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7 *Attorneys for the Official Committee of Equity*
8 *Security Holders of USA Capital Diversified Trust*
9 *Deed Fund, LLC*

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

11 In re: 12 USA COMMERCIAL MORTGAGE COMPANY, 13 Debtor.
13 In re: 14 USA CAPITAL REALTY ADVISORS, LLC, 15 Debtor.
14 In re: 15 USA CAPITAL DIVERSIFIED TRUST DEED 16 FUND, LLC, 17 Debtor.
16 In re: 17 USA CAPITAL FIRST TRUST DEED FUND, LLC, 18 Debtor.
18 In re: 19 USA SECURITIES, LLC, 20 Debtor.
20 Affects: 21 <input checked="" type="checkbox"/> All Debtors 22 <input type="checkbox"/> USA Commercial Mortgage Company 23 <input type="checkbox"/> USA Securities, LLC 24 <input type="checkbox"/> USA Capital Realty Advisors, LLC 25 <input type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC 26 <input type="checkbox"/> USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

Chapter 11
Jointly Administered Under
Case No. BK-S-06-10725-LBR

Date of Confirmation
Hearing: December 19, 2006
Time: 10:00 a.m.
Courtroom: 1

24 **PLAN DOCUMENTS SUPPLEMENT AND NOTICE OF DISCLOSURES BY THE**
25 **OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF**
26 **USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,**
27 **PURSUANT TO 11 U.S.C. §§ 1129(a)(4) AND (5)**
28

1 (c) Jerry T. McGimsey practiced law in Las Vegas for 29 years and
2 is now retired. He continues to reside in Las Vegas and is an avid golfer. Mr.
3 McGimsey has served on the Diversified Fund Committee since its formation.

4 (d) Charles O. Nichols is from Delaware, where he owned and
5 operated a number of businesses for almost 30 years. In 1995, he sold his
6 interests there and retired to Las Vegas. Mr. Nichols has served on the
7 Diversified Fund Committee since its formation.

8 9. Soon after the Effective Date, the DTDF Post-Effective Date Committee will
9 meet, and the Committee Members and Tucker shall establish a protocol for selecting one
10 additional member of the DTDF Post-Effective Date Committee.

11 10. The members of the DTDF Post-Effective Date Committee will be compensated
12 for their service on the DTDF Post-Effective Date Committee as follows: Each will be paid
13 \$500.00 for each meeting of the DTDF Post-Effective Date Committee he/she attends, whether
14 in person or telephonically, and each will have his/her reasonable expenses reimbursed by Post-
15 Effective Date DTDF. In addition, the members of the DTDF Post-Effective Date Committee
16 will receive customary indemnification, and Post-Effective Date DTDF will obtain a directors
17 and officers' policy for them.

18 11. For his services as Chair, which will include frequent contact with holders of
19 interests in Post-Effective Date DTDF as well as leading the DTDF Post-Effective Date
20 Committee, Worthen will be paid an additional \$1,000.00 per month, which amount shall be
21 reviewed and possibly changed by the DTDF Post-Effective Date Committee after the 90-day
22 anniversary of the Effective Date.

23 **Statement Pursuant to Bankruptcy Code Section 1129(a)(4)**

24 12. Any payment by DTDF to any person described in Bankruptcy Code Section
25 1129(a)(4) shall be subject to the approval of the Bankruptcy Court.

26 **Statement Pursuant to Bankruptcy Code Section 1129(a)(5)**

27 13. The Diversified Committee has made the foregoing decisions in the exercise of its
28 reasonable business judgment, and each member of the Diversified Committee believes that such

1 decisions are consistent with the interests of DTDF's creditors, if any, DTDF's equity holders,
2 and with public policy.

3 14. No insider of DTDF has been chosen to be employed or retained by Post-
4 Effective Date DTDF.

5 **DTDF Amended Operating Agreement**

6 15. A true and correct copy of the DTDF Amended Operating Agreement is attached
7 hereto as **Exhibit 1** and is incorporated for purposes herein by this reference. The Diversified
8 Committee reserves the right to make non-material changes to the DTDF Amended Operating
9 Agreement prior to confirmation of the Plan.

10 DATED this 8th day of December 2006.

11 BECKLEY SINGLETON, CHTD.

12 By: 

13 Bob L. Olson (Nevada Bar No. 3783)
14 Anne M. Loraditch (Nevada Bar No. 8164)
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16 and

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EXHIBIT 1
AMENDED AND RESTATED OPERATING AGREEMENT
OF
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC

THE LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST UNITS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("THE ACT"). SUCH UNITS MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED TO ANY PERSON AT ANY TIME WITHOUT SUCH REGISTRATION UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER OF THE COMPANY TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED. THERE ARE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFER, AS SET FORTH IN THIS OPERATING AGREEMENT. IN ADDITION, IN NO EVENT MAY UNITS BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED TO ANY PERSON WHO IS NOT A RESIDENT OF NEVADA FOR A PERIOD OF NINE MONTHS FROM THE DATE OF THE LAST SALE THEREOF BY THE FUND.

AMENDED AND RESTATED

OPERATING AGREEMENT

OF

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") is made and entered into effective as of December __, 2006, by and among Michael Tucker, an individual ("Manager"), and the persons listed on Schedule 1 hereto ("Members").

WHEREAS, the Company has heretofore been formed as a limited liability company pursuant to the provisions of Chapter 86 of NRS, as the same may be amended from time to time (the "Act"), and pursuant to the Articles of Organization, filed with the Nevada Secretary of State on February 3, 2000, and the Operating Agreement of USA Capital Diversified Trust Deed Fund, LLC (the "Original Agreement");

WHEREAS, on April 13, 2006, the Company, USA Commercial Mortgage Company, USA Securities, LLC, USA Capital Realty Advisors, LLC, and USA Capital First Trust Deed Fund, LLC (together, the "Debtors") commenced their bankruptcy cases by filing voluntary petitions under chapter 11 title 11 of the United States Code, as amended (the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of Nevada ("Bankruptcy Court");

WHEREAS, on November 15, 2006, the Debtors and certain of their Affiliates in the Debtors' jointly administered Chapter 11 Cases, proposed a joint chapter 11 Plan of Reorganization (the Third Amended Joint Chapter 11 Plan of Reorganization (together with any and all Bankruptcy Court-approved amendments thereto, all Exhibits thereto and all documents incorporated by reference therein, the "Plan")) pursuant to section 1121(a) of title 11 of the United States Code;

WHEREAS, on [DATE], the Bankruptcy Court's order confirming the Plan was entered on the docket of the Bankruptcy Court;

WHEREAS, on [DATE], the Plan became operative (the "Effective Date");

WHEREAS, the Plan calls for each Debtor to retain its own assets and liquidate them in an orderly way for distribution to their creditors and members;

WHEREAS, Article IV, section D.2 of the Plan provides that the reorganized DTDF (defined in the Plan as "Post-Effective Date DTDF") is to realize assets and to be governed and operated by a manager (defined in the Plan as the "DTDF Administrator") with input from a post-confirmation advisory committee (defined in the Plan as the "DTDF Post-Effective Date Committee"), all pursuant to the Plan and to the "DTDF Amended Operating Agreement;"

WHEREAS, in accordance with the Plan, the Company is liquidating all of its assets and shall dissolve as soon as practicable following such liquidation of substantially all of its assets, or earlier as provided herein;

WHEREAS, in accordance with the Plan, the Original Agreement has been amended and restated to read in its entirety, as set forth in this Agreement, which has been approved by the Bankruptcy Court without the need for further approval by the Members as required by the Original Agreement;

NOW, THEREFORE, in accordance with the Plan, the Original Agreement has been amended and restated to read as follows:

ARTICLE I **DEFINITIONS**

The terms set forth in this Article I shall, for all purposes of this Agreement, have the meanings as defined herein. Capitalized terms used and not defined herein shall have the meanings assigned thereto in the Plan.

1.01. "Affiliate(s)" shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such Person, (iii) any officer, director or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee or holder of ten percent (10%) or more of the voting securities of any Person described in clauses (i) through (iii) of this sentence. "Affiliates" of the Manager include, without limitation, FTI Consulting, Inc.

1.02. "Agreement" shall mean this Amended and Restated Operating Agreement, as the same may hereafter be amended from time to time.

1.03. "Articles" shall mean the Articles of Organization for the Company originally filed with the Nevada Secretary of State and as amended from time to time.

1.04. "Asset Purchase Agreement" means (A) the Revised First Amended And Restated Asset Purchase Agreement between USACM and FTDF, as sellers, DTDF, USA Securities and USA Realty, as acknowledging parties, and SPCP Group, LLC, as purchaser, Filed on November 7, 2006 [Docket No. 1750], and attached to the Plan as Exhibit A, as the same may be further amended pursuant to the terms of the Plan, or (B) any substantially similar agreement executed with a third party bidder, if a third party bidder is the purchaser of the Acquired Assets.

1.05. "Capital Account" shall mean, with respect to any Member, the Capital Account maintained for such Member as set forth as of the Effective Date on Schedule 1 hereto, and as adjusted after the Effective Date in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited such Member's capital contributions (as provided in Section 6.01), such Member's distributive share of Profits, and any items in the nature of income or gain (from unexpected adjustments, allocations or distributions) that are specially allocated to a Member and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member.

(b) To each Member's Capital Account there shall be debited the amount of cash or the fair market value of property distributed to the Member, such Member's distributive share of Losses, and any items in the nature of expenses or losses that are specially allocated to a Member and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

In the event any interest in the Company is transferred according to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

The provision of this Section 1.05 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event it is necessary to modify the manner in which the Capital Accounts are computed in order to comply with such Treasury Regulations, the Manager shall make such modification. The Manager shall adjust the amounts debited or credited to the Capital Accounts with respect to (1) any property contributed to the Company or distributed to any Member and (ii) any liabilities that are secured by such contributed or distributed property or that are assumed by the Company in the event the Manager shall determine that such adjustments are necessary or appropriate pursuant to Treasury Regulations Section 1.704 1(b)(2)(iv). The Manager shall also make appropriate modifications if unanticipated events cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

1.06. "Cash Available for Distribution" shall mean an amount of cash equal to the excess of (i) accrued income from the sale or refinancing or other disposition of, Company assets, or any recoveries in connection with any litigation or claim, in each case during any calendar month over (ii) the accrued Operating Expenses, including any adjustments for bad debt reserves or deductions (including reasonable reserves), any expenses (including reasonable

reserves) associated with any obligations under Section 3.05 or Section 5.07 and reasonable cash reserves for operations, in each case as the Manager may deem appropriate.

1.07. "Code" shall mean the Internal Revenue Code of 1986, as amended, and corresponding portions of any subsequent federal revenue laws.

1.08. "Company" or "DTDF" shall mean USA Capital Diversified Trust Deed Fund, LLC.

1.09. "DTDF Administrator" means the Manager of the Company, who has the powers and responsibilities set forth in Section 3.01 of this Agreement and in the Plan, or any successor manager appointed pursuant to Section 3.06 or 3.07 of this Agreement. The DTDF Administrator shall on the Effective Date be Michael Tucker, an individual residing at 2 N. Central Avenue, Suite 1200, Phoenix, Arizona 85004, who is as of the date hereof a Senior Managing Director of FTI Consulting, Inc.

1.10. "DTDF Member Committee" means the oversight committee for the Company and the Members comprised of seven Members, which committee has the powers and responsibilities set forth in Article V of this Agreement. The initial members of the DTDF Member Committee shall be the following Members of the Company: Robert Worthen (chair), Robert Hardy, Charles O. Nichols, Jerry T. McGimsey, and an individual to be designated by the foregoing members of the DTDF Member Committee, who shall serve until their successors are appointed in accordance with this Agreement and the Act or their earlier resignation or termination.

1.11. "DTDF Unremitted Principal Claim" means the General Unsecured Claim or other Claims of DTDF against USACM for Loan payments received by USACM but not paid to DTDF prior to the Petition Date.

1.12. "DTDF Unsecured Claim" means the General Unsecured Claim of DTDF against USACM, excluding the DTDF Unremitted Principal Claim, allowed in the amount as may be agreed to by the USACM Committee and the DTDF Member Committee by the date of the commencement of the Confirmation Hearing, or if no agreement is reached by such date, the amount determined by the Court after an evidentiary hearing between such Committees; provided, however, that the USACM Committee and the DTDF Member Committee or, after the Effective Date, the Post-Effective Date Entities, may agree at any time as to the amount that represents the DTDF Unsecured Claim without further Court order by filing a notice of such agreement with the Court; and provided further, however, that prior to the Effective Date, the USACM Committee and the DTDF Member Committee shall consult with the FTDF Committee and the Direct Lender Committee regarding the issue.

1.13. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act (as defined in the Whereas clauses above), but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company, or any right to information concerning the business and affairs of the Company.

