

**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 Whitehead, Inc. as Real Estate Broker for a Single Party**, 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

Gregory J. Jordan (ARDC# 6205510)
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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 Whitehead, Inc. as its Commercial Real Estate Broker for a Single Party 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**
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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 WHITEHEAD, INC. AS ITS COMMERCIAL REAL ESTATE
BROKER FOR A SINGLE PARTY**

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 Whitehead, Inc. and the shareholders, and other employees of the firm of Whitehead, Inc. (collectively the “Broker”) as its as its real estate broker for the sale of 29.86 acres of land owned by the Debtor to a single party, 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 for a single purpose, which is the proposed sale of 29.86 acres of land located at 2322 Conger Road, Seward, Illinois (the "Property"). The Property was constructed as a golf course with a clubhouse and a garage. It is currently not being operated.

10. The Broker, which 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, has contacted the Debtor regarding the potential sale of the Property to an undisclosed party. 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.

11. If this application is approved, the Broker will represent the Debtor in the sale of party who has approached the Broker concerning that party's interest in purchasing the Property.

12. The Broker has extensive experience in such matters. The Broker is familiar with the Property and has advised the Debtor that the Broker has been success in the marketing of similar properties and is qualified to serve the Debtor's interests in the above-captioned case in this discrete instance.

13. Subject to this Court's approval, the Debtor will be authorized to execute the listing agreement, which are attached hereto as Exhibit A. Among other terms contained therein, the Broker will receive a commission payable on the sale of each property at the rate of six percent (6.0%) of the actual sale price.

14. 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.

15. Notwithstanding the potential sale of the Property, the Debtor will seek overbids should it tentatively reach an agreement regarding the sale of the Property to the undisclosed party. Should another party purchase the property subject to an overbid, the Broker will be entitled to receive its commission on that sale.

16. The Debtor is simultaneously filing a motion to employ Steve Clark and Doyle Woodhouse & Moore, Inc. as its primary commercial real estate broker (the "Primary 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 Primary Broker will not have earned and the Debtor will not pay a commission to the Primary Broker for that sale.

17. 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.

18. The Debtor's representatives have met with a representative of the Broker and discussed the proposed retention arrangement including the showing of the Property and the proposed commission. The Debtor believes that the proposed retention arrangement is reasonable.

19. Pursuant to Bankruptcy Rule 2016(b), the Broker states that the Broker, including the various employees of Whitehead, 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.

THE BROKER'S DISINTERESTEDNESS

20. To the best of the Debtor's knowledge, information, and belief, and in reliance upon the Affidavit of Dee Premo in Support of the Application, attached hereto as Exhibit B (the "Ullrich 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).

21. The Broker including the employees of Whitehead, 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.

22. Based on the conflicts search conducted to date and described in the Ullrich affidavit, to the best of the Broker's knowledge, neither the Broker, nor any employee of Whitehead, Inc.,

/s/ Gregory J. Jordan
One of Its Attorneys

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