

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

**TAYLOR, BEAN & WHITAKER
MORTGAGE CORPORATION,**

Chapter 11

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

Debtor.

**DEBTOR'S MOTION TO APPROVE COMPROMISE
RELATED TO PAYMENTS OF ADEQUATE ASSURANCE
FOR UTILITY SERVICE WITH CITY OF OCALA**

Taylor, Bean & Whitaker Mortgage Corporation (the “**Debtor**” or “**TBW**”), by and through its undersigned counsel, hereby files its Motion to Approve Compromise Related to Payments of Adequate Assurance for Utility Services with City of Ocala (the “**Motion**”) and requests the entry of an order approving the compromise and payments set forth below. In support of its Motion, the Debtor respectfully represents as follows:

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 operate its business and manage its property as a debtor in possession pursuant to Sections 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 (Doc. No. 203) and appointed an Official Committee of Unsecured Creditors (the "**Committee**").

7. TBW continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

JURISDICTION AND VENUE

8. 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 before this Court pursuant to 28 U.S.C. §§1408 and 1409.

PROCEDURAL HISTORY

9. Prior to the Petition Date, the City of Ocala, a Florida municipal corporation ("**Ocala**" or "**City**") provided utility services (including electric, sewer, solid waste, fire service availability, and stormwater services) (the "**Utility Services**") to the Debtor.

10. Ocala provides and is continuing to provide Utility Services to the Debtor for its eight (8) facilities (the "**Facilities**").

11. Pursuant to Section 366 of the Bankruptcy Code, Ocala originally requested adequate assurance of payment for the furnishing of Utility Services to the Debtor in the form of a deposit in the amount of \$161,971.95, which is equal to the average bill for the Utility Services for 2.25 months calculated over the 12 months period preceding the Petition Date.

12. Ocala and the Debtor have reached an agreement regarding the amount of adequate assurance to be provided to Ocala and the continuation of the Utility Services, which agreement is outlined hereinbelow.

SUMMARY TERMS OF SETTLEMENT AGREEMENT¹

13. The Debtor and Ocala have entered into the Agreement Concerning Adequate Assurance (the “**Agreement**”) in order to resolve all issues related to Ocala’s continuing to provide Utility Services to the Debtor’s facilities. A copy of the Agreement is attached hereto as Exhibit 1.

14. The pertinent terms of the Agreement are described hereinbelow:

a. **Deposit.**

- i. Debtor has furnished City with security in the form of a cash deposit (the “**Deposit**”) in the amount of \$71,987.53, representing the average monthly charge for Utility Services provided to the Debtor’s Facilities calculated over the 12 monthly billing periods preceding the date that Debtor filed its Bankruptcy Petition.
- ii. The Deposit is subject to adjustment as set forth in paragraph 4 of the Agreement, including being reduced as Debtor closes Facilities (as it anticipates doing so).
- iii. Debtor’s failure to provide and maintain the Deposit as required by the Agreement shall entitle City to terminate Utility Services to Debtor without any further notice or order of the Bankruptcy Court.
- iv. City shall be entitled to an administrative claim for any post-petition charges remaining unpaid after application of the Deposit pursuant to Sections 503(b)(1) and 507(a)(1) of the U.S. Bankruptcy Code.

b. **Billing for Utility Services.** City shall bill Debtor for Utility Services as follows:

¹ In the event of a conflict between the summary contained herein and the Agreement, the express terms of the Agreement shall control.

- i. Within ten days of the execution of the Agreement, City will bill or has billed Debtor for all post-petition Utility Services rendered through the service date.
- ii. Thereafter, City will bill Debtor twice a month, or on approximately 31 day periods, for Utility Services as follows:
 - 1. The first bill to be rendered each month (referred to in the Agreement as the “**First Cycle Bill**”) will equal one-half of the average monthly charge for Utility Services provided to Debtor’s Facilities calculated over the 12 monthly billing periods preceding the date of the bill. In addition, each First Cycle Bill shall include an administrative charge of \$150.00 for the first First Cycle Bill, and \$100.00 for each subsequent First Cycle Bill.
 - 2. Approximately 15 to 16 days after the City renders each First Cycle Bill, the City shall render another bill (referred to in the Agreement as the “**Second Cycle Bill**”), which will be in the amount of: (a) the utility charges calculated pursuant to the applicable provisions of the Code of Ordinances of the City of Ocala (the “**City Code**”); less (b) the amount of the previous First Cycle Bill.
- iii. The Agreement provides a mechanism for Debtor to dispute bills or claims for additional Deposits.

c. **Payment.**

- i. The Agreement requires Debtor to pay bills submitted for Utility Services within 10 days of the delivery of the bill by City.
- ii. If Debtor fails to do so, the Agreement requires City to provide Debtor with a notice of default and permits the City to terminate Utility Services to Debtor if the default is not cured within four days thereafter.

STANDARDS FOR COURT APPROVAL

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, 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 the case of *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert denied* 498 U.S. 959, 111 S.Ct. 387, 112 L.Ed. 2d 398 (1990), the Court enunciated certain factors which must be considered in determining whether to approve a compromise, which are:

- 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.

In the case at bar, the *Justice Oaks* factors are supportive of the settlement in the Agreement attached hereto. The Agreement provides a reasoned and fair business solution to the myriad of issues that would otherwise present a morass of litigation regarding the City's entitlement to adequate assurance under Section 366 of the Bankruptcy Code.

In essence, the Agreement provides adequate assurance to the City in the form of a Deposit equal to the amount of utility service charges that could be accrued by the Debtor

before the City is able to discontinue utility service, while avoiding placing an undue financial strain on Debtor's resources.

The Debtor submits that the Agreement represents a fair compromise of the disputes and issues referenced herein and helps to ensure that the Debtor will continue to receive Utility Services.

By this Motion, the Debtor seeks approval of the Agreement, as specifically described herein.

WHEREFORE, Debtors respectfully request this Court grant this Motion and for such other and further relief as may be just.

DATED: October 28, 2009

/s/ Edward J. Peterson, III

Russell M. Blain (FBN 236314)

rblain@srbp.com

Edward J. Peterson, III (FBN 014612)

epeterson@srbp.com

Stichter, Riedel, Blain & Prosser, P.A.

110 East Madison Street, Suite 200

Tampa, Florida 33602

Telephone: (813) 229-0144

Facsimile: (813) 229-1811

Attorneys for Debtor

Exhibit 1

AGREEMENT CONCERNING ADEQUATE ASSURANCE

THIS AGREEMENT is entered into this 23rd of September, 2009, between City of Ocala, a Florida municipal corporation ("City"), and Taylor, Bean & Whitaker Mortgage Corp. ("Debtor").

WHEREAS:

- A. City is a Florida municipal corporation that provides utility services (including electric, water, sewer, solid waste, fire service availability, and stormwater services) to residents of the City and, in certain cases, surrounding areas.
- B. Debtor owns and operates certain facilities (the "Facilities") as described, by street address, on the attached Exhibit A.
- C. On May 24, 2009, Debtor filed a Petition for Relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Middle District of Florida, Jacksonville Division, Case No.3:09-bk-07047-JAF.
- D. City has provided and is continuing to provide utility services to Debtor.
- E. City is entitled to adequate assurance of payment for its utility services pursuant to Section 366(b) of the Bankruptcy Code.
- F. City and Debtor desire to enter into this Agreement to provide for such adequate assurance and for the purposes otherwise set forth below.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

- 1. **Adequate Assurance.** Debtor shall provide City with adequate assurance as follows:
 - 1.1. Debtor will furnish City with security in the form of a cash deposit (the "Deposit") in the amount of \$71,987.53, representing the average monthly charge for utility services provided to the Facilities calculated over the 12 monthly billing periods¹ preceding the date that Debtor filed its Bankruptcy Petition.
 - 1.1.1. Such Deposit is subject to adjustment as set forth in paragraph 4 of this Agreement.
 - 1.1.2. Debtor shall provide the Deposit to City upon Debtor's execution of this Agreement, subject to the provisions of paragraph 7 hereof.

¹ Each billing period referred to in this Agreement is calculated through the date of the rendering of the bill for utility services, which may not necessarily be the date in which the utility services were provided. For example, a bill rendered on February 3, 2009 is included in the February billing period, while it may reflect utility services that were rendered in the month of January, 2009.

- 1.2. Debtor's failure to provide and maintain the Deposit as required by this Agreement shall entitle City to terminate utility services to Debtor without any further notice or order of the Bankruptcy Court.
 - 1.3. Except as set forth in paragraph 4.3, Debtor is not entitled to use all or any portion of the Deposit as payment for Debtor's post-petition utility services.
 - 1.4. Notwithstanding Debtor's provision and maintenance of the Deposit, Debtor shall pay all bills for post-petition utility services pursuant to paragraph 3.1 and, if it fails to do so, City shall be entitled to terminate utility services to Debtor pursuant to paragraph 3.4.
 - 1.5. City shall bill Debtor for post-petition utility services pursuant to paragraph 2.
 - 1.6. City shall be entitled to an administrative claim for any post-petition charges remaining unpaid after application of the Deposit pursuant to Sections 503(b)(1) and 507(a)(1) of the U.S. Bankruptcy Code.
2. **Billing for Utility Services.** City shall bill Debtor for utility services as follows:
- 2.1. Within ten days of execution of this Agreement by Debtor, City will bill Debtor for all post-petition utility services rendered through the service date set forth on the bill (which service date shall be no earlier than the date of execution of this Agreement by Debtor). Such bill shall include all previously billed, but unpaid, post-petition utility services provided by City to the Facilities.
 - 2.1.1. Debtor will pay such bill pursuant to paragraph 3.1 of this Agreement and, if it fails to do so, the City may pursue remedies available under paragraphs 3.3 and 3.4; provided, however, City may not discontinue utility services to Debtor under paragraph 3.4 until approval of this Agreement by the Ocala City Council pursuant to paragraph 7.
 - 2.1.2. Thereafter, City shall bill Debtor for utility services pursuant to paragraph 2.2.
 - 2.1.3. City may, at its sole election, thereafter combine Debtor's existing four separate account numbers into one account number.
 - 2.2. City will bill Debtor twice a month, or on approximately 31 day periods, for utility services as follows:
 - 2.2.1. Commencing approximately fifteen days after the date that City bills Debtor pursuant to paragraph 2.1, and on approximately the same day of each month thereafter, City shall render a bill (the "First Cycle Bill") to Debtor for utility services in an amount equal to one-half of the average monthly charge for utility services provided to the Facilities calculated over the 12 monthly billing periods preceding the date of the bill. The calculation of the average monthly charge set forth in preceding sentence shall include only the Facilities to which City is still providing utility services during the month of billing.

- 2.2.1.1. In addition, each First Cycle Bill shall include an administrative charge equal to: (a) \$150.00 for the first First Cycle Bill to reimburse City for establishing the procedures for the First Cycle Bill; and (b) \$100.00 for each subsequent First Cycle Bill to reimburse the City for expenses incurred in the extra monthly billings caused hereunder.
- 2.2.1.2. As each First Cycle Bill is based upon the formula set forth in paragraph 2.2.1, the City shall not be required to read the utility meters for the Facilities or otherwise base the First Cycle Bill upon actual usage.
- 2.2.1.3. As Debtor has indicated that it anticipates closing certain of its Facilities and discontinuing utility services thereto, and that it will be utilizing less utility services at the Facilities it continues to operate, the parties anticipate that the amount of the First Billing Cycle Bills may decrease during the term of this Agreement.
- 2.2.1.4. Each First Cycle Bill shall be in substantially the form attached hereto as Exhibit B.
- 2.2.2. Approximately 15 to 16 days after the City renders each First Cycle Bill, the City shall render another bill ("the Second Cycle Bill").
 - 2.2.2.1. City will read the utility meters in connection with the rendering of each Second Cycle Bill for the service period since the previous meter reading.
 - 2.2.2.2. Each Second Cycle Bill shall be in the amount of: (a) the utility charges calculated pursuant to the applicable provisions of the Code of Ordinances of the City of Ocala (the "City Code"); less (b) the amount of the previous First Cycle Bill.
- 2.3. Example:
 - 2.3.1. Debtor executes this Agreement on September 24, 2009.
 - 2.3.2. On or about October 9, 2009, City shall bill Debtor for all post-petition utility services provided to the Facilities pursuant to paragraph 2.1
 - 2.3.3. Thereafter, on or about October 24,² 2009, City shall render a First Cycle Bill covering the period between the billing cut-off date for the utility services provided in the October 9 bill, and the date of the First Cycle Bill. The First Cycle Bill shall be based upon one-half of the average monthly charge for utility services provided to the Facilities by City calculated over the 12 monthly billing periods preceding October 24, 2009, plus an administrative fee of \$150.00.

² For purposes of this example, only, weekends and holidays have been ignored for purposes of the date calculations.

- 2.3.4. On or about November 9, 2009, City shall render the Second Cycle Bill which shall be based upon the utility services actually provided to Debtor following the billing cut-off date for the October 9 bill, less the amount of the First Cycle Bill that was rendered on or about October 24, 2009.
- 2.3.5. On or about November 24, 2009, City shall render another First Cycle Bill covering the period between the billing cutoff date for the Second Cycle Bill rendered on or about November 9, 2009, and the date of this First Cycle Bill. This First Cycle Bill shall be based upon one-half of the average monthly charge for utility services provided to the Facilities calculated over the 12 monthly billing periods preceding November 24, 2009, plus an administrative fee of \$100.00.
- 2.3.6. Thereafter, City shall continue to render Second Cycle Bills and First Cycle Bills pursuant to paragraph 2.2.
- 2.4. In the event that Debtor disputes any bill, or claim for an additional Deposit pursuant to paragraph 4.2, rendered by City under this Agreement, Debtor shall:
 - 2.4.1. Provide City with notice of the dispute, including specifications concerning the dispute and an indication of the amount Debtor claims is owed, together with a calculation of same; and
 - 2.4.2. Debtor shall pay the undisputed amount as and when required by paragraph 3.1 (concerning a bill for utility services) or paragraph 4.2.1 (concerning an increase in the Deposit).
 - 2.4.3. Debtor shall promptly, if it is unable to resolve the dispute with City, and in no event later than ten days after City advises Debtor that the dispute has not been resolved, file a motion in the Bankruptcy Court seeking a determination of the amount owed to City. Until the dispute is resolved, City shall not discontinue utility services based upon Debtor's failure to pay the disputed amount; this shall not preclude City from discontinuing utility services based upon Debtor's failure to pay undisputed amount.

3. **Payment.**

- 3.1. Debtor shall pay all bills submitted for utility services pursuant to this Agreement within ten days of the delivery thereof by City.
- 3.2. All bills submitted by City pursuant to this Agreement shall be delivered pursuant to paragraph 11 except that notice to Debtor's counsel need not be provided for the bills.
- 3.3. If Debtor fails to pay a bill pursuant to the time frame required by paragraph 3.1, City shall provide Debtor with a notice of default advising Debtor of the default. Such notice shall be delivered pursuant to paragraph 11 and notice to Debtor's counsel shall be provided.
- 3.4. If Debtor fails to cure the default within four days after City's delivery of the notice pursuant to paragraph 3.3, City shall be entitled to immediately terminate

utility services to Debtor without any further notice or order of the Bankruptcy Court, or the necessity of following the procedure that would otherwise be required under the City Code.

4. **Adjustment of Deposit.**

4.1. In the event that Debtor closes any of its Facilities, and discontinues utility services thereto, Debtor shall provide notice thereof to City pursuant to paragraph 11. Thereafter, "Facilities" shall refer only to the Facilities to which City is providing utility services.

4.1.1. City shall, within ten days of such notice from Debtor, recalculate the Deposit such that it represents the average monthly charge provided to the Facilities, other than the Facilities that are the subject of the notice and those that have already been closed by Debtor during the term of this Agreement, for the 12 monthly billing periods preceding the date of Debtor's notice.

4.1.2. In the event that, as a result of such calculation, the amount of the Deposit should be decreased, City will refund the excess portion to Debtor. In no event, however, shall the Deposit be reduced to an amount less than the amount due City for all unpaid bills plus the City's reasonable estimate of unbilled utility services rendered to the Facilities, until City discontinues utility services to all of Debtor's Facilities and Debtor has paid City in full therefor.

4.2. City may periodically recalculate the amount of the required Deposit based upon the average monthly charge for utility services provided to the Facilities to which the City is still providing utility services, calculated over the 12 monthly billing periods preceding the calculation date.

4.2.1. In the event that the amount of the Deposit is less than the amount required under such calculation, Debtor shall pay the amount of the increase within ten days of City's demand therefor.

4.2.2. If Debtor fails to do so, City shall have the remedies available under paragraphs 3.3 and 3.4 of this Agreement for Debtor's failure to pay such increase.

4.3. After Debtor has cancelled all utility services provided to its Facilities, City shall prepare a final bill for all unpaid utility services provided to the Facilities. City shall deduct the amount of the Deposit from such bill and refund any excess portion of the Deposit to Debtor; if, after application of the Deposit, Debtor is still indebted to the City, Debtor will pay the indebtedness to City pursuant to paragraph 3.1.

5. **Agreement to Prevail over City Code; No Precedent.**
 - 5.1. The provisions of this Agreement shall prevail over any conflicting provisions of the City Code. Debtor waives any benefit of any provisions of the City Code contrary to this Agreement.
 - 5.2. City and Debtor acknowledge that the provisions of this Agreement are appropriate in light of the unique circumstances involving the relationship between Debtor and City, Debtor's Bankruptcy filing, and the provisions of the City Code.
 - 5.3. This Agreement shall not establish a precedent concerning City's provision of utility services to any of its other customers or adequate assurance to be provided under Section 366(b) in any other Bankruptcy proceedings.
6. **Agreement to Survive Conversion.** This Agreement shall survive the conversion of Debtor's Bankruptcy proceeding to a Chapter 7 proceeding.
7. **Subject to City Council and Bankruptcy Court Approval.**
 - 7.1. This Agreement is subject to approval by the Ocala City Council and the Bankruptcy Court in Debtor's Bankruptcy proceeding.
 - 7.2. Notwithstanding such conditions, Debtor shall pay the amount of the Deposit set forth in paragraph 1.1 upon Debtor's execution of this Agreement. City shall retain the Deposit pending the required approvals. Further, pending City Council approval, the parties shall comply with paragraph 2.1.1.
 - 7.3. If City Council does not approve this Agreement, either party may file a motion requesting the Bankruptcy Court to determine the amount of adequate assurance due City under Section 366(b).
 - 7.4. Following City Council's approval of this Agreement:
 - 7.4.1. Debtor shall promptly file a motion requesting the Bankruptcy Court to approve this Agreement.
 - 7.4.2. Pending the Bankruptcy Court's determination of such motion, the parties shall comply with this Agreement and each party shall have all rights and remedies hereunder.
 - 7.5. If the Bankruptcy Court does not approve this Agreement, either party may file a motion requesting the Bankruptcy Court to determine the amount of adequate assurance to City under Section 366(b).
 - 7.6. Pending the determination of any motion requesting the Bankruptcy Court to determine the amount of adequate assurance to City under Section 366(b):
 - 7.6.1. City shall retain the amount of the Deposit paid by Debtor pursuant to paragraph 1.1.

- 7.6.2. Debtor shall make payments for utility services as and when required by the applicable provisions of the City Code.
- 7.6.3. City may discontinue utility services for Debtor's failure to pay for the utility services as and when required under the City Code.
- 7.6.4. City may not discontinue such services based upon Debtor's failure to provide adequate assurance to City in the form acceptable to City; rather, the amount of such adequate assurance shall be determined by the Bankruptcy Court.

8. **Expiration.**

- 8.1. This Agreement shall expire, unless renewed by the parties prior to expiration (which renewal shall be subject to approval by the Ocala City Council but shall not require Bankruptcy Court approval) upon the earlier of the following:
 - 8.1.1. October 1, 2010; or
 - 8.1.2. The date that is 30 days after City ceases to provide utility services to any of Debtor's Facilities.
- 8.2. Notwithstanding the termination of this Agreement, either party may pursue remedies available to such party prior to termination.

9. **Exclusive Venue.** The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in as follows:

- 9.1. Until Debtor's bankruptcy proceeding is dismissed, in such bankruptcy proceeding; or
- 9.2. After Debtor's bankruptcy proceeding is dismissed, in Marion County, Florida.

10. **JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVI-

SION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

11. **Notices.**

11.1. Except as otherwise expressly set forth herein, all notices, requests, consents, demands and other communications required or permitted under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the following or to such other addresses as any party may designate by notice complying with the terms of this paragraph:

11.1.1. If to City: Mr. Tony Clayton, Utility Customer Service Office, 201 SE Third Street, Ocala, FL 34471; fax: _____.

11.1.1.1. With a copy to: W. James Gooding III, Esquire, Gilligan, King, Gooding & Gifford, P.A., 1531 SE 36th Avenue, Ocala, Florida 34471; fax: 352-620-8884.

11.1.2. If to Debtor: Mr. Francesco DiGiannantonio, c/o Navigant Capital Advisors for TBW, 315 NE 14th Street, Ocala, FL 34470; fax: _____.

11.1.2.1. With a copy to: Edward J. Peterson, Esquire, Stichter Riedel Blain & Prosser P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602; fax: 813-229-1811.

11.2. Each such notice shall be deemed delivered:

11.2.1. On the date of delivered if by personal delivery;

11.2.2. On the date of facsimile transmission if by facsimile; and

11.2.3. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not delivered; or (d) the third business day after mailing.

11.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

11.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

11.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

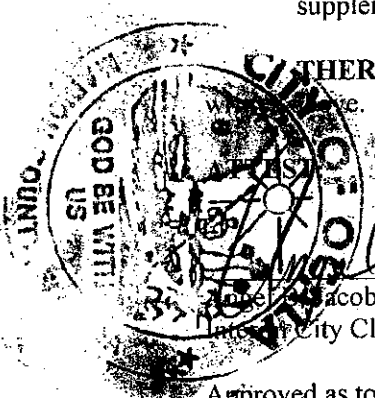
12. **Governing Laws.** This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws.
13. **Attorney's Fees.** If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which: arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
15. **Signatures by Facsimile or Digital Execution.** It is the intent and agreement of the parties hereto that the signatures, initials and handwritten or typewritten modifications to this Agreement shall be as legally binding upon the parties if in the form of a facsimile or digital execution (such as scanning and emailing) as if the original signatures, initials, and modifications were present on the documents in the hands of each party. Neither party shall assert the statute of frauds nor unenforceability or invalidity of this Agreement, or any addendum or modification of this Agreement, because of the use of facsimile or digital copies and not originals in any litigation; both parties simply waive and relinquish any such defense.
16. **Remedies.** No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.
17. **Successors and Assigns.** All covenants, Agreements, warranties, representations, and conditions contained in this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.
18. **Severability Clause.** Except as set forth in paragraph 5.1, provisions contained in this Agreement which are contrary to, prohibited by or invalid under applicable laws or regulations shall be deemed omitted from this document and shall not invalidate the remaining provisions thereof.
19. **Waiver.** A failure to assert any rights or remedies available to a party under the terms of this Agreement shall not be deemed a waiver of such rights or remedies, and a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.

20. **Construction of Agreement.** Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.
21. **Language.** Whenever used in this Agreement, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders where the context permits.
22. **Paragraph Headings.** The paragraph headings used in this Agreement are for convenience only, and shall not be used in interpreting or construing any provision of this Agreement.
23. **Exhibits.** Any exhibits attached to this Agreement shall, by this reference, be incorporated into this Agreement.
24. **Further Action.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.
25. **Time.** Time is of the essence of all of the provisions and terms of this Agreement.
26. **Entire Understanding.** This Agreement represents the entire understanding and Agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties.
27. **Amendments.** The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

THEREFORE, the parties have executed this Agreement on the day and year first

City of Ocala, a Florida municipal
corporation


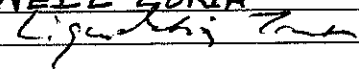

Kyle A. Kay
President, Ocala City Council


Approved as to form and legality


Patrick G. Gilligan
City Attorney

ACCEPTED BY CITY COUNCIL
October 6, 2009
DATE
OFFICE OF THE CITY CLERK

Taylor, Bean & Whitaker Mortgage Corp.

By: 
NEIL LURIA
as 

**EXHIBIT A
FACILITIES**

1. 925 W SILVER SPRINGS PL.
2. 315 NE 14TH ST
3. 2030 SW 60TH AVE
4. 101 NE 2ND ST
5. 1056 NE 16TH ST
6. 1417 N MAGNOLIA AVE
7. 209 NE 1ST AVE
8. 3201 SW 34TH AVE STE 101

**EXHIBIT B
FIRST CYCLE BILL FORM**

OEU STATIONARY

_____ (Date)

_____ (Addressee)

Re: First Cycle Bill

This is a First Cycle Bill rendered pursuant to the Agreement Concerning Adequate Assurance between City of Ocala, a Florida municipal corporation, and Taylor, Bean & Whitaker Mortgage Corp:

1. This bill covers the period from _____ to the date set forth above.
2. The monthly average charge for utility services provided by City to the Facilities (as such term is defined in the Agreement) calculated over the 12 monthly billing periods preceding the month in which this bill is rendered is \$_____.
3. Therefore, the amount due for utility services is \$_____, plus an administrative fee of \$_____, for a total amount due of \$_____.

Sincerely,

Tony Clayton