



The motion is approved; provided, however a hearing shall be held on March 15, 2007 at 9:30 to hear any objections. This stipulations shall be immediately noticed to any entities that have an interest in this loan.

Entered on Docket
March 09, 2007

Hon. Linda B. Riegle
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

Case Nos. BK-S-06-10725 LBR
Case Nos. BK-S-06-10726 LBR
Case Nos. BK-S-06-10727 LBR
Case Nos. BK-S-06-10728 LBR
Case Nos. BK-S-06-10729 LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,
Debtor.

Chapter 11
Jointly Administered Under
Case No. BK-S-06-10725 LBR

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

In re:
USA SECURITIES, LLC,
Debtor.

**STIPULATION AND ORDER
POSTPONING THE TRANSFER OF
USACM'S RIGHTS AND ASSETS
RELATING TO THE PLACER
VINEYARDS LOANS TO THE
USACM TRUST [AFFECTS
DEBTOR USA COMMERCIAL
MORTGAGE]**

Affects:
 All Debtors
 USA Commercial Mortgage Company
 USA Securities, LLC
 USA Capital Realty Advisors, LLC
 USA Capital Diversified Trust Deed Fund, LLC
 USA First Trust Deed Fund, LLC

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1 Debtor in Possession USA Commercial Mortgage Company ("USACM"), by and through
2 its counsel Lenard Schwartz of Schwarter & McPherson Law Firm, the Official Committee of
3 Unsecured Creditors of USA Commercial Mortgage Company (the "UCC Committee"), by and
4 through its counsel Susan Freeman and Rob Charles of Lewis and Roca, LLP, and Compass USA
5 SPE, LLC, successor in interest to Compass Partners, LLC ("Compass"), by and through its
6 counsel, George Davis and Tyson Lomazow of Weil Gotshal & Manges LLP, hereby stipulate and
7 agree as follows:

8 **WHEREAS**, Compass is the Court approved purchaser of certain assets of USACM and
9 Debtor USA Capital First Trust Deed Fund, LLC ("FTDF"), pursuant to the terms of the Compass
10 Asset Purchase Agreement dated December 8, 2006 ("Compass APA"), which was filed with this
11 Court on December 18, 2006 as Docket No. 2164.

12 **WHEREAS**, the definition of "Commercial Mortgage Assets" under Section 1.1 of the
13 Compass APA specifically excludes "(vi) loans made to Placer Vineyards and Marquis Hotel,
14 which shall not be included on the Serviced Loan Schedule."

15 **WHEREAS**, pursuant to this definition in the Compass APA, the assets of USACM
16 relating to the two loans serviced by USACM that are owed by Placer County Land Speculators,
17 LLC on the Placer Vineyards Project (the "Placer Vineyards Loans") were not sold to Compass
18 pursuant to the Compass APA.

19 **WHEREAS**, after the closing of the sale of assets to Compass pursuant to the Compass
20 APA, Compass has subsequently offered to also purchase from USACM the "Commercial
21 Mortgage Assets" relating to the Placer Vineyards Loans (the "Placer Vineyards Commercial
22 Mortgage Assets") from USACM for the purchase price of Three Hundred Thousand Dollars
23 (\$300,000), but only if the sale of the Placer Vineyards Commercial Mortgage Assets to Compass
24 can be sold by USACM and can be sold free and clear of all liens, claims, encumbrances and
25 interests pursuant to 11 U.S.C. § 363(f).

26 **WHEREAS**, USACM will be filing its "Motion To Sell Under Section 363 All
27 Commercial Mortgage Assets of Debtor USA Commercial Mortgage Company in the Placer
28 Vineyards Loans to Compass USA SPE, LLC" (the "Motion"), pursuant to which USACM will be

1 seeking Court approval of the sale of the Placer Vineyards Commercial Mortgage Assets to
2 Compass, subject to higher and better offers, and USACM will provide notice of the Motion to all
3 of the current Direct Lenders of the Placer Vineyard Loans.

4 **WHEREAS**, it is currently anticipated that the Effective Date (the “Effective Date”) of the
5 Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “Confirmed Plan”) will
6 occur prior to the hearing on the Motion.

7 **WHEREAS**, the Plan contemplates that the USACM Trust (the “USACM Trust”) that is
8 to be created and governed pursuant to the Plan will be funded with all assets of the USACM
9 Estate not collected or disposed of prior to the Effective Date of the Confirmed Plan.

10 **WHEREAS**, it is not clear from the Confirmed Plan if the Placer Vineyards Commercial
11 Mortgage Assets are automatically transferred to the USACM Trust on the Effective Date or if
12 USACM has the ability to delay the transfer until such time as USACM is able to reduce the value
13 of the Placer Vineyards Commercial Mortgage Assets to cash, at which time to the cash would be
14 transferred to the USACM Trust.¹

15 **WHEREAS**, the USACM Trust does not have the ability to sell the Placer Vineyards
16 Commercial Mortgage Assets to Compass under 11 U.S.C. § 363(f) because the USACM Trust is
17 not a Chapter 11 debtor-in-possession.

18 **WHEREAS**, USACM and the UCC Committee have agreed that the Confirmed Plan
19 should be clarified to provide that the transfer of the Placer Vineyards Commercial Mortgage
20 Assets from USACM to the USACM Trust is not automatic on the Effective Date of the
21 Confirmed Plan, and instead should not be effective under the Confirmed Plan until the Motion
22 has been heard and ruled upon by this Court (or until the Motion is withdrawn), and if the Motion
23 is granted, until after the sale of the Placer Vineyards Commercial Mortgage Assets to Compass
24

25 _____
26 ¹ This uncertainty under the Confirmed Plan arises because the USACM Trust does not administer all of the assets
27 that remain in the USACM estate following the Effective Date of the Confirmed Plan, leaving questions particularly
28 as to the timing of the transfer of certain assets from USACM to the USACM Trust. The same uncertainty does not
exist under the Confirmed Plan with respect to Post-Effective Date DTDF (as defined in the Confirmed Plan) because
all of the assets to be transferred to Post-Effective Date DTDF under the Confirmed Plan are automatically transferred
to and administered by Post-Effective Date DTDF.

1 (or to the purchaser under a higher and better offer, if any) has been completed, at which time the
2 \$300,000 cash purchase price will be transferred by USACM to the USACM Trust.

3 **WHEREAS**, USACM and the UCC Committee assert that this clarification of the Plan is
4 not a modification of the Plan because the \$300,000 cash purchase price of the Placer Vineyards
5 Commercial Mortgage Assets will be transferred by USACM to the USACM Trust as
6 contemplated by the Plan.

7 **WHEREAS**, because of the imminent occurrence of the Effective Date for the Confirmed
8 Plan, USACM and the UCC Committee agree that the automatic 10 day stay under Bankruptcy
9 Rule 6004(g) should not apply, and this Order should be effective immediately upon its entry.

10 **WHEREAS**, the Official Committee of Holders of Executory Contract Rights Through
11 USA Commercial Mortgage Company (the “Direct Lenders Committee”), the Official Committee
12 of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the “FTDF Committee”),
13 the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund,
14 LLC (the “DTDF Committee”), and the Office of the United States Trustee have no objection to
15 this Stipulation and Order.

16 **THEREFORE**, in consideration of the foregoing, USACM and the UCC Committee agree
17 as follows:

- 18 1. The foregoing recitals are incorporated herein in full.
- 19 2. The Confirmed Plan is hereby clarified to provide that the transfer of the Placer
20 Vineyards Commercial Mortgage Assets from USACM to the USACM Trust is not automatic on
21 the Effective Date of the Confirmed Plan, and instead will not be effective under the Confirmed
22 Plan until the Motion has been heard and ruled upon by this Court (or until the Motion is
23 withdrawn), and if the Motion is granted, until after the sale of the Placer Vineyards Commercial
24 Mortgage Assets to Compass (or to the purchaser under a higher and better offer, if any) has been
25 completed, at which time the \$300,000 cash purchase price will be transferred by USACM to the
26 USACM Trust.

27 ///

28 ///

1 **STIPULATION AND ORDER POSTPONING THE TRANSFER OF USACM'S RIGHTS**
2 **AND ASSETS RELATING TO THE PLACER VINEYARDS LOANS TO THE USACM**
3 **TRUST [AFFECTS DEBTOR USA COMMERCIAL MORTGAGE]**

4 No Objection by:

6 OFFICE OF THE U.S. TRUSTEE

GORDON & SILVER, LTD.

7 By: /s/ August B. Landis

By: /s/ Gerald M. Gordon

8 August B. Landis, Esq.

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of Executory Contract Rights through

USA Commercial Mortgage Company

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14 SHEA & CARLYON, LTD.

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25 *Security Holders of USA Capital*

Security Holders of USA Capital

26 *First Trust Deed Fund, LLC*

Diversified Trust Deed Fund, LLC

27 **ORDER**

28 **IT IS SO ORDERED.**

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