

Peggy Hunt (Utah State Bar No. 6060)
Jeffrey M. Armington (Utah State Bar No. 14050)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
armington.jeff@dorsey.com

Attorneys for D. Ray Strong, Chapter 11 Trustee for Consolidated Legacy Debtors, Post-Confirmation Estate Representative and Legacy Trust Trustee

**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

CHAPTER 11 TRUSTEE’S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH JERRY SHARKO’S & COMPANY, INC. UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

D. Ray Strong, the duly appointed Chapter 11 Trustee (the “Trustee”) for the consolidated bankruptcy estates of Castle Arch Real Estate Investment Company, LLC

(“CAREIC”), CAOP Managers, LLC, Castle Arch Kingman, LLC, Castle Arch Secured Development Fund, LLC, Castle Arch Smyrna, LLC and Castle Arch Star Valley, LLC (collectively, the “Consolidated Legacy Debtors” or “Legacy Debtors”), estate representative for the Consolidated Legacy Estate and the duly appointed Trustee of the Legacy Trust,¹ 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 between the Trustee and Jerry Sharko’s & Company, Inc. (“Sharko” and together with the Trustee, the “Parties”). This Motion is supported by the Declaration of D. Ray Strong, Chapter 11 Trustee (the “Strong Declaration”) filed concurrently herewith. In further support hereof, the Trustee states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, as well as under Article X of the confirmed Plan. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

General

2. On October 17, 2011, CAREIC filed a petition seeking relief under Chapter 11 of the Bankruptcy Code, and on October 20, 2011, the other Consolidated Legacy Debtors also filed Chapter 11 petitions. All of these cases were subsequently substantively consolidated by the Court [Docket No. 590].

¹ Capitalized terms used herein but not defined shall have the meanings ascribed to them in the *Second Amended Chapter 11 Trustee’s Plan of Liquidation Dated February 25, 2013* [Docket No. 701] (the “Plan”).

3. From their respective petition dates through April 30, 2012, the Consolidated Legacy Debtors were operated as debtors in possession. On April 30, 2012, the Bankruptcy Court ordered the appointment of a Chapter 11 trustee for CAREIC, and on May 3, 2012, the Bankruptcy Court entered an Order appointing the Trustee as the Chapter 11 trustee for CAREIC [Docket No. 215].

4. On February 8, 2013, the Court entered an Order substantively consolidating the Consolidated Legacy Debtors as of CAREIC's petition date.

The Sharko and CAREIC Property Transaction

5. By documents dated February 27, 2008, Sharko and CAREIC entered into a purchase agreement (the "February 27 Purchase Agreement"), pursuant to which Sharko agreed to purchase from CAREIC, for the sum of \$1,680,000.00, certain real property located in Kingman, Mohave County, Arizona, which property is more particularly described as follows (the "Property"): ²

An approximate sixty (60) acre parcel located on Grace Neal Parkway, Mohave County, AZ contained in Section 15, Township 22 North, Range 16 West at the Gila and Salt River Base and Meridian, described on the attached two pages.

6. By documents dated April 10, 2008, Sharko and CAREIC entered into another purchase agreement, pursuant to which CAREIC agreed to repurchase the Property back from Sharko for \$2,184,000.00, a portion of which was to be paid in quarterly installments each in the amount of \$42,000.00, with the remainder to be paid in a lump sum on the pre-set closing date of

² Strong Declaration ¶ 3.

July 15, 2011 (the “April 10 Purchase Agreement” and together with the February 27 Purchase Agreement, the “Purchase Agreements”).³

7. CAREIC made payments to Sharko in the amount of \$336,000.00 pursuant to the April 10 Purchase Agreement, but CAREIC’s purchase of the Property never closed, and Sharko has retained title to the Property. Sharko maintains that CAREIC is in default under the April 10 Purchase Agreement.⁴

The State Court Proceeding

8. On or about January 25, 2011, Sharko filed a lawsuit against CAREIC, alleging breach of contract related to the April 10 Purchase Agreement, in the Circuit Court of the Eighteenth Judicial Circuit, Du Page County, Illinois, styled *Jerry Sharko’s and Co., Inc. v. Castle Arch Real Estate Investment, Co., LLC*, Case No. 2011L000086 (the “State Court Proceeding”), which case has been stayed as a result of the filing of the above-captioned bankruptcy case.⁵

The Proof of Claim, the Adversary Proceeding, and Settlement Negotiations

9. On February 21, 2012, Sharko filed a proof of claim in CAREIC’s Bankruptcy Case, designated as Claim No. 31, asserting a general unsecured claim in the amount of \$1,504,494.64 related to the April 10 Purchase Agreement (the “POC”).⁶

³ *Id.* ¶ 4.

⁴ *Id.* ¶ 5.

⁵ *Id.* ¶ 6.

⁶ *Id.* ¶ 7.

10. Prior to the Trustee's appointment, CAREIC, as debtor in possession, filed an adversary proceeding against Sharko in this Court, designated as Adversary Proceeding 12-02111 (the "Adversary Proceeding").⁷

11. Since the Trustee's appointment, he has investigated matters related to Sharko's alleged claim, including but not limited to the POC, the claims made in the State Court Proceeding and those asserted by CAREIC in the Adversary Proceeding.⁸

REQUESTED RELIEF

12. The Parties have entered into arms-length and good-faith negotiations to avoid the costs, expense and uncertainty of litigation and collection relating to the disputes existing amongst them.⁹ Therefore, the Trustee requests that the Court grant this Motion and approve the Settlement Agreement.

TERMS OF SETTLEMENT AGREEMENT

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

(a) **Allowed Claim.** The Parties agree that Sharko will hold an Allowed General Unsecured Claim against the Legacy Debtors in the amount of \$900,000.00 (the "New POC Amount") and that the Order approving the Agreement shall provide that Sharko's General Unsecured Claim against the Legacy Debtors is Allowed in the New POC Amount without further notice or hearing. Sharko agrees that it will not file additional proofs of claim against any of the Debtors and that any claim asserted against the Legacy Debtors in an amount greater than the New POC Amount, whether in the POC or otherwise, is Disallowed in its entirety.

⁷ *Id.* ¶ 8.

⁸ *Id.* ¶ 9.

⁹ *Id.* ¶ 10.

(b) **The Property**. Pursuant to the Agreement, Sharko will retain title and ownership of the Property, and the Legacy Debtors shall have no claims against or liabilities related to the Property.

(c) **Dismissal of State Court Proceeding With Prejudice**. Within five (5) business days of the Entry Date, Sharko will file a Notice of Dismissal in the State Court Proceeding, dismissing such Proceeding with prejudice. The Trustee will stipulate to such dismissal as may be required by applicable law.

(d) **Dismissal of Adversary Proceeding With Prejudice**. Within five (5) business days of the Entry Date, the Trustee will file a Notice of Dismissal in the Adversary Proceeding, dismissing such Proceeding with prejudice. Sharko will stipulate to such dismissal as may be required by applicable law.

(e) **Releases**. The Parties will provide a mutual release of claims against each other as set forth in the Settlement Agreement.¹⁰

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.”¹¹ The Trustee respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

Settlements and compromises “are favored in bankruptcy.”¹² “The purpose behind compromises is to allow the trustee and creditors to avoid the expenses and burdens associated

¹⁰ See generally Exh. A (Settlement Agreement).

¹¹ Fed. R. Bankr. P. 9019(a).

¹² *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)).

with litigating sharply contested and dubious claims.”¹³ 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.¹⁴ Rather, the Court must determine whether the settlement is fair, equitable, and in the best interests of the Debtor’s estate.¹⁵ The Court should approve the Settlement Agreement unless it falls “below the lowest point in the range of reasonableness.”¹⁶

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.¹⁷

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’ estate and creditors.

¹³ *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)).

¹⁴ *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)).

¹⁵ 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).

¹⁶ *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)).

¹⁷ *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*).

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, the Trustee has engaged in arms-length and good-faith settlement negotiations with Sharko.¹⁸ Although the Trustee believes he may be successful in obtaining an Order disallowing the POC and in obtaining judgment against Sharko in the Adversary Proceeding, 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 and the Debtors' respective estates given (1) the inherent risk that the Trustee may not be successful in disallowing the POC, and/or obtaining a judgment or collecting a judgment against Sharko; (2) the time and costs associated with litigating the disputes, especially given the complexity and factual nature of the disputes; (3) the substantial reduction to the POC of more than \$600,000 and the releases given by Sharko; and (4) the relatively quick resolution of the disputes through settlement.¹⁹ 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 Sharko. Even if he were successful in obtaining a judgment against Sharko in the Adversary Proceeding, collection of that judgment may be difficult. This factor has been considered, but has not been central to his decision to enter into the Settlement Agreement.²⁰

¹⁸ Strong Declaration ¶ 10.

¹⁹ *Id.* ¶ 11.

²⁰ *Id.* ¶ 12.

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 complex and factual nature of the various disputes amongst the Parties, litigation of all disputes likely would be lengthy and expensive.²¹ By entering into the Settlement Agreement, the Trustee believes he has obtained a favorable and fair result for the Debtors' estates relating to Sharko without incurring expensive and unnecessary litigation costs.²² Thus, settlement should be favored over litigation.

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 above terms is in the best interests of creditors and the Debtors' respective estates.²³ By engaging in good-faith and arms'-length negotiations with Sharko, the Trustee has avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Debtors for distribution to creditors and, possibly, investors under the Trustee's Plan.²⁴ Therefore, the last factor also weighs in favor of settlement.

²¹ *Id.* ¶ 11.

²² *Id.*

²³ *Id.* ¶ 13.

²⁴ *Id.* ¶ 14.

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 November, 2013.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
Peggy Hunt
Jeffrey M. Armington
*Attorneys for D. Ray Strong,
Chapter 11 Trustee for
Consolidated Legacy Debtors, Post-
Confirmation Estate Representative and
Legacy Trust Trustee*

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

I hereby certify that on November 6, 2013, I electronically filed the foregoing **CHAPTER 11 TRUSTEE’S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH JERRY SHARKO’S & COMPANY UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** (the “Motion”) with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

- Gregory J. Adams gadams@mbt-law.com
- 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
- Mona Lyman Burton mburton@hollandhart.com,
ckelly@hollandhart.com;intaketteam@hollandhart.com;slclitdocket@hollandhart.com
- Leonard J. Carson len@pearsonbutler.com, daneise@pearsonbutler.com
- Andrew B. Clawson andrew@abclawutah.com,
len@pearsonbutler.com;maryann@pearsonbutler.com;daneise@pearsonbutler.com
- Victor P Copeland vpc@pkhlawyers.com, js@pkhlawyers.com
- Joseph M.R. Covey calendar@parrbrown.com
- T. Edward Cundick tec@princeyeates.com,
heidi@princeyeates.com;docket@princeyeates.com
- Anna W. Drake annadrake@att.net
- David R. Hague dhague@fabianlaw.com, dromero@fabianlaw.com
- George B. Hofmann gbh@pkhlawyers.com, dh@pkhlawyers.com;aa@pkhlawyers.com
- Mary Margaret Hunt hunt.peggy@dorsey.com,
long.candy@dorsey.com;smith.ron@dorsey.com;slc.lit@dorsey.com
- Mary Margaret Hunt hunt.peggy@dorsey.com,
long.candy@dorsey.com;smith.ron@dorsey.com;slc.lit@dorsey.com
- Lon A. Jenkins lajenkins@joneswaldo.com,
ecf@joneswaldo.com;hdoherty@joneswaldo.com;rpavlisin@joneswaldo.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Michael L. Labertew michael@labertewlaw.com
- Christopher J Martinez martinez.chris@dorsey.com, stauffer.erin@dorsey.com
- Adelaide Maudsley maudsley@chapman.com, jemery@chapman.com
- John T. Morgan tr john.t.morgan@usdoj.gov,
James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Rinehart.Peshell@usdoj.gov;Suzanne
.Verhaal@usdoj.gov

- Oliver K. Myers myersok@msn.com
- Knute A. Rife KARife@RifeLegal.com
- Nathan Seim seim.nathan@dorsey.com
- Nathan Seim seim.nathan@dorsey.com
- Jeremy C. Sink jeremy@mbt-law.com
- Jeremy C. Sink jeremy@mbt-law.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com;docket@rqn.com
- D. Ray Strong trstrong@brg-expert.com
- Gerald H. Suniville gsuniville@vancott.com, docketing@vancott.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@swlaw.com

/s/ Jeffrey M. Armington

Furthermore, I certify that on the 6th day of Motion, 2013, the Motion was served on the following party by U.S. mail postage prepaid:

Jerry Sharko's & Company, Inc.
c/o James A. Pope
1 S 660 Midwest Road
Suite 200
Oakbrook Terrace, IL 60181

/s/ Jeffrey M. Armington

EXHIBIT A

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this 24 day of October, 2013, by and between Jerry Sharko's & Company, Inc. ("Sharko"), on the one hand, and D. Ray Strong, as the Chapter 11 Trustee 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"), estate representative for the Consolidated Legacy Estate and the duly appointed Trustee of the Legacy Trust (the "Trustee") 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 and Sharko will be referred together as the "Parties."

RECITALS

The Property Transaction

A. On February 27, 2008, Sharko and CAREIC entered into a purchase agreement (the "February 27 Purchase Agreement"), pursuant to which Sharko agreed to purchase from CAREIC, for the sum of \$1,680,000.00, certain real property located in Kingman, Mohave County, Arizona, which property is more particularly described as follows (the "Property"):

An approximate sixty (60) acre parcel located on Grace Neal Parkway, Mohave County, AZ contained in Section 15, Township 22 North, Range 16 West at the Gila and Salt River Base and Meridian, described on the attached two pages.

B. On April 10, 2008, Sharko and CAREIC entered into another purchase agreement, pursuant to which CAREIC agreed to repurchase the Property back from Sharko for \$2,184,000.00, a portion of which was to be paid in quarterly installments each in the amount of \$42,000.00, with the remainder to be paid in a lump sum on the pre-set closing date of July 15, 2011 (the "April 10 Purchase Agreement" and together with the February 27 Purchase Agreement, the "Purchase Agreements").

C. CAREIC made payments to Sharko in the amount of \$336,000.00 pursuant to the April 10 Purchase Agreement, but CAREIC's purchase of the Property never closed, and Sharko has retained title to the Property. Sharko maintains that CAREIC is in default under the April 10 Purchase Agreement.

The State Court Proceeding

D. On or about January 25, 2011, Sharko filed a lawsuit against CAREIC, alleging breach of contract related to the April 10 Purchase Agreement, in the Circuit Court of the Eighteenth Judicial Circuit, Du Page County, Illinois, styled *Jerry Sharko's and Co., Inc. v. Castle Arch Real Estate Investment, Co., LLC*, Case No. 2011L000086 (the "State Court Proceeding"), which case has been stayed as a result of the filing of the Bankruptcy Case.

The Proof of Claim, the Adversary Proceeding, and Settlement Negotiations

E. On February 21, 2012, Sharko filed a proof of claim in CAREIC's Bankruptcy Case, asserting a general unsecured claim in the amount of \$1,504,494.64 related to CAREIC's alleged breach of the April 10 Purchase Agreement (the "POC").

F. Prior to the Trustee's appointment, CAREIC, as debtor in possession, filed an adversary proceeding against Sharko in the Court, designated as Adversary Proceeding 12-02111 (the "Adversary Proceeding").

G. Since the Trustee's appointment, he has investigated matters related to Sharko's alleged claim, including but not limited to the POC, the claims made in the State Court Proceeding and those asserted by CAREIC in the Adversary Proceeding.

H. The Court has confirmed the Trustee's Plan of Liquidation, and the terms "Debtors," "Legacy Debtors," "Consolidated Legacy Estate," "Legacy Trust," and "Allowed General Unsecured Claim" are defined therein and incorporated herein.

I. The Parties have entered into arms' length and good faith negotiations to avoid the costs, expenses and uncertainty of litigation, and 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."

2. **Allowed Claim.** By executing this Agreement, the Parties agree that Sharko will hold an Allowed General Unsecured Claim against the Legacy Debtors in the amount of \$900,000.00 (the "New POC Amount") and that the Order approving this Agreement shall provide that Sharko's general unsecured claim against the Legacy Debtors is allowed in the New POC Amount without further notice or hearing. Sharko agrees that it will not file additional proofs of claim against any of the Debtors and that any claim asserted against the Legacy Debtors in an amount greater than the New POC Amount, whether in the POC or otherwise, is disallowed in its entirety.

3. **The Property.** Pursuant to this Agreement, Sharko will retain title and ownership of the Property, and the Legacy Debtors shall have no claims against or liabilities related to the Property.

4. **Dismissal of State Court Proceeding With Prejudice.** Within five (5) business days of the Entry Date, Sharko will file a Notice of Dismissal in the State Court Proceeding, dismissing such Proceeding with prejudice. The Trustee will stipulate to such dismissal as may be required by applicable law.

5. **Dismissal of Adversary Proceeding With Prejudice.** Within five (5) business days of the Entry Date, the Trustee will file a Notice of Dismissal in the Adversary Proceeding, dismissing such Proceeding with prejudice. Sharko will stipulate to such dismissal as may be required by applicable law.

6. **Release of Claims Against Sharko.** Effective upon the Entry Date, the Trustee releases and forever discharges Sharko 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 against Sharko from the beginning of time to the date hereof, or which may hereafter accrue against Sharko based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited to claims relating to the Purchase Agreements, any and all claims asserted in or that could have been asserted in the Adversary Proceeding, any and all counterclaims that could be or have been asserted in the State Court Proceeding; *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 Debtors.** Effective on the Entry Date, and except as specifically set forth in paragraph 2 above and without limiting anything in said paragraph, Sharko releases and forever discharges the Debtors, including the Legacy Debtors, the Debtors' estates, the Liquidation Trusts, the Trustee, and any one or all of the Trustee'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 "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 Sharko 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 claims relating to the Purchase Agreements, any claim related to the Property, any claim in excess of the New POC Amount, any and all claims that could be or have been asserted in the State Court Proceeding, and any and all counterclaims that could be or have been asserted in the Adversary Proceeding.

8. **Representations and Warranties.** Sharko represents and warrants that it has full power and authority to enter into this Agreement, that 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 that Sharko has not filed any proofs of claims or asserted any claims against any of the Debtors, other than the POC disclosed in this Agreement.

9. **Trustee Representation.** The Trustee represents that as the Court-authorized representative of the Legacy Debtors, the Consolidated Legacy Estate and the Legacy Trust, he has full power and authority to enter into this Agreement.

10. **Default.** Sharko agrees that it is in material default of this Agreement if (a) it fails to dismiss the State Court Proceeding as set forth above; (b) it files or causes 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 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 Sharko, and such damages shall include any and all costs of collection, interest, and reasonable fees and costs incurred.

11. **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.

12. **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.

13. **Binding Effect.** This Agreement shall be binding upon each of the Parties and their respective successors-in-interest, heirs and/or assigns. 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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

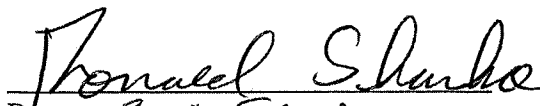
19. **Severability.** To the extent that any portion of this Agreement is held unenforceable by a court, tribunal or arbiter of competent jurisdiction, the remainder of this Agreement shall remain binding and enforceable, provided that the primary purposes of the Agreement are not frustrated.

20. **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.

[Signature Page To Follow]

JERRY SHARKO'S & COMPANY, INC.


By: Ronald Sharko
Its: President

D. RAY STRONG, TRUSTEE


*D. Ray Strong, Chapter 11 Trustee for
Consolidated Legacy Debtors, Post-Confirmation
Estate Representative and Legacy Trust Trustee*

Peggy Hunt (Utah State Bar No. 6060)
Jeffrey M. Armington (Utah State Bar No. 14050)

DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
Email: hunt.peggy@dorsey.com
armington.jeff@dorsey.com

Attorneys for D. Ray Strong, Chapter 11 Trustee for Consolidated Legacy Debtors, Post-Confirmation Estate Representative and Legacy Trust Trustee

**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

**DECLARATION OF D. RAY STRONG IN SUPPORT OF CHAPTER 11 TRUSTEE'S
MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH JERRY
SHARKO'S & COMPANY, INC. UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019**

D. Ray Strong, the duly appointed Chapter 11 Trustee (the “Trustee”) for the consolidated bankruptcy estates of Castle Arch Real Estate Investment Company, LLC (“CAREIC”), CAOP Managers, LLC, Castle Arch Kingman, LLC, Castle Arch Secured Development Fund, LLC, Castle Arch Smyrna, LLC and Castle Arch Star Valley, LLC (collectively, the “Consolidated Legacy Debtors” or “Legacy Debtors”), estate representative for the Consolidated Legacy Estate and the duly appointed Trustee of the Legacy Trust, being of lawful age, hereby declares, verifies and states as follows:

BACKGROUND

1. This Declaration is based upon my personal knowledge of the facts set forth herein. I submit this Declaration in support of the *Chapter 11 Trustee’s Motion for Order Approving Settlement Agreement with Jerry Sharko’s & Company, Inc. 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.

2. 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 Jerry Sharko’s & Company, Inc. (“Sharko” and together with me, the “Parties”) on behalf of the Consolidated Legacy Debtors’ estate

The Sharko and CAREIC Property Transaction

3. By documents dated February 27, 2008, Sharko and CAREIC entered into a purchase agreement (the “February 27 Purchase Agreement”), pursuant to which Sharko agreed to purchase from CAREIC, for the sum of \$1,680,000.00, certain real property located in Kingman, Mohave County, Arizona (the “Property”).

4. By documents dated April 10, 2008, Sharko and CAREIC entered into another purchase agreement, pursuant to which CAREIC agreed to repurchase the Property back from Sharko for \$2,184,000.00, a portion of which was to be paid in quarterly installments each in the amount of \$42,000.00, with the remainder to be paid in a lump sum on the pre-set closing date of July 15, 2011 (the "April 10 Purchase Agreement" and together with the February 27 Purchase Agreement, the "Purchase Agreements").

5. CAREIC made payments to Sharko in the amount of \$336,000.00 pursuant to the April 10 Purchase Agreement, but CAREIC's purchase of the Property never closed, and Sharko has retained title to the Property. Sharko maintains that CAREIC is in default under the April 10 Purchase Agreement.

The State Court Proceeding

6. On or about January 25, 2011, Sharko filed a lawsuit against CAREIC, alleging breach of contract related to the April 10 Purchase Agreement, in the Circuit Court of the Eighteenth Judicial Circuit, Du Page County, Illinois, styled *Jerry Sharko's and Co., Inc. v. Castle Arch Real Estate Investment, Co., LLC*, Case No. 2011L000086 (the "State Court Proceeding"), which case has been stayed as a result of the above-captioned bankruptcy case.

The Proof of Claim, the Adversary Proceeding, and Settlement Negotiations

7. On February 21, 2012, Sharko filed a proof of claim in CAREIC's Bankruptcy Case, designated as Claim No. 31, asserting a general unsecured claim in the amount of \$1,504,494.64 related to the April 10 Purchase Agreement (the "POC").

8. Prior to my appointment, CAREIC, as debtor in possession, filed an adversary proceeding against Sharko in this Court, designated as Adversary Proceeding 12-02111 (the "Adversary Proceeding").

9. Since my appointment, I have investigated matters related to Sharko's alleged claim, including but not limited to the POC, the claims made in the State Court Proceeding and those asserted by CAREIC in the Adversary Proceeding.

10. The Parties have entered into arms-length and good-faith negotiations to avoid the costs, expense and uncertainty of litigation and collection relating to the disputes existing amongst them.

THE SETTLEMENT AGREEMENT

11. Although I believe I may be successful in obtaining an Order disallowing the POC and in obtaining judgment against Sharko in the Adversary Proceeding, I have determined, in the exercise of my business judgment, that resolution of all disputes amongst the Parties through settlement is appropriate and in the best interests of creditors and the Debtors' respective estates given: (a) the inherent risk that I may not be successful in disallowing the POC, and/or obtaining a judgment or collecting a judgment against Sharko; (b) the time and costs associated with litigating the disputes, especially given the complexity and factual nature of the disputes; (c) the substantial reduction to the POC of an amount more than \$600,000 and the releases given by Sharko; and (d) the relatively quick resolution of the disputes through settlement.

12. Even if I were successful in obtaining a judgment against Sharko in the Adversary Proceeding, there is a possibility that collection of that judgment may be difficult. This factor

has been considered, although has not been central to my decision to enter into the Settlement Agreement.

13. In my business judgment, settlement of all the disputes amongst the Parties pursuant to the above terms is in the best interests of creditors and the Debtors' respective estates.

14. By engaging in good-faith and arms-length negotiations with Sharko, I have avoided the costly delays and expenses associated with litigating the above disputes, thereby preserving the existing assets of the Debtors for distribution to creditors and, possibly, investors under the Plan.

DATED this 6th day of November, 2013.



*D. Ray Strong, Chapter 11 Trustee for
Consolidated Legacy Debtors, Post-
Confirmation Estate Representative and
Legacy Trust Trustee*

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

I hereby certify that on November 6, 2013, I electronically filed the foregoing **DECLARATION OF D. RAY STRONG IN SUPPORT OF CHAPTER 11 TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH JERRY SHARKO'S & COMPANY UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** (the "Declaration") with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

- Gregory J. Adams gadams@mbt-law.com
- 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
- Mona Lyman Burton mburton@hollandhart.com,
ckelly@hollandhart.com;intaketeam@hollandhart.com;slclitdocket@hollandhart.com
- Leonard J. Carson len@pearsonbutler.com, daneise@pearsonbutler.com
- Andrew B. Clawson andrew@abclawutah.com,
len@pearsonbutler.com;maryann@pearsonbutler.com;daneise@pearsonbutler.com
- Victor P Copeland vpc@pkhlawyers.com, js@pkhlawyers.com
- Joseph M.R. Covey calendar@parrbrown.com
- T. Edward Cundick tec@princeyeates.com,
heidi@princeyeates.com;docket@princeyeates.com
- Anna W. Drake annadrake@att.net
- David R. Hague dhague@fabianlaw.com, dromero@fabianlaw.com
- George B. Hofmann gbh@pkhlawyers.com, dh@pkhlawyers.com;aa@pkhlawyers.com
- Mary Margaret Hunt hunt.peggy@dorsey.com,
long.candy@dorsey.com;smith.ron@dorsey.com;slc.lit@dorsey.com
- Mary Margaret Hunt hunt.peggy@dorsey.com,
long.candy@dorsey.com;smith.ron@dorsey.com;slc.lit@dorsey.com
- Lon A. Jenkins lajenkins@joneswaldo.com,
ecf@joneswaldo.com;hdoherty@joneswaldo.com;rpavlisin@joneswaldo.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Michael L. Labertew michael@labertewlaw.com
- Christopher J Martinez martinez.chris@dorsey.com, stauffer.erin@dorsey.com
- Adelaide Maudsley maudsley@chapman.com, jemery@chapman.com

- John T. Morgan tr john.t.morgan@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Rinehart.Peshell@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Oliver K. Myers myersok@msn.com
- Knute A. Rife KARife@RifeLegal.com
- Nathan Seim seim.nathan@dorsey.com
- Nathan Seim seim.nathan@dorsey.com
- Jeremy C. Sink jeremy@mbt-law.com
- Jeremy C. Sink jeremy@mbt-law.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com;docket@rqn.com
- D. Ray Strong tr rstrong@brg-expert.com
- Gerald H. Suniville gsuniville@vancott.com, docketing@vancott.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@swlaw.com

/s/ Jeffrey M. Armington

Furthermore, I certify that on the 6th day of November, 2013, the Declaration was served on the following party by U.S. mail postage prepaid:

Jerry Sharko's & Company, Inc.
c/o James A. Pope
1 S 660 Midwest Road
Suite 200
Oakbrook Terrace, IL 60181

/s/ Jeffrey M. Armington