

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11

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

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF
(Jointly Administered Under
Case No. 3:09-bk-07047-JAF)

Debtors.

TAYLOR, BEAN & WHITAKER MORTGAGE
CORP.

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

Applicable Debtor.

**MOTION TO APPROVE SETTLEMENT AGREEMENT BETWEEN FEDERAL
DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR PLATINUM
BANK AND THE TAYLOR, BEAN & WHITAKER PLAN TRUST**

**NOTICE OF OPPORTUNITY TO
OBJECT AND FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files an objection within 21 days from the date this paper is entered on the docket. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at Lee Ann Bennett, Clerk of Court, 4th Floor Courtroom D, 300 North Hogan Street, Jacksonville, Florida 32202, and serve a copy on the movant's attorney, Berger Singerman LLP, Attn: Debi Evans Galler, Esq, 1450 Brickell Avenue, Suite 1900, Miami, FL 33331.

If you file and serve an objection within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Neil F. Luria, Plan Trustee to the Taylor, Bean & Whitaker Plan Trust (“Plan Trust”), files this Motion to Approve Settlement Agreement between the Plan Trust and the Federal Deposit Insurance Corporation as Receiver for Platinum Bank (“FDIC-R,” together with the Plan Trust, the “Parties”) as to proof of claim number 3026 (“Claim No. 3026”) filed by FDIC-R (the “Motion”), and in support of the Motion, respectfully represents 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.

Procedural Background

2. On August 24, 2009 (the “Petition Date”), Taylor, Bean & Whitaker Mortgage Corp. (the “Debtor” or “TBW”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

3. On September 4, 2009, the Office of Thrift Supervision closed Platinum Bank and appointed the FDIC-R as receiver of Platinum Bank.

4. As of September 4, 2009, TBW, or entities in which TBW owned an interest either directly or indirectly, held an aggregated sum of approximately \$4,600,000.00 in certain accounts at Platinum Bank, and the FDIC-R alleges a right to set off the funds against the FDIC-R Claim, defined below, (the “Disputed Funds”).

5. On June 15, 2010 FDIC-R filed Claim No. 3026 as receiver of Platinum Bank in the amount of \$9,498,768.22,¹ (the “FDIC-R Claim”) some or all of which relates to claims with

¹ By Stipulation [ECF 5008], the FDIC-R agreed that the FDIC-R Claim was not entitled to priority status.

respect to the funds held by TBW in bank accounts at Regions Bank (the "Regions Funds") and some or all of which is disputed by TBW.

6. On July 21, 2011, the Bankruptcy Court confirmed the Third Amended and Restated Joint Plan of Liquidation, and Neil F. Luria (the "Plan Trustee") was appointed the trustee of the Plan Trust.

7. On August 15, 2013 the Parties entered into a Settlement Agreement resolving the issues related to Claim No. 3026 and other matters (the "Agreement"). A copy of the Agreement² is attached hereto as **Exhibit "A"** and incorporated herein by reference.

Background

8. On July 1, 2010, TBW filed its final Reconciliation Report of Debtor Taylor, Bean & Whitaker Mortgage Corp. [ECF 1644] (the "Report") in which TBW identified \$133,604.00 held in its bank accounts at Regions Bank which funds, pursuant to the Report, were allocated to FDIC-R. Since the date of the Report, the Debtor has collected an additional \$113,021.00, which is held at Regions Bank and which has been allocated to the FDIC-R.

9. Pursuant to the terms of the Plan, TBW's rights and interests in and with respect to the Regions Funds and any claims against the Investor were transferred to the Plan Trust.

10. Upon approval of this Agreement by the Bankruptcy Court, FDIC-R shall have an Allowed TBW Class 8 Claim (as that term is defined in the Plan) in the amount of \$30,800,000.00 (the "Allowed Claim").

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

11. Within 10 business days following the Effective Date (as defined below), the FDIC-R shall transfer and pay over to the Plan Trustee \$1,250,000.00 the Plan Trust. Upon receipt of \$1,250,000.00, the Plan Trust shall be deemed to have waived and released any claim it may have to the Disputed Funds.

12. Within 10 business days following the Effective Date (as defined below), the Plan Trustee shall cause the Plan Trust to disburse \$246,625.00 from its accounts at Regions Bank to the FDIC-R.

13. Subject to the occurrence of the Effective Date, the Plan Trust's receipt of the funds identified in paragraph 11, above, and the limitations set forth in section 1.5 of the Agreement, the Plan Trustee, on behalf of itself, the Plan Trust, and TBW (collectively the "TBW/Releasors") hereby irrevocably release, waive, and forever relinquish all right of setoff, recoupment, claims, demands, obligations, liabilities, and causes of action of whatever kind or nature, whether known or unknown, which the TBW/Releasors have, may have, or might assert at the time of execution of this Agreement, or in the future, against FDIC-R, and each of its 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 or related to TBW, the Plan Trust, the TBW Chapter 11 Case, the Regions Funds, the Disputed Funds, or the FDIC-R Claim.

14. Subject to occurrence of the Effective Date, FDIC-R's receipt of 246,625.00, and the limitations set forth in 1.5 of the Agreement, upon the Effective Date, and without in any way limiting or modifying the releases, exculpations and injunctions contained in the TBW

Confirmation Order, FDIC-R on behalf of itself, its affiliates and its successors and assigns hereby irrevocably releases, waives, and forever relinquishes all rights of setoff, recoupment, claims, demands, obligations, liabilities, and causes of action of whatever kind or nature, whether known or unknown, which FDIC-R has, may have, or might assert at the time of execution of this Agreement, or in the future, against the Plan Trust, the Trustee, the Plan Trust Advisory Committee, TBW, Ocala, and their respective subsidiaries, professionals, officers, directors, employees, agents, attorneys, accountants, consultants, members and their professionals, and their 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 or related to TBW, the Plan Trust, the TBW Chapter 11 Case, the Regions Funds, the Disputed Funds, or the FDIC-R Claim.

15. Notwithstanding anything contained in the Agreement to the contrary, (a) the FDIC-R and Plan Trust each reserve, and expressly do not release, the right to enforce any and all obligations set forth in this Agreement, and (b) FDIC-R reserves and expressly does not release (i) its right to distributions under the TBW Plan on account of the Allowed FDIC-R Claim (ii) and any claims against parties that were, as of the Agreed Date (as defined below), former (i.e., no longer) officers, directors, employees, agents, fiduciaries, subsidiaries, accountants, auditors, attorneys, appraisers, joint tortfeasors, or contractors of TBW (i.e., this exclusion does not apply to parties that were officers, directors, agents, fiduciaries and contractors of TBW as of the Agreed Date), including, without limitation, Lee Farkas, Desiree Brown, Paul Allen, Delton DeArmas or their insurers based on alleged conduct that caused the damages set forth in the FDIC-R Claim. As used herein, the term Agreed Date shall mean August 11, 2010.

Relief Requested

16. Compromises are generally favored in Chapter 11 cases. *E.g., Barry v. Smith (In re New York, New Haven and Hartford R.R. Co.)*, 632 F.2d 955, 959 (2d Cir. 1980). Approval of a settlement is left to the sound discretion of the court based upon the particular circumstances of the proposed settlement and the case as a whole. *See Langes v. Green*, 282 U.S. 531, 541 (1931); *In re Carson*, 82 B.R. 847 (Bankr. S.D. Ohio 1987); *In re Ericson*, 6 B.R. 1002 (D. Minn. 1980); *Knowles v. Putteraugh (In re Hallet)*, 33 B.R. 564 (Bankr. D. Me. 1983); *In re Mobile Air Drilling Co., Inc.*, 53 B.R. 605 (Bankr. N.D. Ohio 1985); *In re Hydronic Enterprise, Inc.*, 58 BR. 363 (Bankr. D. R.I. 1986).

17. The Plan Trustee is obligated to maximize the value of the estate and make its decisions in the best interests of all of the creditors of the estate. *E.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). Courts generally defer to a Debtor's business judgment when there is a legitimate business justification for the decision to compromise a dispute. *Id.* at 395.

18. The Plan Trust Agreement authorizes the Plan Trustee to use his reasonable business judgment in administering the Plan Trust Assets. *See* Plan Trust Agreement § III.B.

19. In determining whether a settlement should be approved under Bankruptcy Rule 9019, the court must consider: "(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; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Wallis v. Justice*

Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544, 1549 (11th Cir. 1990) (internal citations omitted).

20. A review of the above considerations demonstrates that a settlement of the issues resolved by the Agreement and on the terms contained therein, is in the best interests of the Plan Trust and all of the creditors, is fair and reasonable, and is within the Plan Trustee's sound business judgment.

21. The Agreement resolves the outstanding issues related to Claim No. 3026. Without such a resolution, the Plan Trust would be forced to expend significant resources on protracted litigation, thereby diminishing the ultimate distribution to creditors.

WHEREFORE, the Plan Trustee respectfully requests that the Court enter an order: (i) authorizing the Plan Trustee to enter into the compromise described above with the Parties; (ii) approving the Agreement; and (iii) granting such other and further relief as is just and equitable.

Respectfully submitted, this 27th day of August, 2013.

Respectfully submitted,

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

By: /s/ Debi Evans Galler
Debi Evans Galler
Florida Bar No. 0985236
dgaller@bergersingerman.com

EXHIBIT A
SETTLEMENT AGREEMENT

**SETTLEMENT AGREEMENT BY AND BETWEEN THE TAYLOR BEAN &
WHITAKER PLAN TRUST AND THE FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR PLATINUM BANK**

This Settlement Agreement (the “Agreement”), dated as of August ¹⁵, 2013, is made by and between the Taylor Bean & Whitaker Plan Trust (the “Plan Trust”) and the Federal Deposit Insurance Corporation as Receiver for Platinum Bank (“FDIC-R” and together with the Plan Trust, the “Settling Parties”).

RECITALS

A. WHEREAS, on August 24, 2009 (the “Petition Date”), Taylor, Bean & Whitaker Mortgage Corp. (“TBW” or “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. *et seq.*, the “Bankruptcy Code”) in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (the “Bankruptcy Court”), commencing chapter 11 case 3:09-bk-7047-JAF (the “TBW Chapter 11 Case”).

B. WHEREAS, on July 21, 2011 the Bankruptcy Court entered an Order [Dkt. No. 3420 in the TBW Chapter 11 Case] (the “TBW Confirmation Order”) confirming the Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the “TBW Plan”), and pursuant to the TBW Confirmation Order and the TBW Plan, the Plan Trust is the successor to TBW with respect to, *inter alia*, all causes of action and litigation related matters.

C. WHEREAS, Neil F. Luria was appointed as trustee (“Trustee”) of the Plan Trust to act on its behalf.

D. WHEREAS, on June 15, 2010, FDIC-R filed its Claim No. 3026 in the TBW Chapter 11 Case claiming the amount set forth therein constitutes a priority claim and which sum was subject to modification attributable to allegedly accruing damages (the “FDIC-R Claim”). By Stipulation [DE #5008], the FDIC-R agreed that the FDIC-R Claim was not entitled to priority status. The amount of the FDIC-R Claim continues to be disputed by the Plan Trust.

E. WHEREAS, prior to the Petition Date, Platinum Community Bank, a federally chartered thrift (“Platinum Bank”) was a party to agreements with TBW pursuant to which TBW was, among other things, to originate mortgages on behalf of Platinum Bank.

F. WHEREAS, on September 4, 2009, the Office of Thrift Supervision closed Platinum Bank (the “Closure Date”) and appointed the FDIC-R as the receiver of Platinum Bank (the “Receivership”). By operation of law, the FDIC-R succeeded to all rights, title, powers and privileges of Platinum Bank and of any stockholder, member, accountholder, depositor, officer, or director of Platinum Bank with respect to such institution and the assets of such institution pursuant to 12 U.S.C § 1821(d)(2)(A)(i).

G. **WHEREAS**, as of the Closure Date, TBW, or entities in which TBW owned an interest either directly or indirectly, held an aggregated sum of approximately \$4,600,000.00 in certain accounts at Platinum Bank (collectively, the “**Accounts**”).

H. **WHEREAS**, FDIC-R asserts that it has the right to set off the funds in the Accounts (the “**Disputed Funds**”) against the FDIC-R Claim.

I. **WHEREAS**, the Plan Trust asserts that the Disputed Funds are not the subject of set off rights in favor of FDIC-R.

J. **WHEREAS**, on July 1, 2010, TBW filed its Final Reconciliation Report of Debtor Taylor, Bean & Whitaker Mortgage Corp. [Dkt. No. 1644] (the “**Report**”) in which TBW identified \$133,604.00 (the “**Reconciliation Funds**”) held in its bank accounts at Regions Bank (the “**Regions Accounts**”) which funds, pursuant to the Report, were allocated to FDIC-R. Since the date of the Report, the Debtor has collected an additional sum of \$113,021.00, which is held in the Regions Accounts and which has been allocated to FDIC-R (the “**Additional Regions Funds**”). The Reconciliation Funds and the Additional Regions Funds total \$246,625.00 and are collectively referred to herein as the “**Regions Funds**”.

K. **WHEREAS**, the Settling Parties desire to resolve their respective rights and claims regarding the FDIC-R Claim, the Regions Funds, and the Disputed Funds.

NOW, THEREFORE, the Settling Parties, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows, subject to Bankruptcy Court approval.

ARTICLE I

SETTLEMENT TERMS

Section 1.1. **Allowance of the FDIC-R Claim.** Upon the Effective Date (as defined below), FDIC-R shall have an allowed TBW Class 8 Claim (as defined in the TBW Plan) in the amount of \$30,800,000.00 (the “**Allowed FDIC-R Claim**”). Upon the disbursement of the Regions Funds pursuant to the terms of this Agreement, FDIC-R agrees that it shall have no further claim to any assets of the Plan Trust and shall have no right to any further distributions from the assets of the Plan Trust except distributions to which FDIC-R is entitled under the TBW Plan on account of the Allowed FDIC-R Claim.

Section 1.2. **Disputed Funds.** Within ten (10) business days following the Effective Date, FDIC-R agrees that it shall transfer and pay over to the Plan Trust, by wire transfer to such account as designated in writing by the Plan Trustee, the sum of \$1,250,000.00 (the “**Settlement Funds**”). Subject to occurrence of the Effective Date and Plan Trust’s receipt of the Settlement Funds pursuant to the foregoing sentence, the Plan Trust shall be deemed to have waived and released any claim it may have to the Disputed Funds, and the Settling Parties agree that FDIC-R shall retain the Disputed Funds.

Section 1.3. **Disbursement of the Regions Funds.** Within ten (10) business days following the Effective Date (as defined herein), the Trustee shall cause the Plan Trust to disburse the Regions Funds to FDIC-R.

Section 1.4. **Releases.**

(a) Subject to occurrence of the Effective Date, FDIC-R's receipt of the Regions Funds in accordance with Section 1.3 of this Agreement, and the limitations set forth in 1.5 below, upon the Effective Date, and without in any way limiting or modifying the releases, exculpations and injunctions contained in the TBW Confirmation Order, FDIC-R on behalf of itself, its affiliates and its successors and assigns hereby irrevocably releases, waives, and forever relinquishes all rights of setoff, recoupment, claims, demands, obligations, liabilities, and causes of action of whatever kind or nature, whether known or unknown, which FDIC-R has, may have, or might assert at the time of execution of this Agreement, or in the future, against the Plan Trust, the Trustee, the Plan Trust Advisory Committee, TBW, Ocala, and their respective subsidiaries, professionals, officers, directors, employees, agents, attorneys, accountants, consultants, members and their professionals, and their 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 or related to TBW, the Plan Trust, the TBW Chapter 11 Case, the Regions Funds, the Disputed Funds, or the FDIC-R Claim.

(b) Subject to occurrence of the Effective Date, the Plan Trust's receipt of the Settlement Funds in accordance with Section 1.2 of this Agreement, and the limitations set forth in Section 1.5 below, upon the Effective Date, the Plan Trustee, on behalf of itself, the Plan Trust, and TBW (collectively the "**TBW/Releasers**") hereby irrevocably release, waive, and forever relinquish all right of setoff, recoupment, claims, demands, obligations, liabilities, and causes of action of whatever kind or nature, whether known or unknown, which the TBW/Releasers have, may have, or might assert at the time of execution of this Agreement, or in the future, against FDIC-R, and each of its 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 or related to TBW, the Plan Trust, the TBW Chapter 11 Case, the Regions Funds, the Disputed Funds, or the FDIC-R Claim.

Section 1.5. **Reservation of Rights.** Anything in this Agreement to the contrary notwithstanding, (a) the Settling Parties each reserve, and expressly do not release, the right to enforce any and all obligations set forth in this Agreement, and (b) FDIC-R reserves and expressly does not release (i) its right to distributions under the TBW Plan on account of the Allowed FDIC-R Claim (ii) and any claims against parties that were, as of the Agreed Date (as defined below), former (i.e., no longer) officers, directors, employees, agents, fiduciaries, subsidiaries, accountants, auditors, attorneys, appraisers, joint tortfeasors, or contractors of TBW (i.e., this exclusion does not apply to parties that were officers, directors, agents, fiduciaries and contractors of TBW as of the Agreed Date), including, without limitation, Lee Farkas, Desiree Brown, Paul Allen, Delton DeArmas or their insurers based on alleged conduct that caused the damages set forth in the FDIC-R Claim. As used herein, the term Agreed Date shall mean August 11, 2010.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. **Representations and Warranties of the Plan Trust.** The Plan Trust hereby represents and warrants that: (a) subject to any necessary approval by the Bankruptcy Court, it has full requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith, (i) have been duly and validly authorized by it, and (ii) are not in contravention of its organization documents or any material agreement specifically applicable to it or to which it is a party; and (b) other than the TBW Chapter 11 Case, no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder.

Section 2.2. **Representations and Warranties of FDIC-R.** FDIC-R hereby represents and warrants that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with all requisite power and authority to carry on the business in which it is engaged, to own the properties it owns, to execute this Agreement and to consummate the transactions contemplated hereby; (b) it has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it, and (ii) are not in contravention of its organizational documents or any agreements specifically applicable to it; and (c) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder.

Section 2.3. **Representations of the Settling Parties.** Each Settling Party represents, warrants and acknowledges that: (a) in executing this Agreement, it does not rely, and has not relied, upon any representation or statement made by any other party or any of such other party's representatives, agents or attorneys, with regard to the subject matter, basis or effect of this Agreement or otherwise, other than as stated specifically in this Agreement, (b) in executing this Agreement, it has relied entirely upon its own judgment, beliefs and interest and upon the advice of its counsel and that it has had a reasonable period of time to consider the terms of this Agreement before entering into it, and (c) it has reviewed this Agreement and that it fully understands and voluntarily accepts all of the provisions contained herein. Each Settling Party further represents, acknowledges and agrees that this Agreement was the product of negotiations among the Parties and that any rule of construction as to ambiguities being resolved against the drafting party shall not apply in the interpretation of this Agreement.

ARTICLE III COVENANTS

Section 3.1. **Covenants of the Plan Trust.** The Plan Trust hereby covenants and agrees that it shall take all actions reasonably necessary to obtain approval of this Agreement by the Bankruptcy Court in the TBW Chapter 11 Case, and in furtherance of the preceding, it agrees that

within ten (10) business days after the execution and delivery of this Agreement by the Settling Parties it shall file a motion in the TBW Chapter 11 Case seeking an order from the Bankruptcy Court approving the terms and provisions hereof and the Plan Trust's entry into and performance under this Agreement.

ARTICLE IV

EFFECT OF EXECUTION, DISAPPROVAL, CANCELLATION OR TERMINATION

Section 4.1. **Effective Date.** This Agreement shall become effective on the first date on which each of the following has occurred ("**Effective Date**"):

- (a) **Execution.** This Agreement has been fully executed; and
- (b) **Bankruptcy Court Approval.** This Agreement has been approved by a Final Order of the Bankruptcy Court in the TBW Chapter 11 Case. For purposes of this Agreement, "Final Order" means an order of the Bankruptcy Court, as entered on the docket of the Bankruptcy Court, the operation or effect of which has not been stayed, reversed, vacated, modified or amended, and as to which order either: (a) no objection was filed prior to its entry; or (b) if an objection was filed and overruled, the time to appeal any such objection overruled by the Bankruptcy Court has expired and as to which no appeal or motion for stay or other relief from such order was filed or, if filed, remains pending. For purposes of clarity, the possibility that a motion may be filed pursuant to rules 9023 or 9024 of the Federal Rules of Bankruptcy Procedure beyond the time to appeal shall not mean that an order is not a Final Order.

Section 4.2. **Termination Date.** If the Effective Date has not occurred by October 31, 2013, unless such date is extended by a writing signed by all Settling Parties (the "**Termination Date**"), then this Agreement shall become null and void, and the Settling Parties shall be returned to the status *quo ante* as if this Agreement had never been executed.

ARTICLE V

NO ADMISSIONS

Section 5.1. **No Admissions.** The Settling Parties intend this Agreement and the settlement described herein to be in resolution of disputed claims, and this Agreement shall not be deemed an admission by any Settling Party as to the merits of any claim or defense with respect to these claims.

Section 5.2. **Agreement Inadmissible.** Neither this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement, shall be admissible in any proceeding for any purpose, except to seek approval of or to enforce the terms of the Agreement.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.1. **Good Faith.** The Settling Parties agree that the Agreement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with each of the Settling Parties' representative competent legal counsel.

Section 6.2. **Amendments.** This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties, as the case may be, or their respective successors-in-interest.

Section 6.3. **Authority.** Each person executing this Agreement on behalf of any party hereto hereby warrants that such person has the full authority to do so.

Section 6.4. **Counterparts.** This Agreement may be executed by facsimile, electronic mail, or other electronic means, and in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves executed counterparts.

Section 6.5. **Successors.** This Agreement shall be binding upon, and inure to the benefit of, the successors of the parties hereto, including any corporation or other entity into or with which any party merges, consolidates or reorganizes.

Section 6.6. **Jurisdiction.** The Settling Parties agree that the Bankruptcy Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto consent and submit to the jurisdiction of the Bankruptcy Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

Section 6.7. **Further Assurances.** Each of the Settling Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as any other Settling Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

Section 6.8. **Governing Law.** This Agreement and any exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Florida, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Florida without giving effect to that state's choice of law principles.

Section 6.9. **Notices.** All notices, demands, requests, consents or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when (a) delivered personally to the recipient, (b) sent by electronic mail to the recipient if sent by electronic mail before 5:00 p.m. prevailing Eastern Time on a business day, and otherwise on the next business day, or (c) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid). Such notices, demands, requests, consents and other communications shall be sent to the following addresses:

TBW PLAN TRUST

TBW Plan Trustee
4901 Vineland Road
Suite 120
Orlando, FL 32811
Attn: Neil F. Luria
nluria@navigantcapitaladvisors.com

With a Copy to:

Berger Singerman LLP
350 East Las Olas Blvd., Suite 1000
Ft. Lauderdale, FL, 33301
Attn: James L. Berger, Esq.
E-Mail:Jberger@Bergersingerman.com

**FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver for
Platinum Bank**

3501 Fairfax Dr.
Arlington, VA 22226
Attn: Jeffrey E. Schmitt, Esq.
jschmitt@fdic.gov

With a Copy to:

Ulmer & Berne
500 W. Madison, Suite 3600
Chicago, IL, 60661
Attn: Randall D. Lehner
E-Mail:Rlehner@ulmer.com

or to such other address or to the attention of such other person as the receiving party has specified by prior written notice to the sending party.

Section 6.10. **Entire Agreement.** This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties and covenants contained and memorialized in this Agreement. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true; each party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

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[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

**THE TAYLOR BEAN & WHITAKER PLAN
TRUST**

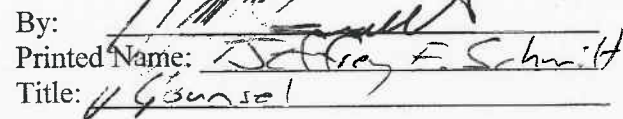
By: _____



Neil F. Luria, Trustee

**FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver for Platinum Bank**

By: _____



Printed Name: Jeffrey F. Schmitt

Title: Counsel

**EXHIBIT B
PROPOSED ORDER**

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11 Case

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

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

Debtors.

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

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

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

Applicable Debtor.

**ORDER GRANTING MOTION TO APPROVE SETTLEMENT
AGREEMENT BETWEEN FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR PLATINUM BANK
AND THE TAYLOR, BEAN & WHITAKER PLAN TRUST**

THIS MATTER came before the Court upon Plan Trustee's *Motion to Approve Settlement Agreement with Federal Deposit Insurance Corporation as Receiver for Platinum Bank* (the "Motion") [ECF. ____]. The Court, having considered the Motion, having been advised that there are no objections to the Motion, and finding that good and sufficient notice of the Motion was provided to all interested parties, and being otherwise fully advised in the premises, does thereupon

ORDER as follows:

1. The Motion is **GRANTED**.

2. Within 10 business days of the Effective Date, the Trustee shall cause a portion of the Regions Funds in the amount of \$246,625.00 to be distributed to the FDIC-R.

3. Within 10 business days of the Effective Date, the FDIC-R shall transfer and pay over to the Plan Trust \$1,250,000.00.

4. FDIC-R shall have an Allowed TBW Class 8 Claim (as that term is defined in the Plan) in the amount of \$30,800,000.00.

5. The Court retains jurisdiction to enforce the terms of the Agreement³ between the Parties, and the Parties are directed to comply with the terms and conditions thereof.

6. The motion, objection, or other matter was served upon all interested parties with the Local Rule 2002-4 negative notice legend informing the parties of their opportunity to object within 21 days of the date of service.

7. No party filed an objection within the time permitted.

8. The Court therefore considers the matter to be unopposed.

DATED this _____ day of _____, 2013, in Jacksonville, Florida.

Jerry A. Funk
United States Bankruptcy Judge

³ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.