



# **A Guide on Handling FAME-Insured Loans and Loan Workouts**

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## **A GUIDE ON HANDLING FAME-INSURED LOANS AND LOAN WORKOUTS**

### **A. Introduction:**

This guide is to address lenders' questions about what FAME's expectations and requirements are when a borrower is unable to meet the terms and conditions of its FAME-insured borrowings, which includes repayment.

For over 25 years, the Finance Authority of Maine ("FAME") has been collaborating with banks and other commercial lenders to help Maine businesses borrow money for startup, expansion and stabilization. The primary means by which FAME assists borrowers and commercial lenders is its Loan Insurance Program. With this program, FAME mitigates a lender's risk of loan loss by contracting to pay an agreed percentage (as high as 100%) of the post-liquidation deficiency balance, if any, on a failed, FAME-insured loan. FAME also offers specialized direct lending programs, a "lender of last resort" program, a venture capital program, and a seed capital tax credit program, any of which might augment the financing a borrower arranges with a commercial lender.

FAME's Loan Insurance Programs are designed to promote "win-win" outcomes for Maine lenders, for Maine borrowers and for the entire State of Maine. With FAME credit enhancement,

- Borrowers gain access to loans for business development purposes for which they might otherwise be turned down.
- Lenders gain loan volume that they otherwise will not book because the loan requests fall a little short of meeting standard business credit underwriting criteria; and
- Maine gains because many of these credit-enhanced loans prove successful in preserving or in generating increased economic activity within the state.

Inevitably, however, when credit risks are taken some business problems and failures are going to result. When problems arise with a particular borrower or loan, both the lender and FAME should, as one of their very first measures, go back and review the contractual terms governing the loan insurance coverage of that borrower or loan.

**THIS GUIDE IS FOR GENERAL INFORMATION AND GUIDANCE PURPOSES ONLY. FOR SPECIFIC REQUIREMENTS OF FAME INSURANCE, REFERENCE SHOULD BE MADE TO THE LOAN INSURANCE AGREEMENT AND AUTHORIZATION, THE SPECIFIC TERMS OF WHICH SHALL CONTROL OVER ANY STATEMENT IN THIS GUIDE.**

## **B. Documents Governing the FAME Loan Insurance Coverage:**

Under typical circumstances, three documents contractually govern the terms under which a Lender qualifies for a FAME insurance payout on a failed, or failing, Loan:

- i. Lender Commitment Letter/Term Sheet. The Commitment Letter/Term Sheet is the document the lender issues to the Borrower outlining the approved loan amount and the lender's required terms of lending. The lending terms spelled out typically include:
  - a. purpose of loan and authorized use of funds;
  - b. required equity, down payment and/or matching or subordinate borrowings to fund project;
  - c. interest rate, repayment terms, and Loan maturity;
  - d. required collateral, collateral advance rates, and collateral lien position;
  - e. required guaranties and credit enhancements (including FAME loan insurance);
  - f. financial reporting requirements and other lender loan monitoring requirements;
  - g. customized loan covenant requirements, including financial covenants, if any.

FAME carefully evaluates the terms of Commitment Letters/Term Sheets in making its loan insurance underwriting decisions and holds lenders and borrowers to a strict standard of adhering to Commitment Letter/Term Sheet terms, unless FAME is requested in writing and agrees to allow a modification of terms.

- ii. Loan Insurance Authorization Letter. A Loan Insurance Authorization Letter is issued by FAME for each approved loan insurance request. This letter incorporates by reference the terms of the Lender's Commitment Letter/Term Sheet. It also may set further requirements for collateral from the borrower or for monitoring by the lender as conditions of FAME's insurance commitment. In cases where Loan Insurance Authorization Letter terms contradict Commitment Letter/Term Sheet terms, the Authorization Letter's terms prevail. It may limit or remove FAME's insurance coverage of specific facets of specific deals. FAME requires strict adherence to the terms of its Loan Insurance Authorization Letters, but is always willing to consider reasonable, written requests for a modification of terms.
- iii. Loan Insurance Agreement/Contract. The Loan Insurance Agreement is also incorporated by reference in each Loan Insurance Authorization Letter. This agreement is a contract, which runs between FAME and each lender, participating in FAME's loan insurance programs. The Loan Insurance

Agreement is the document which spells out the general standards of administrative care a lender must exercise with its insured loan portfolio, what losses are covered, and the process which a Lender must follow to establish a loan loss eligible for insurance payment.

### **C. Lenders' Administrative Duties and Standards for FAME-Insured Loans:**

Generally the standard of administrative care for insured Loans referenced in FAME's Loan Insurance Agreements is a "normal practices of a prudent commercial lender' standard". FAME expects commercial lenders to administer insured loans in a manner meeting accepted industry standards. The administrative standards should at least be on a par with the standards used for uninsured loans in the lenders portfolio, and in some instances, might have to be higher due to heightened monitoring requirements a lender has offered or FAME has required as a means of proceeding with a loan of above-average risk. Generally, a lender is expected by FAME:

- i. to have made a proper credit investigation of a borrower and the proposed loan guarantors before making the loan;
- ii. to have properly investigated and verified ownership and value of proposed collateral;
- iii. to have entered into a binding and enforceable loan contract with a borrower and any guarantors;
- iv. to have properly perfected all security interests required for FAME's loan insurance;
- v. to have exercised reasonable supervision over the use of loan proceeds for authorized purposes;
- vi. to have harbored the loan documents in a secure place and to have maintained accurate records of interest accrual, Loan payments, etc.;
- vii. to require borrowers to adequately maintain and insure loan collateral and keep taxes on collateral property current;
- viii. to maintain reasonable contact with borrowers and to periodically review and track borrowers' Loan payment record and financial and operational performance in a manner acceptable to FAME;
- ix. to obtain FAME consent prior to releasing collateral, guaranties, insurance or bankruptcy claims; prior to allowing changes of borrower ownership, location or control; and prior to making any other material changes in loan terms;
- x. to timely notify FAME of loan payment defaults, of other loan covenant defaults, and of the discovery of any conditions or events which might be reasonably anticipated to make it difficult for borrower to repay, and/or lender to collect, the loan in full;

- xi to track the scheduled termination date of FAME loan insurance (generally corresponds with loan maturity dates; FAME does generally send lenders 30 day pending termination reminder notices), and to submit to FAME timely requests for insurance renewals (at least 30 days in advance of scheduled insurance termination is preferred; temporary insurance extensions can be arranged upon written request, if lender needs more time to submit a complete insurance renewal request package).
- xii to do a yearly review/analysis of the borrower when requested by FAME.

Failure of a lender to properly follow all material obligations or responsibilities gives FAME the option to nullify and cancel the Loan insurance coverage of any loan affected by lender's breach or neglect of its obligations. Without waiving FAME's discretionary right to choose outright insurance nullification or termination, FAME does value its relationships with lenders, and it has a history of "making the punishment fit the crime." There have been numerous instances where a breach has either been outright waived, or where just a partial adjustment to the loan insurance coverage or payout has been made by FAME, depending on the facts and circumstances of the case.

#### **D. FAME's Requirement to Receive Loan Default Notices:**

When it comes to borrowers having business performance troubles and defaulting on their FAME-insured loans, FAME has loan workout expectations and requirements similar to those set by most lenders' own loan committees or credit administration departments. First, FAME wants borrowing relationship managers to provide FAME with early notification of performance changes which threaten or which clearly affect a borrower's ability to stay in business and repay debt. The Loan Insurance Agreements specify that FAME is to be notified no later than 60 days after a loan has gone delinquent on payments, no later than 15 days after a lender discovers an adverse change or event of default which indicates to lender the insured loan "has or will become difficult to collect in full, and within 60 days of any other default.

FAME requires early default notification for two reasons. First, just like a bank, FAME grades its loan exposure and maintains loan loss reserves on its portfolio. FAME needs timely information from lenders to maintain proper loan risk ratings and to allocate appropriate reserve capital to the insured loan portfolio. Second, early notification of borrower problems generally leaves available more time and greater means for the lender, borrower and FAME to create a loan workout plan which does not require full business shutdown and liquidation, which should always be the last resort. Changes such as significant sales declines, operating losses, loan payment delinquency, tax lien or litigation notices, or borrower's loss of access to trade credit, are the types of signals of deterioration in the borrower's (or guarantor's) repayment abilities which should trigger at least a phone call or a short letter from lender to the FAME account officer.

#### **E. FAME's Response Options to Insured Loan Default Notification:**

FAME's Loan Insurance Agreements require FAME to respond to notifications of borrower default from lenders within 30 days after receipt of notice. On defaults other than payment defaults, FAME has five (5) response options:

- i. FAME can elect to cure the default, or elect to arrange with lender (and, by implication, with borrower), another means of curing the default, if any means is reasonably possible. There have been instances, for example, in which borrowers have sold non-essential collateral, with lender and FAME consent, to reduce leverage and debt service. FAME also on occasion provides new, direct loans to cash-strapped borrowers or insures new loans lenders make to borrowers as part of business turn around plans. FAME has a strong interest in working with lenders and borrowers to find sensible ways to cure loan defaults and the business problems causing them.
  
- ii. FAME can elect to instruct the lender to accelerate the loan, liquidate collateral, and pursue the guarantors in an expeditious, prudent, commercially reasonable manner. Generally, FAME is going to elect this option only when a borrower exhibits one or more of the following characteristics:
  - a. has already ceased operations, or has stated that the operations will be shutting down in the very near future;
  - b. has limited or no prospects of continued viability;
  - c. shows significant and continuing collateral deterioration;
  - d. is uncooperative in curing the default(s) or in otherwise working out its problems with the Lender and FAME; or
  - e. has purposefully deceived or caused financial harm to lender.

As an economic development agency, FAME's predisposition is to see some time and effort put into attempting a debt restructuring and business turn around plan. With FAME being the ultimate bearer of up to 90% of the downside risk of loss on most failed loan workouts, if FAME thinks a workout is a realistic solution, FAME typically will request that the lender implement a workout plan rather than moving forward to quickly liquidate borrower's assets.

- iii. FAME can elect to purchase the loan in exchange for payment of the outstanding principal, interest (90 days) and other sums due.
  
- iv. FAME can elect to pay the insured portion of the loan early and require lender to continue with diligent collection efforts or direct lender to assign all loan documents and loan collection and other rights to FAME. FAME has the option contractually either to pay lender in one lump sum or, on pro-rata insured loans, in installments in an amount not less than the insured portion of each regularly scheduled payment as it would come due if the loan were not accelerated. FAME customarily has elected the lump sum payment method.

If the loan is assigned to FAME, unless a lender waives retention of its residual, uninsured interest in the loan (which a lender sometimes does to induce FAME to elect this early buyout option over the other options), lender retains the right to

timely receive from FAME its share, if applicable, of any net loan recoveries attributable to lender's residual, uninsured interest in the loan.

- v. FAME can elect to *take no action*, and require lender to take no collection action, on defaults *other than payment defaults*. Having this option does not mean that FAME takes loan defaults other than payment defaults lightly, it just is an option which gives FAME some negotiating power to encourage lenders to work extra hard towards keeping Maine businesses operating to repay loans rather than seeking the potentially more expedient means of repayment via loan acceleration, liquidation and FAME insurance settlement. Typically, FAME is going to expect lender at least to heighten its monitoring of borrower's performance and possibly, to take other precautionary measures because default, although waived, indicates deterioration in credit quality which merits caution.

As regards to payment defaults on loans, FAME's contractual rights with lenders are more constrained. Contractually, FAME only has the right to elect any of the first four of the five options listed above. Most loans on FAME's over 90-day delinquency list are loans approved for liquidation or are loans involved in legal proceedings, such as bankruptcy. There are instances, however, in which a lender, with continued FAME insurance coverage on outstanding loan balances and accruing interest, is willing to continue working towards a business turnaround with a borrower even though the borrower is more than 60 days past due on loan payments.

#### **F. When FAME Opts for the Loan Acceleration and Liquidation:**

For loans approved by FAME for acceleration and liquidation, lenders are requested to provide for FAME's review and approval a written outline of their liquidation plans, including:

- i. name of collection attorney, hourly billing rate and an estimate of services to be rendered, and cost thereof;
- ii. planned means and estimated cost of liquidating the collateral to meet the requirements of the Uniform Commercial Code and/or the applicable state foreclosure statutes;
- iii. plans, names and estimated costs for hiring appraisers, environmental surveyors, or other professionals to prepare collateral reports or otherwise assist with the liquidation;
- iv. a recommendation for actions to be taken against the loan guarantors, if any;
- v. an estimated timetable for completion of the liquidation and the collection actions against the guarantors.

FAME recognizes that loan workout and liquidation situations tend to be fluid, and are prone to changes of fact and circumstance. FAME's objective in requesting a written,

preliminary liquidation plan is to determine if the lender and FAME agree on what the course of action will be, how it will be implemented, and what it might end up costing. FAME works constantly with a risk-heightened loan portfolio, and it has workout and liquidation experience that is always available and shared with the lenders. When a workout or liquidation situation changes, the lender's relationship manager or workout officer needs to keep in touch with FAME's Senior Workout Officer about the appropriate course of action to be taken.

#### **G. FAME Insurance Coverage of Loan Collection Costs:**

Reasonable and necessary costs of collecting defaulted insured loans may be deducted from liquidation proceeds prior to determining a deficiency, which forms the foundation for a claim. Lenders are expected to arrange and handle most of the business aspects of borrower negotiations and loan liquidations and not to rely excessively on attorneys to handle such aspects of a loan workout. That being said, FAME recognizes that attorneys usually have an important and necessary role to play in loan workouts and liquidations.

Other reasonable and necessary collection costs may include paying overdue property taxes, arranging hazard insurance coverage, obtaining appraisals, doing environmental surveys, changing locks, transporting collateral, paying an auctioneer or broker, etc. The best way to be assured that these costs will be covered in any particular instance is to review the need for these costs with FAME before incurring them. Expensive market value appraisal updates, for example, may not provide much new information truly useful in a liquidation situation, and therefore should not automatically be ordered.

#### **H. Allocation of Collection Proceeds and Costs When Lender Has Both Insured and Non-FAME-Insured Loans with a Borrower:**

Cases frequently arise where lenders have both FAME-insured and uninsured loans with the same borrower. This can raise the issue of how a lender should apply setoffs, guaranty collections, collateral proceeds, insurance refunds, and the like to the various loans. It can also raise the issue of how to allocate costs of collection. Two basic FAME precepts on the issue of loan repayment priorities are:

- i. a lender needs to disclose to FAME all existing and proposed lender loans to the borrower at the time the loan insurance is being underwritten;
- ii. a lender needs to disclose to FAME in advance its plans to lend new monies to and place new liens on a borrower, except for purchase money security interest loans which do not exceed any pre-agreed borrower limits on capital expenditures or on additional indebtedness.

When FAME knows during its insurance underwriting process about other outstanding loans, it generally is very careful to make sure that either Lender's Commitment Letter or FAME's Loan Insurance Authorization Letter clearly delineate the collateral priorities, and sometimes the payment priorities, of the insured and uninsured loans. Sometimes, FAME even requires a marshaling of assets arrangement. When notified in advance, FAME also will seek to reach agreement with lenders on collateral and payment priorities of new, non-FAME-insured loans made to borrowers.

When collateral priorities are clearly delineated, then they, of course, will dictate the priority of application of collateral proceeds funds, or collateral-specific insurance proceeds funds, to the various loans. A first mortgage is paid first, then a second mortgage, etc., irrespective of which loan FAME happens to insure. A lender, however, does not have the right to dilute the priority lien position of a FAME-insured loan, such as by adding a Loan taking a lien position shared with a FAME-insured loan, without FAME's prior knowledge or consent. FAME will either ratably dilute or outright cancel its loan insurance coverage if this is done. Costs of collection specific to a particular collateral asset should also be netted out of the proceeds from that collateral.

FAME's requirement is that non-collateral-specific collection monies, such as guarantor collections, tax refunds and general insurance proceeds, be applied by lender pro-rata to the FAME insured loans, and to the uninsured loans which FAME knew about and consented to. In FAME's view, purchase money security interest loans, such as car loans, and loans made by the lender without FAME's prior knowledge and consent, will only have a second priority claim to the non-collateral-specific collection monies. FAME requires non-collateral-specific collection costs, such as an attorney's fees for handling a bankruptcy case or for obtaining a guarantor deficiency default judgment, to be similarly allocated to the various Loans.

Setoffs can be a special case. If there is a line of credit, cash account balances generally represent inventory proceeds or receivables collections, and as such, generally should be applied first to the credit line having the highest priority claim to receivables and inventory collateral and proceeds. If there is no credit line, just several term loans, the setoff cash generally should go to the loan with the priority general claim to business assets, or ratably to loans with equal priority, as the case might be. It is sometimes possible to trace cash balances as proceeds of a specific collateral asset sale, in which case, the lien priorities on that collateral should be honored.

### **I. Loan Collection Standards and Requirements Prior to Requesting a FAME Insurance Payment:**

Unless FAME has exercised its option to buy a loan or pay insurance early, in lieu of allowing liquidation, FAME's loan insurance coverage is, in effect, loan deficiency balance coverage. A claim payment request, as is outlined in the Loan Insurance Agreement, requires a lender to certify that it has "liquidated the collateral and all guarantees for the loan" and "has diligently pursued and exhausted all sources of repayment." FAME acknowledges that this language sets a very strict standard on obtaining a loan insurance payout. In practice, however, FAME is willing to discuss cost/benefit and time value of money factors with lenders. For example, if it is going to take nine months and cost \$35,000 to foreclose on a second mortgage on a Guarantor's home that is not expected even to bring its full first mortgage amount at auction, then FAME is likely to waive, at lender's request, the liquidation of the 2nd mortgage position. It will probably make assigning the guaranty and the 2nd mortgage outright to FAME a condition of the insurance settlement. In other cases, such as when there is a piece of collateral with some net realizable value that will take an extended period of time to liquidate, FAME may consider making a partial insurance claim payout, while the lender continues towards liquidating this residual collateral.

## **J. FAME Policy on Collection from Loan Guarantors:**

Another insurance settlement issue, which frequently arises for discussion between lenders and FAME, is the amount of time and effort, which should be put into the collection of loan guaranties, especially personal guaranties. FAME, as a fiduciary for State of Maine monies, and as a party which has provided an extra measure of support to a guarantor's business, views personal guaranty obligations very seriously. It expects guarantors to honor their obligations to the best of their ability to do so. If a guarantor does not come forward to propose an equitable settlement of his or her personal guaranty, FAME expects at minimum that a Lender will obtain and record a deficiency judgment against that guarantor, even if no means of collecting on the judgment is immediately obvious. Usually in such cases, FAME is providing up to 90% insurance coverage of the legal costs expended to obtain the judgment, so FAME views this as a fair requirement to impose on the Lenders. FAME then typically has the deficiency judgment assigned over to FAME as part of its insurance settlement with lender. Depending on a guarantor's income and personal assets, taking collection action on the judgment may also be required of the lender. If a guarantor only will step forward and offer a settlement equivalent to or less than what the lender might end up getting out of a Chapter 7 or 13 bankruptcy proceeding, which frequently is where a guarantor's attorney will try to steer the negotiations, then FAME will likely reject the settlement offer and request lender to continue pressing collection action until the guarantor offers something better, or does indeed file for bankruptcy protection.

Some guarantors offer to sign loan reaffirmations after filing for bankruptcy protection (most typically when their residence is mortgaged to help secure the insured loan), or offer to sign deficiency settlement notes outside of bankruptcy. FAME encourages lenders to take back such notes, and to be creative and flexible in negotiating the monthly payment amounts and interest rates on such notes. Lenders, however, should always clear their guarantor settlement arrangements with FAME before finalizing them with the guarantors.

FAME typically offers lenders the choice of holding and collecting the guarantor's note as part of the deficiency settlement, with FAME insurance coverage remaining intact on the note and FAME settling the deficiency amount over and above the note amount, or the choice of taking FAME's pro-rata or leveraged insurance payment in settlement of the full deficiency and assigning the guarantor's note outright to FAME to collect on as a possible recovery source on the insurance payment.

## **K. Submitting a Loan Insurance Payment Request to FAME:**

Once a lender is ready to certify that it has liquidated all collateral and pursued and exhausted all sources of repayment, or once a lender has negotiated with FAME a mutually acceptable, alternative insurance settlement arrangement, it is time to memorialize the insurance settlement in writing and to get the insurance claim paid. Lenders at this point should submit to FAME a written request for payment addressing the following

- i. borrower's name, guarantors' names, original loan amount, and date of FAME Loan Insurance Authorization;

- ii. certifying that lender has liquidated the collateral and all guarantees for the Insured loan and has diligently pursued and exhausted all sources of repayment (lender should spell out any exceptions to meeting these standards and any alternative arrangements for which it is seeking approval from FAME);
- iii. providing the details of:
  - a. date of loan acceleration and the insured loan balance at time of loan acceleration;
  - b. a brief history of the loan account, the nature of the problems arising, lender's pre-acceleration efforts to resolve same with borrower, a brief recounting of the measures taken to collect the loan/liquidate the collateral once FAME approved acceleration/liquidation (FAME tries to learn how to be a better risk underwriter from this information);
  - c. the amounts afterwards collected and the sources of such collection;
  - d. the legal and other collection expenses incurred and any protective advances made;
  - e. the current accrued interest amount owed and the per diem interest cost;
  - f. the remaining unpaid principal balance;
- iv. if applicable, certifying that lender has allocated payments, collateral proceeds and other collection proceeds, and expenses among the FAME-insured and other non-insured loans of borrower in the manner prescribed in the Loan Insurance Agreement (discussed above), and providing an accounting for same.

If a lender knows that as part of the loan insurance claim settlement, FAME is going to be taking assignment of the insured loan from Lender, then lender should send along to FAME with the request for payment a set of photocopies' of the loan documents which FAME can use to help prepare the loan assignment documents lender will have to execute in FAME's favor.

Lenders should take note of the fact, when preparing insurance payment requests, that FAME loan insurance coverage does not cover the following items:

- i. interest in excess of 90 days, or penalty interest, or prepayment penalties;
- ii. late charges or other loan default or forbearance fees levied on borrower;
- iii. the cost of any FAME loan insurance premiums, which lender has paid to FAME and has been unable to get reimbursed by borrower,
- iv. professional fees or other collection costs which FAME finds unnecessary or excessive.

Upon receipt of a written request for a loan insurance payout, the FAME's Senior Workout Officer reviews the history of the loan and of the loan workout, and if everything is in order, promptly seeks internal approval to issue an insurance settlement check. If any requirement remains unresolved, then FAME will promptly contact lender and search for mutually agreeable solutions to any open issues. FAME will always prepare a Settlement Memorandum (see sample below) to accompany a settlement check. The Settlement Memorandum will spell out any remaining obligations of lender and FAME to one another concerning the settlement. Although FAME always requests lender to promptly execute and return to FAME an acknowledgement copy of the Settlement Memorandum, cashing of the insurance check also signifies to FAME lender's acceptance of the outlined settlement terms, so the memorandum should be reviewed carefully. If an assignment of the Insured loan from lender to FAME is a required part of the insurance settlement, FAME may require completion and return of the assignment documents and delivery of the original loan documents prior to turning over the insurance settlement check (see sample below of FAME's standard Assignment Document). If an assignment of the Insured Loan from lender to FAME is a required part of the insurance settlement, in lieu of the above noted Settlement Agreement, FAME may require completion and return of an Assignment Agreement including the delivery of the bank's original loan documents prior to turning over the insurance settlement check (see sample below of FAME's standard Assignment Document).

#### **L. Final Comment**

This guide tries to address the most asked questions lenders may have about FAME's loan insurance and loan workout programs. FAME is a state-chartered agency, and it strives to be a responsive, flexible, non-bureaucratic organization in pursuit of its economic development mission to support the financing of private enterprise initiatives in Maine. To that end, FAME welcomes all lender questions and input, so please call us whenever you have a comment or a question about how our programs work.



**Loan Insurance Settlement  
Memorandum (Sample)**

To: XXX Banker ("Lender")

From: Finance Authority of Maine ("FAME")

Subject: (the "Loan or Insured Loan") in the Original Loan Amount of \$000.00

Date:

\*\*\*\*\*

Enclosed FAME's check of **\$000.00** in full settlement of FAME's maximum % pro-rata loan insurance liability for the above-referenced insured Loan, including but not limited to full settlement of those matters set forth in and contemplated by a Loan Insurance Program Insurance Authorization (the "Authorization") dated , executed by \_\_\_\_\_. The loan insurance settlement figure used above is based upon the insurance settlement request you sent to FAME. The loan insurance settlement figure used above is based upon \_\_\_\_\_% of FAME's maximum liability under the Authorization.

Your signature below and the cashing of this check shall acknowledge acceptance of this check in full satisfaction of FAME's insurance liability for this insured Loan.

In order to preserve the evidentiary records of the Note, it should not be recorded by Lender that the FAME payment reduces the amount due from the Borrower. Rather, the FAME payment represents a payment of insurance that Lender, under the terms of the FAME Loan Insurance Program Authorization, is obligated to repay FAME from any future net amounts recovered from the Borrower that are applicable to the FAME-Insured Note.

Please contact me, if you have any questions or concerns about the terms of this loan insurance settlement.

**Memorandum seen, acknowledged and agreed to this \_\_\_\_ day of \_\_\_\_\_ 20XX.**

**(Lender)**

**By:** \_\_\_\_\_  
**Title:**

## SETTLEMENT AGREEMENT (Sample)

THIS SETTLEMENT AGREEMENT, dated as of \_\_\_\_\_, 20XX by and between **XXX Bank** (hereinafter "Lender") and the **Finance Authority of Maine** (hereinafter "Authority").

### WITNESSETH

WHEREAS, Lender and Authority are the parties to a Loan Insurance Program Authorization dated \_\_\_\_\_, (the "Authorization") concerning a Loan (the "Loan") in the amount of \$000.00 (0% pro rata insured) to (the "Borrower"), which is governed by a Loan Insurance Agreement dated as of \_\_\_\_\_, as amended by an addendum dated \_\_\_\_\_, between Lender and the Authority (the "Loan Insurance Agreement");

WHEREAS, the Authority has paid to the Lender money and other considerations as payment in full for the Lender's claim for amounts remaining due on the Loan, plus all costs and expenses of collection eligible for insurance;

WHEREAS, Lender and the Authority desire to set forth the terms of the final payment and the remaining ongoing rights, obligations and responsibilities of the parties hereafter;

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Acknowledgment of Final Settlement by Lender. Lender acknowledges that it has received **\$000.00**, which represents 100% of FAME's liability under the Authorization, and other considerations from the Authority which satisfy all obligations due from the Authority to the Lender pursuant to the Loan Insurance Agreement relating to the Loan from Lender to Borrower, and that no further amounts are due to Lender, regardless of any further expenses incurred or interest accrued under or related to the Loans. Notwithstanding the foregoing, the Authority may insure additional reasonable expenses incurred by the Lender to fulfill its obligations under paragraph 2(a) below to the extent such expenses are approved in advance by the Authority.

2. Lender's Duty to Account, Act Reasonably, Repay Surplus, and Assign Rights.

a. Lender agrees to diligently continue its collection efforts against Borrower and any Loan Guarantors and to keep the Authority reasonably informed as to the progress of any continuing collection efforts, including liquidation of any remaining collateral, and to provide an accounting of all amounts received on account of the Loan, and expenses incurred to collect such sums, at least semi-annually and at such time as Lender determines it does not wish to further pursue liquidation or collection on the Loans. Lender further agrees to act in a commercially reasonable manner in liquidating any remaining collateral, and in collection of amounts remaining due from Borrower and any Loan Guarantors.

b. In the event Lender recovers any further amounts on account of the Loan, including any amounts recovered from Loan Guarantors, after payment of all reasonable costs of collection, \_\_\_% of such amounts shall be paid to the Authority by Lender within 30 days after Lender's collection thereof. To the extent Lender recovers funds from Loan Guarantors who are also Guarantors of other Lender Loans (not FAME-insured), and such amounts are of proceeds of collateral for the Loan, Lender and the Authority agree to split the net (net of costs of collection)

recovery between the Loan and these other Lender Loans on a proportional basis based on outstanding principal balances.

c. In the event Lender determines it does not wish to further pursue collection or liquidation on the Loan prior to receiving payment in full, or fails to take any action thereon for a period of 6 months, it agrees to assign to the Authority the Loan and all documents evidencing or securing the Loan, including copies of its credit file(s), without further consideration.

3. Representations and Warranties of Lender. Lender hereby represents and warrants to Authority, its successors and assigns that:

(a) Lender has all requisite corporate power and authority to execute, deliver and perform the obligations of Lender under this Agreement and to consummate the transactions contemplated herein;

- (b) the execution, delivery and performance of this Agreement and the consummation of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of Lender and do not and will not (i) require any consent or approval of the stockholders of Lender, (ii) violate the Certificate of Incorporation or By-Laws or any similar governing instruments of Lender, (iii) violate any law, rule, regulation, order, judgment, injunction, decree, determination or award presently in effect having applicability to Lender or (iv) result in a breach or constitute a default (or an event which with or without notice and/or lapse of time would constitute a default) under any indenture or Loan or credit Agreement or other Agreement to which Lender is a party or by which it is bound;
- (c) no Authorizations, consents or approvals from, registrations with, notifications to or any other action by any court or any governmental department, commission, board or agency having jurisdiction over Lender are or will be necessary to the valid execution, delivery or performance by Lender of this Agreement or to the consummation of the actions contemplated herein;
- (d) all terms and conditions of the Authorizations and the Loan Insurance Agreement have been met, including but not being limited to those regarding perfection of collateral priorities; and
- (e) Lender is not aware of any claims or causes of action, including but not being limited to any rights or possibilities of set-off, recoupment or the like, arising against Lender out of the Loans or of any state of facts which could materially alter or adversely affect the Loans or the obligations of any Borrower or Guarantor thereunder.
- (f) According to Lender's records, the total amount due from Borrower on account of the Loans, is as previously represented to the Authority, with all appropriate credits given.
4. Representations and Warranties of Authority. Authority hereby represents and warrants to Lender that:
- (a) Authority has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement and to consummate the transactions contemplated herein;
- (b) no Authorizations, consents or approvals from, registrations with, notifications to or any other action by any court or governmental department, commission, board or agency having jurisdiction over the Authority are or will be necessary to the valid execution, delivery or performance by the Authority of this Agreement or to the consummation of the actions contemplated herein.
5. Indemnity for Costs. Lender shall be solely responsible for, and shall indemnify the Authority on account of, all professional fees or similar costs or expenses payable or reimbursable by Lender with respect to the Loan, which are incurred for services rendered prior to or, unless approved in advance as provided in paragraph 1 above, subsequent to the date of this Agreement.

6. Further Assurances and Cooperation. From and after the date hereof, Lender and Authority covenant and agree to execute and deliver all such documents and to cooperate with each other and to take all such further actions as are reasonably necessary to carry out the intent and purposes of this Agreement and to consummate the transactions contemplated hereby.

7. Notices. All notices between the parties shall be in writing and shall be delivered either personally, by certified mail postage prepaid, return receipt requested, or by overnight courier service, to the following addresses:

If to Lender:  
XXX Savings Bank  
Attn.: John Doe  
123 Main Street  
Anywhere, ME 00000

If to Authority:  
Finance Authority of Maine  
Attn: Senior Workout Officer  
5 Community Drive/P.O. Box 949  
Augusta, Maine 04332-0949

The parties may designate in writing from time to time other and additional places to which notices may be sent.

8. Miscellaneous.

(a) This Agreement and the exhibits hereto constitute the complete Agreement of the parties hereto with respect to the subject matter hereof and supersede all prior or contemporaneous negotiations, promises covenants, Agreements, or representations. This Agreement cannot be amended, modified, or supplemented except by an instrument in writing executed by the parties hereto.

(b) The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the Lender, the Authority and their respective successors and assigns. All representations and warranties made herein shall survive the consummation of the transactions contemplated herein. This Agreement may be executed in counterparts, each of which when so executed shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(c) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MAINE WITHOUT REFERENCE TO CONFLICTS OF LAWS.**

(d) Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered as of the date first above stated.

**XXX Bank**

**FINANCE AUTHORITY OF MAINE**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: Senior Workout Officer

## ASSIGNMENT AGREEMENT (Sample)

THIS ASSIGNMENT AGREEMENT, dated as of, 20XX, by and between **XXX Bank** (hereinafter "Assignor") and the **Finance Authority of Maine** (hereinafter "Assignee").

WITNESSETH

WHEREAS, Assignor and Assignee are parties to a certain Loan Insurance Authorization dated \_\_\_\_\_, as amended (the "Authorization"), between Assignor and Assignee concerning a Loan in the amount of **\$000.00** (the "Loan"), to (the "Borrower"), which is governed by a Loan Insurance Agreement dated as of , as amended, between the Assignor and Assignee (the "Loan Insurance Agreement");

WHEREAS, Assignee has paid to Assignor money and other considerations as payment in full for the Assignor's claim for amounts remaining due on the Loan, plus all costs and expenses of collection eligible for insurance;

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to acquire from Assignor, all of Assignor's right, title and interest in and to the documents specified or otherwise identified or defined in Section 2 hereof (the "Documents"), copies of some or all of which may be attached hereto, and the rights and claims of Assignor thereunder and all records and files pertaining thereto (the Documents and rights and claims and all records and files pertaining thereto shall hereinafter be collectively referred to as the "Assigned Rights"), all upon the terms and conditions set forth herein,

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Sale and Assignment. Assignor hereby transfers, assigns and conveys unto Assignee, its successors and assigns without recourse (except for violations of this Agreement, the Authorization or the Loan Insurance Agreement) and without any warranties or representations of any kind, other than those made herein and those stated in 11 MRSA §3-1416, all right, title and interest of Assignor in and to the Assigned Rights and all indebtedness evidenced thereby and all of Assignor's right to receive any distributions of cash, securities, obligations, or other property in respect of the Assigned Rights. This Assignment (i) is intended to be a presently effective assignment and (ii) shall entitle Assignee to collect and receive all payments or other distributions and to exercise and enforce all rights and remedies in respect of the Assigned Rights from and after the date hereof.

2. Delivery of Documents. Simultaneously with the execution and delivery of this Agreement, Assignor has delivered or caused to be delivered to Assignee the originals of the Documents, specifically, those documents listed on Exhibit A hereto, incorporated herein by reference. In addition, Assignor shall endorse all original promissory notes "In consideration of \$1.00 and other valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby sells, assigns and sets over without recourse to the Finance Authority of Maine, all its rights, title and interest in and to the within documents and shall deliver separate assignments in recordable form, duly executed and notarized, where applicable, for any mortgage or UCC-1 financing statement.

All financing documents, instruments and Agreements executed in connection with or pursuant to, or described in, any of the foregoing listed Documents shall be included in the term "Documents," as shall any allonges to or replacements for any promissory note listed.

3. Acknowledgment of Assignor. Assignor acknowledges that it has received money and other considerations from Assignee which satisfy all obligations due from Assignee to Assignor pursuant to the Loan Insurance Agreement relating to the Loans from Assignor to Borrower, and that no further amounts are due to Assignor, regardless of any further recovery by Assignee pursuant to the Assigned Rights.

4. Power of Attorney. Assignor gives to Assignee full power of attorney-in-fact to collect, demand, receive, or compromise or settle any claims and in any other way to assume the full rights of Assignor in the Assigned Rights.

5. Representations and Warranties of Assignor. Assignor hereby represents and warrants to Assignee, its successors and assigns that:

(a) Assignor has all requisite corporate power and authority to execute, deliver and perform the obligations of Assignor under this Agreement and to consummate the transactions contemplated herein;

(b) the execution, delivery and performance of this Agreement and the consummation of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of Assignor and do not and will not (i) require any consent or approval of the stockholders of Assignor, (ii) violate the Certificate of Incorporation or By-Laws or any similar governing instruments of Assignor, (iii) violate any law, rule, regulation, order, judgment, injunction, decree, determination or award presently in effect having applicability to Assignor or (iv) result in a breach or constitute a default (or an event which with or without notice and/or lapse of time would constitute a default) under any indenture or Loan or credit Agreement or other Agreement to which Assignor is a party or by which it is bound;

(c) no Authorizations, consents or approvals from, registrations with, notifications to or any other action by any court or any governmental department, commission, board or agency having jurisdiction over Assignor are or will be necessary to the valid execution, delivery or performance by Assignor of this Agreement or to the consummation of the actions contemplated herein;

(d) Assignor is the owner of the Assigned Rights and has made no prior assignment, pledge, or other disposition of the Assigned Rights to any person other than Assignee, in whole or in part;

(e) the documents delivered pursuant to Section 2 hereof constitute all documents which evidence or secure the Assigned Rights, and Assignor is not aware of any other documents which would materially or adversely affect the Assigned Rights;

(f) all terms and conditions of the Authorization and the Loan Insurance Agreement have been met, including but not being limited to those regarding perfection of collateral priorities; and

(g) Assignor is not aware of any claims or causes of action, including but not being limited to any rights or possibilities of set-off, recoupment or the like, arising against Assignor (and Assignee, as its assignee) out of the Assigned Rights or of any state of facts which could materially alter or adversely affect the Assigned Rights.

(h) According to Assignor's records, the total aggregate amount due from Borrower on the Loan as of \_\_\_\_\_, is as follows:

Principal:	\$
Interest:	\$
(90 days maximum)	
Legal Costs	\$
Property Maintenance	\$
<hr/>	
TOTAL:	\$

6. Representations and Warranties of Assignee. Assignee hereby represents and warrants to Assignor that:
  - (a) Assignee has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement and to consummate the transactions contemplated herein;
  - (b) no Authorizations, consents or approvals from, registrations with, notifications to or any other action by any court or governmental department, commission, board or agency having jurisdiction over Assignee are or will be necessary to the valid execution, delivery or performance by Assignee of this Agreement or to the consummation of the actions contemplated herein.
7. Subsequent Payment or Distribution. In the event Assignor shall receive any payment or distribution with respect to the Assigned Rights after the date hereof, including cash, securities, obligations, or other property, Assignor agrees to accept and hold such payment or distribution on behalf of Assignee and for the benefit of Assignee as Assignee's agent and to deliver the same forthwith to Assignee in the same form received, with the endorsement of Assignor, without recourse, when necessary or appropriate. In the event Assignor shall receive any documents, instruments, notices, or correspondence relating to the Assigned Rights after the date hereof, Assignor agrees to forward promptly such materials to Assignee at its address specified below.
8. Indemnity for Costs. Assignor shall be solely responsible for, and shall indemnify Assignee on account of, all professional fees or similar costs or expenses payable or reimbursable by Assignor with respect to the Assigned Rights which are incurred for services rendered on or before the date of this Assignment.
9. Further Assurances and Cooperation. From and after the date hereof, Assignor covenants and agrees to execute and deliver all such documents and to cooperate with Assignee and to take all such further actions as are reasonably necessary to carry out the intent and purposes of this Agreement and to consummate the transactions contemplated hereby, including but not being limited to making available for consultation and testimony all employees (and helping to locate and make so available former employees) having knowledge of the Assigned Rights and the Documents.
10. Full Right of Disposal. This Assignment includes the full right to start and maintain an action on the Assigned Rights and Documents described in any court of

competent jurisdiction and to settle, compromise, abandon, or otherwise dispose of all causes of action and to execute releases on Assignee's behalf, discharging any party to liability under any cause of action related to the Assigned Rights or the Documents.

11. Notices. All notices between the parties shall be in writing and shall be delivered either personally, by certified mail postage prepaid, return receipt requested, or by overnight courier service, to the following addresses:

If to Assignor:

XXX Bank  
123 Main Street  
PO Box 0000  
Anywhere, ME 00000  
Attn: John Doe

If to Assignee:

Finance Authority of Maine  
5 Community Drive  
P.O. Box 949  
Augusta, Maine 04332-0949  
Attention: Senior Workout Officer

The parties may designate in writing from time to time other and additional places to which notices may be sent.

12. Miscellaneous.

(a) This Agreement and the exhibits hereto constitute the complete Agreement of the parties hereto with respect to the subject matter hereof and supersede all prior or contemporaneous negotiations, promises covenants, Agreements, or representations. This Agreement cannot be amended, modified, or supplemented except by an instrument in writing executed by the parties hereto.

(b) The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the Assignor, the Assignee and their respective successors and assigns. All representations and warranties made herein shall survive the consummation of the transactions contemplated herein. This Agreement may be executed in counterparts, each of which when so executed shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(c) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MAINE WITHOUT REFERENCE TO CONFLICTS OF LAWS.**

(d) Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered as of the date first above stated.

**XXX Bank**

By: \_\_\_\_\_  
Name: John Doe  
Title: Vice President

**FINANCE AUTHORITY OF MAINE**

By: \_\_\_\_\_  
Name:  
Title: Senior Workout Officer

**EXHIBIT A-LIST OF DOCUMENTS**

1. Commercial Note
2. Collateral Assignment of Lessee's Interest in Lease
3. Mortgage recorded in the County Registry of Deeds, Book, Page.
4. Personal Guaranty
5. UCC1
6. Security Agreement
7. Any and all other documents or rights arising out of the foregoing.