

IN THE CIRCUIT COURT OF THE 11TH
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,

Defendant.

THE ORIGINAL
FILED ON:

OCT 03 2009

IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL.

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,
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,
REDLANDS RANCH HOLDINGS, LLC, a
Florida Limited Liability Company, **DB
CARROLL STREET, LLC**, a Florida Limited
Liability Company,

Relief Defendants.

BERGER SINGERMAN
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**RECEIVER'S MOTION TO APPROVE THE
EXCLUSIVE RIGHT OF SALE AGREEMENT BETWEEN
COLLIERS DICKINSON AND RELIEF DEFENDANT MAMC BELLA VISTA LLC**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Dana J. Berman ("Berman"), Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., by and through undersigned counsel, hereby files this Motion to Approve the Exclusive Right of Sale Agreement Between Colliers Dickinson and Relief Defendant MAMC Bella Vista LLC ("MAMC Bella Vista"), and states:

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

2. Among the Relief Defendants is MAMC Bella Vista. As such, all assets belonging to MAMC Bella Vista are subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and such assets shall be under the exclusive control of the Receiver:

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

Receivership Order, ¶ 3 (emphasis added).

3. The Receiver now seeks to retain Colliers Dickinson as the Broker to sell property owned by MAMC Bella Vista, located at 97 1st Street South, Jacksonville Beach, FL 32250 (the "Property").

4. Based on the Colliers Dickinson Broker, the Receiver has listed the Property for \$4,650,000. This recommendation came following a market analysis by the Colliers Dickinson firm. The amount is substantially below the original principal amount of the Note and Mortgage, pursuant to which the Investor Group took title to this property. Colliers Dickinson and accordingly, the Receiver does not believe that the property can be sold at a price equal to the original principal amount of the loan, and certainly not for the principal amount of the loan plus interest, default interest, costs and attorneys fees. The Receiver makes this disclosure and offers the lenders an opportunity to object if they believe it appropriate to the listing of the property at the price proposed by Colliers Dickinson. (Please see Exhibit "A" attached hereto.)

5. The Receiver believes that the retention of Colliers Dickinson is absolutely necessary to ensure the preservation and/or recovery of receivership assets, and thereby prevent any further waste or dissipation, and most of all, protect the Investor Group. The retention of Colliers Dickinson is particularly necessary considering the Property is located in Jacksonville.

6. Importantly, this Court has already authorized the Receiver to employ professionals, such as real estate brokers, when necessary to preserve Receivership assets, such as MAMC Bella Vista:

The Receiver his hereby authorized to employ, without further order of the Court ... accountants ... and other professionals ... as is necessary and proper for the collection [and] preservation ... of the Receivership Assets, including assets 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.

See Receivership Order, ¶ 19 (emphasis added).

7. Furthermore, the Agreement has already been executed by the Receiver, as this Court has previously authorized the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants:

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

Receivership Order, ¶17. (emphasis added)

8. In line with the aforementioned authority granted by this Court, the Receiver now seeks this Court's approval of the retention of Colliers Dickinson and the Agreement.

WHEREFORE, the Receiver moves this Court for entry of an Order Approving the Exclusive Right of Sale Agreement Between Colliers Dickinson and Relief Defendant MAMC Bella Vista, LLC, and any other relief deemed necessary by this Court.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 3rd day of October 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; to **Allan A. Joseph, Esquire, Counsel for The Amadi Companies and Amedia Family Investors**, DAVID AND JOSEPH, P.L., 1001 Brickell Bay

Drive, Suite 2002, Miami, Florida 33131; to **Richard R. Robles, Esquire**, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; to **Daniel Kaplan, Esquire**, *Counsel for Deborah A. Berman*, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191st Street, Aventura, Florida 33180; to **Howard N. Kahn, Esquire**, *Attorneys for Intervenor, Ira Sukoff*, KAHN, CHENKIN & RESNIK, P.L., 1815 Griffin Road, Suite 207, Dania, Florida 33304; to **Charles Pickett, Esquire and Linda Dickhaus Agnant, Esquire**, *Attorneys for Johns Manville*, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401; to **Helen Schwartz Romañez, Esquire**, *Attorneys for Turnberry Bank & Bank of Coral Gables*, The Romañez Law Firm, 255 Alhambra Circle, Suite 850, Coral Gables, Florida 33134; to **Charles W. Throckmorton, Esquire**, *Attorneys for Dana Berman*, KOZYAK TROPIN THROCKMORTON, P.A., 2525 Ponce de Leon Boulevard, 9th Floor, Coral Gables, Florida 33134; to **James S. Telepman, Esquire**, *Attorneys for Jericho All-Weather Opportunity Fund, LP*, COHEN, NORRIS, SCHERER, WEINBERGER & WOLMER, 712 U.S. Highway One, Suite 400, North Palm Beach, Florida 33408-7146; to **Allen P. Pegg, Esquire**, *Counsel for IbeX Cheoah I, LLC*, at MURAI, WALD, BIONDO, MORENO & BROCHIN, P.A., Two Alhambra Plaza, Penthouse 1B, Coral Gables, Florida 33134; to **J. Andrew Baldwin, Esquire**, *Attorneys for Regions Bank*, THE SOLOMON LAW GROUP, P.A., 1881 West Kennedy Boulevard, Tampa, Florida 33606-1606; to **Rey Hicks and Javier Castillo** of COMPLETE PROPERTY MANAGEMENT, at Post Office Box 402507, Miami Beach, Florida 33140; to **Daren Schwartz**, BERMAN MORTGAGE CORPORATION D/B/A M.A.M.C., INC., at 402 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida 33133; to **Norman S. Segall, Esquire**, *Attorneys for Skilled Services of Tampa Bay, LLC*, RUDEN MCCLOSKEY SMITH

SCHUSTER & RUSSELL, P.A., 701 Brickell Avenue, Suite 1900, Miami, Florida 33131; to **Norman Malinski, Esquire**, *Counsel for Giles Construction*, 2875 NE 191st Street, Suite 508, Aventura, Florida 33180; **Gabrielle D'Alemberte, Esquire**, LAW OFFICES OF ROBERT PARKS, 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134; to **Robert B. Miller, Esquire**, *Attorneys for Atlantic Lending, LLC*, TABAS, FREEDMAN, SOLOFF & MILLER, P.A., The Ingraham Building 25 SE 2nd Avenue, Suite 919, Miami, Florida 33131-1538; to **Richard P. Cole, Esquire**, **Edward S. Polk, Esquire** and/or **Crystal Leah Arocha, Esquire**, *Attorneys for Meland Russin Hellinger & Budwick, P.A.* COLE SCOTT & KISSANE, P.A., Pacific National Bank Building, 1390 Brickell Avenue, Third Floor, Miami, Florida 33131; and to **David A. Wheeler, Esquire**, *Counsel for Various Unit Owners at Le Chateau Condominiums at DB Biloxi II, LLC* WHEELER & WHEELER, PLLC, 185 Main Street, Biloxi, Mississippi 39530.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

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By: 

JAMES D. GASSENHEIMER

Florida Bar No. 959987

GREGORY A. HAILE

Florida Bar No. 606421

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

1729633-1



Colliers International
Real estate services

EXCLUSIVE RIGHT OF SALE

In consideration of One Dollar (\$1.00) paid by Colliers Dickinson, hereinafter referred to as Broker, and Heritage Capital Group, Inc., hereinafter referred to as Co-Listing Broker, to

Owner: MAMC Bella Vista, LLC

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

RE#: 175511-0000
971st Street South
Jacksonville Beach, FL 32250

Owner hereby grants to Broker an Exclusive Right of Sale on subject property for a period beginning on October 1, 2008 and expiring on September 30, 2009. Broker agrees to advertise subject property in such a manner as Broker may deem advisable and to use its efforts to secure a purchaser, and to cooperate with other Brokers. This agreement may be continued by a letter agreeing to continue the listing or by signing another Exclusive Right of Sale Agreement extending this agreement. 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.

Owner agrees to furnish a policy of title insurance showing a marketable and/or insurable title thereto. 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 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 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.

For finding a purchaser ready, willing and able to purchase the above property, Owner agrees to pay Broker a commission of 6% of the purchase price no later than event of closing. 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 twelve months from the termination of this agency to a purchaser to whom it was submitted by Broker, or a cooperating Broker, and whose name has been disclosed to the Owner within 30 days from written notice of termination. If two or more Brokers they will split a total commission of 7%.

In the event the property is leased or rented, Owner will pay Broker, when lease is signed by both parties, a commission of 6% of the gross rent collections for the base term of the lease and 6% of the gross rent collections of any renewal leases. All leasing commissions payable up front and in full to Broker upon execution of lease for base term. If the Tenant is required by the Owner to deposit funds into an Escrow Account then any commissions earned by Colliers Dickinson/Heritage Capital Group, Inc. shall first be paid through the disbursements of such funds. In such case a separate Brokers statement showing the disbursements of the escrow funds will be submitted to the Owner. Renewal commissions are payable up front and in full to Broker upon execution of each renewal term. If tenant subsequently purchases property, Owner agrees to pay Broker commission based upon 6% of the purchase price less any unearned (earned leasing commissions are on the amount of time tenant leased prior to purchase), leasing commission. This is payable at the time of closing.

In the event of a build-to-suit or joint venture, a real estate commission equal to the real estate commission on the sale of the subject property will be paid to the listing agent at the time the written agreements are signed by the Seller.

The price for which this property is to be sold is \$4,650,000

INITIAL HERE

EXHIBIT

"A"

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Unless otherwise agreed upon with the purchaser, taxes, insurance premiums, and rents shall be adjusted pro rata as of the date of closing. Improvement liens are to be paid by the Owner.

As Owner's agent, Broker is authorized to accept receipt for, and hold all money paid or deposited as binder thereon, and if such deposit shall be forfeited by the prospective purchaser, Broker may retain one half (1/2) of such deposit but not exceeding the total amount of Broker's commission as its compensation.

In the event Owner fails to make payments within the time limits set forth herein, from that date until paid, the delinquent amount shall bear interest at the maximum rate permitted by Florida law. If Broker is required to institute legal action against Owner relating to this Schedule or any agreement of which it is part, Prevailing Party shall be entitled to reasonable attorney's fees and costs.

COMMERCIAL LIEN ACT DISCLOSURE: The Florida Commercial Real Estate Sales Commission Lien Act provides that when A BROKER has earned a commission by performing licensed services under a brokerage agreement with you, the BROKER may claim a lien against your net sales proceeds for the BROKER'S commission. The BROKER'S lien rights under the act cannot be waived before the commission is earned.

In the event the Property is removed from the market due to the opening of escrow and does not close, the listing shall be extended for a period of time equal to the number of days the escrow had been opened. In no event shall such extension exceed 180 days.

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

IN WITNESS WHEREOF, the Owner has executed this agreement this 23 day of September 2009

Signed, sealed and delivered in the presence of:

Charlene Rude
(WITNESS)

[Signature] Receiver*
(OWNER)

(WITNESS)

By: _____
(OWNER)

(WITNESS)

(OWNER)

THIS AGREEMENT SHALL NOT BECOME BINDING UPON THE BROKER UNTIL APPROVED BY LISTING BROKERS.

*subject to court approval

(APPROVED) (DATE)
Colliers Dickinson

(APPROVED) (DATE)
Heritage Capital Group, Inc.

INITIAL HERE [Signature]