

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR 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, **DBDS NORTH MIAMI, LLC**, a Florida
Limited Liability Company, **REDLANDS RANCH
HOLDINGS, LLC**, a Florida Limited Liability
Company, **DBDS BISCAYNE PARK, LLC**, a Florida
Limited Liability Company, **DB CARROLL
STREET, LLC**, a Florida Limited
Liability Company,

Relief Defendants.

**PLEASE READ THIS MOTION CAREFULLY AS IT MAY
AFFECT YOUR RIGHTS. PLEASE CONSULT YOUR
ATTORNEY IF YOU HAVE ANY QUESTIONS.**

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

THIS COURT WILL HOLD A HEARING AT THE MIAMI-DADE COURTHOUSE ON FRIDAY, JULY 17, 2009, AT 9:00 A.M. TO CONSIDER THIS MOTION AND THE RELIEF REQUESTED HEREIN. IF YOU HAVE ANY OBJECTION TO THE APPROVAL OF THE MOTION AND RELIEF REQUESTED, YOU MUST ATTEND THE HEARING, OTHERWISE YOU WILL BE BOUND BY THE TERMS OF THE REQUESTED BAR ORDER. THIS MOTION AND NOTICE OF HEARING THEREON WILL BE POSTED TO THE RECEIVERSHIP WEBSITE.

RECEIVER'S MOTION FOR AND ORDER APPROVING SETTLEMENT BETWEEN DB BILOXI III, LLC AND ALTERNA MORTGAGE INCOME FUND, LLC AND FOR ENTRY OF A BAR ORDER ENJOINING CLAIMS AGAINST ROBERT KONRAD AND ALBERT FRIEDMAN

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Dana J. Berman, 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 for an Order Approving Settlement between DB Biloxi III, LLC and Alterna Mortgage Income Fund, LLC and for Entry of Bar Order Enjoining Claims against Robert Konrad and Albert Friedman and states:

1. DB Biloxi III, LLC (DB Biloxi III) is a Relief Defendant that, at the time of the Receivership was instituted, was a single purpose real estate entity and the owner of an apartment property, known as Oak Shores, located on 12 acres of property in Biloxi Mississippi, which property was converted to condominium units. Although the development originally consisted of a 264-unit apartment property, the units suffered substantial property damage from Hurricane Katrina and only 174 units on the north five acres of the property were salvageable (Oak Shores Phase I). The remaining 88 units on the south Gulf-front 7-acre parcel (Phase II) were demolished. The developer planned construction of a mid-rise condominium complex on

the Phase II parcel. However, the Phase II parcel is currently vacant land. Phase I and Phase II are collectively referred to herein as the "Property."

2. As a Relief Defendant, the assets of DB Biloxi III 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., and Relief Defendants [including Biloxi], 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 personal, 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. By prior Order, this Court has authorized the Receiver to preserve and recover the assets of the Relief Defendants on behalf of the Receivership. 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[.]

4. The Receivership Order authorizes the Receiver to institute, defend, compromise, or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be

advisable or proper for the protection of the Receivership Assets or proceeds thereof, and to institute, prosecute, compromise or adjust such actions or proceedings in state or federal courts as may in his judgment be necessary or proper for the collection, preservation and maintenance of the Receivership Assets and/or on behalf of the Receivership Defendants.

Receivership Order, ¶ 21.

5. The assets of DB Biloxi III, LLC are subject to a first mortgage in favor of Alterna Mortgage Income Fund, LLC ("Alterna") for a loan amount of approximately \$6,698,367.00. Alterna claims that the mortgage amount is approximately \$7,439,500.00. The dispute between the parties as to the correct mortgage amount resulted from the application of a \$400,000.00 payment made in September 2008 by the MAMC Lenders to pay down principal, which payment Alterna claimed it was entitled to apply to interest. Alterna holds an interest reserve in the amount of \$341,133.00 with respect to the Alterna mortgage.

6. The MAMC Lenders hold a second mortgage on the property in the amount of \$23,350,000.00.

7. Alterna has instituted foreclosure proceedings on the Oakshores property against DB Biloxi III and the MAMC Lenders as second mortgage holders.

8. The Receiver, after hiring a real estate consultant to evaluate the property has been advised that it is unlikely that DB Biloxi III has equity in the Oakshores property beyond what is owed to Alterna, as the first mortgage holder. Accordingly, in the foreclosure proceedings, subject to any defenses by DB Biloxi III and/or the MAMC Lenders to the foreclosure, the interests of DB Biloxi III and the MAMC Lenders would be foreclosed completely by Alterna. Therefore, the Receiver believes that the proposed settlement is in the best interest of the Receivership estate and the MAMC Lenders.

9. Subject to this Court's approval, the Receiver entered into an agreement to compromise the disputes between the DB Biloxi III and Alterna pursuant to the terms contained in **Exhibit A** attached hereto. The terms of the settlement include:

- a. The Receiver agrees to allow Alterna to foreclose the interests of the receivership estate including that of DB Biloxi III and the MAMC Lenders as second-mortgage holders and further agrees that the relief defendant DB Biloxi III, LLC shall not be subject to the Court's temporary restraining Order of December 11, 2007;
- b. The Receiver will agree to the foreclosure sale of the Property and will file and/or execute the appropriate documents to allow the foreclosure to proceed.
- c. In the event that Alterna is the successful bidder at the foreclosure sale of the Phase II property and becomes the owner of the Phase II property, Alterna will pay the Receivership twenty percent (20%) of the net sales proceeds from any subsequent sale of the Phase II property for the benefit of the MAMC Lenders holding the second mortgage on the Property.
- d. Alterna is authorized to enter the Property, make improvements to the Property, and market the Phase I units for sale.
- e. Alterna will retain all the proceeds of the sale of the Phase I condominium units; In the event Alterna recovers its full principal under the mortgage, including contract rate of interest and all fees and costs outlined in paragraph 5 of **Exhibit A**, Alterna agrees to pay 80% of the net proceeds of unit sales to the Receivership Estate for the benefit of the MAMC Lenders as second mortgage holders.

10. As part of the terms offered by Alterna as a condition of the settlement, the Receiver has agreed to release any and all claims of DB Biloxi III and the MAMC Lenders

("Noticed Parties") against Robert Konrad, the principal of Alterna, and seek a bar order in relation to same.

11. Additionally, in light of the benefits of the proposed settlement, the Receiver has agreed to a limited release of claims by the Noticed Parties against Albert Friedman in relation to DB Biloxi III and to seek a bar order enjoining said claims against Albert Friedman in connection with DB Biloxi III. Friedman, an investor in DB Biloxi III, was also formerly the director of MAMC Incorporated and responsible for preparing disclosures for lending opportunities distributed to the Lenders regarding DB Biloxi III. Friedman, who now works for Alterna, has requested the release and bar order as a condition of the settlement.

12. By this Motion, the Receiver requests a Court Order approving the proposed settlement and the Receiver's execution thereof and authorizing the Receiver to execute all appropriate documents to effectuate the proposed settlement.

13. Pursuant to the procedure previously established by this Court, a copy of this Motion and notice of hearing thereon are being posted on the Receiver's website, which is available to all MAMC Lenders. Notice of the posting is simultaneously emailed to all MAMC investors.

WHEREFORE, the Receiver moves this Court for entry of an Order:

a. finding that the posting and distribution procedure established by the Court and followed by the Receiver provides adequate notice of the instant Motion and of the hearing thereon to the Noticed Parties;

b. approving the proposed settlement outlined in **Exhibit A** and the Receiver's execution thereof;

c. authorizing the Receiver to file and/or execute all documents appropriate to effectuate the terms of the proposed settlement;

d. entering a bar order enjoining all Noticed Parties from prosecuting claims against Robert Konrad in relation to DB Biloxi III;

e. entering a bar order enjoining all Noticed Parties from prosecuting claims against Albert Friedman in relation to DB Biloxi III; and

f. awarding such other and further relief this Court deems just and proper.

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 10th day of July 2009, to the attached service list.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

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200 South Biscayne Boulevard

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By: _____

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cc: The Honorable Thomas Wilson, Jr. (*via hand-delivery*)
Michael Goldberg, Esq. (*via email*)
M.A.M.C. Inc. – Investor Group (*via email*)

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June 19, 2009

Michael I. Goldberg
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RE: DB Biloxi III / Oak Shores, Biloxi, MS
Our File No. 09-4229

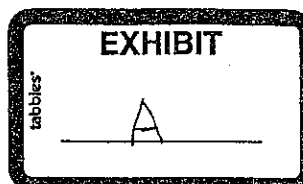
Dear Mr. Goldberg:

I am writing on behalf of my client, ALTERNA Mortgage Income Fund, LLC in connection with their first mortgage on the property of DB Biloxi III in Biloxi, Mississippi known as the Oak Shores Condominium property. The information provided herein is for purposes of settlement negotiations only and will not be binding until all terms and conditions are accepted and completed. This is my client's final offer. If it is not accepted by 5:00 p.m. ~~Monday, June 22, 2009~~, this offer will be null and void.

Wed. 24

I have been directed by my client to advise you that in connection with the judicial foreclosure proceedings which they have filed, ALTERNA Mortgage Income Fund, LLC will agree to certain terms affecting the unplatted portion of the property commonly known as the Phase II property on the condition that you as the Receiver for DB Biloxi III and on behalf of the second mortgage holders agree to certain terms and conditions. These are as follows:

1. You, as Receiver, authorize ALTERNA Mortgage Income Fund, LLC to enter onto the property to inspect and make such repairs and improvements to the property, including the existing condominium units owned by DB Biloxi III and to establish sales and marketing teams, as it deems necessary in its sole discretion and at its sole expense.
2. You consent, on behalf of DB Biloxi III, to the judicial foreclosure and file a response conceding the allegations necessary to obtain the foreclosure and agreeing to the sale as outlined in the Complaint.
3. On behalf of the Second Mortgage holders, you consent to the judicial foreclosure and file a response conceding the allegations necessary to obtain the foreclosure of the Complaint and agreeing to the judicial foreclosure sale as outlined in the Complaint.
4. In the event ALTERNA Mortgage Income Fund, LLC is the successful bidder at the foreclosure sale, ALTERNA Mortgage Income Fund, LLC agrees that upon a sale by it of the Phase II property (that is the property that is not included in the plat of Oak Shores Condominiums, Phase One), the will pay you as Receiver for the benefit of the Second



Page Two

Mortgage holders 20% of the net sales proceeds (defined as gross sales net of the reasonable and customary closing costs, commissions, marketing costs, insurance, taxes and travel) of the sale of the Phase II property.

5. ALTERNA Mortgage Income Fund, LLC will retain all net proceeds of any sales attributable to any condominium units in Oak Shores Condominiums, Phase One. In the event that ALTERNA Mortgage Income Fund, LLC recovers its full principle plus all interest at the contract rate and all out of pocket expenses including but not limited to insurance, taxes, HOA fees, electric, legal accounting, marketing costs, commissions and travel directly attributable to the Condominiums, then they will agree to pay you as Receiver for the benefit of the Second Mortgage holders 80% of the net proceeds of the unit sales thereafter.
6. You, as the Receiver, will obtain full releases of any and all claims DB Biloxi III may have against Robert Konrad and Albert Friedman and shall seek a bar order permanently barring any such claims the DB Biloxi III's second mortgage holders' may have against Robert Konrad or Albert Friedman in connection with DB Biloxi III.
7. You will file the appropriate pleading in the receivership action in the State of Florida to authorize all of the above, to obtain the appropriate releases and bar orders and to allow the judicial foreclosure action filed in Biloxi, Mississippi to go forward. *and obtain a Decision Notice approving*

These are the material points of our offer. If accepted by you, a formal agreement will be executed to be included in the final court order.

I would appreciate it if you would confirm your acceptance of these conditions by executed this letter below and returning a signed copy to me. I would further appreciate it if you would send me copies of the pleadings you file in the receivership proceedings to accomplish the above.

I look forward to hearing from you soon.

Sincerely,




David A. Wheeler

DAW/hc

cc: ALTERNA Mortgage Income Fund, LLC

ACCEPTED:


MICHAEL I. GOLDBERG
Receiver for DB Biloxi, III and
M.A.M.C. Incorporated

* subject to Decision Notice
to Court Approval which
will be promptly sought