

MEMORANDUM

TO: Jacques Massa
CC: Mark Weibel, Esq.
FROM: Compass Financial Partners LLC
DATE: May 7, 2008
RE: Massa Questions Regarding Bundy \$5.725 MM SPE Operating Agreement

Below are Compass's responses to the questions, comments, and proposed revisions to the Bundy \$5.725 MM Operating Agreement raised by Mr. Jacques Massa.

Effect of Preliminary Injunction Order

Compass's actions in opting to acquire, hold, and convey title to real property collateral through a Single Purpose Entity are entirely consistent with the Preliminary Injunction Order entered by the U.S. District Court for the District of Nevada. As set forth below, the Operating Agreement prepared by Compass for each Single Purpose Entity ("SPE") does not in any way limit or impair the rights and protections the Direct Lenders are afforded under the Preliminary Injunction Order or the LSAs.

The relevant section of the Preliminary Injunction Order pertaining to holding title is paragraph 7, which is set forth below. The Preliminary Injunction Order was heavily negotiated by counsel for the LLCs and Compass, with substantial input from District Judge Jones before entry, and counsel for the LLCs supported the rationale for, and specifically consented to, the SPE structure.

7. Foreclosure. In the event that Compass commences and pursues a foreclosure sale with respect to a Loan in accordance with the applicable LSAs: (a) Compass or a single purpose entity designated by Compass (the "Bidding Entity") is authorized to make a credit bid at the foreclosure sale (which shall not be in an amount greater than Payment in Full) on behalf of Compass and the Direct Lenders (including, but not limited to, Compass to the extent that it is a Direct Lender under such Loan) with respect to Compass's and the Direct Lenders' respective rights as beneficiaries under any applicable deed of trust, mortgage or security interest on account of obligations arising under the applicable Loan

documents that are secured by the collateral (the “Bid Interests”); (b) if the Bidding Entity makes such a credit bid and there is a cash overbid, then either (i) if the cash overbid is in an amount equal to or greater than Payment in Full, then the Bidding Entity shall have no further obligation to bid at the foreclosure sale and upon receipt of proceeds of the sale in an amount equal to or greater than Payment in Full, the Bidding Entity shall proceed in accordance with paragraph 4 above, (ii) if the cash overbid is in an amount less than Payment in Full and Compass and all Direct Lenders under such Loan (including, but not limited to, Compass to the extent that it is a Direct Lender under such Loan) have not consented to the acceptance of a cash overbid in such amount, then the Bidding Entity must increase its credit bid to at least the next highest incremental bid amount in excess of the cash overbid permitted at the foreclosure sale, or (iii) if the cash overbid is in an amount less than Payment in Full but Compass and all Direct Lenders under such Loan (including, but not limited to, Compass to the extent that it is a Direct Lender under such Loan) have consented (in accordance with the applicable LSAs), after Disclosure, to the acceptance of a cash overbid in such amount, then (A) the Bidding Entity must accept (or direct the foreclosure trustee or other entity conducting the foreclosure sale to accept) such cash overbid, and (B) the Bidding Entity shall distribute such proceeds in accordance with paragraph 5 above. Under no circumstance shall the Bidding Entity be obligated to make a bid in an amount greater than Payment in Full.

In the event that the Bidding Entity purchases the collateral at the foreclosure sale pursuant to a successful credit bid made on behalf of the holders of the Bid Interests or receives a deed in lieu of foreclosure, then the Bidding Entity is authorized to hold title to the purchased collateral in the name of such Bidding Entity on behalf of the holders of the Bid Interests, and to preserve, maintain, manage, market, sell and (in accordance with the applicable section of the LSA which provides for the conveyance of title upon the approval of fifty-one percent (51%) of the Direct Lenders in a Loan) convey title to the purchased collateral in the name of the Bidding Entity on behalf of the holders of the Bid Interests, with all costs and advances associated therewith to be deducted and paid to the Bidding Entity in accordance with the terms of the applicable LSAs, after Disclosure, as a first priority from the proceeds realized in a subsequent disposition of the collateral, prior to distribution of the balance in a manner consistent with paragraphs 4, 5, or 6 above.

Members

- The purposes of creating a SPE to hold title to the collateral are primarily two-fold: (1) to protect the Direct Lenders from liability that may be associated with owning the property (including, but not limited to, environmental issues); and (2) to avoid the massive title conveyance problems that would be associated with requiring every single Direct Lender to execute any conveyance or other title document prior to liquidating collateral.

- For the above reasons, Compass does not feel it is prudent to have every Direct Lender in a loan be a member of the SPE.
- Compass's decision to hold title in this fashion was authorized by Judge Jones in the Preliminary Injunction Order (paragraph 7, above).
- As noted below, the SPE structure does not in any way limit or impair the rights and protections the Direct Lenders are afforded under the Preliminary Injunction Order or the LSAs, including but not limited to the right to vote on proposed loan resolutions and terminate Compass (as servicer or as Manager) for cause.
- Pursuant to the express language of paragraph 7 of the Preliminary Injunction Order, the SPE is holding title on behalf of Compass's and the Direct Lenders' respective rights as beneficiaries under the Deed of Trust on account of obligations arising under the governing loan documents that were secured by the collateral. Compass will provide any Direct Lender with a list of Compass's and each Direct Lenders' proportionate share of the Bid Interests.

Voting Rights

- The requirement that 51% of the Direct Lenders approve the sale of the collateral is already inherent in the Preliminary Injunction Order and Loan Servicing Agreements, which govern Compass's actions under the Operating Agreement.
- In order to take action on behalf of all Direct Lenders in a loan which will enable a title company to insure the resale of the collateral, the servicer/manager needs the express authority to be able to bind 100% of the Direct Lenders in a loan. 100% of the Direct Lenders in a loan would not be bound by Mr. Massa's proposed alternate structure unless each and every Direct Lender executed a new agreement. All Direct Lenders currently are bound by their LSAs and the Preliminary Injunction Order.
- Under the Operating Agreement, which incorporates the terms of the Preliminary Injunction Order and existing LSAs, Direct Lenders maintain the right to vote on loan resolutions, gain access to information in the loan file, receive distributions in accordance with the Preliminary Injunction Order, and terminate Compass (as servicer or as Manager) for cause, and the other rights that exist in the LSAs and the Preliminary Injunction Order.

Conflicts

- An Operating Agreement cannot supersede or invalidate the effectiveness of a Court Order.
- The issue of whether or not the Direct Lenders can waive or subordinate the rights to default interest and late charges they assigned to USA Commercial Mortgage Company (and which USA sold to Compass) is currently the subject of ongoing litigation.
- With respect to invalidating the existing LSAs, as stated, in order to take action on behalf of all Direct Lenders in a loan which will enable a title company to insure the resale of the collateral, the servicer/manager needs the express authority to be able to bind 100% of the Direct Lenders in a loan. All Direct Lenders currently are bound by their LSAs and the Preliminary Injunction Order. 100% of the Direct Lenders in a loan would not be bound by the proposed alternate structure unless each and every Direct Lender executed a new agreement.

Amendment

- The provisions of the District Court's Preliminary Injunction Order cannot be modified by vote of the Direct Lenders in a loan.
- To the extent the Direct Lenders' propose an amendment to the Operating Agreement that is not inconsistent with the Preliminary Injunction Order, Compass will certainly consider any such proposal.

Management

- The servicer currently is the entity that is authorized under the Preliminary Injunction Order and LSAs to take the actions delineated to the "Executive Committee" under Mr. Massa's proposed alternate structure.
- There is no existing authority to permit an "EC" to take action in litigation that would be binding upon 100% of the Direct Lenders.
- There is no existing authority to require 100% of the Direct Lenders to take on additional financial responsibilities not provided for in the LSAs or addressed in the Preliminary Injunction Order.
- There is no existing authority to require 100% of the Direct Lenders to reimburse an "EC" for obligations that are not otherwise provided for in the Preliminary Injunction Order or LSAs.

Finance

- As set forth above, there is no existing authority to require 100% of the Direct Lenders to take on additional financial responsibilities not provided for in the LSAs or addressed in the Preliminary Injunction Order.
- There is no existing authority to require 100% of the Direct Lenders to reimburse an "EC" for obligations that are not otherwise provided for in the Preliminary Injunction Order or LSAs.
- The "Finance" section of the proposed alternative structure presumes the "EC" will be able to procure a rate of interest at a more advantageous rate than Compass has proposed. There is no basis for this presumption, particularly in the current economic climate.

Miscellaneous

- The allocation of proceeds of any liquidation of the collateral is governed by the Preliminary Injunction Order.
- There is no existing authority to permit an "EC" or any other entity to pledge the Direct Lenders' collateral without the Direct Lenders' (and, in certain instances, the District Court's) consent.
- There is no existing authority to permit an "EC" or any other entity to restrict the transferability of a Direct Lenders' interest.
- Not every Direct Lender is responsible for the 1% "legal pledge" to FDH Management. Furthermore, the District Court has ruled from the bench that Compass shall no longer withhold the 1% "legal pledge" to FDH from any loan distribution.

- Under the current Operating Agreement, the LLC entity is being taxed as a partnership.

Responses to Other Comments to Operating Agreement

- Compass is amenable to changing the jurisdiction to the State of Nevada.
- Regarding the comments to Section 2.3 to strike the Company's authority to receive funds from affiliates, this authority is necessary to ensure the Company has sufficient access to capital. The LLC has no income.
- The comments to Section 2.3.2 appear to write out Compass's interest, which is protected by the Preliminary Injunction Order.
- With respect to the comments to Section 2.3.4, as set forth above, the provisions of the District Court's Preliminary Injunction Order cannot be modified by vote of the Direct Lenders. To the extent the Direct Lenders' propose an amendment to the Operating Agreement that is not inconsistent with the Preliminary Injunction Order, Compass will certainly consider such any such proposal.
- The Termination of Manager provision of Section 4.6 mirrors the governing language of the Preliminary Injunction Order on this point, set forth in paragraph 8.
- The SPE's principal place of business is 333 Seventh Avenue, Third Floor, New York, New York 10001.
- Capitalized terms not otherwise defined in the Operating Agreement have the meanings ascribed to them in the Preliminary Injunction Order.