

The below described is **SIGNED**.

Dated: September 9, 2014



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



*Prepared and Submitted By:*

Peggy Hunt (Utah State Bar No. 6060)  
Nathan S. Seim (Utah State Bar No. 12654)

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

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

In re:

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

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

Debtors.

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

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

(Chapter 11)  
The Honorable Joel T. Marker

- Affects All Debtors
- Affects Only the Substantively Consolidated Debtors
- Affects only 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 SNELL & WILMER LLP UNDER FEDERAL  
RULE OF BANKRUPTCY PROCEDURE 9019**

The matter before the Court is the *Trustee's Motion for Order Approving Settlement Agreement with Snell & Wilmer LLP Under Federal Rule of Bankruptcy Procedure 9019* [Docket No. 976] (the "Motion"), which seeks approval of the Settlement Agreement, attached hereto as Exhibit A (the "Settlement Agreement"), that the Trustee entered into with Snell & Wilmer LLP. 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. 985] (the "Notice") that provided for, among other things, notice of the scheduled hearing on the Motion and notice of the deadline of August 26, 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. 977], 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**;
2. Snell & Wilmer LLP has an Allowed General Unsecured Claim in the total amount of \$41,457.00; and
3. 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 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]*

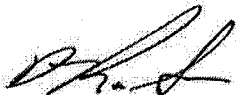


**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date and year first above written.

**SNELL & WILMER LLP**

By:   
Title: Partner

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



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

**DESIGNATION OF PARTIES TO BE SERVED**

Service of the foregoing **ORDER GRANTING TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH SNELL & WILMER LLP UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** (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
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- Kim R. Wilson bankruptcy\_krw@scmlaw.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.