

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, et al.,

Relief Defendants.

**RECEIVER'S MOTION FOR AN ORDER APPROVING THE CONTRACT OF SALE
OF A PORTION OF DB BILOXI, LLC'S PROPERTY AND DISBURSEMENT OF
PROCEEDS OF SALE**

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., by and through undersigned counsel, hereby files this Motion for an Order Approving the Contract of Sale of a Portion of DB Biloxi, LLC's Property and Disbursement of Proceeds of Sale and states:

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

2. DB Biloxi, LLC (DB Biloxi), one of the Relief Defendants, is a Florida limited liability company formed by Dana Berman which was funded by loans from a third party bank

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

and loans from certain lender groups. The capital structure for DB Biloxi includes a first mortgage in favor of TransCapital Bank, on a portion of the land and junior mortgages in favor of the lender groups. The junior mortgages were serviced by Defendant M.A.M.C., Incorporated.

3. In April 2005, DB Biloxi purchased an 11-acre parcel located at 2660 Beach Boulevard on the Gulf Coast in Biloxi, Mississippi (the "Property"). The improvements on the Property included a 140-unit apartment complex, known as Edgewater Garden Apartments (the "Units"), which DB Biloxi was converting to condominiums. However, the Units suffered substantial damage from Hurricane Katrina and were subsequently demolished.

4. The Property has since been subdivided into two parcels. DB Biloxi currently owes approximately \$2.5 Million to TransCapital Bank, the first mortgage-holder on the front 3-acre parcel; DB Biloxi also owes loans totaling approximately \$10,465,000 to approximately 234 individuals (collectively, the "Lenders") in relation to the Edgewater Gardens Apartments Property secured by a second mortgage on the front 3 acre parcel and a first mortgage on an 8-acre back parcel. On June 23, 2009, the court has entered an order allowing the Receiver to treat all lenders *pari passu* with respect to recovery on their various loans in proceedings related to DB Biloxi or on the sale of assets belonging to DB Biloxi ("Pari Passu Order"). A copy of the Court's Pari Passu Order is attached hereto as Exhibit A.

5. The Receiver has attempted to market the Property in the best interests of the Lenders, which group the Receivership was designed to protect and obtained a Letter of Intent (the "LOI") from Wal-Mart Stores, Inc. for the 5.5 acres of the 8-acre back parcel (the "Property").

6. On September 23, 2009, the Court approved the proposed sale of the Property pursuant to the Letter of Intent and the Receiver's execution of the terms of the LOI. A copy the Court's September 23, 2009 Order is attached hereto as **Exhibit B**.

7. Pursuant to the terms of the Letter of Intent Wal-Mart will pay \$ 1 Million to purchase the Property ("Proceeds of Sale").

8. The Receiver executed the LOI pursuant to the Court's Receivership Order authorizing the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants and the entities controlled by the Receivership Defendants which states that:

[t]he 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. Similarly, the Receiver now seeks the Court's approval to enter into and close on the contract for the sale of the Property attached hereto as **Exhibit C** (the "Contract").

10. There are approximately 234 Lenders with regard to DB Biloxi who are represented by an Executive Committee of Lenders, which committee has unanimously approved the sale of the Property pursuant to the terms of the Contract. Pursuant to the Court's June 23, 2009 Pari Passu Order, the Lenders are to be treated as equal in priority with respect to recoveries on their various loans to DB Biloxi, including on any sale(s) of DB Biloxi's assets. See Exhibit A.

11. The Receiver has utilized the notice procedures which were established by the Court. The Receiver will post this Motion including the Contract, and Notice of Hearing to the Receivership website and distribute a copy of the Notice of Hearing and Motion to the Lenders via the posting and e-mail distribution procedures previously established by this Court for the purposes of the Receivership.

12. The Receiver seeks to distribute the Proceeds of Sale as follows:

- a. \$6,732.00 to Berger Singerman, P.A. for representation of the Receiver in relation to the instant project including its efforts related to this Motion;

- b. \$5,000.00 holdback as reserve for Berger Singerman, P.A. for additional attorneys fees incurred in resolving post-closing issues and through the hearing on this motion. The Receiver requests authorization to pay up to the \$5,000.00 amount without further order of this Court;
- c. \$10,000.00 holdback as a reserve for the Receiver's fee and for Akerman Senterfitt's for representation of the Receiver in relation to the instant transaction; The Receiver requests authorization to pay up to the \$10,000 amount without further order of this Court;
- d. \$90,000 plus 8% contractual interest to repay the priority loans advanced by certain lenders post-Receivership.
- e. \$20,000.00 to the Receivership estate representing a 2% holdback of the gross sales proceeds in accordance with prior Orders of the Court to cover administrative expenses
- f. \$100,000 holdback as a reserve for this project for disbursement at the discretion of the Executive Committee of Lenders upon further Motion and Order of this Court;
- g. The Receiver further seeks authority to distribute the remaining net proceeds to the Lenders on a pro-rata basis in accordance with interests in the loans to DB Biloxi, LLC, *pari passu*.

WHEREFORE, the Receiver moves this Court for entry of an Order:

- a. finding that the notice and established procedures by posting to the Receivership website and e-mail distribution to the Lenders constitute adequate notice of the instant motion and hearing thereon;
- b. approving the Receiver's execution of the Contract and authorizing the Receiver to perform all acts and execute all documents necessary to effectuate the terms of the Contract and close on the sale of the Property pursuant to the Contract ;

- c. authorizing the Receiver to make the distributions outlined in paragraph 12 from the Proceeds of Sale; and
- d. awarding such other and further relief this 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 **30th day of September 2009**, to the attached service list.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

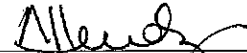
1000 Wachovia Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

Phone: (305) 755-9500 / Fax: (305) 714-4340

By: _____



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Counsel for Flagstar Bank
ADORNO & YOSS, LLP
2525 Ponce de Leon Boulevard, Suite 400
Coral Gables, Florida 33134

cc: The Honorable Thomas Wilson, Jr. (*via U.S. Mail*)
Michael Goldberg, Esq., as Receiver (*via e-mail*)
The Investor(s)/Lender(s) Group (*via e-mail*)
Posted to the Berman Mortgage Website

2343210-1

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

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

**ORDER GRANTING RECEIVER'S MOTION TO
TREAT ALL INVESTORS OF DB BILOXI, LLC *PARI PASSU***

THIS MATTER CAME ON before the court on the Receiver's Motion To Treat All Investors of DB Biloxi, LLC *Pari Passu* at 2:30 p.m. on June 23, 2009, and the Court having reviewed the motion, reviewed the procedures for service of the motion, found that the method of service of the motion was sufficient, having heard the arguments of counsel, and being otherwise fully advised in the premises, it is:

ORDERED AND ADJUDGED as follows:

1. The motion and all the relief requested in the motion is GRANTED.



2. All MAMC investors in the DB Biloxi, LLC project, shall be treated *pari passu* with respect to any recovery made in proceedings against or involving DB Biloxi, LLC.

3. The Receiver is hereby authorized to treat all MAMC investors in the DB Biloxi, LLC project *pari passu* with respect to any distributions from the sale of DB Biloxi, LLC's assets.

4. _____

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida, on this 23rd day of June, 2009.

Confirmed Copy

JUN 23 2009

Thomas S. Wilson, Jr.

THOMAS WILSON, Jr. Circuit Court Judge
CIRCUIT JUDGE

Copies furnished to:

All interested parties.

2175147-1

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO: 07-43672 CA 09

STATE OF FLORIDA, OFFICE
OF FINANCIAL REGULATION

Plaintiff(s),

vs.

BERMAN MORTGAGE CORPORATION

et al.

Defendant(s).

07-43672 CA 09

ORDER

GRANTING/DENYING
~~PLAINTIFF'S/DEFENDANT'S~~
RECEIVER'S MOTION

FOR AN ORDER APPROVING
SALE OF DB BILOXI, LLC
PROPERTY PURSUANT TO LOI

Receiver's THIS CAUSE having come on to be heard on Wednesday, September 23, 2009
on Plaintiff's/Defendant's Motion FOR AN ORDER APPROVING THE SALE OF A

PORTION OF DB BILOXI, LLC'S PROPERTY PURSUANT TO THE LETTER OF

INTENT TO PURCHASE BY WALMART STORES, INC. AND APPROVING LOI EXECUTION

and the Court having heard argument of counsel, and being otherwise advised in the premises, it is BY RECEIVER
hereupon (MOTION)

ORDERED AND ADJUDGED that said Motion be, and the same is hereby GRANTED.

THE COURT FINDS THAT THE NOTICE PROCEDURES USED BY THE RECEIVER CONSTITUTE
ADEQUATE NOTICE TO THE LENDERS OF THE MOTION AND HEARING THEREON.

THE COURT HEREBY APPROVES THE RECEIVER'S EXECUTION OF THE LETTER OF INTENT

ATTACHED TO THE MOTION, NUNC PRO TUNC TO JULY 25, 2009. THE

RECEIVER IS AUTHORIZED TO COMPLY WITH THE TERMS OF THE LETTER OF

INTENT AND PERFORM SUCH ACTS AND EXECUTE ALL APPROPRIATE DOCUMENTS
TO EFFECTUATE THE TERMS OF THE LETTER OF INTENT.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 23rd day of

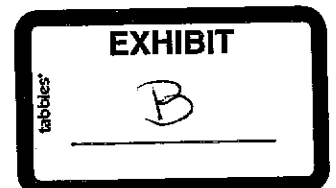
SEPTEMBER, 2009

Thomas S. Wilson, Jr.
CIRCUIT COURT JUDGE

THOMAS S. WILSON, Jr.

Copies furnished to: Counsel of Record

117.01-554 1/03 POSTED TO RECEIVERSHIP WEBSITE.



DRAFT 9.1.09

Biloxi, MS

Store #1088-05

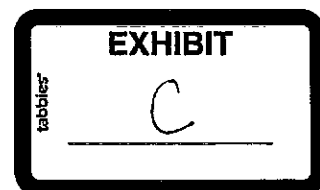
PURCHASE AGREEMENT

Date: _____, 2009

DB BILOXI, LLC, a Florida limited liability company ("Seller")**WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Buyer")

1. Sale and Purchase. Pursuant to this Agreement, Seller shall sell and Buyer shall purchase the approximately 5.5-acre tract of land located in the City of Biloxi, Harrison County, Mississippi, together with all improvements thereon, easements, water rights, mineral rights and other rights appurtenant thereto and all of Seller's right, title, and interest in any public rights-of-way adjoining the property, together with any and all development fees, impact fees, water, sewer or other utility tap, connection, meter or service fees or amounts which have been paid to any governmental authority in connection with any previous development of the property or any utility service provided to any improvement located on said land (collectively, the "Property") described in Exhibit A hereto.
2. Purchase Price. The purchase price for the Property (the "Purchase Price") is One Million and 00/100 Dollars (\$1,000,000.00) unless the Survey (as defined below) reveals that the Property contains fewer or more than five and one-half (5.5) acres, in which case the Purchase Price will equal One Hundred Eighty-One Thousand Eight Hundred Eighteen and 18/100 Dollars (\$181,818.18) multiplied by the number of Net Acres (as defined below) shown by the Survey. Buyer will pay Ten Thousand and 00/100 Dollars (\$10,000.00) (the "Deposit") within ten (10) days after its execution hereof to an interest bearing escrow account with First American Title Insurance Company Title Insurance Company ("Title Company"), with interest accruing to Buyer. Such interest shall be included in any refund of the Deposit hereunder. Any amounts required to be deposited by Buyer with the Title Company pursuant to the terms of this Agreement may, at Buyer's election, be allocated pursuant to an irrevocable letter of credit existing in favor of the Title Company. The balance of the Purchase Price after application of any deposits made pursuant to this Agreement will be paid through the Escrow upon closing of this sale ("Closing") by Federal wire transfer.
3. INTENTIONALLY OMITTED.
4. Survey. Buyer, at its own expense, shall obtain a survey of the Property (the "Survey") suitable to Buyer and Title Company, containing the certification of the surveyor of the number of net acres contained in the Property, exclusive of any land lying within roadways, streets, highways, alleys, canals, wetlands, flood plains or rights of way or

Biloxi, MS Store #1088-05
 Purchase Agreement -- DB III
 September 1, 2009
 Jackson 4325105v1



areas that are, by dedication or easement or use over time, open to public use (the "Net Acres").

5. Title Review. The Title Company shall, at Buyer's expense, provide Buyer with a commitment for an ALTA owner's title policy on the Property (the "Commitment"), and copies of all instruments shown by the Commitment as exceptions. At Closing Seller shall pay and release all amounts secured by mortgages, deeds of trust or other liens on the Property ("Monetary Liens") and terminate all existing tenancies or rights to possession of the Property ("Tenancy Rights"). Buyer shall have thirty (30) days after receipt of the Commitment, Survey and copies of all documents constituting exceptions to title and survey (the "Review Period"), to review the Commitment and Survey. If Buyer objects to any matters in the Commitment or Survey, Buyer shall notify Seller in writing within the Review Period. Within thirty (30) days of receipt of notice, Seller shall clear the title of the matters to which Buyer objects. If Buyer does not either accept or object to the Commitment and Survey within the Review Period, Buyer shall be deemed to have accepted the Commitment and Survey. Except for Monetary Liens, Tenancy Rights and matters to which Buyer objects, exceptions contained in the Commitment are the "Permitted Exceptions". If the Commitment is amended or supplemented after Buyer has submitted its objections to Seller, the same time periods, procedures and notices for objections and clearance of title shall apply to matters disclosed thereby.
6. Title Insurance and Deed. At Closing, Seller shall convey marketable fee simple title to the Property to Buyer, by special warranty deed in a form acceptable to Buyer, if this is the type of deed seller received subject only to the Permitted Exceptions. The deed shall specifically list the Permitted Exceptions on an exhibit and shall not contain language such as or similar in context to "subject to all matters of record." Buyer shall obtain at Closing, at Buyer's expense, a standard form ALTA Owners Title Insurance Policy (the "Policy") issued by the Title Company, insuring marketable fee simple title to Buyer in the full amount of the Purchase Price and containing no exceptions or conditions other than the Permitted Exceptions. Buyer has the right to elect to obtain an ALTA extended coverage title insurance policy and such endorsements to the Policy as Buyer may require including a contiguity endorsement satisfactory to Buyer insuring that the Property is contiguous to the Related Parcel (as defined below). Buyer will be responsible for the premium for the title policy and the costs of any endorsements other than endorsements obtained by Seller to cure Buyer's title objections as set forth in Section 5.
7. Risk of Loss and Condemnation. Until Closing, Seller has the risk of loss or damage to the Property. If any loss or damage occurs prior to Closing, Buyer may, at its option, either (i) cancel this Agreement and receive a refund of the Deposit, or (ii) accept the Property with the Purchase Price reduced by the cost of replacement or repair. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement

and receive a refund of the Deposit, or (b) complete the purchase, with all condemnation proceeds and claims being assigned to Buyer.

8. Taxes and Assessments. Any real property taxes, water rates, sewer charges and rents shall be prorated and adjusted on the basis of the actual days in the calendar year, Seller to have the last day, to the date of Closing. Taxes for all prior years shall be paid by Seller. If Closing occurs before the tax rate is fixed for the then-current year, taxes will be apportioned upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, to be adjusted between the parties based on actual taxes for the year in which Closing occurs at the time actual taxes are determined. At Closing, Seller and Buyer shall each deliver its prorated share of taxes plus an additional ten (10) percent to Butler, Snow, O'Mara, Stevens & Cannada, PLLC ("Escrow Agent") for payment to the taxing authority before delinquency based on the amount of prorated taxes for the entire tax parcel multiplied by the percentage derived by dividing the number of square feet contained in the Property by the number of square feet contained in the tax parcel as a whole with an equitable adjustment for any improvements that affect taxes. Because the tax parcel is carried on the tax rolls in the name of Seller, Seller warrants and agrees that so long as the Property remains part of such tax parcel, Seller shall pay all taxes on the tax parcel in a timely manner and shall not allow such taxes to become delinquent. Assessments, either general or special, for improvements completed prior to Closing, whether matured or unmatured, shall be paid in full by Seller (including all principal and interest). All other assessments shall be paid by Buyer. The Seller will provide to Buyer such real property tax information for the Property as Buyer requests. Any Federal, state and local documentary or revenue stamps, transfer, sales and other taxes relating to the sale of the Property shall be paid by Seller at Closing and both parties agree to execute any tax forms required.
9. Notice of Default. In the event either party is in default of any provision hereof, including pursuant to Section 19, the non-defaulting party, as a condition precedent to its remedies, must give the defaulting party written notice of the default in strict accordance with the notice requirements of Section 18. The defaulting party shall have ten (10) business days from receipt of such notice to cure the default. If the default is timely cured, this Agreement shall continue in full force and effect. If the default is not timely cured, the non-defaulting party may pursue its applicable remedies set forth in Sections 10 or 11.
10. Remedies of Seller. If Buyer defaults under this Agreement, Seller's sole and exclusive remedy shall be to retain the Deposit as liquidated damages, and cancel this Agreement with Buyer responsible for the payment of any escrow cancellation fees. The parties acknowledge that: (i) it would be impracticable to fix the actual damages suffered by Seller as a result of such default; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Seller for such default.

11. Remedies of Buyer. If Seller defaults under this Agreement, Buyer may, at its option, (a) cancel this Agreement in which case the Title Company is irrevocably instructed to return the Deposit, to Buyer, Seller shall be responsible for any escrow cancellation fees and Buyer may recover from the Seller all reasonable expenses paid or incurred by Buyer in connection with this Agreement.

12. Right of Entry and Inspection. At any time prior to Closing, at Buyer's sole expense, Buyer or its authorized agents may enter upon the Property for any lawful purpose, including making Inspections (as defined below). Buyer may select qualified professionals to make "Inspections" (including tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards. Buyer shall order the Inspections within thirty (30) days of receipt of the Survey. Buyer shall keep the Property free of any liens, and repair any material physical damages to the Property arising from the Inspections. Buyer shall indemnify, defend and hold harmless the Sellers from and against all losses, claims, liens, liabilities, costs and expenses caused by Buyer's exercise of its right under this Section 12, except those arising from the gross negligence or willful misconduct of Sellers or their agents, invitees, employees or contractors or pre-existing conditions on the Property. If any Inspections disclose matters unsatisfactory to Buyer, which Seller is unable or unwilling to correct at Seller's expense, Buyer may cancel this Agreement and, if such cancellation occurs prior to the end of the Feasibility Period (as hereinafter defined), receive a refund of the Deposit.

13. Brokerage Fees. Seller shall be responsible for the payment of the brokerage fee or commission, payable only upon Closing, in an amount equal to six percent (6%) of the Purchase Price as follows: six percent (6%) to Terranova Corporation . Both parties represent that no other broker is involved in this Agreement and each party indemnifies the other against brokerage or commission claims arising out of the indemnifying party's actions.

14. Seller's Warranties. Seller makes the following representations and warranties which are true and accurate as of the date of this Agreement and as of Closing:
 - (a) Seller has no knowledge of any violations of city, county, state, federal, building, land use, fire, health, safety, environmental, hazardous materials or other governmental or public agency codes, ordinances, regulations, or orders with respect to the Property, or any lands adjacent to the Property.

 - (b) No litigation is pending, or, to the best of Seller's knowledge, threatened or likely with respect to the Property, Seller's interest therein, or which would inhibit Buyer obtaining clear title to the Property.

- (c) Seller has no knowledge of any facts concerning the Property that would adversely affect the ability of Buyer to develop the Property as a retail facility.
 - (d) To the best of Seller's knowledge and except as disclosed to Seller in writing, the Property is not contaminated with, nor threatened with contamination from outside sources by, any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority or which is known to pose a hazard to health and safety and the Property has never been used for a landfill, dump site, underground improvements, storage of hazardous or regulated substances, or by a manufacturer of any product or for any other industrial use, nor is the Property subject to any wetlands or other environmental limitation.
 - (e) Except as disclosed to Buyer on Schedule 14(e) attached hereto and made a part hereof, there are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting or relating to the Property in any way.
 - (f) Except to the extent this Agreement provides otherwise, the Property will remain in the condition existing as of the execution of this Agreement until Closing.
 - (g) The individual(s) signing this Agreement on behalf of Seller have the authority to bind the Seller to the agreements set forth herein.
15. Environmental Indemnity. Seller hereby indemnifies and agrees to defend and hold Buyer harmless from all claims, costs, liabilities, judgments or expenses (including but not limited to attorneys' fees) resulting from any representations and warranties in Section 14(d) being materially false. Seller agrees, at its sole cost and expense, to perform all acts necessary to cause the Property to comply with all federal, state and local environmental laws, rules and regulations or to cancel this Agreement and return Buyer's deposit. Buyer may postpone Closing until Seller does so, or, postpone Closing and undertake actions necessary to fulfill Seller's obligations hereunder and receive a credit against the Purchase Price for the expenses incurred by Buyer in fulfilling Seller's duties hereunder.
16. Contingencies.
- (a) Governmental Approvals. This Agreement is expressly conditioned on all approvals, including proper zoning, deemed necessary by Buyer for its use of the Property and for the construction of Buyer's planned facilities, subject only to conditions and stipulations acceptable to Buyer (the "Governmental Approvals"). Seller shall, in all ways, fully cooperate with Buyer in the pursuit of the Governmental Approvals including, without limitation, executing any application

necessary to obtain each and every Governmental Approval. Buyer shall pursue the applications and processing to completion and Seller shall execute all necessary and appropriate instruments reasonably requested by Buyer which are related to the same. "Final Approval" of the Governmental Approvals shall be the date when: (i) all of the Governmental Approvals have been reviewed and finally approved by the appropriate governmental agencies, (ii) any ordinances with respect thereto have taken effect, (iii) the time has passed for appeal of all Governmental Approvals, (iv) no notice of referendum or initiative with respect to any Governmental Approval has been published or publicized and (v) any appeals or litigation with respect to (iii) or (iv) above have been prosecuted and resolved in a manner which is satisfactory to Buyer and is not subject to remand to lower courts or governmental agencies. If Final Approval has not occurred on or before the expiration of the Feasibility Period (as defined below), as the same may be extended (the "Approval Deadline"), Buyer may, at its option, either (a) continue this Agreement in full force and effect until the same has occurred, (b) terminate this Agreement, in which case this Agreement shall be of no further force and effect, and Title Company is irrevocably instructed to return to Buyer the Deposit, or (c) waive some or all parts of this contingency, (with or without imposition of further conditions not involving additional dollar expense by Seller) at Buyer's sole and absolute discretion, and proceed with the Closing.

- (b) Feasibility Period. Buyer shall have a 180-day period from the date of this Agreement (the "Feasibility Period") to determine the feasibility of Buyer's planned development of the Property. Buyer may, at its option, extend the Feasibility Period for one (1) additional ninety (90) day period by depositing with the Title Company an additional Ten Thousand and 00/100 Dollars (\$10,000.00) for such extension. Said deposit shall increase the amount of the Deposit and be applied to the Purchase Price. In the event Buyer fails to timely make such deposit(s), Buyer shall be deemed to be in default hereof, and Seller shall be entitled to give Buyer notice of the same in accordance with Section 9 above. At any time prior to the end of the Feasibility Period, the Buyer may, for any reason in its sole and absolute discretion, cancel this Agreement and receive a refund of the Deposit.
- (c) Related Closings/Negotiations. This Agreement and purchase is wholly contingent upon Buyer being able to: (i) simultaneously close purchase transactions with certain other sellers (collectively, the "Related Escrows"), applicable to real property located contiguous to or near the Property and described on Exhibit C attached hereto (collectively, the "Related Parcel"), and (ii) successfully negotiate an easement(s) across certain property located adjacent to and east of the Property which easement(s) shall allow Buyer to develop and have access to the Property as shown on Exhibit D attached hereto and made a part hereof. In the event Buyer is not able to simultaneously close the Related

Escrows, the Agreement shall, at Buyer's sole option, terminate and neither party shall have any further obligations under the terms hereof, and the Escrow Agent is irrevocably instructed to return the Deposit to Buyer.

- (d) Utilities. Buyer shall determine if the Property is or can be adequately serviced for all utility services. If Buyer determines, in its sole discretion, that such utility service is not available in a manner or at a cost to make development of the Property economically feasible for Buyer, Buyer may cancel this Agreement and receive a refund of the Deposit, together with all interest thereon.
- (e) Declaration of Restrictions. The purchase of the Property is contingent upon Seller entering into a Declaration of Restrictions as to Seller's remaining property located adjacent to the Property and Related Parcels in substantially the form attached hereto as Exhibit E.

17. Information. Within ten (10) days after the date of this Agreement, Seller shall provide Buyer with copies of all surveys, site plans, studies, engineering reports, environmental studies, agreement pertaining to any water rights or supply, matters similar to the results of Inspections and other materials prepared for Seller, in Seller's possession or available to Seller relating to the Property and shall disclose in writing any other reports of which Seller is aware. If this Agreement is canceled, at the written request of Seller, the information provided will be returned to Seller; otherwise, Buyer may retain the information. Seller shall disclose any material changes with respect to any information contained in this Agreement which occur prior to Closing.

18. Notices. All notices and communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to Seller:

DB Biloxi, LLC
2401 Douglas Road
Coral Gables, FL 33145
Attention: E. Harold Gassenheimer

If to Buyer:

Wal-Mart Real Estate Business Trust
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Attention: Real Estate Manager
Store #1088-05

With a copy to:
William C. Byrd II
Bradley Arant Boult Cummings
1819 5th Avenue North
Birmingham, AL 35203

With Copy To:
Wal-Mart Real Estate Business Trust
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Attention: Legal Team
Store #1088-05

With Copy To:
Butler, Snow, O'Mara, Stevens &
Cannada, PLLC
17th Floor, AmSouth Plaza
210 East Capitol Street
Jackson, MS 39201
Attention: Grace Tate

Notice shall be deemed to have been given upon receipt or refusal.

19. Closing. Closing shall occur at a place and time mutually agreed upon by the parties, within thirty (30) days following the date when all conditions and contingencies set forth in this Agreement are satisfied. Seller shall deliver to Buyer and Title Company all information and documents required of it for Closing at least ten (10) days prior to Closing. If Seller fails to do so, Buyer may, at its option, delay Closing until ten (10) days after all information and documents are delivered. Each party authorizes the Title Company to prepare the settlement statements for the Closing on HUD forms, show both the Buyer and Seller columns on a single settlement statement and disclose to the other party both the Buyer's and the Seller's half of any settlement statement, pre-audit or similar closing statement. Seller shall deliver possession of the Property to Buyer at Closing.
20. Closing Costs. Notwithstanding anything to the contrary contained herein, Closing costs shall be paid as follows:

By Seller (Seller hereby authorizing Title Company to deduct the following expenses from the Seller's proceeds due at Closing):

- (a) Expenses of placing title in proper condition.
- (b) Preparation of Special Warranty Deed, affidavits and any other documents required to convey title.
- (c) Brokerage or finders fee or commission.
- (d) Seller's direct and indirect legal fees and expenses associated with this transaction.

By Buyer:

- (a) Title insurance examination and standard owner's policy premium.
- (b) Survey.
- (c) Recording fees.
- (d) Buyer's direct and indirect legal fees associated with this transaction.

21. Time of Essence. Time is of the essence of this Agreement.
22. Entire Agreement. This Agreement contains the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.
23. Headings. The Section headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.
24. Modifications and Waiver. This Agreement may be amended only by an instrument in writing signed by both Seller and Buyer. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Seller and Buyer. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.
25. Successors. This Agreement shall inure to the benefit of and bind the parties hereto and their respective executors, heirs, administrators, successors and assigns. Seller may not assign this Agreement without the prior written consent of Buyer. Buyer may freely assign this Agreement without consent by Seller.
26. Internal Revenue Code. Seller agrees to comply with Section 1445 of the Internal Revenue Code and will complete and submit to Buyer the form attached as Exhibit B.
27. Attorney's Fees; Court Costs. Except for Seller's obligation to indemnify Buyer for Attorneys' fees as set forth in Section 15, in any action or proceeding arising out of this Agreement, each party shall bear its own attorney's fees, and the prevailing party shall be entitled to recover only court costs from the non-prevailing party incurred by such party in enforcing its rights hereunder. In the event of a legal dispute, the laws of the State where the Property is located shall prevail.

28. Survival. All warranties, indemnities, representations and covenants herein and the provisions of Section 8 shall survive Closing.
29. Dates of Performance. If any date for performance of any obligation hereunder falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be extended until the next business day following such date.
30. Enforceability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof.
31. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year of the last execution shown below (the "Effective Date").

SELLER

DB BILOXI, LLC, a Florida limited liability company

By: _____

Its: _____

Date: _____

BUYER

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware Statutory Trust

By: _____
J. Chris Callaway, Regional Vice President

Date: _____

R

SCHEDULE 14(e)

Unrecorded Leases and Other Unrecorded Agreements

SCHEDULE 14(e) TO PURCHASE AGREEMENT

Biloxi, MS Store #1088-05
Purchase Agreement – DB III
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EXHIBIT A TO PURCHASE AGREEMENT

(Legal Description of the Property)

5.5 acres of that certain property bearing tax parcel # 1110M-01-002.000 located at 2660 Beach Boulevard in the City of Biloxi, Harrison County, Mississippi.

The parties hereby agree that on or before the expiration of the Feasibility Period, as the same may be extended from time to time, the legal description as set forth on the Survey shall be substituted for this Exhibit A.

EXHIBIT A TO PURCHASE AGREEMENT

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EXHIBIT B TO PURCHASE AGREEMENT

(Form of Non-Foreign Affidavit)

ENTITY TRANSFEROR

Personally appeared before me the undersigned officer, duly authorized to administer oaths, _____, who being duly sworn according to law, deposes and says on oath as follows:

1. The undersigned is presently _____ of _____, a _____ limited liability company (the "Company").

2. The undersigned is familiar with the affairs of the Company and has personal knowledge of the facts sworn to in this Affidavit, and is authorized on behalf of the Company to make this Affidavit.

3. The Company is the owner of that certain property (the "Property") described on Exhibit "A" attached hereto and by this reference made a part hereof and the Company has caused to be executed and delivered that certain deed, of even date herewith, conveying the Property to _____, a _____ partnership ("Purchaser").

4. Section 1445 of the Internal Revenue Code provides that a purchaser of a U.S. real property interest must withhold tax if the seller is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the Purchaser that the withholding of tax is not required upon the disposition of the Property by the Company, the undersigned hereby certifies the following on behalf of the Company:

- (a) The Company is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii);
- (b) The Company's U.S. Employer Identification Number is _____;
- (c) The Company's office address is _____.

5. The Company understands that this certification may be disclosed to the Internal Revenue Service by the Purchaser and that any false statement contained herein could be punished by fine, imprisonment, or both.

EXHIBIT B TO PURCHASE AGREEMENT

6. Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Company.

GIVEN under my hand and seal this _____ day of _____, 200__.

Sworn to and subscribed
in the presence of:

Notary Public _____(SEAL)

My Commission Expires:

[NOTARIAL SEAL]

EXHIBIT B TO PURCHASE AGREEMENT

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EXHIBIT C TO PURCHASE AGREEMENT

(Related Properties)

That certain property bearing tax parcel # 1110L-02-003.000 located at 2681 CT Switzer Drive, and that certain Easement Parcel bearing tax parcel #1110M-01-007.000 both parcels located in the City of Biloxi, Harrison County, Mississippi.

PARCEL 1(Tract 1)

That certain parcel of land located in Section 33, Township 7 South, Range 10 West, Second Judicial District of Harrison County, Mississippi, being more fully described as a Lot on the North Side of U.S. Highway 90, and running back North between parallel lines 225 feet apart, more or less, a distance of 2063 feet, being a portion of that certain property conveyed by Owen T. Palmer, et al. to Sherwood R. Bailey by Warranty Deed recorded in Book 531 at Page 143 of the Chancery Clerk of said County, reference to which is hereby made in aid of and as a part of this description, and being more particularly described as follows:

Beginning at a point on the North margin of U.S. Highway 90 that is 34 feet due East of the West line of Lot 48 of the L.A. Frederick Survey in the above numbered Section, marked by an old fence line; from said point of beginning, running thence N 00°00' E and parallel with the West line of said Lot 48, a distance of 2063.0 feet; running thence due West (N 90°00' W) a distance of 226.00 feet; running thence S 00°00' E and continuing along the West margin of Lot 48 of the L.A. Frederick Survey a distance of 2120.7 feet to the North margin of U.S. Highway 90; running thence N 75°40' E along said North margin 233.25 feet to the POINT OF BEGINNING. Being a part of the South ½ of U.S. Government Lot J; and all of that part of Lot 49 and the West 34 feet of Lot 48 of the L.A. Frederick Survey, located North of the North margin of the Right-of-Way of U.S. Highway 90; all in Section 33, Township

7 South, Range 10 West, Second Judicial District of Harrison County, Mississippi.

EXHIBIT C TO PURCHASE AGREEMENT

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PARCEL 1 (Tract 2)

Commencing at a "chip" in concrete on the North Margin of U.S. Highway 90 that is 34 feet due East of the West line of Lot 48 of the L.A. Frederick Survey in Section 33, Township 7 South, Range 10 West, Second Judicial District, Harrison County, Mississippi and run North for 2063.00 feet to an iron pipe for the POINT OF BEGINNING.

From said POINT OF BEGINNING run South 89 degrees 54 minutes 33 Seconds West for 225.03 feet to an iron pipe; thence run North for 3.36 feet to an iron rod on the south right of way line of C.T. Switzer, Sr. Drive; thence run North 78 degrees 34 minutes 02 seconds East along said south right of way for 229.58 feet to an iron rod; thence run South for 48.51 feet back to the POINT OF BEGINNING.

Said parcel of land is part of U.S. Government Lot 3 Section 33, Township 7 South, Range 10 West; and part of lots 48 and 49 of the L.A. Frederick Survey, in Section 33, Township 7 South, Range 10 West, Second Judicial District, Harrison County, Mississippi, and containing 0.134 acres, more or less.

PARCEL 2 (Parcel A)

That certain parcel of land located in Section 33, Township 7, South of Range 10 West, Harrison County, Mississippi.

Commencing at the point of intersection of the East boundary of Lot 53 of the L.A. Frederick survey with the North margin of U.S. Highway 90 and run thence North 0 degrees 14' East along the aforesaid East line of Lot 53 of the L.A. Frederick survey and the projection thereof a distance of 1175.90 feet to a point which point is the point of beginning of the herein described property; continues thence North 0 degrees 14' East a distance of 753.04 feet; thence South 73 degrees 58' West a distance of 124.34 feet; thence South 1 degree 27' West 523.0 feet; thence South 33 degrees 29' East a distance of 234.88 feet, more or less, to point of beginning, together with all improvements situated thereon and appurtenances thereunto belonging.

EXHIBIT C TO PURCHASE AGREEMENT

PARCEL 2 (Tract 1)

Tract I: That certain parcel of land in Lot 6 of Section Thirty-three (33), Township Seven (7) South of Range Ten (10) West, particularly described as beginning Seventy-five (75) feet due East of the Southwest Corner of Lot Fifty-Two (52) of the L.A. Frederick Survey, and running thence North to a point 400 feet North of the North margin of a public road (U.S. Highway No. 90) running East and West across said property, and running thence East Fifty (50) feet; running thence South to the Gulf of Mexico; running West along the shore of the Gulf of Mexico Fifty (50) feet to the point of beginning and being a lot of ground Fifty (50) feet wide from East to West and extending back between parallel lines Fifty (50) feet apart from the Gulf of Mexico to a line Four Hundred (400) feet North of the North margin of said Public Road together with riparian rights belonging to said property and subject to rights of way of said public road and the seawall and the public utility easements across said property, this being part of the same land acquired by M.S. Enochs by Deed dated August 17, 1927, from S.A. Tomlinson, Jr., and more specifically being the West Fifty (50) feet thereof.

The above described property is sold subject to and with ull reservation of a right of ingress and egress over, on and upon said property for driveway purposes in favor of R.O. Holt and his wife, Mrs. Louise H. Holt, their heirs, assigns, administrators, and executors as well as their customers, patrons, invitees, and licensees in connection with an incident to the conduct of a tourist court business at Fernwood by the Sea Tourist Court and any other business in which they may be engaged, except motion picture business or the usual incidentals thereto.

EXHIBIT C TO PURCHASE AGREEMENT

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PARCEL 2 (Tract II)

Tract II: The following described real property located and situated in Section No. Thirty-three (33), Township No. Seven (7) South, Range No. Ten (10) West, of the Third Principal Meridian (3rd P.M.) and situated in the County of Harrison and State of Mississippi, to-wit:

That certain property enclosed by a line running as follows: Beginning at a point on the South boundary line of Lot No. Three (3) of said Section No. Thirty-three (33) that is 209.2 feet East of the Southwest (SW) corner of said Lot No. Three (3) and thence running East (E) along the south boundary line of said Lot No. Three (3) for distance of Five Hundred and Seventy-six (576) feet to a point where an iron pipe is driven into the ground, thence North 0 degrees 9 minutes West for a distance of 1000 feet to a point where an iron pipe is driven into the ground, which point is 135.3 feet South of the South line of the right of way of the Louisville & Nashville Railroad Company, A Corporation, thence running South (s) 89 degrees 59 minutes West for a distance of 576 feet to a point where an iron pipe is driven into the ground, which point is two (2) feet South of the South line of the right of way of the Louisville & Nashville Railroad Company, A Corporation, thence running South 0 degrees 9 minutes East 1000 feet to the point of beginning; the land herein described being 1000 feet North and South and 576 feet East and West. Subject to reservation by former owners of all oil, gas and other minerals except surface sand, clay and gravel in and under and that may be produced from the above described land.

EXHIBIT C TO PURCHASE AGREEMENT

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PARCEL 2 (Tract III)

Tract III: That certain tract or parcel of land in United States Government Lot Number Six (6) in Section Thirty-three (33), Township Seven (7) South of Range Ten (10) West, and being more particularly described as being located in Lot Fifty-two (52) of the L.A. Frederick Survey, and beginning at a point approximately Seventy-five (75) feet East of the West line of the said Lot Fifty-two (52) and approximately Four Hundred (400) feet North of the North margin of the public road (U.S. Highway No. 90), said point being the Northwest corner of the property sold to R.O. Holt by Enochs Investment Company by Warranty Deed dated October 1, 1943, and recorded in Book 315, Pages 119-120, of the Record of Deeds of Harrison County, Mississippi, and which land has this day been sold to the Grantees herein by the said R.O. Holt; North from said point of beginning approximately Six Hundred (600) feet to the North line of Lot Fifty-Two (52) of the L.A. Frederick Survey and running thence East fifty (50) feet; running thence South a distance of approximately Sixty-Seven (67) feet West of the East line of Lot Fifty-two (52) of the L.A. Frederick Survey or a point Twenty-Five (25) feet West of the Northwest corner of the above mentioned property which was sold to R.O. Holt by the Enochs Investment Company; and running thence West along the North line of the above mentioned property which was sold to R.O. Holt by Enochs Investment Company to the point of beginning, and being a lot of ground Fifty (50) feet wide from East to West and extending between parallel lines Fifty (50) feet apart North and South for approximately Six Hundred (600)

feet from the North line of the above mentioned property sold to R.O. Holt by Enochs Investment Company to the North line of Lot Fifty-two (52) of the L.A. Frederick Survey; said property being part of the property sold to Mrs. Louis H. Holt by Mrs. W.F. West and H.F. West through Warranty Deed recorded in Book 309, Pages 222-224 of the Record of Land Deeds of Harrison County, Mississippi.

EXHIBIT C TO PURCHASE AGREEMENT

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LESS AND EXCEPT FROM ALL OF PARCEL 2:

THAT CERTAIN LOT or parcel of land described as COMMENCING at the Northeast property corner of property acquired by grantors in quitclaim deed dated December 24, 1986, which appears of record in Book 188, at pages 320-323, and in Book 198, at pages 74-77, of the Land Deed Records of the Second Judicial District of Harrison County, Mississippi; said corner being 566.50 feet North of and 2100.18 feet East of the Southeast intersection of the South margin of the CSX Railroad right of way and the East margin of DeBuys Road; running thence North 89° 50' 05" West a distance of 233.7 feet to the point of beginning. From said point of beginning running thence South 77° 46' 30" West a distance of 381.27 feet to a point; running thence North 00° 09' 00" West a distance of 81.81 feet to a point on the South margin of the CSX Railroad right of way; running thence South 89° 50' 05" East a distance of 372.84 feet to the point of beginning. Said property containing 15,251 square feet, or approximately .035 acre.

EXHIBIT C TO PURCHASE AGREEMENT

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EXHIBIT D TO PURCHASE AGREEMENT

Site Plan

See Attached

EXHIBIT D TO PURCHASE AGREEMENT

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EXHIBIT E TO PURCHASE AGREEMENT

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