

# EXHIBIT 10



/805370

failure to join 250 East Borrower, LLC (the "Sponsor") as a necessary party, or, in the alternative, for an Order granting leave to add the Sponsor as a defendant to this action.

### A TEMPORARY RECEIVER SHOULD BE APPOINTED

3. As discussed in the accompanying affirmation of Maria I. Beltrani, an Order appointing a temporary receiver is appropriate because Real Property Law ("RPL") § 339-aa unequivocally entitles the Board to a receiver when the Condominium's bylaws likewise provide for the appointment of a temporary receiver in a lien foreclosure action, which is the case here.

4. Contrary to the representations made in the affirmation of Ryan Kaupelis, dated April 15, 2016 (the "Kaupelis Affirmation") and the affidavit of Gene Kiselman on behalf of defendant AB Funding, sworn to April 15, 2016 (the "Kiselman Affidavit"), under RPL 339-aa, the appointment of a receiver is appropriate regardless of the amount of equity the owner has in the unit and regardless of whether the condominium can demonstrate irreparable loss and the need to conserve the property and to protect the parties' interests, as may be required under CPLR § 6401.

5. But even if the Court were to apply the heightened standard set forth in CPLR § 6401, the Board meets that standard because, for one thing, contrary to the representations in paragraph 36 of the Kaupelis Affirmation, AB Funding is not paying the real estate taxes on the unit, which has resulted in a tax lien foreclosure action entitled, *NYCTL 2015-A Trust and The Bank of New York Mellon, as Collateral Agent and Custodian v. AB Funding Corporation, et al.*, which is pending in this Court under index no. 152816/2016 (the "Tax Lien Foreclosure Action"). Under RPL § 339-z, the tax lien that is being foreclosed in the Tax Lien Foreclosure Action has a statutory priority over the Condominium's lien for unpaid common charges, which

/805370

means that the Condominium's lien is in danger of being extinguished. In order for the Condominium to protect its lien, it must satisfy the tax lien. Thus, a receiver must be appointed to rent the unit, generate rental proceeds and pay off the tax lien in order to avoid irreparable loss to the Condominium and to conserve the property.

6. Furthermore, contrary to the representations set forth in paragraph 36 of the Kaupelis Affirmation, AB Funding's failure to pay common charges does detrimentally affect the Condominium's finances in that coupled with the substantial common charge arrears owed on unit 24PHAB, which currently owes in excess of \$467,000, the Condominium has experienced very real cash flow problems which has left the Board with no alternative but to assess all unit owners. More specifically, three assessments have been levied on unit owners to cover revenue shortfalls and expenses of the Condominium: \$590,000 in November 2013, \$625,000 in September 2014 and \$1,250,000 in April 2016. To date, AB Funding has not paid any of the assessments it owes for the Unit. Thus, a receiver is most certainly needed in order to protect the Condominium's interests and to preserve its limited resources. Simply put, the non-defaulting unit owners in the Condominium should not have to shoulder the burden of AB Funding's non-payment, particularly when a receiver can be appointed to rent the unit and pay the outstanding common charges.

7. It is completely untrue that the Board has refused to permit AB Funding to pay current common charges. See Kaupelis Affirmation at ¶ 37 and Kiselman Affidavit at ¶ 7. What the Board has said is that it will not permit AB Funding to dictate how its payments will be credited and all payments received will be applied to the oldest debt in accordance with sound accounting principles.

/805370

8. It is also untrue that the Sponsor paid \$140,000 in common charges that has not been credited. See Kiselman Affidavit at ¶ 7 and the Kaupelis Affirmation at ¶ 11. All of the Sponsor's payments for the Unit have been credited and are reflected in Exhibit "B" to the Condominium's motion.

9. Likewise, it is untrue that the common charges on the Unit were current when AB Funding acquired it in July 2013. See Kiselman Affidavit at ¶¶ 3-6. AB Funding would have the Court believe that common charges were current in July 2013 due to credits given to Sponsor for advances allegedly made by the Sponsor and that after AB Funding acquired the Unit the Board denied the credits to the Sponsor and back-charged the Unit for the unpaid common charges. These are specious allegations.

10. As reflected in the account history (Exhibit "B") maintained by Taube Management ("Taube"), the managing agent hired by the Sponsor and which the Sponsor controlled, the credits the Sponsor is now claiming have never been substantiated as confirmed in the accompanying affidavit of Carl Cesarano (the "Cesarano Affidavit"), the Condominium's auditor, and were never applied to the Unit or any other unit owned by the Sponsor. As reflected in Exhibit "B", in July 2013, when the Unit was transferred to AB Funding from the Sponsor, there was a balance on the account in the amount of \$9,977.48 in unpaid common charges. That amount should have been considerably more given the late fees and interest to which the Condominium was entitled, but Taube failed for years to record the late fees and interest due from the Sponsor.

11. As is also reflected in Taube's account history, after AB Funding acquired the Unit in July 2013, it, too, failed to pay common charges without justification. Thus when the

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