

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

DISTRICT COURT  
OKLAHOMA COUNTY

JAN 22 2015

TIM RHODES  
COURT CLERK

75

Oklahoma Department of Securities )  
*ex rel* Irving L. Faught, Administrator, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Seabrooke Investments, L.L.C., et al. , )  
 )  
Defendants. )

Case No. CJ-2014-4515

**QUAIL CREEK BANK'S OBJECTION TO  
"DEFENDANT'S MOTION FOR ORDER INSTRUCTING ESCROW AGENT  
TO DISBURSE ESCROW FUNDS, ETC." AND BRIEF IN SUPPORT**

COMES NOW Quail Creek Bank ("Bank"), and for its Objection to Bricktown Capital, LLC's, Motion for an Order Instructing Escrow Agent to Disburse Escrow Funds, Etc., as filed herein on January 15, 2015, ("Objection"), respectfully submits the following.

**BRIEF BACKGROUND**

When the sale of the Bricktown Hotel closed, two (2) separate and distinct amounts of the sale proceeds became disputed.

First, \$187,858.90 remained after the second mortgage holder (SBA) was paid in full, and after the principal balance owing and accrued interest through December 10, 2014, was paid to Quail Creek Bank ("Bank").

Secondly, \$17,797.94 was placed in escrow because of a dispute regarding whether or not the Bank should be reimbursed for its fees and costs.

The Bank has no interest in the \$187,858.90 dispute. This Objection only relates to Defendant's Proposition II, wherein Defendant asks this Court to give the \$17,797.94 to Defendant Bricktown Capital, LLC.

**UNDISPUTABLE FACTS**

1. On October 16, 2007, Bricktown Capital, LLC, mortgaged the Bricktown Hotel to Bank. The mortgage was filed October 17, 2007, in Book 10637, at Pages 219-229, (the "Mortgage"). A copy of the Mortgage attached hereto as Exhibit "1".

2. In addition to the Bricktown Hotel real estate being pledged in the Mortgage to secure the indebtedness owing Bank, the Mortgage also contained an Assignment of Rents. See Exhibit "1", Mortgage, Page 2.

3. In addition to the Mortgage, and notwithstanding the Assignment of Rents provisions contained therein, Bricktown Capital, LLC, also pledged all of its rents and income in a separate "Assignment of Rents" filed October 17, 2007, in Book 10637, at Page 264-270, ("Assignment of Rents"). A copy of the Assignment of Rents is attached hereto as Exhibit "2".

4. After a contract was obtained to sell the Bricktown Hotel, Bank issued to Stewart Abstract its certain "payoff letter", which was good through December 10, 2014. A copy of the payoff letter, ("Payoff Letter"), is attached hereto as Exhibit "3".

5. As shown on the Payoff Letter, the amounts owing Bank through December 10, 2014, were:

Principal	\$1,836,650.47
Interest Due (Thru December 10, 2014)	55,711.73

Attorney Fees & Costs (From November 23, <u>2010</u> thru October, 2014)	17,727.94
Late Fees	50.00
Payoff Letter Fee	20.00
	<hr/>
Total Payoff (Thru December 10, 2014)	\$1,910,160.14
Per Diem Interest	\$306.11

6. The closing occurred on December 19, 2014. Stewart Abstract issued its final “Seller’s Closing Statement” indicating a “payoff” to Bank in the amount of \$1,911,290.69. See Stewart Abstract’s “Seller’s Closing Statement” attached hereto as Exhibit “4”.

7. Prior to the closing, the Receiver objected to the payment of any attorney fees and costs to Bank. The Receiver refused to agree to closing the \$2,550,000 sale of the hotel unless the \$17,727.94 in legal fees incurred by Bank from November, 2010, through October, 2014, were placed in escrow.

8. Numerous emails were exchanged with the Buyers’ attorney shortly before the sale. The Buyer’s attorney stated several times that the Seller (Bricktown Capital, LLC) will be considered in default if the sale did not timely close, and that the Buyers would therefore “back out” of the purchase.

9. To avoid stopping the sale of the hotel, and as an accommodation to both the Receiver and Bricktown Capital, LLC, Bank agreed to enter into an Escrow Agreement with the Receiver. The purpose of the Escrow Agreement was for Stewart Abstract to hold in escrow \$17,797.94 pending a resolution of who is entitled to the \$17,797.94. This resulted in Bank only being paid principal and accrued interest owing on the loan. Bank was not paid

the attorney fees and costs it had incurred and was not paid the \$50.00 late fee or the \$20.00 Payoff Letter fee. A copy of the Escrow Agreement is attached as Exhibit "5".

10. As a result of the closing, Bank was paid \$1,893,492.75. See copy of check paid to Bank by Stewart Abstract, a copy of which is attached hereto as Exhibit "6".

11. On January 7, 2015, Bank filed its Motion ("Bank's Motion") requesting an Order from this Honorable Court directing Stewart Abstract to pay the \$17,797.94 that is held in escrow to Bank.

12. Attached as Exhibit "8" is an Affidavit from John Workun, Executive Vice-President of Bank. In the Affidavit, Mr. Workun itemizes in detail all relevant facts, including attorney fees paid by the Bank, and specifically addresses whether or not payments paid by Bank were "added back in" to the Bricktown Capital loan. Mr. Workun's Affidavit confirms that as of January 15, 2015, that Bank has a \$19,404.94 net loss.

13. On September 9, 2014, this Court issued its "Order Modifying Relief". In relevant part, that Order provides:

"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." See Page 3 of "Order Modifying Relief", a copy of which is attached hereto as Exhibit "7".

#### **PROPOSITION I**

**BRICKTOWN CAPITAL, LLC, HAS ABSOLUTELY NO CLAIM TO THE \$17,797.94 THAT IS BEING HELD IN ESCROW.**

The "Order Modifying Relief", (Exhibit "7"), expressly states that any remaining net proceeds from the sale of the hotel shall be used for investor restitution. Nowhere does any

Order issued by this Court state that Bricktown Capital, LLC, is entitled to receive any money whatsoever from the sale of the hotel.

As a red herring, Defendant references in Paragraph 4 of its “Background” section of its Motion, a copy of the contract Defendant Bricktown Capital, LLC signed with the Buyer. The relevant portion Defendant relies upon states that Defendant agreed that “*all debts, liabilities and obligations arising from the ownership and operation of the Property shall have been paid*”. This is a contract exclusively between Bricktown Capital, LLC, and the Buyer, whereby Bricktown Capital, LLC, as the Seller, is promising to the Buyer that all debts and liabilities of the hotel will have been paid in full. That contract has absolutely nothing to do with Bank’s claim as a secured party, and more specifically, Bank’s claim to the \$17,797.94 that is being held in escrow by Stewart Abstract. Defendant Bricktown Capital, LLC’s, reliance on its own contract with the Buyer is nothing more than a red herring.

Assuming arguendo that Bank was not entitled to the \$17,797.94, then the only other party who would be entitled to receive the \$17,797.94 would be the Receiver for payment to investors pursuant to the September 9 Order Modifying Relief, (Exhibit “7”).

## **PROPOSITION II**

### **BANK HAS A SECURED LIEN ON THE \$17,797.94 CURRENTLY HELD IN ESCROW.**

In its “Proposition II”, Defendant Bricktown Capital makes the unsubstantiated claim that Bank is an unsecured creditor, and that Bank’s mortgage does not secure the subject \$17,797.94. Except for one reference to an inapplicable definition from Black’s Law Dictionary, Defendant offers no statutory or case authority whatsoever to support its position.

There can be no serious question that Bank's mortgage placed a secured lien on the Bricktown Hotel, which, of course, includes a lien on the sale proceeds from the sale of the Hotel in an amount equalling the total indebtedness owing Bank by Bricktown Capital.

In Bank's separate Motion filed herein on January 7, 2015, wherein Bank seeks an Order instructing the escrow agent to disburse the subject funds to the Bank, the Bank cites several statutes and case authority which confirm that Bank has a secured lien on the \$17,797.94. See authority cited in "Motion for Order Instructing Escrow Agent to Disburse Escrow Funds to Quail Creek Bank", filed January 7, 2015; Proposition II, "Bank's Mortgage Takes Priority Over All Claims", and Proposition IV, "The Mortgage Clearly Authorizes Bank to be Reimbursed Its Fees and Costs".

Defendant's final argument claims that the Bank did not object to the \$17,797.94 being placed in escrow, and therefore somehow "*tacitly agreed that this money was not part of the principal indebtedness*".

Nothing could be further from the truth. The only reason why the \$17,797.94 was placed in escrow was because the Receiver required the \$17,797.94 to be placed in escrow because, at that time, the Receiver was not willing to concede that the Bank was entitled to be paid its attorney fees and costs. To avoid stopping the sale of the hotel, Bank agreed to the escrow arrangement. If the Bank had not been willing to do so, the sale would not have occurred.

### **PROPOSITION III**

**BANK HAS A \$19,404.94 LOSS, WHICH IS GREATER THAN THE \$17,797.94 HELD IN ESCROW.**

The Affidavit of John Workun, Executive Vice-President for Bank, itemizes in detail all relevant facts involving the attorney fees and costs that Bank incurred, whose monies were used to pay those fees, whether or not the fees paid by the Bank were added back in to the principal amount owing by Bricktown Capital and the net resulting loss. See generally Exhibit "8", Affidavit of John Workun.

Mr. Workun confirms in his Affidavit that after doing all proper calculations, giving credits, etc., that as of January 15, 2015, the Bank has a \$19,404.94 loss, which is, of course, greater than the \$17,797.94 that is held in escrow by Stewart Abstract.

Because Bank has a secured lien on the \$17,797.94, Bank is entitled to be paid the \$17,797.94 since that amount is less than what was owed to Bank as of January 15, 2015.

If the Receiver had agreed to Bank being paid its attorney fees and costs, then there would be no Escrow Agreement and the Bank would have already been paid the \$17,797.94. Bank is now having to incur additional attorney fees because (i) Bank was not paid all money it was entitled to be paid at the closing, (ii) Bank has had to file its separate Motion, as filed herein on January 7, asking this Court to issue its Order instructing Stewart Abstract to pay the \$17,797.94 to Bank, (iii) Bank would not have been incurring attorney fees in having to draft this Objection to Defendant's Motion, and (iv) Bank would not be incurring attorney fees for having to appear at the hearing pursuant to Bank's Motion and now Defendant's Motion and Bank's Objection thereto.

#### **PRAYER**

Quail Creek Bank prays that this Honorable Court overrule Bricktown Capital, LLC's, Motion; that this Honorable Court issue its Order instructing Stewart Abstract to pay

the \$17,797.94 to Bank; that Bank be awarded all of its costs and fees incurred herein; and that Bank be awarded any and all other relief this Honorable Court deems just and proper.

Respectfully submitted,



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Rollin Nash, Jr., OBA No. 6584  
NASH, COHENOUR, KELLEY, GIESSMANN  
& KNIGHT, P.C.  
4101 Perimeter Center Dr, Suite 200  
Oklahoma City, OK 73112  
(405) 917-5000 – Telephone  
(405) 917-5005 – Facsimile  
Email: [mash@nashfirm.com](mailto:mash@nashfirm.com)  
ATTORNEYS FOR QUAIL CREEK BANK

**CERTIFICATE OF SERVICE**

This certifies that on the 22<sup>nd</sup> day of January, 2015, a true and correct copy of the above document was emailed to the following:

Patricia A. Labarthe  
Jennifer Shaw  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102

Jim W. Lee  
One Broadway Executive Park  
201 N.W. 63<sup>rd</sup>, Suite 230  
Oklahoma City, OK 73116-8237

Mark A. Robertson  
Michael Paul Kirschner  
Robertson & Williams  
9658 N. May Avenue, Suite 200  
Oklahoma City, OK 73120

Robert Edinger, Esq.  
116 East Sheridan  
Suite 207  
Oklahoma City, OK 73104

John M. Thompson  
CROWE & DUNLEVY  
Braniff Building  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102

Ryan Leonard  
MEYER LEONARD & ALLISON, PLLC  
116 East Sheridan, Suite 207  
Oklahoma City, OK 73104

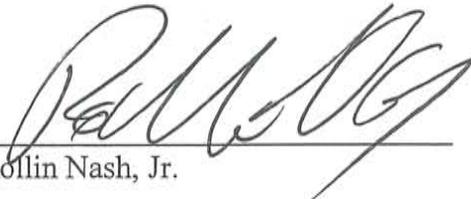
Terry D. Kordeliski  
RIGGS ABNEY  
5801 N. Broadway Ext., Suite 101  
Oklahoma City, OK 73118-7489

R. Stephen Haynes  
First Commercial Bank Building  
3805 West Memorial Road  
Oklahoma City, OK 73134

HPJ Family Limited Partnership  
6632 Parkhurst Rd.  
Edmond, OK 73003

David L. Nunn  
DAVID L. NUNN, P.C.  
P.O. Box 230  
Edmond, OK 73083-0230

Edward O. Lee  
Billy Lewis  
LEE, GOODWIN, LEE, LEWIS  
& DOBSON  
1300 E. 9<sup>th</sup>  
Suite 1  
Edmond, OK 73034

  
Rollin Nash, Jr.

**AMERICAN GUARANTY TITLE CO.**  
4040 N. TULSA  
OKLAHOMA CITY, OK 73112

A

Doc # 2007152128  
BK 10637  
Pg 230-232  
DATE 10/17/07 15:38:00  
Filing Fee \$17.00  
Documentary Tax \$0.00  
State of Oklahoma  
County of Oklahoma  
Oklahoma County Clerk  
Carolynn Caudill

RECORDATION REQUESTED BY:  
QUAIL CREEK BANK, N.A.  
P.O. BOX 20160  
12201 N MAY AVENUE, OKLAHOMA CITY,  
OK 73120  
OKLAHOMA CITY, OK 73156

RETURN TO  
American Guaranty Title Company  
4040 N. Tulsa  
Oklahoma City, Oklahoma 73112  
Attention: *Jamie Garcia*  
#07082007

WHEN RECORDED MAIL TO:  
QUAIL CREEK BANK, N.A.  
P.O. BOX 20160  
12201 N MAY AVENUE, OKLAHOMA CITY,  
OK 73120  
OKLAHOMA CITY, OK 73156

Doc # 2007152128  
BK 10637  
Pg 219-229  
DATE 10/17/07 15:38:00  
Filing Fee \$33.00  
Documentary Tax \$0.00  
State of Oklahoma  
County of Oklahoma  
Oklahoma County Clerk  
Carolynn Caudill

SEND TAX NOTICES TO:  
BRICKTOWN CAPITAL LLC  
425 NW 11th STREET  
OKLAHOMA CITY, OK 73103

TREASURER'S ENDORSEMENT  
I hereby certify that I received \$ 3,238.03 issued rec No. 118  
Therefore I am releasing the mortgage tax on the within mortgage.  
Dated this 17th day of OCTOBER, 2007.  
FORREST "BUTCH" FREEMAN, County Treasurer  
By HOLLY GUNCKEL, Deputy

FOR RECORDER'S USE ONLY



2 MORTGAGE

A POWER OF SALE HAS BEEN GRANTED IN THIS MORTGAGE.  
A POWER OF SALE MAY ALLOW THE MORTGAGEE TO TAKE THE MORTGAGED  
PROPERTY AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE ACTION  
UPON DEFAULT BY THE MORTGAGOR UNDER THIS MORTGAGE.

THIS MORTGAGE dated October 16, 2007, is made and executed between BRICKTOWN CAPITAL LLC; AN OKLAHOMA LIMITED LIABILITY COMPANY (referred to below as "Grantor") and QUAIL CREEK BANK, N.A., whose address is P.O. BOX 20160, 12201 N MAY AVENUE, OKLAHOMA CITY, OK 73120, OKLAHOMA CITY, OK 73156 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in OKLAHOMA County, State of Oklahoma:

A part of the Southwest Quarter (SW/4) of Section THIRTY-SIX (36), Township TWELVE (12) North, Range THREE (3) West of the Indian Meridian, Oklahoma County, Oklahoma, more particularly described as follows: Beginning at the Southwest corner of said Southwest Quarter (SW/4); thence North on the West line a distance of 225 feet; thence East and parallel to the South Section line a distance of 50 feet; thence North and parallel to the West Section line a distance of 250 feet; thence East and parallel with the South Section line a distance of 605.12 feet; thence South and parallel with the West Section line a distance of 425 feet; thence West and parallel with the South Section line a distance of 380.12 feet; thence South and parallel with the West Section line a distance of 50 feet to a point on the South Section line; thence West on said South Section line a distance of 275 feet to the point of beginning. Less and Except that part as described as follows: Beginning 50.00 feet East of and 33.00 feet North of the Southwest corner of said Southwest Quarter (SW/4); thence East along the North right-of-way line of Reno Avenue a distance of 225.00 feet; thence North a distance of 17.00 feet; thence South 89°49'16" West a distance of 205.02 feet; thence North 45°12'48" West a distance of 28.30 feet to a point on the East right-of-way line of Eastern Avenue; thence South along said right-of-way line a distance of 37 feet to a point of beginning. And Less and Except that part described as follows: Beginning 445.82 feet North and 50 feet East of the Southwest corner of the Southwest Quarter (SW/4); thence North a distance of 30 feet; thence East a distance of 30 feet; thence in a Southwesterly direction a distance of 42.77 feet to the point of beginning.

The Real Property or its address is commonly known as 2001 E RENO AVENUE, OKLAHOMA CITY, OK

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3,238.<sup>03</sup> + 5.<sup>00</sup>

11/23

MORTGAGE  
(Continued)

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73117.

Grantor also grants to Lender a Uniform Commercial Code security interest in the Personal Property as defined below.

**ASSIGNMENT OF RENTS.** In addition to the mortgaging of the Real Property to Lender, if Grantor's loan does not constitute a consumer loan as defined in 14A O.S. Section 3-104 and is not made primarily for an agricultural purpose as defined in 14A O.S. Section 1-301(4) to a natural person or to a farm or ranching business corporation as defined in 18 O.S. Section 951, Grantor hereby grants to Lender as additional security for the Indebtedness secured by this Mortgage and empowers Lender to collect all Rents (as defined below) from the Property. This grant is known as an "Assignment of Rents," but is sometimes technically denominated as a pledge since the assignment is conditional and not absolute. This Assignment of Rents is conditioned upon the occurrence of an Event of Default under this Mortgage and becomes effective thereafter, whether or not proceedings have been instituted to foreclose this Mortgage by judicial foreclosure or power of sale upon the earliest of:

- (a) Lender taking possession of the Property, and Grantor agrees that upon default Lender or its agent shall have the right to take possession of the Property, collect the Rents, and apply the proceeds to the Indebtedness;
- (b) the appointment of a receiver for the Property, and Grantor recognizes that upon the occurrence of an Event of Default under this Mortgage, a court may grant specific performance of Grantor's agreement that Lender will have the right to take possession of the Property by appointment of a receiver in accordance with 12 O.S. Section 1551 (Sixth), which authorizes appointment in all other cases where receivers have been appointed by the usages of the courts of equity, and may also appoint a receiver upon the other grounds for appointment of a receiver set forth in 12 O.S. Section 1551 (Second); or
- (c) Lender giving Grantor and any lessees of the Property written notice to pay Rents due after a specified date to Lender, and Grantor recognizes that consistent with 46 O.S. Section 4 when the Lender receives Rents after written notice and does not also enter into physical possession of the Property and exercise exclusive operating control, Lender shall not be deemed to be a "mortgagee in possession," but will account to Grantor regarding Rents actually collected.

Grantor also recognizes that Lender may as part of this Assignment of Rents extend or renew or enter into new leases for periods and payments consistent with the terms and payments customary for leases of the Property. If Lender sends written notice to a lessee obligated to pay under any lease on the Property requesting lessee to direct all Rents payable under the lease to Lender, this Assignment of Rents, when it is effective, shall transfer to Lender the lessee's obligation to pay Grantor the Rents, and Grantor and all lessees agree that no modification or termination or renewal of a lease prior to or subsequent to that time or advance payment and collection of Rents will be effective against Lender unless Lender consents in writing. If any lessee obligated to pay Lender does not do so, Lender shall have available all remedies to collect the Rents, including without limitation those available to a lessor upon a lessee's failure to perform under a lease. If Grantor occupies the Property, Grantor also agrees to pay to Lender a reasonable rental for the use and occupancy of the Property if after default Lender makes a demand for such payment in writing.

Grantor agrees that this Assignment of Rents will be considered as separate and independent from the Mortgage to the extent that the Assignment of Rents shall continue in effect in favor of the purchaser of the Property upon foreclosure with respect to leases that are not terminated by foreclosure or, at the election of Lender made known before any sale upon foreclosure is concluded, shall continue in effect in favor of Lender with respect to leases that are not terminated by foreclosure until any deficiency owed Lender after foreclosure is satisfied by payments under the leases, at which time further due payments shall accrue to the purchaser of the Property or to the purchaser's assigns.

**THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under,

EXHIBIT 1  
PAGE 2  
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MORTGAGE  
(Continued)

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about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent. This restriction will not apply to rights and easements (such as gas and oil) not owned by Grantor and of which Grantor has informed Lender in writing prior to Grantor's signing of this Mortgage.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Oklahoma law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this

EXHIBIT 1  
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OF 11 PAGES

MORTGAGE  
(Continued)

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Mortgage:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$500.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage:

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$100.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear. If all or part of the Property is damaged or destroyed by a third party and sums are due from that party or its insurer as a result, whether due to judgment, settlement or other process, these sums shall be applied in the same manner as insurance proceeds under this paragraph.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is

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required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note or at the highest rate authorized by law, from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default. If Lender is required by law to give Grantor notice before or after Lender makes an expenditure, Grantor agrees that notice sent by regular mail at least five (5) days before the expenditure is made or notice delivered two (2) days before the expenditure is made is sufficient, and that notice within sixty (60) days after the expenditure is made is reasonable.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Mortgage:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

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**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Condemnation, Casualty.** The taking by rights of eminent domain of all or any portion of the Property or the damage or destruction by an uninsured casualty of the Property.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material

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respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Grantor would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** In any action by Lender for the foreclosure of this Mortgage, whether by judicial foreclosure or power of sale, Lender shall be entitled to the appointment of a receiver upon any failure of Grantor to comply with any term, obligation, covenant, or condition contained in this Mortgage, the Note, or any Related Documents.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of

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the Property.

**Power of Sale.**(1) Lender, as an alternative remedy, may elect to foreclose by power of sale, and Grantor authorizes Lender, or Lender's attorney, and grants to Lender, or Lender's attorney, the power (a) to sell and to convey the Property to a purchaser and the purchaser's heirs or assigns, forever, and (b) to foreclose Grantor's rights and the rights of all persons who took an interest in the Property subject to this Mortgage.(2) This right to foreclose and to sell and convey the Property which Grantor has given Lender by contract is called the "power of sale" and may, at the option of Lender, be utilized in lieu of the procedure authorized by law for acceleration and foreclosure by judicial process. The power of sale means that in accordance with applicable Oklahoma law with respect to notice to Grantor and other persons, Grantor's interest and the other persons' interests in the Property can be sold by Lender at public sale and that the proceeds can be applied to pay the accelerated debt evidenced by the Note and any other indebtedness secured by this Mortgage without Lender having to go to court in a foreclosure action.(3) However, under the power of sale, before Lender, after an Event of Default, declares all sums secured by this Mortgage immediately due and payable irrespective of any maturity date specified in the Note or in this Mortgage, Lender must give Grantor written notice of intention to foreclose by power of sale, which notice informs Grantor how Grantor has failed to perform under this Mortgage and what Grantor must do to cure the failure.(4) Grantor will have the right for thirty-five (35) days from the date notice is sent, or for any other period provided by law, to cure the failure by paying money or otherwise providing the performance due, unless Grantor previously has been in default more than the number of times specified by statute within the previous two (2) years, in which case (a) Lender is entitled immediately to accelerate the sums secured by this Mortgage and to proceed with the power of sale, and (b) Lender is not required to send a notice of intention of foreclosure with any right to cure. If Grantor cures the default or if Lender accepts a partial performance and a promise to complete performance later, Lender may not require immediate payment in full by acceleration. Grantor understands cure of a default or Lender's acceptance of partial cure and a promise to complete performance later does not affect or compromise Lender's rights if there is again a default. If Lender so requests, Grantor agrees to sign and return a form stating (a) when Grantor received the notice specified in this paragraph, (b) whether the Property is homestead property, and (c) if so, whether Grantor will elect judicial foreclosure or elect against a deficiency. Grantor understands that Grantor may, but need not, waive a right to cure in any such receipt form if requested by Lender.(5) In any effort to collect the amounts secured by this Mortgage, whether or not involving foreclosure and sale by power of sale, Lender will have the right to collect all costs allowed by law, and Grantor agrees to pay to the extent permitted by law Lender's legal expenses.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

**Appraisal.** Lender, at Lender's option, may waive or not waive appraisal of the Property at the time judgment is rendered in any judicial foreclosure of the Property or at any time prior to such foreclosure.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender, to the extent permitted by applicable law, shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid.

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Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**NOTICES.** To the extent permitted by applicable law, any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. To the extent permitted by applicable law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. All prior and contemporaneous representations and discussions concerning such matters either are included in this document or do not constitute an aspect of the agreement of the parties. Except as may be specifically set forth in this Mortgage, no conditions precedent or subsequent, of any kind whatsoever, exist with respect to Grantor's obligations under this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Governing Law.** This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Oklahoma without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of Oklahoma.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If

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ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Mortgage.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Oklahoma as to all Indebtedness secured by this Mortgage.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means BRICKTOWN CAPITAL LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Default.** The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

**Grantor.** The word "Grantor" means BRICKTOWN CAPITAL LLC.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

**Lender.** The word "Lender" means QUAIL CREEK BANK, N.A., its successors and assigns.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender.

**Note.** The word "Note" means the promissory note dated October 16, 2007, in the original principal amount of \$3,238,031.53 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

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OF 11 PAGES

MORTGAGE  
(Continued)

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**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

BRICKTOWN CAPITAL LLC

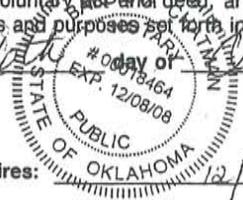
By: [Signature]  
THOMAS W SEABROOKE, Manager of BRICKTOWN CAPITAL  
LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Oklahoma )  
 ) SS  
COUNTY OF Oklahoma )

Before me, the undersigned, a Notary Public in and for the above County and State, on this 16th day of October, 2007 personally appeared THOMAS W SEABROOKE, Manager of BRICKTOWN CAPITAL LLC, a member or designated agent of BRICKTOWN CAPITAL LLC, to me known to be the identical person who executed the Mortgage on behalf of the limited liability company and acknowledged to me that THOMAS W SEABROOKE, Manager of BRICKTOWN CAPITAL LLC, executed the same Mortgage as his or her free and voluntary act and deed, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes set forth in the Mortgage.

Signed the 16th day of October, 2007.  
Barbara Chatman  
Notary Public



My Commission Expires: 12/8/08

Loan Number 167187

EXHIBIT 1  
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OF 11 PAGES

AMERICAN GUARANTY TITLE CO.  
4040 N. TULSA  
OKLAHOMA CITY, OK 73112

33

Doc # 2007152133  
Bk 10637  
Pg 264-270  
DATE 10/17/07 15:38:00  
Filing Fee \$25.00  
Documentary Tax \$0.00  
State of Oklahoma  
County of Oklahoma  
Oklahoma County Clerk  
Carolynn Caudill

RECORDATION REQUESTED BY:  
QUAIL CREEK BANK, N.A.  
P.O. BOX 20160  
12201 N MAY AVENUE, OKLAHOMA CITY,  
OK 73120  
OKLAHOMA CITY, OK 73156

RETURN TO  
American Guaranty Title Company  
4040 N. Tulsa  
Oklahoma City, Oklahoma 73112  
Attention *Jamie Garcia*

WHEN RECORDED MAIL TO:  
QUAIL CREEK BANK, N.A.  
P.O. BOX 20160  
12201 N MAY AVENUE, OKLAHOMA CITY,  
OK 73120  
OKLAHOMA CITY, OK 73156

#07082007

SEND TAX NOTICES TO:  
BRICKTOWN CAPITAL LLC  
425 NW 11th STREET  
OKLAHOMA CITY, OK 73103

FOR RECORDER'S USE ONLY



Quail Creek Bank, n.a.



\*000000000000167187011510162007\*

ASSIGNMENT OF RENTS

THIS ASSIGNMENT OF RENTS dated October 16, 2007, is made and executed between BRICKTOWN CAPITAL LLC; AN OKLAHOMA LIMITED LIABILITY COMPANY (referred to below as "Grantor") and QUAIL CREEK BANK, N.A., whose address is P.O. BOX 20160, 12201 N MAY AVENUE, OKLAHOMA CITY, OK 73120, OKLAHOMA CITY, OK 73156 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in OKLAHOMA County, State of Oklahoma:

A part of the Southwest Quarter (SW/4) of Section THIRTY-SIX (36), Township TWELVE (12) North, Range THREE (3) West of the Indian Meridian, Oklahoma County, Oklahoma, more particularly described as follows: Beginning at the Southwest corner of said Southwest Quarter (SW/4); thence North on the West line a distance of 225 feet; thence East and parallel to the South Section line a distance of 50 feet; thence North and parallel to the West Section line a distance of 250 feet; thence East and parallel with the South Section line a distance of 605.12 feet; thence South and parallel with the West Section line a distance of 425 feet; thence West and parallel with the South Section line a distance of 380.12 feet; thence South and parallel with the West Section line a distance of 50 feet to a point on the South Section line; thence West on said South Section line a distance of 275 feet to the point of beginning. Less and Except that part as described as follows: Beginning 50.00 feet East of and 33.00 feet North of the Southwest corner of said Southwest Quarter (SW/4); thence East along the North right-of-way line of Reno Avenue a distance of 225.00 feet; thence North a distance of 17.00 feet; thence South 89°49'16" West a distance of 205.02 feet; thence North 45°12'48" West a distance of 28.30 feet to a point on the East right-of-way line of Eastern Avenue; thence South along said right-of-way line a distance of 37 feet to a point of beginning. And Less and Except that part described as follows: Beginning 445.82 feet North and 50 feet East of the Southwest corner of the Southwest Quarter (SW/4); thence North a distance of 30 feet; thence East a distance of 30 feet; thence in a Southwesterly direction a distance of 42.77 feet to the point of beginning.

The Property or its address is commonly known as 2001 E RENO AVENUE, OKLAHOMA CITY, OK 73117.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents,

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**ASSIGNMENT OF RENTS  
(Continued)**

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Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that:

**Ownership.** Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

**Right to Assign.** Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

**No Prior Assignment.** Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

**No Further Transfer.** Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

**LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS.** Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

**Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

**Enter the Property.** Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

**Maintain the Property.** Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

**Compliance with Laws.** Lender may do any and all things to execute and comply with the laws of the State of Oklahoma and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

**Lease the Property.** Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

**Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

**Other Acts.** Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

**No Requirement to Act.** Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

**APPLICATION OF RENTS.** All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

**FULL PERFORMANCE.** If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Assignment, the Note, and the Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

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**ASSIGNMENT OF RENTS  
(Continued)**

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**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note or at the highest rate authorized by law, from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Assignment also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default. If Lender is required by law to give Grantor notice before or after Lender makes an expenditure, Grantor agrees that notice sent by regular mail at least five (5) days before the expenditure is made or notice delivered two (2) days before the expenditure is made is sufficient, and that notice within sixty (60) days after the expenditure is made is reasonable.

**DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Assignment:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Assignment or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Default on Other Payments.** Failure of Grantor within the time required by this Assignment to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Assignment or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Property Damage or Loss.** The Property is lost, stolen, substantially damaged, sold, or borrowed against.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Cure Provisions.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the

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ASSIGNMENT OF RENTS  
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default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Grantor would be required to pay.

**Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** In any action by Lender for the foreclosure of this Assignment, whether by judicial foreclosure or power of sale, Lender shall be entitled to the appointment of a receiver upon any failure of Grantor to comply with any term, obligation, covenant, or condition contained in this Assignment, the Note, or any Related Documents.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Assignment:

**Amendments.** This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. All prior and contemporaneous representations and discussions concerning such matters either are included in this document or do not constitute an aspect of the agreement of the parties. Except as may be specifically set forth in this Assignment, no conditions precedent or subsequent, of any kind whatsoever, exist with respect to Grantor's obligations under this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Caption Headings.** Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

**Governing Law.** This Assignment will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Oklahoma without regard to its conflicts of law provisions. This Assignment has been accepted by Lender in the State of Oklahoma.

**Merger.** There shall be no merger of the interest or estate created by this assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

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ASSIGNMENT OF RENTS  
(Continued)

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**Interpretation.** (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** To the extent permitted by applicable law, any notice required to be given under this Assignment shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. To the extent permitted by applicable law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Powers of Attorney.** The various agencies and powers of attorney conveyed on Lender under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are renounced by Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

**Successors and Assigns.** Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Assignment.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Oklahoma as to all indebtedness secured by this Assignment.

**Waiver of Right of Redemption.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Assignment. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Assignment.** The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to

EXHIBIT 2  
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ASSIGNMENT OF RENTS  
(Continued)

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this ASSIGNMENT OF RENTS from time to time.

**Borrower.** The word "Borrower" means BRICKTOWN CAPITAL LLC.

**Default.** The word "Default" means the Default set forth in this Assignment in the section titled "Default".

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Assignment in the default section of this Assignment.

**Grantor.** The word "Grantor" means BRICKTOWN CAPITAL LLC.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment.

**Lender.** The word "Lender" means QUAIL CREEK BANK, N.A., its successors and assigns.

**Note.** The word "Note" means the promissory note dated October 16, 2007, in the original principal amount of \$3,238,031.53 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON OCTOBER 16, 2007.

GRANTOR:

BRICKTOWN CAPITAL LLC

By:   
THOMAS W SEABROOKE, Manager of BRICKTOWN CAPITAL  
LLC

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(Continued)

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Oklahoma )  
 ) SS  
COUNTY OF Oklahoma )

Before me, the undersigned, a Notary Public in and for the above County and State, on this 16<sup>th</sup> day of October, 2007, personally appeared **THOMAS W SEABROOKE, Manager of BRICKTOWN CAPITAL LLC**, a member or designated agent of **BRICKTOWN CAPITAL LLC**, to me known to be the identical person who executed the Assignment on behalf of the limited liability company and acknowledged to me that **THOMAS W SEABROOKE, Manager of BRICKTOWN CAPITAL LLC**, executed the same Assignment as his or her free and voluntary act and deed, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes set forth in the Assignment.

Signed this 16<sup>th</sup> day of October, 2007  
Barbara Chatman  
Notary Public



My Commission Expires 12/8/08

Loan Number 167187

CNO FIDELIC

EXHIBIT 2  
PAGE 7  
OF 7 PAGES

PAYOFF LETTER

TO: Stewart Title  
ATTN: Margaret  
FAX# \_\_\_\_\_  
PHONE \_\_\_\_\_

As requested, the amount listed below is required to payoff the referenced loan with Quail Creek Bank n.a.

CUSTOMER Bucktown Capital, LLC  
LOAN # 1107187 COLLATERAL 2001 E Bend Ave  
CKC, OK.

ok for	PRINCIPAL	<u>\$1,836,650.47</u>	}
	INTEREST DUE	<u>\$55,711.73</u>	
	Legal Fees	<u>\$17,237.94</u> (Nov 2010 - Oct 2014)	
	LATE FEES	<u>\$50 -</u>	
	PAYOFF LETTER FEE	<u>\$20 -</u>	
TOTAL PAYOFF		<u>\$1,910,100.14</u>	
GOOD THRU:		<u>12-10-14</u>	
PER DIEM:		<u>\$300.11</u>	

LINE OF CREDIT

PLEASE CALL & VERIFY PAYOFF BEFORE FORWARDING. BALANCES MAY HAVE CHANGED.

UPON RECEIPT OF THE PAYOFF PROCEEDS, THE ABOVE PROPERTY WILL BE RELEASED ALONG WITH ANY UCC FILINGS RELATED TO THIS PROPERTY.

RESPECTFULLY,

Sheeli Hines  
LOAN ADMINISTRATION

EXHIBIT 3  
PAGE 1  
OF 1 PAGES



Quail Creek Bank n.a.

## 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

133626030

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 12/19/2014 Disbursement Date 12/19/2014 Proration Date 12/19/2014

	Debit	Credit
<b>Sales/Price</b>		
Contract sales price		\$2,550,000.00
<b>Prorations</b>		
County taxes 12/19/2014 to 1/1/2015		\$1,370.50
<b>Other Adjustments</b>		
Release of Mortgage (Doyle Mortgage) to County Clerk	\$17.00	
2014 Real Estate Taxes to County Treasurer	\$38,479.29	
Pursuant to Agreement Net Proceeds to Oklahoma County District Court Clerk	\$187,858.90	
<b>Payoffs</b>		
Payoff of first mortgage loan to 12-15-14 to Quail Creek Bank	\$1,911,290.69	
Payoff of second mortgage loan to 12/23/14 to SBA; Loan: 6525055006	\$327,772.12	
<b>Commissions</b>		
\$76,500.00 to Vawter real Estate	\$76,500.00	
<b>Title Charges</b>		
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	
<b>Recording Fees/Transfer Charges</b>		
State tax/stamps: Deed \$3,825.00	\$3,825.00	
<b>Subtotal:</b>	<b>\$2,551,370.50</b>	<b>\$2,551,370.50</b>
Balance due from Seller:		\$0.00
<b>Totals:</b>	<b>\$2,551,370.50</b>	<b>\$2,551,370.50</b>

  
\_\_\_\_\_  
Bricktown Capital LLC

EXHIBIT 4  
PAGE 1  
OF 1 PAGES

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") made by and between Ryan Leonard, Receiver ("Receiver"), as appointed in the certain civil proceeding entitled "*Oklahoma Department of Securities ex rel Irving L. Faught, Administrator, Plaintiff, vs. Seabrooke Investments, LLC, et al.*", Case No. CJ-2014-4515, (the "Lawsuit"), and Quail Creek Bank ("Bank"). This Agreement is accepted and approved by Stewart Abstract & Title of Oklahoma ("Escrow Agent), as evidenced by its signature below.

RECITALS

WHEREAS, Escrow Agent has been requested to close a certain sale of real property which is commonly known by the Receiver and Bank as the "Bricktown Hotel and Convention Center" (the "Hotel"); and

WHEREAS, as part of the subject Settlement Statement (HUD-1) involving the sale of the Hotel, the Bank has requested that it be reimbursed \$17,797.94 as and for its attorney fees, costs, late fees and letter fee, as incurred by Bank throughout the term of the loan; and

WHEREAS, the Receiver has not yet had an opportunity to complete his due diligence regarding whether or not the \$17,797.94 should be paid to Bank at the closing; and

WHEREAS, the Receiver and Bank agree that the sale of the Hotel should occur as quickly as possible, and the question regarding the payment of the \$17,797.94 to Bank should not impede or delay the closing of the sale of the Hotel; and

WHEREAS, the Receiver and Bank agree that the \$17,797.94 should remain in escrow, and held by the Escrow Agent pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the Recitals set forth above, and the agreements set forth below, it is therefore agreed as follows:

AGREEMENTS

1. Agreement to Close Sale of Hotel. The Receiver and Bank agree that the Escrow Agent shall immediately close the sale of the Hotel as expeditiously as possible, and without delay.
2. Escrow of "Attorney Fees and Costs". Per the Settlement Statement previously prepared and circulated among the Parties by Escrow Agent, the Receiver and Bank agree that the \$17,797.94 referenced in the Settlement Statement as Bank's attorney fees, costs, late fees and letter fee shall not be distributed at the closing to Bank, but rather the \$17,797.94 shall remain in escrow pursuant to the terms of this Agreement.

Escrow Agreement by and between  
Ryan Leonard, Receiver, and  
Quail Creek Bank  
Page 1 of 3

EXHIBIT 5  
PAGE 1  
OF 5 PAGES

3. Future Court Order. The Receiver and Bank agree that Escrow Agent shall hold the \$17,797.94 in escrow pursuant to the terms hereof until the Court in the Lawsuit issues its Order, which shall contain specific orders directing how much, and to whom, the \$17,797.94 should be distributed.

4. Terms Involving Escrow Agent. The following terms shall govern the responsibilities, duties and liabilities of the Escrow Agent, to-wit:

A. Depository Duty. The Escrow Agent will be liable as a depository only in accordance with this Agreement.

B. Standard of Care. The Escrow Agent will not be liable for any act or omission done in good faith, or for any claim, demand, loss or damage made or suffered by any party to this Agreement, excepting such as may arise through or be caused by the Escrow Agent's willful misconduct or gross negligence.

C. Reliance. The Escrow Agent is authorized to rely upon any file-stamped, certified copy of any Order(s) entered in the Lawsuit with respect to the \$17,797.94, and the Receiver and Bank both hereby release and hold Escrow Agent harmless for following the orders contained in any such Order(s) involving the Lawsuit and the subject \$17,797.94.

D. Escrow Fee. Because Escrow Agent will be paid its fee for closing the sale of the Hotel, Escrow Agent will not be paid a separate fee for serving as Escrow Agent under this Agreement.

E. Liability of Escrow Agent. If the Escrow Agent obeys or complies with any judgment, order or decree issued by the Court in the Lawsuit, the Escrow Agent will not be liable to any of the parties hereto nor to any other person, firm or corporation by reason of such compliance, notwithstanding any such judgment, order or decree being subsequently reversed, appealed, modified, annulled, set aside or vacated.

F. Dispute. In addition to Escrow Agent's other rights herein, in the event any contest, dispute or litigation arises or exists between the UNDERSIGNED, then in such event, Escrow Agent may, in its discretion, continue to retain the \$17,797.94 as Escrow Agent during the pendency of any such contest, dispute or litigation, provided that both the UNDERSIGNED consent to Escrow Agent retaining such funds. However, if both the UNDERSIGNED do not consent to Escrow Agent retaining the Escrow Funds during the pendency of any contest, dispute or litigation, then in such event, Escrow Agent may, in its discretion, interplead the Escrow Funds into the office of the court Clerk of Oklahoma county, State of Oklahoma, in which event, Escrow Agent shall be entitled to be repaid its expenses, including court costs and attorney fees which it incurs

as a result thereof, and in which event this Escrow Agreement shall be deemed terminated.

The UNDERSIGNED have executed this instrument on the date appearing opposite each Party's respective signature.

"RECEIVER"

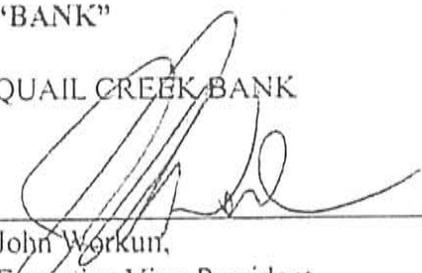
Signed: December \_\_\_\_\_, 2014

\_\_\_\_\_  
Ryan Leonard

"BANK"

QUAIL CREEK BANK

Signed: December 18, 2014

BY:   
\_\_\_\_\_  
John Workun,  
Executive Vice-President

Stewart Abstract & Title of Oklahoma agrees to act as Escrow Agent under the terms and conditions set forth above.

Signed: December \_\_\_\_\_, 2014

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

as a result thereof, and in which event this Escrow Agreement shall be deemed terminated.

The UNDERSIGNED have executed this instrument on the date appearing opposite each Party's respective signature.

"RECEIVER"

Signed: December 17<sup>th</sup>, 2014

*Ryan Leonard*  
Ryan Leonard

"BANK"

QUAIL CREEK BANK

Signed: December \_\_\_\_\_, 2014

BY: \_\_\_\_\_  
John Workun,  
Executive Vice-President

Stewart Abstract & Title of Oklahoma agrees to act as Escrow Agent under the terms and conditions set forth above.

Signed: December \_\_\_\_\_, 2014

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

as a result thereof, and in which event this Escrow Agreement shall be deemed terminated.

The UNDERSIGNED have executed this instrument on the date appearing opposite each Party's respective signature.

"RECEIVER"

Signed: December \_\_\_\_\_, 2014

\_\_\_\_\_  
Ryan Leonard

"BANK"

QUAIL CREEK BANK

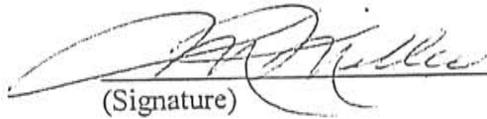
Signed: December \_\_\_\_\_, 2014

BY: \_\_\_\_\_

John Workun,  
Executive Vice-President

Stewart Abstract & Title of Oklahoma agrees to act as Escrow Agent under the terms and conditions set forth above.

Signed: December 17, 2014

  
\_\_\_\_\_  
(Signature)

Margaret Miller, Sr. Vice President  
(Print Name and Title)





IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

SEP 19 2014

FILED  
DISTRICT CLERK

79 *Mus*

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, Administrator, )

Plaintiff, )

v. )

Case No. CJ-2014-4515

Seabrooke Investments LLC, an Oklahoma )  
limited liability company; )

Seabrooke Realty LLC, an Oklahoma )  
limited liability company; )

Oakbrooke Homes LLC, an Oklahoma )  
limited liability company; )

Bricktown Capital LLC, an Oklahoma )  
limited liability company; )

KAT Properties LLC, an Oklahoma )  
limited liability company; )

Cherry Hill LLC, an Oklahoma limited liability )  
company doing business as Cherry Hill Apartments; )

Tom W. Seabrooke, individually and as trustee of )

Tom Seabrooke 2007 Revocable Trust and )

J. Karyn Seabrooke 2007 Revocable Trust; and )

Judith Karyn Seabrooke, individually and as trustee )  
of Tom Seabrooke 2007 Revocable Trust and )

J. Karyn Seabrooke 2007 Revocable Trust, )

Defendants. )

**ORDER MODIFYING RELIEF**

On August 11, 2014, the Oklahoma Department of Securities ("Department"), ex rel. Irving L. Faught, Administrator, filed a verified *Petition for Permanent Injunction and Other Relief* against the named Defendants pursuant to the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011).

EXHIBIT 7  
PAGE 1  
OF 6 PAGES

On August 11, 2014, the Department filed the *Application for Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, Order for Accounting and Temporary Injunction* pursuant to the Act.

On August 11, 2014, this Court entered the *Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, Order for Accounting and Temporary Injunction*.

On September 5, 2014 entered the *Temporary Injunction and Ancillary Relief (Temporary Injunction)*.

A significant asset of the receivership is the Bricktown Hotel and Convention Center (Bricktown Hotel), an asset owned by Defendant Bricktown Capital LLC. Operation of the Bricktown Hotel has required substantial time of the Receiver and resulted in substantial expense to the receivership. The Receiver has determined that the Bricktown Hotel is operating at a deficit and has for at least a year. The amount due on the primary mortgage on the Bricktown Hotel is in excess of One Million Eight Hundred Thousand Dollars (\$1,800,000). The amount due on the secondary mortgage on the Bricktown Hotel is approximately Three Hundred Fifty Thousand Dollars (\$350,000). The Department and the Receiver believe that the current value of the Bricktown Hotel is less than the value of the Bricktown Hotel's existing mortgages.

The parties wish to modify the Temporary Injunction by releasing Bricktown Capital LLC from the asset freeze and receivership and by releasing the Bricktown Hotel from the asset freeze and receivership, with it also being agreed that the Receiver and the Plaintiff shall 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. All other provisions of the Temporary Injunction shall remain in effect.

IT IS HEREBY ORDERED that Bricktown Capital LLC be released from the receivership and the asset freeze herein effective immediately.

IT IS FURTHER ORDERED that monies in the following bank accounts of Bricktown Capital LLC, be allocated as follows:

- (1) \$42,214.23 from the Bank of the West account number xxx-xx0749 and \$1,822.49 from the Bank of the West account number xxx-xx5268 shall be released to Bricktown Capital LLC; and
- (2) \$34,500.94 from the Bank of the West account number xxx-xx9583 and \$9,575.75 from the Bank of the West account number xxx-xx0749 shall remain in the full custody and control of the Receiver and shall be transferred immediately by Bank of the West to an account in the name of the Receiver.

IT IS FURTHER ORDERED that the asset known as the Bricktown Hotel be released from the asset freeze and the receivership herein effective immediately.

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.

IT IS FURTHER ORDERED that if Bricktown Capital LLC or Bricktown Hotel receives proceeds from insurance litigation or settlement relating to any claim from damages to the Bricktown Hotel that occurred in 2013, in an amount greater than the amounts owed on valid

mortgages existing as of the date of this order and the amount necessary to repair the damages sustained from the 2013 incident, the remaining funds will be used to pay, on a pro rata basis, investor restitution owed by Defendants as determined by this Court.

IT IS FURTHER ORDERED that all other provisions of the Temporary Injunction shall remain in effect.

THIS ORDER IS ENTERED this 9th day of September, 2014.

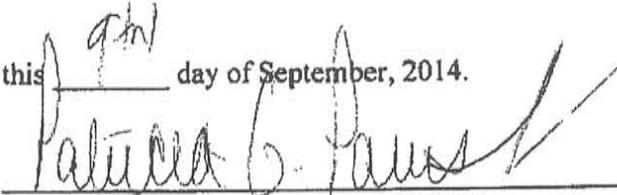
  
\_\_\_\_\_  
DISTRICT COURT JUDGE

EXHIBIT 7  
PAGE 4  
OF 6 PAGES

APPROVED



Patricia A. Labarthe, OBA #10391

Jennifer Shaw, OBA #20839

Oklahoma Department of Securities

120 North Robinson, Suite 860

Oklahoma City, Oklahoma 73102

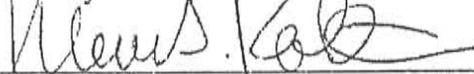
Telephone (405) 280-7700

Facsimile (405) 280-7742

plabarthe@securities.ok.gov

jshaw@securities.ok.gov

Attorneys for Plaintiff



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Michael Paul Kirschner, OBA#5056

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mike@robertsonwilliams.com

and

Jim W. Lee, OBA#5336

Lee & Kisner

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201 Northwest 63<sup>rd</sup> Street

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jimlee@legalassociatesllc.net

Attorneys for Defendants

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Robert Edinger PLLC

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Telephone (405) 702-9900

Facsimile (405) 605-8381

redinger@edingerpllc.com

Attorney for Receiver

EXHIBIT 7  
PAGE 5  
OF 6 PAGES

APPROVED

---

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Jennifer Shaw, OBA #20839  
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plabarthe@securities.ok.gov  
jshaw@securities.ok.gov  
Attorneys for Plaintiff

---

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mike@robertsonwilliams.com

and

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Lee & Kisner  
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Facsimile (405) 848-5502  
jimlee@legalassociatesllc.net  
Attorneys for Defendants

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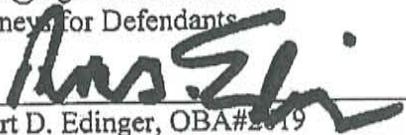
  
Robert D. Edinger, OBA#2019  
Robert Edinger PLLC  
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Oklahoma City, Oklahoma 73104  
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Facsimile (405) 605-8381  
redinger@edingerpllc.com  
Attorney for Receiver

EXHIBIT 7  
PAGE 6  
OF 6 PAGES

AFFIDAVIT

STATE OF OKLAHOMA            )  
  ) SS  
COUNTY OF OKLAHOMA        )

I, John Workun, being first duly sworn, and upon oath, do hereby affirm, state and depose as follows:

1. I am the Executive Vice-President of Quail Creek Bank. I have personal knowledge of the certain 2007 loan between Quail Creek Bank (the "Bank") and Bricktown Capital, LLC ("Bricktown Capital"). This Affidavit is made for the purpose of clarifying and confirming questions regarding whether or not attorney fees that the Bank incurred regarding the Bricktown Capital loan were ever added to the principal amount owing the Bank by Bricktown Capital.

2. After reviewing all relevant Bank records, I can confirm the following: From November 23, 2010, to when the lawsuit regarding the Oklahoma Department of Securities vs. Seabrooke Investments, LLC, Case No. CJ-2014-4515, Oklahoma County District Court, (the "Lawsuit"), was filed, the Bank incurred and paid from Bank monies attorney fees totaling \$10,836.68, plus costs of \$427.06, which totals \$11,263.74. Since the filing of the Lawsuit on August 11, 2014, to November 15, 2014, the Bank incurred additional attorney fees of \$5,972.33 and costs totaling \$91.87, totaling \$6,064.20.

3. Therefore, from November 23, 2010, to November 15, 2014, (approximately four years), the Bank incurred attorney fees and costs totaling \$17,327.94.

4. The Bricktown loan was in default numerous times from November, 2010, to when the Bricktown Hotel was finally sold. Because of the numerous defaults by Bricktown Capital under the loan documents, the Office of the Comptroller of Currency "classified" the Bricktown loan as a "substandard" loan.

5. The Bank's policy is to maintain a separate account, which Bank personnel sometimes commonly refers to as the "legal bad debt expense account". The Bank, and only the Bank, deposits money in the "legal bad debt expense account" for the payment of legal fees and costs incurred for loans that have been classified, such as the Bricktown Capital loan.

6. There were only three (3) instances when the Bank added back into the principal amount owing on the Bricktown Capital loan, amounts the Bank paid in attorney fees from the Bank's "legal bad debt expense account". Those three times, and the amounts were:

February 24, 2011	\$1,652.00
March 2, 2011	\$ 935.00
August 21, 2013	\$ 396.00
Total:	<u>\$2,983.00</u>

EXHIBIT 8  
PAGE 1  
OF 3 PAGES

In summary, of the \$17,327.94 total billed to and paid by Bank, a total of \$2,983.00 was added back in to the principal amount owing on the Bricktown Capital loan. Therefore, from November 23, 2010, to November 15, 2014, a net amount of \$14,344.94 has been paid by the Bank to its attorneys from funds solely owned by Bank, and that \$14,344.94 has not been repaid by any party to the Bank, and as mentioned, that same \$14,344.94 was never added to the principal amount owing Bank by Bricktown Capital.

7. In anticipation of closing the sale of the Bricktown Hotel, the Bank provided a "Payoff Letter" to Stewart Abstract. A copy of that Payoff Letter is attached as Exhibit "A" to this Affidavit. The Payoff Letter states that legal fees were incurred totaling \$17,727.94 from November, 2010 through October, 2014. There is a \$400.00 difference, or discrepancy, between the amount of attorney fees stated in the Payoff Letter as compared to the total attorney fees that Bank incurred during the same period of time. I do not have an explanation for that \$400.00 difference.

8. From November 16, 2014, through the date of closing the sale of the Bricktown Hotel, the Bank incurred additional attorney fees and costs totaling \$1,737.00. The Bank has paid that \$1,737.00 from its own money, and the Bank has not been reimbursed for that \$1,737.00 by any party.

9. The reason why the Bank did not update the Payoff Letter for attorney fees incurred from November 16, 2014, to December 15, 2014, is because the closing occurred before the Bank received a statement (bill) from its attorneys.

10. From the date of closing, through January 15, 2015, in Bank's continuing efforts to collect what is owed to the Bank under the Bricktown Capital loan, the Bank has incurred a total of \$3,253.00 in fees and costs. It is unknown how much additional attorney fees and costs the Bank will incur from January 16 until paid in full.

11. In summary, from November, 2010, through January 15, 2015, the Bank has paid, or is obligated to pay, attorney fees and costs from its own money, and therefore currently has a loss, calculated as follows:

\$17,327.94	- Attorney Fees and Costs from November, 2010, to November 15, 2014
+ \$ 1,737.00	- Attorney Fees and Costs from November 16, 2014, to the date of Closing
+ \$ 3,253.00	- Attorney Fees from Date of Closing to January 15, 2015
+ \$ 50.00	- Late Fee
+ \$ 20.00	- Payoff Letter Fee
- (\$ 2,983.00)	- Added to Principal
<hr/>	
<b>\$ 19,404.94</b>	<b>- TOTAL LOSS THROUGH JANUARY 15, 2015</b>

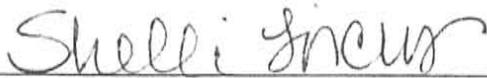
12. Shortly before the closing of the sale of the Bricktown Hotel, the Bank became aware that the Receiver was not willing to agree to close the sale of the hotel unless the Bank was only paid principal and accrued interest, and not paid attorney fees, late fees and the Payoff Letter fee. Because the Bank did not want to jeopardize the sale of the Bricktown Hotel, the Bank begrudgingly entered into an Escrow Agreement whereby \$17,797.94 was placed in escrow, which is currently being held by Stewart Abstract.

13. As shown above, the Bank's loss through January 15, 2015, (\$19,404.94), is greater than the \$17,797.94 that is currently being held in escrow by Stewart Abstract.

FURTHER AFFIANT SAYS NOT

  
\_\_\_\_\_  
John Workum, Executive Vice-President

Subscribed and sworn to before me, a Notary Public, on January 22<sup>nd</sup>, 2015.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
3-7-17

Commission No. \_\_\_\_\_



EXHIBIT 8  
PAGE 3  
OF 3 PAGES