

**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 TO APPROVE SETTLEMENT**

COMES NOW Taylor, Bean & Whitaker Mortgage Corp. (“TBW” or “Debtor”), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and hereby files this motion (“Motion”) to approve a compromise and Settlement Agreement, attached hereto as Exhibit A (the “Settlement Agreement”)<sup>1</sup>, entered into by TBW and Branch Banking & Trust Company (“BB&T”) to settle claims between TBW and BB&T regarding funds related to servicing of certain mortgage loans and related issues. In support of this motion, Debtor shows 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**

2. On August 24, 2009 (the "Petition Date"), TBW filed with this Court its voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). TBW continues to manage its property as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code and is in the process of winding up its affairs through liquidation.

3. By order dated August 14, 2009, the Alabama State Banking Department closed Colonial Bank and appointed the FDIC-R as the receiver of Colonial Bank, and by operation of law, the FDIC-R succeeded to all rights, title, powers and privileges of Colonial Bank and of any stockholder, member, accountholder, depositor, officer, or director of Colonial Bank with respect to such institution and the assets of such institution pursuant to 12 U.S.C. § 1821(d)(2)(A)(i).

4. Prior to the Petition Date, TBW and BB&T entered into a *Mortgage Loan Purchase and Sale Agreement* (the "MLPSA") pursuant to which BB&T purchased mortgage loans and related loan documents (the "Purchased Loans") from TBW, and TBW acted as servicer for such Purchased Loans.

5. Subsequent to the Petition Date, TBW and BB&T entered into an *Agreed Stipulation Regarding Transfer of Loans to BB&T* [Doc. No. 709-1], which was approved by the Bankruptcy Court by Order dated December 17, 2009 [Doc. No. 801], whereby TBW transferred servicing of the Purchased Loans to BB&T.

6. On July 1, 2010, TBW filed the *Final Reconciliation Report of Debtor Taylor, Bean & Whitaker Mortgage Corp.* [Doc. No. 1644] (the "Reconciliation Report"). Pursuant to the Reconciliation Report, TBW holds funds relating to the Purchased Loans in bank accounts at (i) Regions Bank in the approximate amount of \$1,795,186 (the "Regions Funds") and (ii)

Colonial Bank in the approximate amount of \$1,968,193 (the “Colonial Funds,” together with the Regions Funds, the “Reconciliation Funds”). See Reconciliation Report, Ex. E.

7. Approximately \$7,150.70 of the Reconciliation Funds are owed to a borrower with respect to TBW Loan No. 7028045 to refund escrow payments (the “Escrow Funds”).

8. TBW is owed servicing fees related to the Purchased Loans in the approximate amount of \$58,747 (the “Servicing Fee”).

9. The FDIC-R controls the timing of distribution of the Colonial Funds.

10. On June 11, 2010, BB&T filed its *Proof of Claim of Branch Banking & Trust Company* [Claim No. 2559], whereby it asserted an administrative claim against TBW in the amount of \$3,491,034.70 (the “BB&T Administrative Claim”).

11. TBW and the FDIC-R, among others, entered into that certain *Settlement Agreement* dated August 11, 2010 [Doc. No. 1783-1], amended by that certain *First Amended Settlement Agreement* entered on or about August 31, 2010 [Doc. No. 1878] (as amended, the “FDIC Settlement”), which was approved by the Bankruptcy Court by Order entered September 14, 2010 [Doc. No 1936]. As set forth more fully in sections 1.7(c) and (d) of the FDIC Settlement, TBW has an interest in those certain “TBW II Funds” and “BB&T Funds” (as those terms are defined in sections 1.7(c) and (d), respectively, of the FDIC Settlement).

12. TBW and BB&T entered into the attached Settlement Agreement to settle all interests, claims, or disputes arising between TBW and BB&T related to the MLPSA, the Purchased Loans, the Reconciliation Funds, the Servicing Fee, the Escrow Funds, the BB&T Administrative Claim, the TBW II Funds, the BB&T Funds, and any other funds on deposit at BB&T in the TBW accounts listed on Exhibit J to the Reconciliation Report (the “TBW Accounts”).

13. The Settlement Agreement provides that, upon approval by the Court:
  - a. TBW shall distribute the Regions Funds to BB&T, less the Servicing Fee and the Escrow funds (which Escrow Funds TBW shall refund to the affected borrower);
  - b. TBW shall utilize its best efforts to cause the FDIC-R, to the extent it has not already done so, to promptly distribute to BB&T the Colonial Funds with no deduction from the Colonial Funds for the Servicing Fee or the Escrow Funds;
  - c. Upon receipt of the Regions Funds and the Colonial Funds, BB&T shall withdraw the BB&T Administrative Claim;
  - d. BB&T acknowledges it has no right to or interest in the TBW II Funds, the BB&T Funds, or any other funds on deposit at BB&T in the TBW Accounts;
  - e. TBW and BB&T provide mutual releases of all claims and interests regarding the MLPSA, the Purchased Loans, the Reconciliation Funds, the Servicing Fee, and the Escrow Funds.

14. The Settlement Agreement was negotiated at arms length.

15. Debtor has reviewed the Settlement Agreement and Debtor's claims regarding the subject matter thereof and has made the determination that the Settlement Agreement is in the best interest of the estate.

**WHEREFORE**, Debtor respectfully requests that the Court enter an order approving the Settlement Agreement and granting such other and further relief as is just and equitable.

Dated November 30, 2010.

*[signature on following page]*

**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 Debtor*

Exhibit A

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT dated as of November 18, 2010 (this "Agreement"), is by and between TAYLOR, BEAN & WHITAKER MORTGAGE CORP. ("TBW") and BRANCH BANKING & TRUST COMPANY ("BB&T") together with TBW, 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 "Bankruptcy Court") (the "Bankruptcy Case");

**WHEREAS**, by order dated August 14, 2009, the Alabama State Banking Department closed Colonial Bank and appointed the FDIC as the receiver of Colonial Bank ("FDIC-R"), and by operation of law, the FDIC-R succeeded to all rights, title, powers and privileges of Colonial Bank and of any stockholder, member, accountholder, depositor, officer, or director of Colonial Bank with respect to such institution and the assets of such institution pursuant to 12 U.S.C. § 1821(d)(2)(A)(i);

**WHEREAS**, prior to the Bankruptcy Case, TBW and BB&T entered into a *Mortgage Loan Purchase and Sale Agreement* (the "MLPSA") pursuant to which BB&T purchased mortgage loans and related loan documents (the "Purchased Loans") from TBW, and TBW acted as servicer for such Purchased Loans;

**WHEREAS**, during the pendency of the Bankruptcy Case, TBW and BB&T entered into an *Agreed Stipulation Regarding Transfer of Loans to BB&T* [Doc. No. 709-1], which was approved by the Bankruptcy Court by Order dated December 17, 2009 [Doc. No. 801], whereby TBW transferred servicing of the Purchased Loans to BB&T;

**WHEREAS**, pursuant to the *Final Reconciliation Report of Debtor Taylor, Bean & Whitaker Mortgage Corp.* filed July 1, 2010 [Doc. No. 1644] (the "Reconciliation Report"), TBW holds funds relating to the Purchased Loans in bank accounts at (i) Regions Bank in the approximate amount of \$1,795,186 (the "Regions Funds") and (ii) Colonial Bank in the approximate amount of \$1,968,193 (the "Colonial Funds");

**WHEREAS**, approximately \$7,150.70 of the Regions Funds and/or the Colonial Funds are owed to a borrower with respect to TBW Loan No. 7028045 to refund escrow payments (the "Escrow Funds");

**WHEREAS**, TBW is owed servicing fees related to the Purchased Loans in the approximate amount of \$58,747 (the "Servicing Fee");

**WHEREAS**, the FDIC-R controls the timing of distribution of the Colonial Funds;

**WHEREAS**, on June 11, 2010, BB&T filed its *Proof of Claim of Branch Banking & Trust Company* [Claim No. 2559], whereby it asserted an administrative claim in the amount of \$3,491,034.70 (the "BB&T Administrative Claim");

**WHEREAS**, TBW and the FDIC-R, among others, entered into that certain *Settlement Agreement* dated August 11, 2010 [Doc. No. 1783-1], amended by that certain *First Amended Settlement Agreement* entered on or about August 31, 2010 [Doc. No. 1878] (as amended, the "FDIC Settlement"), which was approved by the Bankruptcy Court by Order entered September 14, 2010 [Doc. No 1936];

**WHEREAS**, as set forth more fully in sections 1.7(c) and (d) of the FDIC Settlement, TBW has an interest in those certain "TBW II Funds" and "BB&T Funds" (as those terms are defined in sections 1.7(c) and (d), respectively, of the FDIC Settlement); and

**WHEREAS**, TBW and BB&T desire to settle all interests, claims, or disputes arising between TBW and BB&T related to the MLPSA, the Purchased Loans, the Regions Funds, the Colonial Funds, the Servicing Fee, the Escrow Funds, the BB&T Administrative Claim, the TBW II Funds, and the BB&T Funds.

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

1. Subject to and upon entry of a final order by the Bankruptcy Court approving this Agreement, (i) TBW shall distribute to BB&T the Regions Funds, less the Servicing Fee and the Escrow Funds (which Escrow Funds TBW shall refund to the affected borrower), and (ii) TBW shall utilize its best efforts to cause the FDIC-R, to the extent it has not already done so, to promptly distribute to BB&T the Colonial Funds with no deduction from the Colonial Funds for the Servicing Fee or the Escrow Funds (the amounts to be distributed to BB&T under this paragraph hereinafter the "Reconciliation Funds").

2. Upon receipt of the Reconciliation Funds in accordance with paragraph 1, BB&T shall withdraw the BB&T Administrative Claim.

3. BB&T acknowledges and agrees that it has no right to or interest in the TBW II Funds, the BB&T Funds or any other funds on deposit at BB&T in the TBW accounts listed on Exhibit J to the Reconciliation Report (the "TBW Accounts").

4. Effective upon receipt by BB&T of the Reconciliation Funds and upon the withdrawal of the BB&T Administrative Claim, (i) TBW, on behalf of itself, its affiliates 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 TBW has, may have, or might assert at the time of execution of this Agreement, or in the future, against BB&T and/or against BB&T's affiliates and each of their respective officers, directors, employees, agents, attorneys, accountants, consultants, successors, and assigns, directly or indirectly, each acting in such capacity, 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 MLPSA, the Purchased Loans, the Reconciliation Funds, the Servicing Fee, or the Escrow Funds; (ii) BB&T, on behalf of itself, its affiliates 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 BB&T has, may have, or might assert at the time of execution of this Agreement, or in the future, against TBW and/or against TBW's affiliates and each of their respective officers, directors, employees, agents, attorneys, accountants, consultants, successors, and assigns, directly or indirectly, each acting in such capacity, 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 MLP SA, the Purchased Loans, the Reconciliation Funds, the Servicing Fee, the Escrow Funds, the TBW II Funds, the BB&T Funds, or any other funds on deposit at BB&T in the TBW Accounts.

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

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

7. 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.

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

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

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

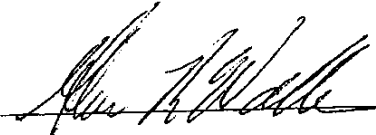
11. The terms of this Agreement are subject to approval by final order of this Agreement by the Bankruptcy Court. This Agreement shall become null and void if it is not approved by the Bankruptcy Court on or before February 1, 2011; provided that such date may be extended by mutual agreement of the Parties.

**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.

BRANCH BANKING & TRUST COMPANY

By: 

By: 

Name: Neil L. Neil

Name: Glenn R. Walker

Title: CEO

Title: Vice President