

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, **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, and  
**MAMC 903 DUVAL STREET, LLC**, a Florida  
Limited Liability Company,

Relief Defendants.

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**BERGER SINGERMAN**  
attorneys at law

*Boca Raton Fort Lauderdale Miami Tallahassee*

**MOTION TO APPROVE SETTLEMENT AGREEMENT BETWEEN NON-PARTY,  
IBEX CHEOAH, I, LLC AND DEFENDANTS BERMAN MORTGAGE CORPORATION,  
DANA BERMAN, THE MAMC LENDERS AND THE RECEIVERSHIP ASSETS**

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 Settlement Between Non-Party Ibex Cheoah, I, LLC ("Ibex") and Receivership Defendants Berman Mortgage Corporation and Dana Berman, and states:

**The Receiver is Appointed Over Berman Mortgage Corporation, M.A.M.C. Incorporated, and Their Respective Assets**

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

2. Among the Defendants are Berman Mortgage Corporation, and Dana Berman. As Receivership Defendant, Berman Mortgage Corporation is a receivership asset 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., and Relief Defendants, the "Receivership Assets", which includes, but are not limited to: files, records, documents, leases, mortgages, investments, 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 situated 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).

**Ibex Cheoah I, LLC and Its Lawsuit  
Involving Berman Mortgage Corporation and Dana Berman**

3. Ibex is a plaintiff in an action pending in Miami-Dade County Circuit Court captioned *Ibex Cheoah I, LLC v. Berman Mortgage Corporation, et al.*, Case No. 07-17149 CA 22 (the "Ibex Case"), in which Berman Mortgage Corporation and Dana Berman are Defendants.

4. On August 13, 2008, this Court entered an Order relieving Ibex from the stay obligations of the Receivership Order.

**The Parties Agree to Settle, and Thereby Preserve Receivership Assets**

5. The Parties have agreed to settle all disputes between them regarding the Ibex Case, so as to avoid the expense and delay associated with litigating these disputes and thereby preserve Receivership assets.

6. The settlement agreement is attached hereto as Exhibit "A" (the "Settlement Agreement") and contains the following key provisions:

- a) DISMISSAL OF THE IBEX CASE: The parties shall dismiss the Ibex case with prejudice with each party bearing its own attorneys fees and costs and mutual releases in favor of the borrower and the Lender group.
- b) PAYMENTS TO RECEIVERSHIP: Ibex shall pay Receiver Fifty Thousand Dollars (\$50,000.00) within 30 days from the date of this Court's approval of the Settlement Agreement. In addition, Receiver shall be entitled to retain, free and clear of lien and claims by Ibex, all amounts currently held in trust by Berger Singerman, P.A., which amounts total approximately One Hundred Ninety-Two Thousand Three Hundred Dollars (\$192,300.00).
- c) CANCELLATION OF NOTE: The note and mortgage (Deed In Trust) shall be restated to Five Hundred Fifty Thousand Dollars (\$550,000.00) to be due four years from the date of this Court's approval of the Settlement Agreement. All other loan documents, to the extent they are rendered moot

by the Settlement Agreement, will be cancelled, subject to the advice of Ibex's counsel.

7. The Receiver now seeks to finalize this Settlement Agreement.

8. The Receiver believes that this settlement conforms with the Receiver's Court ordered obligation 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.

9. Importantly, this Court has previously authorized the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants:

The Receiver is further authorized to ... execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls[.]

Receivership Order, ¶17. (emphasis added)

10. In line with the aforementioned authority granted by this Court, the Receiver now seeks this Court's approval of the Settlement Agreement.

**WHEREFORE**, the Receiver moves this Court for entry of an Order Approving the Settlement between Non-Party, Ibex Cheoah I, LLC, and Receivership Defendants Berman Mortgage Corporation and Dana Berman, and the Receivership Assets, 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 U.S. Mail on this 10<sup>th</sup> day of November 2008, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2<sup>nd</sup> 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 Amadi Companies and Amedia Family Investors*, DAVID AND JOSEPH, P.L., 1001 Brickell Bay Drive, 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. 191<sup>st</sup> 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 **Allen P. Pegg, Esquire**, *Counsel for IBEX Cheoah I, LLC*, MURAL, WALD, BIONDO, MORENO & BROCHIN, P.A., Two Alhambra Plaza, PH-1B, Coral Gables, Florida 33134; to **Helen Schwartz Romañez, Esquire**, *Attorneys for Turnberry Bank & Bank of Coral Gables*, 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, 9<sup>th</sup> Floor, 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 191<sup>st</sup> 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; to **Robert B. Miller, Esquire**, *Attorneys for Atlantic Lending, LLC*, TABAS, FREEDMAN, SOLOFF & MILLER, P.A., The Ingraham Building 25 SE 2<sup>nd</sup> Avenue, Suite 919, Miami, Florida 33131-1538; to **Richard P. Cole, Esquire, Edward S. Polk, Esquire and/or Crystal Leah Arocha, Esquire**, *Attorneys for Meland Russin Hellinger & Budwick, P.A.* COLE SCOTT & KISSANE, P.A., Pacific

National Bank Building, 1390 Brickell Avenue, Third Floor, Miami, Florida 33131; to **David A. Wheeler, Esquire**, *Counsel for Various Unit Owners at Le Chateau Condominiums at DB Biloxi II, LLC* WHEELER & WHEELER, PLLC, 185 Main Street, Biloxi, Mississippi 39530; **Michael A. Hanzman, Esquire**, HANZMAN GILBERT, LLP, 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134; to **Paul Huck, Esquire and Dean C. Colson, Esquire**, COLSON HICKS EIDSON, 255 Aragon Avenue, Second Floor, Coral Gables, Florida 33134; and to **Jason S. Miller, Esquire**, *Counsel for Flagstar Bank*, ADORNO & YOSS, LLP, 2525 Ponce de Leon Boulevard, Suite 400, Coral Gables, Florida 33134.

Respectfully submitted,

BERGER SINGERMAN  
*Attorneys for the Receiver, Michael I. Goldberg*  
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200 South Biscayne Boulevard  
Miami, Florida 33131  
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By: 

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

CASE NO: 07-17149 CA 22

Ibex Cheoah, I, LLC, A Florida  
Limited Liability Company,

Plaintiff(s),

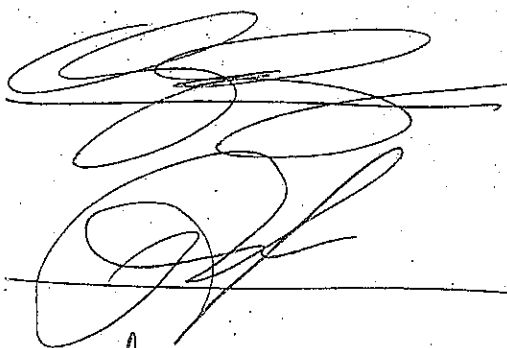
v.

BERMAN MORTGAGE CORPORATION,  
A Florida Corporation; Filter International  
Corporation; Coconut Grove Bank, as Custodian  
of the William McBride IRA, Coconut Grove  
Bank, as the Custodian of the Harvey A. Shulman  
S/D IRA et al.,

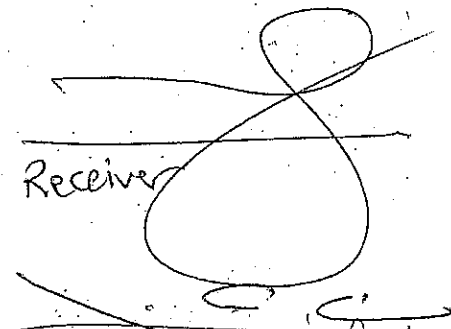
Defendant(s).

**MEDIATION SETTLEMENT AGREEMENT**

plaintiffs

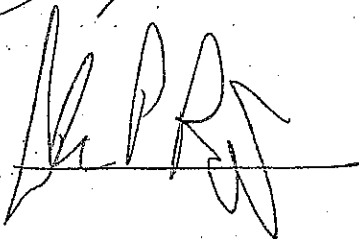


Receiver



Receiver's Counsel

plaintiffs' Counsel



Dated 10/13/08

EXHIBIT

"A"

tabbles

1. Plaintiffs shall pay the Receiver <sup>Court approval of</sup> fifty thousand dollars within thirty days of this agreement.

(Deed in Trust)

2. The notes and mortgages ~~the~~ shall be restated to five hundred and fifty thousand dollars due four years from the date of <sup>Court approval of</sup> this agreement or an equivalent North Carolina procedure. The note shall not bear interest and no prepayment penalty.

3. The parties shall exchange full and mutual general releases of all claims including on behalf all agents, lawyers, Berman Mortgage Corporation, MAME, Incorporated, all lenders named or unnamed.

4. All loan documents, other than the deed in trust (mortgage) and notes, to the extent they are rendered void by this settlement shall be cancelled, subject to advice of North Carolina Counsel.

5. The Receiver shall keep all money currently in the Berger Singerman Trust account free and clear of liens and claims.

6. The Receivership ~~is~~ Court shall have exclusive jurisdiction to enforce the terms of this agreement.

7. The parties shall dismiss the lawsuit with prejudice with each party to bear its own fees and costs.

8. This settlement is subject to court approval by the Receivership Court.

9. The parties shall cooperate to achieve terms to the settlement to minimize and/or defer the tax impact of the settlement to the plaintiffs provided it does not change the or tax consequence to defendants.