

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

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.

**RECEIVER'S MOTION TO APPROVE THE SALE TO THIRD PARTY OF THE
M.A.M.C. LENDERS' LOAN TO MIAMI HEALTH DISTRICT HOLDINGS, LLC, AND
FOR AN ORDER AUTHORIZING THE DISTRIBUTION OF THE SALE PROCEEDS
IN ACCORDANCE WITH THE MOTION**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Dana J. Berman, Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta, LLC, et al., files this Motion to Approve the Sale to a Third Party of the M.A.M.C. Lenders' Loan to Miami Health District Holdings, LLC, which loan is a Receivership Asset held by Defendant M.A.M.C. Incorporated, and states:

BERGER SINGERMANN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

THE ORIGINAL
FILED ON:
SEP 15 2009
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

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 this Court.

2. Among the Defendants is M.A.M.C. Incorporated. As a Defendant, M.A.M.C. Incorporated is a receivership asset subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and subject to 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. [Incorporated], and Relief Defendants, 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 person, tangible and intangible, of whatever kind and description, wherever situation 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); *see also*, Receivership Order, ¶ 13 (specifically recognizing Michael I. Goldberg as "the Receiver for ... M.A.M.C. Incorporated").

3. Certain M.A.M.C. Lenders hold the ownership rights to a mortgage and note in the principal amount of \$2,550,000 (the "Mortgage Note") secured by a first mortgage upon property located at Lots 1 & 2, Block E, HIGHLAND PARK, according to the plat thereof, as recorded in Plat Book 2, Page 13 of the Public records of Dade County, Florida, known as Miami-Dade County, Florida; together with Lots 3 & 4, Block E, HIGHLAND PARK, according to the plat thereof, as recorded in Plat Book 2, Page 13 of the Public records of Dade County,

Florida, known as Miami-Dade County, Florida (the "Property"), which Property is owned by the borrower, Miami Health District Holdings, LLC ("Miami Health").

4. Miami Health is in default under the Mortgage Note. The full principal amount of the Mortgage Note plus accrued and default interest are due and owing.

5. The Mortgage Note is an asset of Defendant M.A.M.C. Incorporated, who acts as servicing agent and attorney in fact for the M.A.M.C. Lenders. Thus, pursuant to the Receivership Order, the Mortgage Note is a receivership asset under the exclusive control of the Receiver.

6. Subject to this Court's approval, the Receiver has entered into an agreement ("Proposed Sale") to sell the Mortgage Note to Perfume Paradise Ltd. and or its assignee.

7. Pursuant to the Receivership Order, this Court has authorized the Receiver to preserve and recover the assets of the Relief Defendants on behalf of the Receivership.

institute, defend, compromise, or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be 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.

8. Importantly, this Court has previously authorized the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants:

The Receiver is further authorized to ... execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls[.]

Receivership Order, ¶ 21.

9. The Receiver seeks to sell the Mortgage Note to Perfume Paradise Ltd. pursuant to the terms of the Proposed Sale and assign the interest of the M.A.M.C. Lenders in the Mortgage Note to the buyer pursuant to the "Assignment of Mortgage" attached hereto as **Exhibit A**.

10. Under the terms of the Proposed Sale, Perfume Paradise LTD. will pay the Receivership \$1.55 Million for the benefit of the Lenders in exchange for M.A.M.C. Incorporated's assignment of the Mortgage Note, as the Servicing Agent and Attorney in Fact for the Lenders.

11. The Receiver has been advised that it is unlikely that the value of the subject property is in excess of the amount being offered by Perfume Paradise LTD. for the purchase and sale of the Mortgage Note pursuant to the Proposed Sale. The Proposed Sale and closing of the sale of the Property, if consummated, will recover over 60% percent of the loan principal for the Lenders and will spare the Receivership the costs associated with instituting foreclosure proceedings on the Property (including obtaining the foreclosure sale of the Property) and marketing the Property for sale, including the concomitant professional fees and carry costs. Therefore, the Receiver believes that the Proposed Sale is in the interest of the Lenders.

12. Pursuant to the Loan Origination and Servicing Agreement ("LOSA") between the Lenders and M.A.M.C Incorporated and executed by each of the Lenders, the Lenders appointed M.A.M.C. Incorporated as their agent to declare any loan in default, to initiate foreclosure of any loan, and to liquidate any real estate beneficially acquired in foreclosure. However, the LOSA reserves to the Lenders the decision to settle a loan in any amount less than the outstanding principal balance of the loan plus accrued interest will be recovered. See LOSA

attached hereto as **Exhibit B** at ¶10k. The LOSA also provides in that section that MAMC is entitled to recover costs incurred in the foreclosure action including but not limited to legal costs.

13. In the interest of providing all interested parties with notice and opportunity to be heard with regard to the terms of the Proposed Sale, the Receiver has filed the instant Motion rather than utilize the alternative Decision Notice procedures outlined in the LOSA. Pursuant to the procedure previously established by this Court, a copy of this Motion and notice of hearing thereon are being posted on the Receiver's website, which website is available to all MAMC Lenders. Notice of the posting is simultaneously emailed to all M.A.M.C. Lenders.

14. By this Motion, the Receiver requests a Court Order approving the Proposed Sale, approving the Receiver's execution of the Assignment of Mortgage, and authorizing the Receiver to close on the Proposed Sale and to execute all appropriate documents to effectuate the Proposed Sale and assignment of the Mortgage Note.

15. By this motion, the receiver requests a Court Order authorizing the following distribution from the net proceeds of the sale:

- (a) The Receiver seeks to reserve \$40,000.00 for attorney's fees and costs incurred by Berger Singerman P.A. and Akerman Sentefitt with respect to representation of the Receiver in this matter, including the preparation of the assignment documentation and this motion and through any hearings thereon and closing on the Proposed Sale. Any distribution from the reserve will be the subject of a future application for fees in this Court, with any unused portion distributed to the Lenders.

- (b) The Receiver further seeks authority to pay 2% of the gross sale proceeds to the receivership estate in accordance with prior Orders of the Court to cover administrative expenses totaling approximately \$31,000.
- (c) The Receiver further seeks the authority to distribute to the Lenders the remaining net proceeds on a pro-rata basis in accordance with the loan documents of the loan to Miami Health District Holdings, LLC.

WHEREFORE, the Receiver moves this Court for entry of an Order

- (a) finding that the posting and distribution procedures established by the Court and followed by the Receiver provide adequate notice of the instant Motion and of the hearing thereon;
- (b) approving the Proposed Sale of the Receivership Asset (the Mortgage Note) held by Defendant M.A.M.C. Incorporated,
- (c) approving the Receiver's execution of the Assignment of Mortgage and authoring the Receiver to close on the Proposed Sale;
- (d) authorizing the Receiver to file and/or execute any and all additional documents appropriate to effectuate the terms of the Proposed Sale and assignment of the Mortgage Note;
- (e) authorizing the reserve and distribution of the net proceeds of the Proposed Sale as set forth in this motion and authorizing Receiver to distribute same; and
- (f) awarding such other and further relief this Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 15th day of September 2009, to the attached service list.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

1000 Wachovia Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

Phone: (305) 755-9500 / Fax: (305) 714-4340

By: _____


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OFFICE OF FINANCIAL REGULATION

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Darlene Levasser, Robert Dzimidas IRA,

Lawrence Meyer IRA, Lawrence Meyer Roth IR

and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA

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Counsel for Flagstar Bank

ADORNO & YOSS, LLP

2525 Ponce de Leon Boulevard, Suite 400

Coral Gables, Florida 33134

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)*

Posted to the Berman Mortgage Website

BERGER SINGERMANN
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Boca Raton Fort Lauderdale Miami Tallahassee

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This instrument prepared by:

Name: David C. Ristaino, Esq.
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Las Olas Centre II, Suite 1600
350 East Las Olas Blvd.
Fort Lauderdale, FL 33301-2229
Telephone: (954) 468-2460

ASSIGNMENT OF MORTGAGE

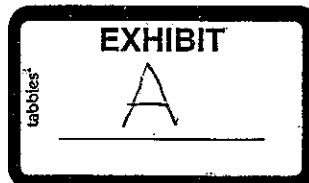
WITNESSETH: that Michael I. Goldberg, as Receiver of M.A.M.C. Incorporated, f/k/a Berman Mortgage Corporation and M.A.M.C. Inc., a Florida corporation, as the Servicing Agent and Attorney in Fact Assembling a Group Of Lenders Assembled By and Through Berman Mortgage Corporation whose address is 3250 Mary St. #402 Coconut Grove, Florida 33133 (the "Assignor"), in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable considerations received at or before the ensealing and delivery of this instrument, the receipt and sufficiency whereof are hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over to Perfume Paradise, Limited, whose address is _____ (the "Assignee"), all of the Assignor's right, title and interest in and to that certain Mortgage and Security Agreement dated November 6, 2006 and recorded on November 8, 2006, in Official Records Book 25082, beginning at Page 2194, of the Public Records of Miami-Dade County, Florida (the "Mortgage"), together with Assignor's interest in the following instruments:

1. Promissory Note dated November 6, 2006, made by Miami Healthy District Holdings, LLC ("MHDH") to the Lender as defined therein in the original principal amount of \$2,550,000.00 (the "Note");
2. Assignment of Leases and Rentals dated November 6, 2006, and recorded on November 8, 2006, in Official Records Book 25082, beginning at Page 2211, of the Public Records of Miami-Dade County, Florida (the "Assignment");

The Mortgage, Note and Assignment are hereinafter referred to as the "Assigned Documents." The unpaid principal balance due under the Note as of the date hereof is \$2,550,000.00.

TO HAVE AND TO HOLD the same unto the Assignee and the Assignee's successors and assigns forever.

3. This Assignment is made **WITHOUT RECOURSE**, "AS IS WHERE IS, WITH ALL FAULTS" and without representation or warranty, and the Assignor hereby disclaims all representations and warranties that would otherwise be implied into this Assignment under the Uniform Commercial Code and other



applicable law. This Assignment is made by the Assignor without any representations or warranties whatsoever, whether expressed, implied, or imposed by law. Without limiting the generality of the foregoing, this Assignment is made without any representations or warranties with respect to:

- a. the genuineness of any signature other than those made by or on behalf of the Assignor in connection with this Assignment;
- b. the collectibility of any amount owed to the Assignor under any of the Assigned Documents by MHDH;
- c. the financial condition of MHDH;
- d. the legality, validity, sufficiency, or enforceability of any of the Assigned Documents;
- e. the validity, enforceability, attachment, priority, or perfection of any security interest, attachment, relief, encumbrance or mortgage included in the Assigned Documents, or the compliance with applicable law of any proceedings commenced or followed by the Assignor with respect to the Assignor's loan arrangements with MHDH;
- f. the existence, or applicability, of any claims or causes of action under any state and Federal fraudulent transfer and conveyance laws, insolvency laws, and judicially developed doctrines relevant, or similar, to any of the foregoing laws, such as preference actions, equitable subordination and the like, whether under bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights and remedies of creditors, or other applicable law, that may result in the avoidance, subordination, setting aside, or invalidation of the Assigned Documents, or otherwise modify or affect the validity, enforceability, or priority, of the Assigned Documents or any of the claims evidenced thereby or the liens, pledges, and/or security interests granted thereunder or in connection therewith; and/or
- g. the existence, value, access to, or condition of any collateral granted (or purported to be granted) to the Assignor under the Assigned Documents, including, without limitation, as to any environmental matters (including, without limitation as to the existence of lead paint, asbestos, urea formaldehyde foam insulation, radon or any other material, hazardous or otherwise), the existence of health, building or other code violations and/or the existence, identity or number of tenants or other occupants at any real estate collateral.

The Mortgage encumbers real property located in Miami-Dade County, Florida more particularly described in the attached Schedule "A".

The Assignee acknowledges that by Order dated December 11, 2007, issued by the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Court") in Case No. 07-43672 CA 09 (the "Receivership Case"), Michael I. Goldberg was appointed as receiver for Assignor ("Receiver"). The Receiver shall have no personal liability or obligation under the Note or under this Agreement or any of the Assigned Documents.

This Assignment is being executed pursuant to the Order granting Receiver's Motion to Approve entered September __, 2009 in the Receivership Case.

WITNESS the due execution hereof as of September __, 2009.

Signed, sealed and delivered in the presence of:

Michael I. Goldberg, as Receiver of M.A.M.C. Incorporated, f/k/a Berman Mortgage Corporation and M.A.M.C. Inc., a Florida corporation, as the Servicing Agent and Attorney in Fact Assembling a Group Of Lenders Assembled By and Through Berman Mortgage Corporation

Print Name:

By: _____
Michael I. Goldberg, not individually but only in his capacity as Receiver

Print Name:

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of September, 2009 by Michael I. Goldberg, as Receiver of M.A.M.C. Incorporated, f/k/a Berman Mortgage Corporation and M.A.M.C. Inc., a Florida corporation, as the Servicing Agent and Attorney in Fact Assembling a Group Of Lenders Assembled By and Through Berman Mortgage Corporation. Such individual ☐ personally appeared before me and is personally known to me or ☐ has produced _____ as identification.

Notary: _____
Print Name: _____
Notary Public, State of _____
My Commission Expires: _____
Commission Number: _____

SCHEDULE "A"

LEGAL DESCRIPTION

Lots 1 and 2, Block E, HIGHLAND PARK, according to the Plat thereof, as recorded in Plat Book 2 at Page 13 of the Public Records of Dade County, Florida, now know as Miami-Dade County, Florida; together with Lots 3 and 4, Block E, HIGHLAND PARK, according to the Plat thereof, as recorded in Plat Book 2 at Page 13 of the Public Records of Dade County, Florida, now know as Miami-Dade County, Florida.

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.

EXHIBIT

tabbles

B

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.

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

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

109 **Part Two - Loan Servicing**

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

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

119 a. Confirmation that any improvements of the premises securing each Loan are insured by one or more
120 companies deemed acceptable by M.A.M.C. in amounts at least equal to the outstanding principal balance of
121 each such Loan (and in the amount(s) necessary to comply with any applicable co-insurance provisions); which
122 insurance shall contain a mortgagee clause in accordance with the Borrower Loan Commitment. M.A.M.C.
123 shall hold, on Lender's behalf, all such policies and renewals thereof or, in lieu thereof, a current Certificate
124 of Insurance for each Loan.

125 b. Compliance with all applicable State and Federal mortgage lending regulations.

126 c. Collection of all monthly and other payments due pursuant to each Loan.

127 d. Fulfillment of Lender reporting obligations, and maintenance of appropriate records, with respect to
128 each Loan and providing Lender access to records for all Loan(s) that M.A.M.C. is servicing on Lender's
129 behalf.

130 e. Principal reductions and interest disbursements to Lender. M.A.M.C. will make such disbursements
131 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

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

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

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

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

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

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

381 **Part Five - Other Provisions**

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

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

398 33. **Assignment by Lender of Loan Participations.** Lender shall have the right to assign its interests in any
399 Loan, in whole or in part, provided, however, no such assignment shall become effective as to M.A.M.C. until Lender
400 shall have provided M.A.M.C. with at least ten (10) business days notice of each such assignment prior to any particular
401 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
402 and disbursement instructions regarding the Loan. All such Assignments must be effected by the recording of an
403 assignment of Lender's undivided interest, signed by Lender and by M.A.M.C. and filed for record in the public records
404 of the County in which the Loan Collateral is located.

405 34. **Miscellaneous**

406 a. This Agreement contains all the terms and conditions agreed upon by the parties with reference to the
407 subject matter and supersedes any and all previous agreements, representations and communications, whether written
408 or oral. This Agreement may not be modified or changed except by written instrument signed by all of the parties, or
409 their respective successors or assigns; provided, however, that BMC and/or M.A.M.C. shall have the right to modify and
410 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 of 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

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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 [REDACTED] day of [REDACTED],
509 [REDACTED].

510 LENDER:

511 [REDACTED] [Signature]

512 [REDACTED], Lender / Print

513 [REDACTED] [Signature]

514 [REDACTED], 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.