

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

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,

Defendants.

and

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

Relief Defendants.

**RECEIVER'S MOTION FOR AUTHORITY TO ENTER INTO
EXCLUSIVE LISTING AGREEMENTS WITH MARCUS & MILLICHAP,
TO MARKET AND SELL (I) THE PROPERTY OWNED BY
MAMC EMERALD CAY, LLC AND (II) THE HAINES CITY PROPERTY
(OWNED BY THE RECEIVERSHIP ESTATE), *NUNC PRO TUNC***

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this *Motion for Authority to Enter Into Exclusive Listing Agreements with Marcus & Millichap, to Market and Sell (I) the Property Owned by MAMC Emerald Cay, LLC and (II) the Haines City Property (owned by the Receivership Estate), Nunc Pro Tunc* (the "Motion"). In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, the State of Florida, Office of Financial Regulation ("OFR") filed a *Complaint for Temporary and Permanent Injunction and Appointment of Receiver*. The OFR alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors ("Lenders") by offering fractional interests in short-term acquisition and/or construction mortgage loans. MAMC serviced the loans pursuant to servicing agreements entered into between the Lenders and MAMC.

2. One of the loans was made to Emerald Cay Investments, LLC (the "Borrower") and secured by a first mortgage ("Mortgage") on four parcels of vacant land located on Polynesian Isle Blvd., in Kissimmee, Florida (the "Emerald Cay Property"). The loan was serviced by MAMC.

3. After the Borrower defaulted under the loan documents, MAMC, on behalf of the Lenders foreclosed on the loan. After the completion of the foreclosure, the Emerald Cay Property was held in the name of MAMC Emerald Cay, LLC

4. On December 11, 2007, this Court (the "Receivership Court") appointed Michael Goldberg as the receiver for BMC, MAMC and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants' assets (the "Receivership Estate") to the detriment of the Lenders.

5. On August 17, 2010, the Receivership Court entered an Order expanding the Receivership to include MAMC Emerald Cay, LLC as a Relief Defendant.

6. The second property is comprised of 6.99 acres located in Haines City, Florida (the "Haines City Property"). The Haines City Property was acquired in February 2005 with using funds in the possession of the Receivership Defendants.

7. On July 31, 2009 a Quit-Claim Deed was executed by Dana J. Berman transferring the Receivership Defendants' interest in the Haines City Property to Michael I. Goldberg, in his capacity as Receiver for BMC.

8. The Haines City Property is owned free and clear of any encumbrances. Proceeds from the sale of the Haines City Property will benefit the Receivership Estate.

9. The Receiver now seeks authority from the Receivership Court to enter into (i) an Exclusive Right of Sale Agreement for the Emerald Cay Property and (ii) an Exclusive Right of Sale Agreement for the Haines City Property (jointly, the "Agreements") with Marcus & Millichap, (the "Broker"), to market and sell the Emerald Cay Property and the Haines City Property.

10. The Agreements are for a duration of six months and are effective as of January 7, 2015. Accordingly, the Receiver seeks the entry of Order *nunc pro tunc* to January 7, 2015. True and correct copies of the Agreements are attached hereto as Exhibit 1 and Exhibit 2.

11. The Receiver is authorized to enter into agreements and take such action as he deems advisable or proper for the marshaling, maintenance or preservation of the Receivership Assets. *See* Order Appointing Receiver, at ¶ 17.

12. The Receiver has consulted with the lender committees for the Emerald Cay Property and the Haines City Property,¹ who have advised the Receiver that they approve his entering into the Agreements on their behalf.

13. Notice of this Motion shall be provided by posting a copy (and the Notice of Hearing) on the Receivership website and sending a copy to the Lenders via e-mail.

¹ At the outset of the receivership, the Receiver set up committees comprised of lenders for each loan and one overall committee made up of at least one lender from each loan ("Executive Committee") to advise the Receiver.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of BMC, MAMC and related entities, respectfully request this Court to enter an Order authorizing the Receiver to enter into the Agreement described herein and to grant such further relief as is just and proper.

Respectfully submitted,

AKERMAN LLP

Counsel for the Receiver

Las Olas Centre II, Suite 1600

350 East Las Olas Boulevard

Fort Lauderdale, FL 33301-2229

Phone: (954) 463-2700/Fax: (954) 463-2224

Email: joan.levit@akerman.com

By: /s/ Joan Levit

Joan M. Levit, Esquire

Florida Bar No. 987530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 2015, a true and correct copy of the forgoing was furnished to the parties on the attached Service List by U.S. mail, to the Lenders by e-mail and a copy of this motion will be posted on the receivership web-page.

/s/ Joan Levit

SERVICE LIST

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1000 Brickell Avenue, Suite 1020
Miami, FL 33131
pvalori@dvlp.com

EXHIBIT 1

EXCLUSIVE RIGHT OF SALE

In consideration of One Dollar (\$1.00) paid by **Marcus & Millichap**, hereinafter referred to as Broker, to

**Owner: MAMC Emerald Cay, LLC
c/o Michael I. Goldberg, Receiver
350 E. Las Olas Blvd., #1600
Ft. Lauderdale, FL 33301**

**CONTACT
Tony Valencia, Asset Manager
786-309-6966**

and is hereby acknowledged, and in further consideration of Broker's agreement to list the property belonging to owner described as:

Property located in Osceola County, FL., consisting of the following parcels:

#R022528-285500010035
#R022528-503500010016
#R022528-503500010017
#R022528-503500010018

Owner hereby grants to Broker an Exclusive Right of Sale on subject property for a period beginning on **January 7, 2015** and expiring on **June 7, 2015** Broker agrees to advertise subject property in such a manner as Broker may deem advisable and to use its best efforts to secure a purchaser, and to cooperate with other Brokers. This agreement may be continued by a written agreement signed by both Parties. During the term, the Broker has the exclusive right and authority to find a purchaser for the above described property at the price and upon the terms hereinafter set forth, or at any other price and terms acceptable to the Owner.

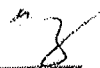
In the event Broker secures a purchaser for the property, the usual and customary practice for the examination of title, curing defects of title and for closing the transaction shall apply. Owner agrees to execute and deliver to the purchaser a good and sufficient special warranty deed, free and clear of all liens and encumbrances except those which the purchaser shall assume as part of the purchase price and which are specifically detailed in the purchase contract.

Owner grants the exclusive right to install a "For Sale" sign on the property and further agrees to refer to Broker all inquiries which Owner may receive during the continuance of this agency.

Broker will proceed with the marketing plan provided by Broker and attached to this agreement. Including but not limited to, installing 4 x 8 "For Sale" signs with a diagram outlining the lots being sold.

In addition, Broker shall submit a monthly written status report to MAMC Emerald Cay, LLC.

INITIAL HERE _____



The status report shall include the progress on the marketing plan, a summary of the discussions with interested parties, and any other relevant information.

For finding a purchaser ready, willing and able to purchase the above property at closing, Owner agrees to pay Broker a commission of 6% of the purchase price, if, and only if, closing occurs.

Said commission is payable whether the purchaser be secured by listing Broker, or any other Broker. A commission is payable if the property is contracted on within six months from the termination of this agency to a prospective purchaser to whom it was submitted by Broker, or a cooperating Broker, and whose name has been disclosed to the Owner, in writing, within 10 days from written notice of termination or expiration of the term. The list of prospective purchasers shall only include and be applicable to any prospective purchaser with whom there was a meaningful exchange conducted in writing or through negotiations and does not include parties to whom submission was made which did not result in meaningful negotiations.

Co-Broker Compensation

Seller's Broker is to cooperate with all other brokers except when not in Seller's best interest. Seller's Broker shall split the 6% commission 50/50 with Co-Broker. Total commission must not exceed 6%.

Seller's Exclusion

Notwithstanding of this agreement, Seller's Broker agrees to exclude the prospective buyers listed on the Seller's exclusion list for 30 days. Seller and Buyer must execute a sales contract and provide written notice to Broker on or before the 30 days.

The price for which this property is to be sold is **\$2,300,000**

If either Party is required to institute legal action against the other Party relating to this Agreement, the Prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

Indemnification Agreement

Broker agrees to indemnify and hold harmless Michael I. Goldberg, Receiver for BMC/MAMC, Inc., MAMC Emerald Cay, LLC (Seller), their agents, owners, employees, assignees and any and all persons or entities related from and against any and all claims, demands, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by Broker on owner's behalf with any Broker or finder in connection with the transaction herein contemplated, or any party claiming by, through or under Broker.

Owner agrees to disclose to Broker and to prospective purchasers any action taken to enforce or recover damages for the breach of any provision of this Agreement.

This Agreement may be executed in counterparts, each of which counterparts shall constitute an

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original and all of which together shall constitute one and the same instrument. If any provision of this Agreement is held or rendered illegal or unenforceable, it shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in force and bind the Parties as though the illegal or unenforceable provision had never been included in this Agreement. This Agreement sets forth the entire Agreement between Broker and Owner regarding the subject matter hereof. This Agreement may not be modified except by agreement in writing executed by Broker and Owner. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

Limitation of Liability

Except for either Party's gross negligence or willful misconduct, the Party's liability for any contractual breach or negligence in its performance of this agreement shall be limited to the greater of twenty five thousand dollars (\$25,000) or, in the case of the Broker, the amount of compensation actually received by Broker in any transaction hereunder. *if greater than \$25,000.*

This property is offered without respect to race, color, creed or national origin.

IN WITNESS WHEREOF, the Owner has executed this agreement this _____ day of _____, 2015.

Signed, sealed and delivered in the presence of:

MAMC Emerald Cay, LLC, a Florida
Limited liability company

By: _____
Michael I. Goldberg, as Receiver for MAMC Emerald Cay, LLC

THIS AGREEMENT IS CONTINGENT UPON COURT APPROVAL.

Broker: Ray Turchi DATE: 1-15-15
 Marcus & Millichap

Signature

INITIAL HERE _____

LISTING AGREEMENT EXCLUSION LIST FOR MAMC EMERALD CAY, LLC

1. WhitCo, LLC
2. Daniel Harper and/or any company controlled by Daniel Harper
3. Sheldon Rubin and/or any company controlled by Sheldon Rubin

A handwritten signature in black ink, appearing to be a stylized 'S' or similar character.

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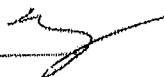
A handwritten signature in black ink, appearing to be a stylized 'S' or similar character.

EXHIBIT 2

EXCLUSIVE RIGHT OF SALE

In consideration of One Dollar (\$1.00) paid by **Marcus & Millichap**, hereinafter referred to as Broker, to

Owner: Michael Goldberg, Receiver for MAMC Incorporated
c/o Michael I. Goldberg, Receiver
350 E. Las Olas Blvd., #1600
Ft. Lauderdale, FL 33301

CONTACT
Tony Valencia, Asset Manager
786-309-6966

and is hereby acknowledged, and in further consideration of Broker's agreement to list the property belonging to owner described as:

Johnson Ave, Haines City, Polk County, FL 33844
Parcel ID: 272721749500022802

Owner hereby grants to Broker an Exclusive Right of Sale on subject property for a period beginning on **January 7, 2015** and expiring on **June 7, 2015** Broker agrees to advertise subject property in such a manner as Broker may deem advisable and to use its best efforts to secure a purchaser, and to cooperate with other Brokers. This agreement may be continued by a written agreement signed by both Parties. During the term, the Broker has the exclusive right and authority to find a purchaser for the above described property at the price and upon the terms hereinafter set forth, or at any other price and terms acceptable to the Owner.

In the event Broker secures a purchaser for the property, the usual and customary practice for the examination of title, curing defects of title and for closing the transaction shall apply. Owner agrees to execute and deliver to the purchaser a good and sufficient special warranty deed, free and clear of all liens and encumbrances except those which the purchaser shall assume as part of the purchase price and which are specifically detailed in the purchase contract.

Owner grants the exclusive right to install a "For Sale" sign on the property and further agrees to refer to Broker all inquiries which Owner may receive during the continuance of this agency.

Broker will proceed with the marketing plan provided by Broker and attached to this agreement. Including but not limited to, installing 4 x 8 "For Sale" signs with a diagram outlining the lots being sold.

In addition, Broker shall submit a monthly written status report to MAMC Incorporated. The status report shall include the progress on the marketing plan, a summary of the discussions with interested parties, and any other relevant information.

INITIAL HERE _____

For finding a purchaser ready, willing and able to purchase the above property at closing, Owner agrees to pay Broker a commission of 6% of the purchase price, if, and only if, closing occurs.

Said commission is payable whether the purchaser be secured by listing Broker, or any other Broker. A commission is payable if the property is contracted on within six months from the termination of this agency to a prospective purchaser to whom it was submitted by Broker, or a cooperating Broker, and whose name has been disclosed to the Owner, in writing, within 10 days from written notice of termination or expiration of the term. The list of prospective purchasers shall only include and be applicable to any prospective purchaser with whom there was a meaningful exchange conducted in writing or through negotiations and does not include parties to whom submission was made which did not result in meaningful negotiations.

Co-Broker Compensation

Seller's Broker is to cooperate with all other brokers except when not in Seller's best interest. Seller's Broker shall split the 6% commission 50/50 with Co-Broker. Total commission must not exceed 6%.

The price for which this property is to be sold is **\$490,000**

If either Party is required to institute legal action against the other Party relating to this Agreement, the Prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

Indemnification Agreement

Broker agrees to indemnify and hold harmless Michael I. Goldberg, Receiver for BMC/MAMC, Inc., MAMC Incorporated (Seller), their agents, owners, employees, assignees and any and all persons or entities related from and against any and all claims, demands, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by Broker on owner's behalf with any Broker or finder in connection with the transaction herein contemplated, or any party claiming by, through or under Broker.

Owner agrees to disclose to Broker and to prospective purchasers any action taken to enforce or recover damages for the breach of any provision of this Agreement.

This Agreement may be executed in counterparts, each of which counterparts shall constitute an original and all of which together shall constitute one and the same instrument. If any provision of this Agreement is held or rendered illegal or unenforceable, it shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in force and bind the Parties as though the illegal or unenforceable provision had never been included in this Agreement. This Agreement sets forth the entire Agreement between Broker and Owner regarding the subject matter hereof. This Agreement may not be modified except by agreement in writing executed by Broker and Owner. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

INITIAL HERE 

Limitation of Liability

Except for either Party's gross negligence or willful misconduct, the Party's liability for any contractual breach or negligence in its performance of this agreement shall be limited to the greater of twenty five thousand dollars (\$25,000) or, in the case of the Broker, the amount of compensation actually received by Broker in any transaction hereunder. *if greater than \$25,000*

This property is offered without respect to race, color, creed or national origin.

IN WITNESS WHEREOF, the Owner has executed this agreement this _____ day of _____, 2015.

Signed, sealed and delivered in the presence of:

MAMC Incorporated, a Florida
Limited liability company

By: _____
Michael I. Goldberg, as Receiver for MAMC Incorporated

THIS AGREEMENT IS CONTINGENT UPON COURT APPROVAL.

Broker: Ray Turchi DATE: 1-15-15
 Marcus & Millichap

Signature

INITIAL HERE _____