

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 7
: :
AMERICAN BUSINESS FINANCIAL : Case No. 05-10203 (MFW)
SERVICES, INC. *et al.*, : (Jointly Administered)
: :
Debtors.¹ : Related Doc. No. 3305, 3866, 3870 and
: Adversary No. 06-50826
: :
: **Hearing Date:** 12/19/2007 at 2:00 p.m.
: :
: **Objections Due:** 12/12/2007 at 4:00 p.m.

NOTICE OF MOTION

PLEASE TAKE NOTICE George L. Miller, Chapter 7 Trustee ("Trustee") for the estates of American Business Financial Services, Inc., *et al.*, has filed the Motion of Chapter 7 Trustee for Order Approving Settlement Agreement Between George L. Miller as Chapter 7 Trustee, Wells Fargo Bank, N.A. as Indenture Trustee and Law Debenture Trust Company of New York as Indenture Trustee Regarding (I) Disbursement Motion (Docket No. 3305), (II) Indenture Trustees' Motions (Docket Nos. 3866 and 3870), and (III) Adversary Action (Adversary No. 06-50826) (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

You are required to file with the Bankruptcy Court any response to the Motion on or before **December 12, 2007 at 4:00 p.m.** (the "Objection Deadline"). At the same time, you must also serve a copy of any response upon the counsel for the Trustee at the address set forth below.

A hearing on the Motion shall be held before the Honorable Mary F. Walrath, Chief United States Bankruptcy Judge on **December 19, 2007 at 2:00 p.m.** at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware.

¹ The Debtors are American Business Financial Services, Inc., Case No. 05-10203, Tiger Relocation Company, Case No. 05-10204, American Business Credit, Inc., Case No. 05-10206, HomeAmerican Credit, Inc., Case No. 05-10207, American Business Mortgage Services, Inc., Case No. 05-10208, and ABFS Consolidated Holdings, Inc., Case No. 05-10217.

IF YOU DO NOT PROPERLY FILE AND SERVE AN OBJECTION OR OTHER RESPONSE TO THE MOTION BY THE OBJECTION DEADLINE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Date: November 13, 2007

COZEN O'CONNOR

By:


/s/ John T. Carroll, III

John T. Carroll, III (DE No. 4060)

1201 North Market Street

Suite 1400

Wilmington, DE 19801

302-295-2028

302-295-2013 Fax No.

Counsel for the Chapter 7 Trustee,

George L. Miller

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 7
: :
AMERICAN BUSINESS FINANCIAL : Case No. 05-10203 (MFW)
SERVICES, INC. *et al.*, : (Jointly Administered)
: :
Debtors.¹ : Related Doc. No. 3305, 3866, 3870 and
: Adversary No. 06-50826
: :
: **Hearing Date: 12/19/2007 at 2:00 p.m.**
: :
: **Objections Due: 12/12/2007 at 4:00 p.m.**

**MOTION OF CHAPTER 7 TRUSTEE FOR ORDER APPROVING SETTLEMENT
AGREEMENT BETWEEN GEORGE L. MILLER AS CHAPTER 7 TRUSTEE, WELLS
FARGO BANK, N.A. AS INDENTURE TRUSTEE AND LAW DEBENTURE TRUST
COMPANY OF NEW YORK AS INDENTURE TRUSTEE REGARDING (I)
DISBURSEMENT MOTION (DOCKET NO. 3305), (II) INDENTURE TRUSTEES'
MOTIONS (DOCKET NOS. 3866 AND 3870), AND (III) ADVERSARY ACTION
(ADVERSARY NO. 06-50826)**

George L. Miller, in his capacity as the Chapter 7 Trustee (the "Trustee") for the bankruptcy estates of American Business Financial Services, Inc. and the related debtors (collectively referred to as the "Debtors"), hereby files this Motion (the "Motion"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, for the entry of an order approving the settlement agreement by and between the Trustee, Wells Fargo Bank, N.A., as Indenture Trustee ("Wells Fargo"), and Law Debenture Trust Company of New York as Indenture Trustee ("Law Debenture") (Wells Fargo and Law Debenture are hereinafter collectively referred to as the "ITs") (the Trustee and the ITs are hereinafter collectively referred to as the "Parties"), a copy of the executed settlement agreement is attached hereto as Exhibit "A" (the "Settlement")

¹ The Debtors are American Business Financial Services, Inc., Case No. 05-10203, Tiger Relocation Company, Case No. 05-10204, American Business Credit, Inc., Case No. 05-10206, HomeAmerican Credit, Inc., Case No. 05-10207, American Business Mortgage Services, Inc., Case No. 05-10208, and ABFS Consolidated Holdings, Inc., Case No. 05-10217.

Agreement") and a conformed copy of the Settlement Agreement is also attached hereto as Exhibit "B". In support hereof, the Trustee respectfully avers the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter concerns the administration of the Debtors' bankruptcy estates and is therefore a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. §105, Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

2. On January 21, 2005 and January 24, 2005 (together, the "Petition Date") the Debtors each filed petitions in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") seeking relief under Chapter 11 (the "Chapter 11 Cases") of title 11 of the United States Code (the "Bankruptcy Code").

3. Wells Fargo is the successor Indenture Trustee under the Indenture (the "2004 Indenture"), dated as of June 30, 2004, by and between American Business Financial Services, Inc. ("ABFS") and Wells Fargo (successor to U.S. Bank, National Association ("U.S. Bank")), as Indenture Trustee with respect to certain of ABFS' Senior Collateralized Notes ("2004 Senior Collateralized Notes").

4. Law Debenture is the successor Indenture Trustee under the Indenture (the "2003 Indenture") and, together with the 2004 Indenture, the "Indentures"), dated as of December 31, 2003, by and between ABFS and Law Debenture (successor to U.S. Bank), as Indenture Trustee

with respect to certain of ABFS's Senior Collateralized Notes ("2003 Senior Collateralized Notes") and, together with the 2004 Senior Collateralized Notes, the "Collateralized Notes").

5. The amount of Collateralized Notes outstanding as of the Petition Date was approximately \$97 million.

6. On May 17, 2005 (the "Conversion Date"), the Bankruptcy Court entered an Order converting the Chapter 11 Cases of the Debtors to cases under Chapter 7 of the Bankruptcy Code (the "Chapter 7 Cases"). On May 17, 2005, the Office of the United States Trustee appointed George L. Miller to serve as Chapter 7 Trustee, and the Trustee continues to serve in such capacity.

7. During the Chapter 11 Cases, the Bankruptcy Court, on March 9, 2005 and April 4, 2005 respectively, entered orders affecting the extent of the assets securing the obligations in

the Chapter 11 Cases, including the priority of such security interests, namely (a)

Financial Products, Inc. ("Greenwich"). The interest only strips serving as collateral of the ITs which have not been liquidated by Greenwich as of the date of the Settlement Agreement and remain subject to the junior lien and security interest of the ITs are the following eight (8) interest only strips: 2001-1, 2001-2, 2001-4, 2002-1, 2002-2, 2002-3, 2002-4 and 2003-1 (collectively, the "Remaining IOS"). Additionally, under the Final DIP Order, the ITs were

debtor special purpose entity holding an interest only strip that is the subject of the Disbursement Motion (as hereinafter defined).

10. On January 12, 2007, the Trustee filed the Motion for an Order (A) to Use Funds of ABFS 2003-2, Inc. to Pay Sums Owed by ABFS 2003-2, Inc. to the Debtors as Originators Under the 2003-2 Mortgage Loan Purchase Agreement and (B) to Dispose of Such Funds by Making Payment of (I) the Alleged Greenwich Secured Claim Under the Final DIP Order and (II) the Secured Claims Held by the Debtors' Estates as Assignee of the Patriot Deferred Payoff Secured Claim and the Clearwing Deferred Payoff Secured Claim Under the Final DIP Order and (C) to Permit the Debtors' Estates to Use Such Payments Received on Account of the Patriot Deferred Payoff Secured Claim and Clearwing Deferred Payoff Secured Claim to Pay Chapter 7 Administrative Claims ("Disbursement Motion") (Docket No. 3305).

11. The ITs have filed the following Objections to the Disbursement Motion (collectively, the "ITs' Disbursement Motion Objections"): (a) Limited Objection to Disbursement Motion filed by Wells Fargo Bank, National Association, as Indenture Trustee and Law Debenture Trust Company of New York, as Indenture Trustee (Docket No. 3727); and (b) Supplemental Objection of Law Debenture Trust Company of New York, as Indenture Trustee, and Wells Fargo Bank, National Association, as Indenture Trustee, to their Limited Objection to the Disbursement Motion (Docket No. 3878).

12. Greenwich filed a Limited Objection to the Disbursement Motion (Docket No. 3726).

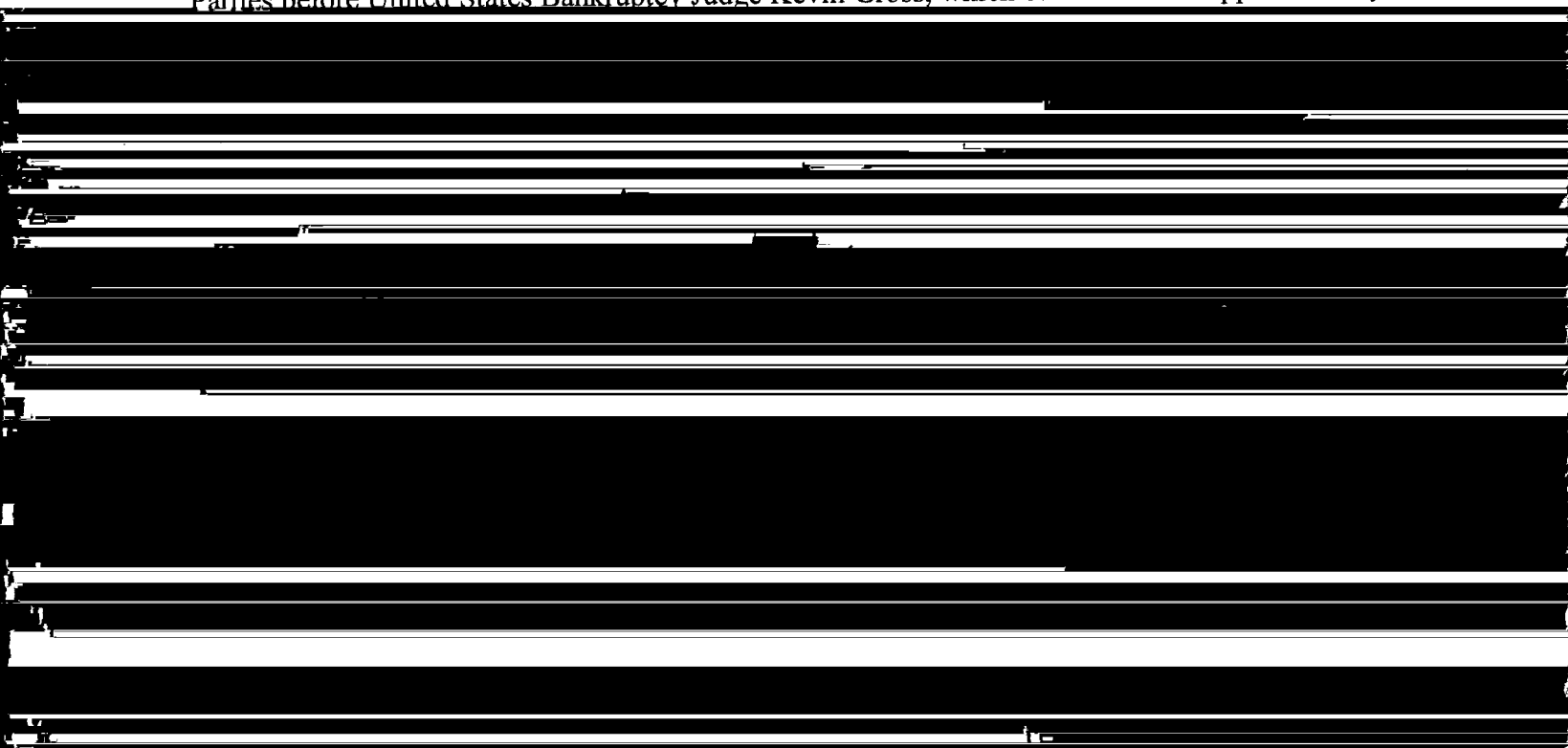
13. The ITs filed the following joint motions (collectively, the "ITs' Motions"): (a) Joint Motion of Law Debenture Trust Company of New York, as Indenture Trustee, and Wells Fargo Bank, National Association, as Indenture Trustee for Entry of Order Granting Leave to File State Court Action against George L. Miller, and for Continuance of May 29, 2007 Hearing on Chapter 7 Trustee's Disbursement Motion (the "ITs' Motion for Leave") (Filed 5/23/2007;

Docket No. 3866); and (b) Joint Motion of Law Debenture Trust Company of New York, as Indenture Trustee, and Wells Fargo Bank, National Association, as Indenture Trustee, for Entry of an Order Modifying the Automatic Stay (the “ITs’ Motion for Relief”)(Filed 5/23/2007;

under the 2003 Indenture, pursuant to which \$100,000,000 aggregate principal amount of 2003 Senior Collateralized Notes were authorized to be issued and of which Law Debenture claims and/or alleges the aggregate principal amount of \$57,019,180 plus interest, costs, attorneys fees and expenses remains outstanding (the "Law Debenture Proof of Claim").

17. Wells Fargo on or about August 10, 2005, filed proofs of claim asserting secured claims in the cases of American Business Financial Services, Inc., Case No. 05-10203 ABFS Consolidated Holdings, Inc., Case No. 05-10217, Tiger Relocation Company, Case No. 05-10204, American Business Credit, Inc., Case No. 05-10206, Home American Credit, Inc., Case No. 05-10207 and American Home Business Mortgage Services, Inc., Case No. 05-10208, as successor Indenture Trustee under the 2004 Indenture, pursuant to which \$60,000,000 aggregate principal amount of 2004 Senior Collateralized Notes were authorized to be issued and of which Wells Fargo claims and/or alleges the aggregate principal amount of \$41,130,505 plus interest, costs, attorneys fees and expenses remains outstanding (the "Wells Fargo Proof of Claim").

18. Commencing on November 5, 2007 at approximately 10:00 a.m., the Parties voluntarily participated in a mediation session to resolve the multiple disputes between the Parties before United States Bankruptcy Judge Kevin Gross, which culminated at approximately



The Settlement Agreement

20. The key terms of the Settlement Agreement include, but are not limited to, the following²:

A. **Trustee Dismissal of Adversary Action Against ITs.** Upon entry of the Approval Order (which is defined in paragraph 10 of the Settlement Agreement as an Order of the Bankruptcy Court approving the Settlement Agreement and authorizing the Trustee to make the payments to the ITs as provided for therein), the claims asserted by the Trustee against Wells Fargo Bank, N.A., individually, Law Debenture Trust Company of New York, individually, and Wells Fargo and Law Debenture as the ITs, in the Adversary Action shall be deemed dismissed, with prejudice. Nothing in the Settlement Agreement shall dismiss, impair, prejudice or otherwise impact the Trustee's claims and causes of action against any/all other persons or entities not specifically identified in paragraph 3 of the Settlement Agreement. See ¶ 2 of the Settlement Agreement.

B. **Trustee Covenant Not to Sue.** The Trustee on behalf of the Debtors' estates covenants and agrees to refrain from hereafter commencing or prosecuting any action, ~~litigation or proceeding~~ against the ITs, their respective current and former officers, directors,

former respective officers, directors, employees and principals in the courts of any jurisdiction with respect to the facts, matters and/or claims that were asserted (or which could have been asserted) in the Adversary Action but only if and to the extent arising out of any action or inaction prior to the date of the Settlement Agreement. See ¶ 3 of the Settlement Agreement.

C. **Allowed ITs' Chapter 11 Super-Priority Claim.** Upon entry of the Approval Order, the ITs are granted an allowed unsecured super-priority administrative claim against the estates of the Debtors under Section 503(b) of the Bankruptcy Code in the aggregate amount of \$40 million, which claim shall be considered to have been incurred in the Chapter 11 Cases before the conversion of the Debtors' Chapter 11 Cases to Chapter 7 Cases on the Conversion Date and such claim shall have priority over any and all administrative expenses incurred in the Chapter 11 Cases of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code (the "Allowed ITs' Chapter 11 Super-Priority Claim"). See ¶4(a) of the Settlement Agreement.

D. **Allowed ITs' General Unsecured Claim.** Upon entry of the Approval Order, the ITs are granted an allowed general unsecured claim against the estates of the Debtors in the aggregate amount of \$58,149,685, which claim for purposes of distribution of property of the estate will be entitled to payment as an allowed timely filed general unsecured claim under Section 726(a)(2) of the Bankruptcy Code (the "Allowed ITs' General Unsecured Claim"). See ¶4(b) of the Settlement Agreement.

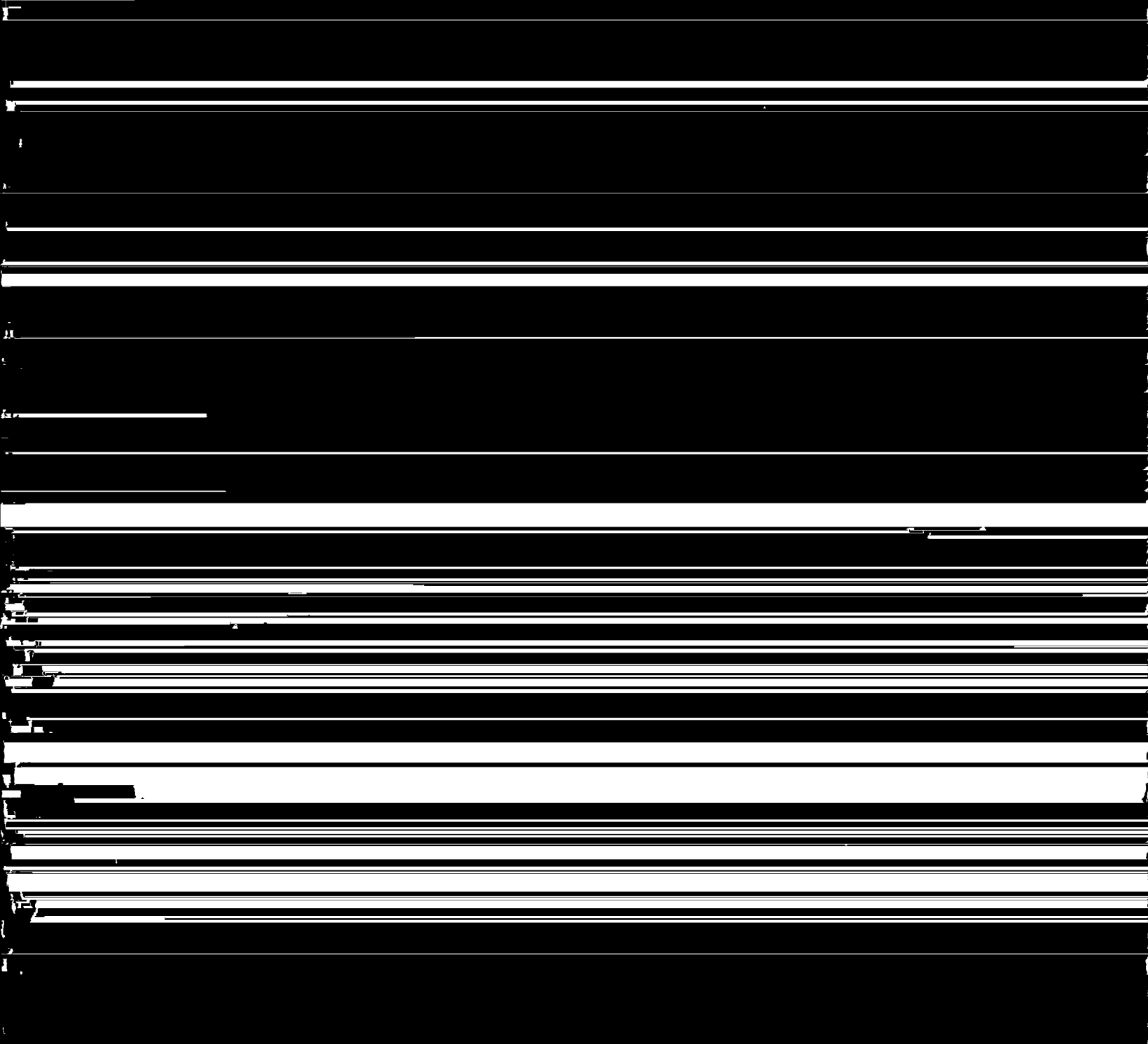
E. **ITs' 2003-2, Inc. Initial Distribution.** In partial payment of the Allowed ITs' Chapter 11 Super-Priority Claim, the Trustee shall distribute or cause to be distributed to the ITs, either directly from ABFS 2003-2, Inc. or from the Debtors' estates, up to a maximum of \$1,000,000 (the "ITs' 2003-2, Inc. Initial Distribution"), the first funds available for distribution

from the ABFS 2003-2, Inc. Funds Initially On-Hand (as defined below), after deducting for (i) amounts owed by the Debtors' estates to Greenwich, or to be reserved by the Debtors' estates for the benefit of Greenwich, on account of the indemnity claim alleged by Greenwich (the "Greenwich Indemnity Claim"), as provided for in a final order of the Bankruptcy Court resolving the Disbursement Motion or otherwise resolving the Greenwich Indemnity Claim, and (ii) amounts presently due and owing at the time of the Trustee's payment of the ITs' 2003-2, Inc. Initial Distribution, or any part thereof, in accordance with the provisions of paragraph 8(b) of the Settlement Agreement. All remaining funds constituting the ABFS 2003-2, Inc. Funds Initially On-Hand after full payment of the ITs' 2003-2, Inc. Initial Distribution, and any funds acquired by ABFS 2003-2, Inc. after full payment of the ITs' 2003-2, Inc. Initial Distribution, whether held by ABFS 2003-2, Inc. or the Debtors' estates, shall, subject to the provisions of paragraph 8(b) of the Settlement Agreement, be distributed as follows: (i) the next \$500,000 to the Trustee and (ii) all additional funds shall be deemed property of the Debtors' estates to be distributed between the Parties with the ITs receiving forty percent (40%) on account of the Allowed ITs' Chapter 11 Super-Priority Claim and the Trustee receiving sixty percent (60%). See ¶ 5(a) of the Settlement Agreement.

F. **Timing of ITs' 2003-2, Inc. Initial Distribution.** The Trustee shall make payment to the ITs of the ITs' 2003-2, Inc. Initial Distribution on a monthly basis within fifteen (15) days after the end of each calendar month in which the Trustee has accumulated at least \$5,000 of ABFS 2003-2, Inc. funds available for distribution in accordance with sub-paragraph 5(a) of the Settlement Agreement, and until such time as the Trustee has distributed \$1,000,000 to the ITs, or the Trustee has determined that no further funds will be available to the ITs for payment of the ITs' 2003-2, Inc. Initial Distribution. To the extent that the Trustee has not

accumulated ABFS 2003-2, Inc. funds of \$5,000 in any given calendar month, then the Trustee will roll said sums forward for distribution in the first subsequent month when at least \$5,000 of ABFS 2003-2, Inc. funds has been accumulated. See ¶ 5(b) of the Settlement Agreement.

G. **ITs' Sharing Distribution.** (i) The Trustee shall receive the first \$5,000,000 and the Parties have agreed to share the net proceeds in excess of \$5,000,000 of the



litigation claims held by the Debtors' estates (including without limitation expenses for expert witnesses) allowed pursuant to Orders of the Bankruptcy Court (the "Litigation Proceeds"). The Liquidation Proceeds and Litigation Proceeds will be shared by the Parties, with the ITs receiving forty percent (40%) of the Liquidation Proceeds and the Litigation Proceeds (the "ITs' Sharing Distribution(s)") on account of the Allowed ITs' Chapter 11 Super-Priority Claim and the Trustee receiving sixty percent (60%) of the Liquidation Proceeds and the Litigation Proceeds for the benefit of the Debtors' estates, including but not limited to, use for costs of administration of the Chapter 7 Cases (which shall include any and all statutory or other commissions claimed by the Trustee and allowed by the Bankruptcy Court). The ITs' Sharing Distribution only applies to property of the Debtors' estates and, accordingly, to the extent the Trustee is in possession of property in escrow or property claimed by third parties, then such contested property shall not be the subject of distribution by the Trustee to the ITs as an ITs' Sharing Distribution until such time as the Bankruptcy Court has entered an order adjudicating or otherwise determining the estates' interest of the Debtors' estates in such contested property. See ¶ 5(c) of the Settlement Agreement.

H. **Timing of ITs' Sharing Distribution.** The Trustee shall make payment



I. **Application of ITs' Distribution and Disgorgement.** The distributions by the Trustee pursuant to the Settlement Agreement are being made on account of and shall be applied against the Allowed ITs' Chapter 11 Super-Priority Claim. The distributions which are made by the Trustee in accordance with the Settlement Agreement on account of the Allowed ITs' Chapter 11 Super-Priority Claim shall not be subject to disgorgement by the ITs. See ¶ 5(f) of the Settlement Agreement.

J. **ITs' Cooperation.** The ITs shall reasonably cooperate with the Trustee in connection with his prosecution or defense of the Adversary Action and any other litigation undertaken by the Trustee to benefit the Debtors' estates. The reasonable expenses incurred in providing such reasonable cooperation shall be paid 60% by the Trustee and 40% by the ITs. Attorneys' fees shall not be subject to any sharing agreement set forth in this paragraph. Any disputes arising under this paragraph shall be subject to binding non-appealable arbitration before U.S. Bankruptcy Judge Kevin Gross. See ¶ 6 of the Settlement Agreement.

K. **ITs' Waiver of Privilege.** The ITs hereby waive any and all privileges that they have asserted or otherwise may be able to assert in connection with the Debtors' bankruptcy proceedings and/or the Adversary Action but only to the extent of communications to and from consultants and experts of the ITs that otherwise would have been protected communications, or, which would have been work product of consultants and experts of the ITs. The ITs shall promptly produce to the Trustee (subject to their right to designate such production as confidential within the parameters of the existing protective order) all documents heretofore requested by the Trustee but withheld by the ITs (or their consultants or representatives) under the privilege waived under this paragraph. See ¶ 7 of the Settlement Agreement.

L. **Withdrawal of Indenture Trustees' Motions and ITs' Disbursement**

Motion Objections. Upon entry of the Approval Order, the ITs shall withdraw the pending ITs' Motions and ITs' Disbursement Motion Objections. See ¶ 8(a) of the Settlement Agreement.

M. **Use of Funds of ABFS 2003-2, Inc.** With respect to ABFS 2003-2, Inc., the Parties agree that the Trustee may use the funds of ABFS 2003-2, Inc. to (i) make monthly estimated tax payments to the Internal Revenue Service based upon thirty-five percent (35%) of cash flow distributions received by ABFS 2003-2, Inc., (ii) make payment annually in the aggregate amount of not to exceed \$10,000 to Santoro CPA Group, KPMG or similar third party tax preparers for preparation of tax returns which are the responsibility of ABFS 2003-2, Inc. pursuant to the applicable Pooling and Servicing Agreement, including Federal Form 1066 - U.S. Real Estate Mortgage Investment Conduit Income Tax Returns for ABFS Mortgage Loan Trust 2003-2 REMIC I, II and III together with related Schedule A's, (iii) make any payments on account of the ABFS 2003-2, Inc. Obligation (as defined in the Disbursement Motion) in accordance with a final Order of the Bankruptcy Court resolving the Disbursement Motion, and (iv) make payment to Boston Portfolio in an amount not to exceed \$7,000 monthly for surveillance of ABFS 2003-2, Inc. and its assets. See ¶ 8(b) of the Settlement Agreement.

N. **ITs' Sharing of Tax Refunds.** To the extent the Trustee on behalf of the Debtors' estates receives any tax refund attributable to taxes paid utilizing the funds of ABFS 2003-2, Inc. those funds shall be distributed in accordance with paragraph 5(a) of the Settlement Agreement. See ¶ 8(c) of the Settlement Agreement.

O. **Representation of Trustee.** The Trustee hereby represents to the ITs that the amount of funds held in the bank accounts of ABFS 2003-2, Inc. as of the date of the

Settlement Agreement is approximately \$4,000,000 (the “ABFS 2003-2, Inc. Funds Initially On Hand”). See ¶ 8(d) of the Settlement Agreement.

P. **Release of Trustee Related to ABFS 2003-2, Inc.** Effective upon entry of the Approval Order, the ITs release and forever discharge the Debtors’ estates, George L. Miller, individually and in his capacities as Trustee and Director and Officer of ABFS 2003-2, Inc., their successors, assigns and attorneys (the “Trustee Released Parties”) from any and all claims and causes of action arising out of or relating in any way to ABFS 2003-2, Inc., whether known or unknown, including but not limited to claims that were asserted (or which could have been asserted) in the ITs’ Motion for Leave especially with respect to claims asserted in the Proposed Complaint annexed as Exhibit “A” thereto, from the beginning of the world through the date of the Settlement Agreement, which either of the ITs may have against the Trustee Released Parties, provided however, that the foregoing release and discharge shall in no event extend to or release the Trustee Released Parties from any obligations under the Settlement Agreement. See ¶ 8(e) of the Settlement Agreement.

Q. **ITs’ Distribution on Remaining IOs.** The ITs shall retain their liens on and security interests in the Remaining IOS and the stock of ABFS 2003-2, Inc. which were granted under the Final DIP Order, the Servicing Sale Order and any other applicable order, and shall have the right to receive distributions from the Remaining IOS, or the proceeds thereof, subject to the prior rights of Greenwich under the Final DIP Order and related agreements, if any, and in accordance with the terms thereof. Distributions to the ITs from the Remaining IOS shall be net of any tax liabilities owed by the Debtors’ estates and Trustee, if any, as a result of any taxable income on account of the residual interests represented by any of the Remaining IOS or on account of the liquidation or transfer of any of the Remaining IOS. Accordingly, no such

distributions to the ITs shall be made until the associated tax liabilities are paid. Distributions to the ITs from either the Remaining IOS, or from the proceeds thereof, shall not constitute Liquidation Proceeds or be subject to sharing with the Debtors' estates pursuant to the provisions of paragraph 5(b) of the Settlement Agreement. The Trustee and the Debtors' estates shall have no liability on account of any diminution of the value of the Remaining IOS, or for failure of any adequate protection related to the Remaining IOS, and the Allowed ITs' Claims shall not be increased on account of any such diminution or failure of adequate protection. To the extent that the ITs receive distributions from or on account of the Remaining IOS, the Allowed ITs' Chapter 11 Super-Priority Claim shall be reduced by the amount of any such distributions received by the ITs from the Remaining IOS. See ¶ 9(a) of the Settlement Agreement.

R. **Damages to Remaining IOS.** The Parties agree that any claims for damages to the Remaining IOS which have been asserted by the Trustee in the Adversary Action shall remain property of the Debtors' estates, and, to the extent monies are recovered thereon such monies shall constitute Litigation Proceeds subject to sharing pursuant to the Settlement Agreement. See ¶ 9(c) of the Settlement Agreement.

RELIEF REQUESTED AND BASIS THEREFOR

21. The Trustee requests that the Court enter an Order approving the Settlement Agreement and authorizing the Trustee to take the actions contemplated therein, including but not limited to the payments to the ITs as provided therein. The Settlement Agreement is the product of a substantial amount of time and effort expended by the Parties, and the Trustee believes that the settlement the Parties have reached will provide a great benefit to the Debtors' estates, their creditors and other parties in interest and, accordingly, that it is within his sound and reasonable business judgment to enter into the Settlement Agreement.

22. The Settlement Agreement resolves, without the expense, delay, and uncertainty associated with continued litigation, a myriad of complicated disputes between the ITs and the Trustee. The Settlement Agreement, *inter alia*, (i) dismisses the Adversary Action against the ITs (ii) allows to the ITs a Chapter 11 (as opposed to Chapter 7) superpriority claim in the amount of \$40 million; (iii) allows to the ITs' a general unsecured claim in the amount of approximately \$58 million; (iv) disposes of the ITs' Disbursement Motion Objections and the ITs' Motions; and (v) greatly enhances the Trustee's ability to administer the Debtors' estates and pursue claims for the estates' benefit (including noteholders) by (a) providing benefit to the holders of the Collateralized Notes, which is a large class of creditors of the Debtors' estates, (b) providing certainty as to the treatment of the claims of such class of creditors, (c) providing for the ITs' cooperation and sharing of certain expenses (excluding attorneys' fees) with the Trustee in connection with the Adversary Action and any other litigation undertaken by the Trustee to benefit the estates, as well as waiver of privilege by the ITs and (d) making funds available to the Trustee through the sharing arrangement agreed upon by the Trustee and the ITs as to Liquidation Proceeds and Litigation Proceeds. In short, the Settlement Agreement enables and facilitates the Trustee moving forward with the administration of the Debtors' estates for the benefit of the Debtors' estates and their thousands of secured and unsecured creditors and for other parties in interest.

23. Bankruptcy Rule 9019 grants the Court authority to approve settlements of claims and controversies after notice and a hearing.⁵ Under this authority, the Third Circuit has emphasized that "to minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" *Myers v. Martin (In re Martin)*, 91 F. 3d 389, 393

⁵ Bankruptcy Rule 9019 provides in pertinent part that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."

(3d Cir. 1996) (*quoting* 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993)). In addition, this District has recognized that the approval of a proposed compromise and settlement is committed to the sound discretion of the bankruptcy court. *See In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997).

24. Before approving a settlement under Bankruptcy Rule 9019, a court must determine whether “the compromise is fair, reasonable, and in the interests of the estate.” *In re Marvel Entertainment Group, Inc.* 222 B.R. 243, 249 (D. Del. 1998) (*quoting Louise's*, 211

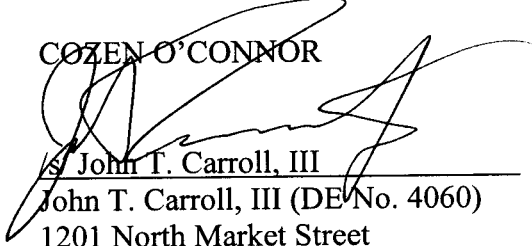
a range of reasonableness.” 10 Collier on Bankruptcy, ¶ 9019.2, 9019-4 (15th ed.), quoting *In re Drexel Lambert Group, Inc.*, 134 B.R. 493 (Bankr. S.D.N.Y. 1991). See also *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 822 (1983).

25. The Trustee believes that the Settlement Agreement reflects a fair and equitable resolution of issues between the Parties, and the settlement should be approved by the Court as it is in the best interests of the Debtors’ estates, its creditors and other parties in interest. The Settlement Agreement achieves both of the key policy objectives that are furthered by promoting compromises in bankruptcy, as it minimizes what would continue to be expensive, contentious litigation between the Parties and will expedite and facilitate the Trustee’s administration of the Debtors’ estates. The Trustee is simply in a better position to fulfill his guiding objective – generating the highest recovery possible under the circumstances for creditors of the Debtors’ estates – with this Settlement Agreement in hand than he was without it.

26. Pursuant to Local District Court Rule 7.1.2(a), incorporated by reference into the Local Rules of the Bankruptcy Court and because there are no novel issues of law presented in this Motion, the Trustee waives his right to file a brief in support of this Motion.

WHEREFORE, the Trustee respectfully requests that the Court enter the Order substantially in the form attached as Exhibit "C" hereto, approving the Settlement Agreement and granting any other and further relief as is just under the circumstances.

Dated: November 13, 2007
Wilmington, DE

COZEN O'CONNOR

By: /s/ John T. Carroll, III
John T. Carroll, III (DE No. 4060)
1201 North Market Street
Suite 1400
Wilmington, DE 19801
Telephone: (302) 295-2028
Facsimile: (302) 295-2013

Eric L. Scherling
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-2042
Facsimile: (215) 701-2081

Attorneys for George L. Miller,
Chapter 7 Trustee

EXHIBIT "A"

~~Trustee's Draft~~
~~Cazen & Connor~~
~~10/3/2007~~

THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 7
: :
AMERICAN BUSINESS FINANCIAL : Case No. 05-10203 (MFW)
SERVICES, INC., *et al.*, : :
: Jointly Administered
Debtors. ¹ : :
: Related Doc. No. 3305, 3866, 3870

SETTLEMENT AGREEMENT BETWEEN GEORGE L. MILLER AS CHAPTER 7
TRUSTEE, WELLS FARGO BANK, N.A. AS INDENTURE TRUSTEE AND
LAW DEBENTURE TRUST COMPANY OF NEW YORK AS INDENTURE TRUSTEE
REGARDING (I) DISBURSEMENT MOTION (DOCKET NO. 3305), (II) INDENTURE
TRUSTEES' MOTIONS (DOCKET NOS. 3688 AND 3870), AND
(III) ADVERSARY ACTION (ADVERSARY NO. 06-50826)

This agreement (the "Settlement Agreement") is made as of ~~October~~ ^{NOVEMBER 6,} 2007, by and
between George L. Miller, the Chapter 7 Trustee ("Trustee") for the bankruptcy estates of
American Business Financial Services, Inc. and the related debtors (collectively referred to as the
"Debtors") pending in the United States Bankruptcy Court for the District of Delaware (the
"Bankruptcy Court") and Wells Fargo Bank, N.A., as Indenture Trustee ("Wells Fargo"), and
Law Debenture Trust Company of New York as Indenture Trustee ("Law Debenture") (Wells
Fargo and Law Debenture are hereinafter collectively referred to as the "ITs") (the Trustee and
the ITs are hereinafter collectively referred to as the "Parties").

¹ American Business Financial Services, Inc, Case No. 05-10203, Tiger Relocation Company, Case No.
05-10204, American Business Credit, Inc., Case No. 05-10206, HomeAmerican Credit, Inc., Case No. 05-

Recitals

A. On January 21, 2005 and January 24, 2005 (together, the "Petition Date") the Debtors each filed petitions in the Bankruptcy Court seeking relief under Chapter 11 (the "Chapter 11 Cases") of Title 11 of the United States Code (the "Bankruptcy Code").

B. Wells Fargo is the successor Indenture Trustee under the Indenture (the "2004 Indenture"), dated as of June 30, 2004, by and between American Business Financial Services, Inc. ("ABFS") and Wells Fargo (successor to U.S. Bank, National Association ("U.S. Bank")), as Indenture Trustee with respect to certain of ABFS's Senior Collateralized Notes ("2004 Senior Collateralized Notes").

C. Law Debenture is the successor Indenture Trustee under the Indenture (the "2003 Indenture" and, together with the 2004 Indenture, the "Indentures"), dated as of December 31, 2003, by and between ABFS and Law Debenture (successor to U.S. Bank), as Indenture Trustee with respect to certain of ABFS's Senior Collateralized Notes ("2003 Senior Collateralized Notes" and, together with the 2004 Senior Collateralized Notes, the "Collateralized Notes").

D. The amount of Collateralized Notes outstanding as of the Petition Date was approximately \$97 million.

E. On May 17, 2005 (the "Conversion Date"), the Bankruptcy Court entered an Order converting the Chapter 11 Cases of the Debtors to cases under Chapter 7 of the Bankruptcy Code (the "Chapter 7 Cases"). On May 17, 2005, the Office of the United States

10207, American Business Mortgage Services, Inc., Case No. 05-10208 and ABFS Consolidated

Trustee appointed George L. Miller to serve as Chapter 7 Trustee, and the Trustee continues to serve in such capacity.

F. During the Chapter 11 Cases, the Bankruptcy Court, on March 9, 2005 and April 4, 2005 respectively, entered orders affecting the extent of the assets securing the obligations in respect of the Indentures, as well as affecting the priority of such security interests, namely, (a) the Final Order (i) Authorizing Incurrence of Indebtedness with Administrative Super-Priority and Secured by Senior Liens and Security Interests on Substantially All Assets of the Debtors Pursuant to Bankruptcy Code §§ 364(c)(1), (c)(2), (c)(3), and (d)(1), (ii) Authorizing Repayment of Certain Prepetition Debt, (iii) Granting Adequate Protection and Other Relief, (iv) Authorizing Certain Debtors to Consent to Transfers of Certain IOS, and (v) Authorizing Use of Cash Collateral (the "Final DIP Order") (Docket No. 366), and; (b) Order (A) Approving Sale of Advance Receivables Free and Clear of All Liens, Claims and Encumbrances, Rights of Offset, Recoupment and Other Defenses and (B) Authorizing the Assumption and Assignment of Related Servicing Rights (the "Servicing Sale Order") (Docket No. 575). Under the Final DIP Order and/or the Servicing Sale Order, the ITs were granted liens and security interests in certain stock and interest only strips which also served as collateral security for Greenwich Capital Financial Products, Inc. ("Greenwich"). The interest only strips serving as collateral of the ITs which have not been liquidated by Greenwich as of the date of this Settlement Agreement and remain subject to the junior lien and security interest of the ITs are the following eight (8) interest only strips: 2001-1, 2001-2, 2001-4, 2002-1, 2002-2, 2002-3, 2002-4 and 2003-1 (collectively, the "Remaining IOS"). Additionally, under the Final DIP Order, the ITs were granted a junior lien on and security interest in 100% of the stock of ABFS 2003-2, Inc., a non-

Holdings, Inc., Case No. 05-10217 are collectively referred to herein as the "Debtors").

debtor special purpose entity holding an I/O Strip that is the subject of the Disbursement Motion (as hereinafter defined).

G. On May 27, 2005, the Bankruptcy Court entered the Interim Order (the "Interim Chapter 7 Order") (I) Authorizing the Trustee to Operate the Debtors' Businesses for a Limited Period Pursuant to 11 U.S.C. § 721; (II) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363; and (III) Scheduling a Final Hearing Pursuant to Fed. R. Bankr. P. 4001 (Docket No. 895). The Interim Chapter 7 Order authorized, among other things, the Chapter 7 Trustee to operate the business of the Debtors and to use Greenwich's and the ITs' cash collateral.

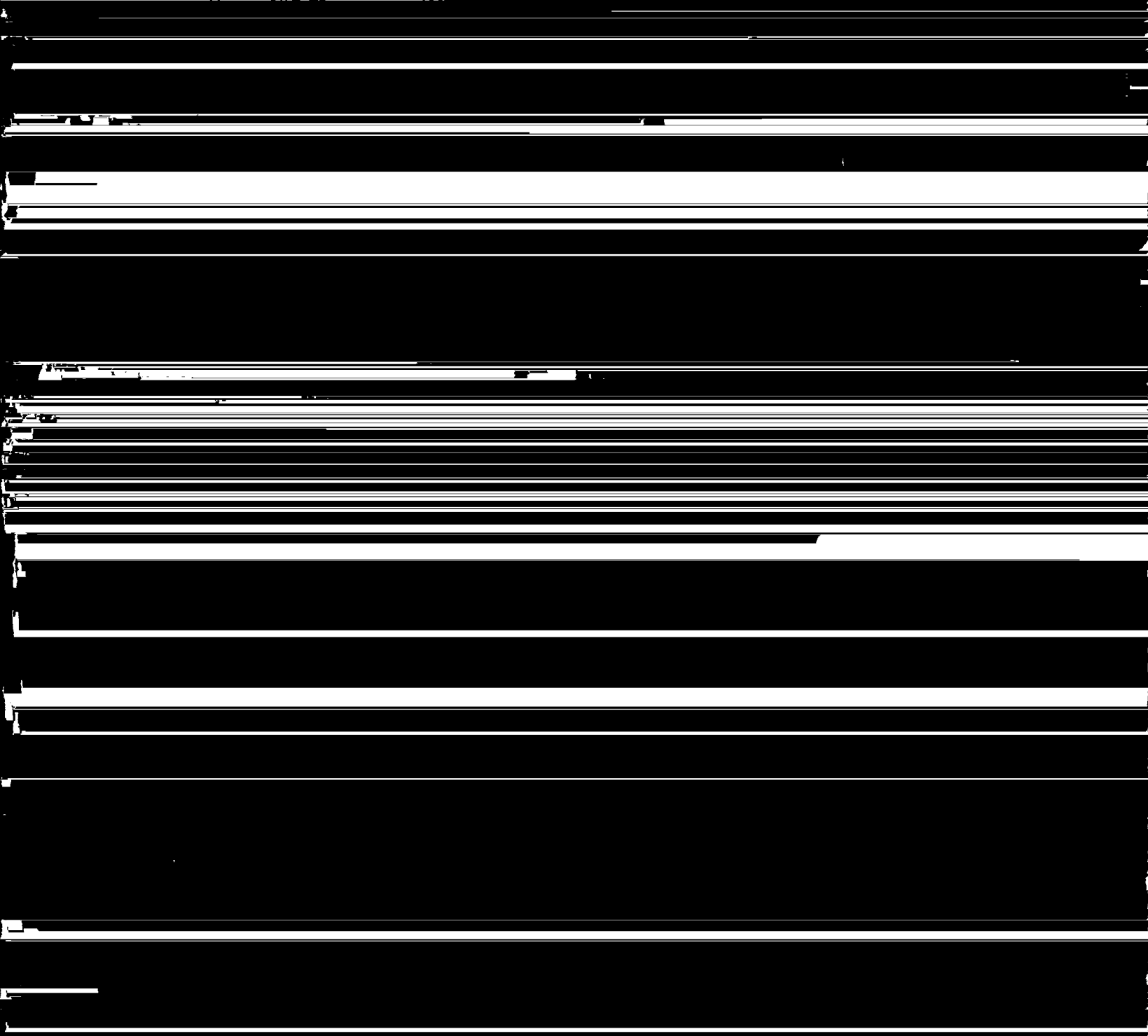
H. On January 12, 2007 the Trustee filed the Motion for an Order (A) to Use Funds of ABFS 2003-2, Inc. to Pay Sums Owed by ABFS 2003-2, Inc. to the Debtors as Originators Under the 2003-2 Mortgage Loan Purchase Agreement and (B) to Dispose of Such Funds by Making Payment of (I) the Alleged Greenwich Secured Claim Under the Final DIP Order and (II) the Secured Claims Held by the Debtors' Estates as Assignee of the Patriot Deferred Payoff Secured Claim and the Clearwing Deferred Payoff Secured Claim Under the Final DIP Order and (C) to Permit the Debtors' Estates to Use Such Payments Received on Account of the Patriot Deferred Payoff Secured Claim and Clearwing Deferred Payoff Secured Claim to Pay Chapter 7 Administrative Claims ("Disbursement Motion"), Docket No. 3305; and

I. The ITs have filed the following Objections to the Disbursement Motion (collectively, the "ITs' Disbursement Motion Objections"):

1. Limited Objection to Disbursement Motion filed by Wells Fargo Bank, National Association, as Indenture Trustee and Law Debenture Trust Company of New York, as Indenture Trustee [Filed 2/7/2007; Docket No. 3727]; and

2. Supplemental Objection of Law Debenture Trust Company of New York, as Indenture Trustee, and Wells Fargo Bank, National Association, as Indenture Trustee, to their Limited Objection to the Disbursement Motion [Filed 5/24/2007; Docket No. 3878].

1. Greenwich filed a Limited Objection to the Disbursement Motion (Filed 2/7/2007;



M. Hearings on the Disbursement Motion and the ITs' Motions have been held, and

N. The Trustee has asserted claims and causes of action against Wells Fargo and

~~by~~ ~~Dr~~ ~~atures~~ which are subject to pending motions to dismiss filed by Wells Fargo and Law

Consolidated Holdings, Inc., Case No. 05-10217, Tiger Relocation Company, Case No. 05-10204, American Business Credit, Inc., Case No. 05-10206, Home American Credit, Inc., Case No. 05-10207 and American Home Business Mortgage Services, Inc., Case No. 05-10208, as successor Indenture Trustee under the 2004 Indenture, pursuant to which \$60,000,000 aggregate principal amount of 2004 Senior Collateralized Notes were authorized to be issued and of which Wells Fargo claims and/or alleges the aggregate principal amount of \$41,130,505 plus interest, costs, attorneys fees and expenses remains outstanding (the "Wells Fargo Proof of Claim").

Q. The Parties have engaged in good faith, arms length negotiations as to the Disbursement Motion, the ITs Motions, the Adversary Action, the Law Debenture Proof of Claim, the Wells Fargo Proof of Claim, and related disputes existing between the Parties, and have agreed to this Settlement Agreement to resolve such disputed matters.

NOW THEREFORE, the Parties subject to Bankruptcy Court approval, intending to be legally bound, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby stipulate and agree as follows:

1. **Recitals Integrated.** The statements and definitions contained in the above "Recital" paragraphs A through Q are incorporated herein by reference and constitute a material part of this Settlement Agreement.

2. **Trustee Dismissal of Adversary Action Against ITs.** Upon entry of the Approval Order (as defined below), the claims asserted by the Trustee against Wells Fargo Bank, N.A., individually, Law Debenture Trust Company of New York, individually, and Wells Fargo and Law Debenture as the ITs, in the Adversary Action shall be deemed dismissed, with

prejudice. Nothing in this Agreement shall dismiss, impair, prejudice or otherwise impact the

Trustee's claims and causes of action against any/all other parties to the Adversary Action.

IDENTIFIED IN PARAGRAPH 3 BELOW.

PERSONS OR ENTITIES NOT SPECIFICALLY

ON BEHALF OF THE DEBTORS ESTATES

RESPECTIVE CURRENT AND FORMER

3. Trustee Covenant Not To Sue. The Trustee hereby covenants and agrees

to refrain from hereafter commencing or prosecuting any action, litigation or proceeding against ~~IT'S~~ OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND ATTORNEYS, and the ITs in the courts of any jurisdiction with respect to the facts, matters and/or claims that were

asserted (or which could have been asserted) in the Adversary Action but only if and to the

extent arising out of any action or inaction of the ITs prior to the date of this Settlement

Agreement. ~~IT'S~~ SUSAN STORRY, KELLEY RYGE & WARREN LLP, PLYOR CASHMAN LLP, GETZLER

HENRICH & ASSOCIATES LLC, HURON CONSULTING GROUP, CHARLES RIVER ASSOCIATES AND ITS SUBSIDIARY INTECAP, INC., OBSEDIAN FINANCE GROUP LLC

4. Allowance of ITs' Claims. AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND PRINCIPALS

a. Allowed ITs' Chapter 11 Super-Priority Claim. Upon entry

of the Approval Order (as hereinafter defined), the ITs are granted an allowed unsecured super-

priority administrative claim against the estates of the Debtors under §503(b) of the

Bankruptcy Code in the aggregate amount of \$40 million, which claim shall be considered to

have been incurred in the Chapter 11 Cases before the conversion of the Debtors' Chapter 11

Cases to Chapter 7 Cases on the Conversion Date and such claim shall have priority over any

and all administrative expenses incurred in the Chapter 11 Cases of the kind specified in

§§503(b) or 507(b) of the Bankruptcy Code (the "Allowed ITs' Chapter 11 Super-Priority

Claim").

b. Allowed ITs' General Unsecured Claim. Upon entry of the

Approval Order (as hereinafter defined), the ITs are granted an allowed general unsecured

claim against the estates of the Debtors in the aggregate amount of \$58,149,685, which claim

for purposes of distribution of property of the estate will be entitled to payment as an allowed

** WITH RESPECT TO OBSEDIAN FINANCE GROUP LLC THE COVENANT NOT TO SUE SHALL BE LIMITED TO THE SERVICES RENDERED BY IT TO THE IT'S AND SHALL EXCLUDE CLAIMS ASSERTED OR DEMANDED TO GREENWICH OR ANYONE OR SU

AGREEMENT TO THIS CONTRACT, THE TRUSTEE MAY PURSUE ANY PREFERENCE ACTION AND OBJECT TO ANY CLAIMS OTHER THAN THE ALLOWED ITS CLAIMS.

timely filed general unsecured claim under §726(a)(2) (the "Allowed ITs' General Unsecured Claim").

c. Amendment of Wells Fargo Proof of Claim and Law Debenture Proof of Claim. The Allowed ITs' Chapter 11 Super-Priority Claim and the Allowed ITs' General Unsecured Claim (collectively, the "Allowed ITs' Claims") provided hereunder shall supersede, amend and replace the Wells Fargo Proof of Claim and the Law Debenture Proof of Claim. The Allowed ITs' Claims shall not be subject to amendment to increase the amount of the claims. The Allowed ITs' Claims shall be in full satisfaction of any and all obligations and/or claims, as defined in U.S.C. §101(5)², of the ITs against the Debtors' estates, including but not limited to any and all claims of the ITs for diminution of any collateral or failure of any adequate protection arising under the Interim Chapter 7 Order, the Final DIP Order, the Servicing Sale Order, or, otherwise.

d. Trustee's Consent To Allowed ITs' Claims. The Trustee hereby consents, on his behalf and on behalf of the Debtors' estates, to the Allowed ITs' Claims and shall not challenge or otherwise object to the Allowed ITs' Claims.

e. NOTWITHSTANDING ANYTHING CONTAINED IN THIS SETTLEMENT

5. Trustee's Distributions to ITs.

a. ITs' 2003-2, Inc. Initial Distribution. In partial payment of the ITs' Allowed Chapter 11 Super-Priority Claim, the Trustee shall distribute or cause to be distributed to the ITs, either directly from ABFS 2003-2, Inc. or from the Debtors' estates, up to a maximum of \$~~1,500,000~~^{1,000,000} (the "ITs' 2003-2, Inc. Initial Distribution"), the first funds

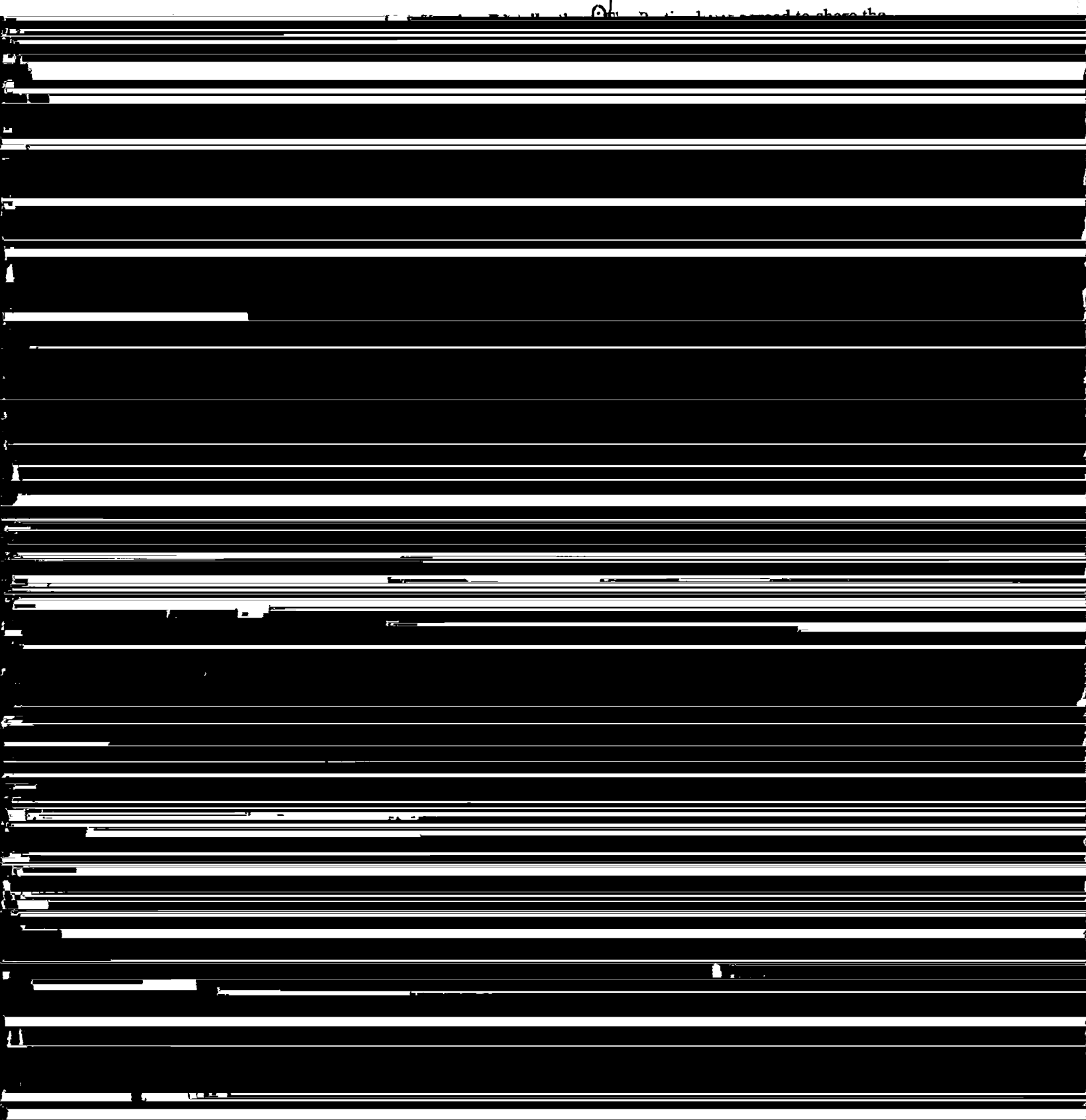
² Throughout this Settlement Agreement the terms "claim" or "claims" shall be defined as set forth in 11

available for distribution from the ABFS 2003-2, Inc. Funds Initially On-Hand (as hereinafter defined), after deducting for (i) amounts owed by the Debtors' estates to Greenwich, or to be reserved by the Debtors' estates for the benefit of Greenwich, on account of the indemnity claim alleged by Greenwich (the "Greenwich Indemnity Claim"), as provided for in a final order of the Bankruptcy Court resolving the Disbursement Motion or otherwise resolving the Greenwich Indemnity Claim, and (ii) amounts presently due and owing at the time of the Trustee's payment of the ITs' 2003-2, Inc. Initial Distribution, or any part thereof, in accordance with the provisions of paragraph 8(b) of this Settlement Agreement. ~~THIS MOTION IS NOT FOR THE ABFS~~ All remaining funds constituting the ABFS 2003-2, Inc. Funds Initially On-Hand (as hereinafter defined) after full payment of the ITs' 2003-2, Inc. Initial Distribution, and any funds acquired by

the ABFS 2003-2, Inc. after full payment of the ITs' 2003-2, Inc. Initial Distribution, whether held

Trustee will roll said sums forward for distribution in the first subsequent month when at least \$5,000 of ABFS 2003-2, Inc. funds has been accumulated.

→ THE TRUSTEE SHALL RECEIVE THE FIRST \$5,000,000 AND



C.(ii) INSERT

C.(ii) THE PARTIES HAVE AGREED TO SHARE THE PROCEEDS RECEIVED ON ACCOUNT OF THE ADVERSARY ACTION, THE STATE COURT ACTION IN THE MATTER OF MILLER V. SANTILLI, COMMENCED IN THE COURT OF COMMON PLEAS OF PHILA. COUNTY, JULY TERM 2006 NO 01225_N ^(THE "SANTILLI ACTION") THE STATE COURT ACTION IN THE MATTER OF MILLER V. WEBER COMMENCED IN THE COURT OF COMMON PLEAS OF PHILA COUNTY (THE "WEBER ACTION"), ANY CLAIMS ASSERTED AGAINST ANY OF THE DEBTORS FORMER ACCOUNTANTS AUDITORS, ATTORNEYS, CONSULTANTS, ADVISORS, UNDERWRITERS, SECURITIZATION INSURERS OR CLAIMS AGAINST ANY OTHER PERSON OR ENTITY ARISING OUT OF OR RELATED TO ANY PREPETITION OR POSTPETITION EVENTS DESCRIBED IN THE ADVERSARY ACTION, THE SANTILLI ACTION OR THE WEBER ACTION AFTER DEDUCTION OF AMOUNTS

Bankruptcy Court). The ITs' Sharing Distribution only applies to property of the Debtors' estates and, accordingly, to the extent the Trustee is in possession of property in escrow or property claimed by third parties, then such contested property shall not be the subject of distribution by the Trustee to the ITs as an ITs' Sharing Distribution until such time as the Bankruptcy Court has entered an order adjudicating or otherwise determining the estates' interest of the Debtors' estates in such contested property. ~~The ITs shall have the right to contest any characterization by the Trustee that any property is not property of the Debtors' estates provided however that the ITs shall pay all fees and costs incurred by the Debtors' estates in connection with such a contest by the ITs in the event the Bankruptcy Court determines the subject property is not property of the Debtors' estates.~~

d. Timing of ITs' Sharing Distribution. The Trustee shall make payment to the ITs of the ITs' Sharing Distribution on a monthly basis within fifteen (15) days

when the Trustee has accumulated at least \$5,000 of

f. Application of ITs' Distribution and Disgorgement. The distributions by the Trustee pursuant to this Settlement Agreement are being made on account of and shall be applied against the Allowed ITs' Chapter 11 Super-Priority Claims. Furthermore, ^The distributions which are made by the Trustee in accordance with this Settlement Agreement on account of the Allowed ITs' Chapter 11 Super-Priority Claim ~~prior~~ ^{NOT} ~~to approval of the Trustee's Final Report and closing of the Chapter 7 Cases~~ shall be subject to disgorgement by the ITs ~~in the event the Bankruptcy Court determines that the ITs have received more from the Trustee on account of the Allowed ITs' Chapter 11 Super-Priority Claim than the proportionate share paid to other claimants holding allowed claims of the same or higher priority as the Allowed ITs Chapter 11 Super-Priority Claim.~~

~~g. Warranty of Trustee. The Trustee, after reasonable inquiry and based on information and belief, warrants to the ITs that he has no knowledge of any other allowed claims in the Chapter 11 cases of equal or greater priority to the Allowed ITs' Chapter 11 Super-Priority Claim.~~

6. ITs' Cooperation. The ITs shall cooperate ^{REASONABLY} ~~fully~~ with the Trustee in connection with his prosecution or defense of the Adversary Action and any other litigation undertaken by the Trustee to benefit the Estate. ^{DEBTORS} ~~The ITs' cooperation shall include:~~

~~a. Directing their officers, employees, professionals and consultants⁴ to meet with and be interviewed by the Trustee and/or his counsel upon request;~~
→ THE REASONABLE EXPENSES INCURRED IN PROVIDING SUCH REASONABLE COOPERATION SHALL BE PAID 60% BY THE TRUSTEE AND 40% BY THE ITs. ATTORNEYS FEES SHALL NOT BE SUBJECT TO ANY SITTING AGREEMENT SET FORTH IN THIS PARAGRAPH. ANY

⁴ Including, Susan Story, Getzler Henrich, Huron Consulting Group, Charles River Associates, Obsidian

~~b. Making their officers, employees, professionals and consultants reasonably available for deposition;~~

~~c. Making their officers, employees, professionals and consultants available to testify live at any trials or hearings at the request of the Trustee;~~

~~d. Producing, without subpoena, any and all documents requested by the Trustee and/or his counsel that are within the Indenture Trustees' custody or control; and,~~

~~e. In response to a document request from the Trustee and/or a subpoena from the same, waiving any and all privileges related to any documents that are not within the Indenture Trustees' custody or control, but are in the custody or control of their professionals and consultants. The ITs hereby waive any and all privileges as they relate to documents in the possession of Michael W. Trickey, The Berkshire Group LP, and/or Obsidian Financial Group, LLC.~~

7. ITs Waiver of Privilege. The ITs hereby waive any and all privileges that they have asserted or otherwise may be able to assert in connection with the Debtors' bankruptcy proceedings and/or the Adversary Action but only to the extent of communications to and from consultants and experts of the ITs that otherwise would have been protected communications, or, which would have been work product of consultants and experts of the ITs. The ITs shall promptly produce to the Trustee (subject to their right to designate such production as confidential within the parameters of the existing protective order) all documents heretofore requested by the Trustee but withheld by the ITs (or their consultants or representatives) under a claim of privilege.

THE WAIVER UNDER THIS PARAGRAPH.

8. Provisions Related to ABFS 2003-2, Inc.

a. Withdrawal of Indenture Trustees' Motions and ITs' Disbursement Motion Objections. Upon entry of the Approval Order, the ITs shall withdraw the pending ITs' Motion, and ITs' Disbursement Motion Objections.

b. Use of Funds of ABFS 2003-2, Inc. With respect to ABFS 2003-2, Inc., the Parties agree that the Trustee may use the funds of ABFS 2003-2, Inc. to (i) make monthly estimated tax payments to the Internal Revenue Service based upon thirty-five percent (35%) of cash flow distributions received by ABFS 2003-2, Inc., (ii) make payment

d. **Representation of Trustee.** The Trustee hereby represents to the ITs that the amount of funds held in the bank accounts of ABFS 2003-2, Inc. as of the date of this Settlement Agreement is approximately \$4,000,000 (the "ABFS 2003-2, Inc. Funds Initially on Hand").

e. **Release of Trustee Related to ABFS 2003-2, Inc.** Effective upon entry of the Approval Order (as defined below), the ITs hereby release and forever
release the Delaware trustee, George L. Miller, individually and in his capacities as Trustee

ACCORDINGLY, NO SUCH DISTRIBUTIONS TO THE ITS
SHALL BE MADE UNTIL THE ASSOCIATED TAX
LIABILITIES ARE PAID.

agreements, if any, and in accordance with the terms thereof. Distributions to the ITs from the Remaining IOS shall be net of any tax liabilities owed by the Debtors' estates and Trustee, if any, as a result of any taxable income on account of the residual interests represented by any of the Remaining IOS or on account of the liquidation or transfer of any of the Remaining IOS. Distributions to the ITs from either the Remaining IOS, or from the proceeds thereof, shall not constitute Liquidation Proceeds or be subject to sharing with the Debtors' estates pursuant to the provisions of paragraph 5(b) of this Settlement Agreement. The Trustee and the Debtors' estates shall have no liability on account of any diminution of the value of the Remaining IOS, or for failure of any adequate protection related to the Remaining IOS, and the Allowed ITs' Claims shall not be increased on account of any such diminution or failure of adequate

LITIGATION SUBJECT TO SETTING PURSUANT
thereon such monies shall constitute Liquidation Proceeds as defined in paragraph 5(e) of this
TO THIS SETTLEMENT AGREEMENT

c. **Advice of Counsel.** Each Party hereby agrees, represents and warrants that it has had the advice of counsel of its own choosing in negotiations for and the preparation of this Settlement Agreement that it has read the provisions of this Settlement Agreement that it has had this Settlement Agreement fully explained by such counsel, and that it is fully aware of the contents and legal effect of the Settlement Agreement, and has executed this Settlement Agreement voluntarily and fully intending to be bound thereby.

d. **Assignment by the ITs.** The ITs shall have the right to freely assign their respective rights and interests under this Settlement Agreement to their respective (i) successors and assigns, and (ii) duly appointed successor indenture trustee under the 2003 Indenture or the 2004 Indenture, as appropriate, and the Trustee will not contest the assignment of any such rights and interests. The ITs shall have the right to assign their respective interests under this Settlement Agreement to any other party not described in this paragraph with the consent of the Trustee, which shall not be unreasonably withheld.

e. **Authority.** Upon entry of the Approval Order, the Trustee and the Debtors' bankruptcy estates have the requisite power and authority to execute, deliver, and perform under this Settlement Agreement. Each other Party to this Settlement Agreement has the requisite power and authority to execute, deliver, and perform under this Settlement

→ MEDIATION OF DISPUTES. THE PARTIES AGREE THAT ANY DISPUTES UNDER THIS SETTLEMENT AGREEMENT SHALL BE MEDIATED BEFORE U.S. BANKRUPTCY JUDGE CROSS WHO MAY REPORT THE RESULTS OF SAID MEDIATION TO U.S. BANKRUPTCY JUDGE ^{MARY WALSH.}

Agreement and that they have not executed this Settlement Agreement in reliance on any such representations, inducements, promises, agreements, or warranties.

g. Third Party Beneficiary. The Parties agree that George L. Miller individually shall be considered an intended third party beneficiary entitled to enforce the release and indemnity provisions set forth respectively in paragraphs 8(d) and 9(d) of this Settlement Agreement.

h. Joint Effort. This Settlement Agreement has been drafted through a joint effort of the Parties and their counsel and, therefore, shall not be construed in favor of or against any of the Parties. The terms of this Settlement Agreement have been negotiated by the Parties in good faith with the advice of counsel and are fair and reasonable under the circumstances.

i. Counterparts. This Settlement Agreement may be executed in multiple counterparts and by facsimile copy or electronic copy, each of which shall be considered an original but all of which shall constitute one agreement.

J.

IN WITNESS WHEREOF, the Parties hereto by themselves or through their duly authorized counsel, intending to be bound, have executed this Settlement Agreement as of the day and year set forth above by affixing their signatures below.

Dated: ~~October~~ ^{NOVEMBER 6} 2007

By: 

John T. Carroll, III, Esquire (DE No. 4060)
Cozen O'Connor
1201 N. Market Street, Suite 1400
Wilmington, DE 19801
(302) 295-2028 Phone
(302) 295-2013 Facsimile

Steven M. Coren, Esquire
David Dormont, Esquire
Kaufman Coren & Ress, P.C.
1717 Arch Street, Suite 3710

By: _____

Frederick B. Rosner, Esquire (DE No. 3995)

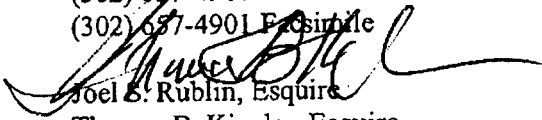
Duane Morris LLP

1100 N. Market Street, Suite 1200

Wilmington, DE 19801

(302) 657-4900 Phone

(302) 657-4901 Facsimile


Joel S. Rublin, Esquire

Thomas B. Kinzler, Esquire

Kelley Drye & Warren LLP

101 Park Avenue

New York, NY 10178

(212) 808-7800 Phone

(212) 808-7897 Facsimile

Counsel to Wells Fargo Bank, National
Association, as Indenture Trustee

By: _____

Francis A. Monaco, Jr., Esquire (DE No. 2078)

Kevin J. Mangan, Esquire (DE No. 3810)

Womble Carlyle Sandridge & Rice PLLC

222 Delaware Avenue, 15th Floor

Wilmington DE 19801

(302) 252-4340 Phone

(302) 666-2769 Facsimile

Tina Nichold Moss, Esquire

James S. O'Brien, Esquire

Pryor Cashman LLP

410 Park Avenue

New York, NY 10022-4441

(212) 421-4100 Phone

(212) 326-0806 Facsimile

Counsel to Law Debenture Trust Company of
New York, as Indenture Trustee

EXHIBIT "B"

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 7
: :
AMERICAN BUSINESS FINANCIAL : Case No. 05-10203 (MFW)
SERVICES, INC., *et al.*, : :
: Jointly Administered
Debtors. ¹ : :
: Related Doc. No. 3305, 3866, 3870

**SETTLEMENT AGREEMENT BETWEEN GEORGE L. MILLER AS CHAPTER 7
TRUSTEE, WELLS FARGO BANK, N.A. AS INDENTURE TRUSTEE AND
LAW DEBENTURE TRUST COMPANY OF NEW YORK AS INDENTURE TRUSTEE
REGARDING (I) DISBURSEMENT MOTION (DOCKET NO. 3305), (II) INDENTURE
TRUSTEES' MOTIONS (DOCKET NOS. 3866 AND 3870), AND
(III) ADVERSARY ACTION (ADVERSARY NO. 06-50826)**

This agreement (the "Settlement Agreement") is made as of November 6, 2007, by and between George L. Miller, the Chapter 7 Trustee ("Trustee") for the bankruptcy estates of American Business Financial Services, Inc. and the related debtors (collectively referred to as the "Debtors") pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and Wells Fargo Bank, N.A., as Indenture Trustee ("Wells Fargo"), and Law Debenture Trust Company of New York as Indenture Trustee ("Law Debenture") (Wells Fargo and Law Debenture are hereinafter collectively referred to as the "ITs") (the Trustee and the ITs are hereinafter collectively referred to as the "Parties").

Recitals

A. On January 21, 2005 and January 24, 2005 (together, the "Petition Date") the Debtors each filed petitions in the Bankruptcy Court seeking relief under Chapter 11 (the "Chapter 11 Cases") of Title 11 of the United States Code (the "Bankruptcy Code").

¹ American Business Financial Services, Inc, Case No. 05-10203, Tiger Relocation Company, Case No. 05-10204, American Business Credit, Inc., Case No. 05-10206, HomeAmerican Credit, Inc., Case No. 05-10207, American Business Mortgage Services, Inc., Case No. 05-10208 and ABFS Consolidated Holdings, Inc., Case No. 05-10217 are collectively referred to herein as the "Debtors".

B. Wells Fargo is the successor Indenture Trustee under the Indenture (the "2004 Indenture"), dated as of June 30, 2004, by and between American Business Financial Services, Inc. ("ABFS") and Wells Fargo (successor to U.S. Bank, National Association ("U.S. Bank")),

Pursuant to Bankruptcy Code §§ 364(c)(1), (c)(2), (c)(3), and (d)(1), (ii) Authorizing Repayment of Certain Prepetition Debt, (iii) Granting Adequate Protection and Other Relief, (iv) Authorizing Certain Debtors to Consent to Transfers of Certain IOS, and (v) Authorizing Use of Cash Collateral (the "Final DIP Order") (Docket No. 366), and; (b) Order (A) Approving Sale of Advance Receivables Free and Clear of All Liens, Claims and Encumbrances, Rights of Offset, Recoupment and Other Defenses and (B) Authorizing the Assumption and Assignment of Related Servicing Rights (the "Servicing Sale Order") (Docket No. 575). Under the Final DIP Order and/or the Servicing Sale Order, the ITs were granted liens and security interests in certain stock and interest only strips which also served as collateral security for Greenwich Capital Financial Products, Inc. ("Greenwich"). The interest only strips serving as collateral of the ITs which have not been liquidated by Greenwich as of the date of this Settlement Agreement and remain subject to the junior lien and security interest of the ITs are the following eight (8) interest only strips: 2001-1, 2001-2, 2001-4, 2002-1, 2002-2, 2002-3, 2002-4 and 2003-1 (collectively, the "Remaining IOS"). Additionally, under the Final DIP Order, the ITs were granted a junior lien on and security interest in 100% of the stock of ABFS 2003-2, Inc., a non-debtor special purpose entity holding an I/O Strip that is the subject of the Disbursement Motion (as hereinafter defined).

G. On May 27, 2005, the Bankruptcy Court entered the Interim Order (the "Interim Chapter 7 Order") (I) Authorizing the Trustee to Operate the Debtors' Businesses for a Limited Period Pursuant to 11 U.S.C. § 721; (II) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363; and (III) Scheduling a Final Hearing Pursuant to Fed. R. Bankr. P. 4001 (Docket No. 895). The Interim Chapter 7 Order authorized, among other things, the Chapter 7 Trustee to operate the business of the Debtors and to use Greenwich's and the ITs' cash collateral.

H. On January 12, 2007 the Trustee filed the Motion for an Order (A) to Use Funds of ABFS 2003-2, Inc. to Pay Sums Owed by ABFS 2003-2, Inc. to the Debtors as Originators Under the 2003-2 Mortgage Loan Purchase Agreement and (B) to Dispose of Such Funds by Making Payment of (I) the Alleged Greenwich Secured Claim Under the Final DIP Order and (II) the Secured Claims Held by the Debtors' Estates as Assignee of the Patriot Deferred Payoff Secured Claim and the Clearwing Deferred Payoff Secured Claim Under the Final DIP Order and (C) to Permit the Debtors' Estates to Use Such Payments Received on Account of the Patriot Deferred Payoff Secured Claim and Clearwing Deferred Payoff Secured Claim to Pay Chapter 7

United States District Court for the District of Columbia

Hearing on Chapter 7 Trustee's Disbursement Motion (the "ITs' Motion for Leave") [Filed 5/23/2007; Docket No. 3866]; and

2. Joint Motion of Law Debenture Trust Company of New York, as Indenture Trustee, and Wells Fargo Bank, National Association, as Indenture Trustee, for Entry of an Order Modifying the Automatic Stay (the "ITs' Motion for Relief") [Filed 5/23/2007; Docket No. 3870].

L. The Trustee filed the following objections to the ITs' Motions (collectively, the "Trustee's Objections"):

1. Trustee's Response and Objection to Joint Motion of Law Debenture Trust Company of New York, as Indenture Trustee, and Wells Fargo Bank, National Association, as Indenture Trustee for Entry of Order Granting Leave to File State Court Action Against George L. Miller and for Continuance of May 29, 2007 Hearing on Chapter 7 Trustee's Disbursement Motion [Filed 5/28/2007; Docket No. 3882]; and
2. Trustee's Response and Objection to Joint Motion of Law Debenture Trust Company of New York, as Indenture Trustee and Wells Fargo Bank, National Association, as Indenture Trustee for Entry of an Order Modifying the Automatic Stay [Filed 5/28/2007; Docket No. 3883].

M. Hearings on the Disbursement Motion and the ITs' Motions have been held, and the Court has directed that the Parties and Greenwich file post-hearing briefs.

N. The Trustee has asserted claims and causes of action against Wells Fargo and Law Debenture which are subject to pending motions to dismiss filed by Wells Fargo and Law Debenture in the adversary action of *In re: George L. Miller, Chapter 7 Trustee v. Greenwich Capital Financial Products, Inc., Ocwen Loan Servicing, LLC, Wells Fargo Bank, N.A., individually and as trustee and representative of thousands of ABFS Collateralized Noteholders, Law Debenture Trust Company of New York, individually and as trustee and representative of thousands of ABFS Collateralized Noteholders, The Berkshire Group LP, and Michael W. Trickey*, Adversary No. 06-50826, (the "Adversary Action ").

O. Law Debenture on or about January 22, 2007, filed amended proofs of claim (amending claims originally filed on August 5, 2005) asserting secured claims in the cases of ABES Consolidated Holdings, Inc., Case No. 05-10217, American Business Financial Services,

NOW THEREFORE, the Parties subject to Bankruptcy Court approval, intending to be legally bound, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby stipulate and agree as follows:

1. **Recitals Integrated.** The statements and definitions contained in the above “Recital” paragraphs A through Q are incorporated herein by reference and constitute a material part of this Settlement Agreement.

2. **Trustee Dismissal of Adversary Action Against ITs.** Upon entry of the Approval Order (as defined below), the claims asserted by the Trustee against Wells Fargo Bank, N.A., individually, Law Debenture Trust Company of New York, individually, and Wells Fargo and Law Debenture as the ITs, in the Adversary Action shall be deemed dismissed, with prejudice. Nothing in this Agreement shall dismiss, impair, prejudice or otherwise impact the Trustee’s claims and causes of action against any/all other persons or entities not specifically identified in paragraph 3 below.

3. **Trustee Covenant Not To Sue.** The Trustee on behalf of the Debtors’ estates hereby covenants and agrees to refrain from hereafter commencing or prosecuting any action, litigation or proceeding against the ITs, their respective current and former officers, directors, shareholders, employees and attorneys, and Susan Storey, Kelley Drye & Warren LLP, Pryor Cashman LLP, Getzler Henrich & Associates LLC, Huron Consulting Group, Charles River Associates and its subsidiary InteCap, Inc., Obsidian Finance Group LLC² and their current and former respective officers, directors, employees and principals in the courts of any

² With respect to Obsidian Finance Group LLC, the covenant not to sue shall be limited to the services rendered by it to the ITs and shall exclude claims concerning services rendered to Greenwich or anyone else.

jurisdiction with respect to the facts, matters and/or claims that were asserted (or which could have been asserted) in the Adversary Action but only if and to the extent arising out of any action or inaction prior to the date of this Settlement Agreement.

4. **Allowance of ITs' Claims.**

a. **Allowed ITs' Chapter 11 Super-Priority Claim.** Upon entry of the Approval Order (as hereinafter defined), the ITs are granted an allowed unsecured super-priority administrative claim against the estates of the Debtors under §503(b) of the Bankruptcy Code in the aggregate amount of \$40 million, which claim shall be considered to have been incurred in the Chapter 11 Cases before the conversion of the Debtors' Chapter 11 Cases to Chapter 7 Cases on the Conversion Date and such claim shall have priority over any and all administrative expenses incurred in the Chapter 11 Cases of the kind specified in §§503(b) or 507(b) of the Bankruptcy Code (the "Allowed ITs' Chapter 11 Super-Priority Claim").

b. **Allowed ITs' General Unsecured Claim.** Upon entry of the Approval Order (as hereinafter defined), the ITs are granted an allowed general unsecured claim against the estates of the Debtors in the aggregate amount of \$58,149,685, which claim for purposes of distribution of property of the estate will be entitled to payment as an allowed timely filed general unsecured claim under §726(a)(2) (the "Allowed ITs' General Unsecured Claim").

c. **Amendment of Wells Fargo Proof of Claim and Law Debenture Proof of Claim.** The Allowed ITs' Chapter 11 Super-Priority Claim and the Allowed ITs' General Unsecured Claim (collectively, the "Allowed ITs' Claims") provided

hereunder shall supersede, amend and replace the Wells Fargo Proof of Claim and the Law Debenture Proof of Claim. The Allowed ITs' Claims shall not be subject to amendment to increase the amount of the claims. The Allowed ITs' Claims shall be in full satisfaction of any and all obligations and/or claims, as defined in U.S.C. §101(5)³, of the ITs against the Debtors' estates, including but not limited to any and all claims of the ITs for diminution of any collateral or failure of any adequate protection arising under the Interim Chapter 7 Order, the Final DIP Order, the Servicing Sale Order, or, otherwise.

d. **Trustee's Consent To Allowed ITs' Claims.** The Trustee hereby consents, on his behalf and on behalf of the Debtors' estates, to the Allowed ITs' Claims and shall not challenge or otherwise object to the Allowed ITs' Claims.

e. Notwithstanding anything contained in this Settlement Agreement to the contrary, the Trustee may pursue any preference action and object to any claims other than the Allowed ITs' Claims.

5. **Trustee's Distributions to ITs.**

a. **ITs' 2003-2, Inc. Initial Distribution.** In partial payment of the ITs' Allowed Chapter 11 Super-Priority Claim, the Trustee shall distribute or cause to be distributed to the ITs, either directly from ABFS 2003-2, Inc. or from the Debtors' estates, up to a maximum of \$1,000,000 (the "ITs' 2003-2, Inc. Initial Distribution"), the first funds available for distribution from the ABFS 2003-2, Inc. Funds Initially On-Hand (as hereinafter defined), after deducting for (i) amounts owed by the Debtors' estates to Greenwich, or to be reserved by the Debtors' estates for the benefit of Greenwich, on account of the indemnity

³ Throughout this Settlement Agreement the terms "claim" or "claims" shall be defined as set forth in 11 U.S.C. §101(5).

claim alleged by Greenwich (the "Greenwich Indemnity Claim"), as provided for in a final order of the Bankruptcy Court resolving the Disbursement Motion or otherwise resolving the Greenwich Indemnity Claim, and (ii) amounts presently due and owing at the time of the Trustee's payment of the ITs' 2003-2, Inc. Initial Distribution, or any part thereof, in accordance with the provisions of paragraph 8(b) of this Settlement Agreement. All remaining funds constituting the ABFS 2003-2, Inc. Funds Initially On-Hand (as hereinafter defined) after full payment of the ITs' 2003-2, Inc. Initial Distribution, and any funds acquired by ABFS 2003-2, Inc. after full payment of the ITs' 2003-2, Inc. Initial Distribution, whether held by ABFS 2003-2, Inc. or the Debtors' estates, shall, subject to the provisions of paragraph 8(b) of this Settlement Agreement, be distributed as follows (i) the next \$500,000 to the Trustee and (ii) all additional funds shall be deemed property of the Debtors' estates to be distributed between the Parties with the ITs receiving forty percent (40%) on account of the Allowed ITs' Chapter 11 Super-Priority Claim and the Trustee receiving sixty percent (60%).

b. Timing of ITs' 2003-2, Inc. Initial Distribution. The Trustee shall make payment to the ITs of the ITs' 2003-2, Inc. Initial Distribution on a monthly basis within fifteen (15) days after the end of each calendar month in which the Trustee has accumulated at least \$5,000 of ABFS 2003-2, Inc. funds available for distribution in accordance with sub-paragraph (a) above, and until such time as the Trustee has distributed \$1,000,000 to the ITs, or the Trustee has determined that no further funds will be available to the ITs for payment of the ITs' 2003-2, Inc. Initial Distribution. To the extent that the Trustee has not accumulated ABFS 2003-2, Inc. funds of \$5,000 in any given calendar month, then the Trustee will roll said sums forward for distribution in the first subsequent month when at least \$5,000 of ABFS 2003-2, Inc. funds has been accumulated.

c. **ITs' Sharing Distribution.** (i) The Trustee shall receive the first \$5,000,000 and the Parties have agreed to share the net proceeds in excess of \$5,000,000 of the Trustee's liquidation of any and all property or assets of the Debtors' estates, other than the Remaining IOS, or any funds available for distribution from the Remaining IOS, and other than

by the Parties, with the ITs receiving forty percent (40%) of the Liquidation Proceeds and the Litigation Proceeds (the "ITs' Sharing Distribution(s)") on account of the Allowed ITs' Chapter 11 Super-Priority Claim and the Trustee receiving sixty percent (60%) of the Liquidation Proceeds and the Litigation Proceeds for the benefit of the Debtors' estates, including but not limited to, use for costs of administration of the Chapter 7 Cases (which shall include any and all statutory or other commissions claimed by the Trustee and allowed by the Bankruptcy Court). The ITs' Sharing Distribution only applies to property of the Debtors' estates and, accordingly, to the extent the Trustee is in possession of property in escrow or property claimed by third parties, then such contested property shall not be the subject of distribution by the Trustee to the ITs as an ITs' Sharing Distribution until such time as the Bankruptcy Court has entered an order adjudicating or otherwise determining the estates' interest of the Debtors' estates in such contested property.

d. **Timing of ITs' Sharing Distribution.** The Trustee shall make payment to the ITs of the ITs' Sharing Distribution on a monthly basis within fifteen (15) days after the end of each calendar month in which the Trustee has accumulated at least \$5,000 of Liquidation Proceeds or Litigation Proceeds. To the extent the Trustee has not accumulated Liquidation Proceeds or Litigation Proceeds of \$5,000 in any given calendar month, then the Trustee will roll said sums forward for distribution in the first subsequent month when at least \$5,000 of Liquidation Proceeds or Litigation Proceeds has been accumulated.

e. **Allocation of Distributions Between the ITs.** The ITs' 2003-2, Inc. Initial Distribution and all of the ITs' Sharing Distribution(s) shall be distributed by the Trustee in equal amounts on a 50/50 basis to Wells Fargo and Law Debenture unless and until

the Trustee receives a joint letter of direction executed by both Wells Fargo and Law Debenture that provides for a different allocation of such distributions by the Trustee.

f. Application of ITs' Distribution and Disgorgement. The

of and shall be applied against the Allowed ITs' Chapter 11 Super-Priority Claims. The

of and shall be applied against the Allowed ITs' Chapter 11 Super-Priority Claims. The

requested by the Trustee but withheld by the ITs (or their consultants or representatives) under the privilege waived under this paragraph.

8. **Provisions Related to ABFS 2003-2, Inc.**

a. **Withdrawal of Indenture Trustees' Motions and ITs' Disbursement Motion Objections.** Upon entry of the Approval Order, the ITs shall withdraw the pending ITs' Motion, and ITs' Disbursement Motion Objections.

b. **Use of Funds of ABFS 2003-2, Inc.** With respect to ABFS 2003-2, Inc., the Parties agree that the Trustee may use the funds of ABFS 2003-2, Inc. to (i) make monthly estimated tax payments to the Internal Revenue Service based upon thirty-five percent (35%) of cash flow distributions received by ABFS 2003-2, Inc., (ii) make payment annually in the aggregate amount of not to exceed \$10,000 to Santora CPA Group, KPMG or similar third party tax preparers for preparation of tax returns which are the responsibility of ABFS 2003-2, Inc. pursuant to the applicable Pooling and Servicing Agreement, including Federal Form 1066 - U.S. Real Estate Mortgage Investment Conduit Income Tax Returns for ABFS Mortgage Loan Trust 2003-2 REMIC I, II and III together with related Schedule A's, (iii) make any payments on account of the ABFS 2003-2, Inc. Obligation (as defined in the Disbursement Motion) in accordance with a final Order of the Bankruptcy Court resolving the Disbursement Motion, (iv) make payment to Boston Portfolio in an amount not to exceed \$7,000 monthly for surveillance of ABFS 2003-2, Inc. and its assets.

c. **ITs Sharing of Tax Refunds.** To the extent the Trustee on behalf of the Debtors' estates receives any tax refund attributable to taxes paid utilizing the funds of ABFS 2003-2, Inc. those funds shall be distributed in accordance with paragraph 5(a).

d. **Representation of Trustee.** The Trustee hereby represents to the ITs that the amount of funds held in the bank accounts of ABFS 2003-2, Inc. as of the date of this Settlement Agreement is approximately \$4,000,000 (the "ABFS 2003-2, Inc. Funds Initially on Hand").

e. **Release of Trustee Related to ABFS 2003-2, Inc.** Effective upon entry of the Approval Order (as defined below), the ITs hereby release and forever discharge the Debtors' estates, George L. Miller, individually and in his capacities as Trustee and Director and Officer of ABFS 2003-2, Inc., their successors, assigns and attorneys (the "Trustee Released Parties") from any and all claims and causes of action arising out of or relating in any way to ABFS 2003-2, Inc., whether known or unknown, including but not limited to claims that were asserted (or which could have been asserted) in the ITs' Motion for Leave especially with respect to claims asserted in the Proposed Complaint annexed as Exhibit

_____ of the world through the date of this Settlement Agreement.

Remaining IOS shall be net of any tax liabilities owed by the Debtors' estates and Trustee, if any, as a result of any taxable income on account of the residual interests represented by any of the Remaining IOS or on account of the liquidation or transfer of any of the Remaining IOS. Accordingly, no such distributions to the ITs shall be made until the associated tax liabilities are paid. Distributions to the ITs from either the Remaining IOS, or from the proceeds thereof, shall not constitute Liquidation Proceeds or be subject to sharing with the Debtors' estates pursuant to the provisions of paragraph 5(b) of this Settlement Agreement. The Trustee and the Debtors' estates shall have no liability on account of any diminution of the value of the Remaining IOS, or for failure of any adequate protection related to the Remaining IOS, and the Allowed ITs' Claims shall not be increased on account of any such diminution or failure of adequate protection. To the extent that the ITs receive distributions from or on account of the Remaining IOS, the Allowed ITs' Chapter 11 Super-Priority Claim shall be reduced by the amount of any such distributions received by the ITs from the Remaining IOS.

b. **Obsidian Evaluation of IOS.** In the event the ITs retain Obsidian to evaluate the Remaining IOS or ABFS 2003-2, Inc., the Trustee consents and has no objection to same provided, however, that the ITs shall be responsible for any fees of Obsidian related to such evaluation.

c. **Damages to Remaining IOS.** The Parties agree that any claims for damages to the Remaining IOS which have been asserted by the Trustee in the Adversary Action shall remain property of the Debtors' estates, and, to the extent monies are recovered thereon such monies shall constitute Litigation Proceeds subject to sharing pursuant to this Settlement Agreement.

10. **Bankruptcy Court Approval.** This Settlement Agreement, including all obligations, covenants, and conditions herein is conditioned on an order of the Bankruptcy Court approving this Settlement Agreement and authorizing the Trustee to make the payments to the ITs as provided herein (the "Approval Order") upon a Motion to be filed by the Trustee pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") upon no less than forty five (45) days notice of hearing and the Approval Order shall provide that the ten (10) day stay of Bankruptcy Rule 6004(g) is waived.

11. **Miscellaneous Provisions.**

a. **Further Instruments.** Each Party agrees to reasonably cooperate in executing any further documentation or taking such further action as may be reasonably necessary to carry out the intent of this Settlement Agreement.

b. **No Admission of Liability.** The acceptance and execution of this Settlement Agreement by the Parties and the agreements herein shall not be deemed or construed as an admission of liability of any nature whatsoever arising from or related to the subject of this Settlement Agreement.

c. **Advice of Counsel.** Each Party hereby agrees, represents and warrants that it has had the advice of counsel of its own choosing in negotiations for and the preparation of this Settlement Agreement that it has read the provisions of this Settlement Agreement that it has had this Settlement Agreement fully explained by such counsel, and that it is fully aware of the contents and legal effect of the Settlement Agreement, and has executed this Settlement Agreement voluntarily and fully intending to be bound thereby.

d. **Assignment by the ITs.** The ITs shall have the right to freely assign their respective rights and interests under this Settlement Agreement to their respective (i) successors and assigns, and (ii) duly appointed successor indenture trustee under the 2003 Indenture or the 2004 Indenture, as appropriate, and the Trustee will not contest the assignment of any such rights and interests. The ITs shall have the right to assign their respective interests under this Settlement Agreement to any other party not described in this paragraph with the consent of the Trustee, which shall not be unreasonably withheld.

e. **Authority.** Upon entry of the Approval Order, the Trustee and the Debtors' bankruptcy estates have the requisite power and authority to execute, deliver, and perform under this Settlement Agreement. Each other Party to this Settlement Agreement has the requisite power and authority to execute, deliver, and perform under this Settlement Agreement. None of the Parties has transferred, assigned or disposed of any interest in the claims being allowed, fixed and/or released under this Settlement Agreement.

f. **Non-Reliance.** The Parties acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by any Party hereto, or anyone acting on their behalf, which are not embodied in this Settlement Agreement and that they have not executed this Settlement Agreement in reliance on any such representations, inducements, promises, agreements, or warranties.

g. **Third Party Beneficiary.** The Parties agree that George L. Miller individually shall be considered an intended third party beneficiary entitled to enforce the release and indemnity provisions set forth respectively in paragraphs 8(d) and 9(d) of this Settlement Agreement.

h. **Joint Effort.** This Settlement Agreement has been drafted through a joint effort of the Parties and their counsel and, therefore, shall not be construed in favor of or against any of the Parties. The terms of this Settlement Agreement have been negotiated by the Parties in good faith with the advice of counsel and are fair and reasonable under the circumstances.

i. **Counterparts.** This Settlement Agreement may be executed in multiple counterparts and by facsimile copy or electronic copy, each of which shall be considered an original but all of which shall constitute one agreement.

j. **Mediation of Disputes.** The Parties agree that any disputes under this Settlement Agreement shall be mediated before U.S. Bankruptcy Judge Gross who may report the results of said mediation to U.S. Bankruptcy Judge Mary Walrath.

IN WITNESS WHEREOF, the Parties hereto by themselves or through their duly authorized counsel, intending to be bound, have executed this Settlement Agreement as of the day and year set forth above by affixing their signatures below.

Dated: November 6, 2007

By: /s/ John T. Carroll, III

John T. Carroll, III, Esquire (DE No. 4060)

Cozen O'Connor

1201 N. Market Street, Suite 1400

Wilmington, DE 19801

(302) 295-2028 Phone

(302) 295-2013 Facsimile

Steven M. Coren, Esquire

David Dormont, Esquire

Kaufman Coren & Ress, P.C.

1517 A Street, Suite 2710

By: _____

Frederick B. Rosner, Esquire (DE No. 3995)
Duane Morris LLP
1100 N. Market Street, Suite 1200
Wilmington, DE 19801
(302) 657-4900 Phone
(302) 657-4901 Facsimile

/s/ Thomas B. Kinzler

Joel S. Rublin, Esquire
Thomas B. Kinzler, Esquire
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178
(212) 808-7800 Phone
(212) 808-7897 Facsimile

Counsel to Wells Fargo Bank, National
Association, as Indenture Trustee

By: _____

Francis A. Monaco, Jr., Esquire (DE No. 2078)
Kevin J. Mangan, Esquire (DE No. 3810)
Womble Carlyle Sandridge & Rice PLLC
222 Delaware Avenue, 15th Floor
Wilmington DE 19801
(302) 252-4340 Phone
(302) 656-2769 Facsimile

/s/ James S. O'Brien, Jr.

Tina Niehold Moss, Esquire
James S. O'Brien, Esquire
Pryor Cashman LLP
410 Park Avenue
New York, NY 10022-4441
(212) 421-4100 Phone
(212) 326-0806 Facsimile

Counsel to Law Debenture Trust Company of
New York, as Indenture Trustee

EXHIBIT "C"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 7
: :
AMERICAN BUSINESS FINANCIAL : Case No. 05-10203 (MFW)
SERVICES, INC. *et al.*, : (Jointly Administered)
: :
Debtors.¹ : Related Doc. No. 3305, 3866, 3870 and
: Adversary No. 06-50826

**ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN GEORGE L.
MILLER AS CHAPTER 7 TRUSTEE, WELLS FARGO BANK, N.A., AS INDENTURE
TRUSTEE, AND LAW DEBENTURE TRUST COMPANY OF NEW YORK, AS
INDENTURE TRUSTEE, REGARDING (I) DISBURSEMENT MOTION (DOCKET NO.
3305), (II) INDENTURE TRUSTEES' MOTIONS (DOCKET NOS. 3866 AND 3870),
AND (III) ADVERSARY ACTION (ADVERSARY NO. 06-50826)**

Upon consideration of the Motion² of George L. Miller, the Chapter 7 Trustee (the "Trustee") for the bankruptcy estates of American Business Financial Services, Inc. and the related debtors (collectively referred to as the "Debtors") for the entry of an order pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a) approving the settlement agreement by and between the Trustee, Wells Fargo Bank, N.A., as Indenture Trustee ("Wells Fargo"), and Law Debenture Trust Company of New York as Indenture Trustee ("Law Debenture") (Wells Fargo and Law Debenture are hereinafter collectively referred to as the "ITs") (the "Settlement Agreement"), a copy of which is attached to the Motion as Exhibit "A"; it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion and the opportunity for a hearing on the Motion were appropriate and sufficient

¹ The Debtors are American Business Financial Services, Inc., Case No. 05-10203, Tiger Relocation Company, Case No. 05-10204, American Business Credit, Inc., Case No. 05-10206, HomeAmerican Credit, Inc., Case No. 05-10207, American Business Mortgage Services, Inc., Case No. 05-10208, and ABFS Consolidated Holdings, Inc., Case No. 05-10217.

² Capitalized terms shall have the meanings set forth in the Motion unless otherwise defined herein.

under the particular circumstances and that no other or further notice need be given; and the Court finding that the Trustee has articulated reasonable business judgment to support his entry into the Settlement Agreement and that the Trustee's entry into the Settlement Agreement is in the best interest of the Debtors' estates and their creditors and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED THAT:

A. (i) Proper, timely, adequate and sufficient notice of the Motion and the Hearing has been provided in accordance with Section 102(l) of the Bankruptcy Code and Bankruptcy Rules 2002 and 9019, (ii) such notice was good and sufficient, and appropriate under the circumstances of these cases, and (iii) no other or further notice of the Motion is or shall be required.

B. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to Wells Fargo, (iii) counsel to Law Debenture, and (iv) counsel to Greenwich Capital Financial Products, Inc.

C. The Settlement Agreement represents a fair, prudent and reasonable compromise of the controversies resolved therein and is in the best interests of the Debtors' estates, their creditors, and holders of the Collateralized Notes (the "Holders"), taking into account, among other things, (a) the probability of success on the claims being compromised as part of the Settlement Agreement, (b) the complexity of the litigation involved with respect to the claims being compromised as part of the Settlement Agreement and (c) the paramount interest of the creditors and a proper deference to their views in respect of the Settlement Agreement.

D. The Trustee has demonstrated good, sufficient, and sound business purpose and justification in entering into the Settlement Agreement with the ITs.

E. The ITs each possess full power and authority under their respective Indentures to enter into the Settlement Agreement on behalf of and for the benefit of the Holders, and their entry into the Settlement Agreement with the Trustee is a prudent exercise of their power and

4. The Trustee's entry into the Settlement Agreement is authorized and ratified pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019, and the Trustee is hereby authorized, empowered and directed to enter into and perform, and consummate the transactions, under the Settlement Agreement. All the terms of the Settlement Agreement are hereby approved and are binding in all respects on all creditors and parties in interest in these cases, including the Trustee, the Debtors' estates, the ITs, the Holders and any future Holders.

5. The Trustee is hereby authorized to take any and all actions and execute any and all documents and instruments that are reasonably necessary or appropriate to implement and effectuate the Settlement Agreement, including but not limited to the distribution of funds to the ITs as provided for therein.

6. The claims asserted by the Trustee against Wells Fargo Bank, N.A., individually, Law Debenture Trust Company of New York, individually, and Wells Fargo and Law Debenture as the ITs, in the Adversary Action, are hereby dismissed with prejudice. Nothing herein dismisses, impairs, prejudices, or otherwise impacts the Trustee's claims and causes of action against any and all other persons or entities not specifically identified in paragraph 3 of the Settlement Agreement.

7. The ITs' Motions (Docket Nos. 3866 and 3870) and the ITs' Disbursement Motion Objections (Docket Nos. 3727 and 3878) are hereby deemed withdrawn.

8. The ITs are hereby allowed an unsecured priority administrative claim against the estates of the Debtors under Section 503(b) of the Bankruptcy Code in the aggregate amount of Forty Million Dollars (\$40,000,000)(the "Allowed ITs' Chapter 11 Super-Priority Claim"), which claim is deemed to have been incurred in the Chapter 11 Cases before conversion of the Debtors' Chapter 11 Cases to Chapter 7 Cases. Such claim shall have priority over any and all

administrative expenses incurred in the Chapter 11 Cases of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

9. The ITs are hereby allowed a general unsecured claim against the estates of the Debtors in the aggregate amount of Fifty Eight Million One Hundred Forty Nine Thousand Six Hundred Eighty Five Dollars (\$58,149,685)(the "Allowed ITs' General Unsecured Claim"), which claim for purposes of distribution of property of the estates will be entitled to payment as an allowed timely filed general unsecured claim under Section 726(a)(2) of the Bankruptcy Code.

10. The Allowed ITs' Chapter 11 Super-Priority Claim and the Allowed ITs' General Unsecured Claim (collectively, the "Allowed ITs' Claims") allowed under the Settlement Agreement supersede, amend and replace the Wells Fargo Proof of Claim and the Law Debenture Proof of Claim. The Allowed ITs' Claims shall be in full satisfaction of any and all obligations and/or claims, as defined in Section 101(5) of the Bankruptcy Code, of the ITs

~~in the amount of \$58,149,685, including but not limited to any and all claims of the ITs for~~

documents, if any. All Enjoined Parties shall be, and hereby are, bound by this Order, and shall be permanently and irrevocably enjoined from commencing or continuing in any manner any action or proceeding against the IT Parties for their entry into the Settlement Agreement or arising out of, relating to or in connection with the ITs' support of the Motion and actions taken in connection with the execution and delivery of the Settlement Agreement and the ancillary documents, if any.

12. The failure to mention any provision of the Settlement Agreement in this Order shall not impair its efficacy, it being the intent and effect of this Order that the Settlement Agreement is approved in all respects and all relief contemplated by the Settlement Agreement is hereby granted.

13. This Court retains jurisdiction to interpret, implement and enforce the terms and provisions of this Order and the Settlement Agreement.

14. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). The provisions of Bankruptcy Rule 6004(g) staying the effectiveness of this Order are hereby waived, and notwithstanding Bankruptcy Rule 7062, this Order shall be effective immediately upon entry hereof.

Dated: December _____, 2007

BY THE COURT:

HONORABLE MARY F. WALRATH
CHIEF UNITED STATES BANKRUPTCY JUDGE