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**ATTORNEYS FOR FORD ELSAESSER,
CHAPTER 11 TRUSTEE**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

JOSEPH D. MILANOWSKI,

Debtor.

Chapter 11 – Involuntary

Case No. BK-S-07-13162-LBR

**DECLARATION OF CHAPTER 11
TRUSTEE FORD ELSAESSER FILED
IN SUPPORT OF THE MOTION FOR
ORDER AUTHORIZING AND
APPROVING STIPULATION FOR
POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. § 364(c)(1)-(3)**

Date: September 28, 2007

Time: 1:30 p.m.

1. I am the Trustee in the chapter 11 involuntary bankruptcy case (the “Bankruptcy Case”) of Joseph D. Milanowski (“Debtor”). I have personal knowledge of the facts stated herein, and if called as a witness I could and would testify competently thereto.

1 2. No committees have been appointed in this Bankruptcy Case.¹

2 3. The Bankruptcy Case involves millions of dollars in assets, real property and
3 holdings, numerous interested business entities and ownership interests, and literally dozens of
4 creditor claims. Administering the Debtor's estate (the "Estate") has proven to be complicated
5 and time-consuming because of the convoluted ownership interests and transactions.
6

7 4. Several of these entities and their affiliates (collectively, the "Milanowski Related
8 Entities") are debtors in separate cases under the Bankruptcy Code (collectively with the
9 Bankruptcy Case, the "Milanowski Related Cases"), including, but not limited to, USACM
10 Liquidating Trust (successor in interest to USA Commercial Mortgage Company) (the "Lender"
11 or "USACM Trust") (06-10725-LBR); USA Capital Diversified Trust Deed Fund, LLC
12 ("Diversified") (06-10727-LBR); USA Investment Partners, LLC ("USAIP") (07-11821-LBR);
13 and Thomas Hantges ("Hantges") (07-13163-LBR). I understand that most, if not all, of the
14 Milanowski Related Entities were operated out of the same office, may have intermingled
15 property and assets, and share similar legal issues.
16

17 5. I have been working diligently along with my professionals to attempt to unravel
18 the web of Milanowski Related Entities, in an effort to investigate, locate and identify assets, and
19 determine which assets belong to which estates. We are diligently pursuing leads, reviewing
20 thousands of documents, and investigating extensive transactions involving the Debtor and his
21 numerous related entities.
22

23 6. My professionals and I have also been working together with the trustees of the
24 other debtors in the Milanowski Related Cases (collectively, the "Creditor Representatives") in
25 an effort not to duplicate efforts by the Creditor Representatives in the Milanowski Related
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27 ¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Motion for*
28 *Order Authorizing and Approving Stipulation for Post-Petition Financing Pursuant to 11 U.S.C. § 364(c)(1)-(3)*.

1 Cases. We will continue to do so to obtain access to information necessary to understand the
2 assets and liabilities of the Milanowski Related Entities. Based on what I have seen to date, an
3 extensive in depth investigation is necessary to comprehend the various transactions and to
4 locate and identify assets. The investigation of the interests is a huge undertaking, which has
5 been prolonged and hampered by claims of “Fifth Amendment implications” by individuals
6 related to the Milanowski Related Entities.
7

8 7. Unfortunately, a loan from a third party is necessary because there are limited, if
9 any, funds in the Estate to pay (a) my professionals and me for the aforementioned necessary
10 services and costs incurred and to be incurred, (b) quarterly fees due to the Office of the United
11 States Trustee (“UST”), and (c) other costs associated with administering the Estate until such
12 time, if ever, I am able to recover assets and proceeds for the Estate (“Milanowski Estate
13 Proceeds”). The Loan proceeds will be used to pay professionals, including myself, in
14 accordance with the interim compensation procedures we are seeking to be employed in this case
15 pursuant to the *Motion for Administrative Order (1) Establishing Procedures for Interim*
16 *Compensation and Reimbursement of Expenses of Professionals, and (2) Authorizing Payment of*
17 *Chapter 11 Trustee at Hourly Rate on an Interim Basis.*
18

19 8. Based on my experience, I believe it to be unlikely, given the circumstances of
20 this Bankruptcy Case, that I could find an institutional bank that would be willing to loan the
21 Estate the necessary funds.
22

23 9. USACM Trust is in a unique position in this case. Because USACM Trust is
24 likely a primary direct beneficiary of proceeds that will be collected by the Trustee, if any, or
25 otherwise obtained by the Milanowski Related Entities through the efforts of my professionals
26 and me, it is in USACM Trust’s best interests to fund the needed loan. However, USACM Trust
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1 is only willing to loan funds on a secured basis subject to the terms in the Stipulation. A true and
2 correct copy of the Stipulation is attached hereto as Exhibit "1."

3 10. Over the last few weeks my counsel and I have had ongoing, arm's length
4 negotiations with USACM Trust and its counsel regarding a loan to the Estate. I negotiated for
5 the most favorable terms possible considering that with no other third parties willing to loan
6 funds, my leverage was undercut. Based on my years of experience restructuring companies, I
7 believe the terms and conditions set forth in the Stipulation are fair and reflective of the current
8 market. The Loan is without any side deals or promises, or payment of consideration to the
9 Lender or its officers or insiders outside of repayment of the Loan. Furthermore, the Lender and
10 I have not engaged in any fraud, collusion, or attempt to take unfair advantage of other bidders.
11 The Loan is not the result of any improper conduct or ulterior motive. Therefore, the Loan has
12 been reached in good faith.
13
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15 11. The representatives of the Milanowski Related Entities, USAIP, and Diversified
16 have no objection to the Stipulation as reflected by their signatures thereon.

17 I declare under penalty of perjury under the laws of the United States of America and the
18 State Law of Nevada that the foregoing is true and correct.

19 DATED this 31st day of August, 2007

20
21 /s/ Ford Elsaesser
22 Ford Elsaesser, Trustee
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In re:

JOSEPH D. MILANOWSKI,

Debtor.

Chapter 11 – Involuntary

Case No. BK-S-07-13162-LBR

**STIPULATION REGARDING
POST-PETITION FINANCING FOR
THE ESTATE OF DEBTOR JOSEPH
D. MILANOWSKI PURSUANT TO
11 U.S.C. § 364(c)(1)-(3)**

Geoffrey L. Berman (“Berman”), solely in his capacity as trustee for the USACM Liquidating Trust (successor in interest to USA Commercial Mortgage Company (“USACM”)) (“USACM Trust”), and Chapter 11 Trustee Ford D. Elsaesser (“Elsaesser” or the “Trustee”), solely in his capacity as Trustee for the estate (the “Estate”) of Debtor Joseph D. Milanowski

Exhibit 1

1 (“Milanowski”) (collectively, the “Parties”), hereby stipulate (the “Stipulation”) as follows:

2 A. Milanowski and several business associates owned, had interests in, and/or
3 managed various entities that they created. In April 2006, several of these Milanowski-related
4 entities, including USACM, USA Capital Diversified Trust Deed Fund, LLC (“Diversified”),
5 and three related companies (the “Milanowski Related Entities”), filed voluntary petitions under
6 Chapter 11 of the Bankruptcy Code. During these bankruptcy cases, which were jointly
7 administered, evidence of potential misdeeds by Milanowski and several of his business
8 associates perpetrated on various creditors, including Diversified and USACM, came to light.
9 The evidence reflected that Milanowski and certain of his business associates utilized assets and
10 business of various entities under their ownership and control, whether directly or indirectly, for
11 their own personal advantage.
12

13 B. As a result, on April 4, 2007, creditors USACM Trust, Diversified, and Alabruj
14 Investments, LLC filed an involuntary petition for relief against a Milanowski Related Entity,
15 USA Investment Partners, LLC (“USAIP”) (07-11821-LBR), under Chapter 11 of the
16 Bankruptcy Code. *See* Docket No. 1. On May 9, 2007, an order for relief was entered granting
17 the involuntary petition against USAIP. *See* Docket No. 101. On April 6, 2007, the Court
18 appointed Lisa Poulin as the interim trustee and she remains as the Chapter 11 trustee in
19 USAIP’s bankruptcy case. *See* Docket No. 17.
20

21 C. On May 29, 2007, creditors USACM Trust, Diversified, and Nevada State Bank,
22 filed an involuntary petition for relief against Milanowski, as an individual, under Chapter 11 of
23 the Bankruptcy Code. *See* Docket No. 1. On June 11, 2007, the Court appointed Elsaesser as
24 the interim trustee. *See* Docket No. 37. On June 25, 2007, Milanowski filed his answer to the
25 involuntary petition, seeking to have the petition dismissed. *See* Docket No. 88, refiled as
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1 Docket No. 91, and subsequently amended by Docket No. 118. A hearing to consider both the
2 petition and the answer was held August 9, 2007. On August 13, 2007, the Bankruptcy Court
3 entered the *Order for Relief and Granting Involuntary Chapter 11 Petition* [Docket No. 168]
4 (the “Order for Relief”).

5
6 D. The Milanowski Related Entities’ bankruptcy cases mentioned above
7 (“Milanowski Related Cases”) potentially involve millions of dollars in assets, real property
8 holdings, and literally many dozens of creditor claims. The Milanowski Related Cases are
9 complex in nature as they involve numerous interested business entities, ownership interests, and
10 holdings. The investigation of the interests is a huge undertaking, which has been prolonged and
11 hampered by claims of “Fifth Amendment implications” by individuals related to the
12 Milanowski Related Entities.

13
14 E. The USACM Trust, Diversified, and USAIP through their trustee’s, assert that
15 they are creditors of the Estate and will most likely be the primary beneficiaries of services
16 rendered by the Trustee and his professionals in the Milanowski bankruptcy case (the
17 “Bankruptcy Case”), including, but not limited to, cash proceeds recovered from liquidation of
18 assets in the Estate, including pursuit of causes of action (“Milanowski Proceeds”) and recovery
19 of assets, if any, ultimately deemed to belong to one of the Milanowski Related Estates and not
20 otherwise belonging to the USACM Trust, Diversified or USAIP by reason of the terms of the
21 confirmed Plan of Reorganization in those related cases. The trustees for the Milanowski
22 Related Cases and their professionals (collectively, the “Creditor Representatives”) are working
23 together with the Trustee and his professionals to maximize proceeds and to limit costs for their
24 respective entities.
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1 F. There are constant communications and collaborative efforts by and among the
2 Creditor Representatives and the Trustee and his professionals to identify, locate, and realize the
3 cash value of assets that belong to the respective entities so that efforts are not duplicated.

4 G. The Trustee and his professionals are incurring fees and costs as they provide the
5 necessary services to identify and locate assets of the Estate and to maximize the recovery for
6 creditors, which efforts benefit the Milanowski Related Entities. At this time, there are limited,
7 if any, funds in the Estate to pay Elsaesser and his professionals for their services. In order to
8 fund the necessary fees and costs to be incurred by Elsaesser and his professionals in the
9 Bankruptcy Case, Elsaesser needs a loan. Berman, as trustee of USACM Trust, recognizing the
10 value of the services of Elsaesser and his professionals, and in an effort to maximize recovery for
11 the creditor beneficiaries of the USACM Trust, has agreed to loan to Elsaesser, on a limited
12 basis, on behalf of the Estate, the funds necessary to allow Elsaesser and his professionals to take
13 the necessary actions to maximize creditor recoveries.

14 H. Elsaesser has moved for Bankruptcy Court approval of an administrative order
15 establishing procedures for interim compensation and reimbursement of expenses of
16 professionals and of Elsaesser as Trustee with review and objection procedures by the Creditor
17 Representatives comparable to those entered in the Bankruptcy Case of USAIP and its related
18 bankruptcy cases (upon entry of such order, the "Interim Compensation Order").

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24 1. Loan: Berman, as trustee of USACM Trust, has agreed to loan Elsaesser, as
25 Trustee of the Estate, up to \$750,000.00 dollars from USACM Trust, on a revolving line basis,
26 for payment of the Trustee and Trustee's professionals' compensation and reimbursement of
27

1 costs, except for any fees and costs incurred in connection with investigating or pursuing
2 potential claims against the Lender or Berman as trustee of the Lender (the “Loan” and, with
3 accrued interest and any reasonable accrued fees and costs at any time, the “Loan Amount”).
4 Allowable costs are also deemed to include fees due the Office of the United States Trustee
5 (“UST”) as well as filing fees related to proceedings in this matter. Subject to the terms and
6 conditions in this Stipulation, Elsaesser may borrow, repay and reborrow Loan Advances under
7 the revolver at any time prior to the Maturity Date (both terms, as defined below).
8

9 2. Interest: Interest shall accrue on the outstanding principal amount of the Loan at
10 the JPMorgan Chase prime rate (the “Prime Rate”). If there is an Event of Default pursuant to
11 the terms set forth in Paragraph 10 below, interest shall accrue at the Prime Rate plus two percent
12 (2%) percent per annum.
13

14 3. Lien: Pursuant to 11 U.S.C. § 364(c)(2) and (3), USACM Trust is granted a first
15 priority lien on any and all assets of the Estate that currently exist or that are recovered on behalf
16 of the Estate that are unencumbered and a next-priority junior lien on otherwise encumbered
17 assets, up to and including the Loan Amount that is outstanding, accrued and owing as of the
18 Maturity Date (as defined below) (the “Lien”). The Lien shall be deemed perfected without the
19 necessity of filing or recording any financing statement, deed of trust or other document, but
20 Elsaesser agrees to execute any further documents and take any further actions reasonably
21 requested by Berman to evidence or perfect the Lien granted herein, to maintain the first priority
22 of the Lien, or to effectuate the rights granted herein.
23

24 4. Administrative Super-Priority: Pursuant to 11 U.S.C. § 364(c)(1), USACM Trust
25 shall have an administrative expense claim with priority over any or all administrative expenses
26 of the kind specified in 11 U.S.C. §§ 503(b) and 507(b), up to and including the Loan Amount.
27
28

1 No other such super-priority administrative expense claim or lien on Estate assets shall be
2 allowed without the consent of USACM Trust until such time as the Loan Amount is repaid
3 pursuant to the terms of this Stipulation.

4 5. Funding of Loan Amount: Advances on the Loan Amount (each, a “Loan
5 Advance”) shall be paid by USACM Trust to Elsaesser, on behalf of the Estate and for the sole
6 purpose of Trustee and the Trustee’s professionals’ compensation and reimbursement of costs,
7 within five (5) business days after receipt of a certificate from Elsaesser requesting a Loan
8 Advance and stating (a) that a review period has expired, setting forth the undisputed fees and
9 costs payable under the Interim Compensation Order and requesting a Loan Advance; or (b) that
10 an order has been entered approving any fee application, and setting forth the unpaid and allowed
11 amount of fees and costs payable in accordance with the Interim Compensation Order.
12

13 14 6. Maturity Date: The Maturity Date of the Loan shall be the earlier of (a) the
15 effective date of a plan of reorganization confirmed by the Bankruptcy Court; or (b) such other
16 date that final disposition of the Bankruptcy Case is effected, including conversion of the chapter
17 11 case to a chapter 7 case. On the Maturity Date, the then-outstanding Loan Amount shall be
18 paid in full.

19 20 7. Prepayment: Within ten (10) days after (a) recovery of the first \$500,000 of
21 Milanowski Proceeds by the Estate, Elsaesser shall apply \$350,000 of such Milanowski Proceeds
22 to the then-outstanding Loan Amount; and (b) recovery of any Milanowski Proceeds in excess of
23 the first \$500,000 by the Estate, Elsaesser shall apply sixty percent (60%) of each such recovery
24 of Milanowski Proceeds to repay the then-outstanding Loan Amount (the “Prepayments”).

25 26 8. Lien Carve-Out: If, after application of Prepayments, additional fees and costs
27 remain due under the Interim Compensation Order and the Loan Amount has not been paid in
28

1 full, Berman authorizes a carve-out of the Lien granted under this Stipulation in the amount of
2 half of any Milanowski Proceeds remaining after such Prepayments.

3 9. Application of Payments: All payments by Elsaesser to Berman shall be applied
4 first to any Collection Costs, then interest, then the principal amount of the Loan.
5

6 10. Default and Stay Lift: An Event of Default shall be deemed to exist ten (10) days
7 after written notice by Berman to Elsaesser of the existence of any default under the provisions
8 of this Stipulation, which notice may be delivered by e-mail and deemed received on the first
9 business day after delivery, if such default remains uncured. Upon an Event of Default on the
10 Loan, Berman's obligation to make additional Loan Advances shall automatically terminate, and
11 the Loan Amount shall immediately become due and payable, provided that Berman may delay
12 any Loan Advance if a notice of default has been sent and the cure period is in effect. The
13 automatic stay and any other applicable injunctions or stays in the Bankruptcy Case are modified
14 to authorize Berman to notify Elsaesser of any default. No delay or omission of Berman to
15 exercise any right or remedy shall be deemed a waiver; any waiver shall be effective only with
16 the written agreement of Elsaesser and Berman. Elsaesser agrees that ten (10) days' written
17 notice, which may be delivered by e-mail and deemed received on the first business day after
18 delivery, constitutes reasonable notice for Berman's exercise of any right or remedy as a secured
19 creditor.
20

21
22 11. Collection Costs: If Berman gives notice pursuant to paragraph 10 of a default
23 which may result in an Event of Default, Berman's reasonable attorneys' fees and costs incurred
24 in enforcement of its terms shall be added to the Loan Amount, subject to the approval of this
25 Court.
26
27
28

1 12. Capacity: The Loan is made by Berman, solely in his capacity as trustee of
2 USACM Trust is received by Elsaesser solely in his capacity as Trustee of the Estate, and is
3 made and received by both without personal liability for any obligations with respect to the
4 Loan, which shall be advanced only from the USACM Trust assets and shall be payable only
5 from assets of the Estate, with no personal recourse to either Berman or Elsaesser.
6

7 13. Successors: This Stipulation is binding upon all successors in interest of Berman
8 and Elsaesser, in their respective capacities as trustees only, including any Chapter 7 trustees.

9 14. Reservations: This Stipulation is entered into without prejudice to any future
10 financing agreement that may be extended by the USACM Trust or any other sources of fee
11 payment or other expenses of the Estate for the Trustee and his professionals as their payment
12 needs may arise.
13

14 15. Bankruptcy Court Approval: The effectiveness of this Stipulation is conditioned
15 upon approval by the Bankruptcy Court.
16

THE ESTATE OF JOSEPH D. MILANOWSKI

17
18 Dated: _____, 2007

Chapter 11 Trustee, Ford Elsaesser, on behalf
of the estate of Joseph D. Milanowski

19
20
21 Dated: _____, 2007

USACM LIQUIDATING TRUST

Trustee, Geoffrey L. Berman, on behalf of the
USACM Liquidating Trust

1 **APPROVED AS TO FORM:**

2 **COX SMITH MATTHEWS INCORPORATED**

3
4 _____
5 Deborah D. Williamson (Texas Bar No. 21617500)
6 Thomas Rice (Texas Bar No. 24025613)
7 Counsel for Ford Elsaesser, Trustee of
8 the estate of Joseph D. Milanowski

9
10 **LEWIS AND ROCA LLP**

11 _____
12 Attorneys for Geoffrey Berman, Trustee of the
13 USACM Liquidating Trust

14 **NO OBJECTION TO STIPULATION:**

15 **STEPTOE & JOHNSON LLP**

16
17 _____
18 Robbin L. Itkin (CA Bar No. 117105)
19 Katherine C. Piper (CA Bar No. 222828)
20 Francis J. Burke, Jr. (AZ Bar No. 010570 and
21 CA Bar No. 75970)
22 Counsel for Michael W. Carmel, Trustee for
23 the estate of Thomas A. Hantges

24 **ORRICK, HERRINGTON & SUTCLIFFE, LLP**

25 _____
26 */s/ Jeffrey D. Hermann*
27 Marc A. Levinson (CA Bar No. 57613)
28 Jeffrey D. Hermann (CA Bar No. 90445)
Counsel for Michael Tucker, Administrator of
USA Capital Diversified Trust Deed Fund, LLC

1 **GORDON & SILVER, LTD.**

2
3 /s/ Gregory E. Garman
4 Gerald M. Gordon (NV Bar No. 229)
5 Gregory E. Garman (NV Bar No. 6654)
6 Counsel for Chapter 11 Trustee, Lisa Poulin,
7 on behalf of USA Investment Partners, LLC
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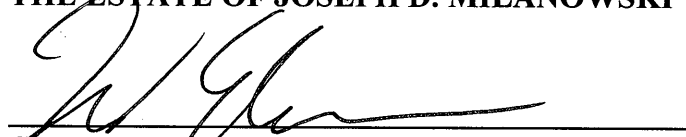
5 13. Successors: This Stipulation is binding upon all successors in interest of Berman
6 and Elsaesser, in their respective capacities as trustees only, including any Chapter 7 trustees.

7 14. Reservations: This Stipulation is entered into without prejudice to any future
8 financing agreement that may be extended by the USACM Trust or any other sources of fee
9 payment or other expenses of the Estate for the Trustee and his professionals as their payment
10 needs may arise.

11 15. Bankruptcy Court Approval: The effectiveness of this Stipulation is conditioned
12 upon approval by the Bankruptcy Court.
13

THE ESTATE OF JOSEPH D. MILANOWSKI

14
15 Dated: 8-30, 2007


Chapter 11 Trustee, Ford Elsaesser, on behalf
of the estate of Joseph D. Milanowski

16
17
18 Dated: _____, 2007

USACM LIQUIDATING TRUST

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21 _____
Trustee, Geoffrey L. Berman, on behalf of the
USACM Liquidating Trust
22
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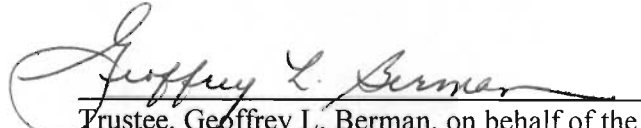
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13
14 **THE ESTATE OF JOSEPH D. MILANOWSKI**

15 Dated: _____, 2007

16 _____
17 Chapter 11 Trustee, Ford Elsaesser, on behalf
18 of the estate of Joseph D. Milanowski

19 Dated: August 29, 2007

20 **USACM LIQUIDATING TRUST**

21 
22 _____
23 Trustee, Geoffrey L. Berman, on behalf of the
24 USACM Liquidating Trust

1 **APPROVED AS TO FORM:**

2 **COX SMITH MATTHEWS INCORPORATED**

3
4 

5 Deborah D. Williamson (Texas Bar No. 21617500)
6 Thomas Rice (Texas Bar No. 24025613)
7 Counsel for Ford Elsaesser, Trustee of
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14 **NO OBJECTION TO STIPULATION:**

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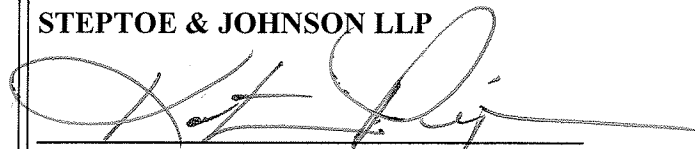
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