

**IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR MIAMI-DADE COUNTY,  
FLORIDA**

**CASE NO. 07-43672 (CA 09)**

STATE OF FLORIDA, OFFICE OF FINANCIAL  
REGULATION,

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.

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**RECEIVER'S MOTION FOR AUTHORITY TO ENTER INTO  
AN EXCLUSIVE LISTING AGREEMENT WITH  
DOUG STEWARD REALTY, INC., NUNC PRO TUNC,  
TO MARKET AND SELL THE EMERALD CAY PROPERTY**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this *Motion for Authority to Enter Into an Exclusive Listing Agreement with Doug Stewart Realty, Inc., Nunc Pro Tunc, to Market and Sell the Emerald Cay Property* (the "Motion"). In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, the State of Florida, Office of Financial Regulation ("OFR") filed a *Complaint for Temporary and Permanent Injunction and Appointment of*

*Receiver*. The OFR alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors ("Lenders") by offering fractional interests in short-term acquisition and/or construction mortgage loans. MAMC serviced the loans pursuant to servicing agreements entered into between the Lenders and MAMC.

2. One of the loans was made to Emerald Cay, LLC (the "Borrower") and secured by a first mortgage ("Mortgage") on four parcels of vacant land located on Polynesian Isle Blvd. in Kissimmee, Florida (the "Emerald Cay Property"). The loan was serviced by MAMC.

3. After the Borrower defaulted under the loan documents, MAMC, on behalf of the Lenders foreclosed on the loan. After the completion of the foreclosure, the Emerald Cay Property was held in the name MAMC Emerald Cay, LLC

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

5. On August 17, 2010, the Receivership Court entered an Order expanding the receivership estate to include additional relief defendant MAMC Emerald Cay, LLC

6. The Receiver now seeks authority from the Receivership Court to enter into an Exclusive Right of Sale Listing Agreement for Commercial Property (the "Agreement") with Doug Steward Realty, (the "Broker"), *nunc pro tunc* to August 13, 2013, to market and sell the Emerald Cay Property.

7. The Agreement is for a duration of six months. A true and correct copy of the Agreement is attached hereto as Exhibit 1.

8. The Receiver is authorized to enter into agreements and take such action as he deems advisable or proper for the marshaling, maintenance or preservation of the Receivership Assets. *See* Order Appointing Receiver, at ¶ 17.

9. The Receiver has consulted with the lender committee for the Emerald Cay Property,<sup>1</sup> who have advised the Receiver that they approve his entering into the Agreement on their behalf.

10. Notice of this Motion shall be provided by posting a copy (and the Notice of Hearing) on the Receivership website and sending a copy to the Lenders via e-mail.

**WHEREFORE**, Michael I. Goldberg, in his capacity as Receiver of BMC, MAMC 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**

*Counsel for the Receiver*

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350 East Las Olas Boulevard

Fort Lauderdale, FL 33301-2229

Phone: (954) 463-2700/Fax: (954) 463-2224

Email: joan.levit@akerman.com

By: /s/ Joan Levit

Joan M. Levit, Esquire

Florida Bar No. 987530

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<sup>1</sup> 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.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of September, 2013, a true and correct copy of the forgoing was furnished to the parties on the attached Service List by U.S. mail, to the Lenders by e-mail and a copy of this motion will be posted on the receivership web-page.

/s/ Joan Levit

**SERVICE LIST**

Pury Santiago  
Assistant General Counsel  
STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION  
401 N.W. 2<sup>nd</sup> Avenue, Suite N-708  
Miami, FL 33128  
[pury.santiago@fiofr.com](mailto:pury.santiago@fiofr.com)

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255 Aragon Avenue, Second Floor  
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Charles Evans Glausier, Esquire  
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ANANIA, BANDKLAYDER,  
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100 SE 2<sup>nd</sup> Street  
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**EXHIBIT 1**

**Exclusive Right of Sale Listing Agreement For Commercial Property**



This is a legal and binding contract on all parties hereto, including their heirs, legal representatives, successors and assigns and if it is not fully understood, OWNER should seek competent legal advice.

1. This contract made and entered into by and between:  
MARC EMBRAID OAY LLC (Cont/ Line 170) ("OWNER" which term shall include singular and plural)  
and DOUG STEHART REALTY, INC ("BROKER")

OWNER hereby gives BROKER for a period of time commencing the 13 day of AUG 2013, and terminating the 13 day of FEB 2014 or any renewal hereof ("Termination Date") THE EXCLUSIVE RIGHT AND AUTHORITY to find a purchaser of the real property and/or inventory or assets, arrange a merger, lease, lease with option to purchase, rent or exchange for the herein described property and personally described in Paragraph 1(A). Upon full execution of a contract for sale and purchase of the Property, all rights and obligations of the Agreement will automatically extend through the date of the actual closing of the sales contract.

A. Description of real property:  
Street address: S/N POLYNISIAN ISLE BUND KISSIMEE FL 34746

Legal Description:  
SEE EXHIBIT "A"

B. Description of personal property (including machinery, inventory, supplies and equipment); Upon the following price and terms:

Price: \$ 2,800,000.00, subject to adjustment at Owners sole discretion.  
Terms: (include special financing terms here)



C. Mortgage Information: existing mortgage with \$ \_\_\_\_\_ Balance; \_\_\_\_\_ % Payable \$ \_\_\_\_\_ Per Month P.I. \$ \_\_\_\_\_ Approximately \_\_\_\_\_ years to run.

D. Interest on encumbrances, taxes, insurance premiums and rents shall be adjusted pro rata at the date of closing. Improvement liens, if any, will be discharged by the OWNER. The usual and customary time to be allowed for examination of title and closing of the transaction. Personal property to be included in the purchase price shall include all fixed equipment, and plants and shrubbery now installed on said property. It is understood that the sale is to include:  the goodwill and name as a going concern;  furniture, fixtures and equipment as per attached inventory;  advertising; contract rights;  leases;  licenses;  rights under any agreement for interests except as stated herein. Seller shall convey title to personal property assets by Bill of Sale Absolute giving good marketable title unless the sale is a secured transaction, in which case a Security agreement will be required by the purchaser. The OWNER agrees at its expense to provide (a) preparation of and delivery to the Purchaser of a warranty deed or other \_\_\_\_\_ conveying a marketable title free and clear of all liens except encumbrances of record assumed by the Purchaser as part of the purchase price (public utility easements); (b) abstract of title or binder for marketable title insurance policy; (c) documentary stamps for the deed; (d) Seller's attorney fees; (e) recording fee for satisfaction of existing mortgage is paid off.

2. BROKER agrees:

- A. To process Property through Multiple Listing Services.
- B. To inspect and become familiar with the Property and promote its sale;
- C. To present all offers and counter-offers in a timely manner regardless of whether the Property is subject to a contract for sale;
- D. To advertise the Property as Broker deems advisable including advertising the Property on the Internet unless limited in 2(d)(i) or 2(d)(ii) below.  
(Seller opt-out)(Check one if applicable)  
 (i) Display the Property on the Internet except the street address of the Property shall not be displayed on the Internet.

Seller (Signature) and Broker/Sales Associate (Signature) acknowledge receipt of a copy of this page, which is Page 1 of 4 Pages.



51'  (i) Seller does not authorize Broker to display the Property on the Internet.  
52' Seller understands and acknowledges that if Seller selects option (i), consumers who conduct searches for listings  
53' on the Internet will not see information about the listed property in response to their search.

54' \_\_\_\_\_ Initials of Seller.

55' E. Virtual Office Websites: Some real estate brokerages offer real estate brokerage services online. These websites are  
56' referred to as Virtual Office Websites ("VOW"). An automated estimate of market value or reviews and comments about a prop-  
57' erty may be displayed in conjunction with a property on some VOWs. Anyone who registers on a Virtual Office Website may  
58' gain access to such automated valuations or comments and reviews about any property displayed on a VOW. Unless limited  
59' below, a VOW may display automated valuations or comments/reviews (blogs) about this Property.

60'  Seller does not authorize an automated estimate of the market value of the listing (or hyperlink to such estimate) to  
61' be displayed in immediate conjunction with the listing of this Property.

62'  Seller does not authorize third parties to write comments or reviews about the listing of the Property (or display a  
63' hyperlink to such comments or reviews) in immediate conjunction with the listing of this Property.

64' F. To the extent not in conflict with BROKER'S duties under paragraph 6 below, to furnish information requested by  
65' another agent or licensed real estate broker and to assist cooperating broker in closing transaction on the Property  
66' when requested.

67' G. To take all reasonable precautions to prevent damage in the process of showing Property or permitting others to  
68' show Property, but BROKER accepts no responsibility for loss or damage; and

69' H. To  utilize  not utilize the name of the OWNER in connection with marketing or advertising of the Property  
70' either before or after sale;

71' I. To represent the OWNER, and thereby is authorized to accept, receipt for and hold all monies paid or deposited as a  
72' binder or deposit on the purchase of the Property, and the duties of the BROKER relative thereto shall be in accordance  
73' with the laws of the State of Florida and regulations of the Florida Real Estate Commission; and

74' 3. OWNER agrees:

76' A. To pay the BROKER compensation in accordance with the terms of this Agreement set forth in paragraph 4 below;

76' B. To give BROKER permission to pay cooperating brokers, except when not in OWNER'S best interest:  and to offer  
77' compensation in the amount of 3 % of the purchase price or \$ \_\_\_\_\_ to buyer's agents, who represent  
78' the interest of the buyers, and not the interest of OWNER in a transaction;  and to offer compensation in the amount of

79' 3 % of the purchase price or \$ \_\_\_\_\_ to a broker who has no brokerage relationship with the buyer or  
80' OWNER;  and to offer compensation in the amount of 3 % of the purchase price or \$ \_\_\_\_\_ to trans-  
81' action brokers for the buyer;  None of the above (if this is checked, the Property cannot be placed in the MLS.)

82' G. In the event of an exchange, to permit BROKER to represent all parties and collect compensation or commissions from  
83' them. BROKER is authorized to pay other brokers such compensation or commissions in any manner acceptable to brokers.

84' D. To pay compensation due BROKER if Property, or any interests therein is sold, leased or contracted to be sold or  
85' leased or otherwise transferred within 10 days after Termination Date to anyone to whom the Property was submit-  
86' ted by or through the efforts of any BROKER or the OWNER before the Termination Date. However, the obligation to  
87' pay such compensation to BROKER shall cease if a bona fide Exclusive Right of Sale Contract is entered into after  
88' Termination Date with another licensed BROKER and a sale, lease, exchange or contract therefor, of the Property is  
89' made during the term thereof;

90' E. To notify the BROKER in writing before leasing, mortgaging or otherwise encumbering the Property and to provide  
91' details of any such encumbrances;

92' F. To refer immediately to BROKER all inquiries relative to the purchase or leasing of the Property.

93' G. To warrant accuracy of information set forth herein and on the data sheets, exhibits and addenda attached hereto and  
94' to indemnify and save harmless BROKER and those relying thereon for damages resulting from errors contained therein;

95' H. To furnish BROKER with keys to the Property and make the Property available for BROKER to show during reasonable hours;

96' I. To pay any applicable sales tax when due;

97' J. To obtain any information relating to the present mortgage or mortgages on the Property including existing balance,  
98' interest rate, monthly payment, balance in escrow and payoff amount;

99' K. To authorize BROKER to place "For Sale", "Under Contract" OR "Sale Pending" signs upon the Property and to  
100' remove the signs upon termination of this Agreement or sale of the Property; and

101' L. To otherwise cooperate with the BROKER in carrying out the purpose of this Contract.

102' M. Provide all reasonable financial information, including but not limited to balance sheet, etc.

103' 4. Compensation: OWNER agrees to pay BROKER as follows, including paying all taxes, if any, on BROKER'S services, if  
104' BROKER, any agent of BROKER or a Buyer's Broker procures a buyer who is ready, willing, and able to purchase, lease or  
105' exchange the property, and/or inventory of the OWNER, and/or assets of the business whichever is applicable, on the terms  
106' of this Contract or any other terms acceptable to OWNER. The stated compensation shall be paid to the BROKER in the  
107' event of a sale, exchange, or transfer of any interest including stocks or shares in the Property during the term of this con-  
108' tract, whether such transaction, sale or exchange be accomplished by the BROKER or any other person or entity including  
109' OWNER; (complete whichever fee arrangements apply):

110' Seller (\_\_\_\_\_) and Broker/Sales Associate (\_\_\_\_\_) acknowledge receipt of a copy of this page, which is Page 2 of 4 Pages.



*No commission shall be due if the sale fails to close for any reason, excluding the willful default of owner under existing agreement.*

111' A. (CHECK ONE)  0 % of gross sales price, or  \_\_\_\_\_ % of gross sales price plus \$ \_\_\_\_\_, or  \$ \_\_\_\_\_ including  
112' fees BROKER may pay to cooperating brokers. OWNER shall pay this fee at the time, and from the proceeds, of closing. If  
113' OWNER transfers the Property for nominal consideration, OWNER shall pay \$ \_\_\_\_\_ on the date OWNER transfers title.

114' B. In the event the Property is leased during the term of this Agreement, OWNER shall pay to BROKER a leasing fee of  
115' \$ \_\_\_\_\_ or \_\_\_\_\_ % of gross lease amounts. The fee shall be paid to BROKER when BROKER, OWNER or anyone  
116' working by or through BROKER produces a tenant acceptable to OWNER. If the tenant purchases the Property at any  
117' time, even if such a purchase is subsequent to the expiration date of this Agreement, BROKER shall be paid the stated  
118' compensation set forth in Paragraph 4A at the time of closing.

119' C. In the event that deposit(s) be retained, 0 % thereof, but not exceeding the compensation provided above, shall  
120' be paid to the BROKER as full consideration for BROKER(s) services, including costs expended by BROKER, and the  
121' balance shall be paid to OWNER. If the transaction shall not be closed because of refusal or failure of OWNER to per-  
122' form, the OWNER shall pay the said compensation in full to BROKER upon demand.

123' D. OWNER understands that this Contract does not guarantee the sale of the Property but that it does assure OWNER  
124' that BROKER will make earnest and continued effort to sell the Property until this Contract is terminated.

125' E. (CHECK ONE) OWNER  DESIRES  DOES NOT DESIRE UTILIZATION OF A LOCKBOX SYSTEM. IN THIS  
126' REGARD, OWNER HAS BEEN INFORMED THAT THROUGH THE USE OF A LOCKBOX SYSTEM, THE PROPERTY  
127' MAY BE MORE READILY SHOWN TO PROSPECTIVE BUYERS, BUT THAT PERSONAL PROPERTY OF OWNER,  
128' MAY, THEREFORE, BE MORE SUSCEPTIBLE TO THEFT OR DAMAGE. OWNER AGREES THAT THE LOCKBOX, IF  
129' UTILIZED, WILL BE FOR THE BENEFIT OF OWNER AND RELEASES BROKER AND THOSE WORKING BY OR  
130' THROUGH BROKER, AND THE BROKER(S) LOCAL BOARD(S) AND/OR ASSOCIATIONS OF REALTORS FROM ANY  
131' LIABILITY AND RESPONSIBILITY IN CONNECTION WITH ANY LOSS THAT MAY OCCUR. THE BROKER ADVISES  
132' AND REQUESTS THE OWNER TO SAFEGUARD OR REMOVE ANY VALUABLES NOW LOCATED ON THE PROP-  
133' ERTY AND TO VERIFY THE EXISTENCE OF OR OBTAIN PROPER PROPERTY INSURANCE. SHOULD A TENANT BE IN  
134' THE PROPERTY, THE SELLER SHOULD NOTIFY THE TENANT IN WRITING OF THE USE OF A LOCKBOX.

135' 7. OWNER authorizes BROKER, upon execution of a contract for sale and purchase, to notify the Multiple Listing Service  
136' of the pending sale and after closing of the sale to disclose sale information including the sales price to the Multiple Listing  
137' Service, other REALTORS and appraisers.

138' 8. In the event any litigation arises out of this Contract, the prevailing party shall be entitled to recover reasonable attorney  
139' fees and costs.

140' 9. TERMINATION: This Contract shall terminate as of the Termination date unless sooner terminated as provided below:  
141' A. If OWNER decides, because of a bona fide change in circumstances, not to sell the Property, this Contract shall be  
142' conditionally terminated as of the date OWNER executes a Withdrawal Agreement and pays BROKER a cancellation fee  
143' of ~~\$ 5,000.00~~ 0 If OWNER contracts for sale to anyone after the agreed early termination date but on or before the original  
144' Termination Date, then the early termination provided by this paragraph shall be voidable by BROKER and OWNER shall  
145' pay BROKER the compensation stated in paragraph 4, less the cancellation fee paid pursuant to this paragraph.

146' B. If at any time during the term of this Contract, BROKER determines that the proceeds from the sale of the Property  
147' which OWNER would reasonably expect to receive will not be sufficient to pay the compensation due BROKER, then  
148' this Contract may be terminated by BROKER upon three days written notice to OWNER.

149' 10. MANDATORY ARBITRATION: ATTORNEYS' FEES: All claims, disputes, and other matters in question between the parties  
150' arising out of or relating to this Contract, or any addendum or addition, SHALL BE DECIDED BY MANDATORY BINDING ARBITRA-  
151' TION in accordance with the Florida Arbitration Code, Chapter 682, Florida Statutes. Each party shall select any arbitrator and the  
152' two arbitrators so chosen shall choose a third arbitrator. The three arbitrators so chosen shall hear and determine the matter. THIS  
153' AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE UNDER THE FLORIDA ARBITRATION CODE, and judg-  
154' ment upon the award rendered by the ARBITRATORS may be entered by the Court having jurisdiction thereof. In connection with  
155' any such arbitration or litigation, the prevailing party shall be entitled to recover all fees and costs incurred including reasonable attor-  
156' neys' fees. OWNER has been advised and consents to permit BROKER to file a lien against the Property, if applicable, for unpaid  
157' real estate commissions, pursuant to Section 476.42(1)(b), Florida Statutes, which lien shall be released only at such time as the full  
158' commission and all other sums due under this Agreement, including interest, attorneys fees and costs, have been paid in full.

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

163' 12. MISCELLANEOUS: This Agreement is binding on BROKER's and OWNER's heirs, personal representatives, administrators,  
164' successors and assigns. BROKER may assign this Contract to another listing office. This Contract is the entire agreement between  
165' BROKER and OWNER. No prior or present agreements or representations shall be binding on BROKER or OWNER unless included

166' Seller ( [Signature] ) and Broker/Sales Associate ( [Signature] ) acknowledge receipt of a copy of this page, which is Page 3 of 4 Pages.

167 In this Contract. Signatures, initials and modifications communicated by facsimile will be considered as originals. The term "buyer" as  
168 used in this Contract includes buyers, tenants, exchangees, optionees and other categories of potential or actual transferees.

169 13. ADDITIONAL TERMS

170 Continuation line 2: Brokers agree to identify and hold harmless Michael I.  
171 Goldberg, receiver for BMC-NAMC INC, NAMC EMERALD CAY (Seller), their agents, owners,  
172 employees, assignees and any all persons or entities related from and against any and  
173 all claims, demands, losses, damages, costs or expenses of any kind or character  
174 arising out of or resulting from any agreement, arrangements or understanding alleged  
175 to have been made by Brokers on owner's behalf with any Broker or finder in  
176 connection with the transaction herein contemplated, one any party claiming by,  
though or under Broker.

170 Date: \_\_\_\_\_ Seller: MAMC EMERALD CAY LLO Tax ID No: \_\_\_\_\_  
(print name)

171 Telephone #'s: Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_ Fax: \_\_\_\_\_

172 Address: \_\_\_\_\_ E-mail: \_\_\_\_\_

170 Date: \_\_\_\_\_ Seller: \_\_\_\_\_ Tax ID No: \_\_\_\_\_  
(print name)

169 Telephone #'s: Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_ Fax: \_\_\_\_\_

168 Address: \_\_\_\_\_ E-mail: \_\_\_\_\_

162 Date: \_\_\_\_\_ Authorized Listing Associate or Broker: SCOTT STEWART / KYRIL SRBENENSKY  
(print name)

163 Brokerage Firm Name: DOUG STEWART REALTY Telephone: 407-908-3213

164 Address: 7001 KINGPOINTE PKWY SUITE 8 ORLANDO FL 32819

165 Rec'd  
166 Signature of Seller \_\_\_\_\_ Signature of Seller \_\_\_\_\_

167 \_\_\_\_\_  
168 Signature of Associate or Broker

169 Copy returned to Seller on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:  personal delivery  mail  e-mail  fax.

Subject to cont approval

190 Seller (\_\_\_\_) (\_\_\_\_) and Broker/Sales Associate (SDS) (\_\_\_\_) acknowledge receipt of a copy of this page, which is Page 4 of 4 Pages.