

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 AMENDED¹ MOTION TO APPROVE LOANS TO CERTAIN
RECEIVERSHIP PROJECTS FOR PAYMENT OF
2012 REAL PROPERTY TAXES AND OTHER ANNUAL EXPENSES**

Michael I. Goldberg, the receiver of Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this Motion to Approve Loans to Certain Receivership Projects for Payment of 2012 Real Property Taxes and Other Annual Expenses, and in support, states as follows:

1. On December 11, 2007, this Court appointed Michael Goldberg as the receiver (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

¹ This motion was originally filed on November 28, 2012, but did not make the cut-off for any December 2012 motion calendar hearings. As a result, the Receiver has authorized the payments which were due to be made prior to December 31, 2012 and now seeks the Court's *nunc pro tunc* approval.

detriment of the lenders ("Lenders") 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 ("Accountant Settlement Proceeds") 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 Accountant Settlement Proceeds.

4. With the Court's permission, the Receiver held back several million dollars of the Accountant 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. 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. Through this Motion, the Receiver seeks authorization to make loans to the following projects (collectively, "Projects") for payment of the real property taxes ("Taxes") and other annual expenses.

6. The 2012 Tax bills have been mailed by the Florida tax collectors. Although payment is due on or before March 31, 2013, 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 payments are received by December 31, 2012.

7. The amounts listed are the sums necessary to pay the Taxes by December 31, 2012 and timely pay other annual expenses:

Item	AHIFO	Bella Vista	Emerald Cay	SouthChase
Taxes	\$8,894	\$33,655	\$23,199	\$20,058
Insurance		\$126	\$170	\$125
Maintenance				
Association dues			\$9,800	
Corp filing	\$139	\$139	\$139	\$139
Other				
Total	\$9,033	\$33,919	\$33,307	\$20,321

8. 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.

9. 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. The committee's for each of the Projects and the Executive Committee approve the loans and have authorized immediate payment of the Taxes in order to take advantage of the discounts.

10. 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.*

11. 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.

12. The Receiver, the Executive Committee and the Project Committees believe each of the loans are fully secured by the value of the corresponding property. The loans, together with all accrued interest, will be payable on sale of the corresponding property. Moreover, the Projects will reimburse the receivership estate \$250 in costs incurred in obtaining approval of their loan.² The Receiver and the Executive Committee believe making these loans are in the best interest of the receivership estate.

13. For the past two years, this Court authorized the Receiver to loan funds from the Accountant Settlement Proceeds to certain receivership projects for payment of real property taxes and other expenses. The Receiver believes it is in the best interest of the receivership estate to loan the Projects money to pay the expenses described herein and the Lenders will receive a benefit from early payment of the Taxes.

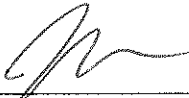
WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of Berman Mortgage, M.A.M.C. and related entities, respectfully request this Court to enter an Order authorizing the

² This fee will be added to the outstanding loan balance.

Receiver to make the loans described herein and to grant such further relief as is just and proper.

Respectfully submitted,

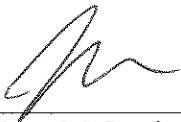
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of December 2012, a true and correct copy of the forgoing was furnished via U.S. Mail to the parties on the attached Service List, the lenders were notified by e-mail and a copy of this motion will be posted on the receivership web-page.

By: 

Joan M. Levit

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