

**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.

**RECEIVER'S MOTION FOR AUTHORIZATION TO ENTER
INTO AN EXCLUSIVE LISTING AGREEMENT WITH
COLLIERS INTERNATIONAL TO MARKET AND SELL
MAMC BELLA VISTA, LLC'S PROPERTY**

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 Colliers International ("Broker") to Market and Sell MAMC Bella Vista LLC's Property. In support of this Motion, the Receiver states as follows:

1. During the real estate boom in the mid-2000's, BMC invested in 100 real estate projects and vacant properties, using \$192 million in funds loaned from approximately 640 individual investors ("Lenders"). The loans were secured by the properties.

2. MAMC serviced the loans pursuant to servicing agreements entered into between the individual Lenders and MAMC. Initially, MAMC serviced about 104 mortgage loans.

3. On December 11, 2007, upon the plaintiff's motion for temporary and permanent injunction and for appointment of a receiver, this Court ("Receivership Court") appointed Michael Goldberg as the receiver for Berman Mortgage, MAMC and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the Lenders.

4. Certain of the Lenders loaned money to Bella Vista del Mar, LLC ("Bella Vista Borrowers") for the purchase of real property located in Jacksonville, Florida ("Jacksonville Property").

5. In 2008, upon default by the Bella Vista Borrowers, MAMC commenced a foreclosure suit in Duval County, Florida, against the Bella Vista Borrowers and other parties who had an interest in the Jacksonville Property.

6. Final Summary Judgment was entered in 2008 in favor of MAMC. After a foreclosure sale, the Clerk of the Court for Jacksonville issued a Certificate of Title in the name of MAMC Bella Vista, LLC, dated July 23, 2008.

7. The Jacksonville Property is currently managed by MAMC. Upon motion of the Receiver, on August 11, 2008, this Court entered an Order expanding the Receivership Defendants to include MAMC BELLA VISTA, LLC.

8. MAMC Bella Vista, LLC has previously entered into an Exclusive Right of Sale Listing Agreement ("Agreement") with Colliers International to market and sell the Jacksonville Property.

9. The Receiver seeks to extend the Agreement, *nunc pro tunc* from January 13, 2013 through December 31, 2013. A true and correct copy of the new 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 Receivership Order at ¶ 17.

11. The Receiver has consulted with the lender committee for this project¹, who have advised the Receiver that they approve his entering into the Agreement on behalf of the project.

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

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of March, 2013, a true and correct copy of the motion was furnished via e-mail and U.S. Mail to the parties on the attached Service List. A copy of the motion (along with a Notice of Hearing) will also be posted on the receivership website.

By: 

Joan M. Levit

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EXHIBIT 1

COLLIERS
INTERNATIONAL

EXCLUSIVE RIGHT OF SALE

In consideration of One Dollar (\$1.00) paid by Colliers Dickinson, hereinafter referred to as Broker, to

Owner: MAMC Bella Vista LLC

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

**Re: 175511-0000
97-1st Street South
Jacksonville Beach, FL 32250
(see Exhibit "A")**

Owner hereby grants to Broker an Exclusive Right of Sale on subject property for a period beginning on **January 21, 2013** and expiring on **December 31, 2013**. 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 **6 %** 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 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.

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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 6% commission 50/50 with Co-Broker. Total commission must not exceed 6%.

In the event the property is leased or rented, Owner will pay Broker, ~~when lease is signed by both parties,~~ a commission of 6% of the gross rent collections for the base term of the lease and 6% of the gross rent collections of any renewal leases. All leasing commissions payable ~~up front and in full~~ to Broker upon ~~execution of lease for base term~~. If the Tenant is required by the Owner to deposit funds into an Escrow Account then any commissions earned by Colliers Dickinson shall first be paid through the disbursements of such funds. In such case a separate Brokers statement showing the disbursements of the escrow funds will be submitted to the Owner. Renewal commissions are payable up front and in full to Broker upon execution of each renewal term. If tenant subsequently purchases property, Owner agrees to pay Broker commission based upon 6% of the purchase price less any unearned ~~← earned leasing~~ commissions are on the amount of time tenant leased prior to purchase), leasing commission. This is payable at the time of closing.

commencement of lease payments and court approval.

and earned

paid up to the date of closing.

In the event of a build-to-suit or joint venture, a real estate commission equal to the real estate commission on the sale of the subject property will be paid to the listing agent at the time the written agreements are signed by the Seller.

The price for which this property is to be sold is \$ 2,300,000.00

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 Bella Vista, 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.

COMMERCIAL LIEN ACT DISCLOSURE: The Florida Commercial Real Estate Sales Commission Lien Act provides 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 for the BROKER'S commission. The BROKER'S lien rights under the act cannot be waived before the commission is earned.

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.

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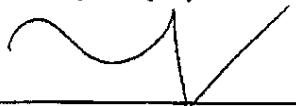
This Agreement may be executed in counterparts, each of which counterparts shall constitute an original and all of which together shall constitute one and the same instrument. If any provision of this Agreement is held or rendered illegal or unenforceable, it shall be considered separate and severable 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 20 day of February 2013.

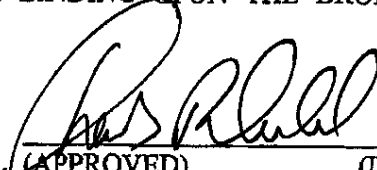
Signed, sealed and delivered in the presence of:

MAMC BELLA VISTA LLC, a Florida
Limited liability company

By: 
Michael I. Goldberg, as Receiver

THIS AGREEMENT IS CONTINGENT UPON COURT APPROVAL.

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

 2/26/2013
(APPROVED) (DATE)
Colliers Dickinson
Charles R. Disher
Broker / COO

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