

Peggy Hunt (Utah State Bar No. 6060)  
Nathan S. Seim (Utah State Bar No. 12654)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

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

---

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

---

In re:

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

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

Debtors.

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

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

(Chapter 11)  
The Honorable Joel T. Marker

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

---

**TRUSTEE'S MOTION TO APPROVE SETTLEMENT AGREEMENT  
WITH LUXENBERG PARTIES UNDER FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 9019**

---

D. Ray Strong (the "Trustee"), as the post-confirmation estate representative 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 (collectively, the “Legacy Debtors”), and the Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust (the “Trust”), by and through his undersigned counsel, 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 Dr. Matthew Luxenberg (“Luxenberg”) and the Matthew B Luxenberg Living Trust DTD 5/28/98 (the “Luxenberg Trust” and, together with Luxenberg, the “Luxenberg Parties”). 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, CAREIC filed a petition for relief under Chapter 11 of the Bankruptcy Code, and on October 20, 2011, the other Legacy Debtors also filed petitions seeking relief under Chapter 11 of the Bankruptcy Code (the October 17 and October 20 petition dates will be referred together as the “Petition Date”).

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 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 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 Legacy Debtors; and (iii) appointed the Trustee as the Liquidating Trustee for the Trust.

### *The Luxenberg Parties' Connection with the Legacy Debtors*

8. Prior to the Petition Date, the Luxenberg Trust made two cash investments in CAREIC totaling \$450,000.00. The Luxenberg Trust has not received any payments on account of these investments.

9. Also prior to the Petition Date, the Trustee alleges that the Legacy Debtors made a series of transfers of cash to Luxenberg as compensation for soliciting investments in, referring investors to, or raising funds for the Legacy Debtors (collectively, the "Transfers"), totaling \$92,940.00.

### *The Adversary Proceeding and Good-Faith Negotiations*

10. On October 15, 2013, the Trustee commenced an adversary proceeding against Luxenberg, styled *Strong v. Luxenberg*, Adv. Pro. No. 13-02405 (the "Adversary Proceeding"), seeking avoidance and recovery of the Transfers.

11. Since the filing of the Adversary Proceeding, the Trustee and Luxenberg Parties 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.<sup>1</sup>

**TERMS OF SETTLEMENT AGREEMENT**

12. The material terms of the Settlement Agreement are set forth below:<sup>2</sup>

(a) Within five (5) business days after the Court's entry of an Order approving the Settlement Agreement (the "Entry Date"), Sixty Thousand Dollars (\$60,000.00) will be paid to the Trustee for the benefit of the Legacy Trust.

(b) Upon the Entry Date, the Luxenberg Trust shall be allowed an Allowed Legacy Preferred Interest in the Legacy Trust, entitled to treatment under Class A5 of the Confirmed Plan.

(c) Within five (5) business days of the Entry Date, after the \$60,000.00 is paid, the Trustee will file in the Adversary Proceeding a Stipulated Notice of Dismissal, dismissing the Adversary Proceeding with prejudice.

(d) The Trustee and the Luxenberg Parties will provide each other with a mutual release of claims, as set forth in the Settlement Agreement.<sup>3</sup>

---

<sup>1</sup> Strong Declaration ¶ 4.

<sup>2</sup> 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.

<sup>3</sup> See generally Exh. A (Settlement Agreement).

## 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.”<sup>4</sup> Settlements and compromises “are favored in bankruptcy.”<sup>5</sup> “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.”<sup>6</sup> A court’s decision to approve a settlement “must be an informed one based upon an objective evaluation of developed facts.”<sup>7</sup> However, “it is not necessary for a bankruptcy court to conclusively determine claims subject to a compromise, nor must the court have all of the information necessary to resolve the factual dispute, for by so doing, there would be no need of settlement.”<sup>8</sup> Thus, “in approving a settlement, the . . . court is not required to conduct a ‘mini-trial’ on the merits.”<sup>9</sup> “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.”<sup>10</sup>

---

<sup>4</sup> Fed. R. Bankr. P. 9019(a).

<sup>5</sup> *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)).

<sup>6</sup> *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)).

<sup>7</sup> *Reiss v. Hagmann*, 881 F.2d 890, 891-92 (10th Cir. 1989).

<sup>8</sup> *In re Dennett*, 449 B.R. 139, 145 (Bankr. D. Utah 2011); accord *Martin v. Cox (In re Martin)*, 212 B.R. 316, 319 (B.A.P. 8th Cir. 1997).

<sup>9</sup> *In re Armstrong*, 285 B.R. 344 at \*3 (B.A.P. 10th Cir. 2002) (table decision); accord *Dennett*, 449 B.R. at 145 (“[T]he Court is not required to hold a mini-trial on the issues involved in the case being compromised.”).

<sup>10</sup> *Dennett*, 449 B.R. at 145 (citations omitted).

The Bankruptcy Appellate Panel for the Tenth Circuit established the following four factors (referred to as the “Kopexa Factors”) that bankruptcy courts should consider in determining the propriety of a settlement for purposes of approval under Bankruptcy Rule 9019:

- (1) the probable success of the underlying litigation on the merits;
- (2) the possible difficulty in collection of a judgment;
- (3) the complexity and expense of the litigation; and
- (4) the interest of creditors in deference to their reasonable views.<sup>11</sup>

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

**A. Probability of Success of Litigation on the Merits**

The first *Kopexa* Factor requires the Court to consider the probable success of the underlying litigation on the merits. To avoid the costs, expense and uncertainty of litigation and collection, the Trustee has engaged in arms’-length and good-faith settlement negotiations with the Luxenberg Parties.<sup>12</sup> The Trustee’s Complaint sought recovery of \$92,940.00 from Luxenberg for compensation paid to him for soliciting investments in, referring investors to, or raising funds for the Legacy Debtors. Luxenberg maintained that the Trustee did not have a claim against him and that he had valid defenses.<sup>13</sup>

The Trustee believes he has strong claims against Luxenberg for avoidance and recovery of the Transfers, but has determined, in the exercise of his business judgment, that resolution of

---

<sup>11</sup> *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*).

<sup>12</sup> Strong Declaration ¶ 4.

<sup>13</sup> *Id.* ¶ 5.

all disputes amongst the Parties through settlement is appropriate given: (1) the inherent risks of litigation; (2) the time and costs associated with litigating the various disputes against Luxenberg; (3) the immediate cash payment by the Luxenberg Parties for the benefit of the Trust; and (4) the relatively quick resolution of the disputes through settlement, including the Luxenberg Parties' release of the Legacy Debtors and Trust.<sup>14</sup> 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 Luxenberg. Other than the time and expense of collecting on any judgment, the Trustee does not believe that this factor is at issue in this case. Rather, the Trustee's decision to settle with Luxenberg was reached, in large part, on the Trustee's assessment of potential litigation risk, as well as the costs likely to be incurred to obtain a judgment against Luxenberg, and then collect on that judgment.<sup>15</sup>

**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 Transfers to Luxenberg, litigation of the avoidance action would be fact intensive and likely expensive. By entering into the Settlement Agreement, the Trustee believes he has obtained a favorable and fair result for the Trust, without incurring potentially expensive litigation costs.<sup>16</sup> Thus, this factor supports the Settlement Agreement.

---

<sup>14</sup> *Id.* ¶ 6.

<sup>15</sup> *Id.* ¶ 7.

<sup>16</sup> *Id.* ¶ 8.

**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 Trust and its beneficiaries. By engaging in good-faith and arms'-length negotiations with the Luxenberg Parties, the Trustee avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Trust for distribution under the Confirmed Plan and Trust Agreement.<sup>17</sup> The Trustee has obtained a settlement that will pay \$60,000.00 in cash now, which is only approximately \$33,000.00 less than the amount demanded. Given all of the above, it is possible that if this matter were litigated to judgment, the net result for the Trust would be the same. 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 16th day of April, 2015.

**DORSEY & WHITNEY LLP**

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

---

<sup>17</sup> *Id.* ¶ 9.



# EXHIBIT A

## SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this ~~25~~<sup>26</sup> day of February, 2015, by and between (i) Dr. Matthew Luxenberg ("Luxenberg") and the Matthew B Luxenberg Living Trust DTD 5/28/98 (the "Luxenberg Trust") and, together with Luxenberg, the "Luxenberg Parties"; and (ii) D. Ray Strong (the "Trustee"), as the post-confirmation estate representative of the Debtors (defined below) and the Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust (the "Legacy Trust"), the Castle Arch Opportunity Partners I, LLC Liquidating Trust and the Castle Arch Opportunity Partners II, LLC Liquidating Trust (collectively, 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 the Luxenberg Parties 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 (together with October 17, 2011, the "Petition Date"), affiliated 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 and Castle Arch Opportunity Partners II, LLC 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 [Bankruptcy Case Docket No. 590]. These entities, as consolidated, are referred collectively herein as the "Legacy Debtors."

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

*The Luxenberg Parties' Connection with the Debtors*

E. Prior to the Petition Date, the Luxenberg Trust made two cash investments in CAREIC totaling \$450,000.00 (the "Luxenberg Trust Investment"). The Luxenberg Trust received no payments on account of the Luxenberg Trust Investment prior to the Petition Date or otherwise.

F. Also prior to the Petition Date, the Legacy Debtors made a series of cash transfers to Luxenberg as compensation for referring investors to the Legacy Debtors (the "Transfers").

*The Adversary Proceeding and Good-Faith Negotiations*

G. On October 15, 2013, the Trustee commenced an adversary proceeding in the Bankruptcy Case against Luxenberg, styled as *Strong v. Luxenberg*, Adv. Pro. No. 13-02405 (the "Adversary Proceeding"), seeking avoidance of the Transfers and recovery of the same.

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 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 promptly 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; and (b) to the degree possible, while acknowledging that time may render appeals moot, the Parties shall be in the same position they were in as though this Agreement had never been executed.

2. **Settlement Payment.** Within five (5) business days of the Entry Date, the Luxenberg Parties will pay Sixty Thousand Dollars (\$60,000.00) (the "Settlement Payment") to the Trustee for the benefit of the Legacy Trust.

3. **Allowed Interest.** Upon the Entry Date, the Luxenberg Trust shall be allowed an Allowed Legacy Preferred Interest in the Legacy Trust entitled to treatment in Class A5 of the Confirmed Plan (the "**Allowed Interest**"). No further notice or hearing will be required and the Order approving this Agreement shall so provide.

4. **Release of Claims Against the Luxenberg Parties.** Effective on the Entry Date, the Trustee, the Debtors and the Trusts release and forever discharge the Luxenberg 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, 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 the Luxenberg Parties from the beginning of time to through the filing of the Adversary Proceeding, including but not limited to all claims asserted against the Luxenberg Parties in the Adversary Proceeding; *provided however*, the release 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, the Luxenberg Parties release 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 the Luxenberg Parties 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, except for the Allowed Interest; *provided however*, the release 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. Notwithstanding the foregoing, the Parties agree that the Luxenberg Parties may sue the officers and directors of the company seeking a judgment of no more than \$60,000.00 plus fees and costs to reimburse the Luxenberg Parties for the Settlement Payment herein; *provided however*, that the Luxenberg Parties expressly agree that any right to payment they may obtain, whether by agreement, judgment or otherwise, shall be subordinated to any claims of the Trusts against these parties.

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

7. **Representations and Warranties.** The Luxenberg Parties represent and warrant that (a) they have 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) the statements in ¶ E above are true and correct;

and (d) they have not filed any proofs of claim or asserted any claims against or interests in any of the Debtors or Trusts as of the date of this Agreement, except for the Allowed Interest.

8. **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.

9. **Default.** The Luxenberg Parties agree that they are in material default of this Agreement if (a) the Settlement Payment is not made as set forth above; (b) any of the representations and warranties set forth above are materially false or misleading; or (c) they take actions in violation of Section 5 above. The Trustee agrees that he is in material default if (a) the representation set forth above in Section 8 is materially false or misleading; or (b) actions are taken in violation of Section 4 above. In the event of any such material default, the the nondefaulting party shall be entitled to damages, and such damages shall include any and all costs of collection, interest, and reasonable fees and costs incurred.

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, heirs and/or 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.

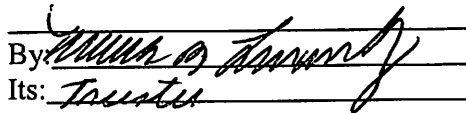
*[Signature Page Follows]*

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

**DR. MATTHEW LUXENBERG**

  
\_\_\_\_\_

**MATTHEW B LUXENBERG LIVING TRUST DTD 5/28/98**

By:   
Its: Trustee

**D. RAY STRONG, AS ESTATE 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 April 16, 2015, I electronically filed the foregoing **TRUSTEE’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH LUXENBERG PARTIES UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** (the “Motion”) with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users:

- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com, debbie@princeyeates.com;docket@princeyeates.com
- John T. Anderson janderson@aklawfirm.com, aolson@aklawfirm.com
- Troy J. Aramburu taramburu@swlaw.com, rmaxwell@swlaw.com;docket\_slc@swlaw.com
- Jeffrey M. Armington armington.jeff@dorsey.com, long.candy@dorsey.com;ventrello.ashley@dorsey.com
- Julie A. Bryan julie@crslaw.com, diana@crslaw.com;joshua@crslaw.com
- Mona Lyman Burton mburton@hollandhart.com, ckelly@hollandhart.com;intaketeam@hollandhart.com;slclitdocket@hollandhart.com
- Schuyler G. Carroll scarroll@perkinscoie.com, DOlsky-efile@perkinscoie.com
- Leonard J. Carson len@pearsonbutler.com, kylie@pearsonbutler.com
- William H. Christensen wchristensen@larsenrico.com, ogappmayer@larsenrico.com;fileclerk@larsenrico.com
- Andrew B. Clawson andrew@abclawutah.com, kylie@pearsonbutler.com
- T. Edward Cundick tec@princeyeates.com, docket@princeyeates.com;pam@princeyeates.com
- Robert T. Denny rtd@scmlaw.com, hae@scmlaw.com
- Anna W. Drake annadrake@att.net
- Jodi Knobel Feuerhelm jfeuerhelm@perkinscoie.com, blumm@perkinscoie.com;docketPHX@perkinscoie.com
- Jennie B. Garner garner.jennie@dorsey.com
- Eric D. Goldberg egoldberg@gordonsilver.com
- Eric D. Goldberg egoldberg@stutman.com
- Sarah Goldberg goldberg.sarah@dorsey.com
- David R. Hague dhague@fabianlaw.com, dromero@fabianlaw.com
- George B. Hofmann ghofmann@cohnekinghorn.com, dhaney@cohnekinghorn.com;jthorsen@cohnekinghorn.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com;koontz.jennifer@dorsey.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com;koontz.jennifer@dorsey.com
- Jennifer A. James jaj@clydesnow.com, mcarter@clydesnow.com
- Lon A. Jenkins jenkins.lon@dorsey.com, lalor.carol@dorsey.com





Peggy Hunt (Utah State Bar No. 6060)  
Nathan S. Seim (Utah State Bar No. 12654)  
**DORSEY & WHITNEY LLP**  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360  
Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

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

---

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

---

In re:

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

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

Debtors.

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

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

(Chapter 11)  
The Honorable Joel T. Marker

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

---

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

---

D. Ray Strong, as Liquidating Trustee of the Consolidated Legacy Debtors Liquidating  
Trust (the "Trust"), 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 Trust.

2. This Declaration is based upon my personal knowledge of the facts set forth herein. I submit this Declaration in support of the *Trustee's Motion to Approve Settlement Agreement with Luxenberg Parties 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 Dr. Matthew Luxenberg ("Luxenberg") and the Matthew B Luxenberg Living Trust DTD 5/28/98 (together with Luxenberg, the "Luxenberg Parties"). The Luxenberg Parties and I will be referred together as the "Parties."

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

5. In the Complaint that I filed against Luxenberg, I sought recovery of \$92,940.00 from Luxenberg for compensation paid to him for soliciting investments in, referring investors to, or raising funds for the Legacy Debtors. Luxenberg maintained that the Trust did not have a claim against him and that he had valid defenses.

6. I believe that I have strong claims against Luxenberg for avoidance and recovery of the Transfers, but 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 risks of litigation; (b) the time and costs associated with litigating the various disputes against Luxenberg; (c) the immediate cash payment for the benefit of the Trust; and (d) the relatively quick resolution of the disputes through settlement, including the Luxenberg Parties' release of the Legacy Debtors and Trust.

7. The possible difficulty in collection of a judgment was not a main factor in my decision to settle, though I did consider the time and expense of collecting on any judgment. Rather, my decision to settle with Luxenberg was reached, in large part, on my assessment of potential litigation risk, as well as the costs likely to be incurred to obtain a judgment against Luxenberg, and then collect on that judgment.

8. Given the various Transfers to Luxenberg, litigation of the avoidance action would be fact intensive and likely expensive. By entering into the Settlement Agreement, I believe that I obtained a favorable and fair result for the Trust, without incurring potentially expensive litigation costs.

9. In my business judgment, settlement of all the disputes amongst the Parties pursuant to the terms of the Settlement Agreement is in the best interests of the Trust and its beneficiaries. By engaging in good-faith and arms'-length negotiations with the Luxenberg Parties, I avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Trust for distribution under the Confirmed Plan and Trust Agreement. Pursuant to the Settlement Agreement, the Trust will obtain \$60,000.00 in cash now, which is only approximately \$33,000.00 less than the amount demanded. Given all of

the above, it is possible that if this matter were litigated to judgment, the net result for the Trust would be the same.

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

Dated this 14<sup>th</sup> day of April, 2015.



---

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

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

I hereby certify that on April 16, 2015, I electronically filed the foregoing **DECLARATION OF D. RAY STRONG IN SUPPORT OF TRUSTEE’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH LUXENBERG PARTIES UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** (the “Declaration”) with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users:

- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com, debbie@princeyeates.com;docket@princeyeates.com
- John T. Anderson janderson@aklawfirm.com, aolson@aklawfirm.com
- Troy J. Aramburu taramburu@swlaw.com, rmaxwell@swlaw.com;docket\_slc@swlaw.com
- Jeffrey M. Armington armington.jeff@dorsey.com, long.candy@dorsey.com;ventrello.ashley@dorsey.com
- Julie A. Bryan julie@crslaw.com, diana@crslaw.com;joshua@crslaw.com
- Mona Lyman Burton mburton@hollandhart.com, ckelly@hollandhart.com;intaketeam@hollandhart.com;slclitdocket@hollandhart.com
- Schuyler G. Carroll scarroll@perkinscoie.com, DOlsky-efile@perkinscoie.com
- Leonard J. Carson len@pearsonbutler.com, kylie@pearsonbutler.com
- William H. Christensen wchristensen@larsenrico.com, ogappmayer@larsenrico.com;fileclerk@larsenrico.com
- Andrew B. Clawson andrew@abclawutah.com, kylie@pearsonbutler.com
- T. Edward Cundick tec@princeyeates.com, docket@princeyeates.com;pam@princeyeates.com
- Robert T. Denny rtd@scmlaw.com, hae@scmlaw.com
- Anna W. Drake annadrake@att.net
- Jodi Knobel Feuerhelm jfeuerhelm@perkinscoie.com, blumm@perkinscoie.com;docketPHX@perkinscoie.com
- Jennie B. Garner garner.jennie@dorsey.com
- Eric D. Goldberg egoldberg@gordonsilver.com
- Eric D. Goldberg egoldberg@stutman.com
- Sarah Goldberg goldberg.sarah@dorsey.com
- David R. Hague dhague@fabianlaw.com, dromero@fabianlaw.com
- George B. Hofmann ghofmann@cohnekinghorn.com, dhaney@cohnekinghorn.com;jthorsen@cohnekinghorn.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com;koontz.jennifer@dorsey.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com;koontz.jennifer@dorsey.com
- Jennifer A. James jaj@clydesnow.com, mcarter@clydesnow.com
- Lon A. Jenkins jenkins.lon@dorsey.com, lalor.carol@dorsey.com

