UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:	Chapter 11
TAYLOR, BEAN & WHITAKER MORTGAGE CORP., *et al.,*	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)

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MOTION TO MODIFY ORDER ESTABLISHING PROCEDURES GOVERNING ADVERSARY PROCEEDINGS UNDER 11 U.S.C. §§ 544 - 550

Neil F. Luria, as Trustee (the "Trustee") for the Taylor, Bean & Whitaker Plan Trust (the "Trust"), hereby moves by this Motion to Modify Order Establishing Procedures Governing Adversary Proceedings Under 11 U.S.C. *§§ 544-550* (the "Motion") for an order modifying the *Order Establishing Procedures Governing Associated Adversary Proceedings under 11 U.S.C. §§ 544-550* (the "Order") [D.E. #3948]. In support of this motion, the Trustee respectfully states:

1. On August 24, 2009, Taylor Bean & Whitaker Mortgage Corp. ("TBW") filed for relief under Chapter 11 of the United States Bankruptcy Code.

2. On November 25, 2009, REO Specialists, LLC ("REO") and Home America Mortgage, Inc. ("HAM" and collectively with TBW and REO, the "Debtors") filed for relief under Chapter 11 of the United States Bankruptcy Code.

3. On July 21, 2011, the Court entered its order confirming the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [D.E. 3420].

4. On August 10, 2011, the plan became effective and created the Taylor, Bean & Whitaker Plan Trust, with Neil F. Luria as Plan Trustee.

5. Under the Trust, the Trustee is authorized on behalf of the Trust to enforce, sue on, settle or compromise Causes of Action (as defined in the Plan), including adversary proceedings.[1]

6. In late 2011, the Trustee commenced 387 avoidance actions pursuant to 11 U.S.C. §§ 544 – 550 (the "Avoidance Actions"). The Avoidance Actions sought to recover over $280 million in transfers made during the four years preceding the Debtors' bankruptcy filings.

7. In an effort to effectively manage the Avoidance Actions in a cost effective manner for the estate with the minimum of burden on the Court, the Trustee on August 19, 2011, filed a *Motion for Entry of an Order Establishing Procedures Governing Adversary Proceedings under 11 U.S.C. §§ 544 – 550* [D.E. #3631] (the "Procedures Motion") requesting the Court enter an order governing all aspects of the Avoidance Actions including, the mediation process, motion practice, discovery and the timing of eventual litigation.

8. On August 25, 2011, following review and consideration, the Court entered the Order, which granted the Procedures Motion.

9. The Order: (a) streamlined the resolution of the Avoidance Actions without prejudice to any defendant, (b) facilitated the prompt and cost-effective resolution of the

[1] Under subsection B.(9) ("Scope of Authority") of Section III of the *Plan Trust Agreement* (the "Agreement") filed on July 10, 2011 as part of the *Plan Supplement Filed with Respect to the Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [D.E. # 3322] an addition to the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Unofficial Committee of Unsecured Creditors*, which was confirmed on July 21, 2011 [D.E. # 3420], the Plan Trustee has the power to "file, prosecute, settle, compromise, withdraw, litigate to judgment, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with Causes of Action and any other Claims in favor of or against the Plan Trust as the Trustee shall deem advisable."

Avoidance Actions, (c) minimized the Court's administrative burden, (d) maximized the recovery of funds for the Trust, and (e) provided for creditors to receive higher distributions through lowered administrative costs.

10. The Order provided specific direction regarding all aspects of the Avoidance Actions. Concerning the discovery and litigation processes, the Order provided that:

> Federal Rule of Civil Procedure 26(f), made applicable herein pursuant to Bankruptcy Rule 7026, shall be, and hereby is, stayed with respect to the Avoidance Actions. Upon completion of all Avoidance Actions being mediated the Plan Trustee shall file with the Court a notice stating that the mediations in the Avoidance Actions have been completed and requesting the Court set a status conference for any remaining Avoidance Actions that have not been resolved (the "Notice"). A status conference will then be scheduled before the Court wherein pretrial requirements, motion practice and related deadlines will be established.

See Order 5.D.

11. The Order further provided that "[f]ormal discovery in each Avoidance Action shall be, and hereby is, stayed until all mediations of the Avoidance Actions are completed, the Plan Trustee files the Notice and the status conference … is held." *See Order* 5.E.

12. Therefore, the Order sets a bright line rule that formal discovery and the requirements of Rule 26 are stayed until mediation has been completed in <u>all</u> Avoidance Actions, notice thereof has been filed with the Court and a post mediation status conference has been conducted by the Court.

13. As of October 26, 2012, the Plan Trustee has fully resolved approximately 250 of the 387. There are approximately 10 matters that still need to be mediated. The remainder of the Avoidance Actions, other than the Litigation Matters (defined below) are either involved in productive settlement negotiations, nearing resolution or are the subject of a default. Resolution

has been accomplished mainly through settlements obtained both prior to and during the mandatory mediation process implemented by the Court. Therefore, the Order was instrumental in developing and implementing a mechanism to efficiently resolve the vast majority of the Avoidance Actions.

14. There are particular Avoidance Actions where extensive efforts through mediation and direct settlement discussions have been unsuccessful and the parties agree further settlement negotiations at this time would be unfruitful. Accordingly, the Trustee seeks to advance certain of the Avoidance Actions believing that by commencing the litigation, information will be brought forward that would be helpful to the parties' evaluation of the cases, advance settlement discussions or otherwise allow for resolution of the cases. The following are the Avoidance Actions the Trustee seeks to have the Court move forward into litigation (the "Litigation Matters"):

(a) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. ADP, Inc. (Adv. Pro. No.: 3:11-ap-657-JAF);

(i) This matter was commenced by the filing of the complaint on August 23, 2011, to avoid and recover preferential transfers in the amount of $62,669.82 and fraudulent transfers in the amount of $46,728,945.76.

(ii) On June 26, 2012, the parties attended a mediation conference which resulted in an impasse.

(b) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. ADP, Inc. (Adv. Pro. No.: 3:11-ap-966-JAF);

(i) This matter was commenced by the filing of the complaint on November 23, 2011, to avoid and recover fraudulent transfers in the amount of $24,071.39.

(ii) On June 26, 2012, the parties attended a mediation conference which resulted in an impasse.

(c) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. James Gregory Hicks (Adv. Pro. No.: 3:11-ap-674-JAF);

(i) This matter was commenced by the filing of the complaint on August 23, 2011, which was later amended twice on October 17, 2011 and January 23, 2012, to avoid and recover preferential transfers in the amount of $1,279,565.44 and fraudulent transfers in the amount of $20,894,448.00.

(ii) On February 28, 2012, the parties attended a mediation conference which resulted in an impasse.

(d) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. James Gregory Hicks (Adv. Pro. No.: 3:11-ap-976-JAF);

(i) This matter was commenced by the filing of the complaint on November 23, 2011, to avoid and recover fraudulent transfers in the amount of $3,993,740.

(ii) On February 28, 2012, the parties attended a mediation conference which resulted in an impasse.

(e) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. RLI Insurance Company (Adv. Pro. No.: 3:11-ap-566-JAF);

(i) This matter was commenced by the filing of the complaint on August 20, 2011, which was amended on January 4, 2012, to avoid and recover fraudulent transfers in the amount of $3,249,875.20.

(ii) On February 23, 2012, the parties attended a mediation conference which resulted in an impasse.

(f) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. AK Contracting, LLC (Adv. Pro. No.: 3:11-ap-880-JAF);

(i) This matter was commenced by the filing of the complaint on November 21, 2011, which was amended on December 2, 2011, to avoid and recover fraudulent transfers in the amount of $3,019,162.91.

(ii) On July 12, 2012, the parties attended a mediation conference which resulted in an impasse.

(g) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Harbor Auto Restoration, Inc. (Adv. Pro. No.: 3:11-ap-456-JAF);

(i) This matter was commenced by the filing of the complaint on August 19, 2011, to avoid and recover fraudulent transfers in the amount of $725,000.

(ii) On January 12, 2012, the parties attended a mediation conference which resulted in an impasse.

(h) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Urban Trust Bank (Adv. Pro. No.: 3:11-ap-642-JAF);

(i) This matter was commenced by the filing of the complaint on August 23, 2011, to avoid and recover preferential transfers in the amount of $423,916.32.

(ii) On August 29, 2012, the parties attended a mediation conference which resulted in an impasse.

(i) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Huston Motors, Inc. (Adv. Pro. No.: 3:11-ap-940-JAF);

(i) This matter was commenced by the filing of the complaint on November 22, 2011, to avoid and recover fraudulent transfers in the amount of $144,737.38.

(ii) On April 16, 2012, the parties attended a mediation conference which resulted in an impasse.

(j) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Thunderflower, LLC (Adv. Pro. No.: 3:11-ap-693-JAF);

(i) This matter was commenced by the filing of the complaint on August 23, 2012, to avoid and recover preferential transfers in the amount of $894,550.36 and fraudulent transfers in the amount of $8,483,554.71.

(ii) On May 30, 2012, the parties attended a mediation conference which resulted in an impasse.

(k) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Dine Design Group, Inc. d/b/a Sky Asian Fusion (Adv. Pro. No.: 3:11-ap-691-JAF);

(i) This matter was commenced by the filing of the complaint on August 23, 2011, to avoid and recover preferential transfers in the amount of $706,692.96 and fraudulent transfers in the amount of $2,624,215.76.

(ii) On January 30, 2012, the parties attended a mediation conference which resulted in an impasse.

(l) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Dine Design Group, Inc. d/b/a Ipanema (Adv. Pro. No.: 3:11-ap-692-JAF); and

(i) This matter was commenced by the filing of the complaint on August 23, 2011, to avoid and recover preferential transfers in the amount of $226,915.43 and fraudulent transfers in the amount of $1,814,649.58.

(ii) On January 30, 2012, the parties attended a mediation conference which resulted in an impasse.

(m) Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. CPMG, LLC (Adv. Pro. No.: 3:11-ap-477-JAF).

(i) This matter was commenced by the filing of the complaint on August 20, 2011, to avoid and recover fraudulent transfers in the amount of $1,213,608.96.

(ii) On May 30, 2012, the parties attended a mediation conference which resulted in an impasse.

15. The Trustee believes that the Litigation Matters should be moved forward into a litigation track. Although, at the Trustee's suggestion the Order explicitly does not allow litigation to commence until all of the Avoidance Actions have been mediated, a Notice of the completion of all of the meditations is filed with the Court and a status conference held, the Trustee believes that the vast majority of the intent of the Order has been accomplished and that the estate would be better served by advancing the Litigation Matters for the reasons explained above. Through this Motion the Trustee seeks allowance from the Court to proceed forward with the Litigation Matters and seeks the following modifications to the Order.

16. The Plan Trustee requests the following modifications to the Order:

(a) Allow the Litigation Matters to move forward into a litigation track prior to the completion of mediation of all Avoidance Actions;

(b) Allow the Trustee to file the Notice to have the Litigation Matters be set for a status conference;

(c) To provide that the Trustee, in his sole discretion, be allowed to file supplemental Notices with the Court to move additional Avoidance Actions into a litigation track, if necessary; and

(d) To preserve the remaining substance of the Order, including the stay of discovery, in all Avoidance Actions where the Trustee has not filed the notice.

17. The Plan Trustee believes that the proposed modifications to the Procedures Order are appropriate under the circumstances and in the best interest of the Trust and creditors, and should be approved.

Conclusion

Therefore, the Plan Trustee respectfully requests that the Court grant the Motion, enter the Proposed Order in the form attached hereto and grant such other and further relief as the Court deems just and proper.

Dated: November 16, 2012

BERGER SINGERMAN LLP
Counsel for Neil F. Luria, Trustee of the Taylor, Bean & Whitaker Plan Trust
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: */s/ Paul Steven Singerman*
Paul Steven Singerman
Florida Bar No. 378860
singerman@bergersingerman.com
Kristopher Aungst
Florida Bar No. 0055348
kaungst@bergersingerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically via the Court's CM/ECF system upon all registered users receiving electronic notice in this case and via U.S. Regular Mail, postage prepaid, upon all parties listed on the attached Service List on this 16th day of November, 2012.

/s/ Kristopher Aungst
Kristopher Aungst

SERVICE LIST
In re Taylor, Bean & Whitaker Corporation
Case no. 3:09-bk-07047

Atech Plumbing, Inc.
c/o Lonnie Perry, President
2012 Airport Ct. SE
Marietta, GA 30060

F.I.A. Card Services, N.A.
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Aris Anthony Chaparro
2280 Marks Road
Valley City, OH 44280

Benjamin Charles
1123 Soundview Trail
Gulf Breeze, FL 32561

C&D Residential Service Corp.
8953 Putter Place
Belvidere, IL 61008

Coldwell Banker Real Estate, LLC
c/o Corporation Service Company
400 Technology Parkway South
Norcross, GA 30092

Karen Strickholm
720 Mesilla Road
Santa Fe, NM 87501

Manley Built Construction
c/o Robert D. Manley
9220 N.W. 13th Place
Gainesville, FL 32606

Ergle Construction Co., Inc.
c/o Richard A. Perry, Esq.
820 East Fort King Street
Ocala, FL 34471

Andrew Copeland Architect, PA
c/o Richard A. Perry, Esq.
820 East Fort King Street
Ocala, FL 34471

CPMG, LLC.
c/o Kimberly Held Israel
Held & Israel
6320 St. Augustine Road, Ste. 2
Jacksonville, FL 32217

J.R. Corelli Association Inc.
c/o Mike Jorgensen, Esq.
2318 Park Street
Jacksonville, FL 32204

Greg Weaver
c/o Jacob D. Flentke, Esq.
Broad and Cassel
390 North Orange Ave., Ste. 1400
Orlando, FL 32801

Dine Design Group, Inc.
c/o Arnold D. Levine, Esq.
Arnold D. Levine & Associates, P.A.
P.O. Box 3429
Tampa, FL 33601

Lincoln National Life Insurance Co.
c/o Stephanie Reed Traband, Esq.
Jones, Walker, Waechter, et al.
201 Biscayne Blvd., Ste. 2600
Miami, FL 33131

Markell Strumpher d/b/a Moss Building Maintenance & Property Management
57 Sugar Creek Hills
Auburn, IL 62615

Promontory Financial Group, LLC
c/o Leanne McKnight Prendergast, Esq.
Smith Hulsey & Busey
225 Water Street, Suite 1800
Jacksonville, FL 32202

ThunderFlower, LLC
c/o Kimberly Held Israel
Held & Israel
6320 St. Augustine Road, Ste. 2
Jacksonville, FL 32217

Triple Point Construction, LLC
c/o Marshall G. Reissman, Esq.
The Reissman Law Group, P.A.
5150 Central Avenue
St. Petersburg, FL 33707

ADP, Inc.
c/o Leanne McKnight Prendergast, Esq.
Smith Hulsey & Busey
225 Water Street, Suite 1800
Jacksonville, FL 32202

James Gregory Hicks
c/o David E. Otero, Esq.
Akerman Senterfitt
50 North Laura St., Ste. 2500
Jacksonville, FL 32202

AK Contracting Property Management
c/o Michael J. Marees, Esq.
Joseph & Marees, P.A.
4035 Atlantic Boulevard
Jacksonville, FL 32207

Harbor Auto Restoration Inc.
c/o Raymond J. Rotella, Esq.
Kosto & Rotella, P.A.
P.O. Box 113
Orlando, FL 32802

Huston Motors, Inc.
c/o Allan C. Watkins, Esq.
Watkins Law Firm, P.A.
707 North Franklin Street, Ste. 750
Tampa, FL 33602

RLI Insurance Company
c/o Joseph D. Wargo, Esq.
Wargo & French, LLP
999 Peachtree St., NE, 26th Floor
Atlanta, GA 30309

Trentalis Law Offices
c/o Alan L. Landsberg, Esq.
Keller Landsberg PA
500 E. Broward Blvd., Ste. 1400
Ft. Lauderdale, FL 33394

Urban Trust Bank
c/o Joseph d. Foley, Jr., Esq.
Joseph Dayton Foley, Jr., P.A.
283 Cranes Roost Blvd. Ste. 111
Altamonte Springs, FL 32701

Barfield & Associates of Ocala, Inc.
c/o Dock A. Blanchard, Esq.
Blanchard, Merriam, Adel & Kirkland
P.O. Box 1869
Ocala, FL 34478

First American CREDCO, Inc.
c/o Jacob A. Brown, Esq.
Akerman Senterfitt
50 North Laura Street, Suite 3100
Jacksonville, FL 32202

Integrity Field Services, Inc.
c/o John S. Sarrett, Esq.
Hahn Loeser & Parks LLP
800 Laurel Oak Drive, Ste. 600
Naples, FL 34108

Phillips Printing, Inc.
c/o Richard A. Perry, Esq.
820 East Fort King Street
Ocala, FL 34471

Uplead Technology, LLC
c/o Thomas W. Cartwright, Esq.
108 N. Magnolia Avenue, Ste. 318
Ocala, FL 34475

Deutsche Bank Securities Inc.
c/o Todd B. Marcus, Esq.
Bingham McCutchen LLP
399 Park Avenue
New York, NY 10022

Capital One Global Corporation
c/o Jesse Tyner Moore
Hunton & Williams LLP
111 Congress Ave., Suite 510
Austin, TX 78701

Henley Holdings, LLC
c/o William L. Norton, Esq.
Bradley Arant Boult Cummings, LLP
1600 Division Street, Ste. 700
Nashville, TN 37203

JP Morgan Chase & Company
c/o Robert M. Quinn, Esq.
Carlton Fields, P.A.
P.O. Box 3239
Tampa, FL 33601

Guardian Insurance Company
c/o Kenneth B. Jacobs, Esq.
GrayRobinson, P.A.
50 North Laura Street, Ste. 1100
Jacksonville, FL 32202

BasePoint Analytics, LLC
c/o Jacob A. Brown, Esq.
Akerman Senterfitt
50 North Laura Street, Suite 3100
Jacksonville, FL 32202

First American Flood Data Services
c/o Jacob A. Brown, Esq.
Akerman Senterfitt
50 North Laura Street, Suite 3100
Jacksonville, FL 32202

Jumbolair, Inc.
c/o R. Travis Santos, Esq.
Hill, Ward & Henderson, P.A.
P.O. Box 2231
Tampa, FL 33601

The Dorchester Group, LLC
c/o Bradford Petrino, Esq.
Korshak & Associates, P.A.
950 S. Winter Park Drive, Ste. 320
Casselberry, FL 32707

AIG Insurance Management Services
c/o Hywell Leonard, Esq.
Carlton Fields, P.A.
4221 W Boy Scout Blvd., Ste. 1000
Tampa, FL 33601

E.O. Vick Construction Co., Inc.
c/o Robert A. Heekin, Jr., Esq.
Stutsman Thames & Markey, P.A.
50 N. Laura Street, Ste. 1600
Jacksonville, FL 32202

Cenlar, FSB
c/o Jason B. Burnett, Esq.
GrayRobinson, P.A.
50 North Laura Street, Suite 1100
Jacksonville, FL 32202

I Control Audio Video, LLC
c/o Richard R. Thames, Esq.
Stutsman Thames & Markey, P.A.
50 N. Laura Street, Ste. 1600
Jacksonville, FL 32202

Law Office of R. William Futch P.A.
c/o Richard A. Perry, Esq.
820 East Fort King Street
Ocala, FL 34471

Hawker & Beechcraft Services, Inc.
c/o David D. Burns, Esq.
Fowler White Boggs, P.A.
50 N. Laura Street, Ste. 2800
Jacksonville, FL 32202

C J Sales & Service of Ocala, Inc.
c/o Lara Roeske Fernandez, Esq.
Trenam, Kemker, Scharf, et al.
101 East Kennedy Blvd., Ste. 2700
Tampa, FL 33602

GE Capital Financial, Inc.
c/o David M. Levine, Esq.
Levine Kellogg Lehman, et al.
201 S. Biscayne Blvd., 22nd Floor
Miami, FL 33131

Locke Lord Bissell & Liddell LLP
c/o Andrew Barr, Esq.
Locke Lord LLP
2200 Ross Avenue, Ste. 2200
Dallas, TX 77520

U.S. Dept of Agriculture
c/o Christopher J. Emden, Esq.
U.S. Department of Justice
1100 L Street NW, Room 10046
Washington, DC 20005

Bloomberg L.P.
c/o Leanne McKnight Prendergast, Esq.
Smith Hulsey & Busey
225 Water Street, Suite 1800
Jacksonville, FL 32202

Guaranty Bank
c/o Sean Affleck, Esq.
Butler & Hosch, P.A.
3185 South Conway Road, Suite E
Orlando, FL 32812

CitiMortgage, Inc.
c/o Daniel T. O'Connor, Esq.
Bryan Cave LLP
1155 F Street NW
Washington, DC 20004

Iron Mountain Information Mgmt, Inc.
c/o Jason B. Burnett, Esq.
GrayRobinson, P.A.
50 North Laura Street, Ste. 1100
Jacksonville, FL 32202

LeadAcquisition Technology, Inc.
c/o Walter W. Gouldsbury, III, Esq.
Jeffer, Mangets, Butler & Mitchell, LLP
Two Embarcadero Ctr., 5th Floor
San Francisco, CA 94111

Hawthorne Capital, LLC
c/o Nathan Frederick, Registered Agent
6875 South 900 East
Midvale, UT 84087

Merscorp. Inc.
c/o John B. Rosenquest, IV, Esq.
Morgan, Lewis & Bockius, LLP
200 S. Biscayne Blvd, Ste. 5300
Miami, FL 33131

NV Energy, Inc.
c/o M. Lee Johnsey, Jr., Esq.
Balch & Bingham LLP
1901 Sixth Avenue North, Ste. 1500
Birmingham, AL 35203

Roberts & Shirley Law Offices
c/o James J. Shirley, Esq.
Roberts & Shirley Law Offices
25 Butler Street, Ste. B, POB 307
Springvale, MA 04083

Sun Life Assurance Co. of Canada
c/o Chief Financial Officer
200 E. Gaines Street
Tallahassee, FL 32399

The Sherwin-Williams Co.
c/o Carrie M. Brosius, Esq.
Vorys, Sater, Seymour and Pease, LLP
1375 East 9th Street, Suite 2100
Cleveland, OH 44114

Deloitte LLP
c/o Kerry A. Miller, Esq.
Deloitte Touche Tohmatsu Limited
111 S. Wacker Drive
Chicago, IL 60606

Capital Markets Cooperative, LLC
c/o Kenneth B. Jacobs, Esq.
GrayRobinson, P.A.
50 North Laura Street, Ste. 1100
Jacksonville, FL 32202

Solar Designs, Inc.
c/o David E. Hicks, Esq.
Dennis LeVine & Associates, P.A.
P.O. Box 707
Tampa, FL 33601

Alabama Housing Finance Authority
c/o Jayna Partain Lamar, Esq.
Maynard Cooper & Gale, P.C.
1901 Sixth Avenue North, Ste. 2400
Birmingham, AL 35203

Capitol Automotive Company
c/o E. Lee Redfern, Esq.
1800 Peachtree Road, NW, Ste. 600
Atlanta, GA 30309

Metlife, Inc.
c/o Gregory S. Grossman, Esq.
Astigarraga Davis Mullins, et al.
701 Brickell Avenue, 16th Floor
Miami, FL 33131

Ring Power Corporation
c/o Bethany R. Reichard, Esq.
Holbrook, Akel, Cold, Stiefel & Ray
One Independent Drive, Ste. 2301
Jacksonville, FL 32202

Roger Tabor
c/o Thomas W. Cartwright, Esq.
108 N. Magnolia Avenue
Suite 318
Ocala, FL 34475

Guardian Life Insurance Co of America
c/o Kenneth B. Jacobs, Esq.
GrayRobinson, P.A.
50 North Laura Street, Ste. 1100
Jacksonville, FL 32202

Wilson Mill Townhouse Comm Assoc
c/o Jake Blanchard, Esq.
Fowler White Boggs
501 E. Kennedy Blvd., Ste. 1700
Tampa, FL 33602

GMAC Mortgage, LLC
c/o Laura Roeske Fernandez, Esq.
Trenam Kemker Scharf, et al.
101 E. Kennedy Blvd., Ste. 2700
Tampa, FL 33602

CBCInnovis, Inc
c/o Leanne McKnight Prendergast, Esq.
Smith Hulsey & Busey
225 Water Street, Ste. 1800
Jacksonville, FL 32202

Edward Dauer, M.D. P.A.
c/o Brian A. Hart, Esq.
The Hart Law Firm, P.A.
799 Brickell Plaza, Ste. 900
Miami, FL 33131

Chartis, Inc.
c/o Robert Quinn, Esq.
Carlton Fields
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, FL 33607-5780

Chisholm Properties of Atlanta, LLC
c/o Jacob A. Brown, Esq.
Akerman Senterfitt, LLP
50 North Laura Street, Suite 3100
Jacksonville, FL 32202

Nevada Association Services, Inc.
c/o Kenneth C. Grace, Esq.
Sessions, Fishman, Nathan & Israel
3350 Buschwood Park Dr., Ste. 195
Tampa, FL 33618

Roberson Construction Company, Inc.
c/o Paul Mueller, Registered Agent
7700 Ouray N.W.
Alburquerque, NM 87120

State of West Virginia, Div of Banking
c/o Lauren C. Allen, Esq.
Deputy Counsel
One Players Club Drive, Ste. 300
Charleston, WV 25311

The Royal Gulf Beach and Racquet
Club Condominium Owners Assoc. Inc.
c/o Jerrett M. McConnell, Esq.
1756 University Blvd. S.
Jacksonville, FL 32216

Wolters Kluwer Financial Services, Inc.
c/o Deborah M. Gutfeld, Esq.
Neal, Gerber & Eisenberg, LLP
Two North LaSalle St., Ste. 1700
Chicago, IL 60602

24/7 Call Capture, LLC
c/o Thomas W. Cartwright, Esq.
108 N. Magnolia Avenue, Ste. 318
Ocala, FL 34475

Weston Graphics, Inc.
c/o Thomas W. Cartwright, Esq.
108 N. Magnolia Avenue, Ste. 318
Ocala, FL 34475

Compass Health & Fitness, Inc.
c/o Kimberly Held Israel
Held & Israel
6320 St. Augustine Road, Ste. 2
Jacksonville, FL 32217

Assurant, Inc.
c/o CSC Lawyers Incorporating Svc.
150 S. Perry Street
Montgomery, AL 36104-4227

Cintas Document Management, LLC
c/o Jason V. Stitt, Esq.
Keating Muething & Klelamp PLL
One East 4th Street, Ste. 1400
Cincinnati, OH 45202

Jorge A. Porras, Esq.
Boston Water and Sewer Commission
980 Harrison Avenue
Boston, MA 02119

20-20 Financial Advisors, LLC
c/o Amy Wilstead, Registered Agent
6710 E. University Drive, #121
Mesa, AZ 85205

Bruce & Charline Kane
345 Virginia Street, Unit 6
Hollywood, FL 33019-2000

FedEx Corporation
c/o Robert R. "Bob" Ross, Esq.
3620 Hacks Cross Road
Building B--2nd Floor
Memphis, TN 38125

Fields Motorcars of Florida, Inc.
c/o Michael Friedman, Esq.
Genovese Joblove & Batista, P.A.
100 Southeast Second Street, 44th Floor
Miami, FL 33131

Phillip Hunsaker
1 Knox Road
Red Hook, NY 12571

Islay Martinez d/b/a American Property Specialists
123 Canary Island Circle
Davenport, FL 33837

Scottsdale Coachworks, LLC
c/o Garry Drummond, Registered Agt
2525 E. Arizona Biltmore Cir., #117
Phoenix, AZ 85016

Kimberly Porter
2919 S.E. 7th Avenue, Apt. D
Ocala, FL 34471-9636

Lewis Electrical Constructors, Inc.
c/o Richard A. Perry, Esq.
820 East Fort King Street
Ocala, FL 34471

Jason W. Johnson, Esq.
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
450 South Orange Avenue, Ste. 800
Orlando, FL 32801-3344

NADA Airline, Inc.
c/o Lee B. Farkas, Registered Agent
315 N.E. 14th Street
Ocala, FL 34470

Precision Contracting Group, Inc.
c/o Keith Franklin, CEO
301 Winterthur Estates Trace
Canton, GA 30114

Root Theory, LLC
c/o David Fechtman, CEO
44 S.E. 1st Avenue, Ste. 215
Ocala, FL 34471

Desiree Brown
2314 S.E. 24th Avenue
Ocala, FL 34471-8355

Stradley, Ronon, Stevens & Young
c/o Leanne McKnight Prendergast, Esq.
Stradley, Ronon, Stevens & Young
225 Water Street, Suite 1800
Jacksonville, FL 32202

US Bank N.A.
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Villa Montana HOA, Inc.
c/o Mychal J. Katz, Esq.
Roetzel & Andress LPA
P.O. Box 6507
Orlando, FL 32802-6507

Wells Fargo & Company
c/o Leanne McKnight Prendergast, Esq.
Smith Hulsey & Busey
225 Water Street, Suite 1800
Jacksonville, FL 32202

Western Distributers, Inc.
c/o E. Scott McKinlay, Esq.
McKinlay Parr Legal Group
10800 Alpharetta Hwy., Ste. 208-695
Roswell, GA 30076-1467

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:	Chapter 11
TAYLOR, BEAN & WHITAKER MORTGAGE CORP., *et al.,*	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)

_____/

ORDER GRANTING MOTION TO MODIFY ORDER ESTABLISHING PROCEDURES GOVERNING ADVERSARY PROCEEDINGS UNDER 11 U.S.C. §§ 544 - 550

THIS MATTER came before the Court upon the *Motion to Modify Order Establishing Procedures Governing Adversary Proceedings Under 11 U.S.C. §§ 544-550* [D.E. ____] (the "Motion"). The Court finding that the relief requested by the Motion is reasonable, necessary and in the best interests of all the parties; and sufficient cause appearing for granting of the relief requested in the Motion; it is

ORDERED:

1. The Motion is GRANTED.

2. The proposed modifications to the Procedures Order[1] are APPROVED.

3. The Procedures Order is modified as follows:

A. The Litigation Matters (as more fully described below) shall proceed on a litigation track prior to the completion of mediation of all Avoidance Actions;

B. The Trustee shall file a Notice requesting that the following Litigation Matters be set for a status conference (the "Litigation Notice"):

[1] All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

i. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. ADP, Inc. (Adv. Pro. No.: 3:11-ap-657-JAF);

ii. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. ADP, Inc. (Adv. Pro. No.: 3:11-ap-966-JAF);

iii. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. James Gregory Hicks (Adv. Pro. No.: 3:11-ap-674-JAF);

iv. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. James Gregory Hicks (Adv. Pro. No.: 3:11-ap-976-JAF);

v. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. RLI Insurance Company (Adv. Pro. No.: 3:11-ap-566-JAF);

vi. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. AK Contracting, LLC (Adv. Pro. No.: 3:11-ap-880-JAF);

vii. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Harbor Auto Restoration, Inc. (Adv. Pro. No.: 3:11-ap-456-JAF);

viii. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Urban Trust Bank (Adv. Pro. No.: 3:11-ap-642-JAF);

ix. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Huston Motors, Inc. (Adv. Pro. No.: 3:11-ap-940-JAF);

x. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Thunderflower, LLC (Adv. Pro. No.: 3:11-ap-693-JAF);

xi. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Dine Design Group, Inc. d/b/a Sky Asian Fusion (Adv. Pro. No.: 3:11-ap-691-JAF);

xii. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. Dine Design Group, Inc. d/b/a Ipanema (Adv. Pro. No.: 3:11-ap-692-JAF); and

xiii. Neil F. Luria, as Trustee to the Taylor, Bean & Whitaker Plan Trust v. CPMG, LLC (Adv. Pro. No.: 3:11-ap-477-JAF);

C. The Trustee, in his sole discretion, shall be allowed to file supplemental notices with the Court to move additional Avoidance Actions into a litigation track; and

D. All other terms of the Procedures Order shall remain unchanged including, but not limited to, the stay of discovery in all Avoidance Actions in which the Trustee has not filed a notice.

4. This Order shall be served on all parties related to the Litigation Matters.

5. This Court retains jurisdiction for all matters arising from or related to the interpretation and implementation of this Order.

DATED this _____ day of November, 2012, in Jacksonville, Florida.

_____
JERRY A. FUNK
United States Bankruptcy Judge

Copies to:
Kristopher Aungst, Esq.