

**IN THE CIRCUIT COURT OF THE ELEVENTH 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 AUTHORIZATION
TO ENTER INTO AN EXCLUSIVE LISTING AGREEMENT
WITH COLDWELL BANKER COMMERCIAL NRT**

Michael I. Goldberg, the receiver of Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), *et al.*, and Relief Defendants DB Atlanta, LLC, *et al.* ("Receiver"), hereby files this Motion for Authorization to Enter into an Exclusive Listing Agreement with Coldwell Banker Commercial NRT ("Broker"). In support of this Motion, the Receiver states as follows:

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

detriment of approximately 640 investors who entrusted over \$192 million to the Receivership Defendants.

2. On August 17, 2010, this Court entered an Order expanding the receivership estate to include Relief Defendant MAMC Emerald Cay, LLC.

3. Prior to the receivership case, MAMC serviced a loan made by seventy-four investors to Emerald Cay, LLC ("Borrower"). The Borrower defaulted and MAMC, on behalf of the investors foreclosed on the loan. MAMC formed MAMC Emerald Cay, LLC ("Emerald Cay") to hold title to the collateral securing the loan.

4. The collateral consists of four parcels of vacant land in Orange County, Florida (the "Property"). It is the intention of the Receiver to market and sell the Property by entering into a Exclusive Right of Sale Listing Agreement ("Agreement") with the Broker. The Agreement is for a duration of six months. A true and correct copy of the Agreement is attached hereto as Exhibit 1.

5. This Receiver is charged with the responsibility of preventing waste and dissipation of the Defendants' assets. *See* Receivership Order at ¶ 7. Moreover, the Receiver is authorized to enter into agreements and take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. *See* Receivership Order at ¶ 17.


6. The Receiver has consulted with the lender committee for Emerald Cay¹, who have advised the Receiver that they approve his entering into the Agreement on behalf of Emerald Cay.

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 Berman Mortgage, M.A.M.C. 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 SENTERFITT
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: 
Joan M. Levit, Esquire
Florida Bar No. 987530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of January, 2011, a true and correct copy of the forgoing was furnished via U.S. Mail to the parties on the attached Service List.

By: 
Joan M. Levit

EXHIBIT 1



Exclusive Right of Sale Listing Agreement

NRT

This Exclusive Right of Sale Listing Agreement ("Agreement") is between MAMC EMERALD CAY, LLC ("Seller") and Coldwell Banker Commercial NRT ("Broker").
Seller's mailing address: 3400 Coral Way, Suite 303, Miami, FL - Orlando, FL 32802
Telephone: _____ Cell Phone: _____ Email: _____

1. **EXCLUSIVE RIGHT OF SALE:** In consideration of the covenants set forth herein, Seller hereby grants Broker the exclusive right to sell the real and personal property described below (collectively, "Property") for the price and terms stated herein:

Property Street Address: NOT DEFINED
Legal Description: 022528503500010018, 022528503500010017, 022528285500010035, 022528503500010016
Personal Property, including appliances: _____

Seller represents that he/she/it has full legal authority and is legally entitled to convey marketable title to the Property and that the Property is not currently occupied by a tenant. ~~If occupied, the lease term or tenancy (including any options to renew) expires on the~~
~~day of~~ 20

2. **TERM:** This Agreement shall commence on the ~~20th~~ 15th day of DECEMBER 20 10, and terminate upon the later of either 11:59 p.m. on the 31ST day of JULY 20 11 or any extended date agreed to in writing by Seller and Broker (hereafter, the "Termination Date"). Upon full execution of a contract for purchase and sale, all rights and obligations of this Agreement shall automatically extend through the date of the actual closing of the contract. In the event any contract entered into during the term of this Agreement does not close, the term of this Agreement shall automatically be extended for a period equal to the time that the contract was pending. Upon the acceptance of any lease or rental of the Property during the term of this Agreement, the term of this Agreement shall automatically be extended for a period equal to the term of said lease or rental and any extension or renewal thereof. 2,300,000

3. **PRICE AND TERMS:** The Property is offered for sale on the following terms: \$700,000 \$500,000 \$1,100,000
a) Price: ~~\$3,395,000~~ 2,300,000 (Price includes all fixtures except LOT 1 \$500,000, LOT 2 \$395,900, LOT 3 \$99,900)
SEE ATTACHED SELLER AGREES TO SELL THE LOTS SEPARATELY

- b) Financing Terms: Cash Conventional Other _____
- c) Seller Financing: Seller will provide financing in the form of a purchase money mortgage in the amount of \$ _____ upon the following terms: _____
- d) Other terms: _____

4. **BROKERAGE RELATIONSHIP, OBLIGATIONS AND AUTHORITY.** Seller acknowledges that Broker and its representatives are representing Seller in a statutory Transaction Brokerage relationship as set forth in §§ 475.01(1)(f) and 475.278(2)(b), Fla. Stat. Broker agrees to make diligent and continued efforts to sell the Property during the term of this Agreement. Seller authorizes Broker to: (a) advertise the Property as Broker deems advisable, in its sole discretion, in newspapers, publications, computer networks and other media; (b) place appropriate transaction signs on the Property, including "For Sale" signs; (c) use Seller's name in connection with marketing and advertising the Property; (d) obtain information relating to the present mortgage(s) on the Property and any leases/tenants; (e) place the Property and all transaction information in the appropriate commercial information exchange service; (f) withhold verbal offers withhold all offers once Seller accepts a sales contract, and (g) divulge the existence of offers on the Property in response to inquiries from buyers or cooperating brokers.

5. **SELLER OBLIGATIONS AND REPRESENTATIONS:** Seller agrees to: (a) cooperate with Broker in carrying out the purpose of this Agreement, including immediately referring to Broker all inquires regarding the Property; (b) provide Broker with keys and security codes to the Property and all up to date financial information concerning the Property (c) make the Property available for Broker to show during reasonable times; (d) inform Broker in writing prior to leasing, mortgaging or otherwise encumbering the Property, or if Seller receives a notice of mortgage default or a foreclosure proceeding is initiated (Broker shall have the right, in addition to any other remedies, to immediately terminate this Agreement in the event foreclosure proceedings are initiated); (e) comply with the Foreign Investment In Real Property Tax Act and any related laws or rules; (f) consult appropriate professionals for legal, tax, zoning, permitting, square footage, property condition or boundaries, environmental, and other specialized advice; and (g) make all legally required disclosures to any buyer. Seller represents and warrants that (i) no person or entity has any right to purchase or lease the Property or any portion thereof by virtue of any agreement, authorization, option or right of first refusal except as expressly disclosed in paragraph 14, and (ii) there are no prior listing, sale or other agreements affecting the Property that have not been lawfully terminated.

6. **COMPENSATION:** Seller shall compensate Broker as follows:
a) Seller agrees to pay Broker a commission in the amount of either 7 % of the total purchase price, plus \$295.00 or \$ _____, plus \$295.00. Broker's commission shall not be due or owing unless and until there is a closing, except Broker's commission shall be due and owing if: (i) during the term of this Agreement, Seller options or transfers the Property or any interest therein, whether by sale, lease, exchange, sale of stock, governmental action, foreclosure, agreement for deed, bankruptcy or any other means of transfer, regardless of whether the buyer or transferee was secured by Broker, Seller or any other person; (ii) Seller refuses to cooperate in carrying out the purpose of this Agreement; (iii) Seller refuses to accept an offer at the price and terms stated in this Agreement, defaults on an executed contract, or agrees with a buyer to cancel an executed contract; (iv) Seller terminates or cancels this Agreement prior to the Termination Date referenced in paragraph 2 (regardless of any other provision allowing early termination or cancellation), unless agreed to in a writing signed by Broker's Branch Office Manager (who shall have the sole and exclusive authority for Broker to terminate or cancel this Agreement regardless of who

may have signed this Agreement for Broker), or (v) within 180 days after Termination Date ("Protection Period"), Seller agrees to or does sell, transfer, lease, exchange or option the Property or any interest therein to a buyer with whom Seller, Broker, or any real estate licensee communicated regarding the Property prior to the Termination Date. For commissions owed pursuant to subsections (ii), (iii), or (iv) above, the commission shall be the amount set forth above (percentage shall be calculated on the list price set forth in paragraph 3(a) above).

b) \$ _____ or _____ % of the gross lease value (10% if left blank), which commission shall be due on the date Seller enters into a lease or agreement to lease, whichever is sooner;

c) In the event that Seller retains any deposits in connection with a transaction that does not close for any reason, Broker shall be entitled to receive 60% of all such retained deposits, not to exceed the commission in 6(a) above.

7. **INDEMNIFICATION:** Seller agrees to indemnify and hold Broker harmless from losses, damages, costs and expenses of any nature, including attorney's fees, and from liability to any person, that Broker incurs because of (a) Seller's negligence, representations, omissions, actions, or inactions, (b) the existence of undisclosed material facts about the Property, or (c) a court or arbitration decision that a broker who was not compensated in connection with a transaction is entitled to compensation from Broker.

8. **THIRD PARTY VENDORS.** As a courtesy, Broker may provide Seller with one or more names of service providers including, but not limited to, inspectors, engineers, contractors, repairpersons, or attorneys that other consumers have used or of whom we are aware. The providing of such names shall not in any way be construed to be a recommendation or endorsement of, nor is Broker warranting the work of, any of the named providers. The final choice of any service provider rests solely with Seller and Seller is free to choose any provider, whether the name appears on any list or not. Seller agrees to indemnify and hold Broker harmless from any and all claims or losses that in any way arise out of, or relate to, the selection or use of any such service provider.

9. **GOVERNING LAW, VENUE, LIMITATION OF LIABILITY, AND WAIVER OF JURY TRIAL.** This Agreement shall be construed under Florida law. In the event of litigation involving Broker in any way arising out of or relating to this Agreement, the Property; or the relationship created hereunder, venue shall be exclusively in Broward County, Florida. In any claim for damages of any kind by Seller against Broker or its representatives (including negligence), Seller's damages shall not exceed the amount of the commission that Broker was paid, or would have been paid, in connection with the sale of the Property pursuant to this Agreement. **BROKER AND SELLER HEREBY KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION.**

10. **ACKNOWLEDGEMENTS:** Broker's general company policy is to cooperate with, and compensate, a broker who is the legal and procuring cause of a buyer who purchases the Property and will offer compensation from the commission listed in paragraph 6(a) and (b) to cooperating brokers of 3-4 % of the total purchase price or na % of the gross lease value; provided, however, that nothing herein shall in any way confer any third party benefit in favor of any cooperating broker. Broker shall have the right, in its discretion, to increase or decrease the offer of compensation to cooperating brokers and Seller will be notified of any such change; provided, however, that Seller shall not be obligated to pay more than the amount set forth in paragraph 6. Florida law permits a cooperating broker to represent the interests of the buyer even though that broker is compensated by the Seller. At Seller or Buyer request, and upon receipt of the statutory disclosures signed by Seller and buyer, Broker may act as a "designated salesperson" (i.e., agent of the Seller and the Buyer) in accordance with §475.2755, Fla. Stat. Seller acknowledges that this Agreement does not guarantee a sale. If acting as escrow agent, Broker will deposit funds received on your behalf ("Deposit") in a non-interest bearing account at Comerica Bank ("Bank"), a state-chartered bank that is insured by the Federal Deposit Insurance Corporation ("FDIC"). FDIC deposit insurance coverage applies to a maximum amount of \$250,000 per depositor for deposits held in the same legal ownership category at each bank ("FDIC Limit"). For example, the Deposit will be combined with any individual accounts held directly by you at the Bank. You are responsible for monitoring the total amount of deposits that you own, directly or indirectly, in the Bank. If you have questions about FDIC deposit insurance, contact your financial or legal advisors or go to www.fdic.gov/deposit/deposits/index.html. Broker does not guarantee the solvency of any bank into which funds are deposited and does not assume any liability for any loss you incur due to the failure, insolvency or suspension of operations of any bank or the \$250,000 FDIC Limit. The Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin or any other class or status protected by law.

11. **ENTIRE AGREEMENT:** This Agreement sets forth the entire agreement between Seller and Broker and may only be modified in writing signed by Seller and Broker. This Agreement may be executed in counterparts and via facsimile. If any provision of the Agreement is or becomes invalid or unenforceable, all other provisions shall remain fully effective.

12. **MISCELLANEOUS:** This Agreement is binding on Broker's and Seller's heirs, personal representatives, administrators, successors and assigns. Time is of the essence. Broker may assign this Agreement to another Coldwell Banker office. For purposes of paragraphs 7, 8, 9, 10 and 11 the term "Broker" shall include Broker's employees and representatives. The term "buyer" includes buyers, tenants, exchangers, optionees and other categories of potential or actual transferees and immediate family members and any entity or trust in which they have an interest. Paragraphs 6, 7, 8, 9 and 13 shall survive the termination or expiration of this Agreement.

13. **LIEN RIGHTS:** The Florida Commercial Real Estate Sales Commission Lien Act and the Florida Real Estate Leasing Commission Lien Act provide 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 or your interest in the Property, respectively, for the broker's commission. The broker's lien rights under the acts cannot be waived before the commission is earned.

14. **SPECIAL CLAUSES:**

IF THE CANRELE GROUP, DAVID RAVINDRA AND OR A RELATED ENTITY ENTER INTO A FULLY EFFECTIVE CONTRACT WITHIN 90 DAYS FROM EFFECTIVE DATE OF THIS AGREEMENT THAT SALE WILL BE EXCLUDED FROM THIS AGREEMENT AND NO COMMISSION WILL BE DUE TO BROKER
This is intended to be a binding contract. Neither Broker nor its representatives make any representations as to the legal effect or tax consequences of this Agreement or the transactions contemplated herein. If you do not fully understand this contract, consult an attorney and/or accountant before you sign it.

Seller agrees to the terms of this Agreement and acknowledges receipt of a copy within 24 hours of Broker's acceptance.

Seller: _____ Date 12/22/10 Seller: _____ Date _____

Coldwell Banker Commercial NRT: By: _____ (As Its Authorized Representative) Date _____

** The terms of this agreement are subject to court approval.*