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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

CHAPTER 11 TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH NOLAN AND KIMBERLEE HIGA 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”) 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 between Nolan and Kimberlee Higa (together, the “Higas”) and the Trustee (collectively with the Higas, 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 May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC.

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

The Property Transaction

5. On May 5, 2008, the Higas and CAREIC entered into a purchase agreement, pursuant to which the Higas agreed to purchase from CAREIC, for the sum of \$300,000, certain

real property located in Mohave County, Arizona, the legal description of which is set forth in the Settlement Agreement (the “Property”).

6. On June 4, 2008, the Higas and CAREIC entered into a second purchase agreement, pursuant to which CAREIC agreed to purchase the Property back from the Higas for \$390,000 (the “June 4th Agreement”).

7. CAREIC made payments to the Higas in the amount of \$52,500 pursuant to the June 4th Agreement, but CAREIC’s repurchase of the Property never closed, and the Higas have retained title to the Property.

8. At present, the Higas have informed the Trustee that taxes in the approximate amount of \$20,841.34 are owed on the Property (the “Property Taxes”).

The Promissory Notes and Investments

9. On or about November 18, 2008, CAREIC executed two promissory notes, one in favor of Nolan Higa in the principal amount of \$100,000, and one in favor of Kimberlee Higa in the principal amount of \$100,000 (the two promissory notes will be referred together as the “Promissory Notes”).

10. On March 1, 2010, the Higas were each paid \$134,369.86 pursuant to their respective Promissory Notes.

11. At various times, the Higas also invested money in CAREIC for which they received equity in CAREIC (the “Equity Interests”).

The State Court Proceeding, Proof of Claim, and Settlement Negotiations

12. The Higas declared CAREIC to be in default under the June 4th Agreement, and on or about February 17, 2011, the Higas filed a lawsuit against CAREIC in the Superior Court of the State of California for the County of Los Angeles–Central District, styled as *Dr. Nolan*

and Kimberly Higa v. Castle Arch Real Estate Investment Company, LLC, Case No. BC455351 (the “State Court Proceeding”).

13. On February 21, 2012, the Higas filed a proof of claim in CAREIC’s Bankruptcy Case, designated as Claim No. 41 on CAREIC’s claims docket, asserting a general unsecured claim in the amount of \$417,500.00 relating to the June 4th Agreement (the “POC”).

14. Prior to the Trustee’s appointment, CAREIC, as debtor in possession, filed an adversary proceeding against the Higas in this Court, designated as Adversary Proceeding No. 12-02115 (the “Adversary Proceeding”).

REQUESTED RELIEF

15. The Parties have entered into arms’-length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigation relating to the disputes existing between them. Therefore, the Trustee requests that the Court grant this Motion and approve the Settlement Agreement.¹

TERMS OF SETTLEMENT AGREEMENT

16. 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 Higas shall hold an “Allowed General Unsecured Claim” against the Legacy Debtors in the amount of \$260,000.00 (the “New POC Amount”). The New POC Amount will apply for all purposes in this Bankruptcy Case, including for purposes of voting on and distribution under the Trustee’s proposed Plan of Liquidation as a holder of an Allowed General Unsecured Claim against the Legacy Debtors.

¹ Strong Declaration ¶ 6.

(b) Within five business days of the Entry Date, the Higas will (i) pay all Property Taxes on the Property and provide proof to the Trustee of the payment; and (ii) execute a quit claim deed transferring the Property to the Trustee for the benefit of the Legacy Debtors.

(c) Within five (5) business days of the Entry Date, the Higas will file a Notice of Dismissal in the State Court Proceeding, dismissing such proceeding with prejudice.

(d) Within five (5) business days of the Entry Date, the Trustee will file a Notice of Dismissal in the Adversary Proceeding, dismissing such proceeding with prejudice.

(e) Effective on the Entry Date, the Trustee will release the Higas from any and all claims, including but not limited to claims relating to the June 4th Agreement, claims asserted in the Adversary Proceeding, and any counterclaims that could be or have been asserted in the State Court Proceeding.

(f) With the exception of the Allowed General Unsecured Claim in the New POC Amount and any rights arising in the Bankruptcy Case as a result of the Higas' Equity Interests, effective on the Entry Date, the Higas will release the Debtors and the Debtors' estates, as well as the Trustee and his professionals from any and all claims, including but not limited to claims relating to the June 4th Agreement, any claims in excess of the New POC Amount, any claims that could be or have been asserted in the State Court Proceeding, and any counterclaims that could be or have been asserted in the Adversary Proceeding.²

² See generally Settlement Agreement.

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.”³ The Trustee respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

Settlements and compromises “are favored in bankruptcy.”⁴ “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.”⁵ In determining whether to approve a proposed settlement, the Court is not required to conduct a “mini-trial” to decide the questions of law or fact raised by the settlement.⁶ Rather, the Court must determine whether the settlement is fair, equitable, and in the best interests of the Debtor’s estate.⁷ The Court should approve the Settlement Agreement unless it falls “below the lowest point in the range of reasonableness.”⁸

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 Fed. R. Bankr. P. 9019(a).

⁴ *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)).

⁵ *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)).

⁶ *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)).

⁷ 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).

⁸ *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)).

- (3) the complexity and expense of the litigation; and
- (4) the interest of creditors in deference to their reasonable views.⁹

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, expenses and uncertainty of litigation, the Trustee has engaged in arms'-length and good-faith settlement negotiations with the Higas.¹⁰ Although the Trustee believes he may be successful in defending the Legacy Debtors against the claims asserted by the Higas in the State Court Proceeding, and although the Trustee believes he has valid claims against the Higas relating to, among other things, (1) payments made to the Higas under their respective Promissory Notes; and (2) claims that were or could be asserted against the Higas relating to the June 4th Agreement, including avoidance of the June 4th Agreement and recovery of the deposit payments made to the Higas under such agreement, the Trustee, in the exercise of his business judgment, has determined that resolution of these disputes through settlement is appropriate and in the best interests of the Legacy Debtors' estate and creditors given (1) the inherent litigation risk that the Trustee may not be successful in litigating the disputes; (2) the time and costs associated with litigating the disputes, especially given the complexity and factual nature of the disputes; (3) the payment of the Property Taxes by the

⁹ *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*).

¹⁰ Strong Declaration ¶ 6.

Higas and the transfer of the Property to the Legacy Debtors' estate for the benefit of its creditors; (4) the reduction in the amount of the Higas' Allowed Unsecured Claim against the Legacy Debtors; and (5) the relatively quick resolution of the disputes through settlement, which will allow the Trustee to focus the estate's resources on confirming the Trustee's proposed Plan of Liquidation.¹¹ 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 Higas. This factor is not applicable in the present matter.

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 would be lengthy and expensive.¹² By entering into the Settlement Agreement, the Trustee believes he has obtained a favorable and fair result for the Legacy Debtors' estate relating to the Higas without incurring expensive and unnecessary litigation costs.¹³ 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 between the Parties pursuant to the above terms is in the best interests of the Legacy Debtors' estate and creditors.¹⁴

¹¹ *Id.* ¶ 7.

¹² *Id.* ¶ 8.

¹³ *Id.*

¹⁴ *Id.* ¶ 9.

By engaging in good-faith and arms'-length negotiations with the Higas, the Trustee has avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Legacy Debtors for distribution to creditors and possibly investors under the Trustee's proposed Plan of Liquidation.¹⁵ 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.

DATED this 8th day of April, 2013.

DORSEY & WHITNEY LLP

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

¹⁵ *Id.*

EXHIBIT A

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this ___ day of March, 2013, by and between Nolan and Kimberlee Higa (together, the "Higas"), 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 (together, the "CAOP Debtors" and, 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 and the Higas will be referred together as the "Parties."

RECITALS

The Property Transaction

A. On May 5, 2008, the Higas and CAREIC entered into a purchase agreement, pursuant to which the Higas agreed to purchase from CAREIC, for the sum of \$300,000, certain real property located in Mohave County, Arizona, which property is more particularly described as follows (the "Property"):

An approximate twelve (12) acre parcel located on Grace Neal Parkway, Mohave County, AZ contained in Section 15, Township 22 North, Range 16 West at the Gila and Salt River Base and Meridian.

B. On June 4, 2008, the Higas and CAREIC entered into another purchase agreement, pursuant to which CAREIC agreed to purchase the Property back from the Higas for \$390,000 (the "June 4th Agreement").

C. CAREIC made payments to the Higas in the amount of \$52,500 pursuant to the June 4th Agreement, but CAREIC's repurchase of the Property never closed, and the Higas have retained title to the Property.

D. At present, the Higas have informed the Trustee that taxes in the amount of approximately \$20,841.34 are owed on the Property (the "Property Taxes").

The Promissory Notes and Investments

E. On or about November 18, 2008, CAREIC executed two promissory notes, one in favor of Nolan Higa in the principal amount of \$100,000, and one in favor of Kimberlee Higa in the principal amount of \$100,000 (the two promissory notes will be referred together as the "Promissory Notes").

F. On March 1, 2010, Nolan and Kimberlee Higa were each paid \$134,369.86 pursuant to their respective Promissory Notes.

G. The Higas also invested at various times monies in CAREIC (the “Equity Interests”).

The State Court Proceeding, Proof of Claim, and Settlement Negotiations

H. The Higas declared CAREIC to be in default under the June 4th Agreement, and on or about February 17, 2011, the Higas filed a lawsuit against CAREIC in the Superior Court of the State of California for the County of Los Angeles–Central District, styled as *Dr. Nolan and Kimberly Higa v. Castle Arch Real Estate Investment Company, LLC*, Case No. BC455351 (the “State Court Proceeding”), which case has been stayed as a result of the filing of CAREIC’s bankruptcy case.

I. On February 21, 2012, the Higas filed a proof of claim in CAREIC’s Bankruptcy Case, designated as Claim No. 41 on CAREIC’s claims docket, asserting a general unsecured claim in the amount of \$417,500.00 relating to the June 4th Agreement (the “POC”). Neither the Higas nor any person or entity affiliated with the Higas have filed a proof of claim against any of the Debtors except the POC specifically identified herein.

J. Prior to the Trustee’s appointment, CAREIC, as debtor in possession, filed an adversary proceeding against the Higas in the Court, designated as Adversary Proceeding 12-02115 (the “Adversary Proceeding”). Since the Trustee’s appointment, he has discussed the claims made in the Adversary Proceeding with the Higas, as well as other potential claims related to the June 4th Agreement and the Promissory Notes.

K. The Parties have entered into arms’ length and good faith negotiations to avoid the costs, expenses and uncertainty of litigation, and 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.”

2. **Allowed General Unsecured Claim.** By executing this Agreement, the Parties agree that the Higas shall still hold an “Allowed General Unsecured Claim” against the Legacy Debtors in the amount of \$260,000.00 (the “New POC Amount”) and that the Order approving

this Agreement shall provide that the Higas' Allowed General Unsecured Claim against the Legacy Debtors is allowed in the New POC Amount without further notice or hearing. The New POC Amount will apply for all purposes in the Bankruptcy Case, including for purposes of voting on and distribution under the Trustee's proposed Plan of Liquidation as a holder of an Allowed General Unsecured Claim against the Legacy Debtors. The Higas agree that they will not file additional proofs of claim against any of the Debtors and that any claim asserted against the Legacy Debtors in an amount greater than the New POC Amount, whether in the POC or otherwise, is disallowed in its entirety. For the sake of clarity, this paragraph applies only to the General Unsecured Claim that the Higas have asserted against CAREIC and the estate through the State Court Proceeding and in the POC, and in no way pertains to the allowance of the Higa's Equity Interest. This Agreement in no way makes any admissions with regard to the Equity Interest or in any way affects that Equity Interest.

3. **Transfer of Property to the Trustee.** Within five (5) business days of the Entry Date, the Higas will (a) pay all Property Taxes, and provide proof of such payment to the Trustee; and (b) execute a quit claim deed transferring the Property to the Trustee for the benefit of the Legacy Debtors, in the form attached hereto as Exhibit A.

4. **Dismissal of State Court Proceeding With Prejudice.** Within five (5) business days of the Entry Date, the Higas will file a Notice of Dismissal in the State Court Proceeding, dismissing such proceeding with prejudice. The Trustee will stipulate to such dismissal as may be required by applicable law.

5. **Dismissal of Adversary Proceeding With Prejudice.** Within five (5) business days of the Entry Date, the Trustee will file a Notice of Dismissal in the Adversary Proceeding, dismissing such Proceeding with prejudice. The Higas will stipulate to such dismissal as may be required by applicable law.

6. **Release of Claims Against the Higas.** Effective upon the Entry Date, the Trustee releases and forever discharges the Higas 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 against the Higas from the beginning of time to the date hereof, or which may hereafter accrue against the Higas based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited to claims relating to the June 4th Agreement, any and all claims asserted in the Adversary Proceeding, any and all counterclaims that could be or have been asserted in the State Court Proceeding; *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.

7. **Release of Claims Against Trustee and Debtors.** With the exception of the Allowed General Unsecured Claim in the New POC Amount provided for in paragraph 2 above and any rights arising in the Bankruptcy Case as a result of the Equity Interest, effective on the Entry Date, the Higas release and forever discharge the Debtors, the Debtors' 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 Higas 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 claims relating to the June 4th Agreement, any claim in excess of the New POC Amount, any and all claims that could be or have been asserted in the State Court Proceeding, and any and all counterclaims that could be or have been asserted in the Adversary Proceeding.

8. **Representations and Warranties.** The Higas represent and warrant that they have full power and authority to enter into this Agreement, that 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, and that they have not filed any proofs of claims or asserted any claims against any of the Debtors, other than the POC disclosed in this Agreement.

9. **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.

10. **Default.** The Higas agree that they are in material default of this Agreement if (a) they fail to pay all taxes and other obligations owing on the Property as set forth above; (b) they fail to transfer the Property to the Trustee as set forth above; (c) they fail to dismiss the State Court Proceeding as set forth above; (d) 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 (e) the representations and warranties set forth above are materially false. Without limiting any of the Trustee's rights and remedies, in the event of any such material default, the Trustee shall be entitled to damages against the Higas, and such damages shall include any and all costs of collection, interest, and reasonable fees and costs incurred by the Debtors' estates.

11. **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.

12. **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.

13. **Binding Effect.** This Agreement shall be binding upon each of the Parties and their respective successors-in-interest, heirs and/or assigns. 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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

[Signature Page to Follow]

DR. NOLAN HIGA

Dr. Nolan Higa

KIMBERLEE HIGA

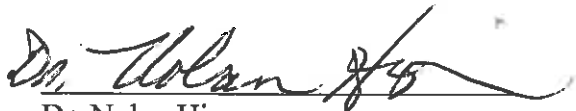
Kimberlee Higa

D. RAY STRONG, TRUSTEE




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

DR. NOLAN HIGA

A handwritten signature in cursive script, appearing to read "Dr. Nolan Higa", written over a horizontal line.

Dr. Nolan Higa

KIMBERLEE HIGA

A handwritten signature in cursive script, appearing to read "Kimberlee Higa", written over a horizontal line.

D. RAY STRONG, TRUSTEE

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

EXHIBIT A

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

QUIT CLAIM DEED

For valuable consideration, the sum of which is hereby acknowledged, Dr. Nolan and Kimberlee Higa (together, "Grantors"), c/o Steven B. Kotulak, Esq., Ives, Kirwan and Dibble, 660 So. Figueroa Street, Suite 1990, Los Angeles, CA 90017, hereby disclaim, relinquish, and quit claim to D. Ray Strong, in his capacity as Chapter 11 Trustee of the consolidated bankruptcy estates of Castle Arch Real Estate Investment Company, LLC, CAOP Managers, LLC, Castle Arch Kingman, LLC, Castle Arch Smyrna, LLC, Castle Arch Secured Development Fund, LLC and Castle Arch Star Valley, LLC, in the bankruptcy case styled *In re Castle Arch Real Estate Investment Company, LLC et al.*, Case No. 11-35082, pending in the United States Bankruptcy Court for the District of Utah, all right, title and interest of Grantors in and to the following real property situated in Mohave County, AZ, including all rights, privileges and appurtenances thereunto belonging:

An approximate twelve (12) acre parcel located on Grace Neal Parkway, Mohave County, AZ, contained in Section 15, Township 22 North, range 16 West at the Gila and Salt River Base and Meridian, legally described as follows:

LAND DESCRIPTION

That portion of Parcel "D" as shown on Record of Survey Plat recorded November 14, 2005 in Book 29, Record of Surveys, Pages 98-98A, records of Mohave County, Arizona and being a division of Section 22, Township 22 North, Range 16 West of the Gila and Salt River Meridien, Mohave County, Arizona and being more particularly described as follows:

Commencing at the Northwest Section Corner of said Section 22 and running thence, South 89°48'58" East, along the North Line of said Section 22, a distance of 1883.92 feet; thence, South 00°08'31" West, 1953.50 feet to the true POINT OF BEGINNING;

Thence, South 89°49'49" East, 759.23 feet to a point on the East boundary of the Northwest quarter of said Section 22;

Thence, South 00°08'51" West, along the East boundary of the Northwest quarter of said Section 22, a distance of 688.52 feet to a point being the Southeast corner of the Northwest quarter of said Section 22;

Thence, North 89°49'49" West, along the South boundary of the Northwest quarter of said Section 22, a distance of 759.16 feet;

Thence, North 00°08'31" East, 688.52 feet to the POINT OF BEGINNING.

The parcel of land herein described containing 12.00 acres, more or less.

05-912E.DOC



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Luis Obispo

On 04/05/2013 before me, Scott William Haigwood, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Nolan Higa and Kimberlee Higa
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature [Signature]
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Quitclaim Deed

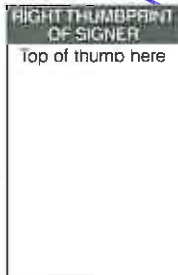
Document Date: 04/05/2013 Number of Pages: Two

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

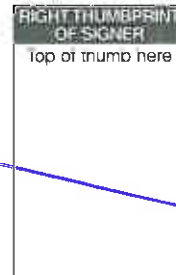
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

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

I hereby certify that on April 8, 2013, I electronically filed the foregoing **CHAPTER 11 TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH NOLAN AND KIMBERLEE HIGA 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.

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/s/ Nathan S. Seim