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*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 the Substantively
Consolidated Debtors
- Affects Castle Arch
Opportunity Partners I, LLC
- Affects only Castle Arch
Opportunity Partners II, LLC

**TRUSTEE’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH RICHARD
WHELAN UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

D. Ray Strong (the “Trustee”), as the post-confirmation estate representative of the above-captioned Debtors and the Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust (the “Trust”), 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”), that he entered into with Richard Whelan (“Whelan”). This Motion is supported by the Declaration of D. Ray Strong (the “Strong Declaration”). In further support hereof, the Trustee states as follows:

JURISDICTION AND VENUE

1. On October 17, 2011, Castle Arch Real Estate Investment Company, LLC (“CAREIC”) filed a petition for relief under Chapter 11 of the Bankruptcy Code, and on October 20, 2011, CAREIC affiliates CAOP Managers, LLC (“CAOP Managers”), Castle Arch Kingman, LLC (“CAK”), Castle Arch Secured Development Fund, LLC (“CASDF”), Castle Arch Smyrna, LLC (“CAS”), Castle Arch Opportunity Partners I, LLC and Castle Arch Opportunity Partners II, LLC (collectively with CAREIC, the “Debtors”) also filed petitions seeking relief under Chapter 11 of the Bankruptcy Code.

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

3. On June 7, 2013, the Bankruptcy Court entered an *Order Confirming Chapter 11 Trustee’s First Amended Plan of Liquidation Dated February 25, 2013 as Modified* [Docket No. 705] (the “Confirmation Order”), thus confirming the *Second Amended Chapter 11 Trustee’s Plan of Liquidation Dated February 25, 2013* [Docket No. 701] (the “Confirmed Plan”), pursuant to which the Court retains jurisdiction over this proceeding, which arises under the Bankruptcy Code and arises in and is related to the above-captioned bankruptcy cases.

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

BACKGROUND

General

5. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC, and in that capacity he managed each of the other Debtors.

6. On February 8, 2013, the Court entered an Order substantively consolidating CAOP Managers, CAK, CAS, CASDF and non-debtor Castle Arch Star Valley, LLC with CAREIC [Docket No. 590]. These entities, as consolidated, are referred collectively herein as the “Consolidated Legacy Debtors.”

7. On June 7, 2013, the Bankruptcy Court entered the Confirmation Order which, among other things: (i) confirmed the Confirmed Plan; (ii) appointed the Trustee as the post-confirmation estate representative for each of the Debtors; and (iii) appointed the Trustee as the Liquidating Trustee for, among others, the Trust.

Whelan’s Connection with the Debtors

8. Prior to their respective petition dates, the Consolidated Legacy Debtors made a series of transfers of cash to Whelan that the Trustee claims were compensation for soliciting investments in, referring investors to, or raising funds for the Debtors (the “Transfers”), which Whelan denies.

The Adversary Proceeding and Good-Faith Negotiations

9. On October 11, 2013, the Trustee commenced an adversary proceeding against Whelan relating to the Transfers, styled as *Strong v. Whelan*, Adv. Pro. No. 13-02387 (the “Adversary Proceeding”).

10. Since the filing of the Adversary Proceeding, the Parties exchanged financial and other information and entered into arms'-length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigation and collection, and without admitting liability or wrongdoing, the Parties agreed to resolve and compromise the claims and disputes existing amongst them pursuant to the terms of the Settlement Agreement.¹

TERMS OF SETTLEMENT AGREEMENT

11. The material terms of the Settlement Agreement are set forth below:²

(a) Within five (5) business days of the Court's entry of an Order approving the Settlement Agreement, Whelan will pay the Trustee, for the benefit of the Trust, the amount of \$3,000.00 (the "Settlement Payment").

(b) Within five (5) business days of the Trustee's receipt of the Settlement Payment, the Trustee will file in the Adversary Proceeding a Notice of Dismissal, dismissing the Adversary Proceeding with prejudice.

(c) The Trustee and Whelan will provide each other with a mutual release of claims, as set forth in the Settlement Agreement.³

APPLICABLE LAW AND ANALYSIS

I. The Settlement Agreement is Proper Pursuant to Federal Rule of Bankruptcy Procedure 9019 and the *Kopexa* Factors

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."⁴ Settlements and

¹ Strong Declaration ¶ 4.

² Reference should be made to the Settlement Agreement, attached as Exhibit A. In the event of any issue as to the Settlement Agreement, the terms of the Settlement Agreement govern, and this summary shall have no effect.

³ See generally Exh. A (Settlement Agreement).

compromises “are favored in bankruptcy.”⁵ “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.”⁶ “In approving a settlement, the bankruptcy court is not required to conduct a ‘mini-trial’ on the merits.”⁷ “Rather, the obligation of the court is to canvass the issues and see whether the settlement 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) the complexity and expense of the litigation; and
- (4) the interest of creditors in deference to their reasonable views.⁹

⁴ Fed. R. Bankr. P. 9019(a).

⁵ *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)).

⁶ *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)).

⁷ *In re Armstrong*, 285 B.R. 344 at *3 (B.A.P. 10th Cir. 2002) (table decision) (citations omitted); accord *In re Dennett*, 449 B.R. 139, 145 (Bankr. D. Utah 2011) (“[T]he Court is not required to hold a mini-trial on the issues involved in the case being compromised.”).

⁸ *Dennett*, 449 B.R. at 145 (citations omitted).

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*).

As discussed below, an evaluation of the *Kopexa* Factors shows that the Settlement Agreement is fair, equitable, and in the best interests of the Trust's beneficiaries.

A. Probability of Success of Litigation on the Merits

The first *Kopexa* Factor requires the Court to consider the probable success of the underlying litigation on the merits. To avoid the costs, expense and uncertainty of litigation and collection, the Trustee engaged in arms'-length and good-faith settlement negotiations with Whelan, which settlement negotiations were focused, in large part, on Whelan's representations that he has limited funds to pay a judgment, for which he provided extensive financial information to the Trustee to support his assertion.¹⁰

Thus, although the Trustee believes he has strong claims against Whelan for the Transfers, the Trustee has determined, in the exercise of his business judgment, that resolution of all disputes amongst the Parties through settlement is appropriate given: (1) the inherent risk that the Trustee may not be successful in obtaining a judgment against, and/or collecting a full judgment from Whelan; (2) the time and costs associated with litigating the various disputes against Whelan, vis-à-vis the recovery to be obtained and the collectability of a judgment; (3) the cash payment by Whelan for the benefit of the Trust; and (4) the relatively quick resolution of the disputes through settlement, including Whelan's release of the Debtors and Trust.¹¹ As such, this factor weighs in favor of settlement.

¹⁰ Strong Declaration ¶¶ 4–5.

¹¹ *Id.* ¶ 6.

B. Possible Difficulty in Collection of Judgment

The second *Kopexa* Factor requires the Court to consider the possible difficulty in collecting any judgment against Whelan. Whelan informed the Trustee that he is struggling financially, and that even if the Trustee were able to obtain a judgment against him, Whelan would not have funds to satisfy any material part of the judgment. The Trustee has verified the information related to Whelan's financial condition, and based thereon has determined that collection of any material part of a judgment would be difficult. As such, to avoid the costs and difficulty of collecting any judgment against Whelan, the Trustee has determined, in his business judgment, that the Settlement Agreement is in the best interests of the Trust and its beneficiaries.¹² Therefore, this factor also supports approval of the Settlement Agreement.

C. Complexity and Expense of Litigation

The third *Kopexa* Factor requires the Court to consider the complexity and expense of any litigation. Given the various payments to Whelan by the Consolidated Legacy Debtors, litigation of all payments and disputes would likely be expensive. By entering into the Settlement Agreement, the Trustee believes he has obtained a favorable and fair result for the Trust, without incurring expensive and unnecessary litigation costs.¹³ Thus, this factor supports the Settlement Agreement.

D. Interest of Creditors

The final *Kopexa* Factor looks at the interests of creditors in deference to their reasonable views. In the Trustee's business judgment, settlement of all the disputes amongst the Parties

¹² *Id.* ¶ 7.

¹³ *Id.* ¶ 8.

pursuant to the terms of the Settlement Agreement is in the best interests of the Trust and its beneficiaries. By engaging in good-faith and arms'-length negotiations with Whelan, the Trustee has avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Trust for distribution under the Confirmed Plan and Trust Agreements.¹⁴ Therefore, the last factor also supports the Settlement Agreement.

CONCLUSION

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

DATED this 20th day of November, 2015.

DORSEY & WHITNEY LLP

 /s/ Peggy Hunt
Peggy Hunt
Nathan S. Seim
Attorneys for Trustee

¹⁴ *Id.* ¶ 9.

EXHIBIT A

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this 16th day of November, 2015, by and between (i) Richard Whelan ("Whelan"); and (ii) D. Ray Strong, as the post-confirmation estate representative of the Debtors (defined below) and the Liquidating Trustee (the "Trustee") of the Consolidated Legacy Debtors Liquidating Trust (the "Trust"), as appointed in such capacities in the bankruptcy case styled *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"). The Trustee and Whelan will be referred together as the "Parties."

RECITALS

General

A. On October 17, 2011, Castle Arch Real Estate Investment Company, LLC ("CAREIC") filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the Court, and on October 20, 2011, Debtors CAOP Managers, LLC ("CAOP Managers"), Castle Arch Kingman, LLC ("CAK"), Castle Arch Smyrna, LLC ("CAS"), and Castle Arch Secured Development Fund, LLC ("CASDF") also filed voluntary petitions with the Court under Chapter 11 of the Bankruptcy Code.

B. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC, and in that capacity he managed each of the other Debtor entities.

C. On February 8, 2013, the Court entered an Order substantively consolidating CAOP Managers, CAK, CAS, CASDF and non-debtor Castle Arch Star Valley, LLC with CAREIC [Docket No. 590]. These entities, as consolidated, are referred herein as the "Debtors."

D. On June 7, 2013, the Bankruptcy Court entered an *Order Confirming Chapter 11 Trustee's First Amended Plan of Liquidation Dated February 25, 2013 as Modified* [Docket No. 705] which, among other things: (i) confirmed the *Second Amended Chapter 11 Trustee's Plan of Liquidation Dated February 25, 2013* [Docket No. 701]; (ii) appointed the Trustee as the post-confirmation estate representative for each of the Debtors; and (iii) appointed the Trustee as the Liquidating Trustee of the Trust.

Whelan's Connection with the Debtors

E. Prior to their respective petition dates, the Debtors made a series of transfers of cash to Whelan that the Trustee claims were compensation for soliciting investments in, referring investors to, or raising funds for the Debtors (the "Transfers"), which Whelan denies.

F. The Trustee claims the Transfers were made by the Debtors at a time when Whelan was not a licensed securities broker or dealer authorized to sell or solicit investments in securities.

The Adversary Proceeding and Good-Faith Negotiations

G. On October 14, 2013, the Trustee commenced an adversary proceeding against Whelan in the Bankruptcy Case styled as *Strong v. Whelan*, Adv. Pro. No. 13-02387 (the "Adversary Proceeding"), relating to Whelan's receipt of funds from the Debtors that the Trustee claims were for soliciting investments in, referring investors to, or raising funds for the Debtors.

H. Since the filing of the Adversary Proceeding, the Parties have exchanged information and entered into arms'-length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigation and collection, and without admitting liability or wrong doing by any Party, the Parties have agreed to resolve and compromise the claims and disputes which may exist between them, whether known or unknown, pursuant to the terms and conditions more fully set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and based upon the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Bankruptcy Court Approval; Best Efforts.** This Agreement is conditioned on, and is subject to, the Court's entry of an Order in the Bankruptcy Case approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019. The Trustee will file a motion seeking Court approval of this Agreement, and the Parties each agree to use their best efforts to secure Court approval of this Agreement in accordance with all applicable law. The date that the Court enters an Order approving this Agreement shall be referred to herein as the "Entry Date." In the event the Court does not issue an Order approving this Agreement, or if such Order is appealed and reversed, then: (a) this Agreement shall be null, void and of no force or effect; (b) nothing contained in this Agreement or in any motion or proceeding (including any hearing before the Court) by the Trustee seeking approval of this Agreement can be used in any manner or in any proceeding (including courts or claims in arbitration) by any of the Parties; and (c) to the degree possible, while acknowledging that time may render appeals moot, the Parties shall be in the same position they were in as though this Agreement had never been executed.

2. **Settlement Payment.** Within five (5) business days after the Entry Date, Whelan will pay the Trustee, for the benefit of the Trust, the amount of \$3,000.00 (the "Settlement Payment").

3. **Dismissal of Adversary Proceeding.** Within five (5) business days of the Trustee's receipt of the Settlement Payment, the Trustee will file in the Adversary Proceeding a Stipulated Notice of Dismissal, dismissing the Adversary Proceeding with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1), made applicable to the Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7041.

4. **Release of Claims Against Whelan.** Effective upon the Trustee's receipt of the Settlement Payment, the Debtors and the Trust release and forever discharge Whelan 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, the Debtors or the Trust may have, or may acquire from any other party against Whelan from the beginning of time to the date hereof, or which may hereafter accrue against Whelan based upon any claims, acts or omissions occurring prior to the date of this Agreement, or which may hereafter accrue against Whelan based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited to all claims asserted against Whelan in the Adversary 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.

5. **Release of Claims Against the Trust, the Debtors and the Trustee.** Effective on the Entry Date, Whelan releases and forever discharges the Debtors, the post-confirmation estates of the Debtors, the Trust, and the Trustee, as well as the Trustee's agents, attorneys and representatives, and any 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 Whelan 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; *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.

6. **Representations and Warranties.** Whelan represents and warrants that: (a) he has full power and authority to enter into this Agreement; (b) there has been no assignment or other transfer of a claim, cause of action or other liability which might affect or impair the releases set forth in this Agreement; (c) he has not filed any proofs of claim or asserted any claims against any of the Debtors or the Trust; and (d) the financial and other information that he has provided to the Trustee is true and correct.

7. **Trustee Representation.** The Trustee represents that as the Court-authorized representative of the Debtors and the Trust, he has full power and authority to enter into this Agreement, subject to Court approval as provided for above.

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

9. **Default.** Whelan agrees that he will be in material default of this Agreement if: (a) he files or causes any other party to file a claim against any of the Debtors or any successor of

the Debtors, including the Trust, or otherwise takes any action to assert an interest in assets of any of the Debtors or the Trust; (b) he fails to make the Settlement Payment as set forth above; or (c) any of the representations and warranties set forth above are materially false or misleading. The Trustee will be entitled to interest, any and all costs and fees, including but not limited to attorneys' fees, incurred by the Debtors or Trust in enforcing this Agreement or collecting amounts due hereunder.

10. **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.

11. **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.

12. **Binding Effect.** This Agreement shall be binding upon each of the Parties and their respective successors-in-interest, assigns, executors, affiliates, administrators, personal representatives, estates and to all persons or entities claiming by, through or under them, including but not limited to any successor to the Trustee, the Debtors or their bankruptcy estates and including any representative or other liquidating agent that may be appointed for the Debtors by Order of the Court or pursuant to any plan of reorganization confirmed by the Court. All representations and warranties made herein shall survive execution of this Agreement and shall at all times subsequent to the execution of this Agreement remain binding and fully enforceable.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

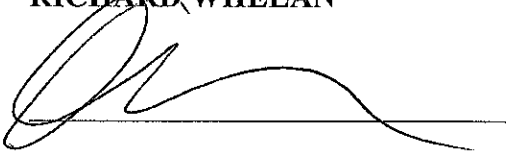
**CHRIS. A DEXTER, AS COUNSEL FOR
RICHARD WHELAN**

**D. RAY STRONG, AS ESTATE REPRESENTATIVE OF THE DEBTORS
AND LIQUIDATING TRUSTEE OF THE TRUST**



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

**CHRIS. A DEXTER, AS COUNSEL FOR
RICHARD WHELAN**

A handwritten signature in black ink, appearing to read "Chris. A. Dexter", written over a horizontal line.

**D. RAY STRONG, AS ESTATE REPRESENTATIVE OF THE DEBTORS
AND LIQUIDATING TRUSTEE OF THE TRUST**

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

I hereby certify that on November 20, 2015, I electronically filed the foregoing **TRUSTEE’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH RICHARD WHELAN UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** (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.

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I further certify that on November 20, 2015, the Motion was emailed to the following:

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/s/ Peggy Hunt

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*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 the Substantively
Consolidated Debtors
- Affects Castle Arch
Opportunity Partners I, LLC
- Affects only Castle Arch
Opportunity Partners II, LLC

**DECLARATION OF D. RAY STRONG IN SUPPORT OF TRUSTEE'S MOTION TO
APPROVE SETTLEMENT AGREEMENT WITH RICHARD WHELAN UNDER
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

D. Ray Strong (the "Trustee"), as the post-confirmation estate representative of the
above-captioned Debtors and the Liquidating Trustee of the Consolidated Legacy Debtors
Liquidating Trust (the "Trust"), being of lawful age, declares, verifies and states as follows:

1. Pursuant to the *Order Confirming Chapter 11 Trustee's First Amended Plan of Liquidation Dated February 25, 2013 as Modified* [Docket No. 705], I am the post-confirmation estate representative for the above-captioned Debtors and the Liquidating Trustee for the Trust.

2. This Declaration is based upon my personal knowledge of the facts set forth herein. I submit this Declaration in support of the *Trustee's Motion to Approve Settlement Agreement with Richard Whelan Under Federal Rule of Bankruptcy Procedure 9019* (the "Motion"). Unless otherwise stated, all capitalized terms used herein have the meanings ascribed to such terms in the Motion.

3. Pursuant to the Motion, I seek entry of an Order approving the Settlement Agreement that I entered into with Richard Whelan ("Whelan"), a copy of which is attached as Exhibit A to the Motion.

4. Whelan and I exchanged information and entered into arms'-length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigation and collection, and we agreed to resolve and compromise the claims and disputes existing amongst us pursuant to the terms of the Settlement Agreement.

5. To avoid the costs and uncertainty of litigation and collection, I engaged in settlement negotiations with Whelan, which settlement discussions were focused, in large part, on Whelan's representations that he has limited funds to pay a judgment, for which he provided financial information and documentation to support his assertion.

6. Although I believe that I have strong claims against Whelan for the Transfers, I have determined, in the exercise of my business judgment, that resolution of all disputes amongst the Parties through settlement is appropriate given: (a) the inherent risk that I may not be

successful in obtaining a judgment against, and/or collecting a full judgment from Whelan; (b) the time and costs associated with litigating the various disputes against Whelan, vis-à-vis the recovery to be obtained and the collectability of a judgment; (c) the cash payment by Whelan for the benefit of the Trust; and (d) the relatively quick resolution of the disputes through settlement, including Whelan's release of the Debtors and Trust.

7. Whelan has alleged that he is struggling financially, and that even if I were able to obtain a judgment against him, Whelan would not have the funds to satisfy any material part of a judgment. I have verified the information related to Whelan's financial condition, and based thereon have determined that collection of any material part of a judgment obtained would be difficult. As such, to avoid the costs and difficulty of collecting any judgment against Whelan, I have determined, in my business judgment, that the Settlement Agreement is in the best interests of the Trust and its beneficiaries.

8. Given the various payments to Whelan by the Consolidated Legacy Debtors, litigation of all payments and disputes would likely be expensive. By entering into the Settlement Agreement, I believe that I obtained a favorable and fair result for the Trust, without incurring expensive and unnecessary litigation costs.

9. In my business judgment, settlement of all the disputes amongst the Parties pursuant to the terms of the Settlement Agreement is in the best interests of the Trust's beneficiaries. By engaging in good-faith and arms'-length negotiations with Whelan, I believe that I have avoided the costly delays and expenses associated with litigating the disputes, thereby preserving the existing assets of the Trust for distribution under the Confirmed Plan and Trust Agreements.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 19th day of November, 2015.



*D. Ray Strong, as Estate Representative and
Liquidating Trustee*

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

I hereby certify that on November 20, 2015, I electronically filed the foregoing **DECLARATION OF D. RAY STRONG IN SUPPORT OF TRUSTEE’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH RICHARD WHELAN UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** (the “Declaration”) 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:

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I further certify that on November 20, 2015, the Declaration was emailed to the following:

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/s/ Peggy Hunt