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

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

14 In re

15 JOSEPH D. MILANOWSKI,

16 Debtor.

Case No. BK-S-07-13162 LBR

Chapter 11

**DECLARATION OF MICHAEL A. TUCKER 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

26 I, Michael A. Tucker, hereby declare, verify and state as follows:

27 1. I am over the age of 18, am mentally competent, have personal knowledge of the  
28 facts that follow, except where noted as upon information and belief, and if called upon to testify

1 thereto, I could and would do so under oath. I make this declaration in support of the Emergency  
2 (1) Motion Under 11 U.S.C. §§ 303 (f) and (g), 105 and 1104(a) for an Order Appointing an  
3 Interim Trustee, and (2) Ex Parte Motion for an Order Immediately Restricting the Alleged  
4 Debtor's Business-Related Activities Pending Appointment of an Interim Trustee (the "Motion").

5 2. I am a Senior Managing Director with FTI Consulting, Inc. ("FTI"), a financial  
6 advisory services firm specializing in reorganization, litigation and related consulting services. I  
7 joined FTI in 2002 upon FTI acquiring PricewaterhouseCoopers LLP's Business Recovery  
8 Services group where I was a Partner and had been employed for 17 years.

9 3. On April 13, 2006 (the "Petition Date"), USA Capital Diversified Trust Deed  
10 Fund, LLC ("Diversified") and four related companies, namely USA Commercial Mortgage  
11 Company ("USACM"), USA Capital Realty Advisors, LLC ("USACRA"), USA Capital First  
12 Trust Deed Fund, LLC and USA Securities, LLC (collectively the "USA Debtors") filed petitions  
13 for relief under chapter 11 of the Bankruptcy code. FTI was retained by the Official Committee of  
14 Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC ("Diversified  
15 Committee") on June 9, 2006 to perform financial advisory services for the Diversified  
16 Committee in the chapter 11 cases. On March 12, 2007, the Debtors' Third Amended Plan of  
17 Reorganization (the "Plan") became effective and in accordance with the Plan, I became the  
18 Administrator of Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC  
19 ("Diversified").

20 4. **Jointly-Administered Bankruptcy Filings.** By order entered June 9, 2006, the  
21 Court approved the joint administration of the five bankruptcy cases (the "USA Cases").

22 5. Commencing no later than January 2003 and continuing through at least December  
23 2004, Milanowski and Hantges caused USACM to begin raiding Diversified as a source of funds  
24 for the Collection Account and for their own potential personal gain. Milanowski and Hantges  
25 ultimately perpetrated a massive fraud upon Diversified by failing in every conceivable way to  
26 adhere to the promises and representations contained in the Prospectus or to protect the interests  
27 of Diversified's members.  
28



1 11. USAIP manages entities that are borrowers on numerous loans arranged by  
2 USACM and entities that are obligors of Diversified. Milanowski and Hantges have guaranteed  
3 the repayment of loans arranged by USACM and owed to Movants and other creditors. *Id.*

4 **Milanowski Burdened USA Investors VI, LLC, With Personal Obligations**  
5 **Owing to Salvatore Reale For No Consideration.**

6 12. One entity managed by USAIP is USA Investors VI, LLC (“Investors VI”), which  
7 is the owner of the Hotel Zoso (formerly known as the Marquis Hotel) in Palm Springs,  
8 California. Investors VI owes in excess of \$20 million to direct lenders in a loan arranged by  
9 USACM (“Marquis Hotel Loan”). Investors VI also is obligated to Diversified, a substantial  
10 creditor of Investors VI, in connection with the Sheraton Hotel loan. The Hotel Zoso has been  
11 under a contract of sale since May 2006. Investors VI was the subject of an involuntary  
12 bankruptcy petition filed by Diversified in this Court, case no. BK-S-06-13925-LBR. Recently,  
13 the trustee of USAIP filed a voluntary petition for Investors VI, initiating case no. BK-S-07-  
14 12377 LBR.

15 13. Commencing in the Summer of 2006, the USA Debtors engaged in discussions  
16 with Milanowski for payment of the Marquis Hotel Loan and obligations owing to Diversified  
17 upon the sale of the Hotel Zoso. Milanowski offered that he would make such payments, but  
18 when asked for enforceable commitments by the USA Debtors, Milanowski stated that it was not  
19 possible to provide Diversified with a deed of trust or other direct claims against the property to  
20 assure such payment, since, according to Milanowski, approval of the Bureau of Indian Affairs  
21 (“BIA”) for such a lien or claim was necessary, would take a great deal of time, and most likely  
22 would not be obtained.

23 14. Diversified and USACM Trust subsequently learned – as a result of the filing of a  
24 proof of claim in the Investors VI case – that in early September 2006, five months after the filing  
25 of the USA Cases, Milanowski on behalf of USAIP, as manager of Investors VI, signed a  
26 guaranty, deed of trust, promissory note and security agreement in favor of Salvatore J. Reale, as  
27 trustee of the Salvatore J. Reale Living Trust dated November 15, 2004 (“Reale”), filed UCC-1  
28 financing statements in connection with the same in late September 2006, and, after obtaining

1 BIA approval, recorded the deed of trust against the Hotel Zoso property. Not only did these  
2 documents secure the personal obligations of Milanowski and Hantges owing to Reale with  
3 property belonging to Investors VI, but Milanowski thereby acknowledged two other multi-  
4 million dollar obligations improbably alleged to be owing to Reale by Investors VI and secured  
5 those obligations with the Hotel Zoso property of Investors VI. All such actions taken by  
6 Milanowski were undertaken in the name of USAIP.

7 **Milanowski's Agreement with Ashby USA Pursuant to which USAIP**  
8 **Unnecessarily Agreed to Absorb All Manner of Expenses.**

9 15. USAIP holds a 50% member interest in Ashby USA, LLC ("Ashby USA"), an  
10 entity that is in the process of developing major portions of the Roripaugh Ranch project in  
11 Temecula, California. The USAIP ownership interest is pledged to Diversified as collateral for  
12 the 10-90 Loan. The manager of Ashby USA is Ashby Development Company.

13 16. In the Spring of 2006, Ashby USA was the borrower under \$51 million of bonds  
14 issued by the City of Temecula. After the bonds were purchased, the City of Temecula and bond  
15 counsel allegedly learned that USACM had filed its chapter 11 case on April 13, 2006. The City  
16 of Temecula contended that the bonds would have to be repurchased and resold after making the  
17 additional disclosures about the bankruptcy case. The costs of repurchase and re-issuance of the  
18 bonds are likely substantial. Although Ashby Development Company, as the manager of Ashby  
19 USA, was responsible for the statements in the bond offering statement, Ashby Development  
20 Company demanded that USAIP absorb *all* bond re-issuance expenses. Milanowski assured the  
21 USA Debtors that he would not agree to the Ashby demands for reimbursement of bond re-  
22 issuance costs.

23 17. However, the USA Debtors subsequently learned that even while Milanowski was  
24 assuring the USA Debtors that he would not agree to the Ashby reimbursement demands, in  
25 October of 2006, Milanowski executed an amendment to the operating agreement of Ashby USA,  
26 which did just that, agreeing to extremely broad categories of reimbursable expenses that go far  
27 beyond those directly related to any conceivable bond re-issuance costs. As a result of  
28 Milanowski's actions on behalf of USAIP, not only were the USA Debtors misled as to

1 Milanowski's intentions until it was too late to take any pre-emptive action, but the collateral for  
2 the 10-90 Loan was improperly reduced in value by an amount that could be millions of dollars --  
3 without any consideration whatsoever to USAIP.

4 **Milanowski, Through USAIP, Burdened HMA Sales, LLC, With Liability**  
5 **for Personal Obligations Owing to Salvatore Reale.**

6 18. USAIP also manages HMA Sales, LLC ("HMA"), the former owner of the Royal  
7 Hotel in Las Vegas. As the Court is aware as a result of the HMA Adversary, Milanowski  
8 granted Reale a deed of trust against the Royal Hotel in May 2006 in order to secure repayment of  
9 the loans Reale made to Hantges and Milanowski personally. HMA received no consideration  
10 whatsoever for taking on and collateralizing the approximately \$10 million debt that Hantges and  
11 Milanowski owed to Reale.

12 19. Milanowski granted the Reale lien on the Royal Hotel while Milanowski was  
13 negotiating with the USA Debtors on the USAIP \$58 million Note. In doing so, Milanowski  
14 effectively stripped substantial value from the collateral pledged to secure that Note (including  
15 the equity interests in HMA Sales, LLC and numerous other LLC entities), to the detriment of the  
16 Movants and other creditors.

17 **Milanowski Conspired to Place USAIP Into Receivership**  
18 **to Avoid This Court's Jurisdiction.**

19 20. On March 26, 2007, Robert A. Russell, an individual, Placer County Land  
20 Investors, LLC ("Placer Investors"), a California limited liability company, and SVRB  
21 Investments, LLC, an Arizona limited liability company – entities that Movants are informed and  
22 believe to be owned and/or controlled by Robert A. Russell (together with Placer Investors and  
23 SVRB, "Russell") – filed papers in case no. EDCV07-0343 SGL (JCRx) (the "Receivership  
24 Action") in United States District Court, Central District of California (Eastern Division) (the  
25 "California Court") seeking the ex parte and immediate appointment of a receiver for all of  
26 USAIP's assets.

27 21. On March 27, 2007, while under Milanowski's control, USAIP filed a Declaration  
28 of Non-Opposition (the "Consent Declaration") in response to the ex parte receivership motion in

1 the Receivership Action. A true and correct copy of the Consent Declaration is attached hereto as  
2 **Exhibit 1** and is incorporated herein by this reference.

3 22. After entering an ex parte order in the Receivership Action that, among other  
4 things, prohibited all persons from initiating bankruptcy proceedings against USAIP and perhaps  
5 stayed the litigation ongoing in this Court against entities in which USAIP has an ownership  
6 interest and for which USAIP is the manager, the California Court – after hearing oral arguments  
7 on Movants’ emergency motion for modification – entered an order modifying its previous order,  
8 which clarified, among other things, that the filing of a bankruptcy case against USAIP and the  
9 litigation ongoing in this Court were not stayed. Modification Order, at ¶ 2, lines 8-16. A true  
10 and correct copy of the Modification Order is attached hereto as **Exhibit 2** and is incorporated  
11 herein by this reference. Thus, despite Milanowski’s attempts to thwart efforts to recover from  
12 USAIP assets, the USAIP Petitioning Creditors filed the USAIP Case.

13 **Movants Lack Information about Other Self-Dealing and Harmful Transactions**  
14 **in which Milanowski and Hantges Have Engaged Because, Among Other Things,**  
15 **Milanowski and Hantges Have Repeatedly Invoked Their Fifth Amendment Rights.**

16 23. Given the above and certain other transactions of which Movants are aware,  
17 Movants suspect that Milanowski and Hantges utilized their control over USACM and USAIP,  
18 USACM’s control over Loan repayments, and USAIP’s control over the numerous entities  
19 affiliated with USAIP, to their personal advantage and to the detriment of the Movants and others.  
20 Moreover, while under the control of Milanowski and Hantges, USAIP was not forthcoming in  
21 providing financial or operational information to the USA Debtors or their successors, Diversified  
22 and USACM Trust, consistently insisting that a global deal and settlement first be reached  
23 between USAIP and Movants before USAIP would provide financial information.

24 **Milanowski and Hantges Owe Substantial Sums that Are Mature, Liquidated**  
25 **and Cannot Be Disputed.**

26 24. The 10-90 Loan is in default, and Diversified’s guaranty claims against  
27 Milanowski and Hantges have matured, are liquidated and cannot be disputed. Milanowski and  
28 Hantges are aware of their guaranty obligations, but no payment has been forthcoming. A true  
and correct copy of the correspondence to USAIP, Milanowski and Hantges demanding

1 repayment on the 10-90 Loan is attached hereto as **Exhibit 3** and is incorporated herein by this  
2 reference.

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

5 Executed this 29th day of May 2007, at Phoenix, Arizona.

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/s/ Michael A. Tucker  
MICHAEL A. TUCKER