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8 United States District Court
9 District of Nevada

10 USACM Liquidating Trust,

11 Plaintiff,

12 v.

13 Placer County Land Speculators, LLC, aka
Placer County Land Investors, LLC; et al,

14 Defendants.
15

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

**Supplement to Amended Motion for
Appointment of a Receiver**

Hearing: December 3, 2008
Time: 9:00 a.m.

16 **Introduction**

17 The USACM Liquidating Trust (the “USACM Trust”) seeks the appointment of a
18 receiver for over 300 lenders (each a “Placer 1 Lender” and collectively “Placer 1
19 Lenders”), as collective owners on an undivided basis of all of the beneficial interests in a
20 Promissory Note in the ultimate principal amount of \$31.5 million made by Placer County
21 Land Speculators, LLC¹ (the “Borrower”) originally dated December 10, 2004 (as
22 amended, the “Placer 1 Note”). The USACM Trust holds the Placer 1 Note as servicing
23 agent for the Placer 1 Lenders. This filing supplements the USACM Trust’s Amended
24 Motion to Appoint Receiver; Memorandum of Points and Authorities filed on October 2,
25 2008 at DE 5 in three ways:

26 ¹ Also known as Placer County Land Investors, LLC.

1 recommendation to the Court, for consideration at a hearing on notice. That process
2 would delay the foreclosure until perhaps February, at the earliest.

3 To add to the sense of urgency, the Placer Vineyards Development Group, LLC
4 (“Development Group”) has proposed a Third Amendment to Operating Agreement, that
5 would amend the Operating Agreement for The Company, effective as of August 16,
6 2007, as amended by the First Amendment thereto, effective on or around October 2,
7 2007, and the Second Amendment thereto, dated for reference purposes as of May 22,
8 2008 (collectively, the “Operating Agreement”). Among the changes proposed is a
9 penalty upon members who fail to pay capital calls for two consecutive quarters. The
10 Borrower has failed to pay quarterly capital calls of \$52,718.04 for the first and second
11 quarters of 2008, and \$13,179.51 in the third quarter; the Development Group has charged
12 a 5% penalty on each installment, and now seeks to bar such a double defaulting member
13 from participation in the development.

14 No one would benefit from delay of foreclosure. During the delay, real estate taxes
15 would be unpaid, and no one would be authorized to act on behalf of the property owner in
16 resolving the issues with the Development Group.

17 Accordingly, the USACM Trust requests that the Court order the Receiver (if
18 appointed) to direct the conclusion of the pending foreclosure sale, without further
19 hearing.

20 **II. THERE ARE TWO REMAINING RECEIVER CANDIDATES**

21 Both Mark Kagan and Beverly McFarland have withdrawn their names from
22 consideration.

23 After Mr. Kagan withdrew his name, an effort was made to seek Placer 1 Lenders’
24 expression of preference among Elli M.A. Mills and John Paxton. The USACM Trust will
25 supplement the record on Monday, December 1, 2008, with a tally of those preferences.
26

1 The USACM Trust does not take a position as between these two candidates or any other
2 person the Court deems qualified to act as the Receiver.

3 **III. CLARIFICATION CONCERNING THE PROPOSED REQUIREMENT**
4 **THAT 51% OF THE PLACER 1 LENDERS APPROVE A**
5 **RECOMMENDATION BY THE RECEIVER, ABSENT A TRUE**
6 **EMERGENCY**

7 The USACM Trust has recommended, consistent with the loan servicing agreement
8 and Nevada law, that the Court require that the Receiver be directed to consult with or
9 seek input from all Placer 1 Lenders before making any recommendation to the Court, and
10 to make a recommendation only with the consent of at least 51% of the beneficial interests
11 in the Placer 1 Note, absent a true emergency. The USACM Trust has received some
12 inquiries on this recommendation.

13 The USACM Trust is referring to 51% of the unpaid principal balance of the Placer
14 1 Note as the threshold, rather than 51% of the holders of interests in the Loan.

15 The loan servicing agreement provided in ¶ 2(e) that with respect to matters which
16 a Lender's prior consent, "provided, however, if Lender fails to grant or deny its consent
17 within three (3) business days after notice from USA, Lender shall be deemed to have
18 conclusively given its consent."³ In the experience of the USACM Trust, three business
19 days is too short a time for anyone to think that several hundred direct lenders have
20 received and considered a request for consent. The USACM Trust believes thirty days is
21 a more realistic timeframe.

22 **Conclusion**

23 The USACM Trust requests that the Court enter its order:

- 24 ○ Appointing a Receiver for the Placer 1 Loan;
- 25 ○ Authorizing the Receiver to foreclose the lien of the Placer 1 Deed of Trust;

26 ³ Exhibit 2, page 3.

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