

UNITED STATES BANKRUPTCY COURT

Middle District of Florida

PROOF OF CLAIM

Name of Debtor: Taylor, Bean & Whitaker Mortgage Corp.

Case Number: 3:09-BK-07047-JAF

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property): Jeff Schepp, Inc. d/b/a Tarpon Bay Construction

Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:

Matthew S. Toll, Esquire
202 S. Del Prado Blvd.
Cape Coral, Florida 33990

CLAIM FILED JACKSONVILLE, FLORIDA

Court Claim Number: (If known)

Telephone number: (239) 574-7442

JAN 04 2010

Filed on:

Name and address where payment should be sent (if different from above): CLERK, U. S. BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Telephone number:

Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: \$ 50,000.00 (est.)

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

Specify the priority of the claim.

2. Basis for Claim: mediation agreement Case # 08-CA-013409 20th Judicial Cir. Lee County (See instruction #2 on reverse side.) See Attached.

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

3. Last four digits of any number by which creditor identifies debtor:

3a. Debtor may have scheduled account as: (See instruction #3a on reverse side.)

Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: 1515 NE 17th St., Cape Coral, FL 33909

Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).

Value of Property: \$ Annual Interest Rate %

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: \$ Basis for perfection:

Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

Amount of Secured Claim: \$ 22.50% of value of property Amount Unsecured: \$

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)().

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

Amount entitled to priority:

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

\$

If the documents are not available, please explain:

*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Date:

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Matthew Toll Counsel for Creditor

FOR COURT USE ONLY

T, B & W Mortgage Corp.



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In The Twentieth Judicial Circuit
Court in and for Lee County, Florida

Case No. 08-CA-013409

Jeff Schepp, Inc., d/b/a
Tarpon Bay Construction,
Plaintiff,

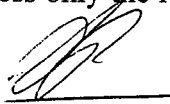
v.


Taylor, Bean & Whitaker Mortgage
Corp., et al,
Defendants.

Mediated Settlement Agreement, dated January 27, 2009

Jeff Schepp, Inc., d/b/a Tarpon Bay Construction, hereinafter referred to as "Tarpon Bay," and Taylor, Bean & Whitaker Mortgage Corp, hereinafter referred to as "TBW," agree as follows:

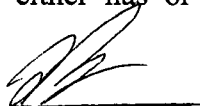
1. **The Property.** TBW is the owner of Lots 39 and 40, Block 2119, Cape Coral, Unit No. 32, a subdivision as per the plat thereof recorded in Plat Book 16, pages 11-13, of the Public Records of Lee County, FL, bearing Lee County Property Appraiser's Tax Parcel No. 31-43-24-C3-02119.0390 (the "Property"). TBW is also the holder of a mortgage on the Property (which TBW has asserted did not get merged into the deed in lieu of foreclosure by which TBW acquired title to the Property). Tarpon Bay has asserted a claim of lien against the Property (the "Claim of Lien").
2. **TBW's Control of the Property.** TBW has indicated that its intention is to market and sell the Property. It is understood and agreed, however, the TBW shall have the sole, absolute and unfettered right to market the Property or not and, if marketed, to determine the asking and ultimate selling price for the Property. The only limitation on TBW's rights in this regard are that it agrees that it shall not, and shall not attempt to, sell, transfer, assign or convey the Property to any person or entity with whom it is affiliated, directly or indirectly, but rather will only sell, transfer, assign or convey the Property to a disinterested, bona fide third party purchaser.
3. **Proceeds Payable to Tarpon Bay Upon Sale.** At the closing of the sale of the Property (whenever that may occur), Tarpon Bay shall be paid twenty-two and one-half percent (22.5%) of the net proceeds of sale. For purposes of this Agreement, the phrase "the net proceeds of sale" is defined to mean the purchase price, less only the real estate commissions paid at closing, and the title insurance


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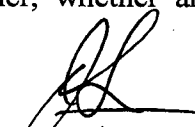

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and documentary stamps, if any, for which TBW is responsible at closing. Any and all other amounts which may otherwise be deducted from the purchase price (e.g., pro rata real estate taxes) shall not be taken into consideration for purposes of calculating the 22.5% to be paid to Tarpon Bay. The proceeds that are so payable to Tarpon Bay shall be paid by check payable to "Jeff Schepp, Inc.," which shall be delivered to Tarpon Bay's attorney, Matthew Scott Toll, Esq., Lusk, Drasites, Tolisano & Smith, P.A., 202 Del Prado Blvd., Cape Coral, FL 33990.

4. **Satisfaction of Claim of Lien to Be Held in Escrow.** By or before February 6, 2009, Tarpon Bay shall execute and deliver to counsel for TBW, Tom Smoot, III, Esq., a satisfaction of the Claim of Lien (the "Satisfaction"). Mr. Smoot shall hold the Satisfaction in escrow until such time as there is a closing of the sale of the Property (whenever that may occur). Upon condition that Tarpon Bay is paid at the closing as provided in paragraph 3 above, Mr. Smoot may deliver the executed Satisfaction to the closing agent who handles the closing of the sale of the Property (whenever that may occur) for recording following the closing.
5. **Stipulation for Dismissal.** By or before February 6, 2009, Mr. Toll shall prepare, execute and deliver to Mr. Smoot, a Stipulation for Dismissal with Prejudice with a proposed Order on the Stipulation, which shall provide that any and all Notices of Lis Pendens recorded against the Property in connection with this Civil Action (Case No. 08-CA-013409, as captioned above) are released and discharged of record, that the Clerk of the Court is directed to record the Order of Dismissal to accomplish the same, and that this entire action is dismissed with prejudice, all parties to bear their own attorneys' fees and costs, but which Order shall also provide that the Court reserves jurisdiction to enforce the terms of this Mediated Settlement Agreement. Within 7 days of receiving the same, Mr. Smoot shall execute the Stipulation of Dismissal with Prejudice and file the same with the Court with the request that the Court enter the Order of Dismissal with Prejudice.
6. **Releases.** Except for the obligations of this Mediated Settlement Agreement, which are not hereby released and which shall survive the execution hereof, Tarpon Bay, on the one hand, and TBW, on the other hand, for themselves and for their respective successors and assigns, hereby remise, release, acquit, waive, satisfy and forever discharge one another and one another's respective officers, directors, shareholders, members, employees, agents, servants, representatives and insurers, and the respective personal representatives, heirs, successors and assigns of all of them, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, guarantees, warranties (whether express or implied, and whether based on statute, common law or otherwise), third-party claims, bad faith claims, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, which either has or may have against the other, whether arising in tort, by



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contract, by virtue of statute, or otherwise, and whether in law or in equity, regardless of whether the same are known or unknown, suspected or unsuspected, patent or latent, or have yet accrued or not accrued (collectively, "Claims"), provided the same arise out of or relate to the issues and/or Claims that were or should have been asserted in this Civil Action, including, without limitation, any Claims that Tarpon Bay has or may have based upon Section 713. 3471, Florida Statutes, or upon any obligations that may arise from any draw agreement.

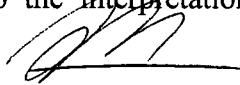
7. **Due Dates Falling on Weekends or Holidays.** In the event that the date of any act required to be performed by this Agreement (including, but not limited to, the payment of any money) falls on a weekend or a federal holiday, then the same shall not be required to be performed until the next business day thereafter.
8. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and no verbal or written warranties or representations have been made or have been relied upon which do not appear in writing within this Agreement. Any reliance on verbal or other representations which do not appear within this Agreement shall be deemed unjustifiable reliance. Each party hereto is represented by that party's own counsel (or has had the opportunity to confer with counsel of their own choosing) and has had the benefit of such counsel's advice in reviewing, commenting upon, and modifying this Agreement.
9. **Modification of Agreement.** This Agreement may not be amended or modified except by written instrument signed by all of the parties hereto, and the parties agree that this provision may not be waived except in writing.
10. **Waiver** The rights of the parties under this Agreement are to be considered cumulative, and the failure on the part of any party to exercise or enforce properly or promptly any rights arising out of this Agreement shall not operate to forfeit or serve as a waiver of any of those or other rights. The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.
11. **Mediator As Scrivener; Interpretation.** The mediator has provided the initial draft of this Mediated Settlement Agreement to the parties and their counsel as a draft for their consideration. The mediator has done so as an accommodation to assist the parties in memorializing their agreement and has not done so in order to render any legal advice. The parties and their counsel have been free to add to, delete from, and to otherwise change the initial draft as they have seen fit. Any changes made to the initial draft of this Agreement have been at the request of one or more of the parties to this Agreement (or their counsel) and represent the memorialization of their intent. **The parties hereto acknowledge and agree that the mediator has not provided them with any legal advice (either during the**

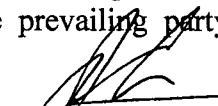

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course of the mediation or in connection with the negotiation and preparation of this Agreement), and that they have obtained their own independent legal advice prior to executing this Agreement. The parties hereto agree that in the event of any dispute as to the precise meaning of any term or provision contained herein, the principle of construction and interpretation that written documents are to be construed against the party preparing the same shall not be applicable. Wherever used herein, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter, all as the context requires.

12. **Cooperation.** The parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the parties hereto.
13. **No Admission of Liability.** By this settlement, no party admits any liability, but rather the parties have agreed to this settlement as a compromise of disputed claims in the interests of avoiding the costs and uncertainty of continued litigation.
14. **Time is of the Essence.** Time is of the essence of this Agreement.
15. **Headings.** The headings used in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision in it.
16. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, whether on its face or as applied, the remaining provisions shall remain in full force and effect.
17. **Benefit and Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The individuals signing below on behalf of entities represent and warrant that they have the full authority to bind their respective entities to all of the provisions hereof. Signatures by facsimile transmission or other electronic transmission of this Agreement shall be acceptable and binding upon the Parties. A copy hereof shall be as binding as the executed original.
18. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida, without regard to its principles of conflicts of law.
19. **Attorneys' Fees.** In any litigation arising out of or relating to this Agreement, or to the interpretation or enforcement hereof, the prevailing party(ies) shall be



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entitled to recover the prevailing party's(ies') attorneys' fees and costs from the non-prevailing party(ies) at the trial and at all appellate levels.

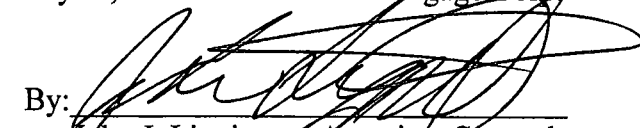
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first stated above.

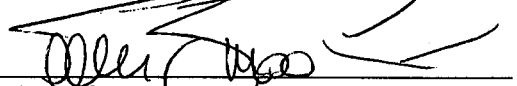
Jeff Schepp, Inc., d/b/a
Tarpon Bay Construction

By: 
Brent Schepp, Executive
Vice President

Matthew Scott Toll, Esq., Counsel for
Tarpon Bay

Taylor, Bean & Whitaker Mortgage Corp.

By: 
John J. Lippincott, Associate Counsel
and Authorized Agent



Tom Smoot, III, Esq., Counsel for
TBW