

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
www.flmb.uscourts.gov

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-1022-JAF
Case No. 3:09-bk-10023-JAF

Debtor.

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.

**MOTION TO APPROVE COMPROMISE BETWEEN
TAYLOR, BEAN & WHITAKER MORTGAGE CORP., TAYLOR,
BEAN & WHITAKER PLAN TRUST, LARRY HESS, AND ICE LEGAL. P.A.**

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 A RESPONSE WITHIN TWENTY-ONE (21) DAYS FROM THE DATE SET FORTH ON THE PROOF OF SERVICE ATTACHED TO THIS PAPER PLUS AN ADDITIONAL THREE DAYS FOR SERVICE. IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PAPER, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE COURT AT SAM M. GIBBONS UNITED STATES COURTHOUSE, 801 NORTH FLORIDA AVENUE, TAMPA, FLORIDA 33602, AND SERVE A COPY ON THE MOVANT'S ATTORNEY, EDWARD J. PETERSON, III, ESQUIRE, STICHTER, RIEDEL, BLAIN & POSTLER, P.A., 110 E. MADISON STREET, SUITE 200, TAMPA, FLORIDA 33602 AND ANY OTHER APPROPRIATE PERSONS WITHIN THE TIME ALLOWED.

IF YOU FILE AND SERVE A RESPONSE WITHIN THE TIME PERMITTED, THE COURT MAY SCHEDULE AND NOTIFY YOU OF A HEARING, OR THE COURT MAY CONSIDER THE RESPONSE AND MAY GRANT OR DENY THE RELIEF REQUESTED WITHOUT A HEARING. IF YOU DO NOT FILE A RESPONSE WITHIN THE TIME PERMITTED, THE COURT WILL CONSIDER THAT YOU DO NOT OPPOSE THE RELIEF REQUESTED IN THE PAPER, WILL PROCEED TO CONSIDER THE PAPER WITHOUT FURTHER NOTICE OR HEARING, AND MAY GRANT THE RELIEF REQUESTED.

TAYLOR BEAN & WHITAKER PLAN TRUST (the “**Plan Trust**”) hereby files this Motion to Approve Compromise Between Taylor, Bean & Whitaker Mortgage Corp., Taylor, Bean & Whitaker Plan Trust, Larry Hess, and ICE Legal, P.A. (the “**Motion**”). In support of this Motion, the Plan Trust states the following:

Jurisdiction And Venue

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. The statutory predicate for the relief sought herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Background

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

3. On July 21, 2011, the Court entered its Order Confirming Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the “**Confirmation Order**”), pursuant to which it confirmed the Debtor’s plan of liquidation (the “**Plan**”).

4. Pursuant to the Plan and the Confirmation Order, most of the assets of the Debtor and the claims against the Debtor were channeled to the Plan Trust. The effective date of the Plan was August 10, 2011.

5. Prior to the Petition Date, the Debtor was in the business of originating and servicing consumer mortgage loans. As of January 1, 2007, the Debtor was the servicer (but not the owner) of a mortgage loan (the “**Loan**”) on which Larry Hess (“**Hess**”) was the obligor.

6. On April 28, 2008, following an uncured default by Hess, a foreclosure action was instituted, styled *Taylor, Bean and Whitaker Mortgage Corp. v. Larry Hess, et al.*, in the 15th Judicial Circuit Court (the “**State Court**”), being case number 2008-CA-121620 (the “**Action**”). The Debtor was incorrectly alleged to be the owner of the Loan in the Action, and Ice Legal, P.A. (“**Ice Legal**”) served as counsel for defendant Hess in the Action.

7. On October 30, 2009, the Debtor transferred servicing of the Loan to American Home Mortgage (“**AHM**”). From October, 2009, until very recently, the Debtor had no further involvement in or with respect to the Loan, Hess, or the Action.

8. AHM, as the servicer of the Loan, hired as substitute counsel the firm of Robertson, Anschutz & Schneid, P.L. (“**RAS**”), who appeared in the Action and purported to act on behalf of the Debtor. The Debtor was not consulted in connection with such substitution of counsel and was not consulted in connection with any matter in the Action after, at the latest, October, 2009.

9. It is the Plan Trust’s understanding that U.S. Bank, National Association in its capacity as Indenture Trustee of the TBW Mortgage-Backed Trust, Mortgage Pass-Through Certificates Series 2006-6 (“**U.S. Bank**”), is the owner and/or holder of the Loan. Attempts were made to substitute U.S. Bank as the plaintiff in the Action in lieu of the Debtor; however, such relief was never granted by the State Court.

10. On December 2, 2011, RAS dismissed the Action. The Debtor was not consulted in connection with the dismissal.

11. On December 7, 2011, Hess, through his counsel, Ice Legal, filed a Motion for Fees and Costs (the “**Fee Motion**”).

12. On or about February 13, 2013, AHM transferred servicing of the Loan to Ocwen Loan Servicing, LLC.

13. On May 18, 2015, the State Court granted the Fee Motion and entered an Amended Judgment Awarding Attorney's Fees and Costs to Hess in the amount of \$195,755.20 against the Debtor (the "**Fee Judgment**").

14. The Debtor was not advised of the pendency of the Fee Motion or consulted at any time in connection therewith until after the State Court ruled on the Fee Motion and entered the Fee Judgment.

15. The Debtor never retained or otherwise authorized RAS to represent it in the Action, nor did the Debtor ever pay (and was never obligated to pay) RAS for legal services in connection with the Action.

16. The Debtor did not learn of the Fee Judgment until after it was entered.

17. On June 24, 2015, the Debtor filed its Amended Motion to Reconsider and Vacate Amended Judgment Awarding Attorney's Fees and Costs to Defendant, which, without limitation, implicated the automatic stay of § 362 of the Bankruptcy Code.

18. In response, on July 21, 2015, Hess and Ice Legal filed their Motion for Relief from Stay (Doc. No. 8267) (the "**Lift Stay Motion**") and on September 16, 2015, the Debtor filed its response in opposition to the Lift Stay Motion (Doc. No. 8287).

19. In order to resolve this dispute, the parties have reached the terms of the Agreement on Ice Legal's Motion for Relief from Stay (the "**Agreement**"), a true and correct copy of which is attached hereto as **Exhibit A**.

Summary of Agreement¹

20. Pursuant to the proposed compromise, the parties to the Agreement stipulate to the entry of a proposed order (the “**Order**”) granting the Lift Stay Motion and finding that the automatic stay does not apply to the state court litigation. The Order submitted to the Bankruptcy Court is to contain the following language:

The Bankruptcy Court is only called upon here to determine if the automatic stay applies to the Fee Judgment held by Ice Legal, and finds that it does not. For clarity, however, any liability for the Fee Judgment on the part of any parties other than the Debtor, the Plan Trust and their respective affiliates, directors, members, shareholders, agents, employees, officers and attorneys is not addressed here, and it is this Court’s understanding and expectation that they be addressed in the state court forum.

21. In addition, pursuant to the Agreement, the parties have agreed to release each other, as further set forth in paragraph three of the Agreement, for any liability related to the Fee Judgment or the Action. Any claims that Ice Legal or Hess may have against third parties (other than the Debtor, the Plan Trust, and affiliates, etc.) are carved out of the release. By the same token, any claims the Debtor may have against third parties related to the Fee Judgment are not subject to the release in the Agreement. Finally, the Debtor agrees to reasonably cooperate (without expense, and only through 2016) with reasonable requests for testimony or other documents in any further state court litigation against third parties regarding the Fee Judgment.

Standards for Court Approval

22. 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, C.J.). Some courts have held that a proposed settlement should be approved unless it yields less than the lowest

¹ This is only intended as a summary of the Agreement. The terms of the Agreement control in the event of any inconsistency between the terms of this Agreement and the summary.

amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). In *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, (1990), the court enunciated certain factors which must be considered in determining whether to approve a compromise. These factors include the following:

- 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.

Id.

23. The Plan Trust asserts that the terms of the proposed compromise satisfy the test set forth in the *Justice Oaks* case.

24. Indeed, although the Plan Trust feels confident in its chances of success in avoiding liability for the Fee Judgment, the outcome is not guaranteed. The Agreement will ensure that neither the Plan Trust nor the Debtor is liable for the Fee Judgment.

25. The terms of the Agreement will allow the dispute between the parties to be resolved expeditiously, and, given the costs of continuing litigation, the compromise is in the best interest of all creditors.

26. The Debtor and the Plan Trust reserve all rights and causes of action against any third parties relating to the entry of the Fee Judgment.

WHEREFORE, the Plan Trust respectfully requests that the Court enter an order granting the Motion; approving the terms of the compromise as set forth in the Agreement; authorizing the

parties to take all steps necessary to effectuate the terms of the compromise as set forth in the Agreement; and granting such further relief as is just.

Dated: March 10, 2016

/s/ Edward J. Peterson, III _____

Edward J. Peterson, III

Florida Bar No. 0014612

Stichter Riedel Blain & Postler, P.A.

110 East Madison Street, Suite 200

Tampa, Florida 33602

(813) 229-0144 – Phone

(813) 229-1811 – Fax

epeterson@srbp.com

Attorneys for the Plan Trust

EXHIBIT A

AGREEMENT ON ICE LEGAL’S MOTION FOR RELIEF FROM STAY

COME NOW, Larry Hess (“**Hess**”), ICE Legal, P.A. (“**Ice Legal**”), on the one hand, and Taylor, Bean & Whitaker Mortgage Corp. (“**TBW**”) and the Taylor, Bean & Whitaker Plan Trust (“**Plan Trust**”), on the other hand (Hess, together with Ice Legal, TBW and the Plan Trust are collectively, the “**Parties**”), and hereby enter into this agreement (the “**Agreement**”) on Ice Legal’s Motion for Relief from Stay (the “**Motion**”), as follows:

Recitals

WHEREAS, on August 24, 2009 (the “**Petition Date**”), TBW filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “**Bankruptcy Case**”) in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (the “**Bankruptcy Court**”);

WHEREAS, on July 21, 2011, the Court entered its Order Confirming Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the “**Confirmation Order**”), pursuant to which it confirmed TBW’s plan of liquidation (the “**Plan**”);

WHEREAS, pursuant to the Plan and the Confirmation Order, substantially all of the assets of TBW and the claims against TBW were channeled to the Taylor, Bean & Whitaker Plan Trust (the “**Plan Trust**”). The effective date of the Plan was August 10, 2011;

WHEREAS, prior to the commencement of the Bankruptcy Case in 2009, TBW was in the business of originating and servicing consumer mortgage loans. As of January 1, 2007, TBW was the servicer (but not the owner) of a mortgage loan (the “**Loan**”) on which Hess was the obligor;

WHEREAS, on April 28, 2008, following an uncured default by Hess, a foreclosure action was instituted, styled *Taylor, Bean and Whitaker Mortgage Corp. v. Larry Hess, Mortgage Electronic Registration Systems, Incorporation, as a Nominee for Taylor, Bean and Whitaker Mortgage Corp.; Sandpiper Cove at Botanica Condominium Association, Inc.; Unknown Spouse of Larry Hess; John Doe; Jane Doe as Unknown Tenant(s) in Possession of the Subject Property*, in the 15th Judicial Circuit Court (the “**State Court**”), being case number 2008-CA-121620 (the “**Action**”);

WHEREAS, TBW was mistakenly alleged to be the owner of the Loan in the Action, and Ice Legal served as counsel for defendant Hess in the Action;

WHEREAS, on October 30, 2009 (after the Petition Date), TBW transferred servicing of the Loan to American Home Mortgage (“**AHM**”). From October, 2009, until very recently, TBW had no further involvement in or with respect to the Loan, Hess, or the Action;

WHEREAS, AHM, as the servicer of the Loan, hired as substitute counsel the firm of Robertson, Anschutz & Schneid, P.L. (“**RAS**”) who appeared in the Action and purported to act on behalf of TBW. TBW was not consulted in connection with such substitution of counsel and was not consulted in connection with any matter in the Action after, at the latest, October, 2009;

WHEREAS, on December 2, 2011, RAS dismissed the Action. TBW was not consulted in connection with the dismissal.

WHEREAS, on December 7, 2011, Hess, through his counsel, Ice Legal, filed a Motion for Fees and Costs (the “**Fee Motion**”);

WHEREAS, on or about February 13, 2013, AHM transferred servicing of the Loan to Ocwen Loan Servicing, LLC;

WHEREAS, on May 18, 2015, the State Court granted the Fee Motion and entered an Amended Judgment Awarding Attorney’s Fees and Costs to Hess in the amount of \$195,755.20 against TBW (the “**Fee Judgment**”);

WHEREAS, TBW was not advised of the pendency of the Fee Motion or consulted at any time in connection therewith until after the State Court ruled on the Fee Motion and entered a fee award against TBW as set forth below;

WHEREAS, it is TBW’s understanding that U.S. Bank, National Association in its capacity as Indenture Trustee of the TBW Mortgage-Backed Trust, Mortgage Pass-Through Certificates Series 2006-6 is the owner and/or holder of the Loan;

WHEREAS, TBW never retained or otherwise authorized RAS to represent it in the Action;

WHEREAS, TBW never paid (and was never obligated to pay) RAS for legal services in connection with the Action;

WHEREAS, TBW did not learn of the Fee Judgment until after it was entered;

WHEREAS, on July 21, 2015, Hess and Ice Legal filed the Motion;

WHEREAS, on September 16, 2015, TBW filed its response in opposition to the Motion.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, it is hereby agreed as follows:

1. The Parties stipulate that the above recitals are true and correct to the best of their knowledge, information and belief. If any recited dates or factual allegations are incorrect, it shall not affect the validity of this Agreement.

2. The Parties shall stipulate to the entry of a proposed order (the “**Order**”) granting the Motion and finding that the automatic stay does not apply to the state court litigation. The Order submitted to the Bankruptcy Court shall contain the following language: “The Bankruptcy Court is only called upon here to determine if the automatic stay applies to the Fee Judgment held by Ice, and finds that it does not. For clarity, however, any liability for the Fee Judgment on the part of any parties other than TBW, the TBW Plan Trust and their respective affiliates, directors, members, shareholders, agents, employees, officers and attorneys is not addressed here, and it is this Court’s understanding and expectation that they be addressed in the state court forum.” However, in the event the Bankruptcy Court modifies the language, such change shall not affect the validity of this Agreement.

3. **Mutual Release.** The Parties hereby release and forever discharge each other, their respective officers, directors, shareholders, members, agents, employees, attorneys, and related companies from any and all claims, demands, causes of action, obligations, damages and liabilities of any nature whatsoever, existing as of the date of this Agreement, whether or not presently known, suspected or claimed, which each party individually or collectively had, now has, claims to have, or may in the future have against each other which relate directly or indirectly to or arise from, or are based in whole or in part upon the Fee Judgment and the matters alleged in the Action. The Parties agree not to bring, commence, institute, maintain, prosecute or aide by action at law or proceedings in equity against each other any claim for damages or relief whatsoever, which relate directly or indirectly to, arise from, or are based in whole or in part upon or related to the Fee Judgment and matters alleged in the Action.

4. Hess and Ice Legal covenant and agree not to take any action to enforce or otherwise collect on the Fee Judgment against TBW or the Plan Trust, including their affiliates, directors, shareholders, agents, employees, officers, attorneys, members, and related companies.

5. On or before the date that is ten days after the entry of the Order, TBW shall stipulate to an agreed order denying with prejudice any of its pending motions in the Action. In addition, on or before the date that is ten days after the entry of the Order, Ice Legal and Hess will stipulate to an agreed order denying with prejudice any pending motions against TBW in the Action and shall withdraw all discovery requests served upon TBW.

6. Nothing in this Agreement shall be interpreted as releasing any claims of Ice Legal or Hess against RAS, U.S. Bank, National Association, or any third party not expressly released herein for liability on the Fee Judgment and related costs and fees of collection.

7. **Authority of the Parties.**

a. Each of the Parties hereby warrants and represents that: (i) subject to any necessary approval by the Bankruptcy Court, it has full requisite power

and authority to execute, deliver and fully perform this Agreement; (ii) the instruments and documents required to be executed by it in connection with this Agreement have been duly and validly authorized by it, and are not in contravention of its organizational documents or any agreement specifically applicable to it or to which it is a party; (iii) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it that would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder; and (iv) subject to any necessary approval by the Bankruptcy Court, it has the power and authority to bind itself to the terms of this Agreement.

- b. Each person who signs this Agreement on behalf of an entity including, but not limited to, a limited liability company or trust, represents that he or she (i) is fully authorized to sign this Agreement by the entity for which he or she is signing this Agreement, (ii) is fully competent to execute the Agreement, (iii) is over eighteen (18) years of age, (iv) is not a person for whom a guardian has been appointed with authority to conduct property and business transactions, including this Agreement and (v) can read and understand English.

8. **Voluntary and Knowing Agreement.** Each Party warrants, represents and acknowledges that in executing this Agreement it: (a) 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 may be stated specifically in this Agreement; (b) is represented by experienced counsel; (c) has carefully read, reviewed and considered the terms of this Agreement; (d) has had an opportunity to discuss the terms of this Agreement with attorneys or advisors of his or her own choosing; (e) 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; (f) fully understands, voluntarily accepts and agrees to all of the provisions contained in this Agreement; (g) intends to be bound by this Agreement and to fulfill such Party's promises set forth herein; (h) voluntarily and knowingly enters into this Agreement, without duress, with full understanding of its binding legal consequences; and (i) shall not later seek to overturn or invalidate any aspect of this Agreement on grounds of unconscionability, oppression or any reason.

9. **No Admissions/Inadmissibility.** Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement is, or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of any Party in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal or an admission about the merits or lack thereof of any claims or defenses by any Party. Neither this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible against any Party in any proceeding for any purpose, except a proceeding to seek approval of or to enforce the terms of the Agreement.

Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement is, or may be deemed to be, an admission by Hess or Ice Legal regarding the applicability of the bankruptcy stay to the Action or the validity or invalidity of the Fee Judgment under bankruptcy laws. The Parties agree that the Agreement is admissible for any purpose that serves Hess or Ice Legal in litigation against third parties. Moreover, TBW agrees that it will cooperate with any reasonable requests made of Hess and/or Ice Legal for a period of twelve (12) months from the execution of this Agreement in any further state court litigation, including – without limitation - providing documents and testimony without necessity of subpoena or Court Orders of compulsion (unless otherwise required by law); provided, however, TBW and the Plan Trust shall not be required to incur any costs and expenses in connection with same and provision for payment of any such costs and expenses shall be made in advance by Hess and/or Ice Legal.

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

11. **Waiver, Amendments.** No waiver, amendment, alteration, modification or termination of any provision of this Agreement shall be binding unless made in writing and signed by the Parties and approved by the Bankruptcy Court. No Party may construe another Party's conduct, or a course of conduct, inaction or failure to press that Party's rights under this Agreement as a waiver of any of the rights or obligations under this Agreement.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, by facsimile, electronic mail or other means acceptable to the Parties, with each counterpart to be considered an original portion of this Agreement, all of which taken together shall constitute one and the same instrument.

13. **Entire Agreement.** This Agreement integrates the whole of all agreements and understandings of any sort or character between the Parties concerning the subject matter of the Agreement and supersedes all prior negotiations, discussions, or agreements of any sort whatsoever, whether oral or written, concerning the subject matter of the Agreement. There are no representations, agreements or inducements relating to the subject matter hereof, except as set forth expressly and specifically in this Agreement. There are no unwritten, oral or verbal understandings, agreements or representations of any sort whatsoever between the Parties with respect to the subject matter covered by this Agreement, it being understood that the rights of the Parties with respect to the subject matter of this Agreement against one another shall be governed exclusively by this Agreement.

14. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the successors of each of the Parties hereto, including any corporation or other entity into or with which any party merges, consolidates or reorganizes. This Agreement shall not be assignable by anyone without the express written consent of all of the Parties.

15. **Costs.** Each Party shall bear its own costs and attorneys' fees in connection with the preparation, negotiation, review, and documentation of this Agreement and with respect to all matters subject to this Agreement.

16. **Jurisdiction.** The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction to the fullest extent possible over the interpretation and enforcement of this Agreement and over any dispute between them in any way related to this Agreement.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with laws of the state of Florida, without regard to any conflict or choice of law provisions.

18. **Binding Effect.** This Agreement shall be binding upon each of the Parties and shall inure to the benefit of the Parties.

19. **Headings.** Headings used herein are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting, this Agreement.

20. **Rules of Interpretation.** The Parties acknowledge and agree that each has been given the opportunity to review this Agreement with their respective legal counsel and agree to the particular language in each provision herein. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, the interpretation of this Agreement shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty or against the drafter. The Parties expressly agree that in the event of an ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each party participated in the drafting hereof.

21. **Survival of Representations and Warranties.** All representations and warranties made in this Agreement shall survive the completion of the transactions contemplated by this Agreement.

22. **No Third Party Rights Created.** The Parties specifically disavow any intention to create rights in third parties under or in relation to this Agreement, except as otherwise expressly provided herein. Nothing herein shall impair or prejudice the ability of Hess and Ice Legal to pursue third parties other than TBW, the Plan Trust, and their affiliates, directors, shareholders, agents, employees, officers, attorneys, members, and related companies.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above-written, to be effective as of that date.

[Signature]
Larry Hess
Dated: 01/27/16

COUNTY OF Livingston
STATE OF ~~FLORIDA~~ Michigan

The foregoing instrument was acknowledged before me on this 27 day of January, 2016, by LARRY HESS, who is known to me or produced Drivers License as identification.

[Signature]
Notary Public
Kevin White
Printed Name

KEVIN WHITE
Notary Public, State of Michigan
County of Livingston
My Commission Expires Jul. 10, 2020
Acting in the County of LIVINGSTON

ICE Legal, P.A.

By: A.L. Lundergan
Printed Name: Amanda L. Lundergan
Its: Managing Attorney
Dated: 1/7/16

COUNTY OF Palm Beach
STATE OF FLORIDA

The foregoing instrument was acknowledged before me on this 7 day of 2016, 2015, by Amanda Lundergan on behalf of ICE LEGAL, P.A., who is known to me or produced _____ as identification.

Jennifer Euart
Notary Public

Jennifer Euart
Printed Name



TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.

By: [Signature]
Printed Name Neil Luria
Its: Chief Executive Officer
Dated: 2/9/2016

COUNTY OF Orange
STATE OF FLORIDA

The foregoing instrument was acknowledged before me on this 9th day of January, 2016, by Neil F. Luria on behalf of TAYLOR, BEAN & WHITAKER MORTGAGE CORP., who is known to me or produced _____ as identification.



Kira Abramovs
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF232267
Expires 5/25/2019

[Signature]
Notary Public
Kira Abramovs
Printed Name

TAYLOR, BEAN & WHITAKER PLAN TRUST

By: [Signature]
Printed Name: Neil F. Wrig
Its: PL Trust
Dated: 2/8/2016

COUNTY OF Orange
STATE OF Florida

The foregoing instrument was acknowledged before me on this 9th day of January 2016, by Neil F. Wrig on behalf of TAYLOR, BEAN & WHITAKER PLAN TRUST, who is known to me or produced _____ as identification.

[Signature]
Notary Public

Kira Abramovs
Printed Name



Kira Abramovs
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF232267
Expires 5/25/2019