# IN THE CIRCUIT COURT OF THE 11<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA OFFICE OF FINANCIAL REGULATION,

GENERAL JURISDICTION DIVISION

CASE NO.: 07-43672-CA-09

Plaintiff,

VS.

BERMAN MORTGAGE GROUP and DB BILOXI, LLC at al.,

Defendants,

VS.

JOHNS MANVILLE, INC. a Delaware corporation,

Intervener/Third Party Plaintiff.

# JOHNS MANVILLE'S OBJECTIONS TO SUBORDINATION TO MAMC/BMC LENDER MORTGAGE

Limited Intervener, Johns Manville, Inc. ("Johns Manville"), by and through its undersigned counsel, respectfully submits its Objections to Subordination to MAMC/BMC Lender Mortgage, and states:

- 1. On February 10, 2009, this Court entered its Order Granting Receiver's Motion to Compromise with Johns Manville (hereinafter, "the Order"). A copy of the Order is attached hereto as Exhibit "A."
- 2. Inter alia, the Order provided that Johns Manville may obtain a judgment against D.B. Biloxi LLC (Edgewater) and that such judgment would be "junior to the Transcapital Mortgage."

The Order also provided that Johns Manville's judgment "shall be junior to the MAMC/BMC Lender Mortgage unless within thirty days Johns Manville files papers objecting to this priority in which case the priority shall be set down for hearing."

and the William of the first of the first of the second of the second of the second of the second of the second

- UCC Financing Statements indicate that the MAMC/BMC Lender Mortgage is in the amount of \$3.5 million. See Statements attached as composite Exhibit "B."
- 5. Accordingly, Johns Manville objects to subordination to the MAMC/BMC Lender Mortgage to the extent such subordination exceeds \$3.5 million.
- 6. In addition, Johns Manville objects on equitable grounds. Inter alia, it provided real services and products to D.B. Biloxi LLC (Edgewater). The MAMC/BMC Lender group were/are investors and speculators. It would be inequitable to accord a higher priority to the MAMC/BMC Lender group.

WHEREFORE, based on the foregoing, Limited Intervener, Johns Manville, Inc., objects to subordination to the MAMC/BMC Lender Mortgage.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was transmitted via U.S. Mail on this day of March, 2009 to all persons on the attached Service List.

> CASEY CIKLIN **LUBITZ MARTENS** O'CONNELL

(Counsel for Johns Manville)

515 North Flagler Drive, Suite 1900

West Palm Beach, Florida 33401

Telephone:

561-832-5900

Facsimile:

561-833-4209

By:

LINDA DICKHAUS AGNANT

Florida Bar No.: 708623 CHARLES L. PICKETT

Florida Bar No.: 0051217

### SERVICE LIST

Christina Saenz Assistant General Counsel,Office of Fin. Reg.  $401~\mathrm{NW}~2^{\mathrm{ND}}$  Avenue Suite N-706 Miami, FL 33128

ALAN M. SANDLER, ESQ. ANDLER & SANDLER 117 ARAGON AVE. CORAL GABLES, FL 33134

MICHAEL I. GOLDBERG, ESQ. ACKERMAN SENTERFITT 350 E. LAS OLAS BLVD., SUITE 1600 FT. LAUDERDALE, FL 33301-4127

DANIEL KAPLAN, ESQ.
DANIEL KAPLAN, PA
2875 NE 191 St., SUITE 600
AVENTURA, FL 33180

CHARLES W. THROCKMORTON, ESQ. KOZYAK TROPIN THROCKMORTON, PA 2525 PONCE DE LEON BLVD. 9TH FL CORAL GABLES, FL 33134

REY HICKS & JAVIER CASTILLO COMPLETE PROPERTY MANAGEMENT PO BOX 402507 MIAMI BEACH, FL 33140 James D. Gassenheimer, Esq. Berger Singerman 200 S. Biscayne Blvd., Suite 100 Miami, FL 33131

Allan A. Joseph, Esq. David and Joseph, PL 1001 Brickell Bay Dr., Suite 2002 Miami, FL 33131

RICHARD R. ROBLES, ESQ. LAW OFFICES OF RICHARD R. ROBLES, PA 905 BRICKELL BAY DRIVE TOWER II, MEZZANINE, SUITE 228 MIAMI, FL 33131

HOWARD N. KAHN, ESQ. KAHN CHENKIN & RESNIK, PL 1815 GRIFFIN RD., SUITE 207 DANIA, FL 33304

J. Andrew Baldwin, Esq. The Solomon Law group, PA 1881 W. Kennedy Blvd. Tampa, FL 33606-1606

Mr. Daren Schwartz 12555 Biscayne Bl.vd., Unit 930 North Miami, FL 33181

#### SERVICE LIST

JARED GELLES, ESQ.
RAFFERTY, STOLZENBERG GELLES ET AL.
1401 BRICKELL AVENUE, SUITE 825
MIAMI, FL 33131-3502

Gabrielle D'Alemberte, Esq. Law Offices of Robert Paqrks 2121 Ponce de Leon Blvd, Suite 505 Coral Gables, FL 33134

RICHARD P. COLE, ESQ.
COLE SCOTT & KISSANE, PA
PACIFIC NATIONAL BANK BUILDING
1390 BRICKELL AVENUE, 3<sup>RD</sup> FL
MIAMI, FL 33131

MICHAEL A. HANZMAN, ESQ. HANZMAN GILBERT LLP 2525 PONCE DE LEON BLVD, SUITE 700 CORAL GABLES, FL 33134

JASON S. MILLER ADORNO & YOSS, LLP 2525 PONCE DE LEON BLVD., SUITE 400 CORAL GABLES, FL 33134

COURTNEY MURPHY, ESQ.
ERIC T. KREJCI, ESQ.
CLAUSEN MILLER, PC
ONE CHASE MANHATTAN PLAZA – 39<sup>TH</sup> FL
NEW YORK, NY 10005

Norman Malinski, Esq. 2875 NE 191st Street, suite 508 Aventura, FL 33180

ROBERT B. MILLER, ESQ.
TABAS, FREEDMAN, SOLOFF & MILLER, PA
THE INGRAHAM BUILDING
25 SE 2<sup>ND</sup> AVENUE, SUITE 919
MIAMI, FL 33131-1538

DAVID A. WHEELER, ESQ. WHEELER & WHEELER, PLLC 185 MAIN STREET BILOXI, MS 39530

DEAN C. COLSON, ESQ. COLSON HICKS EIDSON 255 ARAGON AVENUE, 1ND FL CORAL GABLES, FL 33134

WILLIAM S. BERK, ESQ.
MELISSA MCMILLAN SIMS, ESQ.
BERK MERCHANT & SIMS, PLC
2100 PONCE DE LEON BLVD – PH-1
CORAL GABLES, FL 33134

LAWRENCE SHOOT, ESQ. 4830 S.W. 92<sup>ND</sup> AVE MIAMI, FL 33165

### SERVICE LIST

HELEN SCHWARTZ ROMANEZ, ESQ. THE ROMANEZ LAW FIRM 255 ALHAMBRA CIRCLE – SUITE 850 CORAL GABLES, FL 33134

ALLEN P. PEGG, ESQ. MURAI, WALD, ET. AL. TWO ALHAMBRA PLAZA PENTHOUSE 1B CORAL GABLES, FL 33134 JAMES S. TELEPMAN, ESQ.
COHEN NORRIS, ET AL.
712 U.S. HIGHWAY ONE – SUITE 400
NORTH PALM BEACH, FL 33408-7146

CHARLES L. PICKETT, ESQ.
CASEY CIKLIN LUBITZ MARTENS & O'CONNELL
515 NORTH FLAGLER DRIVE
SUITE 1900
WEST PALM BEACH, FL 33401

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup> 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.

•

PLAINTIFF S/DEFENDANT'S
Receiver's motion to
compromise with John's

ORDER

Manuille

Berman Modbjage Corp

Defendant(s).

on Plaintiff & Motion

Receiver's motion for Court order authorizing Receiver to

Compromise with the Claims of Johns Manuel

and the Court having heard argument of counsel, and being otherwise advised in the premises, it is hereupon

Granted. Receive is authorized date to alow dohn's Manuelle to obtain a judgment against D. B. Bilox. The judgment to obtain a judgment against D. B. Bilox. The judgment to the be justing to the leanscapital Mocteage. The judgment will be judgment to the Mame/ Rmc Candle Working unless within thirty days Johns Manuelle files papers obserting to this prienting in which can the priority low shall be set close for hearing to Chambers at Miami-Dade County, Florida this day of

February , 2009

CIRCUIT COURT JUDGE

THOMAS S. WILSON, JI.

Copies furnished to: Counsel of Record

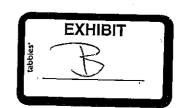
117.01-554 1/03

EXHIBIT .sapples

|   |  |  | 451 No  | <u>To:</u><br>I Randall, Jr.<br>orthpark Drive,<br>and, MS 3915                  | Ste. A   |
|---|--|--|---|--|--|
| CC FINANCING  | 8 (front and book) CAREFIXLY   |  | <u> </u>  |  | ومرز بنتني                                     |
| NAME & PHONE OF C   | ONTACT AT FILER (optional)   |  |   |  | رواد اور اوراد<br>پرواز اوراد رواد کاراد کاراد |
| Baker Crong (<br>307 Continents<br>3250 Mary Str  | MENT TO: (Name and Address)<br>Bassenheimer LLP:<br>Il Piaza   |  |   | ent 2006 3543<br>lecorded 5/12/200<br>ses 18.00                                  |  |
| DEBTOR'S EXACT R  | JLLILEGIAL NAME: Inventonly our ceptor name (1e pr. 1b)  |  | FACE IS FO  | R FILMO OFFICE USE (   | NEY!   |
| DE BILOXI LLC.  | OME:   |  | <u></u> .   |  | <u> </u>                                       |
| TE INCIVIOUAL SEAST   | We.  | FRST NAME  | MOOLE   | NAME   | SUFFIX   |
| O, MAILING ADDRESS  | Constitution of the Consti | CITY   | STATE   | POSTAL CODE  | COUNTRY  |
|   |  |  |   |  | 1-1-19-19-19                                   |
| 经运行的 有一种医动物的 化二氯  | (a) 501  | Caconiil Grove   | FL  | 33133  | USA  |
| 3250 Mary Street, Sul<br>a <u>seewatruc</u> fions   | ADO'L NEO RE 1. TYPE OF ORGANIZATION   | Coconiil Grove:  | FL<br>1s. ORG   | F 5 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7  | USA  |
| 3250 Mary Street, Sul<br>4. BEEWATRUCTIONS<br>7. ADDITIONAL DESTO   | ADOLINFO RE (1-TYPE OF ORGANIZATION) ORGANIZATION Limited Liability Company R'S EXACT FULL LEGAL NAME - Insert only pas de   | Coconiil Grove:  11. JURISDICTION OF CRIGANIZATION Florids   | FL<br>1s. ORG<br>1.0400   | 33133  | USA  |
| 3250 Mary Street, Sul<br>4. <u>septinatructions</u>   | ADOLINFO RE (1-TYPE OF ORGANIZATION) ORGANIZATION Limited Liability Company R'S EXACT FULL LEGAL NAME - Insert only pas de   | Coconiil Grove:  11. JURISDICTION OF CRIGANIZATION Florids   | FL<br>1s. ORG<br>1.0400   | 33133  | 12.0   |
| 3250 Mary Street, Sul<br>4. BEEWATRUCTIONS<br>7. ADDITIONAL DESTO   | ADDITION RE 16 TYPE OF ORGANIZATION CHARACTER LIMITED LIMITED LIMITED LIMITED LIMITED LIMITED ROOM OF THE POST OF  | Coconiil Grove:  11. JURISDICTION OF CRIGANIZATION Florids   | FL<br>1s. ORG<br>1.0400   | 33133<br>AMEATIONAL ID * 1 any<br>0071379  | USA  |
| 3250 Mary Street, Suit a seematrugtions  7. Adolftonal DESTO  (2a. ORGANIZATION B.R.  | ADDITION RE 16 TYPE OF ORGANIZATION CHARACTER LIMITED LIMITED LIMITED LIMITED LIMITED LIMITED ROOM OF THE POST OF  | COCORDIA GROVE:  1. JURISDICTION OF OR GLAVIZATION:  Florida  bitar nerite (2s or 2a) - do tot abbreviate or comb  | FL Is GRG. LC400 no names   | 33133<br>NAZATIONAL ID W. II and<br>G071379<br>NAME                              | USA  |
| 1250 Mary Street, Suit & SERINSTRUCTIONS  1. ADDITIONAL DESTO 23, ORGANIZATION SINCE A CONTROL SUASTION AND ADDRESS OF SERINSTRUCTIONS  | ADDITION OR DESTREE OF GRANZATION DESTOR LIMITED LIGHTLY COMPANY AND ADDITIONS OF THE PROPERTY | CACOMINI Grove  17. AURISCICTION OF ORGANIZATION  FIORIDA  billion harmo (28 or 20) - do not abbreviate or comini  FIRST NAME  21. JUNESDICTION OF ORGANIZATION  | FL Is GRG. LC400 no names   | 33133<br>NAZATIONAL ID W. B and<br>0071379                                       | USA  |
| 1250 Mary Street, Suit & SERINSTRUCTIONS  1. ADDITIONAL DESTO 23, ORGANIZATION SINCE A CONTROL SUASTION AND ADDRESS OF SERINSTRUCTIONS  | ADDITUTE OR DE TUPE OF ORGANIZATION DEBTOR LIMITED LIBITITY OF DEBTOR LIMITED LIBITITY OF DEBTOR ORGANIZATION | CACOMINI Grove  17. AURISCICTION OF ORGANIZATION  FIORIDA  billion harmo (28 or 20) - do not abbreviate or comini  FIRST NAME  21. JUNESDICTION OF ORGANIZATION  | FL Is GRG. LC400 no names   | 33133  ANZATIONAL ID #, B and OG71379  NAME  POSTAL COOS  ANZATIONAL ID #, Ramy  | USA  |
| ADOITIONAL DEBTO TABLE PROPERTY TO SEEINSTRUCTIONS TO PROPERTY TO | ADDITION DESTRUCTION DESTRUCTI | COCOMINI Grove:  11. JURISDICTION OF ORIGINALIZATION  FIORIDA  billion manner (2s or 20) - do not abbreviate or comini  FIRST NAME:  CITY  31. JURISDICTION OF ORIGINAZATION  71. Internative gas secured party mains (Sacc. 35) | FL Is GRG. LC400 no names   | 33133 ANZATIONAL ID W. B and OQ71379  NAME  POSTAL COOE  ANZATIONAL ID A Rang    | USA  |
| 1250 Mary Street, Suit 4. BEENGTRUCTIONS 1. ADDITIONAL DEBTO 2a. DRGANZATIONS N 25. PONTOURL'S LAST 16. MALING ACCRESS 16. SEGURED PARTY 15. ORGANZATIONS   | ADDITION DESTRUCTION DESTRUCTI | CACOMINI Grove  17. AURISCICTION OF ORGANIZATION  FIORIDA  billion harmo (28 or 20) - do not abbreviate or comini  FIRST NAME  21. JUNESDICTION OF ORGANIZATION  | FL Tai ORG.   10400 | 33133  ANZATIONAL ID W. II and O071379  NAME  IPOSTAL CODE  ANZATIONAL ID A NAME | USA NOS  |
| 1250 Mary Street, Suit 4. BEENGIRUGTONS 1. ADDITIONAL DEBTO 22. UNGANIZATION SI 23. INDIVIDUAL SLAST 25. INDIVIDUAL SLAST 26. MALING ADDRESS 26. SEGURED PARTY 26. ORGANIZATION SI 26. ORGANIZATION SI 26. ORGANIZATION SI  | ADDITION DESTRUCTION DESTRUCTI | COCOMINI Grove:  11. JURISDICTION OF ORIGINALIZATION  FIORIDA  billion manner (2s or 20) - do not abbreviate or comini  FIRST NAME:  CITY  31. JURISDICTION OF ORIGINAZATION  71. Internative gas secured party mains (Sacc. 35) | FL Tai ORG.   10400 | 33133 ANZATIONAL ID W. B and OQ71379  NAME  POSTAL COOE  ANZATIONAL ID A Rang    | USA NON  |

| S ALTERNATIVE DESIGNATION IT ANALYSING   LESSEEALESSOR                  | CONSIGNEE    | CONSIGNOR      | BAILEE/BAILOF   | SELLER/BUYER           | AG. LIEN    | NON-LICEFILING       |
|---|--------------|----------------|-----------------|------------------------|-------------|----------------------|
| A LA THAT FRANCING STATEMENT Is to be filed for record (or recorded) in |              | 7. Chack to RE | SUEBT SEARCH RE | PORT (S) on Delator(s) | All Debtors | Datisat 1 Dahtor 2   |
| LY ESTATE RECORDS. ARACH ARGOSTAN B. OPTIONAL FILER REFERENCE DATA.     | IL SPONGSONS |                | . (1212         |                        |             | , et a 40 to 10 to 1 |
| 10484-014   |              |                |                 | ·                      |             | 4                    |
| 10404-014   |              |                |                 |                        |             |                      |

FEING OFFICE COPY - UCC FINANCING STATEMENT (FORM LCC1) (REV. 05/22/02)



#### EXHIBIT A TO FINANCING STATEMENT

LENDER:

A Group of Lenders Assembled by Berman Mortgage Corporation

BORROWER:

DB Biloxi, LLC, a Florida limited liability company

LOAN:

\$3,500,000 Loan to Borrower

PROPERTY ADDRESS:

2660 Beach Boulevard, Biloxi, Mississippi

CLOSING DATE:

May 5, 2006

Debtor grants Secured Party a security interest in, and assigns and pledges to Secured Party, all of the following property now owned or hereafter acquired by Debtor or in which Debtor now or hereafter has any interest, to wit:

- (a) all fixtures and building materials of every kind and nature whatsoever, now or hereafter located upon the real property described on this financing statement or any part thereof and used in connection with any present or fiture construction on or occupancy or operation of said real property and/or any buildings or improvements thereon or thereto (the real property and all buildings and improvements hereinafter being the "Real Property");
- (b) the equipment described as: all electrical, heating, lighting, incinerating and power equipment; engines, pipes, pumps, ducts, compressors, tanks, motors, conduits, switchboards; plumbing, lifting, cleaning, laundering, fire prevention, fire extinguishing, waste disposal, refrigerating, ventilating, communications, air cooling, and air conditioning apparatuses, elevators, escalators, other people or freight moving systems, shades, screens, storm prevention equipment, cabinets, partitions, shrubbery, and abstracts of and commitments and policies to insure or insuring title to the Real Property; AND
- (c) any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Real Property as a result of the exercise of the right of eminent domain, the alteration of the grade of any street or any other damage to or decrease in the value of the Real Property; and all proceeds of the conversion, voluntary or involuntary, of the Real Property, or any part thereof, into each or liquidated claims, including without limitation, proceeds of insurance; AND
- (d) all rights to enter into and all contracts for the sale of the Real Property or any part or unit thereof built or to be built on the Real Property and all licenses or leases now and hereafter entered into involving the Real Property or any part or unit thereof and all right, title, and interest of Debtor thereumder, including, without limitation, cash or securities deposited thereunder to secure performance by the contract vendees or the lessess of their obligations, together with the right, upon the happening of any event of default under the Mortgage Deed and Security Agreement and Assignment of Leases, Rents and Other Property evidenced by this Financing Statement, to receive and collect the rents, additional rents and other payments payable thereunder; AND
- (e) all rights of Debtor and deposits under any agreements of whatever nature between Debtor and any utility company of whatever nature, whether public, private or otherwise, now or hereafter servicing the Real Property;
- all agreements or undertakings between Debtor (and/or any predecessor of Debtor which Debtor has acquired by assignment or otherwise) and any architect, engineer, contractor, independent contractor, security company, waste disposal company, elevator company, exterminating company, environmental control company, any other developer or any governmental entity of any type involved in or having jurisdiction of the Real Property and/or any construction or development thereon or relating thereto; AND
- (g) all royalties, mineral oil and gas rights (including easements and/or licenses for exercising such rights), water and water rights and liberties, privileges, hereditaments and appurtenances whatsoever belonging to the Real Property or in any wise pertaining thereto, including those interests outside the boundaries of the Real Property as a result of which the Real Property is or becomes the dominant or servient estate; and the rents, issues, profits, reversions and remainders thereof, AND
- (h) all building permits, licenses, approvals, plans, drawings, specifications, surveys, site plans, plot plans, plats and any pending zoning or building applications and the deposits accompanying same applicable to or affecting the Real Property or any part thereof; AND

- all right, title and interest of Debtor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Real Property, hereafter acquired by, or released to, Debtor or constructed, assembled or placed by Debtor on the Real Property, immediately upon such acquisition, release, construction, assembling, or placement, as the case may be, and in each such case, without any further or additional mortgage, security agreement, conveyance, assignment or other act by Debtor, the same shall become subject to the lien and security interest of the Mortgage Deed and Security Agreement and Assignment of Leases, Rents and Other Property evidenced by this Financing Statement, as fully and completely, and with the same effect, as though now owned by Debtor and specifically described herein; AND
- (j) all funds under and all interest reserve or cash deposit accounts now or hereafter established in connection with or pursuant to any construction loan agreement between Debtor and Secured Party relating to the Real Property; AND
- (k) all accounts, instruments (including promissory notes), chattel paper (including morigages and security agreements), and general intangibles arising in connection with or as the result of any of the aforedescribed property;
- (I) all insurance policies, payments, escrows, refunds and prepaid premiums with respect to the aforedescribed property, AND
- (m) all property of the same classes described above, acquired or created by Debtor subsequent to the execution hereof until the termination or release of this Financing Statement; AND
- (n) all increases, substitutions, replacements, parts, special tools, renewals, additions and accessions to the aforesaid property; AND
  - (o) all proceeds and products of the aforedescribed property;

As all such property is now or may hereafter be located on, pertain to, or be used or useful in the operation, possession, or enjoyment of the Real Property, owned by Debtor, lying and simulte in Harrison County, Mississippi and more particularly described in Exhibit B attached hereto.

S.V.ENDING/Bermant.com Fuerkussissipprioest.402, DB Blant, Edgeware Backet/HBIT'A TO FDIANCING STATEMENTLENDER.wood File Floofs-Moderiday, May 5, 2006 C2006 Black Cross Gausenhaumer LLP.

## EXHIBIT B

# BACK PARCEL

### LEGAL DESCRIPTION: PARCEL "A"

THAT CERTAIN PARCEL OF LAND LOCATED IN SECTION 33, TOWNSHIP 7. SOUTH, PANGE 10 WEST, SECOND JUDICIAL DISTRICT OF HARRISON COUNTY, WISSISSIPPL BEING WORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PART OF THE SOUTH 1/2 OF U.S. GOVERNMENT LOT 3, AND A PORTION OF THAT PART OF LOT 49 AND THE WEST 34 FEET OF LOT 48 OF THE LA. FREDERICK SURVEY, LOCATED NORTH OF THE NORTH WARRING OF THE RIGHT-OF-MAY OF U.S. HOHMAY 90: ALL IN SECTION 33, TOWNSHIP 7, SOUTH, RANGE 10 WEST, SECOND JUDICIAL DISTRICT OF HARRISON COUNTY, MISSISSIPPI MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH WARRIN OF U.S. HOHMAY 90 THAT IS 34 FEET DUE EAST OF THE WEST LINE OF LOT 48 OF THE LA. FREDERICK SURVEY IN THE ABOVE MANEERED SECTION. FROM SAID POINT OF BEGINNING THENCE NOO'11'38'W PARALLEL WITH THE WEST LINE OF SAID LOT 48. A DISTANCE OF SUCON FEET TO THE POINT OF BEGINNING. THENCE CONTINUE NOO'11'38'W 1881.85 FEET TO AN IRON ROO FOUND LYNING ON THE SOUTH RIGHT-OF-MAY LINE OF C. T. SWITZER DRIVE; THENCE ALONG SAID SOUTH WARRIN, STR-23'42'W 228.51 FEET TO AN IRON ROO FOUND; THENCE SOCI'11'18'E 1535.38 FEET TO AN IRON ROO SET, THENCE NOO'00'E 225.13 FEET TO THE POINT OF BEGINNING, CONTAINING, 8.032 ACRES. SAID PARCEL HAS ACCESS THROUGH A PERPETUAL NON-EXCLUSIVE INGRESS AND EGRESS EASEMENT TO HIGHWAY 90 THROUGH A PROPOSED ACCESS DRIVE.

Indexing Instructions: Section 33, Township 7 South, Range 10 West Second Judicial District Harrison County, Mississippi

| FOLLOW INSTRUCTI                            | NG STATEMENT<br>ONS (from and back) CAREFULLY           |   |
|---|---|---|
| A, NAME & PHONE OF                          | CONTACT AT FILER [optional]                             |   |
| Omar Figueras 3                             | 05-444-6300   |   |
| B. SEND ACKNOWLE                            | DGMENT TO: (Name and Address)                           |   |
| Baker Cronig<br>307 Continer<br>3250 Mary S | Gassenheimer LLP.<br>dal Plaza                          | <del></del> -   |
| L   |   |   |
| -1.DEBTOR'S EXACTE                          | UILLEGAL NAME-insertonly <u>one</u> debtorneme (1 mer 1 | A december of the contract of |
| 14 ORGANIZATIONS N                          | AME   | O . OO HOLD STREET OF COTTON  |
| DB BILOXI, LLC.                             | * * * *   |   |
| OR TE NOWOUAL SLAST!                        | VIVIE   | FIRSTNAME   |
| 1c. MALING ADDRESS                          |   |   |
|   |   | CITY  |
| 3250 Mary Street, Suit                      | · ·   | Cocenut Grove   |
| 1d. SEEINSTRUCTIONS                         | ADDL INFORE 11 TYPE OF ORGANIZATION                     | IL JURISDICTION OF OR   |

FLORIDA SECURED TRANSACTION REGISTRY

# FILED 2006 Jun 02 AM 12:00

\*\*\*\*\* 200602795395 \*\*\*\*\*

| 1.DEBTOR'S EXACTE  | DESCRIPTION OF THE PARTY OF THE |                               |   |                  |                                       |             |
|--|--|-------------------------------|---|------------------|---------------------------------------|-------------|
| 14 ORGANIZATIONS   | VAME   |                               | A) TOWNSON THE BOY COST DES   |                  |                                       |             |
| DB BILOXI, LLC.  |  | • • •                         |   |                  |                                       | <u> </u>    |
| OR TE INDIVIOUAL STAST   | NAME   |                               | FIRSTNAME   |                  |                                       |             |
|  |  |                               |   |                  |                                       | <del></del> |
| « MALING ADDRESS   |  |                               | - ary   |                  |                                       | 1           |
| 250 Mary Street, Sui   | N 501  |                               |   | STATE            | POSTAL CODE                           | COUNTRY     |
| . SEEINSTRUCTIONS  |  | 14 TYPE OF ORGANIZATION       | Coconut Grove   | FL               | 33133                                 | USA         |
|  | ORGANIZATION   | , ·                           | 1L JURISDICTION OF ORGANIZATION   | 1g. OR           | GANIZATIONAL ID #, If any             | 1,7,7,      |
|  | DESTOR   | Limited Liability Compan      | y   Florida   | ; L840           | 00071379                              | Пыс         |
| ADDITIONAL DEBTO   | R'S EXACT FUL  | LLEGAL NAME - Insert only one | datable riskner (2s or 2h) - do not abbreviate or comi  | And Names        |                                       | <u> </u>    |
| 1  |  |                               |   |                  |                                       |             |
| 2h DOWDUAL'S UST   | VAME   |                               |   |                  |                                       |             |
| TE DESVIDUACE CAST NAME.   |  |                               |   | MODIE NAME       |                                       |             |
|  | TI WILL  | •                             | FIRSTNAME   | MICOLE           | NAME                                  | SUFFIX      |
|  |  |                               |   | MIDIXE           | NAME                                  | SUFFIX      |
|  |  |                               | CITY  | STATE            | POSTAL CODE                           |             |
| MAILING ADDRESS  |  |                               |   |                  | <u> </u>                              | COUNTRY     |
| MAILING ADDRESS  | ADD'L INFO RE  | 20. TYPE OF ORGANIZATION      |   | STATE            | POSTAL COOE                           |             |
| MAILING ADORESS  | ADD'L INFO RE<br>ORGANIZATION<br>DEBTOR  |                               | ZIJURISDICTION OF ORGANIZATION  | STATE            | <u> </u>                              | COUNTRY     |
| MALING ADDRESS SEEINSTRUCTIONS SECURED PARTYS  | ADD'L INFO RE<br>ORGANIZATION<br>DEBTOR  |                               | ZIJURISDICTION OF ORGANIZATION  | STATE            | POSTAL COOE                           |             |
| MALING ADDRESS   | ADD'L INFO RE<br>ORGANIZATION<br>DEBTOR  |                               | CITY  | STATE            | POSTAL COOE                           | COUNTRY     |
| MALING ADDRESS SEEINSTRUCTIONS SECURED PARTY'S ISLORGANIZATIONS NAIL MALING ADDRESS MALING ADDRE | ADD'L INFO RE<br>ORGANIZATION<br>DEBTOR<br>LAME (or NAME of  |                               | ZIJURISDICTION OF ORGANIZATION  | STATE            | POSTAL COOE                           | COUNTRY     |
| MAILING ADDRESS SEEINSTRUCTIONS SECURED PARTY'S N SECURED PARTY'S NA   | ADD'L INFO RE ORGANIZATION DEBTOR HAME (MINAME of MANE of MANE of MANE of DRATED   |                               | 27. JURISDICTION OF ORGANIZATION  7- Insert only pag sectured party ranne (Se or 3b)                | STATE<br>25, ORG | POSTAL CODE                           | COUNTRY     |
| MALING ADDRESS SEEINSTRUCTIONS SECURED PARTY'S N SE ORGANIZATION'S NAI M.A.M.C. INCORPO  | ADD'L INFO RE ORGANIZATION DEBTOR HAME (MINAME of MANE of MANE of MANE of DRATED   |                               | ZIJURISDICTION OF ORGANIZATION  | STATE            | POSTAL CODE                           | COUNTRY     |
| MALING ADDRESS SEEINSTRUCTIONS SECURED PARTY'S IN SECURED PARTY P | ADD'L INFO RE ORGANIZATION DEBTOR HAME (MINAME of MANE of MANE of MANE of DRATED   |                               | 21. JURISDICTION OF ORGANIZATION  7- Insert only pag section of party risens (3e or 3b)  FRIST NAME | STATE 25, ORG    | POSTAL CODE  ANIZATIONAL ID F, if any | COUNTRY     |
| MAILING ADDRESS SECURED PARTY'S IN SECURED PARTY IN SECURED PART | ADDIL INFO RE ORBANIZATION DEBTOR AMME (M NAME of DRATED   |                               | 27. JURISDICTION OF ORGANIZATION  7- Insert only pag sectured party ranne (Se or 3b)                | STATE<br>25, ORG | POSTAL CODE                           | COUNTRY     |

Florida Documentary Stamp Tax is not required.

| 5. ALTERNATIVE DESIGNATION (#       |                         |                 | <u> </u>   |                     |             |                   |
|-------------------------------------|-------------------------|-----------------|--|---------------------|-------------|-------------------|
| 6. A Disc Stown Stown Street Street | timber time to a second | ESSOR (COMSION) | EE/CONSIGNOR BALFE/BALOR                           |                     | AG, LIEN    | NON-UCCFILING     |
| IL OPTIONAL FILER REPERENCE DAY     | spoendizm.              | A recipable     | 7. Check to REQUEST SEARCH REP<br>TADDITIONAL FEET | ORT(S) on Debtor(z) | All Debtors | Debtor 1 Debtor 2 |
| 10484-014                           |                         |                 |  | <u>-</u>            |             |                   |
|                                     |                         | ••              |  |                     |             |                   |

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

# EXHIBIT A TO FINANCING STATEMENT

LENDER:

A Group of Lenders Assembled by Berman Mortgage Corporation

BORROWER:

DB Biloxi, LLC, a Florida limited liability company

LOAN:

\$3,500,000 Loan to Borrower

PROPERTY ADDRESS:

2660 Beach Boulevard, Biloxi, Mississippi

CLOSING DATE: -

May 5, 2006

Debtor grants Secured Party a security interest in, and assigns and pledges to Secured Party, all of the following property now owned or hereafter acquired by Debtor or in which Debtor now or hereafter has any interest, to with

- all fixtures and building materials of every kind and nature whatsoever, now or hereafter located upon the real property described on this financing statement or any part thereof and used in connection with any present or future construction on or occupancy of operation of said real property and/or any buildings or improvements thereon or thereto (the real property and all buildings and improvements hereinafter being the "Real Property"); AND
- (b) the equipment described as: all electrical, heating, lighting, incinerating and power equipment; engines, pipes, pumps, ducts, compressors, tanks, motors, conduits, switchboards; plumbing, lifting, cleaning, laundering, fire prevention, fire extinguishing, waste disposal, refrigerating, ventilating, communications, air cooling, and air conditioning apparatuses, elevators, escalators, other people or freightmoving systems, shades, screens, storm prevention equipment, cabinets, partitions, shrubbery, and abstracts of and commitments and policies to insure or insuring title to the Paul Despetter AND. the Real Property; AND
- (c) any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Real Property as a result of the exercise of the right of eminent domain, the alteration of the grade of any street or any other damage to or decrease in the value of the Real Property; and all proceeds of the conversion, voluntary or involuntary, of the Real Property; or any part thereof, into cash or liquidated claims, including without limitation, proceeds of incurance. AND without limitation, proceeds of insurance; AND
- (d) all rights to enter into and all contracts for the sale of the Real Property or any part or unit thereof built or to be built on the Real Property and all licenses or leases now and hereafter entered into involving the Real Property or any part or unit thereof and all right, title, and interest of Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the contract vendees or the leasees of their obligations, together with the right, upon the happening of any event of default under the Mortgage Deed and Security Agreement and with the right, upon the happening of any event of default under the Mortgage Deed and Security Agreement and Assignment of Leases, Rents and Other Property evidenced by this Financing Statement, to receive and collect the rents, additional rents and other payments payable thereunder, AND
- all rights of Debtor and deposits under any agreements of whatever nature between Debtor and any utility company of whatever nature, whether public, private or otherwise, now or hereafter servicing the Real Property;
- acquired by assignment or other wise) and any architect, engineer, contractor, independent contractor, security company, waste disposal company, elevator company, exterminating company, environmental control company, any other developer or any governmental entity of any type involved in or having jurisdiction of the Real Property and/or any construction or development thereon or relating thereto, AND
- (g) all royalties, mineral, oil and gas rights (including easements and/or licenses for exercising such rights), water and water rights and liberties, privileges, hereditaments and appurtenances whatsoever belonging to the Real Property or in any wise pertaining thereto, including those interests outside the boundaries of the Real Property as a result of which the Real Property is or becomes the dominant or servient estate; and the rents, issues, profits, reversions and remainders thereof; AND
- (h) all building permits, licenses, approvals, plans, drawings, specifications, surveys, site plans, plot plans, plats and any pending zoning or building applications and the deposits accompanying same applicable to or affecting the Real Property or any part thereof; AND

Page 1

Exhibit to UCC-1 Financing Statement

- all right, title and interest of Debtor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Real Property, hereafter acquired by, or released to, Debtor or constructed, assembled or placed by Debtor on the Real Property, immediately upon such acquisition, release, construction, assembling, or placement, as the case may be, and in each such case, without any further or additional mortgage, security agreement, conveyance, assignment or other act by Debtor, the same shall become subject to the lien and security interest of the Mortgage Deed and Security Agreement and Assignment of Leases, Rents and Other Property evidenced by this Financing Statement, as fully and completely, and with the same effect, as though now owned by Debtor and specifically described herein; AND
- (j) all funds under and all interest reserve or each deposit accounts now or hereafter established in connection with or pursuant to any construction loan agreement between Debtor and Secured Party relating to the Real Property; AND
- (k) all accounts, instruments (including promissory notes), chattel paper (including mortgages and security agreements), and general intangibles arising in connection with or as the result of any of the aforedescribed property;
- all insurance policies, payments, escrows, refunds and prepaid premiums with respect to the
- (m) all property of the same classes described above, acquired or created by Debtor subsequent to the execution hereof until the termination or release of this Financing Statement; AND
- (n) all increases, substitutions, replacements, parts, special tools, renewals, additions and accessions to the aforesaid property; AND
  - (a) all proceeds and products of the aforedescribed property;

As all such property is now or may hereafter be located on, pertain to; or be used or useful in the operation, possession, or enjoyment of the Real Property, owned by Debtor, lying and situate in Harrison County, Mississippi and more particularly described in **Exhibit B** attached hereto.

S.V.ENDINOB-manul.com FiledMississiPff10057-402, DB BROX, Edgewert BeckEDITERT A TO FINANCING STATEMENTLENDER op File #1007-402/Fidey, May 5, 2006 00206 Bakir Chelle Cetterbrime LI P.

## EXHIBIT B

## **BACK PARCEL**

## LEGAL DESCRIPTION: PARCEL "A"

THAT CERTAIN PARCEL OF LAND LOCATED IN SECTION 33, TOWNSHIP. 7 SOUTH, RANGE 10 WEST, SECOND JUDICIAL DISTRICT OF HARRSON COUNTY, MISSISSIPPI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PART OF THE SOUTH 1/2 OF U.S. GOVERNMENT LOT J, AND A PORTION OF THAT PART OF LOT 49 AND THE WEST J4 FEET OF LOT 48 OF THE LA. FREDERICK SURVEY, LOCATED NORTH OF THE NORTH MARGIN OF THE RIGHT-OF-WAY OF U.S. HIGHWAY 90: ALL IN SECTION JJ. TOWNSHIP 7 SOUTH, RANGE 10 WEST, SECOND JUDICAL DISTRICT OF HARRISON COUNTY, MISSISSIPPI MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT POINT ON THE NORTH MARGIN OF U.S. HIGHWAY 90 THAT IS J4 FEET DUE EAST OF THE WEST LINE OF LOT 48 OF THE LA. FREDERICK SURVEY IN THE ABOVE NUMBERED SECTION: FROM SAID POINT OF BEGINNING THENCE NOO'11'38'W PARALLEL WITH THE WEST LINE OF SAID LOT 48, A DISTANCE OF SOLDO FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NOO'11'38'W 1881.55 FEET TO AN IRON ROD FOUND LITING ON THE SOUTH RIGHT-OF-WAY LINE OF G. I. SWITZER DRIVE; THENCE ALONG SAID SOUTH MARGIN, S7823'42'W 228.51 FEET TO AN IRON ROD FOUND. THENCE SOC'11'18'L 1535.38 FEET TO A RON ROD SET; THENCE NOO'00'00'E 225.13 FEET TO THE POINT OF BEGINNING, CONTAINING, 8.052 ACRES. SAID PARCEL HAS ACCESS THROUGH A PERFETUAL NON-EXCLUSIVE MIGRESS AND EGRESS EASEMENT TO HIGHWAY 90 THROUGH A PROPOSED ACCESS DRIVE.