McGRANE LLP

Attorneys at Law

Please reply to:
William McGrane

Direct E-mail:
William.McGrane@mcgranellp.com

Four Embarcadero Center
Suite 1400
San Francisco, CA 94111
Phone: (415) 766-3590

December 1, 2011

VIA FEDERAL EXPRESS
William T. Neary
United States Department of Justice
United States Trustee, Region 6
1100 Commerce Street, Room 976
Dallas, TX 75242

Re: *In re R.E. Loans, LLC et al.*, United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 11-35865-BJH (the R.E. Loans Bankruptcy Case)

Dear Mr. Neary:

I am counsel to Development Specialists, Inc., the former Collateral Agent for R.E. Loans, LLC (Debtor) and a present administrative creditor in the RE Loans Bankruptcy Case.

DSI only first became an administrative creditor in the RE Loans Bankruptcy Case as of last October, 2011, when it was forced to hire my office in order to defend several civil lawsuits that had earlier been filed against it by other of Debtor's creditors, which lawsuits alleged that DSI was somehow responsible to them for the loss of their investments in Debtor. DSI has now tendered the defense of these actions to Debtor only

to be lately informed by Debtor that Debtor would not honor DSI's demand for indemnity.[1]

On June 6, 2011, DSI was served with yet another subpoena, this time one coming from the office of Melinda Haag, the United States Attorney for the Northern District of California (the Second SDT). This Second SDT came as part of what was explicitly described by Ms. Haag's office as "a federal criminal investigation" respecting all of the principals of Debtor. (See Exhibit 1.) Up to now—and after fully complying with the Second SDT at no cost or expense to Debtor—DSI has honored Ms. Haag's office's informal request that DSI voluntarily remain silent about the fact certain principals of Debtor have been made the subject of "a federal criminal investigation" which Ms. Haag's office itself characterizes as "an important investigation."

However, and given recent developments in the RE Loans Bankruptcy Case, DSI has determined that the time for silence is now clearly at an end. Thus, 11 United States Code section §1104(e) mandates that your office move for a Chapter 11 trustee when there are "reasonable grounds to suspect that ... members of the governing body who selected the debtor's chief executive or chief financial officer, participated in actual fraud,

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[1] Following DSI's January 15, 2009, service of a Notice of Default on Debtor in DSI's capacity as Collateral Agent—and only after DSI was subsequently forced to sue Debtor on February 12, 2010, for certain legal fees DSI incurred responding to a Securities & Exchange Commission subpoena related to Debtor's business operations (the First SDT)—DSI accepted a partial payment of its previously incurred attorney's fees from Debtor and simultaneously resigned as Debtor's creditors' Collateral Agent on November 23, 2010. The 2010 settlement with Debtor expressly reserved all of DSI's future indemnity rights from Debtor.

dishonesty or criminal conduct in the management of the debtor or the debtor's public financial reporting."

As is noted in that certain "Application etc." (see Exhibit 2), Debtor is a California limited liability company which, at the time it filed for bankruptcy, had only one member, to wit, another California limited liability company, this one named B-4 Partners, LLC (B-4). B-4, in turn, is both owned and managed by Walter Ng and his two sons Kelly and Barney Ng (the Ngs). *Id.*

All of the Ngs are the subject of the Second SDT, as is B-4 itself. Under applicable nonbankruptcy law governing California limited liability companies, it is axiomatic that, when B-4 (the sole owner of Debtor) resigned post-petition as manager of Debtor in favor of Debtor's new manager, Mackinac Partners, B-4 (and through B-4, the Ngs themselves) were necessarily the ***sole*** persons who could ever even possibly be said to have "selected" Mr. James Weissenborn, who is the present chief executive of Debtor, bearing the formal title of Debtor's Chief Restructuring Officer (CRO).

Not only are the Ngs and B-4 all currently being investigated by Ms. Haag's office for their numerous financial crimes related to the loss of approximately $750,000,000 by what are mainly San Francisco Bay Area investors, Wells Fargo Capital Finance, LLC (Wells)—the very institution which either wittingly or unwittingly facilitated the Ngs' subsequent conversion of millions of dollars that it (Wells) had earlier loaned Debtor—has now brought an adversary proceeding in the RE Loans Bankruptcy Case entitled *Wells Fargo etc. v. Noble et. al.*, Adversary Proceeding No. 11-03618-BJH (the Wells AP

[Exhibit 3]). See also *Greenberg Traurig et al. v. Collins et al.*, Adversary Proceeding No. 11-03620-BJH (the Greenberg AP [Exhibit 4]).

Both the Wells AP and the Greenberg AP recite some of the many ways in which the Ngs criminally harmed Debtor's creditors and then asserts that some or all of the claims for relief which arise from the Ngs' bad acts likely belong exclusively to the Debtor and thus must be prosecuted only by the Debtor, through Debtor's CRO.

As previously noted, however, the CRO for Debtor in this case is Mr. Weissenborn, the very same individual who was admittedly selected ***solely*** by the currently-under-criminal-investigation-principals-of-Debtor. That same gentleman, Mr. Weissenborn, is also now ***solely*** dependent on Wells for payment of his and his own legal counsel's professional fees by way of various carve-outs from Wells' as-yet-unchallenged-by-anyone lien priority in the RE Loans Bankruptcy Case.

This latter fact makes allowing Mr. Weissenborn to continue in his role as CRO doubly concerning to DSI. This is because: (i) Mr. Weissenborn is necessarily a creature of the same principals of Debtor who should obviously go to jail for what they did in depriving Debtor's creditors of approximately $750,000,000 and (ii) Mr. Weissenborn is also necessarily a creature of Wells, an entity whose own claim against Debtor should obviously be made subject to equitable subordination given the unusual nature of the loan Wells made to Debtor in this case.

Please let me know if either I or my client DSI can be of any further assistance to you in having a Chapter 11 trustee appointed in this case.

Very truly yours,

McGRANE LLP

William McGrane

Enclosure

cc: Allan Cone (via e-mail w/ encl.)
Andrew S. Friedman (via e-mail w/ encl.)
Barbara Hamrick (via e-mail w/ encl.)
Barbara Suzanne Farley (via e-mail w/ encl.)
Charles R. Gibbs (via e-mail w/ encl.)
Dixon Collins (via e-mail w/ encl.)
Edwin Blue (via e-mail w/ encl.)
Elliott Abrams (via e-mail w/ encl.)
Gene Rapp (via e-mail w/ encl.)
Geoffrey Berman (via e-mail w/ encl.)
George F. McElreath (via e-mail w/ encl.)
Jeffrey C. Krause (via e-mail w/ encl.)
Kathryn A. Honecker (via e-mail w/ encl.)
Kyle Everett (via e-mail w/ encl.)
Linda Reilly (via e-mail w/ encl.)
Lisa Kran (via e-mail w/ encl.)
Mark A. Chavez (via e-mail w/ encl.)
Michael P. Cooley (via e-mail w/ encl.)
Nance F. Becker (via e-mail w/ encl.)
Pearl L. Tom (via e-mail w/ encl.)
Randall B. Aiman-Smith (via e-mail w/ encl.)
Reed W. L. Marcy (via e-mail w/ encl.)
Richard E. Brown (via e-mail w/ encl.)
Robert W. Brower (via e-mail w/ encl.)
Ron Nahas (via e-mail w/ encl.)
Sherratt Reicher (via e-mail w/ encl.)
Steve Fong (via e-mail w/ encl.)
William Brandt (via e-mail w/ encl.)
William F. King (via e-mail w/ encl.)
William G. Fairbourn (via e-mail w/ encl.)

EXHIBIT 1

U.S. Department of Justice

United States Attorney
Northern District of California

Ronald V. Dellums Federal Building
1301 Clay Street, Suite 340S
Oakland, California 94612-5217

(510) 637-3680
FAX:(510) 637-3724

June 6, 2011

Development Specialists, Inc.
345 California Street, Suite 1150
San Francisco, CA 94104
Attention: Kyle Everett
415-981-2717

Re: Federal Grand Jury Subpoena

Dear Mr. Everett:

The attached Federal Grand Jury subpoena is issued in furtherance of a federal criminal investigation being conducted under the supervision of this Office. This is to certify that there is sufficient reason to believe that notification of this subpoena and your compliance therewith, or disclosure of the information provided thereunder, could seriously impede and thwart this important investigation.

Therefore, you are requested to withhold disclosure and notification for an indefinite period of time.

Thank you for your cooperation in this matter. If you have any questions regarding this Grand Jury subpoena, please contact FBI Special Agent Christine A. Hemje at (925) 363-2028.

Sincerely,

MELINDA HAAG
United States Attorney

STEPHEN G. CORRIGAN
Assistant United States Attorney

Encl.

AO110 (Rev. 12/89) Subpoena to Testify Before Grand Jury

GJ 11-1 2011R00248

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

TO:

Development Specialists, Inc.
345 California Street, Suite 1150
San Francisco, CA 94104
Attention: Kyle Everett
415-981-2717

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date and time specified below.

PLACE	COURTROOM
United States District Court 1301 Clay Street, Suite 380 South Oakland, CA 94612	Grand Jury Room 380S, Third Floor
	DATE AND TIME
	June 23, 2011 at 9:00 am

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

SEE ATTACHMENT TO SUBPOENA

IN LIEU OF ATTENDANCE AND APPEARANCE BEFORE THE GRAND JURY, the required information and a copy of this subpoena may be provided directly to: Special Agent Christine A. Hemje, Federal Bureau of Investigation, 1850 Gateway Blvd., Suite 1010, Concord, CA 94520, (925) 363-2028. This Grand Jury Subpoena is issued in furtherance of a federal criminal investigation being conducted under the supervision of this office. This is to clarify that there is sufficient reason to believe that notification of this subpoena and your compliance therewith, or disclosure of the information provided thereunder, could seriously impede and thwart this important investigation. Therefore, you are requested to withhold disclosure/notification for an indefinite period of time.

☐ Please see additional information on reverse.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE JUDGE OR CLERK OF COURT	DATE
RICHARD W. WIEKING	June 6, 2011
(By) Deputy Clerk Richard W. Wieking	

This subpoena is issued on application of the United States of America
MELINDA HAAG
United States Attorney

NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY
STEPHEN G. CORRIGAN, AUSA
U.S. Attorney's Office, 1301 Clay Street, Suite 340S
Oakland, California 94612
S/A Christine A. Hemje, FBI, (925) 363-2028

* If not applicable, enter "none".

Attachment to Grand Jury Subpoena

Development Specialists, Inc.
345 California Street, Suite 1150
San Francisco, CA 94104
Attention: Kyle Everett
415-981-2717

Please provide the following documents, including, but not limited to:

All books, records, audits, financial statements, work papers, correspondence in both paper and electronic format, relating to the following individuals/businesses and any other entity in which the following individuals/entities have a business or financial interest:

Walter Ng
Barney Ng
Kelly Ng
Bruce Horwitz
RE Loans (Mortgage pools for all years)
RE Loans, LLC
Bar-K, Inc.
B-4 Partners
Mortgage Fund '08
The Mortgage Fund
Lend, Inc.

****ALL OF THE ABOVE RECORDS SHOULD BE PROVIDED IN ELECTRONIC FORMAT IF POSSIBLE****

AO110 (Rev. 12/89) Subpoena to Testify Before Grand Jury

RETURN OF SERVICE (1)		
RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		
SERVED BY (PRINT NAME)		TITLE

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER (2)

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct

Executed on _____
DATE

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

ADDITIONAL INFORMATION

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

Hi Mike,

6/9/11

As we spoke this morning, would you please make sure that DSI includes a disk they provided to Robert Brower that they had received from Matt Kelly of RE Loans? This should be a copy of the original disk, and they should preserve, of course, the original. Please let Mr. Everett know that we would like to interview him in the near future if you concur.

Thank you,
Chris Hemje

EXHIBIT 2

Stephen A. McCartin (TX 13374700)
Holland Neff O'Neil (TX 14864700)
Virgil Ochoa (TX 24070358)
GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201-4761
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
smccartin@gardere.com
honeil@gardere.com
vochoa@gardere.com

and

Jeffrey C. Krause (CA 94053)
Gregory K. Jones (CA 181072)
STUTMAN, TREISTER & GLATT PROFESSIONAL CORPORATION
1901 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
Telephone: (310) 228-5600
Facsimile: (310) 228-5788
jkrause@stutman.com
gjones@stutman.com

PROPOSED COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Chapter 11**
	§	
R.E. LOANS, LLC,	§	**Case No. 11-35865-BJH**
R.E. FUTURE, LLC and	§	
CAPITAL SALVAGE, a California	§	**(Joint Administration**
corporation,	§	**Motion Pending)**
	§	
Debtors.	§	

APPLICATION TO AUTHORIZE EMPLOYMENT OF MACKINAC PARTNERS AND JAMES A. WEISSENBORN ON AN INTERIM AND FINAL BASIS FROM THE PETITION DATE, TO PROVIDE INTERIM MANAGEMENT AND MANAGEMENT ASSISTANCE TO THE DEBTORS PURSUANT TO 11 U.S.C. § 363

R.E. Loans, LLC ("**R.E. Loans**"), R.E. Future, LLC ("**R.E. Future**") and Capital Salvage, a California corporation ("**Capital Salvage**"), the debtors and debtors in possession herein (the "**Debtors**"), submit this application (the "**Application**") for authorization (i) to employ Mackinac Partners ("**Mackinac**") from and after the Petition Date to provide interim management to the Debtors as more fully described below and to serve as the sole manager of R.E. Loans and R.E. Future, pursuant to 11 U.S.C. § 363 (11 U.S.C. § 101-1330 shall hereinafter be referred to as the "**Bankruptcy Code**"), and (ii) to employ James A. Weissenborn from and after the Petition Date as (a) the Chief Restructuring Officer of the Debtors (the "**CRO**"), and (b) the sole director and President of Capital Salvage. Although Mackinac is being engaged as management it will continue to bill the Debtors for services rendered on a straight hourly basis and has agreed to submit its compensation to review by parties in interest and this Court, in a similar manner to the compensation of the Debtors' professionals. The proposed employment of Mackinac and Mr. Weissenborn is critical to the Debtors' operations and is in the best interests of creditors and the estates, for the reasons set forth in detail in Sections III and IV, below. Mackinac has served as CRO from April of 2010. Mackinac's employees have been managing the Debtors' day-to-day operations for more than a year. This gives them invaluable background knowledge that is key to the Debtors' ability to proceed promptly with these chapter 11 cases. The Debtors request interim approval of the relief requested in this Application, pending a hearing on notice to creditors, because such relief is a condition precedent to the funding of the debtor in possession credit facility (the "**DIP Loan**") from Wells Fargo Capital Finance, LLC ("**WFCF**") described below, which is needed to maintain the Debtors' operations. The Debtors will request final approval of the employment at the final hearing on the Application.

I.
PETITION DATE AND JURISDICTION

1. On September 12, 2011 (the "**Petition Date**"), the Debtors filed with this Court their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

II.
JURISDICTION AND VENUE

2. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), and 327 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their business and manage their properties and assets as debtors in possession. Joint administration of these cases has been requested.

III.
RELIEF REQUESTED

3. By this Application, the Debtors seek authority to employ and retain Mackinac, effective on the Petition Date, to assist the Debtors in these chapter 11 cases, and designate James A. Weissenborn to serve as the Debtors' CRO. In addition, Mackinac will assume responsibility as the sole manager of both R.E. Loans and R.E. Future and James A. Weissenborn has been elected (subject to the approval of the Application) as the only director and the President of Capital Salvage, all effective as of the Petition Date. Pursuant to Bankruptcy Code § 363, the Debtors seek authority to engage Mackinac and Mr. Weissenborn. Mr. Weissenborn will act as the final decision maker and authorized signatory for the Debtors. In such a capacity, Mr. Weissenborn will be better able to assist the Debtors in their efforts to dispose of assets, control disbursements, make staffing decisions and negotiate with various stakeholders. Mr. Weissenborn will perform the ordinary course duties as sole manager of R.E. Loans and R.E. Future, including, but not limited to, providing daily leadership to the employees of the Debtors and activities related to the chapter 11 cases, and coordinating marketing of the Debtors' assets, in an effort to maximize the net value realized in light of the

time constraints arising from current carrying costs and the terms of the proposed DIP Loan from WFCF, while avoiding the losses that could arise from a fire sale of such assets. The proposed employment of Mackinac and Mr. Weissenborn is critical to the Debtors' operations and is in the best interests of creditors and the estates, for the reasons set forth in detail in Sections III.C and IV, below. The Debtors request interim approval of the relief requested in this Application, pending a hearing on notice to creditors, because such relief is a condition precedent to the funding of the debtor in possession credit facility (the "**DIP Loan**") from Wells Fargo Capital Finance, LLC ("**WFCF**") described below, which is needed to maintain the Debtors' operations. The Debtors will request final approval of the employment at the final hearing on debtor in possession financing. The Debtors seek interim approval of this employment, and then final approval of the employment at a final hearing set at the same time as the final hearing on the DIP Loan, after notice to creditors.

4. The CRO will have direct control over the Debtors' four employees and over the Mackinac employees and independent contractors who will provide these critical services. The CRO and Mackinac will also be responsible, along with Debtors' counsel, for communicating with creditors, interest holders, and this Court and formulating a plan of reorganization. Mackinac's services will include assisting, analyzing and advising the Debtors with respect to the following:

- Developing a business a plan to deal with current liquidity issues.
- Preparing the necessary schedules and budgets in connection with the chapter 11 cases.
- Preparing marketing materials to be utilized in discussions with prospective purchasers of the Debtors' assets.

- Identifying and evaluating potential purchasers.
- Negotiating the bid procedures, conducting the sale process, and consummating sales transactions.
- Preparing all necessary cash flow forecasts and budgets necessary during the bankruptcy process.
- Assisting in the preparation of the Statement of Financial Affairs, Schedules, Monthly Operating Reports, etc. during the bankruptcy process.
- Negotiating a chapter 11 plan of reorganization with the various constituencies in these cases.

IV.
BACKGROUND

A. The Debtors' Business and Loan Portfolio.

5. R.E. Loans is a California limited liability company. R.E. Loans is the sole shareholder of Capital Salvage and the sole member of R.E. Future. *See* Weissenborn Declaration ¶ 9. B-4 Partners, LLC ("**B-4**"), a California limited liability company, is the sole member of R.E. Loans. At all times prior to the Petition Date, B-4 was also the sole manager of R.E. Loans, which was the sole manager of R.E. Future.

6. R.E. Loans was in the business of making secured loans to property developers. Its primary source of income was interest and fees paid by developers. Virtually none of the real property owned by those developers produced any material income. The real property collateral is in various early stages of development.

7. In 2008, the United States economy in general and real estate development in particular entered into the worst economic downturn since the Great Depression. Virtually all of

the borrowers to whom R.E. Loans had outstanding loans in 2008 have defaulted. As a result, the Debtors have no regular cash flow. R.E. Loans has worked with many of its borrowers in an effort to maximize the recovery on the defaulted loans, but in other instances it has been forced to foreclose. R.E. Loans has foreclosed on 17 loans with an aggregate unpaid principal balance ("**UPB**") of approximately $308.6 million. At each foreclosure sale one of the Debtors acquired title to the underlying collateral.

8. Capital Salvage and R.E. Future are subsidiaries that were formed to take title to and administer some of the real property upon which R.E. Loans had foreclosed (the "**REO**"). When R.E. Loans acquired REO as the result of a credit bid at a foreclosure sale, it transferred title to some of the REO properties to Capital Salvage and of certain other REO properties to R.E. Future (the "**REO Subsidiaries**"). Each of the REO Subsidiaries delivered a promissory note payable to R.E. Loans and secured by the REO acquired.[1] Lists of the REO owned by R.E. Future and Capital Salvage and the face amount of the notes payable to R.E. Loans secured by each REO property are attached as Exhibit A hereto and made part hereof.

9. R.E. Loans retained title to certain real property acquired through foreclosure proceedings. A list of the REO retained by R.E. Loans is attached as Exhibit B hereto and made a part hereof. In addition, R.E. Loans holds the notes receivable from the REO Subsidiaries that are listed in Exhibit A and notes from third party developers ("**R.E. Loans' Borrowers**") that are secured by first priority liens on the real property still owned by R.E. Loans' Borrowers. The UPB of the notes payable by R.E. Loans' Borrowers and a list of the real property that secures those notes are listed in Exhibit C hereto and made a part hereof. Virtually all of the

[1] There is one exception to this structure. The property in Escambia County, Florida was acquired by Capital Salvage at the foreclosure sale, but R.E. Loans was not granted a lien on this REO.

R.E. Loans' Borrowers are in default and R.E. Loans is in the process of negotiating with R.E. Loans' Borrowers and, in some cases, foreclosing on the underlying real property collateral.

10. As the result of the defaults by R.E. Loans' Borrowers and the many foreclosure sales, R.E. Loans has been forced to transform from a secured lender to an owner and property manager of real property. R.E. Loans did not have employees or infrastructure designed to deal with the massive number of defaults it has suffered or the acquisition and management of large numbers of properties that have become REO.

B. The Debtors' Creditors.

11. WFCF has a claim for approximately $68 million, which is secured by a first priority security interest in and lien on all or substantially all of the assets of R.E. Loans, including all of the notes payable to R.E. Loans by the REO Subsidiaries and by R.E. Loans' Borrowers. WFCF's collateral also includes REO owned by R.E. Loans. WFCF provided a working capital line of credit to the Debtors beginning in July of 2007.

12. A group of approximately 1,400 holders of promissory notes (the "**Noteholders**") have claims totaling approximately $776 million, including approximately $138 million of accrued interest, which are secured by a second priority lien on substantially all of R.E. Loans' personal property, including all promissory notes payable by the REO Subsidiaries and by R.E. Loans' Borrowers. The Noteholders' claims are not secured by REO owned directly by R.E. Loans. The Noteholders' notes (the "**Exchange Notes**") were issued in exchange for membership interests in R.E. Loans effective December 1, 2007, pursuant to an exchange agreement. Each member of R.E. Loans, other than B-4, received an Exchange Note in the face amount of that member's capital account in exchange for its membership interests. The documentation of the exchange offer expressly states that the security interest securing the

Exchange Notes will be subordinate to the first priority security interest in and lien on the Debtors' assets in favor of WFCF, including any future working capital loans from WFCF.

13. In addition to the claims of WFCF and the Noteholders, the Debtors owe ad valorem taxes that are secured by the REO and the underlying real property collateral of the notes payable by R.E. Loans' Borrowers is also subject to such taxes. The taxes owing secured by the REO total approximately $5.2 million and the taxes owing by R.E. Loans' Borrowers that are secured by the underlying real property collateral total approximately $4.8 million.

14. WFCF declared a default under R.E. Loans obligations to WFCF in August of 2008. Since August of 2008 the Debtors and R.E Loans have entered into a series of amendments and forbearance agreements. These amendments required the employment of a consultant and then the employment of a chief restructuring officer, as conditions to WFCF's agreement to forbear from enforcing its rights and to make additional protective advances at its option.

15. WFCF has also agreed to provide the DIP Loan to the Debtors. The Debtors have filed a separate motion seeking authority to enter into that financing arrangement. WFCF's commitment to provide the additional cash the Debtors require to avoid a fire sale of their assets is conditioned on the employment of either Mackinac or another management firm acceptable to WFCF to serve as CRO of the Debtors and to possess final decision making authority, so long as any debt remains owing to WFCF.

C. The Debtors' Pre-Petition Engagement of Mackinac.

16. During December of 2009 R.E. Loans interviewed several potential candidates to serve the role of consultant. R.E. Loans and its sole manager, B-4, concluded that it was in R.E. Loans' best interest to engage Mackinac to perform an analysis of R.E. Loans' assets and operations.

17. During January of 2010, Mackinac was engaged by R.E. Loans to provide consulting services and assist R.E. Loans in dealing with its existing defaults to its creditors, including WFCF and the Noteholders. Mackinac's initial duties included assisting R.E. Loans "in preparing, analyzing, and presenting various analyses, projections and business plans to lenders and investors as part of [R.E. Loans'] effort to resolve its current capital structure issues." *See* Engagement Letter attached as Exhibit D hereto and made a part hereof.

18. Effective April 10, 2010, the responsibilities of Mackinac were expanded, and Mr. James A. Weissenborn became the CRO of R.E. Loans. In connection therewith, R.E. Loans and Mackinac executed an amendment to the Engagement Letter (the "**Amendment**"), a true and correct copy of which is attached as Exhibit E hereto and made a part hereof. The Amendment provides that the CRO "will have primary day-to-day responsibility for addressing issues relating to [R.E. Loans]'s restructuring efforts." Among other things, the CRO became responsible for (i) development and execution of a liquidity management plan, (ii) coordinating the activities of R.E. Loans' representatives in conducting negotiations with WFCF and the Noteholders, (iii) the development, negotiation, and execution of a business plan, (iv) the preparation of reports, and communications with R.E. Loans' equity holders and creditors, and (v) the responsibility for accounting, budgeting, and treasury activities, including control over bank accounts.

19. Prior to the Petition Date, neither Mackinac nor Mr. Weissenborn became a manager or corporate officer of any of the Debtors. B-4 was the sole member and sole manager of R.E. Loans at all times prior to the Petition Date, and Walter Ng and/or Kelly Ng were the managers of B-4 at all times from and after the time Mackinac was engaged as the CRO. Prior to the Petition Date, Mackinac made day-to-day business decisions for R.E. Loans, but ultimately reported to and obtained authorization for all major decisions from either Walter Ng or Kelly Ng.

20. Because R.E. Loans had no infrastructure to manage the REO that it was acquiring as the result of various foreclosure sales, employees and independent contractors of Mackinac assumed day to day responsibility for the management of the assets of R.E. Loans and its wholly owned subsidiaries. With respect to the notes receivable owned by R.E. Loans, Mackinac assumed responsibility for negotiations with R.E. Loans' Borrowers and, when appropriate, foreclosure proceedings to obtain title to the underlying real property collateral. With respect to real property collateral ownership of which was obtained through such foreclosure sales, i.e. REO, Mackinac assumed responsibility for managing the REO, making decisions regarding payment of necessary carrying costs, and efforts to market the REO. Mackinac also assumed responsibility to create systems to enable the Debtors to gather and update all information needed to manage the assets and the litigation that was generated by various defaults by R.E. Loans' Borrowers. The sheer number of parcels that comprised the REO and the underlying collateral made this an extremely difficult and time-consuming task. There were more than 1,000 separate legal parcels in three dozen taxing jurisdictions that comprised the REO or underlying collateral.

21. Mackinac has established and now manages the systems needed to manage and market the REO and to enforce the notes receivable from R.E. Loans' Borrowers. Since April of 2010, Mackinac has provided the critical services that the Debtors require to maximize the value of their assets.[2] At all relevant times, Mr. Weissenborn has been the representative of Mackinac ultimately responsible for supervising the other Mackinac employees and independent

[2] A handful of employees of companies affiliated with the Debtors have provided important ongoing administrative services and the managers of B-4 have provided key assistance with historical facts and transition, as well as making final major decisions. The employees providing ongoing administrative services will become employees of R.E. Loans effective September 15, 2011, as part of the effort to streamline R.E. Loans' operations and minimize costs.

contractors working for R.E. Loans and the efforts to restructure R.E. Loans' assets and obligations.

22. Effective as of the Petition Date, subject to this Court's approval of the Application, the following management changes will be implemented: (1) B-4 will resign as the sole manager of R.E. Loans; (2) in its capacity as the sole member of R.E. Loans, B-4 will elect Mackinac as the sole manager of R.E. Loans; (3) R.E. Loans will resign as the sole manager of R.E. Future; (4) in its capacity as the sole member of R.E. Future, R.E. Loans will appoint Mackinac as the sole manager of R.E. Future; (5) each of the directors of Capital Salvage will resign; (6) R.E. Loans, as the sole shareholder of Capital Salvage, will vote by unanimous consent to appoint James A. Weissenborn as the sole director of Capital Salvage and to consent to his election as the President of Capital Salvage; and (7) Mr. Weissenborn, as the sole director of Capital Salvage, will vote by unanimous consent to elect James A. Weissenborn as the President of Capital Salvage. Based on the foregoing changes, effective on the Petition Date, Mackinac and Mr. Weissenborn will become the responsible management of each of the Debtors with final decision making authority for each of the Debtors under applicable California law, conditioned only on this Court's approval of the Application.

V.
SCOPE OF ASSISTANCE TO BE PROVIDED

23. The Debtors seek authority to engage Mackinac and Mr. Weissenborn during these chapter 11 cases to render the critically important services described in paragraphs 4 and 16 through 22, inclusive, above. Mackinac filled what would have been a vacuum in managing the financial crises that the Debtors faced, as well as planning, record keeping, reporting, analyzing financial performance, preparing projections to inform operational decisions, and

communicating with creditors. Hence, over the past year, Mackinac's representatives have provided critical services that were required to maximize the value of the Debtors' assets.

24. If Mackinac were unable to continue providing services to the Debtors, the Debtors would experience a severe disruption to their operations because they would be without core pieces of their present management team, and they would have to endure the inefficiencies and significant costs associated with new management working to learn the details of the Debtors' business, assets, and relationships in a short period. Mackinac will continue to provide the services described above to the Debtors during these cases under the terms of the Engagement Letter, subject to Bankruptcy Court approval of Mackinac's compensation. Subject to this Court's approval of the Application, Mackinac and the Debtors have agreed to modify Mackinac's responsibilities from and after the Petition Date; through the changes described in paragraph 22, above, the Debtors will vest Mackinac and Mr. Weissenborn with final decision making authority for all decisions affecting the Debtors, subject to this Court's approval of all transactions requiring such approval.

VI.
MACKINAC'S QUALIFICATIONS AND DISINTERESTEDNESS

25. Mackinac is a boutique firm providing restructuring management services, asset management advisory services, strategic planning, and dispute advisory services. It provides these services to a geographically and industry diverse group of companies, and a broad spectrum of stakeholders involved in multiple industries, ranging from manufacturing-based middle market companies, to public conglomerates and hedge and private equity funds. Each Mackinac principal has more than twenty-five years of relevant experience and its managing directors and directors average fifteen years of work experience.

26. Mr. Weissenborn has over 25 years of business experience including positions as Chief Executive Officer, Chief Financial Officer and Chief Operating Officer of several major national and international, public and private corporations. He has experience in several industry sectors, including banking and financial services, real estate, entertainment and time-share.

27. As discussed below, the Debtors do not believe that the services being provided by Mackinac are services of a "professional" under Bankruptcy Code section 327, because Mackinac is supplying the Debtors' day-to-day management team. That said, except to the extent that they have been engaged to provide management services to the Debtors, Mackinac and Mr. Weissenborn are "disinterested person[s]", as such term is defined in Bankruptcy Code section 101(14). Except as may be set forth in the Weissenborn Declaration, Mackinac has provided services to the Debtors and received payments for those services it (i) has no connection with the Debtors, their creditors, or other parties in interest in this case, (ii) does not hold any interest adverse to the Debtors' estates, and (iii) believes it would be a "disinterested person" as defined within Section 101(14) of the Bankruptcy Code but for the determination to engage Mackinac as the manager of R.E. Loans and R.E. Future and Mr. Weissenborn as the Director/President of Capital Salvage as of the Petition Date. During the 90 days prior to the Petition Date, Mackinac received the payments from the Debtors listed in Exhibit F hereto and made a part hereof. Each of those payments, except the retainer paid on September 8, 2011, was made in the ordinary course of business of both Mackinac and the Debtors to compensate Mackinac for current services. The retainer was not paid on account of services rendered before it was paid, but rather was paid to secure payment of services to be rendered after it was paid, including services rendered during these chapter 11 cases.

28. Mackinac will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered or arise, Mackinac will supplement its disclosure to the Court.

VII.
COMPENSATION TERMS

29. Mackinac is not owed any amounts with respect to its pre-petition fees and expenses. As set forth in the Engagement Letter, Mackinac has been, and will be, compensated on an hourly basis for fees incurred rendering services to the Debtors, and reimbursed for actual and necessary expenses. Specifically, Mackinac will be compensated for its services on a time and charges basis at its standard billing rates in effect at the time services are rendered. Pursuant to the Engagement Letter and Amendment, the hourly billing rate for Mr. Weissenborn is currently $560. The current hourly rates for other Mackinac members are as follows:

	Standard Rate
Partner	$560
Lead Managing Director	$440
Senior Advisors	$400-440
Managing Director/Director	$300-375
Senior Analyst/Analyst/Staff	$250-350

Mackinac has been paid twice each month based on billings submitted for services rendered on the first and the fifteenth of each month during the prepetition period. During the chapter 11 cases, Mackinac proposes that its compensation will be paid pursuant to any interim fee procedures to be established by this Court.

30. Mackinac is not entitled to a success fee or any other type of incentive fee because it has not been engaged as a broker or investment banker.

31. Although Mackinac is being engaged as of the Petition Date, subject to approval by this Court, as the manager of R.E. Loans and R.E. Future and Mr. Weissenborn is being appointed the Director and President of Capital Salvage, they will continue to be paid hourly, subject to the fee application process described in Paragraph 41, below.

32. Mackinac does not share with any person or firm the compensation to be paid Mackinac for professional services rendered in connection with these cases except to the extent that Mackinac's employees and independent contractors are paid for their time out of the fees charged to the Debtors.

33. In addition to the fees outlined above, Mackinac will bill for reasonable direct expenses which are likely to be incurred on behalf of the Debtors. Direct expenses include reasonable and customary out-of-pocket expenses which are billed directly to the engagement such as certain telephone, overnight mail, messenger, travel, meals, accommodations, and other expenses specifically related to the engagement.

34. Mackinac should be employed under a general retainer because of the variety and complexity of the services that will be required during these proceedings. This retainer is in the amount of $350,000.

35. Additionally, as set forth in the Engagement Letter and Amendment, the Debtors have agreed to indemnify Mackinac and its members against claims, losses, damages, liabilities and expenses arising out of Mackinac's performance under the Engagement Letter and Amendment, except to the extent that a court having competent jurisdiction determines by final judgment that such an otherwise indemnified claim resulted primarily and directly from the willful malfeasance or gross negligence of Mackinac or its indemnified member. These are

comparable to the indemnities provided by the Debtors and other organizations to officers, members, and managers.

VIII.
AUTHORITY FOR THE RELIEF REQUESTED

36. Section 363(b) of the Bankruptcy Code provides in part that a debtor in possession "after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). In the Fifth Circuit, a proposed use of property pursuant to section 363(b) is appropriate if "some articulated business justification" exists for the transaction. *Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.*), 780 F.2d 1223, 1226 (5th Cir. 1986) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re ASARCO LLC*, 441 B.R. 813, 823-24 (S.D. Tex. 2010) (stating that "there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business"); *GBL Holding Company, Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Building Group, Ltd.*), 331 B.R. 251, 254 (N.D. Tex. 2005) ("Great judicial deference is given to the [debtor in possession's] exercise of business judgment.").

37. A company engaged to provide management services and to provide a CRO and a temporary CFO need not be engaged as a "professional." A debtor's president, CEO or CFO need not be disinterested and need not be engaged as a professional. If this Court grants this Application, the same standard should be applied to Mackinac and Mr. Weissenborn, which are being engaged as of the Petition Date as the manager of R.E. Loans and R.E. Future and the Director and President of Capital Salvage, respectively, to provide management related services.

38. Because section 327(a) of the Bankruptcy Code applies only to "professional persons," numerous courts have held that the retention of interim corporate officers and other

temporary employees is proper under section 363 of the Bankruptcy Code. For example, the United States Bankruptcy Courts for the District of Delaware, the Northern District of Illinois, the Middle and Southern Districts of Florida, and the Western District of Washington have approved the retention of temporary employees to provide restructuring services and interim management services under section 363 of the Bankruptcy Code. *See, e.g., In re Web Press Corp.,* (Case No. 09-17418) (KAO) (Bankr. W.D. Wash. Apr. 22, 2010); *In re EZ Lube, Inc.,* (Case No. 08-13256 (CSS) (Bankr. D. Del. Jan. 13, 2009); *In re Weeks Landing, LLC, et al.,* (Case No.06-10721)(ALP) (Bankr. M.D. Fla. Nov. 19, 2006); *In re AT&T Latin Am. Corp., et al.,* (Case No. 03-13538)(BKC-RAM)) (Bankr. S.D.Fla. June 11, 2003); *In re Piccadilly Cafeterias,* (Case No. 03-27976-BKC-RBR) (Bankr. S.D. Fla. Oct. 31, 2003); *In re LJM2 Co-Investment, L.P.,* Case No. 02-38335 (SAF) (Bankr. N.D. Tex. Dec. 12, 2002); *In re Exide Techs., Inc., et al.,* (Case No. 02-11125) (JCA) (Bankr. D. Del. May 10, 2002); *In re Kmart Corp., et al.,* (Case No. 02-B02474)(SPS) (Bankr. N.D. Ill. May 22, 2002); and *In re WorldCom Group, et al.,* (Case No. 02-13533)(AJG) (Bankr. S.D.N.Y. Sept. 17, 2002). An appendix comprised of copies of each of these orders has been filed contemporaneously herewith.

39. Here, Mackinac has provided and will continue to provide only services that are "necessary whether a Chapter 11 had been filed or not, and the nature of the services [will] not change significantly on account of a bankruptcy." *See In re Dairy Dozen-Milnor, LLP*, 441 B.R. 918, 921 (Bankr. D.N.D. 2010). Indeed, Mackinac is the only entity that can supply the Debtors with the full extent of management services that the Debtors require to manage their day to day affairs. The Debtors' creditors have been interacting with Mackinac's employees who have been managing the Debtors' assets for over a year. Mackinac need not be engaged in these cases as a "professional" under the Bankruptcy Code, because, as one court reasoned:

> Who else would the creditors expect to be running the show? It is contemplated by the Code that the debtor will continue to operate its business unless and until an independent trustee or examiner is appointed. . . . The requirements of 11 U.S.C. § 1104 for appointment of a trustee or examiner should not be sidestepped by the unwarranted use of 11 U.S.C. § 327(a). CMG is not an independent professional person, and this court finds that 11 U.S.C. § 327(a) does not apply.

In re Century Inv. Fund VII Ltd. Partnership, 96 B.R. 884, 894 (Bankr. E.D. Wis. 1989).

40. The "daily management of the Debtor[s] is a necessity regardless of the existence of the bankruptcy." *Dairy Dozen-Milnor*, 441 B.R. at 922. Here, where Mackinac's continued involvement is critical to the success of the Debtors' cases, that daily management is a pointed necessity. Based on this importance, and because the terms of Mackinac's engagement are commercially reasonable for services of comparable expertise and skill, the Debtors' continued engagement of Mackinac is a sound exercise of business judgment, and the retention should be approved under section 363(b) of the Bankruptcy Code.

41. Although Bankruptcy Code § 327 does not apply directly to the employment of Mackinac as the manager of R.E. Loans and R.E. Future or Mr. Weissenborn as the Director/President of Capital Salvage, Mackinac and Mr. Weissenborn have agreed to submit regular interim and final fee applications based on the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, corresponding local rules, orders of this Court, and guidelines established by the United States Trustee that apply to compensation of professionals, in the same manner as professionals employed by the Debtors. Through this mechanism, the United States Trustee, parties in interest and this Court will have an opportunity to review the reasonableness of Mackinac's compensation.

42. The employment of Mackinac and Mr. Weissenborn is necessary to ensure that the Debtors have executive leadership which is well-versed in the restructuring process. The

Debtors' retention of Mackinac and Mr. Weissenborn will benefit the Debtors' estates by providing them with objective and skilled professionals to assist in, among other things, evaluating and implementing sale and reorganization alternatives and providing other restructuring guidance. Accordingly, such employment is in the best interests of the Debtors' estates, creditors, and other parties in interest.

43. The indemnification provisions of the type specified in the Engagement Letter are customary and reasonable for engagements of this type, out of court and in chapter 11 cases, and reflect the qualifications and limitations on indemnification provisions that are customary in the Fifth Circuit and other jurisdictions. *See, e.g., In re Pilgrim's Pride Corp.*, Case No. 08-45665 (Bankr. N.D. Tex. Feb 9, 2009) (authorizing indemnification provisions relating to retention of CRO).

44. The Debtors request that the Court authorize the employment and indemnification of the CRO and Mackinac be approved under section 363 of the Bankruptcy Code.

IX.
NOTICE

45. No trustee, examiner or statutory creditors' committee has been appointed in these chapter 11 cases. This Application has been provided to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) a combined list of the twenty largest unsecured creditors of the Debtors, and the twenty largest Exchange Note Holders, as defined in the *Motion for Order Establishing Notice Procedures and Permitting Debtors in Possession to Serve Insured Depository Institutions by First-Class Mail*; (iii) counsel to Wells Fargo Capital Finance, LLC; (iv) the Internal Revenue Service; (v) the U.S. Securities and Exchange Commission; and (vi) all parties in interest who have requested notice. The Debtors respectfully submit that no further notice of this Application is required.

46. The Pleadings in these cases and supporting papers are available on the Debtors' website **www.RELoansllc.com** and on the Bankruptcy Court's website at **ecf.txnb.uscourts.gov**. If you would like copies of pleadings from either of these sources, you can request any pleading you need from counsel for R.E. Loans at the following addresses: (a) Stutman, Treister & Glatt PC, c/o Kendra Johnson, 1901 Avenue of the Stars, 12th Floor, Los Angeles, California 90067 (kjohnson@stutman.com), or (b) Gardere Wynne Sewell, c/o Sharon Hawthorne, 1601 Elm Street, Suite 3000, Dallas, Texas, 75201 (shawthorne@gardere.com).

WHEREFORE, based upon the foregoing, the Debtors respectfully request that the Court enter an Order authorizing the Debtors to engage Mackinac and James A. Weissenborn on the terms described above, pursuant to section 363 of the Bankruptcy Code and granting such other and further relief as the Court may deem just and proper. The Debtors seek such relief on an interim basis for the next few weeks, because the employment of Mackinac and Mr. Weissenborn is a condition precedent to the funding of advances under the DIP Loan to be provided by WFCF. The Debtors will request final approval of such employment at the final hearing on approval of the debtor in possession credit facility.

DATED: September 13, 2011

Respectfully submitted by:

/s/ Holland N. O'Neil

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Holland Neff O'Neil (TX 14864700)
Virgil Ochoa (TX 24070358)
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PROPOSED COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

Exhibit A

REO Owned by RE Loans' Subsidiaries

Exhibit A

DD	Property	Asset	Location	Owner		UPB
9	Zohouri (Solaris)	REO	GA	Capital Salvage	$	26,836,766
10	All American Bottled Water	REO	WA	Capital Salvage		24,638,351
16	Otay Mesa	REO	CA	Capital Salvage		16,750,000
28	Perdido Village	REO	FL	Capital Salvage		5,600,000
31	Pecos Creek	REO	NV	Capital Salvage		4,371,633
Capital Salvage Subtotal					**$**	**77,196,752**
1.2	Pinnacle LochenHeath	REO	MI	RE Future	$	45,324,121
1.1	Pinnacle Georgetown	REO	TX	RE Future		45,324,121
4	Adams Canyon	REO	CA	RE Future		40,026,027
17.2	Weyrich Development (Santa Ysabel)	REO	CA	RE Future		8,297,742
RE Future Subtotal					**$**	**138,972,011**
Grand Total					**$**	**216,168,763**

Exhibit B

RE Loans REO

Exhibit B

DD	Property	Asset	Location	Owner	UPB
5	Aqualerra	REO	FL	RE Loans	$ 38,500,000
18	Vaught	REO	SC	RE Loans	10,200,000
19	Quintero	REO	AZ	RE Loans	10,025,000
29	Zohouri (Kimberly Rd)	REO	GA	RE Loans	5,400,000
34	Triple S Ranch	REO	CA	RE Loans	2,200,000
35	Feenune	REO	NV	RE Loans	1,800,000
42	Acanto 1	REO	CA	RE Loans	101,282
RE Loans Subtotal					**$ 68,226,282**

Exhibit C

RE Loans Notes Receivable

Exhibit C

DD	Property	Asset	Location	Borrower	UPB
2	Canyon Club	Note	WY	Canyon Club Inc.	$ 61,146,348
3	Rancho Las Flores	Note	CA	Rancho Las Flores LLC	55,241,524
11	2718 Santa Rosa, LLC 1 & 2	Note	FL	2718 Santa Rosa LLC	46,939,240
6	Vantage Lofts	Note	NV	Vantage Lofts LLC	37,510,943
7	Harmony Holdings	Note	SC	Harmony Holdings LLC	36,066,598
8	Lakeview Homes	Note	CA	LakeView Homes at the Pointe LLC	26,901,250
15	Moses Point	Note	WA	Westshore Improvement LLC	18,499,087
20	Cottonwood Hills	Note	KS	Cottonwood Hills LLC	9,942,963
21	Woodbridge at Portola	Note	CA	Woodbridge at Portola Inc	9,195,180
22	J.C. Reeves	Note	OR	JC Reeves Corporation	7,094,000
23	Weyrich (Jack's Ranch)	Note	CA	Pending Foreclosure	6,500,000
25	Quincy	Note	WA	Quincy 132, LLC	5,804,004
26	Circle H Ranch	Note	MT	Circle H Ranch LLC	5,669,446
27	Arlin Geophysical	Note	UT	Arlin Geophysical Inc	5,616,478
17.1	Weyrich Development (Carlton)	Note	CA	Carlton Hotel Investment LLC	5,300,000
30	Las Colinas	Note	TX	Las Colinas of Treasure Hills Inc.	5,100,000
32	Deville	Note	CA	Deville LLC	3,750,000
36	Pacific Investment Advisors	Note	CA	Pacific Investment Partners LP	700,000
37	A. Kelly	Note	CA	Reberta A. Kelly	650,000
40	Pend Oreille	Note	ID	Pend Oreille Bonner Development LLC	278,148
41	Dwaine Taylor	Note	CA	Dwaine C. Taylor	125,000
43	Adkins	Note	CA	Jennipher Adkins	100,000
44	S.C. Club	Note	CA	S.C. Club LP	1,488
Note Subtotal					**$ 347,131,698**

Exhibit D

Mackinac PARTNERS

December 10, 2009

Mr. Kelly Ng
President
RE Loans, LLC
201 Lafayette Circle
Lafayette, CA 94549

Dear Mr. Ng:

We are pleased to confirm RE Loans, LLC ("Client"), has retained Mackinac Partners, LLC ("MP") as its financial advisor in connection with assisting Client in preparing, analyzing and presenting various analyses, projections and business plans to lenders and investors as part of Client's effort to resolve its current capital structure issues. The scope, pricing and timing are included in Exhibit B of this engagement letter.

The Terms of MPs engagement are as follows:

1. (a) MP will be compensated for its services on a time and charges basis at the following discounted billing rates. The professionals at MP who may work as advisors to Client and the discounted hourly rates are as follows:

Professional Hourly Rate Schedule:

- Managing Partner: James Weissenborn	$495/hour
- Lead Managing Director: Farley Dakan	$395/hour
- Managing Directors/Directors	$325/hour
- Directors – As necessary	$300/hour
- Staff/Analyst – As necessary	$250/hour

Expected Staffing:

- Farley Dakan, Project Lead/Oversight
- (1) Managing Director/Director
- (1) Analyst

The rates shown above represent significant discounts from our standard rates and as such these rates are confidential and the parties agree not to disclose such rates except as

may be required by law or as otherwise may be required such as to the Company's auditors, legal advisors, or tax professionals.

1.1 MP will bill fees and cost reimbursements every two weeks, in arrears. Invoices are payable upon presentation. Client will pay MP a retainer of $25,000 upon execution of this agreement. Unpaid fees and cost reimbursements will be applied to the retainer at the end of the engagement. The retainer will be returned to Client in full, less deductions for unpaid fees and costs, upon completion of the engagement. The Client will reimburse MP promptly upon request for its reasonable out-of-pocket expenses incurred in connection with this agreement.

2. The term of this agreement will commence upon execution of this agreement and may be terminated by Client at any time, except as it relates to the indemnification provisions as provided in paragraph 3 and 4 below and Appendix A and for Client's obligation to pay MP any compensation payable to MP pursuant to paragraph 1 above and to reimburse MP for any expenses incurred by it pursuant to paragraph 1 above for periods through and including the termination date (regardless of whether billed before or after the termination date) which shall survive the termination of this agreement. MP may terminate this agreement or defer, delay or alter its performance under this agreement only (a) with the Client's consent, (b) if Client fails reasonably to cooperate with MP's efforts, or (c) if Client fails to cause MP to be timely paid its fees and reimbursed its costs.

3. In connection with engagements such as this, it is our firm policy to receive indemnification. Client will provide MP with the indemnification and contribution agreements described on the attached Exhibit A.

4. MP may also be engaged to act for Client in one or more capacities other than pursuant to this agreement. The terms of any such additional engagement may be embodied in one or more separate written letters or agreements. The indemnification provisions contained in this agreement will apply to the engagement under this agreement and to any such additional engagement.

5. Notices under this agreement must be in writing and be mailed, sent by recognized overnight courier, telecopied or hand delivered to MP, at its offices at 180 High Oak Road, Suite 100, Bloomfield Hills, MI 48304, Attention: Jim Weissenborn. And to RE Loans, LLC, 201 Lafayette Circle, Lafayette, CA 94549 Attn: Kelly Ng

6. This agreement may be executed in counterpart.

7. This agreement incorporates the entire understanding of the parties and supersedes all previous or contemporaneous agreements and/or discussions, whether written or oral, between MP and Client concerning its subject matter.

8. This agreement may not be amended or modified except in writing executed by Client and MP.

9. This agreement will be governed by, and construed in accordance with, the laws of the State of California. The parties waive any right to trial by jury in connection with any dispute related to this agreement or any other matter contemplated by this agreement.

10. Except as contemplated by this agreement and except as required by applicable law, MP will keep confidential all material non-public information of Client.

11. Except as required by law, any advice furnished by MP to Client will not be publicly disclosed or made available to third parties other than affiliates of Client, or to Client's directors, officers, agents, attorney's or accountants, without MP's advance written consent. MP understands and agrees that its advice and work product may be disclosed to Client's lender, a Committee of Client's largest creditors, and their agents. MP further grants Client a license to use MP's written work-product in any legal proceeding to which Client may become a party, after first affording MP an opportunity to correct or comment upon it.

Please confirm your agreement with the foregoing by dating, signing and returning the enclosed copy of this letter agreement, whereupon it will become binding and enforceable in accordance with its terms.

We are delighted to accept this engagement and look forward to working together with you on this assignment.

Sincerely,

Mackinac Partners, LLC

By: James C. Weissenborn

Name: James Weissenborn
Title: Managing Partner

Agreed to this on January 14, 2009

RE Loans, LLC

By: _____

Name: Kelly Ng
Title: President

EXHIBIT A

INDEMNIFICATION PROVISIONS TO
LETTER AGREEMENT DATED DECEMBER 10, 2009
BETWEEN RE LOANS, LLC AND MACKINAC PARTNERS, LLC ("AGREEMENT")

(1) Except as otherwise defined below, all capitalized terms used in these provisions have the definitions given to them in the Agreement.

(2) (a) RE Loans, LLC ("Client") will indemnify and hold harmless Mackinac Partners LLC ("MP") and its partners, principals, affiliates, agents and employees, and any persons retained by MP in connection with the performance of the services described in the Agreement (collectively, "Indemnified Parties"), from and against all Damages (as defined in paragraph 2(d) below) arising out of, based upon or directly related to MP's engagement under the Agreement. An Indemnified Party will be entitled to indemnification under this paragraph 2 unless a court having competent jurisdiction has determined by final judgment that the Indemnified Party's Damages resulted primarily and directly from the willful malfeasance or gross negligence of MP or such Indemnified Party. This indemnification will apply regardless of whether MP is a party to a lawsuit, claim or proceeding.

(b) MP will indemnify and hold harmless Client from and against all Damages arising out of, based upon or directly related to any action on the part of MP in connection with its engagement which a court having competent jurisdiction has determined by final judgment has resulted primarily and directly from the willful malfeasance or gross negligence of MP, its officers, managers, principal, employees or agents.

(c) To the extent Client's (in the case of paragraph 2(a) or MP's (in the case of paragraph 2(b)) counsel or any law firm with experience in such matters determines that a conflict of interest would exist if Client or MP, as applicable, and the Indemnified Parties are represented by one counsel, the Indemnified Parties will be entitled to retain separate counsel of their choice reasonably acceptable to Client or MP, as applicable, in connection with any matter which is indemnifiable under this paragraph 2, and the costs of such counsel will be Damages.

(d) As used in this Exhibit A, "Damages" means all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees, interest, penalties, and all third party costs reasonably incurred in investigation, defense or settlement of any of the foregoing).

(3) Client will not, except with the written consent of the Indemnified Party, consent to the entry of a judgment or settlement of any pending or threatened claim related to or arising out of this engagement which does not include as an unconditional term thereof the giving by the

claimant or plaintiff to such Indemnified Party of an unconditional release, and holding such Indemnified Party harmless, from all liability in respect of such third party claim or demand.

Mackinac Partners, LLC

By: _____

Name: Jim Weissenborn
Title: Managing Partner

RE Loans, LLC

By: _____

Name: Kelly Ng
Title: President

DETROIT.3442319.2

EXHIBIT B

SCOPE, TIMING, DELIVERABLE AND PROFESSIONAL FEE PRICING PROVISIONS TO LETTER AGREEMENT DATED DECEMBER 10, 2009 BETWEEN RE LOANS, LLC AND MACKINAC PARTNERS, LLC ("AGREEMENT")

PHASE 1a

Corporate Level Review – Assessment of all corporate/entity level operations, legal agreements and any other relevant data to determine any operational deficiencies related to the execution of future collateral recovery efforts (please see Note). The review will include but not be limited to the following:

- Creditor loan document(s)
- Debtor loan document(s)
- Partnership document(s), operating agreements, PPMs, etc.
- Capital structure review
- Pending litigation schedule
- Other legal (foreclosures in process, DIL, receiver appointment, etc.)
- Loan servicing operations
- Cash management/treasury functions
- Corporate level funding requirements
- Overhead cost structure
- Construction/development management
- Property management functions

Asset Level Review (High Priority) – Asset level review of "High Priority" assets (TBD pending discussions with Senior secured lender). For purposes of scope definition, this includes reviewing and generating write-ups for the greater of 10 assets/loans or 50% of total outstanding UPB (as originated). Analysis will include but not be limited to:

- Credit file(s)
- Appraisals
- Internally generated valuation models
- Capital commitments/funding requirements
- Write-ups
  - Sources & Uses
  - Costs to complete
  - Disposition analysis
  - Sensitivity analysis
  - Debt coverage analysis (valuation)
- Site visits (TBD)

Strategic Review – Mackinac will internally review all deliverables and present client updates periodically and findings upon completion. Mackinac to assist client with any/all Senior secured lender communications throughout Phase 1a.

Time to Complete:	30 days (excludes site visits)
Staffing:	Managing Partner, Jim Weissenborn - (Review) Managing Director, Farley Dakan - (Lead) Director, TBD Analyst, TBD
Professional Fee Cap:	$180,000 + all out of pocket expenses

Note: Mackinac will NOT make any assumptions on an entity/portfolio level financial roll-up until completion of Phase 1b.

PHASE 1b

Asset Level Review (Low Priority) – Asset level review of "Low Priority" assets (TBD pending discussions with Senior secured lender). For purposes of scope definition, this includes reviewing and generating write-ups for all loans not included in Phase 1a. Analysis will include but not be limited to:

- Credit file(s)
- Appraisals
- Internally generated valuation models
- Capital commitments/funding requirements
- Write-ups
  - Sources & Uses
  - Costs to complete
  - Disposition analysis
  - Sensitivity analysis
  - Debt coverage analysis (valuation)

Strategic Review – Mackinac will internally review all deliverables and present client updates periodically and findings upon completion. Mackinac to assist client with any/all Senior secured lender communications throughout Phase 1b.

Time to Complete:	30 days (excludes site visits)
Staffing:	Managing Partner, Jim Weissenborn - (Review) Managing Director, Farley Dakan - (Lead) Director, TBD Analyst, TBD

Professional Fee Cap: $120,000 + all out of pocket expenses

PHASE 2

Portfolio/Corporate Level Roll-up – Financial roll-up of the portfolio based upon loan/asset level analysis of Phase 1a and 1b. Additional financial roll-up to be provided based upon corporate G&A structure. Capital structure roll forward including Senior secured lender, LPs, GP etc. The review will include but not be limited to the following:

- Total Portfolio Roll-up
  - Sources & Uses
  - Costs to complete
  - Disposition analysis
  - Sensitivity analysis
  - Debt coverage analysis (valuation)
- Corporate Rollup
  - Same as aforementioned w/G&A assumptions
- Capital structure roll forward
- Scenario analysis

Strategic Review – Mackinac to review all assimilated data and prepare a go-forward business plan taking into consideration all constituencies. Mackinac to assist client with any/all Senior secured lender communications throughout Phase 2.

Time to Complete: 5 days

Staffing:
Managing Partner, Jim Weissenborn - (Review)
Managing Director, Farley Dakan - (Lead)
Director, TBD
Analyst, TBD

Professional Fee Cap: $40,000 + all out of pocket expenses

Mackinac Partners, LLC

By: _____

Name: Jim Weissenborn
Title: Managing Partner

RE Loans, LLC

By: _____

Name: Kelly Ng
Title: President

DETROIT.3442319.2

180 High Oak Road, Bloomfield Hills, MI 48304

January 7, 2010

Mr. Kelly Ng
President
RE Loans, LLC
201 Lafayette Circle
Lafayette, CA 94549

Re: RE Loans, LLC

RETAINER INVOICE
By Mackinac Partners, LLC

	Total
Fees	
Retainer	25,000
	-
	-
	-
	-
	-
	-
Sub Total	25,000
Out-of-Pocket Expenses:	
	25,000

Wiring Instructions:
Bank: Bank of America, N.A.
ABA Routing No.: 026009593
Account: Merrill Lynch Account 6550113516
For Final Credit of 619-07016
Mackinac Partners, LLC

Exhibit E

Mackinac PARTNERS

www.mackinacpartners.com

April 10, 2010

Mr. Kelly Ng
Mr. Walter Ng
RE Loans LLC
201 Lafayette Circle
Lafayette, CA 94549

Re: Amendment to Engagement Agreement dated January 14, 2010 Between Mackinac Partners, LLC ("MACKINAC"), and RE Loans, LLC (the "Company"), (the "Engagement Agreement")

Dear Sirs:

In addition to the financial advisory services being provided by MACKINAC to the Company pursuant to the Engagement Agreement, the Company wishes, and MACKINAC has agreed, that MACKINAC make available the services of James A. Weissenborn (the "CRO") as chief restructuring officer of the Company. Upon your execution, this letter will constitute an amendment to the Engagement Agreement (as so amended, the "Amended Engagement Agreement"), which reflects the scope of services to be rendered by the CRO and the basis of compensation of MACKINAC for the CRO's services; these matters are in addition to the performance of financial advisory services and related compensation as described in the Engagement Agreement, the terms of which shall continue in full force and effect except as expressly modified herein.

1. Description of Services and Duties

a. During the term of this engagement, MACKINAC shall make available to the Company the services of the CRO as chief restructuring officer of the Company. The appointment of the CRO as chief restructuring officer of the Company has been duly authorized by B-4 Partners, LLC ("B-4"), and Bar-K, Inc. ("Bar-K" and, together with B-4, the "Members"), as members of the Company, by B-4 as Managing Member of the Company and by Bar-K, as Servicer Member of the Company. The CRO shall report directly to Walter Ng and Kelly Ng (the "B-4 Managers"), in their capacities as managing members of B-4. The CRO will

have direct access to the B-4 Managers and shall develop proposals for the Managing Member's consideration to address the Company's financial and operating performance. It is anticipated that, subject to oversight and direction by the B-4 Managers, the CRO will have primary day-to-day responsibility for addressing issues related to the Company's restructuring efforts, including:

(i) development and execution of a liquidity management plan to include: a) disposition of assets, b) enforcement of rights under notes owned by the Company, c) generation of liquidity from the Company's assets of every kind;
(ii) coordinating, on issues related to the Company's restructuring efforts, the activities of the Company's representatives in conducting negotiations with Wells Fargo Foothill ("WFF") and the note holders;
(iii) assistance in addressing issues in connection with financing the Company's operations, including take-out financing for WFF; and
(iv) the development, negotiation and execution of a business plan;
(v) assistance in the preparation of an operating plan, cash flow forecasts, and Three Year Business Plan and presentation of such plans and forecasts to the B-4 Managers and the Company's creditors;
(vi) development and execution of plans to rationalize the Company's overhead;
(vii) the preparation of reports, and communications with the Company's equity holders and creditors;
(viii) development of a strategy for and negotiation of contracts for the management of facilities not directly owned or leased by the Company;
(ix) responsibility for accounting, budgeting, treasury, including control over bank accounts;
(x) other activities as approved by the B-4 Managers or otherwise related to the Company's restructuring efforts.

b. The B-4 Managers will retain final authority to make all major decisions vested in the Managing Member under the Company's Operating Agreement and B-4 and Bar-K shall retain final authority to make all decisions vested in the members of the Company under the Company's Operating Agreement. MACKINAC has been engaged pursuant to this Agreement in order for the Company to obtain the benefit of the CRO's experience and expertise in dealing with distressed companies; therefore, the Managing Member shall confer with the CRO with respect to all decisions requiring Managing Member or Member approval and shall duly consider the CRO's proposed course of action with respect to all such matters. Neither MACKINAC nor the CRO will have any liability with respect to any decision made by the Managing Member or the Members.

c. MACKINAC has also been engaged pursuant to this amendment to enhance the credibility of the Company and the B-4 Managers with the creditors and other constituents. In order to achieve this goal, the CRO may engage in such direct communications with these interested parties, including without limitation, informing them of recommended courses of action for the Company, whether or not the Managing Member or the Members adopt such proposed actions. In the event that MACKINAC resigns, or the Company terminates, MACKINAC's engagement under this amendment, MACKINAC and the CRO will have the right to inform such interested parties of such resignation or termination and any related information they deem appropriate.

d. The CRO will devote a reasonable amount of time to this engagement; however, the CRO will continue to be employed by MACKINAC and during the period that the CRO is rendering services to the Company pursuant to this amendment, he will also continue to work on other MACKINAC engagements and on his supervisory and managerial duties at MACKINAC, including matters unrelated to the Company. In rendering services to the Company, the CRO may use such additional MACKINAC personnel to assist him as he wishes.

e. The services to be rendered by the CRO may include the preparation of projections and other forward-looking statements; because numerous factors (many of which are neither known nor predictable at this time) can affect the actual results of the Company's operations, which may materially and adversely differ from those projections and other forward looking statements, neither MACKINAC nor the CRO will have any liability with respect to any such projection or statement prepared by it pursuant to this amendment. In addition, the CRO will be relying on information provided by the Company, the Managing Member and their other representatives in the preparation of those projections and other forward-looking statements; neither CRO nor MACKINAC are responsible for such information and are entitled to rely on any such information without verifying its authenticity or accuracy. Neither MACKINAC nor the CRO: (i) makes any representation or guarantee that an appropriate restructuring proposal presented to the Managing Member will be more successful than any other possible restructuring proposals, or, if formulated, that any proposed restructuring plan will be accepted by the Company's creditors, equity holders and other constituents; or (ii) assumes responsibility for the selection of any restructuring proposal which the CRO formulates and presents to the Managing Member. The CRO shall use his best commercially reasonable efforts to implement the restructuring proposal approved by the Managing Member and only to the extent and in the manner authorized and directed by the Managing Member.

2. Compensation

a. MACKINAC will receive compensation for the CRO and personnel who assist the CRO as follows:

(i) MACKINAC will be compensated for its services on a time and charges basis at the following rates:

(a) CRO: James Weissenborn at $550/hour;
(b) Lead Managing Director: Farley Dakan at $425/hour;
(c) Senior Advisor: Rick Dishnica at $400/hour;
(d) Other Managing Directors/Directors, as necessary at $300-$375/hour;
(e) Staff/Analysts, as necessary, at $225-$275/hour.

b. MACKINAC will be reimbursed for its and the CRO's reasonable out-of-pocket expenses incurred in connection with this assignment such as travel, lodging and telephone charges. In addition, MACKINAC shall be reimbursed for the reasonable fees and expenses of its counsel incurred in connection with the preparation, negotiation and approval of this agreement. All such fees and expenses will be billed and payable every two weeks, in arrears with the Engagement Agreement.

3. Term

a. The CRO engagement pursuant to this amendment will commence as of the date that this amendment is executed by all parties; such execution will also constitute formal appointment of the CRO by the Managing Member.

b. The Company may terminate MACKINAC's engagement as CRO without Cause (as defined below) by giving thirty days' written notice to MACKINAC. Upon such termination MACKINAC and the CRO may inform any creditor or equity holder of the termination of its services.

c. The Company may immediately terminate MACKINAC's CRO services under this amendment at any time for Cause by giving written notice to MACKINAC. For purposes of this amendment, "Cause" shall mean: (i) the CRO is convicted of a felony; or (ii) as determined in good faith by the Managing Member, and after 30 days' notice and opportunity to cure, either (x) the CRO or

MACKINAC willfully engages in misconduct materially injurious to the Company; (y) the CRO or MACKINAC breaches any of his or its material obligations under this amendment; or (z) the CRO or MACKINAC willfully disobeys a lawful direction of the Managing Member.

d. MACKINAC may terminate its services under this amendment without Good Reason (as defined below) at any time by giving written notice to the Managing Member. Such termination will become effective upon the date specified in such notice, provided that such date is at least 30 days after the date of delivery of the notice.

e. MACKINAC shall be entitled to terminate its services hereunder for Good Reason. For purposes of the amendment, termination for "Good Reason" shall mean its resignation caused by the breach by the Company of any of its obligations under the Amended Engagement Agreement, which breach is not cured within 10 days of MACKINAC having given written notice to the Company thereof (provided that no advance notice will be required for the second, or any subsequent, alleged breach of the Amended Engagement Agreement).

f. Upon any termination of MACKINAC's engagement under this amendment, the Company will immediately pay to MACKINAC all fees and reimbursements, through the effective date of termination, and the provisions of this amendment will cease to apply, except for paragraph 6 below, which will survive without limitation. Termination of MACKINAC's CRO engagement pursuant to this amendment by MACKINAC or the Company will not result in an automatic termination of the Amended Engagement Agreement; the Amended Engagement Agreement may only be terminated pursuant to its express terms.

4. Relationship of the Parties

The parties intend that an independent contractor relationship will be created between MACKINAC and the Company by this engagement letter. The CRO shall remain an employee of MACKINAC, which shall retain the rights (subject to the terms hereof) to direct and control his performance. The compensation set forth in paragraph 2 shall be exclusive, and the CRO shall not be entitled to participate in any other

compensation or benefit plan or perquisite of the Company (other than as referred to in Section 6). Any amounts of cash paid to the CRO shall be paid to and received by the CRO solely as nominee for and on behalf of MACKINAC and not on his own account. Neither MACKINAC nor any of its personnel or subcontractors is to be considered an employee or agent of the Company and the personnel and subcontractors of MACKINAC are not entitled to any of the benefits that the Company provides for the Company's employees. The Company acknowledges that MACKINAC's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of the AICPA, SEC, or other state or national professional or regulatory body.

5. Confidentiality / Non-Solicitation

MACKINAC and the CRO shall keep as confidential all non-public information received from the Company in conjunction with this engagement, except: (i) as requested by the Company or its legal counsel; (ii) as required by legal proceedings or (iii) as reasonably required in communication with the Company's members, affiliates and creditors, or their advisors, in the performance of this engagement. The Company agrees not to solicit, recruit or hire any employees of MACKINAC for a period of two years subsequent to the termination of this agreement.

6. Indemnification

The indemnification provisions of the Engagement Agreement shall be extended, and apply, to this amendment and to the CRO as well as MACKINAC. Termination of this amendment shall not affect any of these indemnification provisions, which shall remain in full force and effect.

7. Engagement Agreement

The Engagement Agreement, as amended hereby, continues in full force and effect.

Very truly yours,

MACKINAC PARTNERS

By: _____
Name:
Title: Managing Partner

ACCEPTED AND AGREED:

RE LOANS, LLC

By: _____
Name:
Title:

_____
Walter Ng

_____
Kelly Ng

DETROIT.4133585.2

Exhibit F

Exhibit F

	Amount Paid	Date Paid
11	$ 177,823	6/28/2011
12	$ 202,571	7/14/2011
13	$ 200,324	7/27/2011
14	$ 185,045	7/27/2011
15	$ 184,176	8/11/2011
16	$ 204,059	8/26/2011
17	$ 207,955	9/8/2011
18	$ 165,568	9/12/2011

EXHIBIT 3

David Weitman, Esq.
Texas State Bar No. 21116200
John E. Garda, Esq.
Texas State Bar No. 00793780
K&L GATES LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201
Telephone (214) 939-5500
Telecopy: (214) 939-6100

ATTORNEYS FOR WELLS FARGO CAPITAL FINANCE, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	**Chapter 11**
	)	
R.E. LOANS, LLC,	)	**Case No. 11-35865-BJH**
R.E. FUTURE, LLC, and	)	
CAPITAL SALVAGE, a California	)	**Jointly Administered**
corporation,	)	
	)	
Debtors.		
WELLS FARGO CAPITAL FINANCE, LLC,	)	
	)	
Plaintiff,	)	
	)	**Adversary Proceeding No. 11-_____**
vs.	)	
	)	
GORDON NOBLE, ARLENE DEA DEELEY, FREDRIC C. MENDES, NANCY RAPP, PHILLIP CANTOR and IRENE LEE,	)	
Defendants,		
R.E. LOANS, LLC,		
Nominal Defendant.		

COMPLAINT FOR DECLARATORY JUDGMENT AND TEMPORARY INJUNCTION

Plaintiff Wells Fargo Capital Finance, LLC f/k/a Wells Fargo Foothill, LLC ("Wells Fargo") files the following Complaint for Declaratory Relief and Temporary Injunction (this "Complaint") in this adversary proceeding (this "Adversary Proceeding") and, in support hereof, Wells Fargo alleges as follows:

I.
NATURE OF THIS ADVERSARY PROCEEDING AND RELIEF REQUESTED

1. This Adversary Proceeding arises out of a present and actual controversy between Wells Fargo and Gordon Noble, Arlene Dea Deeley, Fredric C. Mendes, Nancy Rapp, Philip Cantor, Irene Lee and others similarly situated (collectively, the "Defendants") arising from alleged conduct by Wells Fargo associated with a line of credit facility provided by Wells Fargo to R.E. Loans, LLC ("R.E. Loans") in July of 2007.

2. In September of 2011, a class action lawsuit was initiated (the "Noble Class Action Lawsuit") by the filing of a complaint (the "Noble Complaint") against, among others, Wells Fargo, in Alameda County, California Superior Court by certain holders of promissory notes issued by each of Mortgage Fund '08 LLC ("MF08") and R.E. Loans. The Noble Complaint was subsequently amended (the "Noble First Amended Complaint"), and the Noble First Amended Complaint contains twelve (12) causes of action against a variety of defendants.

3. Wells Fargo is named as a defendant in the Noble First Amended Complaint with respect to three (3) of the causes of action: (i) Aiding and Abetting Breach of Fiduciary Duty; (ii) Violation of Unfair Competition Law Business & Professional Code Section 17200; and (iii) Secondary Liability for Securities Fraud. A true and accurate copy of the Noble First Amended Complaint is attached hereto as Exhibit "A" and is incorporated herein by reference.

4. In October of 2011, a second class action lawsuit was initiated (the "Mendes Class Action Lawsuit," by the filing of a complaint (the "Mendes Complaint") against, among others, Wells Fargo in Alameda County, California Superior Court by certain holders of promissory notes issued by each of R.E. Loans and MF08 (the "Mendes Plaintiffs," and with the Noble Plaintiffs, the "Class Action Plaintiffs"). The Mendes Complaint was subsequently amended (the "Mendes First Amended Complaint," and with the Noble First Amended Complaint, the "Class Action Complaints"). The Mendes First Amended Complaint contains ten (10) causes of action against a variety of defendants.

5. Wells Fargo is named as a defendant in the Mendes First Amended Complaint with respect to three (3) of the causes of action: (i) Aiding and Abetting Fraud; (ii) Aiding and Abetting Breach of Fiduciary Duty; and (iii) Violation of Unfair Business Practices California Business & Professions Code Section 17200. A true and accurate copy of the Mendes First Amended Complaint is attached hereto as Exhibit "B" and is incorporated herein by reference.

6. On November 3, 2011, Alameda County, California Superior Court Judge Steven A. Brick issued a Tentative Case Management Order in the Noble Lawsuit, a copy of which is attached hereto as Exhibit "C" and is incorporated herein for all purposes. The Tentative Case Management Order affords the parties the opportunity to seek guidance from this Court as to whether the claims asserted in the Noble Lawsuit are subject to the automatic stay 11 U.S.C. § 362(a).

7. 11 U.S.C. § 362(a)(1) imposes an automatic stay of any proceeding commenced or that could have been commenced against the debtor at the time of the filing of the Chapter 11 proceeding. 11 U.S.C. § 362(a)(3) provides that the filing of a bankruptcy petition "**operates as a[n] [automatic stay] applicable to all entities, of…any act to obtain possession of property of the estate or of property from the estate.**" 11 U.S.C. § 362(a)(3) (emphasis added). The

stay extends to **any action, whether against the debtor or third parties, that seeks to obtain or exercise control over the property of the debtor**, including causes of action that could have been raised by the debtor as of the commencement of the bankruptcy case.

8. The claims asserted against Wells Fargo in the Class Action Complaints (collectively, the "Class Action Claims") are claims which could have been raised by the Debtor R.E. Loans as of the commencement of the R.E. Loans' bankruptcy proceedings. As such, the Class Action Claims are property of R.E. Loans' bankruptcy estate pursuant to 11 U.S.C. § 541, and as property of the bankruptcy estate, the Class Action Claims are subject to the automatic stay of 11 U.S.C. § 362(a)(3) arising from the commencement of the bankruptcy proceedings of R.E. Loans.

9. In addition, R.E. Loans agreed to indemnify Wells Fargo for any and all claims, including defense costs, arising in relation to the line of credit provided by Wells Fargo to R.E. Loans. The legal expenses incurred and continuing to accrue in the Class Action Complaints and any liability or judgment entered against Wells Fargo are subject to payment by the R.E. Loans' bankruptcy estate -- as part of Wells Fargo's secured claim against the R.E. Loans' bankruptcy estate -- pursuant to the indemnity agreement in favor of Wells Fargo. As a result of R.E. Loans' indemnity obligations to Wells Fargo, and the corresponding direct liability of R.E. Loans, prosecution of the Class Action Claims against Wells Fargo is tantamount to a direct action against R.E. Loans and barred by the automatic stay under § 362(a) of the Bankruptcy Code, or as more fully described below, such claims constitute property of the R.E. Loans' bankruptcy estate.

10. This Complaint seeks: (i) a declaratory judgment declaring that (a) some or all of the Class Action Claims are property of the bankruptcy estate of R.E. Loans pursuant to 11 U.S.C. § 541, and as such, are subject to the automatic stay set forth in 11 U.S.C. § 362(a)(3)

arising from the commencement of the bankruptcy proceedings of R.E. Loans, (b) because Wells Fargo is entitled to contractual indemnification from R.E. Loans with respect to the Class Action Claims, and the corresponding depletion of estate assets due to the indemnification obligations of R.E. Loans to Wells Fargo, the Class Action Complaints are stayed under § 362(a) of the Bankruptcy Code and Wells Fargo is entitled to reimbursement of its reasonable and necessary attorneys' fees and defense costs incurred as a result of defending the Class Action Claims and in bringing this adversary proceeding from the bankruptcy estate of R.E. Loans, and (c) the Class Action Claims must proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court; (ii) the entry of a temporary injunction and/or other applicable injunctive relief prohibiting the Class Action Claims against Wells Fargo from continuing in Alameda County, California Superior Court until R.E. Loans has confirmed its plan of reorganization in its bankruptcy proceedings in this Court; and (iii) an order that the Class Action Claims and any similar claims against Wells Fargo must proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court.

II.

JURISDICTION AND VENUE

11. On September 13, 2011 (the "Petition Date"), R.E. Loans, R.E. Future, LLC ("R.E. Future"), and Capital Salvage, a California corporation ("Capital Salvage") (collectively, the "Debtors"), filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

12. This Court is granted subject-matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334(b) and (e). This Adversary Proceeding is a core proceeding under

28 U.S.C. § 157(b)(2)(A), (C), (E), and (O), because it raises significant issues that implicate the administration of the Debtors' estates.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

14. Pursuant to §§ 362(a) and 105(a) of the Bankruptcy Code and 28 U.S.C. § 2201, this Court can enter the declaratory and injunctive relief sought in this Complaint because this case presents an actual controversy and is within this Court's jurisdiction as stated above.

15. To the extent that any of the Class Action Claims against Wells Fargo are valid, an assertion that Wells Fargo categorically denies, such claims are tantamount to a direct action against R.E. Loans, are property of the bankruptcy estate of R.E. Loans within the meaning of 11 U.S.C. § 541(a)(1), or are so intertwined with the claims in the underlying bankruptcy proceedings that they are subject to the automatic stay of § 362(a).

III.

PARTIES

16. R.E. Loans is a California limited liability company. Following the entry of a certain Final Order Authorizing Employment of Mackinac Partners and James A. Weissenborn From the Petition Date to Provide Interim Management and Management Assistance to the Debtors Pursuant to 11 U.S.C. § 363 (the "Management Order"), entered by this Court on October 28, 2011 [Docket No. 179], effective as of the Petition Date, (a) Mackinac Partners became the sole manager of R.E. Loans and R.E. Future, (b) James A. Weissenborn became the Chief Restructuring Officer of each of the Debtors; and (c) James A. Weissenborn became the sole director and president of Capital Salvage. R.E. Loans is named as a nominal defendant in this adversary proceeding because (i) as a result of R.E. Loans' indemnity obligations to Wells Fargo, prosecution of the Class Action Claims against Wells Fargo is tantamount to a direct

action against R.E. Loans and barred by reason of § 362(a) of the Bankruptcy Code, (ii) all or some of such claims are the property of the R.E. Loans' bankruptcy estate pursuant to 11 U.S.C. § 541, and as such, are subject to the automatic stay set forth in 11 U.S.C. § 362(a)(3), (iii) as a result of R.E. Loans' indemnity obligations to Wells Fargo, Wells Fargo is entitled to reimbursement of its reasonable and necessary attorneys' fees and defense costs incurred as a result of defending the Class Action Claims and in bringing this adversary proceeding from the bankruptcy estate of R.E. Loans, and (iv) R.E. Loans is a necessary party to this action.

17. Plaintiff Wells Fargo f/k/a Wells Fargo Foothill, LLC, is a Delaware limited liability company.

18. Defendant Gordon Noble is one of the named plaintiffs in the Noble Class Action Lawsuit, and upon information and belief, is an individual resident of Marin County, California.

19. Defendant Arlene Dea Deeley is one of the named plaintiffs in the Noble Class Action Lawsuit, and upon information and belief, is an individual resident of Alameda County, California.

20. Defendant Fredric C. Mendes is one of the named plaintiffs in the Mendes Class Action Lawsuit, and upon information and belief, is an individual resident of San Mateo County, California.

21. Defendant Nancy Rapp is one of the named plaintiffs in the Mendes Class Action Lawsuit, and upon information and belief, is an individual resident of Marin County, California.

22. Defendant Philip Cantor is one of the named plaintiffs in the Mendes Class Action Lawsuit, and upon information and belief, is an individual resident of Alameda County, California.

23. Defendant Irene Lee is one of the named plaintiffs in the Mendes Class Action Lawsuit, and upon information and belief, is an individual resident of Contra Costa County, California.

IV.

R.E. LOANS' BUSINESS AND LOAN PORTFOLIO[1]

24. R.E. Loans was, for many years, in the business of providing financing to home builders and developers of real property ("R.E. Loans' Borrowers"). All of the R.E. Loans' loans were initially secured by first-priority deeds of trust or mortgages on real property owned by R.E. Loans' Borrowers. See Weissenborn Declaration ¶ 8.[2]

25. In 2008, the United States economy in general and real estate development in particular entered into the worst economic downturn since the Great Depression. Virtually all of the R.E. Loans' Borrowers that had outstanding loan balances due to R.E. Loans in 2008 have defaulted. As a result, the Debtors have no regular cash flow. R.E. Loans has worked with many of R.E. Loans' Borrowers in an effort to maximize the recovery on the defaulted loans, but in other instances R.E. Loans has been forced to foreclose. See Weissenborn Declaration ¶ 10.

26. As a result of the multiple defaults by R.E. Loans' Borrowers, R.E. Loans has effectively transitioned from being a lender to becoming a property management company. See Weissenborn Declaration ¶¶ 11-12.

27. R.E. Loans retained title to certain REO acquired through foreclosure proceedings. When R.E. Loans acquired property as the result of credit bids at foreclosure sales (the "REO Property"), it transferred title to some of the properties to each of its wholly owned

[1] Paragraphs 24 through 42 are based upon the Weissenborn Declaration, which was filed with this Court on September 13, 2011 (Docket No. 14).

[2] A true and correct copy of the Weissenborn Declaration is attached hereto as Exhibit "D" and is incorporated herein for all purposes.

subsidiaries, Capital Salvage and R.E. Future (the "REO Subsidiaries"). In exchange for each such transfer, the REO Subsidiary that received title delivered a promissory note payable to R.E. Loans and secured by the same REO Property.[3]

V.

THE DEBTORS' MEMBERS AND FORMER SERVICER

28. R.E. Loans owns 100% of the issued and outstanding stock of Capital Salvage. Capital Salvage is a California corporation. R.E. Loans is the sole member of R.E. Future, which is a California limited liability company. See Weissenborn Declaration ¶ 4.

29. B-4 Partners LLC ("B-4"), a California limited liability company, is the sole member of R.E. Loans. The members of B-4 throughout most of the Debtors' history were Walter Ng, Kelly Ng, Barney Ng, and Bruce Horwitz ("Horwitz"), each of whom owned 25% of B-4. Walter Ng was a manager of B-4 at all relevant times before he filed his chapter 11 petition on May 12, 2011. Horwitz was also a manager of B-4 until September 24, 2009. At that time, Horwitz resigned as a manager of B-4 and sold his 25% interest in B-4 to Kelly Ng. Kelly Ng also became a manager of B-4 on September 24, 2009. As a result, the members of B-4 are currently Walter Ng (25%), Barney Ng (25%) and Kelly Ng (50%). Kelly Ng is the manager of B-4, which is, in turn, the only member and, prior to the Petition Date and the entry of the Management Order, was the manager of R.E. Loans. See Weissenborn Declaration ¶ 5.

30. Until September of 2009, Barney Ng was also the president of Bar-K, Inc., a California corporation ("Bar-K"). Barney Ng resigned as the President of Bar-K in September of 2009. At that time Kelly Ng became the president of Bar-K. Bar-K originated most of R.E. Loans' loans to R.E. Loans' Borrowers and serviced R.E. Loans' loans until October 1,

[3] The one exception to this structure is the property known as "Perdido Key", title to which was conveyed to Capital Salvage.

2010. Lend, Inc. assumed responsibility for servicing R.E. Loans' notes receivable on October 1, 2010. Kelly Ng is the President of Lend, Inc. See Weissenborn Declaration ¶ 6.

VI.

THE DEBTORS' PRE-PETITION SECURED LENDERS

31. R.E. Loans' originally raised the capital to fund the secured loans to R.E. Loans' Borrowers by selling membership interests in R.E. Loans. In April of 2007, R.E. Loans stopped selling membership interests. See Weissenborn Declaration ¶ 16.

32. During 2007, R.E. Loans granted two security interests in all notes receivable held by R.E. Loans. In July of 2007, R.E. Loans granted a security interest to Wells Fargo in all or substantially all of R.E. Loans' personal property (consisting primarily of notes receivable and the collateral securing the repayment of same), which security interest was perfected by the filing of a UCC-1 Financing Statement with the California Secretary of State on July 6, 2007. On December 1, 2007, R.E. Loans completed the exchange offer described below, and granted a subordinate security interest in all notes receivable held by R.E. Loans to secure the repayment of the "Exchange Notes," as defined below. That security interest was perfected by the filing of a UCC-1 Financing Statement by the collateral agent for the holders of the Exchange Notes (the "Noteholders") on November 27, 2007. That security interest is expressly contractually subordinate to the security interest granted to Wells Fargo under its credit facility. The Noteholders' security interest is also junior to Wells Fargo's security interest because the security interest granted to the Noteholders was granted, filed of record, and perfected after Wells Fargo's security interest was granted, filed of record, and perfected. See Weissenborn Declaration ¶ 17.

33. In July of 2007, Wells Fargo provided an initial $50 million line of credit facility to R.E. Loans to fund its operations (the "Line of Credit"). Wells Fargo holds a first-priority

perfected security interest in all or substantially all of the Debtors' assets to secure the Line of Credit. Availability under the Line of Credit was originally based on a borrowing base formula, which considered, among other things, the amount owing under eligible notes payable to R.E. Loans by R.E. Loans' Borrowers. The balance owing to Wells Fargo as of the Petition Date was approximately $68 million. See Weissenborn Declaration ¶¶17 & 29.

34. The second-priority security interest in the notes payable by the R.E. Loans Borrowers to R.E. Loans was granted effective December 1, 2007, pursuant to the form of exchange notes, the Security Agreement, and the "Exchange Agreement." The Security Agreement securing the Exchange Notes expressly provides that the security interest granted to secure the Exchange Notes is subordinate to the Wells Fargo first-priority security interest. Section 3.6(b) of the Exchange Agreement reads as follows:

> The lien on [R.E. Loans'] assets established by the security agreement (the "***Lien***") will be subordinate to the lien of any Company Borrowings, including the WFF Lien. In addition, the terms of the WFF LOC provide for the payment of principal and interest on the WFF LOC on a priority basis under specified circumstances from certain income and assets of the Company, including from revenues and income generated by Portfolio Loans and from proceeds payable to the Company with respect to Portfolio Loan principal or the exercise of the Company's rights and remedies with respect to the Portfolio Loans.

35. Company Borrowings is defined at page 2, paragraph E of the Exchange Agreement to state that R.E. Loans "is specifically authorized to enter into loan agreements and lines of credit with institutional and other lenders for the purpose of borrowing operating capital and capital funds in order to make portfolio loans and for such other purposes as the Manager may determine (. . . such borrowings shall be collectively referred to as the '***Company Borrowings***')."

36. The Summary of Reorganization Plan is incorporated into the Confidential Memorandum accompanying the R.E. Loans Reorganization Plan and Note Program, dated October 2007, which was approved by the Exchange Agreement. The Summary of Reorganization Plan states that "The Note Documents will subordinate the Fund's obligations under the Investor Notes to its obligations as borrower under the WFF Loan Documents." (Addendum Exhibit "L" at page 2). The "R.E. Loans, LLC Reorganization Plan and Note Program Confidential Memorandum dated October, 2007" also contains several subordination provisions, at page 2 (confirming subordination of the Noteholders' lien on R.E. Loans' assets to "other Company Borrowings, including the WFF Line of Credit"), page 5 ("the WFF Line of Credit will be secured by a senior lien"), and page 13 (the Noteholders' lien is "junior to the liens imposed by Company Borrowings . . ."). See Weissenborn Declaration ¶ 19.

37. R.E. Loans originally raised the capital to fund the secured loans to R.E. Loans' Borrowers, which are real estate owners and developers, by selling membership interests in R.E. Loans. In April of 2007, R.E. Loans stopped selling membership interests. As of April of 2007, R.E. Loans had approximately 3,000 members, but its sole manager was B-4 and its loans were being originated and serviced by Bar-K. At that time R.E. Loans had no material debts. R.E. Loans then entered into the original Loan Agreement with Wells Fargo effective July 10, 2007 to evidence the Line of Credit. [Docket No. 35].

38. R.E. Loans thereafter engaged in an exchange offer designed to bring it into compliance with applicable provisions of ERISA and applicable securities laws. On December 1, 2007, R.E. Loans consummated an exchange offer pursuant to which each member of R.E. Loans, other than B-4, received a promissory note in exchange for the member's membership interest (the "Exchange Notes"). Pursuant to the exchange offer, R.E. Loans issued Exchange Notes in the aggregate face amount of $743 million in exchange for the interests of its

members. Upon information and belief, the dollar amount of the Exchange Notes delivered to each former member was equal to the balance of that member's capital account, including the principal invested and interest accrued but not paid, as of the date the Exchange Offer closed. As of the Petition Date, there were approximately 2,800 Exchange Notes outstanding, held by 1,400 separate individuals or entities. In some instances a single person holds more than one Exchange Note in different capacities or through different accounts, including retirement accounts. See Weissenborn Declaration ¶ 20.

39. The Exchange Notes issued to the former members have at all times been secured by a second-priority security interest in substantially all of the R.E. Loans' notes receivable, subordinate in all respects to the first-priority security interests in and liens on all or substantially all of the Debtors' assets in favor of Wells Fargo. The Exchange Notes are not secured by any real estate owned by any of the Debtors. The Exchange Notes are payable interest only until December 1, 2012, when they are all due and payable. Noteholders could, however, request prepayment of amounts due to them at any time. R.E. Loans had the right but not the obligation to honor such requests and R.E. Loans had historically honored those requests when R.E. Loans had sufficient liquidity. Shortly after R.E. Loans defaulted under the Wells Fargo Line of Credit and R.E. Loans had limited liquidity, R.E. Loans stopped funding cash distributions to the Noteholders, which payments were at the option of R.E. Loans.

40. Because Wells Fargo's documentation provided for R.E. Loans' grant to Wells Fargo of a first-priority security interest in all notes payable to R.E. Loans, this includes the notes payable by the REO Subsidiaries. Similarly, because the Noteholders were granted a second-priority security interest in all notes payable to R.E. Loans, this also includes the notes payable by the REO Subsidiaries. See Weissenborn Declaration ¶ 23.

41. In addition, R.E. Loans granted to Wells Fargo a first-priority deed of trust or mortgage on each of the properties acquired by R.E. Loans through foreclosure sales.[4] No lien was granted to the Noteholders on any of the real estate acquired by R.E. Loans directly. See Weissenborn Declaration ¶ 24.

42. The Exchange Notes and the Line of Credit were both in default for an extended period of time prior to the Petition Date. Pursuant to the terms and conditions of the operative loan agreements between R.E. Loans and Wells Fargo, Wells Fargo declared a default under the Line of Credit in August of 2008. After that default was declared, Wells Fargo was under no obligation to make additional advances to R.E. Loans. The Debtors ceased making interest payments on account of the Exchange Notes during September, 2008. Between that date and the Petition Date, Wells Fargo and R.E. Loans entered into a series of forbearance agreements during which time Wells Fargo did not exercise its rights or remedies and funded R.E. Loans' operations through optional protective advances. In early 2010, Wells Fargo was still funding such optional protective advances, based on approved budgets generated by Mackinac Partners, who was engaged in January of 2010 to provide consulting services to R.E. Loans. See Weissenborn Declaration ¶ 26.

43. On September 13, 2011, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The cases are being jointly administered.

44. Wells Fargo has provided post-petition financing to the Debtors pursuant to that certain Joint Stipulation and Final Agreed Order: (I) Authorizing Debtors to (A) Obtain Post-Petition Financing on a Super-Priority, Secured and Priming Basis in Favor of Wells Fargo Capital Finance, LLC; (B) Use Cash Collateral on an Interim Basis, (C) Provide Adequate

[4] No lien was granted on the Perdido Key property because of the large transfer taxes that would have been incurred for recording such a grant.

Protection to Wells Fargo Capital Finance, LLC and the Noteholders, and (D) Enter into Post-Petition Agreements with Wells Fargo Capital Finance, LLC; (II) Modifying the Automatic Stay entered by the Court on November 23, 2011, together with prior interim financing orders entered by this Court. [Docket No. 273].

VII.
INDEMNIFICATION CLAIMS

45. Section 11.3 of the Loan and Security Agreement among Wells Fargo, as lender, R.E. Loans and B-4, as borrowers, provides that R.E. Loans and B-4 shall indemnify Wells Fargo for any and all claims arising in relation to the Line of Credit.

46. Specifically, Section 11.3 of the Loan and Security Agreement provides, in relevant part, that:

> Each Borrower [each of R.E. Loans and B-4] shall pay, indemnify, defend, and hold the Lender-Related Persons [Wells Fargo, together with its Affiliates, officers, directors, attorneys, and agents], and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts and consultants and other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution, delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Borrowers' and their Subsidiaries' compliance with the terms of the Loan Documents, (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto…This provision shall survive the termination of this Agreement and the repayment of the Obligations.

VIII.
THE CLASS ACTION CLAIMS

47. The Noble First Amended Complaint was filed on or about November 2, 2011 in Alameda County, California Superior Court against defendants B-4, Bar-K, The Mortgage Fund, LLC ("Mortgage Fund"), Horwitz, Kelly Ng, Greenberg Traurig, LLP ("Greenberg"), and Wells Fargo.

48. The Noble First Amended Complaint alleges twelve (12) separate causes of action, including, with respect to R.E. Loans:

(i) Breach of Fiduciary Duties (against Bruce Horwitz, Kelly Ng, B-4 and Bar-K),

(ii) Aiding and Abetting Breach of Fiduciary Duty (against Greenberg and Wells Fargo),

(iii) Control Person Liability for California Statutory Securities Fraud (against Horwitz, B-4, Bar-K and Kelly Ng),

(iv) Secondary Liability for Securities Fraud (against Horwitz, B-4, Bar-K, Kelly Ng, Greenberg and Wells Fargo),

(v) Fraud (against Horwitz, Kelly Ng, B-4, Bar-K and Greenberg),

(vi) Violation of Unfair Competition Law Business & Professions Code § 17200 et seq. (against B-4, Bar-K, Kelly Ng, Horwitz, Greenberg and Wells Fargo), and, with respect to MF08:

(vii) Control Person Liability for California Statutory Securities Fraud (against Mortgage Fund, Horwitz, B-4, Bar-K and Kelly Ng),

(viii) Secondary Liability for Securities Fraud (against Mortgage Fund, Horwitz, B-4, Bar-K, Kelly Ng and Greenberg),

(ix) Fraud (against Mortgage Fund, Horwitz, Kelly Ng, B-4, Bar-K and Greenberg),

(x) Breach of Fiduciary Duty (against B-4, Bar-K, Horwitz and Kelly Ng),

(xi) Aiding and Abetting Breach of Fiduciary Duty (against Greenberg) and

(xii) Violation of Unfair Competition Law Business & Professions Code § 17200 et seq. (against Mortgage Fund, B-4, Bar-K, Kelly Ng, Horwitz and Greenberg).

49. The Mendes First Amended Complaint was filed on or about November 4, 2011 in Alameda County, California Superior Court against defendants B-4, Bar-K, Horwitz, Barney Ng, Kelly Ng, Greenberg, Development Specialists, Inc. ("DSI"), Armanino McKenna, LLP ("Armanino") and Wells Fargo.

50. The Mendes First Amended Complaint alleges ten (10) separate causes of action, including:

(i) Fraud- Intentional Misrepresentation and False Promise (against Horwitz, Barney Ng, Kelly Ng, B-4 Bar-K and Greenberg),

(ii) Fraud- Concealment and Suppression of Fact (against Horwitz, Barney Ng, Kelly Ng, B-4 and Bar-K),

(iii) Aiding and Abetting Fraud (against Greenberg and Wells Fargo),

(iv) Securities Fraud (against B-4, Horwitz, Kelly Ng, and Barney Ng),

(v) Aiding and Abetting Securities Fraud (against B-4, Horwitz, Kelly Ng, Barney Ng, and Greenberg),

(vi) Breach of Fiduciary Duty (against B-4, Bar-K, Horwitz, Barney Ng and Kelly Ng),

(vii) Aiding and Abetting Breach of Fiduciary Duty (against Greenberg, Armanino and Wells Fargo),

(viii) Breach of Contract (against DSI),

(ix) Negligent Misrepresentation (against Armanino and Greenberg), and

(x) Unfair Business Practices (against B-4, Bar-K, Horwitz, Kelly Ng, Barney Ng, Greenberg, Armanino and Wells Fargo).

51. While the various allegations and causes of action differ somewhat between the Class Action Complaints, generally speaking, the Class Action Complaints are substantially similar, especially as to the claims against Wells Fargo. To summarize, with respect to the allegations related to Wells Fargo, the Class Action Complaints generally allege that the Managers of R.E. Loans (Bruce Horwitz, Walter Ng, Barney Ng, and Kelly Ng) breached their fiduciary obligations to R.E. Loans itself and the Noteholders by:

- improperly establishing the unauthorized Line of Credit with Wells Fargo,
- wrongfully assigning $250 million of the Fund's portfolio as collateral for the Line of Credit,
- concealing the credit facility and related assignment to Wells Fargo of trust deeds totaling $250 million,
- exhausting the Line of Credit almost immediately in self-dealing transactions, and
- causing the Fund to become illiquid through secret self-dealings and insider distributions.

52. With respect to the Class Action Claims against Wells Fargo, the Class Action Complaints generally allege that Wells Fargo somehow had a role in the alleged breaches of fiduciary duties by:

(i) extending the Line of Credit "knowing the Fund Managers were breaching their fiduciary duties to the investors by entering the Loan Agreement and assigning to Wells Fargo assets worth five times as much as the $50 million loan amount,"

(ii) knowingly or recklessly disregarding that the "Fund Managers lacked authority to enter into the Line of Credit,"

(iii) making a $50 million loan secured by $250 million of the Fund's mortgage portfolio that was "recklessly inconsistent with the published Offering Circulars,"

(iv) knowing, based on the Fund's financial statements, that "few, if any" investors were covered by the 12/06 Offering Circular,

(v) knowing, based on the Fund's financial statements, that R.E. Loans was illiquid and undercapitalized and therefore "likely incapable of performing its obligations and complying with the onerous, non-standard Loan covenants,"

(vi) negotiating and closing the $50 million Line of Credit on an expedited timetable,

(vii) permitting use of the Line of Credit to pay fund managers and for other purposes contrary to the stated purpose of the credit facility,

(viii) allowing Barney Ng to sign loan documents as an officer of R.E. Loans "even though he did not hold this position," and

(ix) reassigning deeds of trust to the Fund, which sold them to MF08, "to retroactively disguise and re-characterize the MF08 loan as a 'sale' of properties."

Other than these allegations in support of the Aiding and Abetting Breach of Fiduciary Duty claim against Wells Fargo, there are no independent allegations contained in the Class Action Complaints to support the other claims against Wells Fargo -- namely Secondary Liability for Securities Fraud, Aiding and Abetting Fraud, and Violations of the Unfair Business Practices/Competition Law Section 17200. In any event, all of the claims asserted against Wells Fargo trigger the indemnity obligations of the Debtor R.E. Loans to cover the defense costs that Wells Fargo incurs and any underlying liability or judgment entered against Wells Fargo in the Class Action Complaints as described above.

IX.
THE CLASS ACTION CLAIMS AGAINST WELLS FARGO ARE TANTAMOUNT TO AN ACTION AGAINST R.E. LOANS AND ARE PROPERTY OF THE R.E. LOANS' BANKRUPTCY ESTATE

53. Although the Class Action Complaints have been amended and pled to explicitly remove R.E. Loans as a named defendant in an apparent attempt to evade the automatic stay provisions of § 362(a) of the Bankruptcy Code, such attempt must fail, at least as it relates to the Class Action Claims against Wells Fargo. Pursuant to the indemnification provisions of the Line of Credit discussed above, any costs and expenses incurred by Wells Fargo in defending the Class Action Complaints are costs and expenses that are made a part of Wells Fargo's secured claim against the R.E. Loans' bankruptcy estate. Further, to the extent that any of the Class Action Claims against Wells Fargo result in any liability or judgment against Wells Fargo, Wells Fargo is entitled to full indemnification of such liability or judgment from R.E. Loans, which would increase the secured claims against the R.E. Loans' bankruptcy estate.

54. Due to the ongoing harm to the R.E. Loans' bankruptcy estate resulting from the legal expenses of Wells Fargo in defending the Class Action Complaints, and the continuing

harm to the R.E. Loans' bankruptcy estate that would result from any liability or judgment that is obtained against Wells Fargo in the Class Action Complaints, the Class Action Complaints need to be stayed, and the claims against Wells Fargo should be heard, if at all, by this Court in connection with the R.E. Loans' bankruptcy proceedings. Allowing the Class Action Complaints to continue against Wells Fargo, which would dissipate the assets of the R.E. Loans' bankruptcy estate as a result of the indemnity obligations, would eviscerate the fundamental policy of requiring similarly situated creditors being treated equally within an organized and uniform bankruptcy proceeding and would otherwise cause duplicative, expensive, and burdensome litigation.

55. Wells Fargo is named as a defendant in the Noble First Amended Complaint with respect to three (3) of the causes of action: (i) Aiding and Abetting Breach of Fiduciary Duty; (ii) Violation of Unfair Competition Law Business & Professional Code Section 17200; and (iii) Secondary Liability for Securities Fraud. All of these claims asserted against Wells Fargo trigger the indemnity obligations of the Debtor R.E. Loans to cover the defense costs that Wells Fargo incurs and any underlying liability or judgment entered against Wells Fargo in the Noble Class Action as described above. As a result, prosecuting the claims against Wells Fargo in the Noble Class Action is tantamount to a direct action against R.E. Loans and barred by § 362(a) of the Bankruptcy Code.

56. Wells Fargo is named as a defendant in the Mendes First Amended Complaint with respect to three (3) of the causes of action: (i) Aiding and Abetting Fraud; (ii) Aiding and Abetting Breach of Fiduciary Duty; and (iii) Violation of Unfair Business Practices California Business & Professions Code Section 17200. All of these claims asserted against Wells Fargo trigger the indemnity obligations of the Debtor R.E. Loans to cover the defense costs that Wells Fargo incurs and any underlying liability or judgment entered against Wells Fargo in the Mendes

Class Action as described above. As a result, prosecuting the claims against Wells Fargo in the Mendes Class Action is tantamount to a direct action against R.E. Loans and barred by § 362(a) of the Bankruptcy Code.

57. The allegations of the Class Action Complaints that relate to Wells Fargo describe a series of events whereby Wells Fargo extended a $50 million line of credit to R.E. Loans in July 2007, the proceeds of which are alleged to have been re-distributed to certain managers of R.E. Loans in an unauthorized and self-dealing manner. This same basic set of allegations gives rise to each of the Class Action Claims asserted against Wells Fargo in both of the Class Action Complaints. If the allegations set forth in the Class Action Complaints were true, and damages resulted from the self-dealing transactions, those damages would primarily be damages suffered by R.E. Loans. While ultimately, the Noteholders may also have suffered damages from these alleged self-dealing transactions, any potential damages to the Noteholders would have been in the form of an inability to collect on their notes due to the financial condition of R.E. Loans, which was allegedly weakened by the self-dealing transactions described in the Class Action Complaints. Regardless, any damages awarded against Wells Fargo will trigger the indemnity obligations that the Debtor R.E. Loans owes to Wells Fargo as described above. Thus, even if the Class Action Plaintiffs allege their own "direct" claims against Wells Fargo on the face of the Class Action Complaints, the R.E. Loans' indemnity obligations owed to Wells Fargo cause these Class Action Claims to constitute direct actions against R.E. Loans and barred by the automatic stay under § 362(a) of the Bankruptcy Code. Given that the allegations in the Class Action Complaint center around the acts of R.E. Loans and Wells Fargo regarding the Line of Credit as described above, coupled with the full indemnity obligations of R.E. Loans to Wells Fargo and the fact that Wells Fargo was the primary lender of R.E. Loans leading up to the filing of its bankruptcy case, and continues to provide R.E. Loans with post-petition financing as the

parties work towards confirming a plan of reorganization within the underlying bankruptcy proceedings, Wells Fargo and R.E. Loans are so intertwined that a stay of the Class Action Claims against Wells Fargo is proper until R.E. Loans has confirmed its plan of reorganization.

58. The Class Action Complaints describe in detail the ways that the Debtor R.E. Loans was injured by its management in support of the Class Action Claims. For example, Paragraph 91 of the Mendes First Amended Complaint states that:

> On July 17, 2007, the same day the Wells Fargo Loan was closed, R.E. Loans' managers drew $43,624,663 from the $50,000,000 line. Of this, $22,039,072.58 was used by R.E. Loans' managers, B-4 Partners, and BAR-K to continue cash disbursements to preferred investors, to make unauthorized and unwarranted payments to themselves, and for other unlawful and/or improper purposes. Plaintiffs are informed an[d] believe that $2,000,000 of the initial draw from the line of credit was paid to Barney Ng as an undisclosed finder's or origination fee for the Wells Fargo Loan.

See Mendes First Amended Complaint at ¶ 91.

59. Further, paragraph 94 of the Mendes First Amended Complaint, addressing the alleged breaches of fiduciary duty states that:

> R.E. Loans' managers engaged in the following activities and thereby violated their fiduciary duties to R.E. Loans' investors [by]…(4) immediately drawing down nearly the entire secret Line of Credit and misappropriating the funds in self-dealing transactions; and (5) bringing about the illiquidity of the Fund through mismanagement, self-dealing, preferential distributions, and other secret and unauthorized activities.

See Mendes First Amended Complaint at ¶ 94.

60. The paragraphs quoted above allege certain self-dealing transactions undertaken by the managers of R.E. Loans associated with the proceeds of the Wells Fargo Line of Credit. To the extent that Wells Fargo is liable under an "aiding and abetting breach of fiduciary duty" theory, such aiding and abetting claim must be based on the underlying breach of fiduciary duties owed to the Debtor R.E. Loans allegedly carried out by its management -- namely B-4, Bar-K,

Horwitz, Walter Ng, Barney Ng, and/or Kelly Ng -- in association with the Wells Fargo loan transaction. To the extent that these allegations are true and give rise to damages, such damages are first and foremost recoverable by R.E. Loans against the Managers of R.E. Loans.

61. While the paragraphs above specifically reference the alleged breach of fiduciary duties by the Managers of R.E. Loans, the same principle would apply to the claim in the Mendes First Amended Complaint against Wells Fargo for aiding and abetting fraud because **the claim relates to the same set of underlying facts and could have been raised by R.E. Loans as of the commencement of the bankruptcy case**.

62. The remaining claims contained in the Class Action Complaints against Wells Fargo for Secondary Liability for Securities Fraud and Violations of the Unfair Business Practices/Competition Law Section 17200 do not contain any independent allegations to support these claims. Rather, these claims are based on the same allegations in support of the Aiding and Abetting Breach of Fiduciary Duty claim as described above. As a result, all Class Action Claims against Wells Fargo (i) in essence amount to merely an aiding and abetting a breach of fiduciary duty claim, (ii) could have been raised by R.E. Loans as of the Petition Date, (iii) constitute property of the R.E. Loans' bankruptcy estate, and/or (iv) trigger the indemnity obligations owed by R.E. Loans to Wells Fargo as described above so that prosecution of these claims against Wells Fargo is tantamount to an action against R.E. Loans and its bankruptcy estate.

63. Being property of R.E. Loans' bankruptcy estate, the pursuit of these claims by the Class Action Plaintiffs in Alameda County, California Superior Court should be stayed by virtue of 11 U.S.C. § 362(a)(3).

64. Moreover, the claims in the Class Action Complaints related to fraud and breach of fiduciary duty appear to be predicated on some sort of alter ego theory. For example,

Paragraphs 151 (under the heading FIRST CAUSE OF ACTION- Fraud- Intentional Misrepresentation and False Promise), 177 (under the heading SECOND CAUSE OF ACTION- Fraud- Concealment and Suppression of Fact) and 264 (under the heading SIXTH CAUSE OF ACTION- Breach of Fiduciary Duty) of the Mendes First Amended Complaint state that "Notwithstanding its purported existence as a separate entity, **R.E. Loans was in fact an alter ego and joint venture partner of B-4 Partners, Bar-K, and the managers of those entities**, all of whom acted in concert to control the business operations of R.E. Loans." (emphasis added).

65. To the extent that the Class Action Claims arise in connection with an "alter ego" theory, then this may be another independent basis for this Court to decide whether these claims are property of R.E. Loans' bankruptcy estate.

66. The Bankruptcy Court is the best gatekeeper to decide whether the Class Action Claims against Wells Fargo are property of R.E. Loans' bankruptcy estate and thus should be stayed. To the extent that any of the Class Action Claims against Wells Fargo is determined to be solely direct claims of the Noteholders, including the Class Action Plaintiffs, and not property of R.E. Loans' bankruptcy estate (notwithstanding the indemnity obligations or the fact that the claims are based on an alter ego theory as described above), the claims should still be heard by the Bankruptcy Court in the interest of judicial economy because they all arise out of the same set of facts as the other claims that are property of the bankruptcy estate. In doing so, it will avoid the inefficiencies of piecemeal adjudication and promote judicial economy by aiding in the efficient and expeditious resolution of all matters connected to R.E. Loans.

67. The series of transactions described above and the relationships of the parties described herein are significantly intertwined with the R.E. Loans' bankruptcy case pending before this Court. In essence, the Class Action Plaintiffs allege that the Managers of R.E. Loans

first and foremost breached their fiduciary obligations to R.E. Loans by improperly entering in to the Line of Credit facility with Wells Fargo, improperly distributing funds to themselves, and failing to properly disclose these transactions to the Noteholders. In doing so, the Class Action Plaintiffs allege that the Managers of R.E. Loans also breached their fiduciary duties to the Noteholders. Thus, the threshold issue involved in both the underlying bankruptcy proceedings and the Class Action Complaints is whether the Managers of R.E. Loans breached their underlying fiduciary duties to R.E. Loans.

68. The most efficient, and cost effective way to untangle this complicated web is within the context of the R.E. Loans' bankruptcy proceedings. Indeed, the central figure in each of the claims set forth in the Class Action Complaints is R.E. Loans. As a result, if the Class Action Complaints are not stayed, all of the parties, including the Debtor R.E. Loans itself, would be subject to duplicative, expensive, and burdensome litigation, including substantial costs of discovery, related to the Class Action Complaints. Furthermore, R.E. Loans may also suffer damage from inconsistent rulings and the potential consequences involved with the doctrines of res judicata or collateral estoppel over litigating these issues within the Class Action Complaints without R.E. Loans as a named party.

69. Allowing the Class Action Claims to continue against Wells Fargo threaten the property of the R.E. Loans' bankruptcy estate, burden and impede the reorganization effort, contravene the public interest, and may render any plan of reorganization futile. The burden on the R.E. Loans' bankruptcy estate substantially outweighs any burden on the Class Action Plaintiffs caused by enjoining the Class Action Claims against Wells Fargo. The evidence and underlying testimony presented in the Class Action Complaints will be substantially similar to the evidence and testimony presented in the R.E. Loans bankruptcy case and the interests of judicial economy are best served by having all of these interrelated issues heard together in the

same Court, especially in light of the indemnification obligations that R.E. Loans owes to Wells Fargo as described above. That way, each of the competing interests can be considered together. Wells Fargo respectfully requests that the Court issue an order staying the Class Action Complaints and similar lawsuits that may be brought by Noteholders and hearing the claims set forth in the Class Action Complaint in connection with the R.E. Loans' bankruptcy proceedings.

X.

CAUSES OF ACTION

First Cause of Action: Claim For Declaratory Judgment That The Class Action Claims Against Wells Fargo Should Be Stayed Based On The Indemnity Obligations Of R.E. Loans

70. Wells Fargo hereby incorporates all of the foregoing paragraphs in their entirety by reference.

71. R.E. Loans owes contractual indemnity obligations to Wells Fargo for all defense costs and any liability or judgments entered against Wells Fargo as a result of any of the Class Action Claims. As a result, all of the Class Action Claims against Wells Fargo are subject to the automatic stay of § 362(a) in that prosecuting the Class Action Claims against Wells Fargo is tantamount to a direct claim against R.E. Loans and its bankruptcy estate.

72. Wells Fargo requests a declaratory judgment declaring that the Class Action Claims against Wells Fargo are subject to the automatic stay set forth in 11 U.S.C. § 362(a) commencing upon the filing of R.E. Loans' petition in bankruptcy; and that all of the Class Action Claims should proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court.

Second Cause of Action: Claim For Declaratory Judgment That The Class Action Claims Against Wells Fargo Should Be Stayed Since Some or All of the Class Action Claims Are Property Of The Bankruptcy Estate Of R.E. Loans Pursuant To 11 U.S.C. § 541

73. Wells Fargo hereby incorporates all of the foregoing paragraphs in their entirety by reference.

74. Some or all of the Class Action Claims could have been brought by R.E. Loans at the commencement of its bankruptcy proceedings. As a result, some or all of the Class Action Claims against Wells Fargo (i) in essence amount to merely an aiding and abetting a breach of fiduciary duty claim, (ii) could have been raised by R.E. Loans as of the Petition Date, and/or (iii) constitute property of the R.E. Loans' bankruptcy estate.

75. Wells Fargo requests a declaratory judgment declaring that some or all of the Class Action Claims are property of the bankruptcy estate of R.E. Loans pursuant to 11 U.S.C. § 541, and as such, are subject to the automatic stay set forth in 11 U.S.C. § 362(a)(3) commencing upon the filing of R.E. Loans' petition in bankruptcy; and that all of the Class Action Claims should proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court.

Third Cause of Action: Application For Temporary Injunction And Any Other Applicable Injunctive Relief That The Class Action Claims Against Wells Fargo Should Be Stayed Based On The Indemnity Obligations Of R.E. Loans

76. Wells Fargo hereby incorporates all of the foregoing paragraphs in their entirety by reference.

77. R.E. Loans owes indemnity obligations to Wells Fargo for all defense costs and any liability or judgments entered against Wells Fargo as a result of any of the Class Action Claims. As a result, all of the Class Action Claims against Wells Fargo are subject to the automatic stay of § 362(a) in that prosecuting the Class Action Claims against Wells Fargo is tantamount to a direct action against R.E. Loans and its bankruptcy estate.

78. Wells Fargo seeks the entry of a temporary injunction (i) until R.E. Loans has confirmed its plan of reorganization and there is a clear delineation within the confirmed plan as to who will prosecute claims owned by the R.E. Loans' bankruptcy estate and claims owned by the Noteholders, including the Class Action Plaintiffs, pursuant to applicable injunctive relief pursuant to sections 362(a) and 105(a) of the Bankruptcy Code, and 28 U.S.C. 1334; and (ii) enjoining the continued prosecution of the Class Action Claims against Wells Fargo and enjoining the Defendants and any other party from commencing or continuing any lawsuit or proceeding against Wells Fargo based on the allegations contained in the Class Action Complaints. Wells Fargo further seeks the entry of an order that any claims against Wells Fargo related to the Line of Credit with R.E. Loans should proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court.

79. This injunctive relief is necessary and appropriate because (i) the Class Action Claims against Wells Fargo threaten to adversely affect the interests of the Debtor R.E. Loans, (ii) there is a likelihood of success on the merits on the relief sought herein by Wells Fargo, (iii) granting the injunctive relief does not contravene the public interests, (iv) Wells Fargo does not have an adequate remedy at law, and/or (v) Wells Fargo would suffer irreparable harm if the requested relief is not granted.

Fourth Cause Of Action: Application For Temporary Injunction And Any Other Applicable Injunctive Relief That The Class Action Claims Against Wells Fargo Should Be Stayed Because Some Or All Of The Class Action Claims Are Property Of The Bankruptcy Estate Of R.E. Loans Pursuant To 11 U.S.C. § 541

80. Wells Fargo hereby incorporates all of the foregoing paragraphs in their entirety by reference.

81. Some or all of the Class Action Claims could have been brought by R.E. Loans at the commencement of its bankruptcy proceedings. As a result, all of the Class Action Claims

against Wells Fargo (i) in essence amount to merely an aiding and abetting a breach of fiduciary duty claim, (ii) could have been raised by R.E. Loans as of the Petition Date, and/or (iii) constitute property of the R.E. Loans' bankruptcy estate.

82. Wells Fargo seeks the entry of a temporary injunction (i) until R.E. Loans has confirmed its plan of reorganization and there is a clear delineation within the confirmed plan as to who will prosecute claims owned by the R.E. Loans' bankruptcy estate and claims owned by the Noteholders, including the Class Action Plaintiffs, pursuant to applicable injunctive relief pursuant to section 362(a) and 105(a) of the Bankruptcy Code, and 28 U.S.C. 1334, (ii) enjoining the continued prosecution of the Class Action Claims against Wells Fargo and enjoining Defendants and any other party from commencing or continuing any lawsuit or proceeding against Wells Fargo based on the allegations contained in the Class Action Complaints. Wells Fargo further seeks the entry of an order that any Class Action Claims against Wells Fargo related to the Line of Credit with R.E. Loans should proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court.

83. This injunctive relief is necessary and appropriate because (i) the Class Action Claims against Wells Fargo threaten to adversely affect the interests of the Debtor R.E. Loans, (ii) there is a likelihood of success on the merits on the relief sought herein by Wells Fargo, (iii) granting the injunctive relief does not contravene the public interests, (iv) Wells Fargo does not have an adequate remedy at law, and/or (v) Wells Fargo would suffer irreparable harm if the requested relief is not granted.

Attorneys' Fees

84. Wells Fargo hereby incorporates all of the foregoing paragraphs in their entirety by reference.

85. As a result of the need to bring this action, Wells Fargo has retained the undersigned counsel and has agreed to pay its reasonable attorneys' fees. Wells Fargo is entitled to its reasonable and necessary attorneys' fees pursuant to the indemnity obligations of the Debtor R.E. Loans and other applicable law. As a result, Wells Fargo seeks a judgment for Wells Fargo's reasonable and necessary attorneys' fees incurred in connection with this action and in defending the Class Action Claims and any other related claims.

WHEREFORE, Plaintiff Wells Fargo Capital Finance, LLC requests that this Court enter a judgment in its favor and against the Defendants as follows:

A. Declaring that based on the indemnity obligations of R.E. Loans, the Class Action Claims against Wells Fargo are subject to the automatic stay set forth in 11 U.S.C. § 362(a) commencing upon the filing of R.E. Loans' petition in bankruptcy; and that all of the Class Action Claims should proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court;

B. Declaring that some or all of the Class Action Claims are property of the bankruptcy estate of R.E. Loans pursuant to 11 U.S.C. § 541, and as such, are subject to the automatic stay set forth in 11 U.S.C. § 362(a)(3) commencing upon the filing of R.E. Loans' petition in bankruptcy;

C. With the entry of a temporary injunction until R.E. Loans has confirmed its plan of reorganization and there is a clear delineation within the confirmed plan as to who will prosecute claims owned by the R.E. Loans' bankruptcy estate and claims owned by the Noteholders, including the Class Action Plaintiffs, and/or the entry of other applicable injunctive relief, enjoining the Class Action Claims against Wells Fargo and any similar suits to be brought

by Noteholders from proceeding against Wells Fargo in Alameda County, California Superior Court or in any other jurisdiction other than this Court;

D. Declaring that the Class Action Claims and any other similar claims against Wells Fargo should proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court;

E. Awarding Wells Fargo its reasonable and necessary attorneys' fees in connection with this action and in defending the Class Action Claims; and

F. Awarding Wells Fargo such other relief, at law or in equity, to which it may be justly entitled.

DATED: November 28, 2011

Respectfully submitted,

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: R.E. LOANS, LLC, R.E. FUTURE, LLC, and CAPITAL SALVAGE, a California Corporation, Debtors.	Case No. 11-35865-BJH JOINTLY ADMINISTERED CHAPTER 11
GREENBERG TRAURIG LLP and ELIZABETH COBEY, Plaintiffs, vs. DWIGHT DIXON COLLINS, KATHLEEN COLLINS, THE BATROA PROFIT SHARING PLAN, MICHAEL L. LEVINE, GORDON NOBLE, ARLENE DEA DEELEY, FREDRIC C. MENDES, NANCY RAPP, PHILIP CANTOR, IRENE LEE, JOHN MCGUIRE, JANE MCGUIRE, and NANCY BERGERON, Defendants, R.E. LOANS, LLC, Nominal Defendant.	ADV. PROC. NO. 11-_____

COMPLAINT FOR DECLARATORY JUDGMENT AND TEMPORARY INJUNCTION

Plaintiffs Greenberg Traurig LLP ("Greenberg Traurig") and Elizabeth Cobey (collectively, the "Greenberg Parties") file the following Complaint for Declaratory Relief and Temporary Injunction ("Complaint") in this adversary proceeding ("Adversary Proceeding") and, in support hereof, the Greenberg Parties allege as follows:

I. NATURE OF THIS ADVERSARY PROCEEDING AND RELIEF REQUESTED

A. BACKGROUND

1. On September 13, 2011 (the "Petition Date"), real estate fund R.E. Loans LLC ("R.E. Loans" "Debtor" or the "Fund") commenced with this Court a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. This Adversary Proceeding arises out of a present and actual controversy between former R.E. Loans' counsel, Greenberg Traurig LLP ("Greenberg Traurig") and Elizabeth Cobey, a former Greenberg Traurig attorney ("Cobey") (collectively, the "Greenberg Parties"), on the one hand, and Gordon Noble, Arlene Dea Deeley, Fredric C. Mendes, Nancy Rapp, Philip Cantor, Irene Lee, Dwight Dixon Collins, Kathleen Collins, the Batroa Profit Sharing Plan, Michael L. Levine, John McGuire, Jane McGuire, Nancy Bergeron and others similarly situated (collectively, the "California Action Plaintiffs"), on the other hand.

3. At issue are five separate lawsuits currently pending in California state courts (the "California Actions") filed by the California Action Plaintiffs against one or both of the Greenberg Parties arising from alleged conduct in connection with the Greenberg Traurig's provision of legal services to Debtor R.E. Loans.

4. The California Actions have been filed by noteholders of R.E. Loans ("Noteholders") alleging that they have not received payment on account of their investments in R. E. Loans.

5. The factual allegations in the California Actions relate to a series of alleged events in connection with the conduct of the business of R.E. Loans and its interactions with investors, including the opening of a line of credit with Wells Fargo Foothill LLC ("Wells Fargo"), the assignment of a portion of the R.E. Loans portfolio to Wells Fargo as collateral for that line, a transaction pursuant to which investors voted to convert their equity interest in R.E. Loans into debt interest in the form of secured promissory notes, and alleged transactions between R.E. Loans and Mortgage Fund '08 LLC ("MF08"), a subsequent fund operated by the same individuals who operated R.E. Loans.

6. The primary claims in the California Actions, including allegations of breach of fiduciary duty, fraud, and securities fraud, are made against the principals of R.E. Loans, and in some cases, against R.E. Loans itself.

7. Greenberg Traurig, which served as counsel to R.E. Loans for a portion of the period encompassed by the allegations, has been named in the California Actions in connection with its legal services rendered to R.E. Loans as, *inter alia*, having "aided and abetted" or otherwise assisted the principals of R.E. Loans in committing alleged breaches of fiduciary duty and securities fraud.

B. THE CALIFORNIA ACTIONS

The Collins Action

8. In October 2010, a lawsuit was initiated entitled *Dwight Dixon Collins, et al. v. Walter Ng, et al.*, Contra Costa County Superior Court, Case No. MSC-10-02950 (the "Collins

Action"). The Collins Action, pending in Contra Costa County, California Superior Court, names as defendants, *inter alia*, R.E. Loans, the principals of R.E. Loans, and the Greenberg Parties.

9. The allegations against the Greenberg Parties in the Collins Action stem from Greenberg Traurig's legal representation of R.E. Loans beginning in mid-2007. Plaintiffs therein allege that Greenberg assisted R.E. Loans in a series of allegedly fraudulent communications associated with the reorganization of the Fund, whereby investors' equity interests were exchanged for promissory notes. A true and accurate copy of the First Amended Complaint in the Collins Action is attached hereto as **Exhibit "A"** and is incorporated herein by reference.

10. The Collins Action has been stayed since May 2011 in light of the bankruptcy filings of R.E. Loans and its manager Walter Ng. However the Contra Costa County Superior Court recently set a hearing for December 23, 2011, to consider the impact of the bankruptcy on the action.

The Batroa Action

11. On August 30, 2011, a lawsuit was initiated entitled *Batroa Profit Sharing Plan (Batroa) v. R.E. Loans, LLC, et al.*, Contra Costa County Superior Court, Case No. C-11-02000 (the "Batroa Action"). The Batroa Action, pending in Contra Costa County, California Superior Court, names as defendants, *inter alia*, certain principals of R.E. Loans and the Greenberg Parties.

12. The allegations against the Greenberg Parties in the Batroa Action stem from Greenberg Traurig's legal representation of R.E. Loans beginning in mid-2007. The plaintiffs in the Batroa Action allege that they were defrauded by the principals of R.E. Loans and accuse the Greenberg Parties of breaching their alleged fiduciary duty to R.E. Loans and assisting certain

principals of R.E. Loans in committing securities fraud. The Batroa plaintiffs also purport to bring derivative claims for breach of fiduciary duty on behalf of R.E. Loans against certain principals of the Fund. A true and accurate copy of the Complaint in the Batroa Action is attached hereto as **Exhibit "B"** and is incorporated herein by reference.

13. The Batroa Action has been stayed by the Contra Costa County Superior Court as to all parties in light of R.E. Loans' bankruptcy filing. However the Contra Costa County Superior Court recently set a hearing for January 30, 2012 to consider the impact of the R.E. Loans bankruptcy on the action.

The Noble Action

14. In October of 2011, a class action lawsuit now entitled *Noble v. B-4 Partners et al.*, Alameda County Superior Court Case No. RG-11-593201 (the "Noble Action") was initiated by the filing of a complaint (the "Noble Complaint") in Alameda County, California Superior Court, by certain holders of promissory notes issued by R.E. Loans and MF08. The Noble Complaint was subsequently amended (the "Noble First Amended Complaint"), and the Noble First Amended Complaint names as defendants, *inter alia*, certain principals of R.E. Loans, Wells Fargo and Greenberg Traurig.

15. The allegations against Greenberg Traurig in the Noble Action stem from Greenberg Traurig's legal representation of R.E. Loans beginning in mid-2007. The plaintiffs in the Noble Action allege, *inter alia*, that Greenberg Traurig assisted R.E. Loans in a series of allegedly fraudulent communications associated with the reorganization of the Fund, whereby investors' equity interests were exchanged for promissory notes, and that Greenberg Traurig assisted R.E. Loans in entering into a purportedly unauthorized secured loan transaction with

Wells Fargo. A true and accurate copy of the Noble First Amended Complaint is attached hereto as **Exhibit "C"** and is incorporated herein by reference.

16. On November 8, 2011, Alameda County, California Superior Court Judge Steven A. Brick issued a Case Management Order in the Noble Action, a copy of which is attached hereto as **Exhibit "D"** and is incorporated herein for all purposes. The Case Management Order affords the parties the opportunity to seek guidance from this Court as to whether the claims asserted in the Noble Action are subject to the automatic stay.

The Mendes Action

17. In November of 2011, a class action lawsuit entitled *Mendes v. B-4 Partners, et al.*, Alameda County Superior Court Case No. RG-11-603095 (the "Mendes Action") was initiated by the filing of a complaint (the "Mendes Complaint") in Alameda County, California Superior Court, by certain holders of promissory notes issued by R.E. Loans and MF08. The Mendes Complaint was subsequently amended (the "Mendes First Amended Complaint"), and the Mendes First Amended Complaint names as defendants, *inter alia*, certain principals of R.E. Loans, Wells Fargo and Greenberg Traurig.

18. The allegations against Greenberg Traurig in the Mendes Action stem from Greenberg Traurig's legal representation of R.E. Loans beginning in mid-2007. The plaintiffs in the Mendes Action allege, *inter alia*, that Greenberg Traurig assisted R.E. Loans in a series of allegedly fraudulent communications associated with the reorganization of the Fund, whereby investors' equity interests were exchanged for promissory notes, and that Greenberg Traurig assisted R.E. Loans in entering into a purportedly unauthorized secured loan transaction with Wells Fargo. A true and accurate copy of the Mendes First Amended Complaint is attached hereto as **Exhibit "E"** and is incorporated herein by reference.

The McGuire Action

19. In October of 2011, a lawsuit entitled *McGuire v. B-4 Partners, et al.*, Contra Costa County Superior Court, Case No. C-11-02451 (the "McGuire Action") was initiated by the filing of a Complaint in Contra Costa County, California Superior Court by certain holders of promissory notes issued by R.E. Loans. The McGuire Action, pending in Contra Costa County, California Superior Court, names as defendants, *inter alia*, certain principals of R.E. Loans and the Greenberg Parties.

20. The allegations against the Greenberg Parties in the McGuire Action stem from Greenberg Traurig's legal representation of R.E. Loans beginning in mid-2007. The plaintiffs in the McGuire Action allege that they were defrauded by the principals of R.E. Loans and accuse Greenberg Traurig of aiding and abetting the principals of R.E. Loans in breaching their fiduciary duties and committing securities fraud. A true and accurate copy of the Complaint in the McGuire Action is attached hereto as **Exhibit "F"** and is incorporated herein by reference.

II. JURISDICTION AND VENUE

21. On September 13, 2011, R.E. Loans (together with R.E. Future, LLC and Capital Salvage, a California corporation) filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

22. This Court is granted subject-matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334(b) and (e). This Adversary Proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (C), (E), and (O), because it raises significant issues that implicate the administration of the Debtor's estate.

23. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

24. Pursuant to 28 U.S.C. § 2201, this Court can enter the declaratory relief sought in this Complaint because this action presents an actual controversy and is within this Court's jurisdiction as stated above.

25. To the extent that any of the claims asserted in the California Actions against the Greenberg Parties are valid (an assertion that the Greenberg Parties categorically deny), such claims are property of the bankruptcy estate of R.E. Loans within the meaning of 11 U.S.C. § 541(a)(1), and are subject to the automatic stay of § 362(a)(3) arising from the commencement of R.E. Loans' bankruptcy proceedings.

26. As continued prosecution of the California Actions during the pendency of R.E. Loans' chapter 11 case exposes R.E. Loans to substantial cost, burden and risk of evidentiary and other prejudice, these actions are subject to the automatic stay imposed by § 362 of the Bankruptcy Code.

III. PARTIES

27. R.E. Loans is a California limited liability company. Following the entry of a certain Final Order Authorizing Employment of Mackinac Partners and James A. Weissenborn From the Petition Date, to Provide Interim Management and Management Assistance to the Debtors Pursuant to 11 U.S.C. § 363 (the "Management Order"), entered by this Court on October 28, 2011 (Docket No. 179), effective as of the Petition Date, (i) Mackinac Partners became the sole manager of R.E. Loans and R.E. Future, (ii) James A. Weissenborn became the Chief Restructuring Officer of the Debtors, and (iii) James A. Weissenborn became the sole director and president of Capital Salvage. R.E. Loans is named as a nominal defendant in this adversary proceeding because (i) prosecution of the California Action claims against the Greenberg Parties is tantamount to a direct action against R.E. Loans, (ii) such claims are the

property of the R.E. Loans' bankruptcy estate, and (iii) R.E. Loans is a necessary party to this action.

28. Plaintiff Greenberg Traurig is an international law firm that was previously retained by Debtor R.E. Loans. On account of alleged actions arising in the course of providing legal services to R.E. Loans, Greenberg Traurig has been named as a defendant in all five of the California Actions.

29. Plaintiff Elizabeth Cobey is a former Greenberg Traurig attorney, and in that capacity provided legal services to R.E. Loans. On account of alleged actions arising in the course of Greenberg Traurig's engagement by R.E. Loans, Ms. Cobey has been named as a defendant in three of the California Actions.

30. Defendant Dwight Dixon Collins is one of the plaintiffs in the Collins Action, and upon information and belief, is an individual residing in Angels Camp, Calaveras County, California.

31. Defendant Kathleen D. Collins, is one of the plaintiffs in the Collins Action, and upon information and belief, is an individual residing in Angels Camp, Calaveras County, California.

32. Defendant Batroa Profit Sharing Plan is a plaintiff in the Batroa Action, and upon information and belief is a registered ERISA 401(k) profit sharing pension plan administered in Contra Costa County California, established for the benefit of Michael L. Levine.

33. Defendant Michael L. Levine M.D. is a plaintiff in the Batroa Action, and upon information and belief is an individual resident of Alameda County, California.

34. Defendant Gordon Noble is one of the named plaintiffs in the Noble Action, and upon information and belief, is an individual resident of Marin County, California.

35. Defendant Arlene Dea Deeley is one of the named plaintiffs in the Noble Action, and upon information and belief, is an individual resident of Alameda County, California.

36. Defendant Fredric C. Mendes is one of the named plaintiffs in the Mendes Action, and upon information and belief, is an individual resident of San Mateo County, California.

37. Defendant Nancy Rapp is one of the named plaintiffs in the Mendes Action, and upon information and belief, is an individual resident of Marin County, California.

38. Defendant Philip Cantor is one of the named plaintiffs in the Mendes Action, and upon information and belief, is an individual resident of Alameda County, California.

39. Defendant Irene Lee is one of the named plaintiffs in the Mendes Action, and upon information and belief, is an individual resident of Contra Costa County, California.

40. Defendant John McGuire is a plaintiff in the McGuire Action, and upon information and belief, is an individual residing in Walnut Creek, Contra Costa County, California.

41. Defendant Jane McGuire is a plaintiff in the McGuire Action, and upon information and belief, is an individual residing in Walnut Creek, Contra Costa County, California.

42. Defendant Nancy Bergeron is a plaintiff in the McGuire Action, and upon information and belief, is an individual residing in Roseburg, Oregon.

IV. THE CALIFORNIA ACTIONS SHOULD BE STAYED PENDING R.E. LOANS' CHAPTER 11 CASE

43. While the various allegations and causes of action differ slightly amongst the California Actions, generally speaking, the California Action Complaints are substantially similar, especially as to the claims against the Greenberg Parties. To summarize, with respect to the allegations related to the Greenberg Parties, the California Action Complaints generally

allege that the principals of the Fund (Bruce Horwitz, Barney Ng and Kelly Ng) breached their fiduciary obligations to the Noteholders by purportedly:

- improperly establishing an unauthorized and over-collateralized line of credit ("Line of Credit") with Wells Fargo;
- wrongfully assigning $250 million of the Fund's portfolio as collateral for the Line of Credit;
- improperly seeking investor approval for an exchange transaction whereby shares would be exchanged for promissory notes;
- misrepresenting to investors the financial condition of R.E. Loans;
- misrepresenting to investors the purpose of the Wells Fargo Line of Credit;
- misrepresenting to investors the purpose of the exchange transaction;
- causing the Fund to become illiquid through secret self-dealings and insider distributions;
- concealing past securities violations and illiquidity problems; and,
- wrongfully soliciting and misappropriating funds from MF08 investors.

44. With respect to the claims against the Greenberg Parties, the Complaints generally allege that either Greenberg Traurig alone or the Greenberg Parties together played a role in the alleged breaches of fiduciary duties by:

- assisting R.E. Loans in arranging the Wells Fargo Line of Credit (which was allegedly unauthorized and overly collateralized);
- providing support to R.E. Loans in engineering and instituting an exchange transaction wherein members would exchange their membership interests for promissory notes;
- preparing correspondence to investors on R.E. Loans' behalf soliciting approval for reorganization of the Fund through the exchange transaction described above;
- assisting the R.E. Loans principals in concealing past R.E. Loans securities violations;

- assisting the R.E. Loans principals in concealing R.E. Loans' liquidity problems; and,
- assisting the R.E. Loans principals in wrongfully soliciting and misappropriating funds from MF08 investors.

45. As an initial matter, to the extent the claims asserted in the California Actions allege that the Greenberg Parties did not provide truthful and/or effective counsel to R.E. Loans and its members, any such claims are the property of R.E. Loans.

46. 11 U.S.C. § 362(a)(3) provides that the filing of a bankruptcy petition "operates as a[n] [automatic stay] applicable to all entities, of...any act to obtain possession of property of the estate or of property from the estate." 11 U.S.C. § 362(a)(3) (emphasis added). The stay extends to "any action, whether against the debtor or third parties, that seeks to obtain or exercise control over the property of the debtor," including causes of action that could have been raised by the debtor as of the commencement of the bankruptcy case. *In re S.I. Acquisition, Inc.*, 817 F.2d 1142 (5th Cir. 1987) (emphasis added).

47. The claims asserted against Wells Fargo in the California Actions are claims which could have been raised by Debtor R.E. Loans as of the commencement of the R.E. Loans' bankruptcy proceedings. As such, the California Action claims are property of R.E. Loans' bankruptcy estate pursuant to 11 U.S.C. § 541, and as property of the bankruptcy estate, these claims are subject to the automatic stay of 11 U.S.C. § 362(a)(3) arising from the commencement of the bankruptcy proceedings of R.E. Loans.

48. Further, the allegations against the Greenberg Parties are fundamentally of a secondary nature; they are premised on primary liability on the part of R.E. Loans and its principals. That is, before the California Action plaintiffs can prove that the Greenberg Parties are liable for "aiding and abetting" wrongdoing by R.E. Loans, they must first show wrongdoing by the R.E. Loans' principals themselves, *i.e.*, that R.E. Loans did not have authority to enter into

the Wells Fargo transaction, that R.E. Loans made numerous misrepresentations to its shareholders, that it wrongfully concealed liquidity and securities problems, and that the exchange transaction was an improper scheme. Accordingly, should the Greenberg Parties be found liable in these actions, they will be almost sure to have contribution claims against the Debtor for any judgment.

49. In light of these circumstances, R.E. Loans' interests are *de facto* being litigated in the continuing action against the Greenberg Parties. R.E. Loans cannot afford to not participate in the California Actions while its own principals, whose statements may be imputed to R.E. Loans, are being called upon to testify, and its own records are taking center stage in the California Actions.

50. Because the conduct of Debtor R.E. Loans itself is at the heart of the California Actions, R.E. Loans will have to be intimately involved in the proceedings despite its pending chapter 11 case. R.E. Loans will effectively have to participate in full-blown discovery in the California Actions, producing documents, defending and attending depositions, engaging in all the associated motion practice, and otherwise participating as if it were an actual party in the proceedings so as to avoid development of a factual record that will prejudice Debtor permanently.

51. This adversary proceeding seeks to extend the automatic stay to or otherwise enjoin the prosecution of the California Actions against the Greenberg Parties. If the automatic stay is not extended as requested, the Debtor and its estate will be irreparably damaged, and the purposes of the Bankruptcy Code will be frustrated because, among other things:

a. R.E. Loans will be subject to substantial risks associated with the development of a testimonial record that could be used eventually against R.E. Loans;

b. The risk of collateral estoppel and evidentiary prejudice will effectively compel R.E. Loans to actively participate in the California Actions, with substantial costs to the Debtor;

c. Participation in these actions will sap not only the Debtor's funds, but also the time and energy of Debtor's management at a time when it is most needed to effect a successful resolution of the Debtor's chapter 11 case; and

d. The continued prosecution of the California Actions against the Greenberg Parties exposes R.E. Loans to risk of liability for a contribution claim.

52. Despite the application of the automatic stay to R.E. Loans, R.E. Loans will have no alternative but to engage in a time-consuming and active role in the defense of the California Actions.

53. Thus, the continued prosecution of the California Actions is directly antithetical to the intent and purpose of chapter 11. The relief requested in this Complaint is necessary to protect property of the Debtor's estate and business interests.

54. Finally, the evidence and underlying testimony presented in the California Actions will be substantially similar to the evidence and testimony presented in the R.E. Loans bankruptcy case. The interests of judicial economy are best served by having all of these interrelated issues heard together in the same court, especially in light of the harm to the Debtor's estate, discussed above, that will occur should the California actions proceed.

55. The Greenberg Parties respectfully request that the Court issue an order staying the California Actions and similar lawsuits that may be brought by R.E. Loans Noteholders, pending the resolution of the R.E. Loans chapter 11 case.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION – CLAIM FOR DECLARATORY RELIEF (11 U.S.C. § 362 – Stay of Causes of Action Belonging to Debtor)

56. The Greenberg Parties repeat and reallege the allegations set forth above and incorporate them in this Count as though fully set forth herein.

57. Greenberg Traurig was retained as counsel by R.E. Loans, not by the California Action Plaintiffs. Any actions taken by the Greenberg Parties at issue in the California Actions were taken in connection with the Greenberg Parties' engagement as counsel to R.E. Loans.

58. If the Greenberg Defendants did not perform satisfactorily in connection with their service as legal counsel to R.E. Loans, then any claims relating to the engagement belong to the client – Debtor R.E. Loans.

59. The Greenberg Defendants request a declaratory judgment declaring that the California Action claims against the Greenberg Parties are property of the bankruptcy estate of R.E. Loans pursuant to 11 U.S.C. § 541, and as such, are subject to the automatic stay set forth in 11 U.S.C. § 362(a)(3) commencing upon the filing of R.E. Loans' petition in bankruptcy; and that the California Action claims against the Greenberg Parties should proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court.

SECOND CAUSE OF ACTION – CLAIM FOR DECLARATORY RELIEF (11 U.S.C. § 362 – Stay of Causes of Action Wherein Continuing Prosecution Harms the Debtor in Violation of the Automatic Stay)

60. The Greenberg Parties repeat and reallege the allegations set forth above and incorporate them in this Count as though fully set forth herein.

61. The California Actions are *de facto* litigating the liability of R.E. Loans and its management, and accordingly R.E. Loans will be forced to participate in the California Actions

so long as those actions are not stayed. The continued prosecution of the California Actions will require the active involvement of R.E. Loans and its management in order to protect R.E. Loans' rights and interests.

62. The continued prosecution of the California Actions thwarts the purpose of the Bankruptcy Code by allowing some creditors to advance their claims against R.E. Loans indirectly to the disadvantage of other similarly situated claimants.

63. Continuation of the California Actions will frustrate not only the rehabilitative intent of chapter 11, but also, the core objective of chapter 11 to provide a fair, consolidated, orderly, and consistent process by which a debtor may address and resolve its liabilities for the benefit of all creditors.

64. The continued prosecution of the California Actions will hinder Debtor's reorganization process to the detriment and prejudice of all parties in interest and is directly antithetical to the intent and purpose of the automatic stay provisions of the Bankruptcy Code.

65. Accordingly, the automatic stay provisions of section 362 of the Bankruptcy Code stay, or should be extended to stay, the continued prosecution of the California Actions against the Greenberg Parties.

66. This Court should declare that the continued prosecution of the California Actions during the pendency of R.E. Loans' chapter 11 case violates the automatic stay imposed by section 362 of the Bankruptcy Code.

THIRD CAUSE OF ACTION: APPLICATION FOR TEMPORARY INJUNCTION AND/OR OTHER APPLICABLE INJUNCTIVE RELIEF

67. The Greenberg Parties repeat and reallege the allegations set forth above and incorporate them in this Count as though fully set forth herein.

68. The Greenberg Parties seek the entry of a temporary injunction until R.E. Loans has confirmed its plan of reorganization and there is a clear delineation within the confirmed plan as to who will prosecute claims owned by the R.E. Loans' bankruptcy estate and claims owned by the R.E. Loans Noteholders, including the California Action Plaintiffs, and/or other applicable injunctive relief pursuant to section 362(a) of the Bankruptcy Code, and 28 U.S.C. 1334, enjoining the continued prosecution of the California Actions against the Greenberg Parties and enjoining the California Action Plaintiffs and any other party from commencing or continuing any lawsuit or proceeding against the Greenberg Parties based on the allegations contained in the California Action Complaints.

69. This injunctive relief is necessary and appropriate because (i) the California Actions against the Greenberg Parties threaten to adversely affect the interests of the Debtor R.E. Loans, (ii) there is a likelihood of success on the merits on behalf of the Greenberg Parties, (iii) granting the injunctive relief is not counter to the public interests, (iv) the Greenberg Parties do not have an adequate remedy at law, and (v) the Debtor is likely to suffer irreparable harm if the requested relief is not granted.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiffs Greenberg Traurig and Elizabeth Cobey request that this Court enter a judgment in their favor and against the Defendants as follows:

A. Declaring that the California Action claims against the Greenberg Parties are property of the bankruptcy estate of R.E. Loans pursuant to 11 U.S.C. § 541, and as such, are subject to the automatic stay set forth in 11 U.S.C. § 362(a)(3) commencing upon the filing of R.E. Loans' petition in bankruptcy;

B. Declaring that continuation of the California Actions as against the Greenberg Parties should be and is stayed, and that continuation of such actions violates the automatic stay imposed by section 362(a) of the Bankruptcy Code;

C. With the entry of a temporary injunction until R.E. Loans has confirmed its plan of reorganization and there is a clear delineation within the confirmed plan as to who will prosecute claims owned by the R.E. Loans' bankruptcy estate and claims owned by the Noteholders, including the California Action Plaintiffs, and/or the entry of other applicable injunctive relief, enjoining the California Actions and any similar suits to be brought by Noteholders;

D. Declaring that the California Action claims and any other similar claims against the Greenberg Parties should proceed, if at all, only in connection with the underlying bankruptcy case of R.E. Loans in this Court; and

E. Awarding the Greenberg Parties such other relief, at law or in equity, to which they may be justly entitled.

Dated: November 29, 2011.

Respectfully submitted,

/s/ Stephen A. Goodwin

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