

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JAN 30 2015

TIM RHODES
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Oklahoma Department of Securities)	
<i>ex rel.</i> Irving L. Faught, Administrator,)	
)	
Plaintiff,)	
)	
v.)	Case No. CJ-2014-4515
)	
Seabrooke Investments LLC, <i>et al.</i> ,)	
)	
Defendants.)	

**OKLAHOMA DEPARTMENT OF SECURITIES' RESPONSE TO
DEFENDANT'S MOTION FOR ORDER INSTRUCTING ESCROW AGENT TO
DISBURSE ESCROW FUNDS, INSTRUCTING RECEIVER TO PAY HOTEL
VENDORS AND OBJECTION TO QUAIL CREEK BANK'S MOTION FOR ORDER
INSTRUCTING AGENT TO DISBURSE ESCROW FUNDS TO QUAIL CREEK BANK**

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (Department), respectfully responds to *Defendant's Motion for Order Instructing Escrow Agent to Disburse Escrow Funds, Instructing Receiver to Pay Hotel Vendors and Objection to Quail Creek Bank's Motion for Order Instructing Agent to Disburse Escrow Funds to Quail Creek Bank and Brief in Support* (Bricktown Capital Motion for Disbursement).

On August 11, 2014, the Department filed a securities fraud action against Defendants. The Court froze the assets of the Defendants, including the Bricktown Hotel and Convention Center (Bricktown Hotel), and appointed Ryan Leonard as Receiver (Receiver) by entering the *Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting* and, on September 5, 2014, by entering the *Temporary Injunction and Ancillary Relief* (collectively, the "Orders"). The Orders provided in part that:

"...all creditors and other persons seeking money, damages, or other relief from Defendants, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees, are hereby stayed and

restrained from doing any act or thing whatsoever to interfere with the Receiver or to the possession of or management by the Receiver of the Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over the Defendants.”

On September 9, 2014, Defendant Bricktown Capital LLC (Bricktown Capital) and the Bricktown Hotel were removed by the Court from the receivership and the asset freeze, upon the agreement of the parties as provided in the Order Modifying Relief (Modification Order). Despite the release, Bricktown Capital has continued as a Defendant in the case. The Modification Order provided:

IT IS FURTHER ORDERED that the Receiver and the Plaintiff be released and indemnified from and against all liability and loss for any debts or obligations, acts or omissions, of whatever nature of Bricktown Capital LLC and the Bricktown Hotel.

IT IS FURTHER ORDERED that if the Bricktown Hotel is sold for an amount greater than the amounts owed on valid mortgages existing as of the date of this order, the remaining funds will be used to pay, on a pro rata basis, investor restitution owed by Defendants as determined by this Court.

On December 23, 2014, the Bricktown Hotel was sold. On or about December 10, 2014, in preparation for the sale of the Bricktown Hotel, a Seller’s Closing Statement (Closing Statement) was presented to the parties listing Bricktown Capital expenses of \$191,143.84 (Bricktown Capital Expenses) to be paid from the proceeds from the sale. *See* Exhibit A. The expenses were unsubstantiated. Therefore, it is impossible to determine the purpose or benefit of the expenses including, the person who authorized the expenses, whether the products or services were delivered, the time period during which the expenses were incurred, and the relevance of the expenses to Bricktown Capital.

The funds for which Bricktown Capital seeks payment are for what it describes as “vendors, creditors and suppliers of the hotel” and vendors of Bricktown Capital “owed money

at the time of closing for goods and services needed in the operation of the hotel.” It lists those items on the Closing Statement as:

Invoice #47423 to Robertson & Williams	\$39,938.55
Invoice 355 to Oklahoma Web Media	\$ 398.00
Legal Fees to Jim Lee, Attorney at Law	\$21,178.05
Fees to Discover Card	\$ 2,789.40
Fees to Expedia	\$ 3,399.00
Fees to Ecolab	\$ 3,504.65
Fees to Champion Supply	\$ 3,628.11
Fees to Progressive	\$ 2,143.00
Fees to MS1	\$ 1,550.00
Pest Control to Mother Nature Pest Control	\$ 160.00
Fees to Locke Supply	\$ 100.34
Fees to InnPoints Worldwide	\$ 585.84
Costs to US Foods	\$ 554.87
Fees to Freedom Electric	\$ 3,680.00
Bankcard to Bank of the West	\$43,781.19
Fees to Bank of America	\$ 3,823.74
Statement to American Express	\$28,954.03
Fees to City of Oklahoma City	\$ 5,592.01
Invoice to ONG	\$ 5,889.09
Services to OG&E	\$16,447.90
Services to Cox Communications	\$ 3,600.94

After the payment of the first and second mortgages to Quail Creek Bank and the United States Small Business Administration, and the payment of closing expenses, the balance of the proceeds from the sale was \$187,858.90 (Remaining Proceeds). In order to close the sale of the Bricktown Hotel, funds in the sum of \$17,797.94 were escrowed to address the issue of Quail Creek Bank’s claim of attorney fees (Escrowed Funds). On January 15, 2015, Bricktown Capital filed the Bricktown Capital Motion for Disbursement seeking the payment of the Bricktown Capital Expenses from the Remaining Proceeds and the Escrowed Funds.

I. BRICKTOWN CAPITAL IS LIABLE FOR THE PAYMENT OF EXPENSES

Attached hereto as Exhibit B is the Contract for Sale of the Bricktown Hotel (Contract). The parties to the Contract are Bricktown Capital, Seller, and Nicky Jariwala and/or Assigns, Purchaser. Neither the Receiver nor the Department was a party to the Contract. Defendant

Tom Seabrooke signed the Contract on behalf of Bricktown Capital on November 11, 2014. On page 7 of the Contract, Bricktown Capital:

represents and warrants to the Purchaser as of the date hereof and as of the Closing Date that...[e]xcept for debts, liabilities and obligations for which provision is made herein for proration or other adjustment at the Closing, as of the Closing, all debts, liabilities and obligations arising from the ownership and operation of the Property shall have been paid.

No provision was made in the Contract for payment, at closing, of any of the Bricktown Capital Expenses. Notably, the Contract between the buyer and seller does not provide that “as of the closing, all debts, liabilities and obligations” **shall be paid** but provides conclusively that “as of the closing, all debts, liabilities and obligations **shall have been paid.**” (Emphasis added.)

Bricktown Capital now claims the Bricktown Capital Expenses are due from the Remaining Proceeds and Escrowed Funds. However, Bricktown Capital cannot unilaterally obligate the Receiver or the Department for liability for payment of the Bricktown Capital Expenses or rely on the Contract to impose such liability.

II. BRICKTOWN CAPITAL EXPENSES ARE NOT ELIGIBLE FOR PAYMENT UNDER THE MODIFICATION ORDER

In the Modification Order releasing Bricktown Capital LLC and the Bricktown Hotel from the receivership and asset freeze, the Court ordered, and all parties agreed, that funds remaining after the payment of valid mortgages would be used to pay investor restitution. The Remaining Proceeds and Escrowed Funds are such funds. Clearly, the expenses of vendors, creditors, and suppliers of the hotel are not mortgages. Included among the listed items are over \$60,000 in legal fees, significant credit card and bank fees, utility fees, and fees to be paid to Freedom Electric, a company controlled by Defendants Tom and Karyn Seabrooke. No justification exists to classify these items as “valid mortgages” and Bricktown Capital failed to provide support for such a classification.

Additionally, the Modification Order specifically released and indemnified the Receiver and the Department from all liability and loss for any debts of Bricktown Capital and the Bricktown Hotel. Neither the Receiver nor the Department would have agreed to a modification that would have allowed Defendants to incur or pay any costs associated with the hotel ahead of investor restitution. Defendants have paid costs and personal expenses with investor funds for years and this case seeks to remedy Defendants' fraudulent activity. Claims for restitution for victims in this case will surely exceed the funds and assets available from Defendants and it is unconscionable to think that Defendants can continue to receive funds that rightfully belong to the victims of their fraud. To attempt to impose liability on the Receiver or the Plaintiff for expenses of Bricktown Capital and the Bricktown Hotel violates the clear and intentional language of the Modification Order.

III. BRICKTOWN CAPITAL IS NOT ENTITLED TO FUNDS FOR PAYMENT OF ATTORNEY FEES

Documents previously filed in the Department's enforcement case, along with testimony and evidence presented in the case, detail the fraudulent investment scheme that underlies this action. Since the time the Orders imposed a freeze on the assets of all Defendants, including Bricktown Capital, the Receiver has identified funds and assets that will be insufficient to fully remedy losses suffered by investors.

No determination can be made at this time regarding the scope of the legal services provided by Robertson & Williams or Jim Lee, Attorney at Law. There is no substantiation of whether the listed items were incurred exclusively for the benefit of Bricktown Capital and the Bricktown Hotel and when the services were provided. Regardless, there is no basis for reducing the recovery by investors by the payment of the attorney fees from the Remaining Proceeds and Escrowed Funds.

As a general rule, the standard governing the release of assets to pay attorney's fees and costs is whether the action is "in the best interests of the defrauded investors." *SEC v. Grossman*, 887 F. Supp. 649, 661 (S.D.N.Y. 1995), *aff'd*, *SEC v. Estate of Hirschberg*, 101 F.3d 109 (2d Cir.1996); *SEC v. Coates*, 1994 WL 455558, at *1, (S.D.N.Y. Aug. 23, 1994). In *SEC v. Capital Counsellors, Inc.*, 512 F. 2d 654 (2nd Cir. 1975), an application for the allowance of a claim against a securities receivership estate for legal services was filed. The Court stated "...the award of attorneys' fees in a case such as this is entrusted to the sound discretion of the district judge." *Id.* at 658. The Court further stated:

"Defendant's attorneys' fees are not typically allowed. As said in 2 Tardy, Smith on Receivers s 639, at 1779 (2d ed. 1220): 'Ordinarily the services of an attorney employed by defendant to represent him in the receivership proceedings are solely for his benefit and are not to be paid for out of funds brought into court for the benefit of plaintiff and other claimants against the defendant.'" *Id.*

As the expenses of the Bricktown Capital attorneys appear to bear no relation to the interest of defrauded investors, there is no ground to permit such payments from funds or assets subject to the Orders. Moreover, with respect to the attorneys' fees, it is well-established that there is no right to use the money of others for legal services. *Grossman* at 661.

Additionally, funds should not be released from an asset freeze for the payment of attorney fees particularly where a potential disgorgement order would vastly exceed the assets frozen by the Court. *SEC v. Current Fin. Servs.*, 62 F. Supp.2d 66, 68 (D.D.C. 1999). The payment of attorney fees at this time would be a payment made out of funds that will be available to remedy the violations of the securities laws perpetrated by Defendants, including Bricktown Capital. "A defendant is not entitled to foot his legal bill with funds that are tainted by [his] fraud." *Coates* at *3. To allow Bricktown Capital to apply any of the remaining investor funds for attorney fees will essentially help it retain a portion of the benefit of its securities

violations. “[A] swindler in securities markets cannot use the victims’ assets to hire counsel who will help him retain the gleanings of crime.” *SEC v. Quinn*, 997 F.2d 287 (7th Cir. 1993).

IV. BRICKTOWN CAPITAL MOTION FOR DISBURSEMENT UNDERMINES THE CLAIMS PROCESS

The purpose of appointing a receiver in a securities enforcement action is to effect an “orderly and efficient administration of the estate.” *FTC v. 3R Bancorp*, 2005 WL 497784, *3 (N.D. Ill. Feb. 23, 2005) (citing *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986)). The Receiver in this case was appointed to provide investors and other creditors with an officer who can marshal assets quickly, fairly, and systemically for the benefit of all creditors. Allowing any non-party to receive a priority consideration undermines the very purpose of the equity receivership. *SEC v. Nadel*, 2009 WL 3100285 (M.D.Fla.)

In *SEC v. Nadel*, *supra*, a secured creditor sought a determination by the Court of the value and priority of a claim. The Court refused to consider the claim stating that the whole purpose of an “equity receivership imposed at the request of a government agency such as the SEC” is to “remedy violations of the securities laws for the benefit of investors.” *Id.* In denying relief to the creditor, the Court stated that the consideration of creditors’ priorities should be done “in a single setting when all creditors have had a chance to submit claims and will have notice and an opportunity to be heard.” *Id.*

Claimants to the Bricktown Capital Expenses will have an opportunity to make a claim in the Court-approved claims process, at which time they will have the eligibility, value and priority of the claims determined along with those of all other claims in a single, efficient proceeding. However, the Department will object to the payment of any such claim from the receivership because these expenses were not eligible to be considered under the Modification Order; the Receiver and the Department were released and indemnified from the expenses in the

Modification Order; and Bricktown Capital is not entitled to the Remaining Proceeds and Escrowed Funds for the payment of the expenses.

CONCLUSION

Since filing this case, the Department has persisted in seeking to preserve Defendants' assets for the payment of restitution to victims of Defendants' securities law violations. This is one such preservation effort. The request for any payment by a Defendant in this case must be denied in the interest of providing relief to the victims of the securities scheme. For the foregoing reasons, the Department respectfully requests that this Court deny the Bricktown Capital Motion for Disbursement.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th day of January, 2015, a true and correct copy of the above and foregoing was emailed to the following:

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Michael Paul Kirschner, OBA #5056
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Facsimile (405) 843-6707
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mike@robertsonwilliams.com

Rollin Nash, Jr., OBA #6584
Nash Cohenour Kelley Giessman
& Knight P C
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Oklahoma City OK 73112
Telephone: (405) 917-5000
Facsimile: (405) 917-5005
rnash@nashfirm.com
Attorney for Quail Creek Bank

and

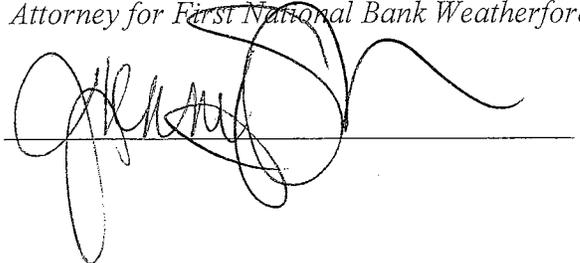
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Seller's Closing Statement

Stewart Abstract & Title of Oklahoma, Stewart Abstract & Title of Oklahoma
701 North Broadway, Suite 300, Oklahoma City, OK 73102, (405) 232-6764

Seller(s) Bricktown Capital LLC
 Buyer(s) Prominent Hotels, LLC
 Lender(s) Cash
 Property 2001 E Reno Oklahoma City, Oklahoma 73117

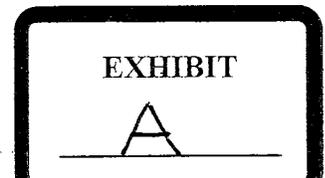
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Section Number 36Township 12N, Range 03W Oklahoma

PT SW4 SEC 36 12N 3W BEG SW/C SW4 TH N225FT E50FT N250FT E605.12FT S425FT W380.12FT S50FT
 W275FT TO BEG EX BEG 50FT E & 33FT N OF SW/C SW4 TH E225FT N17FT W205.02FT NW28.30FT S37FT TO
 BEG & EX BEG 445.82FT N & 50FT E OF SW/C SW4 TH N30FT E30FT SW42.77FT TO BEG SUBJ TO ESMTS ON
 W & S

Closing Date 12/12/2014 Disbursement Date 12/12/2014 Proration Date 12/12/2014

	Debit	Credit
Sales/Price		
Contract sales price		\$2,550,000.00
Prorations		
County taxes 12/12/2014 to 1/1/2015		\$2,108.45
Other Adjustments		
Release of Mortgage (Doyle Mortgage) to County Clerk	\$17.00	
2014 Real Estate Taxes to County Treasurer	\$38,479.29	
Payoffs		
Payoff of first mortgage loan to 12-15-14 to Quail Creek Bank	\$1,911,290.69	
Payoff of second mortgage loan to 12/15/14 to SBA; Loan: 6525055006	\$327,487.72	
Commissions		
\$76,500.00 to Vawter real Estate	\$76,500.00	
Title Charges		
Settlement or closing fee to Stewart Abstract & Title of Oklahoma	\$150.00	
Abstract or title search to Stewart Abstract & Title of Oklahoma	\$500.00	
Title examination to Stewart Abstract & Title of Oklahoma	\$300.00	
Title Insurance to Stewart Abstract & Title of Oklahoma		
Owner's coverage \$2,550,000.00 \$4,427.50	\$4,427.50	
Final Title Report to Stewart Abstract & Title of Oklahoma	\$100.00	
Title Service Fee to Stewart Abstract & Title of Oklahoma	\$150.00	
Recording Fees/Transfer Charges		
State tax/stamps: Deed \$3,825.00	\$3,825.00	
Additional Charges		
Invoice # 47423 to Robertson & Williams	\$39,938.55	
Invoice 355 to Oklahoma Web Media	\$398.00	
Legal Fees to Jim Lee, Attorney at Law	\$21,178.05	
Fees to Discover Card	\$2,789.40	
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Fees to Locke Supply	\$100.34	
Fees to InnPoints Worldwide	\$585.84	
Costs to US Foods	\$554.87	
Fees to Freedom Electric	\$3,680.00	
Bankcard to Bank of the West	\$43,781.19	
Fees to Bank of America	\$3,823.74	
Statement to American Express	\$28,954.03	
Fees to City of Oklahoma City	\$5,592.01	
Invoice to ONG	\$5,889.09	
Services to O G & E	\$16,447.90	
Services to Cox Communications	\$3,600.94	



Seller's Closing Statement

Subtotal:	\$2,554,925.91	\$2,552,108.45
Balance due from Seller:		\$2,817.46
Totals:	\$2,554,925.91	\$2,554,925.91

Bricktown Capital LLC

CONTRACT OF SALE

THIS CONTRACT OF SALE (the "Contract") is made between BRICKTOWN CAPITAL LLC (the "Seller") and NICKY JARIWALA and/or ASSIGNS, (collectively, the "Purchaser"). In consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

ARTICLE I Sale and Purchase

Subject to the terms and provisions of this Contract, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to buy and pay for all of the following described property (sometimes referred to herein in the aggregate as the "Property"):

- (a) that certain tract of land located in Oklahoma County, Oklahoma, as depicted on Exhibit "A" attached hereto and incorporated herein by reference for all purposes, together with all of Seller's right, title and interest in and to the rights and appurtenances pertaining to such tract of land, including, any right, title and interest of Seller in and to adjacent strips and gores between such tract of land and any abutting properties, adjacent roads, streets, alleys, easements or rights-of-way (collectively, the "Real Property");
- (b) the buildings, structures, fixtures and other improvements on the Real Property, including without limitation, a One Hundred (100) room Bricktown Hotel and Convention Center located at 2001 E Reno Ave, Oklahoma City, OK 73117 (collectively, the "Improvements");
- (c) All of Seller's proprietary, privileged or confidential information relating to the Property, including but not limited to, Seller's internal financial analyses, materials relating to Seller's cost to acquire the Property and any documents or communications subject to the attorney/client or work product privilege (collectively the "Excluded Items"). Excluded Items also includes eight (8) vending machines currently in use and located in various areas around the hotel unless Purchaser wishes to purchase the vending machines from the Seller (See Article 7.6(d)).
- (d) All of Seller's right, title and interest in and to all equipment, fixtures, machinery, building materials and other personal property used in connection with the operation, management and maintenance of the Real Property and the Improvements, including without limitation, all keys, licenses, permits, books, records, plans and specifications, architectural and engineering drawings, trade names, trademarks, contract rights, licenses, permits, consents and other intangible property pertaining to the Real Property and Improvements located on

the property, with the exception of the Excluded Items, but including the 2011 Chevy E2T Van with VIN number 1GAWGREA0B1147144 and the Dodge Caravan with VIN number 2D4RNSDG6BR693374 in an "as is, where is" condition subject to any remaining debt (see Article 7.6(e)), provided, however, Purchaser may elect to exclude the Chevy E2T Van and Dodge Caravan at any time prior to Closing. The Vans will otherwise be maintained in good running condition until Closing (collectively, the "Personal Property"); and

- (e) All of Seller's right, title and interest in and to (i) all assignable contracts and agreements (collectively, the "Operating Agreements"), relating to the upkeep, repair, maintenance or operation of the real property, improvements or personal property which shall extend beyond the Closing Date (as hereinafter defined), including specifically, without limitation, all assignable equipment leases and (ii) all assignable existing warranties and guarantees (express or implied) issued to Seller in connection with the improvements or the personal property (collectively, the "Intangibles").

ARTICLE II

Purchase Price and Financing

2.1 Purchase Price: The total purchase price for the Property (the "Purchase Price") shall be a sum of not more than Two Million, Five Hundred Thousand Dollars and No/100 only (\$2,500,000.00). Funds will be delivered to the Title Company at Closing, cash by cashier's check or other evidence of current funds acceptable to the Title Company for immediate disbursement by the Title Company to the Seller at Closing. Purchaser shall have the responsibility of providing same day immediately available funds so that disbursement of proceeds shall be made on the day of Closing.

2.2 Third Party Financing: Purchaser will have Twenty (20) days from the date of this contract in which to secure suitable financing, which such financing terms may be approved or disapproved by Purchaser in Purchaser's sole discretion. If Purchaser is unable to secure suitable financing within Twenty (20) days, Purchaser will have the right to terminate this contract and Title Company will return the Earnest Money to Purchaser.

ARTICLE III

Earnest Money Deposit

3.1 Amount and Title Company. Upon full and final execution of this Contract by both Purchaser and Seller, Purchaser shall deliver within three (3) business days the Earnest Money to Stewart Abstract and Title Company, 701 N. Broadway Avenue, Oklahoma City, OK 73102, Attention: Margaret Miller (the "Escrow Officer"), the sum of Fifty Thousand Dollars and No/100 cents (\$50,000.00) (the "Earnest Money"). Such sum shall be refundable to the Purchaser until the end of the Inspection Period, as hereinafter defined, at which time the Earnest

Money will become nonrefundable, and shall otherwise be applicable to the Purchase Price due at the Closing (as hereinafter defined).

3.2 **Deposit and Application.** In the event that this Contract is actually closed and consummated in accordance with the terms hereof, the Earnest Money shall be applied toward the cash payment due at Closing by the Purchaser to the Seller. In the event that this Contract does not actually close and consummate in accordance with the terms hereof, the Earnest Money shall be disbursed by the Title Company to Seller or Purchaser (as appropriate) in accordance with the terms of this Contract. In the event that the Purchaser shall fail to timely deposit the Earnest Money (or, if in the form of a check, the bank on whom such check is drawn refuses to fully honor such check when negotiated and presented for payment by the Seller) this Contract shall by written notice from Seller to Purchaser terminate whereupon neither party shall have any further obligation hereunder.

ARTICLE IV **Title and Survey**

4.1 **Title Commitment.** Within five (5) days after the date of this Contract, Seller shall obtain, and deliver to Purchaser (i) a current commitment for an Owner's Policy of Title Insurance in favor of Purchaser (the "Title Commitment") issued by the Title Company and (ii) legible copies of all instruments shown as exceptions in the Title Commitment. The premium of such Policy shall be paid by Seller. The Title Commitment shall describe the Real Property, which legal description, unless modified by the Survey in accordance with the terms and provisions of Section 4.2 below, shall be incorporated into this Contract as Exhibit "A-1", and shall constitute the legal description for purposes of the Closing documents.

4.2 **Survey.** Within five (5) days after the date of this Contract, Seller shall deliver to Purchaser a copy of a current as-built survey (the "Survey") if any, of the Real Property and Improvements, previously prepared by a registered professional land surveyor. All costs incurred in connection with obtaining a survey, updating or recertification of the Survey shall be borne by the Purchaser. The legal description of the Real Property contained in the Survey, if different from the description contained in Exhibit "A", shall be substituted for the description of the Real Property contained in Exhibit "A", and the Contract shall be deemed amended by the substitution of the legal description of the Real Property contained in the Survey for the description of the Real Property contained in Exhibit "A".

4.3 **Review of Title Commitment.** Purchaser shall have five (5) business days after the date of receipt of the last of the Title Commitment, copies of all instruments shown as exceptions in the Title Commitment (the "Title Review Period"), in which to notify Seller in writing of any objections Purchaser has to any matters shown or referred to in the Title Commitment. The standard preprinted exceptions in the Title Commitment, zoning ordinances, existing utility easements affecting the Property, and any other title encumbrances or exceptions set forth in the Title Commitment which Purchaser does not object within the Title Review Period, shall be deemed to be permitted exceptions to the status of Seller's title (the "Permitted Exceptions").

4.4. Objections to Status of Title. In the event that Purchaser shall object to the status of Seller's title to the Property during the Title Review Period, Seller shall have three (3) business days after receipt of Purchaser's objections within which to satisfy such objections, if Seller elects to attempt to satisfy such objections (the "Cure Period"). In the event Seller shall be unable or unwilling to satisfy Purchaser's objections within the Cure Period (and Seller shall have no obligation whatsoever to satisfy any of Purchaser's objections or to expend any sum of money in doing so), Purchaser shall have the option, exercisable by delivery of written notice to the Seller at any time within three (3) business days after the date Seller has notified Purchaser as to the Purchaser's objections which shall not be cured (the "Option Period"), to either (i) waive Purchaser's objections and purchase the Property as otherwise contemplated in this Contract, notwithstanding such objections, in which event the subject matter of such waived objections shall become Permitted Exceptions, and Seller shall convey the Property to Purchaser by the Deed referred to in Section 7.4(a) hereof, subject to the Permitted Exceptions, or (ii) terminate this Contract, which shall be a Permitted Termination as provided in Section 9.1 hereof. In the event Purchaser fails to timely deliver written notice to Seller within the Option Period, Purchaser shall be deemed to have elected to waive Purchaser's objections, and shall have no further right to terminate this Contract pursuant to the terms of Article IV hereof.

4.5. Amendments to Title Commitment and Survey. Purchaser shall have the right to object to any exceptions to title or other matters first raised by the Title Company or the surveyor in any amendments to the Title Commitment or the Survey issued after the expiration of the Title Review Period by giving written notice of the exceptions or matters to which Purchaser is objecting within three (3) business days after the issuance of any such amendment or delivery of the Survey. If Purchaser does not object to any exception or matter first raised in an amendment to the Title Commitment or the Survey received after the expiration of the Title Review Period by giving timely written notice as herein provided such exception or matter shall be a Permitted Exception. In the event Purchaser gives timely written notice of objection to any exception or matter as herein provided, the provisions of Section 4.4 shall apply with respect thereto as if set forth herein in full.

4.6. Curable Matters. Notwithstanding anything to the contrary set forth herein, Seller shall be obligated to remove on or before the Closing Date, (a) liens or encumbrances of a definite and ascertainable amount, (b) mortgages or deeds of trust encumbering the Property (other than the Loan Documents), and (c) real estate taxes that are due and payable [the items set forth in (a), (b) and (c) are collectively referred to as the "Curable Matters"]. In the event Seller has failed to remove or fails to pay any and all of the Curable Matters as of the Closing, Purchaser shall have the right to deduct from the Purchase Price a sum equal to the total amount required to discharge the Curable Matters. In the event that any of the Curable Matters are not cured to Purchaser's satisfaction, Seller agrees to create an escrow account at Closing to cover such amount of potential liability, such escrow account to be used to pay off the liability at the appropriate time or to be refunded to Seller if the liability is resolved otherwise.

ARTICLE V
Investigation by Purchaser

5.1 **Submission Matters Delivered to Purchaser.** Within three (3) days from the date of this Contract, Seller shall deliver to Purchaser, the Profit and Loss statements, Federal Tax Returns for the Property for 2011, 2012 and 2013 and a YTD income statement, copies of all contracts that Purchaser shall be assuming, all present and historical information in Seller's possession regarding the Party's environmental status, any information on structural and mechanical condition of the Property, any information regarding the existence of hazardous or contaminated substances on the Property that could constitute a health, safety or other environmental hazard, any information regarding non-functioning equipment/devices essential to the daily operation of the Property, and any information on ongoing actions by the Health Department against the Property. Seller shall also deliver any other pertinent documents and due diligence related items that may be reasonably requested by the Purchaser (all of the foregoing matters referenced in this Section 5.1 are collectively referred to herein as the "Submission Matters").

All Submission Matters procured by the Purchaser shall promptly be returned to Seller by Purchaser if this Contract is not consummated for any reason.

5.2 **Inspection Period.** Purchaser shall, at Purchaser's sole expense, have twenty (20) days after the date of this Contract (the "Inspection Period") to review the Submission Matters, inspect the condition of the Property, conduct an examination of the Property (including without limitation, a physical inspection, appraisal and engineering inspection of the Property) and review such other matters as Purchaser deems necessary in order to determine the suitability of the Property for the Purchaser's needs. If within the Inspection Period, Purchaser shall for any reason in Purchaser's sole discretion, judgment and opinion, disapprove or be dissatisfied with any aspect of the Property, then Purchaser shall be entitled to terminate this Contract by giving written notice thereof to Seller prior to the expiration of the Inspection Period and the Earnest Money, previously deposited by the Purchaser with the Title Company shall be immediately returned by the Title Company to the Purchaser, whereupon this Contract shall automatically be tendered null and void and thereafter neither Seller nor Purchaser shall have any further obligations or liabilities to the other hereunder except with respect to the indemnities which shall expressly survive any such termination. In the event Purchaser fails to notify Seller in writing on or before the expiration of the Inspection Period of its disapproval of the results of its inspections of the Property, then the Submission Matters and all of such inspections shall be conclusively deemed to have been approved. After the Inspection period, all of the Earnest Money Deposit shall become immediately non-refundable to the Purchaser, unless otherwise provided for in this Contract.

IF PURCHASER SHALL NOT SO ELECT TO TERMINATE THIS AGREEMENT PURSUANT TO SECTION 5.2, THEN, EXCEPT AS SET FORTH BELOW, PURCHASER SHALL BE DEEMED TO HAVE ELECTED TO ACCEPT THE PROPERTY ON AN "AS IS" BASIS AS OF THE LAST DAY OF THE INSPECTION PERIOD, SUBJECT TO:

(i) Seller's satisfaction of any Title Objections, and (ii) Seller's obligations under Section 5.4 below regarding operation and maintenance of the Property pending Closing. Upon expiration of the Inspection Period, Seller's sole obligation with respect to the physical condition of the Property shall be to deliver possession thereof to Purchaser on the Closing Date in substantially the same condition (excluding normal wear and tear and any casualty damage or taking permitted or waived under Section 10.1 and Section 10.2 below) as existed on the last day of the Inspection Period.

5.3 Manner and Scope of Inspections. During the term of this Contract, Purchaser and its agents and representatives, shall be entitled to enter upon the Property (as coordinated through Seller), including all leased areas, upon reasonable prior notice to Seller. Notwithstanding the foregoing, Purchaser shall not be permitted to interfere unreasonably with Seller's operations at the Property or interfere with any tenant's operations at the Property, and the scheduling of any inspections shall take into account the timing and availability of access to tenants' premises, pursuant to its rights under the Tenant Leases or otherwise. Any meetings with tenants at the Property shall be conducted only with a representative of the Seller in attendance. If Purchaser wishes to engage in any environmental testing or any other testing which shall damage or disturb any portion of the Property, Purchaser shall obtain Seller's prior written consent thereto, and such testing shall be conducted according to protocols reasonably established by Seller. Purchaser shall repair any damage to the Property caused by any such tests or investigations.

5.4 Confidentiality of Submission Matters: As a condition to the Purchaser's receipt of the Submission Matters, the Purchaser agrees to treat such information in accordance with the provisions of this Section 5.4 and to take or refrain from taking certain actions as hereinafter set forth. Purchaser agrees that the Submission Matters (a) shall be used solely for the purpose of evaluating the purchase of the Property, and (b) shall be kept confidential and shall not be disclosed to any person, firm or entity, except employees, consultants and representatives of the Purchaser who need to know such information for the purpose of evaluating the potential purchase of the Property, and who have otherwise agreed to be bound by the terms of this Section 5.4.

5.5 Franchise. None

ARTICLE VI Condition of Premises:

Purchaser agrees that the Seller has not made, nor makes any representations or warranties as to the condition of the premises, buildings, appurtenances and fixtures located thereon, and accepts the property in its "as-is" condition without warranty of any sort.

Furthermore, Purchaser understands that the property is being purchased "as is" with several rooms, approximately 85 of which are in various stages of disrepair, 14 of which are in complete disrepair, after being damaged in a severe thunderstorm. Purchaser has been made aware of asbestos issues by the health department with regard to the 14 room that are in complete

disrepair. Seller has informed Purchaser that these 14 rooms will require asbestos remediation. Seller shall provide a complete list of the damaged rooms within 5 days of the date hereof.

Warranties and Representations

6.1 Seller's Warranties and Representations. Seller represents and warrants to Purchaser as of the date hereof and as of the Closing Date that:

- (a) Seller has good and indefeasible fee-simple title to the Real Property and Improvements, and at the Closing, Seller shall have and shall convey to the Purchaser good and indefeasible fee-simple title to the Real Property and Improvements, free and clear of all liens, defects, encumbrances, conditions, exceptions, restrictions or other matters affecting title, except the Permitted Exceptions. Seller has the right, title and authority to execute and perform this Contract and to consummate the transaction contemplated herein.
- (b) Seller has not received any written notice of any pending condemnation or similar proceeding affecting the Real Property and Seller has not received any written notice and has no actual knowledge that any such proceeding is contemplated.
- (c) Seller has not received written notice of any action, suit, proceeding or claim affecting the Property, or affecting Seller and relating to or arising out of the ownership, operation, use or occupancy of the Property.
- (d) Except for debts, liabilities and obligations for which provision is made herein for proration or other adjustment at the Closing, as of the Closing, all debts, liabilities and obligations arising from the ownership and operation of the Property shall have been paid.
- (e) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws pending against Seller or to Seller's actual knowledge threatened against Seller or the Property.

For purposes of this Section 6.1, references to the "actual knowledge" or "knowledge" of Seller shall refer only to the actual knowledge of the Designated Employee (as hereinafter defined) of Seller, and shall not be construed, by imputation or otherwise, to refer to the knowledge of Seller, to any property manager, or to any other officer, agent, manager, representative or employee of Seller or to impose upon such Designated Employee any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. As used herein, the term "Designated Employee" shall refer to Tom Seabrooke. Seller represents and warrants to Purchaser that Tom Seabrooke is the person with the most knowledge of the operations conducted at the Property, and to whom notices concerning the matters described in this Section 6.1 would typically be sent.

6.2 Purchaser's Representations and Warranties. Purchaser hereby represents and warrant as of the date hereof and as of the Closing Date that:

- (a) Purchaser has the right, title and authority to enter into this Contract, to comply with all the terms and obligations hereof and to consummate the transactions provided for hereunder. This Contract shall, when executed and delivered by Purchaser, constitute the valid and binding obligation of Purchaser enforceable in accordance with its terms.
- (b) No consent, approval or other action of, or filing or registration with, any governmental agency, commission or officer is required in connection with the execution or performance by Purchaser of this Contract or any of the transactions provided for hereunder.
- (c) There has not been filed by or, to Purchaser's knowledge, against Purchaser, a petition in bankruptcy or insolvency proceedings, or for reorganization, or for the appointment of a receiver or trustee, nor has any such entity made an assignment for the benefit of creditors or filed a petition for an arrangement or entered into any arrangement with creditors or admitted in writing the inability to pay its debts as they become due.
- (d) The execution and delivery of this Contract and the transactions provided for herein shall not result in a breach of any of the terms and provisions of or constitute a default under or conflict with any agreement, indenture, mortgage, lien, lease, consent, license, franchise or other instruments to which Purchaser or any person or entity which Purchaser represents is bound.

6.3 Survival of Representations and Warranties. The foregoing representations and warranties of Seller and Purchaser are made as of the date the parties execute this Contract and shall be remade by each party as of the date of Closing, provided that Seller may update the information in such representations and warranties as appropriate from matters occurring (but not caused by or consented to by Seller) between the date Seller executes this Contract and the Closing Date by written notice to Purchaser on or prior to the earlier of two (2) business days after Seller acquiring notice of such change and the Closing Date. If Seller updates such representations and warranties pursuant to the preceding sentence and the update changes the information in such representations and warranties in a detrimental way between the date Seller executes this Contract and the Closing Date, Purchaser may, as its sole remedy, terminate this Contract by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser, and the parties shall have no further obligations under this Contract, except for the indemnities which expressly survive the termination of this Contract. All representations and warranties contained in Article 6 hereof shall survive the closing of this transaction, but shall expire on the first anniversary of the Closing Date. If within such time Purchaser does not commence legal action against Seller for any inaccuracy in such representations and warranties, such representations and warranties shall be of no further force or effect.

6.4 Covenants of Seller. Seller hereby covenants with Purchaser that, from the date

of this Contract until the Closing Date or earlier termination of this Contract:

- (a) Seller shall (i) continue to operate the Property in accordance with its present operating policy; and, (ii) maintain, in force and effect property and liability insurance with respect to damage or injury to person or property occurring on the Property in at least such amounts as are maintained by Seller as of the date of this Contract. It is the intention of the parties that the general operation of the Property shall not be materially changed between the date of this Contract and the Closing Date, except as herein provided or to the extent Seller, in the ordinary course of business, deems such change to be reasonably necessary or advisable.
- (b) Seller shall not enter into any new Operating Agreements relating to the Property (i) without prior written notification to Purchaser (which notification shall include a statement fully disclosing the obligations and costs associated therewith, and any other information reasonably requested by Purchaser) and (ii) without Purchaser's consent if such Operating Agreements may not be terminated prior to Closing. Seller agrees that there shall be no contracts in existence at the Closing for the management of the Property, and Seller agrees to terminate Seller's existing management contract on the Closing Date. Except as to Operating Agreements that either Purchaser notifies Seller in writing to continue prior to the expiration of the Inspection Period or, are Operating Agreements which were delivered to Purchaser pursuant to Section 5.1 and contain a fixed term expiring after the Closing Date (collectively, the "Assigned Contracts"), all Operating Agreements shall be terminated by Seller as of the Closing. The Assigned Contracts shall be assigned to and assumed by the Purchaser at the Closing; provided, Seller shall be responsible for any defaults occurring prior to Closing.

ARTICLE VII Closing

7.1 Time and Place of Closing. Subject to the controlling terms of Section 9.10 below, the consummation of the transaction evidenced by this Contract (the "Closing") shall take place at the offices of the Title Company at 11:00 o'clock a.m. local time, on or before Thirty (30) days from the date of this Contract (the "Closing Date").

7.2 Closing Costs. Seller shall pay costs for the following expenses: releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability, if any; the Owner's title policy; tax statements or certificates; preparation of the deed and any bill of sale; broker's fee; one-half of any escrow fee; costs to record any documents to cure title objections that Seller must cure; the documentary stamp tax for the deed, and other expenses that Seller will pay under other provisions of this contract.

Purchaser shall pay for costs the following expenses: all expenses incident to any loan (e.g., loan procurement fees, preparation of note, deed of trust, and other loan documents, recording fees, mortgagee's title policy, prepaid interest, credit reports) and any other associated

loan expenses and fees; preparation fees of any deed of trust; recording fees for the deed and any deed of trust; one-half of any escrow fee; fees for a new surveys or updating any existing surveys and other expenses that Purchaser will pay under other provisions of this contract.

Each party shall pay its own attorneys' fees; provided, however, in the event of any litigation arising hereunder, the prevailing party shall be entitled to recover, as part of any judgment rendered, reasonable attorneys' fees and cost of suit. Except as otherwise provided in this Section 7.2 or elsewhere in this Contract, all other expenses hereunder shall be paid by the party incurring such expenses.

7.3 Prorations.

- (a) Room revenue generated from the Property and operating expenses shall be prorated between the parties at the Closing. Purchaser shall receive all room revenue and other income and bear all operating expenses after the Closing Date.
- (b) Real property, ad valorem and personal property (if any) taxes, sewer rents and charges, and other state and county municipal taxes, special or otherwise (collectively the "Taxes") for the then current tax year for which the same are levied, imposed or assessed which are liens and which are due and payable in such year shall be prorated at Closing effective as of the Closing Date. If Closing shall occur before the tax rate is fixed for the then current tax year, the apportionment of the Taxes shall be upon the basis of the tax rate for the preceding year. Any difference in the actual and estimated taxes and assessments shall be adjusted in cash between the parties within thirty (30) days following receipt of information confirming the actual amounts thereof. All Taxes imposed because of a change of use or ownership of the Property after or in connection with the Closing shall be the responsibility of the Seller. Notwithstanding anything contained herein to the contrary, any unpaid real property, ad valorem, hotel occupancy or personal property taxes currently associated with the Property shall be paid by Seller at or prior to Closing.
- (c) All utility charges accruing prior to the Closing Date will be paid by Seller, and all utility charges accruing on and after the Closing Date will be paid by Purchaser.

7.4 Deliveries at Closing. At the Closing:

- (a) Seller shall deliver to Purchaser the following:
 - (i) A General Warranty Deed (the "Deed") duly executed and acknowledged by Seller, conveying to Purchaser good and indefeasible fee-simple absolute title to the Real Property, free and clear of any lien, encumbrance or exception other than the Permitted Exceptions.

- (ii) A Blanket Conveyance, Bill of Sale and Assumption Agreement, duly executed by Seller, conveying to Purchaser the Personal Property.
 - (iii) An Owner's Policy of Title Insurance issued by the Title Company, conforming to the requirements of Article IV above, insuring Purchaser's title in the amount of the Purchase Price and containing no exceptions other than (a) the standard printed exceptions; (b) the lien for current taxes, and subsequent assessments for prior years due to change in land usage or ownership; (c) the Permitted Exceptions; and (d) other exceptions, if any, which Purchaser may approve. The exception for restrictive covenants shall be deleted or the Title Company shall indicate. Following such exception, those restrictive covenants included among the Permitted Exceptions.
 - (iv) A non-foreign certificate executed by Seller as required by Section 1445 of the Internal Revenue Code, as amended.
 - (v) Possession of the Property, subject only to the Permitted Exceptions.
 - (vi) To the extent in Seller's possession, the original copies of the Operating Agreements, if any.
 - (vii) All keys, licenses, permits, books, records, plans, specifications and other items related to the Property.
 - (viii) Such other instruments and documents as are reasonably appropriate, necessary and required by the Title Company or the Purchaser to complete and evidence the transactions contemplated hereby.
 - (ix) Such evidence of the authority and capacity of Seller and its representatives, as the Purchaser or the Title Company may reasonably require.
- (b) Purchaser shall deliver to Seller the following:
- (i) The cash payment due in accordance with Article 11 hereof.
 - (ii) The Blanket Conveyance, Bill of Sale and Assumption Agreement, duly executed by the Purchaser.
 - (iii) such other instruments and documents as are reasonably appropriate, necessary and required by the Title Company or the Seller to complete and evidence the transactions contemplated hereby.

7.5 Possession: Seller will deliver possession of the Property to the Purchaser upon closing and funding of this sale.

(a) Until Closing:

- (i) Seller will operate the Property in the same manner as on the effective date and will not transfer or dispose of any of the Personal Property described in Article I sold under this contract.
- (ii) Any possession of Purchaser before Closing or by Seller after Closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

7.6 Special Provisions:

- (a) Purchaser will receive a ten (10) day operational inventory supply at no cost to the Purchaser. Purchaser will receive One and one half (1 and 1/2) times the linen inventory at Closing at no cost to the Purchaser.
- (b) Seller retains all earned revenues received up to 11:00 AM on the day of Closing; Purchaser is to receive all earned revenues thereafter.
- (c) Seller and Purchaser agree to provide an automatic 15 day extension of the Inspection Period and Closing date should additional time be needed to perform any of the provisions of this contract.
- (d) The eight (8) Seller owned vending machines referenced in Article 1(c) can be purchased for Twenty Five Thousand Dollars and No/100 cents (\$25,000.00).
- (e) Payments for the two (2) hotel owned shuttle vans referenced in Article 1(d) currently have a combined total of approximately Thirty Thousand Dollars (\$30,000.00) due the vehicle loans. If the Purchaser elects to keep the shuttles, then Purchaser will be required to assume the remaining debt on these vehicles.

ARTICLE VIII

Termination, Default and Remedies

9.1 Permitted Termination. If this Contract is terminated by either Seller or Purchaser pursuant to a right expressly given it to do so hereunder (herein referred to as a "Permitted Termination"), except for a termination by Seller because of the default of Purchaser, the Earnest Money, together with any accrued interest thereon, shall immediately be returned to Purchaser and this Contract shall thereafter be null and void.

9.2 Default by Seller: Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

- (a) any of Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect when made or at Closing;
- (b) Seller shall fail to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Contract, for any reason other than a Permitted Termination; or
- (c) Seller shall fail to deliver at the Closing any of the items required of Seller in Section 7.4(a) hereof, for any reason other than a Permitted Termination.

In the event of a default by Seller hereunder, Purchaser may, as Purchaser's sole and exclusive remedies for such default, either (i) terminate this Contract by written notice delivered to Seller at or prior to Closing, which termination shall be a Permitted Termination as provided in Section 9.1 above; or (ii) enforce specific performance of this Contract.

9.3 Default by Purchaser. Purchaser shall be in default hereunder upon the occurrence of any one or more of the following events:

- (a) any of Purchaser's warranties or representations set forth herein are untrue or inaccurate in any material respect when made or at Closing;
- (b) Purchaser shall fail to meet, comply with or perform any covenant, agreement, or obligation on its part required within the time limits and in the manner required in this Contract, for any reason other than a Permitted Termination; or
- (c) Purchaser shall fail to deliver at the Closing any of the items required of Purchaser in Section 7.4(b) hereof, for any reason other than a Permitted Termination.

In the event of a default by Purchaser hereunder, Seller's sole and exclusive remedy for such default shall be to terminate this contract by notice to Purchaser and retain the Earnest Money held by the Seller upon occurrence of the foregoing as liquidated damages, the parties agreeing that it would be difficult to ascertain actual damage suffered by Seller in the event of Purchaser's breach of this Agreement or to pursue any other remedy available to Seller under Oklahoma law.

ARTICLE IX Miscellaneous

9.1 Casualty Loss. Prior to the Closing, risk of loss with regard to the Property shall be borne by the Seller. If the Improvements or any of the Personal Property are damaged or destroyed prior to closing, then:

- (a) If the cost of repairing such damage is less than or equal to \$50,000.00, as determined by an architect selected by Purchaser, who is reasonably acceptable to the Seller; then, at the Seller's option [such election to be made in writing within

thirty (30) days of such event]: (i) Seller shall repair such damage as promptly as is reasonably possible, restoring the damaged property at least to its condition immediately prior to such damage, and, in the event such repairs have not been completed prior to Closing, then the Closing nevertheless shall proceed as scheduled, and Purchaser may direct the Title Company to withhold from the Seller in an escrow account the funds necessary to make such repairs until the Seller has repaired such damage pursuant to the provisions hereof, at which time such funds shall be distributed to the Seller; or, (ii) Seller shall assign to Purchaser all insurance proceeds payable with respect to such damage, and the Purchaser shall receive a cash credit against the Purchase Price for the amount of the deductible under the Seller's insurance policy, and for the amount by which the estimated costs of repair exceed the estimated insurance proceeds, and the Purchaser shall be obligated to proceed to purchase the Property [such election to be made in writing within thirty (30) days of such event] in accordance with the terms hereof; or,

- (b) If the cost of repairing such damage is greater than \$50,000.00, as determined by an architect selected by Seller, who is reasonably acceptable to the Purchaser, then, at the Purchaser's option [such election to be made in writing within thirty (30) days of such event]: (i) Purchaser may elect to terminate this Contract by written notice to Seller, which shall be a Permitted Termination as provided in Section 8.1 hereof; (ii) have Seller, at Seller's sole expense, repair the damages promptly as is reasonably possible, restoring the damaged property at least to its condition immediately prior to the damage, and the Closing hereunder shall be deferred until such repairs are made; or, (iii) Seller shall assign to Purchaser all insurance proceeds payable with respect to such damage, and the Purchaser shall receive a cash credit against the Purchase Price for the amount of the deductible under the Seller's insurance policy, and for the amount by which the estimated costs of repair exceed the estimated insurance proceeds, and the sale shall be closed without the Seller's repairing such damage.

9.2 **Condemnation.** If, prior to the Closing, condemnation proceedings are threatened or commenced with respect to any portion of the Land and Improvements, Purchaser may terminate this Contract by delivering a written termination notice to Seller on or prior to the Closing Date, which shall be a Permitted Termination as provided in Section 9.1 hereof. Prior to Purchaser's termination of this Contract, or if Purchaser does not terminate this Contract, both the Seller and the Purchaser, by and through their respective attorneys, shall have the right to appear in such condemnation proceedings and defend their interests in the Real Property and Improvements. Any award in condemnation made prior to the Closing shall become the property of the Seller, and the Purchase Price shall be reduced by the amount of the gross condemnation award made to the Seller. An award in condemnation after the Closing shall be the property of the Purchaser, and the Purchase Price shall not be reduced thereby.

9.3 **Compensation Fee.** Seller acknowledges that *Vawter Real Estate* is working on behalf of the Purchaser. Seller shall be solely responsible for and shall pay a Compensation Fee

(the "Fee") of three percent (3%) to *Vawter Real Estate* should the sales transaction contemplated by this Contract Close:

Except for the Brokers, each party represents to the other that it has not authorized any other broker or finder to act on its behalf in connection with the sale and purchase transaction contemplated hereby and that it has not dealt with any broker or finder purporting to act for any other party. Each party agrees to indemnify and hold harmless the other party from and against any and all liabilities, costs, damages and expenses of any kind or character arising from any claims for brokerage or finder's fees, commissions or other similar fees in connection with the transactions covered by this Contract insofar as such claims shall be based upon alleged arrangements or agreements made by such party or on its behalf, which indemnity shall (notwithstanding anything to the contrary contained or implied elsewhere in this Contract) expressly survive any termination or Closing of this Contract.

9.4 **Like Kind Exchange by Seller.** Seller may elect to exchange the Property for other property of like kind in a manner and pursuant to procedures which will qualify the conveyance by the Seller of the Property as an exchange under Section 1031 of the Internal Revenue Code. In the event Seller makes such election, Purchaser agrees to reasonably cooperate with Seller in connection with such like kind exchange, provided however, Purchaser shall have no obligation whatsoever, to incur (or pay) any costs or expenses in connection with such cooperation, all of which Seller specifically indemnifies Purchaser for, nor shall such election change in any respect, any of the terms, covenants or conditions of this Agreement.

9.5 **Notices.** Any notices, consents or other communications required or permitted to be given pursuant to this Contract must be in writing and shall be sent to the address set forth below (or such other address as the party might hereafter designate for itself by notice to the other parties as required hereby). Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage pre-paid; by hand delivery; by overnight courier service; or by facsimile, with an original by regular mail. Any such notice or communication shall be effective on: (a) the date of receipt if delivered personally; (b) three (3) days after deposit in an official depository under the regular care and custody of the United States Postal Service, if transmitted by registered or certified mail, return receipt requested; (c) the first business day after the date of deposit, if transmitted by overnight courier service, or (d) the date of transmission with confirmed answer back, if transmitted by facsimile, whichever shall first occur.

If to Seller:

Tom Seabrooke
C/O Seabrooke Realty
425 NW 11th Street
Oklahoma City, OK 73103
Phone: (405) 235-1647
E-mail: owner@bricktownhotelokc.com

If to Purchaser:

Nicky Jariwala
1200 W. Walnut Hill Lane, Suite #2250

Irving, TX 75038
Phone: (972) 679-9223
E-mail: nickyjarwala@yahoo.com

With a copy to:

Tom Irons
Stewart Title Company
17950 Preston Road #650
Dallas, TX 75252
Phone: (972) 248-4879
Fax: (972) 248-5828
E-mail: Tiron3398@aol.com

With a copy to:

Margaret Miller
American Abstract and Title Company
701 N. Broadway Avenue
Oklahoma City, OK 73102
Phone: (405) 232-6764
Fax: (800) 249-7052
Margaret.miller@stewart.com

And with a copy to:

Jonathan Filinto
Vawter Real Estate
2332 N. Interstate Drive
Norman, OK 73072
(405) 406-1126
Fax: (405) 447-4849
jfilinto@cox.net

9.6. **Applicable Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Oklahoma. This Contract is performable and venue for any action hereunder shall be in Oklahoma County, Oklahoma.

9.7. **Entire Agreement; Modifications.** This Contract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

9.8. **Counterpart Execution.** This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute one and the same instrument.

9.9. **Captions; Construction.** The captions which have been used throughout this Contract have been inserted for convenience of reference only and do not constitute matter to be

construed in interpreting this Contract. Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder," and other similar compounds of the words "here" when used in this Contract shall refer to the entire Contract and not to any particular provision or section.

9.10 **Time is of the Essence.** With respect to all provisions of this Contract, time is of the essence; provided, however, if the final date of any period set forth herein (including, but not limited to, the Closing Date) falls on a Saturday, Sunday or legal holiday under the laws of the State of Oklahoma or the United States of America, the final date of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. The term "days" as used herein shall mean calendar days. The term "business days" as used herein shall mean calendar days except Saturdays, Sundays or legal holidays under the laws of the State of Oklahoma, or the United States of America.

9.11 **Invalid Provisions.** If any term, provision, condition or covenant of this Contract or the application thereof to any party or circumstance shall, to the extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law; and said invalid or unenforceable term, provision, condition or covenant shall be substituted by a term, provision, condition or covenant as near in substance as may be valid and enforceable.

9.12 **Binding Effect.** Purchaser shall be entitled to assign its rights under this Contract to a third party single purpose entity in which Purchaser or its principals hold an ownership interest. Subject to the foregoing, this Contract shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective heirs, personal representatives, successors and permitted assigns. Except as expressly provided herein, nothing in this Contract is intended to confer on any person, other than the parties hereto and their respective heirs, personal representatives, successors and permitted assigns, any rights or remedies under or by reason of this Contract.

9.13 **Further Acts.** In addition to the acts recited in this Contract to be performed by Seller and Purchaser, Seller and Purchaser agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

9.14 **Exhibits.** All references to Exhibits contained herein are references to Exhibits attached hereto, all of which are made a part hereof for all purposes the same as if set forth herein verbatim, it being expressly understood that if any Exhibit attached hereto which is to be executed and delivered at Closing contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained herein and as contemplated herein prior to or at the time of execution and delivery thereof.

9.15 Date of Contract. All references to the "date of this Contract" or similar references as used herein shall be deemed to mean the date, whichever is latest, that this Contract has been fully executed by the Seller and Purchaser, as indicated by their signatures below, and delivered to and acknowledged by the Title Company.

9.16 Attorneys' Fees. If either party shall be required to employ an attorney to enforce or define the rights of such party hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit.

9.17 Assignment. Purchaser shall have the right to assign this Agreement without approval of the Seller.

EXECUTED by Seller on this 11 day of Nov, 2014

SELLER:

Bricktown Capital LLC
Corporation and Title

Tom Seabrooke
Print Name of Seller

[Signature]
Seller's Signature

EXECUTED by Purchaser on this _____ day of _____, 2014

PURCHASER:

[Signature]
Corporation and Title

Nitin Jander
Print Name of Purchaser

[Signature]
Purchaser's Signature