

Peggy Hunt (Utah State Bar No. 6060)  
Scott A. Cummings (Utah State Bar No. 11443)  
Nathan Seim (Utah State Bar No. 12654)

**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](mailto:hunt.peggy@dorsey.com)

[cummings.scott@dorsey.com](mailto:cummings.scott@dorsey.com)

[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

*Attorneys for D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC*

**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  
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,

Debtors.

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  
(Jointly Administered)

(Chapter 11)

The Honorable Joel T. Marker

**CHAPTER 11 TRUSTEE’S REPLY TO OBJECTIONS TO MOTION BY D. RAY  
STRONG, CHAPTER 11 TRUSTEE FOR CASTLE ARCH REAL ESTATE  
INVESTMENT COMPANY, LLC, SEEKING APPROVAL OF PROPOSED USE  
OF CASH MANAGEMENT PLAN**

D. Ray Strong, the Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC (the “Trustee”) hereby responds to *Objections* to the *Motion by D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC, Seeking Approval of Proposed*

*Use of Cash Management Plan* [Docket No. 240] (the “Use of Cash Motion”), each of which is discussed in further detail below. Unless stated otherwise, all capitalized terms used herein are defined in the Use of Cash Motion. In support hereof, the Trustee states as follows:

**STATUS OF THE USE OF CASH MOTION AND SUMMARY OF OBJECTIONS**

1. On June 5, 2012, the Trustee filed the Use of Cash Motion with the Court.
2. Also on June 5, 2012, the Trustee filed a *Notice of Hearing* relating to the Use of Cash Motion [Docket No. 241] (the “Notice”). The Notice was timely and properly served on all interested parties, including all equity holders in each of the Debtors’ cases.<sup>1</sup> The Notice informs parties in interest that the deadline to file objections to the Use of Cash Motion was June 25, 2012, and that a hearing on the Use of Cash Motion will take place on June 28, 2012 at 2:00 p.m.
3. As instructed in the Notice, numerous persons served with the Notice requested a copy of the Use of Cash Motion from the Trustee or his counsel, and in each such instance, the Use of Cash Motion was provided as requested.
4. To date, only one Objection has been filed with the Court related to the Use of Cash Motion [Docket No. 249], a copy of which is attached hereto as Exhibit A (the “Flynn Objection”).
5. In addition to the Flynn Objection filed with the Court, the Trustee’s counsel has received four additional letters appearing to be objections to the Use of Cash Motion.
6. Two of the four letters are identical letters from CAOP II investors, copies of which are attached hereto as Exhibit B (the “CAOP II Objections”).

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<sup>1</sup> See *Certificate of Service* [Docket No. 250].

7. A third letter was received from Michael and Christine Frantonius, who upon information and belief are CAREIC investors (the “Frantonius Parties”). A copy of this letter is attached hereto as Exhibit C (the “Frantonius Letter”).

8. Finally, the fourth letter was received Carolina and Ernesto Hernandez, who upon information and belief are CAK investors (the “Hernandez Parties”), and a copy of this letter is attached hereto as Exhibit D (the “Hernandez Letter”).

9. The Flynn Objection, the CAOP II Objections, the Frantonius Letter and the Hernandez Letter, to the extent that they are objections to the Use of Cash Motion, are without merit and each are addressed in turn below.

### **REPLY**

#### **The Flynn Objection**

10. The Flynn Objection, filed by Daniel A. Flynn, who upon information and belief is a CAREIC investor, does not state the basis for Mr. Flynn’s objection. Rather, it merely states: “I am in opposition to the court approving a motion by Ray Strong, Chapter 11 Trustee for Castle Arch ‘Use of Cash Management Plan’.”<sup>2</sup>

11. Because the Objection does not articulate the basis for Mr. Flynn’s objection to the Use of Cash Motion, the Trustee is unable to respond to the Objection, and it should be stricken.

#### **The CAOP II Objections**

12. In the CAOP II Objections, the CAOP II investors state that they “object to the co-mingling of the cash of the various Castle Arch entities[,]”that “CAOP II is being treated as

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<sup>2</sup> Exhibit A (Flynn Objection).

the ‘Rich Uncle’ because of its greater cash position” and that the “other Castle Arch entities are not providing their share of the expenses.”<sup>3</sup> They conclude that “[e]ach entity should pay for its share of the investigation and if they don’t have it, members should be asked to contribute.”<sup>4</sup>

13. The CAOP II Objections are without merit for three primary reasons, and the Trustee reserves the right to respond more fully at the hearing.

14. *First*, the CAOP II Objections are incorrect in asserting that there is any co-mingling of cash occurring as a result of the Use of Cash Motion or since the appointment of the Trustee. In fact, the purpose of the relief requested in the Use of Cash Motion is to be certain that there is no co-mingling of funds, that estimated costs of administering the Debtors’ respective estates are allocated to each entity, and that each of the Debtors is charged its fair share of costs. The Borrowers will borrow money from CAOP I and CAOP II (collectively, the “CAOPs”) only as needed up to the amounts stated in ¶ 41 of the Use of Cash Motion, and such loans will accrue interest at a rate of 4.0%, giving the CAOPs an administrative expense in the borrowing entity’s case.

15. *Second*, contrary to the statements in the CAOP II Objections, the Use of Cash Motion does not require CAOP II to pay the costs of others, but rather requires CAOP II to pay its fair share of management costs. As discussed in the Use of Cash Motion, the CAOPs, as with the other CAREIC Affiliates, have not had independent management, but instead have relied solely on CAREIC for management. Accordingly, the Trustee, as the trustee for CAREIC, is the manager of the CAOPs, and costs of management must be allocated in some way to each of the CAREIC Affiliates. Given the fact that they have on-going businesses, the CAOPs will have the

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<sup>3</sup> Exhibit B (The CAOP II Objections).

<sup>4</sup> *Id.*

largest amount of Common Expenses relating to non-CAREIC entities and will require more management than the other Debtors, thus necessitating a larger Management Fee. While the amount of expense for each entity cannot be determined with any certainty, the Management Fees proposed by the Trustee for this first quarter are, in his business judgment, a reflection of the estimated actual and necessary expenses of each of the CAREIC Affiliates, and he has proposed a quarterly review of the Management Fees to be sure that the Fees are fair.

16. *Third*, while the CAOP II Objections think it unfair that Management Fees must be paid, historically the CAREIC Affiliates have (or should have) paid CAREIC a fee for management and, in fact, the proposed Management Fees are less than those that were proposed by prior management.

#### The Frantoni Letter

17. The Frantoni Letter does not appear to be an objection to the Use of Cash Motion, but rather appears to be a request that the Trustee immediately liquidate the Debtors.<sup>5</sup>

18. At the hearing on the Use of Cash Motion, the Trustee intends to provide the Court with a report as to the status of this case, and his intent to propose a Chapter 11 plan for the Debtors in the near future. Until a plan is confirmed, however, the Trustee has a duty to manage the Debtors and preserve the assets of the estate, which necessarily requires expense. As discussed, through the Use of Cash Motion the Trustee proposes a fair and equitable means of allocating management costs until such time as a plan is confirmed.

#### The Hernandez Letter

19. The Hernandez Letter objects to the Use of Cash Motion on the basis that “all money should be disbursed to the investors.”<sup>6</sup> This objection is without merit as there is no basis

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<sup>5</sup> Exhibit C (Frantoni Letter).

at this time to disburse money to investors when it is not even clear if there will be sufficient funds to pay unsecured creditors in these cases. For all of the reasons stated in the Use of Cash Motion and herein, the proposal made by the Trustee should be approved by the Court so as to allow for the fair and efficient administration of these cases pending confirmation of a Chapter 11 plan.

**CONCLUSION**

For all of the reasons set forth above and in the Use of Cash Motion, the Trustee respectfully requests that the Objections, to the extent they are objections to the Use of Cash Motion, be overruled or stricken and that the Use of Cash Motion be granted.

DATED this 26th day of June, 2012.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*  
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Peggy Hunt  
Scott A. Cummings  
Nathan Seim  
*Attorneys for Chapter 11 Trustee*

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<sup>6</sup> Exhibit D (Herandez Letter).



# EXHIBIT A



Case 11-35082 Doc 249 Filed 06/18/12 Entered 06/19/12 08:06:34 Desc Main  
Document Page 1 of 1

June 5, 2012

Clerk of the Court  
United States Bankruptcy Court  
350 South Main St., Room 301  
Salt Lake City, UT 84101

FILED IN THE  
UNITED STATES  
BANKRUPTCY COURT  
2012 JUN 18 PM 12:04  
DISTRICT OF UTAH  
MAIL

RE: Castle Arch Real Estate Investment Company LLC  
Bankruptcy Case No. 11-35082 etc.

Dear Sirs,

I am in opposition to the court approving a motion by Ray Strong, Chapter 11 Trustee for  
Castle Arch "Use of Cash Management Plan".

Sincerely,



Daniel A. Flynn

Cc Dorsey and Whitney LLP  
136 South Main St., Suite 1000  
Salt Lake City, Utah 84101

# EXHIBIT B

US BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

In re:

Capital Arch Opportunity Partners II, et al

Case no. 11-35241  
(Jointly administered)

Objection to Notice of Motion by Ray Strong

I am a member (equity holder) of Capital Arch Opportunity Partners II ("CAOP II").

I oppose the proposed cash management plan. Further, I object to the co-mingling of the cash of the various Castle Arch entities. I feel that CAOP II is being treated as the "Rich Uncle" because of its greater cash position and that the unrelated Capital Arch entities are not providing their share of the expenses. My interest is in determining and isolating the assets of CAOP II (which should have been done by the CAOP II managers by maintaining accurate records of account of all transactions) and having them managed without regard to other unrelated entities. I can understand why it might make for a neater package to untangle the whole ball of wax, but I'm not interested in the other entities and don't want to bear their share of expenses (by loan or otherwise). Each entity should pay for its share of the investigation and if they don't have it, members should be asked to contribute. The funds of CAOP II should not be used for the benefit of other Castle Arch entities which are in bankruptcy.

Dated: June 21, 2012



Michael B Dobbins  
183 Federal Hill Road  
Milford, NH 03055  
[mike@dobbins.com](mailto:mike@dobbins.com)  
6037315361

US BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

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In re:

Capital Arch Opportunity Partners II, et al

Case no. 11-35242  
(Jointly administered)

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Objection to Notice of Motion by Ray Strong

I am a member (equity holder) of Capital Arch Opportunity Partners II ("CAOP II").

I oppose the proposed cash management plan. Further, I object to the co-mingling of the cash of the various Castle Arch entities. I feel that CAOP II is being treated as the "Rich Uncle" because of its greater cash position and that the unrelated Capital Arch entities are not providing their share of the expenses. My interest is in determining and isolating the assets of CAOP II (which should have been done by the CAOP II managers by maintaining accurate records of account of all transactions) and having them managed without regard to other unrelated entities. I can understand why it might make for a neater package to untangle the whole ball of wax, but I'm not interested in the other entities and don't want to bear their share of expenses (by loan or otherwise). Each entity should pay for its share of the investigation and if they don't have it, members should be asked to contribute. The funds of CAOP II should not be used for the benefit of other Castle Arch entities which are in bankruptcy.

Dated: June 21, 2012

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James Eisberg  
5719 Renzo Lane  
Sarasota, FL 34243  
[jimeisberg@yahoo.com](mailto:jimeisberg@yahoo.com)  
9178414699

# EXHIBIT C

Mr. and Mrs. Michael J and Christine M Frantonius  
7720 Monroe – Forest Park – IL 60130  
708-771-7881

June 12, 2012

Clerk of the Court  
United States Bankruptcy Court  
350 South Main Street, Room 301  
Salt Lake City, UT 84101

Re: Use of Cash Motion for Castle Arch Real Estate Investment Company, LLC; CAOP Managers, 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. (Castle Arch)

To: Honorable Joel T. Marker, United States Bankruptcy Judge

While it may seem prudent to use the remaining cash to try and maximize investor ultimate returns, we are concerned as follows:

- 1) Castle Arch and their counsel assume real estate will rebound in the near term and therefore seek time to “hold on”. We believe that is a one-sided view that is blind-sided by the following.
- 2) The Case-Shiller Index and research data suggest another 20% approximate decline in existing housing.
- 3) Any further decrease in existing home prices will impact Castle Arch holdings further due to the overall lack of confidence in real estate.
- 4) The American economy is still extremely vulnerable to aftershocks of any continued or increased uncertainty in overseas markets that may undermine confidence further.
- 5) Our nation is the most indebted nation in the world; is stressed beyond capacity and will likely lay off more federal workers.
- 6) Federal layoffs and any additional private sector layoffs will exacerbate the real estate sector and many other sectors.
- 7) While in the longer term beyond 10 or 15 years we can see real estate *rebounding*, it is *not prudent to allow remaining cash to potentially disappear by propping up real estate holdings of Castle Arch that may be dramatically reduced in value and perhaps completely void of any value after continuing to pay expenses.*

We believe it is in the best interest of all to give back as much as possible without further delay and expense. Allow each investor the right to reinvest their portion as seems fit.

Sincerely,



Michael J. and Christine M. Frantonius  
Investors

# EXHIBIT D

CAROLINA HERNANDEZ JT TEN  
ERNESTO HERNANDEZ JT TEN  
38595 SAN FRANCISQUITA CANYON RD.  
SAUGUS, CA 91390

JUNE 15, 2012

CASE # 11-35242  
SUBJECT: US OF CASH MOTION

CLERK OF THE COURT  
UNITED STATES BANKRUPTCY COURT  
350 SOUTH MAIN STREET, ROOM 301  
SALT LAKE CITY, UT 84101

We are one of the persons who invested \$100,000 with the  
CASTLE RANCH COMPANY. We now received the letter stating  
company wants to use the money for the use of 'CASH MOTION'

We strongly object to this. We believe any and all money  
should be disbursed to the investors.

So please see what can be done to pay back some of the money  
to us (theinvestors). Anything that you can do would be  
appreciated.

Thank You.

  
\_\_\_\_\_  
Carolina Hernandez

  
\_\_\_\_\_  
Ernesto Hernandez

cc: Dorsey & Whitney LLP  
136 South Main St., Suite 1000  
Salt Lake City, Ut 84101