

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

CASE NO.: 07-43672-CA-09

STATE OF FLORIDA, OFFICE OF FINANCIAL  
REGULATION,

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, et al.,

Relief Defendants.

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**RECEIVER'S MOTION FOR AUTHORIZATION TO LOAN FUNDS TO V-STRATEGIC  
AND ATLANTIC BEACH PROJECTS IN ORDER TO FUND ESSENTIAL  
EXPENSES TO PRESERVE VALUE OF PROJECTS**

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., (the "Receiver"), by and through undersigned counsel, hereby files this *Motion for Authorization to Loan Funds to the V-Strategic and Atlantic Beach Projects in Order to Fund Essential Expenses to Preserve Value of Projects* (the "Motion"). In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, this Court appointed Michael Goldberg as the receiver for the Defendants and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of investors who entrusted over \$192 million to the Receivership Defendants.

2. As part of his duties in administering the receivership, the Receiver uncovered potential claims against the Receivership Defendants' accountants. Accordingly, the Receiver, in conjunction with a class of creditors, brought claims against the accountants. Subsequently, a settlement with the accountants was reached and a pool of money was available to satisfy certain creditors' claims.

3. On or about March 9, 2010, the Receiver filed the *Receiver's Motion for an Order Approving the Proposed Priority of Distribution and Procedures for the Disbursement of Funds Recovered by Receiver in an Accounting Professional Liability Claim* (the "Distribution Motion").

4. The Court granted the Distribution Motion, and shortly thereafter, the Receiver made a distribution of a substantial portion of the settlement proceeds. With the Court's permission, the Receiver held back several million dollars of the settlement proceeds to fund future and current administrative expenses as well as to make loans to various projects on an as-needed basis. More specifically, the Receiver is still administering approximately 15 projects (down from 34 at the start of the receivership). Many of these projects are either embroiled in litigation or currently being marketed for sale and require that certain essential expenses, such as taxes and insurance, be paid in order to preserve the project's value.

5. Loans are not being made merely based on need. Rather, loans are only made to a project if the Receiver believes that there is a substantial likelihood that the project will

ultimately be able to repay the loan, together with interest at 4%. Moreover, the Receiver is not making these loans solely based on his own decision. Rather, if a project needs a loan, the lender committee for the project makes a request to the Receiver to loan the project funds. The Receiver reviews the request, and if he believes that the funds are needed and there is a substantial likelihood that the project can repay the loan, the Receiver then convenes a meeting of the Executive Committee to consider the loan. Only if the Executive Committee agrees, does the Receiver seek the Court's authorization to make the loan.<sup>1</sup>

6. Through this Motion, the Receiver seeks authorization to loan the V-Strategic project up to \$350,000. This loan proceeds will be used to pay approximately \$345,000 in taxes due and owing. V-Strategic is a three acre parcel of land located in Hallandale, Florida. During the Receivership, the V-Strategic loan was foreclosed and now the Receiver is attempting to sell the property. The Receiver has received an offer on the V-Strategic property of \$3.5 million and expects to list the property at about \$6 million. The Receiver believes that the V-Strategic property is worth at least \$3.5 million, thus he believes the loan will be fully secured.

7. The Receiver also seeks permission to loan the Atlantic Beach project up to \$100,000. This project involves 11 lots of land consisting of approximately 1.7 acres located in Myrtle Beach, South Carolina. The lenders have been involved in attempting to foreclose this property for almost two years. A settlement has been reached whereby the borrowers have agreed to deed the property back to the lenders in exchange for a release from their personal guarantees. By separate motion filed contemporaneously herewith, the Receiver has requested

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<sup>1</sup> As the Court is aware, at the outset of the receivership, the Receiver set up committees comprised of lenders for each loan (a "lender committee") and one overall committee made up of at least one lender from each loan (the "Executive Committee") to advise the Receiver.

authorization to enter into this settlement.<sup>2</sup> Notwithstanding the fact that the Court has not yet authorized the Receiver to settle the matter, the Receiver believes that the Atlantic Beach property has substantial value and will fully secure this loan, provided the Court authorizes it to be in a first priority position above all other debt on the property. The funds are needed by the Atlantic Beach project in order to pay \$33,000 in legal fees to counsel handling the foreclosure; \$47,500 in property taxes; and \$8,000 to obtain a new appraisal to be used in connection with litigation against the appraisers who created the faulty appraisal that was relied upon when the loan was entered into. There is an outstanding priority loan on Atlantic Beach in the amount of \$4,940.78 and this loan will also be used to retire this priority loan which is bearing interest at 8%.

8. The loans will accrue interest at the rate of 4% per annum, simple interest. Currently, the funds are being held in the Receiver's law firm's trust account and are earning substantially less interest. Currently, the V-Strategic project is paying interest on the taxes owed at 18%. Accordingly, making these loans is a win-win situation for the receivership estate which will make more interest than it is currently earning and the project will pay considerably less interest than what is accruing on the outstanding taxes. If the Atlantic Beach project does not pay its attorneys to complete the foreclosure or help consummate the settlement, the project will continue to remain in the hands of the defaulting borrower and no value will be achieved.

9. The Receiver and the Executive Committee believe the loans are fully secured by the value of the respective property. The loans, together with all accrued interest, will be payable on sale of the property. Moreover, each project will reimburse the receivership estate

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<sup>2</sup> This settlement is opposed by an entity called Green-East, a substantial lender on the property. As is set forth more fully in the settlement motion, the Receiver believes that the applicable servicing agreement between M.A.M.C. and Green East provide the Receiver authority to enter into the settlement on Green East's behalf.

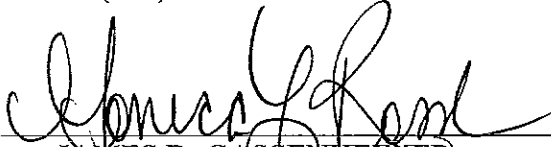
\$1,000 in fees and costs incurred in obtaining approval of its loan.<sup>3</sup> The Receiver and the Executive Committee believe making these loans is in the best interest of the receivership estate.

**WHEREFORE**, Michael I. Goldberg, in his capacity as Receiver of Berman Mortgage, M.A.M.C. and related entities, respectfully requests this Court to enter an Order authorizing the Receiver to make the loans described herein and to grant such further relief as is just and proper.

Respectfully Submitted,

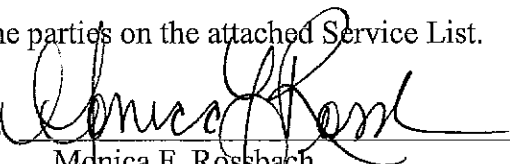
**BERGER SINGERMAN**

*Attorneys for Receiver, Michael Goldberg*  
200 South Biscayne Boulevard, Suite 1000  
Miami, FL 33131  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340

By:   
\_\_\_\_\_  
JAMES D. GASSENHEIMER  
Florida Bar No. 959987  
[jgassenheimer@bergersingerman.com](mailto:jgassenheimer@bergersingerman.com)  
MONICA F. ROSSBACH  
Florida Bar No. 13641  
[mrossbach@bergersingerman.com](mailto:mrossbach@bergersingerman.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7<sup>th</sup> day of September, 2010, a true and correct copy of the forgoing was furnished via U.S. Mail to the parties on the attached Service List.

By:   
\_\_\_\_\_  
Monica F. Rossbach

<sup>3</sup> This fee will be added to the outstanding loan balance.

SERVICE LIST

<p><b>Cristina Saenz</b>  <b>Assistant General Counsel</b>  STATE OF FLORIDA  OFFICE OF FINANCIAL REGULATION  401 N.W. 2<sup>nd</sup> Avenue, Suite N-708  Miami, FL 33128</p>	<p><b>Alan M. Sandler, Esquire</b>  SANDLER &amp; SANDLER  117 Aragon Avenue  Coral Gables, FL 33134</p>
<p><b>Charles W. Throckmorton, Esquire</b>  <i>Attorneys for Dana Berman</i>  KOZYAK TROPIN THROCKMORTON, P.A.  2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor  Coral Gables, FL 33134</p>	<p><b>Paul Huck, Esquire</b>  <b>Dean C. Colson, Esquire</b>  COLSON HICKS EIDSON  255 Aragon Avenue, Second Floor  Coral Gables, FL 33134</p>
<p><b>Jason S. Miller, Esquire</b>  <i>Counsel for Flagstar Bank</i>  ADORNO &amp; YOSS, LLP  2525 Ponce de Leon Boulevard, Suite 400  Coral Gables, FL 33134</p>	<p><b>Maurice Baumgarten, Esquire</b>  ANANIA, BANDKLAYDER, BLACKWELL,  BAUMGARTEN, TORRICELLA &amp; STEIN  Bank of America Tower – Suite 4300  100 SE 2<sup>nd</sup> Street  Miami, FL 33131</p>
<p><b>Mark A. Basurto, Esquire and Charles Evans  Glausier, Esquire, Attorneys for Gulf Island Beach  and Tennis Club Condominium Association, Inc.</b>  BUSH ROSS, P.A.  Post Office Box 3913  Tampa, Florida 33601-3913</p>	<p><b>Charles L. Neustein, Esquire</b>  CHARLES L. NEUSTEIN, P.A.  777 Arthur Godfrey Road, Second Floor  Miami Beach, FL 33140</p>
<p><b>William Dufoe, Esquire</b>  <b>Robert W. Lang, Esquire</b>  HOLLAND &amp; KNIGHT, LLP  100 North Tampa Street, Suite 4100  Tampa, FL 33602</p>	<p><b>Deborah Poore Fitzgerald, Esquire</b>  WALTON LANTAFF SCHROEDER  &amp; CARSON, LLP  Corporate Center, Suite 2000  100 East Broward Boulevard  Fort Lauderdale, FL 33301</p>
<p><b>Peter Valori, Esquire</b>  DAMIAN &amp; VALORI, LLP  1000 Brickell Avenue, Suite 1020  Miami, FL 33131</p>	<p><b>Christopher S. Linde, Esquire</b>  BURR FORMAN  450 S. Orange Avenue  Suite 200  Orlando, Florida 32801</p>

cc: Michael Goldberg, Esq., as Receiver *(via e-mail)*  
The Investor(s)/Lender(s) Group *(via e-mail)*  
Posted to the Berman Mortgage Website

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