

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**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**

**MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT**

COME NOW Taylor, Bean & Whitaker Mortgage Corp. (“TBW”), REO Specialists, LLC (“REO”, together with TBW, “Debtors” or “Movants”), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and hereby file this motion (“Motion”) to approve a compromise and Settlement Agreement, attached hereto as Exhibit A (the “Settlement Agreement”)<sup>1</sup>, entered into by Movants to settle claims held by TBW and REO against certain real property titled in the name of United Funding Mortgage Corp. (“UFM”). In support of this motion, Movants show the Court as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Settlement Agreement.

## **BACKGROUND**

### **The Parties**

2. On August 24, 2009, TBW filed with this Court its voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). On November 25, 2009, REO, a wholly owned subsidiary of TBW, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The two cases are being jointly administered under Case No. 3:09-bk-07047. Both TBW and REO continue to manage their respective properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, and both are in the process of winding up their affairs through liquidation.

3. On August 9, 2010, UFM filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Georgia Bankruptcy Court"), Case No. 10-83213-JB (the "UFM Bankruptcy Case"). Robert B. Silliman was appointed as Chapter 7 Trustee for UFM ("Trustee") and is duly qualified. Trustee is currently in the process of winding up the affairs of UFM.

### **The Properties**

4. At the time UFM filed its petition for relief, UFM held record title to certain parcels of real estate situated at (i) 1205 W. Conway, NW, Atlanta, Georgia ("1205 W. Conway") and (ii) 501 Spring Lake Road, Ocala, Florida ("501 Spring Lake", together with 1205 W. Conway, each individually, a "Property", and collectively, the "Properties").

5. On October 26, 2010, Trustee filed its *Motion for an Order Approving Sale of 1205 W. Conway Drive, N.W., Atlanta, Georgia Free and Clear of Liens, Claims, and Encumbrances* (Doc. No. 48 in the UFM Bankruptcy Case) (the "Sale Motion"). The Sale

Motion is set for hearing to be held on November 17, 2010. Trustee seeks to sell 1205 W. Conway to Paul Bontempo and Janice Bontempo for a purchase price of \$750,000 pursuant to that certain Purchase and Sale Agreement dated September 18, 2010 (as amended, the "Bontempo Sales Agreement"), which provides for a closing date of November 29, 2010. Pursuant to the Sale Motion, Trustee seeks authority to pay certain taxes, fees, costs, and expenses related to 1205 W. Conway so that the net proceeds of the sale will be approximately \$679,200.00 (the "Bontempo Net Proceeds").

6. 501 Spring Lake is currently not subject to any contract for sale.

### **The Claims of TBW and REO**

7. TBW and REO hold claims to the Properties for, without limitation, fraudulent conveyance and constructive trust, which arise from the misappropriation of over \$3,000,000 of TBW and REO funds used to fund either the acquisition or improvement of the Properties.

8. With respect to 1205 W. Conway, in April, 2008, \$700,000 was withdrawn from TBW's operating account and used by Sean Murla, a personal acquaintance of Lee Farkas, the then principal of TBW, to purchase 1205 W. Conway. Mr. Murla subsequently transferred 1205 W. Conway to UFM on March 16, 2010. Moreover, during the period from January to August of 2009, REO directly funded renovations to 1205 W. Conway in the approximate amount of \$801,750.15. Neither TBW nor REO received any consideration for these transfers.

9. With respect to 501 Spring Lake, on or about June 30, 2006, \$1,518,234.44 of TBW's funds were used to purchase the Property for Mr. Farkas' wholly owned company, NADA Airline, Inc. ("NADA"). NADA subsequently transferred the Property to Mr. Murla on March 16, 2010, and Mr. Murla transferred the Property to UFM on the same day. TBW received no consideration for any of the foregoing transfers.

10. TBW and REO assert that, as a result of the foregoing facts, at the time UFM filed its petition for relief, UFM held no equitable interest in the Properties, UFM held only legal title to the Properties, and the Properties are therefore not property of UFM's bankruptcy estate.

### **The Settlement**

11. After a review of the issues involved in the claims of TBW and REO, coupled with the inherent delay and substantial expense regarding the outcome of litigation of such claims, Movants concluded that it is in their respective best interests to resolve the claims through a mutually agreeable compromise and settlement.

12. To settle the claims, on November 15, 2010, Movants entered into the attached Settlement Agreement with the Trustee. In summary, the Settlement Agreement provides as follows:

- a. Upon a sale of the Properties, TBW will pay the Net Proceeds of such sale into the UFM Bankruptcy Estate, and Trustee will thereafter distribute 60% of such Net Proceeds to TBW and retain the remaining 40% of such Net Proceeds for the benefit of the UFM Bankruptcy Estate; and
- b. TBW and REO will release all claims against Trustee and/or the UFM Bankruptcy Estate related to the Properties, and Trustee will release all claims on behalf of itself and the UFM Bankruptcy Estate against TBW and/or REO related to the Properties.

13. The Settlement Agreement was negotiated at arms length.

14. On November 16, 2010, Trustee filed his *Motion for Approval of Compromise and Settlement* in the UFM Bankruptcy Case [Doc. No. 59] (the "Trustee's Motion"). The Trustee's Motion, which is set for a hearing on December 15, 2010, is substantially similar to this Motion and seeks approval of the compromise and Settlement Agreement by the Georgia Bankruptcy Court. The Settlement Agreement is conditioned upon approval by both this Court and the Georgia Bankruptcy Court.

**RELIEF REQUESTED**

15. By this Motion, Movants respectfully requests that the Court approve the Settlement Agreement pursuant to Bankruptcy Rule 9019.

16. “As a general matter, settlements or compromises are favored in bankruptcy and, in fact, encouraged.” *In re Adelpia Commc’ns. Corp.*, 368 B.R. 140, 226 (Bankr. S.D.N.Y. 2007); *See also e.g., Barry v. Smith (In re New York, New Haven and Hartford R.R. Co.)*, 632 F.2d 955, 959 (2d Cir. 1980). Settlements “minimize litigation and expedite the administration of the estate.” *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). Approval of a settlement is left to the sound discretion of the court based upon the particular circumstances of the proposed settlement and the case as a whole. *See Langes v. Green*, 282 U.S. 531, 541 (1931).

17. The Debtor is obligated to maximize the value of the estate and make its decisions in the best interests of all of the creditors of the estate. *See e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). Courts generally defer to a Debtor’s business judgment when there is a legitimate business justification for the decision to compromise a dispute. *Id.* at 395.

18. In determining whether a settlement should be approved under Bankruptcy Rule 9019, the court must consider: “(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.” *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990) (internal citations omitted).

19. As reiterated by numerous courts, “a bankruptcy court is not required to hold a mini-trial on the merits of the settlement. Instead, it is charged with ‘canvassing the issues to determine whether the settlement falls below the lowest point in the range of reasonableness.’” In re Enron Corp., 2003 U.S. Dist. LEXIS 1383 at\*6 (S.D.N.Y. Jan. 31, 2003) (affirming bankruptcy court order approving settlement) (quoting In re Interstate Cigar Co., 240 B.R. 816, 822 (E.D.N.Y. 1999)); Abeles v. Infotechnology (In re Infotechnology), 1995 U.S. App. LEXIS 39883 at \*4-5 (2d Cir. Nov. 9, 1995) (the court should not substitute its business judgment for that of the debtor in possession).

20. Debtors have reviewed their claims against the Properties and have made the determination that, in light of the delay and expense involved in potential litigation over Debtors’ claims, the Settlement Agreement is in the best interest of their estates.

**WHEREFORE**, Debtors respectfully requests that the Court enter an order:

(i) authorizing Debtors to enter into the compromise described above with Trustee; (ii) approving the Settlement Agreement; and (iii) granting such other and further relief as is just and equitable.

Dated November 16, 2010.

**TROUTMAN SANDERS LLP**

/s/ Jeffrey W. Kelley

Jeffrey W. Kelley (GA Bar No. 412296)

[jeff.kelley@troutmansanders.com](mailto:jeff.kelley@troutmansanders.com)

600 Peachtree Street, Suite 5200

Atlanta, Georgia 30308

Telephone No: 404-885-3358

Facsimile No.: 404-885-3995

**SPECIAL COUNSEL FOR THE DEBTORS AND**

**DEBTORS IN POSSESSION**

**TAYLOR, BEAN & WHITAKER MORTGAGE CORP. AND**

**REO SPECIALISTS, LLC**

Exhibit A

Settlement Agreement

### **SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT dated as of November 15, 2010 (this "Agreement"), is by and between TAYLOR, BEAN & WHITAKER MORTGAGE CORP., a Florida corporation ("TBW"), REO SPECIALISTS, LLC, a Florida limited liability company ("REO"), and ROBERT B. SILLIMAN, as the duly qualified and acting Chapter 7 Trustee ("Trustee") of the bankruptcy estate of United Funding Mortgage Corp. (the "UFM Bankruptcy Estate"). TBW, REO, and Trustee are, collectively, the "Parties."

**WHEREAS**, TBW is a debtor and debtor-in-possession in a pending chapter 11 bankruptcy case, In re: Taylor, Bean & Whitaker Mortgage Corp., et al., Case No. 09-07047-JAF, United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (the "Jacksonville Bankruptcy Court") (the "TBW Bankruptcy Case");

**WHEREAS**, REO is a debtor and debtor-in-possession in a pending chapter 11 bankruptcy case, In re: REO Specialists, LLC, Case No. 09-10022-JAF, pending in the Florida Bankruptcy Court, which case is being jointly administered with the TBW Bankruptcy Case;

**WHEREAS**, UFM is a debtor in a pending chapter 7 bankruptcy case, In re: United Funding Mortgage Corp., Case No. 10-83213-JB, United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Atlanta Bankruptcy Court") (the "UFM Bankruptcy Case");

**WHEREAS**, the UFM Bankruptcy Estate holds record title to real properties located at (i) 1205 West Conway Drive, NW, Atlanta, Georgia ("1205 W. Conway") and (ii) 501 Spring Lake Road, Ocala, Florida ("501 Spring Lake", along with 1205 W. Conway, each a "Property", and collectively, the "Properties");

**WHEREAS**, TBW and REO have claims against the Properties including, without limitation, claims for fraudulent conveyance and constructive trust arising from the misappropriation of TBW and REO funds used by or on behalf of United Funding Mortgage Corp. to purchase and improve the Properties;

**WHEREAS**, Trustee has entered into a Purchase and Sale Agreement dated September 18, 2010, to sell 1205 W. Conway to Paul Bontempo and Janice Bontempo for a purchase price of \$750,000 with a closing date of November 29, 2010 (as amended, the "Bontempo Sales Agreement");

**WHEREAS**, Trustee has filed in the UFM Bankruptcy Case its Motion for an Order Approving Sale of 1205 W. Conway Drive, N.W., Atlanta, Georgia Free and Clear of Liens, Claims, and Encumbrances (Doc. No. 48 in the UFM Bankruptcy Case) (the "Sale Motion") seeking approval of the sale of 1205 W. Conway pursuant to Section 363 of Title 11 of the United States Code (the "Bankruptcy Code");

**WHEREAS**, pursuant to the Sale Motion, Trustee proposes to pay certain fees, taxes, expenses, and reimbursements from the proceeds of the sale of 1205 W. Conway so that the net



proceeds to the UFM Bankruptcy Estate will be approximately \$679,200.00 (the "Bontempo Net Proceeds"); and

**WHEREAS**, the Parties desire, in lieu of litigating the claims of TBW and REO at great expense to the estates of TBW, REO, and UFM, to settle the claims held by TBW and REO against the Properties pursuant to the terms of this Agreement.

**THEREFORE**, for valuable consideration, including the mutual agreements hereinafter set forth, the Parties agree as follows:

1. TBW shall not oppose the Sale Motion or the Bontempo Sales Agreement. The Parties agree that the Trustee shall continue to market and attempt to sell the Properties (including 1205 W Conway if the Bontempo Sales Agreement does not close) or that, if he so elects, the Trustee may ask TBW to assume the role of marketing and selling the Properties for the UFM Bankruptcy Estate upon such terms and conditions as the Trustee and TBW may agree.

2. At the closing of a sale of either Property, including without limitation the closing of the Bontempo Sales Agreement, Trustee shall distribute to TBW sixty (60%) percent the proceeds of such sale, less any taxes, costs, fees, or expenses owed on the Property or incurred by Trustee in the marketing or sale of such Property (the "Net Proceeds") and retain the remaining 40% of the Net Proceeds for the benefit of the UFM Bankruptcy Estate.

3. Effective upon receipt by TBW of 60% of the Net Proceeds of the sale of both Properties, (i) TBW and REO, on behalf of themselves, their affiliates and their respective successors and assigns hereby irrevocably release, waive, and forever relinquish all right of setoff, recoupment, claims, demands, obligations, liabilities, and causes of action of whatever kind or nature, whether known or unknown, which TBW or REO have, may have, or might assert at the time of execution of this Agreement, or in the future, against the UFM Bankruptcy Estate or Trustee, and Trustee's attorneys, directly or indirectly, which occurred, existed, was taken, permitted, or begun prior to or on the date of this Agreement, arising out of, based upon, or in any manner connected with the Properties; and (ii) Trustee, on behalf of itself, the UFM Bankruptcy Estate, and their respective successors and assigns hereby irrevocably releases, waives, and forever relinquishes all right of setoff, recoupment, claims, demands, obligations, liabilities, and causes of action of whatever kind or nature, whether known or unknown, which Trustee or the UFM Bankruptcy Estate has, may have, or might assert at the time of execution of this Agreement, or in the future, against TBW and REO and each of their present officers, directors and attorneys, directly or indirectly, which occurred, existed, was taken, permitted, or begun prior to or on the date of this Agreement, arising out of, based upon, or in any manner connected with the Properties.

4. Subject to approval by the Jacksonville Bankruptcy Court, TBW and REO hereby represent and warrant that (i) the person signing this Agreement has the authority to act on behalf of TBW and REO, (ii) this Agreement has been duly authorized, executed and delivered by TBW and REO and is the valid and binding obligation of TBW and REO enforceable against TBW and REO in accordance with its terms and (iii) no material consent of any third party is required for its execution, delivery, and performance of this Agreement by TBW and REO.

5. Subject to approval by the Atlanta Bankruptcy Court, Trustee hereby represents and warrants that (i) the person signing this Agreement has the authority to act on behalf of Trustee and the UFM Bankruptcy Estate, (ii) this Agreement has been duly authorized, executed and delivered by Trustee and is the valid and binding obligation of Trustee and the UFM Bankruptcy Estate enforceable against Trustee and the UFM Bankruptcy Estate in accordance with its terms and (iii) no material consent of any third party is required for its execution, delivery, and performance of this Agreement by Trustee and the UFM Bankruptcy Estate.

6. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof and thereof.

7. This Agreement may be executed in counterparts, each of which will be deemed an original and can be delivered by fax or email.

8. This Agreement shall, in all respects, be governed by, and construed and interpreted in accordance with, the laws of the State of Georgia, without reference to any choice or conflict of law provisions.

9. Venue for any action arising under or relating to this Agreement lies in the United States Bankruptcy Court for the Northern District of Georgia or the Middle District of Florida, and the parties agree to consent to such Courts' jurisdiction to enforce the terms of this Agreement.

10. The terms of this Agreement are subject to approval by final order of this Agreement by both the Jacksonville Bankruptcy Court and the Atlanta Bankruptcy Court. This Agreement shall become null and void if it is not approved by both the Jacksonville Bankruptcy Court and the Atlanta Bankruptcy Court on or before February 1, 2011; provided that such date may be extended by mutual agreement of the Parties.

*[signatures on following page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.

ROBERT B. SILLIMAN, as Trustee for  
United Funding Mortgage Corp.

By: SPK

\_\_\_\_\_

Name: Neil Linn

Title: CEO

REO SPECIALISTS, LLC

By: SPK

Name: Neil Linn


Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.

ROBERT B. SILLIMAN, as Trustee for  
United Funding Mortgage Corp.

By: \_\_\_\_\_

  
\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

REO SPECIALISTS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_