

**IN THE CIRCUIT COURT OF THE  
ELEVENTH 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 ENTRY OF AN ORDER  
AUTHORIZING THE RECEIVER TO ENTER INTO A SETTLEMENT  
AGREEMENT WITH INTERVENOR GULF ISLAND BEACH  
AND TENNIS CLUB CONDOMINIUM ASSOCIATION, INC.**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this Motion for Entry of an Order Authorizing the Receiver to Enter into a Settlement Agreement with Intervenor Gulf Island Beach and Tennis Club Condominium Association, Inc. (the "Motion"). In support of the Motion, the Receiver states as follows:

1. On December 11, 2007, the Florida Office of Financial Regulation ("OFR") filed a Complaint for Temporary and Permanent Injunction and Appointment of Receiver.

2. 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.

3. 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").

4. Oceanside Acquisitions, LLC ("Oceanside") is one of the original Relief Defendants. Oceanside is an entity formed by Dana Berman and Keith Novak to purchase certain of the condominium units (the "Oceanside Units") located at the Gulf Island Resort & Tennis Club ("Gulf Island Resort") in Pasco County, Florida.

5. In 2003, Oceanside borrowed \$1,700,000 from thirty-eight of the Lenders to fund the purchase of the Oceanside Units. As evidenced by the loan documents, including a First Mortgage and Security Agreement and a Second Mortgage and Security Agreement (jointly, the "Mortgages") recorded in the Official Records of Pasco County, the loans were secured by the Oceanside Units and other related property (including parking spaces and dock slips). The loans were serviced by MAMC and are in default.

6. Upon notice, motion and hearing, the Receivership Court previously approved the sale of individual Oceanside Units. Nine Oceanside Units remain secured by the mortgages.

7. Other liens, claims and encumbrances have been asserted against the Oceanside Units. The real property taxes for 2006 and 2008 – 2012 remain unpaid. The Gulf Island Beach and Tennis Club Condominium Association, Inc. (the "Association") asserts claims against the Oceanside Units based upon unpaid maintenance fees and special assessments (the

"Assessments") in the approximate sum of \$294,000 (which include interest, attorney fees and late charges). Both the taxes and the Assessments continue to increase on a monthly basis.

8. In August of 2013, the Receivership Court entered an Order authorizing the Receiver to file a lawsuit to foreclose the Mortgages and other claims, liens and encumbrances.

9. Counsel for the Association asserts that its liens, claims and encumbrances have a higher priority for payment than the liens, claims and encumbrances created by the Mortgages and has expressed an intention to vigorously defend the Association's claims.

10. After many discussions, the Receiver and the Association (jointly, the "Settling Parties") have agreed to settle their disputes. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

11. The Settling Parties have agreed to a minimum gross sales price for the Oceanside Units (which the Settling Parties can reduce by written agreement). In the event the Receiver seeks to sell the Oceanside Units at a lower price and the settling Parties cannot agree to a lower price, the Receiver may file a motion seeking authorization from the Receivership Court to approve the sale price. In the event the Settling Parties agree to the sale price, the Settling Parties consent to sell the Oceanside Units without further Order of the Receivership Court.

12. The Settling Parties have agreed to a formula to apportion the proceeds of the sale of the Oceanside Units, as more fully described in the Settlement Agreement.<sup>1</sup> In the event the Association receives \$294,000 from the proceeds of the sale, it shall no longer be entitled to share in any further proceeds from the sale of the Oceanside Units.<sup>2</sup>

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<sup>1</sup> Proceeds from the sale of the parking spaces will be included in the Association's share of the sale proceeds, The Association shall not share in the proceeds of the sale of a dock slip (which shall be sold by separate contract).

<sup>2</sup> This is not to be construed as a guarantee that the Association will receive \$294,000 from the sale of the Oceanside Units. There is a possibility that the sale of the Oceanside Units will produce less than \$294,000 for the Association.

13. In order to avoid the continued expense to the Receivership Estate, any further delay in the sale of the Oceanside Units, and the uncertainty attendant to the foreclosure litigation, the Receiver believes the settlement is in the best interest of the Lenders and the Receivership Estate.

14. By virtue of the Order Appointing Receiver, the Receiver has standing to institute, defend or compromise court proceedings as may in his judgment be necessary or proper for the collection, preservation and maintenance of receivership assets and/or on behalf of the Receivership Defendants. *See* Order at ¶ 21.

15. The Receiver has consulted with the lender committee for Oceanside<sup>1</sup> who have advised the Receiver that they approve his entering into the Settlement Agreement.

16. Notice of this Motion shall be provided by posting a copy (and the Notice of Hearing) on the Receivership website and sending a copy to the Lenders via e-mail.

**WHEREFORE**, Michael I. Goldberg, in his capacity as Receiver, respectfully request this Court enter an Order, in the form attached hereto as Exhibit 2, authorizing the relief requested herein and such further relief as is just and proper.

Respectfully submitted,

**AKERMAN LLP**  
*Counsel for the Receiver*  
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By: /s/ Joan M. Levit  
Joan M. Levit, Esquire  
Florida Bar No. 987530

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of November, 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: /s/ Joan M. Levit  
Joan M. Levit, Esquire

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**EXHIBIT 1**

**IN THE CIRCUIT COURT OF THE  
ELEVENTH 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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**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT made and entered into as of this \_\_\_ day of October, 2013, by and between Michael I. Goldberg ("Receiver"), in his capacity as capacity the receiver for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC") and Oceanside Acquisition Company (hereafter, "Oceanside") on the one hand and The Gulf Island Beach and Tennis Club Condominium Association, Inc. (the "Association") on the other. The Receiver and the Association shall hereafter jointly be referred to as the "Settling Parties".



**WHEREAS**, the case (the "Receivership Case") was filed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "Court"), Case No. 07-43672 CA 09, styled *State of Florida, Office of Financial Regulation v. Berman Mortgage Corporation, et al.*;

**WHEREAS**, Oceanside Acquisitions, LLC ("Oceanside") is one of the original Relief Defendants in the Receivership Case;

**WHEREAS**, Oceanside is an entity formed by Dana Berman and Keith Novak to purchase certain of the condominium units (the "Oceanside Units") located at the Gulf Island Resort & Tennis Club ("Gulf Island Resort") in Pasco County, Florida;

**WHEREAS**, Oceanside borrowed \$1,700,000 from thirty-eight of the Lenders to fund the purchase of the Oceanside Units and the Receiver represents that there is currently \$1,372,400 in principal due and outstanding to the Lenders under this loan;

**WHEREAS**, there are nine remaining Oceanside Units, eight remaining parking spaces (the "Parking Spaces") and remaining dock slips (the "Dock Slips") and it is undisputed that the Association does not have a lien on the Parking Spaces or the Dock Slips;

**WHEREAS**, the loans are secured by the Oceanside Units and other related property as evidenced by the loan documents, including a First Mortgage and Security Agreement and a Second Mortgage and Security Agreement (jointly, the "Mortgages") recorded in the Official Records of Pasco County. The loans were serviced by MAMC and are in default;

**WHEREAS**, the real property taxes (the "Taxes") for 2006 and 2008 – 2012 remain unpaid. According to the web site for the Pasco County Tax Collector, as of September 1, 2013, the amount of Taxes range from \$22,860 to \$25,125 for each of the Oceanside Units. Except for the 2006 taxes, where tax certificates have been sold, the unpaid taxes accrue interest at 18% per year;

**WHEREAS**, The Gulf Island Beach and Tennis Club Condominium Association, Inc. (the "Association") asserts claims against the Oceanside Units based upon unpaid maintenance fees and special assessments in the approximate amount of \$294,000 (collectively, the "Assessments"), and continue to increase on a monthly basis;

**WHEREAS**, in August of 2013, the Receivership Court entered an order authorizing the Receiver to initiate a lawsuit to foreclose the Lender's Mortgages and other claims, liens and encumbrances;

**WHEREAS**, the Association asserts that the Assessments hold a higher priority for payment than the Mortgages and it intends to vigorously defend the foreclosure action;

**WHEREAS**, it is in the best interest of the Association for the Receiver to sell the Oceanside Units as quickly as possible so that the Oceanside Units can become "performing" units that will commence the payment of all Assessments in the ordinary course;

**WHEREAS**, in order to avoid the expense, delay and uncertainty attendant to the foreclosure litigation and to minimize the risk that both parties will lose the units due to potential tax deed sales, the Settling Parties have agreed to settle all disputes between them on the terms and conditions set forth herein:

#### **TERMS AND CONDITIONS**

1. The foregoing recitals are true and correct and are incorporated in full herein.
2. The Receiver shall immediately place the Oceanside Units for sale. The Receiver, without further order of this Court, may sell each of the Oceanside Units for a minimum gross sales price (the "Minimum Sales Price") as indicated on the Schedule which is attached hereto as Exhibit "A". In the event the Receiver desires to sell an Oceanside Unit for a price lower than the Minimum Sales Price, he may do so, provided the Association agrees to such lower price, in writing. In the event the Association provides its written consent, the Receiver may sell such

Oceanside Unit without further order of the Court. In the event the Receiver deems that it is in the best interest of the receivership estate to sell an Oceanside Unit at a price lower than the Minimum Sales Price and the Association disagrees, the Receiver may file a motion with the Court seeking authorization to sell the Oceanside Unit for less than the Minimum Sales Price and the Court shall hold a hearing to consider the request.

3. In complete satisfaction of any and all sums owed to the Association up until the time that the Oceanside Units are all sold, the proceeds from the sale of the Oceanside Units shall be distributed as follows:

a) The first proceeds from the sale of the Oceanside Units shall be used to bring the property taxes on the Oceanside Units current, except that the Association shall receive \$12,500 from the sale of each of the first two Oceanside Units sold (total of \$25,000);

b) The Receiver shall be paid \$25,000 from the sale of the third Oceanside Unit.

c) After payment of the sums set forth in subsection (a) and (b) above, the net sales proceeds (after payment of taxes, brokerage fees, etc...) from the sale of Oceanside Units shall be distributed to the Receiver and the Association as follows: (i) seventy three percent (73%) to the Receiver and twenty seven percent (27%) to the Association.

4. In the event the Association receives \$294,000, it shall no longer be entitled to share in any of the sales proceeds for the Oceanside Units. Once an Oceanside Unit is sold, the purchaser for such unit shall be responsible for all future Assessments.

5. The Receiver shall include one Parking Space with the sale of each Oceanside Unit and the Association shall be entitled to share in the gross proceeds of any sums attributable to such Parking Space.

6. To the extent a purchaser of an Oceanside Unit purchases a Dock Slip, the Association shall not be entitled to any sales proceeds with respect to such Dock Slip as the Association does not have a lien on such Dock Slip. To that end, the Receiver shall sell all Dock Slips by separate contract and not include them in the contract for the Oceanside Unit. The Receiver shall not put any sales expenses such as attorney's fees and commissions associated with the sale of the Dock Slips, if any, on the closing statement for an Oceanside Unit, but rather all such expenses related to the sale of the Dock Slips shall be included in the contracts for the Dock Slips and paid for from the proceeds of the Sale of the Dock Slips.

7. It is anticipated that the Receiver will sell one Oceanside Unit every four months. In the event the Receiver fails to sell three Oceanside Units within one year from the date the Court approves this Settlement, the Receiver shall commence paying maintenance on one of the remaining Oceanside Units for each four month period in which no sales take place. By way of example, if the Court approves this Agreement on November 15, 2013 and the Receiver sells three Oceanside Units prior to November 15, 2014, then the Receiver does not have to pay any maintenance on any of the Oceanside Units. However, if the Receiver has sold less than three Oceanside Units by November 15, 2014, the Receiver shall commence paying maintenance on one Oceanside Unit on November 15, 2014. In the event the Receiver does not sell another Oceanside Unit before March 15, 2015, the Receiver shall then commence paying maintenance on a second Oceanside Unit. In the event the Receiver does not sell another Oceanside Unit before July 15, 2014, the Receiver shall commence paying maintenance on a third Oceanside Unit. Thereafter, for each four month period the Receiver fails to sell an Oceanside Unit, the Receiver shall start paying maintenance on an additional Oceanside Unit. Notwithstanding the foregoing, to the extent the Receiver sells an Oceanside Unit so that the rate of Sale of an

Oceanside Unit is less than four months per Oceanside Unit, the Receiver will not have to pay maintenance on any Oceanside Units.

8. This Agreement is expressly conditioned upon the Receiver obtaining Court approval of all of the terms of this Settlement Agreement.

9. This Agreement sets forth the entire agreement between the Settling Parties and may be amended only by written agreement of the Settling Parties.

10. This Agreement shall be governed by Florida law.

11. If any action in law or equity is necessary between the parties to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements, including those arising out of any appeals, in addition to any other relief that may be awarded.

12. The parties hereto agree to execute any and all additional documentation reasonably necessary to complete or effectuate the terms of this Settlement Agreement including the release and satisfaction of any alleged liens.

13. This Agreement may be executed in counterparts, each of which shall be deemed an original. Such counterparts, when taken together, shall constitute but one agreement.

14. The Court shall retain jurisdiction to enforce all disputes arising out of this Agreement.

THE GULF ISLAND BEACH & TENNIS  
CLUB CONDOMINIUM ASSOCIATION,  
INC.

By: \_\_\_\_\_

Mark A. Basurto  
*Counsel for The Gulf Island Beach  
& Tennis Club Condominium  
Association, Inc.*

OCEANSIDE ACQUISITION COMPANY

By: \_\_\_\_\_

**EXHIBIT A**

**MINIMUM GROSS SALES PRICE SCHEDULE**

1. Unit 104 - \$100,000
2. Unit 105 - \$100,000
3. Unit 111 - \$100,000
4. Unit 202 - \$100,000
5. Unit 301 - \$110,000
6. Unit 302 - \$110,000
7. Unit 311 - \$110,000
8. Unit 406 - \$120,000
9. Unit 408 - \$120,000

**EXHIBIT 2**

**IN THE CIRCUIT COURT OF THE  
ELEVENTH 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.

**ORDER GRANTING RECEIVER'S MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE RECEIVER TO ENTER INTO A SETTLEMENT  
AGREEMENT WITH INTERVENOR GULF ISLAND BEACH  
AND TENNIS CLUB CONDOMINIUM ASSOCIATION, INC.**

**THIS MATTER** came before the Court on \_\_\_\_\_, 2013 upon hearing on the *Motion for Entry of an Order Authorizing the Receiver to Enter into a Settlement Agreement with the Gulf Island Beach and Tennis Club Condominium Association, Inc.* (the "Motion") filed by Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, and Relief Defendants DB Atlanta, LLC, *et al.* The Court, having reviewed the Motion, heard argument of the Receiver and being advised of the consent of Intervenor Gulf Island Beach and Tennis Club Condominium Association (the "Association"),



being familiar with the case file and otherwise fully advised in the premises, finds that good cause exists to:

**ORDER** that the Motion is **GRANTED**.

1. The Receivership is authorized to enter into the Settlement Agreement with the Association, a copy of which is attached to the Motion as Exhibit 1 and incorporated herein.

2. The Receiver shall immediately place the Oceanside Units<sup>1</sup> for sale.

3. The Receiver, without further order of this Court, may sell each of the Oceanside Units for a minimum gross sales price (the "Minimum Sales Price") as indicated on the Schedule which is attached to the Settlement Agreement.

4. In the event the Receiver desires to sell an Oceanside Unit for a price lower than the Minimum Sales Price, he may do so, provided the Association agrees to such lower price, in writing. In the event the Association provides its written consent, the Receiver may sell such Oceanside Unit without further order of the Court.

5. In the event the Receiver deems that it is in the best interest of the receivership estate to sell an Oceanside Unit at a price lower than the Minimum Sales Price and the Association disagrees, the Receiver may file a motion with the Court seeking authorization to sell the Oceanside Unit for less than the Minimum Sales Price and the Court shall hold a hearing to consider the request.

6. In complete satisfaction of any and all sums owed to the Association up until the time that the Oceanside Units are all sold, the proceeds from the sale of the Oceanside Units shall be distributed as follows:

(a) The first proceeds from the sale of the Oceanside Units shall be used to bring the property taxes on the Oceanside Units current, except that the Association shall

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<sup>1</sup> All capitalized terms shall have the same meaning as defined in the Motion and Settlement Agreement.

receive \$12,500 from the sale of each of the first two Oceanside Units sold (total of \$25,000);

(b) The Receiver shall be paid \$25,000 from the sale of the third Oceanside Unit.

(c) After payment of the sums set forth in subsection (a) and (b) above, the net sales proceeds (after payment of taxes, brokerage fees, etc...) from the sale of Oceanside Units shall be distributed to the Receiver and the Association as follows: (i) seventy three percent (73%) to the Receiver and twenty seven percent (27%) to the Association.

7. As such time as the Association receives \$294,000, it shall no longer be entitled to share in any of the sales proceeds for the Oceanside Units.

8. Once an Oceanside Unit is sold, the purchaser for such unit shall be responsible for all future Assessments.

9. The Receiver shall include one Parking Space with the sale of each Oceanside Unit and the Association shall be entitled to share in the gross proceeds of any sums attributable to such Parking Space.

10. To the extent a purchaser of an Oceanside Unit purchases a Dock Slip, the Association shall not be entitled to any sales proceeds with respect to such Dock Slip as the Association does not have a lien on such Dock Slip. To that end, the Receiver shall sell all Dock Slips by separate contract and not include them in the contract for the Oceanside Unit. The Receiver shall not put any sales expenses such as attorney's fees and commissions associated with the sale of the Dock Slips, if any, on the closing statement for an Oceanside Unit, but rather all such expenses related to the sale of the Dock Slips shall be included in the contracts for the Dock Slips and paid for from the proceeds of the Sale of the Dock Slips.

11. It is anticipated that the Receiver will sell one Oceanside Unit every four months.

(a) In the event the Receiver fails to sell three Oceanside Units within one year from the date the Court approves this Settlement, the Receiver shall commence paying maintenance on one of the remaining Oceanside Units for each four month period in which no sales take place.

(b) However, if the Receiver has sold less than three Oceanside Units by November 15, 2014, the Receiver shall commence paying maintenance on one Oceanside Unit on November 15, 2014. In the event the Receiver does not sell another Oceanside Unit before March 15, 2015, the Receiver shall then commence paying maintenance on a second Oceanside Unit.

(c) In the event the Receiver does not sell another Oceanside Unit before July 15, 2014, the Receiver shall commence paying maintenance on a third Oceanside Unit. Thereafter, for each four month period the Receiver fails to sell an Oceanside Unit, the Receiver shall start paying maintenance on an additional Oceanside Unit.

(d) Notwithstanding the foregoing, to the extent the Receiver sells an Oceanside Unit so that the rate of Sale of an Oceanside Unit is less than four months per Oceanside Unit, the Receiver will not have to pay maintenance on any Oceanside Units.

12. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated in the Settlement Agreement.

**DONE AND ORDERED** in Chambers in Miami-Dade County, Florida on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
**THE HONORABLE JERALD BAGLEY**  
**CIRCUIT COURT JUDGE**

**Conformed copies to:**  
All counsel of record

Posted to the Receiver's Web Site

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