MA VS PLAN

THE BANK OF NEW YORK MELLON (f/k/a The Bank of New York), as Trustee, on behalf of the Trusts listed in Exhibit A,

Plaintiff,

v.

CITY OF RICHMOND, CALIFORNIA, a municipality; RICHMOND CITY COUNCIL; MORTGAGE RESOLUTION PARTNERS L.L.C., a Delaware limited liability company; and GORDIAN SWORD LLC, a Delaware limited liability company;

Defendants.
Pursuant to N.D. Cal. Civil Local Rule 3-16, Plaintiff The Bank of New York Mellon, as
Trustee on behalf of the Trusts listed in Exhibit A hereto, submits the following Certification of
Interested Parties. The undersigned certifies that the following parties are known to have a
financial or other interest in the subject matter in controversy: Plaintiff The Bank of New York
Mellon, as Trustee, on behalf of the Trusts listed in Exhibit A hereto; Defendant the City of
Richmond, California; Defendant Richmond City Council; Defendant Mortgage Resolution
Partners L.L.C.; and Defendant Gordian Sword L.L.C.

In addition, any person or entity holding a interest in the loans secured by the properties
listed in Exhibit B hereto may have a financial or other interest that could be substantially
affected by the outcome of the above-captioned action.

Dated: August 6, 2013

Respectfully submitted,

MAYER BROWN LLP
DONALD M. FALK
BRONWYN F. POLLOCK

By: 
Bronwyn F. Pollock

Attorneys for Plaintiff
THE BANK OF NEW YORK MELLON
(F/K/A THE BANK OF NEW YORK)
### Trusts For Which The Bank of New York Mellon, f/k/a The Bank of New York, is Trustee:

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Exhibit B
July 31, 2013

Ms. Loretta Lundberg
Bank of New York Mellon
101 Barclay Street
New York, NY 10286

Dear Ms. Lundberg:

This letter is being forwarded to you as the Servicer of the mortgage loans in the private securitization trust(s) listed in Attachment A. The City of Richmond ("City"), has been investigating the acquisition of mortgage loans from the trust(s) as part of a public program to modify underwater mortgage loans to reduce principal and avoid foreclosures. The City is experiencing an historic home mortgage crisis that is harming the community in many ways, including: unprecedented rates of default and foreclosure; the loss of jobs, homeowner equity, family wealth and shelter; reductions in income, consumer demand, investment, property values, and tax revenues; and an increase in vandalism, abandoned homes and other decay that harm the economy and the quality of life for residents.

By way of this letter, the City hereby offers to acquire all rights to the mortgage loans listed in Attachment A (the "Loans"). If you do not believe that you are the correct party to consider this offer, please notify me immediately of the party that you believe is the correct party to consider this offer.

The City had the Loans appraised on June 30, 2013 to determine their fair market value. Mortgage Industry Advisory Corporation conducted the appraisal.
Based on the appraisal, the City hereby offers to purchase the Loans (free and clear of any encumbrances to title or other interests that the City, in its discretion, deems unacceptable) for the fair market value determined by the appraisal, which is set out in Attachment B (the "Purchase Price"). The Purchase Price is the full amount believed by the City to be just compensation for the Loans and is not less than the appraisal of the fair market value of the Loans.

The basis for this offer is set forth in Attachment B, which summarizes the basis for the appraisal and is made a part of this offer by reference. The Purchase Price amount is for all owners of any interest in the Loans, and division of this amount among parties that have an interest in the Loans will be your responsibility.

This offer is subject to the approval of the City's City Council, including final conditions that the City Council requires as part of its program.
If you certify that you are the owner of the Loans with the authority to convey them to the City, and wish to obtain your own independent appraisal of the Loans, the City may be willing to provide reasonable reimbursement. Please contact me if you are interested in discussing this issue.

If the offer price is acceptable to you, please so indicate to the undersigned, in writing. This matter will then be presented to the City Council, which has final ratification authority. Upon City Council approval, the City will prepare and forward to you a proposed agreement to acquire the Loans.
If for any reason you are not satisfied with this offer of just compensation, and have relevant information you would like the City to consider, please contact the undersigned. In addition, you
should be aware that, in the event that negotiations fail to result in agreement, and the City decides to proceed with the acquisition of the Loans through eminent domain, the owner will have the right to have the amount of just compensation to be paid by the City for the Loans fixed by a court of law. Please be advised that, in such event, the terms of this offer and the contents of this letter may be excluded from consideration as an offer of settlement, under California Evidence Code sections 1152, 1154, or other applicable provisions of law.

Included with this letter is a pamphlet describing the eminent domain process in California. This pamphlet is provided for informational purposes only and should not be construed as legal advice. Some parts of the pamphlet are addressed to the acquisition of real property and may not be applicable to the present situation.

I hope that this offer meets with your approval and that it can serve as the basis for a quick and mutually beneficial transaction. I look forward to hearing from you after you have had the opportunity to review it. Again, if you are not the correct party with which to negotiate for the acquisition of the Loans, please let me know immediately. In any event, please provide a response no later than August 13, 2013.

The mortgage loans listed in Attachment A are a subset of the mortgage loans the City is interested in acquiring. The full list of mortgage loans the City is interested in acquiring at the present time is provided in Attachment C. The City is making offers to acquire groups of loans based on the Trustee/Servicer information available to the City. If you are the party with authority to consider an offer to purchase any of the other mortgage loans listed in Attachment C and have not received a letter from the City offering to purchase the loans, please let me know immediately.

Thank you for your cooperation.

Sincerely,

City of Richmond

by

William A. Lindsay
City Manager

Attachments and Enclosure
EMINENT DOMAIN – Information Pamphlet

I. Introduction

Eminent domain is the power of the government to purchase private property for a "public use" so long as the property owner is paid "just compensation." Whenever possible, the City of Richmond tries to avoid use of the eminent domain power, exercising it only when it is necessary for a public project. The decision to acquire private property for a public project is made by the City of Richmond only after a thorough review of the project, which often includes public hearings.

This pamphlet provides general information about the eminent domain process and the rights of the property owner in that process.¹

• What is a "public use"?

A "public use" is a use that confers public benefits, like the provision of public services or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects such as street improvements, construction of water pipelines or storage facilities, construction of civic buildings, redevelopment of blighted areas, and levee improvements to increase flood protection. Some public uses are for private entities, such as universities, hospitals and public utilities, which serve the public.

• What is "just compensation"?

Just compensation is the fair market value of the property being acquired by the government. The state law definition of fair market value is "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available."

II. The Eminent Domain Process and the Property Owner's Rights

The eminent domain process begins with a public use project. When selecting a project location, the goal is to render the greatest public good and the least private

¹This pamphlet reflects the current law as of January 1, 2008. However, the information in this pamphlet is not, nor should it be construed as, legal advice. Additionally, some sections of this pamphlet are applicable only to the acquisition of real property and may not be applicable in other situations. You should consult with qualified legal counsel regarding your specific situation rather than relying on this pamphlet as legal advice. The statements in this pamphlet are a general summary of the eminent domain process and are not binding on the City of Richmond.
injury or inconvenience. If it is determined that all or a portion of your property may be necessary for a public use project, the City of Richmond will begin the appraisal process to determine the property’s fair market value.

- **How is the fair market value of my property determined?**

The City of Richmond will retain an appraiser to appraise your property. In the case of real property, the appraiser will invite you to accompany him or her during an inspection of your property. You may give the appraiser any information about improvements and any special features that you believe may affect the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to ensure that nothing of value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property meet with the appraiser instead.

After the inspection, the appraiser will complete an appraisal that will include the appraiser’s determination of your property’s fair market value and the information upon which the fair market value is based. The appraiser will provide the City of Richmond with the appraisal. The City of Richmond will then make a written offer to purchase the property. The offer will also include a summary of the appraisal. The offer will be for no less than the amount of the appraisal.

- **What factors does the appraiser consider in determining fair market value?**

Each parcel of real property is different and, therefore, no single formula can be used to appraise all properties. Among the factors an appraiser typically considers in estimating fair market value are:

- The location of the property;
- The age and condition of improvements on the property;
- How the property has been used;
- Whether there are any lease agreements relating to the property;
- Whether there are any environmental issues, such as contaminated soil;
- Applicable current and potential future zoning and land use requirements;
- How the property compares with similar properties in the area that have been sold recently;
- How much it would cost to reproduce the buildings and other structures, less any depreciation; and
- How much rental income the property produces, or could produce if put to its highest and best use.

If the property to be appraised is not real property, the appraiser would consider factors commonly considered in determining the market value of that type of property.

- **Will I receive a copy of the appraisal?**
The City of Richmond will provide you with its purchase offer, a summary of the appraiser's opinion, and the basis for the City of Richmond's offer. Among other things, the offer letter will include:

- A general statement of the City of Richmond's proposed use for the property;
- An accurate description of the property to be acquired;
- A list of the improvements covered by the offer;
- The amount of the offer; and
- The amount considered to be just compensation for each improvement which is owned by a tenant and the basis for determining that amount.

However, the City of Richmond is only required to show you a copy of the full appraisal if your property is an owner-occupied residential property with four or fewer residential units. Otherwise, the City of Richmond may, but is not required, to disclose its full appraisal during negotiations (though different disclosure requirements apply during the litigation process if the issue of fair market value goes to court).

- **Can I have my own appraisal done?**

  Yes. You may decide to obtain your own appraisal of the property in negotiating the fair market value with the City of Richmond. For real property, at the time of making its initial offer to you, the City of Richmond will offer to reimburse you the reasonable costs, not to exceed $5,000, of an independent appraisal of your property. To be eligible for reimbursement, the independent appraisal must be conducted by an appraiser licensed by the State Office of Real Estate Appraisers.

- **What advantages are there in selling my property to the City of Richmond?**

  A real estate transaction with the City of Richmond is typically handled in the same way as the sale of private property. However, there may be a financial advantage to selling to the City of Richmond.

  - You will not be required to pay for real estate commissions, title costs, preparation of documents, title policy or recording fees required in closing the sale. The City of Richmond will pay all these costs.

  - Although the City of Richmond cannot give you tax advice or direction, you might also be eligible for certain property and income tax advantages. You should check with the Internal Revenue Service (IRS) for details or consult your personal tax advisor.

- **If only a portion of my property is taken, will I be paid for the loss to my remaining property?**
In general, when only a part of your property is needed, every reasonable effort is made to ensure you do not suffer a financial loss to the "remainder" property. The City of Richmond will pay you the fair market value of the property being taken as well as compensation for any loss in value to your remaining property that is not offset by the benefits conferred by the project. The compensation for the loss in value to your remaining property is often referred to as "severance damages."

Also, if any remaining part is of such a size, shape, or condition as to be of little market value, the City of Richmond will offer to acquire that remaining part (or remnant) from you, if you so desire.

- **Will I be compensated for loss of goodwill to my business?**

If you are the owner of a business that is conducted on the property being acquired, you may have a right to compensation for lost business goodwill if the loss is caused by the acquisition of the property. "Goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

- **What will happen to the loan on my property?**

Where the City of Richmond is acquiring the entire property, generally the compensation payable to the owner is first used to satisfy outstanding loans or liens as in a typical real estate transaction. Where less than the entire property is being acquired, whether outstanding loans or liens are paid from the compensation will depend on the particular facts and circumstances.

- **Do I have to sell at the price offered?**

No. If you and the City of Richmond are unable to reach an agreement on a mutually satisfactory price, you are not obligated to sign an offer to sell or enter into a purchase agreement.

- **If I agree to accept the City of Richmond's offer, how soon will I be paid?**

If you reach a voluntary agreement to sell your property or an interest in the property to the City of Richmond, payment will be made at a mutually acceptable time. Generally, this should be possible within 30 to 60 days after a purchase/sale contract is signed by all parties.

- **What happens if we are unable to reach an agreement on the property's fair market value?**
The City of Richmond, to the greatest extent practicable, will make every reasonable effort to acquire your property by negotiated purchase. If, however, the negotiations are unsuccessful, the City of Richmond may either file an eminent domain action in a court located within the same county where your property is located or it may decide to abandon its intention to acquire the property. If the City of Richmond abandons its intention to acquire, it will promptly notify you.

If the City of Richmond proceeds with eminent domain, the first step is for City of Richmond staff to request authority from the City Council to file a condemnation action. The approval from the City Council is called a "Resolution of Necessity." In considering whether condemnation is necessary, the City Council must determine whether the public interest and necessity require the project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether your property is necessary for the project. You will be given notice and an opportunity to appear before the City Council when it considers whether to adopt the Resolution of Necessity. You may want to call an attorney or contact an attorney referral service right away. You or your representatives can raise any objections to the Resolution of Necessity and the condemnation either orally before the City Council or in writing to the City Council.

If the City Council adopts the Resolution of Necessity, the City of Richmond can file a complaint in court to acquire title to the property upon payment of the property's fair market value. The City of Richmond is the plaintiff. Anyone with a legal interest in the property, generally determined from a title report on the property (including tenants or mortgage holders), are named as defendants. Often, the City of Richmond will also deposit the amount the City of Richmond believes is the "probable amount of compensation" with the State Treasurer where the complaint is filed. A deposit must be made if the City of Richmond is seeking to acquire possession of the property before agreement is reached on the fair market value.

- Can the City of Richmond acquire possession of my property before the property's fair market value is determined in the eminent domain lawsuit?

In some cases, the City of Richmond may decide it needs possession of the property before the property's fair market value is finally determined. In such a case, the City of Richmond must apply to the court for an "order for possession" to allow it to take possession and control of the property prior to resolution of the property's fair market value. The City of Richmond is required to schedule a hearing with the court on the proposed order for possession and to give you notice of the hearing. Notice must generally be sent at least 90 days before the hearing date if the property is occupied and 60 days before the hearing date if the property is unoccupied. A judge will decide whether the order for possession should be granted. As noted above, the City of Richmond must deposit with the State Treasurer the probable amount of just compensation in order to obtain possession of the property.
• **Can I oppose the motion for an order for possession?**

Yes. You may oppose the motion in writing by serving the City of Richmond and the court with your written opposition within the period of time set forth in the notice from the City of Richmond.

• **Can I rent the property from the City of Richmond?**

If the City of Richmond agrees to allow you or your tenants to remain on the property after the City of Richmond acquires possession, you or the tenants will be required to pay a fair rent to the City of Richmond. Generally, such rent will not be more than that charged as rent for the use of a property similar to yours in a similar area.

• **Can I withdraw the amount deposited with the State Treasurer before the eminent domain action is completed, even if I don't agree that the amount reflects the fair market value of my property?**

Yes. Subject to the rights of any other persons having a property interest (such as a lender, tenant, or co-owner), you may withdraw the amount deposited with the State Treasurer before the eminent domain action is completed. If you withdraw the amount on deposit, you may still seek a higher fair market value during the eminent domain proceedings, but you may not contest the right of the City of Richmond to acquire the property, meaning you cannot contest that the acquisition of your property is for a public purpose or is otherwise improper.

You also have the right to ask the court to require the City of Richmond to increase the amount deposited with the State Treasurer if you believe the amount the City of Richmond has deposited less than the "probable amount of compensation."

• **Can I contest the condemning agency's acquisition of the property?**

Yes. Provided you have not withdrawn the amount deposited, you can challenge in court the City of Richmond's right to acquire or condemn the property.

• **What happens in an eminent domain trial?**

The main purpose of an eminent domain trial is to determine the fair market value of your property, including compensable interests such as lost business goodwill caused by the taking or severance damages. The trial is usually conducted before a judge and jury. You (and any others with interests in the property) and the City of Richmond will have the opportunity to present evidence of value, and the jury will determine the property's fair market value. In cases where the parties choose not to have a jury, the
judge will decide the property's fair market value. Generally, each party to the litigation must disclose its respective appraisals to the other parties prior to trial.

If you challenge the City of Richmond's right to acquire the property, the eminent domain trial will also determine whether or not the City of Richmond has the legal right to acquire the property. In such cases, the judge (not the jury) will make this determination before any evidence is presented concerning the property's fair market value.

At the end of the trial, the judge will enter a judgment requiring the City of Richmond to pay fair market value. Once the City of Richmond pays the amount listed in the judgment, the judge will enter a final order of condemnation. The City of Richmond will record the final order with the County Recorder, and title to the property will then pass to the City of Richmond.

- Am I entitled to interest?

Anyone receiving compensation in an eminent domain action is generally entitled to interest on that compensation from the date the condemning agency takes possession of the property until the person receiving the compensation has been fully paid. The rate and calculation of the interest is determined under formulas in State law.

- Will the City of Richmond pay my attorneys' fees and costs.

In an eminent domain action, you are entitled to be reimbursed by the condemning agency for your court costs such as court filing fees. In some circumstances, you may also be entitled to be reimbursed by the condemning agency for your attorneys' fees in the lawsuit. Whether you will be entitled to receive reimbursement for your attorneys' fees will depend on the particular facts and circumstances of the case and the offers and demand for compensation made in the action.

- Will I receive assistance with relocation?

Any person, business, or farm operation displaced as a result of the property acquisition is typically entitled to relocation advisory and financial assistance for eligible relocation expenses, such as moving expenses. The amount of relocation compensation is determined on a case-by-case basis in accordance with prescribed law. Relocation benefits are handled separate and apart from the determination of the property's fair market value and are not part of the eminent domain process.

III. Contact Information

We are available to answer your questions and to assist you in understanding the acquisition program and the eminent domain process. Should you desire further
information, please contact the City of Richmond using the contact information contained in the accompanying offer letter.
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</table>
| Bank of New York | 123 Main St, New York, NY 10001 | 123-456-7890 | BankofNY@例例例例.com | Bank is the largest trustee.
| Bank of America | 456 Park Ave, New York, NY 10002 | 234-567-8901 | BankofAmerica@例例例例.com | Bank offers competitive rates.
| JPMorgan Chase | 789 Broadway, New York, NY 10003 | 345-678-9012 | JPMorganChase@例例例例.com | JPMorgan is a major financial institution.
| Citigroup | 101 Avenue of the Americas, New York, NY 10013 | 456-789-0123 | Citigroup@例例例例.com | Citigroup specializes in consumer banking.

**City of Richmond, California**

<table>
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<tr>
<th>Trustee Name</th>
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| Bank of New York | 123 Main St, Richmond, CA 94801 | 123-456-7890 | BankofNY@例例例例.com | Bank is the largest trustee.
| Bank of America | 456 Park Ave, Richmond, CA 94802 | 234-567-8901 | BankofAmerica@例例例例.com | Bank offers competitive rates.
| JPMorgan Chase | 789 Broadway, Richmond, CA 94803 | 345-678-9012 | JPMorganChase@例例例例.com | JPMorgan is a major financial institution.
| Citigroup | 101 Avenue of the Americas, Richmond, CA 94804 | 456-789-0123 | Citigroup@例例例例.com | Citigroup specializes in consumer banking.

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**Footnotes:**

1. Bank of New York is the largest trustee.
2. Bank of America offers competitive rates.
3. JPMorgan Chase is a major financial institution.
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City of Richmond, California
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<td>73%</td>
<td>401,592.71</td>
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<td>75%</td>
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City of Richmond, California
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City of Richmond, California
<table>
<thead>
<tr>
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<th>State</th>
<th>Zip</th>
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<th>Email</th>
<th>Notes</th>
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<tbody>
<tr>
<td>John Doe</td>
<td>123 Main St, Anytown</td>
<td>Anytown</td>
<td>CA</td>
<td>90210</td>
<td>555-555-5555</td>
<td><a href="mailto:johndoe@email.com">johndoe@email.com</a></td>
<td></td>
</tr>
<tr>
<td>Jane Smith</td>
<td>456 Oak Ave, Anytown</td>
<td>Anytown</td>
<td>CA</td>
<td>90210</td>
<td>555-555-5555</td>
<td><a href="mailto:janesmith@email.com">janesmith@email.com</a></td>
<td></td>
</tr>
<tr>
<td>Mike Johnson</td>
<td>789 Pine Rd, Anytown</td>
<td>Anytown</td>
<td>CA</td>
<td>90210</td>
<td>555-555-5555</td>
<td><a href="mailto:mikejohnson@email.com">mikejohnson@email.com</a></td>
<td></td>
</tr>
<tr>
<td>Sarah Brown</td>
<td>101 Cedar Ln, Anytown</td>
<td>Anytown</td>
<td>CA</td>
<td>90210</td>
<td>555-555-5555</td>
<td><a href="mailto:sarahbrown@email.com">sarahbrown@email.com</a></td>
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</tr>
</tbody>
</table>

**Additional Notes:**
- John Doe is a key contact for the project.
- Mike Johnson has been in the area for 5 years.
- Sarah Brown is responsible for customer relations.

Contact Information:
- Phone: 555-555-5555
- Email: john.doe@email.com
- Address: 123 Main St, Anytown, CA 90210

Date: [Current Date]
<table>
<thead>
<tr>
<th>Code</th>
<th>Name</th>
<th>Address</th>
<th>Phone</th>
<th>City</th>
<th>Zip</th>
</tr>
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<tbody>
<tr>
<td>0325</td>
<td>ABC Corporation</td>
<td>123 Main St, NY</td>
<td>12345</td>
<td>City</td>
<td>12345</td>
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<tr>
<td>0456</td>
<td>DEF Company</td>
<td>456 Market St, CA</td>
<td>56789</td>
<td>City</td>
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<tr>
<td>1234</td>
<td>GHI Enterprise</td>
<td>789 Ocean Blvd, TX</td>
<td>98765</td>
<td>City</td>
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**Note:** The table contains information about various companies and their contact details.
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<th>No.</th>
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<tbody>
<tr>
<td>1</td>
<td>ABC</td>
<td>John Doe</td>
<td>1234</td>
<td>john.doe@email</td>
<td>123 Main Street, New York</td>
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</tr>
<tr>
<td>2</td>
<td>DEF</td>
<td>Jane Smith</td>
<td>5678</td>
<td>jane.smith@email</td>
<td>456 Green Lane, Los Angeles</td>
<td>LA</td>
</tr>
<tr>
<td>3</td>
<td>GHI</td>
<td>Michael Johnson</td>
<td>9012</td>
<td>michael.johnson@email</td>
<td>789 Brown St, Chicago</td>
<td>CHI</td>
</tr>
<tr>
<td>4</td>
<td>JKL</td>
<td>Sarah Williams</td>
<td>3456</td>
<td>sarah.williams@email</td>
<td>098 Grey Ave, San Francisco</td>
<td>SF</td>
</tr>
<tr>
<td>5</td>
<td>MNO</td>
<td>David Brown</td>
<td>2468</td>
<td>david.brown@email</td>
<td>101 Black St, Portland</td>
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<tr>
<td>6</td>
<td>PQR</td>
<td>Emily Davis</td>
<td>4680</td>
<td>emily.davis@email</td>
<td>202 White St, Seattle</td>
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<tr>
<td>7</td>
<td>STU</td>
<td>Robert Miller</td>
<td>8642</td>
<td>robert.miller@email</td>
<td>303 Blue St, Boston</td>
<td>BOS</td>
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<tr>
<td>8</td>
<td>VWX</td>
<td>Lisa Anderson</td>
<td>6824</td>
<td>lisa.anderson@email</td>
<td>404 Orange St, Philadelphia</td>
<td>PHIL</td>
</tr>
<tr>
<td>9</td>
<td>YZ</td>
<td>Thomas Young</td>
<td>9246</td>
<td>thomas.young@email</td>
<td>505 Green St, San Antonio</td>
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*Note: Details of the table are fictional.*
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Subtotal: $92,500.00
MAYER BROWN LLP
DONALD M. FALK (SBN 150256)
dfalk@mayerbrown.com
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112
Tel: 650-331-2000
Fax: 650-331-2060

MAYER BROWN LLP
BRONWYN F. POLLOCK (SBN 210912)
bpollock@mayerbrown.com
350 S. Grand Ave., 25th Floor
Los Angeles, CA 90071-1503
Tel: 213-229-9500
Fax: 213-625-0248

Attorneys for Plaintiff
The Bank of New York Mellon
(f/k/a The Bank of New York)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BANK OF NEW YORK MELLON (f/k/a The Bank of New York) as Trustee, on behalf of the Trusts listed in Exhibit A,

Plaintiff,

v.

CITY OF RICHMOND, CALIFORNIA, a municipality; RICHMOND CITY COUNCIL; MORTGAGE RESOLUTION PARTNERS L.L.C., a Delaware limited liability company; and GORDIAN SWORD LLC, a Delaware limited liability company;

Defendants.
Plaintiff The Bank of New York Mellon, as Trustee for the Trusts identified in Exhibit A attached hereto, submits the following Corporate Disclosure Statement pursuant to Fed. R. Civ. P. 7.1. The undersigned certifies that:

1. The Bank of New York Mellon Corporation is the parent corporation of Plaintiff The Bank of New York Mellon, as Trustee for the Trusts identified in Exhibit A hereto, and owns 100% of its stock.

2. The Bank of New York Mellon Corporation is a publicly held corporation whose stock trades on the New York Stock Exchange under the symbol BK.

3. The Bank of New York Mellon Corporation has no corporate parent, and no publicly held corporation owns 10% or more of its stock.

Dated: August 6, 2013

Respectfully submitted,

MAYER BROWN LLP
DONALD M. FALK
BRONWYN F. POLLOCK

By: [Signature]
Bronwyn F. Pollock

Attorneys for Plaintiff
THE BANK OF NEW YORK MELLON
(F/K/A THE BANK OF NEW YORK)

CORPORATE DISCLOSURE STATEMENT
Exhibit A
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(formerly The Bank of New York)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BANK OF NEW YORK MELLON (fka The Bank of New York), as Trustee, on behalf of the Trusts listed in Exhibit A,

 Plaintiff,

v.

CITY OF RICHMOND, CALIFORNIA, a municipality; RICHMOND CITY COUNCIL; MORTGAGE RESOLUTION PARTNERS L.L.C., a Delaware limited liability company; and GORDIAN SWORD LLC, a Delaware limited liability company;

 Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

FILE VIA FAX
Plaintiff allege as follows based on information and belief:

INTRODUCTION

1. This is a case about the misuse of public power for private benefit.

2. Following a scheme devised by a mortgage investment firm that stands to profit handsomely from the deal, the City of Richmond (the “City”) has made clear that it imminently plans to seize residential mortgages—mortgages that are current on their payments—at deep discounts and then refinance the properties at reduced loan values. The borrowers would retain their homes with a lower debt load. The City and the investment firm each would receive certain fees generated by the refinancing transactions, and then the firm and its investors would profit from reselling federally guaranteed loans. And the trusts and their investors, including pension funds and other institutional investors, who held current, performing loans that had financed the purchase of homes in the City would be left holding the bag, losing tens of millions of dollars in loan principal.

3. The contemplated use of the eminent domain power in this seizure and refinance scheme violates the constitutions of both the United States and California, along with several California statutes.

4. Plaintiff, The Bank of New York Mellon, is the Trustee of certain trusts that were created to hold residential mortgage loans (the “Trusts,” listed in Exhibit A hereto). The Trusts’ beneficiaries include both municipal and private pension plans, 401(k) plans, mutual funds, and other investors.

5. Defendants City and Mortgage Resolution Partners L.L.C. (“MRP”) have entered into an agreement, pursuant to which they will use the City’s eminent domain power to seize performing debt instruments—which are not located in Richmond and are held by out-of-state trusts—at deeply discounted prices. Defendants would then profit by refinancing and resecuritizing those loans, while paying fees to MRP and to the City. MRP’s investors—whose funds will be used to acquire the loans—will reap substantial profits. Defendants’ mortgage loan seizure program is referred to herein as the “Seizure Program.”
6. Defendants attempt to justify the Seizure Program as one that will help homeowners and communities in Richmond that are struggling with foreclosures, but the Seizure Program actually targets performing loans and does nothing to help homeowners in foreclosure. These loans, which have survived the recession and housing crisis intact, are the ones for which seizure will be most valuable to MRP’s investors but least likely to generate any public benefit. Even if the City did intend to take high-risk loans, the Seizure Program still could not create any public benefit, because many of the Trusts’ servicers already can and do forgive principal where doing so would make the loan more valuable, by reducing the risk of default enough to justify the loss of principal.

7. The Seizure Program is unlawful and unconstitutional and violates numerous federal, state and local laws, including the City’s own Charter. Nevertheless, in connection with its agreement with MRP, the City intends to employ the Seizure Program and has taken substantial steps in its furtherance.

8. Defendants have already selected over 100 mortgage loans that they wish to seize from the Trusts. The City has nominally offered to “purchase” the loans on behalf of MRP. The offers, however, are not in good faith: Defendants’ valuation method is designed to produce values that are far below any reasonable level because they give no value to homeowners’ steady payment record. And MRP has stated publicly that federal law precludes the Trusts from selling the loans through the voluntary purchase proposal offered by Defendants.

9. The low offers are no accident, nor are they the beginning of a constructive negotiation. Defendants cannot simply purchase the loans consensually from their owners (i.e., the Trusts), because the Seizure Program does not work if the City actually pays fair value. MRP and its investors do not plan to hold the loans for the long-term and collect principal and interest from borrowers. The Seizure Program is pure financial engineering. MRP and its investors, with the critical assistance of City’s purported power of eminent domain, intend to take the loans for a fraction of their value and then flip them, reselling them in a new securitization.

10. Defendants do not plan to do anything to enhance the value of the mortgaged properties, to bear market risk, or to work with borrowers to improve their ability to pay. In fact,
the only modification that they plan is to write off much of each loan’s balance before acquiring
the loans.

11. The Seizure Program purportedly is intended to assist homeowners at risk of
defaulting on their mortgage loans and thereby somehow avoid urban blight. But the design and
implementation of the Seizure Program show that the rationale is a pretext. The Seizure Program
actually is intended to generate significant sums for MRP and its investors, with payments to the
City in exchange for the use of its eminent domain powers. The Seizure Program also generates
private benefits for the homeowners who are selected for it.

12. Many of the Trusts’ existing guidelines and practices, implemented by the
servicers, of modifying loans is further proof that undercompensation, not modification, is the
source of the Seizure Program’s profit. The true value of the loans already reflects the Trusts’
ability to enhance their value through modification. There is no indication that MRP, which
describes itself as a “community advisory firm,” will be as qualified as experienced servicers.
Indeed, the blanket modifications that Defendants plan are unlikely to increase the price of the
loans in a resale. For example, while it is sometimes possible to increase a loan’s value with a
carefully considered modification, it rarely makes sense to reduce the loan balance when the
borrower is making the existing, agreed payments. Nor is it often the case that a loan will be
more valuable if its principal is reduced below the value of the house. That MRP expects to
profit nonetheless demonstrates that undercompensation of the Trusts is an essential element of
the Seizure Program.

13. There are numerous reasons that this scheme is unconstitutional. As outlined
above, the Seizure Program cannot be successful on its own terms if the Trusts receive fair
market value. Thus, this case is more than a dispute about valuation of individual loans. The
takings also are manifestly not for public use—indeed, the Seizure Program specifically carves
out loans whose modification might avoid foreclosure, in apparent recognition that many Trusts
already can conduct such modifications. Further, the Seizure Program involves the taking of
loans that are located outside of the City’s limits and therefore are beyond its eminent domain
power.
14. The Seizure Program violates other provisions of the U.S. and California Constitutions as well. By coercing transactions across state lines and threatening massive disruption to the national mortgage lending and securitization markets, it conflicts with federal power under the Commerce Clause. It also runs afoul of the Contracts Clause, which bars States and their political subdivisions like the City from modifying private contracts. In fact, the Seizure Program is a paradigmatic example of the types of misconduct that each Clause was intended to prevent. The City seeks to abrogate debts that its citizens owe to out-of-town entities and permit a local speculator to reap the profits.

15. Already, the federal government has expressed its concerns about the unconstitutional nature of the Seizure Program and the federal interest in avoiding havoc to mortgage lending nationwide. In a public statement dated August 9, 2012, the Federal Housing Finance Administration (“FHFA”), the conservator of Fannie Mae and Freddie Mac (the two Government-Sponsored Enterprises (“GSEs”) that are among the largest investors in residential-mortgage backed securitization (“RMBS”) trusts), stated that “FHFA has significant concerns about the use of eminent domain to revise existing financial contracts” and that “resulting losses from such a program would represent a cost ultimately borne by taxpayers” and would have “a chilling effect on the extension of credit to borrowers seeking to become homeowners and on investors that support the housing market.” 77 Fed. Reg. 47,652 (August 9, 2012). FHFA noted that “[a]mong questions raised regarding the proposed use of eminent domain are the constitutionality of such use,” “the effects on holders of existing securities,” “the impact on millions of negotiated and performing mortgage contracts,” and “critical issues surrounding the valuation by local governments of complex contractual arrangements that are traded in national and international markets.” Id.

16. As stated, the targeted loans are out-of-Richmond interests, held by out-of-Richmond entities. Nevertheless, as an alternative, and to the extent that loans targeted by the Seizure Program may be considered local interests (they are not), the Seizure Program also violates the California Constitution, which, as amended by voter proposition in 2008, expressly prohibits local governments from using eminent domain to seize owner-occupied residences for
the purpose of conveying it to a private person. Cal. Const. art. I, § 19(b). Specifically, as an
alternative basis, the Seizure Program is unlawful if the targeted mortgage loans constitute
interests in real property that are secured exclusively by owner-occupied residences and are
conveyed to private persons.

17. Injunctive and declaratory relief is necessary to avoid imminent and irreversible
harm, not only to the Trusts but to the national economy. The City intends to use California’s
“quick take” procedure, which allows it to condemn property first and ask the courts to
determine fair compensation second. Once each loan is taken, MRP will destroy it through
refinancing; a new loan would then be imposed on each borrower, and those new loans would be
hastily sold to other investors. If the Seizure Program is found unconstitutional afterwards, that
egg may prove impossible to unscramble, and certainly not without harming innocent
homeowners and investors. Moreover, because of the design of the Seizure Program, the
compensable losses to the Trusts will be far greater than the City realizes and may exceed its
ability to pay. MRP is indemnifying the City for these costs, but its financial resources are
unknown.

18. Moreover, several other municipalities—including North Las Vegas, Nevada; El
Monte, California; La Puente, California; Orange Cove, California; Pomona, California; and San
Joaquin, California—have entered into agreements with MRP. Litigating each taking
individually in state court while waiting for definitive guidance on federal constitutional issues
would be wasteful and protracted and lead to years of uncertainty.

19. The Seizure Program is a scheme that should be nipped in the bud. That is why
Plaintiff seeks immediate relief from this Court.

THE PARTIES

A. Plaintiff

20. Plaintiff, The Bank of New York Mellon, is a bank organized under the laws of
the State of New York and having its principal place of business at One Wall Street, New York,
New York 10286. The Bank of New York Mellon serves as Trustee for Trusts listed on Exhibit
A hereto that hold mortgage loans targeted by the Seizure Program.
21. The beneficial owners of the Trusts include municipal and private pension plans, 401(k) plans, mutual funds, and other investors.

22. As the first phase of the Seizure Program, the City sent out letters to 32 trustees and servicers of RMBS trusts offering to purchase approximately 624 loans. The Mayor of Richmond publicly indicated that this was only the "first batch" of loans and that she hopes to expand the Program. Plaintiff received a letter from the City dated July 31, 2013 demanding to purchase more than 100 loans from the Trusts. Attached hereto as Exhibit B is a true and correct copy of the City’s letter.

23. None of the Trusts is incorporated in California or otherwise organized under the laws of California. All of the Trusts are organized under New York common law.

24. The physical notes and other documents evidencing the mortgage loans that Defendants intend to seize all are valid and binding, and located outside of the territorial boundaries of the City.

25. The beneficiaries of the Trusts are located across the country and the world.

B. Defendants

26. Defendant MRP is a limited liability company organized and existing under the laws of Delaware, and it is headquartered in San Francisco, California.

27. MRP is a privately-owned, for-profit company that will manage and facilitate the loan restructuring process of the Seizure Program, including (a) raising funds to finance the seizures; (b) identifying mortgage loans to be acquired by eminent domain; and (c) arranging for the loan refinancing. MRP will receive a $4,500 fee for each loan seized and refinanced. In addition, MRP’s investors would receive the profit between the seizure price and price at which the new loan to the homeowner is sold, net of MRP’s fee, the City’s fee, and any expenses incurred by MRP. MRP has no other business operations.

28. Defendant Gordian Sword LLC is a limited liability company organized and existing under the laws of Delaware, and it is headquartered in San Francisco, California. It was established to create the Seizure Program and is the managing member that controls and directs
MRP. The name Gordian Sword is an apparent reference to the Gordian Knot, a legend and
metaphor for an intractable problem that is solved easily by cheating (i.e., cutting the knot).

29. On or about April 2, 2013, the City, through its City Council and upon the
recommendation of its City Manager, voted to enter into an "Advisory Services Agreement" with
MRP, under which MRP would provide contractual services to the City regarding, among other
things, mortgage relief for City homeowners and the acquisition of existing mortgage loans
through eminent domain. It is not clear whether this is the only written agreement between the
City and MRP or if there are other undisclosed oral or written agreements between them.

30. Defendant City, a municipality, is located in Contra Costa County in the State of
California, with the territorial boundaries described in Article I, section 2 of the City’s Charter.

31. Defendant Richmond City Council (the "City Council") is the City’s governing
body. Defendant City Council is the governing body with legal responsibility for making
decisions with respect to the City’s exercise of its eminent domain powers.

JURISDICTION AND VENUE

32. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal
question jurisdiction) and 1343(a)(3) and (4) (jurisdiction over actions for violations of
constitutional and federal rights secured by 42 U.S.C. § 1983), and over Plaintiff’s declaratory
relief causes of action under 28 U.S.C. §§ 2201 and 2202. Plaintiff’s state-law claims form part
of the same case or controversy as the federal claims. Accordingly, this Court has supplemental
jurisdiction over Plaintiff’s state-law claims pursuant to 28 U.S.C. § 1367(a).

33. This Court has personal jurisdiction over Defendants City and City Council, as
municipalities or agents and officers of municipalities located in this judicial district. The Court
also has personal jurisdiction over those Defendants because Plaintiff’s claims arise out of
actions taken by those Defendants in this judicial district.

34. The Court has personal jurisdiction over Defendants MRP and Gordian Sword
because they are headquartered in San Francisco, California, and Plaintiff’s claims arise out of
MRP’s and Gordian Sword’s transaction of business in this judicial district.
35. Venue is proper in this judicial district based on 28 U.S.C. § 1391(b). Defendants City and City Council reside in this judicial district, Defendants MRP and Gordian Sword conduct business in this district, and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district.

**INRADISTRICT ASSIGNMENT**

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

**FACTUAL BACKGROUND**

I. **DEFENDANTS’ SEIZURE PROGRAM**

37. Defendants seek to enrich themselves through an elaborate program under which the City would use its eminent domain powers and litigation to seize residential mortgage loans, secured by owner-occupied residences in the City, held by outsiders, at steeply and unjustifiably discounted prices. MRP would then refinance those loans with new federally insured loans and sell the new loans at a substantial markup.

38. Defendants would profit by sharing in the spread between the price paid by the City (by MRP’s investors) to seize the loans and the proceeds received by the City (through MRP) for selling the new loan to the homeowner to a third party. The outside-of-Richmond Trusts whose mortgage loans would be seized under the Seizure Program would lose significant value—potentially hundreds of thousands of dollars on some individual loans. Thus, the Seizure Program amounts to a seizure and transfer of wealth from private parties outside of the City, on the one hand, to other private parties, on the other hand, with the City receiving a payment as its fee for renting out its eminent domain powers.

A. **The Seizure Program’s Targeting of Performing Loans**

39. The Seizure Program primarily targets for eminent domain seizure mortgage loans that meet a specific profile: (a) performing loans (meaning where the borrower is current on payment); (b) underwater (meaning that the principal loan balance is greater than the underlying home value); and (c) held by “private-label” securitization trusts (meaning that the trusts are
sponsored by a private entity, rather than by a Government-Sponsored Enterprise (GSEs), such as Fannie Mae and Freddie Mac).  

40. The Seizure Program seeks to cherry-pick loans that are “relatively current (not in default),” and only from “borrowers who appear likely to repay their loans.” See Exhibit C at 9 (emphasis added). Thus, the Seizure Program does not target loans where there is a serious risk of default (much less a serious risk of foreclosure). Indeed, of the approximately 624 loans that the City has offered to purchase, approximately 85% are not in any stage of the foreclosure process and approximately 81% of the loans have never had a notice of default filed or are now current. Of the 105 loans held by Plaintiff as trustee, over 90% are not in any stage of the foreclosure process.

41. The stated justifications for the Seizure Program—to prevent “blight” or some other “public” harm caused by foreclosures—are mere pretexts for this profit-driven scheme. Indeed, the fact that the Seizure Program primarily targets performing loans—loans that will be the most profitable to restructure and sell but are the least likely to default—shows that the Seizure Program is designed to create profits for MRP and its investors.

42. MRP has included a small percentage of loans in default or foreclosure for optics only, in a thinly-veiled attempt to justify its scheme under the guise of public good. The Seizure Program is not structured to help borrowers actually facing foreclosure because such borrowers are a bad credit risk, unlikely to qualify for refinancing. In MRP’s own words, one of the “key steps to the MRP process” is that “[h]omeowners 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.” See Exhibit D at 13 (emphasis added).  

1 The Seizure Program has been described in several public sources, attached hereto as Exhibits C and D.  
3 Available at http://sireweb.ci.richmond.ca.us/sirepub/cache/2/ml1qpgj4mcl3zq1kl0y3/36546408062013071309684.PDF (last visited August 7, 2013). This presentation is attached to explain the Seizure Program, which would be unlawful if fully implemented.
43. Defendants attempt to justify the Seizure Program as correcting what they claim to be a contractual bar on forgiving principal in securitization trusts. See, e.g., Exhibit D at 5. As to the Trusts administered by Plaintiff, that is simply false. Many of the loans’ servicers can and do forgive principal when doing so would maximize the value of the loan.

44. Another seemingly arbitrary provision is that the Seizure Program is limited to loans held by private RMBS trusts, all located outside of the City of Richmond.

45. The Seizure Program excludes loans held by trusts sponsored and guaranteed by Freddie Mac or Fannie Mae. It also excludes loans held directly by banks. These exceptions demonstrate that the stated justifications are a pretext and appear intended to minimize opposition from local banks and federal agencies.

B. The Seizure and Refinancing of the Targeted Loans

46. Having now selected loans held by the Trusts for seizure, the City will attempt to seize the loan through eminent domain for a fraction of its value.4 The example frequently given by MRP of its proposed valuation methodology is that for a loan with a principal balance of $300,000 secured by a home worth $200,000, Defendants would seize the loan at $160,000. See Exhibit D at 7, 16-18.

47. Once Defendants expropriate each loan for less than fair market value, 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. Defendants and MRP’s investors would profit by sharing the spread between the discounted seizure price and the 95% refinancing price. See id.

48. Because the loans are underwater (i.e., the home value is less than the outstanding principal balance), Defendants have calculated a discounted valuation that is far lower than the unpaid principal balance of the loan.

49. The offers also are totally disconnected from, and far less than, any measure of fair value. Defendants have primarily selected loans that are current and not in foreclosure. The

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4 In one instance, the City’s July 31, 2013 letter offered a mere 11% of the principal balance of the loan. See Exhibit B at Trustee Exhibit B therein.
fair value of such loans includes the anticipated principal and interest payments over the life of
the loan. That is especially so for long-term holders of the loans like the Trusts, which were
designed to hold loans to maturity, not to trade them in the market.

C. Defendants Have Taken Substantial Steps Towards Implementing the
Seizure Program.

50. Defendants have taken substantial steps towards implementing the Seizure
Program. In April 2013, the City entered into an “Advisory Services Agreement” with MRP,
which is an operative agreement between the City and MRP with respect to the Seizure Program,
attached hereto as Exhibits E (agreement) and F (City Council minutes indicating approval).
Recently, MRP began sending letters to Plaintiff and other trustees and servicers for RMBS
trusts stating that unidentified California cities were interested in acquiring mortgage loans and
would soon be making purchase offers on the loans, one of the prerequisites under California
eminent domain law before a local government can seize property.

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

52. On or about July 31, 2013, Richmond sent a letter to Plaintiff (attached hereto as
Exhibit B) and other trustees and servicers for RMBS trusts making offers to purchase loans
from the Trusts. The offer letters attached a list of approximately 624 mortgage loans
purportedly held by RMBS trusts (including approximately 105 held by the Trusts) that the City
is offering to acquire, “at the present time.” The letters state that the offers are not binding on
the City but provide a deadline of August 13, 2013 for Plaintiff to respond, after which the City
may “decide[] to proceed with the acquisition of the loans through eminent domain.” After
sending the letters, the Mayor of Richmond reportedly declared: “If financial institutions do not
cooperate, the city will seize the loans using eminent domain.” See Exhibit G hereto.\(^5\) The
\(^5\)Available at http://www.latimes.com/business/money/la-fi-mo-richmond-eminent-domain-
City's offer letters constitute a first wave of offers, and if Defendants are successful in acquiring or seizing these loans, it is expected that they will attempt to acquire or seize many other loans.

53. If the offers are not accepted, the City will attempt to quickly seize possession of the loans. The City Council must first hold a condemnation hearing, and immediately thereafter could file an eminent domain lawsuit in California and use an expedited procedure known as a "quick take" to quickly obtain a court order giving the City possession of the loan. MRP has indicated that the "quick take" procedure is a critical component of the Seizure Program. See Exhibit H hereto at 3.6 Once the City receives possession of the loans, it could then extinguish, restructure, and refinance them, causing immediate and irreparable harm to the Trusts that will be exceedingly difficult, if not impossible, to unwind.

54. Thus, there is a high likelihood that Defendants will very soon exercise the City's eminent domain powers to seize possession of mortgage loans under the Seizure Program.

II. IMPLEMENTATION OF THE SEIZURE PROGRAM WOULD RESULT IN SIGNIFICANT HARM TO THE TRUSTS AND WILL AFFECT INTERSTATE COMMERCE

A. Harm to the Trusts

55. If implemented, the Seizure Program would cause significant harm to Trusts.

56. First, the targeting of performing loans within the Trusts' portfolios would, by itself, completely upend the purpose of the securitization process. The structure and value of a particular securitization trust is based upon diversification of loans, in both the terms of the loans and the geographic location of the property secured by the loans, and the associated risks. RMBS trusts are dependent on the stable and non-saleable nature of performing loans within the pool. Cherry-picking performing loans from the Trusts disrupts the risk diversification on which the Trusts were structured.

57. Second, the number of loans targeted in the City alone—hundreds of mortgage loans—would cause significant direct losses to the Trusts and other RMBS trusts. Indeed, the

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first wave of the approximately 624 loans targeted by Defendants could potentially cause losses
to the RMBS trusts holding those loans of over $90 million or more.

58. Third, there is a risk that the takings could jeopardize the Trusts' tax status. The
Trusts are organized as Real Estate Mortgage Investment Conduits (REMICS), a status that
Congress created to apply uniformly on a national basis to encourage securitization of static
pools of residential mortgage loans. The REMIC regulations do not permit the transfer of non-
defaulted loans out of the trusts without the imposition of potentially significant and adverse tax
consequences, nor do they contemplate the City’s unprecedented seizure of mortgage loans from
securitized trusts. Particularly if the Seizure Program is copied by other municipalities, the IRS
may find that the Trusts are not REMIC-eligible. If as a result of the seizure of such loans, the
IRS concluded that the Trusts are no longer REMIC-eligible, the results of that finding would be
catastrophic: the Trusts, which currently pay no tax at the trust level, would be subject to a 35%
tax on all of their income. That tax liability could result in a sharp loss of income for pension
funds, retirees, and others who rely on regular payments from these securities.

59. Fourth, many other municipalities across the U.S. are watching to see whether
Defendants are able to carry out the Seizure Program. If even a few other municipalities of
City’s size implement the Seizure Program, losses could range in the billions of dollars. If more
than a few implement the Seizure Program, far greater losses could mount. This widespread
transfer of substantial funds from the Trusts’ beneficiaries, including municipal pension funds
and private retirement plans, on the one hand, to Defendants, on the other hand, could destabilize
the national housing market and the larger economy.

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

60. The Seizure Program also would cause significant harm to interstate commerce
and the national housing market. As a preliminary matter, because the Trusts and the loans are
located out of California, the Seizure Program would coerce interstate transactions.
Additionally, the Seizure Program is expressly designed to favor local interests—MRP and
underwater homeowners—at the expense of out-of-state creditors. Furthermore, in addition to
the losses suffered by the Trusts from the seizure of performing residential mortgage loans at
below fair market values, the Seizure Program would have a chilling effect on the extension of
credit to homeowners. The Seizure Program also will disrupt the national nature of the mortgage
market by subjecting investors to qualitatively different types of risk in different jurisdictions.
Mortgage rates would rise, and some prospective homeowners may be unable to obtain loans at
all, lowering housing prices across the country.

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

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

63. In comments published in the Federal Register, 77 Fed. Reg. 47,652 (August 9,
2012) discussing the “Use of Eminent Domain To Restructure Performing Loans,” the FHFA
recognized the harm that programs like the Seizure Program would cause. Among other things,
FHFA has explained that the GSEs, as well as the multiple Federal Home Loan Banks for which
FHFA acts as a regulator, because they are substantial holders of RMBS trusts, would be
harmed, as well as the communities themselves that attempt to use eminent domain. According
to FHFA:

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

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

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

64. Likewise, the U.S. House of Representatives Financial Services Committee, which has oversight of Fannie Mae and Freddie Mac, recently issued a draft reform bill, a stated purpose of which is to implement the following reform: “To combat constitutionally-suspect ‘eminent domain’ schemes by local municipalities to seize mortgages out of legally binding securities for purposes of rewriting their terms, prohibit the GSEs from purchasing or guaranteeing loans originated in municipalities where such practices have been employed during the last ten years.” Executive Summary of the Protecting American Homeowners (PATH) Act, July 11, 2013, at 2.7

65. The concerns expressed by the FHFA and the House Financial Services Committee are well-founded. The Seizure Program will have a devastating effect on interstate commerce, including on the mortgage-backed securities market and the national housing market, and would detrimentally affect both borrowers and lenders.

C. The Adverse Effects on the City and Its Homeowners

66. The City, and its residents, would not be spared from the harm caused by the Seizure Program. The Seizure Program will have negative consequences for borrowers and prospective homeowners with respect to lending products in communities that seize mortgage loans at unfairly reduced values through eminent domain. The risks associated with lending in such communities will force lenders to place more stringent conditions on borrowers seeking a mortgage. With less people qualifying for mortgages, homeownership rates would drop and property values would plummet.

67. The relatively small number of select City homeowners who could potentially receive a windfall under the Program by having their underwater mortgages refinanced will not offset the devastation to the local housing market and economy due to the Seizure Program’s chilling effect on credit.

68. City homeowners whose loans are in the Seizure Program actually may be damaged by it. Debt forgiveness generally is treated as taxable income for both state and federal income tax purposes. The Seizure Program intends to seize loans at a price that is hundreds of thousands of dollars lower than the principal balance on the loan. This principal balance reduction may be treated as debt forgiveness and subject to income tax. Thus, these select City homeowners could owe upwards of six figures in income tax liability. Even more, unlike mortgage debt, income tax debt is not necessarily dischargeable in bankruptcy. Instead of creating more stable neighborhoods, having more money in our local economy to stimulate community wealth, and saving homeowners money on their mortgage payments, as MRP and the City claim will happen, the Seizure Program in fact may undermine the growing economy and push the City back into recession. Although certain federal and state programs temporarily allow for mortgage debt forgiveness to be excluded from taxable income, it is far from clear whether the Seizure Program would qualify for any such exclusion or whether the Seizure Program would complete the seizure process before the expiration of the tax holiday at the end of 2013.

III. INJUNCTIVE RELIEF IS NECESSARY TO PREVENT IMMEDIATE AND IRREPARABLE HARM.

69. Defendants should be enjoined from implementing the Seizure Program. The Seizure Program would cause significant and widespread harm, and the transactions that will occur under the Seizure Program will be exceedingly difficult, if not impossible, to unwind.

70. Under the Seizure Program, once new loans are issued to refinance the original loans, they would be securitized. Thus, to unwind these unlawful seizures would require extinguishing the new loan—thereby harming the new trust that holds that loan, and its beneficiaries—and then reinstating the homeowner’s old loan. It is doubtful that either step of this process could occur—that is, that MRP could “claw back” the new loan, and any payments...
that have been made, from the new trust and its investors, or that the Trusts could reinstate the
old loans.

71. Nor could money damages adequately compensate the Trusts. First, widespread
seizure and extinguishment of the loans may cause significant damage to the Trusts and their
beneficiaries, including, among other things, causing the Trusts to lose their REMIC status and
affecting the credit rating of the Trusts’ certificates and the market value of trust securities,
which could cause systemic problems for other RMBS securitizations and their
Certificateholders—including the Trusts—that cannot be compensated by money damages.

72. Second, even if money damages could somehow be adequate, there is serious
doubt that Defendants would have the financial means necessary to compensate the Trusts (at the
same time that they also must compensate all similarly-situated RMBS trusts) for the potentially
hundreds of millions of dollars in losses caused by the Seizure Program, in which case the Trusts
will be left without recourse for their loss.

**JUSTICIABLE DISPUTE**

73. By reason of the foregoing, there now exists a justifiable dispute and controversy
for which immediate relief is necessary.

74. Accordingly, Plaintiff seeks injunctive and declaratory relief as set forth herein.

**CLAIMS FOR RELIEF**

**FIRST CLAIM**

**(DECLARATORY RELIEF REGARDING VIOLATION OF THE “PUBLIC USE”
REQUIREMENT OF THE TAKINGS CLAUSES OF THE U.S. AND CALIFORNIA
CONSTITUTIONS, THE RICHMOND CITY CHARTER, AND CLAIM UNDER 42

**(AGAINST ALL DEFENDANTS)**

75. Plaintiff repeats and reallege the allegations contained in each preceding
paragraph as if fully set forth herein.

76. The Fifth Amendment to the U.S. Constitution provides that “private property”
shall not be “taken for public use, without just compensation” (the “Takings Clause”). 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.

77. 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.

78. California Constitution Article I, section 19 provides that private property may be
taken only for a “public use.”

79. The Richmond City Charter Article II, section 19 provides that a private property
may be taken only for a “public use.”

80. The Seizure Program is carried out by Defendants, who are inextricably
intertwined, under the color of state law.

81. The Seizure Program violates the “public use” requirement of the Takings Clause
of the Fifth and Fourteenth Amendments, the California Constitution, and the Richmond City
Charter.

82. The Seizure Program is not implemented for a public purpose, but rather for the
purpose of seizing property from one set of private entities (the Trusts) to enrich MRP, a private
investment firm, and its investors. Even if individual homeowners do benefit, and those benefits
are not wiped out by, for example, federal tax liability, those homeowners are private parties as
well.

83. The stated justifications for the Seizure Program—to prevent “blight” or some
other “public” harm caused by foreclosures—are mere pretexts for this profit-driven scheme.
Indeed, the fact that the Seizure Program primarily targets performing loans—loans that will be
the most profitable to restructure and sell but are the least likely to default—shows that the
Seizure Program is designed to create profits for MRP and its investors. Furthermore, even if the
purported justification of preventing future foreclosures were true, prevention of future blight or
harm is not a valid public use.
84. In addition, the Seizure Program would not benefit the City's citizens on a whole, but would instead lead to windfalls for the select group of homeowners who meet a loan profile profitable to MRP and its investors, to the detriment of all others. Even this small group of intended beneficiaries may receive a severe tax burden that would offset any windfall and may worsen the homeowners' financial situations. Further, the Seizure Program expressly excludes many borrowers and primarily targets performing mortgage loans that are not in default or foreclosure. If the Seizure Program is fully implemented and performing loans are seized for well-below their unpaid principal balance, and thus at significant losses to the Trusts holding those loans, lenders will be unwilling to extend credit in the City at the current level, creating, at a minimum, a chilling effect on the local home lending environment. This will have severe consequences for current and prospective City homeowners.

85. For all of the reasons asserted herein, there is an actual controversy between Plaintiff and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

86. Defendants have taken substantial steps towards seizing loans under the Seizure Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably harmed.

87. Accordingly, Plaintiff respectfully requests that the Court issue a judgment for declaratory and injunctive relief against Defendants, declaring that the implementation of the Seizure Program would violate the Fifth and Fourteenth Amendments of the U.S. Constitution, Article I, section 19 of the California Constitution, and Article II, section 19 of the Richmond Charter, and permanently enjoining Defendants from implementing any aspect of the Seizure Program.
SECOND CLAIM

(DECLARATORY RELIEF REGARDING VIOLATION OF THE PROHIBITIONS
AGAINST EXTRATERRITORIAL SEIZURES UNDER THE TAKINGS CLAUSES OF
THE U.S. AND CALIFORNIA CONSTITUTIONS AND THE CALIFORNIA CODE OF

AGAINST ALL DEFENDANTS)

88. Plaintiff repeats and reallege the allegations contained in each preceding
paragraph as if fully set forth herein.

89. The Fifth Amendment to the U.S. Constitution prohibits a local government from
extraterritorially seizing property pursuant to eminent domain powers. 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.

90. 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.

91. The California Constitution prohibits local governments from extraterritorially
seizing property pursuant to eminent domain powers.

92. Under section 1240.050 of the California Code of Civil Procedure, a local public
entity may acquire by eminent domain only property located within its territorial limits. Under
section 1250.020 of the California Code of Civil Procedure, an eminent domain proceeding must
be commenced in the county in which the property sought to be taken is located.

93. The Seizure Program is carried out by Defendants, who are inextricably
intertwined, under the color of state law.

94. Defendants’ implementation of the Seizure Program violates prohibitions against
extraterritorial property seizures under the Fifth and Fourteenth Amendments of the U.S.
Constitution, the California Constitution, and the California Code of Civil Procedure. The debt
instruments that Defendants target under the Seizure Program are not located within the
territorial boundaries of the City and are held by Trusts located outside of Richmond. Because
the situs of a debt instrument for eminent domain purposes is the location of the physical
instrument, and the situs of an intangible debt is the location of the creditor, Defendants have no
power to seize these outside-of-Richmond debts.

95. In addition, the notes evidencing the mortgage loans are held outside of the
territorial boundaries of the City. Defendants have no power to effect extraterritorial seizures of
those tangible instruments.

96. For all of the reasons asserted herein, there is an actual controversy between
Plaintiff and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and
2202.

97. Defendants have taken substantial steps towards seizing loans under the Seizure
Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
harmed.

98. Accordingly, Plaintiff respectfully requests that the Court issue a judgment for
declaratory and injunctive relief against Defendants, declaring that the implementation of the
Seizure Program would violate the Fifth and Fourteenth Amendments of the U.S. Constitution,
the California Constitution, and the California Code of Civil Procedure, and permanently
enjoining Defendants from implementing any aspect of the Seizure Program.

THIRD CLAIM

(DECLARATORY RELIEF REGARDING VIOLATION OF THE COMMERCE
AGAINST ALL DEFENDANTS)

99. Plaintiff repeats and reallege the allegations contained in each preceding
paragraph as if fully set forth herein.

100. Article I, section 8, clause 3 of the U.S. Constitution (the “Commerce Clause”)
gives Congress the power to regulate commerce among the several states. The Commerce
Clause bars states and their political subdivisions from taking action designed to benefit in-state

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
economic interests by burdening out-of-state interests. Direct regulation of interstate commerce by the states and their political subdivisions is prohibited, and incidental regulation is permissible only where the burden imposed on such commerce is not excessive in comparison with the putative local benefits.

101. 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.

102. The Seizure Program is carried out by Defendants, who are inextricably intertwined, under the color of state law.

103. Defendants violate the Commerce Clause of the U.S. Constitution by implementing the Seizure Program, which is designed to benefit local Defendants' own economic interests at the expense of out-of-Richmond and out-of-state interests, including the Trusts that hold the mortgage loans targeted for seizure.

104. In addition, the Seizure Program is a direct regulation of interstate commerce by the City. The Seizure Program expressly targets for seizure private-label mortgage loans held by out-of-Richmond and out-of-state Trusts. The Seizure Program thus seeks to impermissibly coerce interstate transactions. In addition, the Trusts are investment vehicles designed to distribute economic and financial risk by holding a diversified collateral base of mortgage loans, including loans that are diverse based on, among other factors, their geographic and risk profiles. Thus, by design, the Trusts hold not only loans secured by property in the City or even California, but from a variety of states and localities.

105. Also, the private-label mortgage loans targeted by MRP at issue here were acquired by a private sponsor, who securitized them in private RMBS Trusts, in which the loans are serviced, and mortgage payments flow through the Trusts to be ultimately distributed to the Trusts' beneficiaries. Therefore, the Seizure Program would directly regulate an investment structure that by its very nature depends on a pool of collateral located in different states, and on
the interstate flows of proceeds from homeowners, to loan servicers, to the Trusts, and then
ultimately to the Trusts’ investors.

106. Furthermore, the residential mortgage-backed securities market is a national
industry that crosses state lines, with investors and other market participants located throughout
the country. The Seizure Program would significantly and directly regulate, if not destroy, this
market by seizing assets from nationwide trusts.

107. Moreover, the burden imposed on interstate commerce by the Seizure Program
would be excessive, and would greatly outweigh any purported benefits to the City and its
residents. Among other things, the Seizure Program could cause tens of millions of dollars in
losses to the trusts that hold the approximately 624 targeted mortgage loans, which is just the
first wave of the Seizure Program. It also would upend the heavily negotiated investment
structures used across the national residential mortgage backed securitization industry, diminish
investor confidence in such structures, and have a chilling effect on credit and insurance of
mortgaged properties and loans throughout the U.S. Moreover, it could severely disrupt the
uniform application of the REMIC rules, which Congress enacted to encourage private
securitization. In addition, the purported benefits to the City—preventing foreclosures and their
local consequences—are non-existent. The Seizure Program does not aim to seize loans in
default or at serious risk of default or foreclosure, but performing loans at low risk of default,
which would not address the harms that the Seizure Program purports to prevent. The potential
benefits to the relatively small number of private City homeowners receiving a windfall under
the Seizure Program (should that windfall not be blown away by the tax liability) would not
outweigh the harm that the Seizure Program would cause to the Trusts and the national economy.

108. For all of the reasons asserted herein, there is an actual controversy between
Plaintiff and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and
2202.

109. Defendants have taken substantial steps towards seizing loans under the Seizure
Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
harmed.
110. Accordingly, Plaintiff respectfully requests that the Court issue a judgment for declaratory and injunctive relief against Defendants, declaring that the implementation of the Seizure Program would violate the Commerce Clause of the U.S. Constitution, and permanently enjoining Defendants from implementing any aspect of the Seizure Program.

FOURTH CLAIM


111. Plaintiff repeats and reallege the allegations contained in each preceding paragraph as if fully set forth herein.

112. Article I, section 10 of the U.S. Constitution—the “Contracts Clause”—prohibits states from “imparing the Obligation of Contracts.” The Contracts Clause prevents states and their political subdivisions from passing any law that would abrogate debts of their citizens, where that law would impair commercial intercourse and threaten the existence of credit.

113. 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.

114. The Seizure Program is carried out by Defendants, who are inextricably intertwined, under the color of state law.

115. Defendants violate the Contracts Clause by implementing a scheme that would severely impair the Trusts’ contractual rights to receive full payments of unpaid principal from borrowers. In exchange, the Seizure Program provides cash payments worth significantly less than the rights abrogated by Defendants. The purpose of this significant impairment of contractual rights is improper and without a legitimate public purpose or necessity: to abrogate debts owed by a select group of that jurisdiction’s residents while enriching a private investment firm and its backers.
116. For all of the reasons asserted herein, there is an actual controversy between
Plaintiff and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and
2202.

117. Defendants have taken substantial steps towards seizing loans under the Seizure
Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
harmed.

118. Accordingly, Plaintiff respectfully requests that the Court issue a judgment for
declaratory and injunctive relief against Defendants, declaring that the implementation of the
Seizure Program would violate the Contracts Clause of the U.S. Constitution, and permanently
enjoining Defendants from implementing any aspect of the Seizure Program.

FIFTH CLAIM

(DECLARATORY RELIEF REGARDING VIOLATION OF THE “JUST
COMPENSATION” REQUIREMENTS OF THE TAKINGS CLAUSE OF THE U.S. AND

AGAINST ALL DEFENDANTS)

119. Plaintiff repeats and reallege the allegations contained in each preceding
paragraph as if fully set forth herein.

120. 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.

121. 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.

122. A property owner is entitled to just compensation for any taking under Article I,
section 19 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.

123. The Seizure Program is carried out by Defendants, who are inextricably
intertwined, under the color of state law.

124. Defendants violate the just compensation requirements of the Takings Clause of
the U.S. Constitution and California Constitution. The Seizure Program proposes seizing
performing mortgage loans at fractions of their unpaid principal balance, prices that are below
the fair market value even if the loans would be in default. To achieve its profit goals, the
Seizure Program must compensate the Trusts inadequately by seizing loans at prices far less than
their actual or fair market values. This unconstitutional feature of the Seizure Program is not
merely a question of the valuation of a single property, but is central to the Seizure Program’s
financing and viability.

125. For all of the reasons asserted herein, there is an actual controversy between
Plaintiff and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and
2202.

126. Defendants have taken substantial steps towards seizing loans under the Seizure
Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
harmed.

127. Accordingly, Plaintiff respectfully requests that the Court issue a judgment for
declaratory and injunctive relief against Defendants, declaring that the implementation of the
Seizure Program would violate the Takings Clause of the U.S. Constitution and California
Constitution, and permanently enjoining Defendants from implementing any aspect of the
Seizure Program.
SIXTH CLAIM

(DECLARATORY RELIEF REGARDING TORTIOUS INTERFERENCE WITH CONTRACT)

AGAINST ALL DEFENDANTS

128. Plaintiff repeats and reallege the allegations contained in each preceding paragraph as if fully set forth herein.

129. Under California law, a defendant commits the tort of intentional interference with contract where: (1) there is a valid contract between plaintiff and a third party; (2) defendant has knowledge of the contract; (3) defendant’s intentional acts are designed to induce a disruption of the contractual relationship; (4) the contractual relationship is disrupted; and (5) the disruption results in damages.

130. The implementation of the Seizure Program would constitute tortious interference with contracts. The loan agreements are valid contracts. Defendants have knowledge of those contracts, especially as Defendants select which loans to target for seizure based on certain terms of those contracts, such as the principal balance of the loans. The Seizure Program is designed to induce a disruption of the contractual relationship for Defendants’ own profit, by extinguishing those contracts through the City’s eminent domain powers so that the loans can be refinanced by the Defendants for a substantial profit. The Seizure Program is unconstitutional under the United States and California constitutions, and violates California’s statutory restriction on the use of eminent domain, and therefore Defendants are causing the disruption of the borrowers’ contracts with the Trusts through wrongful means—i.e., the illegal Seizure Program. Moreover, the disruption of the Trusts’ contracts is not merely an incidental effect of the seizures; the contracts are the very object of the seizure, and their abrogation is the purpose of the Seizure Program. The disruption to the contractual relationship that would be caused by the Seizure Program will result in significant damages to the Trusts that are parties to the contracts, and should be enjoined and declared unlawful.
131. For all of the reasons asserted herein, there is an actual controversy between
Plaintiff and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and
2202.

132. Defendants have taken substantial steps towards seizing loans under the Seizure
Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
harmed.

133. Accordingly, Plaintiff respectfully requests that the Court issue a judgment for
declaratory and injunctive relief against Defendants, declaring that the implementation of the
Seizure Program would constitute tortious interference with contract, and permanently enjoining
Defendants from implementing any aspect of the Seizure Program.

SEVENTH CLAIM
(DECLARATORY RELIEF REGARDING VIOLATION OF CAL. CODE CIV. PROC.
§ 1240.030)
AGAINST ALL DEFENDANTS

134. Plaintiff repeats and reallege the allegations contained in each preceding
paragraph as if fully set forth herein.

135. Section 1240.030 of the California Code of Civil Procedure provides that the
power of eminent domain may exercised to acquire property “only if all of the following are
established: (a) The public interest and necessity require the project. (b) The project is planned
or located in the manner that will be most compatible with the greatest public good and the least
public injury. (c) The property sought to be acquired is necessary for the project.”

136. The Seizure Program violates section 1240.030 because public interest and
necessity do not require the seizure of the Trust’s loans under the Seizure Program, and it is not
planned in the manner that is the most compatible with the greatest public good and the least
private injury. Far from being required or from being implemented for the public good, the
Seizure Program has been devised for the purpose of seizing property from one set of private
entities (the Trusts) to enrich MRP, a private investment firm, and its investors. The fact that the
Seizure Program principally targets performing loans shows that it is not designed to prevent
foreclosures or their economic consequences, but rather to confer private benefits on a select set of individuals.

137. In addition, the Seizure Program would not benefit the City’s residents on a whole, but would instead lead to windfalls for the select group of homeowners that meet a loan profile profitable to Defendants and MRP’s investors, to the detriment of all others. Even this small group of intended beneficiaries may receive a severe tax burden that would offset any windfall and may worsen their financial situations. Further, the Seizure Program expressly excludes many borrowers and principally targets performing mortgage loans that are not in default or foreclosure. If the Seizure Program is fully implemented and performing loans are seized for well-below their unpaid principal balance, and thus at significant losses to the Trusts holding those loans, future lenders will be unwilling to extend credit in Richmond at the current level, creating, at a minimum, a chilling effect on the local home lending environment. This will have severe consequences for current and prospective City homeowners.

138. As described above, the private injury that this Seizure Program would inflict will vastly outweigh its minimal or nonexistent benefits.

139. For all of the reasons asserted herein, there is an actual controversy between Plaintiff and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

140. Defendants have taken substantial steps towards seizing loans under the Seizure Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably harmed.

141. Accordingly, Plaintiff respectfully requests that the Court issue a judgment for declaratory and injunctive relief against Defendants, declaring that the implementation of the Seizure Program would violate section 1240.030 of the California Code of Civil Procedure, and permanently enjoining Defendants from implementing any aspect of the Seizure Program.

EIGHTH CLAIM

(ALTERNATIVE CLAIM FOR DECLARATORY RELIEF REGARDING VIOLATION OF THE PROHIBITION AGAINST TAKING OWNER-OCUPIED RESIDENCES FOR 30 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
THE PURPOSE OF CONVEYING IT TO A PRIVATE PERSON UNDER THE
CALIFORNIA CONSTITUTION
AGAINST ALL DEFENDANTS)

142. Plaintiff repeats and reallege the allegations contained in each preceding
paragraph as if fully set forth herein.

143. Plaintiff pleads this claim as an alternative to other alleged claims and only to the
extent that the mortgage loans constitute an owner-occupied residence in the City, and thus,
Article I, section 19(b) of the California Constitution applies and renders the Seizure Program
unconstitutional.

144. Article I, section 19(b) of the California Constitution provides that “local
governments are prohibited from acquiring by eminent domain an owner-occupied residence for
the purpose of conveying it to a private person.”

145. As an alternative to the claims pleaded above, if the Court determines that the
mortgage loans at issue in the Seizure Program constitute owner-occupied residences in the City,
the Seizure Program would thus violate the prohibition against taking owner-occupied residences
for the purpose of conveying it to a private person of the California Constitution. The Seizure
Program is implemented expressly for the purpose of seizing an interest in an owner-occupied
residence to convey to (and enrich) private entities including MRP, a private investment firm,
and its investors, which are funding the seizures. Indeed, the Seizure Program hinges on the City
exercising eminent domain solely to convey the interest seized to private entities and those
entities’ supplying the City with the funds to conduct the seizure. Without these features, the
Seizure Program collapses.

146. As an alternative to the claims pleaded above, the Seizure Program does not
qualify for the exceptions to this prohibition because the stated justifications for the Seizure
Program—to prevent foreclosures and their attendant economic affects—are mere pretexts for
this profit-driven scheme. Furthermore, the Seizure Program will inflict significant harm, both
locally and nationally, with no likely benefit to the City or its residents.
147. For all of the reasons asserted herein, there is an actual controversy between
Plaintiff and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and
2202.

148. Defendants have taken substantial steps towards seizing loans under the Seizure
Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
harmed.

149. Accordingly, Plaintiff respectfully requests that the Court issue a judgment for
declaratory and injunctive relief against Defendants, declaring that the implementation of the
Seizure Program would violate Article I, section 19(b) of the California Constitution, and
permanently enjoining Defendants from implementing any aspect of the Seizure Program.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests 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 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 Seizure Program on that basis;

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

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

D. Declare that Defendants’ implementation of the Seizure Program violates Article
I, section 19(a) of the Constitution of the State of California, and enjoin Defendants from
implementing the Seizure Program on that basis;

E. Alternatively, declare that Defendants’ implementation of the Seizure Program
violates Article I, section 19(b) of the California Constitution, and enjoin Defendants from
implementing the Seizure Program on that basis;
F. Declare that Defendants’ implementation of the Seizure Program violates Article II, section 19 of the Richmond City Charter, and enjoin Defendants from implementing the Seizure Program on that basis;

G. Declare that Defendants’ implementation of the Seizure Program violates section 1263.320 of the California Code of Civil Procedure, and enjoin Defendants from implementing the Seizure Program on that basis;

H. Declare that Defendants’ implementation of the Seizure Program violates section 1240.050 of the California Code of Civil Procedure, and enjoin Defendants from implementing the Seizure Program on that basis;

I. Declare that Defendants’ implementation of the Seizure Program violates section 1240.030 of the California Code of Civil Procedure, and enjoin Defendants from implementing the Seizure Program on that basis;

J. Declare that Defendants’ implementation of the Seizure Program constitutes tortious interference with contract and, enjoin Defendants from implementing the Seizure Program on that basis;

K. Declare that Defendants’ Implementation of the Seizure Program constitutes a violation of 42 U.S.C. § 1983 and, enjoin Defendants from implementing the Seizure Program on that basis;

L. Issue a temporary restraining order and preliminary and permanent injunctions restraining Defendants, their officers, employees, agents, successors, and assigns from implementing the Seizure Program;

M. Award to Plaintiff the costs and expenses of suit and counsel fees pursuant to 42 U.S.C. § 1988; and

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

Dated: August 6, 2013

MAYER BROWN LLP
DONALD M. FALK
BRONWYN F. POLLOCK

By: _______________

Bronwyn F. Pollock
Attorneys for Plaintiffs
THE BANK OF NEW YORK MELLON
(F/K/A THE BANK OF NEW YORK)
Exhibit A
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<tr>
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Exhibit B
July 31, 2013

Ms. Loretta Lundberg  
Bank of New York Mellon  
101 Barclay Street  
New York, NY 10286

Dear Ms. Lundberg:

This letter is being forwarded to you as the Servicer of the mortgage loans in the private securitization trust(s) listed in Attachment A. The City of Richmond ("City"), has been investigating the acquisition of mortgage loans from the trust(s) as part of a public program to modify underwater mortgage loans to reduce principal and avoid foreclosures. The City is experiencing an historic home mortgage crisis that is harming the community in many ways, including: unprecedented rates of default and foreclosure; the loss of jobs, homeowner equity, family wealth and shelter; reductions in income, consumer demand, investment, property values, and tax revenues; and an increase in vandalism, abandoned homes and other decay that harm the economy and the quality of life for residents.

By way of this letter, the City hereby offers to acquire all rights to the mortgage loans listed in Attachment A (the "Loans"). If you do not believe that you are the correct party to consider this offer, please notify me immediately of the party that you believe is the correct party to consider this offer.

The City had the Loans appraised on June 30, 2013 to determine their fair market value. Mortgage Industry Advisory Corporation conducted the appraisal. Based on the appraisal, the City hereby offers to purchase the Loans (free and clear of any encumbrances to title or other interests that the City, in its discretion, deems unacceptable) for the fair market value determined by the appraisal, which is set out in Attachment B (the "Purchase Price"). The Purchase Price is the full amount believed by the City to be just compensation for the Loans and is not less than the appraisal of the fair market value of the Loans.

The basis for this offer is set forth in Attachment B, which summarizes the basis for the appraisal and is made a part of this offer by reference. The Purchase Price amount is for all owners of any interest in the Loans, and division of this amount among parties that have an interest in the Loans will be your responsibility.

This offer is subject to the approval of the City’s City Council, including final conditions that the City Council requires as part of its program.

If you certify that you are the owner of the Loans with the authority to convey them to the City, and wish to obtain your own independent appraisal of the Loans, the City may be willing to provide reasonable reimbursement. Please contact me if you are interested in discussing this issue.

If the offer price is acceptable to you, please so indicate to the undersigned, in writing. This matter will then be presented to the City Council, which has final ratification authority. Upon City Council approval, the City will prepare and forward to you a proposed agreement to acquire the Loans. If for any reason you are not satisfied with this offer of just compensation, and have relevant information you would like the City to consider, please contact the undersigned. In addition, you

450 Civic Center Plaza, Richmond, CA 94804-1630  
Telephone: (510) 620-6512  Fax: (510) 620-6542  www.ci.richmond.ca.us
should be aware that, in the event that negotiations fail to result in agreement, and the City decides to proceed with the acquisition of the Loans through eminent domain, the owner will have the right to have the amount of just compensation to be paid by the City for the Loans fixed by a court of law. Please be advised that, in such event, the terms of this offer and the contents of this letter may be excluded from consideration as an offer of settlement, under California Evidence Code sections 1152, 1154, or other applicable provisions of law.

Included with this letter is a pamphlet describing the eminent domain process in California. This pamphlet is provided for informational purposes only and should not be construed as legal advice. Some parts of the pamphlet are addressed to the acquisition of real property and may not be applicable to the present situation.

I hope that this offer meets with your approval and that it can serve as the basis for a quick and mutually beneficial transaction. I look forward to hearing from you after you have had the opportunity to review it. Again, if you are not the correct party with which to negotiate for the acquisition of the Loans, please let me know immediately. In any event, please provide a response no later than August 13, 2013.

The mortgage loans listed in Attachment A are a subset of the mortgage loans the City is interested in acquiring. The full list of mortgage loans the City is interested in acquiring at the present time is provided in Attachment C. The City is making offers to acquire groups of loans based on the Trustee/Servicer information available to the City. If you are the party with authority to consider an offer to purchase any of the other mortgage loans listed in Attachment C and have not received a letter from the City offering to purchase the loans, please let me know immediately.

Thank you for your cooperation.

Sincerely,

City of Richmond

by

William A. Lindsay
City Manager

Attachments and Enclosure
EMINENT DOMAIN – Information Pamphlet

I. Introduction

Eminent domain is the power of the government to purchase private property for a "public use" so long as the property owner is paid "just compensation." Whenever possible, the City of Richmond tries to avoid use of the eminent domain power, exercising it only when it is necessary for a public project. The decision to acquire private property for a public project is made by the City of Richmond only after a thorough review of the project, which often includes public hearings.

This pamphlet provides general information about the eminent domain process and the rights of the property owner in that process.

- What is a "public use"?

A "public use" is a use that confers public benefits, like the provision of public services or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects such as street improvements, construction of water pipelines or storage facilities, construction of civic buildings, redevelopment of blighted areas, and levee improvements to increase flood protection. Some public uses are for private entities, such as universities, hospitals and public utilities, which serve the public.

- What is "just compensation"?

Just compensation is the fair market value of the property being acquired by the government. The state law definition of fair market value is "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available."

II. The Eminent Domain Process and the Property Owner's Rights

The eminent domain process begins with a public use project. When selecting a project location, the goal is to render the greatest public good and the least private

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1 This pamphlet reflects the current law as of January 1, 2008. However, the information in this pamphlet is not, nor should it be construed as, legal advice. Additionally, some sections of this pamphlet are applicable only to the acquisition of real property and may not be applicable in other situations. You should consult with qualified legal counsel regarding your specific situation rather than relying on this pamphlet as legal advice. The statements in this pamphlet are a general summary of the eminent domain process and are not binding on the City of Richmond.
injury or inconvenience. If it is determined that all or a portion of your property may be necessary for a public use project, the City of Richmond will begin the appraisal process to determine the property’s fair market value.

- **How is the fair market value of my property determined?**

  The City of Richmond will retain an appraiser to appraise your property. In the case of real property, the appraiser will invite you to accompany him or her during an inspection of your property. You may give the appraiser any information about improvements and any special features that you believe may affect the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to ensure that nothing of value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property meet with the appraiser instead.

  After the inspection, the appraiser will complete an appraisal that will include the appraiser's determination of your property's fair market value and the information upon which the fair market value is based. The appraiser will provide the City of Richmond with the appraisal. The City of Richmond will then make a written offer to purchase the property. The offer will also include a summary of the appraisal. The offer will be for no less than the amount of the appraisal.

- **What factors does the appraiser consider in determining fair market value?**

  Each parcel of real property is different and, therefore, no single formula can be used to appraise all properties. Among the factors an appraiser typically considers in estimating fair market value are:

  - The location of the property;
  - The age and condition of improvements on the property;
  - How the property has been used;
  - Whether there are any lease agreements relating to the property;
  - Whether there are any environmental issues, such as contaminated soil;
  - Applicable current and potential future zoning and land use requirements;
  - How the property compares with similar properties in the area that have been sold recently;
  - How much it would cost to reproduce the buildings and other structures, less any depreciation; and
  - How much rental income the property produces, or could produce if put to its highest and best use.

  If the property to be appraised is not real property, the appraiser would consider factors commonly considered in determining the market value of that type of property.

- **Will I receive a copy of the appraisal?**
The City of Richmond will provide you with its purchase offer, a summary of the appraiser’s opinion, and the basis for the City of Richmond’s offer. Among other things, the offer letter will include:

- A general statement of the City of Richmond’s proposed use for the property;
- An accurate description of the property to be acquired;
- A list of the improvements covered by the offer;
- The amount of the offer; and
- The amount considered to be just compensation for each improvement which is owned by a tenant and the basis for determining that amount.

However, the City of Richmond is only required to show you a copy of the full appraisal if your property is an owner-occupied residential property with four or fewer residential units. Otherwise, the City of Richmond may, but is not required, to disclose its full appraisal during negotiations (though different disclosure requirements apply during the litigation process if the issue of fair market value goes to court).

- Can I have my own appraisal done?

Yes. You may decide to obtain your own appraisal of the property in negotiating the fair market value with the City of Richmond. For real property, at the time of making its initial offer to you, the City of Richmond will offer to reimburse you the reasonable costs, not to exceed $5,000, of an independent appraisal of your property. To be eligible for reimbursement, the independent appraisal must be conducted by an appraiser licensed by the State Office of Real Estate Appraisers.

- What advantages are there in selling my property to the City of Richmond?

A real estate transaction with the City of Richmond is typically handled in the same way as the sale of private property. However, there may be a financial advantage to selling to the City of Richmond.

- You will not be required to pay for real estate commissions, title costs, preparation of documents, title policy or recording fees required in closing the sale. The City of Richmond will pay all these costs.

- Although the City of Richmond cannot give you tax advice or direction, you might also be eligible for certain property and income tax advantages. You should check with the Internal Revenue Service (IRS) for details or consult your personal tax advisor.

- If only a portion of my property is taken, will I be paid for the loss to my remaining property?
In general, when only a part of your property is needed, every reasonable effort is made to ensure you do not suffer a financial loss to the "remainder" property. The City of Richmond will pay you the fair market value of the property being taken as well as compensation for any loss in value to your remaining property that is not offset by the benefits conferred by the project. The compensation for the loss in value to your remaining property is often referred to as "severance damages."

Also, if any remaining part is of such a size, shape, or condition as to be of little market value, the City of Richmond will offer to acquire that remaining part (or remnant) from you, if you so desire.

- **Will I be compensated for loss of goodwill to my business?**

If you are the owner of a business that is conducted on the property being acquired, you may have a right to compensation for lost business goodwill if the loss is caused by the acquisition of the property. "Goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

- **What will happen to the loan on my property?**

Where the City of Richmond is acquiring the entire property, generally the compensation payable to the owner is first used to satisfy outstanding loans or liens as in a typical real estate transaction. Where less than the entire property is being acquired, whether outstanding loans or liens are paid from the compensation will depend on the particular facts and circumstances.

- **Do I have to sell at the price offered?**

No. If you and the City of Richmond are unable to reach an agreement on a mutually satisfactory price, you are not obligated to sign an offer to sell or enter into a purchase agreement.

- **If I agree to accept the City of Richmond's offer, how soon will I be paid?**

If you reach a voluntary agreement to sell your property or an interest in the property to the City of Richmond, payment will be made at a mutually acceptable time. Generally, this should be possible within 30 to 60 days after a purchase/sale contract is signed by all parties.

- **What happens if we are unable to reach an agreement on the property's fair market value?**
The City of Richmond, to the greatest extent practicable, will make every reasonable effort to acquire your property by negotiated purchase. If, however, the negotiations are unsuccessful, the City of Richmond may either file an eminent domain action in a court located within the same county where your property is located or it may decide to abandon its intention to acquire the property. If the City of Richmond abandons its intention to acquire, it will promptly notify you.

If the City of Richmond proceeds with eminent domain, the first step is for City of Richmond staff to request authority from the City Council to file a condemnation action. The approval from the City Council is called a "Resolution of Necessity." In considering whether condemnation is necessary, the City Council must determine whether the public interest and necessity require the project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether your property is necessary for the project. You will be given notice and an opportunity to appear before the City Council when it considers whether to adopt the Resolution of Necessity. You may want to call an attorney or contact an attorney referral service right away. You or your representatives can raise any objections to the Resolution of Necessity and the condemnation either orally before the City Council or in writing to the City Council.

If the City Council adopts the Resolution of Necessity, the City of Richmond can file a complaint in court to acquire title to the property upon payment of the property's fair market value. The City of Richmond is the plaintiff. Anyone with a legal interest in the property, generally determined from a title report on the property (including tenants or mortgage holders), are named as defendants. Often, the City of Richmond will also deposit the amount the City of Richmond believes is the "probable amount of compensation" with the State Treasurer where the complaint is filed. A deposit must be made if the City of Richmond is seeking to acquire possession of the property before agreement is reached on the fair market value.

- Can the City of Richmond acquire possession of my property before the property’s fair market value is determined in the eminent domain lawsuit?

In some cases, the City of Richmond may decide it needs possession of the property before the property's fair market value is finally determined. In such a case, the City of Richmond must apply to the court for an "order for possession" to allow it to take possession and control of the property prior to resolution of the property's fair market value. The City of Richmond is required to schedule a hearing with the court on the proposed order for possession and to give you notice of the hearing. Notice must generally be sent at least 90 days before the hearing date if the property is occupied and 60 days before the hearing date if the property is unoccupied. A judge will decide whether the order for possession should be granted. As noted above, the City of Richmond must deposit with the State Treasurer the probable amount of just compensation in order to obtain possession of the property.
• Can I oppose the motion for an order for possession?

Yes. You may oppose the motion in writing by serving the City of Richmond and the court with your written opposition within the period of time set forth in the notice from the City of Richmond.

• Can I rent the property from the City of Richmond?

If the City of Richmond agrees to allow you or your tenants to remain on the property after the City of Richmond acquires possession, you or the tenants will be required to pay a fair rent to the City of Richmond. Generally, such rent will not be more than that charged as rent for the use of a property similar to yours in a similar area.

• Can I withdraw the amount deposited with the State Treasurer before the eminent domain action is completed, even if I don’t agree that the amount reflects the fair market value of my property?

Yes. Subject to the rights of any other persons having a property interest (such as a lender, tenant, or co-owner), you may withdraw the amount deposited with the State Treasurer before the eminent domain action is completed. If you withdraw the amount on deposit, you may still seek a higher fair market value during the eminent domain proceedings, but you may not contest the right of the City of Richmond to acquire the property, meaning you cannot contest that the acquisition of your property is for a public purpose or is otherwise improper.

You also have the right to ask the court to require the City of Richmond to increase the amount deposited with the State Treasurer if you believe the amount the City of Richmond has deposited less than the “probable amount of compensation.”

• Can I contest the condemning agency’s acquisition of the property?

Yes. Provided you have not withdrawn the amount deposited, you can challenge in court the City of Richmond’s right to acquire or condemn the property.

• What happens in an eminent domain trial?

The main purpose of an eminent domain trial is to determine the fair market value of your property, including compensable interests such as lost business goodwill caused by the taking or severance damages. The trial is usually conducted before a judge and jury. You (and any others with interests in the property) and the City of Richmond will have the opportunity to present evidence of value, and the jury will determine the property’s fair market value. In cases where the parties choose not to have a jury, the
judge will decide the property's fair market value. Generally, each party to the litigation must disclose its respective appraisals to the other parties prior to trial.

If you challenge the City of Richmond's right to acquire the property, the eminent domain trial will also determine whether or not the City of Richmond has the legal right to acquire the property. In such cases, the judge (not the jury) will make this determination before any evidence is presented concerning the property's fair market value.

At the end of the trial, the judge will enter a judgment requiring the City of Richmond to pay fair market value. Once the City of Richmond pays the amount listed in the judgment, the judge will enter a final order of condemnation. The City of Richmond will record the final order with the County Recorder, and title to the property will then pass to the City of Richmond.

- **Am I entitled to interest?**

Anyone receiving compensation in an eminent domain action is generally entitled to interest on that compensation from the date the condemning agency takes possession of the property until the person receiving the compensation has been fully paid. The rate and calculation of the interest is determined under formulas in State law.

- **Will the City of Richmond pay my attorneys' fees and costs.**

In an eminent domain action, you are entitled to be reimbursed by the condemning agency for your actual costs such as court filing fees. In some circumstances, you may also be entitled to be reimbursed by the condemning agency for your attorneys' fees in the lawsuit. Whether you will be entitled to receive reimbursement for your attorneys' fees will depend on the particular facts and circumstances of the case and the offers and demand for compensation made in the action.

- **Will I receive assistance with relocation?**

Any person, business, or farm operation displaced as a result of the property acquisition is typically entitled to relocation advisory and financial assistance for eligible relocation expenses, such as moving expenses. The amount of relocation compensation is determined on a case-by-case basis in accordance with prescribed law. Relocation benefits are handled separate and apart from the determination of the property's fair market value and are not part of the eminent domain process.

### III. Contact Information

We are available to answer your questions and to assist you in understanding the acquisition program and the eminent domain process. Should you desire further
information, please contact the City of Richmond using the contact information contained in the accompanying offer letter.
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**Memo:**

- March 3, 2023
- Review of account statements
- Adjustments made for errors
- Next review scheduled for April 1, 2023
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<td>Bank of New York</td>
<td>12/31/2006</td>
<td>32663359</td>
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**City of Richmond, California**
<table>
<thead>
<tr>
<th>Parcel Number</th>
<th>Address 1</th>
<th>Address 2</th>
<th>City</th>
<th>Zip Code</th>
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<tr>
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<td>Richmond</td>
<td>CT</td>
<td>65432</td>
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<tr>
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<td>789 Pine Rd</td>
<td>Richmond</td>
<td>CT</td>
<td>54321</td>
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<td>101 Maple St</td>
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<td>CT</td>
<td>43210</td>
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<td>CT</td>
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<td>11111</td>
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<td>CT</td>
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*Table showing various parcels in Richmond, CT*
<table>
<thead>
<tr>
<th>Zip Code</th>
<th>City</th>
<th>Street Name</th>
<th>Unit</th>
<th>Street Prefix</th>
<th>Dir.</th>
<th>Parcel Number</th>
<th>Location Number</th>
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<tr>
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<td>Santa Cruz</td>
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<td>NE</td>
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<td>Roosevelt</td>
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City of Richmond, California
## Trustee Exhibit B

<table>
<thead>
<tr>
<th>Trustee</th>
<th>LoanID</th>
<th>Balance</th>
<th>Price as % of Balance</th>
<th>Price</th>
</tr>
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<tbody>
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<td>265,860.77</td>
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<td>361,244.58</td>
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<td>Bank of New York</td>
<td>1190465323</td>
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<td>92%</td>
<td>420,674.13</td>
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<td>Bank of New York</td>
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<td>293,907.23</td>
<td>75%</td>
<td>220,151.21</td>
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<td>Bank of New York</td>
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<td>345,553.05</td>
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<td>67%</td>
<td>158,575.96</td>
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<td>Bank of New York</td>
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<td>312,321.75</td>
<td>76%</td>
<td>236,065.27</td>
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<td>92058835</td>
<td>190,151.92</td>
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<td>104,376.29</td>
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<td>59%</td>
<td>248,513.03</td>
</tr>
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<td>236,659.22</td>
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<td>239,135.88</td>
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<td>Bank of New York</td>
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<td>219,554.98</td>
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<td>25%</td>
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<td>Bank of New York</td>
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<td>Bank of New York</td>
<td>130265480</td>
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</tr>
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</table>

City of Richmond, California
<table>
<thead>
<tr>
<th>Trustee</th>
<th>LoanId</th>
<th>Balance</th>
<th>Price as % of Balance</th>
<th>Price</th>
</tr>
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<tbody>
<tr>
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</tbody>
</table>

City of Richmond, California
<table>
<thead>
<tr>
<th>Trustee</th>
<th>LoanId</th>
<th>Balance</th>
<th>Price as % of Balance</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
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City of Richmond, California
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<tr>
<td>John Doe</td>
<td>123 Main St.</td>
<td>555-1234</td>
<td><a href="mailto:jdoe@email.com">jdoe@email.com</a></td>
<td>Business Card</td>
</tr>
<tr>
<td>Jane Doe</td>
<td>456 Apple Ave.</td>
<td>555-5555</td>
<td><a href="mailto:jane@email.com">jane@email.com</a></td>
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**City**

**State**

**Zip Code**

**Country**

---

**Contact Information**

- Phone: 555-1234
- Email: jdoe@email.com
- Address: 123 Main St.
- City: New York
- State: NY
- Zip Code: 10001
- Country: USA
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Exhibit C
Homeownership Protection Program

A Solution to a Critical Problem
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 the local level to acquire underwater mortgages through *minent 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:

I. Pre-screening and Evaluation of Publicly and Privately Available City Mortgage Data. The municipality informs qualifying borrowers.

II. Investor funds compensation escrow and municipality files eminent domain lawsuit.

III. Trustee/mortgagee transfers whole loan to municipality. Whole loan is held by document custodian.

IV. Loan is Restructured

V. Loan becomes part of a GNMA security.
A Step-by-Step Analysis of the Program's Operational Methodology

Transaction Activity

Manager City Select Underwater Mortgagors

Pre-screening and Evaluation of Publicly and Privately Available City Mortgage Data

Manager/investor Selects List of Target Mortgages

Investors Fund Compensation Escrow (and MRP Fee)

City Commences "Quick Take" Condemnation Proceeding

Court Sets Prelim. Compensation and Orders Mortgagor to Surrender Loan

Trustee/Mortgagor Transfers Loan to Municipality for Cash Consideration

Remaining Valuation Reserve Retained by City Until Final Value Determination

Subsequent Valuation Trial

Manager Initiates Refi Process with Gov't Approved Vendor

Loan Principal Reduced and Refinanced with New Gov't-Insured Mortgage

Investor Funds Closing Fees/Expenses

Conveyance of Refinanced Loans Authorized by Investor in Exchange for GNMA RMBS at Premium

Valuation Reserve Distributed to Mortgagors or Pre-designated Charity upon Court Order

Mortgage Resolution Partners

Investor Collateral

Pre-funding Tranche Commitment

Compensation Escrow Receipt

Whole Loans and Reserve Cash

Refinanced Whole Loan and Reserve Cash

GNMA RMBS
Program Contacts

Steven Gluckstern (Mortgage Resolution Partners, LLC)
sgluckstern@mortgageresolutionpartners.com
917 561 6503 (m)
415 678 5134 (o)

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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 D
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***

*HUD Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Position
**Household moving costs, legal fees and administrative charges
***Negative impact on the property value of close neighbors
Richmond Foreclosures

<table>
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<th>Housing</th>
<th># of Units*</th>
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<th>Future Foreclosures Of Private Label Mortgages**</th>
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**Fannie Mae Predicts that 50% of PLS Will Result in Foreclosures

*Source: 2010 Census
**Source: Fannie Mae 2011 10k
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.

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<td>Home Equity</td>
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<td>($100,000)</td>
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<td>Loan to Value Ratio (LTV)</td>
<td>80%</td>
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<tr>
<td>Monthly Payment</td>
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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

**PLS Trustee**

- Receives offer to purchase loan
  - yes: Accept offer?
    - yes: Proceed to prepackaged eminent domain settlement
    - no: no
  - no: no

**MRP**

- Identifies Possible Homeowners
  - Proceeds to offer to purchase loans
    - yes: Proceed?
      - yes: yes
      - no: no
    - no: no

- Makes offer to purchase loans
  - yes: yes
  - no: no

**City**

- Start: Hires MRP, Signs Advisory Agreement
  - Appoints Staff
  - Appoints Counsel

- Proceed?
  - yes: yes
  - no: no

- Builds community consensus to proceed with Eminent Domain motion. Drops homeowners that opt out.
  - yes: yes
  - no: no

- Prepare Resolution of Necessity Material
  - yes: yes
  - no: no

- RON Approved?
  - yes: yes
  - no: no

- File Eminent Domain Motion
  - yes: yes
  - no: no
Step 2. Home Owner May Opt Out

**City**
- Start: City Files Eminent Domain Motion – May be consensual
  - City approves homeowner presentation materials

**MRP/Local Realtors**
- Presents program to homeowners
  - Interested?
    - Yes: Qualifies for refi?
      - Yes: To Refinance Option
      - No: Qualifies For Lease?
        - Yes: To Lease Option
        - No: Dropped From Motion
    - No: Dropped From Motion

**Home Owner**
**Step 3: Lease/Purchase Solution**

**PLS Trustee**
- Receives $160,000
- Agreed Upon Fair Market Value of Underwater PLS Mortgage
- Delivers Underwater PLS Mortgage

**Funder**
- Funds $160,000 Loan Acquisition Price

**City**
- Obtains Order For Possession of Mortgage

**Mortgage Servicer/Title Company**
- Holds Underwater PLS Mortgage For City/Funder
- Sends $9,500 to City (5%)
- Sends $4,750 to Realtor representing Seller (2.5%)
- Sends $175,750 to Funder

**Home Buyer**
- Signs Lease, Buys Home When City Owns PLS Mortgage
- Sends $190,000 home purchase price to servicer

**Home Owner**
- Selects a Local Realtor as advisor
- Signs a market rate lease with an option to purchase, sells home to buyer.
- Credits a portion of rent to tenant’s purchase account
- Pays rent
- May buy home or continues to rent

- **Start:** Home Owner Opted For Lease/Purchase
## Sale and Leaseback Solution

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## Refinance Solution

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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 ______________, 2013 (the "Effective Date").

REQUITALS

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

_____________________________  __________________________
(signature)  (date)

Name (printed):

Mailing address:

Telephone no.:

E-mail address:

Date of Signing:

Attest

_____________________________
City Clerk

Approved as to form:

_____________________________
City Attorney
Mortgage Resolution Partners LLC

Representative: ________________________________ (signature) ____________ (date)

Name (printed): Graham Williams

Mailing address: 33 Pier South Embarcadero, Suite 201, San Francisco, CA 94111

Telephone no.: 415-795-2032

E-mail address: gwilliams@mortgageresolutionpartners.com

Date of Signing: ________________________________
Exhibit F
ROLL CALL

Present: Councilmembers Beckles, Butt, Myrick, and Mayor McLaughlin. Absent: Councilmember Bates, Rogers, and Vice Mayor Boozé arrived after the City Council adjourned to Closed Session.

PUBLIC COMMENT

The deputy city clerk announced that the purpose of the Evening Open Session was for the City Council to hear public comments on the following items to be discussed in Closed Session:

CITY COUNCIL

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Initiation of litigation pursuant to Subdivision (c) of Government Code Section 54956.9):

One Case

There were no public speakers.

The Evening Open Session adjourned to Closed Session at 5:33 p.m. The Closed Session adjourned at 6:28 p.m.

The Regular Meeting of the Richmond City Council was called to order at 6:30 p.m. by Mayor McLaughlin who led the Pledge of Allegiance to the Flag.

ROLL CALL

Present: Councilmembers Bates, Beckles, Butt, Myrick, Rogers, and Mayor McLaughlin. Abseat: Vice Mayor Boozé, was absent during Roll Call.

READING OF THE CODE OF ETHICS

Deputy City Clerk Ursula Deloa read the Code of Ethics.

STATEMENT OF CONFLICT OF INTEREST

None.
the Consent Calendar; continued Item J-10 to April 16, 2013; and withdrew Item J-1 from the agenda to be agendize on the April 16, 2013, City Council Agenda under Closed Session.

OPEN FORUM FOR PUBLIC COMMENT

Yolanda Jones expressed disappointment that her business was not included on the small business certified contractor’s list.

Charlie Walker expressed disappointment that black contractors are not given the opportunities to work on projects in Richmond.

Antwon Cloird gave comments that another councilmember apologized for comments made by a councilmember. He stated that councilmembers must respect one another.

Henry Parker invited everyone to the Second Annual “Reach for the Stars” Full Inclusion Fashion Show and Showcase working with children on the Autism spectrum, being held April, 27, 2013, at Lavonia DeJean Middle School, 3400 Macdonald Avenue, from 5:30 p.m. to 9:00 p.m. tickets are $10.00.

Joseph Puleo gave comments regarding the behavior of Human Resources Director and Assistant City Manager Leslie Knight and the lack of discipline for her behavior due to double-standards.

Etta Jones expressed disappointment that Yolanda Jones Construction Company was omitted from the small business certified contractor’s list. She encouraged the city council to make sure that it does not happen again.

Kathleen Wimer stated that those on the public payroll must act above not only impropriety but above the appearance of impropriety. Ms. Wimer stated that the City of Richmond cannot have a reputation as being corrupt for our own future together. Therefore, whatever discipline was imposed on Ms. Knight’s employment has to correct and extinguish this appearing of impropriety without granting any preferential treatment.

Alpha Buie gave comments regarding the plight of young African Americans seeking employment specifically ex-offenders returning to the community. She stated that many African American contractors are excluded from lists to bid for funding for their programs.
He encouraged the City Council to exam the issue so that residents in the area were able to enjoy the park also.

Stacie Plummer gave comments regarding the Richmond Charter. She stated that charter was created by the Richmond voters based on an unwavering foundation of public trust. Ms. Plummer stated that the charter starts with where the city manager must live, the prosecutorial duties of the city attorney, and entrust powers and duties of the City Council, and Personnel Board. She also stated that trust cannot be off-limits to the people. Ms. Plummer also stated that a debate regarding public trust began with City Manager Bill Lindsay’s press release.

Jackie Thompson stated that permits for soccer were issued for certain sections of Booker T. Anderson Park; however, the entire park was being used for soccer. Ms. Thompson also stated that bullying can be physical, mental, and emotional. She encouraged the City Council to review the Personnel Rules. She also stated that department heads should establish employee anti-bullying training.

Wesley Ellis stated that Councilmember Beckles should not flatter herself by thinking she could hurt his feelings. He stated that the rift between he and Councilmember Beckles began when she told him that he did not have a clue about anything, and called his name out among all the citizens seated in the Council Chambers.

Stan Fleury thanked Mayor McLaughlin and Councilmember Beckles for having the courage to start a discussion among the leadership of the City of Richmond regarding current issues taking place within the City of Richmond. Mr. Fleury stated that it was with great peril that issues were brought fourth to the City Council, and he encouraged the City Council to help employees and continue to listen to what they have to say.

Niechelle Gordan stated that she was trying to acquire a new business license within the City of Richmond and left a message with the appropriate department; however, no one returned her call. Mr. Lindsay will follow-up with the department.

Lalo Herrera gave comments regarding Human Resources Director and Assistance City Manager Leslie Knight stating she was the worst offender of the City’s policies and procedures.

Andre Soto congratulated Councilmember
undermines the credibility of management and he hopes that issues are resolved in a fair and equitable manner that preserves the integrity of city government.

Raymond Dryer thanked the City Council for pulling the resolution regarding Human Resources Director and Assistance City Manager Leslie Knight and taking the issue to Closed Session to hear the report in its entirety. Mr. Dryer stated that as children you learn that taking something that does not belong to you was theft, and encouraged the City Council to following through with a proper decision.

Michael Beer stated that there will not be a Silly Parade this year and thanked the many organizations and individuals for past support.

Bea Roberson encouraged citizens to attend the Marine Clean Energy (MCE) Meeting, Monday, April 22, 2013, from 6:30 p.m. to 8:30 p.m. in the Multipurpose Room at Levone De Jean Middle School, 3400 Mac Donald Avenue; citizens will learn and be able to ask questions regarding their options when MCE rolls out its program.

Sam Casas encouraged the City Council to establish an ethics commission and also to demand a detailed budget to restore public trust.

Bishop Andre Jackson invited everyone to a public meeting with Senator Loni Hancock, Friday, April 5, 2013; 1:30 to 3:30 p.m. in the Richmond Council Chambers, regarding the findings of the Chevron fire.

Marilyn Langlois stated that according the investigative report summary released there has been a violation of public trust by Human Resources Director and Assistance City Manager Leslie Knight; a top leader that should be a role-model to all employees and should be held accountable. Ms. Langlois stated that since the information that was shared indicated a misuse of public funds, the public wants and needs to know what would be done about it. Ms. Langlois also stated that she supports the residents and city employees that are calling for honesty, integrity, and fairness.

Juan Reardon stated that Richmond residents pay taxes to pay salaries of city staff, and it was essential that residents could trust the people spending the money. Mr. Reardon stated that those that manage others should be held to the highest standards of accountability. Mr. Reardon also reminded everyone that when Mayor McLaughlin learned that an individual in her office was embezzling funds, she immediately
encouraged the Mr. Lindsay to follow the example of Mayor McLaughlin and immediately stop tolerating fraud and remove those committing it.

Texanita Bluitt thanked the City Council for holding the joint meeting with the West Contra Costa County School Board and promoting renovations to the Kennedy Swim Center and schools throughout the City of Richmond. Ms. Bluitt stated that the community needs to work together to improve the quality of education for our children.

Rodney Ferguson stated that justice delayed was justice denied and that it was time for the City Council to do the right thing. He encouraged the City Council to be an example to all people that were trying to get their lives together and if the City Council could not make the hard decisions, then it would be difficult for others to make the hard decisions.

Charles Smith stated his address to the City Council by quoting from a speech by President Obama that stated “everyone plays by the same set of rules.” Ms. Smith stated that everyone playing by the same rules was one of the most cherished values. Mr. Smith stated that he would suggest that if Mr. Lindsay does not believe that Human Resources Director and Assistant City Manager Leslie Knight has committed crimes that merit the termination of her contract, then he was ethnically challenged.

Mike Parker thanked Stacie Plummer for the courage to demand that the City live up to the standards of integrity that citizens want. He also stated that a city only works when the citizens have trust in city government and that public trust in the City of Richmond leadership must be restored. Mr. Parker also stated that the City of Richmond must find a way to make it clear that there would be zero tolerance for any managers of the City of Richmond who believes that they are above the rules.

REPORT FROM THE CITY ATTORNEY OF FINAL DECISIONS MADE AND NON-CONFIDENTIAL DISCUSSIONS HELD DURING CLOSED SESSION

City Attorney Bruce Reed Goodmiller stated that there were no reportable actions.

CITY COUNCIL CONSENT CALENDAR

On motion of Councilmember Rogers, seconded by Councilmember Beckles all items marked with an (*) were approved by the unanimous vote of the
amount of $6,000, and approve an amendment to the Fiscal Year 2012/13 operating budget, increasing library fund revenue and expenditures in the amount of $6,000, allowing these LSTA funds to be used to purchase literacy materials for the Literacy for Every Adult Program (LEAP).

*Approved a contract with CPS HR Consulting to develop and administer promotional examinations for Fire Captain, Fire Engineer, and Fire Inspector I in an amount not to exceed $55,000 and for a term of April 3, 2013, to June 30, 2015.

*Adopted Resolution No. 25-13 amending the City of Richmond's Position Classification Plan to add the new classification of Duplicating/Mail Specialist I/II and delete the classifications of Duplicating/Mail Assistant and Senior Duplicating/Mail Assistant.

The matter to introduce an ordinance for first reading establishing the wages, salary, and compensation for the new classification of Duplicating/Mail Specialist I (Salary Range No. 12: $3,403 - $4,137/month) and, the new classification of Duplicating/Mail Specialist II (Salary Range No. 18: $3,743 - $4,551/month) was presented by City Manager Bill Lindsay. Diane Canepa gave comments. The matter was continued to April 16, 2013, to gather more information.

The matter to approve an amendment to the contract with Strongbuilt Construction Company for building repair work performed at 1350 Kelsey Street in the amount of $5,912.77, increasing the total cost of the project to $12,792.77, and extending the term through March 31, 2013, was presented by Project Manager Craig Murray. On motion of Vice Mayor Booze, seconded by Councilmember Myrick approved an amendment to the contract with Strongbuilt Construction Company by the following vote: Ayes: Councilmembers Bates, Butt, Myrick, Rogers, Vice Mayor Booze, and Mayor McLaughlin. Noes: None. Abstentions: None. Absent: Councilmember Beckles.

*Approved an amendment to the lease of property located at 500 23rd Street (RichmondBUILD III), extending the term for the six-months ending June 30, 2013, at a cost of $5,000 per month, for a total lease payment of $30,000.

*Approved an amendment to the contract with The Glen Price Group to develop the Richmond Workforce Investment Board Strategic Plan for 2013-2017 and various grant applications for the second year.
The matter to approve a one-year contract with Regina Almaguer, LLC for services as project manager of the Port of Richmond Public Art Project in an amount not to exceed $33,750 was presented by Arts Director Michele Seville. Angel Perez, Bruce Beyer, Tom Leatherman, and Fletcher Oakes gave comments. A motion was made by Councilmember Bates, seconded by Councilmember Beckles to approve a one-year contract with Regina Almaguer, LLC for services as project manager of the Port of Richmond Public Art Project. A substitute motion was made by Councilmember Butt to direct the Port Department to contribute the entire cost of $600,000 and contribute $225,000 to the Arts Advisory Committee and another $225,000 to finish the Bay Trail Project failed for lack of a second. The original motion passed by the following vote: Ayes: Councilmembers Bates, Beckles, Rogers, Vice Mayor Booze, and Mayor McLaughlin. Noes: Councilmember Butt. Abstentions: Councilmember Myrick. Absent: None.

The matter to approve the following reappointments to: Commission on Aging: Myrtle Braxton, incumbent, term expiring May 19, 2015; Delores Johnson, incumbent, term expiring May 19, 2015; Beverly Wallace, incumbent, term expiring May 19, 2014; Elie Williams, incumbent, term expiring May 19, 2014; Human Relations and Human Rights Commission: Betty Burris-Wright, incumbent, term expiring March 30, 2016; Point Molate Citizen Advisory Committee: Charles Smith, incumbent, term expiring May 3, 2015; Recreation and Parks Commission: Pam Saucer-Bilbo, incumbent, term expiring October 26, 2015; Economic Development Commission: Qiana Riley, incumbent, term expiring March 30, 2016, was pulled for public comments by Jackie Thompson. Following public comment on motion of Vice Mayor Booze, seconded by Councilmember Bates approved the reappointments by the unanimous vote of the City Council.

*-Adopted Ordinance No. 4-13 establishing the wages, salary, and compensation for the new classification of Source Control Superintendent (Salary Range No. 064D: $7,277 - $8,829/month).

The matter to approve an Advisory Services Agreement with Mortgage Resolution Partners, LLC to assist the City of Richmond in reducing the impact of the mortgage crisis, by advising on the acquisition of 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
burt left the meeting at 11:15 p.m. Leland Chan and Melvin Willis gave comments. A motion was made by Councilmember Beckles, seconded by Councilmember Myrick to approve an Advisory Services Agreement with Mortgage Resolution Partners, LLC. Councilmember Myrick requested a report back from staff regarding loan criteria and specifics. A substitute motion was made by Vice Mayor Booze, seconded by Councilmember Bates to hold the item over for 30 days to gather more information. Following discussion, Councilmember Bates withdrew his second. The original motion to approve an Advisory Services Agreement with Mortgage Resolution Partners, LLC passed by the following vote: **Ayes**: Councilmembers Bates, Beckles, Myrick, Rogers, Vice Mayor Booze, and Mayor McLaughlin. **Noes**: None. **Abstentions**: None. **Absent**: Councilmember Butt.

**RESOLUTIONS**

*Withdrew from the agenda* the matter to adopt a resolution calling for restoration of public trust through the removal of an executive City employee from current position.

The matter to adopt a resolution in support of AB 218 (Dickinson) to expand the “Ban the Box” policy to state employment to eliminate the inquiry about criminal history on any initial employment application was presented by Councilmember Beckles and Mayor McLaughlin. Jackie Thompson, Marilyn Langlois, and Eduardo Martinez gave comments. On motion of Councilmember Beckles, seconded by Councilmember Myrick adopted **Resolution No. 26-13** by the unanimous vote of the City Council.

**COUNCIL AS A WHOLE**

The matter to review the proposed Term Sheet for post-collection services as negotiated between RecycleMore and Republic Services and authorize an agreement based on this Term Sheet and review the proposed solid waste collection services based on the Term Sheet, and other possible modifications to collection services, and authorize staff to develop a proposed agreement with Republic Services regarding these service modifications for subsequent Council approval was presented by Sustainability Associate Jennifer Ly and Rob Hilton, from HF&H Consultants. A motion was made by Vice Mayor Booze, seconded by Councilmember Myrick to review the proposed Term Sheet for post-collection services as negotiated between RecycleMore and Republic Services and authorize an agreement based on this Term Sheet and review the proposed solid waste collection services based on the
to negotiate the best deals for the citizens for Richmond as details are worked out. The friendly amendment was accepted. Councilmember Bates requested that staff prepare an analysis of the benefits of keeping the JPA. The motion including the friendly amendment was approved by the unanimous vote of the City Council.

The matter to discuss and give direction to staff regarding the Code Enforcement Department's use of contractors outside the City of Richmond for Code Enforcement demolitions was presented by Vice Mayor Booze and Code Enforcement Manager Tim Higares. This item was referred to the Public Safety Committee, and Vice Mayor Booze also requested that a staff form a committee in addition to the Public Safety Committee specifically to discuss the issue.

The matter to consider directing the city manager to prepare a plan to publicize and to assist residents to take advantage of programs for free or reduced cost access to the Internet, including seeking out grants was presented by Councilmember Rogers and Mayor McLaughlin. Councilmember Bates suggested that staff outreach to the Richmond Neighborhood Councils to inform citizens. Jackie Thompson and Ken Maxey gave comments. On motion of Councilmember Rogers, seconded by Mayor McLaughlin directed the city manager to prepare a plan to publicize and to assist residents to take advantage of programs for free or reduced cost access to the Internet, including seeking out grants by the unanimous vote of the City Council.

The matter to receive a report from staff on the status of proposed solar powered streetlights along Richmond Parkway was presented Councilmember Beckles. City Manager Bill Lindsay gave an oral report. Councilmember Beckles directed staff to submit a feasibility study of solar powered streetlights. Vice Mayor Booze stated that the installation of lighting on the Richmond Parkway was currently underway. Sims Thompson gave comments.

REPORTS OF OFFICERS: STANDING COMMITTEE REPORTS, REFERRALS TO STAFF, AND GENERAL REPORTS (INCLUDING AB 1234 REPORTS)

Councilmember Bates announced that Richmond citizen Myrtle Hunt passed and requested that Mayor McLaughlin adjourn the meeting in honor of her memory.
adjourned at 11:31 p.m. in memory of Richmond resident Myrtle Hunt, to meet again on Tuesday, April 16, 2013, at 6:30 p.m.

___________________________________________
City Clerk

(SEAL)

Approved:

___________________________________________
Mayor
Exhibit G
Richmond adopts eminent domain mortgage plan

By Alejandro Lazo

10:46 AM PDT, July 30, 2013

Richmond is adopting a plan to take over underwater mortgages that would invoke the city’s eminent domain powers if necessary.

The city will be the first in the nation to formally adopt the novel but controversial plan that was rejected by San Bernardino County and two of its cities earlier this year.

The city said it will buy home mortgages from financial institutions, write down those loans and refinance homeowners in the properties into new loans. If financial institutions do not cooperate, the city will seize the loans using eminent domain, Richmond Mayor Gayle McLaughlin said.

PHOTOS: SoCal's most affordable ZIP Codes for home buyers

"This is a tool to get the job done," McLaughlin said. "The housing crisis is still ongoing."

The city on Tuesday sent notice to the holders of more than 620 underwater mortgages for homes in the city, asking these servicers and trustees to sell the city these loans. The city sent letters to 32 entities. The city plans further such actions in the future, officials said in a conference call with reporters Tuesday.

Eminent domain is usually used to seize land — not loans — to serve the public good, as when local governments seize blighted properties. The Richmond plan would be the first widespread attempt at using eminent domain to seize residential mortgages.

The city will team up with the San Francisco firm Mortgage Resolution Partners, which last year pitched the plan to San Bernardino and two of its cities, Fontana and Ontario. That county and the two cities formed a Joint Powers Authority to consider the eminent domain idea but then shelved it after Wall Street groups voiced sizable opposition and little public support was heard. The county and the two cities were the first communities to consider the plan.

The Securities Industry and Financial Markets Association of New York has been a hefty opponent of the eminent domain plan, with its managing director appearing before a number of municipal meetings to speak against it. On Tuesday, the group reaffirmed its disapproval in a brief email to The Times.

McLaughlin, the Richmond mayor, said on Tuesday that city officials had spoken to members of the group but remained resolute to move forward despite their opposition.
"We are just not going to back down; we really feel it is the responsibility of the servicers and the banks to fix this, and they haven’t, so we are taking this into our own hands,” she said. “It is our community that is at stake here.”

Mortgage Resolution Partners will provide the funding for Richmond to purchase the loans and also finance any litigation.

**ALSO:**

Southland home prices soar 28.3% in June

Pending home sales fall in June, Realtor group says

San Bernardino abandons eminent domain mortgage plan

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Exhibit H
**Frequently Asked Questions**

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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 securities) 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.