

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, **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.

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**MOTION TO AUTHORIZE RECEIVER TO EXECUTE THE ASSET  
MANAGEMENT AGREEMENT BETWEEN RELIEF DEFENDANT DB BILOXI III AND**

**BERGER SINGERMAN**  
attorneys at law

*Boca Raton Fort Lauderdale Miami Tallahassee*

**CONTINENTAL REAL ESTATE COMPANIES COMMERCIAL PROPERTIES CORP.**

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 Authorize Receiver to Execute the Asset Management Agreement between Relief Defendant DB Biloxi III and Continental Real Estate Companies Commercial Properties Corp., and states:

**The Receiver is Appointed Over Relief Defendant DB Biloxi III**

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 III, LLC ("Biloxi III"), a Florida limited liability company that holds title to property located in Biloxi, Mississippi.

3. As a Relief Defendant, Biloxi III is a receivership asset subject to the exclusive jurisdiction of Judge Wilson in the Circuit Court of the Eleventh Judicial Circuit, and subject to 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 Biloxi III], the "Receivership Assets", which includes, but are not limited to: files, records, documents, leases, mortgages, Investment, 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).

4. Pursuant to the authority granted to the Receiver via the Receivership Order, the Receiver seeks to exercise its exclusive control over Biloxi III and market and sell the property held by Biloxi III. However, since the property is located in Mississippi, the Receiver does not have the resources to manage the marketing and sale of the property in a way that is most beneficial to the Investor Group that these Receivership proceedings are designed to protect.

5. Consequently, the Receiver seeks to retain the services of Continental Real Estate Companies Commercial Properties Corp. ("CREC") so that they can manage the marketing and sale of the property held by Biloxi III. Specifically, the Receiver seeks to retain CREC pursuant to the terms of the Asset Management Agreement attached hereto as Exhibit "A."

6. Importantly, CREC was selected only after the Investor Group formed a committee to thoroughly consider which entity would be best to retain for the sale of the property held by Biloxi III. Importantly, although two CREC executives are members of the Investor Group (one of which is Steven Hurwitz, Senior Vice President of CREC), neither of those executives were on the committee that selected CREC to manage the sale of the Biloxi III property. Moreover, the committee voted 3 -1 in favor of retaining CREC, and the Receiver has accepted and wholly approves of the committee's recommendation.

7. To finalize the retention of CREC, however, the Asset Management Agreement must be executed by the Receiver.

**This Court Should Authorize the Execution of the  
Authorize Receiver to Execute the Asset Management Agreement**

8. The Receiver is the only vehicle by which Biloxi III can act. As such, 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 the property held by Biloxi III:

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 Biloxi III, and its authority to execute the Asset Management Agreement between Relief Defendant Biloxi III and CREC, as dictated by the Receivership Order issued by this Court.

**WHEREFORE**, the Receiver, on behalf of Relief Defendant DB Biloxi III, respectfully requests that this Court grant this Motion to Authorize Receiver to Execute the Asset Management Agreement between Relief Defendant DB Biloxi III and Continental Real Estate Companies Commercial Properties Corp., and for such other and additional relief as the Court deems just and proper.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this 4<sup>th</sup> day of September 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 **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; 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; 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; to **Norman S. Segall, Esquire**, *Attorneys for Skilled Services of Tampa Bay, LLC*, RUDEN MCCLOSKEY SMITH SCHUSTER & RUSSELL, P.A., 701 Brickell Avenue, Suite 1900, Miami, Florida 33131; to

**Norman Malinski, Esquire**, *Counsel for Giles Construction*, 2875 NE 191<sup>st</sup> Street, Suite 508, Aventura, Florida 33180; **Gabrielle D'Alemberte, Esquire**, LAW OFFICES OF ROBERT PARKS, 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134; and to **Robert B. Miller, Esquire**, *Attorneys for Atlantic Lending, LLC*, TABAS, FREEDMAN, SOLOFF & MILLER, P.A., The Ingraham Building 25 SE 2<sup>nd</sup> Avenue, Suite 919, Miami, Florida 33131-1538.

Respectfully submitted,

**BERGER SINGERMAN**

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

**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*)

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