

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Chapter 11

USA BROADMOOR, LLC
a/k/a BROADMOOR APARTMENTS,

Case No. 8:13-bk-4880-MGW

Debtor.

**ORDER APPROVING DEBTOR'S DISCLOSURE
STATEMENT ON A FINAL BASIS; CONFIRMING PLAN OF
REORGANIZATION,¹ AND GRANTING MOTION FOR CRAMDOWN**

THIS CASE came before the Court for a final evidentiary hearing on October 3, 2013, at 9:30 a.m. (the “**Confirmation Hearing**”) to consider: (i) final approval of the *Disclosure Statement for Plan of Reorganization for USA Broadmoor, LLC Under Chapter 11 of the United States Bankruptcy Code* (Doc. No. 75) (the “**Disclosure Statement**”); (ii) confirmation of the *Plan of Reorganization for USA Broadmoor, LLC Under Chapter 11 of the United States Bankruptcy Code* (Doc. No. 74), as amended by the *Amendment to Plan of Reorganization for USA Broadmoor, LLC Under Chapter 11 of the United States Bankruptcy Code* (Doc. No. 99) and the *Second Amendment to Plan of Reorganization for USA Broadmoor, LLC Under Chapter 11 of the United States Bankruptcy Code* (Doc. No. 101), and as further amended on the record at the Confirmation Hearing (collectively, the “**Plan**”); (iii) *The Trust's Objections to the Debtor's Disclosure Statement and Initial Objections to Confirmation of the Debtor's Plan of Reorganization* (Doc. No. 85) (the “**Objection**”); and (iv) the *Debtor's Motion*

¹ Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Plan.

for Confirmation of Plan of Reorganization Pursuant to 11 U.S.C. §1129(b) (Cramdown) (Doc. No. 88)

(the “**Cramdown Motion**”). Appearances were made as reflected on the record.

The Court expressly finds that notice of the Confirmation Hearing was sufficient and that it complied with the applicable Bankruptcy Rules. The Court expressly finds that notice of the Disclosure Statement, the Plan, and the deadlines for voting and objections to the Disclosure Statement and confirmation were adequate and sufficient under the circumstances to notify all parties in interest and creditors and that such notice complied in all respects with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of this Court, and otherwise satisfied the requirements of due process. The Court further finds that appropriate affidavits of mailing and certificates of service were then filed in the record with respect to such notice.

At the Confirmation Hearing, the following modifications to the Plan were announced:

The language of Section 5.03 of the Plan shall be amended and restated in its entirety as follows:

Class 2 is comprised of the Secured Claim of Wells Fargo in connection with a first mortgage on the Complex and a security interest in the leases and rents by virtue of the Assignment Documents.

Claim Amount. Wells Fargo shall have an Allowed Class 2 Secured Claim as of the Effective Date in the amount of \$12,750,000.

Interest. Commencing on the Effective Date, interest shall accrue on the Allowed Class 2 Secured Claim at the fixed rate of five percent (5%) *per annum* until the earlier of four (4) years after the Effective Date of the Plan (the “**Maturity Date**”) or the occurrence of a Default Event (as defined below). If a Default Event occurs, interest shall accrue at the fixed rate of ten percent (10%) *per annum*.

Payment. Commencing on the first day of the calendar month following the Effective Date, and continuing on the first day of each calendar month thereafter up to and including the first calendar day of the month that is 18 months after the Effective Date, the Reorganized Debtor shall make interest only payments to Wells Fargo based on a 360-day year and the actual number of days elapsed. Beginning on the first day of the month that is 19 months after the Effective Date, and continuing on the first day of each calendar month thereafter up to and including the Maturity Date, the Reorganized Debtor shall make principal and interest payments based on a 30 year amortization. In the event that a payment is not made within ten (10) calendar days of the date it is due, the Reorganized Debtor shall pay Wells Fargo a late fee equal to five percent (5%) of the unpaid sum.

Prepayment. Provided that no Default Event has occurred, the Allowed Class 2 Secured Claim may be prepaid in whole or in part at any time prior to the Maturity Date without penalty.

Security. Wells Fargo shall retain its Lien until the Allowed Class 2 Claim is paid in full.

Insurance. Except as set forth herein, the Reorganized Debtor shall maintain insurance policies (the “**Policies**”) as set forth in the Loan Documents.

Property Manager. From and after the Effective Date, Internacional Realty Management, Inc. shall manage the Complex. The Reorganized Debtor may change management companies upon notice to Wells Fargo.

Replacement Reserve Payment. Within thirty (30) Business Days after the Effective Date, the Reorganized Debtor shall deposit the sum of \$121,627.00 (the “**Replacement Reserve Payment**”) in the Replacement Reserve Account to fund replacements and capital improvements to the Complex.

Tax Reserve. Commencing on December 1, 2013, and continuing on the first day of each month thereafter until March 1, 2014, the Reorganized Debtor shall remit the sum of Sixty Thousand Five Hundred Sixty Six and 00/100 dollars (\$60,566.00) to Wells Fargo for deposit into a tax escrow account maintained by Wells Fargo such that Wells Fargo can pay the 2013 taxes on the Complex by April 1, 2014. Commencing on April 1, 2014, and continuing on the first day of each month thereafter until the Maturity Date, the Reorganized Debtor shall remit one-twelfth (1/12) of the amount necessary to pay the real estate taxes for the ensuing year to Wells Fargo for deposit into a tax escrow account maintained by Wells Fargo such that Wells Fargo can pay the real estate taxes for the ensuing tax year before they become delinquent on April 1.

Insurance Reserve. Within ten (10) days of the Effective Date, the Reorganized Debtor shall: (a) obtain insurance premium financing for the insurance premium due on January 1, 2014 for coverage on the Complex, including Wells Fargo as an additional insured; and (b) make the down payment to the insurance premium finance company and provide evidence of same to Wells Fargo. Thereafter, the Reorganized Debtor shall make the monthly payments to the insurance premium finance company on a timely basis and provide evidence of same to Wells Fargo. For the insurance premium due January 1, 2015 and thereafter until the Maturity Date, the Reorganized Debtor shall continue to obtain insurance premium financing and comply with the terms of the insurance premium financing agreement, or deposit monthly into the Insurance Reserve Escrow Account an amount sufficient to pay the insurance premium for the ensuing year.

Default Event. The occurrence of any one or more of the following events shall constitute a "Default Event": (a) if any portion of the Debt, as modified by the Plan, is not paid on the date the same is due under the Loan Documents, as modified by the Plan, and such failure to pay is not cured on or before the date that is ten (10) days after the date it is due, or if the entire Debt, as modified by the Plan, is not paid on or before the Maturity Date; (b) if any of the Taxes assessed after the Effective Date are not paid prior to the date the same becomes delinquent; (c) if the Policies, as modified by the Plan, are not kept in full force and effect; (d) if (i) the Reorganized Debtor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, adjustment, liquidation, dissolution or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or Reorganized Debtor, shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Reorganized Debtor (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of sixty (60) days; or (iii) there shall be commenced against the Reorganized Debtor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Reorganized Debtor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Reorganized Debtor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; (e) if the Reorganized Debtor shall be in default under the terms of the Plan beyond any applicable notice or cure period with

regard to any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Complex whether it be superior or junior in lien to the Mortgage; (f) if, following the Effective Date, the Complex becomes subject to any mechanic's, materialman's or other lien, other than a lien for local real estate taxes and assessments or secured claims provided for in the Plan not then delinquent, and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days after the Reorganized Debtor has first received notice thereof; and (g) if for more than thirty (30) days after notice from Wells Fargo, the Reorganized Debtor shall continue to be in default under any other term, covenant or condition of the Note, as modified by the Plan, the Loan Documents, as modified by the Plan, or the Plan, provided that if such default cannot reasonably be cured within such thirty (30) day period and the Reorganized Debtor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require the Reorganized Debtor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days.

Waiver of Existing Defaults. All defaults which existed as of the Effective Date shall be deemed to have been cured as of the Effective Date and shall not be a basis for alleging the existence of a default following the Effective Date of the Plan.

Loan Documents. Except as modified herein, the provisions of the existing Wells Fargo Loan Documents remain in place.

Class 2 is Impaired, and is entitled to vote to accept or reject the Plan.

The language of Section 11.3.2 of the Plan shall be amended and restated in its entirety as follows:

Injunction in Favor of Guarantors. As long as the Debtor is not in default on the payments to Class 2 called for under the Plan, Wells Fargo shall be permanently enjoined and forever barred from taking any of the following actions:

- (a) **commencing or continuing in any manner any action or other proceeding against Internacional Realty, Inc. and USA Broadmoor LeaseCo, LLC (the "Guarantors");**
- (b) **enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Guarantors;**

- (c) creating, perfecting or enforcing any Lien or encumbrance against the Guarantors;
- (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Guarantors;
- (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order; or
- (f) interfering with or in any manner whatsoever disturbing the rights and remedies of the Guarantors;

The parties shall have the right to independently seek enforcement of this injunction provision. This injunction provision is an integral part of the Plan and is essential to its implementation. Notwithstanding the foregoing or anything contained in the Plan to the contrary, neither Section 11.3.2 nor any other provision of the Plan shall release or be deemed to release any of the Guarantors from any Claim.

The foregoing modifications are collectively referred to as the “**Modifications.**”

For the reasons stated orally and recorded in open court, which shall constitute the Court’s findings of fact, conclusions of law, and decision, it is

ORDERED that:

1. The Court has jurisdiction over this case, approval of the Disclosure Statement, and confirmation of the Plan, all of which are core proceedings.

2. The Disclosure Statement is approved on a final basis.

3. The Plan, as modified by the Modifications, is confirmed in all respects.

All references in this Confirmation Order to the Plan shall include and incorporate all such Modifications.

4. The Debtor’s Objection to Claim No. 3 Filed by Wells Fargo Bank Minnesota, N.A. as Trustee for the Registered Holders of GMAC Commercial Securities,

Inc., Mortgage Pass-Through Certificates, Series 2002-C3 (Doc. No. 97) was withdrawn in open court.

5. The Objection is overruled as moot by virtue of the settlement between the Debtor and Wells Fargo, which is incorporated in the Modifications.

6. The Plan satisfies the requirements of 11 U.S.C. § 1129(b)(2)(A) with respect to Classes 3 and 6. Therefore, the Cramdown Motion is granted with respect to Classes 3 and 6.

7. The Plan complies with all of the applicable provisions of Section 1129(a) of the Bankruptcy Code.

8. The Plan complies with the applicable provisions of Chapter 11. Therefore, the provisions of 11 U.S.C. § 1129(a)(1) are satisfied.

9. The Debtor complies with the applicable provisions of Chapter 11. Therefore, the provisions of 11 U.S.C. § 1129(a)(2) are satisfied.

10. The Plan has been proposed in good faith and not by any means forbidden by law. Therefore, the provisions of 11 U.S.C. § 1129(a)(3) are satisfied.

11. All payments made, or to be made, by the Debtor in connection with this case or in connection with the Plan either have been approved by or are subject to the approval of the Bankruptcy Court. Therefore, the provisions of 11 U.S.C. § 1129(a)(4) are satisfied.

12. The Debtor has disclosed that USA Broadmoor Manager, LLC shall continue to serve as Manager of the Debtor, and that Internacional Realty Management,

Inc. shall continue to serve as the Property Manager of the Debtor. Therefore, the provisions of 11 U.S.C. § 1129(a)(5) are satisfied.

13. No regulatory commission has jurisdiction, after confirmation of the Plan, over the rates of the Debtor. Therefore, 11 U.S.C. § 1129(a)(6) is not applicable to this case.

14. The Plan satisfies the requirements of 11 U.S.C. § 1129(a)(7)(A).

15. The Plan does not satisfy the requirements of 11 U.S.C. § 1129(a)(8), but it does satisfy the requirements of 11 U.S.C. § 1129(b)(2)(A).

16. The Plan satisfies the requirements of 11 U.S.C. § 1129(a)(9).

17. At least one class of claims that is not impaired under the Plan has accepted the Plan. Therefore, the Plan satisfies the requirements of 11 U.S.C. § 1129(a)(10).

18. As demonstrated by the revised projections, confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor. Therefore, the provisions of 11 U.S.C. § 1129(a)(11) are satisfied.

19. The Plan provides for the payment of all fees payable under 28 U.S.C. § 1930 on the Effective Date of the plan. The Debtor will reserve sufficient funds at confirmation to pay any fees due under Section 1930 following the Effective Date. Therefore, the provisions of 11 U.S.C. § 1129(a)(12) are satisfied.

20. There are no unsecured claims for contribution to a retiree benefit plan. Therefore, 11 U.S.C. § 1129(a)(13) is not applicable to this case.

21. Neither the avoidance of taxes nor the avoidance of the application of Section 5 of the Securities Act of 1933 is the principal purpose of the Plan. Therefore, the plan satisfies the requirements of 11 U.S.C. § 1129(d).

22. The Modifications are appropriate pre-confirmation modifications pursuant to Section 1127(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3019(a). The Modifications do not materially affect the treatment of class that has not accepted the modification or, alternatively, the Modifications improve the treatment of classes that have previously accepted the Plan.

23. The Plan is binding upon the Debtor, all Creditors and all Holders of Equity Interests of the Debtor (whether or not the Claim of such Creditors, or Equity Interest of such Equity Interest Holders is Impaired under the Plan, and whether or not such Creditors or Equity Interest Holders have accepted the Plan), all parties to any executory contract or unexpired lease of the Debtor, all other parties in interest, and the respective successors and assigns of each of the foregoing.

24. All settlements, agreements and compromises provided for under the Plan, and all transactions, documents, instruments and agreements referred to therein, contemplated thereunder or executed and delivered therewith, and any amendments or modifications thereto in substantial conformity therewith, are approved and the Debtor and other parties thereto are authorized and directed to enter into them and to perform thereunder according to their respective terms.

25. The Debtor and each other person having duties or responsibilities under the Plan, any agreements related thereto, or this Order, and their respective directors,

officers, managers, members, partners, employees, agents, representatives, and attorneys are authorized, empowered, and directed to enter into and to perform its obligations under the Plan, any agreements related thereto, and this Confirmation Order.

26. The assumption of the Assumed Contracts as of the Effective Date and the rejection of the Rejected Contracts as of the Effective Date are hereby approved pursuant to the terms of the Plan.

27. The Court shall retain jurisdiction as set forth in Article 12 of the Plan. In addition, the Court reserves jurisdiction to determine allowance of all administrative expenses, including professional fee applications seeking compensation through the Confirmation Hearing.

28. The Court shall hold a status conference on December 4, 2013 at 9:30 a.m. at which it shall take up any pending matters.

November 04, 2013

DATED at Tampa, Florida on _____.



Michael G. Williamson
United States Bankruptcy Judge

Attorney Amy Denton Harris is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order