

The below described is **SIGNED**.



Dated: December 4, 2014

**JOEL T. MARKER**  
U.S. Bankruptcy Judge

*Prepared and Submitted By:*

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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

**ORDER GRANTING TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH FORTIUS FINANCIAL ADVISORS, LLC UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

The matter before the Court is the *Motion for Order Approving Settlement Agreement with Fortius Financial Advisors, LLC Under Federal Rule of Bankruptcy Procedure 9019* [Docket No. 1038] (the “Motion”), which seeks approval of the Settlement Agreement, attached hereto as Exhibit A (the “Settlement Agreement”), that the Trustee entered into Fortius Financial Advisors, LLC. The Motion was served through the Court’s CM/ECF system upon all parties that receive electronic notice in this case. In addition, a *Notice of Motion and Notice of Opportunity for Hearing* [Docket No. 1040] (the “Notice”) that provided for, among other things, notice of the scheduled hearing on the Motion and notice of the deadline of December 1, 2014, for filing responses to the Motion, was properly served on all parties in interest in this case, and no further notice is required. No responses to the Motion have been filed or received by the Trustee or his counsel.

The Court has considered the Motion, the *Declaration of D. Ray Strong in Support of the Motion* [Docket No. 1039], the Notice, the *Certificate of Service* attached to the Notice, and applicable law. Based thereon, and for good cause shown,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**; and
2. The Settlement Agreement, attached hereto as Exhibit A, is **APPROVED**.

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End of Order

# 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 <sup>1</sup>	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

<sup>1</sup> 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.

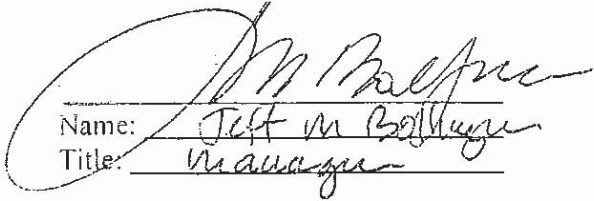
18. **Severability**. To the extent that any portion of this Agreement is held unenforceable by a court, tribunal or arbiter of competent jurisdiction, the remainder of this Agreement shall remain binding and enforceable, provided that the primary purposes of the Agreement are not frustrated.

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. Colthart  
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*

**DESIGNATION OF PARTIES TO BE SERVED**

Service of the foregoing **ORDER GRANTING MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 AND CONFLICT RESOLUTION PROCEDURES FOR ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN THE LEGACY TRUST AND CAOP I TRUST RELATED TO PREPETITION INTERCOMPANY CLAIMS** (the "Order") shall be served to the parties in the manner designated below:

**By Electronic Service:** I certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served notice of entry of the Order through the CM/ECF system:

- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com, debbie@princeyeates.com;docket@princeyeates.com
- Troy J. Aramburu taramburu@swlaw.com, rmaxwell@swlaw.com;docket\_slc@swlaw.com
- Jeffrey M Armington armington.jeff@dorsey.com
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- Richard L. Wynne rlwynne@jonesday.com

**By U.S. Mail** – In addition to the parties receiving notice of the Order through the CM/ECF system, the following parties should be served notice pursuant to Fed R. Civ. P. 5(b): None.