

**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,

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.

**RECEIVER'S MOTION FOR AUTHORIZATION TO LOAN FUNDS
TO CERTAIN RECEIVERSHIP PROJECTS
FOR PAYMENT OF REAL PROPERTY TAXES**

Michael I. Goldberg, the receiver of Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, *et al.*, and Relief Defendants DB Atlanta, LLC, *et al.* (the "Receiver"), hereby files this Motion for Authorization to Loan Funds to Certain Receivership Projects for payment of Real Property Taxes. 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"). The Court granted the Distribution Motion, and shortly thereafter, the Receiver made a distribution of a substantial portion of the settlement proceeds.

4. 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 37 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, be paid in order to preserve the project's value.

5. The 2010 real property tax bills have been mailed by the Florida tax collectors. Although payment is due on or before March 31, 2011, the tax collectors offer a graduated discount up to four percent off the total amount due for early payment, including a discount of three percent – if the payment is received by December 31, 2010.

6. Through this Motion, the Receiver seeks authorization to make loans to the following projects (collectively, "Projects") for payment of the real property taxes ("Taxes"). The amounts listed are the amounts necessary to pay the Taxes by December 31, 2010:

{FT728168;1}

- A. MAMC V-Strategic: \$36,500
- B. MAMC Emerald Cay: \$30,200
- C. MAMC Southchase: \$21,400
- D. MAMC Bella Vista: \$36,200
- E. MAMC Project Manager's: \$7,300

7. The 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 four percent.

8. This request is not based solely on the Receiver's decision. The Receiver has consulted with the lender committees he appointed for each of the projects listed above with regard to their cash flow and ability to pay the Taxes. Early payment will result in a discount of the tax bill, while non-payment or late payment of the Taxes will result in the accrual interest and fees. Moreover, in the event a project is unable to timely pay the Taxes, Florida's tax collectors are authorized to sell tax certificates to cover payment of the Taxes. The Taxes continue to accrue interest and other fees and two years after the purchase of the tax certificate, the tax certificate holder can apply for a tax deed. When the tax deed sale occurs, the mortgages are stripped from the property. *See Florida Statutes, Chap. 197.01, et. seq.*

9. The Projects will be charged interest at the rate of four percent 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 loans is a win-win situation for the receivership estate which will make more interest than it is currently earning and the amount of the Taxes will be discounted as a result of early payment.


10. The Receiver and the Executive Committee believe the loan is fully secured by the value of the property. The loan, together with all accrued interest, will be payable on sale of the property. Moreover, the project will reimburse the receivership estate \$250 in costs incurred in obtaining approval of this loan.¹ The Receiver and the Executive Committee believe making these loans are in the best interest of the receivership estate.

11. This Court has previously authorized the Receiver to loan funds to other projects, including the Bella Vista, V Strategic and Atlantic Beach projects. The Receiver believes it is in the best interest of the receivership estate to loan the Projects money to pay the Taxes and the investors will receive a benefit from early payment of the Taxes.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of Berman Mortgage, M.A.M.C. and related entities, respectfully request 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,

AKERMAN SENTERFITT
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By: 

Joan M. Levit, Esquire
Florida Bar No. 987530

¹ This fee will be added to the outstanding loan balance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of November, 2010, a true and correct copy of the forgoing was furnished via U.S. Mail to the parties on the attached Service List.

By:  _____
Joan M. Levit

SERVICE LIST

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