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*Attorneys for D. Ray Strong, Liquidating Trustee and  
Post-Confirmation Representative of the Debtors*

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

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In re:

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

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

Debtors.

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

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

(Chapter 11)  
The Honorable Joel T. Marker

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

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**TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT  
WITH SNELL & WILMER LLP UNDER FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019**

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D. Ray Strong (the "Trustee"), as the post-confirmation estate representative of the  
above-captioned Debtors and the Liquidating Trustee of the Consolidated Legacy Debtors  
Liquidating Trust (the "Legacy Trust"), by and through his undersigned counsel, hereby moves

this Court for entry of an Order approving the Settlement Agreement, attached hereto as Exhibit A (the “Settlement Agreement”), that he entered into with Snell & Wilmer LLP (“Snell”). 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 Legacy Trust, the Castle Arch Opportunity Partners I, LLC Liquidating Trust and the Castle Arch Opportunity Partners II, LLC Liquidating Trust (collectively, the “Trusts”).

### *Snell’s Proof of Claim and CAREIC’s Scheduled Claim*

8. On November 18, 2011, Snell filed a Proof of Claim against CAREIC, designated as Claim No. 6 on CAREIC’s Claims Register, asserting a general unsecured claim against CAREIC in the amount of \$59,228.17 relating to legal services performed (the “Snell POC”).

9. On December 20, 2011, CAREIC filed Amended Schedules with the Court [Docket No. 29], which (i) scheduled Snell as a creditor, holding a disputed, unsecured claim in the amount of \$59,228.17; and (ii) scheduled CAREIC as holding a claim against Snell for an unknown amount (the “Scheduled Claim”).

10. The Parties exchanged information and entered into arms' length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigating the Snell POC and the Scheduled Claim, and without admitting liability or wrong doing, the Parties agreed to resolve and compromise the claims existing amongst them pursuant to the terms of the Settlement Agreement.<sup>1</sup>

**TERMS OF SETTLEMENT AGREEMENT**

11. The material terms of the Settlement Agreement are as follows:<sup>2</sup>

(a) Effective on the date that the Court enters an Order approving the Settlement Agreement, the Snell POC will be allowed to remain as a Class A4 General Unsecured Claim against the Consolidated Legacy Debtors under the Confirmed Plan, in the reduced amount of \$41,457.00 (the "New POC Amount").

(b) Snell will turn over to the trustee's counsel all files, records and documents of the Debtors that are in Snell's possession or that are under Snell's control, including any and all invoices related to Snell's representation of the Debtors, and any and all email or electronic correspondence. As of the date of filing this Motion, Snell has turned over such documents to the Trustee's counsel.

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

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<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 Settlement Agreement.

### **APPLICABLE LAW AND ANALYSIS**

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> The Trustee respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

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> In determining whether to approve a proposed settlement, the Court is not required to conduct a “mini-trial” to decide the questions of law or fact raised by the settlement.<sup>7</sup> Rather, the Court must determine whether the settlement is fair, equitable, and in the best interests of the Debtor’s estate.<sup>8</sup> The Court should approve the Settlement Agreement unless it falls “below the lowest point in the range of reasonableness.”<sup>9</sup>

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:

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<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> *Comm. of Unsecured Creditors v. Interstate Cigar Dist., Inc. (In re Interstate Cigar Co.)*, 240 B.R. 816, 822 (Bankr. E.D.N.Y. 1999) (quoted with approval in *Armstrong v. Rushton (In re Armstrong)*, 2002 WL 471332 at \*3, Case No. UT-10-039 (B.A.P. 10th Cir., Mar. 28, 2002)).

<sup>8</sup> See *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1967); *Southern Med. Arts*, 343 B.R. at 255-56 (discussing adopting *Trailer* standard under Bankruptcy Code).

<sup>9</sup> *In re Carson*, 82 B.R. 847, 853 (Bankr. S.D. Ohio 1987) (quoting *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 822 (1983)).

- (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>10</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 Legacy Debtors' creditors.

**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. The Trustee and his counsel have reviewed information relating to the Scheduled Claim, including information provided by Snell.<sup>11</sup> Based on this preliminary review, the Trustee has concerns regarding the validity of, and the ability to successfully prosecute the Scheduled Claim.<sup>12</sup> Thus, to avoid the costs, expense and uncertainty of litigation, the Trustee engaged in arms'-length and good-faith settlement negotiations with Snell, and in an exercise of his business judgment, the Trustee has determined that resolution of all disputes between the Parties through settlement is appropriate given: (1) the inherent risk and uncertainty in obtaining a judgment against Snell relating to the Scheduled Claim and in disallowing the Snell POC; (2) the time and costs associated with litigating the various factual issues against Snell vis-à-vis the benefit to the estate, even if the Trustee were successful; (3) the

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<sup>10</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>11</sup> Strong Declaration ¶ 5.

<sup>12</sup> *Id.*

reduction of the Snell POC to the New POC Amount; and (4) Snell's release of the Debtors and the Trusts.<sup>13</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 Snell. If the Trustee was successful in obtaining a judgment against Snell related to the Scheduled Claim, he has no reason to believe that collection of such judgment would be difficult.<sup>14</sup> As set forth above, however, given the information the Trustee and his counsel have reviewed to date, the Trustee has concerns regarding the validity of, and the ability to successfully prosecute the Scheduled Claim.<sup>15</sup> Thus, the Trustee believes that the Settlement Agreement should be approved.

**C. Complexity and Expense of Litigation**

The third *Kopexa* Factor requires the Court to consider the complexity and expense of any litigation. Given the nature of the disputes relating to the Snell POC and the Scheduled Claim, litigation of such disputes likely would be fact-intensive and expensive.<sup>16</sup> By entering into the Settlement Agreement, the Trustee believes he has obtained a favorable and fair result, without incurring expensive and unnecessary litigation costs.<sup>17</sup> Thus, this factor also weighs in favor of the Settlement Agreement.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* ¶ 6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* ¶ 7.

<sup>17</sup> *Id.*

**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 Legacy Debtors' creditors/Legacy Trust beneficiaries.<sup>18</sup> By engaging in good-faith and arms'-length negotiations with Snell, the Trustee was able to reduce the Snell POC to the New POC Amount without incurring expenses associated with potentially protracted litigation, thereby preserving the existing assets of the Legacy Debtors/Legacy Trust for distribution under the Confirmed Plan and Legacy Trust Agreement.<sup>19</sup> Therefore, the last factor also supports settlement.

**CONCLUSION**

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

DATED this 6th day of August, 2014.

**DORSEY & WHITNEY LLP**

/s/ Peggy Hunt  
Peggy Hunt  
Nathan S. Seim  
*Attorneys for D. Ray Strong, Trustee*

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<sup>18</sup> *Id.* ¶ 8.

<sup>19</sup> *Id.*



# EXHIBIT A

## SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this 9<sup>th</sup> day of June, 2014, by and between (i) Snell & Wilmer LLP ("Snell"); and (ii) D. Ray Strong, as the post-confirmation estate representative of the Consolidated Legacy Debtors (defined below) and the Liquidating Trustee (the "Trustee") of the Consolidated Legacy Debtors Liquidating Trust (the "Legacy Trust"), as appointed in such capacities in the bankruptcy case styled *In re Castle Arch Real Estate Investment Company, LLC et al.*, Case No. 11-35082 (the "Bankruptcy Case"), filed in the United States Bankruptcy Court for the District of Utah (the "Court"). The Trustee and Snell 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 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 [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] (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 Legacy Trust, as well as the Liquidating Trust of CAOP I and CAOP II (collectively, the "Trusts").

#### Snell's Proof of Claim and CAREIC's Scheduled Malpractice Claim

E. On November 18, 2011, Snell filed a Proof of Claim against CAREIC, designated as Claim No. 6 on CAREIC's Claims Register, asserting a general unsecured claim against CAREIC in the amount of \$59,228.17 relating to legal services performed (the "Snell POC").

F. On December 20, 2011, CAREIC filed Amended Schedules with the Court [Docket No. 29], which (i) scheduled Snell as a creditor, holding a disputed, unsecured claim in the amount of \$59,228.17; and (ii) scheduled CAREIC as holding a claim against Snell for an unknown amount.

G. The Parties have entered into arms' length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigation and collection, and without admitting liability or any 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 that the Court does not issue an Order approving this Agreement and/or if such an Order is appealed and reversed, then: (a) this Agreement shall be null and void and shall be 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. **Snell POC.** Effective on the Entry Date, the Parties agree that under the Confirmed Plan, the Snell POC will be allowed to remain as a Class A4 General Unsecured Claim against the Consolidated Legacy Debtors in the reduced amount of \$41,457.00 (the "New POC Amount"), and that the Order approving this Agreement shall provide that Snell's claim against the Consolidated Legacy Debtors is allowed as a Class A4 General Unsecured Claim in the New POC Amount without further notice or hearing. Snell agrees that it will not file additional proofs of claim against any of the Debtors and that any claim asserted against the Consolidated Legacy Debtors in an amount greater than the New POC Amount, whether in the Snell POC or otherwise, is disallowed in its entirety without further notice or hearing.

3. **Turnover of Debtors' Records and Files.** As of the date of this Agreement, Snell has turned over to the trustee's counsel, Dorsey & Whitney LLP, 136 South Main Street, Suite 1000, Salt Lake City, Utah 84101, all files, records and documents of the Debtors that are in Snell's possession or that are under Snell's control, including any and all invoices related to Snell's representation of the Debtors, and any and all email or electronic correspondence.

4. **Release of Claims Against Snell.** Effective on the Entry Date, CAREIC's post-confirmation estate and the Consolidated Legacy Trust, release and forever discharge Snell, and any one or all of Snell's associates, affiliates, predecessors, successors, heirs, assigns, managers, subsidiaries, parents, officers, directors, partners, attorneys and agents, as well as the employees, agents, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the "Snell 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, or expenses, set off, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that the Trustee may have, or may acquire from any other party against the Snell Release Parties from the beginning of time to the date hereof, or which may hereafter accrue against the Snell Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement, or which may hereafter accrue against the Snell Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited to CAREIC's scheduled claim against Snell; *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, Snell releases and forever discharges the Debtors, the post-confirmation estates of the Debtors, the Trusts, the Trustee, including 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 Snell 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, including but not limited to any claims asserted against any of the Debtors, other than the Snell POC as allowed in the New POC Amount as set forth herein; *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.** Snell 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, and (c) it has not filed any proofs of claim or asserted any claims against any of the Debtors, other than the Snell POC disclosed in this Agreement.

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

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

9. **Default.** Snell agrees that it is in material default of this Agreement if (a) it files or causes any affiliated 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 turn over to the Trustee's counsel the files, records and documents of the Debtors, as set forth above; or (c) the representations and warranties set forth above are materially false. Without limiting any of the Trustee's rights and remedies, in the event of any such material default, the Trustee shall be entitled to damages against Snell, and such damages shall include any and all costs of collection, interest, and reasonable fees and costs incurred by the Debtors' estates or the Trusts.

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.

**SNELL & WILMER LLP**

By:   
Title: Partner

**D. RAY STRONG, as ESTATE REPRESENTATIVE  
AND LIQUIDATING TRUSTEE**



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

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

I hereby certify that on August 6, 2014, I electronically filed the foregoing **TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH SNELL & WILMER LLP 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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*Attorneys for D. Ray Strong, Liquidating Trustee and  
Post-Confirmation Representative of the Debtors*

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

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In re:

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

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

Debtors.

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

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

(Chapter 11)  
The Honorable Joel T. Marker

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

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**DECLARATION OF D. RAY STRONG IN SUPPORT OF TRUSTEE’S MOTION FOR  
ORDER APPROVING SETTLEMENT AGREEMENT WITH SNELL & WILMER LLP  
UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

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D. Ray Strong, as the post-confirmation estate representative of the above-captioned Debtors and the Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust (the “Legacy 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 representative for the above-captioned Debtors and Liquidating Trustee for the Legacy 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 for Order Approving Settlement Agreement with Snell & Wilmer LLP 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, attached as Exhibit A to the Motion (the "Settlement Agreement"), that I entered into with Snell & Wilmer LLP (Snell). Snell and I are referred to together herein as the "Parties."

4. Snell and I exchanged information and entered into arms' length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigating the Snell POC and the Scheduled Claim, and we agreed to resolve and compromise the claims existing amongst us pursuant to the terms of the Settlement Agreement.

5. My counsel and I reviewed information relating to the Scheduled Claim, including information provided by Snell. Based on this preliminary review, I had concerns regarding the validity of, and the ability to successfully prosecute the Scheduled Claim. Thus, to avoid the costs, expense and uncertainty of litigation, I engaged in arms'-length and good-faith settlement negotiations with Snell, and in an exercise of my business judgment, I determined that resolution of all disputes between the Parties through settlement is appropriate given: (1) the inherent risk and uncertainty in obtaining a judgment against Snell relating to the Scheduled Claim and in disallowing the Snell POC; (2) the time and costs associated with litigating the

various factual issues against Snell vis-à-vis the benefit to the estate, even if I was successful; (3) the reduction of the Snell POC to the New POC Amount; and (4) Snell's release of the Debtors and the Trusts.


6. If I was successful in obtaining a judgment against Snell related to the Scheduled Claim, I have no reason to believe that collection of such judgment would be difficult. As set forth above, however, given the information that my counsel and I reviewed to date, I have concerns regarding the validity of, and the ability to successfully prosecute the Scheduled Claim.

7. Given the nature of the disputes relating to the Snell POC and the Scheduled Claim, litigation of such disputes likely would be fact-intensive and expensive. By entering into the Settlement Agreement, I believe that I obtained a favorable and fair result, without incurring expensive and unnecessary litigation costs.

8. In my business judgment, settlement of all disputes amongst the Parties under the Settlement Agreement is in the best interests of the Legacy Debtors' creditors/Legacy Trust beneficiaries. By engaging in good-faith and arms'-length negotiations with Snell, I was able to reduce the Snell POC to the New POC Amount without incurring expenses associated with potentially protracted litigation, thereby preserving the existing assets of the Legacy Debtors/Legacy Trust for distribution under the Confirmed Plan and Legacy Trust Agreement.

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

DATED this 6<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
*D. Ray Strong, as Representative of the  
Debtors and Liquidating Trustee of the  
Legacy Trust*

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

I hereby certify that on August \_\_\_\_, 2014, I electronically filed the foregoing **DECLARATION OF D. RAY STRONG IN SUPPORT OF TRUSTEE’S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH SNELL & WILMER LLP 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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