

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
RC SOONER HOLDINGS, LLC, <u>et al.</u> , <sup>1</sup>	)	Case No. 10-10528 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Objection Deadline: May 18, 2010 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date May 25, 2010 at 11:00 a.m. (ET)</b>

**NOTICE OF MOTION OF THE DEBTORS FOR VOLUNTARY DISMISSAL  
OF CERTAIN CHAPTER 11 CASES PURSUANT TO 11 U.S.C. § 1112(b)**

PLEASE TAKE NOTICE that on May 4, 2010, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the **Motion of the Debtors for Voluntary Dismissal of Certain Chapter 11 Cases Pursuant to 11 U.S.C. § 1112(b)** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). A copy of the Motion is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon the undersigned counsel for the Debtors and Debtors in Possession on or before **May 18, 2010 at 4:00 p.m. (Eastern Standard Time)**.

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1 The Debtors and the last four digits of their taxpayer identification numbers are: RC Sooner Holdings, LLC (7904); RC Brixton Square Owner, LLC (8002); RC Cedar Crest Owner, LLC (7914); RC Fulton Plaza Owner, LLC (8011); RC Magnolia Owner, LLC (7998); RC Pomeroy Park Owner, LLC (7939); RC Salida Owner, LLC (7947); RC Savannah South Owner, LLC (7983); RC Southern Hills Owner, LLC (7958); Brixton Square Apartments, LLC (1844); CC Apartments, LLC (1798); Fulton Plaza Apartments, LLC (4344); Magnolia Manor Apartments, LLC (4486); Pomeroy Park Apartments, LLC (1649); Salida Apartments, LLC (1915); Savannah South Apartments, LLC (8586); and Southern Hills Villa Apartments, LLC (1721). The business address for each of the Debtors where notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Brendan L. Shannon at the Bankruptcy Court, 824 N. Market Street, 6<sup>th</sup> Floor, Courtroom No. 1, Wilmington, DE 19801 on **May 25, 2010 at 11:00 a.m. (Eastern Standard Time).**

**IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED  
AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY  
COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT  
FURTHER NOTICE OR HEARING.**

Dated: May 4, 2010  
Wilmington, Delaware

BALLARD SPAHR LLP

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Possession

# **EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
RC SOONER HOLDINGS, LLC, <u>et al.</u> , <sup>1</sup>	)	Case No. 10-10528 (BLS)
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Debtors.	)	(Jointly Administered)
	)	
	)	<b>Objection Deadline: May 18, 2010 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: May 25, 2010 at 11:00 a.m. (ET)</b>

**MOTION OF THE DEBTORS FOR VOLUNTARY DISMISSAL OF  
CERTAIN CHAPTER 11 CASES PURSUANT TO 11 U.S.C. § 1112(b)**

RC Sooner Holdings, LLC (“RC Sooner” or the “Company”) and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) file this Motion (the “Motion”) seeking voluntary dismissal of the chapter 11 cases of the Apartment LLCs (as defined below).

**JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate for relief is section 1112 of title 11 of the United States Code (the “Bankruptcy Code”).

**BACKGROUND**

2. On or about February 22, 2010 (the “Petition Date”), each of the Debtors filed their respective voluntary petitions for relief under the Bankruptcy Code. The Debtors

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<sup>1</sup> The Debtors and the last four digits of their taxpayer identification numbers are: RC Sooner Holdings, LLC (7904); RC Brixton Square Owner, LLC (8002); RC Cedar Crest Owner, LLC (7914); RC Fulton Plaza Owner, LLC (8011); RC Magnolia Owner, LLC (7998); RC Pomeroy Park Owner, LLC (7939); RC Salida Owner, LLC (7947); RC Savannah South Owner, LLC (7983); RC Southern Hills Owner, LLC (7958); Brixton Square Apartments, LLC (1844); CC Apartments, LLC (1798); Fulton Plaza Apartments, LLC (4344); Magnolia Manor Apartments, LLC (4486); Pomeroy Park Apartments, LLC (1649); Salida Apartments, LLC (1915); Savannah South Apartments, LLC (8586); and Southern Hills Villa Apartments, LLC (1721). The business address for each of the Debtors where notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

(continued...)

thereafter have continued to manage their business and properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On February 24, 2010, the Court entered an order directing joint administration of these cases. No trustee, examiner or committee has been appointed in these cases.

4. As of the Petition Date, the Debtors owned, operated and maintained a portfolio of 796 multi-family residential units divided among eight (8) separate apartment complexes (collectively, the "Apartments") for lease in Tulsa, Oklahoma. RC Sooner is the direct parent of eight (8) Oklahoma limited liability companies (collectively, the "RC LLCs"<sup>2</sup>), and together with RC Sooner, the "Purchasers") that were formed in October 2009 for the purpose of acquiring 100% of the membership interests of eight (8) existing Oklahoma limited liability companies that own the Apartments (collectively, the "Apartment LLCs"<sup>3</sup>). The purchase price of the acquisition included the assumption of approximately \$27 million in outstanding loans and mortgages (the "Loans and Mortgages") currently held by the Federal National Mortgage Association ("Fannie Mae").

5. During a transition period that lasted from the Closing Date to on or about December 31, 2009 (the "Transition Period"), the sellers remained in possession of, and

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(...continued)

<sup>2</sup> The RC LLCs consist of the following co-debtor subsidiaries of RC Sooner: Brixton Square Owner, LLC; RC Cedar Crest Owner, LLC; RC Fulton Plaza Owner, LLC; RC Magnolia Owner, LLC; RC Pomeroy Park Owner, LLC; RC Salida Owner, LLC; RC Savannah South Owner, LLC and RC Southern Hills Owner, LLC. RC Sooner is also the direct parent of non-filing entity RC Old South Owner, LLC, whose real estate assets are not subject to loans held by the Federal National Mortgage Association.

<sup>3</sup> The Apartment LLCs consist of the following co-debtor indirect subsidiaries of RC Sooner: Brixton Square Apartments, LLC; CC Apartments, LLC; Fulton Plaza Apartments, LLC; Magnolia Manor Apartments, LLC; Pomeroy Park Apartments, LLC; Salida Apartments, LLC; Savannah South Apartments, LLC and Southern Hills Villa Apartments, LLC. RC Sooner is also the ultimate parent of non-filing entity Old South Apartments, LLC, whose loan is not held by the Federal National Mortgage Association.

continued to operate, the Apartment LLCs on behalf of the Company for the purpose of facilitating the transition of the business to the Purchasers.

6. Unbeknownst to the Purchasers, however, the sellers of the Apartment LLCs and their brokers had engaged in a pattern of intentional misconduct and fraudulent misrepresentation from the very outset of negotiations for the sale of the Apartments and the Apartment LLCs, which misrepresentations included the failure to inform the Purchasers that the Loans and Mortgages had been in default since approximately September 2, 2009, and remained in default as of the closing on or about October 29, 2009 (the "Closing Date").

7. Fannie Mae was not informed of the Purchasers' purchase of the Apartment LLCs until late January, 2010, and the Company was not made aware of the existence of the defaults under the Loans and Mortgages until that same time, the sellers having actively concealed such facts from both Fannie Mae and the Company as recently as the final week of January, 2010.

8. Upon learning of the purchase of the Apartment LLCs, Fannie Mae declared a non-monetary default on account of the transfer of the Loans and Mortgages to the Company without Fannie Mae's consent. Fannie Mae subsequently initiated state court actions (the "State Court Actions") in Oklahoma against the Apartment LLCs and certain of the sellers petitioning for foreclosure and the appointment of a receiver against all the Apartments, which State Court Actions were subsequently stayed by the filing of the Debtors' chapter 11 petitions.

9. In light of the apparent misconduct and other improper acts engaged in by the sellers and other third parties with respect to the Apartments, the Debtors initiated two adversary proceedings (Adv. Proc. Nos. 10-50719 and 10-50723) (together, the "Adversary Proceedings") asserting against the sellers and other third parties various causes of action arising out of the sale and subsequent management of the Apartments. Based on the factual allegations

set forth in the complaints filed in each of the Adversary Proceedings, the Apartment LLCs themselves have no causes of action against any defendant in either Adversary Proceeding, nor are the Apartment LLCs entitled to assert claims to any proceeds that may be recovered in connection with the Adversary Proceedings.

10. On March 30, 2010, Fannie Mae filed a Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Lift Stay Motion"). The Debtors subsequently reached an agreement with Fannie Mae consenting to the relief requested by Fannie Mae in the Lift Stay Motion upon the terms and conditions set forth in a Stipulation and Consent Order Granting the Lift Stay Motion (the "Lift Stay Order") entered by this Court on April 27, 2010 (Docket No. 146). Pursuant to the Lift Stay Order, among other things, Fannie Mae was granted relief from the automatic stay imposed by Section 362(a) of the Bankruptcy Code to seek the appointment of a receiver by a competent court of the State of Oklahoma to manage and operate the Apartments and to exercise its other state law rights and remedies against the Apartments, including, without limitation, foreclosing upon the same.

11. Contemporaneously with the Debtors' consenting to the Lift Stay Order, Fannie Mae consented to the entry of a Final Agreed Order Authorizing Debtors in Possession to Use Cash Collateral; Granting Replacement Liens to Lender; and Granting Adequate Protection (the "Final Cash Collateral Order") pursuant to which Fannie Mae consented to the Debtors' use of Cash Collateral, on the terms set forth therein, through and including the date on which a receiver is appointed to manage and operate the Apartments owned by the Apartment LLCs in accordance with the terms set forth in the Lift Stay Order. The Final Cash Collateral Order was entered by this Court on April 27, 2010 (Docket No. 145).



12. In order to ensure their continued ability to fund, among other things, expenses associated with the administration of the Debtors' bankruptcy cases and the prosecution of certain valuable claims and causes of action, including the Adversary Proceedings, the Debtors entered into a Promissory Note and Security Agreement with AllStar Capital, Inc. for postpetition financing (the "Financing Agreement"). On April 30, 2010, the Debtors accordingly filed the Motion of Debtors and Debtors in Possession for Entry of Interim and Final Orders Authorizing Postpetition Financing, Granting Senior Liens, and Approving Agreement with AllStar Capital, Inc. (Docket No. 149).

13. On April 29, 2010, the Oklahoma District Court entered orders in each of the State Court Cases appointing a receiver for each of the Apartments. Pursuant to the terms of the Lift Stay Order, the Debtors have agreed to cooperate with the receiver for each of the Apartments, and furthermore the Debtors do not intend to oppose or otherwise participate in Fannie Mae's prosecution of the State Court Cases, except to the extent necessary to preserve their ability to assert all causes of action, rights and defenses in the pending Adversary Proceedings consistent with the Lift Stay Order. Therefore, and in accordance with the terms of the Lift Stay Order, as of May 5, 2010 the Debtors will no longer be responsible for the day-to-day operations or management of the Apartments. Furthermore, as of the effective date of foreclosure on each Apartment as specified in any order entered in the State Court Actions approving Fannie Mae's foreclosure on the Apartments (the "Foreclosure Orders"), the Apartment LLCs will no longer maintain any ownership interest in the Apartments.

### **RELIEF REQUESTED**

14. The Debtors submit this Motion for an order pursuant to Bankruptcy Code section 1112(b) dismissing the chapter 11 cases of each of the Apartment LLCs, substantially in the form of the proposed order attached as Exhibit A hereto (the "Proposed Order"). The relief

requested in this Motion seeks to dismiss only the Apartment LLC cases, and will not affect the joint administration of the remaining Debtors' bankruptcy cases.

### **BASIS FOR RELIEF**

15. Bankruptcy Code section 1112(b)(1) provides that upon request of a party in interest and after a notice and a hearing, and for cause shown, "the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate". 11 U.S.C. § 1112(b)(1). In turn, Bankruptcy Code section 1112(b)(4) sets forth a list of reasons for conversion or dismissal that constitute "cause". However, such list is not exclusive and a court may accordingly dismiss a case for reasons other than those enumerated under section 1112(b)(4). 7 Collier on Bankruptcy ¶ 1112.04[6][a] (Alan N. Resnick & Henry J. Sommer eds., 16<sup>th</sup> ed.). Moreover, a debtor's request for dismissal should ordinarily be granted absent the likelihood that "plain legal prejudice" will result to creditors by such dismissal. In re Kimble, 96 B.R. 305, 308 (Bankr. D.Mont. 1988).

16. The Debtors submit that "cause" exists to dismiss the Apartment LLC cases, which as a result of the Lift Stay Order will no longer have any assets to administer, due to the fact that the Apartment LLC debtors are all "single asset real estate" debtors as defined under Bankruptcy Code section 101(51B), whose sole assets are the Apartments. Following the entry of any Foreclosure Orders, each of the Apartment LLCs will be rendered holding companies without any assets to administer, and will accordingly derive no further benefits from remaining in bankruptcy.

17. Pursuant to the terms of the Lift Stay Order, Fannie Mae has stipulated and agreed not to object to the dismissal of the Apartment LLC cases. See Lift Stay Order at ¶ 17. Moreover, the remaining creditors of each of the Apartment LLCs will not be prejudiced by the dismissal of the chapter 11 cases, as the Apartment LLCs will not receive a discharge and

creditors will accordingly retain their claims against each Apartment LLC debtor, which claims may be pursued against each debtor outside of bankruptcy.

18. Furthermore, in light of the Lift Stay Order and the pending unopposed foreclosure actions, “cause” also exists to dismiss the cases under Bankruptcy Code section 1112(b)(4)(A) due to the likelihood of substantial or continuing loss to or diminution of the estates. See, e.g., In re Pensignorkay, Inc., 204 B.R. 676 (Bankr.Pa. 1997) (determining it more appropriate to dismiss rather than convert cases of single asset real estate debtor after entry of lift stay order). Absent the Apartment assets to administer, the continued administration of the Apartment LLC cases in bankruptcy will serve only to needlessly accrue administrative expenses. Dismissal of the Apartment LLC cases will eliminate such additional expenses, including, but not limited to, the accrual of United States Trustee fees and other fees and expenses associated with debtor reporting requirements.

19. Finally, the Apartment LLCs possess no significant funds or other assets to adjudicate or administer that would merit the conversion of the cases to cases under chapter 7 of the Bankruptcy Code and justify the appointment and payment of a chapter 7 trustee. Dismissal of the Apartment LLC cases is more appropriate than conversion, as without the Apartments that are subject to the Lift Stay Order and pending foreclosure actions, the estates of each Apartment LLC debtor will be administratively insolvent. See, e.g., In re Markhon Indus., Inc., 100 B.R. 432, 435 (Bankr. N.D.Ind. 1989) (dismissal warranted over conversion where estate has no assets left to administer under chapter 7).

20. Based upon the foregoing, the Debtors accordingly submit that dismissal of the Apartment LLC cases is appropriate and in the best interests of each of the Apartment LLC debtors’ estates and creditors.

**CONCLUSION**

**WHEREFORE**, the Debtors respectfully request that the Court (a) enter an order dismissing the chapter 11 cases of each of the Apartment LLCs substantially in the form of the Proposed Order; and (b) grant such other and further relief as the Court deems just and proper.

Dated: May 4, 2010  
Wilmington, Delaware

Respectfully Submitted,

BALLARD SPAHR LLP

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Counsel for the Debtors and Debtors in  
Possession

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<sup>4</sup> Admitted *pro hac vice*.

# **EXHIBIT A**

**4IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
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RC SOONER HOLDINGS, LLC, <u>et al.</u> , <sup>1</sup>	)	Case No. 10-10528 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Related Docket No. ____

**ORDER DISMISSING CHAPTER 11 CASES OF APARTMENT LLC DEBTORS**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), seeking entry of an order authorizing the Debtors to dismiss the chapter 11 cases of Brixton Square Apartments, LLC (Case No. 10-10537); CC Apartments, LLC (Case No. 10-10538); Fulton Plaza Apartments, LLC (Case No. 10-10539); Magnolia Manor Apartments, LLC (Case No.10-10540); Pomeroy Park Apartments, LLC (Case No. 10-10541); Salida Apartments, LLC (Case No. 10-10542); Savannah South Apartments, LLC (Case No. 10-10543) and Southern Hills Villa Apartments, LLC (Case No. 10-10544) (collectively, the "Apartment LLCs"); it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); it appearing that venue of these chapter 11 cases and the

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<sup>1</sup> The Debtors and the last four digits of their taxpayer identification numbers are: RC Sooner Holdings, LLC (7904); RC Brixton Square Owner, LLC (8002); RC Cedar Crest Owner, LLC (7914); RC Fulton Plaza Owner, LLC (8011); RC Magnolia Owner, LLC (7998); RC Pomeroy Park Owner, LLC (7939); RC Salida Owner, LLC (7947); RC Savannah South Owner, LLC (7983); RC Southern Hills Owner, LLC (7958); Brixton Square Apartments, LLC (1844); CC Apartments, LLC (1798); Fulton Plaza Apartments, LLC (4344); Magnolia Manor Apartments, LLC (4486); Pomeroy Park Apartments, LLC (1649); Salida Apartments, LLC (1915); Savannah South Apartments, LLC (8586); and Southern Hills Villa Apartments, LLC (1721). The business address for each of the Debtors where notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

<sup>2</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; due and adequate notice of the Motion having been given under the circumstances; and after due deliberation and cause appearing therefor; it is hereby

ORDERED that the chapter 11 cases of each of the Apartment LLCs are hereby dismissed; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated:

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UNITED STATES BANKRUPTCY JUDGE