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*Attorneys for Petitioning Creditors USA Capital Diversified Trust Deed Fund, LLC and
the USACM Liquidating Trust*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

THOMAS A. HANTGES,

Debtor.

Case No. BK-S-07-13163 LBR

Chapter 11

**DECLARATION OF JEFFERY D.
HERMANN IN SUPPORT OF
PETITIONING CREDITORS'
EMERGENCY (1) MOTION UNDER 11
U.S.C. §§ 303 (f) AND (g), 105 AND
1104(a) FOR AN ORDER APPOINTING
AN INTERIM TRUSTEE, AND (2) EX
PARTE MOTION FOR AN ORDER
IMMEDIATELY RESTRICTING THE
ALLEGED DEBTOR'S BUSINESS-
RELATED ACTIVITIES PENDING
APPOINTMENT OF AN INTERIM
TRUSTEE**

Hearing Date: OST PENDING

Hearing Time: OST PENDING

I, Jeffery D. Hermann, hereby declare, verify and state as follows:

1. I am over the age of 18, am mentally competent, have personal knowledge of the facts that follow, and if called upon to testify thereto, I could and would do so under oath.

1 2. I am Of Counsel with Orrick, Herrington & Sutcliffe, LLP (“Orrick”), in Los
2 Angeles, California, and make this declaration in support of the Emergency Motion Under 11
3 U.S.C. §§ 303 (f) and (g), 105 and 1104(a) For an Order Appointing an Interim Trustee and an
4 Order Restricting the Alleged Debtor’s Operations Pending Appointment of an Interim Trustee
5 (the “Motion”), as counsel to Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC
6 (“Diversified”).

7 3. On the April 13, 2006 Petition Date, USA Capital Diversified Trust Deed Fund,
8 LLC and four related companies filed petitions for relief under chapter 11 of the Bankruptcy
9 code. Orrick was retained by the Official Committee of Equity Security Holders of USA Capital
10 Diversified Trust Deed Fund, LLC (“Diversified Committee”) on June 1, 2006 to perform legal
11 services for the Diversified Committee in the USA Cases.¹ On March 12, 2007, the Debtors’
12 Third Amended Plan of Reorganization (the “Plan”) became effective and in accordance with the
13 Plan, Michael Tucker became the Administrator of Post-Effective Date USA Capital Diversified
14 Trust Deed Fund, LLC (“Diversified”). Mr. Tucker subsequently retained Orrick as counsel to
15 Diversified.

16 4. On March 13, 2007, I attended the deposition of Joseph Milanowski at the law
17 offices of Gerrard Cox & Larsen, 2450 St. Rose Parkway, #200, Henderson, Nevada 89074, in
18 connection with the HMA Adversary. A true and correct copy of the transcript from the
19 deposition of Joseph Milanowski (the “Milanowski Deposition Transcript”) is attached hereto as
20 **Exhibit 1** and is incorporated herein by this reference.

21 5. On March 14, 2007, I attended the depositions of Thomas Hantges and Victoria S.
22 Loob also at the law offices of Gerrard Cox & Larsen in connection with the HMA Adversary. A
23 true and correct copy of the transcript from the deposition of Victoria S. Loob (the “Loob
24 Deposition Transcript”) is attached hereto as **Exhibit 2** and is incorporated herein by this
25 reference. A true and correct copy of the transcript from the March 14, 2007 deposition of
26 Thomas Hantges (the “Hantges March Deposition Transcript”) is attached hereto as **Exhibit 3**
27 and is incorporated herein by this reference. Also attached hereto as **Exhibit 4** and incorporated

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¹ Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed in the Motion.

1 herein by this reference is the Amended Notice of Deposition of Thomas Hantges reflecting that
2 the Hantges Deposition was rescheduled for March 14, 2007, at 3:00 p.m. at the offices of
3 Gerrard Cox & Larsen.

4 6. On April 25, 2007, I conducted the deposition of Thomas Hantges at the law
5 offices of Diversified Nevada counsel, Beckley Singleton, Chartered, 530 Las Vegas Boulevard
6 South, Las Vegas, Nevada 89101, in connection with the USA Investors VI, LLC case. A true
7 and correct copy of the transcript from the April 25, 2007 deposition of Thomas Hantges (the
8 “Hantges April Deposition Transcript”) is attached hereto as **Exhibit 5** and is incorporated herein
9 by this reference.

10 7. Throughout the USA Cases, the many inquiries of USAIP made by the USA
11 Debtors were repeatedly met with refusals to answer on the grounds of Fifth Amendment
12 privilege. Mr. Milanowski testified, and therefore I am informed and believe that, while under the
13 control of Milanowski and Hantges, USAIP employed only three people, Milanowski, Hantges
14 and Victoria Loob.

15 8. Milanowski invoked his Fifth Amendment privilege 47 times during the deposition
16 taken in the HMA Adversary on March 13, 2007, choosing to answer only those questions that
17 provided information he considered to be favorable to Reale.² See Exhibit 1. Loob, in her
18 deposition taken in the HMA adversary, also invoked the Fifth Amendment, answering no
19 questions. See Exhibit 2.

20 9. Hantges did not initially invoke the Fifth Amendment, choosing instead to ignore a
21 deposition subpoena in the HMA Adversary and not show up at the designated time and place –
22 despite the fact that counsel for the parties in that adversary did appear. See Exhibit 3, Exhibit 4.

23 10. After several continuances granted by counsel for Diversified, Hantges finally did
24 appear for a duly noticed deposition taken in the Investors VI Case on April 25, 2007. Hantges
25 invoked his Fifth Amendment privilege during the short deposition declining even to answer such
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28 ² The 47 count does not include the instances where Milanowski referred to his earlier invocation of the
privilege in refusing to answer a new question.

1 preliminary questions as whether he had ever been deposed before and the details of his
2 educational background, and every succeeding question. See Exhibit 5.

3 11. In short, there may be many more instances of Milanowski and Hantges utilizing
4 the assets and business of various entities under their ownership or control, whether directly or
5 indirectly, for their own personal advantage, but Milanowski, Hantges and Loob have impeded
6 Movants in determining whether that is the case.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct to the best of my knowledge and belief.

9 Executed this 29th day of May 2007, at Los Angeles, California.

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/s/Jeffery D. Hermann
JEFFERY D. HERMANN