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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 * * *

10 USACM Liquidating Trust,)
11)
Plaintiff,) NO.: 2:08-cv-1276
12)
v.) **Response to Amended Motion for**
13) **Appointment of a Receiver**
Placer County Land Speculators, LLC, aka)
14 Placer County Land Investors, LLC, et al.)
15)
Defendants.)
16 _____)

17 COME NOW, PLACER I & II, by and through their undersigned counsel, JUSTIN M.
18 CLOUSER, ESQ., of the law firm of J. M. CLOUSER & ASSOCIATES, LTD., and hereby submit
19 their Response to Plaintiff’s Amended Motion for Appointment of a Receiver as follows:
20

21 **Response**

22 The USACM Liquidating Trust (“Trust”) seeks the appointment of a receiver for approximately
23 325 lenders as identified by Plaintiff in its moving papers. The lenders collectively are owners on an
24 undivided basis of all of the beneficial interests in a Promissory Note in the principal amount of \$31.5
25 million. The Note was made by Placer County Land Speculators, LLC (“Borrower”) originally dated
26 December 10, 2004 “Placer 1 Note”). The Trust holds the Placer 1 Note as servicing agent for the
27 lenders. Pursuant to Rule 66 of the Federal Rules of Civil Procedure and California Code of Civil
28 Procedure, Section 564(b)(1) the Trust seeks the appointment of a Receiver with respect to the lenders
and the Placer 1 Note.

1 The trust anticipates that the Receiver will request and direct foreclosure of the Placer 1 Deed
2 of Trust and that title to the property will transfer to the lenders by credit bid at the foreclosure auction.
3 The Receiver would manage the property for the benefit of the lenders.

4 The reason a Receiver is being sought at this time is that the Trust cannot secure the necessary
5 approval from the majority of the beneficial interest holders to be able to proceed with foreclosure
6 itself. The Trust believes that the appointment of a Receiver is the **only** alternative available to the
7 Trust.

8 The Plaintiff has provided an accurate background so Defendants see no need to repeat any of
9 the here.

10 **Argument**

11 Plaintiff directs the Court's attention to FRCP 66 and Section 564(b)(1) as justification for the
12 appointment of a Receiver at this time. Plaintiff claims that the Receiver is needed to protect the
13 interests of Placer 1 Lenders in the Placer 1 Note and that there are no practical alternatives to the
14 appointment of a Receiver. Plaintiff then goes on to discuss possible alternatives and the
15 impracticality of each discussed alternative. There is a limited discussion about the lenders taking title
16 to the property in the name of a new entity. However, Plaintiff quickly dismisses this alternative as
17 somehow being a taking without the Lenders consent and somehow violative of applicable federal and
18 state securities laws.

19 Plaintiff ignores the rough proposal that has been presented that the creation of a Special
20 Purpose Entity (SPE) would allow the lenders to take over the property in a credit foreclosure and
21 manage and preserve the property until such time as the real estate market recovers sufficiently for the
22 lenders to realize a return of their original investment and possible more.

23 Defendants have been working on such a proposal that would allow each lender to maintain
24 his/her/its proportionate share of ownership of the Placer property. The SPE would have a Board of
25 Directors and an asset manager to oversee the property and pay the annual servicing costs for the
26 property until the value of the property value sufficiently increases, at which time the property would
27 be sold.

28

1 Plaintiff continues to refuse to consider this alternative claiming that the SPE would have to
2 comply with “applicable federal and state securities laws.” That bare statement has been Plaintiff’s
3 justification for refusing to consider this alternative. Defendants have assured Plaintiff on more than
4 one occasion that they would comply with all “applicable” laws and regulations would be responsible
5 for preparing any and all documents necessary to accomplish the formation and operation of the SPE.

6 Defendants argue that this alternative should be given due consideration as the operation of the
7 SPE will be a significantly less financial burden on the lenders than paying for a services of a
8 Receiver. The Receiver candidates are seeking approximately \$200 per hour for their compensation.

9 **Conclusion**

10 The Defendants agree with the Plaintiff that the property needs to go through foreclosure, but
11 the entity that takes over is in dispute. Defendants respectfully request that Plaintiff’s Motion be
12 denied.

13 DATED this 23rd day of November, 2008.

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