

**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 TERRANOVA CORPORATION
TO MARKET AS SELL MAMC SOUTH CHASE, LLC 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 Terranova Corporation ("Broker") to Market and Sell MAMC South Chase, LLC 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 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. As mortgagors defaulted on their loans, the Receiver obtained Orders of this Court adding the projects to the receivership as additional relief defendants. One such project was the South Chase Commerce Center, LLC. MAMC filed a foreclosure suit against South Chase Commerce Center, LLC on behalf of the Lenders and acquired the property at the foreclosure sale under the name MAMC South Chase, LLC ("South Chase"). On January 5, 2010, this Court entered an Order expanding the receivership to include South Chase.

5. MAMC continues to manage South Chase. The collateral consists of real property located at 13250 Blacombe Road, comprising approximately 14.45 acres in Orange County, Florida (the "Property"). It is the intention of the Receiver to market and sell the Property by entering into an Exclusive Sales 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.

6. 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.

7. The Receiver has consulted with the lender committee for South Chase¹, who have advised the Receiver that they approve his entering into the Agreement on behalf of South Chase.

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 25 day of May, 2012, a true and correct copy of the motion was furnished via U.S. Mail to the parties on the attached Service List. A copy of the motion (and the Notice of Hearing) will also be posted on the receivership website.

By: 

Joan M. Levit

SERVICE LIST

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Don Rosenberg
PECKAR & ABRAMSON
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Miami, FL 33131

EXHIBIT 1

EXCLUSIVE SALES LISTING AGREEMENT

24
APR 17 2012
This **EXCLUSIVE SALES LISTING AGREEMENT** (the "Agreement") is made as of the 9th day of ~~September~~ 2011 (the "Effective Date") by and between Michael Goldberg as Receiver of MAMC South Chase, LLC and related entities ("Owner") and TERRANOVA CORPORATION ("Agent"). In consideration of the terms and covenants set forth below, the parties hereto agree as follows:

1. **Appointment.** Owner appoints Agent and Agent accepts the appointment, on the terms and conditions provided below, as the exclusive sales agent of the real estate located at 13250 Blacombe Road, comprising approximately 14.45 +/- acres, in Orange County, Florida and more specifically identified in the Orange County Property Appraiser under Parcel ID 27-24-29-0000-00-001 (the "Properties").

2. **Agent's License.** Agent represents that Agent is a licensed real estate broker in the State of Florida with a license in good standing with the Florida Real Estate Commission.

3. **Exclusive Right of Sale.** For a period of six (6) months from the Effective Date, and thereafter until this Agreement is terminated by thirty (30) days prior written notice from Owner to Agent, Agent shall have the exclusive right and authority to market the Properties for sale and locate a purchaser(s) for the individual Properties upon terms and conditions (including purchase price) acceptable to Owner. All inquiries from brokers, potential buyers or others related to the sale or potential sale of the Properties shall be referred to Agent, and all negotiations connected with a potential sale shall be conducted solely by or under Agent's direction.

4. **Purchase and Sale Agreement.** In the event Agent locates a purchaser(s) for the Properties at a price and terms acceptable to Owner, Owner agrees to enter into a written purchase and sale Agreement with the purchaser that will contain the terms and conditions of said sale. The Properties are subject to separate sale Agreements. **Agent understands and agrees that any Agreement shall provide for sale "as-is", "where-is" and without recourse. Owner does not and shall not be required to make any representation or warranty with respect to the Properties.**

5. **Agent's Commission.** As compensation for marketing the Properties for sale and finding a purchaser for the Properties, Owner shall pay Agent a commission of six percent (6%) of the gross purchase price of each of the Properties ("Agent's Commission"), to be paid to Agent in cash at each closing of any of the real estate by the Closing Agent from the Closing Proceeds (the "Closing"). During the term of this Agreement, Agent's Commission shall be paid to Agent whether Agent, Owner or any other person finds the purchaser. In addition, Agent's Commission shall be paid to Agent if the Closing occurs within six (6) months after the termination of this Agreement by either party and the purchaser was found and/or introduced to Owner during the term of this Agreement by Agent, Owner or any other person.

6. **Marketing and Advertising.** Agent agrees to use commercially reasonable efforts to market the Properties for sale that will include the implementation of a marketing program developed by Agent and approved by Owner. ~~Owner agrees that after signing the Agreement,~~

Cooperation and Compensation with other Brokers:
Broker's policy is to cooperate with all other brokers except when not in Seller's best interest.
Owner's agent and buyer's agent shall determine a reasonable split on the Agent's Commission.

~~Owner will pay for the creation of a sign the cost of which shall not exceed \$1,000 that Agent will design and have placed advertising the site's availability.~~



7. Deposit. In the event a purchaser forfeits a deposit, within fourteen (14) days after the forfeiture, one half of any forfeited deposit shall be remitted to Agent, as compensation for its efforts.

8. Notices. All notices given or required by this Agreement shall be delivered by courier, a generally recognized overnight delivery service, certified or registered mail postage prepaid, or facsimile transmission with a confirmation of transmission and receipt, addressed to the party to whom the notice is being sent at the address specified below, or such other address as such party shall designate. Notices shall be deemed delivered upon the earlier of receipt or three days following the date of deposit with the United States Postal Service with respect to certified or registered mail.

To Owner: Michael Goldberg as Receiver of MAMC South Chase and related entities
350 East Las Olas Boulevard, Suite 1600
Fort Lauderdale, FL 33301
Fax: 954.847.5367

To Agent: Terranova Corporation
801 Arthur Godfrey Road, Suite 600
Miami Beach, Florida 33140
Fax: 305-672-7800
Attention: Stephen Bittel, Chairman

in litigation arising out of Agent's conduct

due to Owner's Conduct (his)

9. Indemnification. To the full extent permitted by law, Owner shall defend, hold harmless and indemnify Agent from any and all losses, claims, damages or expenses, including attorneys fees and costs arising from any claim brought against Agent while carrying out its obligations under this Agreement or acting in accordance with the directions of Owner, except for Agent's gross negligence or willful misconduct. In the event of litigation or other legal action concerning the Properties, except litigation between Owner and Agent, Owner shall compensate Agent for time spent by its employees assisting in the litigation or other legal action at the employees' normal hourly rates. This paragraph shall survive the termination of this Agreement. Agent hereby agrees to indemnify Owner and hold harmless Owner from and against any and all claims, 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 Agent or on its behalf with any broker or finder in connection with the transactions referenced in this Agreement or any party claiming by, through or under Agent.

10. Disclosure. Owner acknowledges that Agent may also represent potential buyers for the Properties and Owner consents to such representation. Any buyer representation notwithstanding, Agent shall always have a fiduciary relationship to Owner.

11. Late Payments; Interest. Any commissions, construction management fees, expense reimbursements or other sums which are earned and due Agent under this Agreement, but remain unpaid by Owner for fourteen (14) days shall earn interest at a rate of eighteen percent (18%) per annum.

12. Attorneys Fees, Security, Law and Venue. In the event of any litigation between the parties to this agreement, attorney's fees and all associated costs of litigation, including attorneys' fees and all associated costs of appeal, shall be awarded to the prevailing party. This Agreement shall be interpreted under the laws of the state of Florida and venue in any action instituted in connection with this Agreement shall be Miami-Dade County, Florida

13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Entire Agreement. This writing constitutes the entire agreement between the parties and may not be modified, supplemented, or amended except by an instrument in writing executed by the parties.

15. Disclaimer. Owner acknowledges that it is, at all times, free to retain and/or consult with an attorney or accountant of its choosing relative to any of the subject matters and services to be rendered by Agent, it being expressly understood that Agent does not furnish any legal or accounting advice, despite the fact that some of its employees are licensed attorneys and accountants. The parties hereto acknowledge that this Agreement has been fairly negotiated and no ambiguity or conflict shall be construed against either party.

Agent and Owner have executed this Agreement as of the date stated above, subject to court approval.

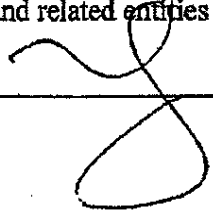
AGENT:
TERRANOVA CORPORATION

By: 

Stephen Bittel, Chairman

OWNER:

Michael Goldberg as Receiver of MAMC South
Chase and related entities

By: 

Receiver