

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

In Re:	)	
	)	
417 RENTALS, LLC,	)	Case No. 17-60935-abf11
	)	Chapter 11
Debtor.	)	

**MOTION TO PROHIBIT USE OF CASH COLLATERAL**

**COMES NOW** Central Bank of the Ozarks (“Central Bank”), by counsel, and states:

**Parties**

1. On August 25, 2017, debtor 417 Rentals, LLC (“Debtor”) filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code and relief was ordered.
2. Debtor is a Missouri limited liability company, with its principal place of business at 5759 W. Highway 60, Brookline, Missouri in the Western District of Missouri.
3. Since filing the petition, Debtor has remained in possession and control of its assets as a debtor-in-possession within the meaning of 11 U.S.C. §1101(1).
4. Central Bank is a secured creditor in this proceeding and is the holder of certain promissory notes, deeds of trust, assignments of rents, guaranties, loan modification agreements, and other loan agreements (collectively the “Loan Documents”) as more particularly described below.

**Jurisdiction and Venue**

5. This is an action to terminate, annul or modify the automatic stay under 11 U.S.C. §362(d)(1) and (2).
6. This court has jurisdiction under 28 U.S.C. §157(a) and §1334.
7. This is a core proceeding under 28 U.S.C. §157(b)(2)(M).
8. Venue is proper under 28 U.S.C. §1408 and §1409.

**First Secured Claim  
Loan No. XXXXX-1632**

9. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:
  - a. 2850 W. Elm Street;
  - b. 900 W. Mt. Vernon;
  - c. 827 S. Nettleton;
  - d. 1271 S. Ferguson.
10. Central Bank is the holder of a Promissory Note (“Note No. 1”), dated October 17, 2008, executed by Christopher Eric Gatley (“Gatley”) which is secured by the property described above under a Deed of Trust (“Deed of Trust No. 1”) of the same date, executed and delivered to Central Bank by Debtor. True copies of Note No. 1 and Deed of Trust No. 1 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 1 and 2.
11. Deed of Trust No. 1 contains an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 9 above.

12. Central Bank's lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deed of Trust No. 1 in the Office of the Recorder of Deeds of Greene County, Missouri on October 21, 2008 in Book 2008 at Page 044559-08.

13. Gatley and Central Bank entered into three (3) Commercial Loan Modification Agreements, true copies of which are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 3, 4 and 5.

14. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 6.

15. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 7 and 8.

16. Debtor unconditionally guaranteed Gatley's debt to Central Bank under Note No. 1 and Deed of Trust No. 1 by execution and delivery of a Commercial Guaranty (the "417 Guaranty") dated February 18, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 9.

17. Upon information and belief Note No. 1 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.

18. As of August 29, 2017, the following amounts were due under Note No. 1:

a. Principal:	\$122,819.69
b. Accrued Interest:	\$827.50
c. Late Fees:	\$284.50
d. Fees:	\$100.00
e. Escrow Taxes:	<u>\$-1,055.10</u>
f. <b>Total Amount Due:</b>	<b>\$122,976.59</b>

19. Interest continues to accrue under Note No. 1 at the rate of \$18.76 per day from August 29, 2017.

20. Under Note No. 1 and Deed of Trust No. 1, Central Bank is entitled to attorney's fees, costs and other expenses including those incurred in this proceeding.

21. Note No. 1 came due on July 16, 2017 and is in default for failure to make the payment when due.

**Second Secured Claim  
Loan No. XXXXX-7631**

22. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:

- a. 811 S. New;
- b. 3159 W. Madison;
- c. 1550 N. Colgate.

23. Central Bank is the holder of a Promissory Note ("Note No. 2") dated November 19, 2008, executed by Christopher Eric Gatley ("Gatley") which is secured by the property described above under a Deed of Trust ("Deed of Trust No. 2") of the same date, executed and delivered to Central Bank by Debtor. True copies of Note No. 2 and Deed of Trust No. 2 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 10 and 11.

24. Deed of Trust No. 2 contains an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 22 above.

25. Central Bank's lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deed of Trust No. 2 in the Office of the Recorder of Deeds of Greene County, Missouri on December 2, 2008 in Book 2008 at Page 049552-08.

26. Gatley and Central Bank entered into two (2) Commercial Loan Modification Agreements, true copies of which are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 12 and 13.

27. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 6.

28. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 7 and 8.

29. Debtor unconditionally guaranteed Gatley's debt to Central Bank under Note No. 2 and Deed of Trust No. 2 by execution and delivery of a Commercial Guaranty (the "417 Guaranty") dated February 18, 2016, a true copy of which is attached to the

Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 9.

30. Upon information and belief Note No. 2 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.

31. As of August 29, 2017, the following amounts were due under Note No. 2:

a. Principal:	\$75,219.12
b. Accrued Interest:	\$508.22
c. Late Fees:	\$0.00
d. Fees:	\$100.00
e. Escrow Taxes:	<u>\$-559.80</u>
f. <b>Total Amount Due:</b>	<b>\$75,267.54</b>

32. Interest continues to accrue under Note No. 2 at the rate of \$11.49 per day from August 29, 2017.

33. Under Note No. 2 and Deed of Trust No. 2, Central Bank is entitled to attorney's fees, costs and other expenses including those incurred in this proceeding.

34. Note No. 2 came due on July 16, 2017 and is in default for failure to make the payment when due.

**Third Secured Claim  
Loan No. XXXXX-2397**

35. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:

- a. 1430 N. Frisco;
- b. 1847 W. Chestnut.

36. Central Bank is the holder of a Promissory Note ("Note No. 3") dated July 16, 2009, executed by Christopher Eric Gatley ("Gatley") which is secured by the property described above under two (2) Deeds of Trust ("Deeds of Trust No. 3 and 4") of the same date, executed and delivered to Central Bank by Debtor. True copies of Note

No. 3 and Deeds of Trust No. 3 and 4 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 14, 15 and 16.

37. Deeds of Trust No. 3 and 4 each contain an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 35 above.

38. Central Bank's lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deeds of Trust No. 3 and 4 in the Office of the Recorder of Deeds of Greene County, Missouri on July 22, 2009 in Book 2009 at Page 033130-09 and Book 2009 at Page 033131-09.

39. Gatley and Central Bank entered into three (3) Commercial Loan Modification Agreements, true copies of which are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 17, 18 and 19.

40. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 6.

41. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 7 and 8.

43. Debtor unconditionally guaranteed Gatley's debt to Central Bank under Note No. 3 and Deeds of Trust No. 3 and 4 by execution and delivery of a Commercial

Guaranty (the “417 Guaranty”) dated February 18, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibit 9.

44. Upon information and belief Note No. 3 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.

45. As of August 29, 2017, the following amounts were due under Note No. 1:

a. Principal:	\$62,752.19
b. Accrued Interest:	\$423.35
c. Late Fees:	\$319.95
d. Fees:	\$0.00
e. Escrow Taxes:	<u>\$-514.85</u>
f. <b>Total Amount Due:</b>	<b>\$62,980.64</b>

46. Interest continues to accrue under Note No. 3 at the rate of \$9.59 per day from August 29, 2017.

47. Under Note No. 3 and Deeds of Trust No. 3 and 4, Central Bank is entitled to attorney’s fees, costs and other expenses including those incurred in this proceeding.

48. Note No. 3 came due on July 16, 2017 and is in default for failure to make the payment when due.

**Fourth Secured Claim  
Loan No. XXXXX-2615**

49. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:

- a. 1617 N. Main Avenue.
- b. 2527 W. Water;
- c. 901 W. Mt. Vernon;

50. Central Bank is the holder of a Promissory Note (“Note No. 4”) dated September 28, 2009, executed by Debtor which is secured by the property described



above under a Deed of Trust (“Deed of Trust No. 5”) of the same date, executed and delivered to Central Bank by Debtor. True copies of Note No. 4 and Deed of Trust No. 5 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 20 and 21.

51. Deed of Trust No. 5 contains an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 49 above.

52. Central Bank’s lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deed of Trust No. 5 in the Office of the Recorder of Deeds of Greene County, Missouri on October 6, 2009 in Book 2009 at Page 044827-09.

53. Gatley and Central Bank entered into three (3) Commercial Loan Modification Agreements, true copies of which are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 22, 23 and 24.

54. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibit 6.

55. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 7 and 8.

56. Gatley unconditionally guaranteed Debtor's debt to Central Bank under Note No. 4 and Deed of Trust No. 5 by execution and delivery of a Commercial Guaranty (the "Gatley September 2009 Guaranty") dated September 28, 2009, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 25.

57. Upon information and belief Note No. 4 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.

58. As of August 29, 2017, the following amounts were due under Note No. 1:

a. Principal:	\$109,965.63
b. Accrued Interest:	\$748.02
c. Late Fees:	\$210.60
d. Fees:	\$100.00
e. Escrow Taxes:	<u>\$-830.07</u>
f. <b>Total Amount Due:</b>	<b>\$110,194.18</b>

59. Interest continues to accrue under Note No. 4 at the rate of \$16.80 per day from August 29, 2017.

60. Under Note No. 4 and Deed of Trust No. 5, Central Bank is entitled to attorney's fees, costs and other expenses including those incurred in this proceeding.

61. Note No. 4 came due on July 16, 2017 and is in default for failure to make the payment when due.

**Fifth Secured Claim  
Loan No. XXXXX-8324**

62. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:

- a. 823 N. Kansas Expressway;
- b. 824 N. Eagle;
- c. 811 S. New;

- d. 3159 W. Madison;
- e. 1550 N. Colgate.

63. Central Bank is the holder of a Promissory Note (“Note No. 5”) dated November 6, 2009, executed by Debtor which is secured by the property described above under a two (2) Deeds of Trust (“Deeds of Trust No. 6 and 7”) of the same date, executed and delivered to Central Bank by Debtor. True copies of Note No. 6 and Deeds of Trust No. 6 and 7 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 26, 27 and 28.

64. Deeds of Trust No. 6 and 7 each contain an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 62 above.

65. Central Bank’s lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deeds of Trust No. 6 and 7 in the Office of the Recorder of Deeds of Greene County, Missouri on November 12, 2009 in Book 2009 at Page 050058-09 and on December 12, 2012 in Book 2012 at Page 057801-12.

66. Debtor and Central Bank entered into two (2) Commercial Loan Modification Agreements, true copies of which are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 29 and 30.

67. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibit 6.

68. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 7 and 8.

69. Gatley unconditionally guaranteed Debtor's debt to Central Bank under Note No. 5 and Deeds of Trust No. 6 and 7 by execution and delivery of a Commercial Guaranty (the "Gatley November 2009 Guaranty") dated November 6, 2009, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 31.

70. Upon information and belief Note No. 5 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.

71. As of August 29, 2017, the following amounts were due under Note No. 5:

a. Principal:	\$73,267.92
b. Accrued Interest:	\$494.20
c. Late Fees:	\$329.07
d. Fees:	\$100.00
e. Escrow Taxes:	<u>\$-348.21</u>
f. <b>Total Amount Due:</b>	<b>\$73,842.98</b>

72. Interest continues to accrue under Note No. 5 at the rate of \$11.19 per day from August 29, 2017.

73. Under Note No. 5 and Deeds of Trust No. 6 and 7, Central Bank is entitled to attorney's fees, costs and other expenses including those incurred in this proceeding.

74. Note No. 5 came due on July 16, 2017 and is in default for failure to make the payment when due.

**Sixth Secured Claim  
Loan No. XXXXX-9456**

75. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:

- a. 2038 N. Robberson;
- b. 1723 W. Lee;
- c. 909 N. Eagle;
- d. 804 N. West.

76. Central Bank is the holder of a Promissory Note (“Note No. 6”) dated February 18, 2016, executed by Debtor which is secured by the property described above under a Deed of Trust (the “Deed of Trust No. 8”) of the same date, executed and delivered to Central Bank by Debtor. True copies of Note No. 6 and Deed of Trust No. 8 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 32 and 33.

77. Deed of Trust No. 8 contains an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 75 above.

78. Central Bank’s lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deed of Trust No. 8 in the Office of the Recorder of Deeds of Greene County, Missouri on February 23, 2016 in Book 2016 at Page 006480-16. A corrected Deed of Trust No. 8 was re-recorded on December 14, 2016 (Deeds of Trust No. 9), a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibit 34.

79. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 6.

80. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 7 and 8.

81. Gately unconditionally guaranteed Debtor's debt to Central Bank under the Note No. 6 and Deed of Trust No. 8 by execution and delivery of a Commercial Guaranty dated February 18, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 35.

82. Upon information and belief Note No. 6 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.

83. As of August 29, 2017, the following amounts were due under Note No. 1:

a. Principal:	\$57,684.07
b. Accrued Interest:	\$388.81
c. Late Fees:	\$60.00
d. Fees:	\$345.40
e. Escrow Taxes:	<u>\$-1,058.38</u>
f. <b>Total Amount Due:</b>	<b>\$57,419.90</b>

84. Interest continues to accrue under Note No. 6 at the rate of \$8.81 per day from August 29, 2017.

85. Under Note No. 6 and Deed of Trust No. 8, Central Bank is entitled to attorney's fees, costs and other expenses incurred in this proceeding.

86. Note No. 6 came due on July 16, 2017 and is in default for failure to make the payment when due.

**Seventh Secured Claim  
Loan No. XXXXX-2225**

87. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:

- a. 2749 W. Olive St.;
- b. 2211 W. Atlantic St.;
- c. 1451 N. West Ave.;
- d. 910 S. Kansas Ave.;
- e. 813 S. Glenn Ave.;
- f. 631 W. High St.;
- g. 2911 W. Calhoun St.;
- h. 1427 W. Lynn St.;
- i. 830 S. Nettleton;

88. Central Bank is the holder of a Promissory Note (“Note No. 7”), dated June 15, 2007, executed by Christopher Eric Gatley (“Gatley”) which is secured by the property described above under a Deed of Trust (“Deed of Trust No. 9”) of the same date, executed and delivered to Central Bank by Gatley. True copies of Note No. 7 and Deed of Trust No. 9 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 36 and 37.

89. Deed of Trust No. 9 contains an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 87 above.

90. Central Bank's lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deed of Trust No. 9 in the Office of the Recorder of Deeds of Greene County, Missouri on June 26, 2007 in Book 2007 at Page 031965-07.

91. Gatley and Central Bank entered into four (4) Commercial Loan Modification Agreements, true copies of which are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 38, 39, 40, and 41.

92. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 6.

93. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 7 and 8.

94. Debtor unconditionally guaranteed Gatley's debt to Central Bank under Note No. 7 and Deed of Trust No. 9 by execution and delivery of a Commercial Guaranty (the "417 Guaranty") dated February 18, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 9.

95. Upon information and belief Note No. 7 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.



96. As of August 29, 2017, the following amounts were due under Note No. 1:

a. Principal:	\$215,771.22
b. Accrued Interest:	1,461.02
c. Late Fees:	309.06
d. Fees:	0.00
e. Escrow Taxes:	<u>-1,607.76</u>
f. <b>Total Amount Due:</b>	<b>\$215,933.54</b>

97. Interest continues to accrue under Note No. 7 at the rate of \$32.97 per day from August 29, 2017.

98. Under Note No. 7 and Deed of Trust No. 9, Central Bank is entitled to attorney's fees, costs and other expenses including those incurred in this proceeding.

99. Note No. 7 came due on July 16, 2017 and is in default for failure to make the payment when due.

100. Upon information and belief, Note No. 7 is also in default because Gatley transferred the property described in paragraph 87 to Debtor in August 2017 without Central Bank's prior knowledge or consent in violation of the Due on Sale clause in Deed of Trust No. 9.

**Eighth Secured Claim  
Loan No. XXXXX-2353**

101. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:

- a. 3015 W. Lincoln;
- b. 2159 W. Chestnut;
- c. 2660 W. Phelps;
- d. 1035 W. Division;
- e. 3050 W. Pacific;
- f. 2129 W. Wall St.;

- g. 1461 N. Missouri;
- h. 2757 W. Walnut;
- i. 2681 E. Atlantic;
- j. 2746 W. College St.

102. Central Bank is the holder of a Promissory Note (“Note No. 8”), dated August 6, 2007, executed by Christopher Eric Gatley (“Gatley”) which is secured by the property described above under two (2) Deeds of Trust (“Deeds of Trust Nos. 10 and 11”) of the same date, executed and delivered to Central Bank by Gatley. True copies of Note No. 8 and Deeds of Trust Nos. 10 and 11 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 42, 43 and 44.

103. Deeds of Trust Nos. 10 and 11 each contain an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 101 above.

104. Central Bank’s lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deeds of Trust Nos. 10 and 11 in the Office of the Recorder of Deeds of Greene County, Missouri on August 28, 2007 in Book 2007 at Page 043197-07 and on May 22, 2008 in Book 2008 at Page 022209-08.

105. Gatley and Central Bank entered into three (3) Commercial Loan Modification Agreements, true copies of which are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff’s Exhibits 45, 46 and 47.

106. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 6.

107. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 7 and 8.

108. Debtor unconditionally guaranteed Gatley's debt to Central Bank under Note No. 8 and Deeds of Trust Nos. 10 and 11 by execution and delivery of a Commercial Guaranty (the "417 Guaranty") dated February 18, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 9.

109. Upon information and belief Note No. 8 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.

110. As of August 29, 2017, the following amounts were due under Note No. 1:

a. Principal:	\$235,732.33
b. Accrued Interest:	1,587.33
c. Late Fees:	109.40
d. Fees:	0.00
e. Escrow Taxes:	<u>-1,951.22</u>
f. <b>Total Amount Due:</b>	<b>\$235,477.84</b>

111. Interest continues to accrue under Note No. 8 at the rate of \$36.01 per day from August 29, 2017.

112. Under Note No. 8 and Deeds of Trust Nos. 10 and 11, Central Bank is entitled to attorney's fees, costs and other expenses including those incurred in this proceeding.

113. Note No. 8 came due on July 16, 2017 and is in default for failure to make the payment when due.

114. Upon information and belief, Note No. 8 is also in default because Gatley transferred the property described in paragraph 101 to Debtor in August 2017 without Central Bank's prior knowledge or consent in violation of the Due on Sale clauses in Deeds of Trust Nos. 10 and 11.

115. Upon information and belief, the property at 2129 W. Wall Street has been substantially damaged by fire and Central Bank is an additional loss payee under the policy of insurance on the property, but no insurance claim has been made by Debtor or Gatley.

116. Upon information and belief, the City of Springfield, Missouri has issued a Notice of Violation of City Ordinances and declared 2129 W. Wall Street a public nuisance, but Debtor has failed to take action to abate the violations.

**Ninth Secured Claim  
Loan No. XXXXX-2370**

117. Debtor owns certain residential rental property in Springfield, Greene County, Missouri commonly known as:

- a. 503 N. Brown Ave.;
- b. 818 E. Garfield;
- c. 842 S. Nettleton;
- d. 2321 N. Concord Ave.;

- e. 2316 W. Olive;
- f. 1634 W. Chestnut;
- g. 2832 W. Water St.;
- h. 833 S. Nettleton;
- i. 1029 N. Johnston;
- j. 1005 E. Commercial St.;
- k. 1448 N. Prospect;
- l. 612 N. Park;
- m. 2051 N. Marion.
- n. 2252 N. Lyon.
- o. 1223 S. New.
- p. 2211 W. Atlantic.

118. Central Bank is the holder of a Promissory Note (“Note No. 9”), dated August 14, 2007, executed by Christopher Eric Gatley (“Gatley”) which is secured by the property described above under eleven (11) Deeds of Trust (“Deeds of Trust Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22”) executed and delivered to Central Bank by Gatley as follows:

- a. Deed of Trust No. 12 dated July 16, 2003.
- b. Deed of Trust No. 13 dated March 3, 2006.
- c. Deed of Trust No. 14 dated March 24, 2006.
- d. Deed of Trust No. 15 dated April 11, 2006.
- e. Deed of Trust No. 16 dated May 12, 2006.
- f. Deed of Trust No. 17 dated August 21, 2006.

- g. Deed of Trust No. 18 dated September 6, 2006.
- h. Deed of Trust No. 19 dated October 19, 2006.
- i. Deed of Trust No. 20 dated November 15, 2006.
- j. Deed of Trust No. 21 dated December 22, 2006.
- k. Deed of Trust No. 22 dated June 15, 2007.

True copies of Note No. 9 and Deeds of Trust Nos. 12-22 are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 48 and 49-59.

119. Deeds of Trust Nos. 12-22 each contain an assignment of leases and rents clause which presently assigns to Central Bank all present and future leases and rents of the property described in paragraph 117 above.

120. Central Bank's lien on the property described above and the assignment of the leases and rents were duly perfected by recording Deeds of Trust Nos. 12-22 in the Office of the Recorder of Deeds of Greene County, Missouri as follows:

- a. Deed of Trust No. 12 recorded July 18, 2003 in Book 2003 at Page 050446-03.
- b. Deed of Trust No. 13 recorded March 9, 2006 in Book 2006 at Page 011971-06.
- c. Deed of Trust No. 14 recorded March 28, 2006 in Book 2006 at Page 015342-06.
- d. Deed of Trust No. 15 recorded April 14, 2006 in Book 2006 at Page 018746-06.

- e. Deed of Trust No. 16 recorded May 16, 2006 in Book 2006 at Page 025358-06.
- f. Deed of Trust No. 17 recorded September 14, 2006 in Book 2006 at Page 049410-06.
- g. Deed of Trust No. 18 recorded September 14, 2006 in Book 2006 at Page 049401-06.
- h. Deed of Trust No. 19 recorded November 3, 2006 in Book 2006 at Page 058949-06.
- i. Deed of Trust No. 20 recorded November 17, 2006 in Book 2006 at Page 061577-06.
- j. Deed of Trust No. 21 recorded December 28, 2006 in Book 2006 at Page 068424-06.
- k. Deed of Trust No. 22 recorded June 26, 2007 in Book 2006 at Page 031966-07.

121. Gatley and Central Bank entered into five (5) Commercial Loan Modification Agreements, true copies of which are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 60, 61, 62, 63 and 64.

122. Central Bank, Debtor and Gatley entered into a Forbearance Agreement dated February 23, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 6.

123. The Forbearance Agreement was amended and extended two (2) times and finally expired on July 16, 2017. True copies of the Addendum to Forbearance

Agreement and the Second Addendum to Forbearance Agreement are attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibits 7 and 8.

124. Debtor unconditionally guaranteed Gatley's debt to Central Bank under Note No. 9 and Deeds of Trust Nos. 12-22 by execution and delivery of a Commercial Guaranty (the "417 Guaranty") dated February 18, 2016, a true copy of which is attached to the Exhibit Index accompanying this Motion and incorporated by reference here as Plaintiff's Exhibit 9.

125. Upon information and belief Note No. 9 is fully secured by the value of the real property described above, but there is otherwise no equity in such property.

126. As of August 29, 2017, the following amounts were due under Note No. 1:

a. Principal:	\$346,495.29
b. Accrued Interest:	2,344.70
c. Late Fees:	764.40
d. Fees:	0.00
e. Escrow Taxes:	<u>-3,291.16</u>
f. <b>Total Amount Due:</b>	<b>\$346,313.23</b>

127. Interest continues to accrue under Note No. 9 at the rate of \$52.94 per day from August 29, 2017.

128. Under Note No. 9 and Deeds of Trust Nos. 12-22, Central Bank is entitled to attorney's fees, costs and other expenses including those incurred in this proceeding.

129. Note No. 9 came due on July 16, 2017 and is in default for failure to make the payment when due.

130. Upon information and belief, Note No. 9 is also in default because Gatley transferred the property described in paragraph 101 to Debtor in August 2017 without



Central Bank's prior knowledge or consent in violation of the Due on Sale clauses in Deeds of Trust Nos. 12-22.

131. Upon information and belief, the property at 833 S. Nettleton has been substantially damaged by fire and Central Bank is an additional loss payee under the policy of insurance on the property, but no insurance claim has been made by Debtor or Gatley.

132. The City of Springfield, Missouri has issued a Notice of Violation of City Ordinances, declared 833 S. Nettleton a public nuisance and issued an order to demolish the property, but Debtor has failed to take action to abate the violation.

#### **Basis for Relief**

133. The debts to Central Bank are in default for:

- a. failure to pay the debts when due;
- b. transfer of certain properties in violation of the Due on Sale clauses in the Deeds of Trust;
- c. failure to maintain certain properties in good condition; and
- d. failure to comply with all existing applicable laws, ordinances, and regulations of governmental authorities.

134. Debtor remains in possession of the real property that secures Central Bank's debts and has failed and refused to turn over the rents, issues, profits and proceeds thereof to Central Bank.

135. Under the promissory notes and deeds of trust, Central Bank has an absolute, present assignment of the rents, issues and profits of the real property that secures its debts and took all necessary steps to perfect its rights under the assignment of rents clause prior to the filing of the petition. Consequently, the rents are not property of

the bankruptcy estate and do not constitute cash collateral within the meaning of 11 U.S.C. §363(a).

136. Central Bank is an additional loss payee under the insurance policies on the 2129 W. Wall Street and 833 S. Nettleton property and is entitled to the insurance proceeds thereof.

137. To the extent the rents are cash collateral, Debtor has not obtained Central Bank's consent to the use thereof and no order authorizing the use of cash collateral has been entered by this Court as required by 11 U.S.C. §363(c)(2).

138. To the extent the rents are cash collateral, Debtor has failed to provide Central Bank with adequate protection of its interest in the property which secures its debts.

139. Upon information and belief, Debtor is using the rents without Central Bank's consent or authorization of the court and Central Bank will suffer irreparable harm unless the court enters an order prohibiting Debtor's use of the rents without adequate protection.

140. Upon information and belief, Debtor has not segregated Central Bank's rents and Debtor should be held to account for any cash collateral in its possession as required by 11 U.S.C. §363(c)(4).

141. To the extent Debtor has engaged in the unauthorized use of cash collateral since the filing of the petition, Central Bank is entitled to an administrative expense claim in the amount such unauthorized use.

**WHEREFORE**, Movant Central Bank of the Ozarks prays for an Order prohibiting the Debtor from using its cash collateral under 11 U.S.C. §363(c)(4); for an

order compelling debtor to segregate and account for Movant's cash collateral in its possession under 11 U.S.C. §363 (c)(4); in the alternative, for an Order compelling the Debtor to pay Central Bank adequate protection as a condition of using its cash collateral; for allowance of an administrative expense claim equal to the amount of cash collateral used by Debtor without its consent or authorization of the court since the filing of the petition; for its attorney's fees and costs incurred herein; and for such further relief as the Court deems just and proper.

LATHROP GAGE LLP

By: /s/ Dan Nelson

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ATTORNEYS FOR CENTRAL BANK  
CENTRAL BANK OF THE OZARKS

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of the above was served electronically on all Central Banks, parties in interest or their attorneys of record, according to this Court's notice of electronic filing and that a copy was served by regular mail, postage prepaid, to the Central Banks, parties in interest or their attorneys of record that did not receive electronic notice on this 29<sup>th</sup> day of September, 2017.

/s/ Dan Nelson  
Dan Nelson