

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,  
ET AL.,

Defendants,

and,

DB ATLANTA LLC, WATERSIDE ACQUISITIONS  
LLC, ET AL.,

Relief Defendants.

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**BANK OF CORAL GABLES' MOTION FOR RELIEF FROM TEMPORARY INJUNCTION**

Non-party, BANK OF CORAL GABLES, hereby moves this Court for relief from its temporary injunction as to Waterside Acquisitions LLC, Dana Berman and Receiver, and states:

1. The Court's Temporary Injunction and Agreed Order Appointing Receiver enjoins all actions against defendants and relief defendants.
2. Bank of Coral Gables' is mortgagee upon the real properties located in Brevard County, Florida, being more particularly described as:

**Unit No. 1089, Building 14, CORAL GARDENS, a Condominium according to the Declaration of Condominium thereof recorded in Official Records Book 5629 at Page 6647, and amendments thereto, of the Public Records of Brevard County, Florida.**

Also known as 1089 June Drive, Melbourne, Florida 32935 ("June Drive Loan"). A copy of the Note is attached and the original Mortgage and Assignment of Rents were recorded in the Official Records Book 5713, at page 8663, all of the public records of Brevard County, Florida.

**Unit No. 1074, Building 9, and Garage Unit No. G3-24 of CORAL GARDENS, a Condominium according to the Declaration of Condominium thereof recorded in Official Records Book 5629 at Page 6647, and amendments thereto, of the Public Records of Brevard County, Florida.**

Also known as 1074 Mollie Lane, Melbourne, Florida 32935 ("Mollie Lane Loan"). A copy of the Note is attached and the original Mortgage and Assignment of Rents were recorded in Official Records Book 5713, at Page 8637 of the public records of Brevard County, Florida.

3. The mortgagor, Waterside Acquisitions, LLC, has failed to make the payment due on March 1, 2008 under the June Drive Loan and failed to make payment due on June 1, 2008 under the Mollie Lane Loan, and all subsequent payments. The guarantor, Dana Berman, has also failed to make payment on behalf of the mortgagor. The Receiver has failed to make payment.

4. A receiver steps into the shoes of the corporation, individual or estate whose interests the receiver was appointed to protect and therefore, with respect to the subject property, a receiver takes the rights, causes and remedies associated therewith. *Hamilton v. Flowers*, 183 So. 811, 817 (1938); *Christian Broad. Network, Inc. v. Starr*, 401 So.2d 1152, 1155 (Fla. 5th DCA 1981).

5. As of July 21, 2008, Waterside Acquisitions, LLC owes Bank of Coral Gables the principal amount of \$112,381.50 under the June Drive Loan, and the principal amount of \$93,400.00 under the Mollie Lane Loan, together with accrued and accruing interest, late fees, reasonable attorney's fees, costs and all other amounts due under the notes and mortgages.

6. Bank of Coral Gables seeks to take all appropriate action which includes, but is not limited to, filing of an action to foreclose its mortgages and claim upon the notes and guaranties, add the receiver as a party defendant as necessary, complete the action through sale and including but not limited to issuance of a certificate of title by the Clerk of Court and dissolving the Court's Temporary Injunction and Agreed Order in limited part as requested herein.

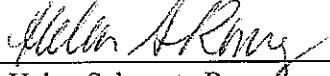
7. Under the circumstances, the court should grant relief from the injunction in favor of Bank of Coral Gables.

WHEREFORE, Bank of Coral Gables requests entry of an order granting the relief requested herein, and such further relief as this Court deems just and proper.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by facsimile (305) 714-4340 and U.S. Mail to: **James D. Gassenheimer, Esq.** (Attorney for Receiver, Michasel I. Goldberg), 200 South Biscayne Blvd., Suite 1000, Miami, Florida 33131, by U.S. Mail to: **Cristina Saenz, Esq.**, Assistant General Counsel, State of Florida, Office of Financial Regulation, 401 N.W. 2<sup>nd</sup> Avenue, Suite N-708, Miami, Florida 33128; **Alan M. Sandler, Esq.**, Sandler & Sandler, 117 Aragon Avenue, Coral Gables, Florida 33134; **Allan A. Joseph, Esq.**, David and Joseph, P.L., 1001 Brickell Avenue, Suite 2002, Miami, Florida 33131; **Richard R. Robles, Esq.**, Law Offices of Richard Robles, P.A., 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; **Daniel Kaplan, Esq.**, Turnberry Plaza, Suite 600, 2875 N.E. 191<sup>st</sup> Street, Aventura, Florida 33180; **Howard N. Kahn, Esq.**, Kahn, Chenkin & Resnick, 1815 Griffin Road, Suite 207, Dania, Florida 33304; **Mark Hicks, Esq.**, Hicks & Kneale, P.A., 799 Brickell Plaza, Suite 900, Miami, Florida 33131; **William S. Berk, Esq.**, Berk, Merchant & Sims PLC, 2100 Ponce de Leon Boulevard, Penthouse 1, Coral Gables, Florida 33134; **Courtney Murphy, Esq.**, Clausen Miller, PC, One Chase Manhattan Plaza, 39<sup>th</sup> Floor, New York, New York 10005 and **Eric T. Krejci, Esq.**, Clausen Miller, PC, One Chase Manhattan Plaza, 39<sup>th</sup> Floor, New York, New York 10005; **Lawrence Shoot, Esq.**, 4830 S.W. 92<sup>nd</sup> Ave, Miami, Florida 33165; **Charles Pickett, Esq.**, Casey Ciklin Lubitz Martens & O'Connell, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401; **Charles W. Throckmorton, Esq.**, Kozyak Tropin Throckmorton, P.A., 2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor, Coral Gables, Florida 33134; **James S. Telepman, Esq.**, Cohen, Norris, Scherer, Weinberger & Wolmer, 712 U.S. Highway One, Suite 400, North Palm Beach, Florida, 33408; **Allen P. Pegg, Esq.**, Maurai, Wald, Biondo, Moreno & Brochin, P.A., Two Alhambra Plaza, Penthouse 1B, Coral Gables, Florida 33134, this 14th day of August, 2008.

The Romanez Law Firm, P.A.  
Attorney for Bank of Coral Gables  
255 Alhambra Circle, Suite 850  
Coral Gables, Florida 33134  
Telephone: (305) 447-2399  
Facsimile: (305) 447-3448

By:   
Helen Schwartz Romanez  
Fla. Bar No.0095567

# PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call/Cal	Acct/Int	Officer	Initials
\$ 112,381.50	09-18-2006	10-01-2036	39000027			ERP	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** Waterside Acquisitions, LLC  
501 Continental Plaza, 3250  
Miami, FL 33133

**WATERSIDE ACQUISITIONS, LLC CERTIFY THIS TO BE TRUE:  
AND CORRECT COPY OF THIS ORIGINAL  
EXECUTED DOCUMENT.  
LAW OFFICES OF SAM MAGUIRE**

**Bank of Coral Gables**  
Lending Division  
95 Merrick Way  
Suite 106  
Coral Gables, FL 33134  
(305) 500-9501

**Principal Amount: \$112,381.50**

**Date of Note: September 18, 2006**

**PROMISE TO PAY.** Waterside Acquisitions, LLC ("Borrower") promises to pay to Bank of Coral Gables ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Hundred Twelve Thousand Three Hundred Eighty-one & 50/100 Dollars (\$112,381.50), together with interest on the unpaid principal balance from September 12, 2006, until paid in full. The interest rate will not increase above 12.875%.

**PAYMENT.** Subject to any payment changes resulting from changes in the Index, Borrower will pay this loan in accordance with the following payment schedule: 36 monthly consecutive interest payments, beginning November 1, 2006, with interest calculated on the unpaid principal balances at an interest rate of 6.875% per annum; 323 monthly consecutive principal and interest payments in the initial amount of \$866.54 each, beginning November 1, 2009, with interest calculated on the unpaid principal balances at an interest rate based on the the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board (currently 5.240%), plus a margin of 2.750 percentage points, the sum rounded to the nearest 0.125 percent, resulting in an initial interest rate of 8.000%; and one principal and interest payment of \$852.10 on October 1, 2036, with interest calculated on the unpaid principal balances at an interest rate based on the the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board (currently 5.240%), plus a margin of 2.750 percentage points, the sum rounded to the nearest 0.125 percent, resulting in an initial interest rate of 8.000%. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled and that the Index does not change; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Note. Unless otherwise agreed or required by applicable law, payments will be applied to Payments will be applied in the following order: Accrued Interest, Principal, Escrows, Late Fees and Collection Costs. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**VARIABLE INTEREST RATE.** The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notice to Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each 12 months after the initial fixed period of three years. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 5.240% per annum. The interest rate or rates to be applied to the unpaid principal balance of this Note will be the rate or rates set forth herein in the "Payment" section. Notwithstanding any other provision of this Note, after the first payment stream, the interest rate for each subsequent payment stream will be effective as of the last payment date of the just-ending payment stream. Notwithstanding the foregoing, the variable interest rate or rates provided for in this Note will be subject to the following minimum and maximum rates. NOTICE: Under no circumstances will the effective rate of interest on this Note be less than 4.875% per annum or more than (except for any higher default rate shown below) the lesser of 12.875% per annum or the maximum rate allowed by applicable law. Notwithstanding the above provisions, the maximum increase or decrease in the interest rate at any one time on this loan will not exceed 2.000 percentage points. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (A) increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (B) increase Borrower's payments to cover accruing interest, (C) increase the number of Borrower's payments, and (D) continue Borrower's payments at the same amount and increase Borrower's final payment.

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Bank of Coral Gables, Attn: Loan Operations, 95 Merrick Way, Suite 106 Coral Gables, FL 33134.

**LATE CHARGE.** If a payment is 15 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note to 18.000% per annum, if and to the extent that the increase does not cause the interest rate to exceed the maximum rate permitted by applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this

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Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Death or Insolvency.** The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the amount of these costs and expenses, which includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**JURY WAIVER.** Lender and Borrower hereby ~~waive the~~ right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other. (Initial Here )

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Florida without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Florida.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Miami-Dade County, State of Florida.

**DISHONORED ITEM FEE.** Borrower will pay a fee to Lender of \$30.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**COLLATERAL.** Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

(A) a Mortgage dated September 18, 2006, to Lender on real property located in Brevard County, State of Florida.

(B) an Assignment of All Rents to Lender on real property located in Brevard County, State of Florida.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES.** Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracies should be sent to us at the following address: Bank of Coral Gables Attn: Loan Operations 95 Merrick Way, Suite 106 Coral Gables, FL 33134.


**GENERAL PROVISIONS.** If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Borrower does not agree or intend to pay, and Lender does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee for this loan, which would in any way or event (including demand, prepayment, or acceleration) cause Lender to charge or collect more for this loan than the maximum Lender would be permitted to charge or collect by federal law or the law of the State of Florida (as applicable). Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this loan, and when the principal has been paid in full, be refunded to Borrower. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.



PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.  
BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

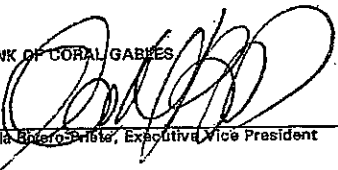
**BORROWER:**

WATERSIDE ACQUISITIONS, LLC

By:   
Dana J. Berlan, Manager of Waterside  
Acquisitions, LLC

**LENDER:**

BANK OF CORAL GABLES

X   
Ela Bereng-Prister, Executive Vice President

**Florida Documentary Stamp Tax**

Florida documentary stamp tax in the amount required by law has been paid with respect to this Note on the Mortgage and Assignment of Rents securing this Note.



**PROMISSORY NOTE**

Principal	Loan Date	Maturity	Loan No.	Collateral	Account	Official	Initials
\$93,400.00	09/18/2006	10/01/2036	30000028			ERP	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*" has been omitted due to text length limitations.

**Borrower:** Waterside Acquisitions, LLC  
501 Continental Plaza, 3250 Mary Street  
Miami, FL 33133

**Lender:** Bank of Coral Gables  
Lending Division  
95 Merrick Way  
Suite 106  
Coral Gables, FL 33134  
(305) 500-8501

**Principal Amount:** \$93,400.00

**Date of Note:** September 18, 2006

**PROMISE TO PAY.** Waterside Acquisitions, LLC ("Borrower") promises to pay to Bank of Coral Gables ("Lender"), or order, in lawful money of the United States of America, the principal amount of Ninety-three Thousand Four Hundred & 00/100 Dollars (\$93,400.00), together with interest on the unpaid principal balance from September 12, 2006, until paid in full. The interest rate will not increase above 12.875%.

**PAYMENT.** Subject to any payment changes resulting from changes in the Index, Borrower will pay this loan in accordance with the following payment schedule: 36 monthly consecutive interest payments, beginning November 1, 2006, with interest calculated on the unpaid principal balances at an interest rate of 6.875% per annum; 323 monthly consecutive principal and interest payments in the initial amount of \$711.87 each, beginning November 1, 2009, with interest calculated on the unpaid principal balances at an interest rate based on the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board (currently 5.240%), plus a margin of 2.750 percentage points, the sum rounded to the nearest 0.125 percent, resulting in an initial interest rate of 8.000%; and one principal and interest payment of \$708.41 on October 1, 2036, with interest calculated on the unpaid principal balances at an interest rate based on the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board (currently 5.240%), plus a margin of 2.750 percentage points, the sum rounded to the nearest 0.125 percent, resulting in an initial interest rate of 8.000%. This estimated final payment will be for all principal and accrued interest not yet made exactly as scheduled and that the Index does not change; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Note. Unless otherwise agreed or required by applicable law, payments will be applied to payments in the following order: Accrued Interest, Principal, Escrows, Late Fees and Collection Costs. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**VARIABLE INTEREST RATE.** The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notice to Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each 12 months after the initial fixed period of three years. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 5.240% per annum. The interest rate or rates to be applied to the unpaid principal balance of this Note will be the rate or rates set forth herein in the "Payment" section. Notwithstanding any other provision of this Note, after the first payment stream, the interest rate for each subsequent payment stream will be effective as of the last payment date of the just-ending payment stream. Notwithstanding the foregoing, the variable interest rate or rates provided for in this Note will be subject to the following minimum and maximum rates. NOTICE: Under no circumstances will the effective rate of interest on this Note be less than 4.875% per annum or more than (except for any higher default rate shown below) the lesser of 12.875% per annum or the maximum rate allowed by applicable law. Notwithstanding the above provisions, the maximum increase or decrease in the interest rate at any one time on this loan will not exceed 2.000 percentage points. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (A) increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (B) increase Borrower's payments to cover accruing interest, (C) increase the number of Borrower's payments, and (D) continue Borrower's payments at the same amount and increase Borrower's final payment.

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Bank of Coral Gables, Attn: Loan Operations, 95 Merrick Way, Suite 106 Coral Gables, FL 33134.

**LATE CHARGE.** If a payment is 15 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note to 18.000% per annum, if and to the extent that the increase does not cause the interest rate to exceed the maximum rate permitted by applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false

I HEREBY CERTIFY THIS TO BE TRUE  
AND CORRECT COPY OF THIS ORIGINAL  
EXECUTED DOCUMENT.  
LAW OFFICES OF SAM MAGUIRE.

PROMISSORY NOTE  
(Continued)

Loan No: 30000028

Page 2

or misleading at any time thereafter.

**Death or Insolvency.** The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the amount of these costs and expenses, which includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**JURY WAIVER.** Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other. (Initial Here                     )

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Florida without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Florida.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Miami-Dade County, State of Florida.

**DISHONORED ITEM FEE.** Borrower will pay a fee to Lender of \$30.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**COLLATERAL.** Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

- (A) a Mortgage dated September 18, 2006, to Lender on real property located in Brevard County, State of Florida.
- (B) an Assignment of All Rents to Lender on real property located in Brevard County, State of Florida.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES.** Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Bank of Coral Gables Attn: Loan Operations 95 Merrick Way, Suite 108 Coral Gables, FL 33134.

**GENERAL PROVISIONS.** If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Borrower does not agree or intend to pay, and Lender does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee for this loan, which would in any way or event (including demand, prepayment, or acceleration) cause Lender to charge or collect more for this loan than the maximum Lender would be permitted to charge or collect by federal law or the law of the State of Florida (as applicable). Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this loan, and when the principal has been paid in full, be refunded to Borrower. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PROMISSORY NOTE  
(Continued)


Loan No: 3000028

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PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.  
BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

WATERSIDE ACQUISITIONS, LLC

By:   
Dana J. Barman, Manager of Waterside  
Acquisitions, LLC

LENDER:

BANK OF CORAL GABLES

X   
Elv Tejero-Prieto, Executive Vice President

Florida Documentary Stamp Tax

Florida documentary stamp tax in the amount required by law has been paid with respect to this Note on the Mortgage and Assignment of Rents securing this Note.

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