

**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  
MOUNTAIN WAY REALTY, INC., TO MARKET AND SELL  
THE PROPERTY OWNED BY MAMC IBEX, LLC**

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 Mountain Way Realty, to Market and Sell the Property Owned by MAMC IBEX, LLC* (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 Ibox Cheoah, LLC (the "Borrower") and secured by a first mortgage ("Mortgage") on 137 acres on Cochrans Creek Road, Graham County, Robbinsville, North Carolina (the "IBEX Property"). The loan was serviced by MAMC.

3. 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.

4. On June 11, 2009, the Receiver and the Borrower entered into a Modification of Promissory Note, First Deed of Trust and Security Agreement, Assignment of Leases and Rentals, and Other Loan Documents and Cancellation of Certain Related Loan Documents (the "Modified Loan Documents"). The Modified Loan Documents were recorded in the Graham County Register of Deeds on June 17, 2009.

5. The Borrower defaulted under the terms of the Modified Loan Documents, due to its failure to pay the 2011 real property taxes. In lieu of defending a foreclosure proceeding, the Borrower agreed to transfer its ownership in the property to MAMC IBEX, LLC (which shall hold the property for the benefit of the Lenders).

6. On February 12, 2013 counsel for the Borrower and real estate counsel for the Receiver executed documents to memorialize the transfer. The Assignment of Deed of Trust,

Promissory Note, Assignment of Leases and Rentals and Other Loan Documents were recorded in the Graham County Register of Deeds on February 27, 2013.

7. On January 30, 2013, the Receivership Court entered an Order granting the Receiver's motion to include MAMC IBEX, LLC, as a Relief Defendant.

8. 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 Mountain Way Realty, (the "Broker"), to market and sell the IBEX Property.

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

10. 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.

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

12. 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

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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.

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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By: /s/ Joan Levit

Joan M. Levit, Esquire

Florida Bar No. 987530

**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

**EXHIBIT 1**

**SERVICE LIST**

Pury Santiago  
Assistant General Counsel  
STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION  
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**EXCLUSIVE RIGHT OF SALE**

In consideration of One Dollar (\$1.00) paid by Mountain Way Realty, hereinafter referred to as Broker, to

**Owner: MAMC IBEX LLC  
c/o Michael I. Goldberg, Reciever  
350 E. Las Olas Blvd., #1600  
Ft. Lauderdale, FL 33301**

**CONTACT**

**Tony Valencia, Asset Manager  
786-309-6966**

and is hereby acknowledged, and in further consideration of Broker's agreement to list the property belonging to owner described as:

**Re: #510103-00-00-7930-P  
137 acres on Cochrans Creek Road (Graham County)  
Robbinsville, NC  
(Exhibit A Attached)**

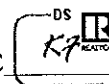
Owner hereby grants to Broker an Exclusive Right of Sale on subject property for a period beginning on **September 30, 2013** and expiring on **March 31, 2014**. Broker agrees to advertise subject property in such a manner as Broker may deem advisable and to use its best efforts to secure a purchaser, and to cooperate with other Brokers. This agreement may be continued by a written agreement signed by both Parties. During the term, the Broker has the exclusive right and authority to find a purchaser for the above described property at the price and upon the terms hereinafter set forth, or at any other price and terms acceptable to the Owner.

In the event Broker secures a purchaser for the property, the usual and customary practice for the examination of title, curing defects of title and for closing the transaction shall apply. Owner agrees to execute and deliver to the purchaser a good and sufficient special warranty deed, free and clear of all liens and encumbrances except those which the purchaser shall assume as part of the purchase price and which are specifically detailed in the purchase contract.

Owner grants the exclusive right to install a "For Sale" sign on the property and further agrees to refer to Broker all inquiries which Owner may receive during the continuance of this agency.

For finding a purchaser ready, willing and able to purchase the above property at closing, Owner agrees to pay Broker a commission of **8%** of the purchase price, if, and only if, closing occurs. Said commission is payable whether the purchaser be secured by listing Broker, or any other Broker. A commission is payable if the property is contracted on within nine months from the

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termination of this agency to a purchaser to whom it was submitted by Broker, or a cooperating Broker, and whose name has been disclosed to the Owner, in writing, within 10 days from written notice of termination or expiration of the term.

#### Co-Broker Compensation

Seller's Broker is to cooperate with all other brokers except when not in Seller's best interest. Seller's Broker shall split the 8% commission 50/50 with Co-Broker. Total commission must not exceed 8%.

The price for which this property is to be sold is **\$548,000**

If either Party is required to institute legal action against the other Party relating to this Agreement, the Prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

#### Indemnification Agreement

Broker agrees to indemnify and hold harmless Michael I. Goldberg, Receiver for BMC/MAMC, Inc., MAMC IBEX, LLC (Seller), their agents, owners, employees, assignees and any and all persons or entities related from and against any and all claims, demands, 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 Broker on owner's behalf with any Broker or finder in connection with the transaction herein contemplated, or any party claiming by, through or under Broker.

Owner agrees to disclose to Broker and to prospective purchasers any action taken to enforce or recover damages for the breach of any provision of this Agreement.

This Agreement may be executed in counterparts, each of which counterparts shall constitute an original and all of which together shall constitute one and the same instrument. If any provision of this Agreement is held or rendered illegal or unenforceable, it shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in force and bind the Parties as though the illegal or unenforceable provision had never been included in this Agreement. This Agreement sets forth the entire Agreement between Broker and Owner regarding the subject matter hereof. This Agreement may not be modified except by agreement in writing executed by Broker and Owner. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

This property is offered without respect to race, color, creed or national origin.

IN WITNESS WHEREOF, the Owner has executed this agreement this 11 day of September 2013.

Signed, sealed and delivered in the presence of:

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MAMC IBEX LLC, a Florida  
Limited liability company

By: \_\_\_\_\_  
Michael I. Goldgerg, as Receiver

**THIS AGREEMENT IS CONTINGENT UPON COURT APPROVAL.**

THIS AGREEMENT SHALL NOT BECOME BINDING UPON THE BROKER UNTIL  
APPROVED BY BROKER.

DocuSigned by:  
*Kate Fields*   
CA11788815EA45D  
\_\_\_\_\_  
(APPROVED) 9/11/2013 (DATE)

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