

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.

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

RECEIVER'S NOTICE OF FILING EXHIBIT "A" TO RECEIVER'S MOTION TO AUTHORIZE RECEIVER TO EXECUTE THE ASSET MANAGEMENT AGREEMENT BETWEEN RELIEF DEFENDANT DB BILOXI III AND CONTINENTAL REAL ESTATE COMPANIES COMMERCIAL PROPERTIES CORP.

Receiver, Michael I. Goldberg, Esq., ("Receiver"), by and through undersigned counsel, hereby gives *Notice of Filing of Receiver's Exhibit "A" to Receiver's 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 in support of same.

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
E-Mail: jgassenheimer@bergersingerman.com

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 Electronic Mail/Facsimile/Hand-Delivery and/or U.S. Mail on this **5th day of September 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,

2

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; 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 191st 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 2nd Avenue, Suite 919, Miami, Florida 33131-1538.

Respectfully submitted,

BERGER SINGERMAN
Attorneys for Receiver, Michael Goldberg
200 South Biscayne Boulevard, Suite 1000
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Direct Line: (305) 714-4383
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Facsimile: (305) 714-4340
E-Mail: jgassenheimer@bergersingerman.com

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*)

1601023-1

ASSET MANAGEMENT AGREEMENT

This Asset Management Agreement (the "Agreement") is dated as of this ____ day of _____, 2008, between _____ (the "Owner"), and Continental Real Estate Companies Commercial Properties Corp., a Florida corporation, as Asset Manager (the "Asset Manager"), recites and provides as follows:

- A. The Owner is the title holder to that certain real property located at _____ in _____, _____ commonly known as "_____" (the "Property").
- B. (some comment about the status of MAMC, receivership authority to enter into this Agreement)
- C. The Owner desires to engage the Asset Manager to provide certain asset management services related to the strategic planning, marketing and sale of the Property as more particularly set forth in Section 2 below and otherwise in accordance with this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. COMMENCEMENT AND TERMINATION DATES.

1.1 Commencement and Termination. The Asset Manager's duties and responsibilities under this Agreement shall begin on the date of this Agreement and shall terminate on the sale of the Property.

1.2 Approvals and Authority.

(a) Control of the Property. (need a statement about who is currently controlling decision making on behalf of ownership and under what authority and procedure for changing authority in the future, ie: post receivership, as well as way we are notified and directed). Define "Controlling Party").

(b) Approvals. The Asset Manager shall create a strategic plan and implement such plan in accordance with the Scope of Work set forth in paragraph 2 below. The Controlling Party shall approve such Strategic Plan and shall have the right to approval all other major actions of the Asset Manager including _____, _____ (need to list items that Controlling Party must approve and process).

(c) Administrative Authority. The Asset Manager shall have no obligation to comply with any requests or directions made by anyone other than the Controlling Party.

2. SCOPE OF WORK.

2.1 Asset Management. The Asset Manager's responsibility is to develop and implement a strategic plan to sell the Property. The Asset Manager is not responsible for property management, day to day operations, legal matters, accounting or other functions not related to the ultimate disposition of the Property.

2.2 Scope of Work. The Asset Manager's scope of work shall include the following:

- Disposition Plan
 - Prepare a strategic plan and timeline
 - Review and affirm existing estimate to complete data, if applicable
 - Review and affirm existing project budget and property valuation
 - Outline and compare all viable disposition options including:
 - Immediate disposition
 - Completion and operation/hold (if applicable)
 - Completion and disposition (if applicable)
 - Long term hold
 - Analyze and summarize comparable market sales and valuations
 - Analyze and summarize competitive property data

EXHIBIT

"A"

tabbles

- Disposition Implementation

- Solicit and evaluate proposals and opinions of value and hire third party service providers where applicable (ie: listing brokers, unit sales agents, management companies)
- Analyze and negotiate purchase offers
- Underwrite prospective buyers and ability to perform
- Oversee sale process (contract negotiation to closing)
- Coordinate and guide efforts of legal counsel
- Prepare monthly reporting & updating
- Disseminate information to Controlling Party as needed

2.3 Status of the Asset Manager. The Owner and the Asset Manager do not intend to form a joint venture, partnership or similar relationship. Instead, the parties intend that the Asset Manager shall act solely in the capacity of an independent contractor. Nothing in this Agreement shall cause the Asset Manager and the Owner to be joint venturers or partners, and neither shall have the power to bind or obligate the other party by virtue of this Agreement. In addition, nothing in this Agreement shall deprive or otherwise affect the right of any party to own, invest in, manage, or operate, or to conduct any business activities, including activities that compete with the Property.

3. Third Party Service Providers: Asset Manager will recommend the hiring of competent third party providers where necessary in order to complete the scope of work set forth herein and will manage such providers at all times. Asset Manager will ensure that all services are provided at market rates by qualified, licensed, insured and experienced professionals. Outside firms providing the following third party services may be utilized:

- Brokerage (unit and property sales & mortgage where appropriate)
- Property Management
- General Contracting/Construction
- Legal
- Appraisals
- Accountants

4. COMPENSATION.

4.1 Asset Management Fee. In consideration of the Asset Management Services to be provided hereunder, Owner shall pay Asset Manager an Asset Management Fee (the "Asset Management Fee") equal to 1.5% of "Gross Sales Price" (as hereinafter defined) of the Property, payable at the closing of all or any portion of the Property (including but not limited to upon the closing of individual unit sales or the Property as a whole). As used herein, the term "Gross Sales Price" shall mean any and all compensation received by Owner in connection with a sale of the Property. The Asset Management Fee shall be paid by Owner to Asset Manager whether a purchaser is secured by Asset Manager, Owner, or by any other person and/or entity. In addition, the Asset Management Fee shall be paid by Owner to Asset Manager if the Property, or any portion thereof, and/or any interest therein, is sold, conveyed, or otherwise exchanged or transferred. For purposes of this Agreement, any conveyance of the Property, or any portion thereof, by sale, ground lease and/or a transfer of interest in the ownership thereof, shall be deemed a sale of the Property.

4.2 Advanced Fee. In consideration of the services to be provided by Asset Manager hereunder, Owner shall pay Asset Manager an Advanced Fee (the "Advanced Fee") in the amount of \$10,000, payable upon the execution of this Agreement. The Advanced Fee shall be offset against the Asset Management Fee upon the sale of the Property. The Advanced Fee shall be earned even if the Property is never sold and an Asset Management Fee is never paid.

4.3 Costs. The Asset Manager shall be reimbursed for all of its out of pocket costs incurred in connection with providing the Asset Management Services (the "Costs"). Such Costs shall be reimbursed within thirty (30) days of the submission of invoices by Asset Manager to Owner.

5. **TERMINATION.** Owner and Asset Manager shall have the right to terminate this Agreement as provided below.

5.1 **Termination by Owner Not "For Cause."** Owner shall have the right to terminate this Agreement without cause with 30 days notice at anytime. Notwithstanding the foregoing, if this Agreement is terminated by Owner without cause any time after Asset Manager has submitted to Owner the strategic plan for the Property, the Asset Management Fee shall be deemed earned and shall be payable to Asset Manager upon the sale of the Property, notwithstanding the prior termination of this Agreement.

5.2 **Termination by the Owner "For Cause."** Owner shall have the right to terminate this Agreement "for cause" upon 30 days prior written notice to the Asset Manager. For purposes of this Agreement, termination "for cause" shall mean termination due to the (a) gross negligence, willful misconduct or fraud of the Asset Manager in connection with the Asset Management Services, (b) bankruptcy, insolvency or inability of the Asset Manager to meet its financial obligations as they come due, or (c) the conviction of a felony of any of the Asset Manager or any of its officers, directors, shareholders, employees or agents having direct responsibility for the provision of the Asset Management Services. In the even the Agreement is terminated for Cause, Owner shall have no responsibility for any future Asset Management Fees.

5.3 **Termination by the Asset Manager.** The Asset Manager shall have the right to terminate this Agreement upon 60 days prior written notice to Owner. In the event the Asset Manager terminates this Agreement, Owner shall have no responsibility for any future Asset Management Fees.

5.4 **Termination on Sale.** This Agreement shall automatically terminate upon the sale of the entire Property (but not sale of Interests or individual units) and payment of all fees due the Asset Manager hereunder.

6. **NOTICES.** All notices, demands, consents, approvals, reports and other communications provided for in this Agreement shall be in writing and shall be given at the address set forth below or at such other address as the parties may specify hereafter in writing:

Owner: Michael Goldberg, Receiver
Akerman Senterfitt
350 East Las Olas Boulevard, Ste. 1600
Fort Lauderdale, Florida 33301
United States of America

Asset Manager: Continental Real Estate Companies
2121 Ponce De Leon Blvd, Suite 1250
Coral Gables, FL 33134
Attn: David Moret

7. **MISCELLANEOUS.**

7.1 **Assignment.** The Asset Manager may not assign this Agreement without the prior written consent of Owner.

7.2 **Gender.** Each gender shall include the other gender. The singular shall include the plural and vice-versa.

7.3 **Amendments.** Except as otherwise provided, each amendment, addition or deletion to this Agreement shall not be effective unless approved in writing by all of the parties hereto.

7.4 **Attorneys' Fees.** In any action or proceeding between the Asset Manager and Owner arising out of, from or relating to this Agreement or the enforcement or interpretation hereof, the party prevailing in such action or proceeding shall be entitled to recover from the other party or parties all of its reasonable attorneys' fees and other costs and expenses of the action or proceeding.

7.5 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida without regard to any choice of law rules.

7.6 Indemnification by the Owner. Owner shall indemnify, defend and hold harmless the Asset Manager and each of its members, managers, shareholders, officers, directors, employees and contractors (each an "Indemnified Party") from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys' fees and court costs, sustained or incurred by or asserted against any Indemnified Party with respect to the Asset Management Services or the Property, except those which arise directly and solely from the gross negligence, willful misconduct or fraud of the Asset Manager or an Indemnified Party. If an Indemnified Party seeks indemnification hereunder, then (a) the Indemnified Party shall give the Owner prompt written notice thereof; (b) the Owner may defend such claim or action by qualified legal counsel of their choosing, provided such counsel is reasonably satisfactory to the Asset Manager; and (c) neither the Indemnified Party nor the Owner shall settle any claim without the other's prior written consent.

7.7 Complete Agreement. This Agreement shall supersede and take the place of any and all previous agreements entered into between the parties with respect to the Asset Management Services.

7.8 Severability. If any provision of this Agreement or application to any party or circumstances shall be determined to be invalid and unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each other provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

7.9 No Waiver. The failure by any party to insist upon the strict performance of, or to seek remedy of, any one of the terms or conditions of this Agreement or to exercise any right, remedy or election set forth herein or permitted by law, in equity or otherwise shall not constitute or be construed as a waiver or relinquishment for the future of such term, condition, right, remedy or election, but such item shall continue and remain in full force and effect. All rights or remedies of the parties specified in this Agreement and all other rights or remedies that they may have at law, in equity or otherwise shall be distinct, separate and cumulative rights or remedies, and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other right or remedy of the parties.

7.10 Binding Effect. This Agreement shall be binding and inure to the benefit of the parties and their respective heirs, successors and assigns.

7.11 Counterparts. This Agreement may be executed in counterparts, which, when taken together, shall be deemed one fully executed original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

ASSET MANAGER:

Continental Real Estate Companies Commercial Properties Corp.,
a Florida corporation

By: _____
Name:
Its:

OWNER:

By: _____
Name: _____
Its: _____

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