

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
REO SPECIALISTS, LLC, and
HOME AMERICA MORTGAGE, INC.

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF

Debtors.

Jointly Administered Under
Case No. 3:09-bk-07047-JAF

APPLICABLE DEBTOR

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

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.

**MOTION TO APPROVE COMPROMISE
BETWEEN TAYLOR, BEAN & WHITAKER
MORTGAGE CORP. AND NL VENTURES VII MAGNOLIA, L.L.C.**

TAYLOR, BEAN & WHITAKER MORTGAGE CORP. (“**Debtor**”), by and through its undersigned attorneys, hereby files this Motion to Approve Compromise with NL Ventures VII Magnolia, L.L.C. (“**Motion**”). In support of this Motion, the Debtor states the following:

Background

1. On August 24, 2009, (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. The Debtor continues to manage its assets as a debtor in possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code
3. No trustee or examiner has been appointed in this case.

4. On September 11, 2009, the Office of the United States Trustee filed its Notice of Appointment of Creditors' Committee (Docket No. 203) and appointed an Official Committee of Unsecured Creditors.

5. 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. The statutory predicate for the relief sought herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure.

6. Prior to May of 2009, the Debtor leased a central document facility located in Ocala, Florida ("**CDF Building**") from 3201 Partnership ("**3201**"), a related entity. On May 26, 2009, 3201 sold the CDF Building to NL Venture VII Magnolia, L.L.C. ("**NL Ventures**") pursuant to the terms of a Sale and Purchase Agreement by and among 3201 as seller, TBW as tenant and NL Ventures as purchaser. On May 26, 2009, TBW entered into a lease agreement (the "**Lease**") with NL Ventures for the lease of the CDF Building.

7. Two large generators (the "**Generators**") are located at the CDF Building. The Lease was deemed rejected, effective as of August 31, 2010. TBW has surrendered possession of the CDF Building to NL Ventures. As part of its continuing efforts to maximize value for creditors, TBW asserted ownership of the Generators and located a purchaser for the Generators. The proposed sale price for the Generators was \$50,000. Accordingly, TBW sent to NL Ventures a notice of proposed sale of the Generators to CJ's Power, pursuant to the Order Granting Debtor's Motion To Sell Non-Essential

Property Free and Clear of Liens, Claims and Encumbrances (Dkt. No. 523). NL Ventures objected to the sale, asserting ownership of the Generators. The parties exchanged informal discovery related to ownership of the Generators.

8. In order to resolve the dispute regarding ownership of the Generators without further litigation and cost, the Debtor and NL Ventures have reached the terms of proposed compromise as set forth herein.

Terms of Compromise¹

9. Pursuant to the proposed settlement agreement (“**Settlement Agreement**”), attached hereto as Exhibit A, the Debtor and NL Ventures have agreed that NL Ventures may retain possession and be deemed the sole owner of the Generators at the CDF Building in exchange for the payment of \$20,000 to TBW on or before the date that is fifteen (15) days of the entry of the order approving the Settlement Agreement. In addition, the parties fully release each other from all claims solely relating to the Generators.

Standards for Court Approval

10. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Some courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). In *In re Justice*

¹ This is intended to be only a summary of the pertinent terms of the Settlement Agreement. In the event of a conflict between the terms of the Settlement Agreement and this summary, the terms of the Settlement Agreement shall control.

Oaks II, Ltd., 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, (1990), the court enunciated certain factors which must be considered in determining whether to approve a compromise. These factors include the following:

- 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; and
- d. The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

11. The Debtor asserts that the terms of the proposed Settlement Agreement satisfy the test set forth in the *Justice Oaks* case.

12. Indeed, although the Debtor feels confident in its chances of success, the outcome is certainly not guaranteed.

13. Additionally, the Debtor and NL Ventures believe that the compromise of the disputes pursuant to the terms outlined herein is in the best interest of the estate. The terms outlined herein will allow the dispute between the Debtor and NL Ventures to be resolved expeditiously, and, given the costs of continuing litigation, the compromise is in the best interest of the estate.

WHEREFORE, the Debtor respectfully requests that the Court enter an order granting the Motion; approving the Settlement Agreement; authorizing the parties to take all steps necessary to effectuate the Settlement Agreement; and granting such further relief as is just.

Dated: November 16, 2010

/s/ Edward J. Peterson, III

Edward J. Peterson, III
Florida Bar No. 0014612
Stichter Riedel Blain & Prosser, P.A.
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(813) 229-0144 – Phone
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epeterson@srbp.com
Attorneys for Debtors

Exhibit A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, (“Settlement Agreement”), is made and entered into this ____ day of October, 2010, by and between NL Ventures VII Magnolia, L.L.C., (the “NL Ventures” or “Landlord”) and Taylor, Bean & Whitaker Mortgage Corp. (the “Debtor” or “TBW”) (NL Ventures and the Debtor are sometimes referred to collectively herein as the “Parties” or individually as a “Party”).

R E C I T A L S :

WHEREAS, on or about May 26, 2009, NL Ventures, as landlord and the Debtor, as tenant, entered into a lease agreement covering certain real property at 1417 N. Magnolia Avenue, Ocala, Marion County, Florida 34475, together with all buildings, structures, facilities, installations, and other improvements in or on the real property (collectively, the “Premises”).

WHEREAS, there are two generators described on the attached Exhibit A (the “Generators”) located on the Premises.

WHEREAS, on or about August 24, 2009 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (the “Bankruptcy Court”).

WHEREAS, on or about August 6, 2010, the Debtors sent to NL Ventures a Notice of Proposed Sale Pursuant to Order Granting Debtor’s Motion to Sell Non-Essential Property Free and Clear of Liens, Claims, and Encumbrances Pursuant to 11 U.S.C. § 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Sale Notice”), pursuant to which the Debtor proposed to sell the Generators to a third-party free and clear of any liens, claims, and encumbrances.

WHEREAS, on or about August 11, 2010, NL Ventures filed an objection (“Objection”) to the Sale Notice, pursuant to which it argued that it has an ownership interest in the Generators.

WHEREAS, the Parties desire to resolve all issues relating to the Objection pursuant to the terms hereof.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by them, the Parties hereby agree as follows:

1. Recitals True and Correct. The above recitals are true and correct and are incorporated herein by reference for all purposes.
2. Title to Generators. While Landlord and Debtor both currently claim title to the Generators, upon Payment of the Settlement Payment, Debtor will waive any claims to the

Generators it has, and Landlord will be deemed to be the sole owner of the Generators and to have sole title to the Generators.

3. Settlement Payment by Landlord. In consideration for the Debtor's withdrawal of the Sale Notice and in consideration of the agreement and fulfillment of the obligations of and by the Debtor as set forth herein, the Landlord agrees to pay and deliver to the Debtor, the sum of \$20,000.00 (the "Settlement Payment") on or before the date that is 15 days after the Bankruptcy Court's entry of an order approving the Settlement Agreement, provided such order is not appealed and a stay pending appeal is not entered; provided further that Landlord shall not be obligated to make the Settlement Payment if the Debtor or any representative of the Debtor's estate appeals the order approving this Settlement Agreement.

4. All payments due from the Landlord to the Debtor shall be made by cash, certified check, wire transfer or other good, immediately available funds and delivered on or before the due date to the Debtor, addressed to the attention of Edward Peterson, Stichter Riedel Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602, or to such other address or location as may be specified from time to time by the Debtor or its attorneys.

5. Release of Landlord. For and in consideration of the Debtor's actual and timely receipt of the full amount of the Settlement Payment, the Debtor does hereby release, remise and discharge, and by these presents does for itself, its heirs, executors, administrators, successors, attorneys, agents, insurers and assigns, remise, release and forever discharge the Landlord, its officers, directors, shareholders, attorneys, agents, accountants, insurers, successors and assigns, of and from any and every claim, demand, right or cause of action, of whatever kind or nature, suspected or unsuspected, from the beginning of time until the date of this Settlement Agreement solely related to the Generators. This release is not a general release, but only applies to claims related to the Generators. For example, Debtor does not release any claims it may have under Sections 544, 547, 548, 549 and 550 of the Bankruptcy Code.

6. Release of Debtor. For and in consideration of the Debtor's actual and timely waiver of its claims to the Generators, the Landlord does hereby completely release, remise and discharge, and by these presents does for itself, its heirs, executors, administrators, successors, attorneys, agents, insurers and assigns, remise, release and forever discharge the Debtor, its officers, directors, shareholders, attorneys, agents, accountants, insurers, successors and assigns, of and from any and every claim, demand, right or cause of action, of whatever kind or nature, suspected or unsuspected, from the beginning of time until the date of this Settlement Agreement solely related to the Generators. This release is not a general release, but only applies to claims related to the Generators. For example, Landlord does not release any claims it may have for rejection damages under the Lease, nor does Landlord release defenses it may have under Sections 544, 547, 548, 549 and 550 of the Bankruptcy Code..

7. Governing Law. This Settlement Agreement shall be governed and interpreted in accordance with the laws of the State of Florida.

8. Partial Invalidity. Should any paragraph, provision or clause in this Settlement Agreement be found to be ineffective, invalid, or unenforceable, the remainder of this Settlement Agreement shall be valid and enforceable, and the Parties shall negotiate, in good faith, a substitute, valid and enforceable provision which most nearly effects the Parties' intent in entering into this Settlement Agreement.

9. Entire Agreement. This Settlement Agreement constitutes the entire agreement of the Parties as to the subject matter hereof.

10. Voluntary Execution of this Settlement Agreement. This Settlement Agreement is executed voluntarily and without any duress or undo influence on the part or behalf of the Parties hereto, with the full intent of releasing certain claims as set forth herein. The Parties acknowledge that: (a) they have read this Settlement Agreement; (b) they have been represented in the preparation, negotiation and execution of this Settlement Agreement by legal counsel of their own choice, or they have voluntarily declined to seek such counsel; (c) they understand the terms and consequences of this Settlement Agreement and of the releases and waivers it contains; and (d) they are fully aware of the legal and binding effect of this Settlement Agreement.

11. Venue and Jurisdiction. If any action shall be brought by any of the Parties under the terms of or seeking to enforce this Settlement Agreement, the Parties hereby expressly agree that venue and jurisdiction shall be proper only in the Bankruptcy Court. The Parties hereby expressly waive any right they may have to require venue or jurisdiction to lie in any other place or locale.

12. Non-Waiver. No delay or failure by any Party to exercise any right under this Settlement Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

13. Headings. Headings in this Settlement Agreement are for convenience only and shall not be used to interpret or construe its provisions.

13. Time is of the Essence. Time is of the essence as to this Settlement Agreement and all performances hereunder.

14. Gender, etc. The use of any gender in this Settlement Agreement shall include all other genders. The singular shall include the plural.

15. Counterparts. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, estates, legal and personal representatives, successors and assigns.

17. Further Assurances and Execution of Documents. Each Party hereto covenants and agrees that he or she will at any time and from time to time do such acts and execute, acknowledge and deliver, or cause to be delivered, such documents as may be necessary or desirable in order to carry out fully and effectuate the accommodations and agreements contemplated by this Settlement Agreement.

18. Bankruptcy Court Approval. This Settlement Agreement is subject to the approval of the Bankruptcy Court and shall be null and void if such approval is not obtained on or before the date that is ninety days after the date first mentioned on page one.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date first above-written, to be effective as of that date.

Signed, sealed and delivered
in the presence of:

Witnesses:

LANDLORD

NL Ventures VII Magnolia, L.L.C.

(print name)

By: _____
(print name)
Its: _____

(print name)

DEBTOR

Taylor, Bean & Whitaker Mortgage Corp.

(print name)

By: _____
(print name)
Its: _____

(print name)

[acknowledgments on following page]

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of October, 2010, by _____ as _____ of NL Ventures VII Magnolia L.L.C., who: (notary **must** check applicable line)

____ is personally known to me.
____ produced a current Florida driver's license as identification.
____ produced _____ as identification.

Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of October, 2010, by _____ as _____ of Taylor, Bean & Whitaker Mortgage Corp., who: (notary **must** check applicable line)

____ is personally known to me.
____ produced a current Florida driver's license as identification.
____ produced _____ as identification.

Notary Public
My Commission Expires:

EXHIBIT A

Generators include the following generators and other components of the uninterruptible power supply systems located on certain real property at 1417 N. Magnolia Avenue, Ocala, Marion County, Florida 34475, including but not limited to: a 750 KW generator and a 500 KW generator.

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