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

**TRUSTEE'S MOTION SEEKING AUTHORIZATION AND APPROVAL OF (1) SALE
OF 300 ACRE-FEET OF WATER RIGHTS IN TOOELE COUNTY, UTAH, OUT OF
THE ORDINARY COURSE OF BUSINESS, FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS, AND SUBJECT TO HIGHER AND/OR BETTER
OFFERS, PURSUANT TO 11 U.S.C. § 363(b) AND (f) AND FEDERAL RULES OF
BANKRUPTCY PROCEDURE 2002 AND 6004; (2) PROPOSED SALE PROCEDURES;
AND (3) PAYMENT OF COSTS OF SALE, INCLUDING COMMISSION TO BROKERS
(BOYER-PLUMB STANSBURY PROPERTIES, L.C.)**

Pursuant to 11 U.S.C. § 363(b) and (f), as well as Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, D. Ray Strong (the "Trustee"), as the duly appointed Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust (the "Legacy Trust") and the 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"), by and through his undersigned counsel, moves this Court for entry of an Order authorizing and approving: (1) the sale of 300 acre-feet of water rights in Tooele County, Utah, with such sale being made out of the ordinary course of business, free and clear of liens, claims, encumbrances and interests, and subject to higher and/or better offers, with valid interests, if any, attaching to the net sale proceeds of the sale; (2) the proposed sale procedures set forth herein; and (3) the Trustee's payment of the actual and necessary costs of sale from the gross sale proceeds, including any broker commission as described below.

This Motion is supported by the *Declaration of D. Ray Strong* (the "Strong Declaration"), the *Declaration of Dell S. Nichols* (the "Nichols Declaration") and the *Declaration of Brian Gochmour* (the "Buyer's Declaration"), filed concurrently herewith. In further support hereof, the Trustee states as follows:

JURISDICTION AND VENUE

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, 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

Case Background

5. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 bankruptcy Trustee for CAREIC [Docket No. 215], and in that capacity he managed each of the other Legacy Debtors.

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

7. On June 7, 2013, the Court entered the Confirmation Order which, among other things: (a) designated the Trustee as the post-confirmation estate representative for the Legacy Debtors; (b) approved the Liquidating Trust Agreement for the Legacy Trust; (c) appointed the Trustee as the Liquidating Trustee for the Legacy Trust; and (d) authorized the Trustee to administer the Legacy Debtors' post-confirmation estates pursuant to the Confirmed Plan.

8. The Confirmed Plan became effective on July 22, 2013 (the “Effective Date”).

See Docket No. 712.

The Tooele Water Rights and Sales of Other Portions of the Water Rights

9. As of the Effective Date, property of the Legacy Trust included approximately 348 acres of real property located in Tooele County, Utah (the “Tooele Property”), and approximately 616 acre-feet of water located in Tooele County, Utah (the “Tooele Water”).

10. On October 29, 2015, the Trustee sold approximately 127 acre-feet of “East Zone” water for the amount of \$856,791.00. See Docket No. 1164. Additionally, on June 13, 2016, the Trustee entered into an *Asset Purchase Agreement* with Ironwood Real Estate, LLC (“Ironwood”) for the purchase of approximately 149.130 acre-feet of the Tooele Water for the amount of \$4,500.00 per acre-foot of water, or \$671,085.00. A motion seeking approval of the purchase agreement with Ironwood is filed concurrently herewith.

The Tooele Water Rights to Be Sold Pursuant to this Motion

11. Relevant to this motion is approximately 300 acre-feet of the Tooele Water, more particularly identified as follows (the “Tooele Water Rights”):

300 acre-feet from water right number 15-5092, including 300 acre-feet from change application number a35778, which 300 acre-feet is approved for the following sole supply beneficial uses: 28.385 acres for irrigation; 238 EDUs; 2.67 acre-feet for commercial use (e.g., fire station, fire protection, and school); and 41.01 acres for irrigation of low water use plants (1.87 acre-feet per acre).

12. The Trustee seeks to sell the Tooele Water Rights pursuant to the *Asset Purchase Agreement*, attached hereto as Exhibit 1 (the “Purchase Agreement”), to Boyer-Plumb Stansbury Properties, L.C. or an appropriate assignee thereof (the “Buyer”), or to the person making the highest and/or best offer. The description of the transaction provided in this Motion is qualified

by the more detailed provisions of the transaction set forth in the Purchase Agreement, the terms of which control in the event of any conflict between the two.

Marketing of the Tooele Water Rights

13. On or about June 19, 2012, the Trustee caused to be filed his *Application of D. Ray Strong, Chapter 11 Trustee of Castle Arch Real Estate Investment Company, LLC, for Entry of an Order Authorizing the Employment of Commerce Real Estate Solutions as Real Estate Broker* [Docket No. 252] ("Employment Application"), and on July 26, 2012, the Court entered an *Order* approving the Employment Application and authorizing the Trustee's employment of Commerce Real Estate Solutions ("Commerce") as broker to sell the Tooele Water Rights pursuant to the terms of the Listing Agreement referenced therein [Docket No. 276].

14. Commerce, principally through broker Dell S. Nichols ("Nichols"), marketed the Tooele Water Rights for sale since June 29, 2012.¹ In approximately November 2013, after entry of the Confirmation Order, Nichols left Commerce and formed his own firm, Dell Nichols Realty & Development, LLC ("Nichols Realty").² In February of 2014, the Trustee, as the Trustee of the Legacy Trust, entered into a new Listing Agreement with Nichols Realty for the sale of the Tooele Water Rights, which was retroactive to December 3, 2013, a copy of which is attached hereto as Exhibit 2.³

15. Pursuant to the Listing Agreement, the Trustee has agreed to pay Nichols Realty a standard commission of no more than 6% of the gross sales price for the Tooele Water Rights,

¹ Nichols Declaration ¶ 3.

² *Id.* ¶ 2.

³ Strong Declaration ¶ 4; Nichols Declaration ¶ 4.

which Nichols Realty will share with any agent representing a purchaser.⁴ The terms of this Listing Agreement are materially similar to those of the Listing Agreement that was previously disclosed as part of the Employment Application, except that Nichols Realty, not Commerce, is now employed and will be paid a commission upon the sale of the Tooele Water Rights.⁵ The Trustee understands that the Legacy Trust has no further obligations to Commerce.⁶

16. Since June 29, 2012, Commerce, and then Nichols Realty, has continuously and actively marketed the Tooele Water Rights for sale pursuant to industry standards, including by: (a) creating marketing flyers and postcards; (b) HTML email broadcasts; (c) posting on national real estate website; (d) launching campaigns to real estate brokers and national home builders; (e) engaging the regional economic development community; (f) soliciting targeted category buyers; and (g) otherwise promoting the availability of the Tooele Water Rights to the national marketplace.⁷

17. On November 5, 2015, the Trustee entered into a *Commercial Real Estate Contract* with Pinehurst Partners, LP (“Pinehurst”) for the purchase of the Tooele Property (\$6,500.00 per acre) and the remaining Tooele Water (\$4,500.00 per acre foot) (the “Pinehurst Purchase Agreement”). On December 22, 2015, the Court entered an *Order*⁸ approving the Pinehurst Purchase Agreement, which was conditioned on Pinehurst’s due diligence. Prior to the

⁴ See Exhibit 2.

⁵ Strong Declaration ¶ 4; Nichols Declaration ¶ 4.

⁶ Strong Declaration ¶ 4; Nichols Declaration ¶ 4.

⁷ Nichols Declaration ¶ 5.

⁸ Docket No. 1216.

due diligence deadline, Pinehurst sent the Trustee written notice of its cancellation of the Pinehurst Purchase Agreement. As a result, the Legacy Trust retained Pinehurst's \$15,000.00 non-refundable deposit. Additionally, the Trustee has received offers from Gravity Segregation, Inc. (for land and water), Utah Youth Village (for land and water), Dunn Land, LLC and Ironwood, LLC (land and water) and Western American Financing Company, Inc., but such offers were significantly deficient to be accepted.⁹

18. Nichols Realty has continued to market the Tooele Water Rights for sale since receiving the offer from the Buyer, and will continue to do so through the Higher and/or Better Bid Deadline (defined below) by: (a) providing notice of the proposed sale to any parties who have previously expressed an interest in the Tooele Water Rights; (b) soliciting the active land and home builders in the market area; (c) soliciting large holders of other water rights in area; and (d) posting on appropriate national real estate websites.¹⁰

The Purchase Agreement

19. On June 14, 2016, the Trustee, as Liquidating Trustee of the Legacy Trust, entered into the Purchase Agreement with the Buyer, a copy of which is attached hereto as Exhibit 1.¹¹

20. While the Purchase Agreement must be reviewed to obtain full disclosure of all its material terms, the following is a summary of the terms most relevant to this Motion, with capitalized terms being defined in the Purchase Agreement:

⁹ Nichols Declaration ¶ 6; Strong Declaration ¶ 5.

¹⁰ Nichols Declaration ¶¶ 7-8.

¹¹ Strong Declaration ¶ 6; Buyer's Declaration ¶ 3.

- (a) The purchase price for the Tooele Water Rights will be \$4,500.00 for each acre-foot of water approved for use within the Stansbury Park Improvement District (“SPID”) water system (the “Purchase Price”).¹²
- (b) The Buyer will make an Earnest Money deposit in the amount of \$25,000.00 (the “Earnest Money”) to be held in escrow, which will be applied to the Purchase Price at Closing.¹³
- (c) The Buyer’s due diligence period commenced upon the execution of the Purchase Agreement and will terminate forty-five days thereafter, which is June 14, 2016 through July 29, 2016 (the “Due Diligence Period”).¹⁴
- (d) If the Buyer terminates the Purchase Agreement prior to the expiration of the Due Diligence Period, the Earnest Money will be returned to the Buyer, except that \$5,000.00 will be paid to the Legacy Trust for costs incurred in bringing this Motion.¹⁵ After the expiration of the Due Diligence Deadline, if all the conditions in the Purchase Agreement are met, the Earnest Money is non-refundable and the Buyer must close on the transaction.¹⁶
- (e) The sale is conditioned upon (i) the Utah State Engineer issuing final, non-appealable approval for use of the Tooele Water Rights within the SPID water system; and (ii) acceptance by SPID of the Tooele Water Rights to satisfy water dedication requirements for Buyer’s development. In the event that either of the conditions set forth in this paragraph are not met, then the Purchase Agreement will terminate and the Earnest Money will be refunded to the Buyer, except that \$5,000.00 will be paid to the Legacy Trust for costs incurred in bringing this Motion.¹⁷
- (f) If the conditions set forth in paragraph (e) above are not satisfied by October 31, 2016, the Trustee or Buyer may terminate the Purchase Agreement. In the event the Purchase Agreement is not terminated, Buyer will pay an additional

¹² Exhibit 1 (Purchase Agreement, § 2). If all 300 acre-feet are approved for use in the SPID system, the Purchase Price for the Tooele Water Rights will be \$1,350,000.00.

¹³ *Id.*, § 3.

¹⁴ *Id.*, § 5.

¹⁵ *Id.*, § 5.

¹⁶ *Id.*, §§ 3.c. and 5.

¹⁷ *Id.*, § 4.b.–c.

\$15,000.00 in earnest money on or before October 31, 2016, to extend the deadline in this paragraph to January 31, 2017.¹⁸

- (g) The sale is subject to approval by the Court, and the sale is subject to higher and/or better offers, to be determined by the Trustee, in his sole discretion, at any time prior to the Court's entry of an Order approving the Purchase Agreement (the "Higher and/or Better Bid Deadline").¹⁹ If the Trustee receives a higher and/or better offer and sells the Tooele Water Rights to another party, then the Earnest Money will be refunded to Buyer.²⁰
- (h) Closing will occur within ten days following the date that all conditions in the Purchase Agreement have been met. Costs of closing will be divided equally between the Buyer and the Legacy Trust.²¹
- (i) The sale of the Tooele Water Rights will be free and clear of liens, claims, encumbrances and interests pursuant to 11 U.S.C. §§ 363(b) and (f).²²
- (j) The sale of the Tooele Water Rights will be made "AS IS" without representations or warranties of any kind.²³

21. In his business judgment, the Trustee believes that the sale of the Tooele Water Rights as set forth in the Purchase Agreement is fair, reasonable, and in the best interests of the Legacy Trust and its beneficiaries.²⁴

Proposed Sale Procedures

22. The sale of the Tooele Water Rights is subject to higher and/or better offers.

¹⁸ *Id.*, § 6.

¹⁹ *Id.*, § 4.a.

²⁰ *Id.*, § 3.a.

²¹ *Id.*, § 9.

²² *Id.*, § 4.a.

²³ *Id.*, § 7.

²⁴ Strong Declaration ¶ 7.

23. The Trustee will consider all Qualified Bids for the purchase of the Tooele Water Rights.²⁵

24. A “Qualified Bid” will only be one which is in writing, submitted prior to the Higher and/or Better Bid Deadline, and which is accompanied by a cash deposit in the amount of \$25,000.00 and evidence of ability to perform. In the event that a Qualified Bid is determined to be the highest and/or best offer, the \$25,000.00 will become nonrefundable upon the Court’s approval of the sale, regardless of whether the contract is cancelled during any due diligence period, and the deposit will be applied to the purchase price. If a Qualified Bid is determined not to be the highest and best offer, the \$25,000.00 will be returned to the person submitting the Qualified Bid.²⁶

25. In the event that Qualified Bids are submitted, the Trustee will provide copies of the Qualified Bids to the Buyer and all other persons submitting Qualified Bids.²⁷

26. If the Trustee determines that it is appropriate, the Trustee may conduct an auction prior to the hearing on the Motion, inviting the Buyer and all those who have submitted Qualified Bids to participate.²⁸

27. Whether an offer is a higher and/or better offer, regardless of his decision to conduct an auction, will be determined by the Trustee in his sole discretion.

²⁵ *Id.* ¶ 8.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

28. Upon closing of the sale, whether to the Buyer or to a person who has submitted a Qualified Bid that is determined to be a higher and/or better offer, the Trustee will file a Notice of Sale with the Court that provides information typically required under Federal Rule of Bankruptcy Procedure 6004(f).²⁹

29. In the event that a higher and/or better offer is received and accepted for the sale of the Tooele Water Rights, approval of the sale to the Buyer herein will be deemed to be approval of the sale to the person submitting the higher and/or better offer, with the Notice of Sale providing an itemization of amounts obtained by the Legacy Trust, as well as all refunds to the Buyer.

Interests in the Tooele Water Rights

30. A preliminary title commitment was obtained for the Tooele Water Rights in connection with the sale contemplated herein, a true and correct copy of which is attached hereto as Exhibit 3 (the "Preliminary Title Commitment"), of which Buyer has received a copy.³⁰

31. The Trustee is providing notice of this Motion to all persons and entities listed on the Preliminary Title Commitment whose interests in the Tooele Water Rights may be affected by any Order granting this Motion pursuant to 11 U.S.C. § 363(b) and (f).³¹

RELIEF REQUESTED

32. By this Motion, the Trustee seeks entry of an Order authorizing: (a) the sale of the Tooele Water Rights pursuant to the Purchase Agreement out of the ordinary course of business,

²⁹ *Id.* ¶ 9.

³⁰ *Id.* ¶ 10; Buyer Declaration ¶ 4.

³¹ Strong Declaration ¶ 11.

free and clear of interests, and subject to higher and/or better offers, with valid liens, claims, encumbrances and interests in the Tooele Water Rights, if any, attaching to the proceeds of the sale, after the deduction of the costs of sale, including Nichols Realty's commission, and any costs that the Legacy Trust or the Legacy Debtors have incurred in relation to the Tooele Water Rights and the sale thereof, and any taxes (the "Net Sale Proceeds"); (b) the sale procedures noted in ¶¶ 22–29 above; and (c) the payment of actual and necessary costs of sale from the gross sale proceeds, including commission to Nichols Realty.

33. For the reasons set forth below, the relief sought herein is appropriate, and the Motion should be granted.

A. The Proposed Sale Should Be Authorized Under 11 U.S.C. § 363(b)

34. 11 U.S.C. § 363(b)(1) provides: "The trustee, after notice and a hearing, may use, sell, lease, other than in the ordinary course of business, property of the estate[.]"

35. To approve a sale of assets outside the ordinary course of business, the Trustee must show that:

- a. a sound business reason exists for the sale;
- b. there has been adequate and reasonable notice to interested parties, including full disclosure of sale terms and any relationship with the buyer;
- c. the sale price is fair and reasonable; and
- d. the proposed buyer is proceeding in good faith.³²

36. The Trustee has met all four parts of this test and, accordingly, he respectfully requests that the Court grant this Motion, thereby entering an Order authorizing: (a) the proposed free and clear sale of the Tooele Water Rights to Buyer, as set forth in the Purchase Agreement,

³² See *In re Medical Software Solutions*, 286 B.R. 431, 439–40 (Bankr. D. Utah 2002).

or to any person making a higher and/or better offer; and (b) the Trustee to pay costs of sale from the gross sale proceeds, subject to 11 U.S.C. § 363(b).

Sound Business Purpose

37. Courts show great deference to a trustee's decision-making.³³ Once a trustee articulates a valid business judgment for a sale, "a presumption of reasonableness attaches to a trustee's management decisions."³⁴

38. In his business judgment, the Trustee believes that the sale of the Tooele Water Rights under the Purchase Agreement is fair, reasonable and will maximize the value of the Tooele Water Rights, minimize costs to the Legacy Trust, and produce a good-faith purchaser. The Trustee's opinion is based on several factors, including but not limited to the following:

- a. the length of time the Tooele Water Rights have been marketed for sale;
- b. the advice of Nichols and those acting under his direction, who have experience in selling water rights similar to the Tooele Water Rights at issue;
- c. the arm's-length nature of the negotiations related to the terms of the Purchase Agreement that were engaged in by the parties;
- d. the cash nature of the sale and the Buyer's representations that it has the financial ability to pay the Purchase Price at Closing; and
- e. the ability of the Trustee under the Purchase Agreement to accept higher and/or better offers for the Tooele Water Rights.³⁵

³³ See *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981).

³⁴ *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986).

³⁵ Strong Declaration ¶ 12; Nichols Declaration ¶ 10.

Notice of the Proposed Sale and Higher and/or Better Offers

39. Adequate and reasonable notice of this Motion and the proposed sale of the Tooele Water rights will be made to interested parties.

40. Concurrent with the filing of this Motion, the Trustee will serve a Notice of Hearing upon all creditors and parties-in-interest in the above-captioned bankruptcy cases and all parties whose interests might be affected by the sale contemplated herein, which Notice will provide, among other things: (a) a general description of the Tooele Water Rights; (b) the price that is offered by the Buyer; (c) a statement that the Trustee will accept higher and/or better offers for the Tooele Water Rights, as well as the procedures for submitting a higher and/or better offer prior to the expiration of the Higher and/or Better Bid Deadline; (d) procedures and the deadline for objecting to the sale of the Tooele Water Rights; and (e) the date and time of any hearing on this Motion, to the extent any party objects to this Motion or a higher and/or better offer is received prior to the expiration of the Higher and/or Better Bid Deadline.³⁶

41. The Trustee will also post a copy of this Motion on his website,³⁷ and Nichols Realty will provide notice of the proposed sale to any parties who have previously expressed an interest in the Tooele Water Rights.³⁸

42. As set forth in ¶ 18 above, Nichols Realty will continue to market the Tooele Water Rights for sale through the Higher and/or Better Bid Deadline,³⁹ and the Trustee will

³⁶ Strong Declaration ¶ 13.

³⁷ *Id.* ¶ 14.

³⁸ Nichols Declaration ¶ 8.

³⁹ *Id.* ¶ 7.

consider competing offers for the Tooele Water Rights prior to the expiration of the Higher and/or Better Bid Deadline.⁴⁰

43. Whether an offer is higher and/or better will be determined by the Trustee in his sole and absolute discretion, and to the extent the Trustee receives a Qualified Bid prior to the Higher and/or Better Bid Deadline that he considers higher and/or better, the Trustee will provide notice to the Buyer of the higher and/or better offer.⁴¹

44. Such procedures are fair, reasonable and afford notice as required under 11 U.S.C. § 363 and Federal Rules of Bankruptcy Procedure 2002 and 6004.

Fair and Reasonable Price

45. For the reasons set forth in ¶ 38 above, as well as the fact that the Trustee can accept higher and/or better offers for the Tooele Water Rights prior to the expiration of the Higher and/or Better Bid Deadline, the Trustee respectfully submits that the proposed sale price for the Tooele Water Rights is fair and reasonable.⁴²

Good Faith Purchaser

46. The parties' negotiation of the Purchase Agreement has been at arms' length and in good faith, and the parties agree that all acts culminating in the Closing of the Purchase Agreement will likewise be negotiated and conducted through arms' length transactions and in good faith.⁴³

⁴⁰ Strong Declaration ¶ 14.

⁴¹ *Id.* ¶ 15.

⁴² *Id.* ¶ 16.

⁴³ *Id.* ¶ 17; Nichols Declaration ¶¶ 9–11; Buyer's Declaration ¶ 5.

47. Although the Bankruptcy Code does not define "good faith," the Tenth Circuit has determined in the context of 11 U.S.C. § 363(m) that a "good faith" purchaser is "one that buys in good faith, and for value."⁴⁴ Actions that destroy a purchaser's good faith include "fraud, collusion between the purchaser and other bidders or trustee, or an attempt to take grossly unfair advantage of other bidders."⁴⁵

48. Here, the good faith standard has been met because the Buyer is purchasing the Tooele Water Rights in good faith and for fair value as part of a transparent process that affords all parties in interest and potential purchasers the opportunity to make a higher and/or better offer for the purchase of the Tooele Water Rights. Additionally, the Buyer is an independent third party that has no connections to the Trustee, the Debtors or the Legacy Trust, and there has been no fraud or collusion between the Buyer and the Trustee.⁴⁶

49. Specifically, Commerce and Nichols Realty have publicly marketed the Tooele Water Rights pursuant to industry standards since June 29, 2012.⁴⁷ Since the Buyer first expressed an interest in purchasing the Tooele Water Rights, the parties entered into good-faith negotiations relating to the terms of the Purchase Agreement.⁴⁸ As a result of such negotiations, as well as other factors discussed in ¶ 38 above, the Purchase Price represents a fair and reasonable value for the Tooele Water Rights. Finally, the material terms of the sale are being

⁴⁴ *Tompkins v. Frey (In re Bel Air Assocs., Ltd.)*, 706 F.2d 301, 304 (10th Cir. 1983).

⁴⁵ *Id.* at 305 n.11 (citation omitted); *see also In re Lotspeich*, 328 B.R. 209 (10th Cir. BAP 2005).

⁴⁶ Strong Declaration ¶ 18; Nichols Declaration ¶ 12; Buyer's Declaration ¶ 6.

⁴⁷ Nichols Declaration ¶ 5.

⁴⁸ Strong Declaration ¶ 17; Buyer's Declaration ¶ 7; Nichols Declaration ¶ 9.

fully disclosed to the Court and parties in interest, and to the extent any party submits a higher and/or better offer for the Tooele Water Rights prior to the expiration of the Higher and/or Better Bid Deadline, the Trustee is able to accept such offer. Accordingly, the Trustee submits that the proposed sale is an arm's length transaction made to a good faith purchaser and requests that any order authorizing this sale so provide.⁴⁹

50. To the best of the Trustee's knowledge and belief, and based on the representations of the Buyer, there are no circumstances giving rise to claims under 11 U.S.C. § 363(n).⁵⁰

51. Accordingly, the Trustee requests that the Court enter an Order granting this Motion, with any Order: (a) approving the sale under 11 U.S.C. § 363(b) and (m); (b) finding that 11 U.S.C. § 363(n) does not apply; and (c) finding that notice of the Motion has been proper.

B. The Sale of the Tooele Water Rights Pursuant to 11 U.S.C. § 363(f) Is Warranted

52. 11 U.S.C. § 363(f) states that a trustee may sell estate property free and clear of interests, if:

- (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or

⁴⁹ Strong Declaration ¶ 18.

⁵⁰ *Id.* ¶ 19; Nichols Declaration ¶ 13; *see* Buyer's Declaration ¶ 8.

- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

53. Because Section 363(f) is in the disjunctive, the satisfaction of any one of the alternative requirements enumerated therein will warrant the Trustee's proposed sale of the Tooele Water Rights free and clear of interests.

54. The Trustee is unaware of any liens, claims, encumbrances or interests relating to the Tooele Water Rights. To the extent any such interests are asserted as being valid, however, such interests are adequately protected because they will attach to the Net Sale Proceeds.⁵¹

55. Accordingly, the Trustee requests that the Court grant this Motion, including by authorizing the sale of the Tooele Water Rights free and clear of liens, claims, encumbrances and interests pursuant to 11 U.S.C. § 363(f), with any interest that might be asserted in the Tooele Water Rights attaching to the Net Sale Proceeds, subject to any claims and defenses that the Trustee, Legacy Trust or Legacy Debtors possess with respect thereto.

C. The Proposed Sale Procedures Are Appropriate

56. The proposed sale procedures set forth in ¶¶ 22–29 above are designed to obtain the highest and best offer for the Tooele Water Rights. Accordingly, the Trustee submits that the procedures are appropriate and should be approved.

D. Payment of Broker Commissions and Customary Closing Costs Is Appropriate

57. The Trustee believes that the employment of Commerce and subsequently Nichols Realty to list and sell the Tooele Water Rights was in the best interests of all parties in

⁵¹ Strong Declaration ¶ 20.

interest. Nichols Realty's services were an important and necessary component in obtaining the proposed terms for the sale of the Tooele Water Rights.⁵²

58. Nichols Realty has informed the Trustee that it does not have any connection with the Buyer, the Trustee, the United States Trustee, the Debtors, their creditors, or any party in interest or their professionals, which have not been previously disclosed to the Court.⁵³

59. The Trustee believes that the payment of sales commission to Nichols Realty under the Listing Agreement is proper and requests any Order granting this Motion so provide.

60. The Trustee may also be required to pay customary closing costs in relation to the sale and requests that any Order granting this Motion authorize such costs.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter an Order granting this Motion as set forth herein.

DATED this 5th day of July, 2016.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Nathan S. Seim

Attorneys for D. Ray Strong, Trustee

⁵² *Id.* ¶ 21.

⁵³ *Id.* ¶ 22; Nichols Declaration ¶ 12.

EXHIBIT 1

Asset Purchase Agreement

This Asset Purchase Agreement ("Agreement") is made this 14th day of June, 2016 ("Effective Date"), between the Consolidated Legacy Debtors Liquidating Trust as successor in interest to Castle Arch Real Estate Investment Company, LLC ("Seller") and Boyer-Plumb Stansbury Properties, L.C. ("Buyer") concerning the following described water right (the "Water Right"):

300 acre-feet from water right number 15-5092, including 300 acre-feet from change application number a35778, which 300 acre-feet is approved for the following sole supply beneficial uses: 28.385 acres for irrigation; 238 EDUs; 2.67 acre-feet for commercial use (e.g., fire station, fire protection, and school); and 41.01 acres for irrigation of low water use plants (1.87 acre-feet per acre).

1. Agreement: In consideration of the mutual promises and covenants set forth in this Agreement, which promises and covenants are hereby acknowledged to be adequate and legally sufficient, Buyer agrees to buy and Seller agrees to sell the Water Right on the terms and conditions set forth in this Agreement.

2. Purchase Price: The "Purchase Price" of the Water Right shall be \$4500 per acre foot approved for use within the Stansbury Park Improvement District ("SPID") water system as provided in subparagraphs 4.b and 4.c below. Assuming 300 acre-feet are approved for use in the SPID system, the purchase price for the Water Right will be one million three hundred and fifty thousand Dollars (\$1,350,000).

3. Earnest Money: Earnest money of Twenty-Five Thousand Dollars (\$25,000) shall be deposited with Metro National Title Company, Attn: Rod Pipella, Tel: (801) 236-3820, 345 East Broadway, Salt Lake City, UT 84111 ("Earnest Money").

- a. The Earnest Money shall be returned to the Buyer in full if the Trustee accepts a higher and/or better offer for the Water Right.
- b. Except for \$5,000.00, the Earnest Money shall be returned to the Buyer if the Closing Conditions in paragraph 4 are not met. In such instance, the Buyer agrees that \$5,000.00 shall be paid to the Seller in part for costs expended to obtain Bankruptcy Court approval.
- c. Once the Closing Conditions are met in paragraph 4, the Earnest Money shall be nonrefundable.
- d. Except as expressly stated herein, the Earnest Money shall be applied to the Purchase Price at Closing.

4. **Closing Conditions:** Neither Buyer nor Seller shall be obligated to proceed to Closing unless the following conditions are satisfied:

- a. **U.S. Bankruptcy Court Approval:** It is understood and agreed that the Buyer's purchase of the Water Right is expressly conditioned on the entry of an Order by the U.S. Bankruptcy Court for the District of Utah (the "Bankruptcy Court") approving this Agreement. The Seller will, within 10 business days, file a motion in the Bankruptcy Court seeking approval of the Agreement and a sale of the Water Right free and clear of all liens pursuant to 11 U.S.C. § 363(b) and (f). It is expressly understood and agreed that the sale of the Water Right is subject to higher and/or better offers made prior to the Bankruptcy Court's entry of an Order approving the sale as provided for in this subparagraph. If multiple offers are tendered all offers are subject to the Seller's determination of the "highest and/or best offer" as approved by the Bankruptcy Court. If the Court rejects this Agreement or Seller accepts a higher and better offer before Bankruptcy Court approval of this Agreement, the Earnest Money shall be refunded to Buyer, except as expressly stated in paragraph 3.
- b. **Change Application Approval:** It is understood and agreed that the Buyer's purchase of the Water Right is expressly conditioned upon the State Engineer issuing final, nonappealable approval for use of the Water Right within the SPID system. If the State Engineer issues a final, nonappealable decision denying the Change Application, this Agreement shall be deemed terminated, and the Earnest Money shall be refunded to Buyer, except as expressly stated in paragraph 3.
- c. **Acceptance by SPID:** It is understood and agreed that the Buyer's purchase of the Water Right is expressly conditioned upon acceptance by SPID of the Water Right to satisfy water dedication requirements for Buyer's development. If SPID refuses to accept the Water Right as provided in this subparagraph, this Agreement shall be deemed terminated, and the Earnest Money shall be refunded to Buyer, except as expressly stated in paragraph 3.

5. **Due Diligence:** A due diligence period will commence from the signing of this Agreement and run for forty-five (45) days. Within this period, Buyer may terminate this Agreement, and the Earnest Money shall be refunded to Buyer, except as expressly stated in paragraph 3. Termination of this Agreement on the basis of due diligence must be in writing and delivered to the Seller so that it is received prior to the expiration of this due diligence period. After the expiration of the due diligence period, the Buyer must close on this transaction if all conditions to closing under paragraph 4 are met, subject only to the approval deadline set forth in paragraph 6.

6. **Approval Deadline:** If the conditions set forth in paragraph 4 are not satisfied on or before October 31, 2016, Buyer or Seller may, in their sole discretion, terminate this Agreement. In the event that the Agreement is not

terminated, Buyer will pay an additional Fifteen Thousand Dollars (\$15,000) in earnest money on or before October 31, 2016, to extend the deadline in this paragraph to January 31, 2017, which shall be included as "Earnest Money" under paragraph 3

7. **Condition of the Water Right:** The Seller's sale of the Water Right is "AS IS" with no representations or warranties by the Seller of any kind except that the Seller has authority to enter into the Purchase Agreement, subject to Bankruptcy Court approval.

8. **Best Efforts; Cooperation; Assignment:** The parties shall use best efforts to meet the Closing Conditions set forth in paragraph 4. The parties shall cooperate in taking all actions, including consenting to and executing all required documents to meet the Closing Conditions set forth in paragraph 4. Any communications received related to the Closing Conditions in paragraph 4 received by one party but not the other, must be immediately provided to the non-receiving party. If one party receives material information about the Closing Conditions in paragraph 4 that is not documented, that party must immediately report such information to the other party. Assignment of this Agreement may only be on the written consent of the non-signing party.

9. **Closing.** A closing of the Water Right shall take place no later than ten (10) days following the date that the last of the conditions contained in paragraph 4 are satisfied. The Purchase Price, less the Earnest Money, shall be paid in full at closing. Costs of closing shall be divided equally between, and paid by, Buyer and Seller. Buyer and Seller shall each pay the cost of their own legal counsel and other advisors in connection with this transaction.

10. **Disputes:** Upon the occurrence of a default, the nondefaulting party shall have the right to exercise all rights and remedies available at law and in equity, including injunctive relief and specific performance. Any action to enforce this Agreement or resolve disputes related to this Agreement must be brought in the Bankruptcy Court and the Buyer expressly consents to jurisdiction in the Bankruptcy Court. In the event of any dispute, the prevailing party in the legal proceeding shall be entitled to recover its reasonable attorneys' fees, costs and expenses from the other party.

11. Seller represents and warrants that it has the requisite authority to execute and deliver this Agreement and to perform its obligations hereunder.

12. Buyer represents and warrants that it has the requisite authority to execute and deliver this Agreement and to perform its obligations hereunder.

13. Any party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing signed by the party intended to be benefited by the provisions and a waiver by a party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

14. This document has been and shall be deemed to be a product of joint drafting by the parties and there shall be no presumption otherwise.

15. The captions and headings in this Agreement are for convenience only and shall not be considered in construing any provision contained in this Agreement.

16. This Agreement constitutes the entire agreement of the parties regardless of any other written or verbal representations of Seller, Buyer or their agents or representatives thereof to the contrary. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by both parties.

17. This Agreement shall be subject to the laws of the State of Utah without regard to principles of conflicts of laws.

18. This Agreement may be signed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one instrument.

The undersigned agree to the above terms and conditions as of the date first written.

Buyer:

Boyer-Plumb Stansbury Properties, L.C.

By: THE BOYER COMPANY, L.C., a Utah limited liability company

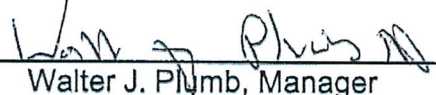
Its: Manager

By: 

Brian Gochnour, Manager

By: PLUMB HOLDINGS, L.L.C. a Utah limited liability company

Its: Manager

By: 

Walter J. Plumb, Manager

Seller:

The Consolidated Legacy Debtors Liquidating

Trust as successor in interest to Castle Arch Real Estate Investment Company, LLC

By: 

D. Ray Strong, Liquidating Trustee

EXHIBIT 2



“Creating Real Estate Value”

EXCLUSIVE AUTHORIZATION OF SALE

D. Ray Strong, as Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC and manager of affiliated entities noted below (“Owner”) in the bankruptcy cases being jointly administered under Case No. 11-35082 in the United States Bankruptcy Court for the District of Utah (“Bankruptcy Court”) hereby grants to Dell Nichols Realty & Development, LLC (“Broker”), the exclusive right to negotiate a sale with respect to the real property described below (the “Property”) for a period commencing on December 3, 2013 and ending at midnight on December 2, 2014, (the “Listing Period”) unless this Authorization is extended in writing and signed by both Owner and Broker, or unless otherwise ordered by the Bankruptcy Court. The Properties are as outlined on Exhibit “A” which by referenced is made a part hereof.

Notwithstanding the foregoing, the Owner and Broker shall have the option to terminate this Agency Agreement upon thirty (30) days written notice to the other party, or if otherwise ordered by the Bankruptcy Court. However, the Owner’s agreement to pay a commission to the Brokerage extends until a date one (1) year following the termination date with regard to anyone who was shown or offered the Property under section 2 and who acquires it within this extended time period, unless the Broker terminates this Agency Agreement.

The price, terms and conditions of the sale for each property, owned by the entities shown on Exhibit “A”, shall be determined by Owner on a property by property basis. The sales price, terms and conditions to which the Owner of the Property agrees in writing will be that represented to the marketplace. Any and all sales hereunder will be as is and expressly conditioned on approval by the Bankruptcy Court after appropriate notice and hearing.

In consideration of the mutual promises contained in this Authorization, Owner agrees to pay Broker commissions as follows:

Six (6%) percent of the gross sales price or as otherwise agreed to in writing by the Owner.

Commissions shall be paid through escrow upon the closing of sales or exchange transactions after Bankruptcy Court approval; absent an escrow, commissions shall be paid upon recordation of a deed or upon delivery of such deed or other instrument of conveyance if recordation is deferred more than one month thereafter. Owner shall pay said commissions to Broker if during the Listing Period: (a) the Property or any interest therein is sold, transferred or conveyed by or through Broker, Owner or any other person or entity; or (b) a purchaser is procured by or through Broker, Owner or any other person or entity who is ready, willing and able to purchase the Property or any interest therein on the terms above stated or other terms acceptable to the owner of the Property.

Owner agrees to cooperate with Broker in effecting a sale of the Property and immediately to refer to Broker all inquiries of any person or entity interested in purchasing the Property. All negotiations are to be through Broker. Owner agrees that the applicable bankruptcy estate will pay all customary escrow, title and revenue charges after Bankruptcy Court approval, and Owner will execute such documents as may be necessary to effect a sale of the Property. Broker is authorized to accept a deposit from any prospective purchaser. In sales and exchange transactions, Broker is authorized, upon the opening of escrow, to transfer such deposit to the escrow agent for the account of the purchaser.

It is understood that it is illegal for either Owner or Broker to refuse to present, sell or lease real property to any person because of race, color, religion, national origin, sex, marital status, age or physical disability.

Owner hereby warrants and represents to Broker that: (1) he has authority to act on behalf of the title owners for the property as trustee in the above-noted bankruptcy case; neither Broker nor any salesperson affiliated with Broker has made any promises or representations to or agreements with Owner not contained herein which in any manner affected Owner's and Broker's rights and obligations under this Authorization.

In the event a claim or controversy arises concerning any failure to pay Broker all or any portion of the amounts provided herein, Owner and Broker hereby agree that such claim or controversy shall be determined by the Bankruptcy Court.

AGENCY.

The Broker and its agents named in this Authorization are agents of the Owner. As such they owe the Owner fiduciary duties of undivided loyalty, obedience to lawful instructions, full disclosure, confidentiality, reasonable care, diligence and accounting.

The Owner instructs the Broker to cooperate by sharing the commission under this Authorization with other licensed brokers and agents.

If the commission split is other than 50 / 50 of the net Broker commission amount with another broker, it must be approved in writing by the Owner.

The heirs, transferees, successors and assigns of the parties hereto are duly bound by the provisions hereof.

The Broker shall be permitted to co-list the Property with other brokers, providing the co-list broker commission shall be paid by Broker within the commission amounts stated above.

NO MODIFICATION OF OR AMENDMENT TO THIS LISTING SHALL BE EFFECTIVE UNLESS THE SAME IS IN WRITING AND SIGNED BY BOTH THE OWNER AND AN AUTHORIZED OFFICER OF BROKER.

Owner hereby acknowledges that neither Broker nor any salesperson associated with Broker is qualified or authorized to give legal or tax advice; if Owner desires such advice he shall consult with an attorney or accountant.

Owner acknowledges receipt of a copy of this Authorization and which Owner has read and understands.

D. Ray Strong as Chapter 11 Trustee for Consolidated Legacy Debtors, CAOPI, and CAOPII; Post-Confirmation Estate Representative and Trust Trustee for the Legacy, CAOPI, and CAOPII Trusts

DATED 2/20/14

By: 
D. Ray Strong

Its: **Chapter 11 Trustee, Post-Confirmation Trust Trustee, and Estate Representative**

Address: **201 South Main Street, Suite 450
Salt Lake City, UT 84111**

Dell Nichols Realty & Development, LLC

By: 
its principal broker

EXHIBIT "A"

PROPERTY

Tooele, UT – Land with Water Rights (if any) – Approx. 348 acres

Kingman, AZ – Land with Water Rights (if any) – Approx. 535 acres

Smyrna, TN – Land with Water Rights (if any) – Approx. 485 acres

Thayne, WY – Land with Water Rights (if any) – Approx. 39 acres

OWNERSHIP ENTITIES:

Castle Arch Real Estate Investment Company, LLC

CAOP Managers, LLC

Castle Arch Opportunity Partners I, LLC

Castle Arch Opportunity Partners II, LLC

Castle Arch Secured Development Fund, LLC

Castle Arch Kingman, LLC

Castle Arch Smyrna, LLC

 Dns

EXHIBIT 3

Document Page 30 of 30
COMMITMENT FOR WATER RIGHT TITLE INSURANCE

ISSUED BY

First American Title Insurance Agency, LLC
215 South State Street, Salt Lake City, UT 84111
Phone: (801)578-8888 | Fax: (866)375-9955

June 24, 2016
Order Number: w16067

Rodney M. Pipella
Metro National Title
345 East 300 South
Salt Lake City, UT 84111

RE: Boyer-Plumb Stansbury Properties, LC

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this commitment is limited by the following: (1) The Provisions in Schedule A. (2) The Requirements in Schedule B-1. (3) The Exceptions in Schedule B-2. (4) The Conditions on the inside cover page.

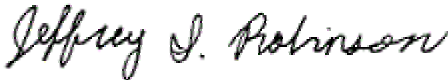
The Commitment is not valid without SCHEDULE A and Sections 1 and 2 of SCHEDULE B.

Underwritten by:

First American Title Insurance Company



Dennis J. Gilmore
President



Jeffrey S. Robinson
Secretary

ESCROW/CLOSING INQUIRIES should be directed to your Escrow Officer: **Rodney M. Pipella** at **801-363-6633** located at **345 East 300 South, Salt Lake City, UT 84111**.

Effective Date: June 14, 2016 at 7:30 a.m.

1. Policy or (Policies) to be issued:

Modified ALTA 1992 Standard Owner's for \$1,350,000.00

PREMIUM \$6,689.00

Proposed Insured:

Boyer-Plumb Stansbury Properties, L.C.

2. The estate or interest in the Water Right described or referred to in this commitment and covered herein is at the effective date hereof vested in:

Castle Arch Real Estate Investment Company, L.L.C., a California limited liability company

3. The Water Right referred to in this Commitment is located in Tooele County, Utah and is described as:

A portion of Water Right No. 15-5092, for irrigation of 28.385 acres, Domestic 238 EDU's; Irrigation Other, low water use plants 41.01 acres; Fire protection 2.67 acre-feet.

**SCHEDULE B - Section 1
Requirements**

The following requirements are to be complied with prior to issuance of policy named in Schedule A herein:

- (A) Pay the agreed amounts for the interest in the Water Right and/or the mortgage or deed of trust to be insured.
- (B) Pay us the premiums, fees and charges for the policy. In the event the transaction for which this commitment is furnished cancels, the minimum cancellation fee will be \$500.00.
- (C) Provide us with releases, reconveyances or other instruments, acceptable to us, including payment of any amounts due, removing the encumbrances shown in Schedule B-2 that are objectionable to the proposed insured.
- (D) Provide us with copies of the appropriate instruments, agreements, certificates, contracts, resolutions or other evidence needed to: (i) create and/or convey the interest in the Water Right being insured; and (ii) identify the party(ies) authorized to execute the subject instruments, agreements, certificates, contracts, resolutions or other such evidence thereof.
- (E) Sign, deliver and record the documents creating the interest to be insured.
- (F) Provide to us in writing the name of anyone not referred to in this Commitment who will receive an interest in, or who will make a loan secured by a deed of trust or mortgage secured by, the Water Right described in this Commitment.
- (G) After receipt of the information requested in these requirements, together with any other information about the transaction, we reserve the right to add requirements to this Schedule B-1 or special exceptions to Schedule B-2.
- (H) Provide us with any information regarding any lien or right to a lien for services, labor or materials furnished as of the Date of Policy, and imposed by law, including but not limited to, applicable River Commissioner assessments made by the Division of Water Rights or enforcement liens or penalties imposed as part of any enforcement action undertaken by the Division of Water Rights.
- (I) Approval and updated ownership records as maintained by the Division of Water Rights with a Report of Water Right Conveyance application.

**SCHEDULE B - Section 2
Exceptions**

Any policy we issue will have the following exceptions and does not insure against loss or damage, nor against costs, attorneys' fees or expenses, any or all of which arise by reason of the following, unless they are taken care of to our satisfaction:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Terms and conditions as set forth in the Water Right.
3. The claim or interest of another person or entity in and to the Point of Diversion, where such claim or interest is established by a valid water right owned by the claimant.
4. Partial or total forfeiture due to non-use or abandonment.

(Exception 4 will not appear in an Extended Coverage Policy)

5. Proceedings pending in the Bankruptcy Court of the U.S. District Court, Utah, entitled in re: Castle Arch Real Estate Investment Company, LLC , as Debtor, whose Attorneys being Adam S. Affleck, T. Edward Cundick and Michael L. Labertew and D. Ray Strong as Trustee in Case No. 11-35082, etal, wherein a petition for relief was filed on October 17, 2011.

The name(s) Castle Arch Real Estate Investment Company, L.L.C., a California limited liability company, has/have been checked for judgments, State and Federal tax liens, and bankruptcies and if any were found, are disclosed herein.

Title inquiries should be directed to Brad Dobson @ (801)578-8820.

NOTE: The policy(ies) to be issued as a result of this Commitment contain an Arbitration Clause set forth in the Conditions/Conditions and Stipulations Section. The following is included for the information of the proposed insured(s):

Any matter in dispute between you and the company may be subject to arbitration as an alternative to court action pursuant to the rules of the American Arbitration Association or other recognized arbitrator, a copy of which is available on request from the company. Any decision reached by arbitration shall be binding upon both you and the company. The arbitration award may include attorney's fees if allowed by state law and may be entered as a judgment in any court of proper jurisdiction.

In the event the transaction for which this commitment was ordered "cancels", please refer to Paragraph B under Schedule B, Section 1 for required cancellation fee.

CONDITIONS

6. DEFINITIONS

- (a) "Water Right" means all right, title and interest thereto and as is provided by both (i) the terms and conditions of the subject Water Right; and (ii) Title 73 of the Utah Code, as amended.
- (b) "Mortgage" means mortgage, deed of trust or other security instrument.
- (c) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

7. LATER DEFECTS

The Exceptions in Schedule B may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements are met. We shall have no liability to you because of this amendment.

8. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

9. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying this Commitment when you acted in good faith to:

comply with the Requirements

or

eliminate with our written consent any Exceptions shown in Schedule B

We shall not be liable for more than the Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

10. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claims, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms

**First American Title Insurance Agency
The First American Corporation**

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from public records or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our web site at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial services providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply.

Confidentiality and Security

Case 1:15-cv-00822 Document 1-1 Filed 07/05/16 Entered 07/05/16 13:17:10 Desc Main Document Page 36 of 39

information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products and services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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

I hereby certify that on July 5, 2016, I electronically filed the foregoing **TRUSTEE'S MOTION SEEKING AUTHORIZATION AND APPROVAL OF (1) SALE OF 300 ACRE-FEET OF WATER RIGHTS IN TOOELE COUNTY, UTAH, OUT OF THE ORDINARY COURSE OF BUSINESS, FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, AND SUBJECT TO HIGHER AND/OR BETTER OFFERS, PURSUANT TO 11 U.S.C. § 363(b) AND (f) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002 AND 6004; (2) PROPOSED SALE PROCEDURES; AND (3) PAYMENT OF COSTS OF SALE, INCLUDING COMMISSION TO BROKERS (BOYER-PLUMB STANSBURY PROPERTIES, L.C.)** (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, nharward@swlaw.com;docket_slc@swlaw.com
- Jeffrey M. Armington armington.jeff@dorsey.com, asmus.natasha@dorsey.com;ventrello.ashley@dorsey.com
- J. Thomas Beckett tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com;kstankevitz@parsonsbehle.com
- Julie A. Bryan julie@crslaw.com, joshua@crslaw.com
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- Schuyler G. Carroll scarroll@perkinscoie.com, DOlsky-efile@perkinscoie.com;ecf-9d8e07160ff2@ecf.pacerpro.com
- Leonard J. Carson len@pearsonbutler.com, kylie@pearsonbutler.com,Brandon@pearsonbutler.com
- Deborah Rae Chandler chandler@millertoone.com
- William H. Christensen wchristensen@larsenrico.com, fileclerk@larsenrico.com
- Andrew B. Clawson andrew@abclawutah.com, kylie@pearsonbutler.com
- Joseph M.R. Covey calendar@parrbrown.com
- T. Edward Cundick tec@princeyeates.com, docket@princeyeates.com;pam@princeyeates.com
- T. Edward Cundick tec@princeyeates.com, docket@princeyeates.com;pam@princeyeates.com
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- Jennie B. Garner garner.jennie@dorsey.com
- Eric D. Goldberg eric.goldberg@dlapiper.com
- Sarah Goldberg goldberg.sarah@dorsey.com
- David R. Hague dhague@fabianlaw.com
- George B. Hofmann ghofmann@cohnekinghorn.com, dhaney@cohnekinghorn.com;hsias@cohnekinghorn.com
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- 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
- Peter J. Kuhn tr Peter.J.Kuhn@usdoj.gov,
James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Michael L. Labertew michael@labertewlaw.com
- Ralph R. Mabey rmabey@kmclaw.com
- Milo Steven Marsden marsden.steve@dorsey.com, debry.leslie@dorsey.com
- Christopher J Martinez martinez.chris@dorsey.com
- Adelaide Maudsley amaudsley@kmclaw.com, mwinters@kmclaw.com
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I further certify that on July 5, 2016, the Motion was served via U.S. First Class Mail, postage prepaid, to the following:

Commerce Real Estate Solutions
170 South Main Street, Suite 1600
Salt Lake City, Utah 84101

I further certify that on July 5, 2016, the Motion was emailed to the following:

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rmoffat@boyercompany.com

Dell Nichols
dell@dncre.com

/s/ Peggy Hunt