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7 Attorneys for Defendants:
8 Charles B. Anderson, as trustee of the Charles
B. Anderson Trust; Rita P. Anderson, as trustee
9 of the Rita P. Anderson Trust; Robert J. Kehl and
Ruth Ann Kehl; Robert A. Kehl and Tina M. Kehl,
10 Assignees of Krystina L. Kehl; Kevin A. Kehl;
Christina M. Kehl; Cynthia A. Winter; and
11 Kehl Development Corporation

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14
15 USACM LIQUIDATING TRUST,
16 Plaintiff,

17 v.

18 PLACER COUNTY LAND SPECULATORS,
LLC, aka PLACER COUNTY LAND
19 INVESTORS, LLC; et al,
20 Defendants.

Civil Action No. 2:08-cv-01276-KJD-RJJ

ORDER APPOINTING RECEIVER

21
22 Upon consideration of the Amended Motion to Appoint Receiver ; Memorandum of Points
23 and Authorities by Plaintiff USACM Liquidating Trust [DE 5] and Supplement thereto [DE 305],
24 after a hearing on notice on December 3, 2008, the Court having considered the parties' motions
25 and arguments, and good cause appearing,

26 IT IS HEREBY ORDERED:

27 1. Elli M.A. Mills, J.D., MBA, is hereby appointed as temporary receiver (the
28 Receiver”) for each of the Lenders holding a beneficial interest (collectively, the “Placer 1

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1 Lenders”) in the Promissory Note dated on or about December 10, 2004, executed by Placer County
2 Land Speculators, LLC aka Placer County Land Investors, LLC (the “Borrower”) in the original
3 principal amount of \$27,500,000; as modified by the First Amendment to Loan Documents dated
4 February 17, 2005; by the Second Amendment to Loan Documents dated April 12, 2005; by the
5 Third Amendment to Loan Documents dated June 1, 2005; by the Fourth Amendment to Loan
6 Documents dated July 13, 2005; by the Fifth Amendment to Loan Documents dated September 19,
7 2005; and by the Sixth Amendment to Loan Documents dated November 3, 2005 (collectively the
8 “Placer 1 Note”), but only to the extent of the Placer 1 Lenders’ interest in the Placer 1 Note.

9 2. Appointment of the Receiver is contingent upon the Receiver filing a verified
10 statement with this Court by December 15, 2008, including: (1) the connections between the
11 Receiver and the Borrower, Lenders, and any other party with an interest in this matter; and (2)
12 posting of a bond in the amount of \$50,000. The statement so filed will be deemed satisfactory to
13 the Court and the Receiver shall be deemed approved and appointed unless the Court subsequently
14 enters a separate order rejecting the Receiver within 5 business days of the submission of the
15 verified statement.

16 3. The Receiver is authorized and directed to conclude the private trustee’s sale of the
17 (1) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of
18 December 10, 2004, and recorded in the Official Records of Placer County, California on December
19 20, 2004, as Document No. 2004-169766; (2) First Amendment to Deed of Trust dated as of
20 February 17, 2005, and recorded in the Official Records of Placer County, California on March 16,
21 2005, as Document No. 2005-30994; (3) Second Amendment to Deed of Trust dated as of April 12,
22 2005, and recorded in the Official Records of Placer County, California on April 22, 2005, as
23 Document No. 2005-50451; (4) Third Amendment to Deed of Trust dated as of June 1, 2005, and
24 recorded in the Official Records of Placer County, California on June 14, 2005, as Document No.
25 2005-74454; (5) Fourth Amendment to Deed of Trust dated as of July 13, 2005, and recorded in the
26 Official Records of Placer County, California on August 8, 2005, as Document No. 2005-103817;
27 (6) Fifth Amendment to Deed of Trust dated as of September 19, 2005, and recorded in the Official
28 Records of Placer County, California on October 7, 2005, as Document No. 2005-135802; and (7)

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1 Sixth Amendment to Deed of Trust dated as of November 3, 2005, and recorded in the Official
2 Records of Placer County, California on November 23, 2005, as Document No. 2005-158127 (the
3 “Placer 1 Deed of Trust”), currently scheduled for December 22, 2008, or thereafter in the
4 Receiver’s discretion.

5 4. Notwithstanding that the Placer 1 Lenders have either not consented to the
6 foreclosure sale or objected to foreclosure, Financial Title Company, a California corporation, as
7 successor Trustee under the Placer 1 Deed of Trust, is authorized to conclude the sale described in
8 the Notice of Trustee’s Sale (Trustee Sale No. 0711376DL), at the Receiver’s direction, in the
9 Receiver’s discretion.

10 5. The Receiver is authorized to perform all acts incidental to foreclosure of the Placer
11 1 Deed of Trust and all acts required to perform the terms of this order, including but not limited to
12 the following: gathering all of the information necessary to determine the approximate fair market
13 value of the property subject to the Placer 1 Deed of Trust (the “Property”); communications with
14 the Placer 1 Lenders and their counsel for purposes of determining any credit bid authorized by this
15 order; attending the foreclosure sale; taking possession of the books and records relevant to the
16 Property; hiring professionals as provided in this order; payment of fees and expenses of the
17 receivership estate as provided in this order; determining and obtaining if necessary appropriate
18 insurance on the Property; obtaining information for and challenging the assessed value of the
19 Property, including updating any appraisal information; investigating the availability of interim
20 financing; evaluating the status of and planning needed for permitting of the Property for
21 development, including representing the Placer 1 Lenders at the Placer Vineyards Development
22 Group, LLC board; cooperating with the Placer 1 Lenders in the formation of an oversight
23 committee and/or a special purpose entity and to the extent practicable allow any oversight
24 committee and/or special purpose entity to undertake appropriate tasks to minimize the fees and
25 costs incurred by the receivership; establishing a means for providing information to the Placer 1
26 Lenders; investigating the potential change of venue of this matter to the U.S. District Court in
27 Sacramento, California; and establishing a mechanism for buying and selling of the interests of the
28 Placer 1 Lenders.

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1 6. The Receiver is authorized to submit a credit bid against the Placer 1 Note at the
2 foreclosure sale, and, in the event of competitive bidding, to engage in bidding up to the maximum
3 amount permitted by law under the Placer 1 Note; provided, however, that the at the foreclosure
4 sale the Receiver shall not accept less than full payment of principal unless directed to do so in
5 writing by 51% the holders of the beneficial interest the Placer 1 Note.

6 7. If the Receiver's credit bid is the highest bid at the foreclosure sale, the Receiver
7 shall direct the foreclosure trustee to issue its trustee's deed to the Property acquired at foreclosure
8 to the Placer 1 Lenders in the same proportion of undivided interests as the Placer 1 Lenders hold
9 beneficial interests in the Placer 1 Note as a matter of record on the date of the foreclosure sale
10 (notwithstanding any objections by the Placer 1 Lenders), and thereafter, the Receiver is authorized
11 to manage the Property for the benefit of the Placer 1 Lenders, as directed by this Order until such
12 time as further ordered by the court.

13 8. If the Property is sold to a third party at the foreclosure sale, the Receiver's and his
14 counsel's fees and costs shall be paid from the proceeds of the sale, subject to confirmation by the
15 Court of the allowance of all such fees and costs so paid.

16 9. If the Receiver's credit bid is the highest bid at the foreclosure sale and the Placer 1
17 Lenders become the owners of the Property, the Receiver is hereby authorized to obtain interim
18 financing for the management of the Property, subject to approval of the Court. The Receiver shall
19 consult with the Placer 1 Lenders regarding the amount, terms and source of such interim financing.

20 10. The Court hereby approves the terms of the Receiver's proposed compensation as
21 follows: hourly rate of \$195 for 2009, to increase 5% per year effective January 1 of each year; the
22 Receiver's travel time shall be billed at one-half of his hourly rate; clerical services shall be billed
23 at \$55 per hour; copies and faxes shall be billed at \$.15 per page; and all other expenses billed at
24 cost. In addition, the Receiver shall receive a fee equal to $\frac{3}{4}$ of 1% of the total sales proceeds when
25 the Property is sold or when any portion of the Property is sold at any sale other than the foreclosure
26 sale; provided however, if the receivership is terminated prior to sale of the Property, then no
27 success fee shall be payable but the Receiver may apply for appropriate compensation to
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1 compensate for his reduced hourly rate. The Receiver and proposed counsel shall be entitled to
2 compensation only for activities that benefit the receivership estate.

3 11. The Court hereby approves the Receiver’s retention of Felderstein Fitzgerald
4 Willoughby & Pascuzzi, LLP (“FFWP”) as counsel to the Receiver. FFWP shall bill the estate
5 using its normal and customary billing rates and terms for 2008, without annual increases unless
6 further authorized by the Court.

7 12. The Receiver may apply ex parte for the approval of employment of other
8 professionals if the holders of the beneficial interest of at least 51% of the unpaid principal balance
9 of the Placer 1 Note consent to such employment. In the event such consent is not obtained, the
10 Receiver’s employment of further professionals shall be by noticed motion.

11 13. The Receiver may pay 80% of all Receiver and professional fees and reimburse
12 100% of Receiver and professional costs incurred on a monthly basis to the extent there is no
13 objection from the Placer 1 Lenders within 15 days after service of a notice to the Placer 1 Lenders
14 showing a description of the services rendered and costs incurred, the amount requested, the total
15 time expended, the names of the professionals who performed the services, and the hourly billing
16 rate for each professional. Any objection to the payment of fees or reimbursement of expenses must
17 specifically describe the particular entry objected to, the nature of the objection, and the amount of
18 fees or costs objected to. The Receiver may pay any fees and costs that are not subject to an
19 objection as provided herein. The payment of fees and costs pursuant to this provision shall be on
20 an interim basis and subject to review by the Court in interim fee applications made to the Court
21 and any final fee applications. The Receiver’s fees paid pursuant to this paragraph shall not exceed
22 \$100,000 in 2009, and \$50,000 per year for each year thereafter, without further order of the court.

23 14. The Receiver shall comply with Local Rule 66-4 requiring a verified report and
24 account within 60 days of the entry of this order, and thereafter within 30 days of the end of each
25 month, the Receiver shall file monthly reports with the Court and make them available to the Placer
26 1 Lenders either by service on them or via a website. Such monthly report shall include the status
27 of the Receiver’s activities and a summary of income and expenses of the receivership estate. The
28 Receiver need not comply with Local Rule 66-3.

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15. All actions of the Receiver other than those authorized by this order shall occur only after an application made to this Court, after notice and hearing on not less than 20 days notice to the Placer 1 Lenders. Any recommendation by the Receiver to this Court shall only be made after consultation with the holders of at least 51% of the unpaid principal balance of the Placer 1 Note or their counsel, absent a true emergency; provided however, that nothing in this order prohibits the Receiver from seeking instructions from the Court if the holders of at least 51% of the unpaid principal balance of the Placer 1 Note do not consent. Whether there is a true emergency shall be determined by the Receiver after consultation with the oversight committee, if possible. Each Placer 1 Lender will be deemed to have conclusively given its consent absent written objection received by the Receiver within 15 days after service of the Receiver's recommendation to the Placer 1 Lenders.

16. The Defendants and their agents, servants, directors, officers, affiliates, employees, attorneys, representatives, and all other persons and entities who are successors in interest to or who are acting in concert or participating with them, or any of them are hereby restrained and enjoined from interfering in any manner with the Receiver's authority to act as set forth in this order

17. It is the intent of the Court that this Receivership and the Receiver shall continue at least until such time as it has been determined whether the Placer 1 Lenders can agree to the formation of a special purpose entity to take title to the Property after the foreclosure sale. In the event a special purpose entity is formed, functioning, and the Property is transferred to the special purpose entity, the Receiver shall report to the Court that fact and, if so ordered by the court, take steps to terminate the receivership.

DATED: December 16, 2008.



UNITED STATES DISTRICT JUDGE