

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

STATE OF FLORIDA, OFFICE OF FINANCIAL  
REGULATION,

CASE NO.: 07-43672 CA 09

Plaintiff,

vs.

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, **DB DURHAM, LLC**, a Florida  
Limited Liability Company, **NORMANDY  
HOLDINGS II, LLC**, a Florida Limited Liability  
Company, **NORMANDY HOLDINGS III, LLC**,  
a Florida Limited Liability Company,  
**ACQUISITIONS, LLC**, a Florida Limited  
Liability Company, **DBKN GULF  
INCORPORATED**, a Florida Limited Liability  
Company, **OCEANSIDE ACQUISITIONS,  
LLC**, a Florida Limited Liability Company, **DB  
BILOXI, LLC**, a Florida Limited Liability  
Company, **DB BILOXI II, LLC**, a Florida  
Limited Liability Company, , **DB BILOXI III,  
LLC**, a Florida Limited Liability Company, **DBDS  
VERO BEACH, LLC**, a Florida Limited Liability  
Company, **DB TAMPA, LLC**, a Florida Limited  
Liability Company, **DB SIMPSONVILLE, LLC**,  
a Florida Limited Liability Company, **DBDS  
NORTH MIAMI, LLC**, a Florida Limited  
Liability Company, **REDLANDS RANCH  
HOLDINGS, LLC**, a Florida Limited Liability  
Company, **DBDS BISCAYNE PARK, LLC**, a  
Florida Limited Liability Company, **DB  
CARROLL STREET, LLC**, a Florida Limited  
Liability Company,

Relief Defendants.

**ORDER ON RECEIVER'S MOTION TO APPROVE THE RENEWAL REPLACEMENT PROMISSORY NOTE ENTERED BY DB BILOXI, LLC**

THIS CAUSE HAVING come before the Court on July 30, 2008, by way of the Order on Receiver's Motion to Approve the Renewal Replacement Promissory Note Entered by DB Biloxi, LLC, and the Court having heard argument of counsel, having heard the position of the Receiver, having reviewed the papers, and having been otherwise duly advised in the premises, it is hereby,

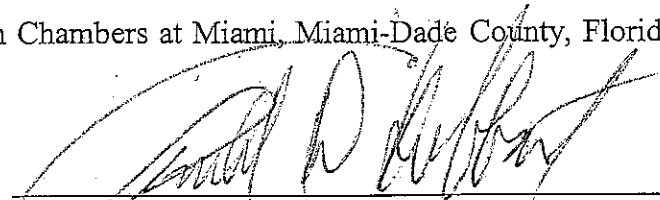
**ORDERED AND ADJUDGED** that:

1. The Receiver's Motion is hereby GRANTED.

2. The Receiver is authorized to enter into  
to loan transaction NVNC pro tunc.

**DONE AND ORDERED** in Chambers at Miami, Miami-Dade County, Florida, on this

30 day of July 2008.

  
**GERALD D. HUBBART, CIRCUIT ALTERNATE  
JUDGE FOR THOMAS WILSON, JR., CIRCUIT JUDGE**

cc: All Counsel of Record  
Posted on Receiver's Website  
E-mailed to Investor Group

1212594-1

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN  
AND FOR 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, **DB DURHAM, LLC**, a Florida Limited  
Liability Company, **NORMANDY HOLDINGS II,  
LLC**, a Florida Limited Liability Company,  
**NORMANDY HOLDINGS III, LLC**, a Florida  
Limited Liability Company, **ACQUISITIONS, LLC**,  
a Florida Limited Liability Company, **DBKN GULF  
INCORPORATED**, a Florida Limited Liability  
Company, **OCEANSIDE ACQUISITIONS, LLC**, a  
Florida Limited Liability Company, **DB BILOXI,  
LLC**, a Florida Limited Liability Company, **DB  
BILOXI II, LLC**, a Florida Limited Liability  
Company, **DB BILOXI III, LLC**, a Florida Limited  
Liability Company, **DBDS VERO BEACH, LLC**, a  
Florida Limited Liability Company, **DB TAMPA,  
LLC**, a Florida Limited Liability Company, **DB  
SIMPSONVILLE, LLC**, a Florida Limited Liability  
Company, **DBDS NORTH MIAMI, LLC**, a Florida  
Limited Liability Company, **REDLANDS RANCH  
HOLDINGS, LLC**, a Florida Limited Liability  
Company, **DBDS BISCAYNE PARK, LLC**, a  
Florida Limited Liability Company, **DB CARROLL  
STREET, LLC**, a Florida Limited  
Liability Company,

Relief Defendants.

**MOTION TO APPROVE THE RENEWAL  
REPLACEMENT PROMISSORY NOTE ENTERED BY DB BILOXI, LLC**

**BERGER SINGERMAN**  
attorneys at law

*Boca Raton Fort Lauderdale Miami Tallahassee*

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., (the "Receiver") by and through undersigned counsel, hereby files this Motion to Approve the Renewal Replacement Promissory Note ("Replacement Note") entered by DB Biloxi LLC, and states:

**The Receiver is Appointed Over DB Biloxi LLC**

1. On December 11, 2007, this Court appointed Michael Goldberg to be the Receiver for the Defendants and the Relief Defendants. *See* Temporary Injunction and Agreed Order Appointing Receiver ("Receivership Order"), previously filed with the Court.

2. Among the Relief Defendants is DB Biloxi LLC ("DB Biloxi"), a Florida limited liability company. DB Biloxi owns certain real property located at 2660 Beach Boulevard, Biloxi, Mississippi (the "Property").

3. Pursuant to the Receivership Order, DB Biloxi's assets are subject to the receivership. In fact, in the Receivership Order, Judge Wilson specifically states that all receivership assets, which includes DB Biloxi and its Property, are subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and such assets shall be under the exclusive control of the Receiver:

The Court hereby takes exclusive jurisdiction and possession of the assets of the Defendants, Berman Mortgage, M.A.M.C., and Relief Defendants [including DB Biloxi], the "Receivership Assets", which includes, but are not limited to: files, records, documents, leases, mortgages, investments, contracts, effects, lands, agreements, judgments, bank accounts, books of accounts, rents, goods, chattels, rights, credit claims, both asserted and unasserted, pending court actions and appeals, files and documents in the possession of attorneys and accountants of all of the Defendants and Relief Defendants, all other property, business offices, computers, servers, electronic data storage units, offsite storage locations, safety deposit boxes, monies, securities, choses in action, and properties, real and person, tangible and intangible, of whatever kind and description, wherever situation of the Defendants ... and Relief Defendants. The Receiver shall retain

custody and control of all of the foregoing pursuant to the terms of this Agreed Order.

Receivership Order, ¶ 3 (emphasis added). *See also*, Receivership Order, ¶ 13 (“Michael I. Goldberg ... is appointed receiver for ... DB Biloxi, LLC ....”).

4. Importantly, this Court has already authorized the Receiver to conduct business on behalf of the Receivership Defendants and the entities controlled by the Receivership Defendants, like DB Biloxi and the Property in the instant matter:

The Receiver is further authorized to ... execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls[.]

Receivership Order, ¶17. (emphasis added).

**DB Biloxi Seeks to Replace the  
Previous Promissory Note with the Replacement Note**

5. On June 8, 2006, DB Biloxi entered a promissory note in the principal amount of \$3,500,000.00 that was secured by the Property. DB Biloxi now seeks to replace that promissory note with the Replacement Note, wherein in DB Biloxi promises to pay Transcapital bank, located at 2100 East Hallandale Beach Boulevard, Hallandale, FL 33309, the principal sum of \$2,500,000.00. *See* Replacement Note attached hereto as Exhibit “A.”

6. Payment of the Replacement Note is secured by a first position Land Deed of Trust and Security Agreement dated April 26, 2005 filed for record April 27, 2005 in the office of the Chancery Clerk of Harrison County, Second Judicial District, Mississippi as Instrument #2005-9652D-J2, secured upon the Property together with the buildings and other improvements constructed thereon.

7. Importantly, the Replacement Note has already been executed by the Receiver, as this Court has already authorized the Receiver to execute agreements, such as promissory notes, on behalf the Relief Defendants (including DB Biloxi):

The Receiver is further authorized to ... execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls[.]


Receivership Order, ¶17.

8. Therefore, the Receiver, via the instant Motion, seeks an Order approving the Replacement Note entered by the Receiver on behalf DB Biloxi.

WHEREFORE, the Receiver, on behalf of Relief Defendant DB Biloxi, LLC, respectfully requests that this Court grant this Motion to Approve the Renewal Replacement Promissory Note entered by DB Biloxi LLC and Transcapital Bank, and for such other and additional relief as the Court deems just and proper.

Respectfully Submitted,

BERGER SINGERMAN  
*Attorneys for Receiver, Michael Goldberg*  
200 South Biscayne Boulevard, Suite 1000  
Miami, Florida 33131  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340

By:   
\_\_\_\_\_  
JAMES D. GASSENHEIMER  
Florida Bar No. 959987  
E-Mail: [jgassenheimer@bergersingerman.com](mailto:jgassenheimer@bergersingerman.com)

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail/Facsimile and/or U.S. Mail on this 2<sup>nd</sup> day of July 2008, to: **Cristina Saenz, Assistant General Counsel, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2<sup>nd</sup> Avenue, Suite N-708, Miami, Florida 33128;** to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134;** to **Allan A. Joseph, Esquire, Counsel for The Amid Companies and Amedia Family Investors, DAVID AND JOSEPH, P.L., 1001 Brickell Avenue, Suite 2002, Miami, Florida 33131;** to **Richard R. Robles, Esquire, LAW OFFICES OF RICHARD ROBLES, P.A., Counsel for the Four Ambassadors Association, Inc., 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131;** to **Daniel Kaplan, Esquire, Counsel for Deborah A. Berman, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191<sup>st</sup> Street, Aventura, Florida 33180;** to **Howard N. Kahn, Esquire, Attorneys for Intervenor, Ira Sukoff, KAHN, CHENKIN & RESNIK, P.L., 1815 Griffin Road, Suite 207, Dania, Florida 33304;** to **Lawrence Shoot, Esquire, Attorneys for USA Funding, 4830 SW 92<sup>nd</sup> Avenue, Miami, Florida 33165;** to **Charles Pickett, Esquire and Linda Dickhaus Agnant, Esquire, Attorneys for Johns Manville, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401;** to **Helen Schwartz Romañez, Esquire, Attorneys for Turnberry Bank, The Romañez Law Firm, 255 Alhambra Circle, Suite 850, Coral Gables, Florida 33134;** to **Charles W. Throckmorton, Esquire, Attorneys for Dana Berman, KOZYAK TROPIN THROCKMORTON, P.A., 2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor, Coral Gables, Florida 33134;** to **James S.**

Telepman, Esquire, Attorneys for Jericho All-Weather Opportunity Fund, LP, COHEN, NORRIS, SCHERER, WEINBERGER & WOLMER, 712 U.S. Highway One, Suite 400, North Palm Beach, Florida 33408-7146; to Allen P. Pegg, Esquire, Counsel for Ibex Cheoah I, LLC, at MURAI, WALD, BIONDO, MORENO & BROCHIN, P.A., Two Alhambra Plaza, Penthouse 1B, Coral Gables, Florida 33134; and to J. Andrew Baldwin, Esquire, Attorneys for Regions Bank, THE SOLOMON LAW GROUP, P.A., 1881 West Kennedy Boulevard, Tampa, Florida 33606-1606.

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

  
JAMES D. GASSENHEIMER

1162850-1



**RENEWAL REPLACEMENT PROMISSORY**  
**NOTE**

("Promissory Note" or "Note")

THIS RENEWAL REPLACEMENT PROMISSORY NOTE RENEWS AND REPLACES IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED JUNE 8, 2006 IN THE PRINCIPAL AMOUNT OF \$3,500,000.00. NO NEW OR ADDITIONAL FUNDS WERE OR ARE TO BE ADVANCED UNDER THIS RENEWAL REPLACEMENT PROMISSORY NOTE TO BORROWER.

\$2,500,000.00

*Ft. Lauderdale*, Florida  
*June* ~~May 31~~, 2008

FOR VALUE RECEIVED, DB Biloxi, LLC, a Florida limited liability company ("Borrower" or "Maker") promises to pay to the order of TRANSCAPITAL BANK ("Lender"), at 2100 East Hallandale Beach Boulevard, Hallandale, FL 33309 the principal sum of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00 USD) or such lesser sum as has been advanced hereunder in lawful money of the United States of America at the time of payment, at the initial interest rate of ELEVEN (11.0%) percent per annum and thereafter the interest rate shall be adjusted from time to time and at the time there is a change in the SunTrust Bank prime rate by adding TWO (2.0%) percent to the SunTrust Bank prime rate, **provided that the interest rate hereunder shall never be less than 11% per annum**. Further provided that the Lender shall not charge interest on this obligation in excess of that allowed by law.

Interest under this Note shall be calculated be computed on the basis of a 360 day year and shall be calculated for the actual number of days elapsed.

Principal and Interest due thereon shall be payable in lawful money of the United States at: 2100 East Hallandale Beach Boulevard, Hallandale, Florida, 33309 or at such other place as the holder hereof may designate in writing, as follows:

Commencing on the 1<sup>st</sup> day of July, 2008 and the 1<sup>st</sup> day of each month thereafter, through October 1, 2009, monthly payments of interest only based upon the unpaid and outstanding principal balance.

**The entire outstanding principal balance together with all outstanding, accrued and unpaid interest shall be due and payable in full on November 1, 2009 ("Maturity Date")**

Payment of this Renewal Replacement Note (the "Note") is secured by a first position Land Deed of Trust and Security Agreement dated April 26, 2005 (the "Deed of Trust") filed for record April 27, 2005 in the office of the Chancery Clerk of Harrison County, Second Judicial District, Mississippi as Instrument #2005-9652D-J2, secured upon certain premises situated in Harrison County, Mississippi, together with the buildings and other improvements now or hereafter constructed thereon, more particularly described in said Deed of Trust (and herein referred to as the "Security

Property") as modified by: (i) Splitter Agreement dated as of May 1, 2006, filed for record May 12, 2006 in the office of the Chancery Clerk of Harrison County, Second Judicial District, Mississippi as Instrument #2006-1587D-J2, dividing the Deed of Trust into a land deed of trust encumbering the "Front Parcel" of the Security Property as described in the said Splitter Agreement ("Deed of Trust #1") and a land deed of trust encumbering the "Back Parcel" of the Security Property as described in the said Splitter Agreement ("Deed of Trust #2"); ii) Assignment of Land Deed of Trust and Security Agreement #1, Splitter Promissory Note #1 and Ancillary Loan Documents dated May 5, 2006 to be filed for record in the office of the Chancery Clerk of Harrison County, Second Judicial District, Mississippi; (iii) Modification of Land Deed of Trust and Security Agreement #1, Splitter Promissory Note #1 and Ancillary Loan Documents dated June 8, 2006 and filed for record in the office of the Chancery Clerk of Harrison County, Second Judicial District, Mississippi, on June 12, 2006 modifying Deed of Trust #1; and, (iv) Second Modification of Land Deed of Trust and Security Agreement #1 dated as of even date herewith to be filed for record in the office of the Chancery Clerk of Harrison County, Second Judicial District, Mississippi. In addition to Deed of Trust #1, payment of this Note is secured by a first position security interest in all furniture, fixtures, machinery and equipment owned by Borrower, located upon the Front Parcel of the Security Property and used in the operation of the Front Parcel of the Security Property, together with all the other documents executed to date by Borrower relating to this transaction (hereinafter collectively referred to as the "Loan # 1 Loan Documents").

All of the agreements, conditions, covenants, provisions and stipulations contained in Deed of Trust #1 and the other Loan # 1 Loan Documents which are to be kept and performed by Borrower are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein, and Borrower covenants and agrees to keep and perform them, or cause them to be kept and performed, strictly in accordance with their terms. Any default by Borrower under any of the Loan #1 Loan Documents which remains uncured upon the expiration of any applicable grace and/or curative period provided for therein, may, at Lender's option, be treated as an event of default hereunder. As at the date hereof, there is no unremedied default under any of the documents executed to date in connection with this transaction, including the Loan #1 Loan Documents.

All payments shall be applied first to accrued interest and then to principal. If any installment of interest or principal and interest or any other payment is not paid within ten (10) days of the date when due under the terms of this Note, or of the Deed of Trust, then there shall also be immediately due and payable a late charge at the rate of FIVE CENTS (\$.05) for each dollar of such delinquent payment for each month of delinquency.

It is further understood, however, that, subject to the notice provisions and opportunity to cure as hereinafter set forth in this Note, should any default be made in the payment of any installment of principal or interest on the date on which it shall fall due, or in the performance of any of the agreements, conditions, covenants, provisions or stipulations contained in this Note, Deed of Trust #1, as from time to time modified, or any of the other Loan #1 Loan Documents, then Lender, at its option and without notice to Borrower unless expressly required elsewhere herein, may declare immediately due and payable the entire unpaid balance of principal with interest accrued thereon at the then otherwise applicable rate specified herein above to the date of default and thereafter

at a rate equal to the maximum legal rate of interest chargeable to Borrower (which rate is hereinafter referred to as the "Default Rate") and all other sums due by Borrower hereunder or under the Loan #1 Loan Documents, anything herein or in the Loan #1 Loan Documents to the contrary notwithstanding; and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided to Lender in this Note, Deed of Trust #1, as modified from time to time, or the Loan #1 Loan Documents. In such case, Lender may also recover all costs of suit and other expenses in connection therewith, together with a reasonable attorneys' fee for collection, together with interest on any judgment obtained by Lender at a rate which shall equal to the maximum rate allowable by law, including interest at that rate from and after the date of any execution, judicial or foreclosure sale until actual payment is made to Lender of the full amount due Lender.

The failure of the Lender to exercise such option to accelerate the indebtedness evidenced hereby shall not constitute a waiver of the right to exercise such option at any other time so long as such event of default remains outstanding and uncured. Lender shall not exercise any right or remedy provided for herein (other than Lender's right to be paid a late charge, as described above), unless Borrower shall have failed, in the event of: (1) a failure to make any payment of principal or interest when due pursuant to the Note within a period of ten (10) calendar days after due; or (2) in the event of any other monetary default, Borrower shall have failed, within a period of ten (10) days after receiving written notice of such default from Lender, to pay the amounts then due; or (3) in the event of a non-monetary default, Borrower shall have failed, within a period of thirty (30) days after notice of such default, to correct the non-monetary default or, if such non-monetary default is of a type which cannot be cured within thirty (30) days, Borrower shall have begun to correct such default and thereafter Borrower proceed diligently to correct such default; provided, however, that Lender shall not be required to allow any part of the grace period if Borrower, or either of them, shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of Borrower's assets, or if Borrower shall have made an assignment for the benefit of creditors, (a) Lender shall not be required to allow any grace period or give notice of any default as aforesaid more than two (2) times in any twelve (12) month period with respect to substantially similar events of default; and (b) Lender shall be permitted to cure any default by Borrower without allowing any part of the grace period if Lender determines, in its reasonable judgment, that its security may be threatened or impaired by reason of such default. In the event that any of the Loan Documents contains a grace period, such grace period shall run concurrently with the grace period granted herein and, if the grace period granted in such other document is shorter than that set forth herein, the grace period set forth herein, the grace period set forth herein shall control.

In the event that any sums of money due under the terms of this Note shall not promptly and fully be paid when the same severally becomes due and payable, or in the event of any other default under the terms of this Note or the Deed of Trust #1, as modified, securing same, or upon any default in the payment of any sum due by Maker to Lender, under any other promissory note, security instrument or other written obligation of any kind now existing or hereafter created, or upon the insolvency, bankruptcy, dissolution, death or incompetency of any Maker, endorser, or guarantor

hereof, the entire principal indebtedness evidenced hereby, together with all arrearage of interest hereon and other sums due hereunder and under said mortgage shall, at the option of the holder hereof, become due and payable immediately, without presentation, demand or further action of any kind and execution may forthwith issue for the collection of same.

The remedies of Lender as provided herein, or in Deed of Trust #1 and the Loan #1 Loan Documents, and the warranties contained herein or attached hereto or contained in Deed of Trust #1 and the Loan #1 Loan Documents, shall be cumulative and concurrent, and may be pursued singly, successively or together at the sole discretion of Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

Borrower and all endorsers, sureties and guarantors hereby jointly and severally waive presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and, except as expressly required by the terms and provisions of the Note and other Loan #1 Loan Documents, all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, and they agree that the liability of each of them shall be unconditional, joint and several, without regard to the liability of any other party, and shall not be affected in any manner by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Lender. Borrower and all endorsers, sureties and guarantors consent to any and all extensions of time, renewals, waivers or modifications that may be granted by Lender with respect to the payment or other provisions of this Note, and to the release of the collateral or any part thereof, with or without substitution, and agree that additional Borrower, endorsers, guarantors or sureties may become parties hereto without notice to them or affecting their liability hereunder.

If any provision of this Note is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Note shall remain in full force and effect and shall be liberally construed in favor of Lender in order to effect the provisions of this Note. In addition, in no event shall the rate of interest payable hereunder exceed the maximum rate of interest permitted to be charged by applicable law (including the choice of law rules) (hereinafter the "Maximum Legal Rate") and any interest paid in excess of the permitted rate shall be refunded to Borrower. Such refund shall be made by application of the excessive amount of interest paid against any sums outstanding and shall be applied in such order as Lender may determine. If the excessive amount of interest paid exceeds the sums outstanding, the portion exceeding the said sums outstanding shall be refunded in cash by Lender. Any such crediting or refund shall not cure or waive any default by Borrower hereunder. Borrower agrees however, that in determining whether or not any interest payable under this Note exceeds the highest rate permitted by law, any non-principal payment, including without limitation, prepayment fees and late charges, shall be deemed to the extent permitted by law to be an expense, fee, premium or penalty rather than interest.

In determining whether or not the interest paid or payable under any specific contingency exceeds the Maximum Legal Rate, Lender shall, to the maximum extent

permitted under applicable law, amortize, prorate, allocate and spread, in equal parts, the total amount of interest throughout the entire contemplated term of this Note so that the interest rate is uniform throughout the entire term of this Note; provided, that if this Note is paid and performed in full prior to the end of the full contemplated term hereof, and if the interest received for the actual period of existence thereof exceeds the Maximum Legal Rate, Lender shall refund to Borrower the amount of such excess, and in such event, no holder shall be subject to any penalties provided by any laws for contracting for, charging or receiving interest in excess of the Maximum Legal Rate.

This Note may be prepaid in whole or in part during the term of the Loan only upon thirty (30) days prior notice to Lender and the payment of a pre-payment penalty equal to one percent (1%) of the amount prepaid. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the holder of this Note shall otherwise agree in writing.

This instrument shall be governed by and construed according to the laws of the State of Mississippi. Borrower consents to the exclusive jurisdiction of the courts of the State of Mississippi and the federal courts located in Mississippi in any and all actions and proceedings, whether arising hereunder or under any of the Loan #1 Loan Documents. Borrower agree that venue for any action brought by Lender under this Note, Deed of Trust #1 or the Loan #1 Loan Documents shall, at Lender's option, be either the county in which Lender's principal place of business is located or the county in which the Trust Property is located, except that with respect to Deed of Trust # 1, venue shall only be proper in the county in which the Front Parcel of the Security Property is located.

Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Lender, and then only to the extent specifically set forth in the writing. A waiver on one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

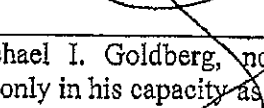
Whenever used, the singular number shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders, and the words "Lender" and "Borrower" shall be deemed to include the respective heirs, personal representative, successors and assigns of Lender and Borrower. This Note may not be amended, nor shall any waiver of any provision hereof be effective, except by an instrument in writing executed by Borrower and Lender.

Lender acknowledges that by Order dated December 11, 2007, issued by the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida (the "Court") in Case No. 07-43672 CA 09 (the "Receivership Case"), Michael I. Goldberg was appointed as receiver for Borrower ("Receiver"). The Receiver shall have no personal liability or obligation under the Note or under any of the Loan #1 Loan Documents, all of which being expressly waived by Lender.

This Promissory Note is being executed pursuant to the Order granting Receiver's Motion to Approve entered May \_\_\_, 2008 in the Receivership Case.

BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT BORROWER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION PROCEEDINGS OR COUNTERCLAIMS ARISING OUT OF, UNDER, OR IN CONNECTION WITH DEED OF TRUST #1, THIS NOTE, OR ANY OF THE OTHER LOAN #1 LOAN DOCUMENTS.

DB BILOXI, LLC, a Florida limited liability company

By:   
Michael I. Goldberg, not individually  
but only in his capacity as Receiver