

**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,

Defendants,

and

DB ATLANTA, LLC, a Florida limited liability  
company, *et al.*,

Relief Defendants.

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**RECEIVER'S MOTION TO APPROVE THE SALE OF PROPERTY  
OWNED BY DBKN GULF INCORPORATED**

Michael I. Goldberg, the court-appointed receiver (the "Receiver") over Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), *et al.*, and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this Motion to Approve the Sale of Property owned by DBKN Gulf Incorporated. In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, this Court entered a *Temporary Injunction and Agreed Order Appointing Receiver* (the "Receivership Order") appointing Michael Goldberg as the receiver for BMC and MAMC (the "Defendants") and the Relief Defendants (collectively, the "Receivership Defendants") to prevent the waste and dissipation of the Receivership Defendants'

assets to the detriment of the investors (the “Lenders”) who entrusted over \$192 million (“Lender Funds”) to the Receivership Defendants.

2. The Lender Funds were secured by mortgages on approximately 40 different real estate projects and properties. One of those properties is vacant land (the “Vacant Land”) located at the Gulf Island Beach and Tennis Club on the water’s edge in Pasco County, Florida.

3. Dana Berman (“Berman”) and Keith Novak (“Novak”), who were two of the principals of BMC, formed DBKN Gulf Incorporated LLC (“DBKN”) for the purpose of acquiring the Vacant Land.<sup>1</sup>

4. DBKN Gulf borrowed a total of \$990,000 (the “DBKN Loan”), funded by twenty-four (24) of the Lenders (the “DBKN Lenders”). As more fully described in the loan documents recorded in the Official Records of Pasco County, Florida, the Vacant Land secured payment of the DBKN Loan.

5. Prior to the appointment of the Receiver, the Vacant Land was the subject of litigation initiated by one of the prior owners of the Vacant Land and adjoining property (the “Quiet Title Action”). After the commencement of the receivership, the Quiet Title Action was transferred to the Receivership Court. The legal battle, which began in 2003, was resolved in 2011.

6. The Vacant Land is currently managed by MAMC.

7. The Court has previously authorized the Receiver to retain Coastal Real Estate Associates (the “Broker”) to market the Vacant Land for sale.

8. In 2015, the Receiver filed a motion seeking approval of a contract to sell the Vacant Land for the sum of \$2,000,000. However, the potential buyer canceled the sale.

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<sup>1</sup> DBKN is an original Relief Defendant.

9. In June of 2017, after notice and hearing, the Court granted the Receiver's Motion for Authority to Sell Certain Receivership Properties by Auction, including the Vacant Land.

10. Since this sale is not part of the auction process, the Receiver now seeks authority to enter into a Vacant Land Contract with John V. Mariano Jr. (the "Buyer") for the sale of the Vacant Land to the Buyer and/or his assigns for the sum of \$900,000. A copy of the Vacant Land Contract is attached hereto as Exhibit "A".

11. The Receiver is authorized to enter into agreements and take such actions, as he deems advisable or proper for the marshaling, maintenance or preservation of the Receivership Assets. *See* Receivership Order at ¶ 17. The Receiver believes entering into the Vacant Land Contract is in the best interest of the receivership and is the best opportunity for the Lenders to partially monetize the DBKN Loan.

12. The Receiver has consulted with the lender committee for DBKN<sup>2</sup>, who has advised the Receiver that they approve his entering into the Vacant Land Contract.

13. 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 Berman Mortgage, M.A.M.C., and related entities, respectfully request this Court to enter an Order, in the form

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<sup>2</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 to advise the Receiver.

attached hereto as Exhibit "B" approving the sale and to grant such further relief as is just and proper.

Respectfully submitted,

/s/ Joan Levit

Joan Levit, Esq.  
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Fax: (954) 463-2224

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this January 22, 2018, 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.

/s/ Joan Levit

Joan Levit, Esq.

**EXHIBIT A**

Vacant Land Contract



1. **Sale and Purchase:** DBKN GULF INCORPORATED ("Seller")  
 and John V. Mariano Jr. and/or assigns ("Buyer")  
 (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")  
 described as:  
 Address: 5913 Sea Ranch Dr Hudson Fl 34667  
 Legal Description: COM NW COR OF NE 1/4 SEC 33 TH S89DG 36' 30W 3170.03 FT FOR POB TH DUE  
SOUTH 883.85 FT TH S83DG 03' 23W 33.41 FT TH S03DG 30' 58E(D1) 319.09 FT TH N87DG 00' 00W 91.87  
FT TH S03DG 00' 00W(D2) 134.74 FT TH S89DG 29' 25W 175.92 FT TH DUE NORTH  
SEC 32 /TWP 24 /RNG 16 of Pasco County, Florida. Real Property ID No.: 32-24-16-0000-00400-002  
 including all improvements existing on the Property and the following additional property:

2. **Purchase Price:** (U.S. currency) ..... \$ 900,000.00  
 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:  
 Escrow Agent's Name: Execurive Title Services of Florida, Inc.  
 Escrow Agent's Contact Person: Sally Morris  
 Escrow Agent's Address: 5419 Main St. New Port Richey FL 34652  
 Escrow Agent's Phone: 727-848-4111  
 Escrow Agent's Email: sally@executivetitleservicesfl.com

(a) Initial deposit (\$0 if left blank) (Check if applicable)  
 accompanies offer  
 will be delivered to Escrow Agent within 14 days (3 days if left blank)  
 after Effective Date ..... \$ 45,000.00  
 (b) Additional deposit will be delivered to Escrow Agent (Check if applicable)  
 within \_\_\_\_\_ days (10 days if left blank) after Effective Date  
 within 3 days (3 days if left blank) after expiration of Feasibility Study Period ..... \$  
 (c) Total Financing (see Paragraph 5) (express as a dollar amount or percentage) ..... \$ 45,000.00  
 (d) Other: ..... \$  
 (e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)  
 to be paid at closing by wire transfer or other Collected funds ..... \$ 810,000.00  
 (f)  (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The  
 unit used to determine the purchase price is  lot  acre  square foot  other (specify): \_\_\_\_\_  
 prorating areas of less than a full unit. The purchase price will be \$ \_\_\_\_\_ per unit based on a  
 calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in  
 accordance with Paragraph 7(c). The following rights of way and other areas will be excluded from the  
 calculation: \_\_\_\_\_

January 10, 2018

3. **Time for Acceptance; Effective Date:** Unless this offer is signed by Seller and Buyer and an executed copy  
 delivered to all parties on or before January 6, 2018, this offer will be withdrawn and Buyer's deposit, if  
 any, will be returned. The time for acceptance of any counter offer will be 3 days after the date the counter offer is  
 delivered. The "Effective Date" of this contract is the date on which the last one of the Seller and Buyer  
 has signed or initialed and delivered this offer or the final counter offer.

4. **Closing Date:** This transaction will close on March 2, 2018 ("Closing Date"), unless specifically  
 extended by other provisions of this contract. The Closing Date will prevail over all other time periods including,  
 but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday,  
 Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business  
 day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property  
 insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If  
 this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and  
 other items.

Buyer (initials) and Seller (initials) acknowledge receipt of a copy of this page, which is 1 of 7 pages.

51 5. Financing: (Check as applicable)

52\* (a)  Buyer will pay cash for the Property with no financing contingency.

53\* (b)  This contract is contingent on Buyer qualifying for and obtaining the commitment(s) or approval(s)

54\* specified below ("Financing") within \_\_\_\_\_ days after Effective Date (Closing Date or 30 days after Effective

55\* Date, whichever occurs first, if left blank) ("Financing Period"). Buyer will apply for Financing within \_\_\_\_\_

56\* days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial,

57\* and other information required by the lender. If Buyer, after using diligence and good faith, cannot obtain the

58\* Financing within the Financing Period, either party may terminate this contract and Buyer's deposit(s) will be

59\* returned:

60\* (1)  New Financing: Buyer will secure a commitment for new third party financing for \$ \_\_\_\_\_

61\* or \_\_\_\_\_% of the purchase price at (Check one)  a fixed rate not exceeding \_\_\_\_\_%  an

62\* adjustable interest rate not exceeding \_\_\_\_\_% at origination (a fixed rate at the prevailing interest rate

63\* based on Buyer's creditworthiness if neither choice is selected). Buyer will keep Seller and Broker fully

64\* informed of the loan application status and progress and authorizes the lender or mortgage broker to

65\* disclose all such information to Seller and Broker.

66\* (2)  Seller Financing: Buyer will execute a  first  second purchase money note and mortgage to

67\* Seller in the amount of \$ \_\_\_\_\_, bearing annual interest at \_\_\_\_\_% and payable as

68\* follows: \_\_\_\_\_

69\* The mortgage, note, and any security agreement will be in a form acceptable to Seller and will follow

70\* forms generally accepted in the county where the Property is located; will provide for a late payment fee

71\* and acceleration at the mortgagee's option if Buyer defaults; will give Buyer the right to prepay without

72\* penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on

73\* conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require Buyer to

74\* keep liability insurance on the Property, with Seller as additional named insured. Buyer authorizes Seller

75\* to obtain credit, employment, and other necessary information to determine creditworthiness for the

76\* financing. Seller will, within 10 days after Effective Date, give Buyer written notice of whether or not

77\* Seller will make the loan.

78\* (3)  Mortgage Assumption: Buyer will take title subject to and assume and pay existing first mortgage to

79\* \_\_\_\_\_

80\* LN# \_\_\_\_\_ in the approximate amount of \$ \_\_\_\_\_ currently payable at

81\* \$ \_\_\_\_\_ per month, including principal, interest,  taxes and insurance, and having a

82\*  fixed  other (describe) \_\_\_\_\_

83\* interest rate of \_\_\_\_\_% which  will  will not escalate upon assumption. Any variance in the

84\* mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. Buyer will

85\* purchase Seller's escrow account dollar for dollar. If the interest rate upon transfer exceeds \_\_\_\_\_% or

86\* the assumption/transfer fee exceeds \$ \_\_\_\_\_, either party may elect to pay the excess,

87\* failing which this contract will terminate; and Buyer's deposit(s) will be returned. If the lender disapproves

88\* Buyer, this contract will terminate; and Buyer's deposit(s) will be returned.

89\* 6. Assignability: (Check one) Buyer  may assign and thereby be released from any further liability under this

90\* contract,  may assign but not be released from liability under this contract, or  may not assign this contract.

91\* 7. Title: Seller has the legal capacity to and will convey marketable title to the Property by  statutory warranty

92\* deed  special warranty deed  other (specify) Receiver's Deed, free of liens, easements,

93\* and encumbrances of record or known to Seller, but subject to property taxes for the year of closing; covenants,

94\* restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any

95\* other matters to which title will be subject) \_\_\_\_\_

96\* provided there exists at closing no violation of the foregoing.

97\* (a) Title Evidence: The party who pays for the owner's title insurance policy will select the closing agent and

98\* pay for the title search, including tax and lien search if performed, and all other fees charged by closing agent.

99\* Seller will deliver to Buyer, at

100\* (Check one)  Seller's  Buyer's expense and

101\* (Check one)  within \_\_\_\_\_ days after Effective Date  at least \_\_\_\_\_ days before Closing Date,

102\* (Check one)

103\* (1)  a title insurance commitment by a Florida licensed title insurer setting forth those matters to be

104\* discharged by Seller at or before closing; and, upon Buyer recording the deed, an owner's policy in the

105\* amount of the purchase price for fee simple title subject only to the exceptions stated above. If Buyer is

106\* paying for the owner's title insurance policy and Seller has an owner's policy, Seller will deliver a copy to

107\* Buyer within 15 days after Effective Date.

Buyer (Signature) and Seller (Signature) acknowledge receipt of a copy of this page, which is 2 of 7 pages.

108\* (2)  an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an  
109 existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy  
110 acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy  
111 will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy  
112 effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents  
113 recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**,  
114 then (1) above will be the title evidence.

115\* (b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within \_\_\_\_\_ days (10 days if left blank)  
116 but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable  
117 to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and  
118\* **Seller** cures the defects within \_\_\_\_\_ days (30 days if left blank) ("Cure Period") after receipt of the notice. If  
119 the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice  
120 of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured  
121 within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after  
122 receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this contract or accept  
123 title subject to existing defects and close the transaction without reduction in purchase price.

124 (c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to  
125 **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any  
126 encroachments on the Property, encroachments by the Property's improvements on other lands, or deed  
127 restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a  
128 title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 7(b).

129 (d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

130 8. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with  
131 conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted: **Seller** will not engage in or  
132 permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

133 (a) **Inspections: (Check (1) or (2))**

134\* (1)  **Feasibility Study:** **Buyer** will, at **Buyer's** expense and within 30 days (30 days if left blank)  
135 ("Feasibility Study Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine  
136 whether the Property is suitable for **Buyer's** intended use. During the Feasibility Study Period, **Buyer**  
137 may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and  
138 investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the  
139 Property's engineering, architectural, and environmental properties; zoning and zoning restrictions;  
140 subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities;  
141 consistency with local, state, and regional growth management plans; availability of permits, government  
142 approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be  
143 rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all  
144 documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives  
145 **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the  
146 Feasibility Study Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its  
147 agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will  
148 indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature,  
149 including attorneys' fees, expenses, and liability incurred in application for rezoning or related  
150 proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any  
151 work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien  
152 being filed against the Property without **Seller's** prior written consent. If this transaction does not close,  
153 **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and  
154 return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller**  
155 all reports and other work generated as a result of the Inspections.

156 Before expiration of the Feasibility Study Period, **Buyer** must deliver written notice to **Seller** of **Buyer's**  
157 determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice  
158 requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is"  
159 condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to  
160 **Seller**, this contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

161\* (2)  **No Feasibility Study:** **Buyer** is satisfied that the Property is suitable for **Buyer's** purposes, including  
162 being satisfied that either public sewerage and water are available to the Property or the Property will be  
163 approved for the installation of a well and/or private sewerage disposal system and that existing zoning

Buyer [Signature] and Seller [Signature] acknowledge receipt of a copy of this page, which is 3 of 7 pages.

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and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to **Buyer**. This contract is not contingent on **Buyer** conducting any further investigations.

- (b) **Government Regulations:** Changes in government regulations and levels of service which affect **Buyer's** intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has expired or if Paragraph 8(a)(2) is selected.
- (c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty
- (d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.  
 **Buyer** waives the right to receive a CCCL affidavit or survey.

9. **Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title binder effective date and recording of **Buyer's** deed, closing agent will disburse at closing the net sale proceeds to **Seller** (in local cashier's check if **Seller** requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 19. In addition to other expenses provided in this contract, **Seller** and **Buyer** will pay the costs indicated below.

- (a) **Seller Costs:**
  - Taxes on deed
  - Recording fees for documents needed to cure title
  - Title evidence (if applicable under Paragraph 7)
  - Other: \_\_\_\_\_
- (b) **Buyer Costs:**
  - Taxes and recording fees on notes and mortgages
  - Recording fees on the deed and financing statements
  - Loan expenses
  - Title evidence (if applicable under Paragraph 7)
  - Lender's title policy at the simultaneous issue rate
  - Inspections
  - Survey
  - Insurance
  - Other: \_\_\_\_\_
- (c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.
- (d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and **Buyer** will pay all other amounts. If special assessments may be paid in installments,  **Seller**  **Buyer** (**Buyer** if left blank) will pay installments due after closing. If **Seller** is checked, **Seller** will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.
- (e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

Buyer    and Seller    acknowledge receipt of a copy of this page, which is 4 of 7 pages.

- 220 (f) Foreign Investment in Real Property Tax Act ("FIRPTA"): If Seller is a "foreign person" as defined by  
221 FIRPTA, Seller and Buyer will comply with FIRPTA, which may require Seller to provide additional cash at  
222 closing.
- 223 (g) 1031 Exchange: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with  
224 closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will  
225 cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided,  
226 however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing  
227 will not be contingent upon, extended, or delayed by the Exchange.
- 228 10. Computation of Time: Calendar days will be used when computing time periods, except time periods of 5 days  
229 or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal  
230 holidays specified in 5 U.S.C. 6103(a). Any time period ending on a Saturday, Sunday, or national legal holiday  
231 will extend until 5:00 p.m. (where the Property is located) of the next business day. Time is of the essence in  
232 this contract.
- 233 11. Risk of Loss; Eminent Domain: If any portion of the Property is materially damaged by casualty before closing  
234 or Seller negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain  
235 proceedings or an eminent domain proceeding is initiated, Seller will promptly inform Buyer. Either party may  
236 terminate this contract by written notice to the other within 10 days after Buyer's receipt of Seller's notification,  
237 and Buyer's deposit(s) will be returned, failing which Buyer will close in accordance with this contract and  
238 receive all payments made by the governmental authority or insurance company, if any.
- 239 12. Force Majeure: Seller or Buyer will not be required to perform any obligation under this contract or be liable to  
240 each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or  
241 prevented by an act of God or force majeure. An "act of God or force majeure" is defined as hurricanes,  
242 earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably  
243 within the control of Seller or Buyer and which by the exercise of due diligence the non-performing party is  
244 unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for  
245 the period that the act of God or force majeure is in place. However, in the event that such act of God or force  
246 majeure event continues beyond 30 days, either party may terminate this contract by delivering written notice to  
247 the other; and Buyer's deposit(s) will be returned.
- 248 13. Notices: All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or  
249 electronic means. Buyer's failure to timely deliver written notice to Seller, when such notice is required by  
250 this contract, regarding any contingency will render that contingency null and void, and this contract will  
251 be construed as if the contingency did not exist. Any notice, document, or item delivered to or received  
252 by an attorney or licensee (including a transactions broker) representing a party will be as effective as if  
253 delivered to or received by that party.
- 254 14. Complete Agreement; Persons Bound: This contract is the entire agreement between Seller and Buyer.  
255 Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker  
256 unless incorporated into this contract. Modifications of this contract will not be binding unless in writing, signed,  
257 or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This  
258 contract, signatures, initials, documents referenced in this contract, counterparts, and written modifications  
259 communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be  
260 binding. Handwritten or typewritten terms inserted in or attached to this contract prevail over preprinted terms. If  
261 any provision of this contract is or becomes invalid or unenforceable, all remaining provisions will continue to be  
262 fully effective. Seller and Buyer will use diligence and good faith in performing all obligations under this contract.  
263 This contract will not be recorded in any public record. The terms "Seller," "Buyer," and "Broker" may be singular  
264 or plural. This contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if  
265 permitted, of Seller, Buyer, and Broker.
- 266 15. Default and Dispute Resolution: This contract will be construed under Florida law. This Paragraph will survive  
267 closing or termination of this contract.
- 268 (a) Seller Default: If Seller fails, neglects, or refuses to perform Seller's obligations under this contract, Buyer  
269 may elect to receive a return of Buyer's deposit(s) without thereby waiving any action for damages resulting  
270 from Seller's breach and may seek to recover such damages or seek specific performance. Seller will also  
271 be liable for the full amount of the brokerage fee.

Buyer ( JA ) and Seller ( [Signature] ) acknowledge receipt of a copy of this page, which is 5 of 7 pages.  
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272 (b) **Buyer Default:** If Buyer fails, neglects, or refuses to perform Buyer's obligations under this contract,  
273 including payment of deposit(s), within the time(s) specified, Seller may elect to recover and retain the  
274 deposit(s), paid and agreed to be paid, for the account of Seller as agreed upon liquidated damages,  
275 consideration for execution of this contract, and in full settlement of any claims, whereupon Seller and Buyer  
276 will be relieved from all further obligations under this contract; or Seller, at Seller's option, may proceed in  
277 equity to enforce Seller's rights under this contract.

278 **16. Attorney's Fees; Costs:** In any litigation permitted by this Contract, the prevailing party shall be entitled to  
279 recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting  
280 the litigation. This Paragraph 16 shall survive Closing or termination of this Contract.

281 **17. Escrow Agent; Closing Agent:** Seller and Buyer authorize Escrow Agent and closing agent (collectively  
282 "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them  
283 upon proper authorization and in accordance with Florida law and the terms of this contract, including disbursing  
284 brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and  
285 finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any  
286 person for misdelivery of escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful  
287 breach of this contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay  
288 the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the  
289 escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

290 **18. Professional Advice; Broker Liability:** Broker advises Seller and Buyer to verify all facts and representations  
291 that are important to them and to consult an appropriate professional for legal advice (for example, interpreting  
292 this contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor  
293 reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax,  
294 property condition, environmental, and other specialized advice. Buyer acknowledges that Broker does not reside  
295 in the Property and that all representations (oral, written, or otherwise) by Broker are based on Seller  
296 representations or public records. **Buyer agrees to rely solely on Seller, professional inspectors, and**  
297 **government agencies for verification of the Property condition and facts that materially affect Property**  
298 **value.** Seller and Buyer respectively will pay all costs and expenses, including reasonable attorneys' fees at all  
299 levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising  
300 from Seller's or Buyer's misstatement or failure to perform contractual obligations. Seller and Buyer hold  
301 harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or  
302 damage based on (i) Seller's or Buyer's misstatement or failure to perform contractual obligations; (ii) the use or  
303 display of listing data by third parties, including, but not limited to, photographs, images, graphics, video  
304 recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's  
305 performance, at Seller's or Buyer's request, of any task beyond the scope of services regulated by Chapter 475,  
306 Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv)  
307 products or services provided by any vendor; and (v) expenses incurred by any vendor. Seller and Buyer each  
308 assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve  
309 Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this contract.  
310 This Paragraph will survive closing.

311 **19. Commercial Real Estate Sales Commission Lien Act:** If the Property is commercial real estate as defined by  
312 Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales  
313 Commission Lien Act provides that when a broker has earned a commission by performing licensed services  
314 under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the  
315 broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

316 **20. Brokers:** The brokers named below are collectively referred to as "Broker." **Instruction to closing agent:**  
317 Seller and Buyer direct closing agent to disburse at closing the full amount of the brokerage fees as specified in  
318 separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the  
319 extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any  
320 MLS or other offer of compensation made by Seller or Seller's Broker to Buyer's Broker.

321\* (a) Coastal Real Estate Associates, Inc (Seller's Broker)  
322\* will be compensated by  Seller  Buyer  both parties pursuant to  a listing agreement  other  
323\* (specify): \_\_\_\_\_  
324\* (b) \_\_\_\_\_ (Buyer's Broker)  
325\* will be compensated by  Seller  Buyer  both parties  Seller's Broker pursuant to  a MLS offer of  
326\* compensation  other (specify): \_\_\_\_\_

Buyer [Signature] and Seller [Signature] acknowledge receipt of a copy of this page, which is 6 of 7 pages.

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327\* 21. **Additional Terms:** This contract is contingent on Receiver Michael Goldberg getting court approval to sell the  
328 above mentioned property. This contract is also contingent on a survey being acceptable to the Buyer and on buyers  
329 Attorney review and acceptance of the Amended Stipulated final Judgment dated October 21, 1980.  
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343 **COUNTER-OFFER/REJECTION**

344\*  Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and  
345 deliver a copy of the acceptance to Seller).  
346\*  Seller rejects Buyer's offer

347 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**  
348 **signing.**

349\* Buyer: John V. Macarone Date: 1/5/18

350\* Print name: John V. Macarone

351\* Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

352\* Print name: \_\_\_\_\_

353 Buyer's address for purpose of notice:

354\* Address: 8116 Greenside Lane

355\* Phone: 727-534-8846 Fax: \_\_\_\_\_ Email: JackMacaroneCC@gmail.com

356\* Seller: Michael Goldberg, Receiver Date: 1/10/18

357\* Print name: Michael Goldberg, Receiver

358\* Seller: \_\_\_\_\_ Date: \_\_\_\_\_

359\* Print name: \_\_\_\_\_

360 Seller's address for purpose of notice:

361\* Address: \_\_\_\_\_

362\* Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

363\* **Effective Date:** \_\_\_\_\_ **(The date on which the last party signed or initialed and delivered the**  
364 **final offer or counter offer.)**

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**EXHIBIT B**

**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,

Defendants,

and

DB ATLANTA, LLC, a Florida limited liability  
company, et al.,

Relief Defendants.

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**ORDER GRANTING RECEIVER'S MOTION TO APPROVE THE  
SALE OF REAL PROPERTY OWNED BY DBKN GULF INCORPORATED**

THIS MATTER came before the Court on \_\_\_\_\_ for consideration of the *Motion to Approve the Sale of Property Owned by DBKN Gulf Incorporated* (the "Motion"), filed by Michael I. Goldberg, in his capacity as the court-appointed receiver (the "Receiver") over Berman Mortgage Corporation, M.A.M.C. Incorporated, and the Relief Defendants.

Based on the proffers of counsel and the record in this case, the Court makes the following findings of fact and conclusions of law:

A. Pursuant to the *Temporary Injunction and Agreed Order Appointing Receiver* (the "Receivership Order") dated December 11, 2007, Michael Goldberg is the Court-appointed

Receiver over BMC and MAMC and the Relief Defendants, including Relief Defendant DBKN Gulf Incorporated (“DBKN”).

B. Prior to the entry of the Receivership Order, BMC 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 commercial mortgage loans.

C. MAMC serviced the loans pursuant to servicing agreements entered into between each investor and MAMC.

D. One of the loans was made to DBKN and secured by a first mortgage on a parcel of vacant land (the “Vacant Land”) located at the Gulf Island Beach and Tennis Club on the water's edge in Pasco County, Florida. The legal description of the Vacant Land is attached hereto as Exhibit A.

E. Pursuant to the *Order Granting Receiver's Amended Motion to Determine Procedures by Which Receiver Can Make Decisions on Specific Loans and Projects*, dated, February 8, 2008, the Receiver is authorized in his sole discretion to make all decisions previously reserved to management under the loan serving agreements.

F. The terms set forth in the Vacant Land Contract with John v. Mariano and/or his assigns (the “Buyer”), are in the best interests of all parties hereto.

G. The sale price reflected in the Vacant Land Contract is more than what is likely to be realized at a public auction of the Vacant Land pursuant to Section 45.031, F.S.

H. The Receiver is not connected with the Buyer through any employment or ownership interest nor familial affiliation.

The Court, having heard argument of counsel, reviewed the Motion, being advised that notice was provided to all interested parties, each of whom have no opposition to the entry of this Order and being otherwise fully advised in the premises, does hereby **Order** that:

1. The Receiver's Motion to Approve the Sale of Property Owned by DBKN Gulf Incorporated is **GRANTED**.

2. The Receiver is authorized to execute the Sale Agreement on behalf of DBKN. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

3. Upon receipt of the consideration set forth in the Vacant Land Contract, and delivery of the deed and other documents called for in the Vacant Land Contract by the Receiver, the sale shall stand as confirmed, without further Order of the Court.

4. Upon the closing of the sale of the Vacant Land, the Receiver shall be discharged as the receiver over the Vacant Land.

5. A copy of this Order shall be filed in the official records of Pasco County, Florida.

**DONE AND ORDERED** in Chambers in Miami-Dade County, Florida on this \_\_\_\_ day of \_\_\_\_\_, 2018.

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**THE HONORABLE PEDRO ECHARTE  
CIRCUIT COURT JUDGE**

**Conformed copies to:**  
All counsel of record  
Posted to the Receiver's Web Site



**LEGAL DESCRIPTION**

A parcel of land lying in Section 32, Township 24 South, Range 16 East, Pasco County, Florida, being more particularly describes follows:

Commence at the Northwest corner of the Northeast one-quarter (1/4) of Section 33, Township 24 South, Range 16 East; thence run South  $89^{\circ} 36' 30''$  West a distance of 3170.03 feet to the Point of Beginning; thence run due South a distance of 883.80 feet; thence run South  $83^{\circ} 03' 23''$  West a distance of 33.41 feet; thence run South  $08^{\circ} 30' 58''$  East a distance of 319.09 feet; thence run South  $03^{\circ} 00' 00''$  West a distance of 5.63 feet; thence run North  $87^{\circ} 00' 00''$  West a distance of 91.87 feet; thence run South  $03^{\circ} 00' 00''$  a distance of 134.74 feet; thence run South  $89^{\circ} 29' 25''$  West a distance of 175.92 feet; thence run due North a distance of 1341.45 feet; and thence run North  $89^{\circ} 36' 30''$  East a distance of 287.99 feet to the Point of Beginning.