UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:	Chapter 11
TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,	Case No. 3:09-bk-07047-JAF
Debtor. _____/	

DEBTOR'S RESPONSE TO MOTION OF SOVEREIGN BANK, AS AGENT FOR ADEQUATE PROTECTION OR, IN THE ALTERNATIVE FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW Taylor, Bean & Whitaker Mortgage Corp. (the "**Debtor**" or "**TBW**"), and responds to the motion of Sovereign Bank ("**Sovereign**"), as agent, for adequate protection or, in the alternative for relief from the automatic stay (the "**Motion**") as follows:

Preliminary Statement

Sovereign is the agent under that certain Sixth Amended and Restated Servicing Facility Loan and Security Agreement dated as of May 15, 2009 (the "**Agreement**") by and among the Debtor, the Lenders party thereto, their successors and Sovereign, as agent. Sovereign asserts that it is owed approximately $164.9 million under the Agreement. Sovereign further asserts that the Debtor's obligations under the Agreement are secured by liens on substantially of the Debtor's assets derived from its servicing contracts, agreements and servicing rights (the "**Collateral**"). These rights that make up the Collateral derive primarily from the Debtor's servicing of mortgage loans insured by

the Governmental National Mortgage Association ("**Ginnie Mae**"). On information and belief, the value of the Collateral is between $473 million and $512 million.

Legal Argument

1. Sovereign seeks an order requiring the Debtor to provide adequate protection, and if the Debtor is not able to provide adequate protection, an order lifting the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code.

2. With respect to Sovereign's request for adequate protection, the equity cushion of approximately three hundred percent that Sovereign enjoys in its Collateral is sufficient to provide adequate protection. *See In re Jug End in the Berkshires, Inc.*, 46 B.R. 892 (Bankr. D. Mass. 1985)(classic protection for secured debtor justifying continuation of automatic stay is existence of an equity cushion). Courts have almost uniformly held that an equity cushion of 18% or more constitutes adequate protection. *See, In re Senior Care Properties, Inc.*, 137 B.R. 527, 529 (N.D. Fla. 1992) (equity cushion of 18% held sufficient); *In re: Ritz Theatres*, 68 B.R. 256, 260 (Bankr. N.D.Fla. 1987) (38% is adequate); *In re Mellon*, 734 F.2d 1396 (9th Cir. 1984) (20% is adequate). Further, the Debtor proposes to provide adequate assurance to Sovereign through the procedure set forth in the Debtor's Emergency Motion for Turnover, Approval of Procedures for the Maintenance and Use of Borrower Payments and Immediate Resolutions of Related Issues (Dkt. No. 83), which is incorporated herein by reference. No further adequate protection is required.

3. With respect to its request for relief from the automatic stay for cause, Sovereign bears the burden of establishing a *prima facie* case that it is entitled to relief

from the automatic stay for cause. *In re Paxson Elec. Co.*, 242 B.R. 67 (Bankr. M.D.Fla. 1999). Sovereign cannot meet this burden. As set forth above, Sovereign enjoys a substantial equity cushion of approximately three hundred percent with respect to its Collateral. Moreover, the Debtor is working with the FDIC to resolve the issues resulting from the FDIC's administrative freeze on the Debtor's accounts. In short, Sovereign is not entitled to relief from the automatic stay.

WHEREFORE, premises considered, the Debtor respectfully requests the Court enter an order denying the Motion and granting such other further relief to which it may be entitled.

Respectfully submitted this 10th day of September, 2009.

/s/ Edward J. Peterson, III

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