

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,

vs.

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

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability  
company, et al.,

Relief Defendants.

THE ORIGINAL  
FILED ON:

DEC 09 2008

IN THE OFFICE OF  
CIRCUIT COURT DADE CO. FL

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**RECEIVER'S MOTION TO ESTABLISH PROCEDURES TO ISSUE AND SELL  
RECEIVER'S CERTIFICATES TO RAISE FUNDS NECESSARY TO PRESERVE  
ASSETS OF DB BILOXI, LLC OR IN THE ALTERNATIVE TO SURCHARGE  
LENDERS, OR IN THE ALTERNATIVE TO ABANDON ASSETS**

Receiver, Michael Goldberg, by and through undersigned counsel, moves this Court for an Order *Establishing Procedures by which the Receiver is authorized to sell Receiver's Certificates to Raise Funds Necessary to Preserve Assets of DB Biloxi, LLC, or in the Alternative to Surcharge Lenders, or in the Alternative to Abandon Assets*, and as grounds therefore states:

**The Receiver Is Appointed**

1. On December 11, 2007, this Court appointed Michael Goldberg (the "Receiver") to be the Receiver for the Defendants and the Relief Defendants. See Temporary Injunction and Agreed Order Appointing Receiver ("Receivership Order"), previously filed with the Court.

2. Among the Relief Defendants is DB Biloxi, LLC, a Florida limited liability company ("DB Biloxi").

3. In the Receivership Order, Judge Wilson specifically states that all receivership assets, which include the assets belonging to the Relief Defendants, are subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and such assets shall be under the exclusive control of the Receiver:

The Court hereby takes exclusive jurisdiction and possession of the assets of the Defendants, Berman Mortgage, M.A.M.C., and Relief Defendants [including Oceanside Acquisitions, LLC], the "Receivership Assets", which includes, but are not limited to: files, records, documents, leases, mortgages, investments, contracts, effects, lands, agreements, judgments, bank accounts, books of accounts, rents, goods, chattels, rights, credit claims, both asserted and unasserted, pending court actions and appeals, files and documents in the possession of attorneys and accountants of all of the Defendants and Relief Defendants, all other property, business offices, computers, servers, electronic data storage units, offsite storage locations, safety deposit boxes, monies, securities, choses in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated of the Defendants ... and Relief Defendants. The Receiver shall retain custody and control of all of the foregoing pursuant to the terms of this Agreed Order.

Receivership Order, ¶ 3 (emphasis added).

4. The Receivership Order also authorizes the Receiver to investigate the manner in which the affairs of the Receivership Defendants, including DB Biloxi, were conducted to defend actions against the estate's assets or to institute actions on behalf of the Receivership Defendants as deemed necessary by the Receiver to collect funds or assets wrongfully misappropriated from the Receivership Defendants:

The Receiver is hereby authorized and specifically has standing to institute, defend, compromise or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion by advisable or proper for the protection of the Receivership Assets or proceeds thereof, and to institute, prosecute, compromise or adjust such actions or proceedings in state or federal courts as may in his judgment be necessary or proper for the collection, preservation and maintenance of the Receivership Assets and/or on behalf of the Receivership Defendants.

Receivership Order, ¶ 21 (emphasis added).

**The Receiver Exercises his Authority Over DB Biloxi, LLC,  
and Fulfills his Obligations, But Remains Unpaid**

5. The aforementioned authority was granted to the Receiver so that he could properly protect the receivership assets, which authority was necessary because the evidence tended to show that there was an “imminent danger that the property of the Defendants and Relief Defendants may be further dissipated and/or commingled if a Temporary Injunction and the appointment of a receiver” was not issued. Receivership Order, ¶2. The Receiver was entrusted with the duty to “prevent immediate and irreparable injury to the investors who have entrusted over \$192,000,000 to the ... Relief Defendants,” Receivership Order, ¶4, and otherwise “prevent further waste and dissipation of the assets of the ... Relief Defendants, to the detriment of its investors.” Receivership Order, ¶7.

6. DB Biloxi, one of the Relief Defendants, is a Florida limited liability company formed by Dana Berman. In April 2005, DB Biloxi purchased an 11-acre parcel located at 2660 Beach Boulevard on the Gulf Coast in Biloxi, Mississippi (the “Property”). The improvements on the Property included a 140-unit apartment complex, known as Edgewater Garden Apartments (the “Units”), which DB Biloxi was converting to condominiums. However, the Units suffered substantial damage from Hurricane Katrina and were subsequently demolished. DB Biloxi currently owes approximately \$2,500,000.00 to TransCapital Bank, the first

mortgage-holder and approximately \$10,465,000 to 234 individuals (collectively, the "Lenders") in relation to the Edgewater Gardens Apartments Property.

7. DB Biloxi has no cash and no sources of revenue and will not have sufficient funds to pay the property taxes and other expenses associated with preserving the Property.

8. At this point in time and based on current market conditions, it is doubtful that DB Biloxi has any equity in the Property over and above what is owed to the Lenders.

9. Notwithstanding that it is in their best interest to pay the foregoing expenses to preserve their collateral, many Lenders have preferred to take a "wait and see" attitude with respect to their decision whether or not to forward the funds necessary to the Receiver to preserve the Property -- including the attorney fees and costs of litigation and the aforementioned taxes. Accordingly, the Receiver anticipates he will not be able to timely pay these necessary expenses.

10. The Receiver understands and is sympathetic that many Lenders are financially strapped and unable to forward the requisite funds. The Receiver also understands how some Lenders do not wish to forward funds when every other Lender is not contributing his or her fair share. Unfortunately, despite this understanding, the Receiver needs to pay the bills necessary to preserve the Property for the very benefit of the Lenders who are not forwarding the funds necessary to do so.

11. The Receiver realizes that the Lenders are comprised of numerous individuals that believe they were somehow defrauded by MAMC and is extremely sympathetic to their plight. That being said, the Receiver believes that these Lenders need to take some ownership responsibility for preserving their collateral and cannot simply wait and see if the litigation is favorably resolved or if the market comes back. Just because Lenders may have been a victim of

fraud does not excuse them from this responsibility. If a financial institution were in this same position, the institution would necessarily have to pay its professionals, taxes, dues and insurance---or lose its collateral.

12. DB Biloxi owes money to MAMC which is necessary to administer the estate.

13. The Receiver can no longer continue administering DB Biloxi without paying his professionals, receivership fees, taxes, and other costs associated with preserving the Property.

**Previous Attempts To Generate Capital To  
Pay the Receiver and his Retained Personnel and Professionals Have Failed**

14. The Receiver has previously sought through application to this Court authority to raise funds to cover expenses. This Court has, through two separate Orders, authorized the Receiver to raise funds from the Investor Group. On a third and most recent occasion, the Court authorized the following:

1. The Receiver to collect and deposit into an operating account 2% of the principal amount of the recover from the monetization of each account.
2. The funds held in this special designated operating account shall be used at the Receiver's discretion to repay the monies advanced to the Receiver and to Alan Goldberg, by certain investors, to cover operating expenses and thereafter used to repay any future advances made by the investors on operating expenses and otherwise used for operating expenses.
3. The Receiver is authorized to continue to raise funds from the investor group to cover short falls for operating expenses, and is authorized to repay these future advances from the funds recovered from the 2% principal collected pursuant to this Order.
4. At the conclusion of the Receivership, excess funds collected and held in the operating budget account, shall be held in escrow and distributed in accordance with Order of this Court.
5. The Receiver shall separately escrow the 2% principal and shall not use or distribute these funds without further Order of this Court on the Atlantic Beach and V-Strategic pending the filing by

investor, Jack Attias, as to a specific objection thereto and/or further motion of the Receiver seeking a final determination on the obligation of these specific loan projects to participate in the operating expenses.

15. However, these measures have proven insufficient to generate enough capital to cover expenses, including payments for Receiver fees and the Receiver's retained personnel and professionals. Moreover, the Receiver believes that it is inequitable to require successful projects to pay specific expenses of other projects as the lender group from project to project varies in composition.

16. As such, the Receiver finds it necessary for the Court to allow the Receiver to act as follows (listed in order of preference):

- a. Issue and Sell Receiver certificates allowing the Receiver' expenses to take priority over pre-existing liens, or in the alternative,
- b. Surcharge the members of the Investor Group; or in the alternative,
- c. Abandon the projects.

**This Court Should Issue Receivership Certificates**

17. The Receiver believes the Court should allow him to issue receiver's certificates in connection with DB Biloxi in order to pay the costs of preserving the collateral. The Receiver believes this is the fairest course of action as it will affect each Lender equally while at the same time giving all Lenders the opportunity to realize the ultimate benefit of preserving the Units.

18. Florida law provides that "[t]he court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets." Fla. Stat. §607.1432 (2007).

19. Further, the Florida Supreme Court has concluded that receivership expenses **take priority over pre-existing liens:**

The appointment of a receiver to protect and preserve property pending litigation does not ipso facto affect the status of liens existing upon the property; but, where a receiver is lawfully appointed at the instance and for the benefit of lien creditors, all proper charges, expenses, and liabilities incurred as incident to duly conferred receivership powers and duties may be a charge upon the earnings and corpus of the property **superior to the lien creditors** who take part in or expressly or impliedly consent to or acquiesce in the receivership proceedings.

The ordinary duties of a receiver of a private corporation are to protect and preserve the property pending the litigation, and all expenses duly authorized and properly incurred by the receiver in the discharge of such duties, including a reasonable compensation for his services, may constitute a first charge upon the income of the property, if any, or, if none, upon the corpus of the property **even postponing prior lienholders.**

*Knickerbocker Trust Co. v. Green Bay Phosphate Co.*, 62 Fla. 519, 56 So. 699, 699 (Fla. 1911) (emphasis added).

20. Courts of many states have recognized that where a Court Appointed Receiver requires funds to preserve the existence of Receivership property, the appointing Court is authorized to issue and sell receiver's certificates which shall have priority over all other liens. Only in the case of certificates issued for purposes other than preservation of the Receivership property will the certificates be subordinate to existing liens. Florida Courts have recognized and authorized a Receiver to issue and sell Receiver's Certificates. *Beach Resort Hotel Corp. v. Wider*, 79 So. 2d 659 (Fla. 1955). Although Florida Courts have not addressed the priority of a Receiver's certificate issued to raise money to pay the expenses incurred by the Receiver in preserving the assets of the estate, Florida Courts have recognized the priority of Receivership expenses. Using this same principle, other courts have held where a receiver's certificate is issued to pay taxes, which are a first lien on the property, the receiver certificate becomes a substitute lien priming all other liens. *Union Trust Company of New York v. Illinois Midland*

*Railing Company*, 117 US 434 (1886); *Jeffers vs. New Jersey and Pennsylvania Railroad Company*, 86 N.E.EQ. 68 (Ch. 1916); Fletcher Cyclopedia of the Law of Corporations Chapter 64, Section 7885 (Power to Issue – Consent of Creditors – Receivership).

21. Thus, it is recognized that in the case of a private corporation run by a receiver, the appointing court is authorized to issue Receiver's certificates so the Receiver can continue the operation of the business without the consent of prior lienholders, provided such operation is necessary to preserve the existence of the Receivership property. In other words, there are only two exceptions under which a Receiver may be authorized to issue certificates entitled to priority over existing liens in the case of a private corporation: (1) where all the lienholders consent; and (2) where the purpose is not merely to operate the business, but to preserve the property. We can find no Florida Court that has addressed the issue of the priority of a Receiver's certificate were issued for the purposes of preserving assets of the estate. In *Lehman v. Trust Company of America*, 57 Fla. 473, 49 So. 502 (Fla. 1909) is the only Florida Court to have ruled on the issue of priority of Receiver's certificates. However, the issue addressed was the priority of expenses to operate the business. Courts that have addressed the issue of the priority of a Receiver's certificate were issued to preserve assets, overwhelmingly find that this is a first priority lien where the Courts are raising funds for paying expenses that would otherwise be a first priority lien within the case. *Montgomery Corp. v. Allais*, 3 SW 2d 180 (Ky. App 1928); . *Hooper v. Cen. Trust Co. of N.Y.* 32 A. 505 (Md. App 1895); *Bailey v. Bailey*, 247 NW 160 (Mich. 1933). *Sibley County Bank of Henderson v. Crescent Milling Co.*, 201 N.W. 618 (Minn. 1926); *Rhode Island Hosp. Trust Co. v. S.H. Greene & Sons Corp.*, 146 A. 765 (R.I. 1929); *Oldroyd v. McCrea*, 235 P. 580 (Ut. 1925); *Karn v. Rover Iron Company*, 11 S.E. 431 (Va. 1890). Thus, as Florida recognizes the priority of expenses incurred by the Receiver to preserve the assets, it



should likewise recognize the priority of a Receiver's certificate issued to raise funds to preserve the assets of the estate.

22. Moreover, the members of the Lender Group, i.e., lienholders, have expressly, let alone impliedly, acquiesced in the receivership proceedings as more fully explained below. As such, this Court should issue an order granting this Motion authorizing the sale of Receiver Certificates as a priority over existing lienholders.

**The Receiver Should Surcharge Members of the Lender Group Pursuant to the Agreement Between M.A.M.C. Incorporated and Members of the Lender Group**

23. If this Court refuses to issue Receivership Certificates – and it should not in light of the aforementioned precedent – in the alternative, the Receiver should be entitled to surcharge members of the Lender Group. In fact, the Lender Group has already agreed to such surcharge in the Loan Origination and Loan Servicing Agreement entered by MAMC Incorporated (which is exclusively controlled by the Receiver and is an asset of the Receivership pursuant to the Receivership Order), and the members of the Investor Group:

Lender(s) shall reimburse M.A.M.C. for M.A.M.C.'s reasonable out-of pocket expenses so incurred, including all reasonable attorneys' fees and costs in connection with any such foreclosure, acquisition or in connection with any other out-of-pocket expenses incurred by M.A.M.C. pursuant to M.A.M.C.'s responsibilities under this Section ....

Loan Origination Agreement, attached hereto as Exhibit "A."

24. As per the terms of the Loan Origination Agreement between the members of the Lender Group and MAMC Incorporated, this Court should authorize the Receiver to surcharge members of the Lender Group so that he and his retained personnel and professional can receiver payment for the work that they obligated to do pursuant to the Receivership Order.

25. Receiver anticipates that some Lenders may not fund surcharge demands in which case the Receiver seeks authority in this order, at his discretion, to sell the interests of the Lenders who fail to timely fund a surcharge demand.

**The Receiver Should be Authorized to Abandon  
DB Biloxi, to the Extent Necessary**

26. Assuming this Court refuses to issue the Receiver Certificates, and (in contradiction to the terms of the Loan Origination Agreement entered by the very parties that this Motion effects) denies the Receiver's motion to surcharge members of the Lender Group, or the secured lenders refuse to be surcharged, the Receiver seeks to Abandon DB Biloxi. In certain instances, the Receiver will (and in fact has) had to manage projects that have no value and no equity beyond secured claims, leaving the Receiver to dedicate resources that could be dedicated to expenses to valueless projects. In such instances, this Court should give the Receiver the authority to abandon such projects from the Receivership proceedings. In fact this Court has previously allowed the Receiver to abandon valueless projects such as DB Durham, LLC, and DB Simpsonville, LLC.

**WHEREFORE**, the Receiver moves this Court for an Order authorizing the aforementioned relief, and for such other relief as the Court deems just and appropriate to complete the intended purpose of the motion.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this **8<sup>th</sup> day of December 2008**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2<sup>nd</sup> Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA**, of

SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to **Allan A. Joseph, Esquire**, *Counsel for The Amadi Companies and Amedia Family Investors*, DAVID AND JOSEPH, P.L., 1001 Brickell Bay Drive, Suite 2002, Miami, Florida 33131; to **Richard R. Robles, Esquire**, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; to **Daniel Kaplan, Esquire**, *Counsel for Deborah A. Berman*, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191<sup>st</sup> Street, Aventura, Florida 33180; to **Howard N. Kahn, Esquire**, *Attorneys for Intervenor, Ira Sukoff*, KAHN, CHENKIN & RESNIK, P.L., 1815 Griffin Road, Suite 207, Dania, Florida 33304; to **Charles Pickett, Esquire and Linda Dickhaus Agnant, Esquire**, *Attorneys for Johns Manville*, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401; to **Helen Schwartz Romañez, Esquire**, *Attorneys for Turnberry Bank & Bank of Coral Gables*, The Romañez Law Firm, 255 Alhambra Circle, Suite 850, Coral Gables, Florida 33134; to **Charles W. Throckmorton, Esquire**, *Attorneys for Dana Berman*, KOZYAK TROPIN THROCKMORTON, P.A., 2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor, Coral Gables, Florida 33134; to **J. Andrew Baldwin, Esquire**, *Attorneys for Regions Bank*, THE SOLOMON LAW GROUP, P.A., 1881 West Kennedy Boulevard, Tampa, Florida 33606-1606; to **Rey Hicks and Javier Castillo** of COMPLETE PROPERTY MANAGEMENT, at Post Office Box 402507, Miami Beach, Florida 33140; to **Daren Schwartz**, 12555 Biscayne Boulevard, Unit #930, North Miami, Florida 33181; to **Norman Malinski, Esquire**, *Counsel for Giles Construction*, 2875 NE 191<sup>st</sup> Street, Suite 508, Aventura, Florida 33180; **Gabrielle D'Alemberte, Esquire**, LAW OFFICES OF ROBERT PARKS, 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134; to **Robert B. Miller, Esquire**, *Attorneys for Atlantic Lending, LLC*, TABAS, FREEDMAN, SOLOFF & MILLER, P.A., The Ingraham Building 25 SE 2<sup>nd</sup> Avenue, Suite 919, Miami, Florida 33131-1538; to **Richard P. Cole, Esquire**, **Edward S. Polk, Esquire and/or Crystal Leah Arocha, Esquire**, *Attorneys for Meland Russin Hellinger & Budwick, P.A.* COLE SCOTT & KISSANE, P.A., Pacific National Bank Building, 1390 Brickell Avenue, Third Floor, Miami, Florida 33131; to **David A. Wheeler, Esquire**, *Counsel for Various Unit Owners at Le Chateau Condominiums at DB Biloxi II, LLC* WHEELER & WHEELER, PLLC, 185 Main Street, Biloxi, Mississippi 39530; to **James M. Kaplan, Esquire**, **Nanci S. Landy, Esquire and/or Kristen A. Rosenthal, Esquire**, *Attorneys for Non-Parties, Barry A. Imber and Imber & Company*, KAPLAN ZEENA, LLP, Two South

Biscayne Boulevard, One Biscayne Tower, Suite 3050, Miami, Florida 33131-1806; to **Michael A. Hanzman, Esquire**, HANZMAN GILBERT, LLP, 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134; to **Paul Huck, Esquire and Dean C. Colson, Esquire**, COLSON HICKS EIDSON, 255 Aragon Avenue, Second Floor, Coral Gables, Florida 33134; and to **Jason S. Miller, Esquire**, *Counsel for Flagstar Bank*, ADORNO & YOSS, LLP, 2525 Ponce de Leon Boulevard, Suite 400, Coral Gables, Florida 33134.

Respectfully submitted,

**BERGER SINGERMAN**

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

JAMES D. GASSENHEIMER

Florida Bar No. 959987

ARIADNA HERNANDEZ

Florida Bar No. 020953

cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*  
Michael Goldberg, Esq., as Receiver *(via e-mail)*  
The Investor(s)/Lender(s) Group *(via e-mail)*

1803329-1

## LOAN ORIGATION AND LOAN SERVICING AGREEMENT

This Loan Origination and Loan Servicing Agreement (hereinafter referred to as the "Agreement") is made and entered into as of the date indicated below by and between **Berman Mortgage Corporation**, a Florida corporation, having its principal place of business at 501 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida 33133 (hereinafter referred to as "BMC"), **M.A.M.C. Incorporated**, a Florida corporation, having its principal place of business at 501 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida 33133 (hereinafter referred to as "M.A.M.C.") and the person, persons and/or entity indicated below, jointly and severally if more than one (hereinafter referred to as "Lender").

### Lender Information

NAME(S):

ADDRESS:

TELEPHONE:

E-MAIL ADDRESS:

SOCIAL SECURITY NUMBER(S):

TITLE IN WHICH LOANS ARE  
TO BE HELD (ACCOUNT NAME):

DATE OF THIS AGREEMENT:

PREFERRED FORM OF  
NOTIFICATION REGARDING LOANS: ☒ E-mail ☐ United States Mail

### RECITALS

BMC is a Florida licensed Mortgage Lender whose business includes the origination of commercial hard equity secured loans (hereinafter "Loans").

M.A.M.C. is a Florida licensed Mortgage Servicer whose business is limited to the management and servicing of such Loans.

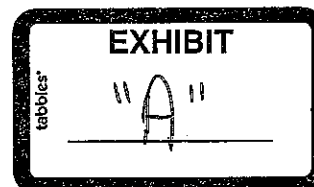
Lender has accurately completed a separate Lender's Representation (the "Lender's Representation"), which is incorporated by reference herein.

BMC will, from time to time, offer Lender the opportunity to extend Loans to borrowers who approach BMC for Loan ("Borrowers") which Loan(s) may be funded solely by Lender, or by Lender and other parties who may extend a portion of the Loan together with Lender (collectively "Participants") and which Loans will be managed and serviced by M.A.M.C.

BMC, M.A.M.C. and the Lender identified above wish to enter into this Agreement, whereby BMC will originate Loans, Lender will have the opportunity to extend and/or participate in such Loans, and M.A.M.C. will manage and service such Loans for Lender and all Participants, as applicable.

NOW THEREFORE, in consideration of Ten Dollars paid by Lender to BMC and M.A.M.C., and other good and valuable consideration, the adequacy and receipt of which hereby are acknowledged, the parties agree as follows:

1. Recitals The foregoing Recitals are true, correct and complete, and are incorporated herein by reference.



36 **Part One - Origination of Loans**

37 **2. Origination of Loans.** Lender hereby requests that BMC notify it of the availability of Loans in which  
38 Lender may participate, on the terms and conditions set forth in Part One of this Agreement and BMC hereby agrees to  
39 do so. The parties stipulate and agree that all Loans to be originated under this Agreement are subject strictly to the  
40 provisions of Florida Statutes §494.0043.

41 **3. Notice of Available Loans.** Periodically, BMC will notify Lender that a Loan is available for Lender's  
42 review and provide an information package regarding the available Loan (a "Loan Availability Notice") which will  
43 include, among other information, the interest rate to be charged to the Borrower, the term of the Loan and any interest  
44 reserves and interest guarantees, as contained in the commitment letter issued to the Borrower (the "Loan Commitment").

45 **4. Future Advance Loans.** From time to time, a Borrower under a Loan may request that additional funds be  
46 lent to that Borrower, with repayment secured by the same collateral (a "Future Advance" under a Loan). Provided:  
47 (i) the loan to value ratio of the Loan following the extension of such a Future Advance does not exceed seventy-five  
48 percent (75%); or (ii) the Lender/Participants in the existing Loan consent to the making of the Future Advance pursuant  
49 to a Decision Notice as set forth in Section 11(a) and the loan to value ratio does not exceed eighty percent (80%); then  
50 BMC shall have the right to issue a Loan Availability Notice as to such Future Advance, which shall be processed in  
51 the same manner as an initial Loan and to close the Future Advance.

52 **5. Acceptance of Available Loan or Participation in Loan.** If Lender wishes to participate in the extension  
53 of a particular Loan, Lender shall notify BMC, either by written notice or by e-mail: (i) specifying the amount which  
54 Lender is willing to extend as in connection with the Loan (the "Participation Amount"), which Participation Amount  
55 shall be in the minimum sum of Ten Thousand Dollars (\$10,000.00 US) and in additional Five Thousand Dollar  
56 (\$5,000.00 US) increments; (ii) confirming that Lender has examined and approves all information in the applicable  
57 Loan Availability Notice; and (iii) acknowledging the date by which Lender's funds must be received (an "Acceptance  
58 Notice"). Lender acknowledges that: (i) all Loans simultaneously will be offered to multiple Participants; (ii)  
59 acceptance of any Loan Availability Notice will be on a "first come, first served" basis; and (iii) BMC does not  
60 guarantee that any Loan submitted to Lender for review will remain available, in whole or in part, for acceptance by  
61 Lender for any particular period of time. Lender acknowledges that, except in connection with a particularly small Loan,  
62 most Loans originated by BMC will have multiple Participants. All Acceptance Notices are subject to acceptance by  
63 BMC in its sole and absolute discretion and BMC retains the sole right to decline any Acceptance Notice, or to accept  
64 any Acceptance Notice but to reduce the amount of Lender's Participation Amount, in its sole discretion with or without  
65 cause. BMC will notify each Lender whose Acceptance Notice was received prior to completion of funding of the Loan  
66 and accepted by BMC to participate in the Loan: (i) that the Lender's Acceptance Notice was accepted for participation  
67 in the Loan; (ii) the amount of the Participation Amount confirmed by BMC; (iii) wiring instructions for the transmission  
68 of the Lender's funds for the Participation Amount; (iv) wiring instructions for funding of the Participation Amount; and  
69 (v) confirming the Available Funds Date (an "Acceptance Confirmation").

70 **6. Funding of Loan Participations.** Lender, by the transmission of any Acceptance Notice, agrees to fund the  
71 amount of its Participation Amount as set forth in the Acceptance Notice, no later than the Available Funds Date, in  
72 clear funds actually received into the trust account of Baker Cronig Gassenheimer LLP., as Escrow Agent, pursuant to  
73 the wiring instructions which will be contained in the Acceptance Confirmation. Lender acknowledges that: (i) the Loan  
74 Closing Date for any Loan is an approximate date and may change based upon the Borrower's compliance with the Loan  
75 Commitment executed by the Borrower; (ii) interest and other payments set forth in the Loan Availability Notice will  
76 not commence to accrue until closing of the underlying Loan has occurred; (iii) if closing of the underlying Loan does  
77 not occur, no interest or other payments will be made to Lender and the Lender's Participation Amount will be returned  
78 to Lender or applied toward another Loan at Lender's direction.

79 Lender acknowledges that some Loans may not close due to the Borrower's failure to fulfill the  
80 requirements of the Loan Commitment or for other reasons. BMC will not close any Loan  
81 where the Borrower has not complied with all material conditions of the Loan Commitment,  
82 although BMC reserves the right to modify such terms when, in BMC's reasonable judgment,  
83 such modification will not have a material adverse effect on the lien priority of the Loan or the  
84 loan to value ratio.

7. **Closing of Loans.** Upon full funding of a Loan and fulfillment of all conditions contained in the Loan Commitment, each Loan will be closed and funded. Lender's Participation in the Loan will be titled as set forth at the beginning of this Agreement. All Loans will be closed by BMC's attorneys, Baker Cronig Gassenheimer LLP. The terms of many Loan Commitments will require the posting of funds into trust for interest reserves, construction escrows and for other purposes. All such funds will be held in trust by Baker Cronig Gassenheimer LLP, as Escrow Agent, and disbursed only in accordance with the terms of the Loan Commitment and the Escrow Terms contained in this Agreement. Within five (5) business days of the closing of a particular Loan, BMC will notify Lender of such Closing (a "Loan Closing Notice"). At the next "Lender Payment Date", as set forth in Section 10(e), all amounts due to Lender in connection with a newly closed Loan will be disbursed to Lender by BMC. Copies of all documents executed in connection with the Loan ("Loan Documents") will be posted to BMC's internet website and will be available for Lender's review at that website for a period of seven (7) years following closing of the Loan. BMC reserves the right in its sole discretion to modify the method by which Loan Documents are made available for Lender's review as technology changes and in accordance with all applicable laws. Upon posting of the Loan Documents to the BMC website, all of BMC's obligations in connection with any applicable Loan will be deemed fulfilled, except as to such continuing obligations as may be imposed by Florida or federal law.

8. **Loans Which Do Not Close.** In the event any particular Loan for which Lender has received an Acceptance Confirmation and for which Lender has funded Lender's Participation Amount fails to close, BMC will notify Lender (a "Loan Commitment Termination"). Lender will have a period of five (5) business days from BMC's transmission of the Loan Commitment Termination to notify BMC whether Lender wishes to: (i) reallocate the Lender's Participation Amount, in whole or in part, to another Loan for which BMC has sent a Loan Availability Notice; or (ii) receive a return of Lender's Participation Amount in full. If BMC does not receive any response from Lender to a particular Loan Commitment Termination, it shall be presumed that Lender directs BMC to have Lender's Participation Amount returned to Lender. Such Participation Amounts will be returned by trust check issued by Baker Cronig Gassenheimer LLP, sent to Lender's address stated in this Agreement.

## **Part Two - Loan Servicing**

9. **Appointment of M.A.M.C.** Following the closing of each Loan, responsibility for administration and servicing of the Loan shall be undertaken by M.A.M.C. on the terms and conditions set forth in Part Two of this Agreement. Lender hereby engages M.A.M.C. to administer and service on Lender's behalf all Loans in which Lender participates pursuant to this Agreement, including all Loans originated by BMC prior to the date of this Agreement and previously administered and serviced by BMC Loan Servicing, and M.A.M.C. accepts such engagement. M.A.M.C. shall employ commercially reasonable practices to perform the duties and obligations of M.A.M.C. set forth in this Agreement.

10. **Loan Administration and Servicing.** M.A.M.C. will undertake the following obligations and provide the following services in connection with each Loan (the "Services"):

- a. Confirmation that any improvements of the premises securing each Loan are insured by one or more companies deemed acceptable by M.A.M.C. in amounts at least equal to the outstanding principal balance of each such Loan (and in the amount(s) necessary to comply with any applicable co-insurance provisions); which insurance shall contain a mortgagee clause in accordance with the Borrower Loan Commitment. M.A.M.C. shall hold, on Lender's behalf, all such policies and renewals thereof or, in lieu thereof, a current Certificate of Insurance for each Loan.
- b. Compliance with all applicable State and Federal mortgage lending regulations.
- c. Collection of all monthly and other payments due pursuant to each Loan.
- d. Fulfillment of Lender reporting obligations, and maintenance of appropriate records, with respect to each Loan and providing Lender access to records for all Loan(s) that M.A.M.C. is servicing on Lender's behalf.
- e. Principal reductions and interest disbursements to Lender. M.A.M.C. will make such disbursements on or before the twentieth day of each month as set forth in the Loan Documents applicable to each Loan (the

132 "Lender Payment Date") Such disbursements shall be made to Lender only after receipt of payment by  
133 M.A.M.C. from the Borrower as to each Loan.

134 f. Review of trust records for all interest reserve and other escrow accounts maintained by Baker Cronig  
135 Gassenheimer LLP. as Escrow Agent in connection with Loans.

136 g. Timely payment, from escrow accounts or as provided herein, of applicable taxes, insurance  
137 premiums, and such other payments as may be necessary or appropriate with respect to the each Loan.

138 h. Undertake appropriate escrow analysis, where applicable.

139 i. Maintain necessary or appropriate communications with Lender.

140 j. Process and obtain the consent of Lender with respect to any requests for contractual waivers or  
141 modifications of the Loan terms and/or Loan Documents.

142 k. M.A.M.C. shall have broad discretionary authority to administer and service Loans, including the  
143 decision to declare a Loan in default, to accelerate the maturity date of the Loan, and to initiate foreclosure of  
144 a Loan, however, the settlement of a foreclosure action, bankruptcy action, or other litigation regarding a  
145 Loan whereby any amount less than the outstanding principal balance, note rate interest will be recovered shall  
146 be reserved to the Lender or, in connection with Loans in which there are multiple Participants, the  
147 Participants. In the event of declaration of default in connection with any Loan, M.A.M.C. will have the  
148 authority to retain appropriate professionals, on Lender's behalf, with respect to the commencement and  
149 prosecution of a foreclosure and/or other appropriate action with respect to the property securing such Loan,  
150 or with respect to the acquisition of such property, and, pending completion of such foreclosure or acquisition,  
151 use of reasonable efforts to protect such property from waste, vandalism, theft and/or burglary. Lender(s) shall  
152 reimburse M.A.M.C. for M.A.M.C.'s reasonable out-of-pocket expenses so incurred, including all reasonable  
153 attorneys' fees and costs in connection with any such foreclosure, acquisition or in connection with any other  
154 out-of-pocket expenses incurred by M.A.M.C. pursuant to M.A.M.C.'s responsibilities under this Section 10(k).  
155 Lender hereby appoints M.A.M.C. as Lender's agent to liquidate any real estate beneficially acquired by  
156 Lender in foreclosure or otherwise in connection with the default or threatened default of any provision(s) of  
157 any Loan which has been declared to be in default. In the event Lender acquires beneficial title to any real  
158 estate acquired in foreclosure or in connection with the default or threatened default of any provision(s) of the  
159 Loan, M.A.M.C. shall form a special purpose entity to take such title to the subject property, which shall be  
160 managed by M.A.M.C. on behalf of the Lender or Participants.

161 l. Process any loan assumption requests under the direction of Lender.

162 11. **Provisions Regarding Multiple Participant Loans.** Lender acknowledges that most Loans originated by BMC  
163 will have multiple Participants. As to each such Loan:

164 a. When any provision of this Agreement requires the approval of the Participants, M.A.M.C. will notify  
165 the Participants of the issues which require approval (a "Decision Notice"), which Decision Notice will set forth  
166 in reasonable detail the events which have led to the need for the Participants' decision, and the question or  
167 questions presented to the Participants. Such approval shall be based upon a simple majority vote of the  
168 respective ownership interests in the Loan by those Participants who respond to the Decision Notice within five  
169 (5) business days of transmission of the Decision Notice by M.A.M.C. (a "Majority Decision"). Any  
170 Participant who fails to respond within said five (5) business day period shall be deemed to have delegated to  
171 M.A.M.C. the authority to vote upon the questions presented in the Decision Notice.

172 b. When a Loan is held by multiple Participants and any amount under this Agreement is due to be paid  
173 or reimbursed to M.A.M.C., the Participants shall be responsible for such payment and/or reimbursement on  
174 a *prorata* basis, computed according to their respective undivided interests in the Loan.



12. **Compensation.** M.A.M.C. shall be entitled to payment of compensation for its services rendered in connection with each Loan for which services are provided pursuant to this Agreement, as follows:

a. M.A.M.C. shall receive a fee for its services hereunder, the amount of which shall be set forth in each Loan Availability Notice (the "Service Fee"), paid on a *prorata* basis if the Loan has multiple Participants. M.A.M.C.'s entitlement to the Service Fee for each particular Loan shall be conditioned upon M.A.M.C.'s collection of the Loan payments as to each particular Loan. Service Fees will be deducted from the monthly payments made pursuant to the Loan Documents for each Loan, on a monthly basis, as and when collected. M.A.M.C. also shall be entitled to retain any late payment penalty charges collected for any Loan serviced under this Agreement.

b. In the event the Lender/Participants acquire title to the property which serves as the collateral for any Loan ("Collateral"), M.A.M.C. shall receive for its management of the default and/or foreclosure process a work-out fee (the "Work-Out Fee") equal to fifty percent (50%) of the Net Sale Proceeds received upon the subsequent sale of the Collateral to a third party purchaser or at the judicial foreclosure sale of the Collateral. Net Sale Proceeds shall be defined as the gross sales price received from the buyer of the Collateral, plus any default interest, late fees, attorneys' fees or costs that may be awarded by the Court with respect to the default of the Loan, less the outstanding principal balance of the Loan and note rate interest under the Loan Documents. The Workout Fee shall, in all events, be subordinate to the full return of all principal and unpaid note rate interest to the Lenders.

13. **Banking.** In connection with M.A.M.C.'s responsibilities hereunder, M.A.M.C. shall maintain bank accounts, in such bank or banks as M.A.M.C. may determine in its reasonable discretion. M.A.M.C. reserves the right to designate personnel who shall be authorized to make deposits into and disbursements from such accounts as necessary to carry out M.A.M.C.'s duties hereunder. M.A.M.C. shall have the right, from time to time, to pay appropriate expenses and make disbursements on behalf of Lender(s), including, but not limited to, tax payments, escrow payments, mortgage insurance payments and principal and interest payments to appropriate lenders. The parties mutually agree that any out-of-pocket costs associated with the transfer or disbursement of any funds, as contemplated herein including, but not limited to any, service charges with respect to such accounts, will be borne solely by Lender.

14. **Term and Termination.**

a. Except as specifically provided in this Section 14 with respect to any particular Loan(s), this Agreement shall remain in full force and effect, from the date of the execution of this Agreement through the later of: (i) the date upon which Lender shall notify M.A.M.C. of termination of this Agreement, which shall be ninety (90) calendar days following such notice; (ii) the date upon which M.A.M.C. shall notify Lender of termination of this Agreement, which shall be ninety (90) calendar days following such notice; (iii) the date which is one hundred eighty (180) days following satisfaction or other termination, settlement or adjudication of all Loans in which Lender has participated (including the disposition of any beneficial interest in Collateral obtained in a settlement or foreclosure), during which one hundred eighty (180) day period Lender has not accepted any new Loan Availability Notice. Lender shall have the right to terminate this Agreement as to all Loans serviced by M.A.M.C. for Lender, or only as to specified Loans ("Terminated Loans").

b. In connection with termination of this Agreement by Lender, Lender shall pay to M.A.M.C. a termination fee equal to one percent (1%) of Lender's undivided percentage interests in all Loans which are subject to such termination (the "Termination Fee"), provided however, no Termination Fee shall be payable if:

i. M.A.M.C. files any voluntary petition in bankruptcy, or a receiver or conservator is appointed for the assets of M.A.M.C.;

ii. An involuntary petition in bankruptcy is filed against M.A.M.C. or a third party petition for appointment of a receiver or conservator is filed and any such petition is not dismissed within thirty (30) calendar days after service upon M.A.M.C.

iii. M.A.M.C. assigns or attempts to assign, without Lender's written consent, its rights and obligations hereunder, other than as specifically provided herein.

iv. M.A.M.C.'s mortgage lender's license is revoked by the State of Florida.

c. Upon termination of this Agreement, M.A.M.C. shall account for and turn over to Lender all funds collected by M.A.M.C. with respect to all Loans which are subject to the Termination Notice, together with copies of all material records and documents relating to such Loans.

d. As to any Loan which is subject to this Agreement in which multiple Participants hold undivided interests, Lender shall not have the right to terminate this Agreement unless: (i) Lender shall secure a Majority Decision of all Participants, agreeing to terminate this Agreement as to that particular Loan; and (ii) all Participants shall agree either to service the Loan themselves, appointing one Participant to receive all notices on behalf of all of the Participants; or (iii) all Participants shall appoint a substitute servicing agent for the Loan; and (iv) all Participants shall execute a Termination Notice in writing, notifying M.A.M.C. of: (A) the effective date of termination (which shall not be earlier than ninety (90) days following the date the Termination Notice is delivered to M.A.M.C.); (B) the name and address of the Participant or successor servicing agent to whom all further communications and payments under the Loan should be directed; and (C) indemnifying M.A.M.C., its affiliates, officers, directors, employees and related professionals, from and against all loss, damage or claims which may arise after the effective date of such termination, in the manner described in Section 15(b).

#### 15. Indemnities

a. M.A.M.C. agrees to indemnify and hold harmless Lender and all officers, directors, employees and agents of the Lender from and against any and all (i) claims, demands and causes of actions of any nature whatsoever brought by any person or entity (other than Lender or Lender's assigns or successors-in-interest) and arising from, or related to, the material misrepresentation or material willful breach by M.A.M.C. of any terms of this Agreement; (ii) costs and expenses incident to the defense of such claims, demands and causes of action including reasonable attorney's fees and court costs; and (iii) liabilities, judgments, settlements, penalties and assessments arising from such claims, demands or causes of action.

b. Lender agrees to indemnify and hold M.A.M.C., its officers, directors, employees and agents harmless from and against any and all (i) claims, demands and causes of actions of any nature whatsoever brought by any person or entity (other than M.A.M.C. or M.A.M.C.'s assigns or successors-in-interest) and arising from or related incident to the material misrepresentation or material willful breach by Lender of any terms of this Agreement; (ii) costs and expenses incident to the defense of such claims, demands and causes of action including reasonable attorney's fees and court costs; (iii) liabilities, judgments, settlements, penalties and assessments arising from such claims, demands or cause of action; and (iv) any termination of this Agreement as set forth in Section 14(d).

c. Except as expressly provided herein, the parties agree that Lender's sole liability to M.A.M.C. hereunder shall be with respect to payment of the compensation due M.A.M.C., as provided herein. The parties further agree that M.A.M.C. shall not be liable to Lender, except as specifically provided in Section 14(b) hereof, regarding the waiver of the Cancellation Fee should M.A.M.C. violate any of the provisions of Section 14(b). Without expanding the limitation of the foregoing sentence, the Lender agrees that M.A.M.C. shall not, under any circumstances, be liable to Lender for any breach of warranty, obligation, or negligence, in any amount that is in excess of the total amount of compensation actually paid to M.A.M.C. by Lender for the Loan or Loans which is/are the subject of such claim. In no event shall either Lender or M.A.M.C., or their assigns or successors-in-interest, be liable to the other for incidental or consequential damages, loss of business or profits, or special or indirect damages of any nature whatsoever.

16. Power of Attorney. In connection with all Loans which are subject to this Agreement, M.A.M.C. shall have the power to accept payments of principal and interest, including full or partial prepayments, to issue partial releases from and satisfactions of mortgages and all other Loan Documents, to issue estoppel information, to settle and compromise the debts evidenced in Loan Documents as it shall determine in its reasonable discretion, and in all other

269 respects to deal with the promissory notes, mortgages and other Loan Documents in the same manner as the Lender could  
270 do in Lender's own name. Lender hereby appoints M.A.M.C. and its Senior Vice President and Chief Financial Officer,  
271 Mitchell Morgan, with full power of substitution, Lender's true and lawful attorney in fact for the purpose of carrying  
272 out the foregoing powers and duties and the powers and duties contained in this Agreement. This power of attorney,  
273 being coupled with an interest, shall be irrevocable.

#### 274 Part Three - Lender Qualification

275 17. Lender Qualification. Lender acknowledges and agrees that BMC's notification to Lender of the  
276 availability of one or more Loan(s), and M.A.M.C.'s agreement to service Loan(s) on behalf of Lender is based upon  
277 BMC and M.A.M.C.'s reliance upon the accuracy of the information and representations contained in Lender's  
278 Representation previously completed by Lender. Lender further represents and warrants that Lender shall notify BMC  
279 and M.A.M.C. in the event there is any material change in Lender's financial condition, or with respect to other  
280 information provided by Lender in the Lender's Representation (after the date upon which Lender completed the  
281 Lender's Representation). In the event Lender wishes to acquire Loan Participations for members of Lender's family,  
282 or wishes to transfer Loan Participations in whole or in part following the closing of a Loan, Lender hereby represents  
283 to BMC and M.A.M.C. that such family member will comply with the requirements for being a "Lender" as set forth  
284 in this Agreement and the Lender's Representation.

#### 285 Part Four - Escrow Provisions

286 18. Provisions Relating to Trust Account Funds. In connection with interest reserves and other Loan  
287 proceeds held in trust by Baker Cronig Gassenheimer LLP., as Escrow Agent, the terms and conditions set forth in this  
288 Part Four shall apply.

289 19. Identity of Escrow Agent. The Escrow Agent shall be the law firm Baker Cronig Gassenheimer LLP.  
290 (the "Escrow Agent") The identity of the Escrow Agent may not be changed except as set forth in these Escrow Terms.

291 20. Clearance of Funds. All funds to be held by Escrow Agent must be cleared funds actually received by  
292 the Escrow Agent (hereinafter "Funds") before any obligation of Escrow Agent shall arise hereunder. For purposes of  
293 this Agreement, Funds shall be deemed clear funds only after Escrow Agent's bank has notified Escrow Agent in writing  
294 or electronically of the availability of such Funds.

295 21. Collection of Loan Proceeds. In accordance with Florida Statutes §494.0043, the Escrow Agent will  
296 establish at such Banks as Escrow Agent shall deem proper non-interest bearing escrow accounts for each Loan  
297 originated by BMC ("Pre-Closing Escrows"). Escrow Agent will disburse the Funds from such Pre-Closing Escrows  
298 only as follows: (i) pursuant to the closing statement in connection with the closing of the Loan for which the Pre-  
299 Closing Escrow was established; (ii) to the Lender, if Lender shall cancel its Acceptance Notice as to any particular Loan  
300 prior to the issuance of a Funding Completion Notice for the Loan; (iii) in accordance with the joint direction of the  
301 Lender and BMC; or (iv) in accordance with the order of a court of competent jurisdiction.

302 22. Post Closing Escrows. As to any Funds delivered to the Escrow Agent for the purpose of funding Interest  
303 Reserves, Construction Escrows, Development Escrows or for other escrow purposes ("Post-Closing Escrows"), the  
304 Escrow Agent will establish at such Banks as Escrow Agent shall deem proper interest bearing escrow accounts for  
305 each Loan originated by BMC, with interest accrued for the benefit of the Borrower ("Post-Closing Escrows").  
306 Escrow Agent will disburse the funds from such Post-Closing Escrows only as follows: (i) payments for Interest  
307 Reserves will be disbursed in accordance with the terms of the promissory note executed in connection with the Loan;  
308 (ii) Construction Escrows shall be disbursed in accordance with a construction loan agreement executed in connection  
309 with the Loan; (iii) Development Escrows shall be disbursed in accordance with the Loan Documents executed in  
310 connection with the Loan; (iv) other types of escrowed funds shall be disbursed in accordance with supplemental escrow  
311 instructions to be executed in connection with the Loan; (v) to M.A.M.C. as servicing agent for the Lender in the event  
312 of default under the Loan in accordance with the terms and conditions of the Loan Documents or the orders of a court  
313 of competent jurisdiction entered in any foreclosure action; (vi) in accordance with the joint direction of the Borrower  
314 and M.A.M.C.; or (iv) otherwise in accordance with the order of a court of competent jurisdiction..

315 23. **Duties of Escrow Agent.** Escrow Agent shall rely upon any written notice provided to Escrow Agent by  
316 BMC, M.A.M.C., Lender as to Pre-Closing Escrows and Borrower as to Post-Closing Escrows, pursuant to this  
317 Agreement in determining who is entitled to any Funds held by Escrow Agent, and in the event Escrow Agent so relies,  
318 each party to whom or which such disbursements are made will indemnify and hold Escrow Agent harmless from any  
319 and all claims or liabilities Escrow Agent may incur, including any attorneys' fees. Escrow Agent may act in reliance  
320 upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and  
321 accuracy of any statements or assertion contained in such writing or instrument; and may assume that any person  
322 purporting to give any writing or instrument; and may assume that any person purporting to give any writing, notice,  
323 advice or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow Agent shall  
324 not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written  
325 instruments delivered to it, nor as to the identity, authority, or rights of any person executing the same. The duties of  
326 Escrow Agent shall be limited to the safekeeping of the escrow Funds and to disbursements of same in accordance with  
327 this Agreement. Escrow Agent undertakes to perform only such duties as are expressly set forth herein, and no implied  
328 duties or obligations shall be read into this Agreement against Escrow Agent. Upon Escrow Agent's full disbursement  
329 of any escrow bank account in accordance with the provisions hereof, the escrow shall terminate as regards the Funds  
330 which were held in such account, and Escrow Agent shall thereafter be released of all liability hereunder in connection  
331 therewith.

332 24. **Provisions Benefitting Escrow Agent.** Escrow Agent may consult with counsel of its own choice and shall  
333 have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and  
334 in accordance with the opinion of such counsel. Escrow Agent shall not be liable for any mistakes of fact or error of  
335 judgment, or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence, and all  
336 parties agrees to indemnify and hold Escrow Agent harmless from any claims, demands, causes of action, liabilities,  
337 damages, or judgments, including the cost of defending any action against it, or prosecuting or defending crossclaims,  
338 counterclaims or actions for declaratory relief or inter pleader, together with any reasonable attorneys' fees incurred  
339 therewith either in original, appellate or administrative proceedings in connection with Escrow Agent's undertaking  
340 pursuant to the terms and conditions of this Agreement, unless such act or omission is a result of the willful misconduct  
341 or gross negligence of Escrow Agent.

342 25. **Conflicting Claims for Escrow Funds.** Should Escrow Agent receive conflicting notices or demands for  
343 Funds held in escrow on behalf of any party, Escrow Agent shall either promptly seek an adjudication of the matter by  
344 interpleader or otherwise. Escrow Agent shall be indemnified by the applicable parties, jointly and severally, for all  
345 costs, including reasonable attorneys' and paraprofessional fees, at trial and upon appeal, in connection with the aforesaid  
346 arbitration or interpleader action, and shall be fully protected in suspending all or a part of its activities under this  
347 Agreement until a final judgment in the interpleader action, if applicable, is received. Escrow Agent shall continue to  
348 hold the disputed Funds during the resolution of any conflict by arbitration; provided, however, Escrow Agent may  
349 interplead any Funds and not hold the same pursuant to this Agreement at any time. No liability shall attach to Escrow  
350 Agent for its act or those of its officers in connection with this Agreement unless the same are done or performed in bad  
351 faith.

352 26. **Resignation.** Escrow Agent may resign at any time upon the giving of thirty (30) calendar days' written notice  
353 to BMC and M.A.M.C. If a successor escrow agent is not appointed within thirty (30) calendar days after notice of  
354 resignation, Escrow Agent may petition any court of competent jurisdiction to name a successor escrow agent and  
355 Escrow Agent herein shall be further relieved of all liability under this Agreement to any and all parties, upon the transfer  
356 of and due accounting for the escrow Funds to the successor escrow agent either designated by BMC and M.A.M.C.  
357 or appointed by the court. All and any ordinary and necessary expenses connected therewith incurred by Escrow Agent,  
358 including attorneys' fees shall be paid by BMC and/or M.A.M.C. as applicable.

359 27. **Replacement Escrow Agent.** BMC or M.A.M.C., as applicable, may, at its discretion, replace the Escrow  
360 Agent upon no less than sixty (60) days written notice. Escrow Agent agrees that, upon written notice by BMC or  
361 M.A.M.C., as applicable,, it will deliver all Funds held by it to the replacement escrow agent, provided the replacement  
362 escrow agent is a bank or trust company having trust powers or an attorney who is a member of the Florida Bar. Upon  
363 any such transfer of Funds to any such successor escrow agent, Escrow Agent shall be relieved of all liabilities and  
364 obligations hereunder and BMC and/or M.A.M.C., as applicable, agrees to indemnify and hold Escrow Agent harmless  
365 from and against any and all liabilities, including attorneys' fees in connection with the delivery of Funds to any such  
366 successor escrow agent.

28. **Deposit of Funds.** Escrow Agent will hold all escrow funds in FDIC insured accounts, which accounts shall not bear interest.

29. **Instructions to Escrow Agent.** The following procedure shall be used by the parties concerning instructions to Escrow Agent:

a. All instructions to Escrow Agent shall be in writing and signed by the person or persons issuing such instructions. Any instructions which are jointly authorized by all parties shall be signed by all persons.

b. Except as may otherwise be set forth herein to the contrary, Escrow Agent shall only take direction by BMC or M.A.M.C., as applicable, and shall not take direction from any Lender or Borrower. The duties of Escrow Agent shall be limited to the safekeeping of the Funds and for disbursements of same in accordance with the written instructions described above.

c. BMC or M.A.M.C., as applicable, shall immediately deliver to Escrow Agent copies of any written notice or request from a Lender or Borrower relating to this Agreement.

30. **Monthly Statements.** The Escrow Agent will send monthly statements regarding all Escrow Accounts to BMC or M.A.M.C., as applicable, at the address set forth above.

#### **Part Five - Other Provisions**

31. **Notices.** For all notices required or permitted to be sent to Lender pursuant to this Agreement, such notices shall be sent to Lender to the address and in accordance with the preferred method of notice set forth at the beginning of this Agreement. For all notices required or permitted to be sent to BMC or M.A.M.C. pursuant to this Agreement, such notices shall be sent to 501 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida. For all notices required or permitted to be sent to Baker Cronig Gassenheimer LLP, such notices shall be sent to 307 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida 33133. Any one of the following methods of delivery shall be sufficient: (i) United States certified mail, return receipt requested, which notice shall be conclusively presumed delivered three business days following mailing; (ii) Federal Express or similar commercial overnight service, which notice shall be conclusively presumed delivered in accordance with the carrier's delivery records, but in no event later than three business days following delivery to the carrier; (iii) by commercial courier with either a receipt for delivery signed by the addressee or a sworn affidavit executed by the courier that delivery was attempted but the addressee was absent or refused to sign or that delivery was refused; or (iv) by telefacsimile, with written confirmation showing the date and time of transmission and the number of pages transmitted.

32. **Consent to Assignment by BMC Loan Servicing.** Lender hereby consents and agrees to the assignment of servicing rights of all Loans extended previously by Lender and currently being administered by Berman Mortgage Corporation d/b/a BMC Loan Servicing.

33. **Assignment by Lender of Loan Participations.** Lender shall have the right to assign its interests in any Loan, in whole or in part, provided, however, no such assignment shall become effective as to M.A.M.C. until Lender shall have provided M.A.M.C. with at least ten (10) business days notice of each such assignment prior to any particular Lender Payment Date and shall have paid an administrative fee to M.A.M.C. for the modification of M.A.M.C.'s records and disbursement instructions regarding the Loan. All such Assignments must be effected by the recording of an assignment of Lender's undivided interest, signed by Lender and by M.A.M.C. and filed for record in the public records of the County in which the Loan Collateral is located.

34. **Miscellaneous**

a. This Agreement contains all the terms and conditions agreed upon by the parties with reference to the subject matter and supersedes any and all previous agreements, representations and communications, whether written or oral. This Agreement may not be modified or changed except by written instrument signed by all of the parties, or their respective successors or assigns; provided, however, that BMC and/or M.A.M.C. shall have the right to modify and amend this Agreement upon thirty (30) calendar days written notice sent to Lender and, if Lender shall not object to such

amendment in writing, such amendment shall become effective thirty-one (31) calendar days following notice thereof sent to Lender.

b. This Agreement shall not be assigned or be assignable by either party without the express written consent of the other parties herein, which consent shall not be unreasonably withheld; provided, however, that M.A.M.C. may freely assign its position hereunder to an entity wholly owned or controlled by M.A.M.C. and/or its principal shareholder(s). This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties and their respective successors and assigns any rights or remedies under or by reason of the Assignment.

c. This Agreement has been entered into in, and shall be governed by, construed, and enforced in accordance with the laws of, the State of Florida. The venue for any litigation regarding this Agreement shall be, for all purposes, the State courts located in Miami-Dade County, Florida, which is the situs of execution of the Agreement, notwithstanding the fact that the Collateral for any particular Loan may be located elsewhere.

d. Each of the parties hereto shall use all reasonable efforts to bring about the transactions contemplated by this Agreement as soon as practicable, including the execution and delivery of all instruments, assignments and assurances. The parties hereto shall take, or cause to be taken, such reasonable further or other actions necessary or desirable in order to carry out the intent and purposes of this Agreement.

e. In the event a lawsuit is brought to enforce or interpret any part of this Agreement or the rights or obligations or any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such lawsuit, including any attorneys' fees and costs incurred at the appellate level(s).

f. In the event that any provision(s) of this Agreement shall finally be determined to be unlawful, such provision shall be, to the extent possible, narrowly construed in such manner as to make it lawful, if possible, or, if a narrower construction is not possible, such provision(s) shall be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

g. Each party hereto has been represented (or had the opportunity to be represented) by independent counsel; therefore, no party to this Agreement shall be deemed the drafter of this Agreement, and no provision of this Agreement shall be construed against any party to this Agreement on the ground that such party is the drafter.

h. This Agreement shall not in any respect be interpreted, deemed, or construed as making the parties partners with one another, or as creating or constituting any partnership or joint venture.

IN WITNESS WHEREOF, the parties have executed this Agreement the dated and year first written above at Miami, Miami-Dade County, Florida.

Berman Mortgage Corporation

By: \_\_\_\_\_  
Dana J. Berman, President

\_\_\_\_\_, Lender / Print

M.A.M.C. Incorporated

By: \_\_\_\_\_  
Dana J. Berman, President

\_\_\_\_\_, Lender / Print

S:\Steve\Berman\Administrative\BMC MAMC Loan Servicing Agreement (4).wpd  
File #10057-282; December 1, 2006  
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## LENDER'S REPRESENTATION

THIS LENDER'S REPRESENTATION is provided by [REDACTED] (the "Lender") to Berman Mortgage Corporation, a Florida corporation, and to M.A.M.C. Incorporated, a Florida corporation (M.A.M.C. Incorporated and Berman Mortgage Corporation are, collectively, referred to herein as the "Company").

### 1. Reliance Upon Lender's Representations, Warranties and Covenants

By the Lender's signature below, the Lender makes the representations, warranties and covenants set forth herein as an inducement to the Company to enter into that certain Loan Origination and Loan Servicing Agreement by and between the Company and the Lender, and to consider providing the Lender with the opportunity to participate in extending mortgage loan(s) to borrowers who approach Berman Mortgage Corporation for mortgage loan financing (the "Loan(s)"). In addition to the representations, warranties and covenants set forth herein, the Lender affirmatively undertakes to advise the Company, in writing, of any material change in any such representations, warranties and covenants.

### 2. Lender's Representations, Warranties and Covenants

The Lender hereby represents, warrants and covenants to the Company as follows:

(a) The Lender is an Accredited Investor, as defined under the Securities Act of 1933, as amended (the "Act") (see definitions attached hereto as Exhibit A) and has sufficient knowledge and experience in financial matters, either alone or in conjunction with the Lender's investment and legal advisors, to be capable of evaluating the merits and risks of participating in the Loan(s).

(b) The Lender will be participating in the Loan(s) solely for investment purposes for the Lender's own account and not with a view to the sale, distribution, fractionalization or other disposition of any interest in any Loan;

(c) The Lender is able to bear the economic risks of participating in the Loan(s), including the risk of losing all of the Lender's participation in the Loan(s). The Lender is aware of the limited ability to sell, transfer or otherwise dispose of any interest which the Lender may acquire in any Loan(s);

(d) The Lender and/or the Lender's representative has such knowledge and experience in financial and business matters and can evaluate the merits and risks of participating in any Loan and has obtained, and will obtain prior to participation in any Loan(s), sufficient information to enable the Lender and/or the Lender's representative to evaluate the merits and risks of participating in any Loan(s); and

(e) The Lender understands that the Lender must bear the economic risk of any interest which the Lender may obtain in any Loan for an indefinite period of time.

487 (f) The Lender understands that the Lender should carefully consider the risks  
488 of participating in Loan(s) generally, as well as the specific risks related to any particular Loan;  
489 and that a determination to participate in any Loan(s) involves a degree of risk and is speculative  
490 in nature.

491 (g) The Lender and/or the Lender's representative understand that the Lender  
492 and/or the Lender's representative have the opportunity (and the obligation) to make inquiries of  
493 the Company through the Company's president and/or authorized representatives to obtain any  
494 information regarding any Loan, the terms thereof or any borrower prior to making a decision to  
495 participate in any Loan(s). Accordingly the Lender will, directly or through Lender's  
496 representative, request, on an on-going basis, such information that the Lender may require with  
497 respect to the Lender's decision to participate in any particular Loan; and that, in connection  
498 with such inquiry, any documents which the Lender wishes to review (to the extent that the  
499 Company possesses such information or can acquire it without unreasonable effort or expense)  
500 will be made available for inspection and copying or provided, upon request, subject to the  
501 Lender's agreement to maintain such information in confidence and to return the same to the  
502 Company if the Lender does not elect to participate in any particular Loan.

503 (h) The Lender will immediately notify the Company, in writing, if the  
504 Lender's financial net worth and/or ability to bear the economic risks of participating in any  
505 Loan(s) change at any time subsequent to the date hereof.

506 IN WITNESS WHEREOF, the undersigned, with the understanding that the Company  
507 will rely upon the accuracy and completeness of the foregoing representations, warranties and  
508 covenants, has executed this Lender's Representation on the [ ] day of [ ],  
509 [ ].

510 LENDER:

511 [Signature]

512 [ ] Lender / Print

513 [Signature]

514 [ ] Lender / Print



## Exhibit A

### ACCREDITED INVESTOR RULES

**Rule 230.215 Accredited Investor.** The term "Accredited Investor" as used in Section 2 (1 5)(ii) of the Securities Act of 1933 shall include the following persons;

Any savings and loan association or other institution specified in Section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of Table I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

- b. Private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
- c. Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- d. Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
- e. Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchaser exceeds \$1,000,000;
- f. Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

552 g. Any trust, with total assets in excess of \$5,000,000, not formed for  
553 the specific purpose of acquiring the securities offered, whose  
554 purchase is directed by a sophisticated person as described in  
555 Section 230.505(b)(2)(ii); and

556 h. Any entity in which all of the equity owners are accredited  
557 investors.

558 ***Additional Rule 504 Categories:***

559 1. Any natural person who purchases \$10,000 or more and purchaser's total  
560 investment does not exceed five (5%) percent of such purchaser's net worth;

561 2. Purchaser has had net income in excess of \$70,000 per year for the preceding two  
562 years with a reasonable expectation of earning the same or more in the current year, provided  
563 such purchaser's investment cannot exceed ten (10%) percent of purchaser's current year income,

564 ***Section 230.506(b)(2)(ii): Nature of Purchasers.*** Each purchaser who is not an accredited  
565 investor either alone or with his purchaser representative(s) has such knowledge and experience  
566 in financial and business matters that he is capable of evaluating the merits and risks of the  
567 prospective investment, or the issuer reasonably believes immediately prior to making any sale  
568 that such purchaser comes within this description.

569 ***Regulation D.*** Section 230.501 incorporates the foregoing as the definition of accredited  
570 investor and specifically added: (I) the term "bank" at each reference to savings and loan  
571 association; and; (ii) Small Business Investment Companies licensed pursuant to Section 301(c)  
572 or (d) of the Small Business Investment Act of 1958; and iii) added the following insurance  
573 company, or registered investment adviser to paragraph (a) above to further define "plan  
574 fiduciary" therein.