

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

CASE NO.: 07-43672 CA 09

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION, a Florida
corporation, M.A.M.C. INCORPORATED, a Florida
corporation, DANA J. BERMAN, as Owner and Managing
Member,

Defendant.

and

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

Relief Defendants.

**RECEIVER'S MOTION FOR AUTHORIZATION
TO ENTER INTO A LEASING AGREEMENT WITH
GADINSKY REAL ESTATE**

Michael I. Goldberg, the receiver of Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, *et al.*, and Relief Defendants DB Atlanta, LLC, *et al.* (the "Receiver"), hereby files this Motion for Authorization to Enter into a Leasing Agreement With Gadinsky Real Estate. In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, this Court appointed Michael Goldberg as the receiver for 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 investors who entrusted over \$192 million to the Receivership Defendants.

2. On August 17, 2010, this Court entered an Order expanding the receivership estate to include Defendant MAMC V-Strategic, LLC ("V-Strategic").

3. Prior to the receivership case, MAMC serviced a loan made to V-Strategic, LLC. V-Strategic LLC defaulted and MAMC, on behalf of the investors foreclosed on the loan and took title to the collateral securing the loan.

4. The collateral consists of a parcel of land located at 2101 East Hallandale Beach Boulevard, Hallandale Beach, Florida at the intersection of Three Islands Boulevard (the "Property"). The parcels sit on 2.36 acres and are zoned for commercial use.

5. It is the intention of the Receiver to market and sell the Property by entering into an agreement with Gadinsky Real Estate, LLC to find a retail tenant(s) to enter into a ground lease(s) with MAMC V-Strategic and build out the property. V-Strategic would then have the option of continuing to lease the property or selling the ground lease . Therefore, the Receiver seeks authority to enter into an agreement with Gadinsky Real Estate, LLC, titled "Retail Development and Leasing Strategy" ("Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit 1.

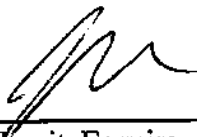
6. This Receiver is charged with the responsibility of preventing waste and dissipation of the Defendants' assets. *See* Receivership Order at ¶ 7. Moreover, the Receiver is authorized to enter into agreements and take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. *See* Receivership Order at ¶ 17.

7. The Receiver has consulted with the lender committee for V-Strategic¹, who have advised the Receiver that they unanimously approve his entering into the Agreement on behalf of MAMC V-Strategic

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of Berman Mortgage, M.A.M.C. and related entities, respectfully request this Court to enter an Order authorizing the Receiver to enter into the agreement described herein and to grant such further relief as is just and proper.

Respectfully submitted,

AKERMAN SENTERFITT
Las Olas Centre II, Suite 1600
350 East Las Olas Boulevard
Fort Lauderdale, FL 33301-2229
Phone: (954) 463-2700
Fax: (954) 463-2224
Email: joan.levit@akerman.com

By: 
Joan M. Levit, Esquire
Florida Bar No. 987530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of November, 2010, a true and correct copy of the forgoing was furnished via U.S. Mail to the parties on the attached Service List.

By: 
Joan M. Levit

¹ At the outset of the receivership, the Receiver set up committees comprised of lenders for each loan and one overall committee made up of at least one lender from each loan ("Executive Committee") to advise the Receiver.

SERVICE LIST

<p>Cristina Saenz Assistant General Counsel STATE OF FLORIDA OFFICE OF FINANCIAL REGULATION 401 N.W. 2nd Avenue, Suite N-708 Miami, FL 33128</p>	<p>Alan M. Sandler, Esquire SANDLER & SANDLER 117 Aragon Avenue Coral Gables, FL 33134</p>
<p>Charles W. Throckmorton, Esquire <i>Attorneys for Dana Berman</i> KOZYAK TROPIN THROCKMORTON, P.A. 2525 Ponce de Leon Boulevard, 9th Floor Coral Gables, FL 33134</p>	<p>Paul Huck, Esquire Dean C. Colson, Esquire COLSON HICKS BIDSON 255 Aragon Avenue, Second Floor Coral Gables, FL 33134</p>
<p>Jason S. Miller, Esquire <i>Counsel for Flagstar Bank</i> ADORNO & YOSS, LLP 2525 Ponce de Leon Boulevard, Suite 400 Coral Gables, FL 33134</p>	<p>Maurice Baumgarten, Esquire ANANIA, BANDKLAYDER, BLACKWELL, BAUMGARTEN, TORRICELLA & STEIN Bank of America Tower - Suite 4300 100 SE 2nd Street Miami, FL 33131</p>
<p>Mark A. Basurto, Esquire and Charles Evans Glausier, Esquire, Attorneys for Gulf Island Beach and Tennis Club Condominium Association, Inc. BUSH ROSS, P.A. Post Office Box 3913 Tampa, Florida 33601-3913</p>	<p>Charles L. Neustein, Esquire CHARLES L. NEUSTEIN, P.A. 777 Arthur Godfrey Road, Second Floor Miami Beach, FL 33140</p>
<p>William Dufoe, Esquire Robert W. Lang, Esquire HOLLAND & KNIGHT, LLP 100 North Tampa Street, Suite 4100 Tampa, FL 33602</p>	<p>Deborah Poore Fitzgerald, Esquire WALTON LANTIAFF SCHROEDER & CARSON, LLP Corporate Center, Suite 2000 100 East Broward Boulevard Fort Lauderdale, FL 33301</p>
<p>Peter Valori, Esquire DAMIAN & VALORI, LLP 1000 Brickell Avenue, Suite 1020 Miami, FL 33131</p>	<p>Christopher S. Linde, Esquire BURR FORMAN 450 S. Orange Avenue Suite 200 Orlando, Florida 32801</p>

EXHIBIT 1



September 16, 2010

PERSONAL & CONFIDENTIAL

MAMC V-Strategic, LLC
3400 Coral Way, Suite 303
Miami, FL 33145
ATTN: Mr. Hank Yunes

**Re: Retail Development and Leasing Strategy;
2101 East Hallandale Beach Boulevard, Hallandale Beach, Florida**

Dear Hank:

The purpose of this non-binding letter is to outline the general terms and conditions of the proposed relationship between MAMC V-Strategic, LLC ("Owner") and Gadinsky Real Estate, LLC ("Manager") in connection with the above-referenced Property ("Property"). Both Owner and Manager acknowledge that a definitive agreement ("Agreement") is necessary to implement such understandings.

The basic terms and conditions of the proposed Agreement are as follows:

- 1. PURPOSE:** Owner and Manager intend to maximize returns to Owner by implementing a retail development and marketing strategy for the Property, subject, however to a fully executed Agreement.
- 2. RELATIONSHIP STRUCTURE:** Manager shall develop and implement a comprehensive strategy for the development and exclusive leasing of the Property on behalf of Owner, acceptable to Owner at Owner's sole and absolute discretion, based upon certain factors such as Owner's specific economic and risk objectives; the location of the Property; current market characteristics impacting the Property; existing retail tenant base in the local and regional sub-markets; available site access; applicable land use regulations and the current physical condition of the Property ("Strategy"), and, further, as reasonably required or requested by Owner, review and revise said Strategy from time to time. To the extent requested by Owner, and legally permissible, Manager shall be responsible for the execution of all aspects of the approved Strategy and engage any additional consultants on behalf of owner, including, without limitation, transactional counsel; land use counsel; architect; civil/traffic engineer(s); general contractor(s) and any local/county governmental liaison(s) ("Owner's Consultants"), as reasonably required to effectively execute the Strategy on an efficient basis. The engagement and compensation of any such Owner's Consultants shall be subject to Owner's prior authorization.
- 3. DESCRIPTION OF THE PROPERTY:** Approximately 102,802± square feet (2.36 acres) of vacant land, as depicted on Exhibit A hereto.
- 4. SCOPE OF MANAGER'S SERVICES:** In order to effectively implement and execute the approved Strategy, to the extent requested by Owner, Manager shall be responsible for certain critical tasks during the Leasing, Due Diligence, Development, and (if requested by Owner), financing/disposition phases, including, without limitation:
 - **Leasing Phase:** Consult and coordinate with Owner to complete the following services, as well as any additional services reasonably required to effectively expose and lease the Property:

- **Prospective Users & Tenants:** Identify prospective retail tenants for the Property based upon Owner's revenue generation and rate of return expectations; risk tolerance and cost of capital, as well as the access, site plan potential, area demographics, land use regulations and applicable restrictive covenants impacting the Property. Introduce the Property and engage confidential discussions and negotiations with appropriate tenant representative brokers and/or real estate managers concerning key deal terms such as premises/space size requirements; base rent amount; site plan configuration; deal structure; delivery condition and ancillary needs.
- **Site Plans:** Direct and manage site plan creation and adjustment process; engage approved Owner's Consultants (architect and/or civil engineer) to draft various site plan concepts based upon preferred prototypical building layouts for specific prospective tenants; applicable land use regulations and Owner's overall development objectives for the Property.
- **Strategy Budgets & Timelines:** Create various detailed Strategy budgets and timelines (critical date schedules) based upon various development scenarios for certain users (tenants); draft/monitor/update proposed budgets and timelines on continual basis or as otherwise reasonably requested by Owner.
- **Lease Negotiation Phase:** Consult and coordinate with Owner and Owner's transactional counsel to facilitate lease transactions with any tenant(s) designated by Owner, at Owner's sole and absolute discretion. Manager's responsibilities in connection with such negotiations shall include, without limitation, the following:
 - **Deal Structure Plan:** Provide Owner with deal structure plan (outline/matrix form) for specific prospective lease transactions from time to time, or as reasonably requested by Owner, summarizing the significant conditions precedent and pursuit cost projections for each such lease transaction; advise Owner as to commercially reasonable provisions concerning such conditions, based upon Manager's overall development, leasing and deal structuring experience.
 - **Non-Binding Letter of Intent to Lease:** Negotiate non-binding Letters of Intent with prospective tenant(s), on form furnished by Manager, subject to Owner's approval, which outlines certain salient deal terms, including, without limitation, base rent amount; conditions precedent/inspection period; delivery condition and Landlord's work (if any).
 - **Lease Negotiations:** Consult and coordinate with Owner and Owner's transactional counsel in order to further negotiate and finalize salient lease terms (based upon the terms and conditions set forth in a fully executed Letter of Intent to Lease).
 - **Reciprocal Easement Agreement & Restrictive Covenants:** If required, consult and coordinate with Owner and Owner's transactional counsel to draft a recordable Reciprocal Easement Agreement ("REA") and/or any additional instruments concerning restrictive covenants; negotiate same with prospective tenants. The REA shall subject all portions of the Property to certain conditions, including, without limitation, provisions concerning the construction of any improvements and use of same; the maintenance, repair, and operation of each leased portion of the Property; the installation, use and operation of certain utility systems and access/parking arrangements upon the Property.
- **Due Diligence Phase:** Upon execution of any lease(s) for the Property, or any portion thereof, Consult and coordinate with Owner, Owner's transactional counsel and any additional Owner's Consultants required to satisfy any conditions precedent required to consummate lease transactions on behalf of Owner. If requested by Owner, to the extent legally permissible, Manager shall be designated as Owner's Authorized Agent (subject to certain terms and conditions) for the purpose of completing any due diligence tasks, including, without limitation, the following:

- **Site Plan:** Work with prospective tenant(s) to create a final site plan concept for the Property based upon said tenant's specific design/build criteria and applicable City of Hallandale Beach; Broward County and Florida Dept. of Transportation (where applicable) land use regulations.
- **Development Review Process:** Manage all development review procedures on behalf of Owner and/or assist/supervise efforts of any prospective tenants to achieve certain discretionary approvals, including, without limitation, site plan approvals; variances; special exceptions/uses; exterior elevation approvals; signage approvals; building permit approvals; access/drainage approvals; amendments to any zoning maps, land development codes and Sub-Division/Platting (if any).
- **Staff Meetings & Public Hearings:** Attend any City of Hallandale Beach; Broward County or Florida Dept. of Transportation staff /development review /planning board meetings, as well as attend/participate in any Public Hearing forums, as required to implement the Strategy to successful completion.
- **Development Phase:** Direct all aspects of the development and construction process including, without limitation:
 - **Ground Lease Tenants:** Coordinate and engage any Owner's Consultants required in order to complete "Landlord's Work" provisions set forth in executed ground lease agreements (if any); assist development and construction efforts of any ground lease tenants (and tenant consultants) and ensure tenant adherence to critical milestones set forth in such lease agreements.
 - **Build-To-Suit Tenants:** Coordinate and manage all aspects of any single-tenant build-to-suit(s) and/or multi-tenant retail building(s), and engage approved Consultants in connection therewith in order to complete such buildings in accordance with critical milestone/delivery schedules set forth in executed leases.
 - **General Contractor & Architect:** Manage bidding and selection process for project architect(s) and General Contractor(s); to the extent requested by Owner, assist Owner and Owner's transactional counsel with negotiation of required AIA contract forms.
 - **Construction Financing:** To the extent requested by Owner, assist with the procurement of construction financing arrangements for the development of any build-to-suit(s) and/or multi-tenant building(s).
- **Disposition/Permanent Financing Phase:** To the extent requested by Owner, assist with and/or coordinate the marketing and sale of the fully developed Property (or any portion thereof), or the procurement of permanent financing.

5. OWNER EQUITY CONTRIBUTION: Owner shall be responsible for one hundred percent (100%) of all costs, fees and expenses related to the implementation of the approved Strategy or as otherwise specified in the Agreement. As of the date hereof, Manager estimates that the initial costs incurred by Owner in order to secure tenants for the Property shall not exceed the amount of \$5,000.

6. MANAGER EQUITY CONTRIBUTION: Manager shall contribute one hundred percent (100%) of the "Sweat Equity" required to successfully implement the approved Strategy to successful completion, or as otherwise specified in the Agreement, as well as any and all costs incurred by Manager to market the Property to prospective tenants, including, without limitation, leasing brochures, presentation materials and leasing signage.

7. OPERATION & MATERIAL DECISIONS: Manager shall oversee the day-to-day implementation of the approved Strategy, and make certain limited decisions in connection therewith; however, Owner shall make all major/material decisions concerning the Property, including, without limitation, Strategy approval/veto; designation of prospective tenants with whom Owner transacts; prior approval of all deal terms for any lease transactions; prior review and approval for any Non-Binding Letter of Intent to drafts and/or definitive Lease drafts; as well as prior approval of all costs and expenditures, or as otherwise specified in the Agreement.

8. CALCULATION OF MANAGER COMPENSATION: As compensation for the services set forth herein, or as otherwise specified in the Agreement, Owner shall pay compensation to Manager ("Manager Compensation") as follows:

Lease Value Compensation: The amount equal to four percent (4%) of the aggregate base rent income payable during the initial fifteen (15) lease years; calculated and payable for each and every lease transaction successfully consummated, in accordance with customary exclusive lease listing agreement stipulations. In the event an exclusive tenant representation broker (cooperating broker) is involved in any such lease transactions, the Manager Compensation for such transactions shall be seven percent (7%) of the aggregate base rent income paid during the initial fifteen (15) lease years, to be divided equally between said brokers.

Development Fee Compensation: Development management fees equal to four percent (4%) of the aggregate total of any approved hard costs (excluding land basis amount) for any build-to-suit(s) and/or multi-tenant retail building(s) developed in connection with the approved Strategy. The Agreement shall specify the approved costs for the purpose of calculating Manager's Development Management Fee Compensation.

9. PAYMENT OF MANAGER COMPENSATION: Payment of Manager Compensation shall be due and payable as follows:

Lease Value Compensation: Fifty percent (50%) shall be earned upon lease execution; fifty percent (50%) shall be earned upon rent commencement. Owner and Manager acknowledge and agree that Lease Value Compensation shall be paid upon the earlier to occur of rent commencement, with the commission(s) to be paid out of rent proceeds as received, until paid in full and/or the sale of the Property.

Development Fee Compensation: Pursuant to completion percentage, in accordance with customary approved construction/draw payment schedule (to be defined), and as otherwise set forth in the Agreement.

10. EXCLUSIVE LISTING: Owner shall grant Manager the exclusive right to lease the Property for a term of six (6) months, as set forth in Paragraph 11 below. Such exclusive lease listing privileges shall be subject to certain terms and conditions customary for a transaction of this nature, and shall either be included in the Agreement or set forth in a separate lease listing agreement by and between Owner and Manager. Upon the termination of the Agreement (or separate lease listing agreement), Manager shall provide Owner a written list of all users/tenants to whom Manager has submitted the Property, within

fifteen (15) days after such termination, and Manager shall be due its Lease Value Manager Compensation in the event Owner enters into a lease or negotiations continue, resume or commence with such parties, within ninety (90) days after such termination.

11. **EXCLUSIONS:** The terms and conditions of this Agreement shall not apply to any lease or sale transaction between Owner and Mr. Juan Carlos Ventura or Mr. Jose' Ventura, including any related entities ("Ventura"). Manager hereby acknowledges and agrees that no compensation shall be due in the event Owner consummates any such transaction with Ventura for the Property, or any portion thereof.

12. **TERM OF AGREEMENT & TERMINATION:** The term of the Agreement shall commence upon the effective commencement date of the Agreement and expire upon the successful completion of the Strategy, or as otherwise specified in the Agreement. However Owner and Manager shall each reserve the right to terminate the Agreement at any time after six (6) months from the effective commencement date of the Agreement by providing ten (10) days written notice of such early termination.

Please indicate your acceptance of the foregoing terms and conditions by returning a fully executed copy of this proposal to our attention. The drafting of the Agreement necessary to implement these understandings shall commence promptly thereafter.

It is understood that this proposal shall have no binding effect of any kind, and is intended for discussion purposes only. It is further understood that the foregoing is only a partial outline of proposed business points which may or may not be included in the final draft of the Agreement. The terms and conditions of this letter are subject to the review and approval of the respective counsel for both Owner and Manager; therefore, the preparation, revision or delivery of this letter, or any subsequent draft thereof, shall in no event be deemed to be an offer or an obligation to develop, manage or operate the Property. Neither party hereto shall have any obligation or liability to the other whatsoever at law or in equity (including any claims for detrimental reliance or promissory estoppel), unless and until such time as both parties shall have executed and delivered a mutually acceptable draft of the Agreement.

Very truly yours,

GADINSKY REAL ESTATE, LLC

Seth Gadinsky
Seth Gadinsky

Justin Schultz
Justin Schultz

ACKNOWLEDGED, AGREED AND ACCEPTED:

Michael Goldberg, as court appointed receiver
OWNER for MAMC V-Strategic, LLC

By: _____
Its: _____
Date: _____

** This non-binding letter of intent is subject to court approval, and any and all agreements contemplated herein or negotiated in accordance with the terms hereof are subject to court approval.*

