

**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 SALE OF PROPERTY  
OWNED BY MAMC EMERALD CAY, LLC**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, hereby files this *Motion to Approve Sale of Property Owned by MAMC Emerald Cay, LLC* (the "Motion"). 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* ("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. As mortgagors defaulted on their loans, the Receiver obtained Orders of this Court adding the projects to the receivership as additional relief defendants.

3. One of the loans was made to Emerald Cay Investments, LLC (the "Borrower") and secured by a first mortgage ("Mortgage") on four parcels of vacant land located at S.R. 535 at Polynesian Isle Boulevard & Oxford Drive, comprising approximately 7.84 acres in Orange County, Kissimmee, Florida (the "Property"). The loan was serviced by MAMC.

4. After the Borrower defaulted under the loan documents, MAMC, on behalf of the Lenders foreclosed on the loan. After the completion of the foreclosure, the Emerald Cay Property was held in the name of MAMC Emerald Cay, LLC.

5. On August 17, 2010, the Receivership Court entered an Order expanding the Receivership to include MAMC Emerald Cay, LLC as a Relief Defendant.

6. The Receivership Court previously authorized the Receivership to enter into an Exclusive Right of Sale Agreement with Marcus & Millichap, (the "Broker") to market and sell the Property.

7. The Receiver seeks authority from the Receivership Court to enter into the Agreement for Purchase and Sale of Real Estate ("Agreement") with ABG 13, LLC, ("Buyer") for the sale of the Property for the sum of \$1,800,000.00. A true and correct copy of the Agreement is attached hereto as **Exhibit 1**.

8. The Receiver's Broker and the buyer's broker, Doug Stewart Realty shall be paid a commission of six percent (6%), which amount shall be divided evenly by the brokers.

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9. 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. The Receiver believes entering into the Agreement is in the best interest of the receivership and is the best opportunity for the Lenders to partially monetize their investment in Emerald Cay.

10. The Receiver has consulted with the lender committee for Emerald Cay,<sup>1</sup> who have advised the Receiver that they approve his entering into the Agreement.

11. A proposed Order is attached hereto as **Exhibit 2**. The terms of the Order have been approved by Buyer's counsel.

12. 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 BMC, MAMC and related entities, respectfully request this Court to enter an Order approving the sale and to grant such further relief as is just and proper.

Respectfully submitted,

**AKERMAN LLP**  
*Counsel for the Receiver*  
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: /s/ Joan Levit  
Joan M. Levit, Esquire  
Florida Bar No. 987530

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<sup>1</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 ("Executive Committee") to advise the Receiver.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this June 24, 2015, a true and correct copy of the forgoing was furnished to the parties on the attached Service List by U.S. mail, to the Lenders by e-mail and a copy of this motion will be posted on the receivership web-page.

/s/ Joan Levit

**SERVICE LIST**

Pury Santiago  
Assistant General Counsel  
STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION  
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[pvalori@dvlp.com](mailto:pvalori@dvlp.com)

**EXHIBIT 1**

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

This AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (the "Agreement") is made and entered into this 18<sup>th</sup> day of June, 2015 (the "Effective Date") by and between:

MAMC Emerald Cay, LLC
c/o Michael I. Goldberg, Receiver
350 E. Las Olas Blvd., #1600,
Fort Lauderdale, FL 33301
Fax No: 954-463-2700

hereinafter called "Seller" and the following purchaser (the "Buyer"):

ABG 13, LLC, a Florida limited liability company
2097 Indian River Blvd.
Vero Beach, Florida, 32960
Email: scott@abgeos.com

WITNESSETH

That in consideration of the mutual promises and covenants herein contained, and other valuable considerations passing between the parties hereto, the Seller agrees to sell and the Buyer agrees to purchase the following described property (the "Property"), lying and being in OSCEOLA county, with the following parcel numbers, to wit:

- 02-25-28-5035-0001-0016 - 1.52 Acres
02-25-28-5035-0001-0017 - 1.24 Acres
02-25-28-5035-0001-0018 - 2.18 Acres
02-25-28-2855-0001-0035 - 2.50 Acres

1. PURCHASE PRICE: \$ 1,800,000.00
Payable as Follows:
Deposit with signing of this Agreement \$ 180,000.00
Balance in cash at Closing \$ 1,620,000.00

Buyer agrees to pay CASH at Closing.

INSPECTION PERIOD. Prior to the Effective Date of this Agreement, Seller has delivered to Buyer copies of documents affecting the Property (the "Inspection Documents"). Buyer hereby confirms and agrees that Seller has made no representation or warranty concerning the ownership, right of use or accuracy of any of the Inspection Documents. Additionally, Buyer agrees that the subsequent use of the Inspection Documents by Buyer (or any employee, agent or independent contractor of Buyer) shall be at the sole risk of Buyer and that Seller shall have no responsibility or liability to in connection with use of or reliance upon the Inspection Documents. Buyer shall have the opportunity to make such investigations, appraisals, surveys, soil borings and similar examinations, studies, tests and inspections of and concerning the Property (collectively the "Inspections") as Buyer may desire; said Inspections will be made before the Closing at Buyer's sole cost and expense. Buyer and its agents, employees and independent contractors have the right to enter upon the Property during normal business hours, provided said Inspections shall not damage the Property, or cause injury to any person. If any Inspections damage the Property, Buyer will restore the Property to substantially the same condition as existed before such damage. Buyer agrees at all times during the entries onto the Property that Buyer or its agents will procure and maintain in effect comprehensive general liability insurance (including contractual liability, contractor's protective liability, personal injury and property damage coverage) of at least \$1,000,000.00 in force per occurrence with a \$2,000,000.00 aggregate limit, and shall provide Seller with evidence of such insurance coverage prior to any entry onto the Property. Buyer shall have Seller added as an additional insured on all such policies and shall provide certificates to Seller evidencing same prior to any Buyer inspections pursuant to this paragraph. This paragraph shall survive Closing or the termination of this Agreement, as applicable. Buyer shall at all times indemnify, save harmless and defend Seller from and

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against any and all claims, liabilities, loss, costs, damage and expenses (including reasonable attorneys' fees whether incurred at or before the trial level or in any appellate or bankruptcy proceedings) which Seller or the Property may suffer, sustain or incur by reason of the exercise of the right to make and conduct the Inspections, including any damage to the Property, or to any person or other real or personal property, and including the filing of any mechanics' or other statutory or common law lien or claim against the Property, or any part thereof. These duties of Buyer to indemnify, defend, and hold harmless Seller shall survive the closing or earlier termination of this Agreement. The right of the Seller to enforce the indemnity, defense and hold harmless provisions of this Agreement shall not be deemed or construed to be the sole right and remedy of the Seller, the Seller may pursue such other rights and remedies as may be available to the Sellers under the statutory or case law of the State of Florida to enforce such indemnity, defense and hold harmless provisions hereof. Buyer may at any time from and after the Effective Date of this Agreement through and including 5:00 p.m. Eastern Standard Time the day which is sixty (60) consecutive calendar days from and after the Effective Date of this Agreement (the "Inspection Period"), terminate this Agreement for any reason or no reason whatsoever by written notice to Seller and the Escrow Agent whereupon all parties shall be released from further liability hereunder except with respect to those provisions of this Agreement which expressly survive termination.

**ESCROW:** The Buyer agrees to transfer the good faith deposit (\$180,000) to Attorney Michael I. Goldberg (the "Escrow Agent"), who agrees to hold the deposit funds in accordance with the Escrow Provisions attached as Schedule A to this Agreement.

**CLOSING, PHYSICAL POSSESSION:** It is anticipated that the closing and payment of the total purchase price (the "Closing Date") shall take place within thirty (30) days from the last day of the Inspection period. Physical possession, unless otherwise stated herein, shall be at the date of Closing. Physical possession shall not be delivered until the full purchase price is paid pursuant to the terms of this Agreement.

**TITLE:** Akerman Senterfitt PA shall provide the title commitment and policy for closing, and Seller shall pay for the title policy which shall be provided to Buyer at closing. Seller shall deliver a title commitment to Buyer within 10 days from the Effective Date of this Agreement.

**TITLE INSURANCE:** During the Inspection Period, Seller shall provide Buyer an owner's title insurance commitment in the amount of the purchase price subject to the usual standard exceptions found in the standard ALTA policies, and any other matters herein excepted, followed by a title insurance policy subsequent to Closing and recordation of requisite instruments. The title insurance commitment shall be subject to applicable zoning laws, matters of survey, matters of possession and easements and restrictions of record. In the event the title insurance commitment reveals defects in Seller's title, Buyer shall notify Seller in writing within ten (10) days of the receipt of the commitments for title insurance and Seller shall have a period of thirty (30) days after such notification by the Buyer to the Seller within which to cure said defects; provided, however, Seller shall not be required to expend any money in the cure of such defects. Upon Seller's failure to correct said defects within the time limit, Buyer shall have five (5) business days to notify Seller of its decision to either (a) waive such defect and proceed to Closing, and (b) have the earnest money deposit returned to Buyer and all rights and liabilities arising hereunder shall terminate. This provision shall be in full and effect even if the Inspection Period has passed. In the event Buyer does not notify Seller of its decision within such five (5) business day period, Buyer shall be deemed to have waived such defect and the parties shall proceed to Closing.

added by Carlos

**CONVEYANCE:** Title shall be conveyed by either special warranty or receiver's deed, free and clear of all liens and encumbrances whatsoever, except easements, reservations and restrictions of record, applicable zoning regulations, taxes for the current year, and years subsequent.

**DOCUMENTARY STAMPS, FEES:** The Seller shall pay for documentary stamps on the deed and the cost of recording the deed. The Seller shall pay for any and all costs of the title insurance premiums and charges. Buyer shall pay for any and all costs attributed to Buyer's mortgage financing, if any.

**PRORATION:** Taxes for the year in which the sale closes shall be pro-rated as of Closing or possession, whichever shall first occur, based upon the best possible information available as to the current year's taxes.

**BROKERAGE:** Seller will pay a commission of 6% of the purchase price, which will be divided equally (3%/3%), between Seller's Listing Agent, and DOUG STEWART REALTY ("the Brokers") at the Closing of title if and only if Buyer purchases the Property and title is transferred to Buyer. Brokers are acting as agents for the transaction.

**"AS IS" SALE - DISCLAIMER OF WARRANTIES:** Seller sells the Property in its "As Is" condition, and disclaims any and all express and implied warranties.

**ENVIRONMENTAL NOTICE/DISCLAIMER:** Seller makes no representations or warranties, express or implied, about environmental conditions, and expressly disclaims any liability for any type of damages arising from environmental conditions of any nature.

**SINKHOLE EXCLUSION:** Certain areas of Florida have experienced "sinkhole" soil settlement activity. Seller makes no warranties or presentations, express or implied, about the existing or future soil conditions on the Property. Seller expressly disclaims any liability of any types for any damages whether direct or indirect, or

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consequential, which the Property may suffer because of settlement, sinking or collapse of the earth on the Property.

**TIME OF THE ESSENCE:** Time is of the essence to this Agreement and specifically each and every paragraph, without limitation, in which a time period is involved.

**ASSIGNMENT OF CONTRACT:** This Agreement may not be assigned without the written consent of the other party. Notwithstanding the foregoing and without releasing the Buyer, this Agreement and Buyer's rights hereunder may be transferred and assigned to any person or entity that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with Buyer or any of its affiliates. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

**DEFAULT:** In the event that Buyer shall default in the performance of any of the obligations to be performed by Buyer pursuant to this Agreement, Seller shall retain the good faith deposit as liquidated damages. The parties hereto agree that the actual damages to Seller in such event are difficult and impractical to ascertain and the good faith deposit retained by Seller upon default is a reasonable estimate of damages and constitute valid liquidated damages; provided, further that in the event of default and Seller's retention of the good faith deposit as liquidated damages, this Agreement shall be null and void and neither party shall have any rights or obligations under this Agreement except for those rights and obligations which by their terms expressly survive any such termination.

If Seller should default in the performance of any of the obligations to be performed by Seller pursuant to this Agreement, Buyer shall notify Seller of such default, and Seller will have ten (10) days after receipt of said notice within which to fulfill Seller's obligations. If, for any reason other than Seller's failure to make Seller's title marketable, Seller fails to perform this Agreement and Buyer is not in default of this Agreement, Buyer may seek specific performance or elect to terminate this Agreement by written notice to Seller, in which event the good faith deposit shall be returned to Buyer upon demand. Under no circumstances may Buyer seek or be entitled to recover any special, consequential, punitive, speculative or indirect damages or any other damages, all of which Buyer specifically waives, from Seller for any breach by Seller of its obligation under this Agreement or any representation, warranty or covenant of Seller hereunder.

**RESOLUTION OF DISPUTES:** If there is any dispute between the parties, the laws of the state of Florida shall govern all proceedings, and all proceedings shall be held in Osceola County, Florida.

**ATTORNEYS FEES AND COSTS:** In the event that any litigation is commenced in connection with the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to recover its cost including reasonable attorneys' and professional fees, at all levels of all proceedings, including appeals.

**NOTICE:** Any notice required or permitted to be given in connection with this Agreement shall be in writing and sent by United States certified mail with return receipt requested, professional overnight courier or telefax (with confirmation and copy by certified mail or overnight professional courier), to Buyer or Seller at the addresses on Page 1 of this Agreement.

**WAIVER:** Seller's waiver of any of its rights or remedies shall not operate to waive any other of Seller's rights or remedies or to prevent Seller from enforcing the waived right or remedy in another instance.

**COUNTERPARTS AND TELEFAXED SIGNATURES:** This Agreement may be executed in any number of counterparts, a complete set of which shall be deemed to be an original and a complete set of which shall comprise but a single instrument. Signatures may be given via facsimile or e-mail transmission and shall be deemed given as of the date and time of the transmission of this Agreement by facsimile to the other party.

**AMENDMENTS:** This Agreement contains the entire agreement between the parties and supersedes any prior written or oral agreements. Any amendment to this Agreement must be made in writing and signed by both Parties.

**RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

**TIME PERIODS:** If the time period by which any right, option, or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a day other than a Business Day, then such time period shall be automatically extended through the close of business on the next regularly scheduled Business Day. Notwithstanding anything to the contrary contained under this Agreement, all time periods shall be measured in calendar days.

**COURT APPROVAL:** This Agreement and the Closing are subject to the approval by the Court ("Approval") in that certain action entitled X (the "Court Order"). In the event the Approval is not received within Sixty (60) days after a request for the Approval is submitted to the Court by Seller (regardless of whether the Court Order has been issued at that

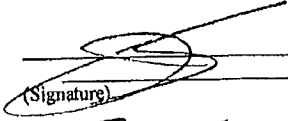
time), then either Buyer or Seller shall have the right to cancel this Agreement by the delivery of written notice thereof to the other, whereupon this Agreement shall be deemed terminated and, notwithstanding any other provision in this Agreement to the contrary, the Escrow Deposit shall be returned to Buyer and the parties shall be thereafter relieved of any and all further obligations each to the other hereunder, except as otherwise expressly provided herein. Seller shall not be liable or in default of this Agreement if Seller requests the Court Order and this Agreement or the sale is not approved by the Court. Seller shall submit this Agreement for approval by the Court within 15 business days after the Effective Date. A draft of the proposed Court Order shall be forwarded to Buyer for review and comment by the Buyer's legal counsel and the title insurer prior to the Closing Date.

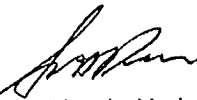
(signatures on next page)

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WITNESSES:

BUYER: ABG 13, LLC

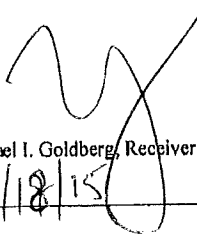
  
 \_\_\_\_\_  
 (Signature)  
 Print JACK SHEZZY  
 Date: June 1, 2015

  
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 (Signature)  
 Print: Scott Parker, Managing Member  
 Date: June 1, 2015

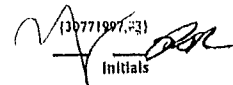
WITNESSES:

SELLER: MAMC Emerald Cay, LLC

\_\_\_\_\_  
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 (Signature)  
 Print \_\_\_\_\_  
 Date: \_\_\_\_\_

  
 \_\_\_\_\_  
 (Signature)  
 Print: Michael I. Goldberg, Receiver  
 Date: 6/18/15

THIS AGREEMENT IS SUBJECT TO COURT APPROVAL

  
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## SCHEDULE A

### ESCROW PROVISIONS

#### 1.1 General Conditions of Escrow.

(a) The Escrow Agent shall hold the Deposit in escrow in a non-interest bearing account at Wells Fargo Bank until the Closing, or sooner termination of this Agreement and shall pay over or apply the Deposit in accordance with the terms of this paragraph. If Purchaser shall be entitled to a return of the Deposit pursuant to the terms of this Agreement, the Deposit shall be paid by Escrow Agent to Purchaser. At the earlier of Purchaser's default hereunder or if the Closing Date occurs, the Deposit shall be paid by Escrow Agent to Seller.

(b) If for any reason the Closing does not occur pursuant to the terms of this Agreement and either party makes a written demand ("Demand Party") upon Escrow Agent for payment of the Deposit ("Demand Notice"), Escrow Agent shall give written notice ("Escrow Agent Notice") to the other party ("Non-Demand Party") of such demand together with a copy of the Demand Notice. It shall be a condition precedent to Escrow Agent's release of the Deposit that the Demand Notice to Escrow Agent be in writing.

(c) If Escrow Agent does not receive a written objection ("Objection Notice") from the Non-Demand Party to the proposed disbursement of the Deposit within ten (10) days after the date Escrow Agent gives the Escrow Agent Notice to the Non-Demand Party, Escrow Agent is hereby authorized to make such disbursement of the Deposit to the Demand Party.

(d) If (i) Escrow Agent receives an Objection Notice from the Non-Demand Party within such ten (10) day period, or if for any other reason Escrow Agent in good faith elects not to make such disbursement of the Deposit, or (ii) a dispute arises as to the rights of the parties in and to, or the disposition of, the Deposit, then Escrow Agent shall have the right to (A) hold and retain all or any part of the Deposit until Escrow Agent: (1) receives a written notice from the Non-Demand Party withdrawing the Objection Notice, (2) receives a written notice signed by both parties directing disposition of the Deposit or (3) such dispute is settled or finally determined by litigation, arbitration or as otherwise evidenced in a writing delivered to Escrow Agent, or (B) deposit the Deposit in an appropriate court of law, following which Escrow Agent shall thereafter be relieved and released from any liability or obligation under this Agreement, or (C) institute an action in interpleader or other similar action in an appropriate court in the State of Florida, or (D) interplead any of the parties in any action or proceeding which may be brought to determine the rights of the parties to all or any part of the Deposit. In the event Escrow Agent elects to file an action in interpleader to resolve the dispute, then upon filing such action, Escrow Agent shall thereafter be relieved and released from any liability or obligation under this Agreement. Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees, including those for appellate and post judgment matters and for paralegals and similar persons, incurred in its capacity as escrow agent in connection with any such interpleader action and the court shall award such attorneys' fees, including those for appellate and post judgment matters and for paralegals and similar persons, to Escrow Agent from the losing party. Escrow Agent shall be fully protected in suspending all or part of its activities under this Agreement until such dispute is settled or finally determined by litigation, arbitration or otherwise.

(e) Any notice to or demand upon Escrow Agent shall be in writing, shall be delivered at the address set forth above for Escrow Agent and shall be sufficient only if received by Escrow Agent within the applicable time period set forth above. Notices from Escrow Agent to Seller or Purchaser shall be given pursuant to the terms of the Section of this Agreement applicable to the giving of notices to and from the parties hereto.

#### 1.2 Limitation of Liability

(a) Escrow Agent may (i) act in reliance upon any writing or instrument or signature which it, in good faith believes to be genuine; (ii) assume the validity and accuracy of any statement or assertion contained



in such a writing or instrument; and (iii) assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions of this agreement has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing any instrument.

(b) Escrow Agent shall not be bound in any way by any other contract or understanding between the parties, whether or not Escrow Agent has knowledge thereof or consents thereto unless such consent is given in writing.

(c) Escrow Agent's sole duties and responsibilities shall be to hold and disburse the Deposit in accordance with this Agreement provided, however, that Escrow Agent shall have no responsibility for the clearing or collection of any check(s) representing the Deposit.

(d) Escrow Agent shall not be liable for any action taken or omitted by Escrow Agent in good faith and believed by Escrow Agent to be authorized or within its rights or powers conferred upon it by this Agreement, except for damage caused by the gross negligence or willful misconduct of Escrow Agent.

(e) Upon the disbursement of the Deposit in accordance with this Agreement, Escrow Agent shall thereafter be relieved and released from any liability or obligation under this Agreement.

(f) Escrow Agent may resign at any time upon at least ten (10) days' prior written notice to the parties. If, prior to the effective date of such resignation, the parties shall all have approved, in writing, a successor escrow agent, then upon the resignation of Escrow Agent, Escrow Agent shall deliver the Deposit to such successor escrow agent. From and after such resignation and the delivery of the Deposit to such successor escrow agent, Escrow Agent shall be fully relieved of all of its duties, responsibilities and obligations under this Agreement, all of which duties, responsibilities and obligations shall be performed by the appointed successor escrow agent. If for any reason the parties shall not approve a successor escrow agent within such period, Escrow Agent may bring an appropriate action or proceeding for leave to deposit the Deposit with a court of competent jurisdiction, pending the approval of a successor escrow agent, and upon such deposit Escrow Agent shall be fully relieved of all of its duties, responsibilities and obligations under this Agreement.

(g) Seller and Purchaser hereby agree to, jointly and severally, indemnify, defend and hold Escrow Agent harmless from and against any liabilities, damages, losses, costs or expenses incurred by, or claims or charges made against, Escrow Agent (including counsel fees, whether of outside counsel or of Escrow Agent's counsel, and court costs) by reason of Escrow Agent's acting or failing to act in connection with any of the matters contemplated by this Agreement or in carrying out the terms of this Agreement, except as a result of Escrow Agent's gross negligence or willful misconduct. To the extent that Escrow Agent holds the Deposit under the terms of this Agreement, the parties agree that Escrow Agent may charge the Deposit with any such attorneys' fees, court costs and expenses as they are incurred by Escrow Agent. Escrow Agent may consult with counsel of its own choice, including counsel within its own firm, and shall have full and complete authorization and protection in accordance with the opinion of such counsel.

(h) Without limitation, Escrow Agent shall not be liable for any loss or damage resulting from the following: (i) the financial status or insolvency of any other party, or any misrepresentation made by any other party; (ii) any legal effect, insufficiency or undesirability of any instrument deposited with or delivered by or to Escrow Agent or exchanged by the parties, whether or not Escrow Agent prepared such instrument; (iii) the default, error, action or omission of any other party or any actions taken by Escrow Agent in good faith, except for Escrow Agent's gross negligence or willful misconduct; (iv) any loss or impairment of the Deposit that has been deposited in escrow while the Deposit is in the course of collection or while the Deposit is on deposit in a financial institution if such loss or impairment results from the failure, insolvency or suspension of a financial institution, or any loss or impairment of the Deposit due to the invalidity of any draft, check, document or other negotiable instrument delivered to Escrow Agent; (v) any loss or impairment of the Deposit arising from any insufficiency of FDIC insurance coverage (up to \$250,000) for funds held in a financial institution (vi) the expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction, accepted by Escrow Agent,



has instructed the Escrow Agent to comply with said time limit; and (vii) Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.

(i) The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that Escrow Agent shall not be deemed to be an agent of either party except for Escrow Agent's representation of [Purchaser or Seller] in connection with this Agreement and the transaction referred to herein.

(j) The parties represent that prior to the negotiation and execution of this Agreement they were advised that Escrow Agent is the law firm representing [Purchaser or Seller] as its attorney in connection with this Agreement and the transaction referred to in this Agreement. The parties covenant that they shall not object, on the grounds of conflict of interest or otherwise, to Escrow Agent's continuing to act as [Purchaser's or Seller's] attorney in connection with this Agreement and the transaction contemplated herein. In the event of a dispute between the parties, the parties consent to Escrow Agent continuing to represent [Purchaser or Seller], notwithstanding that Escrow Agent shall continue to have the duties provided for in this Agreement.

### 1.3 Miscellaneous.

(a) If the Deposit is to be placed in an interest bearing account, the party entitled to the interest shall furnish a taxpayer identification number to Escrow Agent. Escrow Agent does not have to place the Deposit in an interest bearing account until such taxpayer identification number is furnished to Escrow Agent. Purchaser's federal taxpayer identification number is N/A. Seller's federal taxpayer identification number is 264020574.

(b) The parties acknowledge that the disbursement of the Deposit may require a completed W-8 or W-9 form and any other documentation required to satisfy Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act"). The parties agree to execute such documents as is required to satisfy such governmental requirements.

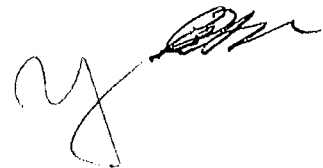
(c) Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement. Escrow Agent shall not be deemed to have any implied duties or obligations under or related to this Agreement.

(d) The terms and provisions of this Article shall create no right in any person, firm or corporation other than the parties and their respective successors and permitted assigns and no third party shall have the right to enforce or benefit from the terms hereof.

(e) In the event Escrow Agent holds the Deposit for a period exceeding twelve (12) months following the Effective Date of this Agreement, Escrow Agent shall thereafter have the right, in its sole discretion, to terminate the escrow in which event it shall either deposit such Deposit with the court or deposit the Deposit with a third party mutually agreeable to parties. Escrow Agent shall give the parties not less than ten (10) days prior notice of such election.

(f) The parties agree that this Agreement shall be effective and in full force and effect upon the execution and delivery of this Agreement by Seller and Purchaser, notwithstanding that the Escrow Agent has not yet executed this Agreement as Escrow Agent.

(g) The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Florida, without application of choice of law or conflicting provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the laws of any jurisdictions other than the State of Florida to be applied.



(h) If any term or provision of this Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(i) Except for the delivery of Form 1099's, the Escrow Agent shall have no duty to prepare or file any Federal or state tax return or report with respect to any funds held under this Agreement or any earnings thereon. With respect to the preparation and delivery of Form 1099's and all matters pertaining to the reporting of earnings on funds held under this Agreement, the Escrow Agent shall be entitled to request and receive written instructions from the Seller and Purchaser and the Escrow Agent shall be entitled to rely conclusively and without further inquiry on such written instructions. Any taxes payable on income earned from the investment of any sums held in escrow under this Agreement shall be paid by the party entitled to receive such income, whether or not the income was distributed by the Escrow Agent to such party during any particular year, as and to the extent required under the provisions of the Internal Revenue Code.

**1.4 Deposit of Funds.** The Deposit will be processed for collection in the normal course of business. No disbursement will be made until the Deposit has been irrevocably credited to Escrow Agent's account. Escrow Agent may commingle the Deposit received in escrow with escrow deposits of others, and may, at its option, deposit such Deposit in its custodial or trust accounts. Unless otherwise indicated in this Agreement, Escrow Agent shall be under no obligation to invest the Deposit on behalf of any depositor, nor shall it be accountable for any earnings or incidental benefit attributable to the Deposit which may be received by Escrow Agent while it holds the Deposit. If, in accordance with this Agreement, the Deposit is invested in interest bearing investments, the interest shall be disbursed as, and shall be deemed included in, the Deposit except as may be otherwise specified in this Agreement.

**1.5 Closing of Escrow.** Signed approval of settlement statements or other statements of account by the Seller and Purchaser shall constitute mutual instructions to Escrow Agent and authority to disburse funds as shown thereon. Upon completion of the disbursement of funds and delivery of instruments, Escrow Agent shall thereafter be relieved and released from any liability or obligation under this Agreement.

**1.6 Electronic Execution.** The parties agree that Escrow Agent shall be entitled to rely upon approvals for the closing of escrow and upon other communications by the parties transmitted by electronic means, including but not limited to facsimile telephone transmission and/or email transmission of data and signatures. Escrow Agent shall not be required to rely upon electronic data, which it determines, in its sole discretion, to be unreliable. Any notice or other communication given in the manner provided above by counsel for any party shall be deemed to be notice of such notice or other communication from the party represented by such counsel. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Handwritten signature and initials in the bottom right corner of the page.

**EXHIBIT 2**



**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.

\_\_\_\_\_/

**ORDER GRANTING RECEIVER'S MOTION TO APPROVE THE  
SALE OF REAL PROPERTY OWNED BY MAMC EMERALD CAY, LLC**

THIS MATTER came before the Court on \_\_\_\_\_, 2015 for consideration of the Motion to Approve the Sale of Property owned by MAMC Emerald Cay, LLC (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, including Emerald Cay, LLC. The Court, having 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, makes the following findings:

A. All interested parties in this action have received notice of the Motion.

B. The terms set forth in the Agreement for Sale and Purchase of Real Estate (the "Sale Agreement") on behalf of MAMC Emerald Cay, LLC for the sale of the real property located on S.R. 535 at Polynesian Isle Boulevard & Oxford Drive, comprising approximately 7.44 acres in Osceola County, Kissimmee, Florida to ABG 13, LLC are in the best interests of all parties hereto.

C. The Property, as more fully described in Exhibit A attached hereto and incorporated herein was marketed by Receiver or those acting at his direction in a commercially reasonable manner.

D. The sale price reflected in the Sale Agreement is more than what is likely to be realized at a public auction of the Property pursuant to Section 45.031, F.S.

E. The Receiver is not connected with the proposed purchaser under the Sale Agreement through any employment or ownership interest nor familial affiliation.

Based upon these findings, it is therefore **ORDERED AND ADJUDGED** that:

1. The Receiver's Motion to Approve the Sale of Property Owned by MAMC Emerald Cay, LLC is GRANTED.

2. The Receiver is authorized to execute the Sale Agreement on behalf of MAMC Emerald Cay, LLC. (A true and correct copy of the Agreement is attached to the Motion as Exhibit 1.) 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 Sale Agreement, and delivery of the deed and other documents called for in the Sale Agreement by the Receiver, the sale shall stand as confirmed, without further Order of the Court.

**DONE AND ORDERED** in Chambers in Miami-Dade County, Florida on this \_\_\_\_ day  
of \_\_\_\_\_, 2015.

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**THE HONORABLE JERALD BAGLEY  
CIRCUIT COURT JUDGE**

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

**EXHIBIT A****PARCEL 1:**

## LOT 3:

Commence at the Northwest corner of Section 2, Township 25 South, Range 28 East, Osceola County, Florida; thence run South 89° 55' 59" East, along the North line of said Section 2, a distance of 385.04 feet to the Point of Beginning of SOUTHBRIDGE "TRACT 1" as recorded in Plat Book 5, Page 199, of the Public Records of Osceola County, Florida; thence continue South 89° 55' 59" East, along said North line of Section 2, 724.01 feet to a point on the Westerly right of way line of State Road 535; thence departing said North line, run South 36° 57' 19" East, along the Westerly right of way line of State Road 535, 42.13 feet to the Point of Beginning; thence continue South 36° 57' 19" East, along said right of way of State Road 535, 160.23 feet; thence departing said right of way line, run South 53° 02' 33" West, 466.61 feet; thence run North 36° 58' 54" West, 63.45 feet to the beginning of a curve concave Northeasterly, having a radius of 188.00 feet, a chord bearing North 23° 11' 54" West, a chord distance of 89.58 feet, through a central angle of 27° 34' 01", thence run along the arc of said curve 90.45 feet to the point of tangency; thence run North 09° 24' 53" West, 32.65 feet to the beginning of a curve concave Southeasterly, having a radius of 138.00 feet, a chord bearing of North 35° 27' 57" East, a chord distance of 194.75 feet, through a central angle of 89° 45' 39"; thence run along the arc of said curve 216.19 feet to the point of tangency; thence run North 80° 20' 46" East, 139.72 feet to the beginning of a curve concave Northwesterly, having a radius of 125.00 feet, a chord bearing of North 66° 40' 56" East, a chord distance of 59.06 feet, through a central angle of 27° 19' 40", thence run along the arc of said curve, 59.62 feet to the point of tangency; thence run North 53° 01' 06" East, 63.03 feet to the Point of Beginning.

## LOT 1:

Commence at the Northwest corner of Section 2, Township 25 South, Range 28 East, Osceola County, Florida; thence run South 89° 55' 59" East, along the North line of said Section 2, a distance of 385.04 feet to the Point of Beginning of SOUTHBRIDGE "TRACT 1", as recorded in Plat Book 5, Page 199, of the Public Records of Osceola County, Florida; thence departing said North line, run South 09° 24' 53" East along the Westerly line of SOUTHBRIDGE "TRACT 1", 535.15 feet; thence run South 19° 13' 22" East, 290.97 feet; thence run South 37° 00' 09" East 15.82 feet to a point on the Northerly right of way line of Polynesian Isles Boulevard; thence departing aforesaid Westerly line of SOUTHBRIDGE "TRACT 1", run North 73° 16' 10" East, along the right of way of Polynesian Isles Boulevard, 206.35 feet, to the Point of Beginning, thence departing said right of way line run North 16° 43' 50" West, 120.32 feet; thence run North 61° 43' 50" West, 82.86 feet; thence run North 09° 24' 53" West 68.24 feet; thence run North 80° 35' 07" East 36.59 feet to the beginning of a curve concave Northwesterly, having a radius of 114.00 feet, a chord bearing of North 47° 26' 29" East, a chord distance of 124.66 feet, through a central angle of 66° 17' 16", thence run along the arc of said curve 131.89 feet to the point of a non tangent line; thence run North 53° 01' 06" East 58.91 feet; thence run South 36° 58' 54" East, 107.49 feet to the beginning of a curve concave Westerly, having a radius of 100.00 feet, a chord bearing of South 13° 41' 32" East, a chord distance of 79.08 feet, through a central angle of 46° 34' 45", thence run along the arc of said curve 81.30 feet to the point of tangency, thence run South 09° 35' 51" West 34.01 feet to the beginning of a curve concave Easterly, having a radius of 100.00 feet, a chord bearing of South 11° 07' 24" East, a chord distance of 70.76 feet through a central angle of 41° 26' 30", thence run along the arc of said curve 72.33 feet to the point of tangency; thence run South 31° 50' 39" East, 18.28 feet to a point on the Northerly right of way line of Polynesian Isles Boulevard, said point also being a point on a non radial curve concave Northwesterly, having a radius of 533.69 feet, a chord bearing of

South 65° 45' 01" West, a chord distance of 139.68 feet, through a central angle of 15° 02' 19", thence run along said right of way line and the arc of said curve 140.08 feet to the point of tangency; thence run South 73° 16' 10" West 31.17 feet to the Point of Beginning.

**TRACT C:**

Commence at the Northwest corner of Section 2, Township 25 South, Range 28 East, Osceola County, Florida; thence run South 89° 55' 59" East along the North line of said Section 2, a distance of 385.04 feet to the Point of Beginning, said point also being the Point of Beginning of SOUTHBIDGE "TRACT 1" as recorded in Plat Book 5, Page 199, of the Public Records of Osceola County, Florida; thence continue South 89° 55' 59" East along said North line of Section 2, 724.01 feet to a point on the Westerly right of way line of State Road 535; thence departing said North line run South 36° 57' 19" East, along the Westerly right of way line of State Road 535, 42.13 feet; thence departing said Westerly right of way, run South 53° 01' 06" West, 63.03 feet to the beginning of a curve concave Northwesterly, having a radius of 125.00 feet, a chord bearing of South 66° 40' 56" West, a chord distance of 59.06 feet, through a central angle of 27° 19' 40"; thence run along the arc of said curve, 59.62 feet to the point of tangency; thence run South 80° 20' 46" West, 139.72 feet to the beginning of a curve concave Southerly having a radius of 138.00 feet, a chord bearing of a 70° 03' 23" West, a chord distance of 49.30 feet, through a central angle of 20° 34' 46", thence run along the arc of said curve, 49.57 feet to a radial line, thence run North 30° 13' 59" West along said radial line, 59.31 feet; thence run North 89° 55' 59" West, 416.82 feet to a point on the Westerly line of aforesaid SOUTHBIDGE "TRACT 1"; thence run North 09° 24' 53" West, along said Westerly line, 85.47 feet to the Point of Beginning.

**PARCEL 2:**

Lot 3, CALYPSO CAY COMMERCIAL, PHASE II, Section 2, Township 25 South, Range 28 East, Osceola County, Florida, as recorded in Plat Book 18, Page 43, of the Public Records of Osceola County, Florida.

**LESS AND EXCEPT:**

**TRACT "A":**

A portion of Lot 3, CALYPSO CAY COMMERCIAL, PHASE II, as recorded in Plat Book 18, Page 43, of the Public Records of Osceola County, Florida, more particularly described as follows: Commence at the Northwest corner of CALYPSO CAY COMMERCIAL, PHASE II, Section 2, Township 25 South, Range 28 East, Osceola County, Florida, as recorded in Plat Book 18, Page 43, of the Public Records of Osceola County, Florida, said point also being a point on the Southerly right of way of Polynesian Isles Boulevard; thence departing said Southerly right of way run South 37° 00' 09" East, along the Westerly lot line of aforesaid Lot 3, 449.30 feet; thence run South 69° 47' 21" East, 145.19 feet, to the Point of Beginning, thence departing said Westerly lot line of said Lot 3, run North 53° 02' 39" East, 132.71 feet to a point on the Easterly lot line of said Lot 3; thence run South 36° 57' 21" East, along said Easterly line of said Lot 3, 146.43 feet, to a point on the Southerly lot line of said Lot 3; thence run South 53° 02' 39" West, along said Southerly lot line, 63.26 feet to the Southwesterly corner of said Lot 3; thence run North 36° 58' 55" West, 38.83 feet; thence run North 69° 47' 21" West, 128.06 feet to the Point of Beginning.