

1 Russell S. Walker, Utah Bar No. 3363
2 Elizabeth R. Loveridge, Utah Bar No. 6025
3 Reid W. Lambert, Utah Bar No. 5744
4 WOODBURY & KESLER, P.C.
5 265 East 100 South, Suite 300
6 P.O. Box 3358
7 Salt Lake City, UT 84111
8 Telephone: (801) 364-1100
9 Facsimile: (801) 359-2320
10 Email: rwalker@wklawpc.com

11 and

12 Joseph J. Huggins
13 Nevada Bar No. 4456
14 HUGGINS & ASSOCIATES
15 8275 S. Eastern Ave., Suite 200
16 Las Vegas, Nevada 89123
17 Telephone: (702) 371-6921
18 Facsimile: (702) 940-4088
19 Email: joehuggins@sbcglobal.net

20 **UNITED STATES BANKRUPTCY COURT**
21 **DISTRICT OF NEVADA**

22 In re:

23 **USA INVESTORS VI, LLC**

24 Debtor.

25 Case No.: BK-S-06-13925 LBR

26 Chapter 7

27 **USA INVESTORS VI, LLC'S AMENDED**
28 **ANSWER TO USA CAPITAL DIVERSIFIED**
TRUST DEED FUND, LLC'S
INVOLUNTARY CHAPTER 7
BANKRUPTCY PETITION

29 Pursuant to 11 U.S.C. § 303 (d) USA Investors' VI LLC ("Investors VI") hereby amends
30 its answer to the involuntary petition herein, dated, December 15, 2006, brought by USA Capital
31 Diversified Trust Deed Fund, LLC's ("Diversified"), and respectfully shows and alleges:

32 **First Affirmative Defense**

- 33 1. The involuntary petition fails to state a claim upon which relief can be granted.

34 **Second Affirmative Defense**

- 35 2. USAIP is the managing member of Investors VI.
- 36 3. Investors VI's only asset consists of the Zoso Hotel and associated assets located in
37 Palm Springs, California ("Hotel Zoso").

1 4. During the fall of 2006, a third party offered to purchase the Zoso Hotel from
2 Investors VI for the approximate sum of \$28,000,000.00.

3 5. However, on December 15, 2006, Diversified filed an involuntary chapter 11
4 petition on behalf of Investors VI. In the petition, Diversified alleged that Investors VI was not
5 paying its debts as they became due.

6 6. Diversified then filed a motion under 11 U.S.C. §§ 303 (f) and (g) seeking the
7 appointment of an interim trustee, or alternatively, an order restricting Investor VI's business
8 operations during the gap period ("Motion for Interim Trustee").

9 7. The basis for Diversified's Motion for Interim Trustee was Diversified's fear that
10 Diversified would not receive any of the proceeds from the sale of the Hotel Zoso to the Buyer.

11 8. But for the present involuntary bankruptcy petition, Investors VI would be able to
12 complete the sale of the Hotel Zoso to the Buyer and apply the proceeds from the sale to satisfy its
13 creditors' claims.

14 9. The present involuntary bankruptcy also threatens the possibility of completing the
15 sale of the Hotel Zoso to the Buyer where the appointment of an interim trustee to conduct all of
16 Investors VI's affairs has negatively impacted the sale negotiations.

17 10. By reason of the foregoing the Court should deny Diversified's involuntary
18 bankruptcy petition where the bankruptcy proceeding itself has frustrated Investors VI's attempts to
19 satisfy valid claims of its creditors.

20 11. In 2005, USAIP granted Diversified a pledge in the sum of \$75,000,000 and in May,
21 2002 USAIP signed a promissory note to USACM and Diversified for \$58,000,000 and granted
22 USACM and Diversified a pledge of \$58,000,000 to secure all claims owing from USAIP and its
23 affiliated entities to the Diversified Fund and USACM.

24 12. Therefore, the Diversified Fund has made an accord and satisfaction with USAIP
25 regarding any debt it claims is owing from Investors VI and therefore it does not have a claim
26 against Investors VI and the Court should deny the petition for relief under §303 of the Bankruptcy
27 Code.

28

WOODBURY & KESLER, P.C.
265 East 100 South, Suite 300
Salt Lake City, UT 84111
Tel: (801) 364-1100 Fax: (801) 359-2320

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Third Affirmative Defense

13. Investors VI has more than twelve creditors therefore the Court should deny Diversified's petition for relief under Section 303 of the Bankruptcy Code.

14. Pursuant to Rule 1003 of Rules of Bankruptcy Procedure , attached hereto is a list of the Investors VI's creditors with their addresses and telephone numbers, also attached is a list of the balances owing to such creditors.

Fourth Affirmative Defense

15. Diversified Fund is not a creditor of Investors VI and therefore the Court should deny the petition for relief under Section 303 of the Bankruptcy Code.

Fifth Affirmative Defense

16. Investors VI is solvent and therefore the Court should deny Diversified's petition for relief under Section 303 of the Bankruptcy Code.

WHEREFORE, USAIP respectfully asks this Court to dismiss the involuntary petition with prejudice.

DATED this 7th day of March, 2007.

WOODBURY & KELSER, P.C.

/s/ Russell S. Walker
Russell S. Walker, Utah Bar No. 3363
Elizabeth R. Loveridge, Utah Bar No. 6025
Reid W. Lambert, Utah Bar No. 5744
WOODBURY & KELSER, P.C.
265 East 100 South, Suite 300
P.O. Box 3358
Salt Lake City, UT 84111

and

Joseph J. Huggins
Nevada Bar No. 4456
HUGGINS & ASSOCIATES
8275 S. Eastern Ave., Suite 200
Las Vegas, Nevada 89123

WOODBURY & KESLER, P.C.
265 East 100 South, Suite 300
Salt Lake City, UT 84111
Tel: (801) 364-1100 Fax: (801) 359-2320

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 7th day of March, 2007, I caused a true and correct copy of the foregoing **USA INVESTORS VI, LLC'S AMENDED ANSWER TO USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC'S INVOLUNTARY CHAPTER 7 BANKRUPTCY PETITION** to be sent via ECF to the following registered users:

ROB CHARLES rcharles@lrlaw.com, cjordan@lrlaw.com

SCOTT D. FLEMING sfleming@halelane.com, dbergsing@halelane.com, ecfvegas@halelane.com

JAMES F. LISOWSKI jfltrustee@aol.com, NV15@ecfbis.com

ANNE M. LORADITCH ecffilings@beckleylaw.com, loraditch@beckleylaw.com; pkois@beckleylaw.com

TIMOTHY A LUKAS ECFLukast@halelane.com

JEANETTE E. MCPHERSON bkfilings@s-mlaw.com; info@s-mlaw.com

LENARD E. SCHWARTZER bkfilings@s-mlaw.com

U.S. TRUSTEE - LV - 7 USTPRegion17.LV.ECF@usdoj.gov

ANTHONY A. ZMAILA azmaila@nevadafirm.com, bkecf@nevadafirm.com; mbarnes@nevadafirm.com, paltstatt@nevadafirm.com

/s/ Lindsey Boynton