

Peggy Hunt (6060)
Nathan S. Seim (12654)
DORSEY & WHITNEY LLP
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Email: hunt.peggy@dorsey.com
seim.nathan@dorsey.com
*Attorneys for D. Ray Strong, Chapter 11
Trustee for Castle Arch Real Estate Investment
Company, LLC*

Michael L. Labertew (5501)
LABERTEW & ASSOCIATES, LLC
4764 South 900 East, Suite 3
Salt Lake City, UT 84117
Telephone: (801) 424-3555
Email: michael@labertewlaw.com
*Attorney for Castle Arch Kingman, LLC,
Castle Arch Smyrna, LLC and CAOP
Managers, LLC*

Gregory J. Adams (6159)
McKAY, BURTON & THURMAN
170 South Main St., Ste. 800
Salt Lake City, UT 84101
Telephone: (801) 521-4135
Email: gadams@mbt-law.com
*Attorney for Castle Arch Opportunity
Partners I, LLC*

Penrod W. Keith (4860)
DURHAM JONES & PINEGAR, P.C.
111 East Broadway, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 415-3000
Email: pkeith@djplaw.com
*Attorney for Castle Arch Opportunity
Partners II, LLC*

Andrew B. Clawson (#10409)
PEARSON, BUTLER, CARSON & COOK
1682 W. Reunion Ave., Ste. 100
South Jordan, UT 84094
Telephone: (801) 207-8262
andrew@abclawutah.com
*Attorney for Castle Arch Secured
Development Fund, LLC*

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

In re:

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, LLC; CAOP
MANAGERS, LLC; CASTLE ARCH
OPPORTUNITY PARTNERS I, LLC;
CASTLE ARCH OPPORTUNITY
PARTNERS II, LLC; CASTLE ARCH

Bankruptcy Case No. 11-35082
Bankruptcy Case No. 11-35237
Bankruptcy Case No. 11-35240
Bankruptcy Case No. 11-35242
Bankruptcy Case No. 11-35243
Bankruptcy Case No. 11-35246
Bankruptcy Case No. 11-35241

| | |
|--|--|
| KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; <i>and</i> CASTLE ARCH SMYRNA, LLC, Debtors. | (Jointly Administered) (Chapter 11) The Honorable Joel T. Marker |
|--|--|

JOINT OMNIBUS CLAIM OBJECTION FILED BY CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC; CASTLE ARCH OPPORTUNITY PARTNERS I, LLC; CASTLE ARCH OPPORTUNITY PARTNERS II, LLC; CASTLE ARCH KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; AND CASTLE ARCH SMYRNA, LLC AND TO THE EXTENT APPROPRIATE REQUESTING THAT CLAIMS BE RECLASSIFIED AS PROOFS OF INTEREST

PLEASE TAKE NOTICE THAT your Proof(s) of Claim in the above cases are objectionable for the reasons stated herein and on Exhibit A attached to this Objection. Locate your name on Exhibit A to determine the basis of the Objection, and read this Objection in its entirety to understand the Objection and determine whether you want to respond to the Objection.

Pursuant to 11 U.S.C. § 502 and Federal Rules of Bankruptcy Procedure 3001, 3003 and 3007, D. Ray Strong, Chapter 11 Trustee (the “Trustee”) for Castle Arch Real Estate Investment Company, LLC (“CAREIC”), together with Castle Arch Opportunity Partners I, LLC (“CAOP I”), Castle Arch Opportunity Partners II, LLC (“CAOP II”), Castle Arch Kingman, LLC (“CAK”), Castle Arch Secured Development Fund, LLC (“CASDF”) and Castle Arch Smyrna, LLC (“CAS” and, collectively with CAREIC, CAOP I, CAOP II, CAK and CASDF, the “Debtors”), through their respective counsel, file this Joint Omnibus Claim Objection (this “Objection”) requesting that certain claims of “Investors” (as defined below) be disallowed as “claims”¹ in this case, and to the extent appropriate, be reclassified as Proofs of Interests. In support hereof, the Trustee and the Debtors state as follows:

¹ See 11 U.S.C. § 101(5) (defining “claim”).

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. § 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

General

4. Between October 17, 2011 and October 20, 2011 (such time period collectively referred to as the “Petition Date”), the Debtors filed petitions seeking relief under Chapter 11 of the Bankruptcy Code.

5. The Debtors’ respective Chapter 11 cases are being jointly administered.

6. The deadline to file proofs of claims against each of the Debtors expired on February 21, 2012, and the bar date to file proofs of interest against each of the Debtors expired on April 20, 2012 (collectively, the “Bar Dates”).²

The Investors and the Nature of the Proofs of Claim Filed

7. Prior to the Petition Date, the Debtors issued common and/or preferred stock to numerous persons and entities (collectively, “Investors”).

8. Some Investors have filed Proofs of Claim against the Debtors asserting secured, priority or general unsecured claims against the Debtors. It is these claims to which the Trustee and the Debtors object pursuant to this Objection as set forth more fully below.

² See CAREIC Docket Nos. 31, 81 and 87.

THE DISPUTED PROOFS OF CLAIM

9. A list of all disputed Proofs of Claim is attached hereto as Exhibit A (the “Disputed Claims”). This Exhibit is organized as follows:

Column 1—states in alphabetical order the name of each holder of a Disputed Claim.

Column 2—states the Disputed Claim number(s) as docketed in the respective Debtor cases.

Column 3—states the Debtor against which the Disputed Claim is filed.

Column 4—states the Debtor against which the Disputed Claim should have been filed.

Column 5—states the amount of the asserted Disputed Claim.

Column 6— states the basis for this Objection based on one or more of the following categories:

Objection Category # 1 – The Disputed Claim was filed late.

Objection Category # 2 – The Disputed Claim was filed against the wrong Debtor.

Objection Category # 3 – The Disputed Claim asserts a secured, priority or general unsecured claim as opposed to an equity interest.

Objection Category # 4 – The Disputed Claim is duplicative with another filed claim.

Objection Category # 5 – The Disputed Claim is not supported by proper documentation.

10. *As shown on the attached Exhibit A, numerous Disputed Claims are subject to more than one objection, and those receiving this Objection should (a) determine the basis for the objection(s) to their respective Disputed Claims by referring to Exhibit A, which lists the Claim Objection Categories applicable to them, and (b) review the applicable Objections set forth below.*

APPLICABLE LAW

Section 501(a) of the Bankruptcy Code states that a “creditor . . . may file a proof of claim.”³ Federal Rule of Bankruptcy Procedure 3001 states that a proof of claim “shall conform substantially to the appropriate Official Form”⁴ and that a “proof of claim shall be executed by the creditor or the creditor’s authorized agent. . . .”⁵ A proof of claim executed and filed in accordance with the Federal Rules constitutes “prima facie evidence of the validity and amount of the claim.”⁶

Section 502(a) of the Bankruptcy Code states that a “claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.”⁷ Section 502(b) further states that except for certain exceptions not relevant here, once an objection to a claim is made, “the court, after notice and a hearing, shall determine the amount of the claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor under any agreement or applicable law . . . or (9) proof of such claim is not timely filed.”⁸ Generally, procedures related to objections to claims are governed by Federal Rule of Bankruptcy Procedure 3007.

³ 11 U.S.C. § 501(a).

⁴ Fed. R. Bankr. P. 3001(a).

⁵ Fed. R. Bankr. P. 3001(b).

⁶ Fed. R. Bankr. P. 3001(f).

⁷ 11 U.S.C. § 502(a).

⁸ 11 U.S.C. § 502(b).

The Court of Appeals for the Tenth Circuit has stated that creditors have the burden of proof regarding the allowance of their claims, and to meet this burden, the claim must be sufficiently substantiated.⁹ Accordingly, claimants are required, to the extent applicable, to “attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements.”¹⁰ If such supporting documentation is not available, the claimant must explain the reason for the unavailability of the documents.¹¹ Only when a proof of claim is executed and filed in accordance with the above requirements is the claim considered prima facie evidence of a valid claim against the debtor under § 502(a) and Bankruptcy Rule 3001(f).¹²

CLAIM OBJECTIONS

Objection Category #1–Disallowance of Late Filed Claims

The Disputed Claims listed on Exhibit A that are subject to Claim Objection Category # 1 were filed after the Bar Dates. Accordingly, the late filed Disputed Claims subject to Claim Objection Category #1 must be disallowed.¹³

Objection Category #2–Re-characterization of Claims Filed Against the Wrong Debtor

The Disputed Claims listed on Exhibit A that are subject to Claim Objection Category #2 were filed against the wrong Debtor. Therefore, as shown by Column 4 in the attached

⁹ See *Caplan v. B-Line, LLC (In re Kirkland)*, 572 F.3d 838, 840 (10th Cir. 2009).

¹⁰ *Id.* (quoting Official Form 10).

¹¹ *Id.* (citing Official Form 10).

¹² See *id.*

¹³ 11 U.S.C. § 502(b)(9); *In re Wynn*, 285 B.R. 344 (B.A.P. 10th Cir. 2002) (“Bankruptcy courts will not ordinarily allow filing of a proof of claim after the claim bar date.”).

Exhibit A, the Debtors request the Court to (1) re-characterize Claim No. 21 listed on CAREIC's claim docket as a proof of interest asserted against CASDF; (2) re-characterize Claim No. 43 listed on CAREIC's claim docket as a proof of interest asserted against CAOP I; (3) re-characterize Claim No. 1 listed on CAREIC's claim docket as a proof of interest asserted against CAOP II; and (4) re-characterize Claim No. 18 listed on CAREIC's claim docket as a proof of interest asserted against CAOP II.¹⁴

Objection Category #3—Claims Asserting Secured, Priority or General Unsecured Claims Should Be Re-Classified as Equity Interests

The Disputed Claims listed on Exhibit A that are subject to Claim Objection Category #3 assert secured, priority or general unsecured claims when, in fact, the claim appears to be based on the claimants' equity interest in the Debtors (the "Misclassified Claims"). The Debtors, therefore, request that the Misclassified Claims be disallowed as secured claims, priority claims, or general unsecured claims, as the case may be, and that they be re-classified as equity interests.

In order to assert a secured claim against the estate, claimants must provide proof of a secured interest in property of the debtor.¹⁵ Furthermore, priority claims are only those types of claims expressly designated in § 507(a) of the Bankruptcy Code, and it is well-established that "[s]tatutory priorities are to be narrowly construed because the presumption in bankruptcy cases is that the debtor's limited resources will be equally distributed among his creditors."¹⁶ A

¹⁴ As set forth below, this Claim is wholly duplicative with Claim No. 1 listed on CAREIC's claims docket, and as such, the Trustee seeks disallowance of this Claim in its entirety. Accordingly, the Trustee seeks re-characterization of this Claim only to the extent the Court does not disallow it completely.

¹⁵ See 11 U.S.C. §§ 502 & 506; Fed. R. Bankr. P. 3001(a), (c)-(d); Official Form 10.

¹⁶ *Peters v. Enterasys Networks, Inc. (In re Native Am. Sys., Inc.)*, 351 B.R. 135, 138 (B.A.P. 10th Cir. 2006) (quoting *In re Amarex*, 853 F.2d 1526, 1530 (10th Cir. 1988)).

person claiming that its claim is entitled to either a secured or priority status bears the burden of proving the basis for such a claim.¹⁷

None of the holders of the Misclassified Claims have provided any documentation demonstrating that their respective claims should be classified as secured, priority or general unsecured claims. Furthermore, based on the documents attached to the Misclassified Claims, the claims made against the Debtors appear to be based on the claimants' respective equity interests in the Debtors. Accordingly, the Court should disallow each of the Misclassified Claims as asserting a secured claim, priority claim or general unsecured claim, as the case may be, and should re-classify such Claims as equity interests in the respective Debtors.

Objection Category #4–Disallowance of Duplicative Claims

The Disputed Claims listed on Exhibit A that are subject to Claim Objection Category #4 are wholly duplicative with other filed Proofs of Claim. Obviously, duplicative claims against a Debtor are not allowed as the claimants of such claims would receive an unfair windfall to the detriment of the Debtors' other claimants.

Therefore, as relates to duplicative Claim Nos. 1 and 18 filed against CAREIC by David Teleki and Petra Herceg, CAREIC designates Claim No. 18 as the Claim to which this Objection is made, leaving Claim No. 1 as the single Claim against CAREIC by David Teleki and Petra Herceg.

As relates to Claim Nos. 3 and 4 filed against CASDF by Robert MacDonald and Gina MacDonald, respectively, CASDF requests that one of these Claims be disallowed and that the

¹⁷ *Id.* (citing *In re Mid Region Petroleum, Inc.*, 1 F.3d 1130, 1133 (10th Cir. 1993)).

Court make a determination as to whether the Claim belongs to Robert or Gina MacDonald, or both.

Objection Category # 5–Disallowance Due to Lack of Documentation

Proofs of Claim designated on Exhibit A that are subject to Claim Objection Category #5 are those where the claimants have failed to provide proper documentation to support the amount or basis for their Claims as required under applicable law.¹⁸ Accordingly, the Claims do not constitute *prima facie* evidence of a claim against any of the Debtors, and the Court should disallow each of these Claims in their entirety.¹⁹

RESERVATION OF RIGHTS

In making this Objection, the Trustee and the Debtors reserve all rights, claims and defenses that they may have relating to the Disputed Claims, including the right to (1) modify, amend, or supplement this Objection as more evidence becomes available; or (2) seek a reduction in the amounts of the claims or interests asserted against the Debtors as set forth on the attached Exhibit A through any subsequent claim objection or in any Chapter 11 plan.

CONCLUSION

For the reasons discussed herein, the Trustee and the Debtors respectfully request that the Court sustain this Objection and disallow or re-characterize the Disputed Claims listed on Exhibit A, as the case may be, as requested herein.

DATED this 4th day of September, 2012.

¹⁸ See 11 U.S.C. §§ 501-502; Fed. R. Bankr. P. 3001-3003; Official Form 10; *Caplan*, 572 F.3d at 840.

¹⁹ To the extent additional documentation is provided for such Claims, the Debtors reserve all rights to object to the Claims.

DATED this 4th day of September, 2012.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
Peggy Hunt
Nathan S. Seim
*Attorneys for D. Ray Strong, Chapter 11
Trustee of Castle Arch Real Estate
Investment Company, LLC*

DATED this 4th day of September, 2012.

DURHAM JONES & PINEGAR, PC

/s/ Penrod W. Keith
Penrod W. Keith
*Attorney for Castle Arch Opportunity
Partners II, LLC*

DATED this 4th day of September, 2012.

LABERTEW & ASSOCIATES, LLC

/s/ Michael L. Labertew
Michael L. Labertew
Attorney for Castle Arch Smyrna, LLC

DATED this 4th day of September, 2012

McKAY, BURTON & THURMAN

/s/ Gregory J. Adams
Gregory J. Adams
*Attorney for Castle Arch Opportunity
Partners II, LLC*

DATED this 4th day of September, 2012

**PEARSON, BUTLER, CARSON &
COOK**

/s/ Andrew B. Clawson

Andrew B. Clawson
*Attorney for Castle Arch Secured
Development Fund, LLC*

EXHIBIT A

| Claimant Name | Claim Number | Debtor Claim Filed Against | Debtor Against Which Claim Should Be Asserted (if different) | Amount of Asserted Claim | Basis for Objection |
|--|--------------|----------------------------|--|--------------------------|---------------------|
| 1031 ECI LLC | 10 | CASDF | | 546,467.70 | 3 |
| Anderson, Paul | 58 | CAREIC | | 100,000.00 | 1, 3 |
| Anderson, Paul | 4 | CAOP I | | 50,000.00 | 1, 3 |
| Barrow, James L. | 54 | CAREIC | | 100,000.00 | 3 |
| Beckner, Kenneth | 53 | CAREIC | | 100,000.00 | 3 |
| Beckner, Kenneth | 3 | CAK | | 50,000.00 | 3 |
| Beckner, Kenneth | 7 | CAS | | 25,000.00 | 3 |
| Broyles, Barbara | 46 | CAREIC | | 50,000.00 | 3 |
| Broyles, Barbara | 50 | CAREIC | | 30,000.00 | 3, 5 |
| Broyles, Edward J | 57 | CAREIC | | 50,000.00 | 3 |
| Carstens, Craig B | 5 | CAOP II | | 50,000.00 | 1, 3 |
| Dance, Richard | 11 | CASDF | | 58,189.95 | 3 |
| Dean, Christine E | 55 | CAREIC | | 26,250.00 | 3 |
| Dean, James W | 56 | CAREIC | | 19,687.50 | 3 |
| Edgell, Gail S. | 21 | CAREIC | CASDF | 3,000.00 | 2, 3 |
| Folkers, Edgar R & Lila May Folker Trust | 5 | CAK | | 107,000.00 | 1, 3 |
| Hvidsten, Joel | 44 | CAREIC | | 50,085.00 | 3 |
| Hvidsten, Joel | 8 | CAS | | 50,000.00 | 3 |
| MacDonald, Gina Y | 48 | CAREIC | | 10,000.00 | 3 |
| MacDonald, Gina Y | 4 | CASDF | | 41,312.00 | 3, 4 |
| MacDonald, Robert | 47 | CAREIC | | 140,000.00 | 3 |
| MacDonald, Robert J II | 3 | CASDF | | 41,312.00 | 3, 4 |
| Methhta, Pradip | 43 | CAREIC | CAOP I | 100,000.00 | 2, 3 |
| Naomi F. King Trust | 8 | CASDF | | 210,832.02 | 3, 5 |
| Nitti, Michael F | 14 | CASDF | | 15,000.00 | 1, 3 |
| Nitti, Patricia | 15 | CASDF | | 14,530.00 | 1, 3 |
| Noreen, Pearl | 13 | CASDF | | 106,292.85 | 1, 3 |
| Padilla, Sandy | 7 | CASDF | | 60,154.00 | 3 |
| Raphael, Concetta | 5 | CASDF | | 23,457.00 | 3 |
| Reeve, Daniel | 9 | CASDF | | 70,000.00 | 3 |
| Rose, Helene | 45 | CAREIC | | 50,000.00 | 3 |
| Sabour, Shahzad | 12 | CASDF | | 131,964.63 | 3 |
| Salzman, Michael | 51 | CAREIC | | 60,000.00 | 3 |
| Salzman, Michael | 4 | CAOP II | | 50,000.00 | 3 |
| Salzman, Michael | 4 | CAK | | 50,000.00 | 3 |

| | | | | | |
|-------------------------------|----|--------|---------|-----------|---------|
| Salzman, Michael | 6 | CASDF | | 60,154.00 | 3 |
| Spinos, Gregory | 49 | CAREIC | | 50,000.00 | 3 |
| Teleki, David / Herceg, Petra | 1 | CAREIC | CAOP II | 50,000.00 | 2, 3, 4 |
| Teleki, David / Herceg, Petra | 18 | CAREIC | CAOP II | 50,000.00 | 2, 3, 4 |
| Walker, Shirley B | 9 | CAS | | 50,000.00 | 1, 3 |
| Wilson, Laura L** | 52 | CAREIC | | | 3 |

**This claimant's Proof of Claim did not assert a claim amount. Based on CAREIC's records, however, it appears that this claimant made a \$50,000 equity investment in CAREIC. As such, the Debtors have agreed to allow this claimant to assert a \$50,000 equity interest in CAREIC.