



Entered on Docket
September 14, 2006

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 No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

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

Chapter 11

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

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

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

**ORDER AUTHORIZING DEBTOR USA
COMMERCIAL MORTGAGE COMPANY
TO GRANT ORDINARY COURSE
RELEASES [AFFECTS USA
COMMERCIAL MORTGAGE
COMPANY]**

In re:
USA SECURITIES, LLC,
Debtor.

Date: August 4, 2006
Time: 9:30 a.m.

- 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

1 Before the Court is the Motion to Distribute Funds and to Grant Ordinary Course Releases
 2 and Distribute Proceeds (the "Motion") filed on July 7, 2006, as Docket No. 847, by Debtor and
 3 Debtor-in-Possession USA Commercial Mortgage Company ("USACM") as well as Debtors USA
 4 Capital Diversified Trust Deed Fund, LLC ("Diversified") and USA First Trust Deed Fund, LLC
 5 ("First"). On July 6, 2006, the Court entered as Docket No. 829 its Order Approving Motion
 6 Authorizing Debtor, Pursuant to 11 U.S.C. § 105 and § 363(b)(1), to Accept Loan Payment
 7 Proceeds and Provide Partial or Full Releases in Connection With the Sale of Properties Securing
 8 Loans Originated by Debtor to Third-Party Borrowers, and to Ratify Partial Releases Previously
 9 Provided by the Debtor (the "First Partial Releases Order"). The First Partial Releases Order gave
 10 the Debtor authority to provide partial releases in connection with 9 specific loans (the "Nine
 11 Loans"). Pursuant to a portion of the Motion, USACM now seeks authorization pursuant to 11
 12 U.S.C. § 105 and 11 U.S.C. § 363(b)(1), for USACM to exercise its powers on behalf of the
 13 lenders including Diversified and First (collectively the "Direct Lenders") of all other loans in the
 14 loan portfolio serviced by USACM (the "Other Loans") to accept loan payment proceeds and
 15 provide the necessary partial releases or full releases and other related documentation required in
 16 connection with the sale to bona fide purchasers of properties securing the Other Loans.

17 No objections to the portion of the Motion relating to USACM's authorization to issue
 18 partial or full releases were filed. Borrower Boise-Gowan LLC filed a Response and Request for
 19 Clarification to the Debtors' Motion to Distribute Funds and to Grant Ordinary-Course Releases
 20 and Distribute Proceeds. USACM filed the Declaration of Thomas J. Allison in Support of
 21 Debtors' Motions to Be Heard August 4, 2006 and a Reply in Support of the Motion on August 2,
 22 2006. At the hearing held on August 4, 2006, numerous appearances were made upon the record,
 23 testimony and other evidence were presented and arguments were made concerning the Motion.

24 The Court having considered the various Declarations of Thomas J. Allison in support of
 25 the Motion, the arguments set forth in the Motion and in the Reply, the evidence presented and
 26 arguments made at the August 4, 2006 hearing, and other facts of record in the Debtors'
 27 bankruptcy cases, and finding that notice of the Motion was adequate and proper, it is hereby

28 ORDERED that the Motion is GRANTED as follows, in the following respects:

1 (1) USACM is authorized to accept loan payment proceeds and provide the necessary
2 partial releases or full releases and other related documentation required in connection with the
3 sale to bona fide purchasers of properties securing the Other Loans upon the following conditions:
4 (a) the partial releases or full releases must be in accordance with the governing loan documents;
5 (b) the loan for which a partial release is requested must be a performing loan at the time that the
6 partial release is given; and (c) USACM must either receive commercially reasonable assurances
7 from the borrower requesting the partial release or full release that the requested partial release or
8 full release is in accordance with the governing loan documents and there are no defenses
9 available to USACM to the request for the partial release or full release, or USACM through
10 independent due diligence consistent with commercially reasonable practices prior to the release
11 must satisfy itself that the requested partial release or full release is in accordance with the
12 governing loan documents and there are no defenses available to USACM to the request for the
13 partial release or full release.

14 (2) All loan payment proceeds that USACM receives as loan servicer pursuant to the
15 requests for partial releases and full releases shall be held in the segregated collection account (the
16 "Collection Account") that has been opened up by USACM, and all loan payment proceeds shall
17 be accounted for by USACM separately on a loan by loan basis (provided, that USACM is not
18 required to separately segregate the loan payment proceeds in separate subaccounts of the
19 Collection Account, but all loan payment proceeds shall be deposited into a single Collection
20 Account).

21 (3) The Collection Account funds shall not be commingled with any operating funds of
22 USACM or any of its affiliates, and USACM shall only transfer from the Collection Account to
23 USACM's separate operating account amounts approved by this Court concerning USACM's use
24 of cash.

25 (4) All liens, rights and interests that the Direct Lenders and any other third party,
26 including First and Diversified, have in any collateral that is being released as a result of USACM
27 providing partial releases or full releases shall attach to the loan payment proceeds that USACM
28 receives as loan servicer and that are deposited into the segregated Collection Account with the

1 same priority, validity and enforceability that existed prior to such release, and USACM's
2 contractual rights and any other rights to collect servicing fees and other fees from the loan
3 payment proceeds that USACM receives as loan servicer shall also attach to such loan payment
4 proceeds as they are deposited into the segregated Collection Account with the same priority,
5 validity and enforceability that existed prior to such release.


6 (5) USACM will provide as part of its monthly operating reports to be filed with the
7 Court the following information: (a) the actual loan payment proceeds and other funds that
8 USACM actually receives in connection with the partial releases and full releases given to
9 borrowers on any loan and an accounting for such funds on a loan by loan basis; and (b) for any
10 loan where there is a senior lienholder and a subordination agreement, the amount of the sale
11 proceeds that are distributed to any senior lender on such loan pursuant to such subordination
12 agreement and the resulting amount outstanding on the loan to such senior lender after such loan
13 proceeds are distributed to such senior lender.

14 (6) No borrower is entitled to rely upon any partial release or full release that was
15 executed by USACM or its former management prior to April 13, 2006 (the "Petition Date") to be
16 effective for any sale of collateral that occurred after the Petition Date, but such borrower must
17 instead apply to USACM for a new partial release or full release to be issued in compliance with
18 the conditions outlined in this Order. This provision does not apply to any releases or
19 reconveyances that were executed by USACM or its former management for closings that were
20 completed prior to the Petition Date, which are not affected by the Motion or this Order. This
21 provision only applies to those situations where USACM or its former management signed the
22 release documents prior to the Petition Date to be held in escrow for future closings, but for which
23 no closings occurred until after the Petition Date.


24 (7) To the extent, if any, that partial releases and full releases have been issued by
25 USACM after the Petition Date, and prior to the date of this Order approving this Motion, for any
26 of the Other Loans that are consistent with the conditions outlined above, such partial releases and
27 full releases are hereby approved and ratified.

28 (8) The loan payment proceeds that are paid by borrowers or other parties in exchange

1 for any partial releases or full releases that are authorized by the Court shall be paid to USACM as
2 loan servicer and such payments shall be applied and accounted for as described in paragraphs (2),
3 (3) and (5) above in this Order and in accordance with the governing documents.

4 Submitted by:
5 RAY QUINNEY & NEBEKER P.C. and
6 SCHWARTZER & MCPHERSON LAW FIRM
7 By: 
8 LENARD E. SCHWARTZER, ESQ.
9 *Attorneys for Debtor and Debtor-In-Possession*

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OFFICE OF THE U.S. TRUSTEE
By: _____
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9 Approved/Disapproved by:
10 LEWIS AND ROCA, LLP
11 By: 
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3 (3) and (5) above in this Order and in accordance with the governing documents.

4 Submitted by:
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6 SCHWARTZER & MCPHERSON LAW FIRM

Approved / Disapproved by:
OFFICE OF THE U.S. TRUSTEE


7 By: _____
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4 Submitted by:
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In accordance with Local Rule 9021, the undersigned certifies:
_____ The court waived the requirements of LR 9021

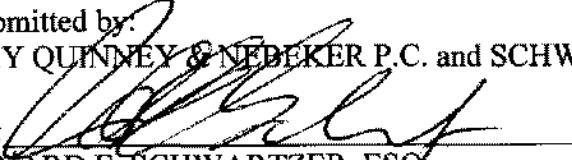
XX I have delivered a copy of this proposed order to all attorneys and unrepresented parties who appeared at the hearing regarding this matter and/or who filed a written objection and each has:

- XX approved the form of this order:
- _____ waived the right to review the order and/or
- XX failed to file and serve papers in accordance with LR 9021(c)

_____ I have delivered a copy of this proposed order to all attorneys and unrepresented parties who appeared at the hearing regarding this matter and/or who filed a written objection and all have either approved the form of this order, waived the right to review the order, failed to file and serve papers in accordance with LR 9021(c) and the following have disapproved the form of the order:

_____ No opposition was filed to the motion and no other party or counsel appeared at the hearing

Submitted by:
RAY QUINNEY & NEBEKER P.C. and SCHWARTZER & MCPHERSON LAW FIRM

By: 
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Attorneys for Debtor and Debtor-In-Possession

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