

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, **DBDS NORTH
MIAMI, 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.

RECEIVER'S MOTION TO APPROVE THE RETENTION

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

**OF MARTIN L. SCHECKNER, CERTIFIED
PUBLIC ACCOUNTANT, P.A., FOR DBDS NORTH MIAMI, LLC**

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 DBDS North Miami, LLC, 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 Relief Defendants is DBDS North Miami, LLC. *See* Receivership Order, ¶ 13 (specifically recognizing Michael I. Goldberg as "the Receiver for ... DBDS North Miami, LLC ..."); *see also*, Receivership Order, ¶ 3.

3. As a Relief Defendant, DBDS North Miami, LLC, is an asset of the Receivership under the control of the Receiver. The Receiver seeks to exercise its control and have some accounting work completed by Scheckner CPA for DBDS North Miami, LLC.

4. 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 ... accounting methods and financial affairs ... carry out bookkeeping ... [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 [DBDS North Miami, LLC's] taxes." *See id.*, at p. 1.

5. 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.

6. 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).

7. 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 DBDS North Miami, LLC, 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 **11th day of September 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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By: 

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 30, 2008

DBDS North Miami, LLC
3250 Mary Street, Suite 402
Coconut Grove, FL 33133

Dear DBDS North Miami, LLC:

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

Martin L. Scheckner, CPA PA

ACKNOWLEDGEMENT

BY: *[Signature]* *

TITLE: *Receiver*

DATE: *9/3/08*

subject to court approval

professionals and paraprofessionals who have provided services to the Trustee during the Application Period, the hourly rate charged by each and a summary of time expended by each. Exhibit "2" contains a summary of professional and paraprofessional time by activity code as required by, and in compliance with, the Guidelines. Exhibit "3" contains a summary of the Applicant's total actual and necessary out-of-pocket expenses and disbursements incurred in representing the Trustee, for which the Applicant seeks reimbursement in accordance with Section 330(a)(2) of the Bankruptcy Code, the Bankruptcy Rules and the Guidelines. The expenses and disbursement summarized in Exhibit "3" are those which the Applicant typically would invoice to its non-bankruptcy clients. Exhibit "4" contains: (i) a daily description of the services rendered and the hours expended by the various attorneys and paraprofessionals of the Applicant who performed services in this case; and (ii) a detailed schedule listing of the expenses and disbursements for which the Applicant seeks reimbursement. The Applicant has prepared Exhibit "4" based on, among other things, contemporaneous daily time records maintained by the Applicant's attorneys and paraprofessionals who rendered services in this case.

II. BACKGROUND

On January 31, 2005, the Debtor, Ernesto Morera, commenced this bankruptcy proceeding by the filing of a voluntary petition for relief under Chapter 7, Title 11, United States Code.

On or about the Petition Date, the Trustee was duly appointed the chapter 7 trustee of the Debtor's estate [D.E. No. 3].

On March 4, 2005 the Debtor's meeting of creditors was held. At the meeting of creditors the Debtor informed the Trustee that he had transferred all right, title and interest in vacant land to his ex-wife Inova Lara ^{Space} (the "Property"), that bears the following description:

(Track 37) Five acres, more or less, of unimproved property, more particularly described as: the North ½ of the Southeast ¼ of the Southeast ¼

of the Northeast ¼ less the East 35 feet for road right-of-way of Section 15 Township 58 South, Range 39 East, of Miami-Dade County, Florida

On April 26, 2007, the Trustee filed an adversary proceeding (the "Complaint") Case No: 07-1042 seeking to avoid the transfer of the vacant land, and recover the Property for the benefit of the estate pursuant to 11 U.S.C. §§ 544, 548 and 550.

On April 23, 2007, the Court entered a Default Final Judgment (D.E. No. 14) in favor of the Trustee therefore, avoiding the transfer and recovering the Property for the benefit of the estate.

III. INDEXING OF TASKS BY ACTIVITY CODES

As set forth in the Exhibits to this Application, the Applicant has organized its time records by activity codes in accordance with the Guidelines. Accordingly, each of the time entries of the attorneys and paraprofessionals of the Applicant have been indexed into the categories listed below.

501. Case Administration: Coordination and compliance activities, including, but not limited to: review of the Debtor's schedules and statement of financial affairs; correspondence with the Trustee; general creditor inquiries; and other tasks not otherwise indexed by activity code.

504: Asset Analysis and Recovery: Review, analyze and communicate with the Trustee and other interested parties regarding recovery of assets for the benefit of the Debtors' estates and their creditors.

505: Asset Disposition/Preservation: Provide legal counsel in connection with the Debtor's sale of assets and related transactional work. Issues related to the preservation or disposal of property; and responding to inquiries of interested parties.

507. Fee/Employment Application: Preparation of employment and fee applications for professionals and tasks and issues related thereto.

527. Litigation Consulting: Activities relating to the review, prosecution and defense of contested matters and litigation.

IV. DESCRIPTION OF SERVICES