

Rocky C. Tsai (SBN 221452)
(rocky.tsai@ropesgray.com)
ROPES & GRAY LLP
Three Embarcadero Center
San Francisco, CA 94111-4006
Telephone: (415) 315-6300
Facsimile: (415) 315-6350

John C. Ertman
(john.ertman@ropesgray.com)
(Pro hac vice applications pending)
Lee S. Gayer
(lee.gayer@ropesgray.com)
Evan P. Lestelle
(evan.lestelle@ropesgray.com)
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: (212) 596-9000
Facsimile: (212) 596-9090

Douglas H. Hallward-Driemeier
(douglas.hallward-driemeier@ropesgray.com)
(Pro hac vice application pending)
ROPES & GRAY LLP
One Metro Center
700 12th Street, NW
Suite 900
Washington, DC 20005-3948
Phone: 202-508-4600

Daniel V. McCaughey
(daniel.mccaughey@ropesgray.com)
Nick W. Rose
(nick.rose@ropesgray.com)
ROPES & GRAY LLP
800 Boylston St.
Boston, MA
Phone: 617-951-7000

Attorneys for all Plaintiffs

THOMAS O. JACOB (SBN 125665)
tojacob@wellsfargo.com
WELLS FARGO & COMPANY
Office of General Counsel
45 Fremont Street, Twenty-Sixth Floor
MAC A0194-266
San Francisco, CA 94105
Telephone: (415) 396-4425
Facsimile: (415) 975-7864

*Attorney for Wells Fargo Bank, solely in its
trustee capacity*

**ORIGINAL
FILED**

AUG 07 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

CRB

CV 13 3663

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, solely in its capacity as
Trustee for**

ABFC 2002-OPT1 Trust, ABFC 2005-OPT1
Trust, ABFC 2006-OPT1 Trust, Asset Backed
Securities Corporation Home Equity Loan
Trust, Series 2003-HE6, Asset Backed

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1	Securities Corporation Home Equity Loan)
2	Trust, Series 2004-HE2, Asset Backed)
3	Securities Corporation Home Equity Loan)
4	Trust, Series AMQ 2007-HE2, Banc of America)
5	Funding 2005-B Trust, Banc of America)
6	Funding 2005-G Trust, Banc of America)
7	Funding 2006-E Trust, Banc of America)
8	Funding 2007-E Trust, BCAP LLC TRUST)
9	2006-AA1, BNC Mortgage Loan Trust 2007-4,)
10	Banc of America Alternative Loan Trust 2003-)
11	8, Banc of America Alternative Loan Trust)
12	2006-5, Banc of America Alternative Loan)
13	Trust 2003-10, Banc of America Alternative)
14	Loan Trust 2003-11, Banc of America)
15	Alternative Loan Trust 2003-4, Banc of)
16	America Alternative Loan Trust 2003-5, Banc)
17	of America Alternative Loan Trust 2003-6,)
18	Banc of America Alternative Loan Trust 2003-)
19	8, Banc of America Alternative Loan Trust)
20	2003-9, Banc of America Alternative Loan)
21	Trust 2004-1, Banc of America Alternative)
22	Loan Trust 2004-11, Banc of America)
23	Alternative Loan Trust 2004-6, Banc of)
24	America Alternative Loan Trust 2004-7, Banc)
25	of America Alternative Loan Trust 2005-6,)
26	Banc of America Alternative Loan Trust 2005-)
27	7, Banc of America Alternative Loan Trust)
28	2006-2, Banc of America Alternative Loan)
	Trust 2006-3, Banc of America Alternative)
	Loan Trust 2006-5, Banc of America)
	Alternative Loan Trust 2006-7, Banc of)
	America Mortgage 2003-6 Trust, Banc of)
	America Mortgage 2003-D Trust, Banc of)
	America Mortgage 2003-H Trust, Banc of)
	America Mortgage 2003-K Trust, Banc of)
	America Mortgage Trust 2004-11, Banc of)
	America Mortgage Trust 2004-6, Banc of)
	America Mortgage Trust 2004-8, Banc of)
	America Mortgage Trust 2004-9, Banc of)
	America Mortgage 2004-B Trust, Banc of)
	America Mortgage 2004-C Trust, Banc of)
	America Mortgage 2004-D Trust, Banc of)
	America Mortgage 2004-I Trust, Banc of)
	America Mortgage 2004-K Trust, Banc of)
	America Mortgage 2004-L Trust, Banc of)
	America Mortgage Trust 2005-10, Banc of)

1	America Mortgage Trust 2005-11, Banc of)
2	America Mortgage Trust 2005-4, Banc of)
3	America Mortgage Trust 2005-7, Banc of)
4	America Mortgage 2005-A Trust, Banc of)
5	America Mortgage 2005-E Trust, Banc of)
6	America Mortgage 2005-J Trust, Banc of)
7	America Mortgage 2007-1 Trust, Banc of)
8	America Mortgage 2007-2 Trust, Banc of)
9	America Mortgage 2004-J Trust, Banc of)
10	America Mortgage 2005-D Trust, Banc of)
11	America Mortgage 2005-E Trust, Banc of)
12	America Mortgage 2007-3 Trust, Bear Stearns)
13	Asset Backed Securities, Inc. 2000-2, Bear)
14	Stearns Mortgage Funding Trust 2006-AR1,)
15	Bear Stearns Mortgage Funding Trust 2006-)
16	AR2, Bear Stearns Mortgage Funding Trust)
17	2006-AR3, Bear Stearns Mortgage Funding)
18	Trust 2006-AR4, Bear Stearns Mortgage)
19	Funding Trust 2006-AR5, Bear Stearns)
20	Mortgage Funding Trust 2007-AR1, Bear)
21	Stearns Mortgage Funding Trust 2007-AR2,)
22	Bear Stearns Mortgage Funding Trust 2007-)
23	AR3, Bear Stearns Mortgage Funding Trust)
24	2007-AR4, Bear Stearns Mortgage Funding)
25	Trust 2007-AR5, Bear Stearns ARM Trust)
26	2007-3, Carrington Mortgage Loan Trust,)
27	Series 2006-FRE2, Carrington Mortgage Loan)
28	Trust, Series 2006-NC2, Carrington Mortgage)
	Loan Trust, Series 2006-NC3, Carrington)
	Mortgage Loan Trust, Series 2006-NC3,)
	Carrington Mortgage Loan Trust, Series 2006-)
	NC5, Carrington Mortgage Loan Trust, Series)
	2006-OPT1, Carrington Mortgage Loan Trust,)
	Series 2006-RFC1, First Franklin Mortgage)
	Loan Trust 2004-FF11, First Franklin Mortgage)
	Loan Trust 2006-FF15, Freddie Mac Securities)
	REMIC Trust 2005-S001, GMACM Home)
	Equity Loan Trust 2003-HE2, GreenPoint MTA)
	Trust 2005-AR3, GreenPoint Mortgage Funding)
	Trust 2005-AR4, GreenPoint Mortgage Funding)
	Trust 2005-AR5, GreenPoint Mortgage Funding)
	Trust 2006-AR1, GreenPoint Mortgage Funding)
	Trust 2006-AR2, GreenPoint Mortgage Funding)
	Trust 2006-AR3, HarborView Mortgage Loan)
	Trust 2006-10, HarborView Mortgage Loan)
	Trust 2006-12, HarborView Mortgage Loan)

1	Trust 2007-1, HarborView Mortgage Loan)
2	Trust 2007-3, Impac CMB Trust Series 2004-)
3	11, Impac CMB Trust Series 2004-6, Impac)
4	CMB Trust Series 2005-6, Irwin Home Equity)
5	Loan Trust 2007-1, Impac Secured Assets)
6	Corp., Mortgage Pass- Through Certificates,)
7	Series 2005-2, Lehman Mortgage Trust 2006-9,)
8	Lehman Mortgage Trust 2007-4, MASTR Asset)
9	Backed Securities Trust 2003-OPT2, MASTR)
10	Asset Backed Securities Trust 2007-NCW,)
11	Merrill Lynch Mortgage Investors Trust, Series)
12	2004-WMC5, Merrill Lynch Mortgage)
13	Investors Trust, Series 2005-WMC2, Merrill)
14	Lynch Mortgage Investors Trust Series MLCC)
15	2004-B, Merrill Lynch Mortgage Investors)
16	Trust Series MLCC 2006-1, Merrill Lynch)
17	Mortgage Investors Trust Mortgage Loan)
18	Asset-Backed Certificates, Series 2006-HE1,)
19	Morgan Stanley ABS Capital I Inc. Trust 2005-)
20	WMC2, Morgan Stanley ABS Capital I Inc.)
21	Trust 2005-WMC3, Morgan Stanley ABS)
22	Capital I Inc. Trust 2005-WMC4, Morgan)
23	Stanley ABS Capital I Inc. Trust 2006-WMC1,)
24	MSCC HELOC Trust 2007-1, National City)
25	Mortgage Capital Trust 2008-1, Option One)
26	Mortgage Loan Trust 2003-5, Option One)
27	Mortgage Loan Trust 2003-6, Option One)
28	Mortgage Loan Trust 2005-3, Option One)
	Mortgage Loan Trust 2005-4, Option One)
	Mortgage Loan Trust 2006-1, Option One)
	Mortgage Loan Trust 2007-1, Option One)
	Mortgage Loan Trust 2007-3, Option One)
	Mortgage Loan Trust 2007-4, Option One)
	Mortgage Loan Trust 2007-5, Option One)
	Mortgage Loan Trust 2007-6, Option One)
	Mortgage Loan Trust 2007CP1, Option One)
	Mortgage Loan Trust 2007-FXD2, Park Place)
	Securities, Inc., Asset-Backed Pass-Through)
	Certificates, Series 2004-MCW1, Park Place)
	Securities, Inc., Asset-Backed Pass-Through)
	Certificates, Series 2004-WHQ1, Park Place)
	Securities, Inc., Asset-Backed Pass-Through)
	Certificates, Series 2004-WHQ2, Park Place)
	Securities, Inc., Asset-Backed Pass-Through)
	Certificates, Series 2005-WCH1, Park Place)
	Securities, Inc., Asset-Backed Pass-Through)

1	Certificates, Series 2005-WCW2, Park Place)
2	Securities, Inc., Asset-Backed Pass-Through)
3	Certificates, Series 2005-WCW2, Park Place)
4	Securities, Inc., Asset-Backed Pass-Through)
5	Certificates, Series 2005-WHQ1, Park Place)
6	Securities, Inc., Asset-Backed Pass-Through)
7	Certificates, Series 2005-WHQ3, Park Place)
8	Securities, Inc., Asset-Backed Pass-Through)
9	Certificates, Series 2005-WHQ4, RESI Finance)
10	Limited Partnership 2003-B, RESI Finance)
11	Limited Partnership 2003-C, RESI Finance)
12	Limited Partnership 2003-CB1, RESI Finance)
13	Limited Partnership 2003-D, RESI Finance)
14	Limited Partnership 2004-B, RESI Finance)
15	Limited Partnership 2004-C, RESI Finance)
16	Limited Partnership 2005-A, RESI Finance)
17	Limited Partnership 2005-B, RESI Finance)
18	Limited Partnership 2005-C, RESI Finance)
19	Limited Partnership 2005-D, RESI Finance)
20	Limited Partnership 2006-A, RMAC Pass-)
21	Through Trust, Series 2010-A, Securitized)
22	Asset Backed Receivables LLC Trust 2006-)
23	HE1, Securitized Asset Backed Receivables)
24	LLC Trust 2006-HE2, SABR Mortgage Loan)
25	2008-1 Grantor Trust, Structured Asset)
26	Investment Loan Trust 2003-BC12, Structured)
27	Asset Mortgage Investments II Trust 2007-)
28	AR4, Structured Adjustable Rate Mortgage)
	Loan Trust, Series 2004-10, Structured)
	Adjustable Rate Mortgage Loan Trust, Series)
	2004-16, Structured Adjustable Rate Mortgage)
	Loan Trust, Series 2004-18, Structured)
	Adjustable Rate Mortgage Loan Trust, Series)
	2004-9XS, Structured Adjustable Rate)
	Mortgage Loan Trust, Series 2005-12,)
	Structured Adjustable Rate Mortgage Loan)
	Trust, Series 2005-17, Structured Adjustable)
	Rate Mortgage Loan Trust, Series 2007-3,)
	Structured Adjustable Rate Mortgage Loan)
	Trust, Series 2007-4, Structured Asset)
	Securities Corporation Pass-Through)
	Certificates, Series 2002-AL1, Structured Asset)
	Securities Corporation Mortgage Pass-Through)
	Certificates, Series 2003-15A, Structured Asset)
	Securities Corporation Mortgage Pass-Through)
	Certificates, Series 2003-26A, Structured Asset)

1	Securities Corporation Mortgage Loan Trust)
2	2006-OPT1, Structured Asset Securities Corp.)
3	2007-BC1, SASI Finance Limited Partnership)
4	2006-A, Southern Pacific Secured Assets Corp.,)
5	Mortgage Loan Asset-Backed Pass-Through)
6	Certificates, Series 1998-2, Soundview Home)
7	Loan Trust 2007-OPT1, Soundview Home Loan)
8	Trust 2007-OPTS, Terwin Mortgage Trust,)
9	Series TMTS 2003-8HE, WaMu Mortgage)
10	Pass-Through Certificates Series 2004-PR1)
11	Trust, WaMu Mortgage Pass-Through)
12	Certificates Series 2004-PR2 Trust, WaMu)
13	Mortgage Pass-Through Certificates Series)
14	2005-PR1 Trust, WaMu Mortgage Pass-)
15	Through Certificates Series 2005-PR2 Trust,)
16	WaMu Mortgage Pass-Through Certificates)
17	Series 2005-PR4 Trust, WaMu Mortgage Pass-)
18	Through Certificates Series 2006-PR1 Trust,)
19	WaMu Mortgage Pass-Through Certificates)
20	Series 2006-PR2 Trust, WaMu Mortgage Pass-)
21	Through Certificates Series 2006-PR3 Trust,)
22	Waterfall Victoria Mortgage Trust 2010-1;)
23	DEUTSCHE BANK NATIONAL TRUST)
24	COMPANY , <i>solely in its capacity as Trustee</i>)
25	<i>for</i>)
26	Alliance Securities Corp. 2007-OA1,)
27	Accredited Mortgage Loan Trust 2006-2,)
28	American Home Mortgage Investment Trust)
	2005-2, American Home Mortgage Investment)
	Trust 2005-3, American Home Mortgage)
	Investment Trust 2006-1, American Home)
	Mortgage Assets Trust 2006-5, American Home)
	Mortgage Investment Trust 2007-1, American)
	Home Mortgage Assets Trust 2007-1, American)
	Home Mortgage Assets Trust 2007-2, American)
	Home Mortgage Assets Trust 2007-4, American)
	Home Mortgage Investment Trust 2007-SD2,)
	Amerquest Mortgage Securities Inc. 2006-R1,)
	Argent Securities Inc. 2004-W8, Argent)
	Securities Inc. 2005-W2, Argent Securities)
	Trust 2006-W4, Argent Securities Trust 2006-)
	M1, Argent Securities Trust 2006-M2, Asset)
	Backed Securities Corporation Home Equity)
	Loan Trust 2004-HE1, Barclays Capital Inc.,)
	BCAP LLC Trust 2007-AA1, Carrington)

1	Mortgage Loan Trust 2005-NC4, Carrington)
2	Mortgage Loan Trust 2005-NC5, Encore Credit)
3	Receivables Trust 2005-3, Downey Savings and)
4	Loan Association Mortgage Loan Trust 2004-)
5	AR2, Downey Savings and Loan Association)
6	Mortgage Loan Trust 2005-AR3, Soundview)
7	Home Equity Loan Trust 2005-OPT4, First)
8	Franklin Mortgage Loan Trust 2005-FFH3,)
9	HarborView Mortgage Loan Trust 2006-14,)
10	Downey Savings and Loan Association)
11	Mortgage Loan Trust 2006-AR1, Fremont)
12	Home Loan Trust 2006-3, HarborView)
13	Mortgage Loan Trust 2006-3, Soundview Home)
14	Equity Loan Trust 2006-OPT5, Soundview)
15	Home Loan Trust 2007-WMC1, Downey)
16	Savings and Loan Association Mortgage Loan)
17	Trust 2007-AR1, HarborView Mortgage Loan)
18	Trust 2007-4, HarborView Mortgage Loan)
19	Trust 2007-7, GSAA Home Equity Trust 2007-)
20	4, GSAA Home Equity Trust 2007-6, GSR)
21	Mortgage Loan Trust 2007-AR2, GSR)
22	Mortgage Loan Trust 2007-OA2, STARM)
23	Mortgage Loan Trust 2007-4, HSI Asset)
24	Securitization Corporation Trust 2005-OPT1,)
25	HSI Asset Securitization Corporation Trust)
26	2006-OPT1, HSI Asset Securitization)
27	Corporation Trust 2006-OPT2, HSI Asset)
28	Securitization Corporation Trust 2007-NC1,)
	HSI Asset Securitization Corporation Trust)
	2007-WF1, HSI Asset Securitization)
	Corporation Trust 2007-HE1, Impac CMB)
	Trust 2005-5, Impac Secured Assets Corp.)
	2006-3, Impac Secured Assets Corp. 2006-5,)
	Impac Secured Assets Corp. 2007-1, Impac)
	Secured Assets Corp. 2007-2, IndyMac)
	Residential Asset Securities Trust (RAST))
	2004-A5, IndyMac INDX Mortgage Loan Trust)
	2005-AR1, IndyMac INDX Mortgage Loan)
	Trust 2005-AR8, IndyMac INDX Mortgage)
	Loan Trust 2005-AR12, IndyMac INDX)
	Mortgage Loan Trust 2005-AR13, IndyMac)
	INDX Mortgage Loan Trust 2005-AR14,)
	IndyMac INDX Mortgage Loan Trust 2005-)
	AR25, IndyMac INDA Mortgage Loan Trust)
	2006-AR2, IndyMac INDX Mortgage Loan)
	Trust 2006-AR6, IndyMac INDX Mortgage)

1	Loan Trust 2006-AR14, IndyMac INDX)
2	Mortgage Loan Trust 2006-AR29, IndyMac)
3	INDA Mortgage Loan Trust 2006-AR3,)
4	IndyMac Residential Asset Securities Trust)
5	(RAST) 2007-A3, IndyMac INDX Mortgage)
6	Loan Trust 2007-AR5, IndyMac INDX)
7	Mortgage Loan Trust 2007-AR211P, IndyMac)
8	INDA Mortgage Loan Trust 2007-AR1,)
9	IndyMac INDA Mortgage Loan Trust 2007-)
10	AR8, IndyMac INDX Mortgage Loan Trust)
11	2007-FLX1, IndyMac INDX Mortgage Loan)
12	Trust 2007-FLX6, J.P. Morgan Mortgage)
13	Acquisition Trust 2007-CH3, J.P. Morgan)
14	Mortgage Acquisition Trust 2007-CH5, Long)
15	Beach Mortgage Loan Trust 2005-WL1, Long)
16	Beach Mortgage Loan Trust 2005-WL2, Long)
17	Beach Mortgage Loan Trust 2006-6, Long)
18	Beach Mortgage Loan Trust 2006-7, Long)
19	Beach Mortgage Loan Trust 2006-8, Long)
20	Beach Mortgage Loan Trust 2006-10, Long)
21	Beach Mortgage Loan Trust 2006-WL1, Long)
22	Beach Mortgage Loan Trust 2006-WL2,)
23	Mortgage IT Trust 2005-3, Morgan Stanley)
24	ABS Capital I Trust 2004-NC7, Morgan)
25	Stanley ABS Capital I Trust 2004-HE8, Morgan)
26	Stanley ABS Capital I Trust 2006-NC3,)
27	Morgan Stanley ABS Capital I Trust 2006-)
28	NC5, Morgan Stanley ABS Capital I Trust)
	2006-HE5, Morgan Stanley ABS Capital I Trust)
	2006-HE7, Morgan Stanley ABS Capital I Trust)
	2006-HE8, Morgan Stanley ABS Capital I Trust)
	2006-WMC2, Morgan Stanley Home Equity)
	Loan Trust 2006-1, Morgan Stanley Home)
	Equity Loan Trust 2006-2, Morgan Stanley)
	ABS Capital I Trust 2007-NC4, Morgan)
	Stanley ABS Capital I Trust 2007-HE7, New)
	Century Home Equity Loan Trust 2005-4, New)
	Century Home Equity Loan Trust 2005-B, New)
	Century Home Equity Loan Trust 2005-D,)
	Novastar Mortgage Funding Trust 2007-1,)
	Saxon Asset Securities Trust 2007-2, Thornburg)
	Mortgage Securities Trust 2004-4, WaMu)
	Mortgage Pass- Through Certificates, Series)
	2004-AR6, WaMu Mortgage Pass-Through)
	Certificates, Series 2005-AR6, WaMu)
	Mortgage Pass- Through Certificates, Series)

2005-AR11, WaMu Mortgage Pass-Through
Certificates, Series 2005-AR12, WaMu
Mortgage Pass- Through Certificates, Series
2005-AR13, WaMu Mortgage Pass-Through
Certificates, Series 2005-AR15, WaMu
Mortgage Pass-Through Certificates, WMALT
Series 2006-AR1, Washington Mutual
Mortgage Pass-Through Certificates, WMALT
Series 2006-AR5, WaMu Asset-Backed
Certificates 2007-HE; and

DEUTSCHE BANK TRUST COMPANY
AMERICAS, *solely in its capacity as Trustee*
for

Residential Accredit Loans Inc. 2005-QA10,
Residential Accredit Loans Inc. 2006-QO2,
Residential Accredit Loans Inc. 2006-QO3,
Residential Accredit Loans Inc. 2006-QO4,
Residential Accredit Loans Inc. 2006-QO6,
Residential Accredit Loans Inc. 2006-QO10,
Residential Accredit Loans Inc. 2006-QS3,
Residential Accredit Loans Inc. 2006-QS10,
Residential Accredit Loans Inc. 2006-QS17,
Residential Accredit Loans Inc. 2007-QA3,
Residential Accredit Loans Inc. 2007-QO1,
Residential Accredit Loans Inc. 2007-QO4,
Residential Accredit Loans Inc. 2007-QO5,
Residential Accredit Loans Inc. 2007-QS3,
Residential Funding Mortgage Securities I
2007-S4, Saxon Asset Securities Trust 2003-3,
Saxon Asset Securities Trust 2006-3;

Plaintiffs,

v.

CITY OF RICHMOND, CALIFORNIA, a
municipality; and MORTGAGE
RESOLUTION PARTNERS LLC;

Defendants.

INTRODUCTION

1. Plaintiffs serve as trustees for hundreds of residential mortgage-backed securitization (“RMBS”) trusts (the “RMBS Trusts” or the “Trusts”) that hold mortgage loans that are targeted by an elaborate profit-driven scheme being implemented by Defendant City of Richmond, California (“Richmond” or the “City”) and its partner Defendant Mortgage Resolution Partners LLC (“MRP”), a for-profit California investment firm. Richmond and MRP seek to impermissibly use Richmond’s power of eminent domain to seize certain mortgage loans located outside of Richmond in order to generate profits for Richmond, MRP, and MRP’s investors (the “Richmond Seizure Program” or the “Program”). If Defendants’ unconstitutional scheme is permitted to go forward, the RMBS Trusts and their beneficiaries, the investors in certificates issued by the RMBS Trusts (also referred to as “certificateholders”) – which include a vast number of public and private pension plans, college savings plans, 401(k) plans, insurance companies, mutual funds, university endowments, and government-sponsored enterprises – would suffer severe irreparable economic harm, as would hundreds of other similarly situated RMBS trusts and their beneficiaries, and potentially the entire U.S. mortgage industry. Accordingly, Plaintiffs seek declaratory and injunctive relief declaring that the Richmond Seizure Program violates the United States Constitution, the California Constitution, and other state laws, and enjoining Defendants from implementing the Program.

2. Defendants Richmond and MRP have entered into an agreement, pursuant to which Defendants will use Richmond’s eminent domain power primarily to seize *performing* mortgage loans – owned by RMBS trusts located outside of Richmond for the benefit of their certificateholders – at steeply discounted prices, typically 80% of the value of the home or less, rather than the outstanding loan amount owed by the borrowers. Upon information and belief, MRP then plans to refinance those loans with new federally insured loans in amounts substantially above the amounts paid by Richmond to seize the original loan. According to MRP’s published statements, this profit strategy would generate profits of up to 20% for MRP and its investors. Richmond would be paid a portion of the profits for allowing MRP to use Richmond’s eminent domain powers in furtherance of MRP’s strategy, and select

1 Richmond homeowners would receive a windfall by having their debt permanently discharged
2 because they meet a borrowing profile that is profitable to Richmond and MRP.

3 3. The Program is a profit-driven strategy designed to enrich Richmond, a
4 private investment firm (MRP) and its financial backers, and select Richmond homeowners, at
5 the expense of private-label RMBS trusts located outside of Richmond and the beneficiaries of
6 those trusts. Such a program does not involve a legitimate “public use” for which the
7 government’s eminent domain power is expressly reserved. Additionally, the entire business
8 model that drives the profits generated by the Program is predicated on paying for the seized
9 performing loans at artificially low prices that are substantially less than the loan’s actual value.
10 Thus, the Richmond Seizure Program would, if allowed to proceed, result in huge losses to the
11 Trusts and their beneficiaries and violate the constitutional requirement of “just compensation”
12 for any taking.

13 4. Moreover, implementing the Richmond Seizure Program would result in
14 a massive transfer of wealth from the beneficial owners of the mortgage loans targeted by the
15 Program (who are all located outside of Richmond and the vast majority of whom are located
16 outside of California) to a few preferred private parties, and would threaten to severely disrupt
17 the United States mortgage industry – a major sector of interstate commerce. Thus, the Program
18 also violates state and federal constitutional prohibitions against the extraterritorial reach of
19 Richmond’s regulatory authority.

20 5. Richmond and MRP seek to disguise the Program as a legitimate public
21 use of eminent domain power by asserting that they are aiming to seize “underwater” mortgages
22 (i.e., those where the value of the home is less than the outstanding principal amount of the
23 mortgage), which they claim will prevent future defaults and foreclosures in Richmond, and
24 therefore prevent their attendant consequences of home abandonment, blight, and economic
25 depression. But that characterization is a mere facade, as the Program principally targets
26 performing loans – i.e., the loans of homeowners who have been making their monthly
27 payments for years despite being “underwater,” and who have good credit ratings, as opposed to
28 those loans that are in default or at serious risk of default. The Program targets performing

1 loans *because they are not at serious risk of default* and therefore can be easily re-financed with
2 a new Federal Housing Authority (“FHA”) insured loan for an amount significantly greater than
3 the price paid by Richmond to seize the original loan. Thus, contrary to Defendants’ assertions,
4 the vast majority of the loans at issue are not at imminent risk of default, and the homeowners in
5 question are not at risk of having their loans foreclosed and having to move out of their homes.
6 Indeed, it is the relative safety of these loans that allows the Defendants to generate the huge
7 profits they seek, which is the actual purpose of the Program.

8 6. Federal agencies have expressed serious concerns about the
9 constitutionality of the Program and its potential impacts on the U.S. mortgage industry if it is
10 allowed to go forward. In a public statement dated August 9, 2012, the Federal Housing
11 Finance Administration (“FHFA”), the conservator of Fannie Mae and Freddie Mac (the two
12 Government–Sponsored Enterprises (“GSEs”) that are among the largest investors in RMBS
13 trusts), stated that “FHFA has significant concerns about the use of eminent domain to revise
14 existing financial contracts” and that “resulting losses from such a program would represent a
15 cost ultimately borne by taxpayers” and would have “a chilling effect on the extension of credit
16 to borrowers seeking to become homeowners and on investors that support the housing market.”
17 77 FR 47652 (August 9, 2012). FHFA noted that “[a]mong questions raised regarding the
18 proposed use of eminent domain are the constitutionality of such use,” “the effects on holders of
19 existing securities,” “the impact on millions of negotiated and performing mortgage contracts,”
20 and “critical issues surrounding the valuation by local governments of complex contractual
21 arrangements that are traded in national and international markets.” *Id.*

22 7. Likewise, the U.S. House of Representatives, House Financial Services
23 Committee, recently issued a draft reform bill, one of the stated purposes of which is: “To
24 combat constitutionally-suspect ‘eminent domain’ schemes by local municipalities to seize
25 mortgages out of legally binding securities for purposes of rewriting their terms, prohibit the
26 GSEs from purchasing or guaranteeing loans originated in municipalities where such practices
27 have been employed during the last ten years.” Executive Summary of the Protecting American
28

1 Homeowners (PATH) Act, July 11, 2013, available at
2 <http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=342165>, at 2.

3 8. The concerns expressed by FHFA and by the House Financial Services
4 Committee are well founded. The Program violates numerous provisions of the United States
5 Constitution, the California Constitution, and California state law. Defendants' own public
6 statements concerning the purpose of the Program and the details of how it would be used to
7 target performing loans and then flip them to generate profits for MRP confirm that it would
8 violate the "public use" and "just compensation," requirements of the "Takings Clause" of the
9 U.S. and California Constitutions. U.S. Const. amend. V; Cal. Const. art. I, § 1. Moreover,
10 because the mortgage loans that would be seized are notes held in locations outside of
11 Richmond by non-Richmond creditors, the Program would also violate the Takings Clause and
12 California statutory prohibitions against extraterritorial seizures. The implementation of the
13 Program should be enjoined for those reasons.

14 9. Additionally, the Program, if fully implemented, would have a significant
15 impact on interstate commerce, and therefore would violate the U.S. Constitution's Commerce
16 Clause and Contract Clause in a number of ways.

17 10. First, the Program would violate the dormant Commerce Clause, which
18 prevents local governments from discriminating against out-of-state investors or otherwise
19 erecting barriers to interstate commerce to benefit in-state economic interests. As noted above,
20 Richmond, MRP, and MRP's financial backers would realize huge profits from this scheme by
21 sharing in the spread between the price at which the homeowner's current mortgage loan is
22 seized and the revenue gained by Richmond/MRP by giving the homeowner a new smaller
23 mortgage loan and then selling that loan to a government-backed securitized pool. The select
24 Richmond homeowners chosen to participate in the Program – because they meet a borrowing
25 profile that would be profitable to Richmond and MRP – also would profit by having their
26 underwater loans and mortgage debts extinguished and replaced with newly refinanced loans.
27 But these economic benefits to a relatively small group of investors and Richmond homeowners
28 would come at the expense of RMBS Trusts located outside of Richmond, and ultimately their

1 certificateholders. These RMBS Trusts and their certificateholders would experience significant
2 losses as a result of each loan seized: losses of approximately the unpaid principal balance of
3 the seized loans or more, minus the price paid by Richmond for the seizure. Such losses could
4 amount to many tens of millions of dollars. This transfer of wealth from the beneficiaries of
5 RMBS Trusts, who in most cases are located entirely outside of California, to Richmond and
6 MRP, not only violates the Commerce Clause of the U.S. Constitution; it also violates the
7 Contract Clause of the U.S. Constitution, which prohibits a local government from abrogating
8 debts of local residents held by creditors.

9 11. Second, while the actual benefits of the Program to Richmond as a whole
10 are questionable (as the Program primarily targets performing loans at low risk of default and
11 has the potential to harm the community by limiting available future mortgage financing), the
12 potential negative effects of the Richmond Seizure Program on the national mortgage industry
13 would be significant and widespread. The number of loans meeting the MRP profile in
14 Richmond alone – approximately 1,000 to 2,000 mortgage loans – would cause many tens of
15 millions of dollars in losses, potentially \$200 million or more if the Program is allowed to go
16 forward. If Richmond were allowed to proceed, other local governments would follow suit,
17 with the result that these damages across RMBS trusts would exceed billions of dollars. Upon
18 information and belief, several other local governments – including, among others, the
19 municipalities of North Las Vegas, Nevada; El Monte, California; La Puente, California; San
20 Joaquin, California; Orange Cove, California; Newark, New Jersey; and Seattle, Washington –
21 are seriously considering the Program or have already engaged MRP or otherwise taken steps
22 toward implementing the Program. This wealth transfer from the RMBS Trusts and their
23 beneficiaries to MRP, local governments, and select homeowners, would seriously adversely
24 impact the national housing market.

25 12. Richmond would advance its local concerns at the expense of an entire
26 sector of interstate commerce that is critical to the health of the national economy. The Program
27 would severely disrupt the interstate market for mortgage-backed securities, which, in turn, is an
28 essential part of the home loan industry that enables a large percentage of Americans to realize

1 the dream of owning their own homes. Lenders enter into mortgage loans, and those loans are
2 conveyed to RMBS trusts in interstate commerce, with the expectation that a large percentage of
3 homeowners will stay in their homes and continue to pay their mortgages or pay them off early
4 at full value, even as the housing market goes through cycles. These expectations are based on
5 careful analysis of historical payment trends. The Program being carried out in Richmond, by
6 itself, poses a direct threat to the economic expectations and underpinnings of the RMBS
7 market, but the threat is even more dire when coupled with the prospect that other cities around
8 the Nation would enter into similar agreements with MRP. If even the highest performing
9 mortgage loans are at risk of being seized at substantial discounts from face value whenever the
10 housing market enters a downward cycle, then the market will reflect that risk by sharply
11 reducing the price at which secondary-market buyers will be willing to purchase mortgage loans
12 in general. If the value of loans on the secondary market plummets, then lending banks likely
13 will reflect that change by offering new loans on more onerous terms than those currently
14 offered. And such more demanding terms will exclude many would-be home purchasers from
15 the market. Thus, by participating in the Program, Richmond would be using its sovereign
16 powers in a manner that effectively compels lenders to alter the terms of credit they offer to
17 account for greater risk. It is beyond question that Richmond could not directly adopt
18 regulations governing the interstate market in home mortgage loans that would have so
19 devastating an effect on the Nation's economy, and it cannot do so indirectly, under the guise of
20 "taking" the contract rights that are at the core of this important sector of interstate commerce.

21 13. The beneficiaries of the RMBS Trusts include state and local pension
22 plans, 401(k) plans, college savings plans, insurance companies, mutual funds, university
23 endowments, and government sponsored enterprises. The economic harm would extend to
24 those entities and ultimately to their individual participants, including a vast number of
25 individual retirees nationwide.

26 14. At the very least, the Program, if permitted to go forward, would have a
27 serious negative effect on the housing market and the local economy of Richmond. Among
28 other things, lenders will take into account Richmond's capricious use of eminent domain

1 powers to seize performing mortgage loans by reducing the available residential mortgage loan
2 credit to Richmond borrowers and increasing interest rates for residential mortgage loans. The
3 Program provides a windfall to a select group of Richmond residents who are paying their
4 mortgages, but harms the residential real estate market in Richmond across the board, and
5 effectively appropriates assets from, among others, a vast number of individual retirees
6 nationwide whose retirement vehicles are beneficiaries of RMBS trusts.

7 15. As is noted above, the Plaintiffs are the trustees for the RMBS Trusts
8 (also listed on Schedules A-C hereto), which hold mortgage loans of homeowners in Richmond
9 that are being targeted by the Program. Plaintiffs request declaratory and injunctive relief
10 against Defendants' implementation of the Program. Moreover, because Defendants have taken
11 substantial steps toward implementing the Program, including sending offer letters to the
12 Plaintiffs and loan servicers for the RMBS Trusts to acquire the loans and publicly declaring
13 their intentions to soon begin seizing mortgage loans using Richmond's eminent domain
14 powers, Defendants should be preliminarily enjoined from implementing the Program, which
15 would be exceedingly difficult, if not impossible, to unwind after it has begun.

16 **THE PARTIES**

17 **A. Plaintiffs**

18 16. Plaintiff Wells Fargo Bank, National Association ("Wells Fargo"), as
19 trustee for each of the RMBS Trusts listed on Schedule A hereto, is a national banking
20 association organized under the laws of the United States with its main office in South Dakota
21 and its principal place of trust administration in Maryland. Plaintiff Deutsche Bank National
22 Trust Company ("DBNTC"), as trustee for the RMBS trusts listed on Schedule B hereto, is a
23 national banking association organized to carry on the business of a limited purpose trust
24 company under the laws of the United States with its main office in Los Angeles, California,
25 and its principal place of trust administration in Santa Ana, California. Plaintiff Deutsche Bank
26 Trust Company Americas ("DBTCA"), as trustee for the RMBS Trusts listed on Schedule C
27 hereto, is a New York Banking Corporation organized and existing under New York law with
28 its principal place of business and its principal place of trust administration in New York.

1 17. None of Wells Fargo, DBTCA, or DBNTC is incorporated in California
2 or otherwise organized under the laws of California. None of the Trustees is headquartered in
3 Richmond, or has any corporate trust services office or employees in Richmond. Of the three
4 Plaintiff trustees, only DBNTC has a principal place of corporate trust administration in
5 California.

6 18. The Plaintiffs serve as trustees for the RMBS Trusts, which hold
7 mortgage loans targeted by the Richmond Seizure Program due to their geographic location and
8 loan profile. The beneficiaries or certificateholders of the RMBS Trusts include a variety of
9 institutional investors investing in the Trusts for their own accounts and on behalf of clients,
10 including federal, state and local pension plans, 401(k) plans, college savings plans, insurance
11 companies, mutual funds, university endowments and other institutional or individual investors.

12 19. Although, as of the time of filing of this Complaint, Plaintiffs do not
13 know all of the loans the Program will target, loans of the type being targeted by the Richmond
14 Seizure Program are held in approximately 1,100 RMBS trusts, including the Trusts listed on
15 Schedules A-C hereto.

16 20. The physical notes evidencing the targeted mortgage loans held by the
17 Trusts all are located outside of Richmond, and in most cases, are located outside of California.

18 21. The certificateholders or beneficial owners of the Trusts are located
19 across the country and the world.

20 **B. Defendants**

21 22. The Defendants – including MRP, a San Francisco-based investment firm
22 – are located in California.

23 23. Defendant MRP is a limited liability company registered under the laws
24 of Delaware, and its registered agent for service of process in Delaware is The Corporation
25 Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware, 19801. It
26 is headquartered in San Francisco, California.

27 24. MRP is a privately-owned, for-profit company that seeks to partner with
28 local governments to seize certain residential mortgage loans under the power of eminent

1 domain and to then restructure those loans. On information and belief, MRP has no other
2 business operations.

3 25. To date, MRP has attempted to partner with numerous municipalities in
4 California and other states to implement its program. While several of these municipalities have
5 taken steps towards implementing MRP's program, Richmond is believed to be furthest along.

6 26. MRP proposes to manage and facilitate the loan restructuring process,
7 including (a) raising funds to finance the seizures of the mortgage loans; (b) identifying
8 mortgage loans to be acquired through eminent domain; and (c) arranging for the refinancing of
9 the seized loans. MRP and its investors would profit handsomely from this arrangement with
10 municipalities. MRP would receive a \$4,500 fee for each loan seized and refinanced. In
11 addition, on information and belief, MRP's investors would receive the profit spread between
12 the seizure price and the price at which the new loan to the homeowner is refinanced and sold to
13 a securitized pool, net of MRP's fee, the fee paid the City of Richmond, and any expenses
14 incurred with the seizure of the loan that MRP has agreed to pay.

15 27. On or about April 2, 2013, Richmond, through its City Council and upon
16 the recommendation of its City Manager, voted to enter into an "Advisory Services Agreement"
17 with MRP, under which MRP would advise Richmond about avenues of mortgage relief for
18 Richmond homeowners, including the possibility of acquiring existing mortgage loans through
19 eminent domain. It is not clear whether this is the only written agreement between Richmond
20 and MRP or if there are other undisclosed oral or written arrangements or understandings
21 between them.

22 28. Defendant City of Richmond, a municipality, is located in Contra Costa
23 County in the State of California.

24 **JURISDICTION**

25 29. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
26 (federal question jurisdiction) and 1343(a)(3) and (4) (jurisdiction over actions for violations of
27 constitutional and federal rights secured by 42 U.S.C. § 1983), and over Plaintiffs' declaratory
28 relief causes of action under 28 U.S.C. §§ 2201 and 2202. Plaintiffs' state law claims are so

1 related to their federal law claims that they form part of the same case or controversy.

2 Accordingly, this Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant
3 to 28 U.S.C. § 1367(a).

4 30. This Court has personal jurisdiction over Defendant Richmond, as a
5 municipality located in this judicial district. The Court also has personal jurisdiction over
6 Richmond because Plaintiffs' claims arise out of actions taken by Richmond in this judicial
7 district.

8 31. The Court has personal jurisdiction over Defendant MRP, because MRP
9 is an investment firm doing business in this judicial district, and Plaintiffs' claims arise out of
10 MRP's transaction of business in this judicial district.

11 **VENUE**

12 32. Venue is proper in this judicial district based on 28 U.S.C. § 1391(b).
13 Defendant Richmond resides in this district, Defendant MRP conducts business in this judicial
14 district, and a substantial part of the events or omissions giving rise to the claims asserted herein
15 occurred in this district.

16 **INTRADISTRICT ASSIGNMENT**

17 33. Pursuant to Civil Local Rules 3-2(c) and 3-2(d), this action is properly
18 assigned to either the San Francisco or Oakland Division of this Court, because a substantial
19 part of the events giving rise to the claims asserted herein occurred in Contra Costa County
20 (where Richmond is located) and the County of San Francisco (where MRP is headquartered).

21 **FACTUAL BACKGROUND**

22 **I. Richmond and MRP's Profit Scheme**

23 34. Defendants Richmond and MRP seek to enrich themselves through a
24 profit-driven scheme under which Richmond would use its eminent domain powers, and the
25 threat of eminent domain litigation, primarily to seize performing residential mortgage loans
26 owned by outside-of-Richmond RMBS Trusts and their beneficiaries at steeply and unjustifiably
27 discounted prices that do not reflect the current value of the loans, and then refinance those
28

1 loans with new federally insured loans for amounts substantially above the amounts paid by
2 Richmond to seize the homeowners' existing loans.

3 35. Richmond and MRP would profit by sharing in the spread between the
4 price paid by Richmond to seize the loans and the proceeds received by Richmond (through
5 MRP) for selling the new refinanced loans to the homeowners to a new securitized pool. The
6 outside-of-Richmond RMBS Trusts whose mortgage loans would be seized under this Program
7 would lose significant value – potentially hundreds of thousands of dollars on some seized loans
8 – causing substantial harm to the Trusts and their certificateholders. Thus, the Program amounts
9 to a seizure and transfer of wealth from private parties outside of Richmond, on the one hand, to
10 other private parties, on the other hand, with Richmond receiving a small cut of the profits as its
11 fee for renting out its eminent domain powers.

12 **A. The Richmond Seizure Program's Targeting of Performing Loans**

13 36. The Program primarily targets, for eminent domain seizure, mortgage
14 loans that meet a specific profile: (a) performing loans (meaning the borrower is not in default);
15 (b) that are underwater (meaning that the loan value is worth more than the underlying home
16 value); and (c) that are held by "private-label" securitization trusts (meaning that the trusts are
17 sponsored by a private entity, rather than by a government-sponsored enterprise).¹

18 37. The Program seeks to cherry-pick loans held by borrowers with the best
19 credit ratings. In MRP's own words, it seeks loans that are "relatively current (not in default),"
20 and only from "*borrowers who appear likely to repay their loans.*" Exhibit A (MRP
21 Homeownership Protection Program Presentation) at 9 (emphasis added). Thus, as MRP
22 admits, the Program does not target loans for which there is a serious risk of default (much less
23 a serious risk of foreclosure).

24 38. The reasons why MRP is targeting performing loans with low risks of
25 default are obvious and implicit in the MRP business model. Under that model, a loan seizure

26 ¹ The Program has been described in several public sources, including in presentations by MRP
27 to Richmond and others, attached hereto as Exhibits A (MRP Homeownership Protection
28 Program Presentation), B (MRP FAQ Sheet), C (Richmond CARES Presentation), and D (North
Las Vegas CARES Presentation).

1 cannot be profitable unless the seized loan can be refinanced. Without such refinancing, the
2 amount paid to compensate the targeted RMBS Trust and its certificateholders for the eminent
3 domain seizure would be unreimbursed (and the City would remain the de facto holder of the
4 seized mortgage loan). Thus, the Program necessarily targets homeowners who can qualify for
5 new loans with good credit ratings that could be sold to a new securitized trust guaranteed by
6 the Federal Housing Administration (“FHA”).

7 39. To put it simply, MRP cannot realize the huge profits it seeks on the
8 backend of its strategy unless it targets performing homeowners with good credit ratings and
9 repayment histories. Otherwise, MRP will not be able to sell the new loan to a securitized pool
10 and obtain the revenue from that sale that provides MRP with the profit spread for this scheme.

11 40. For similar strategic reasons, the Program targets loans held only by
12 private-label RMBS trusts, which are located outside of Richmond. On information and belief,
13 MRP believes the RMBS Trusts are too dispersed, and their certificateholders too dispersed, to
14 coordinate any meaningful resistance to MRP’s scheme.

15 41. The Program, by contrast, avoids seizing loans held by trusts sponsored
16 and guaranteed by Freddie Mac or Fannie Mae, in order to avoid provoking the ire of the federal
17 government. It similarly avoids seizing loans held directly by banks.

18 42. In addition, MRP and Richmond attempt to justify the Program as
19 correcting what they claim to be a market inefficiency that exists with respect to loans held in
20 private-label RMBS Trusts: that the governing documents of some RMBS trusts prohibit the
21 loan servicers for the Trusts from permanently reducing a borrower’s principal balance. *See,*
22 *e.g.*, Exhibit C (Richmond CARES Presentation), at 5.

23 43. Finally, while the Program targets “underwater” loans, to purportedly
24 avoid foreclosures and their attendant economic costs, this justification is a false pretense for the
25 Program’s money-making scheme. The performing loans targeted by the Program are unlikely
26 to go into default, let alone foreclosure, and the targeted homeowners are not about to abandon
27 or be forced out of their homes.

B. The Seizure and Refinancing of the Targeted Loans

44. Under the Program, once a loan is selected, Richmond will attempt to seize the loan through eminent domain powers for approximately 80% or less of the underlying *home value*. Because these are underwater loans (i.e., those with home values below the outstanding principal balance of the mortgage), a payment of 80% of the home value is far lower than the unpaid principal balance of the loan.

45. Because the mortgage loans targeted by Richmond are performing and have a low risk of default, and (as is described below) generally cannot legally be sold out of the RMBS Trusts, those loans are properly valued at an amount worth substantially above the underlying current home value. A proper valuation of the loans would take into account their remaining principal and interest payments. The actual value of such loans would be the loan's unpaid principal balance, which for most of the targeted loans far exceeds 80% of the home's current value.

46. Additionally, it is unclear that the Program will even assess the current value of the underlying home at a fair market value for purposes of pricing its compensation for the seizure. Because Defendants are incentivized to pay as low a seizure price as possible, the Program could value the underlying home at an artificial or deflated price, leading to an even lower seizure price.

47. On information and belief, once Defendants secure the loan at a steeply discounted price, they then intend to replace it with a new loan to be sold into a FHA securitized pool in an amount equal to approximately 95% of the underlying home value. Richmond, MRP, and their investors and partners thus would instantly profit by sharing in the spread between the 80% seizure price and the 95% refinancing price.

48. In an example provided by MRP, an underwater loan on a home worth \$200,000 would be seized by eminent domain for \$160,000 (or 80% of the home's value), and then refinanced into a new FHA loan for \$190,000 (or 95% of the home's value). The \$30,000 spread between the seizure price and the refinancing price would be divided (after expenses) among Richmond, MRP, and MRP's investors.

1 49. In this example, Richmond would receive a flat fee of 5% of the
2 refinancing value (or \$9,500), MRP would receive a flat fee of \$4,500 for each loan seizure, and
3 MRP's investors would receive the remainder of the spread between the seizure price and the
4 refinancing price. *See* Ex. C hereto. MRP may also be entitled to additional compensation in
5 connection with the Program, including fees for arranging the financing for the seizure and/or in
6 connection with the refinancing.

7 50. MRP has claimed that the loans the Program seeks to target do actually
8 trade, and one can pull the trading histories and determine that, for example, a performing
9 \$300,000 loan on a \$200,000 house is worth about 80% of the value of the house. But this is
10 inaccurate. There is no trading market for performing underwater loans held by private-label
11 RMBS trusts. Indeed, the Trusts are structured under federal tax laws as "real estate mortgage
12 investment conduits," or "REMICs," and, as such, are prohibited from selling performing loans.
13 Regardless, the value of such performing loans to the RMBS Trusts is clearly not the current
14 value of the underlying home.

15 51. Additionally, the entire Program is premised on undercompensating the
16 owners of the loans. It could not function in any other way, because the Program is profitable
17 for its participants only because the loans are seized for heavily discounted prices and are then
18 refinanced with a new loan purportedly worth more than the amount for which the homeowner's
19 existing loan was seized. The new loan can be sold to a new securitized pool, creating a profit
20 spread. So compensation for the seized loans under the Program must, *ipso facto*, be at an
21 artificially deflated value – and hardly the "just" compensation that is constitutionally required.

22 52. In fact, not only is the 80% price not a fair value for a performing
23 underwater loan with a low risk of default owned by an RMBS Trust, it would not even be a fair
24 price for Richmond loans not part of RMBS Trusts that are in default or foreclosure. On
25 information and belief, *defaulted* residential mortgage loans available for sale have recently
26 traded at far above 80% of the underlying home value.

C. The Program Will Have a Minimal Impact on Richmond's Foreclosure Rate

53. MRP and the City attempt to justify the Program as a proper use of the City's eminent domain powers by asserting that the seizure of underwater mortgage loans will prevent defaults and foreclosures in Richmond, and thus reduce the economic fallout from the mortgage crisis, which began in 2008. Additionally, Richmond and MRP have touted the Program as fixing a "traditional" type of "market failure": the inability of borrowers to obtain a reduction in the principal balance of loans held by private-label RMBS trusts.

54. For example, Richmond claims that the Program will reduce foreclosures in Richmond, create "more stable neighborhoods," add "more money in our local economy to stimulate community wealth," and save homeowners money on their mortgage payments and put that money in "homeowners' pockets" to spend on local businesses. Likewise, the Program would purportedly "preserv[e] home ownership, restor[e] homeowner equity and stabiliz[e] the communities' housing market and economy by allowing many homeowners to remain in their homes." Exhibit E (MRP Advisory Services Agreement) at 1. MRP claims that the homes that would be seized under the Program are "highly likely" to be foreclosed upon.

55. But such purported justifications for the Program are inconsistent with the Program's business model, which, as noted above, primarily targets performing loans that are not at serious risk of default, let alone foreclosure.

56. These are loans where the borrowers have not gone into foreclosure or otherwise walked away from their mortgages throughout a serious economic downturn that started in 2008. The likelihood that such borrowers would default and be foreclosed upon now, after weathering a years-long financial storm, with property values on the rise nationwide (including in California), is minimal. With real estate prices in California having risen significantly in the past year and expected to increase in the next 12 months, homeowners who have performed their mortgage loan contracts for years have no reason to suddenly walk away from their homes.

57. The actual reality in Richmond contradicts the parade of horrors – of widespread defaults, foreclosures, home abandonments, blight and economic depression – that

1 MRP and Richmond claim will occur if they are not allowed to seize performing underwater
2 loans and refinance them for their own profit.

3 58. For example, MRP claims that *50% of the private label mortgages in*
4 *Richmond will go into foreclosure*, and that “[t]hese foreclosures will cost Richmond \$25
5 million.” Exhibit C (Richmond CARES Presentation) at 2. This is a gross exaggeration that is
6 completely inconsistent with historical trends and experts’ predictions for what will occur in the
7 future.

8 59. The probability that a performing loan being targeted by Richmond and
9 MRP will go into default over the next year is exceptionally low, and any such default would
10 almost certainly be due to a change in economic circumstances of the borrower, like the
11 unexpected loss of a job, and not due to a decision by the homeowner to abandon their home
12 because it is currently underwater. Any loan that were to go into default in Richmond in the
13 next year would most likely qualify to obtain a modification or other type of work-out, and
14 would not be foreclosed upon. Indeed, on information and belief, a significant percentage of the
15 Richmond loans being targeted by the Program have already been modified or refinanced since
16 2008. Under current California law, lenders are required to attempt to negotiate a modification
17 with homeowners before they can resort to foreclosure. In the rare case where a modification or
18 work-out cannot be done, it currently takes a minimum of one year in California before any
19 defaulting loan can be foreclosed upon.

20 60. Thus, the Richmond Seizure Program would have little or no effect on the
21 foreclosure rate in Richmond, and would instead cause substantial economic harm in Richmond
22 and beyond.

23 **D. MRP and The City Have Taken Substantial Steps Towards Implementing**
24 **the Program**

25 61. To date, several other municipalities (in California and other states) have
26 contemplated entering into a partnership with MRP to implement its Program.

27 62. MRP first targeted municipalities in California as potential partners for its
28 Program. The California local governments of San Bernardino County and the Cities of

1 Fontana and Ontario were the first to consider the Program. They formed a Joint Powers
2 Authority (“JPA”) to study the issue. After more than seven months of extensive review, the
3 JPA Board voted unanimously on January 24, 2013 not to consider any proposals that involved
4 the use of eminent domain.

5 63. At the time, JPA Board Chairman Greg Devereaux publicly remarked that
6 the JPA Board’s decision was informed by the fact that experts warned that the use of eminent
7 domain would destabilize an already weak local housing market and worsen the mortgage crisis,
8 and that few local homeowners and other stakeholders expressed support for the use of eminent
9 domain, with many affirmatively opposing such a strategy.

10 64. Although, to Plaintiffs’ knowledge, no loans have yet been seized by
11 Richmond, Defendants have taken substantial steps toward implementing the Program and
12 seizing the loans. In April 2013, Richmond entered into an “Advisory Services Agreement”
13 with MRP, which apparently is the operative agreement between Richmond and MRP with
14 respect to the Program.

15 65. On multiple occasions over the past months, the Mayor of Richmond or
16 other Richmond officials have publicly discussed Richmond’s implementation of the Program,
17 including confirming that the City Council entered into a partnership with MRP to implement
18 the Program and discussing MRP and Richmond’s readiness to begin implementing the
19 Program.

20 66. On or about July 31, 2013, Richmond sent letters to the Plaintiffs and
21 other trustees and loan servicers making offers to purchase loans held in RMBS trusts, which
22 offers are a prerequisite under California eminent domain law before a local government can
23 seize property. The offer letters purported to attach a list of 624 mortgage loans held by various
24 RMBS trusts (including many held by the RMBS Trusts for which Plaintiffs serve as trustees)
25 that Defendants offered to acquire, “at the present time.” Upon information and belief,
26 approximately two-thirds of the loans on this list are performing, thus indicating that the
27 Program seeks to target performing loans. It is unclear whether Richmond intends to seize the
28 nonperforming loans listed on the offer letters. The letters state that the offers are nonbinding

1 on Richmond, and provide a deadline of August 13, 2013 for responses to the offers, after which
2 Richmond may “decide[] to proceed with the acquisition of the loans through eminent domain.”
3 Upon information and belief, Richmond’s offer letters constitute a first wave of offers, and if
4 Defendants are successful in acquiring or seizing these loans, it is expected that they will
5 attempt to acquire or seize many other loans that meet their targeted profile.

6 67. If the offers to sell the loans are not accepted, Richmond could quickly
7 seize possession of the loans. Richmond must first hold a condemnation hearing, and
8 immediately thereafter could file an eminent domain lawsuit in California state court and use a
9 California state law procedure known as a “Quick Take” to immediately obtain a court order
10 giving Richmond possession of the property. MRP has indicated that the “Quick Take”
11 procedure is a critical component of its scheme. *See* Exhibit B (MRP FAQ Sheet), at 3. Once
12 Richmond receives possession of the loans, it could then extinguish, restructure, and refinance
13 them, causing immediate and irreparable harm to the Trusts that will be exceedingly difficult, if
14 not impossible, to unwind.

15 68. Thus, there is a high likelihood that Defendants will soon exercise the
16 City’s eminent domain powers to seize possession of the mortgage loans under the Program.

17 **II. Implementation of the Richmond Seizure Program Would Result in Significant**
18 **Economic Harm to Plaintiffs and Will Impact Interstate Commerce**

19 **A. Economic Harm to the Trusts and their Beneficiaries**

20 **1. Organization of the Trusts**

21 69. Defendants intend to potentially target for seizure under the Program any
22 performing loan secured by property in Richmond that is held by a “private label” RMBS trust.
23 MRP has estimated that approximately 1,500 such mortgage loans exist in Richmond. *See*
24 Exhibit C (Richmond CARES Presentation) at 2.

25 70. The RMBS Trusts are investment vehicles created as part of the
26 residential mortgage loan securitization process, whereby financial and economic risks are
27 distributed by pooling mortgage loans and issuing securities or certificates for which the
28 mortgages serve as collateral. Certificates of the RMBS Trusts are issued to certificateholders

1 on whose behalf Plaintiffs hold the mortgage loans. Under the typical governing documents for
2 the RMBS Trusts, the Plaintiffs, solely in their trustee capacity, hold legal title to the mortgage
3 loans on behalf of and for the benefit of the Trusts' certificateholders.

4 71. The most common form of securitization of mortgage loans involves a
5 "sponsor" – an entity that acquires or originates the mortgage loans and initiates the
6 securitization. A "private label" securitization is one that is sponsored by a private entity, rather
7 than a GSE such as Fannie Mae or Freddie Mac.

8 72. Sponsors do not always originate the mortgage loans themselves, but
9 frequently acquire the mortgage loans from loan originators or others that have title to the loans.
10 For a loan to be conveyed from the point of origination to an RMBS trust involves a complex
11 series of sales transactions that often occur across state lines.

12 73. The prices paid for the mortgage loans that are deposited into the RMBS
13 Trusts are contingent on the quality and value of the mortgage loans. Economic and financial
14 risk are distributed because the pool of loans in an RMBS trust typically is geographically
15 diverse. Thus, the Trusts do not exclusively contain loans secured by California real property
16 (or exclusively loans from any other single state), but rather each Trust contains mortgage loans
17 secured by real property located in a variety of states and localities.

18 74. The certificates issued by the Trusts represent beneficial ownership
19 interests in the principal and interest from the cash flow generated by the mortgage loan pool in
20 accordance with specific payment rules. The assets of the Trusts are serviced by "loan
21 servicers" whose responsibilities include collecting payments by borrowers and managing
22 borrower defaults.

23 75. The certificates are purchased by investors – typically referred to as
24 "certificateholders" – who seek a particular risk profile of the Trust's mortgage loans. The
25 certificates in the Trusts typically are issued pursuant to offering memoranda, which explain the
26 general structure of the investment and the risks involved and contain detailed descriptions of
27 the collateral groups underlying the certificates.
28

1 76. Pursuant to the governing documents for the Trusts, the performing loans
2 held by the Trusts generally cannot be sold. Therefore, there is no trading market for
3 performing private-label loans like those targeted by Richmond and MRP. Investors in RMBS
4 trusts expect those loans to perform until maturity, unless the loan is paid off by the borrower
5 early or goes into default.

6 **2. Harm to the Trusts and their Beneficiaries**

7 77. If implemented, the Richmond Seizure Program would cause significant
8 harm to the RMBS Trusts and their certificateholders, who ultimately bear the substantial harm
9 imposed by the Takings Program.

10 78. First, the targeting of performing loans within the Trusts' portfolios
11 would, by itself, completely upend the purpose of the securitization process, which is based
12 upon loan diversification and on the stable and non-saleable nature of performing loans within
13 the pool.

14 79. Second, the number of loans targeted in Richmond alone – hundreds of
15 mortgage loans – would cause tens of millions of dollars in losses to the RMBS Trusts for which
16 Plaintiffs serve as trustees, and other RMBS trusts holding those loans (with an average
17 estimated loss of approximately \$100,000 to \$200,000 per seized loan), potentially as high as
18 \$66 million or more in losses to the Trusts for which the Plaintiffs are trustees, and \$200 million
19 or more to all RMBS trusts. Indeed, upon information and belief, the first wave of 624 loans
20 targeted by Defendants could potentially cause losses to RMBS trusts holding those loans of
21 \$90 million or more.

22 80. Third, on information and belief, Richmond is a test case for the Program.
23 Many municipalities have been approached by MRP, but, upon information and belief,
24 Richmond has taken the most significant steps towards seizing loans under the Program. On
25 information and belief, those municipalities, and many others, are watching to see whether
26 Richmond is able to carry out its scheme. If even a few other municipalities of Richmond's size
27 implement the Program, then losses could range in the billions of dollars. If more than a few
28 implement the Program, losses could mount far higher. This widespread transfer of substantial

1 wealth from the RMBS Trusts and their certificateholders, on the one hand, to MRP, local
2 governments, and select local homeowners, on the other hand, could destabilize the national
3 housing market.

4 **B. The Effect on Interstate Commerce and the National Housing Market**

5 81. The Program would also cause significant harm to interstate commerce
6 and the national housing market. In addition to the damages caused to RMBS Trusts and their
7 beneficiaries by the seizure of performing residential mortgage loans at artificially low prices,
8 the Program would have a chilling effect on the future extension of mortgage credit to
9 homeowners. Lenders would have reduced willingness to underwrite mortgages in Richmond
10 or other municipalities in which they perceive a risk that similar programs will be implemented.
11 To the extent lenders chose to continue lending in such municipalities at all, they necessarily
12 would lower the loan-to-value (of the home) ratio at which they would lend, and charge a higher
13 interest rate on the loans they do make, to take into account the new risk that the loan would be
14 seized by eminent domain whenever the housing market enters a cyclical downturn. Potential
15 borrowers in those jurisdictions would therefore suffer by the tightening of credit in their
16 communities. With diminished access to credit, many prospective homeowners would be
17 unable to obtain loans, and housing prices would fall across the board.

18 82. Further, the Program would undermine investor confidence in the
19 residential mortgage-backed securities market, and by extension, the national housing market
20 and national economy. The securitization market would be upended, as investors in residential
21 mortgage-backed securities would be unable to adequately evaluate underlying mortgage pools
22 that collateralize their investment, and prices for affected securities would decrease. A broad
23 range of investors hold interests in residential mortgage-backed securitizations as part of
24 common diversification strategies. Thus, the detrimental effects of a valuation crisis as to the
25 securities evidencing those interests would flow through the national housing market, and
26 likewise, the national economy.

1 83. Likewise, industries dependent on a vibrant housing market and an active
2 home lending environment would suffer, such as the home building, construction, and realty
3 industries.

4 84. In comments published in the Federal Register, 77 FR 47652 (August 9,
5 2012) discussing the “Use of Eminent Domain To Restructure Performing Loans,” the FHFA
6 recognized the harm that programs like the Richmond Seizure Program would cause. Among
7 other things, FHFA has explained that the GSEs, as well as the multiple Federal Home Loan
8 Banks for which FHFA acts as a regulator, because they are substantial holders of RMBS,
9 would be harmed, as well as the communities themselves that attempt to use eminent domain.
10 According to FHFA:

11 FHFA has significant concerns about the use of eminent domain to revise existing
12 financial contracts and the alteration of the value of Enterprise or Bank securities
13 holdings. In the case of the Enterprises, resulting losses from such a program
14 would represent a cost ultimately borne by taxpayers. At the same time, FHFA
15 has significant concerns with programs that could undermine and have a chilling
16 effect on the extension of credit to borrowers seeking to become homeowners and
17 on investors that support the housing market.

18 FHFA has determined that action may be necessary on its part as conservator for
19 the Enterprises and as regulator for the Banks to avoid a risk to safe and sound
20 operations and to avoid taxpayer expense.

21 Among questions raised regarding the proposed use of eminent domain are the
22 constitutionality of such use; the application of federal and state consumer
23 protection laws; the effects on holders of existing securities; the impact on
24 millions of negotiated and performing mortgage contracts; the role of courts in
25 administering or overseeing such a program, including available judicial
26 resources; fees and costs attendant to such programs; and, in particular, critical
27 issues surrounding the valuation by local governments of complex contractual
28 arrangements that are traded in national and international markets.

23 85. Likewise, the U.S. House of Representatives Financial Services
24 Committee, which has oversight of Fannie Mae and Freddie Mac, recently issued a draft reform
25 bill, a stated purpose of which is to implement the following reform: “To combat
26 constitutionally-suspect ‘eminent domain’ schemes by local municipalities to seize mortgages
27 out of legally binding securities for purposes of rewriting their terms, prohibit the GSEs from
28 purchasing or guaranteeing loans originated in municipalities where such practices have been

1 employed during the last ten years.” Executive Summary of the Protecting American
2 Homeowners (PATH) Act, July 11, 2013, at 2.

3 86. The concerns expressed by the FHFA and the House Financial Services
4 Committee are well-founded. Indeed, if fully implemented, the Program could have a
5 devastating effect on interstate commerce, including on the mortgage-backed securities market
6 and the national housing market, and would detrimentally affect both borrowers and lenders.

7 **C. The Damages to the City of Richmond and Its Homeowners**

8 87. Richmond, and its citizens, would not be spared from the harm caused by
9 Richmond’s wrongful use of eminent domain powers to seize mortgage loans under the
10 Program. Lenders would be less willing to write mortgages for Richmond citizens, and property
11 values would plummet and homeownership rates would drop.

12 88. The relatively small number of select Richmond homeowners who could
13 receive a windfall under the Program by having their underwater mortgages refinanced will not
14 offset the devastation to the local housing market and economy due to the Program’s chilling
15 effect on future mortgage credit.

16 **III. Injunctive Relief Is Necessary to Prevent the Immediate and Irreparable Harm**
17 **That Will Occur if the Program Is Allowed to Go Forward**

18 89. Defendants should be enjoined from implementing the Richmond Seizure
19 Program. As demonstrated herein, the Program would cause significant and widespread
20 economic harm, and, if carried out, the transactions that the Program contemplates will be
21 exceedingly difficult, if not impossible, to unwind.

22 90. Under the Program, once new loans are issued to refinance the original
23 loans, they would be securitized: sold by Richmond/MRP to another residential mortgage loan
24 pool backed by the FHA. Thus, to unwind these transactions would require extinguishing the
25 new loan, thereby harming the FHA trust that holds that loan, and its certificateholders. The
26 homeowner whose loan has been seized and refinanced would be put in a situation where their
27 underwater mortgage has been extinguished, refinanced for a lower rate, and then reinstated
28 again at the old rate and their new home equity from the refinancing taken away.

1 91. Moreover, money damages would be inadequate to compensate the
2 RMBS Trusts and their certificateholders for Defendants’ wrongdoings. First, widespread
3 seizure and extinguishment of the loans will, among other things, affect the credit rating of
4 certain tranches of the Trusts’ certificates, which could cause systemic problems for the
5 mortgage-backed securities industry – including the RMBS Trusts and their certificateholders –
6 that cannot be compensated by money damages.

7 92. Second, it is unlikely that MRP or Richmond (which has obtained an
8 indemnification from MRP for any liabilities arising from the Program) would have the
9 financial means necessary to compensate the RMBS Trusts and their certificateholders for the
10 potentially hundreds of millions of dollars in losses caused by the Program, in which case the
11 Trusts and their beneficiaries will be left without recourse for their loss.

12 **JUSTICIABLE DISPUTE**

13 93. By reason of the foregoing, there now exists a justiciable dispute and
14 controversy for which immediate relief is necessary.

15 94. Accordingly, Plaintiffs seek injunctive and declaratory relief as set forth
16 herein.

17 **CLAIMS FOR RELIEF**

18 **COUNT I**

19 **(VIOLATION OF THE “PUBLIC USE” REQUIREMENT OF THE TAKINGS**
20 **CLAUSES OF THE U.S. AND CALIFORNIA CONSTITUTIONS AND CLAIM UNDER**
21 **42 U.S.C. § 1983)**

22 **(AGAINST ALL DEFENDANTS)**

23 95. Plaintiffs repeat and reallege the allegations contained in each preceding
24 paragraph as if fully set forth herein.

25 96. The Fifth Amendment to the U.S. Constitution provides that “private
26 property” shall not be “taken for public use, without just compensation” (the “Takings Clause”).
27 This requirement is incorporated and made applicable to the states and their political
28 subdivisions and actors by the Fourteenth Amendment of the U.S. Constitution.

1 97. 42 U.S.C. § 1983 provides that any person, acting under the color of state
2 law, that subjects or causes to be subjected any citizen of the United States or other person
3 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the
4 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
5 proceeding for redress.

6 98. California Constitution article I, § 19 provides that private property may
7 be taken only for a “public use.”

8 99. The Richmond Seizure Program is carried out by Defendants under the
9 color of state law.

10 100. The Program violates the “public use” requirement of the Takings Clause
11 of the Fifth and Fourteenth Amendments and of the California Constitution. The Program is not
12 implemented for a public purpose, but rather for the purpose of seizing property from one set of
13 private entities (the Trusts and their beneficiaries) to enrich MRP, a private investment firm, and
14 its investors. The stated justifications for the Program – to reduce foreclosures and their
15 attendant economic effects – are mere pretexts for this profit-driven scheme. Indeed, the fact
16 that the Program principally targets performing loans shows that it is not designed to reduce
17 foreclosures or their economic consequences, but rather to confer private benefits on a select set
18 of individuals.

19 101. In addition, the Program would not benefit Richmond’s citizens as a
20 whole, but would instead lead to windfalls for the select group of homeowners that meet a loan
21 profile profitable to Defendants and their investors, to the detriment of all others. The Program
22 expressly excludes many borrowers and principally targets performing mortgage loans that are
23 not in default or foreclosure. If the Program is fully implemented and performing loans are
24 seized for well-below their unpaid principal balance, and thus at significant losses to the Trusts
25 holding those loans and their beneficiaries, future lenders will be unwilling to extend credit in
26 Richmond at the current level, creating, at a minimum, a chilling effect on the local home
27 lending environment. This will have severe consequences for current and prospective
28 Richmond homeowners.

1 102. None of the allegations in this Complaint should be construed in any way
2 as an attempt to threaten or restrain any of Defendants' constitutional rights of freedom of
3 speech or rights to petition government for the redress of grievances. Any allegations in this
4 Complaint that discuss statements made or actions taken by Defendants or any of their
5 representatives are included in this Complaint solely for the purposes of pleading a basis for
6 Plaintiffs' claims for relief (all of which are independent of Defendants' rights to free speech or
7 to petition government), including, among other things, by showing how the Richmond Seizure
8 Program works and identifying Defendants' purported and actual justifications for the Program
9 and intent to improperly use eminent domain powers. In short, the Complaint targets
10 Defendants' unconstitutional and unlawful use of eminent domain, not Defendants' statements
11 about it.

12 103. Accordingly, Plaintiffs respectfully request that the Court issue a
13 judgment for declaratory and injunctive relief against Defendants, declaring that the
14 implementation of the Richmond Seizure Program would violate the Fifth and Fourteenth
15 Amendments of the U.S. Constitution and article I, § 19 of the California Constitution, and
16 permanently enjoining Defendants from implementing any aspect of the Program.

17 **COUNT II**

18 **(VIOLATION OF THE PROHIBITIONS AGAINST EXTRATERRITORIAL**
19 **SEIZURES UNDER THE TAKINGS CLAUSES OF THE U.S. AND CALIFORNIA**
20 **CONSTITUTIONS AND THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND**
21 **CLAIM UNDER 42 U.S.C. § 1983)**

22 **(AGAINST ALL DEFENDANTS)**

23 104. Plaintiffs repeat and reallege the allegations contained in each preceding
24 paragraph as if fully set forth herein.

25 105. The Fifth Amendment to the U.S. Constitution prohibits a local
26 government from extraterritorially seizing property pursuant to eminent domain powers. This
27 requirement is incorporated and made applicable to the states and their political subdivisions
28 and actors by the Fourteenth Amendment of the U.S. Constitution.

1 106. 42 U.S.C. § 1983 provides that any person, acting under the color of state
2 law, that subjects or causes to be subjected any citizen of the United States or other person
3 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the
4 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
5 proceeding for redress.

6 107. Article I, § 1 of the California Constitution prohibits local governments
7 from extraterritorially seizing property pursuant to eminent domain powers.

8 108. Under Cal. Civ. Pro. Code § 1240.050, a local public entity may acquire
9 by eminent domain only property located within its territorial limits. Under Cal. Civ. Pro. Code
10 § 1250.020, an eminent domain proceeding shall be commenced in the county in which the
11 property sought to be taken is located.

12 109. The Richmond Seizure Program is carried out by Defendants under the
13 color of state law.

14 110. Defendants' implementation of the Program violates prohibitions against
15 extraterritorial property seizures under the Fifth and Fourteenth Amendments of the U.S.
16 Constitution and Article I, § 1 of the California Constitution, and violates Cal. Civ. Pro. Code §
17 1240.050 and § 1250.020. The mortgage loans that Defendants target under the Program are not
18 located within the territorial borders of Richmond, California, but are held in Trusts located
19 outside of Richmond. Because the situs of a debt for eminent domain purposes is deemed to be
20 the location of the creditor, Defendants have no power to seize these outside-of-Richmond
21 debts.

22 111. In addition, the notes evidencing the mortgage loans are physically held
23 by custodians in locations outside of Richmond. Thus, Defendants have no power to effect
24 extraterritorial seizures of those tangible instruments. Indeed, the many of the RMBS Trusts
25 holding Richmond loans and the notes evidencing those loans are not even located inside the
26 State of California.

27 112. Accordingly, Plaintiffs respectfully request that the Court issue a
28 judgment for declaratory and injunctive relief against Defendants, declaring that the

1 implementation of the Richmond Seizure Program would violate the Fifth and Fourteenth
2 Amendments of the U.S. Constitution, article I, § 1 of the California Constitution, and Cal. Civ.
3 Pro. Code § 1240.050 and § 1250.020, and permanently enjoining Defendants from
4 implementing any aspect of the Program.

5 **COUNT III**

6 **(VIOLATION OF THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION AND**
7 **CLAIM UNDER 42 U.S.C. § 1983)**

8 **(AGAINST ALL DEFENDANTS)**

9 113. Plaintiffs repeat and reallege the allegations contained in each preceding
10 paragraph as if fully set forth herein.

11 114. Article I, § 8, cl. 3 of the U.S. Constitution (the “Commerce Clause”)
12 gives Congress the power to regulate commerce among the several states. Under the doctrine of
13 the “dormant Commerce Clause,” states and their political subdivisions are prohibited from
14 taking action designed to benefit in-state economic interests by burdening out-of-state interests.
15 That doctrine prohibits direct regulation of interstate commerce by the states and their political
16 subdivisions, and permits incidental regulation only where the burden imposed on such
17 commerce is not excessive in comparison with the putative local benefits.

18 115. 42 U.S.C. § 1983 provides that any person, acting under the color of state
19 law, that subjects or causes to be subjected any citizen of the United States or other person
20 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the
21 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
22 proceeding for redress.

23 116. The Richmond Seizure Program is carried out by Defendants under the
24 color of state law.

25 117. Defendants violate the Commerce Clause of the U.S. Constitution by
26 implementing the Program, which is designed to benefit certain local economic interests – i.e.,
27 those of a relatively small number of Richmond homeowners selected to participate in the
28 Program, and of the San Francisco-based investment firm MRP that would profit under the

1 Program – at the expense of out-of-Richmond and out-of-state interests, including the Trusts
2 that hold the mortgage loans targeted for seizure and the beneficiaries of those Trusts.

3 118. In addition, the Program is a direct regulation of interstate commerce by
4 Richmond. The Program expressly targets for seizure private-label mortgage loans held by out-
5 of-Richmond and out-of-state Trusts and their beneficiaries, precisely because of Richmond’s
6 belief that there is a “market failure” in this sector of the interstate economy. The Trusts are
7 investment vehicles designed to distribute economic and financial risk by holding a diversified
8 collateral base of mortgage loans, including loans that are diverse based on, among other
9 factors, their geographic and risk profiles. Thus, the Trusts do not hold only loans secured by
10 real property located in Richmond or California, but by real property located in a variety of
11 states and localities.

12 119. Also, the private-label mortgage loans targeted by MRP were acquired by
13 a private sponsor, who securitized them in a private-label RMBS Trust, in which the loans are
14 serviced, and mortgage payments flow through the Trusts to be ultimately distributed to the
15 Trusts’ certificateholders. Therefore, the Program would directly regulate an investment
16 structure that by its very nature depends on a pool of collateral located in different states, and on
17 the interstate flows of proceeds from homeowners, to loan servicers, to the Trusts, and then
18 ultimately to the Trusts’ certificateholders.

19 120. Furthermore, the residential mortgage-backed securities market is a
20 national industry that crosses state lines, with investors and other market participants located
21 throughout the country. The Program would significantly and directly regulate this market by
22 seizing its underlying assets, and not for a fair market value, but for steeply discounted
23 valuations unilaterally determined by the local government.

24 121. Moreover, the burden imposed on interstate commerce by the Program
25 would be excessive, and would greatly outweigh any purported benefits to the Richmond
26 community. Among other things, the Program could cause hundreds of millions of dollars in
27 losses to the Trusts that hold the targeted mortgage loans and the beneficiaries of those Trusts.
28 It would also upend the heavily negotiated investment structures used across the national

1 residential mortgage backed securitization industry, diminish investor confidence in such
2 structures, and have a chilling effect on mortgage credit (in Richmond and elsewhere). In
3 addition, the purported benefits to Richmond – of reducing foreclosures and their local
4 consequences – are minimal or non-existent. The Program principally does not aim to seize
5 loans in default or at serious risk of default or foreclosure, but performing loans at low risk of
6 default, which would not even address the harms that it purports to prevent. The benefits to the
7 relatively small number of Richmond homeowners receiving a windfall under the Program
8 would not outweigh the harm that the Program would cause to the Trusts, their beneficiaries,
9 and others, on both a local and national scale.

10 122. Accordingly, Plaintiffs respectfully request that the Court issue a
11 judgment for declaratory and injunctive relief against Defendants, declaring that the
12 implementation of the Richmond Seizure Program would violate the Commerce Clause of the
13 U.S. Constitution, and permanently enjoining Defendants from implementing any aspect of the
14 Program.

15 **COUNT IV**

16 **(VIOLATION OF THE CONTRACTS CLAUSE OF THE U.S. CONSTITUTION AND**
17 **CLAIM UNDER 42 U.S.C. § 1983)**

18 **(AGAINST ALL DEFENDANTS)**

19 123. Plaintiffs repeat and reallege the allegations contained in each preceding
20 paragraph as if fully set forth herein.

21 124. Article I, § 10 of the U.S. Constitution – the “Contracts Clause” –
22 prohibits states from “impairing the Obligation of Contracts.” The Contracts Clause prevents
23 states and their political subdivisions from passing any law that would abrogate debts of their
24 citizens, where that law would impair commercial intercourse and threaten the existence of
25 credit.

26 125. 42 U.S.C. § 1983 provides that any person, acting under the color of state
27 law, that subjects or causes to be subjected any citizen of the United States or other person
28 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the

1 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
2 proceeding for redress.

3 126. Defendants violate the Contracts Clause by implementing a scheme that
4 would severely impair the Trusts' contractual rights to receive full payments of unpaid principal
5 from borrowers. In exchange, the Program provides cash payments worth significantly less than
6 the rights abrogated by Defendants. The purpose of this significant impairment of contractual
7 rights is improper and without a legitimate public purpose or necessity: to abrogate debts held
8 by a small, select group of that jurisdiction's citizen while enriching a private investment firm
9 and its backers.

10 127. In addition, the Program impairs commercial intercourse and threatens
11 the existence of credit for current and prospective homeowners, in Richmond and elsewhere in
12 California and throughout the country. In Richmond, the Program would have a chilling effect
13 on home lending, as lenders would be unable to quantify the risk of seizures into pricing for
14 future mortgage loans and would consequently reduce the availability of credit and negatively
15 impact the credit terms on the loans actually made going forward. That underwriting problem
16 would spread to any other jurisdictions that lenders believe are at risk of adopting MRP's
17 scheme, causing property values and homeownership rates to decrease.

18 128. Accordingly, Plaintiffs respectfully request that the Court issue a
19 judgment for declaratory and injunctive relief against Defendants, declaring that the
20 implementation of the Richmond Seizure Program would violate the Contracts Clause of the
21 U.S. Constitution, and permanently enjoining Defendants from implementing any aspect of the
22 Program.

COUNT V

**(VIOLATION OF THE “JUST COMPENSATION” REQUIREMENTS OF THE
TAKINGS CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS AND
CLAIM UNDER 42 U.S.C. § 1983)**

(AGAINST ALL DEFENDANTS)

129. Plaintiffs repeat and reallege the allegations contained in each preceding paragraph as if fully set forth herein.

130. The Fifth Amendment to the U.S. Constitution provides that “private property” shall not be “taken for public use, without just compensation.” This requirement is incorporated and made applicable to the states and their political subdivisions and actors by the Fourteenth Amendment of the U.S. Constitution.

131. In addition, under the U.S. and California Constitutions, where only a portion of property is condemned (referred to as a “partial” taking), the measure of just compensation includes both the value of the thing condemned and the loss in value to the remaining, non-condemned portion of the property.

132. 42 U.S.C. § 1983 provides that any person, acting under the color of state law, that subjects or causes to be subjected any citizen of the United States or other person within its jurisdiction to the deprivation of any rights, privileges, or immunities under the Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress.

133. A property owner is entitled to just compensation for any taking under Article I, § 1 of the California Constitution. California Code of Civil Procedure § 1263.320 provides that the test for assessing “fair market value” for purposes of the “just compensation” requirement is the highest price that a hypothetical buyer and seller would agree to in the marketplace, assuming both were willing and able to complete the transaction but had no particular or urgent necessity to do so.

134. The Richmond Seizure Program is carried out by Defendants under the color of state law.

1 135. Defendants violate the just compensation requirements of the Takings
2 Clause of the U.S. Constitution and California Constitution, and also violate California statutory
3 law. The Program is a for-profit scheme that proposes seizing performing mortgage loans at
4 fractions of their unpaid principal balance, prices that are below the fair market value for even
5 loans that are in default. Thus, the Program would unjustly compensate the Trusts for the loan
6 seizures by seizing loans at prices far less than their actual or fair market values. This
7 unconstitutional feature of the Program is not merely a question of the valuation of a single
8 property, but instead is the central premise of the Program itself. Indeed, the Program is only
9 financially feasible, and profitable to Defendants and the Program's other participants, if loans
10 are seized at deeply discounted values and then refinanced at higher prices (with Defendants
11 profiting from the price spread).

12 136. In addition, the Program violates the just compensation requirements of
13 the Takings Clause of the U.S. Constitution and California Constitution, and also violates
14 California statutory law, by constituting a "partial" taking of the Trusts' remaining assets for
15 which no compensation is provided. The loans targeted by the Program are held by the Trusts
16 as part of a pool consisting of numerous loans. The Program cherry-picks and seizes the most
17 profitable loans from that pool – i.e., performing loans – leaving the Trusts with a pool
18 containing a higher concentration of non-performing loans, thereby diminishing the value of the
19 Trusts' remaining, non-condemned assets.

20 137. Accordingly, Plaintiffs respectfully request that the Court issue a
21 judgment for declaratory and injunctive relief against Defendants, declaring that the
22 implementation of the Richmond Seizure Program would violate the Takings Clause of the U.S.
23 Constitution and California Constitution, and permanently enjoining Defendants from
24 implementing any aspect of the Program.

COUNT VI

**(VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE U.S. AND
CALIFORNIA CONSTITUTIONS AND CLAIM UNDER 42 U.S.C. § 1983)**

(AGAINST ALL DEFENDANTS)

138. Plaintiffs repeat and reallege the allegations contained in each preceding paragraph as if fully set forth herein.

139. The Fourteenth Amendment to the U.S. Constitution provides that no state shall deny to any person within its jurisdiction equal protection of its laws (the “Equal Protection Clause”). The Equal Protection Clause prohibits states or their subdivisions from discriminating against similarly situated individuals, where the discrimination is not rationally related to a legitimate purpose.

140. 42 U.S.C. § 1983 provides that any person, acting under the color of state law, that subjects or causes to be subjected any citizen of the United States or other person within its jurisdiction to the deprivation of any rights, privileges, or immunities under the Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress.

141. Article I, § 7 of the California Constitution provides that a person may not be denied equal protection of the laws.

142. The Richmond Seizure Program is carried out by Defendants under the color of state law.

143. Defendants violate the Equal Protection Clause of the U.S. and California Constitutions because the Program discriminates against certain holders of mortgage loans (including the Trusts), as well as certain classes of Richmond homeowners, and such discrimination is not rationally related to any legitimate purpose.

144. The Program is discriminatory because, among other reasons, it (a) solely targets loans held by private-label RMBS trusts, and does not target loans held by other holders, including GSE trusts or banks, (b) primarily targets performing loans, and primarily excludes defaulted loans, including loans in foreclosure, and (c) targets first-lien mortgages and not

1 second-lien mortgages. Defendants' purported justifications for the Program, of reducing
2 foreclosures and their attendant economic consequences (even if a legitimate purpose for the
3 abuse of eminent domain powers, which they are not), are in no way furthered by targeting
4 performing first-lien loans held in private-label RMBS trusts, to the exclusion of other loans,
5 such as defaulting loans or loans held by GSE trusts or banks.

6 145. Additionally, under the Program, some few select Richmond homeowners
7 would benefit from the Program, whereas many more would be harmed by it. Some Richmond
8 homeowners would receive an unjustified windfall by having their loans refinanced because
9 they meet a borrowing profile profitable to Defendants, whereas no benefit would be bestowed
10 upon the other homeowners who are not eligible for refinancing. Indeed, the homeowners not
11 selected for the Program will suffer harm by, among other reasons, being subjected to the
12 chilling effect on credit in the Richmond community caused by Richmond's implementation of
13 an eminent domain program that arbitrarily seizes mortgage loans. There is no rational basis for
14 providing a windfall to select homeowners at the expense of other homeowners.

15 146. The lack of a rational basis for Richmond's discrimination among
16 homeowners between those who will reap the windfall benefits of the Program and those who
17 will not is underscored by the fact that Richmond does not itself identify which loans will be
18 condemned. Rather, Richmond delegates this responsibility to MRP – a private, for-profit
19 investment firm – to identify which loans will best further its own purpose of enriching itself at
20 the expense of the Trusts and their beneficiaries.

21 147. Accordingly, Plaintiffs respectfully request that the Court issue a
22 judgment for declaratory and injunctive relief against Defendants, declaring that the
23 implementation of the Richmond Seizure Program would violate the Equal Protection Clause of
24 the U.S. Constitution and California Constitution, and permanently enjoining Defendants from
25 implementing any aspect of the Program.

COUNT VII
**(PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DECLARATORY
RELIEF)**
(AGAINST ALL DEFENDANTS)

148. Plaintiffs repeat and reallege the allegations contained in each preceding paragraph as if fully set forth herein.

149. Defendants have taken substantial steps toward seizing loans under the Richmond Seizure Program, and Plaintiffs have every reason to expect that such seizures are imminent. If those seizures occur, the Trusts will be irreparably harmed. As part of the Program, Defendants would restructure the seized mortgages and refinance them with new loans. The new loans would then be sold into new mortgage-backed securities pools. Securities would be issued based on these pools to investors, and the securities would trade. Those transactions will be exceedingly difficult, if not impossible, to unwind after the fact, and to do so could cause harm to a variety of parties, including the Trusts currently holding Richmond loans that are seized and the investors in those Trusts, the issuer of the new mortgage loan, the trust holding the new loan and the investors in that trust, and the homeowners whose loans are restructured and refinanced.

150. Moreover, for all of the reasons discussed herein, Plaintiffs have a likelihood of success on the merits of their claims, and the balance of equities tips decidedly in favor of granting temporary relief to Plaintiffs. There will be no serious harm to Defendants caused by a delay in implementing the Program if it is preliminarily enjoined, as the Program targets loans of homeowners who are not in imminent danger of losing their homes if the Program is subject to a preliminary injunction. On the other hand, if implemented, the Program would have a chilling effect on the extension of credit to Richmond borrowers, along with consequential negative effects on Richmond's housing market and economy. Such effects could spread through California and the country, especially if other municipalities take steps toward implementing similar programs. Additionally, the Program would cause tens of millions of losses to the Trusts, and, if it spreads beyond Richmond, could have a destabilizing effect on the

1 mortgage-backed securities market, and the national housing market more broadly. There is a
2 significant public interest in enjoining the Program both permanently and preliminarily, while
3 the serious issues of constitutionality and legality raised by this Complaint are decided.

4 151. In addition, with respect to all of the claims for relief asserted in this
5 Complaint, and for all of the reasons asserted herein, there is an actual controversy between
6 Plaintiffs and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201
7 and 2202.

8 152. Accordingly, Plaintiffs are entitled to preliminary and permanent
9 injunctive relief and declaratory relief restraining Defendants from implementing the Richmond
10 Seizure Program and declaring the Program unlawful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor on all claims asserted in the Complaint and that the Court:

A. Declare that Defendants' implementation of the Richmond Seizure Program violates the Takings Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

B. Declare that Defendants' implementation of the Richmond Seizure Program violates the Commerce Clause of the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

C. Declare that Defendants' implementation of the Richmond Seizure Program violates the Contracts Clause of the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

D. Declare that Defendants' implementation of the Richmond Seizure Program violates the Equal Protection Clause of the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

E. Declare that Defendants' implementation of the Richmond Seizure Program violates Article I, § 19 of the Constitution of the State of California, and enjoin Defendants from implementing the Program on that basis;

F. Declare that Defendants' implementation of the Richmond Seizure Program violates Article I, § 7 of the Constitution of the State of California, and enjoin Defendants from implementing the Program on that basis;

G. Declare that Defendants' implementation of the Richmond Seizure Program violates Cal. Civ. Pro. Code § 1263.320, and enjoin Defendants from implementing the Program on that basis;

H. Declare that Defendants' implementation of the Richmond Seizure Program violates Cal. Civ. Pro. Code § 1240.050, and enjoin Defendants from implementing the Program on that basis;

1 I. Declare that Defendants' Implementation of the Richmond Seizure
2 Program constitutes a violation of 42 U.S.C. § 1983, and enjoin Defendants from implementing
3 the Program on that basis;

4 J. Issue preliminary and permanent injunctions restraining Defendants, their
5 officers, employees, agents, successors, and assigns from implementing the Richmond Seizure
6 Program;

7 K. Award to Plaintiffs the costs and expenses of suit and counsel fees
8 pursuant to 42 U.S.C. § 1988;

9 L. Award to Plaintiffs such other and further relief as this Court may deem
10 just and proper.

11
12 Respectfully submitted,

13
14 August 7, 2013

By 

15 **ROPES & GRAY LLP**

16 Attorneys for Plaintiffs

17 Rocky C. Tsai (SBN 221452)
18 (rocky.tsai@ropesgray.com)
19 **ROPES & GRAY LLP**
20 Three Embarcadero Center
21 San Francisco, CA 94111-4006
22 Telephone: (415) 315-6300
23 Facsimile: (415) 315-6350
24
25
26
27
28

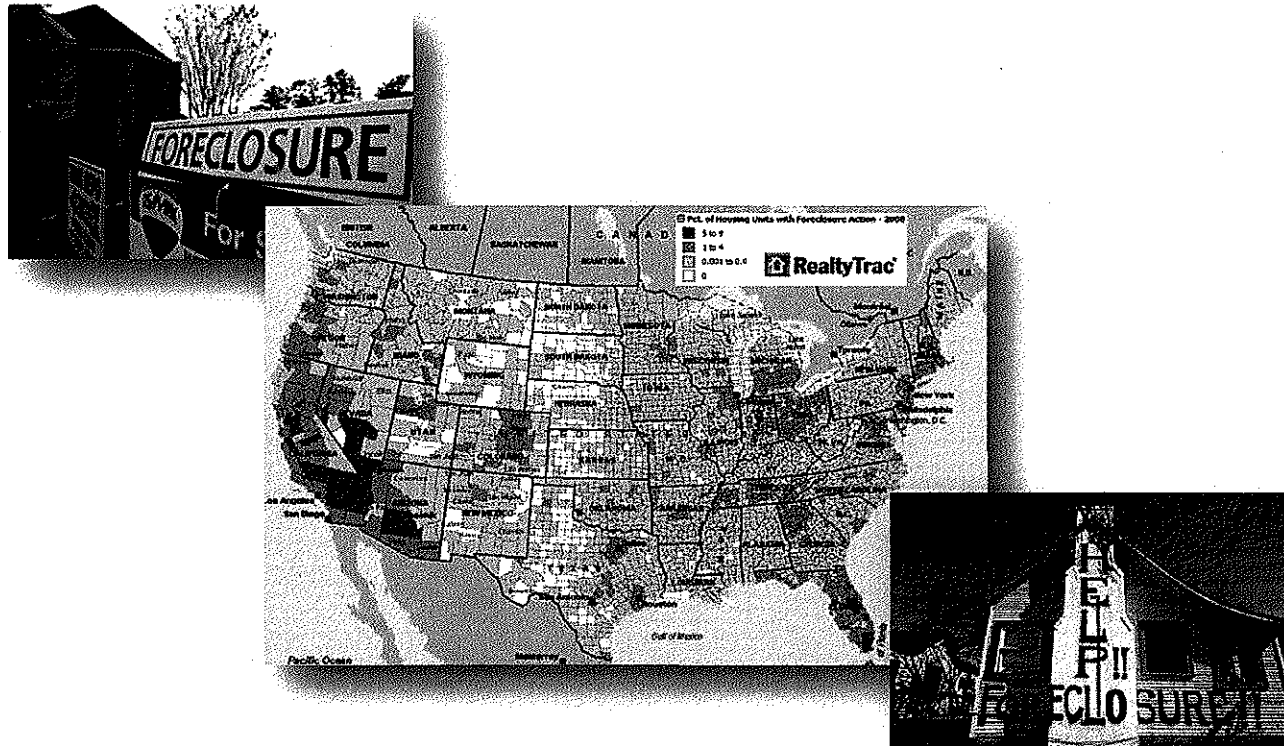
1 Thomas O. Jacob (SBN 125665)
2 tojacob@wellsfargo.com
3 **WELLS FARGO & COMPANY**
4 Office of General Counsel
5 45 Fremont Street, Twenty-Sixth Floor
6 MAC A0194-266
7 San Francisco, CA 94105
8 Telephone: (415) 396-4425
9 Facsimile: (415) 975-7864
10
11 *Attorney for Wells Fargo Bank*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

John C. Ertman
(john.ertman@ropesgray.com)
(Pro hac vice applications pending)
Lee S. Gayer
(lee.gayer@ropesgray.com)
Evan P. Lestelle
(evan.lestelle@ropesgray.com)
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: (212) 596-9000
Facsimile: (212) 596-9090

Douglas H. Hallward-Driemeier
(douglas.hallward-driemeier@ropesgray.com)
(Pro hac vice application pending)
ROPES & GRAY LLP
One Metro Center
700 12th Street, NW
Suite 900
Washington, DC 20005-3948
Phone: 202-508-4600

Daniel V. McCaughey
(daniel.mccaughey@ropesgray.com)
Nick W. Rose
(nick.rose@ropesgray.com)
ROPES & GRAY LLP
800 Boylston St.
Boston, MA
Phone: 617-951-7000

EXHIBIT A



Homeownership Protection Program

A Solution to a Critical Problem

Mortgage Resolution
PARTNERS

Homeownership Protection Program

This presentation has been prepared for discussion purposes only and does not constitute a legally binding commitment or obligation of any of the referenced entities herein to enter into the transactions described. The terms and conditions outlined herein are not a comprehensive statement of the applicable terms and conditions that would be contained in the definitive documentation for the transactions contemplated herein. This presentation should not be deemed a comprehensive disclosure of risks or other implications of the transactions discussed herein.

A program term sheet and FAQ is intended to be part of this presentation and contains additional information.

The Real State of U.S. Housing Today

Home prices continue to deteriorate, jeopardizing mortgage loans and homeowners

- In June of 2006, U.S. residential housing prices hit their peak. Now, nearly six years later, the market is once again at a record post-2006 low (down 33.8% from peak as of year-end 2011).
- Over 22% of the 52.5 million U.S. homes that are mortgaged had “underwater” mortgage loans at the beginning of 2012.
- Such mortgages are generally concentrated in states that experienced acute housing price increases during the bubble -- Arizona, California, Florida and Nevada, to name but a few.
- After short-lived and shallow periods of home price appreciation in mid 2010 and again in 2011, recent pricing trends have turned decidedly negative (the S&P Case Shiller 20 City Index is down 7.5% nationwide from its previous post-crash high in May of 2010).
- The National Association of Realtors, in its December 2011 survey, found that foreclosure sales averaged a discount of 22% compared with non-distressed home sales (up from 20% a year earlier). Short sales, with the cooperation of the lender, averaged 13% below market value. RealtyTrac found even larger differences in 2011.
- **Despite hopes to the contrary, the situation is not materially improving.**

The Homeownership Protection Program Will Help End this National Nightmare

Empowering communities to do what Washington and the private sector have been unable to

- The Program employs the ultimate right of local communities and governments – *through the constitutionally guaranteed power of eminent domain* – to retake control over the welfare of their neighborhoods and their fiscal solvency.
- Organized by Mortgage Resolution Partners – in public/private ventures with cities and counties that have been most affected by the mortgage and housing crisis – the Program will force lenders to surrender their mortgage loans to governments for full and fair value as determined by local courts in condemnation proceedings.
- As the current fair market value of such mortgage loans is considerably less than the face amount thereof, governments will be able to restructure the mortgage loans acquired through eminent domain and refinance severely underwater homeowners (with the ability and creditworthiness to make payments on their restructured loans) into new loans to be sold to large, private sector investors as FHA GinnieMae securities.
- **No taxpayer funds will be used in connection with the Program and the Program requires no state or federal legislation, or administrative action.**

Communities are the Principal Drivers of the Homeownership Protection Program

Municipalities have enormous incentives to adopt and execute the Program

- Defaulted mortgages are typically associated with the cessation of real estate tax payments and other ratable and usage charges payable to localities. This stresses local budgets and financing.
- Throughout the mortgage crisis, underwater loans have demonstrated high default levels – regardless of other borrower circumstances. This tendency poses a threat to areas continuing to see price depreciation.
- Large volumes of defaulted mortgages result in neighborhood blight, abandonment, unkempt property and transience. These factors exacerbate the already compromised housing economics in affected areas and accelerate price depreciation.
- Municipal, county and state governments, and agencies, have a public interest in halting defaults and consequent neighborhood deterioration.
- **The Program provides a practical and efficient solution to this intractable dilemma.**

A Grass Roots Crisis That Demands a Solution

The impact on cities must be resolved locally as broader national policies have proven inadequate

- Post-crash, cities and towns have suffered greatly, often in seldom understood ways:
- For example, when a foreclosed home is sold by a lender in foreclosure, the home's respective tax assessment is permanently reset in many communities.
 - Consider, for example, a home that was purchased for \$400,000 with a \$360,000 mortgage and has a current tax assessment of the purchase price.

If that home sells in foreclosure for \$200,000, its tax assessment is reset, and can only increase by a small amount each year in many communities. The rate of increase may be tied to inflation, which erodes tax revenues until the home is again sold.

- Conversely, consider what would happen if the same homeowner refinanced the mortgage and (quite reasonably) contested its real estate tax assessment.

The home's assessment may be reduced to \$200,000, but the assessment could float freely back up to \$400,000 as markets recover. Of course, once the assessment reaches \$400,000, the rate of increase will be limited on an annual basis in many communities.

A Half-Decade of Partial Mortgage Resolution Solutions have Come up Short

Why does the mortgage crisis still burden the U.S., given the plethora of other programs to end it?

- Private- and government-sponsored modification programs generally have not worked because they do not emphasize significant principal reduction. Overall, fewer than 50% of the 2.26 million mortgages modified from 2008 – 2011 were current at year-end 2011. The majority of modifications have merely capitalized missed payments or reduced monthly payments by less than 10%.
- While encouraging lenders and servicers to pursue loan modifications in lieu of foreclosure, government programs (together with aftermath of the late 2010 “document-gate” foreclosure scandal) have curtailed the pace of foreclosures and liquidations. As a result, Q3 2011 saw a backlog of 394,000 repossessed homes awaiting liquidation, plus an additional 2.86 million homes securing mortgages that were 12 months or more delinquent, for a total “shadow inventory” of homes well down the foreclosure pipeline of 3.25 million. This excludes another approximately 1.4 million loans that are between 60 days and 11 months delinquent.
- As of January 2012, based on current default rates for various categories of loans, Amherst Securities estimated that between 7.4 million and 9.4 million additional home mortgage loans are in danger of defaulting over the next six years, assuming no further price declines or changes to interest rates.

A Half-Decade of Partial Mortgage Resolution Solutions have Come up Short (cont'd)

Systemic problems in the housing and mortgage industries have diluted other solutions' effectiveness

- At its post-bubble peak, the excess inventory of vacant housing rose to nearly 2.1 million units. That number has declined somewhat – particularly in the case of rental housing. Legacy excess unutilized vacant housing remains at over one million units.
- \$873 billion of 2nd lien/HELOC (Home Equity Lines of Credit) mortgage loans exist behind a large portion of the most heavily underwater first mortgage loans. This has made resolution of underwater first mortgages by methods other than foreclosure and liquidation nearly impossible; second mortgage lenders (most of which are large banks) are not willing to offer proportionate relief, despite their subordinate lien status.
- Ironically, many borrowers continue to pay their second-lien lenders even as they are in default on their first mortgage, in order to maintain revolving lines of credit.
- **The \$1.1 trillion of remaining “private-label” residential mortgage backed securities pose extraordinary additional problems by virtue of contractual documentation that never envisioned a housing price meltdown. Servicers are paralyzed by restrictive servicing contracts generally forbidding loan sales and limiting loan modifications. With shrinking margins and continued risks of litigation, servicers act only when forced to.**

The Homeownership Protection Program: A Practical Solution that Works

Why will the Program succeed where other solutions have failed?

- The Program operates at at the local level to acquire underwater mortgages through ***eminent domain***, which is a public – not a private – right.
- Mortgage Resolution Partners (MRP) acts as manager and forms partnerships with local governments to facilitate the eminent domain and mortgage restructuring process.
 - MRP coordinates with local officials to identify subject mortgages and refine program structure.
 - MRP and third-parties preliminarily screens for loans qualifying for modification and refinancing.
 - MRP earns a fair, flat and transparent per-loan fee for its services.
- Not all borrowers will qualify for Program. Only borrowers who appear likely to repay their loans will be accepted. The Program will initially acquire loans that are (i) significantly underwater and (ii) relatively current (not in default)—emphasizing loans held by private-label securitization trusts.
- Loans and liens will be acquired through eminent domain at *fair value*, which is expected to be less than the market value of the home.
- **The Program will partner with institutional investors that fund the condemnation action in order to obtain access to attractively priced, GinnieMae-backed mortgage securities that will result from the restructuring and refinancing of the mortgages acquired under the Program. Investors will approve acquired mortgage pools and will earn all payments received on the acquired mortgages prior the re-securitization thereof.**

The Program Begins Where it is Most Urgently Needed – The State of California

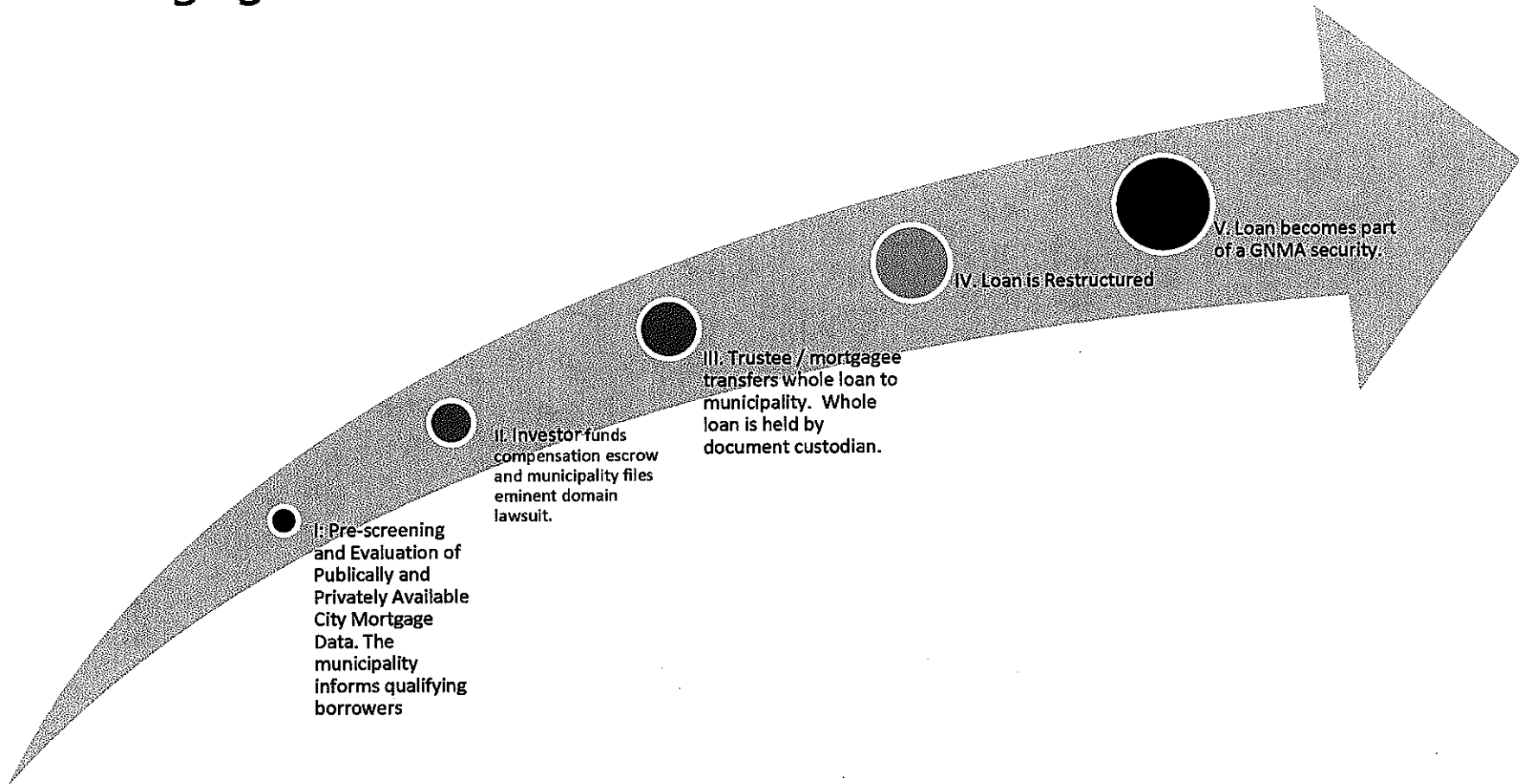
A \$5 billion, initial series to kickoff an up-to-\$500 billion, 3,000,000-home, multi-state effort.

- California has one of the highest percentages and the highest dollar amount of at-risk loans. It is a natural and efficient first state for the program.
- California legal precedent and political posture favor the Program and constitute an ideal proving ground.
- Counties and cities should have the authority under California and Federal law to acquire by eminent domain residential mortgage loans secured by real property when the debtor and the secured property are within its jurisdiction.
- A consortium of the county and city governments in San Bernardino County, California (the largest county in the United States, outside of Alaska) is promulgating a "Joint Powers Authority" to undertake the first series of the Program together with MRP.
- The Program has obtained supporting legal opinions of national counsel specializing in constitutional law and financial regulation. At the California and local level, the Program relies on firms with expertise and experience in local eminent domain law and litigation. San Bernardino County has conducted its own legal review before proceeding with the Program.

In addition, Robert Hockett, Cornell University Law School Professor of Financial and Economic Law has authored a memorandum of law and white paper on the issue of public taking of mortgage loans and liens for the purposes of the Program.

The Program's "Five Stages of Relief"

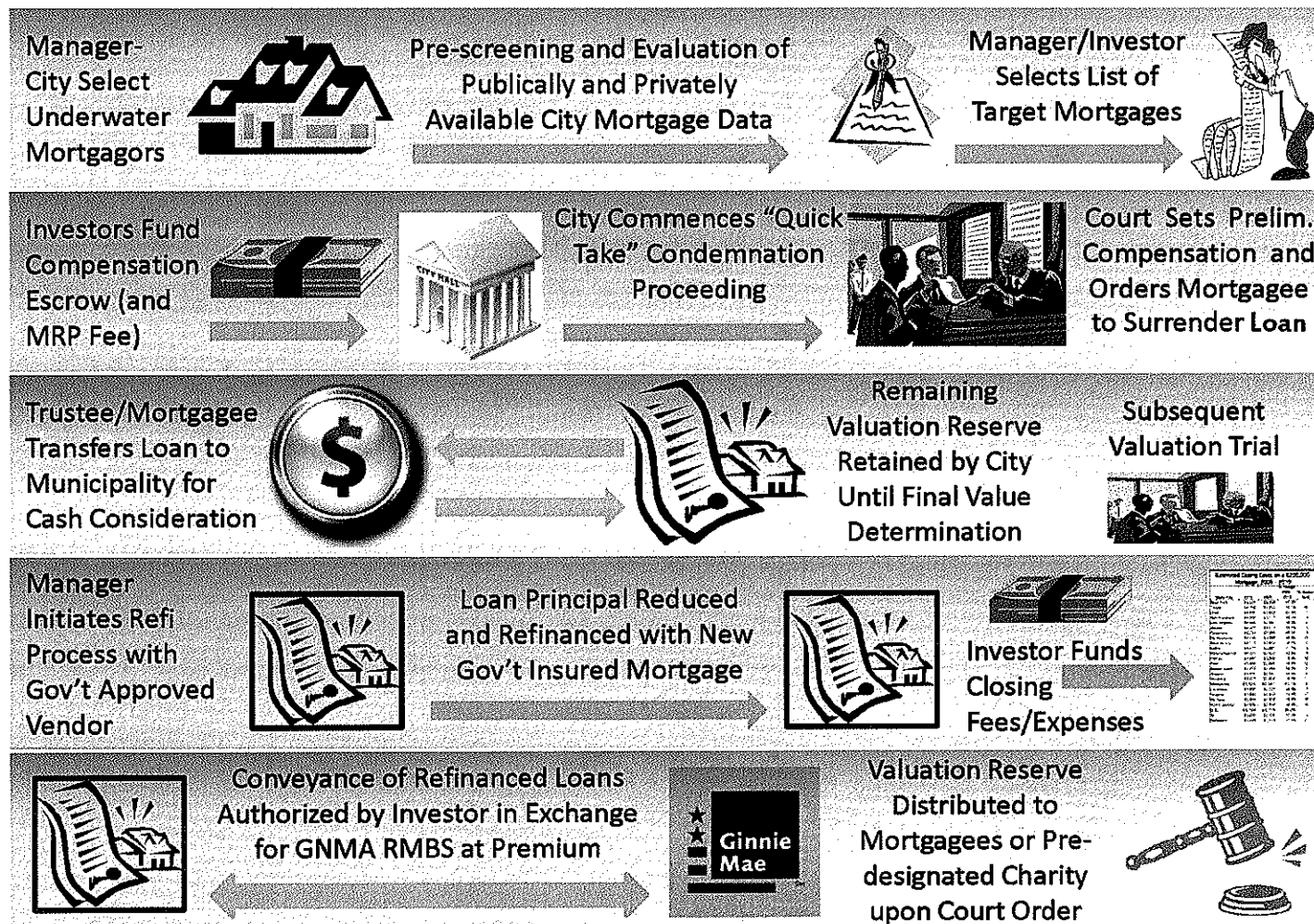
The Program's five stages for resolving underwater mortgages at the local level



A Step-by-Step Analysis of the Program's Operational Methodology

Transaction Activity

Investor Collateral



Program Contacts

Steven Gluckstern (Mortgage Resolution Partners, LLC)

sgluckstern@mortgageresolutionpartners.com

917 561 6503 (m)

415 678 5134 (o)

Donald H. Putnam (Mortgage Resolution Partners, LLC)

dputnam@mortgageresolutionpartners.com

415 350 5266 (m)

415 677 5898 (o)

Daniel Alpert (Westwood Capital, LLC)

dalpert@westwoodcapital.com

917 453 6640 (m)

212 953 6448 (o)

Len Blum (Westwood Capital, LLC)

lblum@westwoodcapital.com

917 699 3597 (m)

212 972 2455 (o)

EXHIBIT B

FREQUENTLY ASKED QUESTIONS



TABLE OF CONTENTS

SECTION ONE: LEGAL 2

SECTION TWO: FAIRNESS.....5

SECTION THREE: BUSINESS.....6

SECTION FOUR: ECONOMICS.....9

SECTION FIVE: GOVERNMENT.....10

SECTION SIX: ORGANIZATION/FOUNDERS..... 12



SECTION ONE: LEGAL

1. Doesn't eminent domain only apply to real estate? No. The power of eminent domain applies to every kind of property, including real estate (like land), tangible personal property (like goods), and intangible personal property (like loans).

2. Can the government condemn property by eminent domain and transfer it to a private person to use to earn a profit? Yes, in California and many other states, as long as the government finds that the private use may serve a public interest. Governments do so all the time, selling condemned property to developers who profit from building offices, shopping malls, or housing. In fact, in limited cases a government can even authorize private parties to directly exercise eminent domain to acquire property for their business use without any government involvement at all.

3. Are borrowers morally and legally obligated to pay the entire balance of their purchase money mortgage? No, particularly in California. Reckless lending standards in the past have caused real estate bubbles and crashes resulting in defaults that have harmed homeowners, destroyed the local economy and overwhelmed the state judicial system. As a consequence, California has deliberately allocated purchase money mortgage loan risk to the lender by enacting laws that allow a borrower to walk away from a purchase money home loan and effectively limit the lender's remedy to foreclosing on the home. This is a fundamental public policy in California and a fundamental part of the homeowner's bargain in taking out a purchase money home loan. Lenders are fully aware of their share of the risk of making a purchase money home loan in California.

4. Can the government acquire performing loans, or only defaulted loans? As long as it is acting to further a public purpose, a government can acquire any kind of loan including performing, delinquent or defaulted loans. A government can purchase underwater performing loans to further a number of purposes -- negative equity is the single greatest predictor of future default, and it creates harm even absent default (including reduced homeowner investment in property maintenance and dislocation in the local property sales market because of restrictions on short sales).

5. What makes you trust the legal advice you have received? Mortgage Resolution Partners (MRP) has received the advice of counsel with national or statewide reputations for excellence and expertise in litigation, eminent domain law and constitutional law. Both clients and other lawyers regularly select the same counsel to handle cases raising eminent domain, constitutional and public policy issues, and we have great confidence in their advice. Ultimately, each city will rely on its own legal review before proceeding with eminent domain actions.

6. What rights will the homeowners have when you provide notice? Homeowners will have the same rights and the same obligations that they have now under their loan agreements. This program simply changes the owner of their loan, not the terms of the loan. But more importantly, they will gain an opportunity -- the opportunity to work with a new loan holder that is not bound by the limitations of any securitization contract and lacks the conflicts of interest that current loan servicers have. Also, current plans provide for the homeowners to opt in to the MRP program on a



voluntary basis.

7. What rights will the loan owners have? The trusts that currently hold the mortgage loans will have the right to receive the fair market value of the loans. This includes the right to a trial to determine the fair value of the loans if the trusts disagree with our valuation.

8. What about second mortgage holders? We expect to negotiate directly with holders of second loans, or use eminent domain to acquire those loans, in order to comprehensively deal with the homeowner's total mortgage debt. If a second loan has significant value because it is full recourse it may be necessary to acquire only the mortgage lien or a lesser interest in the loan. Unlike existing lenders, we will be able to deal with all loans encumbering a property comprehensively at the fair value of each.

9. Why do you need eminent domain? Why don't you just buy loans in the market? Private securitization trusts hold approximately \$1.4 trillion of loans; we could offer to buy their underwater loans, but their trust agreements forbid them to voluntarily sell the loans. Eminent domain allows us to purchase those loans as well as related second mortgage loans if the holders of the seconds are also unable (or unwilling) to sell. Eminent domain is a way to successfully consolidate ownership of a homeowner's mortgage loans in the hands of someone with the economic incentive and freedom to modify or otherwise resolve the loans.

10. How do you plan to address the legal backlash that could occur? California has a well defined judicial process for adjudicating eminent domain actions and gives them priority in court. Loan owners (or Servicers on their behalf) might litigate the right to purchase the loans and the amount of compensation due. We are confident that the communities have the authority to purchase the loans, and we will provide resources to defend against any legal challenge to that right. We will stand willing to negotiate over price with the goal of reaching agreement on fair value. Absent agreement, there will be a final jury determination of fair value in the condemnation action.

11. Isn't there a legal step where judges must agree to the eminent domain plea? What if they don't? As long as the community has the authority, as confirmed by the court, to purchase the loan and pays fair value, the court must permit the acquisition. There is a process under which the community may request the court's permission to purchase the loan first and finally determine fair value later (a "quick take"). We expect that the quick take will be a necessary component of the plan.

12. Who really owns the loans? Securitization trusts typically hold the first mortgage loans that will be purchased by eminent domain. A variety of investors including hedge funds and mutual funds own interests in the trusts and thus the ultimate right to payments for the loans. Third party banks service the loans, and third party trustees monitor the servicers. Banks typically hold for their own account the second mortgage loans.

13. Who goes to court? Assuming the purchase requires court action, the communities will go to court, as will the securitization trust and holder of the second mortgage loan.

14. What happens if they question your valuation of the loan? The trust or bank may seek a higher valuation in the legal proceeding. They and we will provide evidence of value; initially the judge, and ultimately the jury, will determine fair value.

15. How will you deal with missing notes, incomplete records in MERS, and similar mistakes that create havoc in the foreclosure process? Many loan originators and servicers lost important documents or failed to record transfers in their haste to securitize and re-securitize loans. Borrowers rarely deny that they owe their debts; they just need to be sure that they pay the right person, and courts need to be sure that anyone who tries to foreclose actually has the right to do so. Eminent domain resolves these issues. It transfers complete ownership of the loan to the city, regardless of missing paperwork. Anyone who claims to own the loan can prove it in the action and receive the proceeds. Eminent domain settles once and for all who owns the loan (the city) and who has the right to receive payment. Clearing up the paperwork disaster is not a purpose of our program, but it is a fortunate side benefit.



SECTION TWO: FAIRNESS

1. Is your program a giveaway to the undeserving who borrowed more than they should have to purchase houses they never should have owned? No. Everyone in California has the opportunity to purchase a home by borrowing from a lender who is willing to take a loss if home prices decline by more than the homeowner's down payment (see Legal FAQ 3 above). The lender willingly takes the risk when making the loan, and the fair market value of the loan reflects that risk. By purchasing the loan at fair value, we give the lender the benefit of its bargain. By doing an economically rational modification or other resolution with the homeowner, we respect the homeowner's benefit of his or her bargain.

2. Regardless of the legal niceties, is it just wrong and a moral hazard to let these homeowners stay in their homes? No. We protect our neighbors' homes, even allowing them to keep the equity in their homes while canceling their debts in bankruptcy, because it is the right thing for them and the right thing for us. We do not put our neighbors into debtor's prison, or make them homeless unnecessarily. America is facing an economic crisis and the solution requires practical action that keeps people in their homes. We are all in this together, for our neighborhoods, our states and our nation. The real moral hazard is that the system is forcing homeowners to default in order to achieve rational solutions.

3. Won't those who don't qualify think this is unfair? As with many societal issues that have challenged us in the past, solutions do not always provide a direct benefit to everyone. In this case, success will benefit even those who do not qualify by stabilizing home values, restoring neighborhoods and promoting the local economy. Together with the state and the participating communities we will actively address public concerns and educate the public on the benefits to all of stemming the default crisis.



SECTION THREE: BUSINESS

1. What is the fair market value of a loan, and how will you determine it? Fair market value is the price that a willing buyer would pay a willing seller, neither under any compulsion to transact. Similar sales of troubled loans in the secondary market exist and are good evidence of fair value. These sales occur at a significant discount to the fair value of the home because of the foreclosure discount -- the market's recognition of the cost in time, money and effort to foreclose on the homeowner and thereafter to maintain and sell the property. We will use these market data points and supplemental methods including discounted cash flow modeling.

2. How will MRP make money? MRP will partner with communities to purchase all loans (or interests in seconds) encumbering a property through eminent domain at fair value, which will be significantly less than the fair value of the home. We will then proactively work with borrowers to modify or refinance the loans, or possibly take other action (such as a deed in lieu of foreclosure and rent-back or a short sale). Current plans provide for MRP to charge a simple, fair, and transparent flat fee (paid for by investors) for its services.

3. Why hasn't anyone else tried this, or have they? Governments have used eminent domain in the past to address housing dislocations. For example, Hawaii used a statewide program of eminent domain to purchase homes from landlords to sell to tenants when concentrated land ownership had made it difficult for people to buy their own homes. Some have advocated using eminent domain to purchase mortgage loans in the current crisis, including people in the home building, government and academic communities. MRP has simply taken up the idea and run with it because we believe that it is a positive solution to this crisis, particularly for securitized mortgage loans.

4. What other solutions are being offered? Are they working? What makes this proposal any better? There are a number of government programs designed to encourage loan modifications. However, these apparently do not provide sufficient incentives for securitized loan servicers who bear the cost and the risk of modifying a loan, with the trust investors reaping the benefits of a successful modification. Moreover, the existing programs do not adequately deal with conflicts of interest among servicers, securitization trust investors, and second mortgage holders. As a result, few modifications have occurred, and most have been unsuccessful, particularly for securitized loans. Our proposal is better because we will cause the purchase of all loans encumbering a home, with the freedom to effect any modification, including write-downs.

5. How does this affect the borrower's credit? The effect on a borrower's credit will depend upon the resolution of the mortgage loan that he or she agrees to. We expect that the effect will be no worse than it would be without eminent domain and will be better for the borrower if MRP is able to affect a refinancing or a modification that the existing servicer would not have permitted.

6. How will this help home values, or will it? We expect that the program will stabilize home prices by reducing defaults and the resulting forced sales of homes and by reducing the overhang of future expected foreclosures.

7. Do you really believe this is going to work? Yes, so much so that we have personally risked our time, our money and our reputations to get this program up and running.

8. Why California? California has one of the highest percentages of at-risk loans and the highest dollar amount of at-risk loans of any state. It is a natural and efficient first state for the program. We expect to expand the program to other states once it is up and running.

9. How will you choose the mortgages? We will partner with committed local governments that have a sufficient volume of at-risk loans to allow us to make significant investments and make a meaningful difference to the community. The local government offices will help to identify which areas we assist, and each potential mortgage will then go through the regular underwriting and eligibility process.

10. What are your plans after the California pilot? Other cities? Other states? We plan to expand beyond the pilot, both in California and in other states. There is much opportunity both in-state and out-of-state to build on the program's potential value.

11. How many borrowers have second mortgages (like HELOCs), and how will you handle them? We expect that a significant percentage of borrowers will have second mortgages. We expect to reduce or eliminate the balance of the homeowner's second mortgage loan at the same time as the first, either in a voluntary transaction with the holder of the second or (if necessary) by purchasing it through eminent domain.

12. What reactions do you expect from the major bank servicers? We expect the servicers to initially oppose the program. However, we hope that they will come to recognize that the program is the best way to resolve the troubled loans in the securitization trusts for the benefit of all parties involved in the trust, including the trust investors, the trustee, and the servicer.

13. Who will underwrite the new loans -- MRP, third parties, or both? Both. MRP will determine the underwriting criteria for selecting loans based on the requirements of third party lenders, Fannie Mae, Freddie Mac, the FHA, and other parties who will ultimately acquire, refinance or guarantee the loans. We expect to work with third party mortgage professionals in each participating community to underwrite the new loans. This will bring local expertise to the underwriting process and support to the local economy.

14. Won't you have to lend to unqualified borrowers in order to keep people in their homes? How will you manage credit risk? We will not refinance or modify loans for borrowers who do not qualify. We will manage credit risk through underwriting to the requirements of third party lenders and guarantors, who will provide the ultimate take-out for the loans. We may offer other resolutions for homeowners who no longer qualify for loans, such as expedited consideration of proposed short sales and accepting a deed in lieu of foreclosure and potentially renting the home back to them (via an appropriate partner). In addition, a portion of the returns will be dedicated to communities, which may use the funds to finance community housing or other needs.

15. How will you deal with competition from the major banks once you announce your program? We believe that city and state governments may be unwilling to work with major banks or other potential competitors because of their or their affiliates' roles in creating or prolonging the mortgage crisis. Other companies could in time create similar mortgage resolution businesses.

However, the inventory of distressed mortgage loans is unfortunately so great and so widespread that there is room and need for other companies to operate in the space without adversely affecting our business model.

16. Will you partner with existing lenders? Why or why not? We expect to work with selected existing lenders as well as independent real estate professionals to refinance the homeowner's loans.

17. What criteria will you use to select loans to acquire? We will work with each government agency to determine the criteria that best meet the community's needs – with the goal of keeping homeowners in their homes. We expect initially to acquire loans that are significantly underwater, but which are current (not in default). Subsequently, we may expand the program to acquire loans that are in default, but where the homeowner can afford a refinanced loan with a reduced principal amount.

18. If you are successful in modifying loans and reducing principal, won't the homeowner be taxed on the reduction? Through 2012, both federal and California laws forgive the tax for debt used to purchase or improve the home. If the borrower used the proceeds for other purposes, like buying a boat, then the reduction may be taxable. Even after 2012, debt forgiveness generally may not be taxable to the extent the borrower's total debt exceeded total assets, which we expect will be the case for many homeowner participants. The program will be voluntary for homeowners, so they will determine whether to participate based on their own circumstances, including their own tax position. MRP will not provide tax advice, and will urge potential participants to seek such advice.

19. How long will this take? We expect a period of 4 to 12 months from the beginning of the borrowers' opt-in period until completion of loan refinancing.

20. We've seen what outsourcing did to loan modification programs with the big banks. If you are going to outsource, how can you ensure quality? Many of the problems with outsourcing have come from conflicts of interest that the large bank servicers have. They bear the high costs of servicing troubled loans and negotiating modifications, but they do not get the benefits of a successful modification. This has led them to outsource to firms that will foreclose as quickly and cheaply as possible. We intend that our program's investors will acquire all of a homeowner's mortgage loans and bear the risk and returns of restructuring the loans, so our program will not have this conflict of interest. We will closely monitor all service providers because it is in our interest for them to do their jobs right.

SECTION FOUR: ECONOMICS

1. How can the loan purchasers earn a profit if they pay fair value for a loan – and won't the trusts have a free look back to demand more compensation in court? MRP and the loan purchasers can pay fair value and still earn a profit because they will take the risks and earn the returns of acquiring underwater loans and then refinancing them. Many investment funds purchase distressed whole loans from bank portfolios in consensual transactions and then profit by working them out; we expect our loan purchasers to pay the same price that they do. We will seek to provide appropriate reserves for look back risk based on the court's ultimate determination.

2. How will MRP make money? MRP intends to earn fees that are simple and transparent based in part on its success in obtaining control over and modifying or otherwise resolving the loans.

3. Will you share profits with the communities? We expect to contribute to the communities (or not-for-profit organizations) a fixed amount per loan acquired, which may support community housing needs.

4. How have you structured this to create the various profit margins you will need?

Who pays for the legal fees? The structure of the loan acquisitions and the expected loan resolutions will create the necessary profit margins to pay for program costs, including funding costs and legal fees.

SECTION FIVE: GOVERNMENT

1. Eminent domain is already so controversial. Are you concerned about how this will be perceived? Eminent domain is controversial when it displaces homeowners to help unrelated investors. The program will use eminent domain to help homeowners, and we expect it to show that local governments are part of the solution, not part of the problem.

2. What about the bigger picture? Isn't this going one step further to disempower private businesses and empower the government? No. Eminent domain is an inherent power of American governments, one that they have used throughout our nation's history. It is such a fundamental part of government that the US Constitution expressly permits it, as long as the government has a public purpose and pays fair value for the property. Moreover, the government entities will not enter the mortgage loan business or displace any mortgage companies.

3. Is there an ulterior political motive here? No. Eminent domain is a governmental action to achieve governmental objectives, and the objectives are clear -- to reduce the harm that the residential home loan crisis is causing our communities, to stabilize neighborhoods, and to support local economic activity.

4. I read something in the WSJ about a program that President Obama was considering. Is this it? No. Our program is a local one controlled by local city and county governments, supported by private investment funds.

5. How will this affect property taxes? By resolving underwater loans more efficiently with fewer foreclosure sales, we expect the program to stabilize the property tax base and to help collect delinquent property taxes.

6. If this is such a good solution, why didn't the government do this instead of the bank bailouts? Our program addresses a different problem and offers a different solution. The federal government acted to prevent a national financial collapse; that problem required a national solution at a scale that only the federal government could provide. The residential mortgage loan crisis affects individual communities differently and requires a local solution. We can implement the solution on a local scale, funded with private capital.

7. Will participating cities be blackballed? We regard it as unlikely that lending institutions would "redline" or "blackball" a city for exercising a sovereign right. Banks are in the business of making interest margin, and we believe that they will seek to do so wherever the opportunity arises. Punishing communities is not good for business. Also, there are legal strictures that may prevent such retaliation (such as the Community Reinvestment Act).

8. How have you planned to budget for all of the legal costs that will come out of this? Especially for the participating municipalities, how will you put their fears at rest regarding this? We have budgeted for extensive legal fees. MRP's financial model provides that

funding sources and the margins from the loan acquisitions and refinancings will directly pay all legal costs of condemnation and valuation actions.

9. What liability do the participating municipalities have? The participating governments or joint powers authorities will be liable to pay the fair value of the loans as well as certain legal costs and fees. MRP and its funding sources will pay for these costs as described in the answer to FAQ 8.

SECTION SIX: ORGANIZATION/FOUNDERS

- 1. Who is MRP?** MRP is the manager of this resolution program. It will obtain the funding to pay for the acquired loans, and it will manage the process of resolving the loans.
- 2. Where will your corporate offices and operations be based?** MRP's offices and operations are based in San Francisco. As we implement the program we will work with the independent real estate service community in each participating community, which should contribute to the local economy. MRP may open additional offices in other cities and states as the program expands.
- 3. Who is Gordian Sword and what role does it play?** Gordian Sword is the company that the program's founders set up to help create the program and to manage Mortgage Resolution Partners.
- 4. Why LLCs?** Limited liability companies are a typical form of organization for investment and investment management businesses. They operate with the flexibility of partnerships while providing all investors with limited liability like shareholders in a corporation.

EXHIBIT C

Richmond CARES

Community Action to Restore Equity and Stability

Saving Homes, Saving Cities
Solving the Mortgage Crisis Locally

Summary

- An average foreclosure costs the local government \$19,277 (HUD)
- An average foreclosure costs adjacent neighbors \$14,531 (HUD)
- 1,468 first mortgages in Richmond are in Private Label Securities
- 734 of these will be foreclosed (Fannie Mae estimate)
- These foreclosures will cost Richmond \$25 million
- Reducing principal to below home values will stop foreclosures
- Richmond has the power to reduce principal
- ***No one else has any incentive to prevent foreclosures***
- Mortgage Resolution Partners can help

The Cost of a Foreclosure*

Local Governments \$19,227

- Lost Property Taxes
- Unpaid Utility Bills
- Property Upkeep
- Policing
- Legal costs, building inspections
- Demand for social services

Borrowers \$10,300**

Close Neighbors \$14,531***

Richmond Foreclosures

Housing	# of Units*	Private Label Mortgages	Future Foreclosures Of Private Label Mortgages**	Cost of Foreclosures	
				Richmond	Adjacent Neighbors
Owner-occupied	18,659	1,468	734	\$14 million	\$11 million
Renter-occupied	17,434				

**Fannie Mae Predicts that 50% of PLS Will Result in Foreclosures

Problem → Mortgages Held In Private Label Securities

- 4.5 million loans placed in securities not guaranteed by U.S. Government
- Loans not eligible for 15 federal programs created since the housing crash
- Loans are much more likely to be underwater.
- Riskier loans created in 2004 to 2007 helped create housing boom
- Have not been originated since 2007
- ***Securities prohibit principal reduction***

“If we are going to stabilize the housing market, we have to address” PLS loans.

Federal Housing Finance Agency 2009

Result → Fannie Predicts that 50% of PLS Will Result in Foreclosures

The Solution – Principal Reduction

“Most economists see **principal reductions** as central to preventing foreclosures.” *Alan Blinder, former Vice Chairman at the Federal Reserve (Oct. 20, 2011)*

“Government should **reduce mortgage principal** when it exceeds 110 percent of the home value.” *Martin S. Feldstein, former Chairman of the Council of Economic Advisers under President Reagan (Oct. 12, 2011)*

“Surely there is a strong case for experimentation with **principal reduction strategies at the local level.**” *Lawrence Summers, former Treasury Secretary under President Clinton and former Economic Adviser under President Obama (Oct. 24, 2011)*

Example: JP Morgan Chase and Bank of America **unilaterally reduce principal** on option ARM portfolio loans in order to reduce defaults and losses

Principal reduction will prevent future defaults and foreclosures

Why Does Principal Reduction Help?

This is an illustrative example for the level of benefits that participating families may realize. Communities benefit from greatly reduced probability of foreclosure.

	Original Loan	Today	After Program
Home Value	\$400,000	\$200,000	\$200,000
Mortgage Balance	\$320,000	300,000	\$190,000
Home Equity	\$80,000	(\$100,000)	\$10,000
Loan to Value Ratio (LTV)	80%	150%	95%
Monthly Payment	\$1,798	\$1,798	\$907

Assumes a 6%, 30 year, fully amortizing mortgage is refinanced by a 4%, 30 year, fully amortizing mortgage. Some loan programs may also require insurance, which may add \$175 per to the After Program monthly payment.

Probability of Default Drops from ~80% to ~7.5% (FHA actuarial assumption, 95%LTV)

Method of PLS Principal Reduction → Communities Take Action

Securitization agreements and tax laws prohibit the sale of PLS mortgages **except when the mortgages are condemned**

Local government, using their constitutional power of eminent domain, can purchase PLS mortgages when public purpose exists by paying fair value

Then local governments can **reduce the principal balance** on the condemned PLS mortgages, thereby reducing underwater PLS in their community

Governments Can Use Eminent Domain To Avoid Unnecessary Foreclosures

Who Supports the Program?

Broad community-focused support for the program

- AFSCME
- Americans for Financial Reform
- Center for Popular Democracy
- National Community Reinvestment Coalition
- Federal Banking Regulators

Representing

- 1.6 million state and local government employees
- 600 local housing focused organizations
- 250 national, state and local groups working on financial industry reform

Program Addresses Concerns Of Local Homeowners And Community-focused Organizations

MRP is a Community Advisory Firm

MRP clients are state, county, and city governments that purchase underwater PLS mortgages and resolve them to the benefit of their communities. In order, MRP provides, under an advisory contract with the community, the following services:

- Identify and value PLS mortgages
- Educate the community
- Arrange acquisition financing
- Advise community in filing eminent domain motion
 - Demonstrate the public purpose
 - Determine fair market value of mortgages
- Arrange servicing of acquired mortgages
- Arrange resolution of acquired mortgages

MRP Provides These Services No Cost To Cities or Homeowners

Communities That Have Engaged MRP

- El Monte, CA
- La Puente, CA
- San Joaquin, CA
- Orange Cove, CA

MRP is in active discussions with these communities and many more

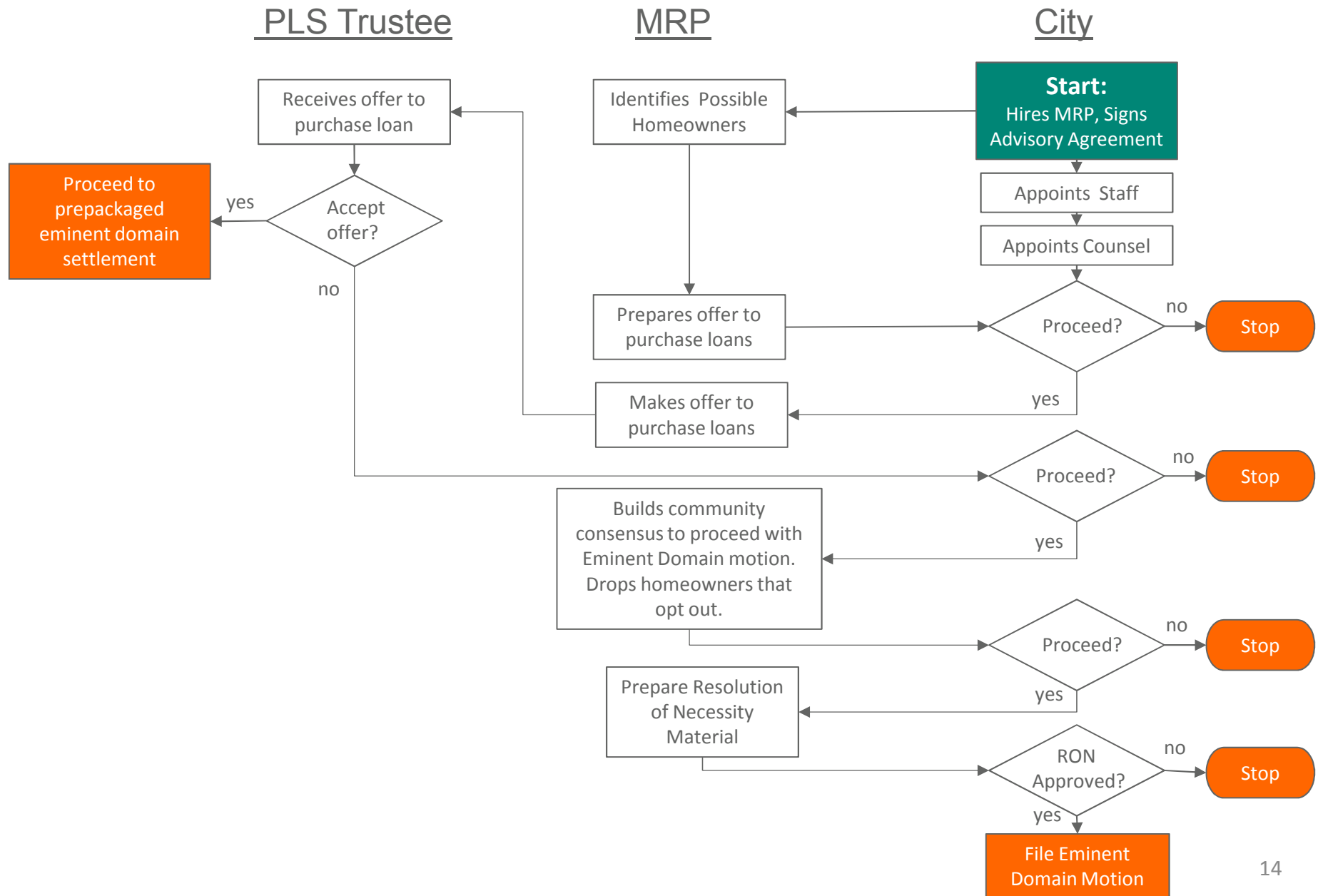
Next Steps

1. The City retains MRP at no cost per the terms of the MRP Advisory Agreement as modified by the City and agreed to by MRP.
2. The City is in control, at each step in the process the City has the option to terminate the Agreement and must approve the next step before it is taken.
3. The City does not pay any costs of the program.
4. Nothing in the Agreement obligates the City to file an eminent domain motion.

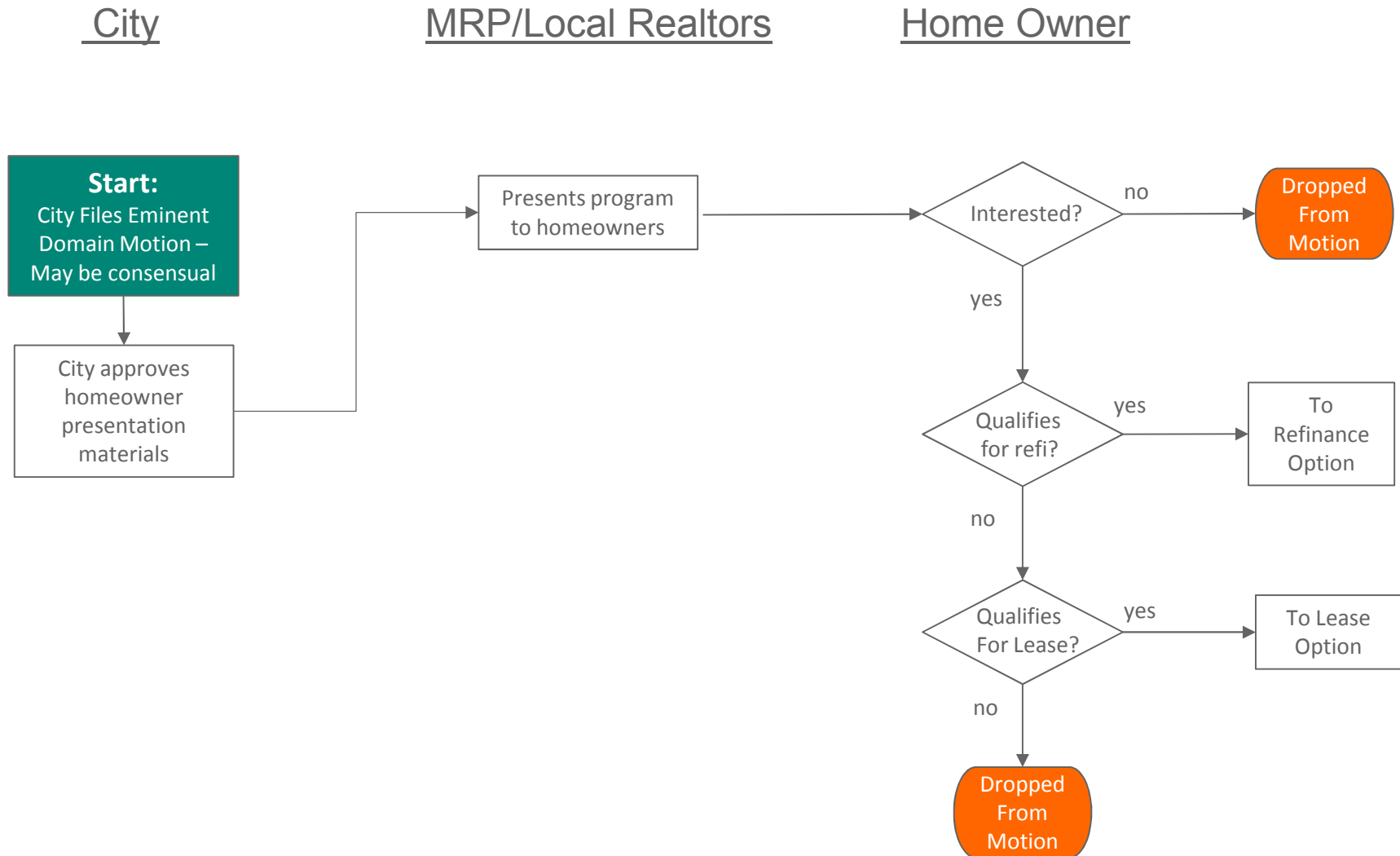
Key Steps To The MRP Process

1. The City hires MRP at no cost per the terms of the MRP Advisory Agreement as modified by the City and agreed to by MRP. At each step in the process the City has the option to terminate the Agreement and must approve the next step before it is taken. The City does not pay any costs of the program. Nothing in the Agreement obligates the City to file an eminent domain motion.
2. The City pre approves all communications with the homeowners and the community.
3. Before or after the City files an eminent domain motion the Homeowner may opt out of the program and their mortgage will be dropped from the motion before it is purchased.
4. Qualified homeowners who opt into the program may elect to refinance for less than the current value of their home.
5. Qualified homeowners who opt into the program may elect to sell their home in full satisfaction of their mortgage and lease back their home with an option to purchase it in the future.
6. Homeowners who opt into the program, but do not qualify for a refinance or a lease will be dropped from the eminent domain motion before their mortgage is purchased.

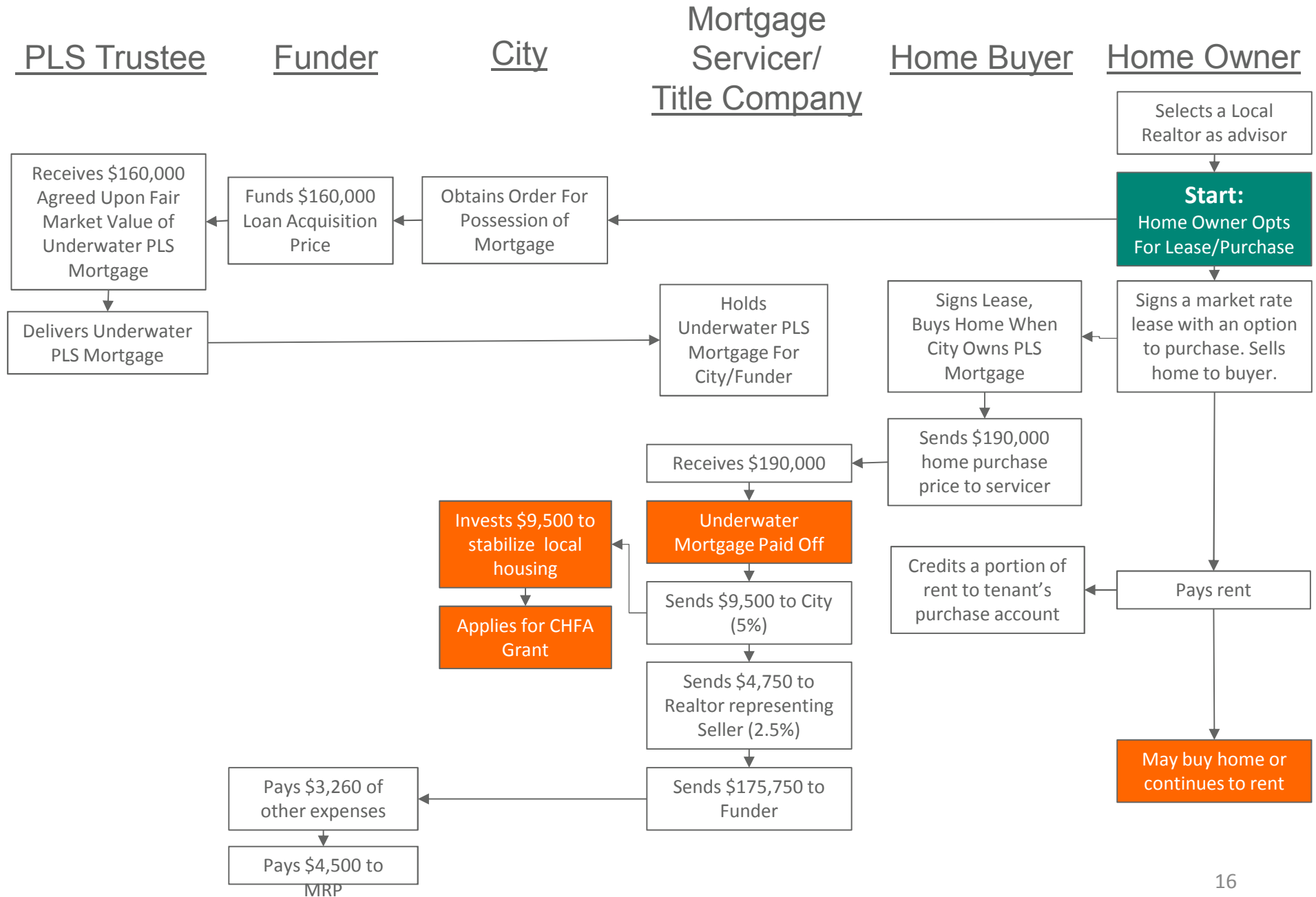
Step 1. City Controls The Process



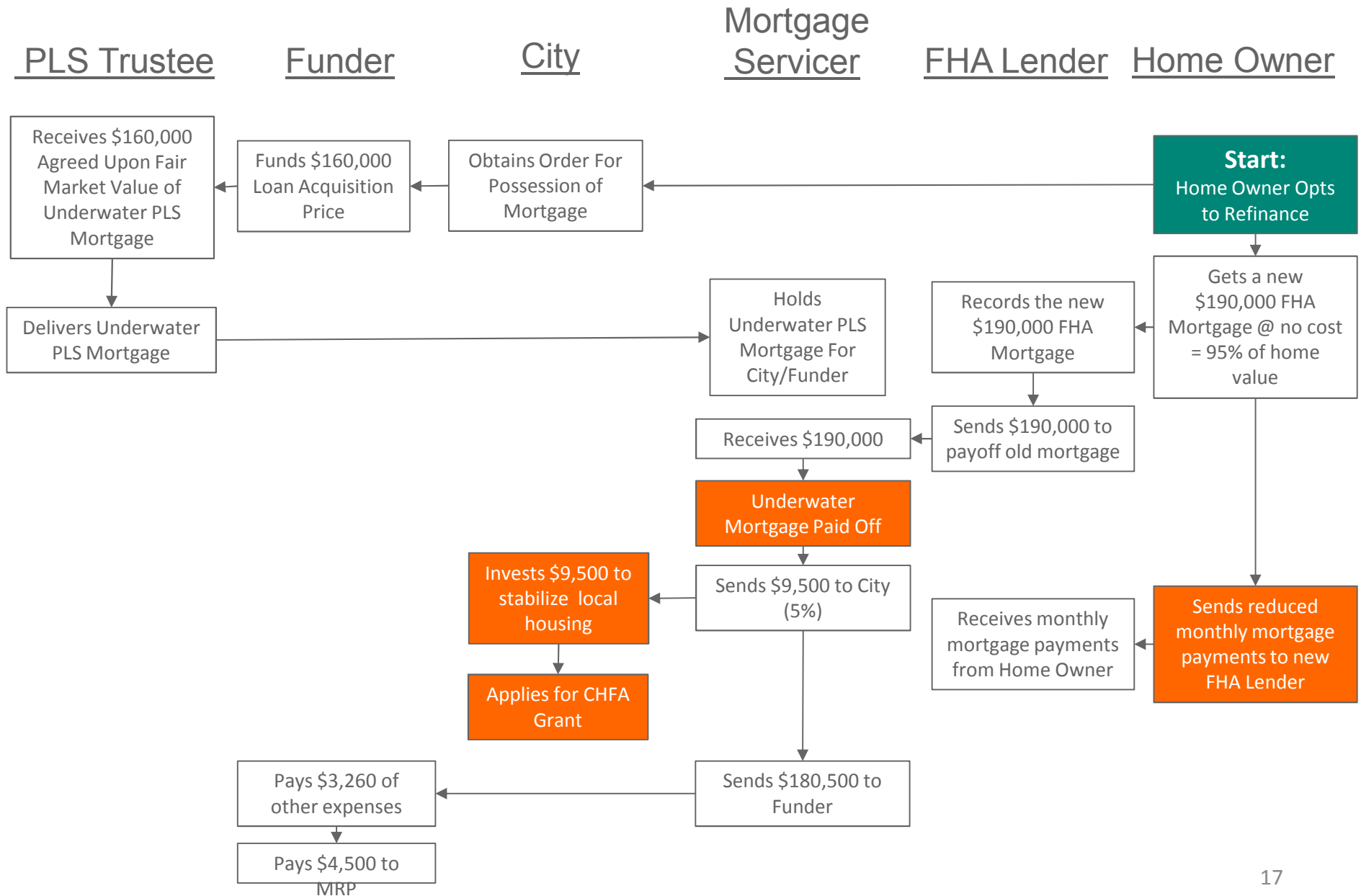
Step 2. Home Owner May Opt Out



Step 3: Lease/Purchase Solution



Step 3: Refinance Solution



Follow the Money

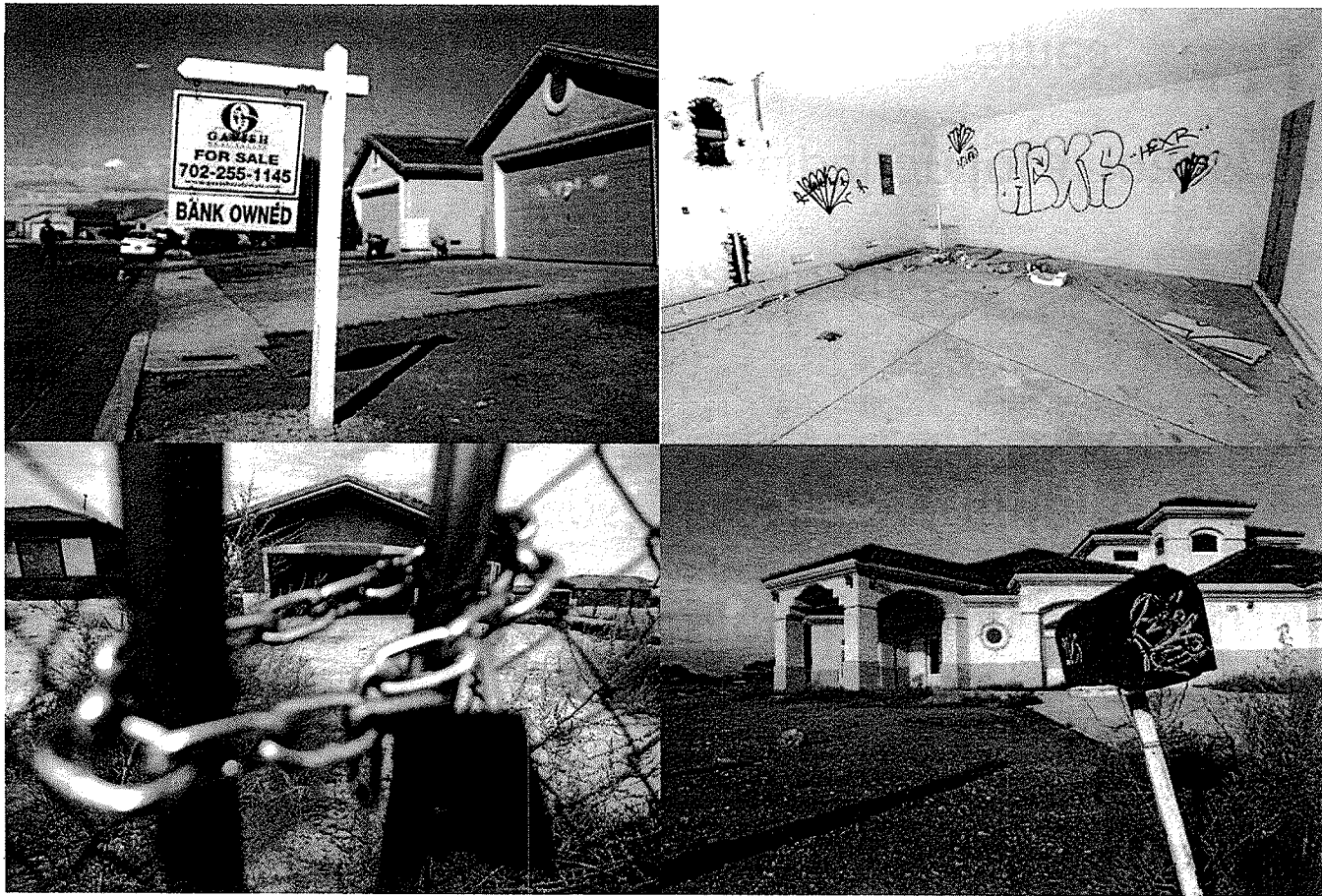
Sale and Leaseback Solution	Who Pays?	When?	Who is Paid?	Cash Flow	MRP Cash Balance	Funder Cash Balance
Legal Expenses	MRP	Before eminent domain motion is filed	Atty's selected by City	(300)	(300)	
50% of MRP Fee	Funder	Eminent domain motion filed	MRP	(2,250)	1,950	(2,250)
Legal Expenses	Funder	After eminent domain motion is filed, prior to possession being awarded	Atty's selected by City	(1,700)	250	
Fair Value Paid For Loan	Funder	Possession of mortgage awarded to city	PLS Trust	(160,000)		(162,250)
Real Estate Commission	Home Buyer	Home sold	Realtors selected by home owner	(4,750)		
Closing Costs	Home Buyer	Home sold	Vendors selected by home owner/realtor	(2,000)		
Home Sales Proceeds	Home Buyer	Home Sold	Funder	183,250		21,000
Community Housing Reserve	Funder	Home Sold	City	(9,500)		11,500
50% of MRP Fee	Funder	Home Sold	MRP	(2,250)	2,500	9,250
Investment Banking Fee	Funder	Home Sold	MRP's investment bank	(560)		8,690
Reimbursement of MRP Advances	Funder	Home Sold	MRP	(2,000)	4,500	6,690

Refinance Solution	Who Pays?	When?	Who is Paid?	Cash Flow	MRP Cash Balance	Funder Cash Balance
Legal Expenses	MRP	Before eminent domain motion is filed	Atty's selected by City	(300)	(300)	
Homeowner Education	MRP	Before eminent domain motion is filed	Vendor approved by City	(300)	(600)	
50% of MRP Fee	Funder	Eminent domain motion filed	MRP	(2,250)	1,650	(2,250)
Legal Expenses	MRP	After eminent domain motion is filed, prior to possession being awarded	Atty's selected by City	(1,650)	-	
Homeowner Education	MRP	After eminent domain motion is filed, prior to possession being awarded	Vendor approved by City	(300)	(300)	
Fair Value Paid For Loan	Funder	Possession of mortgage awarded to city	PLS Trust	(160,000)		(162,250)
Mortgage Servicing	Funder	After possession of mortgage by city until resolution	Servicer of underwater mortgage	(100)		(162,350)
Refinance Proceeds	FHA Lender	Refinance Completed	Funder	190,000		27,650
Community Housing Reserve	Funder	Refinance Completed	City	(9,500)		18,150
50% of MRP Fee	Funder	Refinance Completed	MRP	(2,250)	1,950	15,900
Investment Banking Fee	Funder	Refinance Completed	MRP's investment bank	(560)		15,340
Reimbursement of MRP Advances	Funder	Refinance Completed	MRP	(2,550)	4,500	12,790

EXHIBIT D

North Las Vegas CARES

Community Action to Restore Equity and Stability

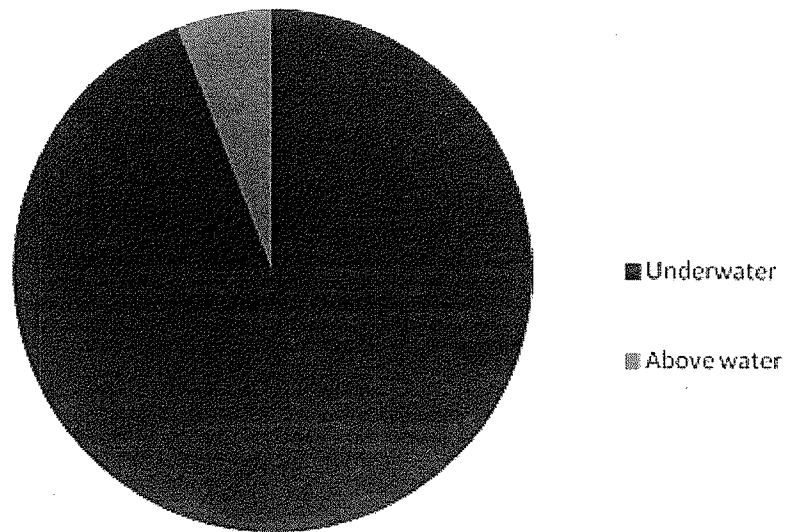


Summary

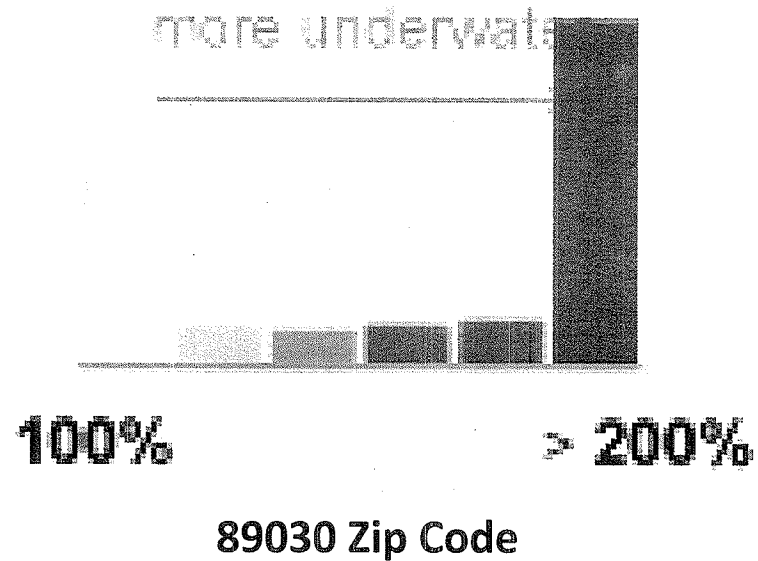
- North Las Vegas: ground zero for the foreclosure crisis.
- An average foreclosure costs local government, borrower and neighbors \$43,000
- Reducing principal will stop foreclosures
- North Las Vegas can reduce principal on local loans, prevent foreclosures, and keep families in their homes
- ***No one else has any incentive to prevent foreclosures***
- Mortgage Resolution Partners can help

North Las Vegas – Ground Zero for the Crisis

- All mortgage loans in North Las Vegas: 75% underwater
- Target mortgage loans in North Las Vegas: 94% underwater



Severity of Problem – How Underwater Are the Loans?



Distribution of underwater loans by
percentage of home value

Loans are not just underwater – they are in the deep end

The Cost of a Foreclosure*

Local Governments \$19,227

- Lost Property Taxes
- Unpaid Utility Bills
- Property Upkeep
- Policing
- Legal costs, building inspections
- Demand for social services

Borrowers \$10,300**

Close Neighbors \$14,531***

The Solution – Principal Reduction

“Most economists see principal reductions as central to preventing foreclosures.”
Alan Blinder, former Vice Chairman at the Federal Reserve (Oct. 20, 2011)

“Government should reduce mortgage principal when it exceeds 110 percent of the home value.” *Martin S. Feldstein, former Chairman of the Council of Economic Advisers under President Reagan (Oct. 12, 2011)*

“Surely there is a strong case for experimentation with principal reduction strategies at the local level.” *Lawrence Summers, former Treasury Secretary under President Clinton and former Economic Adviser under President Obama (Oct. 24, 2011)*

Example: JP Morgan Chase and Bank of America unilaterally reduce principal on option ARM portfolio loans in order to reduce defaults and losses

Principal reduction will prevent future defaults and foreclosures

Who Supports Principal Reduction?

Broad community-focused support for the program

- Culinary Workers Union Local 226, Nevada
- SEIU Local 1107, Nevada
- AFSCME, National
- Americans for Financial Reform, National
- Center for Popular Democracy, National
- National Community Reinvestment Coalition, National
- Federal Banking Regulators

Representing

- 1.6 million state and local government employees
- 600 local housing focused organizations
- 250 national, state and local groups working on financial industry reform

Program Addresses Concerns Of Local Homeowners And Community-focused Organizations

Problem → Mortgages Held In Private Label Securitizations

- 5 million loans that Wall Street placed in securities not guaranteed by U.S. government
- Loans not eligible for 15 federal programs created since the housing crash
- Loans are much more likely to be underwater
- Loans are six times more likely to default than federally guaranteed loans (Financial Crisis Inquiry Commission report)
- Riskier loans created in 2004 to 2007 helped create housing boom
- *Securities effectively prohibit principal reduction*

"If we are going to stabilize the housing market, we have to address" PLS loans.

Federal Housing Finance Agency 2009

Result → Fannie Predicts that 50% of these Loans Will Result in Foreclosures

Future North Las Vegas Foreclosures

Minimum Local Cost of PLS Foreclosures			
Private Label Mortgages	Minimum Future Foreclosures Of Private Label Mortgages*	North Las Vegas	Adjacent Neighbors
5,052	2,526	\$49 million	\$34 million

*Fannie Mae Predicts that 50% of PLS Will Result in Foreclosures

Why Does Principal Reduction Help?

This is an illustrative example for the level of benefits that participating families may realize. Communities benefit from greatly reduced probability of foreclosure.

	Original Loan	Today	After Program
Home Value	\$400,000	\$200,000	\$200,000
Mortgage Balance	\$320,000	300,000	\$190,000
Home Equity	\$80,000	(\$100,000)	\$10,000
Loan to Value Ratio (LTV)	80%	150%	95%
Monthly Payment	\$1,798	\$1,798	\$907

Assumes a 6%, 30 year, fully amortizing mortgage is refinanced by a 4%, 30 year, fully amortizing mortgage. Some loan programs may also require insurance, which may add \$175 per to the After Program monthly payment.

Reducing principal significantly reduces likelihood of default

Method of Principal Reduction → North Las Vegas Takes Action

Many underwater mortgages are worth less than the home securing the mortgage. For example a \$300,000 mortgage on a \$200,000 home is often valued by the market at less than \$200,000.

These are the mortgages that can be purchased.

North Las Vegas can purchase these loans using private funding then reduce the principal balance on the underwater mortgages, thereby reducing foreclosures in the community

Government Can Avoid Unnecessary Foreclosures

Next Steps

1. North Las Vegas engages MRP at no cost to assess the mortgage crisis locally.
2. During the assessment period MRP will:
 - Identify underwater mortgage loans suitable for principal reduction.
 - Represent the City before holders of the loans to discuss possible consensual purchases of the loans.
 - Report back to the City to present recommendations for action.
3. At each step in the process the City has the option to terminate the Agreement and must approve the next step before it is taken.
4. The City does not pay any costs of the program. Nothing in the Agreement obligates the City to take any action.

North Las Vegas CARES

Community Action to Restore Equity and Stability

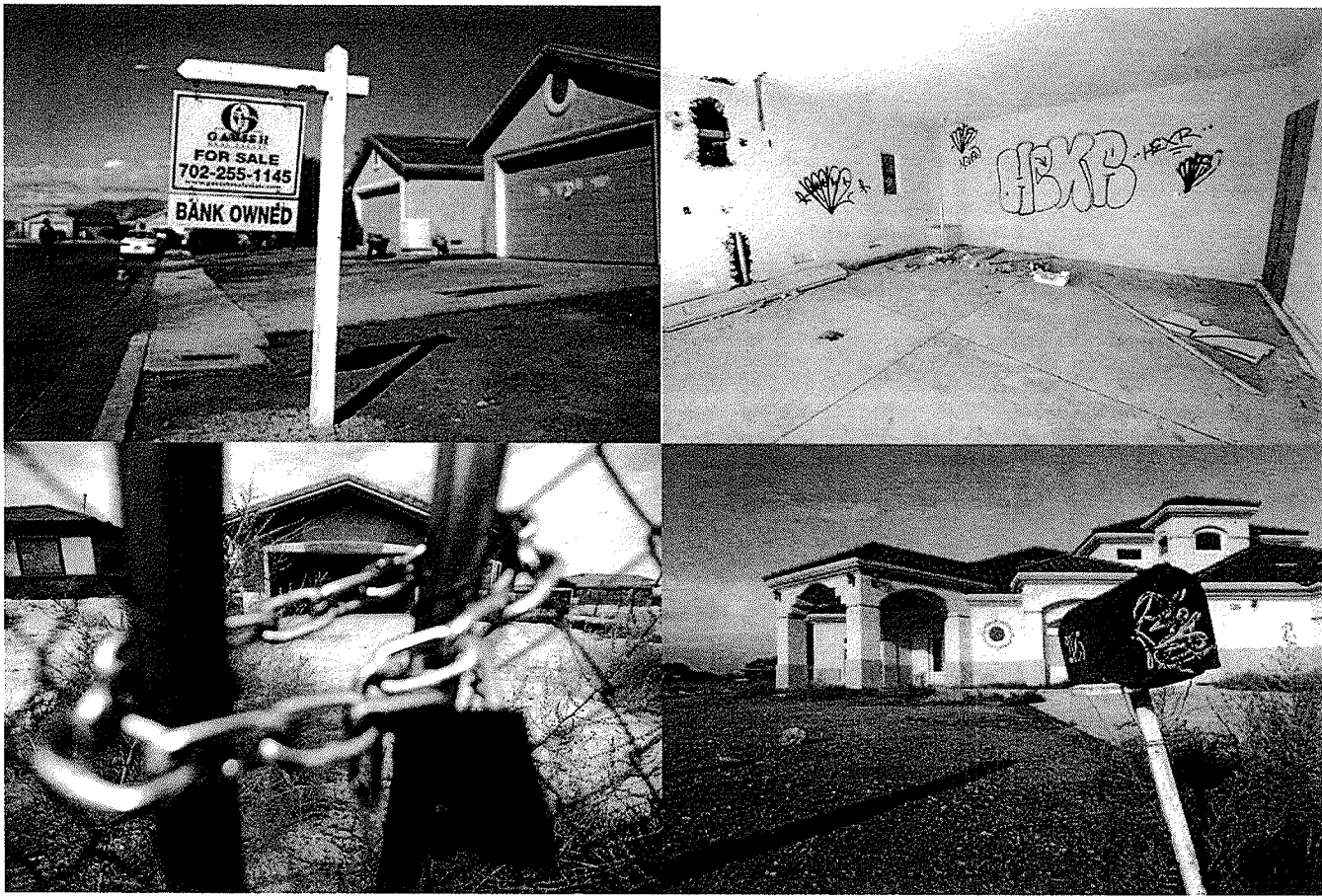


EXHIBIT E

ADVISORY SERVICES AGREEMENT

This Advisory Services Agreement ("Agreement") is entered into by and between Mortgage Resolution Partners LLC, a Delaware limited liability company ("MRP") and the City of Richmond, a municipal corporation and charter city (the "City") and is effective as of July 21, 2013 (the "Effective Date").

RECITALS

A. MRP is a community advisory firm advising public agencies on ways to assist the agency in reducing the impact of the mortgage crisis with its communities including, if necessary, by acquiring mortgage loans through the use of eminent domain, in order to restructure or refinance the loans and thereby preserving home ownership, restoring homeowner equity and stabilizing the communities' housing market and economy by allowing many homeowners to remain in their homes.

B. America in general and the City in particular are each experiencing an historic home mortgage crisis and as a result of the home mortgage crisis, many homeowners in the City have lost significant portions of their disposable income, and some have been unable to make timely mortgage payments on their homes. This has resulted in unprecedented rates of default and foreclosure, loss of homeowner equity, loss of family wealth, and even loss of shelter for some families. The home mortgage crisis has resulted in other adverse impacts within the City such as job losses, reductions in income, consumer demand, and investment, a spiraling reduction in property values, a reduction in property and payroll tax revenues, vandalism, abandoned homes and a general decline in the economy and the quality of life for residents. Restructuring or refinancing mortgage loans will benefit the City's residents by preserving home ownership; restoring homeowner equity; and likely also increasing income, property values, consumer demand, investment, and property and payroll tax revenue.

C. The City is interested in retaining MRP to act as its advisor to assist the City in exploring potential solutions to the mortgage crisis; to assist the City by negotiating on the City's behalf with entities which will provide the necessary funding to the City in order to allow the City to acquire loans; and to assist the City in negotiating contracts with third parties including owners of loans, attorneys, lenders, data companies, other government agencies and others as necessary to implement a program or programs to benefit the City's residents.

NOW THEREFORE, in consideration of the foregoing, MRP and the City agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to enable the City and MRP to work together to assess and implement a program or programs designed to ease the impacts of the mortgage crisis on the residents of the City.

2. SERVICES. MRP agrees to provide the following services ("Services"), and the City authorizes MRP to represent the City as described:

- (a) to advise the City on various alternatives in order to provide assistance to its residents who are burdened with mortgage loans including assessing the possibility and benefits of the formation of a joint powers authority;
- (b) to identify and negotiate with companies acceptable to the City, in City's sole and absolute discretion, to lend funds to the City on a fully secured, non-recourse basis if such funds are required in order to provide the necessary relief;
- (c) to provide extensive legal research acquired by MRP on all aspects of the acquisition and refinancing of mortgage loans including each of the legal steps necessary to implement the necessary programs;
- (d) to identify and negotiate with law firms acceptable to the City, in City's sole and absolute discretion, to work with the City to implement the programs which the City elects to implement;
- (e) to negotiate with other local, state and federal governments and agencies as necessary to implement programs chosen by the City;
- (f) to negotiate on behalf of the City with the holders of mortgage loans secured by property owned by residents of the City (and with trustees, servicers, investors and other parties having a relationship with the holders of the loans);
- (g) to work with the City to identify mortgage loans to target based upon the City's criteria;
- (h) to negotiate on behalf of the City with any other third party as necessary to implement programs which the City elects to implement; and
- (i) to work with the City to establish education and communication programs to address residents' questions about a program or programs the City implements.

Provided, however, MRP shall not take action or implement programs or tasks set forth in subsection (b), (d), (e), (f) and (h) hereof without the express written consent of City in advance, which consent may be withheld in the City's sole and absolute discretion. Provided further, however, in no event shall MRP have the authority to enter into any contracts on behalf of the City.

3. COMPENSATION. As its sole and exclusive compensation for the performance of the Services (the "Advisory Fee"), MRP shall receive the sum of \$4,500 per loan for each loan ultimately acquired by the City or otherwise resolved in a manner which results in the restructuring or refinancing of a loan through a program implemented by the City. The Advisory Fee shall be paid only through the programs implemented by the City and shall not be paid directly by the City. City shall not be responsible for any cost or expense arising out of or related to this Agreement or any program or programs the City implements.

4. ASSIGNMENT. MRP shall not have the right to assign and/or delegate its duties hereunder without the prior written consent of City, which consent may be withheld in the City's sole and absolute discretion.

5. COOPERATION. Each party agrees to cooperate to carry out the purpose of this Agreement and to perform all acts and execute all documents reasonably required to institute the programs chosen by the City pursuant to the terms of this Agreement or as are or may become necessary or convenient to effectuate and carry out this Agreement.

6. RELATIONSHIP OF PARTIES. The relationship of MRP to the City shall at all times be that of an independent contractor. MRP expressly acknowledges and agrees that it does not have the authority to bind the City by contract or otherwise.

7. TERM. This Agreement shall be in effect for a period of one (1) year from the Effective Date and will be renewed automatically for successive terms of one (1) year each unless either party gives notice to the other at least sixty (60) days prior to the termination of any term. Upon any such termination, this Agreement shall be null and void and of no further force or effect, except as to those provisions which expressly survive the termination of the Agreement.

8. INDEMNITY.

(a) Except to the extent caused by the sole active negligence or willful misconduct of City, City and City's representatives shall not be liable for any liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and other defense costs (collectively, "Claims"), resulting from injury to or death sustained by any person, or damage to property of any kind, or any other injury or damage whatsoever, which Claims arise out of or are in any way connected with this Agreement or any programs or tasks implemented pursuant to this Agreement.

(b) Except to the extent caused by the sole active negligence or willful misconduct of City, MRP shall indemnify, protect, defend and hold the City and its representatives, harmless of and from any and all Claims arising out of or in any way related to or resulting directly or indirectly from (i) this Agreement, (ii) the programs or tasks implemented pursuant to this Agreement, (iii) any failure to comply with any applicable law, and (iv) any default or breach by MRP in the performance of any obligation of MRP under this Agreement.

(c) The provisions of this Section 8 shall survive the expiration or sooner termination of this Agreement.

9. INSURANCE. Upon receiving approval from the City to take action or implement programs or tasks set forth in subsection (b) of Section 2, MRP, at its own cost and expense, shall provide and maintain insurance coverage as required in Exhibit A, "City of Richmond Insurance Requirements – Type II: Professional Services". MRP shall submit current certificates of insurance for the policies required in this Section 9 before taking action or implementing any programs or tasks set forth in subsections (b), (d), (e), (f) and (h) of Section 2.

10. GENERAL PROVISIONS.

(a) Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A signature transmitted via scanning and emailing or facsimile shall have the same effect as an original signature.

(b) Modification of Agreement. This Agreement may be modified only by a writing signed by MRP and the City.

(c) Entire Agreement. This Agreement together with any Nondisclosure and/or Common Interest Agreements entered into between the parties either prior or subsequent to the Effective Date constitute the entire understanding and agreement between the parties concerning this subject matter.

(d) Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of the Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

(e) Governing Law. This Agreement is governed by and shall be interpreted according to the laws of the State of California. This Agreement is made in Contra Costa County, California, and any action relating to this Agreement shall be instituted and prosecuted in the courts of Contra Costa County, California.

(f) Waiver of Breach. No waiver of breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement.

(g) Arms-Length Transaction. This Agreement is a product of arms-length negotiations and each party has had an opportunity to receive independent legal advice from attorneys of its own choosing. Thus, neither party can claim that any ambiguities in any term of this Agreement should be construed against any other party.

(h) No Third Party Beneficiaries. This Agreement will not confer any rights or remedies upon any person other than the parties hereto and their permitted successors and permitted assigns.

11. NOTICES. All notices under this Agreement shall be in writing and shall be transmitted by personal delivery or reputable overnight courier service such as FedEx to the parties at the following addresses:

MRP:
Mortgage Resolution Partners, LLC
33 Pier South Embarcadero, Suite 201
San Francisco, CA 94111
Attn: CEO

The City:
450 Civic Center Plaza
Richmond, CA 94804
Attn: City Manager

With copy to:

450 Civic Center Plaza
Richmond, CA 94804
Attn: City Attorney

Such notice shall be deemed given upon personal delivery to the appropriate address or on the next business day if sent by overnight courier service.

WHEREFORE, the parties indicate by their signatures below their entry into this legally-binding Agreement.

The City

 7/25/13
(signature) (date)

Name (printed):

WILLIAM A. LINDSAY

Mailing address:

450 CIVIC CENTER PLAZA

Telephone no.:

510-620-6512

E-mail address:

Bill.Lindsay@ci-richmond.ca.us

Date of Signing:

JULY 25, 2013

Attest


City Clerk

Approved as to form:


City Attorney

Mortgage Resolution Partners LLC

Representative:


(signature)

7-25-13
(date)

Name (printed):

Graham Williams

Mailing address:

33 Pier South Embarcadero, Suite 201, San Francisco, CA 94111

Telephone no.:

~~415-795-2032~~ 971-1771

E-mail address:

gwilliams@mortgageresolutionpartners.com

Date of Signing:

7-25-13

Exhibit A
Insurance Requirements

City of Richmond - Insurance Requirements - Type 2: Professional Services

In all instances where CONTRACTOR or its representatives will provide professional services (*architects, engineers, construction management, counselors, medical professionals, hospitals, clinics, attorneys, consultants, accountants, etc.*) to the City of Richmond (City), the City requires the following MINIMUM insurance requirements and limits.

CONTRACTOR shall procure and maintain for the duration of the contract, agreement, or other order for work, services or supplies, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors. **Maintenance of proper insurance coverage is a material element of the contract. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.**

CONTRACTOR agrees that in the event of loss due to any of the perils for which it has agreed to provide Commercial General Liability Insurance, CONTRACTOR shall look solely to its insurance for recovery. CONTRACTOR hereby grants to CITY, on behalf of any insurer providing Commercial General Liability Insurance to either CONTRACTOR or CITY with respect to the services of CONSULTANT herein, a waiver of any right to subrogation which any such insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance.

Original, signed certificates and original, separate policy endorsements, naming the City as an additional insured for general liability coverage, as well as a waiver of subrogation for Workers' Compensation Insurance, shall be received and approved by the City **before any work may begin**. However, failure to do so shall not operate as a waiver of these insurance requirements.

City reserves the right to modify or require additional coverages for specific risk exposures depending on scope of CONTRACTORS work.

Minimum coverage is detailed below. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated herein shall not serve to reduce the policy limits of coverage of CONTRACTOR.

Minimum Scope of Insurance – the following forms shall be provided and coverage shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (ISO Occurrence Form CG 0001), and including coverage for bodily and personal injury, property damage, and products and completed operations (if applicable).
2. Insurance Services Office Automobile Liability coverage (ISO Form CA 0001, Code 1, Any Auto).
3. Original and Separate Additional Insured Endorsement for General Liability (ISO Form CG 20 10 11/85 or its equivalent) with primary and non-contributory language.
4. Workers' Compensation Insurance as required by the State of California including Employer's Liability coverage.
5. Original and Separate Waiver of Subrogation for Workers' Compensation insurance.
6. Professional Liability or Errors & Omissions Liability Insurance appropriate to the CONTRACTOR's profession (if required.)

Required Coverage	Minimum Limits
Workers' Compensation and Employers' Liability	Statutory limits as required by the State of California including \$1 million Employers' Liability per accident, per employee for bodily injury or disease. If CONTRACTOR is self-insured, provide a certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations and Self-Insurance. If contractor is a sole proprietor (has no employees) then contractor must sign "Contractor Release of Liability" found at: http://www.ci.richmond.ca.us/index.aspx?nid=61 .
General Liability (primary and excess limits combined)	\$2,000,000 per occurrence for bodily injury, personal injury and property damage. If the policy includes a general aggregate, either the general aggregate shall apply separately to this project, service or location or the minimum required aggregate limit shall be twice the per occurrence limit (\$4 million aggregate limit) . Policy shall be endorsed to name the City of Richmond as an additional insured per the conditions detailed below.

City of Richmond - Insurance Requirements - Type 2: Professional Services

Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage.
Professional Liability or Errors & Omissions Liability - <i>Required for all professionals including architects, engineers, consultants, construction management, counselors, medical professionals, hospitals, clinics, attorneys and accountants, & other consultants as may be required by the City.</i>	\$3,000,000 per occurrence

Required Policy Conditions	
Additional Insured Endorsement	<p>Applicable to General Liability coverage.</p> <p>The City of Richmond, its officers, officials, employees, agents and volunteers are to be named as additional insureds for all liability arising out of the operations by or on behalf of the named insured including bodily injury, deaths and property damage or destruction arising in any respect directly or indirectly in the performance of this contract.</p> <p>ISO form CG 20 10 (11/85) or its equivalent is required. If the Contractor is supplying their product or providing a service then the endorsement <u>must not</u> exclude products and completed operations coverage. If it does, then CG 20 37 (10/01) is also required. SAMPLE Endorsements can be found at http://www.ci.richmond.ca.us/index.aspx?nid=61.</p>
Primary and Noncontributory	<p>The contractor's insurance coverage must be primary coverage as it pertains to the City, its officers, officials, employees, agents and volunteers. Any insurance or self insurance maintained by the City is wholly separate from the insurance of the contractor and in no way relieves the contractor from its responsibility to provide insurance.</p>
Waiver of Subrogation Endorsement Form	<p>Contractor's insurer will provide a Waiver of Subrogation in favor of the City for Workers' Compensation Insurance during the life of this contract. SAMPLE Endorsements can be found at http://www.ci.richmond.ca.us/index.aspx?nid=61.</p>
Deductibles and Self-Insured Retentions	<p>Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City or the CONTRACTOR shall procure a financial guarantee in an amount equal to the deductible or self-insured retention guaranteeing payment of losses and related investigations, claims administration and defense expenses.</p> <p>Contractor is responsible for satisfaction of the deductible and/or self-insured retention for each loss.</p>
A. M. Best Rating	<p>A:VII or Better. If the A.M. Best Rating falls below the required rating, CONTRACTOR must replace coverage immediately and provide notice to City.</p>

Umbrella/Excess Liability Policies

If an Umbrella or Excess Liability Policy is used to meet the liability limits, coverage shall be as broad as specified for underlying coverage's and cover those insured in the underlying policies.

City of Richmond - Insurance Requirements - Type 2: Professional Services

Claims-Made Policies

If any Insurance policy is written on a claims-made form: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work. 2) Insurance must be maintained and evidence of Insurance must be provided for at least five (5) years after completion of the contract of work. 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

Subcontractors

CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish to the City for review and approval, separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

CONTRACTOR agrees to defend and indemnify the City of Richmond for any damage resulting to it from failure of either CONTRACTOR or any subcontractor to take out or maintain the required Insurance policies. The fact that insurance is obtained by CONTRACTOR, and/or CONTRACTOR's subcontractors, will not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by CITY from CONTRACTOR or any third party will not be limited by the amount of the required Insurance coverage.

Verification of Coverage

All original certificates and endorsements shall be received and approved by the City ***before work may begin.*** The City of Richmond reserves the right to require complete, certified copies of all required Insurance policies including endorsements affecting the coverage at any time.

Original insurance certificates and required policy endorsements shall be mailed or delivered to the Designated Project Manager for the City of Richmond.

Insurance certificates and endorsements may be faxed to the Designated Project Manager. However, CONTRACTOR must mail the original certificates and endorsements to Designated Project Manager once faxed.

Continuous Coverage

CONTRACTOR shall maintain the required Insurance for the life of the contract. Should the CONTRACTOR cease to have insurance as required during this time, all work by the CONTRACTOR pursuant to this agreement shall cease until insurance acceptable to the City is provided. In the event that CONTRACTOR fails to comply with the City's insurance requirements, the City may take such action as it deems necessary to protect the City's interests. Such action may include but is not limited to termination of the contract, withholding of payments, or other actions as the City deems appropriate.

If services or the scope of work extend beyond the expiration dates of the required Insurance policies initially approved by the City, CONTRACTOR must provide updated certificates and endorsements indicating that the required coverage, terms and conditions are still in place. **Renewal certificates and updated endorsements shall be mailed to the Designated Project Manager.**

Cancellation

CONTRACTOR shall ensure that coverage shall not be cancelled, reduced or otherwise materially changed except after thirty (30) days' prior written notice has been given to the City.

Reporting Requirements

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Consistent with Public Policy

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms and provisions herein may be consistent with public policy and thus enforceable.