

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In Re *
USA Springs Inc., *
*
Debtor. *

Chapter 7
Case No. 08-11816-JMD

LIMITED OBJECTION OF ROSWELL COMMERCIAL MORTGAGE, INC.
TO THE TRUSTEE’S MOTION TO SELL

NOW COMES the Secured Creditor Roswell Commercial Mortgage, Inc. (hereinafter “Roswell”) and makes this limited objection to the Trustee’s Motion to Sell, and in support thereof says as follows:

1. Roswell holds a first priority mortgage on all the real estate proposed to be sold by the Trustee.

2. The Towns of Nottingham and Barrington assert real estate taxes due as of December 31, 2016 in the amount of approximately \$979,872.09.

3. The foregoing assertion of real estate taxes includes a Land Use Change Tax assessed by the Town of Nottingham in the original principal amount of \$134,500.00 together with interest and penalties thereon in the amount of \$259,215.01 as of December 31, 2016 for a total amount due with respect to the Land Use Change Tax in the amount of \$394,215.01 as of December 31, 2016.

4. The Land Use Change Tax was not properly perfected timely. The statute in force at the time required the Town of Nottingham to file the same within eighteen (18) months after the Selectmen first knew of the change of use. N.H. RSA 80:85 (West 2012) (The statute was amended effective June 27, 2012 so that today the period of time to twenty four months.)

5. The selectmen knew of the change of use no later than February 19, 2008. *See,*

Exhibit A Land Use Change Tax Assessment. Eighteen months thereafter is August 19, 2009. The notice of lien was filed on September 14, 2009. *See, Exhibit B Notice of Lien.*

6. The Land Use Change Tax having been filed defectively, Roswell's mortgage on the property of the Garrison Place Real Estate Investment Trust is senior to that of the Town taxes.

7. Roswell believes that the real estate taxes attaching to the property which are senior to its claims are as follows:

Nottingham 2008		As of 12/31
L01000034	Garrison Pla	\$460,166.21
All Other invoices	Garrison Pla	\$367,725.44
Lien Fees		\$300.00
Lot 03-000006	Rotondo	\$49,402.58
Lot 03-000009	Rotondo	\$91,216.92
 Barrington		 \$11,060.94
 Total Tax		 \$979,872.09
Portion Junior to Roswell		\$394,215.01
Tax Senior to Roswell		\$585,657.08

8. Roswell is willing to assent to the proposed sale provided that the proceeds be paid substantially as shown on the following chart:

Purchase Price	\$1,200,000.00	
Commission	\$60,000.00	5.00%
 Net	 \$1,140,000.00	
 Added Funds Held by R&B	 \$23,000.00	
Rents	\$5,000.00	
 Total Funds	 \$1,168,000.00	
 Real Estate Taxes	 \$585,657.08	

Net	\$582,342.92	
Carveout's		
May 29 Stip	\$42,500.00	
Atty Fees	\$35,000.00	
Accountant fees	\$3,000.00	
CRG/Deloitte	\$70,000.00	
Transfer stamps	\$9,000.00	0.75%
Trustee fees	\$61,400.00	
Recording Costs	\$200.00	
Total Carveout	\$221,100.00	
Roswell	\$361,242.92	

9. As indicated in the chart, Roswell is willing to assent to the sale provided that the sum of \$361,242.92 (approximately) be paid to it free and clear of the claims of all other parties.

10. In the absence of such payment, or satisfactory alternate arrangement, Roswell objects to the proposed form of sale.

WHEREFORE, Roswell Commercial Mortgage, LLC respectfully requests that this Honorable Court order and decree as follows:

A. That the sale be approved together with payment to Roswell of the net proceeds thereof after payment of agreed upon carveouts including real estate taxes in an amount not greater than \$585,657.08; and

B. That the sale be approved subject to and preserving Roswell's rights with respect to the priority of the tax liens; and

C. For such other and further relief as may be just and equitable.

Respectfully submitted,
Roswell Commercial Mortgage, LLC

By Its Attorneys,
FORD & MCPARTLIN, P.A.

Dated: October 19, 2016

By: /s/ Edmond J. Ford
Edmond J. Ford, Esq. (#01217)
10 Pleasant Street, Suite 400
Portsmouth, NH 03801
603-433-2002
603-433-2122 (Fax)
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EXHIBIT A

FOR REGISTER OF DEEDS USE ONLY

FILE COPY

FORM
A-5

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION
LAND USE CHANGE TAX

STEP 1 PROPERTY OWNER (S)

PLEASE TYPE OR PRINT	LAST NAME Garrison Place Real Estate Investment Trust	FIRST NAME
	LAST NAME Francesco Rotundo, Trustee	FIRST NAME
	STREET ADDRESS 155 Old Turnpike Road	
	ADDRESS (continued)	
	TOWN/CITY Nottingham	STATE NH

STEP 2 PROPERTY LOCATION

PLEASE TYPE OR PRINT	STREET 145 Old Turnpike Road					
	TOWN/CITY Nottingham			COUNTY Hockingham		
	NUMBER OF ACRES 12	CHECK ONE: PARTIAL RELEASE <input checked="" type="checkbox"/> FULL RELEASE <input type="checkbox"/>		BOOK # 2517	PAGE # 1621	
	MAP # 3	LOT # 10	MAP #	LOT #	MAP #	LOT #

STEP 3 LOCAL IDENTIFICATION OF LAND BEING DISQUALIFIED

(a) Owners Name of Record When Land Was First Classified Pulcinella, Alice L.	Book # 2517	Page # 1621
(b) Number of Acres Originally Classified	121	
(c) Number of Acres Previously Disqualified	-	
(d) Acres Disqualified per this Assessment	12	
(e) Number of Acres Remaining in Current Use [3(b) minus 3(c) and 3(d)]	109	

STEP 4 ASSESSMENT OF LAND USE CHANGE TAX

(a) Narrative description of the disqualification: Building site and associated areas no longer qualify	
(b) Actual Date of Change in Use (MM/DD/YYYY)	07/12/07
(c) Full and True value at Time of Change in Use	\$ 1,345,000
(d) Land Use Change Tax (Step 4(c) x 10%)	\$ 134,500

FORM
A-5

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION
LAND USE CHANGE TAX

STEP 5 SIGNATURES OF A MAJORITY OF SELECTMEN/ASSESSORS

TYPE OR PRINT NAME (in black ink) Peter M. Bock	SIGNATURE (in black ink) <i>Peter M. Bock</i>	DATE 02/19/08
TYPE OR PRINT NAME (in black ink) William P. Netishen	SIGNATURE (in black ink)	DATE 02/19/08
TYPE OR PRINT NAME (in black ink) Mary L. Bonser	SIGNATURE (in black ink) <i>Mary L. Bonser</i>	DATE 02/19/08
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE

STEP 6 LAND USE CHANGE TAX NOTICE (TO BE COMPLETED BY LOCAL ASSESSING OFFICIALS)

PLEASE TYPE OR PRINT	LAST NAME Garrison Place Real Estate Investment Trust	FIRST NAME	
	ADDRESS 155 Old Turnpike Road		
	ADDRESS (continued)		
	TOWN/CITY Nottingham	STATE NH	ZIP CODE 03290
(a) Date of Release (MM/DD/YYYY)		07/12/07	
(b) Date of Bill (MM/DD/YYYY)		02/21/08	
(c) Full and True Value at Time of Change in Use		\$ 1,345,000	
(d) Total Tax Due		\$ 134,500	

STEP 7 CHECKS PAYABLE TO AND MAILED TO (TO BE COMPLETED BY TAX COLLECTOR)

(a) Make Check Payable to: Town of Nottingham-Tax Collector			
(b) Mail To:	NAME William J. Garnett-Nottingham Tax Collector		
	ADDRESS PO Box 150		
	TOWN/CITY West Nottingham	STATE NH	ZIP CODE 03291
(c) Tax Collector's Office Location: 139 Stage Road, Nottingham, NH 03290			
(d) Tax Collector's Office Hours: Wed 7-9PM, Thurs & Sat 9AM-Noon			
(e) Include a separate check in the amount of \$ 16.41 Payable to <u>Rockingham</u> County Register of Deeds for recording fee.			
(f) Payment of this tax is due no later than 30 days after mailing of this bill. Interest, at the rate of 18% per annum, shall be due if this tax is not paid on or before <u>March 22, 2008</u>			

STEP 8 ACKNOWLEDGMENT OF PAYMENT

SIGNATURE (in black ink) OF TAX COLLECTOR	DATE PAID
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EXHIBIT B

Printed from Internet for on 10/19/2016

BK 5050 PG 0784

045902

2009 SEP 14 AM 10: 18

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Town of Nottingham		
Lien Execution Report		
Executed On 09/11/2009 at 8:20AM		
Address	LEVY YEAR 2008	Office Hours
PO Box 150		Wed 7 - 9 PM, Thurs and Sat 9 AM - noon
W. Nottingham, NH 03291		Phone: (603) 679-1630

ANDERSON, PAUL Property Located At: 171 MITCHELL ROAD
ANDERSON, ANDREA Map Lot Sub: 000008 000008 000001
 171 MITCHELL ROAD Property Described As: 5.000 AC & IMPROVEMENTS
 NOTTINGHAM, NH 03290

	Taxes	Interest	Lien Cost	Exec. Cost	Total
2008P02000505 Taxes:	\$ 847.00	\$ 75.19	\$ 18.00	\$ 18.50	\$ 958.69
	\$ 847.00	\$ 75.19	\$ 18.00	\$ 18.50	\$ 958.69

ANDERSON, RICHARD A Property Located At: 28 GILE ROAD
 Map Lot Sub: 000028 000012 000000
 PO BOX 184 Property Described As: 10.000 AC & IMPROVEMENTS
 NOTTINGHAM, NH 03290-0184

	Taxes	Interest	Lien Cost	Exec. Cost	Total
2008P01000507 Taxes:	\$ 1,707.00	\$ 245.25	\$ 18.00	\$ 18.50	\$ 1,988.75
2008P02000506 Taxes:	\$ 1,928.00	\$ 171.14	\$ 0.00	\$ 0.00	\$ 2,099.14
	\$ 3,635.00	\$ 416.39	\$ 18.00	\$ 18.50	\$ 4,087.89

BALBONI, JOHN J. Property Located At: 49 SHORE DRIVE
 Map Lot Sub: 000068 000042 000000
 15 COLONIAL DRIVE Property Described As: 0.330 AC & IMPROVEMENTS
 BILLERICA, MA 01821

	Taxes	Interest	Lien Cost	Exec. Cost	Total
2008P01001207 Taxes:	\$ 3,013.00	\$ 432.88	\$ 18.00	\$ 18.50	\$ 3,482.38
2008P02001203 Taxes:	\$ 3,402.00	\$ 301.99	\$ 0.00	\$ 0.00	\$ 3,703.99
	\$ 6,415.00	\$ 734.87	\$ 18.00	\$ 18.50	\$ 7,186.37

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BK 5050 PG 0791

GARRISON PLACE REAL ESTATE INV
FRANCESCO ROTUNDO, TRUSTEE
 155 OLD TURNPIKE ROAD

Property Located At: 145 OLD TURNPIKE ROAD
 Map Lot Sub: 000003 000010 000000
 Property Described As: 78.000 AC & IMPROVEMENTS

NOTTINGHAM, NH 03290

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P01012503 Taxes:	\$ 11,982.00	\$ 1,721.47	\$ 18.00	\$ 18.50	\$ 13,739.97
2008P02012502 Taxes:	\$ 13,533.00	\$ 1,201.29	\$ 0.00	\$ 0.00	\$ 14,734.29
2008U01-S0004 Taxes:	\$ 134,500.00	\$ 35,684.88	\$ 16.44	\$ 0.00	\$ 170,201.32
	\$ 160,015.00	\$ 38,607.64	\$ 34.44	\$ 18.50	\$ 198,675.58

HARVEY, ALBERT A.

Property Located At: 6 CILLEY RD

Map Lot Sub: 000057 000002 00BLDG

CILLEY ROAD

Property Described As: 0.000 AC & IMPROVEMENTS

NOTTINGHAM, NH 03290

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P01014406 Taxes:	\$ 623.00	\$ 89.51	\$ 18.00	\$ 18.50	\$ 749.01
2008P02014405 Taxes:	\$ 705.00	\$ 62.58	\$ 0.00	\$ 0.00	\$ 767.58
	\$ 1,328.00	\$ 152.09	\$ 18.00	\$ 18.50	\$ 1,516.59

HATCH, JUDITH A.

Property Located At: RAYMOND ROAD

Map Lot Sub: 000067 000009 000001

TRUSTEE FAITH REALTY TRUST
 PO BOX 800

Property Described As: 11.790 AC

GREENLAND, NH 03840

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P01014606 Taxes:	\$ 11.00	\$ 1.58	\$ 18.00	\$ 18.50	\$ 49.08
2008P02014606 Taxes:	\$ 13.00	\$ 1.15	\$ 0.00	\$ 0.00	\$ 14.15
	\$ 24.00	\$ 2.73	\$ 18.00	\$ 18.50	\$ 63.23

HAWKINS, MATTHEW A.

Property Located At: 112 HIGHLAND AVENUE

Map Lot Sub: 000067 000041 000000

112 HIGHLAND AVE

Property Described As: 0.390 AC & IMPROVEMENTS

NOTTINGHAM, NH 03290

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P02014703 Taxes:	\$ 1,767.81	\$ 156.92	\$ 18.00	\$ 18.50	\$ 1,961.23
	\$ 1,767.81	\$ 156.92	\$ 18.00	\$ 18.50	\$ 1,961.23

HEMEON, ROGER
HEMEON, CHARLENE
 PO BOX 69

Property Located At: BACKLAND

Map Lot Sub: 000004 000014 000000

Property Described As: 10.400 AC

NOTTINGHAM, NH 03290

	<u>Taxes</u>	<u>Interest</u>	<u>Lien Cost</u>	<u>Exec. Cost</u>	<u>Total</u>
2008P01014807 Taxes:	\$ 274.00	\$ 39.37	\$ 18.00	\$ 18.50	\$ 349.87
2008P02014807 Taxes:	\$ 309.00	\$ 27.43	\$ 0.00	\$ 0.00	\$ 336.43
	\$ 583.00	\$ 66.80	\$ 18.00	\$ 18.50	\$ 686.30