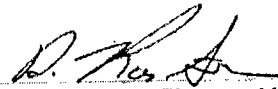
DAVID S. HUNT, P.C.
doing business as
THE HUNT LAW CORPORATION, P.C.


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 Selm
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: _____

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing **ORDER GRANTING 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** (the "Order") shall be served to the parties in the manner designated below:

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

- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com,
debbie@princeyeates.com;docket@princeyeates.com
- Troy J. Aramburu taramburu@swlaw.com,
jpollard@swlaw.com;docket_slc@swlaw.com
- Jeffrey M Armington armington.jeff@dorsey.com
- Julie A. Bryan julie@crslaw.com, diana@crslaw.com;josh@crslaw.com
- Mona Lyman Burton mburton@hollandhart.com,
ckelly@hollandhart.com;intaketeam@hollandhart.com;slclitdocket@hollandhart.com
- Leonard J. Carson len@pearsonbutler.com,
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
- Scott A. Cummings cummings.scott@dorsey.com,
bingham.karen@dorsey.com;smith.ron@dorsey.com
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- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Michael L. Labertew michael@labertewlaw.com
- Christopher J Martinez martinez.chris@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
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- Jeremy C. Sink jeremy@mbt-law.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com; docket@rqn.com
- D. Ray Strong tr rstrong@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@joneswaldo.com

By U.S. Mail – In addition to the parties receiving notice of the Order through the CM/ECF system, the following parties should be served notice pursuant to Fed R. Civ. P. 5(b): None.