

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

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

CASE NO. 07-43672 CA 09

Plaintiff,

vs.

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

Defendants,

and

DB ATLANTA, LLC, a Florida Limited
Liability Company, *et al.*

Relief Defendants.

**RECEIVER'S THIRD MOTION FOR AUTHORIZATION
TO LOAN FUNDS TO THE ATLANTIC BEACH PROJECT**

Michael I. Goldberg ("Receiver"), as Court Appointed Receiver over Defendants Berman Mortgage Corporation ("BMC") and M.A.M.C. Incorporated ("MAMC") and Relief Defendants DB Atlanta, LLC, *et al.*, by and through undersigned counsel, files his Third Motion to Loan Funds to the Atlantic Beach Project. In support of this motion, the Receiver states as follow:

1. On December 11, 2007, the State of Florida, Office of Financial Regulation ("OFR") filed a Complaint for Temporary and Permanent Injunction and Appointment of Receiver. The OFR alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors (the "Lenders") by offering fractional

interests in short-term acquisition and/or construction mortgage loans. MAMC serviced the loans pursuant to servicing agreements entered into between the individual Lenders and MAMC.

2. On December 11, 2007, this Court (the "Receivership Court") appointed Michael Goldberg as the receiver for BMC, MAMC and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the Lenders.

3. In or about April, 2006, BMC raised \$9.65 million from 234 Lenders which funds were loaned to Atlantic Beach Oceanfront, LLC and Seventh Street Properties, LLC (collectively, the "Borrowers") and secured by a first mortgage ("Mortgage") on approximately 1.7 acres, located in Myrtle Beach, South Carolina (the "Atlantic Beach Project"). The loan, as modified, was serviced by MAMC.

4. The Borrowers defaulted under the loan documents and in 2008, the Receiver, commenced a foreclosure suit against the Borrowers and other parties in the Court of Common Pleas for South Carolina (the "Foreclosure Case"). The parties subsequently reached settlement, which was approved by this Court on August 18, 2011 (the "Settlement Order").

5. Pursuant to the Settlement Order, the Court approved the employment of Smith Moore Leatherwood LLP to pursue pending or possible claims against CB Richard Ellis and possibly other entities associated with CB Richard Ellis arising from negligent appraisal(s) of the Atlantic Beach property.

6. In the Settlement Order, the Court also authorized the Receiver to loan up to \$100,000 to the Atlantic Beach Project from money he holds in trust, for the purpose of funding a share of the litigation costs, payment of taxes and carrying costs to preserve the Atlantic Beach Project.

7. The Receivership Court has approved two prior requests to loan funds to the Atlantic Beach Project for the purpose of paying the individual Lenders' share of the litigation costs, payment of taxes and carrying costs to preserve the Atlantic Beach Project. To date, the Atlantic Beach Project has borrowed a total of \$456,423 at four (4%) percent interest.

8. The loans were financed with funds received by the Receiver upon settlement of a large malpractice claim against MAMC's former accountants.

9. The Receiver seeks authority from the Court to loan an additional \$150,000 to the Atlantic Beach Project from funds he holds in trust. The purpose of the loan is to continue to fund the litigation costs. However, as with the other loans approved by this Court, the loan is not being made merely based on need. Rather, a loan is 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.

10. The Atlantic Beach Project will be charged interest at the rate of four percent (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. Accordingly, making the loan is a win-win situation for the receivership estate which will earn better interest than it is currently earning.

11. The Receiver has consulted with the Executive Committee of Lenders and Atlantic Beach Project Committee, who believe making this loan is in the best interest of the receivership estate. The Receiver and the Atlantic Beach Lender Committee believe the loan is fully secured by the value of the Atlantic Beach Project. The loan, together with all accrued interest, will be payable upon sale of the Atlantic Beach Project. Moreover, the Atlantic Beach Project will reimburse the receivership estate \$250 in costs incurred in obtaining approval of this loan. (This fee will be added to the outstanding loan balance.)

WHEREFORE, the Receiver requests the Court to authorize the Receiver to make a first priority loan to the Atlantic Beach Project and grant such other relief as is just and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 4 day of February, 2013, a true and correct copy of the forgoing was furnished via e-mail and U.S. Mail to the parties on the attached Service List. A copy of the Motion will also be sent to the Lenders who have an interest in this property by e-mail and posted on the receivership website.

By: 
Joan M. Levit

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