

**IN THE DISTRICT COURT OF OKLAHOMACOUNTY
STATE OF OKLAHOMA**

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

Case No. CJ-2014-4515

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

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**RECEIVER’S REPORT ON CLAIMS AND
RECOMMENDATION FOR CLASSIFICATION OF SAME**

COMES NOW the Receiver, Ryan Leonard (“Receiver”), and submits the following Receiver’s Report on Claims and Recommendation for Classification of Same:

BACKGROUND

On August 11, 2014, this Court entered a “Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting” against the

following defendants: Seabrooke Investments, LLC, an Oklahoma limited liability company (“Seabrooke Investments”), Seabrooke Realty, an Oklahoma limited liability company (“Seabrooke Realty”), Oakbrooke Homes, LLC, an Oklahoma limited liability company (“Oakbrooke Homes”), Bricktown Capital, LLC, an Oklahoma limited liability company (“Bricktown Capital”), KAT Properties, LLC, an Oklahoma limited liability company (“KAT Properties”), Cherry Hill, LLC, an Oklahoma limited liability company (“Cherry Hill”), Tom W. Seabrooke, individually (“Tom Seabrooke”), and as trustee of the Tom Seabrooke 2007 Revocable Trust (“Tom Seabrooke Trust”), and Judith Karyn Seabrooke, individually (“Karyn Seabrooke”), and as trustee of the J. Karyn Seabrooke 2007 Revocable Trust (“Karyn Seabrooke Trust”)(collectively “Defendants”).

On September 5, 2014, this Court entered its Order for “Temporary Injunction and Ancillary Relief,” ordering the Receiver, amongst other duties:

- to take immediate custody, possession and control of any and all Assets [of the Defendants], as well as any records or documents relating in any way to the Assets;
- to manage the business activities of Defendants, their affiliates, subsidiaries, and any related entities existing at the time of the filing of the Petition, and to conserve, hold, and protect the Assets, pending further action by this Court;
- to market the Assets of the Defendants for sale, including the retention of listing agents, realtors and brokers, and to evaluate all offers to purchase received...;
- to release bank and financial accounts from the freeze as may, in the Receiver’s opinion, be necessary or proper for the protection, maintenance, or preservation of the Assets, or the carrying out of the terms of this Order;
- to receive and collect any and all sums of money owing to the Defendants at the time of the filing of the Petition; to collect the revenue and income

generated by the maintenance and operation of the Assets whether the same are due or shall hereinafter become due and payable; and to make such payments and disbursements as may be necessary and advisable for the preservation of the Assets and as may be necessary and advisable in discharging his duties as Receiver, and;

- to exercise those powers necessary to implement the orders and directives of this Court.

Pursuant to subsequent Orders of the Court, the Receiver has sold real property assets owned by the Defendants, and released certain assets from the receivership. Income from real property sales, combined with revenues generated by the Receiver through management and operation of the defendant entities, less funds paid by the Receiver pursuant to Orders of this Court and other expenses, make up the general assets of the receivership estate (“General Assets”).¹

REPORT ON CLAIMS

On January 22, 2015, this Court entered an “Agreed Order Establishing Procedure to Notify Creditors and/or Claimants to Make Claims and Setting Bar Date for Submitting Proofs of Claim.” The Receiver complied with the Court’s Order providing notice to potential creditors and/or claimants of the receivership estate, including notice by publication, and such creditors and/or claimants were given until April 15, 2015, to submit claims against one or more of the Defendants to the Receiver. In response to the Court’s Order, the Receiver received thirty (30) timely filed claims totaling \$15,275,951.34. No untimely filed claims were received.

¹ The Receiver reserves the right to continue marshalling assets which may belong to the receivership estate.

The Receiver considered several factors in formulating the recommendations on classifications and for distributions contained in this report, consistent with the guiding principle that the distribution plan be “fair and reasonable.” *See SEC v. Wealth Mgmt., LLC*, 628 F.3d 323, 332-33 (7th Cir. 2010). First, because the Defendants operated in almost every respect without regard to company form or distinctions between entities when accepting or distributing funds, and because funds were routinely commingled between the Defendants, the Receiver recommends that all assets be combined into one fund, i.e. the “General Assets,” from which claimants would receive a proportionate distribution as recommended herein.² Second, documents submitted to the Receiver evidence that claimants invested with the Defendants in a variety of ways, including entering into promissory notes and loan agreements at varying interest rates, executing investment agreements and making capital contributions in exchange for equity in various companies (at least one of which did not exist).³ With respect to each of the approved claims, in furtherance of achieving an equitable resolution for eligible claimants, the Receiver recommends that “interest” on all principal investments be disregarded, and that distributions from the General Assets be based upon principal amounts invested and/or loaned less payments received from one or more of the

²In compiling this report, the Receiver relied upon the analysis conducted by the Oklahoma Department of Securities of the Defendants’ bank records to substantiate commingling of assets and payments to and from all claimants.

³ The Receiver also received several claims from commercial entities arising from loan agreements and other commercial transactions. Pursuant to *Reves v. Ernst & Young*, 494 U.S. 56 (1990) and other case law relevant to the interpretation of the Oklahoma Uniform Securities Act of 2004 (71 O.S. §§1-101- 7-101), such transactions are not considered investments in “securities” and are not the class of investments the laws applicable here are designed to protect.

Defendants.⁴ This proposed “pro-rata” method of distribution is broadly supported in the case law. *See SEC v. Byers*, 637 F.Supp.2d 166, 176-78 (S.D.N.Y. 2009)(“pro-rata distributions are the most fair and most favored in receivership cases”); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88-89 (2d Cir. 2002)(pro-rata distribution appropriate if investor funds are commingled and victims are similarly-situated); *Commodity Futures Trading Comm’n v. Topworth*, 205 F.3d 1107, 1116 (9th Cir. 1999)(Court approved distribution plan in a commodities fraud case that paid claimants on a pro-rata basis based on their net investment). Ultimately, the distribution of assets by the Receiver “is to be done equitably and fairly- with similarly-situated investors or customers treated similarly.” *SEC v. Credit Bancorp, Ltd.*, 194 F.R.D. 457, 463-64 (S.D.N.Y. 2000) *citing SEC v. Elliott*, 953 F.2d 1560, 1569 (11th Cir. 1992).

Having reviewed the claims and all documentation submitted by each claimant, the Receiver provides the Court with the following recommendations with respect to each claim:

(1) Patricia Aldridge:

Patricia Aldridge (“Aldridge”) filed a timely claim against Seabrooke Investments, Oakbrooke Homes and Tom Seabrooke in the amount of \$371,875.00 arising from a “Promissory Note and Mortgage” with Seabrooke Investments dated October 11, 2012, in

⁴ In this regard, based upon the examination of the Oklahoma Department of Securities, it is apparent that many claimants received payments from one or more of the Defendants that were simply funds provided to them by more recent investors. In light of the fact that the General Assets will be less than the aggregate amount of allowed claims, the Receiver submits that equity favors allowing eligible claimants to recover as much of their principal investment as is proportionately available, rather than allowing certain claimants to profit at the expense of other “investors,” some of whom have received no payments at all.

the principal amount of \$350,000.00. On November 28, 2012, a mortgage in the amount of \$350,000.00 was granted by Seabrooke Investments in favor of Aldridge and filed with the Custer County Court Clerk encumbering the following property:

Timbercreek II Addition to Weatherford Oklahoma Less Block 1, Lots 16 thru 24. Less Block 2, Lots 1 thru 12. Less Block 3, Lots 1 thru 8. Less Block 4, Lots 1 thru 4 (the "Weatherford Property").⁵

Bank records evidence a payment by Aldridge to Seabrooke Investments in the amount of \$350,000.00 on October 9, 2012. Aldridge received a number of payments following her investment from both Seabrooke Investments and Oakbrooke Homes totaling \$87,500.00. The mortgage filed in favor of Aldridge on the Weatherford Property is subordinate to a first mortgage originally held by First Commercial Bank, the amount of which substantially exceeds the value of the property.

Receiver's Recommendation: The Receiver recommends that Aldridge be classified as a general creditor of the receivership estate in the amount of \$262,500.00 (principal investment less payments received), and that she be entitled to a proportionate distribution from the General Assets.

(2) Roland Boeni:

Roland Boeni filed three (3) timely claims in the combined amount of \$1,520,000.00. The claims are as follows:

- Claim No. 1: Boeni filed Claim No. 1 in the amount of \$408,000.00 against Seabrooke Investments arising from a "Mortgage and Promissory Note" dated October

⁵ A number of claimants either invested in or had mortgages filed against the Weatherford Property.

15, 2009, in the principal amount of \$200,000.00 bearing interest at a rate of twenty percent (20%) annually. The Note purports to be secured by the Weatherford Property, though there is no evidence a mortgage was ever filed of record. Boeni claims to have received \$43,342.00 in payments on this Note, for a net loss of \$156,658.00.

- Claim No. 2: Boeni filed Claim No. 2 in the amount of \$612,000.00 against Seabrooke Investments arising from a “Mortgage and Promissory Note” dated February 28, 2010, in the principal amount of \$300,000.00 bearing interest at a rate of twenty percent (20%) annually.⁶ The Note purports to be secured by land owned by Cherry Hill located at 4708 SE 44th Street, Oklahoma City, Oklahoma, otherwise known as the “Cherry Hill Apartments.” There is no evidence this mortgage was filed of record. Boeni claims to have received \$40,000.00 in payments on this Note, for a net loss of \$260,000.00.

- Claim No. 3: Boeni filed Claim No. 3 in the amount of \$500,000.00 against Cherry Hill arising from an “Amendment” dated June 24, 2010, to the Operating Agreement of Cherry Hill pursuant to which Tom and Karyn Seabrooke granted “HB Group LLC” a fifty percent (50%) ownership interest in Cherry Hill in exchange for \$500,000.00.⁷ Boeni and Caroline Hofmann executed the agreement on behalf of HB Group, LLC. The Cherry Hill Apartments, the sole asset of Cherry Hill, was sold by the Receiver on November 5, 2014, for a sales price of \$1,015,000.00, at a net loss of \$13,433.15 to the receivership.

⁶ Bank records evidence Defendants received \$299,995.00 on this transaction.

⁷ Bank records evidence Defendants received \$499,995.00 on this transaction.

Receiver's Recommendation: The Receiver recommends that Boeni be classified as a general creditor of the receivership estate in the amount of \$916,648.00 (principal investments less payments received), and that he be entitled to a proportionate distribution from the General Assets.

(3) **Faith Bristow f/k/a Faith Brennan and Kenneth Bristow:**

Faith Bristow and Kenneth Bristow (the "Bristows") filed a timely claim against Bricktown Capital, LLC in the amount of \$33,500.00 arising from the purchase of a 0.5% membership interest in Bricktown Capital in November 2006.

The Bristows received no payments from Bricktown Capital or any other Seabrooke-related entity following their investment.

Receiver's Recommendation: The Receiver recommends that the Bristows be classified as a general creditor of the receivership estate in the amount of \$33,500.00 (principal investment less payments received), and that they be entitled to a proportionate distribution from the General Assets.

(4) **Kelly Burfict:**

Kelly Burfict ("Burfict") filed a timely claim against Bricktown Capital, LLC in the amount of \$33,500.00 arising from the purchase of a 0.5% membership interest in Bricktown Capital in November 2006.

Burfict received no payments from Bricktown Capital or any other Seabrooke-related entity following her investment.

Receiver's Recommendation: The Receiver recommends that Burfict be classified as a general creditor of the receivership estate in the amount of \$33,500.00 (principal

investment less payments received), and that she be entitled to a proportionate distribution from the General Assets.

(5) David Curtis:

David Curtis (“Curtis”) filed a timely claim against Tom and Karyn Seabrooke arising from a Promissory Note dated November 21, 2008, in the principal amount of \$200,000.00, which was secured by a mortgage on 1419 N.W. 17th Street, Oklahoma City, Oklahoma. This claim was resolved by the Court’s Order of September 11, 2015, and the Receiver recommends that no further distribution be made to Curtis.

(6) David Dennings:

David Dennings (“Dennings”) filed a timely claim in the amount of \$93,000.00 against Seabrooke Investments, Seabrooke Realty, Oakbrooke Homes, Cherry Hill, Tom Seabrooke and Karyn Seabrooke arising from a Promissory Note dated October 31, 2011, in the principal amount of \$150,000.00 executed by Tom Seabrooke on behalf of “Cherry Hill Apartments, LLC.”⁸ In exchange for his investment, Dennings was promised four percent (4%) of all profits on the sale of the Cherry Hill apartments above \$1,400,000.00, and a six percent (6%) ownership interest in “4708 Investment Group LLC,” an entity purportedly controlled by Tom Seabrooke (but that has no apparent connection to the Cherry Hill apartments).

Bank records evidence a payment by Dennings to Seabrooke Investments on November 21, 2011, in the amount of \$150,000.00. Dennings received a number of

⁸ “Cherry Hill Apartments, LLC” is not and never has been a registered entity in the State of Oklahoma.

payments following his investment from various entities controlled by Tom Seabrooke, including Seabrooke Investments and Oakbrooke Homes, totaling \$61,500.00.

Receiver's Recommendation: The Receiver recommends that Dennings be classified as a general creditor of the receivership estate in the amount of \$88,500.00 (principal investment less payments received), and that he be entitled to a proportionate distribution from the General Assets.

(7) **Wayne Doyle:**

Wayne Doyle ("Doyle") filed a timely claim in the amount of \$3,288,489.38 against Bricktown Capital, Tom Seabrooke, Seabrooke Investments and Oakbrooke Homes arising from capital contributions allegedly made by Doyle as a member of Bricktown Capital beginning in 2011. On April 9, 2014, Doyle, at a time in which he owned and/or controlled at least eighty percent (80%) of Bricktown Capital's membership units, prepared and filed a mortgage encumbering the Bricktown Hotel real property in favor of himself in the principal amount of \$2,759,120.25. Doyle's claim filed with the Receiver consists of an alleged \$2,683,976.97 in capital contributions to Bricktown Capital, \$714,968.37 in interest and \$13,934.00 in attorney fees, less \$124,389.96 he claims to have received from Bricktown Capital.⁹ Doyle acknowledges receiving an additional \$228,894.66 from Bricktown Capital on January 27, 2012, which he considers an "incentive" payment from a litigation settlement involving Bricktown Capital. Bank records evidence that Doyle received a total of \$681,577.43 from

⁹ Pursuant to this Court's Order of August 21, 2015, all funds invested by Doyle or Remington Express, LLC, an entity wholly-owned by Doyle, in Bricktown Capital are classified as "capital contributions."

Bricktown Capital or other Seabrooke-related entities between May 28, 2009, and March 27, 2014.

Receiver's Recommendation: On February 3, 2011, when Doyle executed an agreement to obtain at least a thirty-five percent (35%) ownership interest in Bricktown Capital, “[he] knew that the Bricktown Hotel had not made a profit since 2007.” (“Findings of Fact” entered by this Court on August 21, 2015, ¶7, citing the testimony of Doyle).¹⁰ Further, “[a]fter Doyle purchased his interest, he knew the Bricktown Hotel was operating at a loss and not doing well financially.” *Id.*¹¹ Subsequent to his initial investment in Bricktown Capital, Doyle obtained control of an additional forty-five percent (45%) of the company on a pledge of collateral from Seabrooke, and was preferentially paid \$228,894.00 as “risk compensation” at a time when the hotel desperately needed the money to open new rooms and generate revenue. On April 9, 2014, Doyle used his authority as a dominant owner to cause a \$2.7 million mortgage to

¹⁰ The Agreement executed by Doyle, Ron Hope (“Hope”) and Quail Creek Bank dated February 3, 2011, evidencing the ownership transfer from Hope to Doyle recites that Doyle actually obtained a fifty percent (50%) interest in the company, though Doyle claims only thirty-five percent (35%) was transferred. In exchange for the ownership interest, Doyle paid \$299,500.00 in outstanding debt owed by Bricktown Capital to Quail Creek Bank, N.A. (“Quail Creek Bank”), in addition to substituting himself as a personal guarantor for Hope on Bricktown Capital’s then-outstanding principal obligation of \$2,983,620.00 owed to the bank.

¹¹ Doyle was aware that at times the Hotel could not afford to pay its mortgage payments and other operating expenses as they came due, and that one of its lenders had even filed suit to foreclose on its mortgage. The K-1 tax forms issued to Doyle showed that the Hotel was suffering from consistent losses and, according to Doyle’s own testimony, he knew that payments he received from Bricktown Capital were not paid out of profits since there were not any profits. Doyle was further aware that there was at least one additional investor in Bricktown Capital other than he and Tom Seabrooke.

be filed encumbering the Bricktown hotel in his favor and to the detriment of the company, other owners and creditors.¹²

Various equitable and legal doctrines require that Doyle's equity ownership in Bricktown Capital be subordinated to other claimants and that he not receive a distribution of the General Assets in this receivership. In this regard, where there is evidence that a corporate owner has attempted to attain creditor status for loans advanced to the corporation, courts must be "particularly watchful[,]" and are more likely to subordinate such loans to corporate creditors. *Tanzi v. Fiberglass Swimming Pools*, 414 P.2d 484, 488-489 (R.I. 1980). Likewise, "where the majority shareholder exercises his control to gain a benefit not shared with the minority shareholder, the burden shifts to him to prove the intrinsic fairness of the transaction." *Beard v. Love*, 2007 OK CIV APP 118, ¶29, 173 P.3d 796, 804.¹³ In the context of the doctrine of equitable subordination, a claimant does not have to breach a fiduciary duty in order to have his claim subordinated to other creditors. As the Tenth Circuit held in *In re Hedged-Investments Associates, Inc.*, 380 F.3d 1292:

"When examining a transaction for evidence of inequitable conduct, this Circuit has joined other Courts of Appeal in applying different levels of scrutiny to "insiders and "non-insiders" of the debtor corporation. Where the claimant is an insider or fiduciary, the party seeking subordination need

¹² It has been learned through these proceedings that approximately \$1.2 million of the mortgage Doyle caused to be filed against the hotel in April 2014 had nothing to do with his investments in Bricktown Capital, but rather arose from unrelated real estate transactions with the Defendants.

¹³ While the *Beard* case involved the interpretation of the "business judgment rule," at issue in *Beard* was the "entire fairness" of the majority owner's conduct, which is the same question at issue in the analysis of Doyle's claim.

only show some unfair conduct and a degree of culpability on the part of the insider.” *Id.* at 1301.

See also Bunch v. J.M. Capital Fin., Ltd., (In re Hoffinger Indus., Inc.), 327 B.R. 389, 415 (E.D.Ark. 2005)(“If a claimant is an insider of the debtor, [his] conduct is closely scrutinized and the only proof required is that [he] breached a fiduciary duty *or* engaged in conduct that is somehow unfair to other creditors.”)(emphasis added).¹⁴ “Inequity enough to justify subordination exists when it is shown that a claim which is in reality a proprietary interest is seeking to compete on an equal basis with true creditor’s claims.” *Tanzi*, 414 P.2d at 490. Further, where a corporation enters the zone of insolvency, the duties owed by its controlling stockholders extend to the corporation’s creditors and the stockholders cannot prefer themselves to other creditors. *Schnelling v. Crawford (In re James River Coal Co.)*, 360 B.R. 139 (E.D.Va. 2007); *See also Union Coal Co. v. Wooley*, 1915 OK 992, ¶9, 154 Okla. 391, 399 (“the director of an insolvent corporation is a trustee of the corporate assets for creditors, and...cannot prefer a prior unsecured debt of his to the injury of other creditors.”).

In considering Doyle’s claim, including Doyle’s own testimony, the facts unquestionably demonstrate that Doyle possessed knowledge sufficient to classify him as an “insider” of the company, and in that capacity he engaged in conduct that was unfair to Bricktown Capital, its other owners (including other claimants) and creditors. Namely, Doyle owned or controlled at least eighty percent (80%) of Bricktown Capital during the

¹⁴ While the Tenth Circuit in *In re Hedged-Investments* concluded that the transaction in that case should not be equitably subordinated, it did so based on the factual finding that the party claiming a loan was not an insider and there was no inequitable conduct because the party had no knowledge of the company’s financial straits.

relevant period, he received preferential payments that no other owner received totaling \$228,894.00 and personally orchestrated the filing by Bricktown Capital of a \$2.7 million mortgage in his favor and against the hotel at a time he knew Bricktown Capital had serious financial difficulties. Moreover, Doyle at all relevant times (including when he made his initial investment) had intimate knowledge of the financial hardships and capital needs of the company. In light of these facts and the totality of Doyle's conduct, and as set forth more fully in the "Receiver's Combined Objection to Intervenor Doyle's Motion to Disburse Interpled Funds and Receiver's Motion to Retain Interpled Funds as a Receivership Asset" submitted on May 7, 2015, and "Receiver's Reply in Support of Motion to Retain Interpled Funds as a Receivership Asset" submitted on June 12, 2015, the Receiver maintains that Doyle's claim should be equitably subordinated to the claims of the other claimants in this receivership. Because there are insufficient funds to satisfy the approved claims in full, the Receiver recommends that Doyle not receive a distribution from the General Assets.

(8) Malene Eckhardt:

Malene Eckhardt f/k/a Malene Nielsen ("Eckhardt") filed a timely claim in the amount of \$50,000.00 against Bricktown Capital arising from an "Agreement to Purchase Membership Shares and Share Restriction Agreement" dated May 31, 2007, executed by Tom Seabrooke pursuant to which Eckhardt obtained a 0.75% ownership interest in Bricktown Capital. A Contract Addendum was executed by Tom Seabrooke on June 8, 2007, evidencing an additional \$17,000.00 investment by Eckhardt in exchange for an additional 0.25% ownership interest in the company. Two (2) certificates evidencing

Eckhardt's ownership of "67,000 units" were issued and executed on behalf of Bricktown Capital on August 7, 2014, and August 24, 2007.¹⁵

Bank records evidence payments by Eckhardt to Bricktown Capital on May 31, 2007, and July 30, 2007, in the combined amount of \$67,000.00. Eckhardt received no payments from Bricktown Capital or any other Seabrooke-related entity following her investment.

Receiver's Recommendation: The Receiver recommends that Eckardt be classified as a general creditor of the receivership estate in the amount of \$67,000.00, and that she be entitled to a proportionate distribution from the General Assets.

(9) Alicia T. Holtslander-Petrone:

Alicia T. Holtslander-Petrone ("Holtslander-Petrone") filed a timely claim in the amount of \$112,145.18 against KAT Properties and Tom Seabrooke arising from a Promissory Note in the principal amount of \$100,000.00 dated September 12, 2008, between KAT Properties and Pamela and Don Holtslander.¹⁶ According to the claim, the purpose of the loan was "furthering the operation of the Bricktown Hotel." An amendment to the Promissory Note was executed on September 15, 2008, providing that Holtslander-Petrone is the beneficiary on the Note and that payments should be made to her. Holtslander-Petrone claims to have received \$70,000.00 in "interest" payments on the Note.

¹⁵ It is unclear why two (2) separate Certificates were executed, each evidencing the issuance of "67,000 units" in Bricktown Capital to Eckhardt for the same investment.

¹⁶ Pamela and Don Holtslanders are the deceased parents of Holtslander-Petrone.

Receiver's Recommendation: The Receiver recommends that Holtslander-Petrone be classified as a general creditor of the receivership estate in the amount of \$30,000.00 (principal investment less payments received), and that she be entitled to a proportionate distribution from the General Assets.

(10) Ronald R. Hope:

Dr. Ronald R. Hope ("Hope") filed five (5) timely claims in the combined amount of \$3,757,406.80. The claims are as follows:

- Claim No. 1: Hope filed Claim No. 1 in the amount of \$984,000.00 against Bricktown Capital, Tom Seabrooke, the Tom Seabrooke Trust and Karyn Seabrooke Trust arising from investment contributions made by Hope to Bricktown Capital from January 2009 through February 2011. During this time period, Hope invested \$1,015,000.00 in Bricktown Capital, and received payments totaling \$30,800.00 from Oakbrooke Homes and Tom and Karyn Seabrooke, for a net loss of \$984,000.00.
- Claim No. 2: Hope filed Claim No. 2 in the amount of \$1,572,591.00 against Bricktown Capital, Tom Seabrooke and the Tom Seabrooke Trust arising from earlier investments in Bricktown Capital. Hope provided K-1's from Bricktown Capital evidencing \$1,181,591.00 in contributions in 2007 and an additional \$391,000.00 contributed in 2008.
- Claim No. 3: Hope filed Claim No. 3 in the amount of \$1,355,264.82 against Bricktown Capital, Tom Seabrooke, the Tom Seabrooke Trust and Karyn Seabrooke

arising from three (3) loans to Bricktown Capital from Bank 2, Bank 7 and Midfirst Bank that were guaranteed by Hope and paid by him in 2011.¹⁷

- Claim No. 4: Hope filed Claim No. 4 in the amount of (\$218,000.00) against Tom Seabrooke and the Tom Seabrooke Trust which reflects a gain by Hope from four (4) properties that were deeded by Tom Seabrooke to Hope allegedly valued (by Hope) at \$660,000.00. Hope assumed debt on the properties of \$442,000.00. Hope claims that the net recovery of \$218,000.00 should be considered as an off-set to the losses alleged in Claims Nos. 1-3.
- Claim No. 5: Hope filed Claim No. 5 in the amount of \$63,350.98 against Bricktown Capital, Tom Seabrooke and the Tom Seabrooke Trust arising from a settlement paid by Hope to Bank of the West on a Commercial Guaranty dated January 9, 2009, pursuant to which Hope personally guaranteed the various obligations of Bricktown Capital to Bank of the West.

Receiver's Recommendation: In 2011, Hope was a fifty percent (50%) owner of Bricktown Capital, and personal guarantor (along with Tom Seabrooke) of \$3.2 million in debt borrowed from Quail Creek Bank to finance the Bricktown Hotel. On or about February 3, 2011, with the note from Quail Creek Bank due and owing, Hope, Wayne Doyle and Tom Seabrooke informed the bank that Hope had assigned his ownership interest in Bricktown Capital to Doyle, and Doyle would replace Hope as

¹⁷ Hope ceased to be a member of Bricktown Capital in 2011, and Doyle was substituted for Hope as a guarantor on Quail Creek Bank's first mortgage on the Bricktown Hotel.

personal guarantor on the debt. Hope accordingly relinquished his ownership in Bricktown Capital.¹⁸

In light of the fact that Hope was a fifty percent (50%) owner of Bricktown Capital, exited the investment by assigning his ownership interest to Doyle in the context of a bargained-for-exchange (Hope was released from his substantial personal guaranty to the bank), arguably benefitted from substantial funds invested by many of the claimants in this receivership in the hotel and at all relevant times had knowledge of the company's dire financial condition, there is no factual or legal basis under which Hope can recover his equity contributions or payments made by him to retire his personal guaranty obligations. Hope should therefore not be deemed a creditor of the receivership estate.

(11) Jack Horcher:

Jack Horcher ("Horcher") filed a timely claim in the amount of \$95,409.00 against Seabrooke Realty, Tom Seabrooke and the Tom Seabrooke Trust arising from a Promissory Note dated September 25, 2009, in the principal amount of \$50,000.00. The Note purports to be secured by real estate at 425 N.W. 11th Street, though no mortgage was filed. The Note was executed by Tom Seabrooke on behalf of Seabrooke Realty. Bank records evidence a payment by Horcher to Tom Seabrooke on September 25, 2009, in the amount of \$50,000.00. Horcher received various payments following his investment from Seabrooke Investments and Oakbrooke Homes totaling \$21,625.00.

¹⁸ At the time Hope transferred his interest to Doyle, Hope was aware that Bricktown Capital had not made a profit at least since 2007 and was in default on its mortgage debt to Quail Creek Bank. (Agreement dated February 2, 2011, transferring ownership and liabilities between Hope and Wayne Doyle; Agreement dated February 3, 2011, between Bricktown Capital, Tom Seabrooke, Hope, Wayne Doyle and Quail Creek Bank).

Receiver's Recommendation: The Receiver recommends that Horcher be classified as a general creditor of the receivership estate in the amount of \$28,375.00 (principal investment less payments received), and that he be entitled to a proportionate distribution from the General Assets.

(12) Peggy Johnston and HPJ Family Limited Partnership:

Peggy Johnston ("Johnston") and HPJ Family Limited Partnership ("HPJ") jointly filed six (6) claims in the combined amount of \$1,441,547.21. The claims are as follows:

- Claim No. 1: Johnston and HPJ filed Claim No. 1 in the amount of \$1,012,916.60 against Bricktown Capital, Tom Seabrooke and KAT Properties arising from an "Agreement to Purchase Membership Shares and Share Restriction Agreement" executed on February 27, 2007, between HPJ and Bricktown Capital pursuant to which HPJ invested \$400,000.00 with Bricktown Capital in exchange for a six percent (6%) ownership interest in the company. HPJ claims monies invested under this agreement were also subject to ten percent (10%) annual interest, and that Bricktown paid forty-four (44) monthly payments of \$3,333.33 for a total of \$146,666.52. HPJ subsequently invested \$65,000.00 on November 20, 2008, which was joined with another \$250,000.00 investment (total of \$315,000.00) that was structured as a purchase of an additional five percent (5%) of Bricktown Capital, with an alleged ten percent (10%) interest to be paid on the investment capital.¹⁹ In conjunction with this subsequent agreement, Tom Seabrooke executed a "Collateral Agreement" pledging a one percent (1%) ownership

¹⁹ The total ownership interest claimed by Johnston and HPJ in Bricktown Capital is eleven percent (11%).

interest in Bricktown Capital to HPJ as collateral for the investment (which Seabrooke valued at “\$100,000.00”). According to HPJ, Seabrooke paid twenty-three (23) payments toward this latter investment totaling \$60,375.00. The total amount invested by HPJ under Claim No. 1 is \$715,000.00, total amount received from Defendants for this claim is \$207,041.52, leaving a net loss of \$507,958.48.

- Claim No. 2: Johnston and HPJ filed Claim No. 2 in the amount of \$12,000.00 against Oakbrooke Homes and Tom Seabrooke arising from a Promissory Note dated April 20, 2009, in the principal amount of \$80,000.00. The Note pledged eleven (11) homes in Perkins and Cushing, Oklahoma, as collateral, with HPJ to receive an additional \$1,500.00 upon the sale of each home. HPJ claims to have received \$74,500.00 in payments on this Note, for a net loss of \$5,500.00.

- Claim No. 3: Johnston and HPJ filed Claim No. 3 in the amount of \$150,000.00 against Tom Seabrooke and KAT Properties arising from a Promissory Note dated August 6, 2009, in the principal amount of \$150,000.00 invested for the purpose of building three (3) new homes in Weatherford, Oklahoma. According to HPJ, no monies were paid by Defendants on this Note.

- Claim No. 4: Johnston and HPJ filed Claim No. 4 in the amount of \$42,411.61 against Tom Seabrooke, Karyn Seabrooke and KAT Properties arising from a Promissory Note dated December 2, 2003, in the principal amount of \$110,000.00 invested for the purpose of buying 425 NW 11th Street, Oklahoma City, Oklahoma.²⁰ A mortgage was

²⁰ 425 NW 11th Street was the former location of the Seabrooke Realty, LLC office.

granted to HPJ encumbering the property in this amount and was filed on July 29, 2004. Another mortgage in the amount of \$75,000.00 encumbering the same property was granted to HPJ by Seabrooke Realty on December 2, 2003, and was filed on August 2, 2004. This claim was resolved pursuant to this Court's Order of September 11, 2015.

- Claim No. 5: Johnston and HPJ filed Claim No. 5 in the amount of \$212,500.00 against Bricktown Capital, Tom Seabrooke and KAT Properties arising from a Partnership Agreement dated June 1, 2007, pursuant to which HPJ invested \$150,000.00 with KAT Properties to build and operate a "Microtel" Hotel near Lawton, Oklahoma. This investment was secured with a real estate mortgage filed in Comanche County on November 20, 2008. According to the claim, Defendants paid HPJ \$28,750.00 in payments associated with the investment, for an alleged net loss of \$121,250.00.²¹ The Lawton property was taken into foreclosure by First National Bank of Weatherford during the course of these receivership proceedings, and the Defendants had no equity in this property.

- Claim No. 6: Johnston and HPJ filed Claim No. 1 in the amount of \$11,719.00 against Tom Seabrooke and KAT Properties arising from a Promissory Note dated October 2, 2007, in the principal amount of \$75,000.00 invested "for the sole purpose of financing immediate repairs and renovations" of 1419 NW 17th Street and 1507 NW 17th Street in Oklahoma City. The property was secured by a mortgage filed on 1609 NW

²¹ Bank records, however, reflect that HPJ received thirty-nine (39) payments totaling \$48,750.00 on this investment, for an actual net loss of \$101,250.00.

15th Street. HPJ claims to have received \$63,281.00 in payments on this Note. This claim was resolved pursuant to this Court's Order of September 11, 2015.

Receiver's Recommendation: The Receiver recommends that Johnston and HPJ collectively be classified as a general creditor of the receivership estate in the amount of \$764,958.48 (principal investment less payments received), and that they be entitled to a proportionate distribution from the General Assets.

(13) Patricia Kramer:

Patricia Kramer ("Kramer") filed a timely claim in the amount of \$191,161.03 against Seabrooke Investments, Tom Seabrooke, the Tom Seabrooke Trust and Karyn Seabrooke Trust arising from a Promissory Note dated May 11, 2012, in the principal amount of \$165,000.00, which was secured by a mortgage on 1507 N.W. 17th Street, Oklahoma City, Oklahoma. This claim was resolved by the Court's Order of September 11, 2015, and the Receiver recommends that no further distribution be made to Kramer.

(14) Craig Matthies:

Craig Matthies ("Matthies") filed a timely claim against Seabrooke Investments, LLC, arising from a Promissory Note and Mortgage in the principal amount of \$140,000.00 (bearing interest at 30%) dated November 6, 2012, between Seabrooke Investments, LLC and Grizzly Investment Group Inc. ("Grizzly").²² The Note was secured by the Weatherford Property, and a mortgage was filed in Custer County encumbering the property on September 17, 2013.

²²Grizzly assigned its interest in the subject Promissory Note and Mortgage to Matthies on September 26, 2014.

Bank records evidence a payment by Grizzly to Defendants on November 8, 2012, in the amount of \$130,900.00 (rather than the \$140,000.00 stated in the Note). Grizzly received various payments following its investment from Seabrooke Investments and Oakbrooke Homes totaling \$42,500.00.

Receiver's Recommendation: The Receiver recommends that Matthies be classified as a general creditor of the receivership estate in the amount of \$88,400.00 (principal investment less payments received), and that he be entitled to a proportionate distribution from the General Assets.

(15) Murray Claytor MacDonald:

Murray Claytor MacDonald a/k/a "Frances" ("MacDonald") filed a timely claim in the amount of \$178,968.00 against Tom Seabrooke, Karyn Seabrooke, the Tom Seabrooke Trust and Karyn Seabrooke Trust arising from a Promissory Note in the principal amount of \$200,000.00 dated June 14, 2011, and subsequent Quit Claim Deed in which title to 1419 N.W. 17th Street, Oklahoma City, Oklahoma, was conveyed by KAT Properties to MacDonald. This claim was resolved by the Court's Order of September 11, 2015, and the Receiver recommends that no further distribution be made to MacDonald.

(16) Bobby McCants:

Bobby McCants ("McCants") filed a timely claim in the amount of \$80,000.00 against Tom Seabrooke, Seabrooke Realty, Oakbrooke Homes, Bricktown Capital, KAT Properties and Cherry Hill arising from a Promissory Note in the principal amount of \$100,000.00 dated January 28, 2013. The "Borrower" on the Note is "Tom Seabrooke of

Seabrooke Investments,” but the Note was executed by Tom Seabrooke as Manager of KAT Properties and “Owner: Bricktown Hotel & Convention Center.” The Note purports to be secured by “Tom Seabrooke and equity in The BRICKTOWN HOTEL & CONVENTION CENTER,” in addition to “equity” in 804 NW 21st Street, Oklahoma City, Oklahoma. A mortgage encumbering 804 NW 21st Street in favor of McCants in the amount of \$100,000.00 was filed on July 23, 2013, but was subsequently released.

Bank records evidence two (2) payments by McCants to Seabrooke Investments, one on September 1, 2011, in the amount of \$50,000.00 and one on September 11, 2011, in the amount of \$49,000, for a combined investment of \$99,000.00. McCants received various payments following his investments from Seabrooke Investments and Tom and Karyn Seabrooke in the combined amount of \$50,600.00.

Receiver’s Recommendation: The Receiver recommends that McCants be classified as a general creditor of the receivership estate in the amount of \$48,400.00, and that he be entitled to a proportionate distribution from the General Assets.

(17) Charlotte McGee:

Charlotte McGee (“McGee”) filed a timely claim on behalf of herself and late husband, William J. McGee, in the amount of \$174,000.00 against Seabrooke Realty and Seabrooke Investments arising from two Promissory Notes executed by Tom Seabrooke. The first Promissory Note, dated August 19, 2011, in the principal amount of \$100,000.00 reflects the “Borrower” as “Tom Seabrooke of Seabrooke Realty” in the body of the Note, though the Note is executed by Tom Seabrooke on behalf of “Cherry

Hill Apartments LLC.”²³ The second Promissory Note, dated November 11, 2011, in the principal amount of \$100,000.00 reflects the “Borrower” as “Tom Seabrooke of Seabrooke Investments” in the body of the Note, though again, the Note is executed by Tom Seabrooke on behalf of “Cherry Hill Apartments LLC.”

Bank records evidence two (2) payments by McGee to Seabrooke Investments, one on August 23, 2011, in the amount of \$100,000.00 and the other on November 11, 2014, in the amount of \$100,000.00. McGee claims that she received \$26,000.00 in “principal” payments, and \$35,000.00 in “interest” payments from the Seabrookes or their related entities. Bank records indicate that McGee received a total of \$60,500.00 in payments from Seabrooke Investments, Oakbrooke Homes and Tom and Karyn Seabrooke following her investments.

Receiver’s Recommendation: The Receiver recommends that McGee be classified as a general creditor of the receivership estate in the amount of \$139,500.00 (principal investment less payments received), and that she be entitled to a proportionate distribution from the General Assets.

(18) Kendall McGowen:

Kendall McGowen (“McGowen”) filed a timely claim in the amount of \$255,550.00 against Tom Seabrooke, Oakbrooke Homes and Bricktown Capital arising from two (2) separate documents styled “Promissory Note Loan Agreement” executed by Tom Seabrooke. The first Agreement, dated March 27, 2009, reflects a “Capital Contribution” of \$150,000.00 in the “Hotel” by McGowen, in exchange for which he is

²³ As stated previously, “Cherry Hill Apartments LLC” is not a registered entity in the State of Oklahoma.

to receive ten percent (10%) annual interest on his contribution in addition to one and one-half percent (1.5%) of “profits” “over and above \$7,000,000 debt/equity” in the event of a sale of the Bricktown Hotel. The borrower is defined as “Tom Seabrooke [] of Bricktown Capital LLC d.b.a. Bricktown Hotel and Convention Center.” The first Agreement also grants McGowen “a security interest in the Hotel and all inventory, equipment, furnishings, appliances and fixtures[,]” as well as an assignment by the Borrower to McGowan of “a security interest in all other real property [the Borrower] owns personally or through Bricktown Capital, LLC and other companies.”

The second Agreement, dated May 4, 2009, reflects a “Capital Contribution” of \$120,000.00 in Oakbrooke Homes, in exchange for which McGowan is to receive eleven percent (11%) annual interest on the contribution in addition to \$1,500.00 on each home or lot sold in the “70 Home Development Project” in Weatherford, Oklahoma. The Agreement defines the borrower as “Tom Seabrooke [] of Oakbrooke Homes, LLC,” and grants McGowan a security interest in “all homes” constructed in connection with the project. Tom Seabrooke further assigned to McGowen a security interest “in all other real property he or his heirs owns personally or through any other Lender entities including but not limited to [the Bricktown Hotel].”

Bank records evidence that McGowen made two (2) investments with the Defendants, both made payable to Tom Seabrooke personally, in the combined amount of \$270,000.00. McGowen received various payments following his investments from KAT Properties, Seabrooke Investments, Oakbrooke Homes, Bricktown Capital and Tom and Karyn Seabrooke, individually, totaling \$114,251.60.

Receiver's Recommendation: The Receiver recommends that McGowan be classified as a general creditor of the receivership estate in the amount of \$155,748.40 (principal investments less payments received), and that he be entitled to a proportionate distribution from the General Assets.

(19) Carolyn Poage:

Carolyn Poage ("Poage") filed a timely claim in the amount of \$39,000.00 against Tom Seabrooke and Seabrooke Investments arising from a Promissory Note dated January 17, 2013, in the principal amount of \$39,000.00. The Note purports to be "secured by Tom Seabrooke and equity in The BRICKTOWN HOTEL & CONVENTION CENTER," and reflects "cross-collateral" in "equity" in 115 N.W. 21st Street, Oklahoma City, Oklahoma. The borrower on the Note is "Tom Seabrooke of Seabrooke Investments." Tom Seabrooke "and all his Pertinent LLC's Including KAT Properties, LLC" executed a mortgage in favor of Poage dated January 17, 2013, encumbering 115 NW 21st Street, though no mortgage instrument was ever filed. Tom Seabrooke executed the mortgage as "Owner" of Bricktown Hotel & Convention Center and "Manager" of KAT Properties.

Bank records evidence a payment by Poage to Tom Seabrooke on January 18, 2013, in the amount of \$39,000.00. Poage received various payments following her investment from Seabrooke Investments totaling \$6,290.00.

Receiver's Recommendation: The Receiver recommends that Poage be classified as a general creditor of the receivership estate in the amount of \$32,710.00 (principal

investment less payments received), and that she be entitled to a proportionate distribution from the General Assets.

(20) Amelia Robles:

Amelia Robles (“Robles”) filed a timely claim in the amount of \$22,000.00 against Karyn Seabrooke arising from an “unsecured” verbal loan in the principal amount of \$33,000.00 “for use in her business.” Robles is Karyn Seabrooke’s mother. According to the claim, Karyn Seabrooke was paying Robles \$500.00 per month on the loan.

Bank records confirm a \$33,000.00 cashier’s check was issued made payable to Karyn Seabrooke individually from Robles. Records also reflect payments from Karyn Seabrooke to Robles totaling \$11,000.00.

Receiver’s Recommendation: Robles informed the Receiver by correspondence dated November 23, 2015, that she is withdrawing her claim. The Receiver accordingly recommends that Robles not be classified as a creditor of the receivership estate.

(21) Richard Shonts:

Richard Shonts (“Shonts”) filed a timely claim in the amount of \$150,000.00 (\$20,635.00 in principal and \$129,365.00 in interest) against Tom Seabrooke, Seabrooke Realty and KAT Properties arising from various investment and promissory note agreements between he and several of the Defendants between June 19, 2003, and October 13, 2010, in the collective principal amount of \$275,000.00. A Promissory Note dated October 13, 2010, executed by “Tom Seabrooke with Seabrooke Realty” purports to be secured by real property located at 425 NW 11th Street, Oklahoma City, Oklahoma,

but no mortgage instrument was ever filed. Shonts claims to have received \$254,365.00 in collective payments from Seabrooke or his related entities during the course of his investments. Bank records confirm that various payments were made to Shonts by KAT Properties, Oakbrooke Homes, Seabrooke Investments and Tom and Karyn Seabrooke.

Receiver's Recommendation: The Receiver recommends that Shonts be classified as a general creditor of the receivership estate in the amount of \$20,635.00 (principal investment less payments received), and that he be entitled to a proportionate distribution from the General Assets.

(22) Susan Soesbe:

Susan Soesbe ("Soesbe") filed a timely claim in the amount of \$166,648.16 against Seabrooke Investments arising from a July 2009 Promissory Note and Loan Agreement executed by Tom Seabrooke in the principal amount of \$100,000.00. The loan was to bear interest at a rate of ten percent (10%) annually, and included a "bonus interest" of \$1,000 per lot sold (of the 70 planned lots) from the Weatherford property. Soesbe initially filed several mortgage instruments against the Weatherford property, but for unknown reasons these mortgages were released in 2011.

Bank records evidence a payment by Soesbe to Seabrooke Investments (though the check was deposited in the Oakbrooke Homes bank account) in the amount of \$100,000.00 on July 16, 2009. Soesbe received various payments following her investment from Seabrooke Investments and Oakbrooke Homes totaling \$31,720.00.

Receiver's Recommendation: The Receiver recommends that Soesbe be classified as a general creditor of the receivership estate in the amount of \$70,280.00 (principal investment less payments received), and that she be entitled to a proportionate distribution from the General Assets.

(23) Todd Wedel:

Todd Wedel ("Wedel") filed a timely claim against Tom Seabrooke and Oakbrooke Homes in the amount of \$511,000.00 arising from a series of five (5) personal, unsecured notes in the alleged principal amount of \$275,000.00 between August 2005 and May 2008 (alleged by Wedel to bear interest at a rate of twelve percent (12%) annually). Wedel, the Defendants' accountant, provided no written documentation of the notes in his claim submitted to the Receiver. The Receiver made a follow-up request for additional documentation, but the claimant was unable to provide documentation to support the amounts claimed.

Receiver's Recommendation: This Court's Order of January 22, 2015, establishing the process for submitting proofs of claim requires claimants "to provide any substantiating documentation" in support of their alleged claims. Additionally, the "Instructions" approved by the Court and distributed to prospective claimants provide (in all capitals): "FAILURE TO PROVIDE SUFFICIENT DOCUMENTS OR EVIDENCE SUPPORTING YOUR CLAIM IS GROUNDS FOR DENIAL THEREOF." In this instance, Wedel did not provide documentation sufficient to substantiate the alleged claim, and the Oklahoma Department of Securities was unable to independently verify

the amounts claimed. Accordingly, the Receiver recommends that Wedel not be classified as a creditor of the receivership estate.

(24) Advance Restaurant Finance n/k/a ARF Financial, LLC:

Advance Restaurant Finance n/k/a ARF Financial, LLC (“Advance”) filed a timely claim in the amount of \$251,437.85 against Bricktown Capital and Tom Seabrooke arising from an assignment in favor of Advance from Mission Valley Bank of the rights to a commercial “Merchant Agreement” and guaranty originated on April 29, 2013, in the claimed principal amount of \$250,555.76. Rights to collect under the Merchant Agreement and guaranty were assigned by Mission Valley Bank to Advance on September 3, 2014.

Bank records reflect that \$242,500.00 was actually loaned pursuant to the Merchant Agreement with Mission Valley Bank or about May 29, 2013. Between May 29, 2013, and May 28, 2014, records reflect payments from one or more of the Defendants to Mission Valley Bank in the amount of \$234,423.24. A new loan with Bricktown Capital was originated on or about June 4, 2014, in the principal amount of \$150,000.00, which was added to a claimed balance on the prior loan of \$100,522.76. However, records reflect that the Defendants only received \$144,988.88 on the most recent loan. According to Advance, \$94,329.10 was paid to them or Mission Valley Bank under the Merchant Agreement between June 4, 2014, and December 31, 2014 (including a “bad debt” recovery of \$50,000.00 paid on December 31, 2014).

Receiver’s Recommendation: Advance’s predecessor-in-interest, Mission Valley Bank, loaned Bricktown Capital a combined total of \$387,488.88 pursuant to a Merchant

Agreement that, according to its terms, granted to the lender “a continuing first priority security interest” in all of Bricktown Capital’s personal property, including deposit accounts, “Goods, Equipment, Fixtures, Inventory,” etc. Under the terms of the Merchant Agreement and subsequent loan, Advance or its predecessor-in-interest received payments from Bricktown Capital in the amount of \$328,752.34.²⁴ Bricktown Capital, and its real and personal property, was released as an asset of the receivership estate pursuant to this Court’s Order of September 9, 2014.²⁵ Moreover, as set forth *supra*, the Merchant Agreement upon which Advance relies is not an investment in a “security” subject to the protections of Oklahoma Uniform Securities Act, 71 O.S. §1-101 *et seq.* Accordingly, the Receiver recommends that Advance not be classified as a creditor of the receivership estate.

(25) A-Russell’s Mr. Rooter:

A Russell’s Mr. Rooter (“Mr. Rooter”) filed a timely claim in the amount of \$1,031.23 against Cherry Hill arising from plumbing services performed at the apartment complex from October 22, 2014, through November 6, 2014. This expense was incurred by the Receiver in the normal course of transacting the business of the receivership, and paid from the General Assets.

²⁴ The net loss for the claim is \$58,736.54.

²⁵ The Court’s Order of September 9, 2014, provides: “[The Temporary Injunction is modified] 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.”

(26) **Bank of the West:**

Bank of the West filed a timely claim in the amount of \$44,861.91 against Bricktown Capital and Tom Seabrooke arising from a Commercial Card Agreement executed by Bricktown Capital on October 30, 2008. On or about December 21, 2007, Tom Seabrooke executed a Commercial Guaranty Agreement under which he personally guaranteed all of the existing and future obligations of Bricktown Capital to Bank of the West. On or about January 9, 2009, Bricktown Capital executed a Commercial Security Agreement in favor of Bank of the West whereby Bricktown Capital granted to the bank a security interest in all of its personal property to secure a separate loan. Pursuant to the Commercial Security Agreement, Bricktown Capital also pledged its personal property as collateral for all other obligations of Bricktown Capital to Bank of the West. Bank of the West subsequently filed a UCC-1 Financing Statement with the Oklahoma County Clerk perfecting its security interest. In December 2014, the Bricktown Hotel, together with certain equipment, inventory and other personal property of Bricktown Capital was sold to a third party. For undetermined reasons, Bank of the West was not paid at closing pursuant to its UCC-1 Financing Statement.

Receiver's Recommendation: Bricktown Capital, and its real and personal property, was released as an asset of the receivership estate pursuant to this Court's Order of September 9, 2014. Further, as set forth *supra*, the Commercial Guaranty Agreement and Commercial Security Agreement upon which Bank of the West relies are not investments in "securities" subject to the protections of Oklahoma Uniform Securities

Act, 71 O.S. §1-101 *et seq.* For these reasons, the Receiver recommends that Bank of the West not be classified as a creditor of the receivership estate.

(27) First Commercial Bank:

First Commercial Bank (“First Commercial”) filed a timely claim in the amount of \$310,147.43 against Seabrooke Investments, Cherry Hill, Tom Seabrooke and Karyn Seabrooke arising from a Promissory Note dated June 5, 2009, and mortgage securing a loan on the Weatherford Property (balance of \$287,599.43 as of the claim bar date) and Escrow Deposit Agreement arising from the sale of the Cherry Hill Apartments that was financed by First Commercial (balance of \$22,538.00).²⁶

Receiver’s Recommendation: The Weatherford Property was abandoned by the Receiver as its value was substantially less than mortgages filed against the property. Consequently, First Commercial is entitled to retain the proceeds from any sale. As a commercial transaction, any deficiency from the sale of these property would not be considered a loss from an investment in a “security” subject to the protections of Oklahoma Uniform Securities Act, 71 O.S. §1-101 *et seq.* Further, with respect to the claim concerning the Escrow Deposit Agreement from the sale of the Cherry Hill Apartments, this matter was heard by the Court on June 18, 2015. The Receiver does not recommend that First Commercial be classified as a creditor of the receivership estate.

²⁶ First Commercial received \$879,275.37 from the sale of the Cherry Hill Apartments by the Receiver, which constituted payment-in-full on all outstanding principal and interest.

(28) First National Bank and Trust Company of Weatherford, N.A.:

First National Bank and Trust Company of Weatherford, N.A. (“FNB Weatherford”) filed three (3) timely claims in the Receivership. The first claim was filed in the amount of \$180,406.66 against Oakbrooke Homes, Tom Seabrooke and Karyn Seabrooke arising from a Promissory Note dated March 2, 2010, and a related mortgage and commercial guaranty agreement encumbering property owned by Oakbrooke Homes in Lawton, Oklahoma (the “Lawton Property”). The second claim was also filed against Oakbrooke Homes, Tom Seabrooke and Karyn Seabrooke in the amount of \$240,581.38 arising from a Promissory Note dated March 2, 2010, and a related commercial guaranty agreement encumbering sixteen (16) vacant lots owned by Oakbrooke Homes in the College Park Addition of Oklahoma City, OK (the “College Park Property”). A third claim was filed against Briargate Plaza, Tom Seabrooke and Karyn Seabrooke in the amount of \$1,261,256.78 arising from the ownership of the Briargate Plaza Apartments located at 1712-18 N. Indiana Avenue and 1740-44 NW 17th Street in Oklahoma City. FNB Weatherford notified the Receiver on July 15, 2015, that the third claim related to the Briargate Plaza Apartments was withdrawn following the sale of the property and payment of the outstanding obligation on the Note by the Receiver.²⁷

Receiver’s Recommendation: With respect to the first claim related to the Lawton Property, this property was abandoned by the Receiver as its value was

²⁷ FNB Weatherford received \$1,146,279.27 on June 26, 2015, from the sale of the Briargate Apartments by the Receiver, constituting payment-in-full on the outstanding principal and interest. FNB Weatherford previously received payment-in-full from the Receiver on all principal and interest owed on its note and mortgages encumbering 3020 N. Robinson and properties on NW 17th Street in the combined amount of \$224,458.75.

substantially less than mortgages filed against the property. FNB Weatherford exercised its rights under the mortgage and filed a Notice of Sale in Comanche County on September 18, 2015. With respect to the second claim, the College Park Property was released from the receivership pursuant to the Court's Order of February 20, 2015, and FNB Weatherford filed a Notice of Sale in Oklahoma County on September 18, 2015. FNB Weatherford will retain the proceeds from the sales of both properties. As commercial transactions, any deficiency from sales of these properties would not be considered losses from investments in "securities" subject to the protections of Oklahoma Uniform Securities Act, 71 O.S. §1-101 *et seq.* Consequently, the Receiver recommends that FNB Weatherford not be classified as a creditor of the receivership estate.

(29) LEAF Capital Funding, LLC:

Leaf Capital Funding, LLC ("Leaf Capital") filed a timely claim in the amount of \$60,053.34 against Tom Seabrooke and Bricktown Capital arising from obligations under a lease agreement dated October 28, 2013, later assigned to Leaf Capital, for various lighting retrofit equipment at the Bricktown Hotel. A UCC-1 Financing Statement covering the "Lighting Retrofit" was filed in Oklahoma County on September 12, 2013, and an amended filing covering additional collateral pledged by Bricktown Capital was made on October 25, 2013. On September 29, 2014, Leaf Capital and Bricktown Capital entered into a "Restructure Agreement" restructuring the initial obligations. Tom Seabrooke also executed a personal guaranty of the obligation on September 29, 2014.

Receiver's Recommendation: Bricktown Capital, and its real and personal property, was released as an asset of the receivership estate pursuant to this Court's Order

of September 9, 2014. Pursuant to the authority set forth *supra*, the lease agreement and corresponding security interest upon which Leaf Capital relies are not an investment in a “security” subject to the protections of Oklahoma Uniform Securities Act, 71 O.S. §1-101 *et seq.* Accordingly, the Receiver recommends that Leaf Capital not be classified as a creditor of the receivership estate.

(30) Window World of Oklahoma City, Inc.:

Window World of Oklahoma City, Inc. (“Window World”) filed a timely claim in the amount of \$20,975.00 against Tom and Karyn Seabrooke arising from the purchase of windows that were installed at the Briargate Plaza Apartments prior to the receivership.

Receiver’s Recommendation: Briargate Plaza was sold by the Receiver on June 26, 2015, and net proceeds from the sale were placed into the General Assets of the receivership. The Receiver obtained the benefit of the windows installed by Window World. This claim was resolved at the closing of the sale and paid pursuant to a lien filed by Window World on the property.

REQUEST FOR HEARING

The Receiver requests that the Court enter an Order requiring the Receiver to provide each claimant in this receivership and/or their counsel a copy of this Receiver’s Report, that the Order provide that each claimant is allowed thirty (30) days from the date of service by the Receiver to file a responsive pleading to the Receiver’s Report, that any party be allowed an additional twenty (20) days from the filing of a response to file a

reply, and that a hearing date be scheduled not less than sixty (60) days from the filing of the Order to fully and finally adjudicate all contested claims.²⁸

CONCLUSION

The Receiver recommends that the Report on Claims and Recommendations for Classification of Same be accepted, and requests authority to make distributions to general creditors on approved claims totaling \$2,780,654.88 in an amount proportional to the General Assets of the receivership estate on the date of distribution.²⁹

Respectfully submitted,



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RECEIVER

²⁸ “It is well-settled that a District Court has the authority, in implementing a distribution plan in a receivership case, to use summary proceedings to evaluate claims and claim priority, provided the parties have an opportunity to be heard to argue their claims.” *SEC v. Byers*, 637 F.Supp.2d 166, 184 (S.D.N.Y. 2009) citing *SEC v. Elliott*, 953 F.2d 1560, 1567 (11th Cir. 1992).

²⁹ On the date of this filing, General Assets of the receivership total \$1,735,929.42.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of December, 2015, a true and correct copy of this Report and the "Order Requiring Notice to Claimants of Receiver's Report on Claims and Recommendation for Classification of Same, Establishing Time to Respond and Setting Hearing," was served via First Class Mail, postage prepaid, to all claimants, and the following counsel of record:

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Ryan Leonard

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DEC 22 2015

TIM RHODES Court Clerk
Oklahoma County

