

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.

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**RECEIVER'S MOTION FOR COURT ORDER AUTHORIZING THE RECEIVER  
TO EXECUTE THE EXCLUSIVE SALES LISTING AGREEMENT  
BETWEEN RELIEF DEFENDANTS, DB BILOXI, LLC, AS TO EDGEWATER,  
DB BILOXI, II, LLC, AS TO LE CHATEAU AND DB BILOXI III, LLC,  
AS TO OAK SHORES PHASE II AND TERRANOVA CORPORATION**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants, Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Biloxi, LLC, et al., (the "Receiver") by and through undersigned counsel, hereby files this Motion to Authorize Receiver to Execute the Exclusive Sales Listing Agreement between Relief Defendants DB Biloxi, LLC, as to the Tower and Townhomes at Edgewater, DB Biloxi III, LLC, as to Le

**BERGER SINGERMAN**  
attorneys at law

*Boca Raton Fort Lauderdale Miami Tallahassee*

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

Chateau, and DB Biloxi, II, LLC, as to Oak Shores Phase II and Terranova Corporation, and in support thereof states as follows:

**The Receiver is Appointed Over Relief Defendants  
DB Biloxi, LLC, DB Biloxi II, LLC and DB Biloxi III, LLC**

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

2. Among the Relief Defendants are DB Biloxi, LLC, DB Biloxi, II, LLC and DB Biloxi, III, LLC (collectively the “Biloxi Relief Defendants”), a Florida limited liability companies that holds title to property located in Biloxi, Mississippi, known as Edgewater, Le Chateau and Oak Shores respectively.

3. As a Relief Defendant, the Biloxi Relief Defendants are receivership assets subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and subject to the exclusive control of the Receiver:

The Court hereby takes exclusive jurisdiction and possession of the assets of the Defendants, Berman Mortgage, M.A.M.C., and Relief Defendants [including Biloxi], the “Receivership Assets”, which includes, but are not limited to: files, records, documents, leases, mortgages, Investment, 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 personal, 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).

4. Pursuant to the authority granted to the Receiver via the Receivership Order, the Receiver seeks to exercise its exclusive control over the Biloxi Relief Defendants and market and

sell the properties held by the Biloxi Relief Defendants. However, because the properties are located in Mississippi, the Receiver does not have the resources to manage the marketing and sale of the properties in a way that is most beneficial to the Investor Group that these Receivership proceedings are designed to protect.

5. Consequently, the Receiver seeks to retain the services of Terranova Corporation ("Terranova") so that it can manage the marketing and sale of the properties held by the Biloxi Relief Defendants. Specifically, the Receiver seeks to retain Terranova pursuant to the terms of the Exclusive Sales Listing Agreement attached hereto as Exhibit "A."

6. On January 7, 2009, this Court entered its Order authorizing the Receiver to terminate an existing brokerage and marketing agreement between Relief Defendant DB Biloxi, III, LLC and a broker with respect to the Oak Shores property. The Court's Order also authorized the Receiver to seek an alternative Broker.

7. To finalize the retention of Terranova, as Broker for the properties, the Exclusive Sales Listing Agreement must be executed by the Receiver.

**This Court Should Authorize the Execution of the  
Authorize Receiver to Execute the Exclusive Sales Listing Agreement**

8. The Receiver is the only vehicle by which the Biloxi Relief Defendants can act. As such, this Court has already explicitly authorized the Receiver to conduct business, and execute contracts, instruments and other agreements on behalf the Receivership Defendants and the entities controlled by the Receivership Defendants, like the properties held by Biloxi:

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).

9. Therefore, via this Motion, the Receiver seeks to exercise its authority to execute the Exclusive Sales Listing Agreement between the Biloxi Relief Defendants and Terranova, as dictated by the Receivership Order issued by this Court.

**WHEREFORE**, the Receiver, on behalf of Relief Defendants DB Biloxi, LLC, as to the Tower and Townhomes at Edgewater, DB Biloxi II, LLC, as to Le Chateau, and DB Biloxi, III, LLC, as to Oak Shores Phase II, respectfully requests that this Court grant this Motion to Authorize Receiver to Execute the Exclusive Sales Listing Agreement between Relief Defendants DB Biloxi, LLC, as to the Tower and Townhomes at Edgewater, DB Biloxi III, LLC, as to Le Chateau, and DB Biloxi, II, LLC, as to Oak Shores Phase II and Terranova Corporation, and for such other and additional relief as the Court deems just and proper.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this **21<sup>st</sup> day of January 2009**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2<sup>nd</sup> 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. 191<sup>st</sup> 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, 9<sup>th</sup> Floor, 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**, 12555 Biscayne Boulevard, Unit #930, North Miami, Florida 33181; to **Jared Gelles, Esquire**, *Counsel for Daren Schwartz*, RAFFERTY, STOLZENBERG, GELLES, ET AL., 1401 Brickell Avenue, Suite 825, Miami, Florida 33131-3502; to **Norman Malinski, Esquire**, *Counsel for Giles Construction*, 2875 NE 191<sup>st</sup> 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 2<sup>nd</sup> 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; 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; to **James M. Kaplan, Esquire**, **Nanci S. Landy, Esquire and/or Kristen A. Rosenthal, Esquire**, *Attorneys for Non-Parties, Barry A. Imber and Imber & Company*, KAPLAN ZEENA, LLP, Two South Biscayne Boulevard, One Biscayne Tower, Suite 3050, Miami, Florida 33131-1806; to **Michael A. Hanzman, Esquire**, HANZMAN GILBERT, LLP, 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134; to **Paul Huck, Esquire and Dean C. Colson, Esquire**, COLSON HICKS EIDSON, 255 Aragon Avenue, Second Floor, Coral Gables, Florida 33134; and to **Jason S. Miller, Esquire**, *Counsel for Flagstar Bank*, ADORNO & YOSS, LLP, 2525 Ponce de Leon Boulevard, Suite 400, Coral Gables, Florida 33134.

Respectfully submitted,

**BERGER SINGERMAN**

*Attorneys for Receiver, Michael Goldberg*

200 South Biscayne Boulevard, Suite 1000

Miami, Florida 33131

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

By: \_\_\_\_\_

  
JAMES D. GASSENHEIMER

Florida Bar No. 959987

ARIADNA HERNANDEZ

Florida Bar No. 020953

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

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## EXCLUSIVE SALES LISTING AGREEMENT

This EXCLUSIVE SALES LISTING AGREEMENT (the "Agreement") is made as of the 10<sup>th</sup> day of November 2008 (the "Effective Date") by and between DB Biloxi LLC as to the Tower and Townhomes at Edgewater, DB Biloxi II LLC as to Le Chateau or DB Biloxi III LLC as to Oak Shores Phase II ("Owner") and TERRANOVA CORPORATION ("Agent"). In consideration of the terms and covenants set forth below, the parties hereto agree as follows:

1. Appointment. Owner appoints Agent and Agent accepts the appointment, on the terms and conditions provided below, as the exclusive sales agent of the real estate known as Oak Shores Phase II, comprising approximately 6.832 acres, located at 1664 Beach Blvd, Biloxi, MS and Le Chateau comprising approximately 2.67 acres, located at 1994 Beach Blvd, Biloxi, MS, and The Tower and Townhomes at Edgewater comprising approximately 10.943 acres, located at 2660 Beach Blvd, Biloxi, MS, collectively (the "Properties".)

2. Agent's License. Agent represents that Agent is a licensed real estate broker in the State of Florida with a license in good standing with the Florida Real Estate Commission. Agent has advised Owner that Mississippi has a reciprocal agreement with Florida regarding licensing. Agent agrees to indemnify Owner in connection with any claims against Owner arising therefrom.

3. Exclusive Right of Sale. For a period of six (6) months from the Effective Date, and thereafter until this Agreement is terminated by thirty (30) days prior written notice from Owner to Agent, Agent shall have the exclusive right and authority to market the Properties for sale and locate a purchaser(s) for the individual Properties upon terms and conditions (including purchase price) acceptable to Owner. All inquiries from brokers, potential buyers or others related to the sale or potential sale of the Properties shall be referred to Agent, and all negotiations connected with a potential sale shall be conducted solely by or under Agent's direction. At the time of entering into this agreement, Owner is working with Craig Steinberg of SunSwept Capital and Mark Ianone of Heritage Realty Advisors. The parties agree that a sale of one or more of the properties to or through this entity or an affiliate will not be compensated to Agent providing a contract for sale has been executed by November 30, 2008 and will be compensated at 3% of the gross purchase price providing a contract for sale has been executed by January 31, 2009.

4. Purchase and Sale Agreement. In the event Agent locates a purchaser(s) for the Properties at a price and terms acceptable to Owner, Owner agrees to enter into a written purchase and sale Agreement with the purchaser that will contain the terms and conditions of said sale. The Properties are subject to separate sale Agreements. **Agent understands and agrees that any Agreement shall provide for sale "as-is", "where-is" and without recourse. Owner does not and shall not be required to make any representation or warranty with respect to the Properties.**

5. Agent's Commission. As compensation for marketing the Properties for sale and finding a purchaser for the Properties, Owner shall pay Agent a commission of six percent (6%) of the gross purchase price of each of the Properties ("Agent's Commission"), to be paid to Agent in cash at each closing of any of the real estate by the Closing Agent from the Closing Proceeds (the



"Closing"). During the term of this Agreement, Agent's Commission shall be paid to Agent whether Agent, Owner or any other person finds the purchaser. In addition, Agent's Commission shall be paid to Agent if the Closing occurs within six (6) months after the termination of this Agreement by either party and the purchaser was found and/or introduced to Owner during the term of this Agreement by Agent, Owner or any other person. Notwithstanding the foregoing, no commission will be paid to Agent if Owner has entered into an exclusive agreement with another broker after this agreement has expired. Agent agrees to compensate other real estate brokers if they have participated in procuring the buyer for the sale of one or more of the Properties.

6. Marketing and Advertising. Agent agrees to use commercially reasonable efforts to market the Properties for sale that will include the implementation of a marketing program developed by Agent and approved by Owner. Owner agrees that upon signing the Agreement, Owner will immediately transmit by check or wire transfer a \$10,000 fee to Agent which will help to cover the cost of the creation of the marketing materials and transmission of said materials to prospective buyers.

7. Deposit. In the event a purchaser forfeits a deposit, within fourteen (14) days after the forfeiture, one half of any forfeited deposit shall be remitted to Agent, as compensation for its efforts.

8. Notices. All notices given or required by this Agreement shall be delivered by courier, a generally recognized overnight delivery service, certified or registered mail postage prepaid, or facsimile transmission with a confirmation of transmission and receipt, addressed to the party to whom the notice is being sent at the address specified below, or such other address as such party shall designate. Notices shall be deemed delivered upon the earlier of receipt or three days following the date of deposit with the United States Postal Service with respect to certified or registered mail.

To Owner: MAMC Inc.  
3250 Mary Street, Suite 402  
Coconut Grove FL 33133  
Attention: E. Harold Gassenheimer

To Agent: Terranova Corporation  
801 Arthur Godfrey Road, Suite 600  
Miami Beach, Florida 33140  
Fax: 305-672-7800  
Attention: Stephen Bittel, Chairman

9. Indemnification. To the full extent permitted by law, Owner shall defend, hold harmless and indemnify Agent from any and all losses, claims, damages or expenses, including attorneys fees and costs arising from any claim brought against Agent while carrying out its obligations under this Agreement or acting in accordance with the directions of Owner, except for Agent's gross negligence or willful misconduct. In the event of litigation or other legal action



concerning the Properties, except litigation between Owner and Agent, Owner shall compensate Agent for time spent by its employees assisting in the litigation or other legal action at the employees' normal hourly rates. This paragraph shall survive the termination of this Agreement. Agent hereby agrees to indemnify Owner and hold harmless Owner from and against any and all claims, 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 Agent or on its behalf with any broker or finder in connection with the transactions referenced in this Agreement or any party claiming by, through or under Agent.

10. Disclosure. Owner acknowledges that Agent may also represent potential buyers for the Properties and Owner consents to such representation. Any buyer representation notwithstanding, Agent shall always have a fiduciary relationship to Owner.

11. Late Payments; Interest. Any commissions, construction management fees, expense reimbursements or other sums which are earned and due Agent under this Agreement, but remain unpaid by Owner for fourteen (14) days shall earn interest at a rate of eighteen percent (18%) per annum.

12. Attorneys Fees, Security, Law and Venue. In the event of any litigation between the parties to this agreement, attorney's fees and all associated costs of litigation, including attorneys' fees and all associated costs of appeal, shall be awarded to the prevailing party. This Agreement shall be interpreted under the laws of the state of Florida and venue in any action instituted in connection with this Agreement shall be Miami-Dade County, Florida


13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Entire Agreement. This writing constitutes the entire agreement between the parties and may not be modified, supplemented, or amended except by an instrument in writing executed by the parties.

15. Disclaimer. Owner acknowledges that it is, at all times, free to retain and/or consult with an attorney or accountant of its choosing relative to any of the subject matters and services to be rendered by Agent, it being expressly understood that Agent does not furnish any legal or accounting advice, despite the fact that some of its employees are licensed attorneys and accountants. The parties hereto acknowledge that this Agreement has been fairly negotiated and no ambiguity or conflict shall be construed against either party.

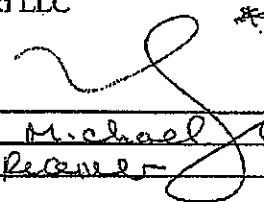
Agent and Owner have executed this Agreement as of the date stated above, subject to court approval.

**AGENT:**  
TERRANOVA CORPORATION

By:   
Stephen Bittel, Chairman

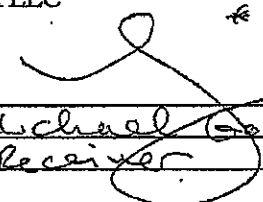
**OWNER:**

DB Biloxi LLC

By:   
Name: Michael Goldberg  
Its: Receiver

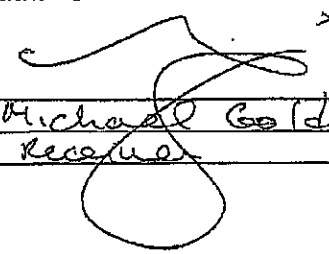
**OWNER:**

DB Biloxi II LLC

By:   
Name: Michael Goldberg  
Its: Receiver

**OWNER:**

DB Biloxi III LLC

By:   
Name: Michael Goldberg  
Its: Receiver

\* This agreement is subject to approval of the receivership court prior to becoming effective.