

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
www.flsb.uscourts.gov

In re:

DB ISLAMORADA, LLC,

Debtor.

Case No. 07-20537-AJC

Chapter 11

**EXPEDITED HEARING  
REQUESTED**

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**MOTION FOR INTERIM ORDER TO OBTAIN CREDIT ALLOWABLE  
AS SUPER-PRIORITY ADMINISTRATIVE EXPENSE UNDER 11 U.S.C. § 364(c)  
SECURED BY SUPERPRIORITY LIEN UNDER 11 U.S.C. § 364(d)  
AND REQUEST FOR EXPEDITED HEARING**

DB Islamorada, LLC (“Debtor”) requests the entry of an order, pursuant to 11 U.S.C. § 364(c) and Federal Rule of Bankruptcy Procedure 4001(c), authorizing the Debtor to obtain credit in an amount up to \$500,000 to, among other things, pay the insurance premium for coverage on the Debtor’s real property, and in support states:

1. The Debtor commenced its bankruptcy case upon the filing of a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida on November 29, 2007.

2. The Debtor is operating its business and managing its assets as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. The Debtor is in the business of developing a condominium hotel (“Premises”) in Islamorada, Florida.

4. The Debtor is attempting to sell the Premises and with approval of the Court, the Premises will be sold for the highest and best price and result in an equitable distribution to all creditors.

5. The major secured creditor in this case is MAMC, INC., d/b/a Berman Capital Management as Servicing Agent, which holds,

a. a first mortgage commonly referred to as the Mortgage Note Series #1 Lenders securing a note with a principal balance of \$23,568,000.00; and,

b. a second mortgage commonly referred to as the Mortgage Note Series #2 Lenders securing a note with a principal balance of \$1,250,000.00.

6. Other secured claims against the Premises are tax liens in favor of the Monroe County Tax Collector securing debt in the total amount of \$60,654.42; and mechanics' liens securing debt in the total amount of \$586,972.34.<sup>1/</sup>

7. The Secured Creditor, or its equity security holders, have been providing additional financing for the Debtor, as needed, with the Court's approval, as follows (collectively "Prior Loans"):

a. On January 14, 2008, the Court entered its Order Granting Emergency Motion to Approve Credit Allowable as Super-Priority Administrative Expense under 11

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<sup>1/</sup> The mechanics' liens are in favor of Price Cutters Trash Removal & P-Rock Sales, Inc. (securing indebtedness in the amount of \$2,997.50); Houston Air Inc. (\$24,515.00); Island Villa Services Group, Inc. dba Island Villa Contractors (\$380,075.50); Commercial Floor Covering Specialist Inc. (\$7,380.00); David Lee Roofing and Sheetmetal, Inc. (\$765.00); Downrite Engineering Corp. (\$40,482.00); Emsea Materials, Inc. (\$5,266.22); Forestek, Inc. (\$12,107.81); Allied Trucking of Florida, Inc. (\$7,184.33); ASAP, Inc. – Marine Contractors (\$20,785.00); Bayside Plumbing and Maintenance (\$38,603.19) and Michael Uhre, Capital Builders Group, Inc. (\$46,810.79).

U.S.C. §364(c) to Pay Insurance Premiums (CP 25) which allowed the Debtor to borrow \$20,864.72.

b. On January 31, 2008, the Court entered its Order Granting Emergency Motion to Approve Credit Allowable as Super-Priority Administrative Expense under 11 U.S.C. §364(c) to Pay Insurance Premiums (CP 37) which allowed the Debtor to borrow \$40,144.08.

c. On March 6, 2008, the Court entered its Interim Order Granting Emergency Motion to Approve Credit Allowable as Super-Priority Administrative Expense under 11 U.S.C. §364(c) to Pay to Reinstate Permits (CP 43) which allowed the Debtors to borrow \$10,000.00.

8. By this Motion, the Debtor seeks authority to borrow up to \$500,000 to pay the expenses associated with the Premises, as set forth on the budget attached as Exhibit A, through October, 2008, at which time the Debtor believes that the Premises will be sold. If approved, the funds will be used to pay (i) the Prior Loans, (ii) insurance premiums, (iii) legal expenses, (iv) 2006 taxes, (v) to clean up the Premises, (vi) an appraisal, (vii) utilities and create a reserve.

9. The Debtor seeks to borrow the funds from the Mortgage Note Series #1 Lenders (“Lender Group”), who presently hold a first priority mortgage on the Premises. Members of the Lender Group have expressed that they would be amenable to lending funds to the Debtor (“Loan”) on the following terms and conditions:

a. The Loan shall be secured by, pursuant to 11 U.S.C. § 364(d), a lien, superior in priority to all other liens on all property of the Debtor, of any kind or nature whatsoever, and its proceeds (“DIP Collateral”).

- b. The Loan will accrue interest at an annual interest rate of twelve percent (12%);
- c. The Loan shall be repaid upon the sale of the Debtor's Premises;
- d. No senior or equal claims, liens or security interests shall attach to the DIP Collateral in this bankruptcy case or any subsequent or superseding case (including any conversion of this case to a case under Chapter 7 of the Bankruptcy Code) or any related case (collectively "Successor Case") without the express written consent of the Lender Group (which consent may be withheld in the Lender Groups' sole discretion);
- e. Except to the extent otherwise expressly set forth herein or in a written instrument, agreement or other document executed by one or more duly authorized representatives of the Lender Group, no liens or security interests granted to the Lender Group, and no claim of the Lender Group arising from an Order on this Motion shall be subject to subordination to any other liens, security interests or claims under Section 510 of the Code or otherwise;
- f. The security interests and liens granted to the Lender Group are perfected by operation of law, provided however, that the Lender Group may, but shall not be required to, take any action in order to validate or perfect such security interests and liens;
- g. In addition to the liens and security interests granted to the Lender Group, the Lender Group is granted a priority claim in an amount equal to the amount loaned by the Lender Group to the Debtor, which claim shall have the highest administrative

priority under § 364(c)(1) of the Bankruptcy Code, and shall have priority over all other costs and expenses of administration of any kind;

h. The Debtor is authorized and directed to perform all acts, and execute and comply with the terms of such agreements, instruments and documents which the Lender Group may reasonably require and/or which may be otherwise deemed reasonable and necessary by the Lender Group to effectuate these terms and conditions; and

i. These provisions shall be binding upon and inure to the benefit of the Lender Group, other secured creditors, the Debtor, and their respective successors and assigns (including any trustee or other estate representative appointed as a representative of the Debtors' estate herein or of any estate in any Successor Case).

10. The Debtor has sought financing on an alternate basis, particularly that of an administrative expense or junior or equal lien and such financing is not available.

11. The Debtor requests that the Court conduct a hearing on this Motion on an expedited basis.

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WHEREFORE, the Debtor respectfully requests that the Court to: (a) conduct an expedited hearing on this Motion; (b) enter an order authorizing the Debtor to obtain credit on the terms and conditions set forth above; and (c) and grant such other and further relief as the Court may deem proper.

Dated: May 28, 2008.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Museum Tower, Suite 2200  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: (305) 789-3200  
Facsimile: (305) 789-3395

By: /s/ Patricia A. Redmond

PATRICIA A. REDMOND.  
Florida Bar No. 303739  
[predmond@swmwas.com](mailto:predmond@swmwas.com)

# **EXHIBIT A**



## ***PROPOSED ORDER***

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division  
www.flsb.uscourts.gov

In re:

DB ISLAMORADA, LLC,

Case No. 07-20537-AJC

Debtor.

Chapter 11

\_\_\_\_\_/

**INTERIM ORDER GRANTING MOTION TO OBTAIN CREDIT  
ALLOWABLE AS SUPER-PRIORITY ADMINISTRATIVE EXPENSE  
UNDER 11 U.S.C. § 364(c) SECURED BY SUPERPRIORITY LIEN UNDER  
11 U.S.C. § 364(d) AND REQUEST FOR EXPEDITED HEARING**

THIS CAUSE came on for hearing on \_\_\_\_\_, 2008 at \_\_\_\_ p.m., upon the Motion for Interim Order to Obtain Credit Allowable as Superpriority Administrative Expense Under 11 U.S.C. § 364(c) Secured by Superpriority Lien Under 11 U.S.C. § 364(d) and Request for Expedited Hearing (D.E. \_\_\_\_, "Motion") filed by the Debtor-in-Possession. Upon the representations made on the record, after hearing argument of counsel, the Court finds good and sufficient case for granting the Motion. Therefore, it is

**ORDERED** that:

1. The Motion is GRANTED.
2. Debtor-in-possession is authorized to obtain credit in the amount of \$500,000 (“Loan”), from the Mortgage Note Series #1 Lenders (“Lender Group”), on the following terms and conditions:
  - a.. The Loan shall be secured by, pursuant to 11 U.S.C. § 364(d), a lien, superior in priority to all other liens on all property of the Debtor, of any kind or nature whatsoever, and its proceeds (“DIP Collateral”).
  - b. The Loan will accrue interest at an annual interest rate of twelve percent (12%);
  - c. The Loan shall be repaid upon the sale of the Debtor’s Premises;
  - d. No senior or equal claims, liens or security interests shall attach to the DIP Collateral in this bankruptcy case or any subsequent or superseding case (including any conversion of this case to a case under Chapter 7 of the Bankruptcy Code) or any related case (collectively “Successor Case”) without the express written consent of the Lender Group (which consent may be withheld in the Lender Groups' sole discretion);
  - e. Except to the extent otherwise expressly set forth herein or in a written instrument, agreement or other document executed by one or more duly authorized representatives of the Lender Group, no liens or security interests granted to the Lender Group, and no claim of the Lender Group arising from an Order on this

Motion shall be subject to subordination to any other liens, security interests or claims under Section 510 of the Code or otherwise;

f. The security interests and liens granted to the Lender Group are perfected by operation of law, provided however, that the Lender Group may, but shall not be required to, take any action in order to validate or perfect such security interests and liens;

g. In addition to the liens and security interests granted to the Lender Group, the Lender Group is granted a priority claim in an amount equal to the amount loaned by the Lender Group to the Debtor, which claim shall have the highest administrative priority under § 364(c)(1) of the Bankruptcy Code, and shall have priority over all other costs and expenses of administration of any kind;

h. The Debtor is authorized and directed to perform all acts, and execute and comply with the terms of such agreements, instruments and documents which the Lender Group may reasonably require and/or which may be otherwise deemed reasonable and necessary by the Lender Group to effectuate these terms and conditions; and

i. These provisions shall be binding upon and inure to the benefit of the Lender Group, other secured creditors, the Debtor, and their respective successors and assigns (including any trustee or other estate representative appointed as a representative of the Debtors' estate herein or of any estate in any Successor Case).

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**Submitted by:**

PATRICIA A. REDMOND, ESQ.  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Museum Tower, Suite 2200  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: (305) 789-3200  
Facsimile: (305) 789-3395

**Copies to:**

Attorney Redmond shall serve a conformed copy of this Order upon receipt of same on all parties in interest, and shall file a Certificate of Service with the Court.

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