

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiffs Federal Deposit Insurance Corporation as Receiver for Colonial Bank (“FDIC-R”) and Neil F. Luria, Plan Trustee of the Taylor, Bean & Whitaker Plan Trust (“TBW Trustee”) on the one hand (collectively “Plaintiffs”), and Lennar Corporation (“Lennar”), U.S. Home Corporation (“U.S. Home”), North American Title Company (“North American”), Andrew Sorenson, and Matthew Devereaux (collectively the “Settling Defendants”) on the other hand. Individually, the FDIC-R, TBW Trustee, and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”).

(b)(6)

RECITALS

WHEREAS:

Prior to August 14, 2009, Colonial Bank (“Bank”) was a depository institution organized and existing under the laws of Alabama.

On August 14, 2009, the Alabama State Banking Department closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were the Bank’s claims, demands, and causes of action that are the subject of this Agreement.

On August 15, 2008, Taylor, Bean & Whitaker Mortgage Corp. (“TBW”) filed a Complaint in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, for money damages against the Settling Defendants, among others, styled *Taylor Bean & Whitaker Mortgage Corp. v. Lennar Corp., et al.*, Case No. 08 CA 021081 (“State Court Action”).

On October 10, 2012, Hon. Judge Sherra Winesett entered an order in the State Court Action allowing TBW’s Complaint to be amended in order to join the FDIC-R as a

plaintiff in the State Court Action.

On October 30, 2012, TBW and FDIC-R filed a First Amended Complaint for money damages against the Settling Defendants, among others.

On October 31, 2012, the FDIC-R removed the State Court Action to the U. S. District Court for the Middle District of Florida (Fort Myers Division) in an action styled *Taylor Bean & Whitaker Mortgage Corp. and Federal Deposit Insurance Corporation as Receiver for Colonial Bank v. Lennar Corp., et al.*, Case No. 2:12-cv-595-FtM-38UAM (the "Action").

On August 14, 2013, Hon. Magistrate Judge Douglas N. Frazier granted an order allowing the TBW Trustee to substitute into the Action in place of TBW.

The Settling Defendants have denied liability in the Action.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to Plaintiffs

A. As an essential covenant and condition to this Agreement, on or before forty five (45) calendar days following the date all Parties execute this Agreement and Settling Defendants receive a fully-executed copy of the Agreement, Settling Defendants agree to pay the Plaintiffs the sum of four million dollars (\$4,000,000.00) ("the Settlement Payment").

B. Settling Defendants shall deliver the Settlement Payment to the Plaintiffs by direct wire transfer into the Mortgage Recovery Law Group's Trust Account. The wire instructions for the Mortgage Recovery Law Group's Trust Account are:

(b)(4) _____ Account Number:

(b)(4) _____ Routing Number:

(b)(4) Account Name:

(b)(4) Bank Info:

Mortgage Recovery Law Group shall hold in escrow, and not disburse any portion of, the Settlement Payment until Plaintiffs file a stipulation of dismissal with prejudice as to the Settling Defendants.

In the event that the Settlement Payment is not delivered to the FDIC-R (or their counsel) within forty-five (45) calendar days following the date all Parties have executed this Agreement and Settling Defendants receive a fully-executed copy of the Agreement, interest shall accrue on all unpaid amounts at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2) from forty-five (45) calendar days following the date all Parties execute this Agreement and Settling Defendants receive a fully-executed copy of the Agreement, until the date of payment.

C. If Plaintiffs do not receive the Settlement Payment in full on or before the date determined by subsection A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(a)(2); or
2. Enforce this Agreement, in which event the Settling Defendants agree to jurisdiction in United States District Court for the Middle District of Florida and to pay all of the Plaintiffs' reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or
3. Terminate the Agreement, move to vacate any dismissal order, to which the Settling Defendants agree to consent and re-institute an action on the Plaintiffs' claims. The Settling Defendants further agree to waive any defense based on any statute of limitations that would bar any of the Plaintiffs' claims and waive and covenant and agree

not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the Plaintiff's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by all of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the Plaintiff's shall file a stipulation of dismissal with prejudice as to the Settling Defendants.

SECTION III: Releases

A. The FDIC-R's Releases.

Upon receipt of the Settlement Payment in full and except as provided in Section III.E., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants, and their respective employees, officers, directors, affiliates, subsidiaries, heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to the causes of action alleged in the Action.

B. The TBW Trustee's Releases.

Upon receipt of the Settlement Payment in full, the TBW Trustee, for itself and its successors and assigns, hereby releases and discharges the Settling Defendants, and their respective employees, officers, directors, affiliates, subsidiaries, heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the TBW Trustee, that arise from or relate to the causes of action alleged in

the Action.

C. The TBW Releases.

Upon receipt of the Settlement Payment in full, the TBW Trustee, on behalf of TBW and its current and former officers, directors, affiliates, subsidiaries, successors, and assigns, hereby releases and discharges the Settling Defendants, and their respective employees, officers, directors, affiliates, subsidiaries, heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to TBW, if any, that arise from or relate to the causes of action alleged in the Action.

D. The Settling Defendants' Releases of Plaintiffs.

Effective simultaneously with the release granted in Sections III.A., III.B., and III.C. above, the Settling Defendants, on behalf of themselves and their respective successors, and assigns, hereby release and discharge: a) the FDIC-R and the TBW Plan Trust, and their employees, officers, directors, representatives, successors and assigns; b) the TBW Plan Trustee and TBW Plan Trust Advisory Committee members; and c) TBW and its current and former officers, directors, affiliates, and subsidiaries, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the causes of action alleged in the Action.

E. Exceptions from Releases by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. Against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by

FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 et. seq., if appropriate.

F. The Settling Defendants' Releases of the Appraiser Parties.

Effective simultaneously with a mutual release granted by Anthony Gizzi Real Estate Appraisal, Inc. and David Sawyer (the "Appraiser Parties") to the Settling Defendants and their respective employees, officers, directors, affiliates, subsidiaries, heirs, executors, trustees, administrators, representatives, successors, and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the Appraiser Parties, if any, that arise from or relate to the causes of action alleged in the Action, the Settling Defendants hereby release the Appraiser Parties and their respective employees, officers, directors, affiliates, subsidiaries, heirs, executors, trustees, administrators, representatives, successors, and

assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the Settling Defendants, if any, that arise from or relate to the causes of action alleged in the Action.

SECTION IV: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

C. Ownership of Claims. Other than any assignment of claims as between and among TBW, Bank, TBW Trustee, and the FDIC-R, the Parties warrant and represent that they have not assigned, pledged, or otherwise transferred any rights, claims or causes of action that are being released, or that the Parties are purporting to release, pursuant to this Agreement.

SECTION V: Reasonable Cooperation

The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

SECTION VI: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise

of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Florida.

D. Pre-Suit Mediation. Disputes arising under this Agreement must first be mediated by Bruce Greer, 5900 SW 97th Street, Suite 1000, Miami, FL 33156-2062, or another mediator mutually agreed-to by the Parties (the "Mediator"), who will encourage and attempt to facilitate a resolution of any such dispute. The Parties agree that the mediation shall occur within thirty (30) days of the date mediation is requested by one or both of the Parties. If the Parties are unwilling or unable to agree on the selection of a Mediator, the Parties agree that the American Arbitration Association shall appoint a Mediator, which appointment shall be binding on the Parties. The Parties agree to abide by the Mediator's Agreement, pay the Mediator's fees promptly, and share them on an equal basis. Litigation may not be commenced until after mediation has been (i) declared an impasse by the Mediator or (ii) terminated in writing by one or both of the Parties.

E. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R: Michael Delbick; Mortgage Recovery Law Group, LLP; 700

North Brand Boulevard, Suite 830, Glendale, CA 91203; (818) 630-7900; Email:

(b)(6) [Redacted]

If to the TBW Trustee: James Gassenheimer; Berger Singerman, P.A.; 1450

Brickell Ave., Suite 1900, Miami, FL 33131; (305) 714-4383; Email:

(b)(6) [Redacted]

If to Lennar, U.S. Home, and/or North American: Hilarie Bass; Greenberg Traurig,

P.A.; 333 Avenue of the Americas, Miami, Florida 33131; (305) 579-0500; Email:

(b)(6) [Redacted] [Redacted]

If to Andrew Sorenson; David Wallace; Williams Parker Harrison Dietz & Getzen;

200 S. Orange Ave., Sarasota, FL 34230; (941) 329-6618; Email:

(b)(6) [Redacted]

If to Matthew Devcreaux: Theodore L. Tripp, Jr.; Han Loeser & Parks, LLP; 2400

First Street, Suite 300, Fort Myers, Florida 33901; (239) 337-6705; Email:

(b)(6) [Redacted]

F. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

G. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

H. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

I. Bankruptcy Court Approval. This Agreement shall be subject to court

approval in the matter of *In re Taylor, Bean & Whitaker Mortgage Corp.*, United States Bankruptcy Court, Middle District of Florida, Case No.: 3:09-bk-07047-JAF.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

Federal Deposit Insurance Corporation as Receiver of Colonial Bank

By: _____
Its: _____

Neil F. Luria, Plan Trustee of the Taylor, Bean & Whitaker Plan Trust

By: _____
Its: _____

Lennar Corporation

By: [Redacted] (b)(6)
Its: General Counsel and Secretary

U.S. Home Corporation

By: [Redacted] (b)(6)
Its: Vice President

North American Title Company

By: [Redacted] (b)(6)
Its: Vice President

Matthew Devereaux

By: _____

Andrew Sorenson

By: _____

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Andrew Sorenson

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Matthew Devercaux

By: _____

Andrew Sorenson (b)(6)

By: (b)(6)



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