

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.

and,

DB ATLANTA, LLC, a Florida Limited Liability
Company, et al.,

Relief Defendants.

**RECEIVER'S MOTION FOR AN ORDER APPROVING THE REVISED LANDOLOGY
CONTRACT FOR SALE OF THE ASSETS OF MAMC ISLAMORADA, LLC, AND
APPROVING DISBURSEMENT OF PROCEEDS OF SALE**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants 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 for an Order Approving the Revised Landology Contract of Sale of the Assets of MAMC Islamorada LLC and Disbursement of Proceeds of Sale and states:

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

2. MAMC Islamorada (Islamorada), one of the Relief Defendants, is a Florida limited liability company formed to hold assets acquired by the MAMC lenders (previously

defined in this case) through a credit bid at a section 363 sale of assets in the DB Islamorada, LLC in its bankruptcy case.

3. The Receiver has attempted to market the Property in the best interests of the Lenders, which group the Receivership was designed to protect and has obtained a Letter of Intent (the "LOI") from Landology LLC. This Court previously approved an LOI issued by Landology, however due diligence required the issuance of a new LOI, attached hereto as **Exhibit A**.

4. The Receiver executed the LOI pursuant to the Court's Receivership Order authorizing the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants and the entities controlled by the Receivership Defendants which states that:

[t]he 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)

5. Similarly, the Receiver now seeks the Court's approval to enter into and close on a contract for the sale of the Property on the terms set forth in **Exhibit A**.

6. The Receiver will post this Motion including the LOI, and Notice of Hearing to the Receivership website and distribute a copy of the Notice of Hearing and Motion to the Lenders via the posting and e-mail distribution procedures previously established and authorized by this Court.

7. The Receiver seeks to distribute the Proceeds of Sale as follows:

- a. Payment to Berger Singerman, P.A. for representation of the Receiver in relation to the instant project including its efforts related to this Motion;

- b. Payment of the Receiver's fee to Akerman Senterfitt for representation of the Receiver in relation to the instant transaction;
 - c. Repayment of DIP Loans and priority loans;
 - d. Holdback to pay future expenses;
 - e. Payment of taxes, water, insurance, permits, and accounting;
 - f. Return of principal pro rata to the MAMC Lenders.
8. After the Contract is final, the Receiver shall post a notice of final distribution ("The Notice"). The Receiver requests the order granting this motion provide that in the absence of a written objection 10 days following the posting to the webpage and notice of filing The Notice, the Receiver is authorized to distribute sales proceeds in accordance with The Notice. If an objection is filed, the non-objected to portion of the distribution shall be distributed and the objectionable portion shall be held and the objection shall be set for hearing.

WHEREFORE, the Receiver moves this Court for entry of an Order:

- a. finding that the notice and established procedures by posting to the Receivership website and e-mail distribution to the Lenders constitute adequate notice of the instant motion and hearing thereon;
- b. approving the Receiver's execution of the LOI and authorizing the Receiver to perform all acts and execute all documents necessary to effectuate the terms of any Contract and close on the sale of the Property pursuant to the Contract;
- c. authorizing the Receiver to make the distributions in accordance with the procedures established in paragraph 8; and
- d. awarding such other and further relief this 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 **25th day of November 2009**, to the attached service list.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

1000 Wachovia Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

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

By: _____


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SERVICE LIST

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| <p>Allan A. Joseph, Esquire <i>Special Counsel for The Receiver</i> DAVID AND JOSEPH, P.L. 1001 Brickell Bay Drive, Suite 2002 Miami, Florida 33131</p> | <p>Jason S. Miller, Esquire <i>Counsel for Flagstar Bank</i> ADORNO & YOSS, LLP 2525 Ponce de Leon Boulevard, Suite 400 Coral Gables, Florida 33134</p> |
| <p>Charles W. Throckmorton, Esquire <i>Attorneys for Dana Berman</i> KOZYAK TROPIN THROCKMORTON, P.A. 2525 Ponce de Leon Boulevard, 9th Floor Coral Gables, FL 33134</p> | <p>Paul Huck, Esquire Dean C. Colson, Esquire COLSON HICKS EIDSON 255 Aragon Avenue, Second Floor Coral Gables, FL 33134</p> |
| <p>Ms. Tamara G. Chaskes, Esquire COCONUT GROVE BANK 2701 South Bayshore Drive Miami, FL 33133</p> | |

cc: The Honorable Jerald Bagley (*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

2459028-1



Date: November 21, 2009

Michael Goldberg, as Receiver
2401 Douglas Road
Coral Gables, Florida 33145

Re: Letter of Intent to Purchase the Indigo Bay Hotel, located Islamorada, Monroe County, Florida

Dear Michael:

I hope that this letter finds you well. I am happy to present you with this offer for the project known as Indigo Bay. Based on all of our time and attention to the diligence of this project we now have an offer that can get done in short order. It is the buyers full intent to close all cash on or before 1/20/2010 but due to the instability of the financial world we believe it is wise to include a seller finance back up option to assure both you and your fellow owners that this transaction will be closed by our group on or before 1/20/2010 regardless. The only exception would be something that we are unaware of at this point that may come up in diligence. We are not at all concerned about the known diligence items; it would only be the unknown - which we have no reason at this point to be concerned.

Michael, with your execution of this letter of intent to evidence the committee's support of this offer (the "Letter of Intent" or "LOI"), the buyer will immediately order survey, appraisal and begin due diligence on Monday, November 23, 2009.

The following is an outline of the material terms and conditions of the proposed transaction, but these terms must be supplemented by a definitive, formal written contract executed by both parties (the "Definitive Agreement").

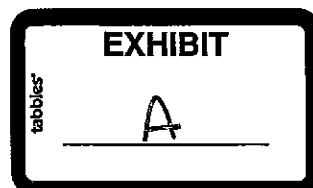
Buyer: Landology or its assigns permitted by the Definitive Agreement

(A) All cash offer

Purchase Price: \$4,800,000

Earnest money deposit: \$250,000 (see copy of check attached)

{FT632096;1}



(B) Seller financing offer:

Purchase Price: \$5,400,000

Financing Terms

Cash at closing: \$772,500 approximate cost for Seller to close.

Final number to be agreed upon when seller is clear on date and cost to close their part of the transaction and provides to seller the final hard cost by December 30th 2009. No material change anticipated and it is agreed that the loan amount will be adjusted accordingly to reflect the difference between purchase price and cash paid at closing

(Proof of funds to be provided by seller within 2 business days of execution of LOI).

Additional cash:

- Buyer agrees to escrow an estimated \$2,000,000 at closing in order to complete the project and bring it operational.

Note value:

\$4,627,500

Terms of note:

- No interest for 4 months from closing
- Interest only of 6.5% month 5-12
- Extension beyond month 12th – interest rate goes to 8.5% with a principal reduction of \$250,000 to be made on first day of 13th month and another \$250,000 reduction on first day of month 19.
- Loan will expire 24 months from date of closing.
- No prepayment penalty applies at any time
- Personal guarantee \$500,000, subject to \$250,000 reduction as set forth below

Cash/finance choice: Seller agrees to firmly commit to buyer at time of first earnest money deposit becoming binding which purchase scenario will apply at which time the other option will become null and void. If Buyer elects seller financing, Seller will prepare seller financing documents subject to Buyer's reasonable approval.

Buyer: The undersigned buyer or its assigns.

Right to take back up offers: Buyer agrees to grant the seller the right to accept back up offers during the due diligence period.

Additional collateral: Buyer agrees to provide a personal guarantee from Darand Williams and Daryl Williams, jointly and severally, in the amount of \$500,000 at closing, \$250,000 of which will be removed at time of certificate of occupancy for all the improvements to be completed by buyer. The additional \$250,000 will carry through to full retirement of debt.

Definitive Agreement: The seller will provide a draft of the Definitive Agreement promptly following the execution of this Letter of Intent. Notwithstanding anything to the contrary herein, in the event that the parties are unable to reach agreement on all the terms and conditions of the Definitive Agreement, or the Definitive Agreement is not fully executed and delivered by the parties within ten (10) business days after the date of this Letter of Intent for any other reason, this Letter of Intent shall automatically terminate, whereupon both parties shall be released from any further liability or obligation under this Letter of Intent.

Deposit: Within one business day after the date of execution of this Agreement, Buyer will deposit \$250,000.00 as earnest money with the law firm of Lowndes, Drosdick, Doster, Kantor & Reed of Orlando Florida. The earnest money deposit is totally and 100% refundable during the due diligence period and will be refunded for any or no reason at the sole discretion of the buyer.

Buyer agrees earnest money will become fully committed as open diligence items are closed, (see below "Open Diligence items"). The following dates will govern earnest money deposit becoming non-refundable upon satisfaction of remaining Open Diligence items as follows:

- \$100,000 becomes non-refundable on December 15th 2009
- Additional \$150,000 becomes non-refundable on December 30th, 2009.

The Definitive Agreement shall provide that Buyer reserves the right to terminate it for any or no reason on or before December 15th 2009. If after that date any Open Diligence items remain open and the Buyer is unable to come to resolution to his full satisfaction, Buyer may terminate the Definitive Agreement and receive a full refund of the buyers earnest money deposit.

Due Diligence: The Due Diligence period shall begin on November 23, 2009 and continue until December 15, 2009 (the "due diligence period"). Buyer is in receipt of all of the sellers materials pertaining to this project. The Buyer shall have the right to inspect, review, and approve, in Buyer's sole discretion, the Property, all associated documents and all available information related to the property. Should the Buyer choose to terminate the LOI or the Definitive

Agreement prior to the expiration of the Due Diligence Period, Buyer will repair any damage to the property caused by its inspections and deliver all of its due diligence materials to Seller, whereupon all Earnest Money deposits and payments will be returned to Buyer. Buyer will indemnify and hold Seller harmless from any and all liabilities, costs and expenses including attorneys' fees and costs arising out of Buyer's entry upon the Property. The Buyer's obligations set forth herein shall survive any termination of this Letter of Intent.

Open items - which must be understood and accepted as is or resolved to buyers satisfaction as outlined above:

- Confirmation that all permits are in full force and effect; Seller agrees to file for one further 90 day extension on or before December 23, 2009 in order maintain all permits in full force and effect through closing of the transaction contemplated by this Agreement.
- Appraisal is ordered on 11/23/09 and received and accepted by buyer no later then 12/14/09;
- Buyer orders and receives ALTA survey; and
- DEP meeting provides clear direction on necessary modifications to sewer treatment plant of which all are acceptable to the buyer.

Closing: Closing will take place on or before January 20th 2010.

AS-IS: The property will be conveyed AS-IS and WHERE-IS by receiver's deed, without any representations or warranties. The seller agrees that any and all applicable warranties that have survived bankruptcy will be conveyed to buyer by quit claim assignment thereof.

Current insurance policy: Seller agrees to make available to buyer during the diligence period copies of its current property and casualty coverage in force whereby Buyer will assess probability of claims resulting from theft. If in the opinion of the Buyer there is a legitimate claim the Seller agrees once the Buyer is fully committed (earnest money deposit is at risk) then the Seller will file claims on Buyers behalf and prior to closing.

Broker(s): If and when the closing contemplated by this agreement occurs, Seller will pay a real estate commission at closing equal to \$50,000, direct to the following licensed real estate brokers: Nelva Sperry and Jessica Amore, \$25,000 each.

Proof of Funds: A letter setting forth Buyer's ability to close this transaction on time will be provided within 2 business days of executed LOI.

Closing Costs: Seller will pay all real estate taxes, transfer tax and any cost of curative title work agreed to be undertaken by Buyer pursuant to the Definitive Agreement or prepayment

premiums or cost associated with the discharge of any monetary liens or loans encumbering the property. Otherwise each party will be responsible for any costs which it incurs.


Title: The closing will be conditioned upon buyer's receipt of a marked up title insurance commitment approved by Buyer in accordance with the applicable provisions of the Definitive Agreement, which commitment and policy will be issued by First American Title Insurance Company, at seller's expense.

Subject to the terms and conditions set forth herein, this letter of intent is intended to be a binding agreement with respect to the transaction contemplated hereby. We acknowledge and agree that the terms of the proposed transaction set forth in this Letter of Intent and the closing contemplated hereby are subject to the approval of the court which appointed you receiver and, therefore, this LOI is subject to your receipt of such approval and the Definitive Agreement shall require such court approval as a condition precedent to its effectiveness and the closing contemplated thereby.

Letter of Intent
November 21, 2009
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Please sign and return a copy of this letter by e-mail or fax affirming the committee's acceptance and support of this offer, subject to the terms and conditions set forth herein.

Landology LLC

By: 
Mike McCann
Its: Partner

Accepted by:



MICHAEL GOLDBERG, AS RECEIVER for Berman Mortgage Corporation, a Florida corporation; MAMC Islamorada LLC, a Florida limited liability company, as assignee of the credit bid made by M.A.M.C. Incorporated, a Florida corporation, and Dana J. Berman, as Owner and Managing Member under Case No. 07-43672 CA 09 in the Circuit Court of the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida