

The below described is **SIGNED**.

Dated: February 26, 2014



JOEL T. MARKER
U.S. Bankruptcy Judge



Prepared and Submitted By:

Peggy Hunt (Utah State Bar No. 6060)
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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

**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 TRENT WADDOUPS AND CARR & WADDOUPS UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

The matter before the Court is the *Trustee's Motion for Order Approving Settlement Agreement with Trent Waddoups and Carr & Waddoups Under Federal Rule of Bankruptcy Procedure 9019* [Docket No. 889] (the "Motion"), which seeks approval of the Settlement Agreement, attached hereto as Exhibit A (the "Settlement Agreement"), entered into by and among the Trustee, Trent Waddoups, and Carr & Waddoups. 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. 891] (the "Notice") that provided for, among other things, notice of the scheduled hearing on the Motion and notice of the deadline of February 20, 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. 890], the Notice, the *Certificate of Service* attached to the Notice, and applicable law. Based thereon, and for good cause shown,

IT IS HEREBY ORDERED THAT:

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

End of Order

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

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing **ORDER GRANTING TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH TRENT WADDOUPS AND CARR & WADDOUPS 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
- Troy J. Aramburu taramburu@swlaw.com,
jpollard@swlaw.com;docket_slc@swlaw.com
- Jeffrey M Armington armington.jeff@dorsey.com
- Julie A. Bryan julie@crslaw.com, diana@crslaw.com;josh@crslaw.com
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- D. Ray Strong trstrong@brg-expert.com
- Marca Tanner marca.tanner@gmail.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Kim R. Wilson bankruptcy_krw@scmlaw.com
- Brock N. Worthen bworthen@joneswaldo.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.