

⑪ \$ 5,204,067.26

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

GENERAL JURISDICTION DIVISION

CASE NO. 08-69512-CA-10

FILED FOR RECORD
2011 JAN 21 AM 9:11
CLERK
CIRCUIT & COUNTY COURTS
MIAMI-DADE COUNTY, FLA.
CIVIL #63

FORECLOSURE

3/20/11

AVATAR INCOME FUND I LLC, a Delaware limited liability company,

Plaintiff,

vs.

KORE ENTERTAINMENT, INC., an Illinois corporation; NOCTURNAL MIAMI, INC., a Florida corporation; GLENN KOFMAN, an individual; R.A.S.A. LLC, a Florida limited liability company; THE STATE OF FLORIDA, DEPARTMENT OF REVENUE; TOAST OF NEW YORK, LLC, a Florida limited liability company; TERMINELLO & TERMINELLO, P.A.; REACH FINANCIAL, LLC, a Delaware limited liability company; REWARDS NETWORK ESTABLISHMENT SERVICES, INC., a Delaware corporation; ROBIN D. HALE, an individual; TEAM SYSTEMS, INC., A Florida corporation,

Defendants.

AMENDED FINAL SUMMARY JUDGMENT OF FORECLOSURE

(Pursuant to Administrative Order 09-09)

THIS ACTION came before the Court on Plaintiff Avatar Income Fund I, LLC's Motion for Final Summary Judgment and Defendant's Stipulation and Consent to the Entry of a Final Judgment of Foreclosure. On the evidence presented,

IT IS ORDERED AND ADJUDGED that:

1. The Plaintiff's Motion for Partial Final Summary Judgment is GRANTED. Service of process has been duly and regularly obtained over Defendants: KORE

ENTERTAINMENT, INC.; NOCTURNAL MIAMI, INC.; GLENN KOFMAN; THE STATE OF FLORIDA, DEPARTMENT OF REVENUE; TOAST OF NEW YORK, LLC; TERMINELLO & TERMINELLO, P.A.; REACH FINANCIAL, LLC; REWARDS NETWORK ESTABLISHMENT SERVICES, INC.; ROBIN D. HALE; and TEAM SYSTEMS, INC. (collectively, "Defendants")¹.

2. **Amounts Due.** There is due to the Plaintiff the following:

Principal due on Note secured by the Mortgage foreclosed:	\$3,800,000.00
Interest from 6/1/08 through 6/1/09	\$418,000.00
Default interest 7/1/08 through 6/1/09	\$348,333.33
Late fees	\$21,895.84
Appraisal	\$9,800.00
<u>Per diem</u> interest of \$2,216.67 from 6/1/09 through 8/13/09	\$161,816.91
<u>Per diem</u> interest of \$2,216.67 from 8/14/09 through 2/8/10	\$394,567.26
SUBTOTAL	\$5,154,413.34

Court Costs:

Filing fee	\$540.50
Service of process	\$695.00
Title abstract	\$180.00
SUBTOTAL	\$5,155,828.84

¹ Defendant R.A.S.A. LLC was served with process on January 20, 2009, and filed an Answer to the Complaint on August 19, 2010. The Court reserves jurisdiction to allow Plaintiff to litigate the interests of R.A.S.A. LLC in the Property through summary judgment of foreclosure or other proceedings as to Defendant R.A.S.A. LLC.

Attorney's Fees, Interest and Payments Made:

Attorney's fees	\$18,129.00
Additional attorney's fees	\$1,200.00
Payments under Forbearance and Settlement Agreement	- \$15,000.00
Payments under Foreclosure Sale Forbearance Agreement	- \$124,000.00
Interest from 6/10/10 through 12/31/10 at 6% on a principal balance of \$5,031,828.84 at per diem rate of \$827.14 for 203 days	\$167,909.42
GRAND TOTAL	\$5,204,067.26

3. **Interest.** The grand total amount referenced in Paragraph 2 shall bear interest from this date forward at the prevailing legal rate of interest of 6.0%.

4. **Lien on Property.** Plaintiff, whose address is: 100 Wall Street, Seattle, Washington 98121, holds a lien for the grand total sum specified in Paragraph 2 herein. The lien of the Plaintiff is superior in dignity to any right, title, interest or claim the Defendants and all persons, corporations, or other entities claiming by, through, or under the Defendants or any of them, and the property will be sold free and clear of all claims of the Defendants, with the exception of any assessments that are superior pursuant to § 718,116, Florida Statutes. The Plaintiff's lien encumbers the subject property located in Miami-Dade County, Florida and described in **Exhibit "A" and Exhibit "A-1"** to the Complaint. Copies of Exhibit "A" and Exhibit "A-1" are attached to this Judgment and incorporated herein.

5. **Sale of Property.** If the grand total amount with interest at the rate described in Paragraph 3 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Court shall sell the subject property at public sale, on **MAR 10 2011** , 2011, to the highest bidder or bidders for cash, except as prescribed in Paragraph 6, at:

[] Room 908, 140 West Flagler Street, Room 908, Miami, Florida, at 11:00 a.m.

SALE DATE AUTHORIZED

[X] www.miamidade.realforeclosure.com, the Clerk's website for on-line auctions at 9:00 a.m., after having first given notice as required by § 45.031, Florida Statutes.

6. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property at the sale. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest and costs accruing subsequent to this Judgment, or such part of it, as is necessary to pay the bid in full. The Clerk shall receive the service charge imposed in § 45.031, Florida Statutes, for services in making, recording, and certifying the sale and title that shall be assessed as costs.

7. **Right of Redemption.** On filing of the Certificate of Sale, Defendant's right of redemption, as proscribed by § 45.0315, Florida Statutes, shall be terminated.

8. **Distribution of Proceeds.** On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of Plaintiff's costs; second, documentary stamps affixed to the Certificate; third, Plaintiff's attorney's fees; fourth, the total sum due to Plaintiff, less the items paid, plus interest at the rate prescribed in Paragraph 2 from this date to the date of the sale. During the sixty (60) days after the Clerk issues the certificate of disbursements, the Clerk shall hold the surplus pending further Order of this Court.

9. **Right of Possession.** Upon filing of the Certificate of Title, Defendants and all persons claiming under or against Defendants since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property and the purchaser at sale shall be let into possession of the property, subject to the provisions of the "Protecting Tenant At Foreclosure Act of 2009".

10. **Attorney's Fees.** The Court finds, based upon the affidavit presented and upon inquiry of counsel for the Plaintiff, that 71.00 hours were reasonably expended by Plaintiff's

counsel and that an hourly rates of \$140.00-\$375.00 are appropriate. PLAINTIFF'S COUNSEL REPRESENTS THAT THE ATTORNEY'S FEE AWARDED DOES NOT EXCEED ITS CONTRACT FEE WITH THE PLAINTIFF. The Court finds that there are no reduction or enhancement factors for consideration by the Court pursuant to *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

11. **NOTICE PURSUANT TO AMENDMENT TO SECTION 45.031, FLORIDA STATUTES (2006)**

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOUR TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 140 WEST FLAGLER STREET, ROOM 908, MIAMI, FLORIDA (TELEPHONE: (395) 375-5943), WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR PROPERTY OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID SOCIETY AT THE DADE COUNTY BAR ASSOCIATION, 123 N.W. 1ST AVENUE, SUITE 214, MIAMI, FLORIDA (TELEPHONE: 305-579-5733), TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OF SUGGEST OTHER OPTION. IF YOU CHOOSE TO CONTACT THE DADE COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

12. **Jurisdiction.** The Court retains jurisdiction of this action to enter further orders as are proper, including, without limitation, writs of possession and deficiency judgments.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida, on 20

January, 2011


THE HONORABLE PETER LOPEZ

PETER R. LOPEZ
CIRCUIT COURT JUDGE

Copies furnished to:

COPY HAND DELIVERED
TO PLTF'S ATTY

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REWARDS NETWORK
ESTABLISHMENT SERVICES, INC.
CT Corporation System, as Registered Agent
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Plantation, Florida 33324

THE STATE OF FLORIDA
DEPARTMENT OF REVENUE
Lisa Echeverri, as Executive Director
c/o Marshall Stranburg, General Counsel
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Attn: Andrew T. Traylor, Esq.
Regions Bank Building, Suite 303
8603 South Dixie Highway
Miami, Florida 33143

ROBIN D. HALE
7382 Gary Avenue
Miami Beach, Florida 33141

Exhibit "A"

(Legal Description)

The North 125 feet of Lot 4, less the West 19/100ths of a foot thereof, Block 18N, of NORTH OF MIAMI, according to the plat thereof, as recorded in Plat Book B, Page 41, of the Public Records of Miami-Dade County, Florida.

50 N.E. 11 STREET, MIAMI, FLORIDA 33132
TOGETHER WITH

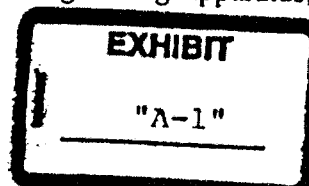


Exhibit "A-1"

(Description of Collateral)

All of Debtor's estate, right, title and interest in, to and under the following described property whether now owned or hereinafter acquired by Debtor (collectively, the "Property"):

1. Land. The real property described in Exhibit "A" attached hereto and made a part hereof (collectively, the "Land"), together with additional lands, estates and development rights hereafter acquired by Debtor for use in connection with the development, ownership or occupancy of such real property, and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of that certain Modified and Restated of Mortgage and Security Agreement in connection herewith (the "Security Instrument");
2. Improvements. The buildings, structures, fixtures, additions, accessions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");
3. Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Debtor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;
4. Fixtures and Personal Property. All machinery, equipment, goods, inventory, consumer goods, furnishings, fixtures (including but not limited to all heating, air conditioning, plumbing, inventory, lighting, communications and elevator fixtures) and other personal property of every kind and nature, whether tangible or intangible, whatsoever owned by Debtor, or in which Debtor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future use, maintenance, enjoyment, operation and occupancy of the Land and the Improvements, including without limitation, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, mini-bars, liquor and other drink dispensers, icemakers, kitchen equipment, radios, television sets, cable t.v. equipment, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, reservation systems and related computer software, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, fittings,



plants, apparatus, stoves, ranges, refrigerators, cutlery and dishes, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, washers and dryers, other customary hotel equipment, and all building equipment, materials and supplies of any nature whatsoever owned by Debtor, or in which Debtor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Land and the Improvements and the right, title and interest of Debtor in and to any of the Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**") superior in lien to the lien of the Security Instrument and all proceeds and products of the above;

5. Leases and Rents. All leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into (including, without limitation, any and all security interests, contractual liens and security deposits) whether before or after the filing by or against Debtor of any petition for relief under 11 U.S.C. § 101 et seq. as the same may be amended from time to time (the "**Bankruptcy Code**") (individually, a "**Lease**", collectively, the "**Leases**") and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Debtor of any petition for relief under the Bankruptcy Code, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Debtor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

6. Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

7. Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

8. Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

9. Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

10. Rights. The right, in the name and on behalf of Debtor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Secured Party in the Property;

11. Agreements. All agreements, contracts (including franchise, purchase, property management, sale, option, right of first refusal and other contracts pertaining to the Property), certificates, instruments, franchises, permits, licenses, approvals, consents, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Property (including any Improvements or respecting any business or activity conducted on the Land and any part thereof) and all right, title and interest of Debtor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Debtor thereunder;

12. Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

13. Accounts. All accounts, accounts receivable, escrows, documents, instruments, chattel paper, claims, reserves (including deposits) representations, warranties and general intangibles, as one or more of the foregoing terms may be defined in the Uniform Commercial Code, and all contract rights, franchises, books, records, plans, specifications, permits, licenses (to extent assignable), approvals, actions, choses, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms, and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Debtor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with any Property returned by or reclaimed from customers wherever such Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon; and

14. Liquor License. All licenses, permits, approvals and consents required for the sale and service of alcoholic beverages on the Property heretofore and hereafter obtained from applicable state and local authorities; and

15. Other Rights. Any and all other rights of Debtor in and to the Property and any accessions, renewals, replacements and substitutions of all or any portion of the Property and all proceeds derived from the sale, transfer, assignment or financing of the Property or any portion thereof.

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