

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

GENERAL JURISDICTION DIVISION

CASE NO.: 10-30070 CA 09

AHIFO-4, LLC, a Florida limited liability
company,

Plaintiff,

vs.

MICHAEL GOLDBERG, as Receiver for
M.A.M.C INCORPORATED, a Florida
corporation, and ALAN GOLDBERG, an
individual,

Defendants.

**RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
AND FOR COURT ORDER AUTHORIZING THE RECEIVER
TO EXECUTE SETTLEMENT AGREEMENT ON BEHALF OF
BMC LENDERS AND FUTURE ADVANCE LENDERS AND FOR AUTHORIZATION
TO MAKE FIRST PRIORITY LOAN TO AHIFO-MAMC CAPE CORAL, LLC IN
ORDER TO PAY TAXES**

Michael I. Goldberg ("Receiver"), as Court Appointed Receiver over Defendants Berman Mortgage Corporation ("BMC") and M.A.M.C. Incorporated ("MAMC"), by and through undersigned counsel, jointly with Plaintiff AHIFO-4, LLC, hereby files this Motion for Approval of Settlement Agreement and for Court Order Authorizing the Receiver to Execute Settlement Agreement on Behalf of the BMC Lenders and Future Advance Lenders and for Authorization to Make First Priority Loan to AHIFO-MAMC Cape Coral, LLC in Order to Pay Taxes. In support of this motion, the Receiver states as follow:

{FT794506;1}

1. On December 11, 2007, the State of Florida, Office of Financial Regulation filed a complaint seeking an injunction against BMC, MAMC, Dana J. Berman (collectively, the "Defendants") and other related entities (the "Relief Defendants") and requesting appointment of a receiver, in the matter styled *State of Florida, Office of Financial Regulation vs. Berman Mortgage Corporation, et al.*, pending in the Eleventh Judicial Circuit in and for Miami-Dade County, designated as case no.: 07-43672 CA 09 (the "Receivership Action").

2. The Office of Financial Regulation alleged that BMC and MAMC obtained at least \$192,000,000 from more than 700 individual investors to whom the Defendants sold unregistered securities in the form of fractionalized interests in mortgages.¹ Put simply, BMC was a hard money mortgage lender, which raised funds from investors to originate mortgage loans. MAMC was an affiliated entity that serviced loans originated by BMC.

3. By Order dated December 11, 2007 (the "Receivership Order"), Michael I. Goldberg was appointed as Receiver over the assets of BMC, MAMC, and the Relief Defendants (hereinafter, the "Receivership Defendants").

4. By virtue of the Receivership Order, the Receiver has standing to institute, defend or compromise court proceedings as may in his judgment be necessary or proper for the collection, preservation and maintenance of Receivership assets and/or on behalf of the Receivership Defendants. *See* Receivership Order at ¶ 21.

5. In or about November, 2005, BMC originated an \$8.9 million dollar loan (the "Top Two Loan") to a borrower named Top Two Development, Inc. ("Top Two"). The Top Two Loan was secured by mortgages on four separate parcels of property (collectively, the "Properties") – three of which were first mortgages and one of which was a second mortgage

¹ BMC and MAMC dispute that they sold securities.

that was subordinate to a mortgage held by Fifth Third Bank on that particular parcel of property (the "Fifth Third Parcel").

6. The plaintiff in this action, AHIFO-4, LLC ("AHIFO"), financed a \$5 million dollar participation interest in the Top Two Loan, such that AHIFO's beneficial ownership in the loan was 56.18%. One hundred and fourteen (114) separate investor-lenders (the "BMC Lenders") cumulatively funded the remaining \$3.9 million dollars of the Top Two Loan, vesting in them the remaining 43.72% ownership interest in the loan. Importantly, AHIFO's servicing agreement with MAMC prohibited BMC and/or MAMC from increasing the amount of the loan without AHIFO's written permission.

7. Pursuant to the Promissory Note executed by Top Two, the Loan was serviced by MAMC in accordance with the terms of servicing agreements entered into by and between MAMC, AHIFO and the BMC Lenders.

8. In or about January, 2006, the Top Two Loan was modified by MAMC to provide for an additional \$2 million advance to Top Two, increasing the outstanding amount under the Top Two Loan to \$10.9 million dollars and thereby diluting the interests of AHIFO and the BMC Lenders in the loan. The Top Two Loan remained secured by the same four parcels of property. The additional \$2 million dollar advance was supplied by a new group of investors (the "Future Advance Lenders," and together with AHIFO and the BMC Lenders, the "Lenders"). There is a dispute as to whether or not this increase in the loan amount violated AHIFO's servicing agreement with MAMC and, hence, as to the priority of the \$2 million dollar advance relative to the original \$8.9 million Top Two Loan.

9. Top Two ultimately defaulted on the Top Two Loan and on its separate mortgage loan to Fifth Third Bank. On or about June 29, 2006, Fifth Third Bank initiated a foreclosure

action against Top Two, in the Circuit Court for the Twelfth Judicial Circuit in and for Lee County, Florida, in the case styled *Fifth Third Bank v. Top Two Development, Inc., et al.*, designated as case no. 06-CA-002677. AHIFO, the BMC Lenders and the Future Advance Lenders (collectively, the "Lenders") were named as defendants in that suit.

10. MAMC, acting as attorney-in-fact and servicing agent for the Lenders, filed a third party complaint in Fifth Third Bank's foreclosure action to foreclose on the Top Two Loan, as modified to include the \$2 million future advance.

11. On or about February 14, 2007, a Final Judgment of Foreclosure was entered in favor of the Lenders in the amount of \$12,651,937.77 against Top Two. The foreclosure action on the Top Two Loan was prosecuted with the full knowledge and consent of the Lenders.

12. In or about March, 2007, prior to the institution of the Receivership Action by the Florida Office of Financial Regulation, Alan Goldberg ("A. Goldberg") was retained to serve as the Chief Restructuring Officer ("CRO") of BMC and MAMC due to the companies' financial difficulties.

13. On or about May 7, 2007, A. Goldberg, as the CRO of MAMC entered into an agreement with AHIFO (the "May 7 Agreement") setting forth terms and conditions for the acquisition of the Fifth Third mortgage or resulting foreclosure judgment that encumbered only the Fifth Third Parcel. The May 7 Agreement contemplated that AHIFO would advance the funds necessary to acquire the Fifth Third Judgment and that an LLC would be created ("AHIFO-MAMC Cape Coral, LLC") to take the assignment of the Fifth Third Judgment and to ultimately bid and acquire title to the Fifth Third Parcel at the foreclosure sale. The May 7 Agreement also provided that AHIFO would get a 25% "bonus" based on the amount of

reduction it was able to negotiate from Fifth Third and that AHIFO's note would bear interest at 18 percent, per annum. Finally, the May 7 Agreement provided that the sum due to AHIFO based on the May 7 Agreement would be repaid with the first funds the AHIFO-MAMC Cape Coral, LLC realized from the sale of the Properties.

14. On or about June 4, 2007, the court presiding over Fifth Third's foreclosure action entered a Final Summary Judgment in favor of Fifth Third on its note and mortgage (the "Fifth Third Judgment"). The Fifth Third Judgment awarded the bank \$3,248,481.59 and granted it a first priority position with respect to the Fifth Third Parcel.

15. Pursuant to the May 7 Agreement, AHIFO negotiated and purchased the Fifth Third Judgment for \$1,850,000. As a result, the Fifth Third Judgment and the associated loan documents were assigned to AHIFO-MAMC Cape Coral, LLC.

16. AHIFO-MAMC Cape Coral, LLC subsequently purchased the Properties at the foreclosure sale resulting from the Fifth Third Judgment and took title to all four parcels of property secured by the Top Two Loan by virtue of two Certificates of Title. Based on the \$1,850,000 purchase price and the terms of the May 7 Agreement, AHIFO was to be repaid approximately \$2.2 million from the sales proceeds of the Properties and this obligation was to accrue interest at the rate of 18% per annum. Accordingly, in essence, although Fifth Third only had a lien of the Fifth Third Parcel ahead of the BMC Lenders, the debt owed to AHIFO was now to be repaid first with the sales proceeds from any of the Properties so that the BMC Lenders were essentially pushed into a second position on all parcels (and the Future Advance Lenders were either pushed in to a second or third position). As of June 1, 2011, the total amount of principal and accrued interest owed to AHIFO having priority was approximately

\$3.78 million.² Based on the current aggregate value of the Properties, there is little chance the BMC Lenders and/or Future Advance Lenders would receive any sums if this obligation stayed in place.

17. The Receiver subsequently became aware that certain of the BMC Lenders and the Future Advance Lenders were taking the position that Alan Goldberg did not have authority to bind MAMC or to cause MAMC to bind them to the May 7 Agreement. The BMC Lenders believed that the May 7 Agreement was one-sided and that Alan Goldberg should not have entered into it because it effectively put them in a second position on all four parcels rather than simply on the Fifth Third Parcel. The BMC Lenders believed that it would have been prudent if Alan Goldberg had simply given up on the Fifth Third Parcel rather than placing them in a worse position with respect to all of the Properties. The BMC Lenders informed the Receiver that they never consented to Alan Goldberg entering into the May 7 Agreement on their behalf and that they never received any notice of his intention to do so. Accordingly, the BMC Lenders informed the Receiver that they did not believe the May 7 Agreement was binding on them. The Receiver informed AHIFO of the BMC Lenders' position.

18. On or about May 24, 2010, AHIFO filed the instant action asserting two claims for declaratory relief against the MAMC Receivership Estate. In its first count, AHIFO seeks a declaration that the interests of the Future Advance Lenders in the Top Two Loan should be subordinated to the interests of AHIFO and the BMC Lenders, because the modification of the

² AHIFO paid \$1,850,000 for the Fifth Third Judgment which was in the amount of \$3,248,482. Thus, AHIFO was entitled to add 25% of the savings (.25 x \$1,398,482=\$349,620.5) to the payment price equaling a principal balance of \$2,199,620.5. This amount has accrued 18% interest for approximately 4 years since June, 2007. (4 x \$395,931.69 = \$1,583,726.76). Thus, arguably, the amount owed to AHIFO is \$3,783,346.76.

loan, which increased the loan balance by \$2 million dollars, was purportedly done by MAMC without AHIFO's consent as required under the terms of its servicing agreement with MAMC.

19. In Count II of its Complaint, AHIFO seeks a declaration that A. Goldberg, in his capacity as CRO of MAMC, had the authority to bind the BMC Lenders and the Future Advance Lenders to the terms of the May 7 Agreement and the Operating Agreement. On August 26, 2010, the Receiver filed his Answer and asserted various affirmative defenses to AHIFO's Complaint.

20. On May 24, 2011, a mediation was held upon notice to all parties to this action. The parties were able to negotiate a settlement relating to all claims among them and a settlement agreement (the "Settlement Agreement") was executed by AHIFO and the Receiver, on behalf of MAMC, the BMC Lenders and the Future Advance Lenders. A copy of the Settlement Agreement is attached hereto as Exhibit "A." The material terms of the settlement are as follows:

- Title to the subject properties shall remain titled in the name of AHIFO-MAMC Cape Coral, LLC.
- The BMC Lenders and the Future Advance Lenders shall pay all outstanding real estate taxes on the subject properties, which are estimated to be \$516,000 (the "BMC Lender Tax Loan"). The BMC Lender Tax Loan shall be repaid to the BMC Lenders from the first sales proceeds from any of the Properties or any other monies, including but not limited to eminent domain proceeds, that AHIFO-MAMC Cape Coral, LLC receives.
- AHIFO shall pay 50% and the BMC Lenders and the Future Advance Lenders, collectively, shall pay the other 50%, of all expenses incurred in connection with the subject Properties, including taxes, insurance, maintenance, etc. (the "Future Expenses") on an ongoing basis.
- AHIFO shall manage AHIFO-MAMC Cape Coral, LLC and make all decisions concerning the subject Properties, except to the extent an offer is made for the purchase of any of the 4 parcels. In the event an offer is made for the purchase of any of the 4 parcels, AHIFO shall advise a representative of the Lenders of the offer, who shall have 5 days to (i) consent to the offer or (ii) agree to purchase the applicable Property on the same terms as the offer. Court approval is required regardless of whether the Lenders choose to allow AHIFO-MAMC Cape Coral, LLC to sell the property to the

offeror third party or to the Lenders and the aforementioned period shall be extended to allow time to obtain the Court's authorization..

- The payment of net sale proceeds of any sale of any Property, after payment of normal expenses of sale and repayment of the BMC Lenders Tax Loan, shall be distributed (i) to AHIFO and the Lenders to repay each for the Future Expenses paid by them; (ii) then \$1,575,000 to AHIFO; and finally (iii) 55% to AHIFO and 45% to the Lenders as received.

21. The Settlement Agreement also provides that it is dependant on the approval of this Court. Accordingly, no party to this action or the Settlement Agreement shall be bound to the terms of the Settlement Agreement without an order of this Court approving the Settlement Agreement. Additionally, the Settlement Agreement provides that this Court shall maintain jurisdiction over this action until the action is dismissed according to the terms of the Settlement Agreement.

22. As the Court is aware, the Receiver previously settled a large malpractice claim against MAMC's former accountants. On or about March 9, 2010, the Receiver filed the Receiver's Motion for an Order Approving the Proposed Priority of Distribution and Procedures for the Disbursement of Funds Recovered by Receiver in an Accounting Professional Liability Claim (the "Distribution Motion"). The Court granted the Distribution Motion, and shortly thereafter, the Receiver made a distribution of a substantial portion of the settlement proceeds.

23. With the Court's permission, the Receiver held back several million dollars of the settlement proceeds to fund future and current administrative expenses as well as to make loans to various projects on an as-needed basis. More specifically, the Receiver is still administering approximately 13 projects (down from 37 at the start of the receivership). Many of these projects are either embroiled in litigation or currently being marketed for sale and

require that certain essential expenses, such as taxes, be paid in order to preserve the project's value. The Top Two project is one of the projects that was embroiled in litigation.

24. Through this Motion, the Receiver seeks authorization to make a loan to AHIFO-MAMC Cape Coral, LLC in the approximate amount of \$525,000 in order for it to be able to satisfy all outstanding real estate taxes and tax certificates which are currently accruing interest at high rates. Under the Settlement Agreement, this sum is to be paid back with the very first funds received by AHIFO-MAMC Cape Coral, LLC, including but not limited to proceeds from the sale of any of the Properties or eminent domain proceeds.

25. The Receiver believes this loan will be fully secure and safe. First, the Receiver believes that the aggregate value of the Properties is well above \$525,000.³ Importantly, a portion of one of the four parcels (the "Burnt Store Road Parcel") is currently the subject of an eminent domain action by Lee County. More specifically, the Burnt Store Road Parcel is 13.47 acres. Lee County seeks to condemn approximately 3.3 acres of the Burnt Store Road parcel. The Receiver has received an offer from Lee County for the 3.3 acres of \$405,000.⁴ Under the terms of the Settlement Agreement, these funds would be used to repay this loan. Accordingly, based on Lee County's offer and the aggregate value of the Properties, the Receiver believes that this loan will be fully secured.

26. This request is not based solely on the Receiver's decision. The Receiver has consulted with the lender committee he appointed for the Top Two Project. The lender committee for this project believes that the loan is warranted and is in the best interest of the project and the BMC Lenders.

³ The current tax assessed value of the Properties in the aggregate is currently \$998,640.

⁴ The Receiver believes that this offer is too low and has retained eminent domain counsel to represent AHIFO-MAMC Cape Coral, LLC interest in the eminent domain action. The Receiver is hopeful that Lee County's offer will be increased.

27. The Lenders affiliated with the Top Two project will be charged interest at the rate of four percent per annum, simple interest in connection with this loan. Such interest will be collected from the Lenders affiliated with the Top Two project when they receive any funds from MAMC or any project MAMC is servicing for such Lenders. Currently, the funds are being held in the Receiver's law firm's trust account and are earning substantially less interest. Accordingly, making the loans is a win-win situation for the Receivership Estate which will make more interest than it is currently earning and the amount of the Taxes will be discounted as a result of early payment. On July 12, 2011, the Receiver held a meeting with the Executive Committee to specifically consider and vote on approving this loan. All members of the Executive Committee that were present at the meeting unanimously voted to approve this loan.⁵

28. The Receiver and the Executive Committee believe the loan is fully secured by the value of the Property and the anticipated eminent domain proceeds.⁶ The loan, together with all accrued interest, will be payable on sale of the Properties (or any single parcel) or receipt of any other funds by AHIFO-MAMC Cape Coral, LLC, including but not limited to, the eminent domain proceeds. The Receiver and the Executive Committee believe making this loan is in the best interest of the Receivership Estate.

29. This Court has previously authorized the Receiver to loan funds to other projects, including the Bella Vista, V Strategic and Atlantic Beach projects. The Receiver believes it is in the best interest of the Receivership Estate to loan the Project money to pay the Taxes and the investors will receive a benefit from early payment of the Taxes.

⁵ Thirteen of the fifteen members of the Executive Committee attended this meeting.

⁶ The Receiver is mindful that it is possible that Lee County abandons its attempt to condemn a portion of the property and therefore the loan would only be secured by the Properties.

30. The Receiver believes the Settlement Agreement is in the best interest of the estate and the Lenders in that it will amicably resolve the claims among the Lenders and AHIFO as well as give the Lenders an opportunity to recoup some of their loans. More specifically, under the Settlement Agreement, AHIFO is reducing the sum it is owed from approximately \$3.8 million to \$1,575,000. This sum will not accrue any interest. After this sum is paid, BMC Lenders will get 45% of every dollar received. If the Settlement Agreement was not entered into and the BMC Lenders lost the litigation, they would not receive any funds until after \$3.8 million was paid to AHIFO. AHIFO is discounting its alleged debt by more than \$2.2 million (in addition it will no longer accrue interest). Accordingly, the BMC Lenders have a much greater chance of receiving some money back on their loans.

31. Through this motion, the Receiver seeks authorization from this Court to execute the Settlement Agreement on behalf of the BMC Lenders and the Future Advance Lenders, thereby binding them to the terms of the Settlement Agreement.

32. A hearing on this motion will be set by the Receiver with notice sent to each of the individual investors in the Top Two Loan, AHIFO, Alan Goldberg and all 640 lenders involved in Berman Mortgage and MAMC's receivership via email and by posting a copy of this Motion on the Berman Receivership website.

WHEREFORE, the Receiver, Michael I. Goldberg, requests this Court enter an order (i) approving the Settlement Agreement; (ii) authorizing the Receiver to execute the Settlement Agreement on behalf of the BMC Lenders and the Future Advance Lenders as set forth herein; (iii) authorizing the Receiver to lend AHIFO-MAMC Cape Coral, LLC approximately \$525,000;

and (iv) granting such other relief as is just and proper.

Respectfully submitted,

AKERMAN SENTERFITT

Attorneys for Defendant

Michael I. Goldberg, Receiver

Las Olas Centre II, Suite 1600

350 East Las Olas Boulevard

Fort Lauderdale, FL 33301-2229

Phone: (954) 463-2700

Fax: (954) 463-2224

By: _____

Michael I. Goldberg, Esq.

Florida Bar Number: 886602

Email: michael.goldberg@akerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via facsimile and U.S. mail this 25th day of July, 2011 to: **David W. Trench, Esq. and Jon C. Chassen, Esq.**, Bilzin, Sumberg, Baena, Price & Axelrod, LLP, *Attorneys for Plaintiff*, 1450 Brickell Avenue, 23rd Floor, Miami, Florida 33131, and **Thomas M. Messana, Esq.**, Messana Stern, P.A., *Attorneys for Defendant*, Alan Goldberg, P.O. Drawer 2485, Fort Lauderdale, FL 33303.

Michael I. Goldberg

EXHIBIT A

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

GENERAL JURISDICTION DIVISION

CASE NO.: 10-30070 CA-09

AHIFO-4, LLC, a Florida limited liability
company

Plaintiff,

vs.

MICHAEL GOLDBERG, as Receiver for
M.A.M.C. INCORPORATED, a Florida
corporation, and **ALAN GOLDBERG**, an
individual,

Defendants.

MEDIATION SETTLEMENT AGREEMENT

This Mediation Settlement Agreement (the "**Agreement**") is made this ____ day of May, 2011 (the "**Settlement Date**") by and between the Plaintiff and Defendants in the captioned lawsuit (the "**Action**"), pursuant to mediation which took place on May 24, 2011, overseen by John W. Salmon (the "**Mediator**").

Plaintiff and Defendants have agreed to settle the Action on the following terms and conditions (and capitalized terms which are not separately defined in this Agreement shall have the meanings ascribed to them in the Complaint filed by Plaintiff in the Action):

1. Title to the Real Property shall remain in the LLC.
2. The BMC Lenders and the Future Advance Lenders shall cause all real estate taxes currently due on the Real Property (estimated to be \$506,000.00, for taxes through calendar year 2010, with interest; the "**Prior Taxes**") to be paid within 10 business days following court approval of this Agreement.

3. From and after the Settlement Date, Plaintiff will be responsible for payment of 50% of expenses incurred in connection with the Property, including but not limited to real estate taxes, insurance, Real Property maintenance, mowing and similar expenses, and accounting and other professional fees, etc. (collectively, "**Future Expenses**").

4. From and after the Settlement Date, the BMC Lenders and the Future Advance Lenders will be responsible for payment of 50% of Future Expenses.

5. Plaintiff and the BMC Lenders and the Future Advance Lenders shall pay (into an account in the name of the LLC) an amount equal to their share (as per paragraphs 3 and 4 above) of the amount estimated to pay Future Expenses for the balance of 2011, including 2011 real estate taxes, within 10 business days following issuance of the TRIM Notices for the Real Property.

6. Plaintiff shall henceforth manage the LLC, and make all management decisions concerning the LLC and the Real Property, with the following exception: To the extent that Plaintiff obtains an offer to purchase any of the parcels of Real Property (each a "**Parcel**") which Plaintiff is willing to accept (an "**Offer**"). Plaintiff will advise a representative of the BMC Lenders and the Future Advance Lenders of the Offer, and the BMC Lenders and the Future Advance Lenders shall have five (5) business days either to (i) agree that the Offer may be accepted, or (ii) agree to purchase the Parcel(s) on the same terms as set forth in the Offer (i.e., a right of first refusal), in either case subject to court approval. Should the designated representative of the BMC Lenders and the Future Advance Lenders not agree (on behalf of the BMC Lenders and the Future Advance Lenders) and NOT timely exercise the right of first refusal, such shall be deemed agreement to the sale of the LLC pursuant to the Offer. Receiver shall immediately file an emergency motion to approve whichever of (i) or (ii) above the BMC Lenders and the Future Advance Lenders decide, and set it as soon as possible, with the understanding that the Defendants shall not be in breach of this Agreement should obtaining court approval take more than the five (5) business days after receipt of notice of the Offer.

7. From the net proceeds of sale of any Parcel (net of typical selling expenses, such as brokerage commissions, title insurance, doc stamps, etc.; the "**Net Proceeds**"), payments will be made in the following order:

(A) To reimburse the BMC Lenders and the Future Advance Lenders for payment of the Prior Taxes;

(B) To reimburse Plaintiff and the BMC Lenders and the Future Advance Lenders for the Future Expenses each has paid, on a pro rata basis;

(C) To Plaintiff in the amount of \$1,575,000.00;

(D) The balance to be split between Plaintiff and the BMC Lenders and the Future Advance Lenders (collectively) on a 55% / 45% basis; i.e., 55% to Plaintiff and 45% to the BMC Lenders and the Future Advance Lenders.

8. Any other income of the LLC (including condemnation proceeds, and proceeds of any action filed by the LLC against any person) shall be considered as Net Proceeds, and distributed on accordance with the foregoing "waterfall." provided, however, that any such ancillary income received in an amount less than \$50,000.00 will be retained by the LLC to pay Future Expenses. Mark Tobin may continue to represent the LLC in connection with a condemnation matter affecting one of the Parcels. Further, and notwithstanding the provisions of paragraph 6, the Receiver shall be primarily responsible with dealing with Mr. Tobin in connection with the condemnation matter, and any settlement of such condemnation matter must be approved by both Receiver and Plaintiff.

9. The Operating Agreement will be revised to effectuate the foregoing.

10. The BMC Lenders and the Future Advance Lenders will designate a single representative to act on their behalf in connection with all matters (which may be the Receiver), and shall decide amongst themselves how any of the expenses for which they are responsible and any portion of Net Proceeds which may be due to them shall be split and distributed.

11. This Agreement shall be subject to the approval by the Court which has jurisdiction over the State Receivership Action. Receiver shall promptly seek such approval.

12. Plaintiff and Defendants shall and hereby do mutually release each other from and of any and all claims which are or which could be the subject of the Action (and will execute additional documentation to memorialize the release) promptly following court approval of this Agreement.

13. All causes of action which any of the parties do or might have with respect to the Original Loan, the Additional Loan, the Servicing Agreement, the Foreclosure Litigation, the Priority Dispute, and similar matters shall be assigned to the LLC, and the proceeds of resolution of any such cause of action shall be deemed to be Net Proceeds.

14. Receiver will also cooperate with the LLC and the parties as necessary to assist the LLC in connection with any and all matters concerning the LLC and the Real Property.

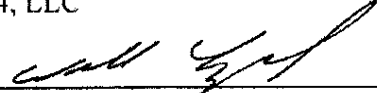
15. Each party shall bear its own fees and costs through the Settlement Date.

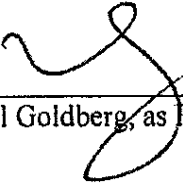
16. The Action shall remain pending until such time as the parties have paid the amounts described in paragraphs 2 and 5; thereafter the Action shall be dismissed, without prejudice, and with the trial court retaining jurisdiction to enforce this Agreement. In the event any party seeks to enforce the Agreement against any other party, the prevailing party in such enforcement action shall be entitled to be reimbursed for its reasonable attorneys fees incurred in such regard.

SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement, as of the Settlement Date.

AHIFO-4, LLC

By: 
Name: *William Lezibski*
Authorized Representative


Michael Goldberg, as Receiver

Alan Goldberg

Counsel for AHIFO-4, LLC


Jon Chassen

Counsel for Michael Goldberg


Marc Gottlieb

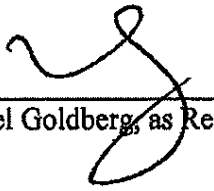
Counsel for Alan Goldberg

Tom Messana

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement, as of the Settlement Date.

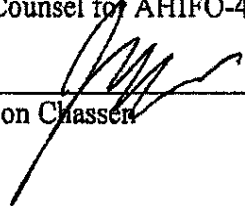
AHIFO-4, LLC

By: 
Name: William Czibicki
Authorized Representative


Michael Goldberg, as Receiver

Alan Goldberg

Counsel for AHIFO-4, LLC


Jon Chasser

Counsel for Michael Goldberg

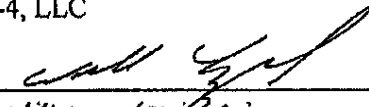

Marc Gottlieb

Counsel for Alan Goldberg

Tom Messana

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement, as of the Settlement Date.

AHIFO-4, LLC

By: 
Name: *William Leibbki*
Authorized Representative

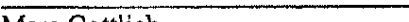

Michael Goldberg, as Receiver


Alan Goldberg

Counsel for AHIFO-4, LLC


Jon Chassen

Counsel for Michael Goldberg


Marc Gottlieb

Counsel for Alan Goldberg


Tom Messana

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement, as of the Settlement Date.

AHIFO-4, LLC

Counsel for AHIFO-4, LLC

By: _____
Name: _____
Authorized Representative


Jon Chassen

Counsel for Michael Goldberg

Michael Goldberg, as Receiver

Marc Gottlieb

Alan Goldberg

Counsel for Alan Goldberg


Tom Messana