

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

CASE NO.: 07-43672 CA 09

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION, a
Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation, DANA
J. BERMAN, as Owner and Managing Member,

Defendant.

and,

DB ATLANTA, LLC, a Florida Limited Liability
Company, **DB DURHAM, LLC**, a Florida
Limited Liability Company, **NORMANDY
HOLDINGS II, LLC**, a Florida Limited Liability
Company, **NORMANDY HOLDINGS III, LLC**,
a Florida Limited Liability Company,
ACQUISITIONS, LLC, a Florida Limited
Liability Company, **DBKN GULF
INCORPORATED**, a Florida Limited Liability
Company, **OCEANSIDE ACQUISITIONS,
LLC**, a Florida Limited Liability Company, **DB
BILOXI, LLC**, a Florida Limited Liability
Company, **DB BILOXI II, LLC**, a Florida
Limited Liability Company, **DB BILOXI III,
LLC**, a Florida Limited Liability Company, **DBDS
VERO BEACH, LLC**, a Florida Limited Liability
Company, **DB TAMPA, LLC**, a Florida Limited
Liability Company, **DB SIMPSONVILLE, LLC**,
a Florida Limited Liability Company,
REDLANDS RANCH HOLDINGS, LLC, a
Florida Limited Liability Company, **DB
CARROLL STREET, LLC**, a Florida Limited
Liability Company,

Relief Defendants.

THE ORIGINAL
FILED ON:
AUG 27 2008
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

**RECEIVER'S MOTION TO APPROVE
THE RETENTION OF MARTIN L. SCHECKNER, CERTIFIED**

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

PUBLIC ACCOUNTANT, P.A., FOR DB ATLANTA INVESTMENT, INC.

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., by and through undersigned counsel, hereby files this Motion to Approve the Retention of Martin L. Scheckner, Certified Public Account, P.A. ("Scheckner CPA"), for DB Atlanta Investment, Inc., and states:

1. On December 11, 2007, this Court appointed Michael Goldberg (the "Receiver") to be the Receiver for the Defendants and the Relief Defendants. See Temporary Injunction and Agreed Order Appointing Receiver ("Receivership Order"), previously filed with this Court.

2. Among the Defendants is M.A.M.C. Incorporated and among the Relief Defendants is DB Atlanta, LLC. As Defendants, M.A.M.C. Incorporated and DB Atlanta, LLC, (as well as their respective assets) are receivership assets subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and subject to the exclusive control of the Receiver:

The Court hereby takes exclusive jurisdiction and possession of the assets of the Defendants, Berman Mortgage, M.A.M.C. [Incorporated], and Relief Defendants, the "Receivership Assets", which includes, but are not limited to: files, records, documents, leases, mortgages, Investment, contracts, effects, lands, agreements, judgments, bank accounts, books of accounts, rents, goods, chattels, rights, credit claims, both asserted and unasserted, pending court actions and appeals, files and documents in the possession of attorneys and accountants of all of the Defendants and Relief Defendants, all other property, business offices, computers, servers, electronic data storage units, offsite storage locations, safety deposit boxes, monies, securities, choses in action, and properties, real and person, tangible and intangible, of whatever kind and description, wherever situation of the Defendants ... and Relief Defendants. The Receiver shall retain custody and control of all of the foregoing pursuant to the terms of this Agreed Order.

Receivership Order, ¶ 3 (emphasis added).

3. M.A.M.C. Incorporated serviced loans that were funded by the group of investors (the "Investor Group") that these Receivership Proceedings were designed to protect. DB Atlanta, LLC, holds title to a hotel in Atlanta, Georgia. The Hotel has over 230 rooms and employs over 85 individuals.

4. The Group of Investors became involved in the Hotel by making a loan to the former owner of the property. The former owner defaulted under the loan and following a state foreclosure and bankruptcy proceedings, the Group of Investors took title to the Hotel through a judicial sale.

5. A single purpose entity was formed by the investors to take title, BMCLS Conservancy, LLC. Subsequently, the Hotel was sold to DB Atlanta, LLC, an entity controlled by Defendant Dana J. Berman. DB Atlanta, LLC, purchased the Hotel in part with the equity participation by certain members of the Investor Group through entities including DB Atlanta Investment, Inc.

6. Consequently, DB Atlanta Investment, Inc., is an asset of the Receivership.

7. The Receiver now seeks to have some accounting work completed by Scheckner CPA for DB Atlanta Investment, Inc.

8. Scheckner CPA's retention shall be pursuant to the terms of the engagement letter, attached hereto as Exhibit "A." Specifically, Scheckner CPA will be retained to "discuss suggestions and recommendations concerning [DB Atlanta Investment, Inc.'s] accounting methods and financial affairs ...to carry out bookkeeping as [they] find necessary preliminary to preparation of the 2007 income tax returns, and any other related work as agreed ... [and to] prepare the necessary 2007 federal and state income tax returns with supporting schedules; to

advise on income tax matters generally; and to discuss with the Internal Revenue Service any matters concerning DB Atlanta Investment, Inc.'s] taxes....” *See id.*, at p. 1.

9. The Receiver believes that the retention of Scheckner CPA is absolutely necessary to ensure the preservation and/or recovery of receivership assets, and thereby prevent any further waste or dissipation, and most of all, protect the Investor Group.

10. Importantly, the Receiver was specifically appointed by this Court to preserve the receivership assets, and employ accountants when necessary to preserve those assets:

The Receiver his hereby authorized to employ, without further order of the Court ... accountants ... and other professionals ... as is necessary and proper for the collection [and] preservation ... of the Receivership Assets, including assets of which the Receiver is a shareholder, to furnish legal, accounting and other advice to the Receiver for such purposes as may be reasonable and necessary during the period of receivership.

See Receivership Order, ¶ 19 (emphasis added).

11. In line with the aforementioned authority granted by this Court, the Receiver now seeks to retain Scheckner CPA.

WHEREFORE, the Receiver moves this Court for entry of an Order Approving the Retention of Martin L. Scheckner, Certified Public Accountant, P.A., for DB Atlanta Investment, Inc., and any other relief deemed necessary by this Court.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and/or U.S. Mail on this **27th day of August 2008**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer**

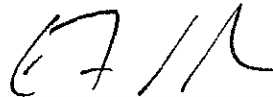
IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to **Allan A. Joseph, Esquire**, *Counsel for The Amid Companies and Amedia Family Investors*, DAVID AND JOSEPH, P.L., 1001 Brickell Avenue, Suite 2002, Miami, Florida 33131; to **Richard R. Robles, Esquire**, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; to **Daniel Kaplan, Esquire**, *Counsel for Deborah A. Berman*, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191st Street, Aventura, Florida 33180; to **Howard N. Kahn, Esquire**, *Attorneys for Intervenor, Ira Sukoff*, KAHN, CHENKIN & RESNIK, P.L., 1815 Griffin Road, Suite 207, Dania, Florida 33304; to **Charles Pickett, Esquire and Linda Dickhaus Agnant, Esquire**, *Attorneys for Johns Manville*, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401; to **Helen Schwartz Romañez, Esquire**, *Attorneys for Turnberry Bank*, The Romañez Law Firm, 255 Alhambra Circle, Suite 850, Coral Gables, Florida 33134; to **Charles W. Throckmorton, Esquire**, *Attorneys for Dana Berman*, KOZYAK TROPIN THROCKMORTON, P.A., 2525 Ponce de Leon Boulevard, 9th Floor, Coral Gables, Florida 33134; to **James S. Telepman, Esquire**, *Attorneys for Jericho All-Weather Opportunity Fund, LP*, COHEN, NORRIS, SCHERER, WEINBERGER & WOLMER, 712 U.S. Highway One, Suite 400, North Palm Beach, Florida 33408-7146; to **Allen P. Pegg, Esquire**, *Counsel for Ibex Cheoah I, LLC*, at MURAI, WALD, BIONDO, MORENO & BROCHIN, P.A., Two Alhambra Plaza, Penthouse 1B, Coral Gables, Florida 33134; to **J. Andrew Baldwin, Esquire**, *Attorneys for Regions Bank*, THE SOLOMON LAW GROUP, P.A., 1881 West Kennedy Boulevard, Tampa, Florida 33606-1606; to **Rey Hicks and Javier Castillo**

of COMPLETE PROPERTY MANAGEMENT, at Post Office Box 402507, Miami Beach, Florida 33140; to **Daren Schwartz**, BERMAN MORTGAGE CORPORATION D/B/A M.A.M.C., INC., at 402 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida 33133; to **Norman S. Segall, Esquire**, *Attorneys for Skilled Services of Tampa Bay, LLC*, RUDEN MCCLOSKEY SMITH SCHUSTER & RUSSELL, P.A., 701 Brickell Avenue, Suite 1900, Miami, Florida 33131; to **Norman Malinski, Esquire**, *Counsel for Giles Construction*, 2875 NE 191st Street, Suite 508, Aventura, Florida 33180; **Gabrielle D'Alemberte, Esquire**, LAW OFFICES OF ROBERT PARKS, 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134; and to **Robert B. Miller, Esquire**, *Attorneys for Atlantic Lending, LLC*, TABAS, FREEDMAN, SOLOFF & MILLER, P.A., The Ingraham Building 25 SE 2nd Avenue, Suite 919, Miami, Florida 33131-1538.

Respectfully submitted,

BERGER SINGERMAN
Attorneys for Receiver, Michael Goldberg
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200 South Biscayne Boulevard
Miami, Florida 33131
Direct Line: (305) 714-4383
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Facsimile: (305) 714-4340
E-Mail: jgassenheimer@bergersingerman.com

By: _____


for JAMES D. GASSENHEIMER
Florida Bar No. 959987

cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*

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MARTIN L. SCHECKNER,
CERTIFIED PUBLIC ACCOUNTANT, P.A.

2525 PONCE DE LEON BLVD.
5TH FLOOR
CORAL GABLES, FL 33134

TELEPHONE (305) 379-0603
FAX (305) 726-2804

June 10, 2008

DB Atlanta Investment Inc.
3250 Mary Street, Suite 402
Coconut Grove, FL 33133

Dear DB Atlanta Investment, Inc.:

This letter is being written to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

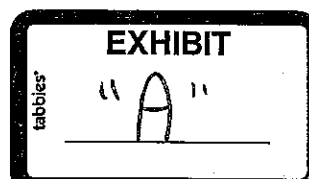
Our engagement will be designed to perform the following services:

1. To discuss suggestions and recommendations concerning your accounting methods and financial affairs, as we consider appropriate.
2. To carry out bookkeeping as we find necessary preliminary to preparation of the 2007 income tax returns, and any other related work as agreed.
3. To prepare the necessary 2007 federal and state income tax returns with supporting schedules; to advise on income tax matters generally; and to discuss with the Internal Revenue Service any matters concerning your taxes (as arranged with you from time to time).

Our engagement cannot be relied upon to disclose errors, irregularities, or illegal acts, including fraud or defalcations that may exist. However, we will inform you of any material errors that come to our attention and any irregularities or illegal acts that come to our attention, unless they are clearly inconsequential.

The tax laws provide for a penalty to be imposed when a taxpayer makes a substantial understatement of tax liability. Accordingly, we will discuss tax positions that may increase the risk of exposure to penalties with you before completing preparation of the return.

The Internal Revenue Code and regulations impose preparation and disclosure standards with noncompliance penalties on the preparer of a tax return and on the taxpayer. These standards differ. Unless we have a reasonable belief that any tax position in your return will more-likely-than-not be sustained on its merits, a preparer penalty will be imposed on us unless that position has a reasonable basis and is adequately disclosed in the return. And, while we might be able to avoid a preparer penalty by adequately disclosing the return position, you might not have to disclose the position in order to avoid applicable penalties. If we determine that we would be subject to a preparer penalty by delivering your return to you, you agree to either adequately disclose that position on your return or change the position to one that would not subject us to penalty. If you do not choose to change your position or adequately disclose so as to eliminate, in our sole opinion, our exposure to



the preparer penalty, we, in our sole discretion and at any time, may withdraw from the engagement without completing or delivering tax returns to you. Such withdrawal will complete our engagement and you will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenses through the date of our withdrawal.

We will use our judgment in resolving questions where the tax law is unclear, or where there are conflicts between taxing authorities' interpretations of the law and other supportable positions. Unless otherwise instructed by you, we will resolve such questions in the corporation's favor whenever possible.

Management is responsible for the proper recording of transactions in the books of accounts, for the safeguarding of assets, and for the substantial accuracy of the financial records. Management also has final responsibility for the tax return and, therefore, the appropriate corporate officials should review the return carefully before an authorized officer signs and files it.

During the course of our engagement, we may receive data from you originating from your accounting software, or we may assist your staff in using or posting adjustments to your accounting software. We may make and post adjustments to your accounting software. It should be understood that any financial statements that may be derived from your accounting software have not been audited, reviewed or compiled by Martin L. Scheckner, CPA PA, and we do not express an opinion or any form of assurance on them. Such financial statements shall not be presented to third parties containing any representation that associates Martin L. Scheckner, CPA PA with them.

The return may be selected for review by the taxing authorities. Any proposed adjustments are subject to certain rights of appeal. In the event of a tax examination, we will be available, upon request, to represent the company. However, such additional services are not included in the fees for the preparation of the tax return.

Certain communications involving tax advice may be privileged and not subject to disclosure to the IRS. By disclosing the contents of those communications to anyone, or by turning over information about those communications to the government, you (or other employees) may be waiving this privilege. To protect this right to privileged communication, please consult us or the corporation's attorney prior to disclosing any information about our tax advice.

Our fees for services will generally be based on time expended and calculated at our hourly rates in effect, plus out-of-pocket expenses. Hourly rates may vary according to the difficulty of the engagement and the skill required to perform the accounting, tax or other services properly as well as the experience and ability of the accountant or accountants assigned to the engagement. Our invoices for these services will be rendered as work progresses and are payable on presentation. Amounts outstanding over 60 days will be considered delinquent and will be subject to an interest charge of 1% per month (annual percentage rate of 12%). In accordance with firm policies, our work may be suspended or terminated if your account becomes 60 days or more over due and will not be resumed until your account is paid in full or suitable arrangements are made. In the event that our work is suspended or terminated as a result of non-payment, you agree that we will not be responsible for your failure to meet government and other filing deadlines, or for penalties or interest that may be assessed against you resulting from your failure to meet said deadlines.

Parties to this engagement agree that any litigation costs related to the collection of fees and costs due to Martin L. Scheckner, CPA PA are to be reimbursed to the prevailing party. Such costs include, but are not limited to, legal fees and court costs.

We shall be pleased to discuss this letter with you at any time and to explain the reasons for any items.

If the foregoing is in accordance with your understanding, please sign the copy of this letter in the space provided and return it to us in the enclosed envelope.

Very truly yours,



Martin L. Scheckner, CPA PA

ACKNOWLEDGEMENT

BY:  _____

TITLE: Receiver _____

DATE: 8/2/08 _____

a subject to court approval