UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
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In re: TAYLOR, BEAN & WHITAKER MORTGAGE CORP., REO SPECIALISTS, LLC, and HOME AMERICA MORTGAGE, INC., Debtors.	Chapter 11 Case No. 3:09-bk-07047-JAF Case No. 3:09-bk-10022-JAF Case No. 3:09-bk-10023-JAF Jointly Administered Under Case No. 3:09-bk-07047-JAF
TAYLOR, BEAN & WHITAKER MORTGAGE CORP., Applicable Debtor.	Case No. 3:09-bk-07047-JAF

DEBTOR'S MOTION FOR ENTRY OF ORDERS PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE AND RULES 2002, 6004 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) (A) APPROVING BIDDING PROCEDURES AND TERMS OF AUCTION FOR THE SALE OF DEBTOR'S MORTGAGE-BACKED SECURITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (B) SETTING HEARING DATE FOR APPROVAL OF SALE, (C) FIXING DEADLINE FOR OBJECTING TO PROPOSED SALE, (D) APPROVING FORM AND MANNER OF SALE NOTICE, AND (E) APPROVING BID PROTECTIONS; AND (II) (A) AUTHORIZING THE SALE OF DEBTOR'S MORTGAGE-BACKED SECURITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, AND (B) GRANTING RELATED RELIEF

A hearing to consider and act upon the requests for relief enumerated as items (I)(A), (I)(B), (I)(C), (I)(D), and (I)(E) of this Motion will be held in Courtroom 4D, Bryan Simpson United States Courthouse, 300 North Hogan Street, Jacksonville, Florida, on Friday, April 16, 2010, at 10:00 a.m. before The Honorable Jerry A. Funk, United States Bankruptcy Judge.

Taylor, Bean & Whitaker Mortgage Corp. (the "**Debtor**" or "**Taylor Bean**"), as debtor in possession, and, pursuant to §§ 105 and 363(b) and (f) of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "**Bankruptcy Code**") and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure, hereby moves this Court (the "**Motion**") for the entry of orders: (A) (i) approving the proposed bidding procedures and terms of a proposed auction (the "**Auction"**) for sale of certain mortgage-backed securities free and clear of all liens, claims, encumbrances and interests; (ii) setting a hearing date for approval of the sale (the "**Sale Hearing"**) (iii) fixing a deadline for objecting to the proposed sale; (iv) approving the form and manner of the notice of this Motion, the Auction and the Sale Hearing; (v) approving bid protections; and (B) (i) authorizing the sale of such mortgage-backed securities free and clear of liens, claims, encumbrances and interests; and (ii) granting certain other related relief as set forth herein. In support of this Motion, the Debtor respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). Venue of the Debtor's chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On August 24, 2009 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court.

3. The Debtor continues to operate its business and manage its properties as debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

4. Until very recently, Taylor Bean was the largest independent (*i.e.*, non-depository owned) mortgage lender in the United States. Headquartered in Ocala, Florida, TBW employed approximately 2,400 people across the country. The largest offices were in Ocala, Florida; Atlanta, Georgia; and Tampa, Florida. Taylor Bean's principal business comprised the following:

- Origination, underwriting, processing and funding of conforming conventional and Government-insured residential mortgage loans;
- Sale of mortgage loans into the "secondary market" to government-sponsored enterprises such as the Federal Loan Mortgage Corporation ("**Freddie Mac**") or the Government National Mortgage Association ("**Ginnie Mae**"); and
- Mortgage payment processing and loan servicing.

5. For a detailed description of the Debtor's business operations and the reasons for the filing of this Bankruptcy Case, please see the description contained in the Debtor's Case Management Summary [Docket No. 4].

The Proposed Sale of the Acquired Securities

6. In connection with its mortgage origination and servicing business, Debtor holds residual and other interests in seven securitized trusts described in **Exhibit A** (the "**Acquired Securities**"). Two mortgage-backed securities consist of residual class interests issued by securitization trusts that the Debtor received when it sold the loans.

Five are mortgage-backed securities that the Debtor purchased in the normal course of business with funds from its general operating account.

7. In order to facilitate an orderly wind-down and liquidation that will maximize value for its estate, the Debtor has determined that sale of the Acquired Securities is necessary and appropriate.

8. To that end, Taylor Bean has entered into an agreement with AG Mortgage Value Partners Master Fund, L.P. (the "**Purchaser**") to effectuate a sale of the Acquired Securities pursuant to a proposed Purchase and Sale Agreement (the "**Agreement**"). A true and correct copy of the Agreement is attached hereto as **Exhibit B**.

9. Pursuant to the Agreement, Purchaser proposes to purchase the Acquired Securities for the Purchase Price.[2] Upon execution of the Agreement, the Purchaser has placed a Deposit of ten percent (10%) of the Purchase Price, to be held by the Escrow Agent. As more particularly described in the Agreement, unless there is a higher and better bid at the Auction, the Purchase Price less the Deposit will then be paid on the Closing Date.

10. To ensure that the offer presented in the Agreement represents the highest or otherwise best value to be derived from the sale of the Acquired Securities, the Debtor

[2] All capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.

has determined that it is in the best interest of all creditors to solicit competing bids and conduct an Auction for the sale of the Acquired Securities.

11. The Agreement is conditioned upon the entry of an Order by this Court approving, *inter alia*, the Bidding Procedures (as defined below) to be used during the Auction, and upon the Purchaser being the Successful Bidder (as defined below) at the Auction. The Agreement is also conditioned upon the entry of an Order by this Court approving the sale of the Acquired Securities by the Debtor to the Purchaser.

12. The Debtor carefully negotiated and reviewed the Agreement and believes that it is in the best interest of the Debtor, its estate and creditors to enter into and consummate the Agreement. The Debtor believes that the terms of the proposed Transaction are fair and equitable and that the Purchase Price represents reasonably equivalent value for the Acquired Securities.

Relief Requested

13. By this Motion, the Debtor initially seeks the entry of an order, substantially in the form submitted herewith, pursuant to sections 105 and 363(b) and (f) of the Bankruptcy Code and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") (i) approving the Bidding Procedures and terms of the Auction for sale of the Acquired Securities; (ii) setting a hearing date for the Sale Hearing; (iii) fixing a deadline for objecting to the proposed sale; (iv) approving the form and manner of the notice of this Motion, the Auction and the Sale Hearing; and (v) approving certain bid protections. The Debtor also requests that, after the Auction has

been conducted and the Sale Hearing held, the Court enter an order authorizing the Debtor to consummate the sale of the Acquired Securities.

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

Bidding Procedures

15. The sale of the Acquired Securities pursuant to the Agreement is subject to higher or better offers. To ensure maximum value is obtained, the Debtor proposes the following terms and procedures (collectively, the "**Bidding Procedures**") to govern the submission of competing bids for the Acquired Securities and for the conduct of the Auction. The Debtor believes that the Bidding Procedures are reasonable and appropriate and in the best interest of the Debtor, its estate and all creditors. 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 in form and substance reasonably acceptable to the Debtor, provided, however, that any such confidentiality agreement shall be at least as restrictive on such potential bidder as the confidentiality agreement entered into by the Purchaser and the Debtor, to request due diligence information related to the Acquired Securities (the "**Due Diligence Package**"). The Debtor will have no obligation to provide due diligence access after the Bid Deadline, as defined below. If the Debtor intends to furnish any information to a

potential bidder which was not provided to the Purchaser, then the Debtor shall make such information available to the Purchaser and the potential bidder simultaneously.

(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 Troutman Sanders LLP, The Chrysler Building, 405 Lexington Ave., New York, New York 10174, commencing at 10:00 a.m. (Eastern Daylight 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 declare the Purchaser the Successful Bidder, as defined below, and will proceed to seek approval to sell the Acquired Securities to the Purchaser in accordance with the Agreement and seek approval thereof 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 Sale Hearing.

(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. (Eastern Daylight 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) the sale of any of the Acquired Securities to any party after the Auction if the Qualified Bidder is the Successful Bidder, or (C) forbearing from submitting a bid at the Auction over any particular price, except as disclosed in the affidavit required by this subparagraph (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 (as defined below), to the extent payable; and (b) the overbid amount of $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, internal approval, 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. Recognizing the Purchaser's expenditure of time and resources, the Debtor has agreed to provide certain bid protections to the Purchaser, which are designed to compensate the Purchaser for its efforts and agreements to date and to facilitate a full and fair process designed to maximize the value of the Acquired Securities for the benefit of the Debtor's creditors and estate. Specifically, the Debtor has determined that the Agreement will further the goals of the

Bidding Procedures by establishing a floor against which all other bids will be evaluated. As a result, if the Agreement is terminated pursuant to Section 8.1(c), 8.1(e) or 8.1(f) thereof, then Debtor shall pay to Purchaser an amount equal to $275,000.00 (the "**Break-Up Fee**") no later than three (3) 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. All bids made during the Auction shall be made and received on an open basis, and all material terms of each such bid shall be fully disclosed to all other Qualified Bidders present at the Auction and to the Purchaser (provided Purchaser is present at the Auction). The Debtor shall maintain a transcript or other record of all bids made and announced at the Auction, all overbids and the Successful Bid (as defined below).

(i) Selection of Successful Bid and Additional Deposits. As soon as practicable after the conclusion of the Auction, but in any event not later than three (3) business days thereafter, 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 Bid, fund by wire transfer 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 the Bidding Procedures 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 the Bidding Procedures 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 Fee. In the event the Purchaser is not the Successful Bidder and the Agreement is terminated pursuant to Section 8.1(c), 8.1(e) or 8.1(f) thereof, then Debtor shall pay to Purchaser the Break-Up Fee no later than three (3) business days following such termination.

(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, the Successful Bidder's proposed agreement, or subparagraph (l) above, 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.

Basis for Relief

16. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "the trustee, after notice and a hearing, may use, sell, lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor-in-possession is given these rights by § 1107(a) of the Bankruptcy Code. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside of the ordinary course of business may occur by private sale or by public auction.

The Sale of the Acquired Securities and the Auction on the Terms Set Forth in the Bidding Procedures Is Warranted

17. Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets prior to confirmation of a plan. Courts have required that the decision to sell assets outside the ordinary course of business be based upon the sound business judgment of the debtor. *See, e.g., Licensing By Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997) ("A sale of a substantial part of a Chapter 11 estate may be conducted if a good business reason exists to support it."); *Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) ("bankruptcy court can authorize a sale of all a Chapter 11 debtor's assets under [section] 363(b)(1) when a sound business purpose dictates such action"); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.").

18. Courts typically consider the following four factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale, (b) whether adequate and reasonable notice of the sale was given to interested parties, (c) whether the sale will produce a fair and reasonable price for the property and (d) whether the parties have acted in good faith. *See, e.g., In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

19. Here, each of these four factors has been satisfied. First, the Debtor currently has liquidity to continue operating in accordance with its traditional practice. The proposed sale of the Acquired Securities will minimize the liquidity the Debtor needs to continue operations, while providing a means for the Debtor to maximize the value of the Acquired Securities for the benefit of its creditors and stakeholders.

20. Second, as discussed below, the Debtor will be providing adequate and reasonable notice to interested parties of the opportunity to bid on the Acquired Securities and participate in the Auction and of the opportunity to object to the sale of the Acquired Securities. *See, e.g., Folger Adam Security Inc. v. DeMatteis/MacGregor*, 209 F.3d 252, 265 (3d Cir. 2000) (stating that notice is sufficient if it includes "the time and place of any public sale, the terms and conditions of any private sale, states the time for filing objections and, if real estate is being sold, provides a general description of the property"); *In re WBQ Partnership*, 189 B.R. 97, 103 (Bankr. E.D. Va. 1995) ("notice is sufficient if it includes the terms and conditions of the sale, if it states the time for filing

objections, and if the estate is selling real estate, it generally describes the property" (quoting *In re Karpe*, 84 B.R. 926, 929 (Bankr. M.D. Pa. 1988)).

21. Third, the Bidding Procedures and the terms of the Auction set forth in the Bidding Procedures will provide for an open and competitive bidding process for the Acquired Securities. Courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. *See, e.g., In re Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (such procedures "encourage bidding and … maximize the value of the debtor's assets); *In re Financial News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991)("court-imposed rules for the disposition of assets … [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates").

22. Fourth, the Debtor is proceeding in good faith and will make a showing at the Sale Hearing that the purchaser or purchasers of the Acquired Securities have acted in good faith. Courts generally conclude that parties have acted in good faith with respect to a proposed sale if the purchase price is adequate and reasonable and the terms of the sale are disclosed fully. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986). The sale of the Acquired Securities and the Auction pursuant to the Bidding Procedures should therefore be approved.

23. As described in detail above, the Debtor has determined that the sale of the Acquired Securities pursuant to the Bidding Procedures will enable the Debtor to obtain the highest and best offer for the Acquired Securities and maximize the value of the

Acquired Securities for its estates and stakeholders. Accordingly, it is in the best interests of the Debtor's estate and stakeholders to implement a sale of the Acquired Securities and the Auction, if necessary, through the terms set forth in the Bidding Procedures.

Request for Approval of a Sale Free and Clear of All Claims and Interests

24. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

> (a) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
>
> (b) such entity consents;
>
> (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (d) such interest is in bona fide dispute; or
>
> (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). In addition, a court may authorize the sale of a debtor's assets free and clear of any liens, claims, encumbrances or interests under section 105 of the Bankruptcy Code. *See Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

25. To facilitate the sale of the Acquired Securities, the Debtor proposes, as set forth in the Bidding Procedures and Agreement, that all of the Debtor's right, title, and interest in and to the Acquired Securities, be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**"). After a good faith search, the Debtor is unaware of any valid Claims and Interests against the Acquired Securities. If valid Claims and Interests do exist against the Acquired Securities, then such Claims and Interests, if any, will attach to the net proceeds of the sale of the Acquired Securities with the same force, effect and priority as such liens had on the Acquired Securities on the day prior to the closing, subject to the rights and defenses, if any, of the Debtor and any party in interest thereto.

Request for Approval of Certain Bid Protections

26. As set forth in the Bidding Procedures and the Agreement, the Debtor proposes to provide the Purchaser with a Break-Up Fee in an amount of $275,000, which is approximately three percent (3%) of the Purchase Price.

27. A "stalking-horse bidder" is a bidder that submits an early bid and absorbs the initial costs and consequences of bidding. If a stalking-horse agreement is negotiated and disclosed to all interested parties, it is anticipated that any such initial, firm bid will assist in generating higher and better offers. If a debtor accepts a higher bid from a party other than the "stalking-horse" bidder, a break-up fee customarily is paid to the "stalking-horse" bidder to compensate the "stalking-horse" bidder for costs incurred as a result of its role as a "stalking-horse" bidder. *See, e.g., In re Loral Space & Commc'ns Ltd.*, No.

03-41710 (RDD) (Bankr. S.D.N.Y. 2003) (approving break-up fee and expense reimbursement) (the "**Loral Order**"); *In re Integrated Resources*, 147 B.R. 650, 660 (S.D.N.Y. 1992) (noting that break-up fees may be approved where they enhance the bidding process); *see also In re LTV Steel Co., Inc.*, Case No. 00-43866 (Bankr. N.D. Ohio April 24, 2001) (approving bid protections that included a termination fee and a minimum overbid); *In re EWI, Inc.*, 208 B.R. 885, 888 (Bankr. N.D. Ohio 1997) (noting the customary nature of break-up fees); *In re CSC Indus., Inc. and Copperweld Steel Co.*, Nos. 93-41898 and 93-41899 (Bankr. N.D. Ohio Nov. 2, 1994) (approving break-up fees); *In re Hupp Indus., Inc.*, 140 B.R. 191, 195 (Bankr. N.D. Ohio 1992) (noting that an unsuccessful bidder should be entitled to a reasonable break-up fee).

28. The Debtor submits that the Break-Up Fee may be payable in accordance with the terms, conditions, and limitations set forth in the Agreement and, (i) to the extent payable, shall be deemed an actual and necessary cost and expense of 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. Thus, assurance to the Purchaser of payment of the Break-Up Fee under certain circumstances will promote competitive bidding by inducing the Purchaser's offer that otherwise would not have been held open, and without which other bidding would be less competitive.

29. 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 its true worth.

30. Finally, absent authorization of the Break-Up Fee, the Debtor will lose the opportunity to obtain the highest or otherwise best available offer for the Acquired Securities.

31. Thus, the bid protections enable the Debtor to assure a sale to a contractually committed bidder at a price the Debtor believes is fair and reasonable, while providing the Debtor with the opportunity of obtaining even greater benefits for the estate through an auction process. For the foregoing reasons, the Debtor submits that it is reasonable and in the best interest of the estate for the Bankruptcy Court to approve the bid protections.

Good Faith Pursuant to 11 U.S.C. § 363(m)

32. Section 363(m) of he Bankruptcy Code provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

33. Although the Bankruptcy Code does not define "good faith," courts have held that:

> the good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; where there is a lack of such integrity, a good faith finding may not be made. A purchaser's good faith is lost by fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders."

In re Rock Industries Machinery Corp., 572 F.2d 1195, 1198 (7th Cir 1978); *see also In re Andy Frain Services, Inc.*, 798 F.2d 1113, 1125 (7th Cir. 1986).

34. As previously discussed, the Agreement is the product of intensive negotiations in which the Debtor and the Purchaser each acted in good faith and at arms' length. The Debtor therefore requests that the Court make a finding that the Purchaser, to the extent the offer set forth in the Agreement is the highest and best offer following the Auction, has purchased the Acquired Securities in good faith within the meaning of section 363(m) of the Bankruptcy Code.

Request to Schedule the Sale Hearing

35. Through this Motion, the Debtor intends to seek, among other things, approval of the Bidding Procedures, the Break-Up Fee, and the form and manner of service of the Sale Notice. To expedite the sale process and in accordance with the terms of the Bidding Procedures, the Debtor requests that the Court schedule a Sale Hearing on or about May 7, 2010, at 10:00 a.m. (Eastern Daylight Time) before the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division, in Courtroom 4D, Bryan Simpson United States Courthouse, 300 North Hogan Street, Jacksonville, Florida, 32202, at which time the Court shall consider the Debtor's request to approve the sale of the Acquired Securities to the Successful Bidder and to confirm the results of the Auction, if any.

Request for the Court to Establish the Deadline to Object to the Proposed Asset Sale

36. 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. (Eastern Daylight Time) on April 30, 2010 (the "**Objection Deadline**").

37. 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, encumbrances and interests as set forth in the Agreement).

Approval of the Form of Notice of Sale Motion and Sale Hearing

38. Pursuant to Bankruptcy Rule 2002(a), the Debtor is required to provide its creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the date, time, and place of the Auction and the Sale Hearing, and the deadline for filing any objections to the relief requested herein.

39. The Debtor submits that notice of the Sale Motion and the Sale Hearing is 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 Debtor (or its agent) shall serve notice substantially in the form of the notice attached to the Motion as Exhibit C, 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 10 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 Debtor shall cause notice substantially in the form of the notice attached to the Motion as Exhibit C to be published in the national edition of the Wall Street Journal.

40. The Debtor shall also file a certificate of service with the Bankruptcy Court showing that service in accordance with the Sale Order has been effectuated.

41. The Debtor submits that the notice of the Sale Motion, the Auction, and the Sale Hearing as provided for herein complies fully with Bankruptcy Rule 2002 and the Local Rules of this Court and constitutes good and adequate notice of the sale of the Acquired Securities and the proceedings with respect thereto. Therefore, the Debtor respectfully requests that this Court approve the notice procedures proposed above.

Relief Under Bankruptcy Rules 6004(g)

42. Bankruptcy Rule 6004(g) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." The Debtor requests that any order approving the sale of the Acquired Securities be effective immediately by providing that the 10-day stay under Bankruptcy Rule 6004(g) is waived.

Notice

43. No trustee or examiner has been appointed in this chapter 11 case. Notice of this Motion has been provided to (a) the United States Trustee, (b) counsel for Purchaser, (c) counsel for the Committee, (d) the parties that have filed requests for service of documents in this case, and (e) the Local Rule 1007(d) Parties in Interest List.

In light of the nature of the relief requested, the Debtor submits that notice in the foregoing manner is adequate and sufficient and that no further notice need be given.

No Prior Request

44. No prior request for the relief sought in this Motion has been made by the Debtor to this or any other court in connection with this chapter 11 case.

WHEREFORE, the Debtor respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit D (a) granting the relief sought

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herein, and (b) granting to the Debtor such other and further relief as the Court may deem proper.

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ATTORNEYS FOR DEBTOR

Exhibit A

Acquired Securities

Ticker	Cusip	Original Face Amount
TBW 06-4 A7	872224AH3	8,392,000.00
TBW 07-2 A2B	872227AD5	7,930,000.00
TBW 07-2 A3B	872227AF0	1,525,000.00
TBW 07-2 A5	872227AJ2	9,794,000.00
CSMC 07-5R A2	12640QAB9	5,000,000.00
TBW 07-2 X	872227AT0	(1)
TBW 06-4 X	872224AP5	(1)

[1] Original Face Amount is a notional amount that is equal to the entire original collateral balance of the respective deal.