

The below described is **SIGNED**.

Dated: November 27, 2013



JOEL T. MARKER
U.S. Bankruptcy Judge



Prepared and Submitted By:

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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

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

The matter before the Court is the *Motion for Order Approving Settlement Agreement with Jerry Sharko's & Company, Inc. Under Federal Rule of Bankruptcy Procedure 9019* [Docket No. 842] (the "Motion"), filed by 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, which seeks approval of the Settlement Agreement, attached hereto as **Exhibit 1** (the "Settlement Agreement"), entered into between the Trustee and Jerry Sharko's & Company, Inc.

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. 844] (the "Notice") that provided for, among other things, notice of the hearing on the Motion and notice of the deadline of November 25, 2013, 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. 843], the Notice, the *Certificate of Service* attached to the Notice, and applicable law. Based thereon, and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**;
2. The Settlement Agreement, attached hereto as **Exhibit 1**, is **APPROVED**;
3. The Proof of Claim filed by Jerry Sharko's Company, Inc., designated as Claim No. 31 on CAREIC's Claims Register, shall be an Allowed General Unsecured Claim against the Consolidated Legacy Debtors in the amount of \$900,000.00, and to the extent that the Proof of Claim asserts a claim in a greater sum, the claim is disallowed.

End of Order_____

EXHIBIT 1

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.

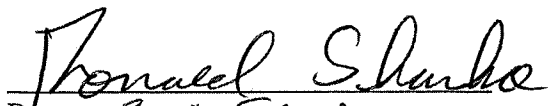
19. **Severability.** To the extent that any portion of this Agreement is held unenforceable by a court, tribunal or arbiter of competent jurisdiction, the remainder of this Agreement shall remain binding and enforceable, provided that the primary purposes of the Agreement are not frustrated.

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*

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing **ORDER GRANTING CHAPTER 11 TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH JERRY SHARKO'S & COMPANY, INC. 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
- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com,
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- 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

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.