

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

In re:) **Chapter 11 Proceeding**
)
COMMERCIAL MORTGAGE AND FINANCE CO.) **Case No. 08-73242**
)
Debtor.) **Hon. Manuel Barbosa**
)

NOTICE OF MOTION

To: See Attached Service List

PLEASE TAKE NOTICE that on **Wednesday, February 18, 2009**, at the hour of **10:30** a.m., or as soon thereafter as counsel may be heard, the undersigned will appear before the Honorable Manuel Barbosa, Bankruptcy Judge, or such other judge as may be sitting in his stead, in Courtroom **115** or in such other courtroom as occupied by him, Federal Courthouse, 211 South Court Street, Rockford, IL 61101 and shall then and there present the attached **Debtor's Application Pursuant to 11 U.S.C. §§ 327, 328 and 1107(b) and Rule 2014 of the Federal Rules of Bankruptcy Procedure to Employ and Retain Steve Clark and Doyle Woodhouse & Moore, Inc. as its Commercial Real Estate Broker**, at which time and place you may appear as you see fit.

**COMMERCIAL MORTGAGE
AND FINANCE CO.**

By: /s/ Gregory J. Jordan
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Gregory J. Jordan, an attorney, certify that I caused a copy of the Notice of Motion and Debtor's Motion for an Debtor's Application Pursuant to 11 U.S.C. §§ 327, 328 and 1107(b) and Rule 2014 of the Federal Rules of Bankruptcy Procedure to Employ and Retain Steve Clark and Doyle Woodhouse & Moore, Inc. as its Commercial Real Estate Broker to be served electronically on to those parties receiving notification by participation in the Court's ECF system and by United States Mail, postage prepaid on the parties listed on the attached service list by United States Mail on February 5, 2009

/s/ Gregory J. Jordan

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In re:) **Chapter 11 Proceeding**
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COMMERCIAL MORTGAGE AND FINANCE CO.) **Case No. 08-73242**
)
Debtor.) **Hon. Manuel Barbosa**
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**DEBTOR'S APPLICATION PURSUANT TO 11 U.S.C. §§ 327, 328 AND 1107(B) AND
RULE 2014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE TO
EMPLOY AND RETAIN STEVE CLARK AND DOYLE WOODHOUSE & MOORE,
INC. AS ITS COMMERCIAL REAL ESTATE BROKER**

Commercial Mortgage & Finance Co., the debtor and debtor in possession (the "Debtor"), pursuant to §§ 327, 328 and 1107(b) of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby request that the Court enter an Order authorizing the Debtor to employ Steve Clark and the shareholders, and other employees of the firm of Doyle Woodhouse & Moore, Inc. (collectively the "Broker") as its as its real estate broker for the sale of certain commercial real estate properties owned by the Debtor, as more fully described below, in this bankruptcy case (the "Application"). In further support of this Application, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
2. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

3. On October 8, 2008 (the "Petition Date"), the Debtor filed with this Court its Voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

4. Pursuant to 11 U.S.C. §§ 1107(a) and 1108, the Debtor continues to operate its businesses and manage its financial affairs as a debtor in possession. The United States Trustee has appointed a committee of unsecured creditors. No trustee or examiner has been appointed in this case.

5. The Debtor is a corporation, organized and existing under the laws of the state of Illinois and headquartered in Rockford, Illinois. The Debtor has been in operation since 1934 and has been an integral part of the Rockford business community since that time. It sells participations in mortgages to local individuals. The money thus generated is used to fund loans, and the Debtor would share the interest generated with its customers. The Debtor also offered "Negotiable Promissory Notes" to Illinois residents, which are neither guaranteed nor is the issuance thereof regulated by any state or federal agency, providing purchasers with interest rates generally higher than interest earned by money market certificates. The Debtor also develops land into residential subdivisions.

6. The nation's ongoing financial challenges precipitated the filing of this case. During the period immediately prior to the bankruptcy filing, a substantial number of the holders of promissory notes closed their notes early causing a serious drain on available cash. On October 6, 2008, one of the holders of the Debtor's Negotiable Promissory Notes obtained a temporary restraining order blocking the Debtor's ability to conduct business. Due to the closing of accounts, the temporary restraining order and general financial difficulties, the Debtor

determined that it would be unable to fund operations and financial obligations without resort to the protections provided in this Court.

7. The Debtor believes that this chapter 11 case will allow it to implement its business plan and control the restructuring of its business operations.

THE DEBTOR'S SELECTION OF THE BROKER AND TERMS OF RETENTION

8. The Bankruptcy Code authorizes a debtor to employ professionals with the Court's approval. 11 U.S.C. § 327(a).

9. The Debtor desires to retain the Broker as its commercial real estate broker to market and sell certain properties in connection with this case because the Broker has a wealth of experience in providing commercial real estate brokerage services and has an excellent reputation for the services it has rendered in the Rockford area. Further, the Debtor believes that the Broker is well qualified and able to serve as its primary real estate broker in this case in an efficient and timely manner.

10. The Broker will have the perform mail and personal marketing with an eye toward the expeditious sale of properties.

11. The Broker has extensive experience in such matters. The Broker is familiar with the Debtor's real estate portfolio and has been success in the marketing of similar properties and is qualified to serve the Debtor's interests in the above-captioned case.

12. Subject to this Court's approval, the Debtor will be authorized to execute the listing agreement, which are attached hereto as Group Exhibit A. Among other terms contained therein, the Broker will receive a commission payable on the sale of each property at the rate of seven percent (7.0%) of the actual sale price.

13. The Broker intends to apply for compensation for professional services rendered in connection with the sale of properties in this chapter 11 case, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Local Rules and orders of this Court, on the basis of the proposed commission terms.

14. Because of the nature of the real estate brokerage business, the Debtor requests that the Broker not be required to provide time sheets indicating the hours spent on marketing and sales efforts in connection with the rendering of brokerage services for which it may seek reimbursement.

15. The Debtor's representatives have met with Steve Clark and discussed the proposed retention arrangement including marketing plans and the proposed commission. The Debtor believes that the proposed retention arrangement including marketing plans and the proposed commission is reasonable.

16. Pursuant to Bankruptcy Rule 2016(b), the Broker states that the Broker, including the various employees of Doyle Woodhouse & Moore, Inc. thereof have not received any promises as to compensation in connection with this chapter 11 case, other than in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The Broker has no agreement with any other entity to share with such entity any compensation received by the Broker in connection with this chapter 11 case.

PROPERTIES FOR WHICH THE BROKER IS ENGAGED TO ACT AS BROKER

17. The Debtor proposes that the Broker be engaged to serve as its listing broker for each of the properties listed on Group Exhibit A.

TRANSACTION FOR WHICH THE BROKER IS NOT EMPLOYED

18. The Debtor is simultaneously filing a motion to employ Whitehead, Inc. as its commercial real estate broker for the potential sale of 29.86 acres of land located at 2322 Conger Road, Seward, Illinois (the "Property") to an undisclosed party who has contacted Whitehead, Inc. (the "Single Party Broker"). In the event that the undisclosed party and (a) the Debtor reach an agreement regarding the sale of the Property, (b) the Debtor thereafter files a motion to sell the Property to the undisclosed party, and (c) the motion results in a sale to the undisclosed party or a party submitting an overbid, the Broker will not have earned and the Debtor will not pay a commission to the Broker for that sale. Instead, the Debtor will pay a commission to Whitehead, Inc. on the terms set forth in that motion.

THE BROKER'S DISINTERESTEDNESS

19. To the best of the Debtor's knowledge, information, and belief, and in reliance upon the Affidavit of Steve Clark in Support of the Application, attached hereto as Exhibit B (the "Clark Affidavit"), and incorporated herein by reference, the Debtor believes that the Broker does not hold or represent any interest adverse to the Debtor or the estate in matters for which the Broker is proposed to be retained. The Debtor believes the Broker is a "disinterested person" within the meaning of Bankruptcy Code § 101(14).

20. The Broker including the employees of Doyle Woodhouse & Moore, Inc. may have in the past represented, may currently represent, or may in the future represent parties-in-interest of the Debtor in matters unrelated to the Debtor and its chapter 11 case. Given the nature of the real estate business and the uniqueness of real estate, the Debtor submits that such representations do not impact the Broker's disinterestedness.

Respectfully submitted,

/s/ Gregory J. Jordan
One of Its Attorneys

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