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Proposed Attorneys for D. Ray Strong, Chapter 11 Trustee

**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]

**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**

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, hereby requests this Court’s approval on an emergency basis of the Trustee’s interim use of cash pursuant to the proposed estimated budget attached hereto as Exhibit 1 (“Interim Budget”). This Motion is made pursuant to 11 U.S.C. § 105(a) and, to the extent that use of cash is outside of the ordinary course of the business, 11 U.S.C § 363(b)(1) and Federal Rule of Bankruptcy Procedure 6004. 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

General

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.

Trustee’s Early Investigation

6. Since his appointment, the Trustee has engaged in an investigation of the Debtors, including but not limited to, meeting with counsel for the Official Unsecured Creditors’ Committee (the “Committee”), meeting with counsel for some of the CAREIC Affiliates, and meeting with CAREIC employees and/or consultants David Hunt (“Hunt”), Glen Martinsen (“Martinsen”), and Jeff Austin (“Austin”).

7. From this early investigation, the Trustee has discovered the following relevant to this Motion:

a. 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 Mangers, are Nevada limited liability companies. CAOP Mangers 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.

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

c. CAREIC wholly owns all membership interests in CASDF, CAOP Mangers, and CAOP II.

d. CAREIC holds membership interests in the other CAREIC Affiliates as follows: 87% of CAS; 72% of CAK; and 35% of CAOP I.

e. 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.

f. Historically, CAREIC, either directly or through CAOP Managers, has been paid management fees by some or all of the CAREIC Affiliates for its management of the Debtors. Upon information and belief, the payment of management fees to CAREIC and/or CAREIC Managers by the CAREIC Affiliates was disclosed to persons who made investments in the Affiliates.

g. At the time of the Trustee's appointment, Martinsen was employed by CAREIC in the ordinary course. As part of his employment, Martinsen was paid a salary, was reimbursed for certain expenses, and CAREIC provided health insurance for Martinsen. Hunt's law firm was also retained pursuant to an annual retainer, and Austin, an officer of CAREIC, was paid an annual consulting fee.

h. 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.

Actions Taken by Trustee In Addition To Investigation and Proposed Interim Budget

8. The Trustee has secured the DIP Accounts, and has transferred the funds in the DIP Accounts to accounts controlled by him at Preferred Bank. The Trustee will maintain separate "Trustee Accounts" for each of the relevant Debtors at Preferred Bank.

9. The Trustee has assessed the Debtors' operations and has created the Interim Budget, a copy of which is attached hereto as Exhibit 1 and incorporated herein, of actual and minimum necessary costs associated with the Debtors' operation for a limited sixty (60) day period. The Interim Budget has been presented to and approved by counsel for CAOP I and CAOP II. Furthermore, the Trustee has discussed proposed expenses and cash management issues with counsel for the Committee, and it has indicated that it will not oppose the Trustee's proposed use of cash.

10. The Trustee has secured the Debtors' corporate office, and has informed all professionals and employees of his appointment and the need to preserve and turn over property of the estate. At this time, the Trustee has determined that the Debtors' operations should continue from their corporate offices located in Salt Lake City, Utah, and he will need to pay expenses related thereto. *See* Exhibit 1 (Interim Budget, items for Rent, Telephone & Internet, and General Office Expenses and Supplies).

11. The Trustee has terminated the employment of Hunt and Austin as of May 3, 2012, with the understanding that compensation will be paid and expenses will be reimbursed through April 30, 2012. *See* Exhibit 1 (Interim Budget, items for Payroll & Benefits and nn. 2-3). Hunt and Austin have been informed that in the event that their services are needed in the

future, they may be employed by the Trustee on a short-term and part time basis. But, the Trustee does not anticipate employing them during the interim 60-day period.

12. At all times relevant hereto, including prior to and after the Petition Date, CARIEC has employed Martinsen either as Controller, Principal Accounting Officer, or Chief Financial Officer. The Trustee has determined that Martinsen's services are essential to assist the Trustee with day-to-day operations, bookkeeping, certain operating accounting tasks, and other assignments as needed and requested by the Trustee, and that employment of Martinsen will be more cost effective than utilizing Berkley Research Group, LLC, his proposed accountants, to assist with these tasks. Martinsen's annual salary had been \$120,000.00, but was reduced to \$72,000.00 in November 2011. Given the Trustee's termination of Hunt's and Austin's employment and to encourage Martinsen to continue his employment, the Trustee has informed Martinsen that his annual salary going forward will be increased to \$90,000.00, his health insurance will continue to be covered, and certain miscellaneous expenses, such as his cell phone, will continue to be reimbursed. *See Exhibit 1* (Interim Budget, items for Payroll & Benefits and nn. 2-5).

13. The Trustee has determined that it will be most cost-efficient for him to have a website for purposes of posting information related to his administration of the estate for the benefit of the Debtors' creditors and investors. The cost for design and the initial management of this website, which is estimated to total \$2,100.00, is included in the Interim Budget. *See Exhibit 1*. These services will be performed by Strong Connexions, LLC, a company with experience in designing and maintaining websites for fiduciaries of corporate entities who is

used by the Trustee and/or his firm on a regular basis for engagements such as the present. Jason Strong, who is the Trustee's brother, is a principal of this company.

14. Quarterly fees payable to the Office of the United States Trustee will be paid from funds on hand in the CAS, CAOP I and CAOP II Trustee Accounts. The Interim Budget anticipates the Trustee's use of cash to include payment of the other Debtors' fees out of the CAREIC Trustee Account. *See Exhibit 1* (Interim Budget, items for US Trustee Fee & n. 8).

15. The Trustee has included a monthly "Miscellaneous Expense" of \$300.00 for payment of unanticipated expenses that may arise, if any. *See Exhibit 1.*

Terms of Use of Cash

16. It is anticipated that the Trustee will operate pursuant to the Interim Budget during the 60-day period noted therein while the Trustee negotiates a final cash management agreement..

17. CAOP I and CAOP II will share the monthly expenses set forth in the Interim Budget equally, and their respective share of the monthly expenses shall be paid from the CAOP I and CAOP II Trustee Accounts to the CAREIC Trustee Account. The first payments will take place immediately upon entry of an Order granting this Motion, and the second payments will take place on June 1, 2012. To the extent that relief from the stay of any Order entered by this Court provided for in Federal Rule of Bankruptcy Procedure 6004(h) is applicable, the Trustee respectfully requests that such stay be waived by the Court.

18. While the Trustee does not anticipate exceeding amounts set forth in the Interim Budget, for the purposes of preserving the value of the estates, the Trustee requests that expenses up to \$2,000.00 over those set forth in the Interim Budget be payable upon prior written approval

of CAOP I, CAOP II and the Committee without further notice and hearing. Such expenses, to the extent that they arise and exist, will be disclosed in monthly operating reports.

19. The Trustee's proposed use of cash and Interim Budget is beneficial to the Debtors, their estates and creditors because (i) it is limited to only those amounts actually required for the administration and continued operation of the Debtors during the initial 60-days of the Trustee's appointment; (ii) such actual expenses must be paid as part of the Debtors' ongoing business and estate administration and, thus, are necessary to preserve property of the estate and the value of the Debtors; (iii) the proposed use of cash allows for consistent management of the Debtors through CAREIC, except that the CAREIC Trustee's use of cash will be more transparent in that expenses are itemized, rather than paid through flat management fees up-streamed by certain Debtors to CAREIC and/or CAREIC Managers; and (iv) the Interim Budget provides for a reduction of salaries going forward, while continuing to pay actual and necessary expenses that arise in the ordinary course of the Debtors' business.¹

CONCLUSION

For all of the reasons set forth above, the Trustee respectfully requests that the Court

¹ See *In re Amdura Corp.*, 75 F.3d 1477, 1453 (10th Cir 1996) (continuation of routine transactions necessitated by pre-petition cash management system which did not prejudice the rights of creditors was authorized).

grant this Motion and authorize the Trustee's use of cash as set forth herein on an interim, emergency basis.

Dated this 14th day of May, 2012.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Scott A. Cummings

Nathan Seim

Proposed Attorneys for Trustee

EXHIBIT 1

CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC
 Estimated Budget for Emergency Cash Management Agreement

	Notes	May 3, 2012 to May 31, 2012	Jun 1, 2012 to Jun 30, 2012	TOTAL
Chapter 11 Trustee Bond	1	\$ 12,550.00	\$ -	\$ 12,550.00
Payroll & Benefits				
Outstanding Payroll (Apr 16 - May 3)	2	12,700.00	-	12,700.00
Outstanding Expenses (Apr 16 - May 3)	3	650.00	-	650.00
Glen Martinsen Payroll	4	8,200.00	8,200.00	16,400.00
Glen Martinsen Expenses	5	250.00	250.00	500.00
Glen Martinsen Health Insurance		2,300.00	2,300.00	4,600.00
Rent				
Judge Building Rent & Parking	6	750.00	700.00	1,450.00
Telephone & Internet	7	600.00	250.00	850.00
US Trustee Fee				
Castle Arch Real Estate Investment Company, LLC		650.00	-	650.00
Castle Arch Kingman, LLC	8	325.00	-	325.00
Castle Arch Secured Development Fund, LLC	8	325.00	-	325.00
Castle Arch CAOP Managers, LLC	8	325.00	-	325.00
General Office Expenses and Supplies		300.00	300.00	600.00
Trustee Website Design and Maintenance		1,600.00	500.00	2,100.00
Miscellaneous Expenses		300.00	300.00	600.00
TOTAL		\$ 41,825.00	\$ 12,800.00	\$ 54,625.00

Notes

- 1 Represents required Chapter 11 Trustee bond in the amount of \$1.4 million. Bond may need to be increased based on future cash collections.
- 2 Represents outstanding payroll and payroll taxes from April 16, 2012 to May 3, 2012 for Glen Martinsen (\$3,900) Jeff Austin (\$4,900), and David Hunt (\$3,900).
- 3 Represents outstanding expenses from April 16, 2012 to May 3, 2012 for Glen Martinsen (\$125) Jeff Austin (\$400), and David Hunt (\$125).
- 4 The Trustee has determined to terminated the employment of Jeff Austin and David Hunt as full time employees as of May 3, 2012. The Trustee will later determine if future services will be required. Should future services be required, the Trustee will seek court approval of a consulting arrangement. The Trustee has determined to retain Glen Martinsen to assist with day-to-day operations, accounting, and other assignments as required. His annual salary was reduced from \$120,000 to \$72,000 in November 2011. The Trustee has determined his services are essential and would be more cost effective than utilizing his own accountants. In an effort to provide some incentive to continue employment and due to the termination of Jeff Austin and David Hunt as full time employees, the Trustee has determined to raise Mr. Martinsen's annual salary to \$90,000.
- 5 Represents monthly expenses including cell phone and miscellaneous expenses.
- 6 Office space includes two offices and storage unit approximately 300 square feet.
- 7 Represents monthly telephone and internet and a one time charge for moving phones to office space.
- 8 These entities do not have cash on hand to pay the 1st quarter 2012 US Trustee fees due.