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9 Attorneys for USACM Liquidating Trust

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:  
13 USA COMMERCIAL MORTGAGE  
14 COMPANY,  
15 USA CAPITAL REALTY ADVISORS,  
16 LLC,<sup>1</sup>  
17 USA CAPITAL DIVERSIFIED TRUST  
18 DEED FUND, LLC,  
19 USA CAPITAL FIRST TRUST DEED  
20 FUND, LLC,<sup>2</sup>  
21 USA SECURITIES, LLC,<sup>3</sup>  
22 Debtors.

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR<sup>1</sup>  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>2</sup>  
Case No. BK-S-06-10729-LBR<sup>3</sup>

CHAPTER 11

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

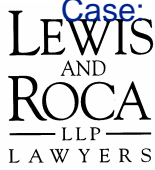
**Motion To Approve Settlement With  
Debt Acquisition Company Of  
America V, LLC**

Date: February 20, 2009  
Time: 9:30 a.m.  
Place: Foley Federal Building, 300  
Las Vegas Boulevard South,  
Courtroom 1, Las Vegas,  
Nevada

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

23 Geoffrey L. Berman as Trustee of the USACM Liquidating Trust (the "Trust")  
24 moves this Court for an order pursuant to 11 U.S.C. § 105 and Rule 9019 of the Federal  
25 Rules of Bankruptcy Procedure approving the settlement agreement between the Trust and  
26 Debt Acquisition Company of America V, LLC ("DACA") attached hereto as **Exhibit 1**

<sup>1</sup> This bankruptcy case was closed on September 23, 2008.  
<sup>2</sup> This bankruptcy case was closed on October 12, 2007.  
<sup>3</sup> This bankruptcy case was closed on December 21, 2007.



1 (the “Agreement”). The Agreement resolves DACA’s appeal of the confirmation order  
2 now pending before the Ninth Circuit Court of Appeals, No. 07-16796. As a material term  
3 and condition of the settlement, the Agreement provides for a sale of the Trust’s right to  
4 collect Prepaid Interest and related assets.

5 This Motion is supported by the following Memorandum of Points and Authorities  
6 and the record before this Court.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. Factual Background.**

9 1. On April 13, 2006 (“Petition Date”), USA Commercial Mortgage Company  
10 (“USACM” or “Debtor”) filed a voluntary petition for relief under chapter 11 of the  
11 Bankruptcy Code. USACM continued to operate its businesses as debtor-in-possession  
12 pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

13 2. On January 8, 2007, this Court entered its Order Confirming the Debtors’  
14 Third Amended Joint Chapter 11 Plan of Reorganization (the “Confirmation Order”).

15 3. *Prepaid Interest.* The Court will recall that the confirmed Plan reserved in  
16 the Trust the right to collect Prepaid Interest. The Trust believes that the uncollected  
17 balance of Prepaid Interest to date is slightly over \$7.2 million. That is comprised of  
18 slightly over \$4.7 million in loans serviced by Compass, or its successors, and slightly  
19 over \$2.4 million in Prepaid Interest in the Placer 1 and 2 Loans, being serviced by the  
20 Trust.

21 4. The Trust sought and obtained the appointment of a Receiver for the Placer  
22 1 Loan in December 2008. Subsequently, the Receiver for the Placer 1 Loan completed  
23 the pending foreclosure of the Placer 1 lien, and took title back to the property, for a credit  
24 bid substantially less than the unpaid principal balance of the loan. Therefore, the near  
25 term prospects of collecting Prepaid interest from the Placer 1 Loan by netting are slim,  
26 and non-existent with respect to the Placer 2 Loan.

1           5. Further, the stalemate in collecting loans serviced by Compass or its  
2 successors makes netting Prepaid Interest from those loans anytime soon problematic.

3           6. The Trust brought suit against Compass seeking an accounting of the  
4 Prepaid Interest collections and a determination that Compass failed to collect certain  
5 sums owed. The Court entered an order in adversary 08-01066 resolving a portion of this  
6 action. In the course of informal discovery, the Trust believes that Compass failed to net  
7 at least \$64,233.70 from Lenders, and instead paid those sums to Lenders.

8           7. *Summary of Agreement – Prepaid Interest.* The Agreement provides for  
9 DACA to purchase the following (the “Assets”):

10           i. USACM and USACM Liquidating Trust’s right to receive all Prepaid  
11 Interest<sup>4</sup> which is required under section IV E.1.(d)(ii) of the Plan to be collected by “any  
12 substitute or subsequent servicer” of a Loan and remitted to the USACM Liquidating  
13 Trust;

14           ii. All causes of action to recover Prepaid Interest, subject to the tolling  
15 of limitations on such causes of action as provided for under the Plan; and

16           iii. All payments to be collected on any Loan that would otherwise be  
17 payable to a Lender that received Prepaid Interest, but only to the extent of such advanced  
18 principal or interest payments.

19           8. DACA will pay the USACM Liquidating Trust \$1,200,000 for the Assets.

20           9. The Plan tolled the limitations period to seek recovery of Prepaid Interest  
21 from Direct Lenders for 2 years. Rather than leave Lenders open to such suits, DACA  
22 agrees not to sue any Lender for Prepaid Interest, unless such Lender received Prepaid  
23 Interest of at least \$200,000.

24  
25  
26 <sup>4</sup> Capitalized terms not defined herein, or in the Agreement, shall have the same meaning as in the Debtor’s confirmed Third Amended Joint Chapter 11 Plan of Reorganization.

1           10.     The Trust does not believe that it is required to seek higher bids for the  
2 uncollected Prepaid Interest, although the Trustee has made informal inquiries with respect  
3 to possible sale of the Prepaid Interest claims. In the event that the Court requires bidding,  
4 the Trust has agreed to use its best efforts to obtain a procedural order requiring a  
5 minimum overbid of \$200,000, subsequent bidding increments of \$50,000, and an up to  
6 \$50,000 expense reimbursement.

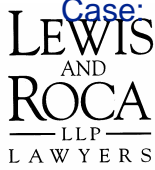
7           11.     *Confirmation Appeal.* DACA objected to the confirmation of the Debtors  
8 Third Amended Joint Chapter 11 Plan of Reorganization (the “Plan”). Its appeal was  
9 dismissed as moot by the United States District Court for the District of Nevada. DACA  
10 appealed the District Court’s ruling to the United States Court of Appeals for the Ninth  
11 Circuit, No. 07-16796 (the “Appeal”). DACA’s pending Appeal is the only appeal of the  
12 Confirmation Order which remains pending. The Appeal has been scheduled for argument  
13 on March 12, 2009.

14           12.     As a material term and condition of the settlement, DACA has agreed to  
15 dismiss the Appeal with prejudice.

16           13.     Bankruptcy Court approval is a condition precedent to the effective of the  
17 settlement, as set forth in the Agreement. This condition was required by DACA in an  
18 abundance of caution for the following reasons:

19           a.     The Bankruptcy Court’s reservation of jurisdiction in the Confirmation  
20 Order would extend, in DACA’s view, to approval of settlements of any  
21 appeal of the Confirmation Order; and

22           b.     The right to recover Prepaid Interest from investors may be a  
23 “Litigation Claim” as defined in the Trust Agreement establishing the  
24 USACM Liquidating Trust. The Trust Agreement was submitted to the  
25 Bankruptcy Court prior to confirmation of the Plan. The Trust agreement  
26 provides in part:



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4.4. Litigation Claims; etc.

(a) Except as to any Litigation Claim released under the Plan, the Liquidating Trustee shall be the successor-in-interest to USACM with respect to any Claim, right or Litigation Claim that was or could have been commenced by USACM prior to the Effective Date, or thereafter arising in conjunction with the Trust Assets until the Liquidating Trust disposes of them. All such Litigation Claims and any and all other rights, Claims or interests constituting Trust Assets, including the right to subordinate Claims under Section 510 of the Bankruptcy Code, but excluding Litigation Claims released under the Plan, shall be retained and pursued and enforced by the Liquidating Trustee, including as the Trust Assets Estate Representative pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code and the terms of the Plan.

(b) The Liquidating Trustee shall have discretion to pursue or not to pursue any and all Claims, rights or Litigation Claims, as he determines to be in the best interests of the Beneficiaries and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of his decision, provided, however, that the Liquidating Trustee may not agree to settle or otherwise dispose of any Claim, right or Litigation Claim valued by the party asserting such claim, right or Litigation Claim where the amount sought in the demand or complaint exceeds \$100,000 without prior notice to the USACM Trust Committee and the approval of the Bankruptcy Court. With respect to any Litigation Claim, the Liquidating Trust and the Liquidating Trustee shall be bound by, and shall give effect to, any release, exculpation, waiver, estoppel or injunction provided by the Plan or the Confirmation Order.

14. Pursuant to section D.VIII of the Plan and the corresponding provisions of the Confirmation Order, this Court retained “exclusive jurisdiction over all matters arising out of and related to the Chapter 11 Cases, the assets and liabilities of the Estates and the Trust Estates, and the Plan to the fullest extent permitted by law.” The Court further retained jurisdiction under paragraph D.VIII 10. of the Plan to enter “such Orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in

1 connection with the Plan, the Disclosure Statement or the Confirmation Order, including  
2 USACM Trust Agreement and the DTDF Amended Operating Agreement.”

3 15. The attached Agreement has been accepted by the parties and, as recited in  
4 that Agreement, the Trust has transmitted the required due diligence materials to DACA.

5 16. The Plan provides that the limitations period on claims to recover Prepaid  
6 Interest is tolled for two years. The second anniversary of the Effective Date of the Plan is  
7 March 12, 2009. It is therefore possible that limitations might expire as to a portion of  
8 these claims shortly after that date. Also, the Appeal is set for oral argument on March  
9 12, 2009. The Trust therefore seeks approval of this Court at the Omnibus Hearing on  
10 February 20, 2009 and anticipates a closing not later than March 9, 2009.

11 **II. Legal Authorities.**

12 Here, the Trustee has made the decision to liquidate the Prepaid Interest causes of  
13 action for a sum certain rather than considering the necessity of prosecuting avoidance  
14 actions against Direct Lenders. By the calculations of the Trust, there are over 900  
15 Lenders that owe uncollected Prepaid Interest in amounts ranging from de minimis to a  
16 handful with liability exceeding \$100,000. The logistics of attempting to bring numerous  
17 avoidance actions in the appropriate venue, much less the discovery and prosecution of  
18 such causes of action, are staggering. The Trustee believes that a net recovery of  
19 \$1,200,000 is a fair result for the Trust without the necessity of bringing these actions.

20 Further, DACA has agreed not to sue Lenders for uncollected Prepaid Interest of  
21 less than \$200,000. As indicated, this literally would remove the threat of Prepaid Interest  
22 Litigation from all but a handful of Direct Lenders.

23 Finally, the sale is a material part of an agreement struck with DACA to settle the  
24 pending Appeal. Dismissal of the Appeal removes legal uncertainty that could affect  
25 proceedings in the District Court involving the Direct Lenders and the successors in  
26 interest to Compass.

1 Under the circumstances, the Trustee believes that the proposed sale is an  
2 appropriate exercise of discretion and asks the Court to approve it.

3 As to the compromise, ordinarily, this Court has authority to enter into a debtor's  
4 proposed compromise and settlement agreements subject to bankruptcy court approval.<sup>5</sup>  
5 Although the Trust would then have the initial burden of proof with regard to the  
6 compromise of claims, the ultimate inquiry is whether the proposed action is reasonable or  
7 in the estate's best interest.<sup>6</sup>

8 "The bankruptcy court has great latitude in approving compromise agreements."<sup>7</sup>  
9 The seminal *A&C Properties* case and its progeny like *Woodson* make the decision to  
10 approve a compromise a matter of this Court's discretion, so long as the result is "fair and  
11 equitable."<sup>8</sup>

12 In making this determination, this Court must consider

13 (a) the possibility of success in the litigation; (b) the difficulties, if  
14 any, to be encountered in the matter of collection; (c) the complexity of the  
15 litigation involved, and the expense, inconvenience and delay necessarily  
16 attending it; (d) the paramount interest of the creditors<sup>9</sup> and a proper  
deference to their reasonable views in the premises.

17 Evaluating a proposed settlement "does not require the bankruptcy judge to hold a  
18 full evidentiary hearing or a 'mini-trial' before a compromise can be approved."<sup>10</sup> Were  
19 that required, "there would be no point in compromising; the parties might as well go  
20

21 <sup>5</sup> Fed. R. Bank. P. 9019; 11 U.S.C. § 105; *see also In re A&C Properties*, 784 F.2d 1377,  
22 1381 (9<sup>th</sup> Cir. 1986) (because "[t]he law favors a compromise and not litigation for its own  
sake," a debtor is empowered to compromise a controversy).

23 <sup>6</sup> *See United States v. Alaska Bank of the North (In the Matter of Walsh Construction,*  
*Inc.)*, 669 F.2d 1325, 1328 (9<sup>th</sup> Cir. 1982).

24 <sup>7</sup> *In re Woodson*, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988).

25 <sup>8</sup> *See Woodson*, 839 F.2d at 620; *A&C Properties*, 784 F.2d at 1381.

26 <sup>9</sup> *Id.* (quoting *In re Flight Transp. Corp. Sec. Litig.*, 730 F.2d 1128, 1135 (8<sup>th</sup> Cir. 1984)).

<sup>10</sup> 10 COLLIER ON BANKRUPTCY, ¶ 9019.02 at 9019-5 (15<sup>th</sup> ed. 2002).

1 ahead and try the case.”<sup>11</sup> Instead, the court is obliged only to “canvass the issues and see  
2 whether the settlement falls below the lowest point in the range of reasonableness.”<sup>12</sup>

3 Here, the Court is very familiar with the issues resolved by this Motion, and should  
4 easily conclude that these settlements fall well above the “lowest point in the range of  
5 reasonableness.” This settlement resolves contentious litigation which, if DACA is  
6 successful, would involve the reversal of certain provisions of the Confirmation Order  
7 which affect the Direct Lenders. Thus, the Settlement Agreement is a reasonable and  
8 prudent course of action and the USACM Trust believes is in the best interest of the estate,  
9 and now the Trust.

10 Dated: January 27, 2009

11 **LEWIS AND ROCA LLP**

12  
13 By: /s/ RC (#6593)  
14 Susan M. Freeman, AZ 4199 (*pro hac vice*)  
15 Rob Charles, NV 6593  
16 3993 Howard Hughes Parkway, Suite 600  
17 Las Vegas, Nevada 89169-5996  
18 Facsimile (702) 949-8321  
19 Telephone (702) 949-8320  
20 *Counsel for USACM Liquidating Trust*

21  
22  
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25 \_\_\_\_\_  
26 <sup>11</sup> *Id.*

<sup>12</sup> *Id.* (internal quotations omitted).

**EXHIBIT 1**

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of January 14, 2009 (the "Effective Date") between USACM Liquidating Trust ("Trust"), and Debt Acquisition Company of America V, LLC ("DACA").

### RECITALS

DACA is willing to settle its objections to confirmation of the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the "Plan") and to dismiss the appeal of the confirmation order now pending before the United States Court of Appeals for the 9th Circuit, No. 07-16796 (the "Appeal"). DACA, on the one hand, as appellant, and USA Commercial Mortgage Company ("USACM") and Trust, as appellees, are parties to the Appeal.

As a material term and condition of the settlement, DACA has agreed to purchase and Trust has agreed to sell, the following as to the Lenders identified in Exhibit A attached hereto on an "AS-IS, WHERE-IS" basis in accordance with the terms and conditions of this Agreement (the "Purchase Transaction"):

- a. The right of Trust to receive all Prepaid Interest which is required under section IV E. 1. (d)(ii) of the Plan to be collected by "any substitute or subsequent servicer" of a Loan and remitted to Trust;
- b. All causes of action to recover Prepaid Interest, subject to the tolling of limitations on such causes of action as provided for under the Plan; and
- c. All payments to be collected on any Loan that would otherwise be payable to a Lender that received Prepaid Interest, but only to the extent of such advanced principal or interest payments (collectively, the "Assets").

### AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree:

1. *Definitions.* The terms (i) "Loan", (ii) "Lender", (iii) "Petition Date", and (iv) "USACM" shall have the same meaning as under the definitions which are a part of the Plan. "Prepaid Interest" shall mean all advanced principal or interest payments from USACM to the applicable Lenders made before the Petition Date.

2. *Dismissal of Appeal.* Contingent upon closing of the Purchase Transaction, the Appeal shall be dismissed with prejudice by DACA, on the condition that the parties (including USACM) shall bear their own attorney fees and costs in relation to the Appeal. Trust will prepare and DACA, through its attorney of record,

will execute a stipulation to that effect for signature by counsel on behalf of DACA, Trust and USACM. If necessary, DACA will file a motion to dismiss the Appeal.

3. *Purchase and Sale of Assets.* Trust shall sell, assign, transfer, and convey the Assets to DACA, and DACA shall purchase, acquire and accept from Trust, all rights, title and interest in the Assets, free and clear of liens, claims and encumbrances.

4. *Limited Waiver of Right to Sue.* DACA agrees not to sue any Lender to recover Prepaid Interest, unless such Lender received Prepaid Interest in an aggregate amount of at least \$200,000.

5. *Initial Deposit.* DACA has deposited \$100,000 into a segregated account held by Trust (the "Initial Deposit").

6. *Purchase Price; Payment.* The purchase price ("Purchase Price") for the Assets shall be \$1,200,000.

7. *Due Diligence Period:* A five business days Due Diligence Period shall commence on January 22, 2009 (the date the parties acknowledge receipt by DACA of all materials listed in paragraph 10.3). The Deposit shall be refundable for any reason during the Due Diligence Period. Upon the expiration of the Due Diligence Period and upon execution of the Purchase Agreement, the Deposit shall be increased by an additional \$100,000.

8. *Bidding Procedures and Expense Reimbursement.* Trust shall seek Bankruptcy Court approval of the settlement, including the Purchase Transaction, without any requirement that the overbids be solicited. In the event that Bankruptcy Court, over the objection of Trust, requires overbidding, then:

8.1. Trust will use its best efforts to obtain an order of the Bankruptcy Court establishing bidding procedures which include a minimum overbid of \$200,000 and subsequent bidding increments of \$50,000; and

8.2. If neither DACA nor any affiliate of DACA is the successful bidder, then Trust will pay DACA up to \$50,000 as reimbursement of DACA's reasonably incurred expenses, and Trust will not unreasonably oppose such request for reimbursement.

9. *Bankruptcy Court Approval.* The effectiveness of the settlement (including, as a component of the settlement, the obligation of DACA to complete the Purchase Transaction) shall be contingent upon the entry of an order of the Bankruptcy Court approving the Settlement, and expressly approving the Purchase Transaction as a part of the settlement (the "Approval Order").

9.1. The Approval Order shall be in form and substance acceptable to DACA and Trust.

9.2. Trust shall file at its own expense a motion seeking entry of the Approval Order.

9.3. Should the Bankruptcy Court fail to approve the Purchase Transaction on the grounds of lack of jurisdiction, Trust will submit an order so stating in form and substance acceptable to DACA (which order shall constitute the Approval Order) and the Parties in such case shall remain obligated to complete the Purchase Transaction.

10. *Closing.* The closing of the transaction contemplated under this Agreement (the "Closing") shall take place on or before March 9, 2009 (the "Closing Date") upon the satisfaction of the following Conditions to Closing.

11. *Conditions to Closing.* The Deposit shall be refunded to DACA if any of the following Conditions precedent are not met, as may be determined by DACA in its reasonable judgment. Conversely, the Closing shall occur one business day after the last to occur of any of the following:

11.1. Execution of this Agreement.

11.2. Eleven calendar days after the Bankruptcy Court's entry of the Approval Order, unless a stay pending appeal has been obtained.

11.3. Five business days after January 22, 2009 (which is the date that Trust provided written notice by Trust to DACA that it has delivered to DACA all of the following documents and information available to Trust using its best efforts).

11.3.1. All reports, statistics and information related to amounts due by Lenders for Prepaid Interest.

11.3.2. All communications between Lenders and USACM or Trust regarding the settlement of any individual Prepaid Interest liability.

11.3.3. All agreements between USACM or Trust and Lenders regarding Prepaid Interest.

11.3.4. All amounts collected and applied against the Prepaid Interest liability for the Marquis Hotel loan.

12. *Trust's Closing Deliveries.* At Closing, Trust shall deliver to DACA:

12.1. A duly executed bill of sale (the "Bill of Sale") in the form

attached hereto as Exhibit B, pursuant to which Trust shall transfer title to the Assets to DACA.

12.2. A stipulation to dismiss the Appeal with prejudice, each party to bear its own costs and attorneys' fees, executed by Trust's counsel of record.

13. *DACA's Closing Deliveries.* At Closing, DACA shall deliver to Trust:

13.1. The Purchase Price in immediately available funds, less any collections of Prepaid Interest after the Effective Date, and less the amount of the Deposit.

13.2. A stipulation to dismiss the Appeal with prejudice, each party to bear its own costs and attorneys' fees, executed by DACA's counsel of record.

14. *Disclaimer of Representations and Warranties.* TRUST MAKES NO REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, REGARDING THE ASSETS TO BE CONVEYED TO DACA PURSUANT TO THIS AGREEMENT. MORE SPECIFICALLY, TRUST MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, CONDITION, DESIGN, OPERATIONS OR FITNESS FOR A PARTICULAR PURPOSE OF THE ASSETS. ALL OF SUCH ASSETS ARE BEING SOLD AND TRANSFERRED ON AN "AS-IS, WHERE-IS" BASIS. DACA HEREBY ACKNOWLEDGES THAT DACA HAS HAD AN ADEQUATE OPPORTUNITY TO INSPECT THE ASSETS AND CONDUCT ANY OTHER INVESTIGATIONS AND INSPECTIONS DEEMED NECESSARY BY DACA IN CONNECTION WITH THE PURCHASE OF THE ASSETS AND THAT DACA ACCEPTS THE ASSETS IN THEIR CURRENT CONDITION WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY TRUST.

15. *Remedies.* The Parties acknowledge and agree that in the event of DACA's breach of this Agreement the resulting damages would be difficult or impossible to determine. The parties agree that the sum of \$200,000 (the amount of the Deposit) is a reasonable and good faith estimate of those damages. In the event of DACA's breach of this Agreement, the Deposit may be retained by Trust as liquidated damages. In the event of a breach of this Agreement by Trust, the sole remedy of DACA shall be to obtain a decree of specific performance.

16. *Broker Commissions.* No broker solicited DACA's interest in the Assets, which resulted in this offer. Each party shall indemnify and hold the other harmless from any claim to a commission allegedly due to a broker or third party on account of that party's action.

17. *Confidentiality.* The existence and terms of this Agreement may be

disclosed by any party (i) in connection with the motion to be filed seeking Bankruptcy Court approval, (ii) by Trust to its Oversight Committee, the Office of the United States Trustee, or (iii) in Trust's reporting after a motion to approve this Agreement has been filed with the Bankruptcy Court. Otherwise, except as may be required by legal process, or at the express direction of the Bankruptcy Court, no party shall disclose this Agreement, or any prior Letter of Intent, drafts, offers, counteroffers or negotiations, to any third party, other than their respective financial, legal, and other professional advisors and their members, limited partners or other related persons, without the prior written consent of the other parties except as may be required by applicable law.

18. *Exclusivity.* Until the earlier of (a) the expiration of this Agreement pursuant to its terms or (b) the Closing, neither Trust nor any of its affiliates, employees, agents, attorneys, financial advisors, or other representatives will, directly or indirectly, (i) solicit any inquiries, discussions, or proposals regarding, (ii) continue, propose or enter into negotiations or discussions with respect to, or (iii) enter into any agreement or other understanding providing for, any Alternative Transaction. The term "Alternative Transaction" means any (A) direct or indirect acquisition or purchase or any of the Assets or (B) other transaction which would reasonably be expected to impede, interfere with, prevent or materially delay the Transaction. Trust agrees that irreparable damage to the DACA would occur in the event that the provisions of this Section 18 were not performed in accordance with their specific terms or otherwise were breached. Accordingly, Trust agrees that DACA shall be entitled to equitable relief to enjoin and prevent breaches of such provisions and to specifically enforce terms of such provisions without posting any bond or other security.

19. *Miscellaneous.*

19.1. *Entire Agreement.* This Agreement (including all exhibits and schedules hereto) contains the entire agreement between the parties with respect to the transactions contemplated hereby, and supersedes all written or oral negotiations, representations, warranties, commitments, offers, bids, bid solicitations and other understandings prior to the Effective Date.

19.2. *Severability.* If any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, such holding or action shall be strictly construed and shall not affect the validity or effect of any other provision hereof.

19.3. *Assignment.* This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, that, except as otherwise provided for herein, neither this Agreement nor any right hereunder shall be assignable by Trust or DACA, without prior written consent of the other party, which



may be withheld at either parties' sole and absolute discretion.

19.4. *Captions.* The captions of the various sections of this Agreement have been inserted only for convenience of reference, and shall not be deemed to modify, explain, enlarge or restrict any provision of this Agreement or affect the construction hereof.

19.5. *Governing Law.* The validity, interpretation and effect of this Agreement shall be governed by the laws of the State of Nevada, without giving effect to the conflict of laws provisions thereof.

19.6. *Counterparts.* This Agreement may be executed in two or more faxed or emailed counterparts, all of which taken together shall constitute a single agreement.

19.7. *Notices.* All notices that are required or permitted to be given under this Agreement shall be given in writing by U.S. Certified Mail, e-mail or facsimile to Trust or DACA at its address or facsimile number set forth below:

Trust:

Geoffrey L. Berman  
Development Specialists, Inc.  
333 South Grand Avenue, Suite 4070  
Los Angeles, CA 90071-1544  
Email: gberman@dsi.biz  
Fax Number: (213) 617-2718

With a copy to:

Rob Charles  
Lewis and Roca LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Email: rcharles@lrlaw.com  
Fax Number: (702) 949-8321

DACA:

Howard J. Justus  
Debt Acquisition Company of America  
V, LLC  
1565 Hotel Circle South, Suite 310  
San Diego, CA 92108  
Email: hjustus@daca4.com  
Fax Number: (619) 220-8112

With a copy to:

Dean T. Kirby, Jr.  
Kirby & McGuinn, A.P.C.  
707 Broadway, Suite 1750  
San Diego, California 92101  
Email: dkirby@kirbymac.com  
Fax Number: 619.525.1651

Notices shall be effective when received by the recipient. A party may change its notice information by written notice.

Entered into as of the date set forth above.

**USACM Liquidating Trust**

By \_\_\_\_\_  
Geoffrey L. Berman, Trustee

**Debt Acquisition Company of America V, LLC**

By  \_\_\_\_\_  
Howard J. Justus, Managing Member

Notices shall be effective when received by the recipient. A party may change its notice information by written notice.

Entered into as of the date set forth above.

**USACM Liquidating Trust**

By Geoffrey L. Berman  
Geoffrey L. Berman, Trustee

**Debt Acquisition Company of America V, LLC**

By \_\_\_\_\_  
Howard J. Justus, Managing Member