

Peggy Hunt (Utah State Bar No. 6060)  
Milo Steven Marsden (Utah State Bar No. 4879)  
Sarah Goldberg (Utah State Bar No. 13222)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[marsden.steven@dorsey.com](mailto:marsden.steven@dorsey.com)  
[goldberg.sarah@dorsey.com](mailto:goldberg.sarah@dorsey.com)

*Attorneys for D. Ray Strong, Liquidating Trustee  
of the Consolidated Legacy Debtors Liquidating  
Trust*

---

**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

---

**MOTION OF THE LIQUIDATING TRUSTEE  
FOR ORDER APPROVING BIDDING PROCEDURES  
AND GRANTING BIDDING PROTECTIONS**

**Proposed Bidding Deadline: July 22, 2015 at 2:00 p.m.**  
**Proposed Auction Date: July 28, 2015 at 9:00 a.m.**

---

D. Ray Strong (the “Liquidating Trustee” and “Movant”), as the duly appointed Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust (the “Legacy Trust”) and post-confirmation estate representative 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 (“CASV”) (collectively, the “Legacy Debtors”), respectfully requests entry of an Order approving certain bidding procedures and granting certain bidding protections pursuant to §§ 105 and 363 of the United States Bankruptcy Code, and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure. In support hereof, the Liquidating Trustee states as follows.

### **JURISDICTION**

1. On October 17, 2011, CAREIC filed a petition for relief under Chapter 11 of the Bankruptcy Code, and on October 20, 2011, the other Legacy Debtors, other than CASV, and certain other entities also filed petitions seeking relief under Chapter 11 of the Bankruptcy Code. On February 8, 2013, this Court entered an Order substantively consolidating the Legacy Debtors,<sup>1</sup> which among other things, consolidated CASV as a Chapter 11 debtor as of CAREIC’s petition date.

2. This Court has subject matter jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334.

3. On June 7, 2013, this Court entered an *Order Confirming Chapter 11 Trustee’s First Amended Plan of Liquidation Dated February 25, 2013 as Modified* (the “Confirmation Order”),<sup>2</sup> thus confirming the *Second Amended Chapter 11 Trustee’s Plan of Liquidation Dated February 25, 2013* (the “Confirmed Plan”),<sup>3</sup> pursuant to which this Court retains jurisdiction over

---

<sup>1</sup> Docket No. 590.

<sup>2</sup> Docket No. 705.

<sup>3</sup> Docket No. 701.

this matter, which arises under the Bankruptcy Code and arises in and is related to the above-captioned relevant bankruptcy cases.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

### **BACKGROUND**

5. On or before June 6, 2015, the Liquidating Trustee will file a “*Trustee’s Motion Seeking (1) Approval of Sale of Property, Including and Relating to Real Property Located in Rutherford County, Tennessee, to Robert Geringer Out of the Ordinary Course of Business, Free and Clear of Liens, Claims, Encumbrances and Interests, and Subject to Higher and Better Offers, Pursuant to 11 U.S.C. § 363(b) and (f) and Federal Rules of Bankruptcy Procedure 2002 and 6004; (2) Authorization to Pay Fee to Real Estate Broker; (3) Authorization to Pay Taxes and Ordinary Sale Costs; and (4) Related Relief*” (the “Sale Motion”). In the Sale Motion, the Liquidating Trustee will request the Court’s approval of a sale (“the “Sale”) of certain real property located in Rutherford County, Tennessee, including interests related to such land, which is referred to in the Legacy Debtors’ consolidated cases as the “Smyrna Property” (the “Property”) to Robert Geringer (“Geringer”) pursuant to the terms of a certain Land Purchase Agreement dated as of June 30, 2015 (the “Land Purchase Agreement”), an unsigned copy of which (without exhibits) is attached hereto as Exhibit A.<sup>4</sup> A hearing on the Sale Motion is currently scheduled for July 28, 2015.

6. The Property has been continuously and actively marketed since at least June 2012 by the Trusts’ real estate broker, Dell Nichols Realty & Development, LLC (“Nichols Realty”). The Liquidating Trustee received three offers to purchase the Property: one from Walton Tennessee, LLC (“Walton”), which was withdrawn; a second from DTB Investments, LP (“DTB”), which was also withdrawn; and a third from DSSIII Holding, LLC (“DSSIII”), which

---

<sup>4</sup>A fully executed copy of the Land Purchase Agreement (with exhibits) will be attached to the Sale Motion.

has been served with notice of termination. Geringer's current offer is valid, not contingent, and only awaits this Court's approval.

7. The Land Purchase Agreement expressly provides that the Sale is subject to higher and better offers. The parties contemplate that an auction for the Property will take place if a qualified competing bid is timely submitted for the Property. The purpose of this Motion is to prescribe, among other things, the requirements for a qualified competing bid and establish a process for any auction for the Property that might develop if one or more qualified competing bids are timely submitted. As Geringer has agreed to subject his offer to the possibility of overbid, Geringer requested, and the Liquidating Trustee agreed to seek, certain non-monetary bidding protections (the "Bidding Protections"). The Bidding Protections are basically the Liquidating Trustee's agreement to release claims against Geringer in the event of a higher and better offer. The form of the general release will be attached as an exhibit to the Land Purchase Agreement that will be filed no later than July 6, 2015.

## **RELIEF REQUESTED**

### **Approval of the Bidding Procedures**

8. The Movant requests entry of an order ("Order") substantially in the form attached as Exhibit B hereto approving bidding procedures attached to the Order as Exhibit 1 (the "Bidding Procedures"). A summary of the Bidding Procedures follows:<sup>5</sup>

- i. The Sale is expressly subject to approval by the Court after consideration of Competing Bids (as defined in the Bidding Procedures), if any, for the Property that are submitted before the "Bidding Deadline" by "Qualified Bidders" and that are "Qualified Bids."
- ii. The "Bidding Deadline" is 2:00 p.m. (Mountain Time) on July 22, 2015.
- iii. A "Qualified Bidder" is a bidder that the Liquidating Trustee determines, in his sole discretion, to be capable of consummating a Qualified Bid transaction. Geringer shall be deemed a Qualified Bidder.

---

<sup>5</sup> This summary of the primary terms of the Bidding Procedures is for convenience only, and the actual Bidding Procedures (which include terms that are not described in this summary) control over the description in this summary.

- iv. To be a “Qualified Bid” a bid must:
- a. Provide a purchase price equal to or greater than Two Million Three Hundred Twenty-Five Thousand Dollars (\$2,325,000.00);
  - b. Be supported by a Fifty Thousand Dollar (\$50,000.00) deposit and evidence of ability to pay the remaining bid price;
  - c. Be made upon substantially similar terms and conditions set forth in the Land Purchase Agreement filed with the Sale Motion (the “Template LPA”);
  - d. Include both a signed form of Land Purchase Agreement (the “Competing LPA”) and a marked copy of the Competing LPA showing the differences between it and the Template LPA;
  - e. Contain a proposed closing date that is not later than August 30, 2015;
  - f. Not be conditioned on approval of any bid protections, such as a break-up fee, termination fee, expense reimbursement or similar type of payment;
  - g. Not be subject to any due diligence or financing contingencies of any kind, or subject to any condition precedent relating to the authorization or approval of the bidder’s governing body;
  - h. Includes an acknowledgement and representation, in form and substance satisfactory to the Liquidating Trustee, that the potential Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Property prior to making its offer, (B) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Property in making its bid, and (C) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Property or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Competing LPA;
  - i. Fully disclose the identity of each person or entity that will be sponsoring, financing or participating with the bidder in connection with the Competing Bid;
  - j. Be irrevocable until the earlier of (a) approval of the Sale at the Sale Hearing; (b) two (2) business days after the closing of another Qualified Bid that is approved by the Court; and (c) August 1, 2015; provided, however, that if a bid is determined to be the Winning Bid or the Alternative Bid (as those terms are defined below), then such bids will be irrevocable until the time set forth in subsection xii below; and
  - k. Be received by each of the Notice Parties prior to the Bidding Deadline. The “Notice Parties” are:

- i. Counsel for the Liquidating Trustee at Dorsey & Whitney, 136 South Main Street, Suite 1000, Salt Lake City, UT 84101-1685, Attn: Peggy Hunt, hunt.peggy@dorsey.com; and
  - ii. Counsel for Geringer at Jones Day, 555 S. Flower Street, 50<sup>th</sup> Floor, Los Angeles, CA 90071, Attn: Richard L. Wynne, rlwynne@jonesday.com.
- v. If any Qualified Bids are received, then on July 23, 2015 the Liquidating Trustee will notify the Court of the need to conduct an auction (the "Auction") to determine the highest and best bid for the Property and provide a copy of the Competing LPA(s) to counsel for Geringer.
- vi. If no Qualified Bids are received, then the Liquidating Trustee will request approval of the Sale at the Sale Hearing and will ask the Court to refuse to consider any bids or other offers that do not comply with the Bidding Procedures.
- vii. The Auction will be conducted on July 28, 2015, starting at 9:00 a.m. (Mountain Time) at the offices of Dorsey & Whitney LLP, 136 South Main Street, Suite 1000, Salt Lake City, UT 84101-1685.
  - i. All proceedings at the Auction shall be conducted before, and transcribed by, a court reporter;
  - ii. Bidding will commence at the amount of the highest and best offer, as determined in the Liquidating Trustee's sole discretion (such amount, the "Starting Bid") and proceed in bid increments of \$50,000, or such amount as the Liquidating Trustee shall deem appropriate during the Auction; and
  - iii. The Auction shall continue until there is only one highest and best bid in the Liquidating Trustee's sole discretion (the "Winning Bid" and the applicable Qualified Bidder, the "Winning Bidder").
- viii. The Liquidating Trustee shall be responsible for determining, in his discretion and subject to the Court's approval, the highest and best bid for the Property.
- ix. The Winning Bid will be submitted to the Court for approval along with the second highest and best Qualified Bid (the "Alternative Bid" and the applicable bidder the "Alternative Bidder"). In the case of a bid submitted by Geringer, if and only if Geringer is chosen as either the second or third highest and best Qualified Bid, Geringer's bid shall remain in place as an "Alternative Bid" for a period of 45 days from the Bankruptcy Court's approval of the sale to the Winning Bidder ("Geringer Back Up Period").
- x. Unless otherwise agreed to by the Liquidating Trustee and the Winning Bidder, within one (1) business day after the conclusion of the Auction, the Winning Bidder shall complete and execute all agreements and other

documents evidencing and containing the terms and conditions upon which the Winning Bidder's bid was made.

- xi. All deposits shall be returned to each bidder not selected by the Liquidating Trustee as the Winning Bidder or the Alternative Bidder, other than Geringer, no later than three (3) business days following the conclusion of the Auction or, in the case of Geringer, three (3) business days following the conclusion of the Geringer Back Up Period.
- xii. If, following the entry of the Sale Order by the Court, the Winning Bidder fails to consummate a transaction with the Liquidating Trustee in respect of such Winning Bid that is the result of a breach or failure to perform on the part of such Winning Bidder, then (i) the Winning Bidder's Deposit shall be forfeited to the Legacy Trust, and (ii) the Alternative Bid shall be deemed the Winning Bid and Liquidating Trustee shall be authorized to consummate the Sale pursuant to the Alternative Bid without further order of the Court. If an Alternative Bid other than Geringer fails to consummate a transaction with the Liquidating Trustee in respect of such bid that is the result of a breach or failure to perform on the part of such Alternative Bidder, then (x) the Alternative Bidder's Deposit shall be forfeited to the Legacy Trust, and (y) Geringer shall be deemed to be the Winning Bid and the Liquidating Trustee shall be authorized to consummate the Sale pursuant to Geringer's Alternative Bid without further order of the Court. If the Winning Bidder consummates the Sale, the deposit of the Alternative Bidder will be returned to the Alternative Bidder within three (3) business days of the Sale's consummation with the Winning Bidder. In the case of Geringer, if the Winning Bidder or the Alternative Bidder consummates the Sale, the deposit of Geringer will be returned to Geringer within three (3) business days of the Sale's consummation regardless of expiration of the Geringer Back Up Period.

9. The Liquidating Trustee will provide a copy of the Bidding Procedures to all parties expressing interest in making a bid for the Property.

#### **Approval of the Bidding Protections**

10. The Liquidating Trustee further requests that the Court approve the Bidding Protections to Geringer because such Bidding Protections are fair and reasonable under the circumstances here. Although Geringer is subjecting his offer to an overbid process and auction, he is not seeking any monetary bid protections, but rather a mutual release as the cost of bringing a potential overbid for the Property. The Liquidating Trustee believes that the Bidding Protections and the establishment of bidding procedures are reasonable and were necessary to induce Geringer

to enter into the Land Purchase Agreement, ultimately making it possible to obtain the highest price possible for the Property.

## **ARGUMENT**

### **The Bidding Procedures Should be Approved**

11. In this case, the Liquidating Trustee has sound business reasons for the Bidding Procedures, which are administrative in nature. The Bidding Procedures will prevent surprise and possible disputes by letting all potential bidders know the rules that will govern the Auction. Providing a transparent process also should encourage parties to come forward and participate in the Sale. Finally, having clear written Bidding Procedures approved in advance by the Court serves the interests of justice and efficiency by placing all parties on a level playing field, with a minimum of grounds for possible issues or disputes about the Sale.

12. The only parties with a known interest in the Bidding Procedures are the Liquidating Trustee, Geringer, DSSIII, and possibly, Walton and DTB. A copy of this Motion, together with the proposed Bidding Procedures, is being provided to Geringer, DSSIII, Walton, and DTB by e-mail.

13. The Liquidating Trustee and Geringer have agreed that (i) the Bidding Procedures are necessary to satisfy the requirements of the Sale Motion, and (ii) are administrative in nature.

14. The Bidding Procedures have been provided to Geringer and Nichols Realty with instructions that they must be provided to any entity that expresses an interest in submitting a bid, and will be posted on the Liquidating Trustee's website. Furthermore, this Motion, along with the proposed Bidding Procedures, will be filed with the Court, served on all parties who receive notice via ECF, and as set forth above, will be served via e-mail on DSSIII, Walton and DTP, the only parties who have an expressed an interest in the Property to date. A copy of this Motion will also be provided to the Office of the United States Trustee by ECF and email, at the same time it is submitted to the Court.



### **The Bidding Protections Should Be Approved**

15. As set forth in the Sale Motion, the Trustee has been actively marketing the Property for a considerable period of time. While the Trustee has determined in his reasonable business judgment that an auction sale of the Property at this time is in the best interests of the estates, such an Auction would not be possible but for the minimum purchase price provided for by Geringer, and Geringer's agreement to subject the Land Purchase Agreement to higher and better offers.

16. Accordingly, the Liquidating Trustee hereby requests that the Court approve the Bidding Protections. In no event shall such Bidding Protections include any monetary compensation such as a break-up fee, termination fee, expense reimbursement or similar type of payment. The Liquidating Trustee submits that cause exists to approve the Bidding Protections because it is fair and reasonable under the circumstances here. The Liquidating Trustee believes that the Bidding Protections are reasonable and necessary to induce Geringer to enter into the transactions encompassed by the Land Purchase Agreement and to obtain the highest price possible for the Property. Bidding protections are intended to "compensate" the initial bidder for serving as a "stalking horse" and, thereby, encouraging the participation of other bidders for the Property to be sold.

17. Many courts have evaluated Bidding Protection arrangements under the business judgment rule standard. *Cottle v. Storer Communications, Inc.*, 849 F.2d 570 (11th Cir. 1988); *CRTF Corp. v. Federated Dep't Stores*, 683 F.Supp. 422 (S.D.N.Y. 1988); *In re Integrated Resources, Inc.*, 147 B.R. 650, 657 (S.D.N.Y. 1992), *appeal dismissed by* 3 F.3d 49 (2d Cir. 1993).

18. As to the propriety of approval of the Bidding Protections, it is well-established that "[a] bankruptcy court should uphold a break-up fee which was not tainted by self-dealing and was the product of arm's-length negotiations." *In re Integrated Resources, Inc.*, 147 B.R. at 658. In the instant case, the proposed Bidding Protections are the product of good faith, arm's-length negotiations between the Liquidating Trustee and Geringer. If other higher and better offers for

the Property are received, it will be because Geringer has served as a “stalking horse” for such offers.

**CONCLUSION**

WHEREFORE, the Movant respectfully requests entry of an Order approving the Bidding Procedures in the form attached hereto, approving the Bidding Protections as described above, and granting the Movant such other and further relief as the Court deems just and proper.

Dated this 2nd day of July, 2015.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*

---

Peggy Hunt  
Milo Steven Marsden  
Sarah Goldberg  
*Attorneys for D. Ray Strong, Liquidating Trustee  
of the Consolidated Legacy Debtors  
Liquidating Trust*

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

I hereby certify that on July 2, 2015, I electronically filed the foregoing **MOTION OF THE LIQUIDATING TRUSTEE FOR ORDER APPROVING BIDDING PROCEDURES AND GRANTING BIDDING PROTECTIONS** (the “Motion”) 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
- John T. Anderson janderson@aklawfirm.com, aolson@aklawfirm.com
- Troy J. Aramburu taramburu@swlaw.com,  
rmaxwell@swlaw.com;docket\_slc@swlaw.com
- Jeffrey M Armington armington.jeff@dorsey.com,  
long.candy@dorsey.com;ventrello.ashley@dorsey.com
- Julie A. Bryan julie@crslaw.com, joshua@crslaw.com
- Mona Lyman Burton mburton@hollandhart.com,  
ckelly@hollandhart.com;intaketeam@hollandhart.com;slclitdocket@hollandhart.com
- Schuyler G. Carroll scarroll@perkinscoie.com, DOlsky-efile@perkinscoie.com
- Leonard J. Carson len@pearsonbutler.com, kylie@pearsonbutler.com
- William H. Christensen wchristensen@larsenrico.com,  
ogappmayer@larsenrico.com;fileclerk@larsenrico.com
- Andrew B. Clawson andrew@abclawutah.com, kylie@pearsonbutler.com
- T. Edward Cundick tec@princeyeates.com,  
docket@princeyeates.com;pam@princeyeates.com
- Robert T. Denny rtd@scmlaw.com, hae@scmlaw.com
- Anna W. Drake annadrake@att.net
- Jodi Knobel Feuerhelm jfeuerhelm@perkinscoie.com,  
blumm@perkinscoie.com;docketPHX@perkinscoie.com
- Jennie B. Garner garner.jennie@dorsey.com
- Eric D Goldberg egoldberg@gordonsilver.com
- Eric D Goldberg egoldberg@stutman.com
- Sarah Goldberg goldberg.sarah@dorsey.com
- David R. Hague dhague@fabianlaw.com
- George B. Hofmann ghofmann@cohnekinghorn.com,  
dhaney@cohnekinghorn.com;jthorsen@cohnekinghorn.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com
- Jennifer A. James jaj@clydesnow.com, mcarter@clydesnow.com
- Lon A. Jenkins jenkins.lon@dorsey.com,  
lalor.carol@dorsey.com;posada.monica@dorsey.com
- Neil A. Kaplan nak@clydesnow.com, mcarter@clydesnow.com

- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Michael L. Labertew michael@labertewlaw.com
- Mark A. Larsen mlarsen@larsenrico.com, wchristensen@larsenrico.com;ogappmayer@larsenrico.com
- Ralph R. Mabey rmabey@kmclaw.com
- Christopher J Martinez martinez.chris@dorsey.com, stauffer.erin@dorsey.com
- Adelaide Maudsley amaudsley@kmclaw.com, squilter@kmclaw.com
- Lance E. Miller lancemiller@americanapparel.net
- John T. Morgan jr john.t.morgan@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Jeffrey P. Mortimer jeff@rulontburton.com
- Oliver K. Myers myersok@msn.com
- Darren B. Neilson dneilson@kmclaw.com, tsanders@kmclaw.com
- David Olsky dolsky@perkinscoie.com
- Rick Poster Rick@posterlaw.com
- Jon A Reed jreed@larsenrico.com
- Knute A. Rife KARife@RifeLegal.com
- Lee Rudd leerudd@ruddlaw.com, leerudd@gmail.com;G5697@notify.cincompass.com
- Nathan Seim seim.nathan@dorsey.com, ventrello.ashley@dorsey.com
- Nathan Seim seim.nathan@dorsey.com, ventrello.ashley@dorsey.com
- Jeremy C. Sink jsink@mbt-law.com
- Eric J. Snyder esnyder@wilkauslander.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com;docket@rqn.com
- Stephen G. Stoker sgstoker@stokerswinton.com, sgstokerlc@gmail.com
- D. Ray Strong jr rstrong@s3advisory.com
- Gerald H. Suniville gsuniville@vancott.com, docketing@vancott.com
- Marca Tanner marca.tanner@gmail.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Russell S. Walker rwalker@wklawpc.com, ckirk@wklawpc.com
- Kim R. Wilson bankruptcy\_krw@scmlaw.com
- Brock N. Worthen bworthen@swlaw.com
- Richard L. Wynne rlwynne@jonesday.com

/s/ Peggy Hunt

**CERTIFICATE OF SERVICE – BY EMAIL**

I further certify that on July 2, 2015, the Motion was sent via email to the following parties, who have expressed an interest in purchasing or have made an offer to purchase the property at issue in the Motion:

DTB Investments, L.P.  
c/o Harold duPerier III (registered agent)  
28615 Interstate 10 W  
Boerne, TX 78006  
[Trip@TexasLandMan.net](mailto:Trip@TexasLandMan.net)

DSSIII Holding, LLC  
c/o Drapac Group USA  
6161 Santa Monica Blvd., Suite 102  
Los Angeles, CA 90038  
Attn: Tyson J. Reilly  
[Tyson@drapacusa.com](mailto:Tyson@drapacusa.com)

Tew & Associates  
c/o Joel Tew  
2999 Palm Harbor Blvd., Suite A  
Palm Harbor, FL 34655  
[JTew@tewlaw.us](mailto:JTew@tewlaw.us)

Walton Tennessee, LLC  
c/o Walton International Group (USA), Inc.  
Attn: Wayne Souza, Esq.  
4800 North Scottsdale Road, Suite 4000  
Scottsdale, AZ 85251  
[wsouza@walton.com](mailto:wsouza@walton.com)

John Morgan  
U.S. Trustee  
450 South Main Street, Suite 300  
Salt Lake City, Utah 84111  
[john.t.morgan@usdoj.gov](mailto:john.t.morgan@usdoj.gov)

/s/ Peggy Hunt

**EXHIBIT A**

**LAND PURCHASE AGREEMENT**

## LAND PURCHASE AGREEMENT

**THIS LAND PURCHASE AGREEMENT (“Agreement”)** is between **ROBERT D. GERINGER**, an individual, (“**Purchaser**”), on the one hand, and the **CONSOLIDATED LEGACY DEBTORS LIQUIDATING TRUST** effective July 22, 2013 as successor in interest to Castle Arch Real Estate Investment Company, LLC and Castle Arch Smyrna, LLC (the “**Legacy Trust**” and “**Seller**”) and the **CAOP I LIQUIDATING TRUST** effective July 22, 2013 (the “**CAOP I Trust**” and “**Acknowledgement Party**”), on the other hand. The Purchaser, the Seller and the Acknowledgement Party are referred to herein collectively as the “**Parties.**”

### RECITALS

The Property (as defined herein) has been marketed for sale since at least June 2012.

On June 7, 2013, the United States Bankruptcy Court for the District of Utah (the “**Bankruptcy Court**”) entered at Docket No. 703 an *Order Confirming Chapter 11 Trustee’s First Amended Plan of Liquidation Dated February 25, 2013, As Modified* (the “**Confirmation Order**”) in the Chapter 11 cases filed by, among others, 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 Castle Arch Opportunity Partners I, LLC (“**CAOP I**”) (collectively with the Legacy Debtors, the “**Debtors**”), jointly administered under Case No. 11-35082 (the “**Bankruptcy Case**”), confirming the *Second Amended Chapter 11 Trustee’s Plan of Liquidation Dated February 25, 2013* at Docket No. 701 (the “**Confirmed Plan**”). As part of the Confirmation Order, the Legacy Trust and the CAOP I Trusts were formed and D. Ray Strong (the “**Liquidating Trustee**”) was appointed as the Estate Representative for the Debtors and Liquidating Trustee of the Legacy Trust and the CAOP I Trust (collectively, the “**Trusts**”).

The Property (as defined herein) was transferred to the Legacy Trust, and all Claims and Causes of Action, including Individual Claims (as defined in the Confirmed Plan), were transferred to the respective Trusts. The Trusts believe that they have Claims and Causes of Action, including Individual Claims, against former management of CAREIC (the “**Former Management Claims**”).

Seller has received two offers for the Property, including an offer from DSSIII Holding Co., LLC (“**DSSIII**”) in the amount of \$1,500,000.00 (the “**DSSIII Purchase Agreement**”). On June 30, 2015, the Liquidating Trustee served a Notice of Termination of Real Estate Purchase and Sale Agreement on DSSIII in accordance with its duty as a fiduciary to accept any higher and better offers for the purchase of the Property. The transaction set forth in this Agreement constitutes such a higher and better offer.

Purchaser holds an Allowed General Unsecured Claim (as defined in the Confirmed Plan) against the Legacy Debtors’ estate in the amount of \$243,146.13 (the “**Geringer Claim**”). The Trusts maintain that they have Former Management Claims against the Purchaser.

Purchaser has filed an *Objection to Amended Motion for Approval of Settlement Agreement Between Trustee and William Warwick Under Federal Rule of Bankruptcy Procedure 9019* at Docket No. 996 in the Bankruptcy Case (the “**Warwick Objection**”). The reference of this

contested matter has been withdrawn from the Bankruptcy Court, and the matter is now before the United States District Court for the District of Utah in the case styled as *Axis Surplus Insurance Co. v. Geringer*, Case No. 14-cv-00244-DAK (D. Utah) (the “**Settlement Litigation**”).

Seller now desires to sell the Property to Purchaser subject to overbid rights, and Purchaser desires to purchase the Property from Seller, and the Parties each desire to settle the Geringer Claim and the Former Management Claims against the Purchaser, and settle the outstanding Warwick Objection, all as part of this purchase and sale transaction upon the terms and conditions contained in this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

1. **Property.** The “**Property**” means all right, fee simple title and interest in the approximately 484.09 acres of real property located in Rutherford County, Tennessee, more particularly described on Exhibit “1” attached hereto, together with all rights, licenses, permits, easements and appurtenances pertaining thereto and all improvements and vegetation thereon. Subject to the terms and conditions set forth herein, Seller agrees to sell, and Purchaser agrees to purchase, the Property.

2. **Effective Date.** The “**Effective Date**” means the later of the dates that this Agreement is signed by Purchaser, Seller or Acknowledgement Party.

3. **Purchase Price.** The purchase price for the Property shall be Two Million Two Hundred Twenty-Five Thousand Dollars (\$2,225,000.00) (the “**Purchase Price**”). The Purchase Price shall be payable, subject to adjustments, pro-rations and credits specifically set forth in section 9 hereof, as follows:

- a. Four Hundred Seventy Five Thousand Dollars (\$475,000.00) shall be payable in cash at Closing; and
- b. The balance of the Purchase Price shall be evidenced by a Promissory Note, secured by a first position Deed of Trust, as set forth in Exhibits “2” and “3” attached hereto. The terms of the Promissory Note shall provide for payment of Five Hundred Thousand Dollars (\$500,000.00) on or before the date that is one hundred twenty (120) days after the date that the Bankruptcy Court order becomes a Final Order, as defined herein below, with One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) payable on or before eighteen (18) months after the date that the Bankruptcy Court order becomes a Final Order (the “**Maturity Date**”). The Promissory Note and Deed of Trust shall have a “due on sale” provision.

4. **Earnest Money.** Within three (3) Business Days of the Effective Date, (a) the Parties shall establish an escrow account with an Escrow Agent for the purpose of consummating this Agreement, and (b) Purchaser shall deposit the sum of One Thousand Dollars (\$1,000.00)





(together with any earnings thereon and any additions thereto, the “**Earnest Money**”) with Jeffrey A. Greene, P.C., 725 Cool Springs Road, Suite 600, Franklin, TN 37067 (“**Escrow Agent**”). Escrow Agent shall hold the Earnest Money in a noninterest-bearing account pursuant to Exhibit “4” hereto (the “**Escrow Conditions**”). The Earnest Money shall be applied to the Purchase Price at Closing or, in the event the Earnest Money is not so applied, then the Earnest Money shall be disbursed by Escrow Agent in accordance with the terms of this Agreement. When the order approving this Agreement becomes a Final Order, then the Earnest Money shall be nonrefundable, except in the event of Seller’s default as set forth in section 16.b hereof.

5. **“As Is Where Is” Sale.** The sale of the Property as set forth in this Agreement is “AS IS WHERE IS,” free and clear of interests as provided for under Section 363(b) and (f) of the Bankruptcy Code. SUBJECT TO THE EXPRESS TERMS OF THIS AGREEMENT, PURCHASER ACKNOWLEDGES FOR PURCHASER AND PURCHASER’S SUCCESSORS AND ASSIGNS THAT PURCHASER IS ACQUIRING THE PROPERTY BASED ON PURCHASER’S OWN INVESTIGATION, IF ANY. THE PARTIES EXPRESSLY AGREE THAT THE PROPERTY IS SOLD AND THAT PURCHASER IS ACCEPTING TITLE AND POSSESSION OF THE PROPERTY ON CLOSING “AS IS WHERE IS WITH ALL FAULTS” WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, SUCH SALE IS WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, FROM SELLER OR ANY REPRESENTATIVE OR AGENT OF SELLER AS TO ANY MATTER CONCERNING THE PROPERTY. PURCHASER EXPRESSLY ACKNOWLEDGES THAT SELLER HAS NOT MADE ANY WARRANTY OR REPRESENTATIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, STATUTORY OR OTHERWISE CONCERNING THE PROPERTY, THE CONDITION OF THE PROPERTY OR ANY USES TO WHICH THE PROPERTY MAY OR MAY NOT BE PUT.

6. **Contingencies.**

- a. The Parties agree that this Agreement is conditioned on and is subject to (i) the Liquidating Trustee’s ability to terminate the DSSIII Purchase Agreement solely as determined by the Bankruptcy Court and (ii) the Bankruptcy Court’s entry of an Order approving this Agreement as to Purchaser or as to a person making a higher and better offer than the Purchaser that is accepted by the Liquidating Trustee. If the Bankruptcy Court does not approve this sale to either the Purchaser or to a person making a higher and better offer for any reason, this Agreement shall be null, void and of no force or effect and the Parties shall be in the same position that they were in as though this Agreement had never been executed
- b. If, and only if, the Sale Order (as defined below) does not become a Final Order (as defined below) on or before December 31, 2015, either of the Parties shall have the right to terminate this Agreement upon written notice to the other. In such event, this Agreement shall be null, void and of no force or effect and the Parties shall be in the same position that they were in as though this Agreement had never been executed. It shall not be a breach of this Agreement by either of the Parties if the Agreement is terminated pursuant to this provision.

7. **Bankruptcy Actions.**

- a. **Procedures Motion.** Seller reserves the right to accept higher and better offers at any time prior to the bid deadline of July 16, 2015 at 2:00 p.m. (Mountain Time). Whether an offer is a higher and better offer is to be determined by the Seller in the Liquidating Trustee's sole discretion with such offer being approved by the Bankruptcy Court. The Parties agree that in the event the operation of this section 7.a results in someone, other than Purchaser, having the right to purchase the Property, the provisions of section 7.a apply. No later than two (2) Business Days after the Effective Date, an ex parte motion for approval of bidding procedures (the "**Procedures Motion**") shall be filed in the Bankruptcy Court seeking entry of an order substantially in the form of Exhibit "5" hereto (the "**Procedures Order**"). The Procedures Motion must seek approval of bidding procedures for the submission of higher and better offers for the purchase of the Property, including but not limited to approval of the Break-Up Consideration.
- b. **Break-Up Consideration.** In the event of any "higher and better offer" under section 7.a, and if, as a consequence thereof, a buyer outbids Purchaser, or if the Seller determines that another offer is a "higher and better offer", then Purchaser shall not be entitled to a break-up fee provided, however, that Purchaser and Seller shall be bound by the mutual general releases of all claims pursuant to the Releases set forth in Exhibit "6" hereto (the "**Break-Up Consideration**").
- c. **Sale Motion.** No later than two (2) Business Days after the Effective Date, Seller shall file a motion (the "**Sale Motion**") in the Bankruptcy Court seeking entry of a sale order substantially in the form of Exhibit "7" hereto (the "**Sale Order**"). The Sale Motion shall seek approval of this Agreement, approval of the sale of the Property to the Purchaser or to any higher and better offer that is received by Seller prior to entry of the Sale Order (but not thereafter), free and clear of interests as provided for in Section 363(b) and (f) of the Bankruptcy Code. Seller shall copy Purchaser on all filings with the Bankruptcy Court concerning the Property, including any other offers received by Seller after the Effective Date.
- d. **Sale Order.** The Sale Order shall include the following provisions: (i) a finding that the notice and opportunity for hearing on the Sale Motion was appropriate; (ii) a finding that the sale is approved under 11 U.S.C. § 363(b) and (f); (iii) a finding that Purchaser is purchasing the Property in good faith pursuant to 11 U.S.C. § 363(m); (iv) a finding that the sale is not avoidable under 11 U.S.C. § 363(n); (v) a finding, if necessary, that the DSSIII Purchase Agreement has been terminated; (vi) a finding that the mutual general releases exchanged by Purchaser and Seller were fair, just and reasonable under the circumstances; and (vii) the Court will retain jurisdiction to enforce the Purchase Agreement in all respects. The Seller will undertake to proceed in good faith to obtain entry of the Sale Order within fifteen (15) days after submittal of the Sale Order; however, it is stipulated and agreed by the Parties that the Bankruptcy Court's refusal or delay to enter the Sale Order shall not constitute grounds for breach of this Agreement by either Party.

8. **Closing.**

- a. **Time and Place.** "**Closing**" shall be held at the offices of Jeffrey A. Greene, P.C., 725 Cool Springs Road, Suite 600, Franklin, TN 37067 ("**Escrow Agent**") on a date set by Purchaser that is no later than thirty (30) days after the date that the Sale Order has become a final non-appealable order ("**Final Order**"), or such other date as mutually agreed to by the Parties.
- b. **Closing Date.** The "**Closing Date**" shall be the date on which the Closing under this section occurs.
- c. **Closing Obligations.**
  - i. **Seller Closing Obligations.** Seller shall obtain and deliver to Escrow Agent at the Closing the following documents (all of which shall be duly executed and witnessed, which documents Purchaser agrees to execute where required):
    - (1) A trustee's deed as described below in a form reasonably acceptable to Purchaser and Seller and as is standard for similar conveyances;
    - (2) A Certificate and Affidavit of Non-Foreign Status, in form and substance reasonably acceptable to Purchaser and the Title Company;
    - (3) An affidavit of title in the form required by the Title Company in order to issue its extended coverage owner's policy of title;
    - (4) A standard ALTA owner's title insurance policy in the amount of the Purchase Price, together with copies of all documents referred to therein, issued by a title insurance company selected by Purchaser (the "Title Company");
    - (5) A properly-completed property transfer tax return or affidavit, if any, in form and substance appropriate to the jurisdiction in which the Property is located;
    - (6) A General Bill of Sale and Assignment transferring all right, title and interest of Seller in and to any personal property (tangible or intangible) located upon or appertaining to the Property, in form and substance reasonably acceptable to Purchaser;
    - (7) The release required of the Seller and the Acknowledgement Party as set forth in Exhibit "6"; and
    - (8) A copy of the entered Sale Order.

- ii. Purchaser Closing Obligations. At Closing, Purchaser shall pay Seller the Purchaser Price as provided in section 3 hereof. In addition, Purchaser shall obtain and deliver to Escrow Agent at the Closing the following consideration and documents (all of which shall be duly executed and witnessed, which documents Seller agrees to execute where required):
  - (1) An executed Promissory Note in the form attached hereto as Exhibit “2”;
  - (2) An executed Deed of Trust in the form attached hereto as Exhibit “3”;
  - (3) Proof of its withdrawal or nonprosecution of the Warwick Objection in the Settlement Litigation;
  - (4) The release required of the Purchaser as set forth in Exhibit “6”; and
  - (5) Proof of insurance of the Property as required under the Deed of Trust.
- iii. Other Closing Obligations.
  - (1) The Parties shall deliver such further instructions, documents and information as the other Party or the Title Company may reasonably request as necessary to consummate this Agreement;
  - (2) Seller and Purchaser shall execute settlement statements to reflect prorations and costs specifically provided for in this Agreement;
  - (3) Title Company (defined below) shall consummate the subject transaction by (a) causing the recording of the trustee’s deed covering the Property in the official records of Rutherford County, (b) causing the recording of the Note and Deed of Trust in the official records of Rutherford County, (c) delivering to Seller \$475,000.00, less any pro-rations and credits specifically provided for in section 9, and including the Earnest Money, and (d) issuing or irrevocably and unconditionally committing to issue a title policy to Purchaser.

**9. Pro-rations; Closing Costs.**

- a. Unless otherwise stated, costs and expenses shall be pro rated and adjusted between Seller and Purchaser as of the Closing Date. The date of Closing shall be attributed to Purchaser. All pro-rations shall be on the basis of the actual number of days in each month and year applicable to such calculation. Any item not specifically allocated under this Agreement shall be pro-rated as of the Closing Date.
- b. Seller shall pay 100% of the cost of any title search, the cost for preparation and issuance of the owner’s title policy up to \$5,000.00, documentary fees and similar charges, all recording costs and transfer taxes with respect to the Deed and the

R

Deed of Trust, if applicable, any existing monetary liens, claims or encumbrances on the Property, Seller's attorneys' fees and all expenses incurred by Seller related to Closing, and 50% of the costs of any closing or escrow fee charged by the Title Company.

- c. Purchaser shall pay shall pay the cost for preparation and issuance of the owner's title policy over and above \$5,000.00, the premium attributable to any endorsements to the owner's title policy, if Purchaser requests an extended coverage policy, the portion of the premium attributable to the "extended coverage" provided by the ALTA policy and any costs associated with obtaining an extended coverage policy, 100% of Purchaser's attorneys' fees and all expenses incurred by Purchaser related to Closing, and 50% of the cost of any closing or escrow fee charged by Title Company.
- d. Ad valorem taxes on the Property for the tax year of Closing shall be prorated between Seller and Purchaser as of Closing based on the latest assessment available. Should such proration be inaccurate based on the actual ad valorem tax bill when received, either party may demand, and shall receive, a payment from the other correcting such apportionment. This obligation for payment in section 9 shall survive Closing.

10. **Conveyance of Title.** At Closing, Seller shall convey good and marketable fee simple title to the Property to Purchaser pursuant to a recordable Trustee's Deed. "Good and marketable title" shall mean title that is insurable by the title insurance company designated by Purchaser (the "**Title Company**") under a standard ALTA owner's form at standard rates.

11. **Condemnation and Casualty.** If prior to Closing, all or any portion of the Property is condemned or taken, or threatened to be condemned or taken, by any authority, or any portion of the Property suffers a casualty loss, Seller shall give Purchaser immediate Notice thereof with a complete description of all relevant information and complete copies of all relevant documentation. Within ten (10) days of such Notice, notwithstanding any contrary provision of this Agreement, Purchaser may elect to either: (i) terminate this Agreement; or (ii) keep this Agreement in full force and effect and to collect all awards and proceeds from any condemnation or insurance policy, in which case Seller shall promptly execute all documents required by Purchaser to assign Seller's rights therein to Purchaser. If Purchaser elects to terminate this Agreement, this Agreement shall be treated as null, void and of no force or effect and the Parties shall be in the same position that they were in as though this Agreement had never been executed.

12. **Seller's Limited Representations and Warranties.** The Parties expressly agree that the sale of the Property is made by Seller with no representations or warranties of any kind, except that: (a) Seller has full right, power and authority to enter into and consummate this Agreement on behalf of the Debtor and the Trusts, including the transactions and conveyances contemplated herein, subject to Bankruptcy Court approval and the Trustee's ability to terminate the DSSIII Purchase Agreement; and (b) Seller will seek approval of the Bankruptcy Court as provided for in this Agreement. The Liquidating Trustee is selling the Property on behalf of the Legacy Trust solely in his capacity as Estate Representative of the Debtors and Liquidating Trustee of the Legacy Trust in the Bankruptcy Case pending in the Bankruptcy Court. Neither the Seller nor its

R

agents shall have any personal liability for the sale contemplated herein. This provision survives Closing or termination of this Agreement.

13. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that:

- a. The statements set forth in this section 13 are true and correct as of the Effective Date;
- b. Purchaser has full power and authority to enter into this Agreement and complete this transaction;
- c. Purchaser has the financial ability to perform at Closing;
- d. This Agreement will be binding and enforceable against Purchaser in accordance with its terms, and upon Purchaser's execution of the additional documents contemplated by this Agreement, they will be binding and enforceable against Purchaser in accordance with their terms; and
- e. All representations, warranties and covenants by Purchaser set forth in this Agreement will survive the consummation of this Agreement.

14. **Broker Fees.** Purchaser and Seller each warrant and represent to the other that (i) neither of them has employed a real estate broker, agent or finder in connection with this transaction, and (ii) no brokers', agents', finders' fees, commissions or other similar fees are due or will be due in connection with this Agreement or this transaction, other than Seller's employment of Dell Nichols Realty & Development, LLC. Purchaser and Seller each agree to indemnify and hold the other harmless from and against all liabilities, losses, costs, damages and expenses (including attorneys' fees and expenses and costs of litigation) that the other party may suffer or incur because of any claim by a broker, agent or finder claiming by, through or under such indemnifying party, whether or not meritorious, for any compensation with respect to this Agreement or Closing. This section shall survive Closing or any termination of this Agreement.

15. **Additional Obligations.**

- a. Purchaser's Obligations:
  - i. In the event DSSIII challenges termination of the DSSIII Purchase Agreement, Purchaser shall indemnify and hold harmless the Seller for any damage claims asserted by DSSIII arising out of the termination of the DSSIII Purchase Agreement. Purchaser may defend any such claims as the real party in interest, and will have authority to settle such claims;
  - ii. On and after the Effective Date, Purchaser shall not prosecute the Warwick Objection;

- iii. Purchaser shall be bound by this Agreement, as a back-up buyer, for a period of forty-five (45) calendar days after this Court's approval of a higher and better offer;
  - iv. At Closing, Purchaser shall execute a mutual general release, substantially in the form of Exhibit "6" hereto; and
  - v. Purchaser shall reasonably cooperate with the Seller in prosecuting Former Management Claims against those named in a lawsuit styled as *Strong v. Cochran et al.*, 14-cv-00788 (D. Utah) (which cooperation shall be required in any event hereunder, including if a higher and better offer is accepted and closed by the Liquidating Trustee).
- b. Seller's Obligations:
- i. At Closing, Seller shall execute a mutual general release substantially in the form of Exhibit "6" hereto.

This section 15 survives Closing or termination of this Agreement.

**16. Default.**

- a. Purchaser's Default. Purchaser agrees he shall be in material default of this Agreement if (a) the Purchase Price is not paid as set forth above; (b) he fails to fulfill or deliver any of the additional obligations provided for in section 15.a above; (c) any of the representations and warranties set forth in section 13 above are materially false; or (d) he otherwise defaults in the performance of obligations set forth in this Agreement. In the event of any such material default, Seller
- i. shall have all legal and/or equitable rights and remedies against Purchaser which rights and remedies it may assert concurrently or separately;
  - ii. shall have the right to retain all payments made toward the Purchase Price, including any Earnest Money at the time of default; and
  - iii. shall be entitled to recover from Purchaser all fees and costs, including all attorney's fees, incurred in enforcing this Agreement or collecting any judgment.

This section 16 shall survive Closing or any termination of this Agreement.

- b. Seller's Default. Seller agrees it shall be in material default of this Agreement only if the Liquidating Trustee or the Acknowledging Party fails to (a) fulfill or deliver the additional obligations set forth in section 15.b above, or (b) perform the material obligations set forth in this Agreement. In the event of such material default, this Agreement shall be null, void and of no force or effect and the Parties shall be in the same position that they were in as though this Agreement had never been executed.

17. **Covenants.** From and after the Effective Date through Closing, Seller shall (a) not voluntarily convey or encumber any portion of the Property or any rights therein, nor enter into any conveyance, security document, option, right of first refusal, easement, lease or other agreement granting to any person or entity any rights with respect to the Property, or any interest therein, in contravention of this Agreement without the prior consent of Purchaser, which shall not be unreasonably withheld; (b) within three (3) Business Days after Seller's receipt thereof, give Notice to Purchaser of any litigation, arbitration or administrative proceeding concerning or affecting the Property, together with copies of all relevant documents, (c) comply with all requirements of all laws, orders, rulings, ordinances, rules and regulations of any governmental authority having jurisdiction over Seller or the Property or the use or construction thereof, and (d) maintain, at its expense, insurance policies providing coverages in at least the amounts and against the risks covered by the insurance policies maintained by Seller as of the Effective Date.

18. **Notices.** All notices required or permitted to be given hereunder ("**Notice**") shall be in writing and shall be deemed given when (a) hand delivered, receipt required (b) delivered via certified first class mail, return receipt requested, (c) delivered via Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (d) transmitted via electronic mail, read receipt required. Notices need not be provided to Escrow Agent unless such Notice requests action by Escrow Agent. All Notices shall be addressed as follows:

Purchaser:

Robert D. Geringer  
9595 Wilshire Blvd, Suite 214  
Beverly Hills, CA 90212  
Phone: 310 656-8710  
E-mail: Robert@GeringerCapital.com

*With a copy to:*

Richard Wynne, Esq.  
Jones Day  
555 South Flower Street, 50<sup>th</sup> Floor  
Los Angeles, CA 90071  
Phone: 213 243-2548  
E-mail: rlwynne@jonesday.com

Seller:

D. Ray Strong, Liquidating Trustee  
S3 Advisory LLC  
299 S. Main Street, Suite 1300  
Salt Lake City, Utah 84111  
Phone: (801)534-4404  
E-mail: rstrong@s3advisory.com

*With a copy to:*

Peggy Hunt, Esq.  
Dorsey & Whitney LLP  
136 South Main Street, Suite 1000  
Salt Lake City, Utah 84103  
Phone: (801) 933-7360





E-mail: hunt.peggy@dorsey.com

Escrow Agent

Jeffrey A. Greene, Esq.  
725 Cool Springs Boulevard, Suite 600  
Franklin, TN 37067  
Phone: (615) 477-4917  
E-mail: Jeff@JGreene.us

Title Company

Jeff Greene  
c/o Old Republic  
725 Cool Springs Boulevard, Suite 600  
Franklin, TN 37067  
Phone: (615) 477-4917  
E-mail: Jeff@JGreene.us

19. **Standard Provisions.**

- a. Provisions of this Agreement related to the sale and transfer of the Property shall be interpreted in accordance with the laws of the state of Tennessee. The releases provided for herein shall be governed by the laws of the state of Utah.
- b. Time is of the essence of this Agreement.
- c. This Agreement constitutes the sole and entire agreement of the parties and is binding upon and shall inure to the benefit of Seller and Purchaser, their respective heirs, successors, and legal representatives and permitted assigns. The rights and obligations of Purchaser under this Agreement may be assigned by Purchaser to any entity with the prior written consent of Seller, which shall not be unreasonably withheld. The rights and obligations of Seller under this Agreement may not be assigned. All prior discussions, negotiations and agreements are merged herein and have no further force or effect. This Agreement may not be modified or amended except by an Agreement in writing signed by Purchaser and Seller. This Agreement may be executed in separate counterparts, and such counterparts shall constitute one and the same document.
- d. The term "**Business Day**" shall mean Monday through Friday, excluding days on which federally-chartered or banks chartered by the state in which the Property is located are closed for business. If the day for any action under this Agreement falls on a day other than a Business Day, the day for the action shall automatically be extended until the next Business Day.
- e. Any approval or determination given, withheld or made by Purchaser or Seller under this Agreement shall be in Purchaser's or Seller's sole and absolute discretion, and any approval hereunder shall only be effective if given in writing prior to the approved action being taken.
- f. If any provision of this Agreement shall be declared invalid or unenforceable by laws applicable thereto, or unenforceable as to certain parties, then the

Q

performance of such provision shall be excused by the parties hereto and the remaining provisions of this Agreement shall remain in full force and effect.

- g. The titles, captions and section headings are inserted for convenience only and are in no way intended to interpret, define or limit the scope or content of this Agreement or any provision hereof. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
- h. PURCHASER AND SELLER EACH AGREE TO WAIVE A TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF THIS AGREEMENT. THE PARTIES EXPRESSLY AGREE THAT ANY DISPUTES RELATED TO THIS AGREEMENT, INCLUDING ALL RELATED DOCUMENTS, WHETHER LEGAL OR EQUITABLE, SHALL BE COMMENCED IN THE BANKRUPTCY COURT; PROVIDED HOWEVER THAT IF THE BANKRUPTCY CASE IS CLOSED, THEN THE EXCLUSIVE JURISDICTION FOR ANY SUCH ACTION SHALL BE IN THE STATE OR FEDERAL COURTS OF THE STATE OF TENNESSEE. THE PARTIES CONSENT TO THE JURISDICTION, VENUE AND PROCESS OF THE APPLICABLE COURT.
- i. Any failure or delay of Purchaser or Seller to enforce any term of this Agreement shall not constitute a waiver of such term, it being explicitly agreed that such a waiver must be in writing and given pursuant to a Notice. Any such waiver by Purchaser or Seller shall not be deemed to be a waiver of any other breach or of a subsequent breach of the same or any other term.
- j. Upon the termination of this Agreement pursuant to its terms, the Earnest Money shall be (i) refunded to Purchaser (less \$100, which shall be paid to Seller as independent contract consideration), or (ii) paid to Seller if required under Section 16.a herein.
- k. This Agreement has been carefully read by the Parties and has been reviewed by the Parties' respective legal counsel; the contents herein 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.
- l. In the event of any litigation between Purchaser and Seller regarding this Agreement, the losing party shall promptly pay the prevailing party's attorneys' fees and expenses and costs of litigation.

20. **Public Announcements.** Seller and Purchaser will consult with each other before issuing any press releases or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and shall not issue any press release or make any public statement without mutual consent, except as may be required by law and then only with such prior

consultation. The Parties agree that all documents filed with the Bankruptcy Court may be posted on the Liquidating Trustee's website.

*[Signatures commence on next page]*

**IN WITNESS WHEREOF**, the parties hereto have set their respective hands the day and year indicated.

**Seller:**

**Purchaser:**

**CONSOLIDATED LEGACY DEBTORS  
LIQUIDATING TRUST**

**Robert D. Geringer, an individual**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**AS ACKNOWLEDGED BY:  
CAOP I LIQUIDATING TRUST**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**PROPOSED ORDER**

*Prepared and Submitted By:*

Peggy Hunt (Utah State Bar No. 6060)  
Milo Steven Marsden (Utah State Bar No. 4879)  
Sarah Goldberg (Utah State Bar No. 13222)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Email: hunt.peggy@dorsey.com  
marsden.steven@dorsey.com  
goldberg.sarah@dorsey.com

*Attorneys for D. Ray Strong, Liquidating Trustee  
of the Consolidated Legacy Debtors Liquidating  
Trust*



---

**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 APPROVING BIDDING PROCEDURES  
AND GRANTING BIDDING PROTECTIONS**

---

The matter before the Court is the *Motion of the Liquidating Trustee For Order Approving Bidding Procedures and Granting Bidding Protections* [Docket No. \_\_\_] (the “Motion”) filed by the Liquidating Trustee<sup>6</sup> for entry of an Order (this “Order”) approving Bidding Procedures and granting Bidding Protections. Notice of the Motion is proper and no further notice is required. Upon the Court’s consideration of the Motion, and it appearing that this Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and upon due deliberation; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Legacy Trust, its beneficiaries, and all parties in interest; and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is GRANTED.
2. The Bidding Procedures, attached hereto, are APPROVED.
3. The Bidding Protections are APPROVED.

**[END OF DOCUMENT]**

---

<sup>6</sup> All capitalized terms not defined herein shall have the meaning ascribed to those terms in the Motion.

**EXHIBIT 1**

**BIDDING PROCEDURES**



## BIDDING PROCEDURES

The following procedures (these "Bidding Procedures") shall govern the sale (the "Sale") by D. Ray Strong, as Liquidating Trustee (the "Liquidating Trustee") of certain real property located in Rutherford County, Tennessee, including interests related to such land, which is referred to in the Legacy Debtors' consolidated case as the "Smyrna Property" (the "Property"). The Sale is expressly subject to approval by the U.S. Bankruptcy Court for the District of Utah at Salt Lake City (the "Court") in a hearing that is set to occur at 2:00 p.m. on July 28, 2015 (the "Sale Hearing").

### *Initial Bid & Initial Bidder*

The Liquidating Trustee has accepted an offer for the Property (the "Initial Bid") submitted to him by Robert Geringer (the "Initial Bidder"). The Initial Bid is set forth in a Land Purchase Agreement dated as of June 30, 2015 (the "Template LPA") between the Initial Bidder and the Liquidating Trustee that the Liquidating Trustee has filed with the Court. An electronic (WORD) or paper copy of the Template LPA may be obtained by contacting any of the following persons:

The Liquidating Trustee's counsel, Peggy Hunt and Milo Steven Marsden:

Dorsey & Whitney LLP  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Phone: (801) 933-7360  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com) or [marsden.steven@dorsey.com](mailto:marsden.steven@dorsey.com)

### *Submission of Competing Bids*

The Initial Bid is expressly subject to approval by the Court at the Sale Hearing after consideration of competing bids for the Property ("Competing Bids") that are submitted by "Qualified Bidders" before the "Bidding Deadline" and are "Qualified Bids."

For purposes of the foregoing:

- A "Qualified Bidder" is a bidder that the Liquidating Trustee determines, in his sole discretion, to be capable of consummating a Qualified Bid transaction. The Initial Bidder shall be deemed a Qualified Bidder.
- The "Bidding Deadline" is 2:00 p.m. (Mountain Time) on July 22, 2015. For a Qualified Bid to be considered to be submitted before the Bidding Deadline, it must actually be received prior to the Bidding Deadline by hand delivery, mail, overnight courier, or email to each of the Notice Parties. A bidder bears all risk of delay or failure of delivery by the Bidding Deadline. All such submissions should be prominently marked "Smyrna Property Bid". The "Notice Parties" are:
  - a. Counsel for the Liquidating Trustee at Dorsey & Whitney, 136 South Main Street, Suite 1000, Salt Lake City, UT 84101-1685, Attn: Peggy Hunt, [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com); and

- b. Counsel for the Initial Bidder at Jones Day, 555 S. Flower Street, 50th Floor, Los Angeles, CA 90071, Attn: Richard L. Wynne, rlwynne@jonesday.com.
- To be a “Qualified Bid” for the Property, a Competing Bid must:
  - a. Provide a purchase price equal to or greater than Two Million Three Hundred Twenty-Five Thousand Dollars (\$2,325,000.00);
  - b. Be supported by a Fifty Thousand Dollar (\$50,000.00) deposit and evidence of ability to pay the remaining bid price;
  - c. Be made upon substantially similar terms and conditions set forth in the Template LPA;
  - d. Include both a signed form of Land Purchase Agreement (the “Competing LPA”) and a marked copy of the Competing LPA showing the differences between it and the Template LPA;
  - e. Contain a proposed closing date that is not later than August 30, 2015;
  - f. Not be conditioned on approval of any bid protections, such as a break-up fee, termination fee, expense reimbursement or similar type of payment;
  - g. Not be subject to any due diligence or financing contingencies of any kind, or subject to any condition precedent relating to the authorization or approval of the bidder’s governing body;
  - h. Includes an acknowledgement and representation, in form and substance satisfactory to the Liquidating Trustee, that the potential Qualified Bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Property prior to making its offer, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Property in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Property or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Competing LPA;
  - i. Fully disclose the identity of each person or entity that will be sponsoring, financing or participating with the bidder in connection with the Competing Bid;
  - j. Be irrevocable until the earlier of (i) approval of the Sale at the Sale Hearing; (ii) two (2) business days after the closing of another Qualified Bid that is approved by the Court; and (iii) August 1, 2015; provided, however, that if a bid is determined to be the Winning Bid or the Alternative Bid (as those terms are defined below), then such bids will be irrevocable until the time set forth below; and

k. Be received by each of the Notice Parties prior to the Bidding Deadline.

Whether a bid meets the foregoing requirements to become a Qualified Bid will be determined by the Liquidating Trustee in his sole judgment. In evaluating Competing Bids, the Liquidating Trustee may not waive substantial compliance with any of the requirements set forth above without the express written consent of the Court.

The Liquidating Trustee shall (i) promptly advise the Initial Bidder of the receipt of any Competing Bid, and (ii) promptly advise the Initial Bidder and the person submitting any Competing Bid whether, in his judgment, the Competing Bid (A) complies with the requirements for a Qualified Bid set forth above or (B) fails to comply with the requirements for a Qualified Bid set forth above (and, if so, in what respects the Competing Bid fails to comply with the requirements for a Qualified Bid).

If the Liquidating Trustee does not receive any Competing Bids that are Qualified Bids by the Bid Deadline, then the Liquidating Trustee shall request approval of the Initial Bid at the Sale Hearing. ***The Liquidating Trustee will request that the Court refuse to consider any Competing Bids for the Property that do not comply with these Bidding Procedures.***

#### ***Auction***

If the Liquidating Trustee has received one or more Qualified Bids (in addition to the Initial Bid) by the Bidding Deadline, then the Liquidating Trustee shall (i) by no later than 10:00 a.m. (Mountain Time) on July 23, 2015 provide written or electronic copies of such Qualified Bid(s) to the Initial Bidder and all other Qualified Bidders that submitted Qualified Bids, and (ii) notify the Court of the need to conduct an auction (the "Auction") to determine the highest and best Qualified Bid for the Property.

By no later than 3:00 p.m. (Mountain Time) on July 23, 2015, the Liquidating Trustee's counsel will advise the Initial Bidder and all other Qualified Bidders which Qualified Bid he has determined, in his sole discretion and professional judgment, to be the then highest and best bid (the "Starting Bid"), after considering without limitation, the following factors: (a) the purchase price associated with each bid; (b) whether the bid is subject to any conditions to closing; and (c) the likelihood of the bid closing (the "Bid Considerations").

The Auction will be conducted on July 28, 2015, starting at 9:00 a.m. (Mountain Time) at the offices of Dorsey & Whitney LLP, 136 South Main Street, Suite 1000, Salt Lake City, UT 84101-1685.

All Qualified Bidders wishing to participate in the Auction must have at least one individual representative present at the Auction, with authority to bind such Qualified Bidder. All proceedings at the Auction shall be conducted before and transcribed by a court reporter. The Auction will proceed as follows:

c. The Auction will commence with the Auctioneer (the Liquidating Trustee, counsel for the Liquidating Trustee, or any other person chosen by the Liquidating Trustee) identifying the Starting Bid and inviting all Qualified Bidders to increase their Qualified Bids in accordance with the procedures set forth herein (each, a "Subsequent Bid").

d. All Subsequent Bids presented during the Auction shall be made and received on an open basis in the presence of the Liquidating Trustee, the Initial Bidder and all other Qualified Bidders. All participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each participating Qualified Bidder shall be fully disclosed to all other Qualified Bidders and that all material terms of each Subsequent Bid presented during the Auction will be fully disclosed to the Initial Bidder and all other participating Qualified Bidders throughout the entire Auction.

e. After each round of Subsequent Bids, the Auctioneer shall announce the Subsequent Bid that the Liquidating Trustee, in his sole and professional judgment after evaluating such bids in conformity with the Bid Considerations, has determined to be the then highest and best bid (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Starting Bid.

f. Each Subsequent Bid at the Auction must be at least \$50,000 more than the then-Leading Bid to be considered.

g. Bidding at the Auction will continue so long as during each round (a) at least one Subsequent Bid is submitted by a Qualified Bidder that improves upon such Qualified Bidder's immediately prior Qualified Bid and meets the overbid requirement set forth above, and (b) the Liquidating Trustee determines, after evaluating the Subsequent Bid in conformity with the Bid Considerations, that the Subsequent Bid is a higher and better offer than the then-current Leading Bid.

h. Bidding shall continue until there is only one highest and best bid in the Liquidating Trustee's sole discretion (the "Winning Bid" and the applicable Qualified Bidder, the "Winning Bidder").

i. The Winning Bid will be submitted to the Court for approval along with the second highest and best Qualified Bid (the "Alternative Bid" and the applicable bidder the "Alternative Bidder"). In the case of a bid submitted by Geringer, if and only if Geringer is chosen as either the second or third highest and best Qualified Bid, Geringer's bid shall remain in place as an "Alternative Bid" for a period of 45 days from the Bankruptcy Court's approval of the sale to the Winning Bidder ("Geringer Back Up Period").

j. All deposits shall be returned to each bidder not selected by the Liquidating Trustee as the Winning Bidder or the Alternative Bidder, other than Geringer, no later than three (3) business days following the conclusion of the Auction or, in the case of Geringer, three (3) business days following the conclusion of the Geringer Back Up Period.

In addition to the foregoing procedures, the Liquidating Trustee may, either immediately prior to the commencement of the Auction or at any point during the Auction, announce additional procedural rules that are fair and reasonable under the circumstances for conducting the Auction (*e.g.*, limits on the amount of time for Qualified Bidders to make

Subsequent Bids); *provided, however*, that such rules are (a) not inconsistent with the Auction procedures and (b) are disclosed in the presence of the Initial Bidder and each Qualified Bidder at the Auction.

***Subsequent Bids by the Initial Bidder***

Notwithstanding anything herein to the contrary, the Initial Bidder shall be deemed to be a Qualified Bidder and shall be permitted to bid using a combination of cash and promissory note in accordance with the terms of the Template Agreement.

***Sale Hearing***

Unless otherwise agreed to by the Liquidating Trustee and the Winning Bidder, within one (1) business day after the conclusion of the Auction, the Winning Bidder shall complete and execute all agreements and other documents evidencing and containing the terms and conditions upon which the Winning Bidder's bid was made.

The Sale Hearing is to be held following the Auction (if any) at 2:00 p.m. (Mountain Time) on July 28, 2015. At the Sale Hearing, the Liquidating Trustee will request that the Court approve the Sale and enter an order granting the Sale Motion (the "Sale Order"), which will, among other things, authorize and approve a sale of the Property (a) to the Initial Bidder, if no other Qualified Bid is received and accepted as the Winning Bid; or (b) to the Winning Bidder, if a Qualified Bid other than from the Initial Bidder is received and determined by the Liquidating Trustee to be the Winning Bid in accordance with these Bidding Procedures. All Qualified Bids (other than the Winning Bid and the Alternative Bid) shall be deemed rejected by the Liquidating Trustee on and as of the date of approval of the Winning Bid and the Alternative Bid by the Court pursuant to the Sale Order.

***Failure to Consummate Purchase; Alternative Bidder***

If, following the entry of the Sale Order by the Court, the Winning Bidder fails to consummate a transaction with the Liquidating Trustee in respect of such Winning Bid that is the result of a breach or failure to perform on the part of such Winning Bidder, then (i) the Winning Bidder's Deposit shall be forfeited to the Legacy Trust, and (ii) the Alternative Bid shall be deemed the Winning Bid and Liquidating Trustee shall be authorized to consummate the Sale pursuant to the Alternative Bid without further order of the Court. If an Alternative Bid other than Geringer fails to consummate a transaction with the Liquidating Trustee in respect of such bid that is the result of a breach or failure to perform on the part of such Alternative Bidder, then (x) the Alternative Bidder's Deposit shall be forfeited to the Legacy Trust, and (y) Geringer shall be deemed to be the Winning Bid and the Liquidating Trustee shall be authorized to consummate the Sale pursuant to Geringer's Alternative Bid without further order of the Court. If the Winning Bidder consummates the Sale, the deposit of the Alternative Bidder will be returned to the Alternative Bidder within three (3) business days of the Sale's consummation with the Winning Bidder. In the case of Geringer, if the Winning Bidder or the Alternative Bidder consummates the Sale, the deposit of Geringer will be returned to Geringer within three (3) business days of the Sale's consummation regardless of expiration of the Geringer Back Up Period.

***No Expense Reimbursement or Break-Up Fee***

The Liquidating Trustee will not pay any form of expense reimbursement or break-up fee to any bidder for the Property. However, the Liquidating Trustee has agreed to and the Court has approved granting certain Bidding Protections for the Initial Bidder.

***Liquidating Trustee's Discretion***

The Liquidating Trustee may (a) determine, in his reasonable business judgment and in conformity with the Bid Considerations, which Qualified Bid, if any, is the highest and best offer, and (b) reject, at any time before entry of an order of the Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of these Bidding Procedures, or the requirements of Utah law or the Bankruptcy Code, or (iii) contrary to the best interests of the Legacy Trust, its beneficiaries and other parties in interest; *provided, however,* that if the Initial Bidder submits the only Qualified Bid, the terms provided in clauses (a) and (b) above shall be inoperative.

***Disputes***

In the event that the Liquidating Trustee and any party disagree as to the interpretation or application of these Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.