

**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,

Defendant.

and

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

Relief Defendants.

/

**RECEIVER'S MOTION TO APPROVE SALE OF A PORTION OF  
THE PROPERTY OWNED BY AHIFO-MAMC CAPE CORAL, 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 for Authority to Approve Sale of a Portion of the Property Owned by AHIFO-MAMC Cape Coral, 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 real estate projects and properties.

**A. Top Two Loan Funded by Lenders and AHIFO-4, LLC**

3. In November 2005, BMC originated an \$8.9 million dollar loan (the “Top Two Loan”) to Top Two Development, Inc (the “Borrower”). The Top Two Loan was secured by mortgages on four separate parcels of property (collectively, the “Property”) in Lee County, Florida – three of which were first mortgages and one of which was a second mortgage that was subordinate to a mortgage held by Fifth Third Bank on that particular parcel of property (the “Fifth Third Parcel”).

4. AHIFO-4, LLC (“AHIFO-4”) financed a \$5 million participation interest in the Top Two Loan. The remaining \$3.9 million of the Top Two Loan, was funded by 114 Lenders. In or about January 2006, the Top Two Loan was modified by MAMC to provide an additional \$2 million advance (by other Lenders) to the Borrower, increasing the outstanding amount under the Top Two Loan to \$10.9 million.

5. Pursuant to the Promissory Note executed by the Borrower, the Top Two Loan was serviced by MAMC in accordance with the terms of servicing agreements entered into by and between MAMC, AHIFO-4 and the Lenders.

**B. Top Two Default and Subsequent Foreclosure Case**

6. The Borrower ultimately defaulted on the Top Two Loan and on its separate mortgage loan to Fifth-Third Bank. On or about June 29, 2006, Fifth-Third Bank initiated a

foreclosure action against the Borrower in the Twelfth Judicial Circuit in and for Lee County, Florida, in the case styled *Fifth-Third Bank v. Top Two Development, Inc., et al.*, Case No. 06-CA-002677. AHIFO-4 and the Lenders were named as defendants in that suit.

7. MAMC, acting as attorney-in-fact and servicing agent for the Lenders, filed a third party complaint in Fifth-Third Bank's foreclosure action to foreclose on the Top Two Loan as modified to include the \$2 million future advance.

8. On or about February 14, 2007, a Final Judgment of Foreclosure was entered in the amount of \$12,651,937.77 against the Borrower.

9. In or about March, 2007, prior to the institution of this receivership case, Alan Goldberg (no relation to the Receiver) was retained to serve as the Chief Restructuring Officer ("CRO") of BMC and MAMC due to the companies' financial difficulties.

#### **C. Creation of AHIFO-MAMC Cape Coral, LLC**

10. On or about May 7, 2007, Alan Goldberg, as the CRO of MAMC, and purportedly acting on behalf of and with the authority of the Lenders, entered into an agreement with AHIFO-4 (the "May 7 Agreement") setting forth the terms and conditions for the acquisition of the Fifth-Third mortgage or resulting foreclosure judgment that encumbered only the Fifth-Third Parcel.

11. The May 7 Agreement contemplated that AHIFO-4 would advance the funds necessary to acquire the Fifth-Third Judgment and that AHIFO-MAMC Cape Coral, LLC would be created to take the assignment of the Fifth-Third Judgment, to ultimately bid and acquire title to the Fifth-Third parcel at the foreclosure sale and to acquire title to the remaining three parcels of the Property. The May 7 Agreement also provided AHIFO-4 with a priority for repayment

from the first funds that AHIFO-MAMC Cape Coral, LLC realized from the sale of the Property, or any portion thereof.

12. On or about June 4, 2007, the court presiding over Fifth-Third's foreclosure action entered a Final Summary Judgment in favor of Fifth-Third (the "Fifth-Third Judgment"). The Fifth-Third Judgment awarded the bank \$3,248,481.59 and granted it a first priority position with respect to the Fifth-Third Parcel.

13. Pursuant to and reliance on the May 7 Agreement, AHIFO-4 negotiated and purchased the Fifth-Third Judgment for \$1,850,000. As a result, the Fifth-Third Judgment and the associated loan documents were assigned to AHIFO-MAMC Cape Coral, LLC.

14. AHIFO-MAMC Cape Coral, LLC subsequently purchased the Fifth-Third Parcel at the foreclosure sale resulting from the Fifth-Third Judgment and took title to all four parcels of the Property secured by the Top Two Loan by virtue of two Certificates of Title.

**D. Settlement of Dispute Between AHIFO-4, LLC and MAMC**

15. A dispute arose regarding the May 7 Agreement and on May 24, 2010, AHIFO-4 filed a lawsuit styled: *AHIFO-4, LLC v. Michael Goldberg, as Receiver for M.A.M.C. Incorporated and Alan Goldberg*, Case No. 10-30070 CA 09 (the "AHIFO Action"), wherein AHIFO-4 asserted claims for declaratory relief with regard to the various parties' interest in the Property.

16. On May 24, 2011, the parties in the AHIFO Action reached a mediated settlement of all claims among them, which apportioned all proceeds the sale of the Property. On October 3, 2011, upon motion and notice to all interested parties, the Court in the AHIFO Action entered an Order approving the settlement.

17. The settlement provided, in relevant part, (i) title to the Property shall remain in the name of AHIFO-MAMC Cape Coral, LLC; (ii) the Lenders shall pay all outstanding real estate taxes on the Property, which were estimated to be \$516,000 (the “Lender Tax Loan”); (iii) the Lender Tax Loan shall be repaid to the Lenders from the first sales proceeds from any portion of the Property or any other monies, including but not limited to eminent domain proceeds; (iv) that AHIFO-4 shall pay 50% and the Lenders shall pay the other 50%, of all expenses incurred in connection with the Property; and (v) that payment of sale proceeds, after repayment of the Lenders Tax Loan, shall be distributed to AHIFO-4 and the Lenders to repay expenses, then \$1,575,000 to AHIFO-4, and finally 55% to AHIFO-4 and 45% to the Lenders.

#### **E. Sale of Parcel**

18. A portion of the Property has been the subject of a condemnation process by Lee County. The Receiver has reached an agreement with Lee County, pursuant to which Lee County agrees to purchase for \$2,100,000.00 the parcel of land consisting of 13.48 acres more or less, and located at 3104 Embers Parkway West, Cape Coral, FL 33991 and more particularly described as: *All of Block 3952, Unit 54, Cape Coral, according to the plat thereof, recorded in Plat Book 19, Page 79, inclusive, of the Public Records of Lee County, Florida* (the “Parcel”). This Parcel will be acquired for the Burnt Store Road Widening Project, No. 4088.

19. The Receiver, on behalf of MAMC and AHIFO-4 have executed an Unanimous Written Consent approving the sale of the Parcel and authorizing AHIFO-4 to execute any documents on behalf of AHIFO-MAMC Cape Coral, LLC to effectuate the sale.

20. Approval of the sale is also subject to notice to the Lenders and approval of this Court and the Lee County Board of County Commissioners.

21. Through this Motion, the Receiver seeks the Court's approval of the Agreement for Purchase and Sale of Real Estate ("Purchase Agreement") with Lee County. A true and correct copy of the Purchase Agreement is attached hereto as **Exhibit 1**.

22. 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 that approval of the Purchase Agreement is in the best interest of all parties with an interest in the Parcel.

23. The Receiver has consulted with the Top Two lender committee<sup>1</sup>, who has advised the Receiver that they approve of the Purchase Agreement.

24. 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 in the form attached hereto as **Exhibit 2** 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 December 2, 2016, 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.

**SERVICE LIST**

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[pvalori@dvllp.com](mailto:pvalori@dvllp.com)

**EXHIBIT 1**

This document prepared by:

Lee County - County Lands Department  
Project: Burnt Store Road No. 4088  
Parcel: 123/AHIFO-MAMC  
STRAP No.: 17-44-23-C1-03952.0000

**BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY  
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**

THIS AGREEMENT for purchase and sale of real property (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between **AHIFO-MAMC Cape Coral, LLC, a Florida limited liability company** (the "SELLER"), whose principal address is M Goldberg, Receiver for MAMC, c/o Akerman, 350 E. Las Olas Blvd., Suite 1600, Fort Lauderdale, FL 33301, and **Lee County, a political subdivision of the State of Florida** (the "BUYER"). SELLER and BUYER are collectively referred to as the "Parties".

**WITNESSETH:**

**1. AGREEMENT TO PURCHASE AND TO SELL:** SELLER agrees to sell and BUYER agrees to purchase, subject to the terms and conditions set forth below, a parcel of land consisting of 13.48 acres more or less, and located at 3104 Embers Parkway West, Cape Coral, FL 33991 and more particularly described as: *All of Block 3952, Unit 54, Cape Coral, according to the plat thereof, recorded in Plat Book 19, Page 79, inclusive, of the Public Records of Lee County, Florida* (the "Property").

**2. PURCHASE PRICE AND TIME OF PAYMENT:** The total purchase price ("Purchase Price") will be Two Million One Hundred Thousand and No/100 Dollars (\$2,100,000.00), payable at closing in U.S. Currency by official bank check. The Purchase

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE  
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Price is inclusive of all fees and costs incurred by the SELLER, including but not limited to attorney's fees and expert fees.

**3. EVIDENCE OF TITLE:** BUYER will obtain at BUYER'S expense an American Land Title Association Form B Title Commitment and provide title insurance Owner's Policy in the amount of the Purchase Price, from a title company acceptable to BUYER. The commitment will be accompanied by one copy of all documents that constitute exceptions to the title commitment. The commitment will also show title to be good and marketable with legal access, subject only to real estate taxes for the current year, zoning, use restrictions imposed by governmental authority, deed restrictions and easements acceptable to BUYER, as determined by BUYER.

**4. CONDITION OF PROPERTY; RISK OF LOSS:** BUYER has inspected the Property and, except as is otherwise provided herein, accepts the Property in the condition inspected. If the Property is damaged or otherwise suffers loss between the date of this offer and the date of closing, BUYER may accept the damaged Property or BUYER may cancel this Agreement without obligation.

**5. SELLER'S INSTRUMENTS and EXPENSES:** SELLER will pay for and provide the following:

- (a) Statutory warranty deed in a form acceptable to BUYER;
- (b) Affidavit regarding liens, possession, and withholding under FIRPTA in a form sufficient to allow "gap" coverage by title insurance (deed/affidavit to be prepared by BUYER'S title company);
- (c) Utility services up to, but not including the date of closing, if applicable;
- (d) Taxes, prorated to the day before closing;

- (e) Payment in full prior to or at closing of all assessments levied against the property;
- (f) Payment of any court fees or release fees necessary for the SELLER to convey unencumbered title of the Property to BUYER; and
- (g) SELLER'S attorney, expert and consulting fees, and costs, if any.

**6. BUYER'S INSTRUMENTS AND EXPENSES:** BUYER will pay for:

- (a) Recording fee for deed;
- (b) Title commitment and policy;
- (c) Survey (if desired by BUYER);
- (d) Environmental Site Assessment;
- (e) BUYER'S attorney, expert, and consulting fees; and
- (f) Documentary stamp tax, if any.

**7. TAXES:** SELLER will be charged for Real Estate taxes and personal property taxes (if applicable) up to, but not including the date of closing. BUYER is exempt from ad valorem taxation. SELLER will pay all taxes determined to be legally due and payable by the Lee County Tax Collector.

**8. ASSESSMENTS:** SELLER will provide all notices of pending or imminent assessments. Failure to disclose assessment notices becomes a breach of agreement and SELLER will be responsible to pay the full amount due.

**9. DEFECTS IN TITLE AND LEGAL ACCESS:** Prior to closing, BUYER will have a reasonable time to examine the title and documents establishing legal access to the property. If title is found to be defective, BUYER will notify SELLER in writing of the defects and SELLER will make a prompt and diligent effort to correct such defects. If SELLER fails to make corrections within 45 days after notice, BUYER may elect to accept the Property in its existing condition or may terminate this Agreement without obligation.

10. **SURVEY:** BUYER may order the Property surveyed at BUYER'S expense. SELLER agrees to provide access to the Property for the survey to be performed. If the survey shows a discrepancy in the size or dimensions of the Property, or shows encroachments onto the Property or that improvements located on the Property encroach onto adjacent lands, or if the survey identifies violations of recorded covenants or covenants of this Agreement, upon notice to the SELLER, the BUYER may elect to treat those discrepancies, violations or encroachments as a title defect.

11. **ENVIRONMENTAL AUDIT:** BUYER may perform or have performed, at BUYER'S expense, an environmental audit of the Property. If the audit identifies environmental conditions unacceptable to the BUYER, BUYER may elect to accept the Property in its existing condition or BUYER may terminate this Agreement without obligation.

12. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER, to the best of SELLER'S knowledge, hereby warrants and represents:

- (a) The Property is free from hazardous materials and does not constitute an environmental hazard under any federal, state, or local law or regulation;
- (b) No hazardous, toxic or polluting substances have been released or disposed of on the Property in violation of any applicable law or regulation;
- (c) No hazardous, toxic, or polluting substances are contained on or emitting from the Property in violation of applicable law or regulation;
- (d) No surface impoundments, waste piles, landfills, injection wells, underground storage areas, or other man-made facilities that have or may have accommodated hazardous materials are contained or located on or within the Property;

- (e) There is no proceeding or inquiry by any governmental agency with respect to production, disposal, or storage on the Property of any hazardous materials, or of any activity that could have produced hazardous materials or toxic effects on humans, flora, or fauna;
- (f) There are no buried, partially buried, or above-ground tanks, storage vessels, drums or containers located on the Property; and
- (g) There is no evidence of release of hazardous materials onto or into the Property.

The SELLER, to the best of SELLER'S knowledge, also warrants that there have been no requests from any governmental authority or other party for information, notices of claim, demand letters, or other notification that there is any potential for responsibility with respect to any investigation or clean-up of hazardous substance releases on the Property. All warranties described herein will survive the closing of this transaction.

In the event the SELLER breaches the warranties as to environmental liability, SELLER agrees to indemnify and hold the BUYER harmless from all fines, penalties, assessments, costs and reasonable attorneys' fees resulting from contamination and remediation of the Property.

**13. TIME AND BINDING AGREEMENT:** Time is of the essence for closing this transaction. The BUYER'S written acceptance of this offer will constitute an Agreement for the purchase and sale of the Property and will bind the parties, their successors, and assigns.

**14. COURT APPROVAL:** The Parties agree and acknowledge that a Court Order will be necessary to approve the sale of the Property and closing of the transaction, and that Seller will move forward expeditiously and at SELLER's sole expense with obtaining

the Court Order. The Parties further agree that the sale of the Property under this Agreement is expressly subject to court approval.

**15. DATE AND LOCATION OF CLOSING:** The closing of this transaction will be held at the office of the insuring title company on or before forty-five (45) days from the date this Agreement is made, or as soon thereafter as can reasonably occur, consistent with the approvals required by this Agreement. The time and location of closing may be changed by mutual agreement of the Parties. The purchase of the Property by the BUYER is subject to available funding.

**16. GOVERNING LAW, VENUE AND ATTORNEY'S FEES:** This Agreement is governed by Florida law. Venue for the purposes of enforcing this Agreement shall be in Lee County, Florida. The prevailing party in any litigation concerning this Agreement will be entitled to recover reasonable attorneys' fees and costs, including appeals.

**17. REAL ESTATE BROKERS:** SELLER hereby agrees to indemnify and hold the BUYER harmless from and against any claims by a real estate broker claiming by or through SELLER.

**18. POSSESSION:** SELLER warrants that there are no parties in possession other than SELLER. SELLER agrees to deliver possession of Property to BUYER at time of closing.

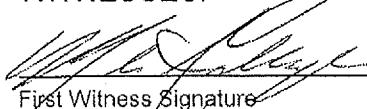
**19. TYPEWRITTEN/HANDWRITTEN PROVISIONS:** Typewritten and handwritten provisions inserted herein or attached hereto as addenda, and initialed by all Parties, will control all printed provisions in conflict therewith.

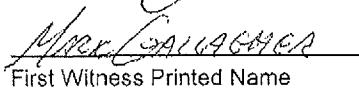
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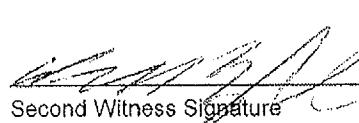
20. **SPECIAL CONDITIONS:** All special conditions will be attached to this Agreement and signed by the Parties.

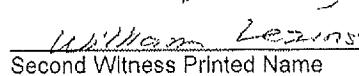
21. **APPROVAL BY THE GOVERNING BODY:** This Agreement is subject to the approval of the Lee County Board of County Commissioners.

WITNESSES:

  
First Witness Signature

  
First Witness Printed Name

  
Second Witness Signature

  
Second Witness Printed Name

LINDA DOGETT, CLERK

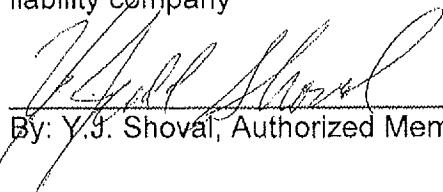
By: \_\_\_\_\_  
DEPUTY CLERK (Date)

SELLER:

**AHIFO-MAMC CAPE CORAL, LLC**, a Florida limited liability company

By Its Manager, **AHIFO-4, LLC**, a Florida limited liability company

By Its Authorized Member, **Ambit Real Estate Holdings, LLC**, a Florida limited liability company

  
By: Y.J. Shoval, Authorized Member

BUYER:

LEE COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
CHAIR

Approved as to form for the reliance of Lee County only

By: \_\_\_\_\_  
Office of the County Attorney

**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 A PORTION OF THE  
PROPERTY OWNED BY AHIFO-MAMC CAPE CORAL, LLC**

THIS MATTER came before the Court on \_\_\_\_\_, 2016 upon the hearing on the *Motion to Approve Sale of a Portion of the Property Owned by AHIFO-MAMC Cape Coral, 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 ("MAMC"), and the Relief Defendants.

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, does hereby find that:

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

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 Top Two Development, Inc (the "Borrower"). The Top Two Loan was secured by mortgages on four separate parcels of property (collectively, the "Property") located in Lee County, Florida.

E. The loan was financed by AHIFO-4, LLC ("AHIFO-4") and 114 of the Lenders; other Lenders subsequently provided an additional advance to the Borrower.

F. After the Borrower defaulted under the terms of the loan, AHIFO-4 and MAMC created AHIFO-MAMC Cape Coral, LLC to take title to the Property through the foreclosure process.

G. AHIFO-4 and MAMC remain the members of AHIFO-MAMC Cape Coral, LLC and the owners of the Property.

H. A portion of the Property has been the subject of a condemnation process by Lee County, to wit 3104 Embers Parkway West, Cape Coral, FL 33991 hereinafter described (the "Parcel") to :

All of Block 3952, Cape Coral Unit 54, according to the map or plat thereof as recorded in Plat Book 19, Pages 79 to 91, inclusive, of the Public Records of Lee County, Florida.

I. The terms set forth in the Agreement for Purchase and Sale of Real Estate (“Purchase Agreement”) with Lee County (“Lee County”), are in the best interests of all parties hereto.

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

K. The Receiver is not connected with Lee County through any employment or ownership interest nor familial affiliation.

It is therefore **ORDERED AND ADJUDGED** that:

1. The Motion is **GRANTED**.
2. The Receiver is 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 Purchase Agreement, and delivery of the deed and other documents called for in the Purchase 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 \_\_\_\_\_, 2016.

---

**THE HONORABLE JERALD BAGLEY  
CIRCUIT COURT JUDGE**

**Conformed copies to:**

All counsel of record  
Posted to the Receiver's Web Site