

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.

**RECEIVER'S MOTION TO DETERMINE PROCEDURES BY WHICH
RECEIVER CAN MAKE DECISIONS ON SPECIFIC LOANS OR PROJECTS**

Receiver Michael I. Goldberg, Esquire, ("Receiver"), moves this court to determine exact procedures by which Receiver can make decisions on specific loans and/or projects and as grounds in support thereof, states as follows:

1. On December 11, 2007, Michael Goldberg was appointed as State Court Receiver in this matter.
2. The receivership estate includes approximately \$192,000,000.00 of investor money secured by approximately 40 different real estate projects through mortgages against real estate.

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

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3. At this time, the internal structure for the decision making process at M.A.M.C. Incorporated entails that The Investor Group individuals voting on specific matters must have an approval percentage rate of over 50.01%.

4. The Receiver, in an effort to expedite and assure that ALL decisions pertaining to loans and/or projects are conducted effectively and accurately, moves this Court to allow him to send to The Investor Group Non-Emergency Notices by U.S. Mail (allowing 10 days to respond) and Emergency Notices by E-mail and/or Federal-Express (allowing 5 days to respond).

5. In the event that any individual in The Investment Group fails to respond to any Non-Emergency Notice and/or Emergency Notice as stated in Paragraph 4, and failure to respond constitutes an approval percentage rate of less than 50.01%, the Receiver shall then have full power and authority to exercise and implement his own decision and/or response in place of the individual in The Investment Group who failed to respond.

6. Moreover, the Receiver will post **ALL** Non-Emergency and Emergency Notices on his website immediately after service of same on The Investor Group individuals.

**FACTUAL BACKGROUND OF THE
DEFENDANT COMPANIES IN RECEIVERSHIP**

1. **BERMAN MORTGAGE CORPORATION:** This entity is a licensed mortgage lender whose primary role in this group of entities was to broker what the company refers as to hard money high interest high risk loans, to various real estate ventures. As a broker it charged fees to the borrowers paid at the time of closing from the loan proceeds. After an individual loan was closed, Berman Mortgage Corporation had very little other involvement. This company also had a residential mortgage brokering business which was another source of income, brokering loans on behalf of borrowers through various commercial lenders.

2. **M.A.M.C. INCORPORATED:** This entity was also a licensed mortgage lender whose primary role in the organization was to act as the loan servicing agent for the brokered hard money loans. M.A.M.C. Incorporated would raise capital to make the loans brokered by Berman Mortgage Corporation through a group of approximately 690 investors ("The Investor Group"). The lending opportunities would be marketed on the internet to The Investor Group and each lender had the option of participating in an individual mortgage. If an investor elected to participate in a mortgage, he or she would receive an undivided percentage interest in the Note and Mortgage documents. As a result of the structure of doing business in this manner a loan may have between, as few as five and as many as 300 participants. Each participant would have a fractural interest in the Note and Mortgage. M.A.M.C. Incorporated was compensated by an origination fee at the time of closing and thereafter received loan servicing fees. The loan servicing fees would be one point on each individual loan. The loans would have interest rates ranging from 12% up to 18%.

3. **THE DB ENTITIES:** The loans made by Berman Mortgage Corporation and M.A.M.C. Incorporated can be broken down into two separate categories, which we refer to as "Third-Party Loans" and "Insider Loans." Third-party loans were made to unaffiliated borrowers. Insider loans were made to single purpose real estate limited liability companies, owned by the principal of Berman Mortgage Corporation and M.A.M.C. Incorporated, Dana Berman. These LLCs would borrow money from The Investor Group for acquisition of real estate and construction financing. The second grouping of defendants in the style of the case, represents the Dana Berman real estate entities that are the subject of the receivership.

4. **CORPORATE STRUCTURE:** All the operations of the entities in receivership were run from a central office in Coconut Grove, Florida. The employees worked in overlapping

roles at Berman Mortgage Corporation and M.A.M.C. Incorporated and the various real estate development companies.

WHEREFORE, The Receiver moves the court for authorization for the Receiver to (1) Send to The Investor Group individuals Non-Emergency Notices by U.S. Mail (allowing 10 days to respond); (2) Send Emergency Notices by e-mail to The Investment Group individuals who have access to e-mail (allowing 5 days to respond); (3) Send Emergency Notices by Federal-Express to The Investment Group individuals who do not have access to e-mail (allowing 5 days to respond); and (4) In the event that any individual in The Investment Group fails to respond to any Non-Emergency Notice and/or Emergency Notice, and failure to respond constitutes an approval percentage rate of less than 50.01%, the Receiver shall have full power and authority to exercise and implement his own decision and/or response in place of the individual in The Investment Group who failed to respond.

Respectfully Submitted,

BERGER SINGERMAN
Attorneys for the Receiver, Michael I. Goldberg
200 South Biscayne Boulevard, Suite 1000
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: _____

JAMES D. GASSENHEIMER
Florida Bar No. 959987

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 11th day of January 2008, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd 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; and to **Michael P. Ehrenstein, Esquire**, *Counsel for The Amid Companies and Amedia Family Investors*, EHRENSTEIN CHARBONNEAU CALDERIN, 1111 Brickell Avenue, 2915 Mellon Financial Center, Miami, Florida 33131.

By: _____

JAMES D. GASSENHEIMER

cc: Michael Goldberg, Esq.
The Lender Investors
The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*

935852-1

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.

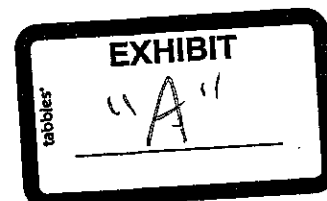
Lender has accurately completed a separate Lender's Representation (the "Lender's Representation"), which is incorporated by reference herein.

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.

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.

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

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

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

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

239 15. Indemnities

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

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

255 c. Except as expressly provided herein, the parties agree that Lender's sole liability to M.A.M.C.
256 hereunder shall be with respect to payment of the compensation due M.A.M.C., as provided herein. The parties
257 further agree that M.A.M.C. shall not be liable to Lender, except as specifically provided in Section 14(b)
258 hereof, regarding the waiver of the Cancellation Fee should M.A.M.C. violate any of the provisions of Section
259 14(b). Without expanding the limitation of the foregoing sentence, the Lender agrees that M.A.M.C. shall not,
260 under any circumstances, be liable to Lender for any breach of warranty, obligation, or negligence, in any
261 amount that is in excess of the total amount of compensation actually paid to M.A.M.C. by Lender for the Loan
262 or Loans which is/are the subject of such claim. In no event shall either Lender or M.A.M.C., or their assigns
263 or successors-in-interest, be liable to the other for incidental or consequential damages, loss of business or
264 profits, or special or indirect damages of any nature whatsoever.

265 16. Power of Attorney. In connection with all Loans which are subject to this Agreement, M.A.M.C. shall
266 have the power to accept payments of principal and interest, including full or partial prepayments, to issue partial
267 releases from and satisfactions of mortgages and all other Loan Documents, to issue estoppel information, to settle and
268 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.

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

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

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

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

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

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

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

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

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

442 Berman Mortgage Corporation

443 By: _____ [Signature]
444 Dana J. Berman, President _____, Lender / Print

445 M.A.M.C. Incorporated

446 By: _____ [Signature]
447 Dana J. Berman, President _____, Lender / Print

448 S:\Steve\Berman\Administrative\BMC MAMC Loan Servicing Agreement (4).wpd
449 File #10057-282; December 1, 2006
450 ©2006 Baker Cronig Gassenheimer LLP.

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

LENDER'S REPRESENTATION

THIS LENDER'S REPRESENTATION is provided by _____
(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.

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

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

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

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

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LENDER:

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_____, Lender / Print

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_____, 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;

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

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

CASE NO:

07-43672 CA 09

Plaintiff,

v.

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

Defendants,

and,

DB ATLANTA, LLC, a Florida Limited
Liability Company, DB DURHAM, LLC, a Florida Limited
Liability Company, NORMANDY HOLDINGS II,
LLC, a Florida Limited Liability Company, NORMANDY
HOLDINGS III, LLC, a Florida Limited Liability Company,
WATERSIDE ACQUISITIONS, LLC, a Florida Limited Liability
Company, DBKN GULF INCORPORATED, a Florida Limited
Liability Company, OCEANSIDE ACQUISITIONS, LLC,
a Florida Limited Liability Company, DB BILOXI, LLC, a Florida
Limited Liability Company, DB BILOXI II, LLC, a Florida
Limited Liability Company, DB BILOXI III, LLC, a Florida
Limited Liability Company, DBDS VERO BEACH, LLC, a
Florida Limited Liability Company, DB TAMPA, LLC, a
Florida Limited Liability Company, DB SIMPSONVILLE,
LLC, a Florida Limited Liability Company, DBDS NORTH MIAMI,
LLC, a Florida Limited Liability Company, REDLANDS RANCH
HOLDINGS, LLC, a Florida Limited Liability Company,
DBDS BISCAYNE PARK, LLC, a Florida Limited Liability
Company, DB CARROLL STREET, LLC, a Florida Limited
Liability Company,

Relief Defendants.

A TRUE COPY
CERTIFICATION ON LAST PAGE
HARVEY KUYM, CLERK

EXHIBIT

11B

TEMPORARY INJUNCTION AND AGREED ORDER
APPOINTING RECEIVER

This cause having come before the Court upon the State of Florida, Office of Financial Regulation's Complaint for a Temporary and Permanent Injunction and Appointment of a Receiver, and, after having reviewed the Complaint and Answer thereto filed by the Defendants and the Relief Defendants, and being otherwise advised in these premises, and further having heard of the agreement of the Parties, the Court does hereby:

ORDER AND ADJUDGE as follows:

1. It appears to the Court that an emergency exists in that the Defendants, Berman Mortgage Corporation ("Berman Mortgage"), M.A.M.C. Incorporated ("M.A.M.C."), and Dana J. Berman ("Berman") (collectively "Defendants"), and DB Atlanta, LLC, DB Durham, LLC, Normandy Holdings II, LLC, Normandy Holdings III, LLC, Waterside Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC, who are defendants solely for purposes of equitable relief (the "Relief Defendants"), have violated and may continue to violate state securities laws and state mortgage lender laws in connection with the placement and servicing of mortgage loans which have been placed with investors who invested approximately \$192 million.

2. The Court is also concerned, and the evidence tendered to the Court shows that there is 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 is not issued.

3. The Court hereby takes exclusive jurisdiction and possession of the assets of the Defendants, Berman Mortgage, M.A.M.C., 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, credits 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, Berman Mortgage and M.A.M.C., and Relief Defendants. The Receiver shall retain custody and control of all of the foregoing pursuant to the terms of this Agreed Order. The Receiver shall file an inventory of the "Receivership Assets" within sixty (60) days of the entry of this Agreed Order.

4. The Court further finds that a temporary injunction shall be entered against all of the Defendants and Relief Defendants, and a Receiver appointed for Defendants, Berman Mortgage and M.A.M.C., and all Relief Defendants to prevent immediate and irreparable injury to the investors who have entrusted over \$192,000,000 to the Defendants and Relief Defendants.

5. Immediate and irreparable injury will result to numerous investors if, as alleged by Plaintiff in its Complaint, the Defendants' representatives are allowed to

transfer or commingle any assets(s) acquired with investor funds; or if the Defendants' and Relief Defendants' financial information is disturbed in any way which would have the effect of frustrating examination by the Court or the receiver. Any such injury would diminish the ability of the Defendants and Relief Defendants to satisfy an order of restitution or effect any rescission.

6. The Court has determined that it is probable that the Plaintiff would prevail on the claims and that the Plaintiff has no adequate remedy at law.

7. The appointment of a Receiver is both necessary and appropriate in this matter in order to prevent further waste and dissipation of the assets of the Defendants and Relief Defendants, to the detriment of its investors.

8. The State of Florida, Office of Financial Regulation is the agency charged, pursuant to Chapters 494 and 517, Florida Statutes, to protect the public from the illegal acts of mortgage brokerage and mortgage lending businesses and securities dealers and securities issuers, and the Court is therefore, waiving the bond requirement in this matter.

9. The Court finds that Plaintiff has a clear legal right to a statutory injunction as provided by Sections 494.0013 and 517.191, Florida Statutes.

IT IS FURTHER ORDERED AND ADJUDGED:

10. M.A.M.C., its officers, agents, servants, personal representatives, legal representatives, employees, and all other persons or entities acting in concert or cooperation with it, are hereby restrained and enjoined from the following acts:

A. Any and all violations of sections 494.0025 (4)(a), (b), (c) and (5), and 494.0072(2)(e), (f), (g) and (h), Florida Statutes;

B. Continuing to service loans for others in violation of Section 494.00721, Florida Statutes;

C. Co-mingling of investor funds in violation of 494.0076(1)(a)2, Florida Statutes.

11. The named Defendants and Relief Defendants, their officers, agents, servants, personal representatives, legal representatives, employees, and all other persons or entities acting in concert or cooperation with them, are hereby restrained and enjoined from the following acts:

A. Selling or offering to sell an unregistered security in this state, without first registering the security with the Office of Financial Regulation, in violation of section 517.07, Florida Statutes;

B. Selling or offering to sell any securities in or from offices in this state, or selling securities to persons in this state from offices outside this state, by mail or otherwise, without first being registered as a dealer, associated person, or issuer with the Office of Financial Regulation, in violation of section 517.12, Florida Statutes;

12. The named Defendants and Relief Defendants, their officers, agents, servants, personal representatives, legal representatives, employees, and all other persons or entities acting in concert or cooperation with them, are hereby restrained and enjoined from the following acts:

A. Dissipating, selling, conveying, alienating, divesting themselves of, withdrawing, pledging as security, transferring, assigning, giving away, or in any manner whatsoever disposing of any of the monies or assets, including checking accounts, savings accounts, money market accounts, certificates of deposit, or any deposit of cash,

RECEIVED
LARRY KUTEL, CLERK

securities or other things of value and any and all real property and improvements thereon, and any motor vehicle, vessel, aircraft, jewelry, art and any other personal property or other assets of any description, obtained with or derived directly or indirectly from any investor monies obtained by the Defendants from the placing and servicing of loans, mortgages, and investments, no matter how ownership or title is held, including, but not limited to, Berman Mortgage, M.A.M.C. and Berman, or in the names of any of the Relief Defendants, DB Atlanta, LLC, DB Durham LLC, Normandy Holdings II, LLC., Normandy Holdings III, LLC, Waterside Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC.

13. Michael I. Goldberg, whose telephone number is 954-463-2700, is appointed Receiver for Berman Mortgage Corporation, M.A.M.C. Incorporated, DB Atlanta, LLC, DB Durham, LLC, Normandy Holdings II, LLC., Normandy Holdings III, LLC, Waterside Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC, and the Receivership Assets. The Receiver is hereby authorized to take and have possession of the Receivership Assets. The Receiver shall have complete and exclusive control, possession and custody of all Receivership Assets. The Receiver shall be vested with the usual powers and duties of equity receivers in like cases and is hereby authorized and

instructed to take possession of and control over the Defendants and Receivership Assets as defined herein, without any limitation of any kind as to his general duties.

14. All persons, including Berman Mortgage and MAMC, (the "Receivership Defendants"), all of their partners, directors, officers, agents, servants, employees, stockholders, personal representatives, legal representatives, attorneys, accountants, as applicable, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and specifically including any bank, brokerage company, or other financial or depository institution holding accounts for or on behalf of the Receivership Defendants shall promptly deliver to the Receiver all Receivership Assets in the possession or control of any one or more of them, and shall promptly surrender all books and records of any kind pertaining to the Receivership Defendants. This paragraph shall specifically apply to any and all depository and/or brokerage accounts held on behalf of the Receivership Defendants.

15. All persons, including the Receivership Defendants, and all of their partners, directors, officers, agents, servants, employees, stockholders, personal representatives, legal representatives, attorneys, accountants, as applicable, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are stayed from:

(a) Commencing, continuing or enforcing any suit or proceeding against the Receiver or the Receivership Assets, except with the prior permission of the Court;

(b) Using self-help or executing or issuing or causing the execution or

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issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned by or in the possession of the Receivership Assets or the Receiver, wherever situated;

(c) Attempting to modify, cancel, terminate, call, extinguish, revoke, or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement, or other agreement with any of the Receivership Assets or any entity controlled by them.

(d) Doing any act or thing whatsoever to interfere with the taking control, possession, or management, by the Receiver of the Receivership Assets and asset owned, controlled or in the possession of the entity in receivership, or to in any way interfere with or harass the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Assets; and,

(e) Causing the issuance of a subpoena on the Receiver, except with the prior permission of the Court.

16. The Receiver is hereby authorized to make appropriate notification to the United States Postal Service and/or any private delivery/messenger service to forward delivery of any mail addressed to the Receivership Defendants, or any company or entity under the direction or control of the Receivership Defendants, to the Receiver. The Receiver is also authorized to open and inspect all such mail, to determine the location or identity of assets or the existence and amount of claims or any other purpose authorized by this Order.

17. The Receiver is further authorized to make such ordinary and necessary

payments, distributions, and disbursements and 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, including the authority to endorse all checks and drafts now or hereafter made payable to the Receivership Defendants.

18. Until further Order of the Court, this Order prohibits the prosecution of any civil action or other proceeding or the enforcement of any judgments against the Receivership Defendants.

19. The Receiver is hereby authorized to employ, without further order of the Court, such employees, accountants, and attorneys, consultants, investigators, and other professionals ("Outside Professionals") as is necessary and proper for the collection, preservation, maintenance and operation of the Receivership Assets, including entities of which the Receiver is a shareholder, to furnish legal, accounting and other advice to the Receiver for such purposes as may be reasonable and necessary during the period of receivership.

20. The Receiver is hereby authorized to receive and collect any and all sums of money due and owing to the Receivership Defendants, whether the same are now due or shall hereafter become due and payable, and is authorized to incur such expenses, satisfy such liabilities, and make such disbursements as are deemed, in his discretion, necessary and proper for the collection, preservation, maintenance and operation of the

Receivership Assets. The Receiver may abandon Receivership assets to duly perfected secured or lien creditors, if after due investigation and notice to parties in interest, he determines that either the Receivership Defendants have no equity in such asset(s) or such asset(s) are burdensome to the estate or are of inconsequential value and harmful to the Receivership estate. Further, the Receiver shall maintain appropriate insurance for the Receivership assets, their premises and/or locations, if appropriate in the Receiver's sole discretion.

21. 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 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.

By this authorization and empowerment, this Court specifically determines that the Receiver is not prohibited and shall not be barred from bringing any action or proceeding due to the doctrine of in pari delicto. In addition, the Receiver is further empowered and authorized to file suit against any person(s) or entity(ies) to recover property of any of the Receivership Defendants, including, but not limited to, fraudulent conveyances and other claims and causes of action of the Receivership Defendants.

The Receiver is authorized to set depositions and demand production of documents on five (5) business days' notice. Any objections to documents requested by the Receiver may be stated at the deposition and reserved for hearing.

22. Any and all attorney(ies), accountants and any and all other professionals handling any matter for the Receivership Defendants shall cooperate with the Receiver and deliver all files, including attorney/client privileged communications and documents and all work product to the Receiver at his direction, notwithstanding any claim of a retaining lien which, if valid, is not extinguished by the delivery of the documents.

Further, Berman Mortgage Corporation, M.A.M.C. Incorporated, Dana J. Berman, the Relief Defendants, and their officers, agents, partners, servants, employees and transferees shall cooperate fully with the Receiver and comply with the Receiver's request(s) for information, records and documentation so that the Receiver may perform his duties with full information and knowledge.

23. The Receiver and his retained personnel or professionals are entitled to reasonable compensation and expense reimbursement out of the Receivership Assets. The Receiver is authorized to pay from the receivership estate's funds eighty percent (80%) of the ordinary and reasonable fees and one hundred percent (100%) of the costs of such Outside Professionals upon receipt of a bill from the Outside Professionals. The remaining twenty percent (20%) of fees shall be withheld (the "holdback") pending final application to the Court for approval of all fees and expenses of such Outside Professionals, including the holdback.

24. The Receiver and his attorneys and his agents are entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for their own good faith compliance with any order, rule law, judgment, or decree. In no event shall the Receiver or his attorneys or his agents be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver, attorney, or agent for

Receiver, nor shall the Receiver or his attorney or his agents be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act, as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties. The Receiver and his attorneys and his agents shall be indemnified and held harmless out of the Receivership Assets for all costs and expenses, including reasonable attorney's fees, incurred as a result of such actions. The Receiver and his attorneys and his agents may rely on, and shall be protected in acting upon, any resolution, certificate, statement, opinion, report, notice, consent, order, or other paper or documents believed to be genuine and to have been signed or presented by the proper party or parties. The Receiver may consult with legal, financial, or accounting advisors for any action taken or omitted to be taken by it in accordance with the advice thereof. Persons dealing with the Receiver shall only look to the receivership Assets to satisfy any liability, and neither the Receiver nor his attorneys or his agents or professionals shall have any personal liability to satisfy any such obligation.

25. From time to time, upon the application of the Receiver, the Court may amend or reissue this Order.

26. The Receiver shall not be required to post any bond.

IT IS FURTHER ORDERED:

27. That this Court shall retain jurisdiction of this action for all purposes.

28. The Receiver is hereby authorized, empowered, and directed to apply to this Court, with notice to the Receivership Defendants named in this action for issuance of such other orders as may be necessary and appropriate in order to carry out the mandate of this Order.

IT IS FURTHER ORDERED that this Order will remain in effect until and unless modified by further Order of this Court.

DONE AND ORDERED in Chambers, in Miami, Miami-Dade County, Florida, on this 11 day of December 2007.



CIRCUIT COURT JUDGE

THOMAS S. WILSON, JR.

Copies furnished to:

Alan L. Goldberg, Chief Restructuring Officer, M.A.M.C.

Dana J. Berman

Daren A. Schwartz

Michael I. Goldberg, Esquire, Receiver

Cristina Saenz, Assistant General Counsel, Office of Financial Regulation

STATE OF FLORIDA, COUNTY OF MIAMI-DADE

I hereby certify that the foregoing is a true and correct copy of the original on file in this office 12/11 AD 2007

HARVEY RUBIN, CLERK
Circuit and County Courts

(SEAL)

Deputy Clerk 