

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

Debtor.

Chapter 11

Case No. 3:09-bk-07047-JAF

**ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY  
CODE AND RULES 2002, 6004 AND 9014 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE (I) APPROVING BIDDING PROCEDURES AND  
TERMS OF AUCTION FOR THE SALE OF DEBTOR'S MORTGAGE-BACKED  
SECURITIES FREE AND CLEAR OF ALL LIENS, CLAIMS AND INTEREST,  
(II) SETTING HEARING DATE FOR APPROVAL OF SALE, (III) FIXING  
DEADLINE FOR OBJECTING TO PROPOSED SALE AND (IV) APPROVING  
FORM AND MANNER OF SALE NOTICE**

This matter is before the Court on the motion (the "**Motion**") of Taylor, Bean & Whitaker Mortgage Corp. (the "**Debtor**"), for the entry of an order (i) approving proposed bidding procedures and terms of an auction for the sale of certain of the Debtor's Acquired Securities (as defined in the Motion) free and clear of all liens, claims, encumbrances and interests, and approving certain bid protections in connection therewith; (ii) setting a hearing date for approval of the sale of the Acquired Securities (the "**Sale Hearing**"); (iii) fixing a deadline for objecting to the proposed sale; and (iv) approving the form and manner of the notice of the Motion and the Sale Hearing. The Motion was filed pursuant to sections 105, 363(b) and 363(f) of the United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

The Court has considered the Motion and any objections filed regarding the Motion, the evidence proffered or adduced at the hearing held on April 16, 2010 with respect to the Motion (the "**Sale Procedures Hearing**"), the arguments of counsel, and the entire record of the

Debtor's chapter 11 case; and after due deliberation thereon, and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The Court has jurisdiction over this matter and over the property of the Debtor and its respective bankruptcy estate pursuant to 28 U.S.C. §§ 157(a) and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

C. The relief requested in the Motion is in the best interests of the Debtor, its estate, its stakeholders, and other parties-in-interest.

D. The notice given by the Debtor of the Motion and the Sale Procedures Hearing constitutes due and sufficient notice thereof.

E. The Debtor has entered into a Purchase and Sale Agreement (the "**Agreement**"<sup>1</sup>) with AG Mortgage Value Partners Master Fund, L.P. (the "**Purchaser**").

F. The Debtor has articulated good and sufficient reasons for the Court to (i) approve the Bidding Procedures, (ii) grant certain bid protections to the Purchaser as provided in the Agreement, (iii) approve the manner of notice of the Motion and the Sale Hearing, (iv) approve the form of notice of the Motion and the Sale Hearing to be distributed to stakeholders and other parties-in-interest, including potential bidders, and (v) schedule a date for the Sale Hearing.

G. The Bidding Procedures are reasonable and appropriate and represent the best method for maximizing the value of the Acquired Securities for the benefit of the Debtor, its estate and all creditors.

H. The Break-Up Fee, which is payable in accordance with the terms of the Agreement (i) to the extent payable, is deemed an actual and necessary cost and expense of

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<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Agreement.

preserving the Debtor's estate, within the meaning of sections 503 and 507(b) of the Bankruptcy Code, (ii) is of substantial benefit to the Debtor, its estate and all creditors, (iii) is reasonable and appropriate, including in light of the size and nature of the proposed sale and the efforts that have been and will be expended by the Purchaser notwithstanding that the Agreement is subject to higher or better offers for all of the Acquired Securities, (iv) was negotiated by the parties at arms' length and in good faith, and (v) is necessary to ensure that the Purchaser will continue to pursue its proposed acquisition of the Acquired Securities. The Break-Up Fee is a material inducement for, and condition of, the Purchaser's entry into the Agreement. The Purchaser is unwilling to commit to hold open its offer to purchase the Acquired Securities under the terms of the Agreement unless it is assured of payment of the Break-Up Fee as set forth in the Agreement. Thus, assurance to the Purchaser of payment of the Break-Up Fee under certain circumstances promotes competitive bidding by inducing the Purchaser's offer that otherwise would not have been held open, and without which other bidding will be less competitive. Further, because the Break-Up Fee induced the Purchaser to submit a bid that will serve as a minimum or floor bid on which other bidders can rely, the Purchaser has provided a benefit to the Debtor's estate by increasing the likelihood that the price at which the Acquired Securities are to be sold reflects their true worth. Finally, absent authorization of the Break-Up Fee, the Debtor may lose the opportunity to obtain the highest or otherwise best available offer for the Acquired Securities.

**THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is **GRANTED**.
2. All parties in interest have had sufficient notice of and the opportunity to object to the Motion and the Bidding Procedures, and to the extent that objections to the Motion or the

relief requested therein have not been withdrawn, waived, or settled, such objections and all reservations of rights included therein, are overruled on the merits.

3. The Debtors are authorized to conduct the Auction to determine the highest or best offer for the sale of the Acquired Securities pursuant to the Bidding Procedures as approved in this Order.

4. The Bidding Procedures, as set forth below, are hereby approved as fair and reasonable. The Bidding Procedures shall govern all proceedings relating to the Auction, the Agreement and any subsequent bids for the Acquired Securities in this case. The Bidding Procedures are as follows:

- a) Due Diligence Period. The Debtor intends to arrange for the sale of the Acquired Securities, in consultation with those entities that have an interest in the Acquired Securities, and to provide a reasonable period of time for other potential bidders to review information with respect to the Acquired Securities to conduct due diligence with respect to the Acquired Securities.
- b) Access to Due Diligence Package. Any potential bidders will be permitted, subject to execution of confidentiality agreements as may be provided by Debtor, to request due diligence information related to the Acquired Securities (the “**Due Diligence Package**”).
- c) Subject to Higher and Better Offers. The Agreement shall be subject to higher and better offers from potential buyers at an auction (the “**Auction**”). The Auction shall be conducted at the offices of Troutmans Sanders LLP, The Chrysler Building, 405 Lexington Ave., New York, New York 10174, commencing at 10:00 a.m. (prevailing Eastern time) on April 22, 2010. Other than representatives of the Debtor and the Official Committee of Unsecured Creditors (the “Committee”), only Qualified Bidders (as defined below) and the Purchaser, and their respective representatives, will be permitted to attend the Auction. If no Qualified Bids (as defined below) are received by the Debtor on or before the Bid Deadline (as defined below), the Debtor will seek approval to sell the Acquired Securities to the Purchaser in accordance with the Agreement at the Sale Hearing (as defined below).
- d) Bankruptcy Approval After Notice and Hearing. The Debtor shall seek approval of a sale of the Acquired Securities at the hearing (the “**Sale Hearing**”) set pursuant to paragraph 7 of this Order.

- e) Delivery Requirements for Qualified Bidders. In the event an interested party desires to propose a bid for the purchase of all of the Acquired Securities, such interested party will be required to deliver to the Debtor's counsel (with a copy to counsel for the Committee) by 12:00 p.m. (prevailing Eastern time) on April 20, 2010 (the "**Bid Deadline**"), the following items in order to be considered a "**Qualified Bidder**": (i) an original executed purchase and sale agreement for all the Acquired Securities, in the form provided by the Debtor (the "**Qualified Bidder's Purchase and Sale Agreement**") which form shall be substantially similar to the Agreement and which shall include the Qualified Bidder's proposed Purchase Price for the pool of the securities, allocating the Purchase Price among each of the securities; (ii) a blackline comparison of such Qualified Bidder's Purchase and Sale Agreement against the Agreement; (iii) a cash deposit in an amount of \$100,000 (the "**Bid Deposit**"), which shall be deposited into escrow with SunTrust Bank on escrow terms acceptable to the Debtor; (iv) financial documentation demonstrating, to the satisfaction of Debtor in consultation with the Committee, the bidder's ability to close the transaction; and (v) an affidavit, sworn to under penalty of perjury, that no representative or agent (including counsel) of the prospective Qualified Bidder has entered into any arrangement, directly or indirectly, expressed or implied, in writing or otherwise, regarding (A) the participation of any other party in the Qualified Bidder's initial Qualified Bid or any subsequent bid at the Auction, (B) forbearing from submitting a bid at the Auction over any particular price, except as disclosed in the affidavit required by this section 4 (e) (v). To the extent that a Qualified Bidder enters into any arrangements of the type described herein after the Bid Deadline and at any time through the completion of the Auction, the Qualified Bidder covenants and agrees to make disclosure thereof in writing immediately to counsel for the Debtor and the Committee. Any bid received from a Qualified Bidder shall be, subject to the requirements of subparagraph (f) below, a "**Qualified Bid.**" The Debtor retains the right in its reasonable business discretion, in consultation with the Committee, to determine whether a bid is a Qualified Bid. Purchaser's Agreement shall be deemed a Qualified Bid and Purchaser shall be deemed a Qualified Bidder for all purposes under the Bidding Procedures.
- f) All Cash Purchase Price and No Closing Contingencies Requirements. Without limiting the terms of the Qualified Bidder's Purchase and Sale Agreement, all Qualified Bids must provide that (i) the purchase price will exceed the Purchaser's proposed purchase price by at least the sum of: (a) the amount of the Break Up Fee, to the extent payable (as defined below); and (b) \$50,000.00; (ii) the purchase price be "all cash" payable at the closing; and (iii) the bidder's obligation to close shall not be conditioned upon obtaining acquisition financing, the completion of any unperformed or additional due diligence with respect to the Acquired Securities or any other contingency, other than the approval by the

Bankruptcy Court. Any bid which does not include provisions for (i), (ii) and (iii) shall not be deemed a Qualified Bid and shall be rejected.

- g) Purchaser Bid Protections. If the Agreement is terminated pursuant to Section 8.1(c), 8.1(e) or 8.1(f) thereof, then Seller shall pay to Purchaser an amount equal to \$275,000.00 (the "**Break-Up Fee**") as follows: (i) in the case of termination pursuant to Section 8.1(c), no later than three (3) business days following the closing of an Alternative Transaction; and (ii) in the case of termination pursuant to Section 8.1(e) or (f), no later than ten (10) business days following such termination.
- h) Required Amounts of Overbids. At the Auction, the first bid must exceed the highest aggregate purchase price established by any Qualified Bid by at least \$50,000.00. The Debtor shall announce such highest aggregate purchase price at the commencement of the Auction. Each successive bid at the auction must exceed the previous bid by at least \$50,000.00.
- i) Selection of Successful Bid and Additional Deposits. As soon as practicable after the conclusion of the Auction, the Debtor will, in consultation with the Committee, review each Qualified Bid and identify (i) the highest or otherwise best offer for the Acquired Securities (the "**Successful Bid**") and the bidder making such bid (the "**Successful Bidder**") and (ii) the next highest or otherwise next best offer for the Acquired Securities (the "**Back-Up Bid**") and the bidder making such bid (the "**Back-Up Bidder**"). In order to proceed as the Successful Bidder and the Back-Up Bidder, such bidders must, immediately upon being notified of the acceptance of their bid as Successful Bid or Back-Up Bidder, place by wire a cash deposit in the amount of ten (10%) percent of their respective bids (including their respective Bid Deposits) (the "**Auction Deposit**"), which shall be deposited into escrow on the same terms and conditions governing the Bid Deposits. The Debtor will sell the Acquired Securities to the Successful Bidder upon the approval of such Qualified Bid by the Bankruptcy Court at the Sale Hearing. The Committee reserves the right to object at the Sale Hearing to the Debtor's determination and selection of the Successful Bidder and the Back-Up Bidder.
- j) Approval of Bankruptcy Court. The entry of an order (the "**Sale Order**") by the Bankruptcy Court approving the sale of the Acquired Securities to the Purchaser or the Successful Bidder shall be required before any offer shall be deemed to have been accepted by the Debtor. The Sale Hearing shall occur on the date scheduled by the Bankruptcy Court pursuant to this Order. At the Sale Hearing, the Debtor will establish that all requirements of section 363 of the Bankruptcy Code have been satisfied.

- k) Closing of the Sale. The closing of the sale of the Acquired Securities shall occur as soon as practical after entry of the Sale Order and in accordance with the terms of the Successful Bid.
- l) Failed Sale. If a Successful Bidder cannot timely close the approved sale transaction because of such Successful Bidder's material breach of the purchase agreement agreed to pursuant to the terms of this Order, such bidder shall forfeit its Auction Deposit. The Back-Up Bidder shall have five (5) days from the date it is notified by the Debtor of the failed closing to close its own sale pursuant to the Back-Up Bid. In the event that the Back-Up Bidder also fails to timely close the sale transactions, that bidder's Auction Deposit shall also be forfeited.
- m) Payment of Break Up Fees. In the event the Purchaser is not the Successful Bidder, the Debtor shall pay the Break-up Fee to the Purchaser, if due under the terms of the Agreement, no later than three (3) business days after the Closing of the Alternative Transaction.
- n) Deposits. The Successful Bidder's Auction Deposit shall be applied to the purchase price pursuant to the Qualified Bidder's Purchase and Sale Agreement. Upon closing of the sale of the Acquired Securities, Bid Deposits and Auction Deposits that are not (i) forfeited as set forth in the Agreement or Successful Bidder's proposed agreement, or (ii) applied to the purchase price paid by the Purchaser or Successful Bidder, shall be returned to the bidder.
- o) Reservation of Rights. The Debtor, in consultation with the Committee (i) may determine which bid, if any, is the highest or otherwise best offer and (ii) may reject at any time any bid (other than the Agreement) that is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the sale; or (c) contrary to the best interests of the Debtor, its estate, and creditors as determined by the Debtor in its sole discretion. The Committee reserves the right to object at the Sale Hearing to any of the foregoing determinations by Debtor.

5. The Agreement will be subject to higher and better offers at the Auction.

6. The Break-Up Fee is hereby approved. The Debtor's obligation to pay the Break-Up Fee, as provided by the Agreement, to the extent payable in accordance with the Agreement, shall constitute an allowed administrative expense pursuant to sections 503(b) and 507(b) of the Bankruptcy Code, and the Debtor is authorized and directed to pay the Break-Up Fee to the

Purchaser in accordance with the terms of the Agreement without further application to or order of this Court.

7. The Court shall hold a Sale Hearing on April 27, 2010 at 11 a.m. (prevailing Eastern time) in the United States Bankruptcy Court for the Middle District of Florida, 300 North Hogan Street, Suite 3-350, Jacksonville, FL 32202, at which time the Court shall consider Debtor's motion to approve the sale of the Acquired Securities to the Successful Bidder (the "**Sale Motion**"), and confirm the results of the Auction, if any.

8. All responses or objections, if any, to the Sale Motion must be in writing, state the name of the objecting party, state with particularity the reasons and basis for the objection, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court and served upon (1) counsel to the Debtor, (2) counsel to the Purchaser, (3) the United States Trustee, (4) counsel to the Committee; and (5) any other parties requesting notice . Objections to the Sale Motion, if any, shall be filed and served no later than 12:00 p.m. (prevailing Eastern time) on April 26, 2010 (the "**Objection Deadline**").

9. Failure to file and serve an objection or otherwise raise an objection as ordered and directed herein shall be deemed consent to the Court's approval of the Sale Motion, the sale, and the Debtors' consummation and performance of the Agreement (including the transfer of the Acquired Securities free and clear of all liens, claims and encumbrances as set forth in the Agreement).

10. Notice of the Sale Motion and the Sale Hearing shall be good and sufficient, and no other or further notice shall be required, if given as follows:

- a) **Notice of Sale Motion and Sale Hearing.** Within two days after entry of the order requested herein (the "**Mailing Date**"), the



Debtors (or their agent) shall serve notice substantially in the form of the notice attached to the Motion as Exhibit B, the Sale Motion, the Agreement, a proposed sale order, the Bidding Procedures, and a copy of the bidding procedures order (collectively, the "Notice Materials") by first-class mail, postage prepaid, upon (i) the Office of the United States Trustee for the Middle District of Florida, (ii) counsel for the Purchaser, (iii) counsel for the Committee, (iv) all entities known to have expressed an interest in a transaction with respect to the Acquired Securities during the past 12 weeks, (v) all entities known to have asserted any lien, claim, interest or encumbrance in or upon the Acquired Securities, (vi) all federal, state, and local regulatory or taxing authorities which have a reasonably known interest in the relief requested by the Sale Motion, (vii) the United States Attorney's office, (viii) the United States Department of Justice, (ix) the Internal Revenue Service and (x) all creditors and equity security holders..

- b) Publication Notice. On or before the Mailing Date, or as soon thereafter as is practicable, the Debtors shall cause notice substantially in the form of the notice attached to the Motion as Exhibit B to be published in the national edition of the Wall Street Journal.
- c) The Debtors also shall file a certificate of service with the Court showing that service in accordance with this Order has been properly effectuated, and shall update such certificate of service as necessary.

11. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

12. The Debtor shall comply with Section 345(b) of the Bankruptcy Code with respect to all deposits received from bidders for the Acquired Securities.

13. Nothing in this Order, the Agreement or any other similar agreement with any other party shall relieve or excuse the Debtor, the Purchaser, or any other party from complying

with any and all applicable federal securities laws or rules and regulations thereunder with respect to the offer, sale, purchase or distribution of the Acquired Securities.

DATED this 20<sup>th</sup> day of April, 2010, in Jacksonville, Florida.

  
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JERRY A. FUNK  
United States Bankruptcy Judge

Copies furnished to:

Local Rule 1007-2 Parties in Interest List