

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

Debtor.

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Chapter 11

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

**APPLICATION OF PREMIER CORPORATE CENTRE, LLC  
FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE**

Premier Corporate Centre, LLC (“**Landlord**”), through counsel and pursuant to 11 U.S.C. §§365(d)(3), 503(b)(1)(A) and 507(a)(2), applies to the Court for the entry of an order allowing Landlord an administrative expense for post-petition rent and other charges in the amount of \$68,392.61 for September and October, 2009, and in support states:

1. On May 8, 2002, the Debtor entered into a lease for the premises situated at 3950 Premier North Drive, Tampa, Florida 33618 (as amended, “**3950 Lease**”). The 3950 Lease was amended on September 5, 2002 and again on April 4, 2006. A copy of the 3950 Lease, with amendments, is attached as Exhibit A.<sup>1</sup>

2. On November 18, 2002, the Debtor entered into a lease for the premises situated at 3926 Premier North Drive, Tampa, Florida 33618 (“**3926 Lease**”). A copy of the 3926 Lease is attached as Exhibit B.

3. On July 2, 2007, the Debtor entered into a lease for the premises situated at 3915 Premier North Drive, Tampa, Florida 33618 (“**3915 Lease**”). A copy of the 3915 Lease is attached

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<sup>1</sup> For non-CM/ECF recipients of this Motion, copies of the exhibits are available by request to undersigned counsel.

as Exhibit C.

4. On September 10, 2008, the Debtor entered into a lease for the premises situated at 3932 Premier North Drive, Tampa, Florida 33618 (“**3932 Lease**”). A copy of the 3932 Lease is attached as Exhibit D.

5. The Debtor last paid the Landlord on July 29, 2009 for amounts due for the month of August, 2009 pursuant to the terms of the 3915, 3926, 3932 and 3950 Leases (collectively, “**Leases**”) for the office suites leased by the Debtor pursuant to the Leases (“**Leased Premises**”).

6. On August 24, 2009 (“**Petition Date**”), the Debtor filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code. On the **Petition Date**, the Debtor was in possession of the **Leased Premises**.

7. The Debtor continued to use and possess the **Leased Premises** after the **Petition Date**. Specifically, the Debtor’s personal property was stored in and occupied the **Leased Premises**. The only post-petition rent paid to the Landlords pursuant to the **Leases** was for the final week of August, despite the Debtor continuing to occupy the **Leased Premises**.

8. On October 23, 2009 the Court entered its Order Granting Debtor’s Motion to Reject Unexpired Leases of Non-Residential Real Property (“**Rejection Order**”) (D.E. 516), and on October 30, 2009, the Debtor sent Landlord Notices of Surrender of Possession of **Leased Premises** advising that as of October 31, 2009 the **Leased Premises** had been surrendered to Landlord. Pursuant to the **Rejection Order**, the **Leases** were deemed rejected upon the surrender of the **Leased Premises** on October 31, 2009.

9. Pursuant to the terms of the **Leases**, the Debtor owes the following amounts to the Landlords for the months of September and October, 2009:

<b>Lease</b>	<b>Rent</b>
3915	\$ 17,062.12
3926	11,464.68
3932	20,421.68
3950	19,443.92
	<b>\$ 68,392.61<sup>2</sup></b>

10. The Landlords have provided storage and protection for the Debtor's personal property and are entitled to an allowed administrative expense in the amount of \$68,392.61 for the months of September and October for the post-petition occupation of the Leased Premises.

11. Section 503(b)(1) allows as administrative expenses "the actual necessary costs and expenses of preserving the estate." Generally, administrative expense priority is allowed only where the expense provided an actual benefit to the estate. *See In re Subscription Television of Greater Atlanta*, 789 F.2d 1530, 1532 (11<sup>th</sup> Cir.1986).

12. A landlord was entitled to an administrative expense for the protection and preservation of estate assets where a tenant/Debtor stores personal property on the premises. In *In re Aerofloral*, Case No. 01-16367 (June 3, 2002), available at <http://www.flsb.uscourts.gov/opinions/RAM/pdf/AEROFLOREAL-ADMIN.pdf>, Judge Mark found that a landlord was entitled to an administrative expense from the date the case converted, which occurred after the lease had been rejected, until the trustee abandoned the personal property 44 days later. "Protection and storage of the Debtor's personal property does constitute 'use' which provided 'actual' benefit to the Debtor." *Id.* at 5 (citing *In re Howe Prods.*, 125 B.R. 313, 314 (Bankr.M.D.Fla.1991))("There is no doubt that a landlord whose premises have been occupied by

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<sup>2</sup> A complete breakdown of amounts due under the Leases is attached as Exhibit E.

the Debtor-in-Possession is authorized under [503(b)(1)(A)] to be awarded an administrative expense for the use and occupancy of the premises”); *In re F.A. Potts & Co.*, 137 B.R. 13 (E.D.Pa.1992)(“[L]essor is entitled to collect the fair rental value of the leased premises so long as the debtor is occupying the leased property and using it to help preserve the estate”); *In re Grimm & Rothwell, Inc.*, 108 B.R. 186, 190 (Bankr.S.D.Ohio 1989)(finding that trustee’s use of the warehouse as storage space was necessary and preserved the assets of the estate)).

WHEREFORE, the Landlords respectfully requests this Court enter an Order approving and allowing the payment of its administrative claim and granting such further relief as it deems just and proper.

Dated: November 4, 2009

/s/ Andrew D. McNamee  
Andrew D. McNamee (FBN 448060)  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Telephone: 305.789.3200  
Facsimile: 305.789.3395  
amcnamee@stearnsweaver.com  
Attorneys for Landlord

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been served by U.S. Mail to Taylor, Bean & Whitaker Mortgage Corp., 315 N.E. 14<sup>th</sup> St., Ocala, FL 34470; Debtor’s counsel, Edward J. Peterson, III and Amy Denton Harris, Stichter Riedel, Blain & Prosser, P.A.; the office of the US Trustee and Counsel for the Creditor Committee Paul S. Singerman via CM/ECF, and the parties on the attached service list, this 4th day of November, 2009.

/s/ Andrew D. McNamee  
Attorney

Label Matrix for local noticing  
113A-3  
Case 3:09-bk-07047-JAF  
Middle District of Florida  
Jacksonville  
Tue Nov 3 17:51:00 EST 2009

Advanced Homebuilders, Inc.  
c/o Robert D. Wilcox, Esq.  
4190 Belfort Road, Suite 315  
Jacksonville, FL 32216-1460

Assured Guaranty Corp.  
c/o White & Case LLP, Linda Leali  
Nachovia Financial Center  
200 S. Biscayne Blvd., Ste. 4900  
Miami, FL 33131-2346

Cal-Western Reconveyance Corporation  
c/o Linda S. Finley, Esq. and Kevin A. S  
3414 Peachtree Road, N.E., Suite 1600  
Atlanta, GA 30326-1164

Compu-Link Corporation d/b/a Celinek  
c/o Hollyn J. Foster  
Scott, Barker & Nassbaum  
334 E. Duval Street  
Jacksonville, FL 32202-2718

DLA Piper LLP (US)  
Counsel for FDIC as Receiver for Colonia  
100 North Tampa Street, Suite 2200  
Tampa, FL 33602-5809  
Attn.: Philip V. Martino, Esq.

Duncan & Associates, P.A.  
and David Isley, Receiver  
PO Box 249  
Fort Myers, FL 33902-0249

Federal Deposit Insurance Corporation as Rec  
c/o DLA Piper LLP (US)  
100 No. Tampa Street, Ste. 2200  
Attn.: Philip V. Martino, Esq.  
Tampa, FL 33602-5809

First American Real Estate Tax Svc.  
c/o Craig Zinda  
1 First American Way  
Westlake, Texas 76262-5310

Five Brothers Mortgage Company  
Services & Securing, Inc.  
c/o Kevin B. Paysinger  
PO Box 10399  
Jacksonville, FL 32247-0399

443 Building Corporation  
c/o Robert D. Wilcox  
Wilcox Law Firm  
4190 Belfort Road, Suite 315  
Jacksonville, FL 32216-1460

American Express  
c/o Martin Tabinowitz, VP  
200 Vesey Street  
New York, NY 10285-0002

Bank of America National Assoc.  
c/o Andrew Zaron  
Hunton & Willisms, LLP  
1200 Brickell Ave., Ste 2500  
Miami, Florida 33131-3155

Centurion Asset Partners, Inc.  
c/o Nicholas V. Pulignano, Jr., Esq.  
1200 Riverplace Blvd., Suite 800  
Jacksonville, Florida 32207-1805

Compu-Link Corporation d/b/a Celinek  
c/o Earl M. Barker, Jr.  
Scott, Barker & Nassbaum  
334 East Duval Street  
Jacksonville, FL 32202-2718

Deutsche Bank AG  
c/o Gunster Yoakley & Stewart, P.A.  
777 South Flagler Drive, Suite 500E  
West Palm Beach, FL 33401-6121

Emc Mortgage corporation  
Law Offices of Marshall C. Watson, P.A.  
1800 N.W. 49th Street, Suite 120  
Ft. Lauderdale, FL 33309-3092

Federal Deposit Insurance Corporation,  
receiver for Colonial Bank, Mont., Ala  
c/o Philip V. Martino  
100 North Tampa St., Ste 2200  
Tampa, FL 33602-5809

First American Title Insurance Company  
c/o Schuyler Smith, Esquire  
111 W Adams St #800  
Jacksonville, FL 32202-3866

G&I VI 655/755 Business Center FE, LLC  
c/o Dana S. Phor, Esquire  
Sirlin Gallogly & Lesser, P.C.  
1529 Walnut Street, Suite 600  
Philadelphia, PA 19102-3012

ACE American Insurance Company  
c/o A. Richard Feldman, E. McCord  
Clayton, Harry Spector  
1515 Market Street, Ste 700  
Philadelphia, PA 19102-1907

Arthur J. Spector  
Berger Singerman PA  
350 East Las Olas Blvd.  
10th Floor  
Fort Lauderdale, FL 33301-4211

Bowie CAD et al  
co Michael Reed  
P.O. Box 1269  
Round Rock, TX 78680-1269

Coda Roberson  
c/o J. Ellsworth Summers, Jr., Esq.  
1301 Riverplace Boulevard, Suite 1500  
Jacksonville, FL 32207-9000

Cumberland Valley National Bank and Trust  
Robert D. Wilcox, Esq.  
4190 Belfort Road, Suite 315  
Jacksonville, FL 32216-1460

Deutsche Bank AG, New York  
c/o Bingham McCutchen LLP  
Attn: Robert M. Dombroff  
399 Park Avenue  
New York, NY 10022-4689

Federal Deposit Insurance Corp.  
as receiver for Colonial Bank, N.A.  
c/o Thomas R. Califano & Jeremy Johnson  
1251 Avenue of the Americas  
New York, New York 10020-1104

First American Capital LLC  
c/o Jon Kringsman  
7286 Siena Way  
Boulder, CO 80301-3722

First National Bank of Layton  
136 W 12300 S Ste 201  
Draper, UT 84020-8368

Gordon R. Duncan  
and David Isley, Receiver  
Duncan Associates  
PO Box 249  
Fort Myers, FL 33902-0249

Grant Ranch Master Community Assoc.  
c/o Loura K. Sanchez  
5610 Ward Rd.m Ste 300  
Arvada, CO 80002-1309

GreatAmerican Leasing Corporation  
c/o The Barthet Firm  
200 S. Biscayne Blvd., Suite 1800  
Miami, Florida 33131-5336

Greg Hicks  
c/o Raye Curry Elliott, Esq.  
50 North Laura St., Suite 2500  
Jacksonville, FL 32202-3646

Guaranty Bank  
c/o Charles Sebesta  
8333 Douglas Ave.  
Dallas, TX 75225-6581

Henley Holding LLC  
c/o William Norton  
Bradley Arant Boulton Cummings LLP  
1600 Division St., Ste. 700  
Nashville, TN 37203-2771

ICBA  
Independent Community  
518 Lincoln Road  
Sauk Centre, MN 56378-2001

Integrity Field Services  
c/o Dan C. Wolters  
Cavitch, Familo & Durkin Co., LPA  
1300 N. 9th St., 9th Floor  
Cleveland, OH 44114-1501

Iron Mountain Information Management, Inc.  
c/o Frank F. McGinn, Esq.  
Bartlett Hackett Feinberg P.C.  
53 W. DeKalb St., 9th Floor  
Boston, MA 02110-1610

JP Morgan  
c/o Steven G. Powrozek  
Shapiro & Fishman  
10004 N. Dale Mabry Hwy., Ste 112  
Tampa, FL 33618-4492

James Gregory Hicks  
c/o Marchman, Kasraie & Fodor  
1755 The Exchange, Ste 339  
Atlanta, GA 30339-7403

Jumbolair, Inc.  
c/o Keith T. Appleby, Esq.  
Fowler White Boggs P.A.  
P.O. Box 1438  
Tampa, FL 33601-1438

Lender Processing Services, Inc  
and related affiliates  
c/o Sheryl Newman, Esq  
601 Riverside Avenue  
Jacksonville, FL 32204-2901

Litton Loan Servicing  
c/o Michelle Hart  
1544 Old Alabama Road  
Roswell, Georgia 30076-2102

MBIA Insurance Corporation  
c/o Betsy C. Cox, Atty.  
Rogers Towers, P.A.  
1301 Riverplace Blvd., Suite 1500  
Jacksonville, FL 32207-1811

Manatee County Tax Collector  
c/o Ken Burton, Jr.  
P.O. Box 252300  
Bradenton, Florida 34205

Mary Hamel-Schwulst, Ph.D.  
242 Woodman Avenue  
Pass Christian, MS 39571-4429

Massachusetts Property Insurance Underwritin  
c/o Kimberly Held Israel  
6320 St. Augustine Rd., Ste 2  
Jacksonville, FL 32217-2813

Merrill Lynch Credit Corporation  
c/o Shapiro & Fishman, LLP  
10004 N. Dale Mabry Hwy  
Suite 112  
Tampa, FL 33618-4492

Microsoft Corporation and Microsoft Licensin  
c/o Maria A. Milano  
Riddell Williams PS  
1001 Fourth Ave., Ste 4500  
Seattle, WA 98154-1065

Missouri Department of Revenue  
c/o Richard Maseles  
PO Box 475  
Jefferson City, MO 65105-0475

MountainView Capital Holdings, L.L.C.  
c/o R. Patrick Vance  
Jones Walker  
201 St. Charles Avenue, Suite 5100  
New Orleans, LA 70170-5101

NL Ventures VII Magnolia, LLC  
c/o Michael M. Parker  
300 Convent Street, Ste 2200  
San Antonio, Texas 78205-3720

National Alliance Capital Markets  
c/o Joseph R. Zapata, Jr., Esquire  
Fox Rothschild LLP  
997 Lenox Drive, 3rd Floor  
Lawrenceville, NJ 08648-2317

Nationwide Title Clearing  
c/o Angelina E. Lim, Esq.  
Johnson, Pope, Bokor, Ruppel & Burns, LL  
P.O. Box 1158  
Clearwater, FL 33757-1368

Nationwide Title Clearing, Inc.  
c/o Erika Lande, SVP Administration  
2100 Alt. 19 N.  
Palm Harbor, FL 34683-2620

Natixis Real Estate Capital Inc.  
c/o Jeffrey N. Rich  
599 Lexington Avenue  
New York, NY 10022-6030

Neasham Investments, LLC  
Attn: Sherri Neasham  
131 Spinnaker Ct.  
Del Mar, CA 92014-3218

Neasham Investments, LLC  
c/o Nina LaFlour  
PO Box 861428  
St. Augustine, Fl 32086-1128

Paul Steven Singerman  
Berger Singerman, PA  
200 South Biscayne Blvd.  
Suite 1000  
Miami, FL 33131-5319

Premier Corporate Centre, LLC  
c/o Stearns Weaver Miller, et al.  
Andrew D. McNamee, Esq.  
180 W. Flagler Street, Suite 200  
Miami, FL 33130-1536

RBC Bank (USA), as successor by merger to Fl  
c/o J. Cameron Story, III, Esq.  
841 W. DuPont Drive, Suite 841  
Jacksonville, Florida 32207-8329

RBC Bank successor  
to Florida Choice Bank  
c/o James W. Carpenter  
515 East Las Olas Blvd., Ste 850  
Fort Lauderdale, FL 33301-2277

RN, Inc. d/b/a PIP Printing and Marketing Se  
11 S.W. 1st Avenue  
Ocala, Fl 34471-1101

Rhode Island Joint Reinsurance Ass'n  
c/o Kim Israel  
Held & Israel  
6320 St. Augustine Road, Suite 2  
Jacksonville, FL 32217-2813

Richard A. Perry, Atty. at Law  
21 North Magnolia Avenue  
Orleans Building, 2nd Floor  
Ocala, Fl 34475-6613

Seaside National Bank & Trust  
c/o Foley & Lardner LLP  
111 North Orange Ave., Ste 1800  
Orlando, Florida 32801-2343

Selene RMOF REO Acquisition II, LLC  
c/o R. Scott Shuker, Esq.  
P.O. Box 3353  
Orlando, FL 32802-3353

Selene Residential Mortgage Opportunity Fund  
c/o R. Scott Shuker, Esq.  
P.O. Box 3353  
Orlando, FL 32802-3353

Sovereign Bank  
c/o Robert Soriano, Esq.  
625 E. Twiggs St., #100  
Tampa, FL 33602-3925

TN Dept. of Financial Institutions  
c/o Gill Geldreich, Asst. Atty. General  
Bankruptcy Division  
P.O. Box 20207  
Nashville, TN 37202-4015

Tennessee Dept. of Financial Institutions  
Attn: Gill Geldreich  
c/o TN Atty General's Office, Bankruptcy  
PO Box 20207  
Nashville, Tennessee 37202-4015

U.S. Department of Housing and Urban Develop  
c/o Glenn D. Gillett and Alicia M. Hunt  
U.S. Department of Justice  
Commercial Litigation Branch  
1100 L Street, NW  
Washington, D.C 20005-4035

United States Trustee - Jax  
135 W Central Blvd, Suite 620  
Orlando, FL 32801-2440

Upstreet Developments, LLC  
c/o Adam B. Wiens  
633 Seventeenth Street, Suite 2700  
Denver, CO 80202-3662

Urban Trust Bank Holdings, Inc.  
c/o Joseph Dayton Foley, Jr., P.A.  
283 Granes-Roose Blvd., Suite 111  
Altamonte Springs, FL 32701-3437

W Scott Wynn  
PO Box 447  
Groveland FL 34736-0447

Wells Fargo Bank  
c/o A. Michelle Hart  
McCalla Raymer, LLC  
1544 Old Alabama Rd.  
Roswell, GA 30076-2102

Wells Fargo Bank, N.A.  
c/o John C. Weitnauer, Esq.  
Graham & Eick LLP  
1201 W. Peachtree St., One Atlantic Ctr  
Atlanta, GA 30309-3424

Wells Fargo Bank, N.A., as Master Servicer  
c/o James H. Post, Esq.  
Smith Hulsey & Busey  
825 Water Street, Suite 1800  
Jacksonville, FL 32202-4494

End of Label Matrix  
Mailable recipients 78  
Bypassed recipients 0  
Total 78