

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.

TERMINAL
RECEIVER
2008-03-03
DEPARTMENT OF
CIRCUIT COURT DALLAS CO. FL.

**RECEIVER'S MOTION FOR COURT ORDER AUTHORIZING THE RECEIVER
TO EXECUTE THE EXCLUSIVE AUTHORIZATION AND RIGHT TO SELL
LISTING AGREEMENT BETWEEN RELIEF DEFENDANT,
DB BILOXI III, LLC AND SAM FORD, CALDWELL BANKER ALFONSO REALTY**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants, Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendant DB Biloxi, III, LLC, (the "Receiver"), by and through undersigned counsel, hereby files this Motion to Authorize the Receiver to Execute the Exclusive Authorization and Right to Sell Listing Agreement between Relief Defendant DB Biloxi, III, LLC and Sam Ford, Caldwell Banker Alfonso Realty, and in support thereof, states as follows:

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

The Receiver is Appointed Over Relief Defendant, 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 is DB Biloxi, III, LLC ("Biloxi III"), a Florida limited liability company that holds title to property located in Biloxi, Mississippi, known as the Oak Shores project.

3. As a Relief Defendant, Biloxi is a receivership asset 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 Biloxi III and market and sell the property held by Biloxi III. However, because the property is located in Biloxi, Mississippi, the Receiver does not have the resources to manage the marketing and sale of the property 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 Sam Ford, Caldwell Banker ("Broker") so that it can manage the marketing and sale of the property held by Biloxi III. Specifically, the Receiver seeks to retain Broker pursuant to the terms of the Exclusive Authorization and Right to Sell 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 Sam Ford, Caldwell Banker Alfonso Realty, as Broker for the properties, the Exclusive Authorization and Right to Sell 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 Biloxi III 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 III:

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 Defendant and Sam Ford, Caldwell Banker Alfonso Realty, as dictated by the Receivership Order issued by this Court.

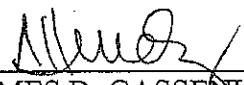
WHEREFORE, the Receiver, on behalf of Relief Defendant DB Biloxi, III, LLC, respectfully request that this Court grant this Motion to Authorize Receiver to Execute the Exclusive Authorization and Right to Sell Listing Agreement between Relief Defendant DB Biloxi, III, LLC, and Sam Ford, Caldwell Banker Alfonso Realty, and for such other and additional relief as the Court deems just and proper.

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

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 **23rd day of January 2009**, 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 **Charles W.**


Throckmorton, Esquire, Attorneys for Dana Berman, KOZYAK TROPIN THROCKMORTON, P.A.,
2525 Ponce de Leon Boulevard, 9th Floor, 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

1931037-1

EXCLUSIVE AUTHORIZATION AND RIGHT TO SELL
LISTING AGREEMENT

This is a legally binding agreement - READ IT CAREFULLY

This form is provided as a courtesy to the parties only. It is not required to be used in this transaction and may not fit the needs, goals and purposes of the parties. The Mississippi Association of REALTORS® makes no statement or warranty as to this form, its contents or use, and the parties, by their use of this form, acknowledge said facts and agree that neither the Mississippi Association of REALTORS® nor any member thereof shall be liable to any party or person for its contents or use. If any party to this transaction does not fully understand it, or has any question, the party should seek advice from a competent legal professional before signing.

1 Are you currently a party to a referral agreement with a relocation company or another real estate broker? YES NO
2 1. EXCLUSIVE RIGHT TO SELL. I, the undersigned Owner, hereinafter called "Owner", hereby employ and grant Sam Ford,
3 Coldwell Banker Alfonso, hereinafter called "Broker", the exclusive and irrevocable right commencing on
4 January 22, 2009, and expiring at midnight on March 22, 2009, to sell or exchange the real property
5 situated in the City of Biloxi, County of Harrison, Mississippi, located at:
6 Legal Description:
7 84 Condominiums in Oak Shores Condos per price list furnished by Maite
8 Mendiola with MAMC. Please see Attachment "A".
9 1664 East Beach Blvd. Biloxi 39530
Street Address City/Town Zip Code

10 2. LIST PRICE. The list price shall be \$ as furnished and on the following terms cash to seller
11 or other price and terms that are acceptable to me.

12 3. MULTIPLE LISTING SERVICE (MLS). Broker is a Participant of the Gulf Coast Association Multiple
13 Listing Service (MLS) and this listing information will be provided to the MLS to be published and disseminated to its Participants.
14 The Listing Broker is also authorized to report the sale, when it occurs, including the price, terms and financing for the publication,
15 dissemination, information and use by authorized members, MLS participants and Subscribers. The Listing Broker is authorized to
16 cooperate with other licensed Brokers/Agents to sell this property and to share the compensation resulting from the sale with the
17 Selling Broker on a basis solely determined by the Listing Broker. It is the policy of the Listing Broker to compensate the Selling
18 Broker a percentage of the total agreed upon sales price as follows: 5% to selling broker in Mississippi
19

20 4. COMPENSATION.

21 (a) Owner agrees to pay Broker, irrespective of agency relationship(s), a fee of 8.000 % of the selling price OR a fee of
22 \$ _____ and an administrative fee of \$ _____ if the Property is sold during the term
23 of or any extension hereof on the terms herein set forth, or _____ % of the listing price OR a fee of
24 \$ _____ and an administrative fee of \$ _____ if the Property is withdrawn from sale,
25 transferred, conveyed, leased or rented without the consent of Broker or made unmarketable by Owner's voluntary act during the
26 term hereof or any extension hereof.
27 (b) The compensation provided for in subparagraph (a) above if property is sold, conveyed, or otherwise transferred within 180
28 days after the termination of this Contract or any extension thereof (Protection Period) to anyone to whom this property was shown
29 provided Owner has received notice in writing, including the names of the prospective purchasers, before or upon termination of
30 this agreement or any extension thereof.
31 (c) Owner shall be obligated to pay the compensation provided for in subparagraph (a) if, in the event of breach by Buyer, Seller
32 successfully secures specific performance by Buyer.
33 (d) Owner shall not be obligated to pay the compensation provided for in subparagraph (a) if a valid listing agreement is entered into
34 during the term of said Protection Period with another licensed real estate broker and a sale, lease or exchange of the property is
35 made during the term of said valid listing agreement.

36 5. DEPOSIT: Listing Selling Broker is authorized to accept and hold on Owner's behalf any deposit of earnest money set forth
37 in the Contract between the parties. In the event Buyer's earnest money is forfeited, one-half (1/2) of the same shall be retained by or
38 paid to the Listing Broker as their compensation, provided that the Listing Broker's portion of any such forfeited deposit shall not
39 exceed the amount of the above-referenced fee, and the remainder shall be paid to Owner.

40 6. I authorize Broker to advertise my property on the Internet YES NO
41 I authorize Broker to place a lockbox on my property YES NO
42 I agree to provide a Home Warranty upon sale of property YES NO
43 I authorize Broker to accept a fee for selling the referenced Home Warranty YES NO
44 I authorize Broker to accept a deposit of earnest money YES NO
45 I authorize Broker to obtain mortgage information on the above described property YES NO

46 ACCT# _____ Mortgage Company _____
47 Address _____

48 I authorize Broker to place a For Sale/Sold sign on my property YES NO
49 I authorize Listing Broker to disclose to buyers or cooperating brokers the existence of offers on the property YES NO



EXHIBIT

"A"

- 50 7. The Listing Broker is hereby authorized as an MLS Participant to:
- 51 Offer other licensed Brokers cooperation and compensation but not by subagency
- 52 Offer other licensed Brokers Subagency and compensation
- 53 Act in the capacity of a Disclosed Dual Agent

54 8. **IMPROVEMENTS:** All improvements and appurtenances are included in the Purchase Price including, if now in or on the Property, the following: lighting fixtures and their shades, ceiling fans, drapery and curtain hardware, window shades and blinds, window and door screens, stationary laundry tubs, water heaters, smoke detectors, built-in security systems, TV antenna and satellite dish and complete rotor equipment, mailbox, remote control garage door opener(s), water pump and pressure tank, built-in kitchen appliances, attached gas grill, awnings, all plumbing and heating and air conditioning equipment including any window units. Seller shall provide to buyer or selling broker at closing at least one (1) exterior door key to the main dwelling.

List any leased equipment:

62 Is security system under contract that must be fulfilled? YES NO

63 9. **LEAD BASED PAINT:** If dwelling was built before 1978, a lead-based paint inspection may be required and the presence of known lead-based paint must be disclosed.

65 10. **HOMESTEAD EXEMPTION:** Homestead exemption is or is not in effect for the current year as represented by the Property Condition Disclosure Statement.

67 11. **OWNER'S ACKNOWLEDGEMENT.** I hereby certify that all information provided herein and on the Property Condition Disclosure Statement attached has been written by me and is complete, true and accurate to the best of my knowledge and belief. I, the Owner, agree to defend, indemnify and hold harmless the Broker and their salespersons against and from any losses, damages, claims, suits at law (including court costs and attorneys fees) or other costs or expenses relating to or resulting from any actual or alleged inaccuracy or incompleteness of the property information contained herein or any other information provided by me.

72 By signing below I acknowledge that the mandatory Working With a Real Estate Broker disclosure form has been fully explained to me and I acknowledge receipt of a signed copy. I, as Owner, acknowledge that I have read and understand this Agreement and, have received a copy. I further acknowledge that I have good title to the Property and full authority to execute this Agreement. I further agree to permit Broker to reassign me to another agent within the firm for representation should I and Broker agree that reassignment is best.

77 12. **BROKER ACKNOWLEDGEMENT.** Broker/Agent agrees: (1) to exercise all duties to Seller(s) as set forth in the Working With a Real Estate Broker disclosure prescribed by the Mississippi Real Estate Commission, including the fiduciary duties of confidentiality, obedience, disclosure, full accounting and the duty to use skill, care and diligence; and (2) to exercise the duty of honest and fair dealing to Seller(s) and Buyer(s).

81 13. **EQUAL HOUSING OPPORTUNITY:** This property is offered in compliance with applicable anti-discrimination laws.

82 14. **ATTORNEY FEES:** In any legal action, proceeding or arbitration arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs from the non-prevailing party.

83 15. **ENTIRE AGREEMENT.** There are no other agreements or conditions except as set forth herein and on the MLS profile sheet attached, if any. No verbal statements, representations, promises or inducements shall have any validity or effect nor shall be a part of this Agreement. Any amendments, changes, additions or deletions to this Agreement must be in writing signed by all parties. Owner should seek professional, legal and/or tax advice.

87 16. **NOTICE.** Any notices required or permitted to be given under this contract shall be delivered by hand or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope; by nationally recognized overnight carrier service; by facsimile with receipt acknowledgment (if the fax number is listed below); or by email (if the email address is listed below), at Sender's option, and addressed to Owner as follows:

91 Address: _____

92 Facsimile: _____

93 Email: _____

94 Signed this the 22nd day of JAN., at 10:15 a.m. p.m., and a copy hereof received:

95 BROKER: Sam Ford, Coldwell Banker Alfonso OWNER: X re ceiver

96 Broker's Firm Name Coldwell Banker Alfonso Realty, Phone: _____

97 Sam F. Ford Sam F. Ford OWNER: _____
Broker's Affiliated Salesperson

98 Phone: (228) 424-8202 Phone: _____



Attachment "A" to Listing Agreement at 1664 East Beach Blvd. Biloxi MS
OAKSHORES CONDOMINIUMS

- 1) In the event and only in the event of the delivery of a purchase and sale agreement with terms acceptable to Owner, and satisfactory completion of settlement pursuant to the terms of said agreement occurs, Owner shall pay a gross commission of 8% to be split as follows:
 - a) Out of State Selling Broker receives 6%
Listing Broker receives 2%
 - b) Local Selling Broker receives 5%
Listing Broker receives 3%
 - c) No co-operating Broker involved Listing Broker receives 6%

- 2) Any agreement must recognize that the property that is the subject of the agreement is being sold "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 property.

- 3) In the event completion of settlement fails to occur for any reason or no reason, no commission, fee, or compensation shall be paid.

- 4) Within 14 days of execution of Listing Agreement, Listing Broker will furnish Owner in writing a schedule of projected sales showing Listing Broker's plan to sell 50% of the subject units within sixty (60) days from execution of this Listing Agreement.

- 5) In addition to other marketing efforts including but not limited to signage, print ads, MLS, Listing Broker will host Open Houses on-site every Saturday and/or Sunday from the hours of 2-5PM.

- 6) Listing Broker must obtain Owner approval for any and all marketing materials prior to dissemination. Approval will not be unreasonably withheld by Owner.

- 7) Listing Broker and Owner agree the unit sale prices are subject to change upon Seller's approval.

- 8) Broker shall act in the capacity of an exclusive agency listing broker, whereas Owner reserves the right to sell the property themselves. Listing Broker shall not

At.

be entitled to compensation for any and all sales procured directly or indirectly through Gutterman Partners and/or Hanover Companies. All other selling brokers must work through the listing broker.

- 9) This subject agreement shall be a master listing for all the units. However, Listing Broker shall also enter 3 units (to be selected by Owner) into Listing Broker's local MLS service. Listing Broker shall prepare additional listing forms for each unit selected.

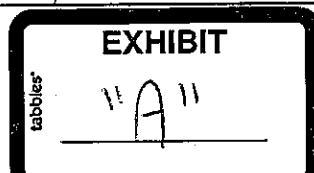
[Handwritten Signature]

ASSET DTM CDK
1/22/09

- 10) This agreement is subject to court approval of the circuit court in and for Miami Dade County Florida having jurisdiction over Seller's recourship.

[Handwritten Signature]

Unit #	Model	Square Footage	HOA dues	Price	Price/Sq.Ft.
1	STUDIO	343	198.14	\$59,500	\$173
2	STUDIO	343	198.14	\$59,500	\$173
3	STUDIO	343	198.14	\$59,500	\$173
5	STUDIO	343	198.14	\$59,500	\$173
6	STUDIO	343	198.14	\$59,500	\$173
8	STUDIO	343	198.14	\$59,500	\$173
31	STUDIO	343	198.14	\$59,500	\$173
41	STUDIO	343	198.14	\$59,500	\$173
42	STUDIO	343	198.14	\$59,500	\$173
47	STUDIO	343	198.14	\$59,500	\$173
52	STUDIO	343	198.14	\$59,500	\$173
57	2 BR/1.5 BA	985	569	\$163,500	\$165
59	2 BR/1.5 BA	985	569	\$163,500	\$165
60	2 BR/1.5 BA	985	569	\$163,500	\$165
62	2 BR/1.5 BA	985	569	\$163,500	\$165
63	2 BR/1.5 BA	985	569	\$163,500	\$165
69	1 BR/1 BA	618	198.14	\$102,500	\$165
70	1 BR/1 BA	618	198.14	\$102,500	\$165
72	1 BR/1 BA	618	198.14	\$102,500	\$165
73	1 BR/1 BA	618	198.14	\$102,500	\$165
74	1 BR/1 BA	618	198.14	\$102,500	\$165
76	1 BR/1 BA	618	198.14	\$102,500	\$165
78	1 BR/1 BA	618	198.14	\$102,500	\$165
83	1 BR/1 BA	618	198.14	\$102,500	\$165
85	1 BR/1 BA	618	198.14	\$102,500	\$165
86	1 BR/1 BA	618	198.14	\$102,500	\$165
89	2 BR/1.5 BA	985	569	\$163,500	\$165
94	2 BR/1.5 BA	985	569	\$163,500	\$165
96	2 BR/1.5 BA	985	569	\$163,500	\$165
99	2 BR/1.5 BA	985	569	\$163,500	\$165
100	2 BR/1.5 BA	985	569	\$163,500	\$165
101	2 BR/1.5 BA	985	569	\$163,500	\$165
104	2 BR/1.5 BA	985	569	\$163,500	\$165
106	2 BR/1.5 BA	985	569	\$163,500	\$165
108	2 BR/1.5 BA	985	569	\$163,500	\$165
109	2 BR/1.5 BA	985	569	\$163,500	\$165
114	1 BR/1 BA	618	198.14	\$102,500	\$165
116	1 BR/1 BA	618	198.14	\$102,500	\$165
118	1 BR/1 BA	618	198.14	\$102,500	\$165
122	1 BR/1 BA	618	198.14	\$102,500	\$165
125	1 BR/1 BA	618	198.14	\$102,500	\$165
126	1 BR/1 BA	618	198.14	\$102,500	\$165
127	1 BR/1 BA	618	198.14	\$102,500	\$165
129	1 BR/1 BA	618	198.14	\$102,500	\$165



130	2 BR/1.5 BA	985	569	\$163,500	\$165
132	2 BR/1.5 BA	985	569	\$163,500	\$165
134	2 BR/1.5 BA	985	569	\$163,500	\$165
135	2 BR/1.5 BA	985	569	\$163,500	\$165
136	2 BR/1.5 BA	985	569	\$163,500	\$165
137	2 BR/1.5 BA	985	569	\$163,500	\$165
140	2 BR/1.5 BA	985	569	\$163,500	\$165
143	2 BR/1.5 BA	985	569	\$163,500	\$165
144	2 BR/1.5 BA	985	569	\$163,500	\$165
147	2 BR/1.5 BA	985	569	\$163,500	\$165
150	2 BR/1.5 BA	985	569	\$163,500	\$165
151	2 BR/1.5 BA	985	569	\$163,500	\$165
152	1 BR/1 BA	618	198.14	\$102,500	\$165
153	1 BR/1 BA	618	198.14	\$102,500	\$165
154	1 BR/1 BA	618	198.14	\$102,500	\$165
155	1 BR/1 BA	618	198.14	\$102,500	\$165
156	1 BR/1 BA	618	198.14	\$102,500	\$165
157	1 BR/1 BA	618	198.14	\$102,500	\$165
158	1 BR/1 BA	618	198.14	\$102,500	\$165
159	1 BR/1 BA	618	198.14	\$102,500	\$165
161	1 BR/1 BA	618	198.14	\$102,500	\$165
164	1 BR/1 BA	618	198.14	\$102,500	\$165
166	1 BR/1 BA	618	198.14	\$102,500	\$165
167	1 BR/1 BA	618	198.14	\$102,500	\$165
168	1 BR/1 BA	618	198.14	\$102,500	\$165
169	1 BR/1 BA	618	198.14	\$102,500	\$165
170	1 BR/1 BA	618	198.14	\$102,500	\$165
171	1 BR/1 BA	618	198.14	\$102,500	\$165
176	2 BR/1.5 BA	985	569	\$163,500	\$165