

IN THE CIRCUIT COURT OF THE 11TH
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, **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,
REDLANDS RANCH HOLDINGS, LLC, a
Florida Limited Liability Company, **DB
CARROLL STREET, LLC**, a Florida Limited
Liability Company,

Relief Defendants.

THE ORIGINAL
FILED ON
JUL 31 2008
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

**RECEIVER'S MOTION TO AUTHORIZE THE EXECUTION OF
THE ESCROW AGREEMENT AND THEREBY AUTHORIZE
THE AGREEMENT TO SETTLE DEBT CONTAINED THEREIN**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Dana J. Berman ("Berman"), Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., by and through undersigned counsel, hereby files this Motion to Authorize the Execution of the Escrow Agreement and Thereby Authorize the Agreement to Settle Debt Contained Therein, and states:

**The Receiver is Appointed Over DB Durham
and DB Durham Acquires and Seeks to Settle Debt**

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 Durham LLC ("DB Durham"), a Florida limited liability company that holds title to hotel property located in Durham, North Carolina.
3. Out of necessity, DB Durham hired Wittson, LLC ("Wittson"), a North Carolina limited liability company to provide security and management services related to the DB Durham's hotel property.
4. There is outstanding debt owed by DB Durham to Wittson for \$48,168.36 for the services provided by Wittson. Consequently, Wittson has filed two claims of lien against the hotel property for the money owed.
5. As stated in the Escrow Agreement (attached hereto as Exhibit "A"), Wittson and DB Durham seek to settle the debt:

Agreement to Settle Debt, Release Lien Claims.

(a) Subject to final approval by the Court, Wittson and Seller hereby agree to settle the Debt in exchange for payment of the Settlement Amount by [DB Durham] to Wittson. From and after the issuance of an Approval Order, and subject to the terms thereof, each of Wittson and [DB Durham] hereby release and forever relinquish any and all claims, causes of action and legal rights such party may have against the other party arising out of or relating to the Debt.

(b) [DB Durham] hereby grants Wittson a security interest in and to the Escrow Fund, as collateral for payment of the Debt. As consideration for the security interest granted herein, Wittson agrees to release the Lien Claims immediately upon execution of this Escrow Agreement.

Escrow Agreement, p. 2, ¶3 (“Agreement to Settle Debt”).

6. To finalize the Escrow Agreement, the Receiver must execute the Escrow Agreement.

This Court Should Authorize the Execution of the Escrow Agreement and Thereby Authorize Agreement to Settle Debt Contained Therein

7. Pursuant to the Receivership Order, DB Durham is subject to the receivership. In fact, in the Receivership Order, Judge Wilson specifically states that all receivership assets, including DB Durham, 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 Durham LLC], 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 Durham, LLC ...”).

8. Therefore, the Receiver is the only vehicle by which DB Durham can act. Indeed, this Court has already explicitly authorized the Receiver to conduct business, and execute contracts, instruments and other agreements on behalf the Receivership Defendants and the entities controlled by the Receivership Defendants, like DB Durham:

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).

9. Therefore, via this Motion, the Receiver seeks to exercise its control over DB Durham, and its authority to execute the Escrow Agreement (which contains the Agreement to Settle Debt).

10. Importantly, in filing this Motion, the Receiver seeks authority to engage in all action necessary to comply with the Escrow Agreement, as well as the Agreement to Settle Debt contained therein, including but not limited to payment of the settlement amount of \$48,168.36 to Wittson.

WHEREFORE, the Receiver, on behalf of Relief Defendant DB Durham LLC, respectfully requests that this Court grant this Motion to Authorize the Execution of the Escrow

Agreement and Thereby Authorize the Agreement to Settle Debt Contained Therein, 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, FL 33131
Direct Line: (305) 714-4383
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: 

JAMES D. GASSENHEIMER
Florida Bar No. 959987

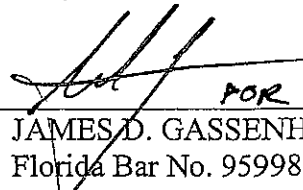
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 31st day of July 2008, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd 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. 191st 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 **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, 9th 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; to **J. Andrew Baldwin, Esquire, Attorneys for Regions Bank**, THE SOLOMON LAW GROUP, P.A., 1881 West Kennedy Boulevard, Tampa, Florida 33606-1606; to **Rey Hicks and Javier Castillo** of COMPLETE PROPERTY MANAGEMENT, at Post Office Box 402507, Miami Beach, Florida 33140; and to **Daren Schwartz, Berman Mortgage Corporation D/B/A M.A.M.C., Inc.**, at 402 Continental Plaza, 3250 Mary Street, Coconut Grove, Florida 33133.

Respectfully submitted,

By: _____

 FOR
JAMES D. GASSENHEIMER
Florida Bar No. 959987

cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*

1223145-1

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made this 29th day of July, 2008, by and among WITTON, LLC, a North Carolina limited liability company ("Wittson"), DB DURHAM, LLC, a North Carolina limited liability company ("Seller"), and ATTORNEYS TITLE, A DIVISION OF UNITED GENERAL TITLE INSURANCE COMPANY ("Escrow Agent").

RECITALS:

A. Seller is the owner of certain land and improvements constituting a hotel property located in Durham, North Carolina (the "Property").

B. Wittson has filed two claims of lien (the "Lien Claims") against the Property for money owed by the Seller to Wittson for work performed (such money hereafter referred to as the "Debt"). The Lien Claims are filed in the office of the Clerk of Court for the Superior Court in Durham County, North Carolina, file No. 08 M 548. The Lien Claims were filed on February 29, 2008 and then on July 25, 2008, with the July 25 claim reciting that it amends the first filing. The total claim of lien for the Debt recited in the Lien Claims is \$59,926.29 plus interest at the rate of 8% per annum.

C. Seller and Krishna Hotels, LLC (as assignee of the original purchaser under the Sales Contract, Ganesh Ventures, LLC, hereafter referred to as the "Purchaser") are parties to a certain Contract to Purchase and Sell Commercial Real Estate dated July 9, 2007 (as amended by six amendments and various letter agreements and correspondence between the parties acknowledging their agreement to modify the foregoing, hereafter collectively referred to as the "Sales Contract") pursuant to which Sales Contract the Purchaser has agreed to purchase the Property, and the Seller has agreed to sell the Property.

D. A receiver, Michael I. Goldberg (the "Receiver"), was appointed for Seller by Order of the Court dated December 11, 2007 in *State v. Berman Mortgage Corp., et al.*, in the Circuit Court of the Eleventh Judicial Circuit in and for the Miami-Dade County, Florida (the "Court"), Case No. 07-43672 CA 09. Accordingly, any settlement of the Debt is subject to approval of the Court.

E. Wittson has agreed to settle the Debt and release the Lien Claims in consideration for receipt of payment in the amount of Forty Eight Thousand One Hundred Sixty Eight and 36/100 Dollars (\$48,168.36) (the "Settlement Amount").

F. Since the deadline for the closing of the sale of the Property to the Purchaser will expire prior to the time when an order could be obtained from the Court approving the settlement of the Debt and release of the Lien Claims in exchange for the Settlement Amount, in order to convey the Property at closing to the Purchaser free and clear of the Lien Claims, the Seller and Wittson have agreed to enter into this Escrow Agreement, pursuant to which, at the time of the closing of the sale of the Property by the Seller to the Purchaser: (i) the Settlement Amount shall be delivered to the Escrow Agent from the proceeds of the sale, to be held in escrow pursuant to the terms and conditions of this Escrow Agreement, (ii) Wittson shall cause the Lien Claims to



be terminated of record as claims of lien upon the Property in the office of the Clerk of Superior Court for Durham County, North Carolina, and (iii) Seller shall grant to Wittson a security interest in the Settlement Amount funds held in escrow by the Escrow Agent pursuant to this Escrow Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Escrow Agent Acceptance. The Escrow Agent hereby accepts appointment as escrow agent hereunder. The Escrow Agent agrees to hold the Settlement Amount in an escrow fund (the "Escrow Fund") in a non-interest bearing account and to disburse the Settlement Amount in accordance with the terms of this Escrow Agreement.

2. Payment of the Escrow Fund. The Escrow Agent shall hold the Escrow Fund in escrow until the first to occur of the following:

(a) Receipt of a certified copy of an order (an "Approval Order") from the Court approving the settlement of the Debt. Upon receipt of such Approval Order, the Escrow Agent shall disburse the Escrow Fund to Wittson in accordance with written instructions received by the Escrow Agent from Wittson.

(b) Receipt of joint written instructions signed by Wittson and the Seller providing for disbursement of the Escrow Fund. Upon receipt of such joint written instructions, the Escrow Agent shall disburse the Escrow Fund in accordance with such instructions.

3. Agreement to Settle Debt, Release Lien Claims.

(a) Subject to final approval by the Court, Wittson and Seller hereby agree to settle the Debt in exchange for payment of the Settlement Amount by Seller to Wittson. From and after the issuance of an Approval Order, and subject to the terms thereof, each of Wittson and Seller hereby release and forever relinquish any and all claims, causes of action and legal rights such party may have against the other party arising out of or relating to the Debt.

(b) Seller hereby grants Wittson a security interest in and to the Escrow Fund, as collateral for payment of the Debt. As consideration for the security interest granted herein, Wittson agrees to release the Lien Claims immediately upon execution of this Escrow Agreement.

4. Covenants of the Escrow Agent. The Escrow Agent hereby covenants to Purchaser and Seller as follows:

(a) The Escrow Agent agrees to perform all of its obligations under this Escrow Agreement and will not deliver custody or possession of any of the Escrow Fund to Wittson or Seller or any person except pursuant to the express terms of this Escrow Agreement.

(b) The Escrow Agent will send to Wittson or Seller, as the case may be, on the next Business Day after receipt from the other party, one copy of each written notice, if any,

delivered to the Escrow Agent by the other party. The Escrow Agent shall not take any action for at least five (5) Business Days after the copy of said notice is deemed given hereunder to Wittson or Seller, as the case may be, in order to provide an adequate opportunity for the recipient to dispute said notice in writing. Upon the expiration of such five (5) Business Days period, if the Escrow Agent has not received written notice of a dispute, then the Escrow Agent shall be entitled to take the action requested in the original notice. If, however, the Escrow Agent receives timely written notice of a dispute concerning the original notice, the Escrow Agent shall not take action upon the original notice unless and until jointly instructed in writing by Wittson and Seller, or upon the final, non-appealable order of a court of competent jurisdiction.

5. Resignation and Removal of Escrow Agent. The Escrow Agent may resign at any time or be removed by the mutual consent of Wittson and Seller upon notice to the other parties hereto given at least ten (10) Business Days prior to the effective date of such resignation or removal; provided, however, that no resignation or removal of the Escrow Agent shall be effective until the appointment of a successor escrow agent in the manner herein provided. In the event of the resignation or removal of the Escrow Agent, Wittson and Seller shall agree upon a successor escrow agent. Any successor escrow agent shall execute and deliver to the predecessor Escrow Agent, Wittson and Seller an instrument accepting such appointment and the transfer of the Escrow Fund and agreeing to the terms of this Escrow Agreement, and thereupon such successor escrow agent shall, without further act, become vested with all the estates, properties, rights, power and duties of the predecessor Escrow Agent as if originally named herein. If an instrument of acceptance by a successor escrow agent shall not have been delivered to the Escrow Agent within ten (10) Business Days after the giving of such notice of resignation, the resigning Escrow Agent may at the joint expense of Wittson and Seller, petition any court of competent jurisdiction for the appointment of a successor escrow agent or file an interpleader action pursuant to Rule 22 of the North Carolina Rules of Civil Procedure.

6. Liability of Escrow Agent. The Escrow Agent shall have no liability or obligation with respect to the Escrow Fund except for the Escrow Agent's willful misconduct or gross negligence. The Escrow Agent may rely upon any instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by the person or parties purporting to sign the same and to conform to the provisions of this Escrow Agreement. The Escrow Agent may consult legal counsel selected by it in the event of any dispute or question concerning the construction of any of the provisions hereof, or of its duties hereunder or seek the assistance of a court of competent jurisdiction, and shall incur no liability and shall be fully protected in acting in accordance with the opinion or instruction of such counsel or such court. Wittson and Seller hereby agree to indemnify and hold harmless the Escrow Agent against any and all losses, claims, damages, liabilities and expenses (except as is caused by Escrow Agent's willful misconduct or gross negligence), including reasonable costs of investigation and counsel fees and disbursement, which may be imposed upon the Escrow Agent or incurred by the Escrow Agent in connection with its acceptance of appointment as escrow agent hereunder, or the performance of its duties hereunder, including any litigation arising from this Escrow Agreement or involving the subject matter hereof or the cash deposited hereunder,

the liability of Seller and Purchaser hereunder each being limited to one-half of such losses, claims, damages, liabilities and expenses.

7. Notices. All notices, consents, waivers or other communications which are required or permitted hereunder shall be sufficient if given in writing and delivered personally, by confirmed telefacsimile, or by prepaid nationally recognized overnight delivery service providing next business day delivery, proof of delivery required:

(a) to Wittson, addressed as follows:

Wittson, LLC
Attn: Darryl T. Robinson
501 Brickell Key Drive, Suite 210
Miami, Florida 33131
Telephone: (305) 282-3259
Facsimile: (305) 675-8120

with a required copy to:

Richard M. Hutson II
Hutson Law Office, P.A.
Suite 1500
300 West Morgan Street (27701)
PO Drawer 2252-A
Durham, North Carolina 27702
Telephone: (919) 683-1561
Facsimile: (919) 281-5270

(b) to Seller, addressed as follows:

DB Durham, LLC
Attn: Harold Gassenheimer
402 Continental Plaza
3250 Mary Street
Coconut Grove, FL 33133
Telephone: (305) 341-0600, ext 249
Facsimile: (305) 358-5160

with a required copy to:

Moore & Van Allen, PLLC
Attn: Edward L. Embree, Esq.
430 Davis Drive, Suite 500
Morrisville, North Carolina 27560
Telephone: (919) 286-8073
Facsimile: (919) 416-8373

(c) to the Escrow Agent, addressed as follows:

Attorneys Title,
A division of United General Title Insurance Company
Attn: D. Donovan Merritt
150 Fayetteville Street, Suite 510
Raleigh, NC 27601
Telephone: (919) 609-8620
Facsimile: (919) 828-5078

(or such other address of Wittson, Seller or the Escrow Agent as shall be set forth in a notice given in the same manner). All such notices shall be deemed given on the date personally delivered or telefacsimiled or the date delivered by the overnight delivery service; provided, if telefacsimiled on a non-business day or after 5:00 p.m. on a business day, such notice shall be deemed given on the next business day.

8. Entire Agreement, Amendment, etc. This Escrow Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof. All of the terms and provisions of this Escrow Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. This Escrow Agreement shall not be amended except by written instrument duly executed by Wittson and Seller and acknowledged and accepted by the Escrow Agent. The Escrow Agent shall have no duties or responsibilities except as expressly provided in this Escrow Agreement nor shall Escrow Agent have any liability or responsibility arising under any agreement to which it is not a party. The use of any pronoun herein when referring to any party has been for convenience only and shall be deemed to refer to the particular party intended.

9. Escrow Agent's Fee. As consideration for serving as escrow agent hereunder, the Escrow Agent shall be entitled to a fee in the amount of Two Hundred and Fifty and 00/100 Dollars (\$250.00). Wittson and Seller shall each pay to the Escrow Agent one half of the escrow fee immediately upon execution of this Escrow Agreement.

10. Governing Law and Venue. This Escrow Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina. Any action or proceeding seeking to interpret or enforce any provision of, or based on any right arising under this Escrow Agreement shall be brought in the General Court of Justice, Superior Court Division, Durham County, North Carolina and such court shall have sole and exclusive jurisdiction and each of the

parties consents to the jurisdiction of such court and waives any objection to jurisdiction and venue.

11. Cooperation. Subject to the terms and conditions herein provided, each of the parties hereto shall use its best efforts to take, or cause to be taken, such action, to execute and deliver, or cause to be executed and delivered, such additional documents and instruments and to do, or cause to be done, all things necessary, proper or advisable under the provisions of this Escrow Agreement and under applicable law to consummate and make effective the transactions contemplated by this Escrow Agreement.

12. Counterparts. This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and any person may become a party hereto by executing a counterpart hereof, but all of such counterparts taken together shall constitute but one and the same instrument. Signatures may be transmitted by facsimile and, once so transmitted, shall constitute the execution and delivery of this Escrow Agreement by the signing parties.

THE REST OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date first set forth above.

WITTON:

WITTON, LLC

By: _____

Name: _____

Its: _____

SELLER:

DB DURHAM, LLC

By:  _____

Michael I. Goldberg, Receiver

by *James Gassenheimer*
as Attorney - in - fact

ESCROW AGENT:

ATTORNEYS TITLE,
A DIVISION OF UNITED GENERAL
TITLE INSURANCE COMPANY

By: _____

Name: _____

Its: _____