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Attorneys for D. Ray Strong, Liquidating Trustee of the Legacy Trust and Chapter 11 Trustee and Post-Confirmation Representative for Castle Arch Real Estate Investment Company, LLC and Substantively Consolidated 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

TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH TRENT WADDOUPS AND CARR & WADDOUPS UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

D. Ray Strong (the "Trustee"), as the duly appointed Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust (the "Legacy Trust") and the Chapter 11 Trustee

and post-confirmation estate representative for the consolidated bankruptcy estates 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”), 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”), entered into by and among (i) Trent J. Waddoups (“Waddoups”) and Carr and Waddoups (the “CW Firm” and, together with Waddoups, the “Waddoups Parties”); and (ii) the Trustee, on behalf of the Legacy Trust and the Legacy Debtors (collectively with the Waddoups Parties, the “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.

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

The Receivership Action

5. On or about June 18, 2010, a lawsuit was filed against CAREIC in the Second Judicial District Court for Davis County, State of Utah (the “State Court”), styled as *The Hunt Law Corporation, P.C. v. Castle Arch Real Estate Investment Company, LLC*, Case No. 100700353 (the “Utah State Court Proceeding”).

6. On or about July 12, 2011, the State Court entered an order (the “Receiver Order”) appointing Waddoups as the receiver for CAREIC and “subsidiaries over which CAREIC has management or voting control” State Court Receiver Order at p. 2.

7. Paragraph I(f) of the State Court’s Receiver Order authorized Waddoups, as receiver, to employ professionals, and Waddoups claims that he employed several firms and individuals pursuant to this provision, including the CW Firm; Dan and Robert Benson and/or Independent Paralegal Consultants, Inc. and/or DB Consultants; and David Hunt (collectively, the “Receiver Professionals”).

The Bankruptcy Action

8. In October 2011, Waddoups, as receiver, caused each of the Legacy Debtors to file their respective bankruptcy petitions with this Court.

9. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 bankruptcy Trustee for CAREIC [Docket No. 215], and in that capacity he managed each of the other Legacy Debtors.

10. On February 8, 2013, the Court entered an Order substantively consolidating the Legacy Debtors [Docket No. 590].

11. On June 7, 2013, the Court entered the Confirmation Order which, among other things, (a) designated the Trustee as the post-confirmation estate representative for the Legacy Debtors; (b) approved the Liquidating Trust Agreement for the Legacy Trust; (c) appointed the Trustee as the Liquidating Trustee for the Legacy Trust; and (d) authorized the Trustee to pursue claims, such as the ones described herein, on behalf of the Legacy Estate and the Legacy Trust.

12. On August 20, 2013, the Waddoups Parties filed their *Application for Allowance of Attorney Fees and Costs* [Docket No. 743] (the "Application"), seeking an allowed administrative expense claim against the Legacy Debtors.

13. On September 16, 2013, the Trustee filed an objection to the Application [Docket No. 778], arguing that any claim asserted by the Waddoups Parties should be disallowed and that the Legacy Debtors had valid claims against the Waddoups Parties, including for surcharge.

14. Thereafter, the 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 by any Party, the Parties agreed to resolve and compromise the claims and disputes existing between them pursuant to the terms of the Settlement Agreement.¹

¹ Strong Declaration ¶ 4.

15. The Utah State Court Proceeding was dismissed by order entered on September 12, 2013.

TERMS OF SETTLEMENT AGREEMENT

16. The material terms of the Settlement Agreement are as follows:

(a) No later than five days from the date that the Court enters an Order approving the Settlement Agreement (the "Entry Date"), the Waddoups Parties shall pay to the Trustee, for the benefit of the Legacy Trust/Legacy Debtors' consolidated estate, the sum of \$30,415.00.

(b) Effective on the Entry Date, the Waddoups Parties are deemed to withdraw their request for additional fees and costs in the sum of \$18,485.10, as requested in the Application.

(c) Effective on the Entry Date, the Waddoups Parties are deemed to partially withdraw their request for fees and costs in the sum of \$30,415.00, as requested in the Application.

(d) Effective on the Entry Date, the Trustee will have no further objection to sums that have previously been made to the Waddoups Parties, and the Waddoups Parties will have no further claim and/or right to any distribution under the Confirmed Plan or through the Legacy Trust.

(e) The Parties will provide a mutual release of claims against each other as set forth in the Settlement Agreement, which includes a release of the Receiver Professionals by the Trustee.

(f) The Parties agree, that to the extent necessary as a result of the dismissal of the Utah State Court Proceeding, Waddoups is discharged as Receiver and has no further duties or obligations in that capacity.²

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.”³ The Trustee respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

Settlements and compromises “are favored in bankruptcy.”⁴ “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.”⁵ 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.⁶ Rather, the Court must determine whether the settlement is fair, equitable, and in the best interests of the Debtor’s estate.⁷ The Court should approve the Settlement Agreement unless it falls “below the lowest point in the range of reasonableness.”⁸

² See generally Exh. A (Settlement Agreement).

³ Fed. R. Bankr. P. 9019(a).

⁴ *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)).

⁵ *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)).

⁶ *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)).

⁷ 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).

⁸ *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)).

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.⁹

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. 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 Waddoups Parties.¹⁰ Although the Trustee believes he would prevail in disallowing any additional claims asserted by the Waddoups Parties against the Legacy Debtors, and although the Trustee believes he would be successful in prosecuting his claim for surcharge against the Waddoups Parties, the Trustee has determined, in the exercise of his business judgment, that resolution of all disputes amongst the Parties through settlement is appropriate and in the best interests of creditors given (1) the inherent risk that the Trustee may not be successful in

⁹ *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*).

¹⁰ Strong Declaration ¶ 4.

disallowing the additional claims of the Waddoups Parties or in obtaining a judgment and/or collecting a judgment against the Waddoups Parties; (2) the amount in question and time and costs associated with litigating the various disputes vis-à-vis the recovery to be obtained and the collectability of a judgment; (3) the cash payment by the Waddoups Parties for the benefit of the Legacy Debtors/Legacy Trust; (4) the Waddoups Parties' agreement to withdraw their additional claims for fees and costs asserted in the Application; and (5) the relatively quick resolution of the disputes through settlement, including a release of the Legacy Debtors by the Waddoups Parties.¹¹ 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 the Waddoups Parties. This factor has played a significant role in the Trustee's decision to settle. Based on his investigation, the Trustee believes that even if he were successful in obtaining a judgment against the Waddoups Parties, collection of that judgment may be difficult or expensive.¹² Therefore, this factor also supports approval of the Settlement Agreement.

C. Complexity and Expense of Litigation

The third *Kopexa* Factor requires the Court to consider the complexity and expense of any litigation. As stated above, given the various disputes between the Parties and the issues involved, litigation of all disputes likely would be expensive.¹³ By entering into the Settlement Agreement, the Trustee believes he has obtained a favorable and fair result for the Legacy Trust

¹¹ *Id.* ¶ 5.

¹² *Id.* ¶ 6.

¹³ *Id.* ¶ 7.

without incurring expensive and unnecessary litigation costs.¹⁴ Thus, this factor also weighs in favor of the Settlement Agreement.

D. Interest of Creditors

The final *Kopexa* Factor looks at the interests of creditors in deference to their reasonable views. In the Trustee's business judgment, settlement of all the disputes amongst the Parties pursuant to the terms of the Settlement Agreement is in the best interests of the Legacy Debtors' creditors/Legacy Trust beneficiaries.¹⁵ By engaging in good-faith and arms'-length negotiations with the Waddoups Parties, the Trustee has avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Legacy Trust for distribution under the Confirmed Plan and Legacy Trust Agreement.¹⁶ 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 30th day of January, 2014.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

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

¹⁴ *Id.*

¹⁵ *Id.* ¶ 8.

¹⁶ *Id.*

EXHIBIT A

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this 29th day of January, 2014, by and between Trent J. Waddoups ("Waddoups") and Carr and Waddoups (the "CW Firm") and, collectively with Waddoups, the "Waddoups Parties"), on the one hand, and D. Ray Strong, as the Chapter 11 Trustee (the "Trustee") and post-confirmation estate representative for the consolidated bankruptcy estate 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") in the bankruptcy case styled as *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"), on the other hand. The Trustee, the Legacy Debtors and the Waddoups Parties will be referred collectively as the "Parties."

RECITALS

The Receivership

A. On or about June 18, 2010, a lawsuit was filed against CAREIC in the Second Judicial District Court for Davis County, State of Utah (the "State Court"), styled as *The Hunt Law Corporation, P.C. v. Castle Arch Real Estate Investment Company, LLC*, Case No. 100700353 (the "Utah State Court Proceeding").

B. On or about July 12, 2011, the State Court entered an order (the "Receiver Order") appointing Waddoups as the receiver for CAREIC and "subsidiaries over which CAREIC has management or voting control . . ." State Court Receivership Order at p. 2.

C. Paragraph I(f) of the State Court's Receiver Order authorized Waddoups, as receiver, to employ professionals, and Waddoups claims that he employed several firms and individuals pursuant to this provision, including the CW Firm; Dan and Robert Benson and/or Independent Paralegal Consultants, Inc. and/or DB Consultants; and David Hunt (collectively, the "Receiver Professionals").

The Bankruptcy Cases

D. On October 17, 2011, Waddoups, as receiver, caused a petition seeking relief under Chapter 11 of the Bankruptcy Code to be filed for CAREIC, and on October 20, 2011, he caused Chapter 11 petitions to be filed for, among others, each of the other Legacy Debtors.

E. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC.

F. On February 8, 2013, the Court entered an Order substantively consolidating the Legacy Debtors [Docket No. 590], and on June 7, 2013, the Court entered an Order confirming the Trustee's Plan of Liquidation [Docket No. 705].

G. On February 8, 2013, the Court entered an Order substantively consolidating the Legacy Debtors [Docket No. 590], and on June 7, 2013, the Court entered an Order confirming the Trustee's Plan of Liquidation [Docket No. 705].

H. On August 20, 2013, the Waddoups Parties filed their *Application for Allowance of Attorney Fees and Costs* [Docket No. 743] (the "Application"), seeking an allowed administrative expense claim against the Legacy Debtors.

I. The Trustee objected to the Application, arguing that any claim asserted by the Waddoups Parties should be disallowed, and that claims existed against the Waddoups Parties, including for surcharge.

J. 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. **Settlement Payment.** No later than five (5) days from the Entry Date, the Waddoups Parties shall pay to the Trustee for the benefit of the Legacy Debtors' consolidated estate the sum of \$30,415.00 through certified funds payable to *D. Ray Strong, Trustee* (the "Settlement Payment").

3. **Withdrawal of Request for Payment of Additional Fees and Costs.** Effective on the Entry Date, the Waddoups Parties hereby withdraw its request for an Order allowing additional fees and costs in the sum of \$18,485.10, as set forth in the Application.

4. **Partial Withdrawal of Request for Payment of Fees and Costs Respecting Settlement Payment.** Effective on the Entry Date, the Waddoups Parties hereby partially withdraws their request for an Order allowing fees and costs in the sum of \$30,415.00.

5. **Disallowance of Claims.** Effective on the Entry Date, the Parties agree that the Trustee shall have no further objection to sums that have been paid to the Waddoups Parties, and that the Waddoups Parties shall have no further claim and/or right to any distribution under the confirmed Plan of Liquidation or through the Liquidation Trust established for the Legacy Debtors through the Plan of Liquidation.

6. **Release of Claims Against the Waddoups Parties.** Effective on the later of the Entry Date or the Trustee's receipt of the Settlement Payment, the Legacy Debtors, their consolidated bankruptcy estate and the Trustee release and forever discharge the Waddoups Parties, and any one or all of the Waddoups Parties' associates, affiliates, predecessors, successors, heirs, assigns, managers, subsidiaries, parents, officers, directors, partners, attorneys and agents, including the Receiver Professionals, as well as the employees, agents, attorneys, representatives, predecessors, successors and assigns of the Waddoups Parties and the Receiver Professionals (collectively, the "Waddoups 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 Waddoups Release Parties from the beginning of time to the date hereof, or which may hereafter accrue against the Waddoups Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement, or which may hereafter accrue against the Waddoups Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement; *provided however*, the release provided under this paragraph is not a release of any claims or causes of action arising under or resulting from a default or breach of this Agreement.

7. **Release of Claims Against Trustee and Legacy Debtors.** Effective on the Entry Date, the Waddoups Parties release and forever discharge the Legacy Debtors, the Legacy Debtors' consolidated bankruptcy estate, the Trustee, and any one or all of the 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 of the Trustee or the Legacy Debtors, as applicable (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 Waddoups 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, including but not limited to any and all claims asserted in the Application or any other pleading filed by the Waddoups Parties in the Bankruptcy Cases; *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.

8. **Representations and Warranties.** The Waddoups 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, and (c) they have not filed any proofs of claim or asserted any claims against any of the Legacy Debtors, other than through the Application disclosed in this Agreement.

9. **Trustee Representation.** The Trustee represents that as the Court-authorized estate representative of the Legacy Debtors, he has full power and authority to enter into this Agreement on behalf of the Legacy Debtors and the Legacy Debtors' consolidated estate.

10. **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.

11. **Discharge of Waddoups.** The Parties agree that as a result of the dismissal of the Utah State Court Case, Waddoups has been and is discharged as Receiver and has no further duties or obligations as Receiver.

12. **Default.** The Waddoups Parties agree that they are in material default of this Agreement if (a) they fail to make the Settlement Payment as set forth herein; (b) they file or cause any affiliated party to file a claim against any of the Debtors or otherwise take any action to assert an interest in assets of any of the Debtors; or (c) the representations and warranties set forth above are intentionally and materially false or incomplete. The Trustee and Legacy Debtors agree they are in material default of this Agreement if (a) they file or cause any affiliated party to file a claim against the Waddoups Parties. Without limiting any of the Parties' rights and remedies, in the event of any such material default, the prevailing party shall be entitled to damages, and such damages shall include any and all costs of collection, interest, and reasonable fees and costs incurred by the prevailing party.

13. **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.

14. **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.

15. **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 Legacy Debtors or their bankruptcy estate. 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.

16. **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 consent to the post-confirmation jurisdiction, venue and process of the Court.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.


22. **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.

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

TRENT J. WADDOUPS


Trent J. Waddoups

CARR AND WADDOUPS


Printed Name: *Trent J. Waddoups*
Its: *Managing Member*

D. RAY STRONG, as ESTATE REPRESENTATIVE FOR THE LEGACY DEBTORS


D. Ray Strong, Estate Representative

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

I hereby certify that on January 30, 2014, I electronically filed the foregoing **TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH TRENT WADDOUPS AND CARR & WADDOUPS 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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