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**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 FOR ORDER APPROVING SETTLEMENT AGREEMENT
WITH FORTIUS FINANCIAL ADVISORS, LLC 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 and the Castle Arch Opportunity Partners I, LLC Liquidating Trust (together,

the “Trusts”), 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 Fortius Financial Advisors, LLC (“Fortius”). 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 “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 the Trusts.

Fortius’ Connection with the Debtors

8. Prior to their respective petition dates, the Legacy Debtors and CAOP I made a series of transfers of cash to Fortius that Fortius claims were fees charged for services rendered to Castle Arch customers and the Trustee claims were compensation for soliciting investments in, referring investors to, or raising funds for the Debtors (the “Transfers”).

The Adversary Proceeding and Good-Faith Negotiations

9. On October 16, 2013, the Trustee commenced an adversary proceeding against Fortius relating to the Transfers, styled as *Strong v. Fortius Financial Advisors, LLC*, Adv. Pro. No. 13-02384 (the “Adversary Proceeding”).

10. Since the filing of the Adversary Proceeding, the Parties exchanged information, analyzed the Trustee's claims against Fortius, 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, 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) Fortius will pay the aggregate sum of Fifteen Thousand Dollars (\$15,000.00), for the benefit of the Trusts, as follows:

PAYMENT DATE³	PAYMENT AMOUNT
On or before January 15, 2015	\$3,000.00
On or before April 15, 2015	\$3,000.00
On or before July 15, 2015	\$3,000.00
On or before October 15, 2015	\$3,000.00
On or before January 15, 2016	\$3,000.00

(b) Within five (5) business days of the Trustee's receipt of the final installment of the settlement payment, the Trustee will file in the Adversary Proceeding a Stipulated Notice of Dismissal, dismissing Fortius from the Adversary Proceeding with prejudice.

(c) The Trustee and Fortius will provide each other with a mutual release of claims, as set forth in the Settlement Agreement.⁴

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 If any of the below payment dates falls on a Saturday, Sunday or legal holiday, the payment will be due on the following business day.

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.”⁵ Settlements and compromises “are favored in bankruptcy.”⁶ “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.”⁷ “In approving a settlement, the bankruptcy court is not required to conduct a ‘mini-trial’ on the merits.”⁸ “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.”⁹

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 See generally Exh. A (Settlement Agreement).

⁵ Fed. R. Bankr. P. 9019(a).

⁶ *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)).

⁷ *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)).

⁸ *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.”).

⁹ *Dennett*, 449 B.R. at 145 (citations omitted).

(4) the interest of creditors in deference to their reasonable views.¹⁰

As discussed below, an evaluation of the *Kopexa* Factors shows that the Settlement Agreement is fair, equitable, and in the best interests of the Trusts' 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 has engaged in arms'-length and good-faith settlement negotiations with Fortius.¹¹ The Trustee's original Complaint sought recovery of \$71,742.97 from Fortius for compensation paid to Fortius for soliciting investments in, or referring investors to the Debtors. However, after reviewing information and documents provided by Fortius, the Trustee concluded that only \$37,500.00 of the payments related to compensation paid to Fortius for soliciting investments for the Debtors, though Fortius claims the funds were legitimate fees charged for services rendered to Castle Arch customers.¹² Additionally, Fortius has alleged that some of the payments are barred by the statute of limitations and that it has limited funds to pay a judgment in the full amount.¹³

Although the Trustee believes he has strong claims against Fortius for payments made within the statute of limitations period, and although the Trustee believes he has arguments to extend and/or toll the statute of limitations period, the Trustee has determined, in the exercise of

¹⁰ *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*).

¹¹ Strong Declaration ¶ 4.

¹² *Id.* ¶ 5.

¹³ *Id.* ¶ 6.

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 Fortius; (2) the time and costs associated with litigating the various disputes against Fortius, particularly the statute of limitations issue, vis-à-vis the recovery to be obtained and the collectability of a judgment; (3) the cash payment by Fortius for the benefit of the Trusts; and (4) the relatively quick resolution of the disputes through settlement, including Fortius' release of the Debtors and Trusts.¹⁴ As such, this factor weighs in favor of settlement.

B. Possible Difficulty in Collection of Judgment

The second *Kopexa* Factor requires the Court to consider the possible difficulty in collecting any judgment against Fortius. Fortius has informed the Trustee that it is struggling financially, and that even if the Trustee were able to obtain a judgment against Fortius in the full amount of \$37,500.00, Fortius would not have the funds to satisfy a judgment in that amount. As such, to avoid the costs and difficulty of collecting any judgment against Fortius, the Trustee has determined, in his business judgment, that the Settlement Agreement is in the best interests of the Trusts and their beneficiaries.¹⁵ 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 Fortius by the Debtors, litigation of all payments

¹⁴ *Id.* ¶ 7.

¹⁵ *Id.* ¶ 8.

and disputes, specifically including the factual nature of any arguments to toll the statute of limitations, would likely be expensive. By entering into the Settlement Agreement, the Trustee believes he has obtained a favorable and fair result for the Trusts, without incurring expensive and unnecessary litigation costs.¹⁶ 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 pursuant to the terms of the Settlement Agreement is in the best interests of the Trusts and their beneficiaries. By engaging in good-faith and arms'-length negotiations with Fortius, the Trustee has avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Trusts for distribution under the Confirmed Plan and Trust Agreements.¹⁷ 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 14th day of November, 2014.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
Peggy Hunt
Nathan S. Seim
*Attorneys for Consolidated Legacy
Debtors Liquidating Trust*

MCKAY BURTON & THURMAN

/s/ Gregory J. Adams
Gregory J. Adams
Attorneys for CAOP I Trust

¹⁶ *Id.* ¶ 9.

¹⁷ *Id.* ¶ 10.

EXHIBIT A

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this 12 day of November, 2014, by and between (i) Fortius Financial Advisors, LLC ("Fortius"); 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 and the Castle Arch Opportunity Partners I, LLC Liquidating Trust (together, the "Trusts"), 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 Fortius 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"), Castle Arch Secured Development Fund, LLC ("CASDF"), Castle Arch Opportunity Partners I, LLC ("CAOP I") and Castle Arch Opportunity Partners II, LLC ("CAOP II") also filed petitions under Chapter 11 of the Bankruptcy Code with the Court (collectively with CAREIC, the "Debtors").

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 Debtors.

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 collectively herein as the "Consolidated Legacy 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 Trusts.

Fortius' Connection with the Debtors

E. Prior to their respective petition dates, the Consolidated Legacy Debtors and CAOP I made a series of transfers of cash to Fortius that Fortius claims were fees charged for services rendered to Castle Arch customers and the Trustee claims were compensation for

soliciting investments in, referring investors to, or raising funds for the Debtors (the “Transfers”).

F. The Transfers were made by the Debtors at a time when Fortius was a licensed investment advisor, but 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 16, 2013, the Trustee commenced an adversary proceeding against Fortius in the Bankruptcy Case, styled as *Strong v. Fortius Financial Advisors, LLC*, Adv. Pro. No. 13-02384 (the “Adversary Proceeding”), relating to Fortius’ receipt of funds from the Legacy Debtors and CAOP I that Fortius claims were fees charged for services rendered to Castle Arch customers and the Trustee claims were for soliciting investments in, or referring investors to, 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.** Fortius will pay the aggregate sum of Fifteen Thousand Dollars (\$15,000.00) (the “Settlement Payment”), for the benefit of the Trusts, as follows:

a. Upon Court approval of this Agreement, Fortius will pay the Trustee Three Thousand Dollars (\$3,000.00).

b. The remaining obligation of Twelve Thousand Dollars (\$12,000.00) will be paid in four quarterly payments of Three Thousand Dollars (\$3,000.00), with the first quarterly payment being due on February 1, 2015, and each subsequent payment being due on the first day of the month of each quarter thereafter. To eliminate any confusion, the Parties agree that the remained of the Settlement Payment will be made in the amounts and according to the dates set forth in the below table:

PAYMENT DATE ¹	PAYMENT AMOUNT
On or before January 15, 2015	\$3,000.00
On or before April 15, 2015	\$3,000.00
On or before July 15, 2015	\$3,000.00
On or before October 15, 2015	\$3,000.00
On or before January 15, 2016	\$3,000.00

c. Provided there is no default in the payment of any one of the installments of the Settlement Payment, Fortius’ obligations to pay the Settlement Payment over time will not bear or accrue any interest during the timeframe set forth above, and all payment obligations under this paragraph may be prepaid in full or in part without penalty.

3. **Dismissal of Adversary Proceeding.** Within five (5) business days of the Trustee’s receipt of the final installment of the Settlement Payment, the Trustee will file in the Adversary Proceeding a Stipulated Notice of Dismissal, dismissing Fortius from the Adversary Proceeding 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 Fortius.** Effective upon the Trustee’s receipt of the entire Settlement Payment, the Debtors and the Trusts release and forever discharge Fortius 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 Trusts may have, or may acquire from any other party against Fortius from the beginning of time to the date hereof, or which may hereafter accrue against Fortius based upon any claims, acts or omissions occurring prior to the date of this Agreement, or which may hereafter accrue against Fortius based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited to all claims asserted against Fortius in the

¹ If any of the below payment dates falls on a Saturday, Sunday or legal holiday, the payment will be due on the following business day.

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 Trusts, the Debtors and the Trustee.** Effective on the Entry Date, Fortius releases and forever discharge the Debtors, the post-confirmation estates of the Debtors, the Trusts, 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 Fortius 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.** Fortius represents and warrants that: (a) it 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) it has not filed any proofs of claim or asserted any claims against any of the Debtors or Trusts; and (d) that the information that it 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 Trusts, 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.** Fortius agrees that it will be in material default of this Agreement if: (a) it files or causes any other party to file a claim against any of the Debtors or any successor of the Debtors, including any of the Trusts, or otherwise takes any action to assert an interest in assets of any of the Debtors or Trusts; (b) it fails to make the Settlement Payment as set forth above, including without limitation, any installment of the Settlement Payment; 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 Trusts 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.

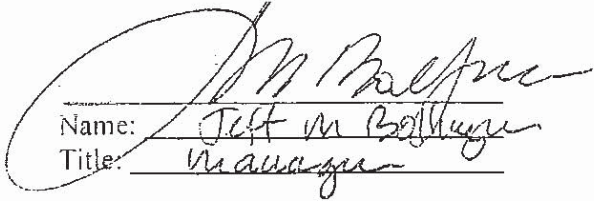
18. **Severability**. To the extent that any portion of this Agreement is held unenforceable by a court, tribunal or arbiter of competent jurisdiction, the remainder of this Agreement shall remain binding and enforceable, provided that the primary purposes of the Agreement are not frustrated.

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.

FORTIUS FINANCIAL ADVISORS, LLC


Name: Jeff M. Coltrane
Title: manager

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


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

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

I hereby certify that on November 14, 2014, I electronically filed the foregoing **TRUSTEE’S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH FORTIUS FINANCIAL ADVISORS, LLC UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com, debbie@princeyeates.com;docket@princeyeates.com
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*Attorneys for D. Ray Strong, Liquidating Trustee and
Post-Confirmation Representative of the Debtors*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, LLC; CAOP
MANAGERS, LLC; CASTLE ARCH
KINGMAN, LLC; CASTLE ARCH
SECURED DEVELOPMENT FUND, LLC;
CASTLE ARCH SMYRNA, LLC; CASTLE
ARCH STAR VALLEY, LLC; *and*

CASTLE ARCH OPPORTUNITY
PARTNERS I, LLC; CASTLE ARCH
OPPORTUNITY PARTNERS II, LLC,

Debtors.

Case Nos. 11-35082, 11-35237,
11-35243, 11-35242 and 11-35246
(Substantively Consolidated)

Case Nos. 11-35241 and 11-35240
(Jointly Administered)

(Chapter 11)
The Honorable Joel T. Marker

- Affects All Debtors
- Affects 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 FOR
ORDER APPROVING SETTLEMENT AGREEMENT WITH FORTIUS FINANCIAL
ADVISORS, LLC 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 (together, the “Trusts”), being of lawful age, hereby 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 Trusts.

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 for Order Approving Settlement Agreement with Fortius Financial Advisors, LLC 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 Fortius Financial Advisors, LLC (“Fortius”). Fortius and I are referred to collectively herein as the “Parties.”

4. Fortius 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. In the original Complaint that I filed against Fortius, I sought recovery of \$71,742.97 from Fortius for compensation paid to Fortius for soliciting investments in, or referring investors to the Debtors. However, after reviewing information and documents provided by Fortius, I determined that only \$37,500.00 of the payments related to compensation

paid to Fortius for soliciting investments for the Debtors, though Fortius claims the funds were legitimate fees charged for services rendered to Castle Arch customers.

6. Fortius has alleged that some of the compensation payments are barred by the statute of limitations and that it has limited funds to pay a judgment in the full amount.

7. Although I believe that I have strong claims against Fortius for payments made within the statute of limitations period, and although I believe that I have arguments to extend and/or toll the statute of limitations period, 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 Fortius; (b) the time and costs associated with litigating the various disputes against Fortius, particularly the statute of limitations issue, vis-à-vis the recovery to be obtained and the collectability of a judgment; (c) the cash payment by Fortius for the benefit of the Trusts; and (d) the relatively quick resolution of the disputes through settlement, including Fortius' release of the Debtors and Trusts.

8. Fortius has alleged that it is struggling financially, and that even if I was able to obtain a judgment against it in the full amount of \$37,500.00, Fortius would not have the funds to satisfy a judgment in that amount. As such, to avoid the costs and difficulty of collecting any judgment against Fortius, I have determined, in my business judgment, that the Settlement Agreement is in the best interests of the Trusts and their beneficiaries.


9. Given the various payments to Fortius by the Debtors, litigation of all payments and disputes, specifically including the factual nature of any arguments to toll the statute of limitations, would likely be expensive. By entering into the Settlement Agreement, I believe that

I obtained a favorable and fair result for the Trusts, without incurring expensive and unnecessary litigation costs.

10. 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 Trusts' beneficiaries. By engaging in good-faith and arms'-length negotiations with Fortius, I believe that I have avoided the costly delays and expenses associated with litigating the disputes, thereby preserving the existing assets of the Trusts 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 13 day of November, 2014.



*D. Ray Strong, as Representative of the
Debtors and Liquidating Trustee of the
Trusts*

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

I hereby certify that on November __, 2014, I electronically filed the foregoing **DECLARATION OF D. RAY STRONG IN SUPPORT OF TRUSTEE’S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH FORTIUS FINANCIAL ADVISORS, LLC UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

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