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5 Attorney for Plaintiffs,
6 DWIGHT DIXON COLLINS
7 and KATHLEEN D. COLLINS

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF CONTRA COSTA

10
11 DWIGHT DIXON COLLINS, individually,
12 and as Trustee of the Collins 2007 Revocable
13 Trust, and as Trustee of the Collins Development
14 Co. Defined Benefit Pension Plan and 401(k)
15 Profit Sharing Plan, KATHLEEN D. COLLINS,
16 individually, and as trustee of the Collins 2007
17 Revocable Trust,

18 Plaintiffs,

19 vs.

20 WALTER NG, KELLY WILLIAM NG,
21 BRUCE HORWITZ, R.E. LOANS, LLC,
22 ARMANINO McKENNA, LLP, ELIZABETH R.
23 COBEY, GREENBERG TRAUIG, LLP,
24 DEVELOPMENT SPECIALISTS, INC.,
25 AND DOES 1 – 100, inclusive,

26 Defendants.
27 _____/

No. C 10 - 02950

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

(Unlimited)

Assigned to Dept. 9

28 **GENERAL ALLEGATIONS**

PARTIES, PLAINTIFFS AND DEFENDANTS

COMES NOW, Plaintiffs, DWIGHT DIXON COLLINS (hereinafter, "DIXON COLLINS")
and KATHLEEN D. COLLINS, and for a First Amended Complaint against Defendants, and

1 each of them, allege as follows:

2 1. Plaintiffs, DIXON COLLINS and KATHLEEN D. COLLINS, are individuals, and husband
3 and wife, residing in Angels Camp, Calaveras County, California.

4 2. Plaintiffs, DIXON COLLINS and KATHLEEN D. COLLINS, are trustees of the Collins
5 2007 Revocable Trust, established on January 4, 2007.

6 3. Plaintiff, DIXON COLLINS, is the trustee of the Collins Development Co. Defined Benefit
7 Pension Plan and the trustee of the Collins Development Co. 401(k) Profit Sharing Plan.

8 4. Defendant, WALTER NG, is an individual, a real estate broker, licensed to practice real
9 estate in California with broker license no. 00062348.

10 5. Defendant, KELLY WILLIAM NG, (hereinafter, "KELLY NG") is an individual, a real
11 estate broker, licensed to practice real estate in California with broker license no. 00641921.

12 6. Defendant, BRUCE HORWITZ, is an individual, who was, at all times relevant herein, a
13 real estate broker, licensed to practice real estate in California with broker license no. 00836614.

14 7. R.E. LOANS, LLC, is, and at all times relevant herein was, a limited liability corporation
15 formed and operating in the City of Lafayette, County of Contra Costa. (Hereinafter referred to
16 as "R.E. LOANS.") Plaintiffs are informed and believe that R.E. LOANS was formed in
17 December 2001 with the intent of offering memberships to qualified California residents,
18 including the limited partners of 9 existing limited partnerships operated by Defendants
19 WALTER NG and BRUCE HORWITZ, and that R.E. LOANS, began doing business on or
20 about November 25, 2002.

21 8. Defendants, WALTER NG, BRUCE HORWITZ, and KELLY NG were, at certain times
22 relevant herein, the Managing Members of R.E. LOANS, and at all times relevant herein,
23 managed R.E. LOANS as follows:

24 9. From its inception in December 2001 to the date of the filing of this Complaint, Defendant,
25 WALTER NG, was, and is, a Managing Member of, and managed, R.E. LOANS.

26 10. From its inception in December 2001 to approximately December 8, 2008 when he
27 formally resigned, Defendant, BRUCE HORWITZ, was a Managing Member of, and managed,
28 R.E. LOANS.

1 11. From approximately April 1, 2007, to the date of the filing of this Complaint, Defendant,
2 KELLY NG, was, and is, a Managing Member of, and managed, R.E. LOANS.

3 12. Defendant, ARMANINO McKENNA, LLP, is a limited liability partnership, practicing
4 public accountancy in California with license no. 3386. (Hereinafter, "ARMANINO
5 McKENNA.") At all times mentioned herein, ARMANINO McKENNA, held itself out as the
6 independent auditor for R.E. LOANS reporting directly to the members of R.E. LOANS,
7 including Plaintiffs herein, notwithstanding the fact that James L. McKenna, one of the founders
8 of ARMANINO McKENNA, was, and is, a member and large investor in Defendant R.E.
9 LOANS.

10 13. Defendant, ELIZABETH R. COBEY, is an individual, an attorney practicing law in
11 California with California State Bar license no. 65476.

12 14. GREENBERG TRAUIG, LLP, is a limited liability partnership, practicing law in
13 California through attorneys licensed by the State Bar of California. (Hereinafter,
14 "GREENBERG TRAUIG.")

15 15. Plaintiffs are informed and believe that Defendant, DEVELOPMENT SPECIALISTS,
16 INC., is an Illinois corporation, offering Advisory and Fiduciary Services, Corporate
17 Restructuring and Workouts, Interim Management and Insolvency Services, and doing business
18 in San Francisco, California.

19 16. Plaintiffs do not know the true names and capacities of Defendants DOES 1-100, inclusive,
20 and therefore sue them by such fictitious names. Plaintiffs request that they be permitted to
21 amend the Complaint when the true names of the DOE Defendants are discovered. Each of the
22 Defendants designated herein as a DOE is legally responsible in some manner for the events
23 referred to, resulting in damages proximately sustained by Plaintiffs, as hereinafter alleged.

24 17. Plaintiffs are informed and believe and thereon allege that at all relevant times, Defendants
25 were the agents, representatives, employees, partners, joint venturers, principals and/or alter egos
26 of their co-Defendants, and that in doing the things alleged in this Complaint were acting, within
27 the course and scope of that agency, representation and/or employment. Plaintiffs are further
28 informed and believe and thereon allege that each Defendant was acting within the course and

1 scope of such relationships with actual, apparent and/or implied authority to so act and that each
2 Defendant aided, abetted and assisted each other in the matters alleged in this Complaint.
3 Plaintiffs are further informed and believe and thereon allege that each Defendant adopted and/or
4 ratified the acts of each of the other Defendants.

5
6 **OPERATION OF R.E. LOANS**
7

8 18. Plaintiffs are informed and believe that Defendants, WALTER NG, BRUCE HORWITZ,
9 and KELLY NG, and each of them, acting individually and as licensed real estate brokers,
10 operated R.E. LOANS, a mortgage loan pool, whereby for compensation or in expectation of
11 compensation, Defendants WALTER NG, BRUCE HORWITZ, and KELLY NG, and each of
12 them, solicited investors, including Plaintiffs herein, to become members of R.E. LOANS, and
13 solicited borrowers for loans secured directly or collaterally by liens on real property, and
14 whereby Defendants WALTER NG, BRUCE HORWITZ, and KELLY NG, and each of them,
15 arranged, negotiated, processed, and consummated such loans as well as collecting payments and
16 performing services for borrowers or lenders or note owners, in connection with those loans.

17 19. The sale of membership interests in R.E. LOANS was under annual permits issued by the
18 Commissioner of the California Department of Corporations pursuant to California Corporations
19 Code section 25113(b)(1). Under these annual permits, R.E. LOANS was entitled to make
20 offerings of membership shares only to qualified California residents and to use the proceeds of
21 these sales of membership shares only to make, purchase, and participate in loans secured by
22 deeds of trust.

23 20. Defendants WALTER NG, BRUCE HORWITZ, and KELLY NG, and each of them,
24 encouraged members of R.E. LOANS, including Plaintiffs herein, to make unlimited deposits of
25 money in R.E. LOANS at any time, and members, including Plaintiffs herein, were promised
26 periodic payments of interest, monthly, quarterly, or semi-annually, and also promised that their
27 investment was, and at all times would be, fully liquid.

28 21. R.E. LOANS would take the investors' money, pool it, and then lend it to borrowers for the

1 purchase, refinance and/or construction of real properties. R.E. LOANS would receive
2 promissory notes from the borrowers that were typically secured by first deeds of trust. The
3 properties included single family homes, apartment buildings, and undeveloped land in a number
4 of states within the United States.

5 22. Plaintiffs are informed and believe that R.E. LOANS, LLC, in October 2007, had
6 approximately 2,200 investors and a loan portfolio of approximately \$700,000,000.

7 23. At all relevant times herein, Plaintiffs, and each of them, had a relationship with
8 Defendants, WALTER NG, BRUCE HORWITZ, and KELLY NG, and each of them, pursuant
9 to which they would participate in investments with R.E. LOANS, which was controlled and
10 managed by said Defendants. Plaintiffs' relationship with these Defendants was based on trust.
11 Defendants WALTER NG, BRUCE HORWITZ, and KELLY NG, and each of them, owed the
12 members of R.E. LOANS, including Plaintiffs herein, fiduciary duties pursuant to the annual
13 permits issued to R.E. LOANS by the Commissioner of the California Department of
14 Corporations, the California Corporations Code, the Operating Agreement of R.E. LOANS, their
15 relationship of trust with the members of R.E. LOANS, and/or their status as real estate brokers
16 licensed by the State of California.

17 24. Defendants, WALTER NG, BRUCE HORWITZ, and KELLY NG, and each of them, were
18 fiduciaries as to Plaintiffs, and each of them. That fiduciary relationship led to, and continued
19 throughout, the investments that are the subject matter of this Complaint, no matter what the
20 technical form of the investment was or when they were made.

21
22 **HISTORY OF PERMITS AND OFFERING CIRCULARS**

23 25. R.E. LOANS operated on annual "permissive" permits issued by the Commissioner of the
24 California Department of Corporations, pursuant to Corporations Code section 25113(b)(1). For
25 each annual permit, R.E. LOANS submitted an Application, an Offering Circular, and other
26 required documents to the Department of Corporations.

27 26. R.E. LOANS initial Application, signed by Defendant, BRUCE HORWITZ, was submitted
28 on December 11, 2001. The accompanying Offering Circular was tentatively and partially dated

1 as “_____, 2001.” (Hereinafter, “Initial Offering Circular.”)

2 27. In the Initial Offering Circular, the R.E. LOANS business model was based on the past
3 business model that WALTER NG and BRUCE HORWITZ, and each of them, used for the 9
4 merged-in limited partnerships, referred to in Paragraph 7, above. The business model or plan
5 for R.E. LOANS envisioned that R.E. LOANS would utilize money obtained from the sale of
6 investor memberships, and the investors’ reinvested interest payments, to fund loans to
7 borrowers.

8 28. The business model or plan for R.E. LOANS described in the Initial Offering Circular did
9 not envision or anticipate that R.E. LOANS would borrow money from a third party lender and it
10 did not envision or anticipate that R.E. LOANS would ever assign the mortgage loan portfolio to
11 a third party lender to secure such a loan. As a result, the term “Leveraging the Portfolio” did
12 not appear in the Initial Offering Circular. “Risks of Leveraging” the portfolio of loans were not
13 mentioned or explained. The Initial Offering Circular specifically disclaimed UBTI, Unrelated
14 Business Taxable Income, which would have been derived from borrowing money from a third
15 party lender and assigning the mortgage loan portfolio to secure such a loan.

16 29. The first permissive permit, effective for 12 months, was issued on December 14, 2001.

17 30. The Initial Offering Circular was printed with a date of “January 2, 2002,” but it was not
18 immediately circulated to any potential investor.

19 31. On July 15, 2002, R.E. LOANS applied for Post-Effective Amendment No. 1. The
20 amendment concerned minor changes to the business plan “to clarify and slightly modify two
21 minor elements of sponsor compensation.”

22 32. R.E. LOANS submitted amendments to the Initial Offering Circular and the Operating
23 Agreement with the application. The amendment was approved on July 19, 2002.

24 33. Instead of printing a new July 19, 2002, Offering Circular, R.E. LOANS merely added
25 glued-on paper strips to the previously printed January 2, 2002, Offering Circular and then
26 circulated it, as the first Offering Circular for the sale of membership shares in R.E. LOANS.
27 (Hereinafter, “the First Published Offering Circular.”) The dollar value of the total number of
28 membership shares to be sold to qualified investors was \$500,000,000.

1 34. In the First Published Offering Circular, the R.E. LOANS business model was unchanged.
2 The business model did not envision or anticipate that R.E. LOANS would borrow money from a
3 third party lender and it did not envision or anticipate that R.E. LOANS would ever assign the
4 mortgage loan portfolio to a third party lender to secure such a loan. The term “Leveraging the
5 Portfolio” did not appear in the First Published Offering Circular. “Risks of Leveraging” the
6 portfolio of loans were not mentioned or explained. The First Published Offering Circular
7 specifically disclaimed UBTI, Unrelated Business Taxable Income, which would have been
8 derived from borrowing money from a third party lender and assigning the mortgage loan
9 portfolio to secure such a loan.

10 35. The second annual application, signed by Defendant, BRUCE HORWITZ, was filed on
11 December 9, 2002, with a revised Offering Circular dated December 6, 2002. The revised
12 Offering Circular reflected the addition of R.E. LOANS’ year-to-date operating results through
13 November 30, 2002, and some very minor modifications to the Management Section.

14 36. The second permissive permit, also effective for 12 months, was issued on December 19,
15 2002.

16 37. Although the December 6, 2002, Offering Circular was not printed and not circulated, the
17 R.E. LOANS business model described therein was unchanged. The business model did not
18 envision or anticipate that R.E. LOANS would borrow money from a third party lender and it did
19 not envision or anticipate that R.E. LOANS would ever assign the mortgage loan portfolio to a
20 third party lender to secure such a loan. The term “Leveraging the Portfolio” did not appear in
21 the December 6, 2002, Offering Circular. “Risks of Leveraging” the portfolio of loans were not
22 mentioned or explained. The December 6, 2002, Offering Circular specifically disclaimed
23 UBTI, Unrelated Business Taxable Income, which would have been derived from borrowing
24 money from a third party lender and assigning the mortgage loan portfolio to secure such a loan.

25 38. The third annual application, signed by Defendant, WALTER NG, was filed on December
26 3, 2003, with a revised Offering Circular erroneously dated January 1, 2002. The revised and
27 erroneously dated Offering Circular reflected the addition of R.E. LOANS year-to-date operating
28 results through October 31, 2003, and some very minor modifications to the Management

1 Section.

2 39. The third permissive permit, also effective for 12 months, was issued on December 5, 2003.

3 40. Although the revised Offering Circular erroneously dated January 1, 2002, was not printed
4 and not circulated, in it the R.E. LOANS business model was unchanged. The business model
5 did not envision or anticipate that R.E. LOANS would borrow money from a third party lender
6 and it did not envision or anticipate that R.E. LOANS would ever assign the mortgage loan
7 portfolio to a third party lender to secure such a loan. The term “Leveraging the Portfolio” did
8 not appear in the revised Offering Circular erroneously dated January 1, 2002. “Risks of
9 Leveraging” the portfolio of loans were not mentioned or explained. The revised Offering
10 Circular erroneously dated January 1, 2002, specifically disclaimed UBTI, Unrelated Business
11 Taxable Income, which would have been derived from borrowing money from a third party
12 lender and assigning the mortgage loan portfolio to secure such a loan.

13 41. The fourth annual application, signed by Defendant, BRUCE HORWITZ, was filed on
14 November 12, 2004, with a revised Offering Circular erroneously dated “[**December 5, 2003**]”
15 with boldface and brackets in the original. The November 2004 Offering Circular, erroneously
16 dated “[**December 5, 2003**],” reflected (1) the addition of R.E. LOANS year-to-date operating
17 results through October 31, 2004, (2) some very minor modifications to the Management
18 Section, and (3) an addition describing the consequences of the company making loans secured
19 by second deeds of trust. The dollar value of the total number of membership shares to be sold
20 to qualified California investors was increased from \$500,000,000 to \$750,000,000.

21 42. The fourth permissive permit, also effective for 12 months, was issued on November 29,
22 2004.

23 43. The November 2004 Offering Circular, erroneously dated [**December 5, 2003**], was printed
24 and circulated as the second Offering Circular for the sale of membership shares in R.E.
25 LOANS. (Hereinafter, “the Second Published Offering Circular.”)

26 44. In the Second Published Offering Circular, the R.E. LOANS business model was
27 unchanged. The business model did not envision or anticipate that R.E. LOANS would borrow
28 money from a third party lender and it did not envision or anticipate that R.E. LOANS would

1 ever assign the mortgage loan portfolio to a third party lender to secure such a loan. The term
2 “Leveraging the Portfolio” did not appear in the Second Published Offering Circular. “Risks of
3 Leveraging” the portfolio of loans were not mentioned or explained. The Second Published
4 Offering Circular specifically disclaimed UBTI, Unrelated Business Taxable Income, which
5 would have been derived from borrowing money from a third party lender and assigning the
6 mortgage loan portfolio to secure such a loan.

7 45. The fifth annual application was filed on November 14, 2005, with a revised Offering
8 Circular erroneously dated November 29, 2004. The November 2005 Offering Circular
9 erroneously dated November 29, 2004, reflected the addition of R.E. LOANS year-to-date
10 operating results through October 31, 2005, some very minor modifications to the Management
11 Section and a deletion concerning the expiration of the suspension and stay of one or more real
12 estate brokers’ licenses.

13 46. The fifth permissive permit, also effective for 12 months, was issued on November 16,
14 2005.

15 47. The date of the November 2005 Offering Circular was corrected, and then printed with the
16 correct date, November 16, 2005. The November 16, 2005, Offering Circular was circulated as
17 the third Offering Circular for the sale of membership shares in R.E. LOANS. (Hereinafter, “the
18 Third Published Offering Circular.”)

19 48. In the Third Published Offering Circular, the R.E. LOANS business model was unchanged.
20 The business model did not envision or anticipate that R.E. LOANS would borrow money from a
21 third party lender and it did not envision or anticipate that R.E. LOANS would ever assign the
22 mortgage loan portfolio to a third party lender to secure such a loan. The term “Leveraging the
23 Portfolio” did not appear in the Third Published Offering Circular. “Risks of Leveraging” the
24 portfolio of loans were not mentioned or explained. The Third Published Offering Circular
25 specifically disclaimed UBTI, Unrelated Business Taxable Income, which would have been
26 derived from borrowing money from a third party lender and assigning the mortgage loan
27 portfolio to secure such a loan.

28 49. From its inception to November 15, 2006, therefore, each and every published, or

1 unpublished, Offering Circular for the sale of membership shares in R.E. LOANS disclaimed
2 borrowing money from a third party lender and each and every published or unpublished
3 Offering Circular described a business plan or model that anticipated R.E. LOANS would
4 generate adequate amounts of cash in the operation of the mortgage pool so that a loan of cash
5 from a third party lender would be unnecessary, and not be reasonably expected by any potential
6 investor in, or member of, R.E. LOANS.

7 50. From its inception to November 15, 2006, therefore, each and every published, or
8 unpublished, Offering Circular for the sale of membership shares in R.E. LOANS described a
9 business plan or model that did not anticipate or envision that R.E. LOANS would ever leverage
10 the portfolio for a loan of money by assigning the mortgage loan portfolio to a third party lender
11 to secure a loan of money from a third party lender.

12 51. From its inception to November 15, 2006, therefore, each and every published, or
13 unpublished, Offering Circular for the sale of membership shares in R.E. LOANS disclaimed
14 UBTI, Unrelated Business Taxable Income, which would have been derived from borrowing
15 money from a third party lender and assigning the mortgage loan portfolio to secure such a loan.

16 17 **THE PROMISE OF LIQUIDITY**

18
19 52. From inception to December 2006, R.E. LOANS generated sufficient cash so that
20 Defendants WALTER NG and BRUCE HORWITZ, the two managers of R.E. Loans during that
21 time period, could, and did, promise potential investors, including Plaintiffs herein, that their
22 membership investment in R.E. LOANS was, and in the future would be, liquid, that is, 100%
23 returnable on short notice.

24 53. At year-end, December 31, 2003, R.E. Loans reported that it had \$14,739,893 cash on
25 hand.

26 54. At year-end, December 31, 2004, R.E. Loans reported that it had \$65,304,695 cash on
27 hand.

28 55. At year-end, December 31, 2005, R.E. Loans reported that it had \$55,408,533 cash on

1 hand.

2 56. At year-end, December 31, 2006, R.E. Loans reported that it had \$55,540,620 cash on
3 hand.

4 **A SECRET CHANGE TO THE BUSINESS MODEL**

5
6 57. The sixth annual application for a permit, dated and signed by Defendant BRUCE
7 HORWITZ on November 9, 2006, was filed with the Department of Corporations on November
8 13, 2006, with a revised Offering Circular tentatively and incompletely dated [**December ____**,
9 **2006**], with boldface and brackets in the original.

10 58. The sixth permissive permit, also effective for 12 months, was issued the following day, on
11 November 14, 2006.

12 59. Unlike the five previous revised Offering Circulars that had only very minor and
13 insignificant changes to each prior Offering Circular, the [**December ____, 2006**] Offering
14 Circular submitted with the November 13, 2006 application made numerous significant,
15 substantive and material changes to the Third Published Offering Circular, published with the
16 date November 16, 2005, and, as a result, numerous significant, substantive and material changes
17 to the business plan or model for R.E. LOANS.

18 60. The [**December ____, 2006**] Offering Circular made a total of 219 changes to the Third
19 Published Offering Circular. These changes included 99 insertions of new matter and 112
20 deletions.

21 61. The most significant, substantive and material change was the deletion of the specific
22 disclaimer that R.E. LOANS would not earn UBTI, Unrelated Business Taxable Income, which
23 would have been derived from borrowing money from a third party lender and by assigning the
24 mortgage loan portfolio to secure such a loan, and the insertion of new matter which authorized
25 R.E. LOANS to leverage the mortgage loan portfolio.

26 62. The following deletion (~~striketrough~~) and insertion (underlined) concerning UBTI was in
27 the section entitled Federal Income Tax Consequences of the proposed [**December ____, 2006**]
28 Offering Circular. On pages 28-29 of the proposed [**December ____, 2006**] Offering Circular, it

1 stated as follows:

2 **Unrelated Business Taxable Income**

3 Units may be offered and sold to certain tax exempt entities (such as qualified
4 pension or profit sharing plans) that otherwise meet the investor suitability
5 standards described elsewhere in this Offering Circular. (See “Investor
6 Suitability Standards.”) Such tax exempt entities generally do not pay federal
7 income taxes on their income unless they are engaged in a business which
8 generates “unrelated business taxable income”, as that term is defined by
9 Section 513 of the Code. Under the Code, tax exempt purchasers of Units will
10 be deemed to be engaged in an unrelated trade or business by reason of
11 interest income earned by the Fund. Interest income (which will constitute the
12 primary source of Fund income) does not constitute an item of unrelated
13 business income, except to the extent it is derived from “debt-financed
14 property”; ~~however, since the Fund will not utilize borrowed funds for the
15 purpose of making or investing in loans, interest earned on Fund loans should
16 not constitute unrelated business taxable income and investors that are
17 otherwise exempt from federal and state income taxes should not realize
18 taxable income by reason of interest income earned by the Fund. To increase
19 Fund profits or increase Fund liquidity, the manager may borrow funds in
20 order to invest in mortgage loans. This “leveraging” of the Fund’s loan
21 portfolio will constitute an investment in “debt-financed property” and the
22 interest earned on loans funded with borrowed funds will be unrelated
23 business income taxable to ERISA plans (see “Leveraging the Portfolio”). . .~~

16 (~~strikethrough~~ and underlined in the original.)

17
18 63. The reference to “Leveraging the Portfolio” at the very end of the inserted matter, above,
19 referred to other new matter inserted into the section “Summary of the Offering” on page 2 of the
20 proposed [December ____, 2006] Offering Circular. That new matter stated:

21 **Leveraging the Portfolio**

22
23 The Fund may borrow funds from a third party lender in order to fund some
24 mortgage loans made or purchased by the Fund. In such case, most or all of
25 the Fund’s loan portfolio will be assigned to this lender as security for the
26 loan(s). In borrowing these funds, the Fund may increase the yield to the
27 Fund; however, leveraging the Fund’s portfolio entails certain additional risks
28 and also entails possible adverse tax consequences. (See “Leveraging the
Portfolio,” “ERISA Considerations” and “Risk Factors – Risk of Leverage.”)

64. The short new paragraph, “Leveraging the Portfolio,” above, was more fully described in a

1 longer and detailed insertion of new matter on pages 14 – 15 of the “Lending Standards and
2 Policies” section the proposed [December ____, 2006] Offering Circular.

3 65. The “Risk Factors – Risk of Leverage” mentioned at the end of the short new paragraph,
4 “Leveraging the Portfolio,” above, were described in a multi-paragraph insertion of new matter
5 on page 24 of the “Risks and Other Important Factors” section the proposed [December ____,
6 2006] Offering Circular.

7 66. The business plan or model for R.E. Loans for the year commencing November 14, 2006,
8 therefore envisioned and anticipated that R.E. LOANS would borrow money from a third party
9 lender, that R.E. LOANS would assign the mortgage loan portfolio to that third party lender to
10 secure such a loan, and that the new business plan or model entailed new and increased risks for
11 any potential investor in, or member of, R.E. LOANS.

12 67. The [December ____, 2006] Offering Circular, which described these significant,
13 substantive and material changes to the business plan or model for R.E. LOANS was never
14 published and it was never circulated.

15 68. Defendants WALTER NG and BRUCE HORWITZ, the two managers of R.E. Loans at
16 that time, did not reveal to the members of R.E. Loans, or prospective investors like Plaintiffs
17 herein, that they had made significant, substantive and material changes to the business plan or
18 model for R.E. LOANS, effective November 14, 2006. The change in the business plan or
19 model for R.E. LOANS, as alleged in Paragraph 66, above, was kept a very closely guarded
20 secret, except as hereinafter alleged.

21
22 **PLAINTIFFS’ INVESTMENT HISTORY**

23 **PART ONE**

24
25 69. On or about November 20, 2006, Plaintiffs, DIXON COLLINS and KATHLEEN
26 COLLINS, as individuals, “and with community property, with right of survivorship,” sent a
27 check in the amount of \$52,300.78 to Defendant BRUCE HORWITZ as an investment in R.E.
28 LOANS and they applied to become members in R.E. LOANS.

1 70. Before making this initial investment, on or about November 20, 2006, Plaintiff DIXON
2 COLLINS had several conversations with Defendant BRUCE HORWITZ. In addition, Plaintiff
3 DIXON COLLINS reviewed documents posted on the R.E. LOANS website including
4 “Summary of the Investment,” “Status of Assets, June 30, 2006,” and “Frequently Asked
5 Questions.”

6 71. At no time, before November 20, 2006, did Defendant BRUCE HORWITZ tell Plaintiffs,
7 or either of them, or any document posted on the R.E. LOANS website reveal, that Defendant
8 BRUCE HORWITZ had executed an application for a permit that made significant, substantive
9 and material changes to the business plan or model for R.E. LOANS or that the application for a
10 permit concerning this change had been approved, and became effective, on November 14, 2006.

11 72. Defendant BRUCE HORWITZ did not give Plaintiffs, or either of them, any published or
12 unpublished Offering Circular before their November 20, 2006, investment. Defendant BRUCE
13 HORWITZ merely provided a Subscription Agreement that referred to the Offering Circular
14 erroneously dated [**December 5, 2003**], described in Paragraphs 41 through 44, above.

15 73. On or about November 27, 2006, after concealing the existence of the November 14, 2006,
16 unpublished and uncirculated Offering Circular, described in Paragraphs 57 through 67, above,
17 Defendant, BRUCE HORWITZ, accepted the Plaintiffs’ initial investment and Plaintiffs became
18 members of R.E. LOANS.

19 74. An investment account, titled D. Dixon or Kathleen D. Collins and identified as Account
20 COL040, was created for this initial individual investment.

21 75. On or about January 4, 2007, plaintiffs created the Collins 2007 Revocable Trust with
22 Plaintiffs as trustees. At the same time, Plaintiffs transferred title to Account COL040 to
23 themselves as trustees of the Collins 2007 Revocable Trust.

24 76. On or about January 15, 2007, Defendant BRUCE HORWITZ signed a “Dear Investors”
25 letter, to the members of R.E. LOANS, including Plaintiffs herein, which was the semi-annual
26 status report for the six months ending December 31, 2006.

27 77. The January 15, 2007, letter did not tell the members of R.E. LOANS, including Plaintiffs
28 herein, that Defendant BRUCE HORWITZ had made significant, substantive and material

1 changes to the business plan or model for R.E. LOANS for the year commencing November 14,
2 2006, or that the business plan now envisioned and anticipated that R.E. LOANS would borrow
3 money from a third party lender and that R.E. LOANS would assign the mortgage loan portfolio
4 to that third party lender to secure such a loan.

5 78. Instead, Defendant BRUCE HORWITZ represented that R.E. LOANS was fully liquid. In
6 the January 15, 2007, letter Defendant BRUCE HORWITZ stated:

7
8 It is our intent to keep the fund liquid. You may add to or withdraw from your
9 account at any time. The earnings are compounded monthly. Your account
10 will be credited with interest from the first day of deposit. Currently we offer
11 an option to make scheduled withdrawals, monthly, quarterly, semi-annually,
12 or yearly. If necessary you may make an unscheduled withdrawal at any time.

13 79. An accompanying "Status of Assets Report" indicated that R.E. LOANS had \$55,540,620
14 cash on hand.

15 80. In reliance on this January 15, 2007, correspondence and further telephone conferences
16 with Defendant BRUCE HORWITZ, on or about February 22, 2007, Plaintiff DIXON COLLINS
17 in his capacity as Trustee of the Collins Development Co. Defined Benefit Pension Plan and the
18 401(k) Profit Sharing Plan invested \$100,000 in R.E. LOANS. Defendant BRUCE HORWITZ
19 did not give Plaintiff, DIXON COLLINS in his capacity as Trustee of the Collins Development
20 Co. Defined Benefit Pension Plan and the 401(k) Profit Sharing Plan, any published or
21 unpublished Offering Circular for this February 22, 2007, investment.

22 81. Defendant BRUCE HORWITZ accepted this initial pension and profit sharing plan
23 investment for membership on March 2, 2007. A second investment account, "R.E. LOANS
24 FBO Collins Development Co. Defined Benefit 401(k) Plan," titled as Account COL041, was
25 created for this initial pension and profit sharing plan investment.

26 82. At no time before March 2, 2007, did Defendant BRUCE HORWITZ reveal to Plaintiffs,
27 or either of them, that he had made significant, substantive and material changes to the business
28 plan or model for R.E. LOANS, effective November 14, 2006.

83. At no time before March 2, 2007, did Defendant BRUCE HORWITZ reveal to Plaintiffs,

1 or either of them, that the business plan or model for R.E. Loans now envisioned and anticipated
2 that R.E. LOANS would borrow money from a third party lender, that R.E. LOANS would
3 assign the mortgage loan portfolio to that third party to secure such a loan, and that Defendant
4 BRUCE HORWITZ contemplated R.E. LOANS would now earn UBTI, Unrelated Business
5 Taxable Income, which would have been derived from borrowing money from a third party
6 lender and by assigning the mortgage loan portfolio to secure such a loan.

7
8 **NOTICE OF SEC VIOLATIONS AND FREEZE OF CONTRIBUTIONS**

9
10 84. Plaintiffs are informed and believe that Defendant ARMANINO McKENNA knew that
11 Defendants, BRUCE HORWITZ, and WALTER NG, and each of them, had operated R.E.
12 LOANS in violation of the rules and regulations of the United States Securities and Exchange
13 Commission (hereinafter, "SEC") since commencing operations on November 25, 2002, but that
14 Defendant, ARMANINO McKENNA, never reported that fact to either Defendants, BRUCE
15 HORWITZ and WALTER NG, or any of the members of R.E. LOANS in any of the annual
16 audit reports, or otherwise.

17 85. Defendants, BRUCE HORWITZ, and WALTER NG, and each of them, claim that on or
18 about mid-March 2007, they were first notified by Defendant ARMANINO McKENNA that
19 since commencing operations on November 25, 2002, they had operated R.E. LOANS in
20 violation of the rules and regulations of the SEC. The notification was oral; it was not reported
21 in the Independent Auditors' Report dated March 16, 2007.

22 86. Shortly thereafter, Defendants, BRUCE HORWITZ, and WALTER NG, and each of them,
23 retained the San Francisco Bay Area law firm of Morgan Miller Blair, who confirmed that since
24 commencing operations on November 25, 2002, Defendants BRUCE HORWITZ and WALTER
25 NG, the managers of R.E. LOANS, had operated R.E. LOANS in violation of the rules and
26 regulations of the SEC.

27 87. Morgan Miller Blair advised Defendants, BRUCE HORWITZ, and WALTER NG, that
28 they should freeze all further contributions to R.E. LOANS because selling membership shares to

1 prospective new members of R.E. LOANS, or accepting additional capital contributions from
2 current members of R.E. LOANS, after notice of the violation(s) would be a Federal crime, that
3 is, a knowing violation of the rules and regulations of the SEC.

4 88. In response to this legal advice from Morgan Miller Blair, Defendants, BRUCE HORWITZ
5 and WALTER NG, and each of them, decided to freeze the Fund and not accept any new
6 contributions of capital, that is, not sell any membership shares to new or old members of R.E.
7 LOANS, and Defendants, BRUCE HORWITZ and WALTER NG, and each of them, decided
8 not to make any new loans to borrowers.

9 89. Defendants, BRUCE HORWITZ and WALTER NG, and each of them, notified the
10 members of R.E. LOANS about the freeze in a letter dated April 1, 2007, the date they
11 represented that they froze contributions to the Fund in order to comply with the rules and
12 regulations of the SEC.

13 90. The freeze letter was also designed to prevent a “run on the bank.” The letter, signed by
14 Defendants, BRUCE HORWITZ and WALTER NG, and each of them, downplayed the
15 seriousness of the situation. They stated that all of the investments were “safe,” that the
16 investors’ accounts would be updated “with the increase of value each month (compounded),”
17 and that Defendants “would use the same business procedures, practices and philosophy as the
18 past 21 years.”

19 91. In further response to the notice that they had operated R.E. LOANS in violation of the
20 rules and regulations of the SEC, however, and as an example of the extremely serious nature of
21 the situation, Defendant BRUCE HORWITZ decided to secretly resign as a manger of R.E.
22 LOANS. The secret resignation involved Defendant BRUCE HORWITZ relinquishing all of his
23 duties and responsibilities as a manager and the reassignment of all of those duties to Defendant
24 KELLY NG.

25 92. Notwithstanding his secret resignation and the reassignment of all of his duties and
26 responsibilities to Defendant KELLY NG, Defendant BRUCE HORWITZ continued to represent
27 himself as a “manager” of R.E. LOANS in all of his communications with members of R.E.
28 LOANS, including Plaintiffs herein, and he continued to sign correspondence to the members of

1 R.E. LOANS as a “manager” of R.E. LOANS.

2 93. Beginning April 1, 2007, Defendant BRUCE HORWITZ considered his role with R.E.
3 LOANS as merely “a figurehead” for investor relations, with his resignation otherwise kept
4 secret from the members of R.E. LOANS, including Plaintiffs herein.

5
6 **PLAINTIFFS’ INVESTMENT HISTORY**

7 **PART TWO**

8
9 94. Notwithstanding the April 1, 2007, freeze on contributions to R.E. Loans and the freeze on
10 making new loans to borrowers, as alleged in Paragraphs 87 through 89, above, on or about April
11 11, 2007, Plaintiffs in their capacity as trustees of the Collins 2007 Revocable Trust made a
12 second investment in the amount of \$11,822.84 and a third investment in the amount of
13 \$21,578.63, respectively, in R.E. LOANS.

14 95. In response to a question about the freeze and these investments, Defendant, BRUCE
15 HORWITZ, stated: “Just go ahead, send the money.”

16 96. The two trust account investments were accepted by R.E. LOANS, the checks were
17 deposited into the R.E. LOANS checking account, and the two amounts were credited to
18 Plaintiffs’ Account COL040.

19 97. On the same day, April 11, 2007, Plaintiff, DIXON COLLINS, in his capacity as Trustee of
20 the Collins Development Co. Defined Benefit Pension Plan and the 401(k) Profit Sharing Plan
21 made a second pension plan and profit sharing plan investment in the amount of \$57,000 in R.E.
22 LOANS.

23 98. The pension/profit sharing plan investment was accepted by R.E. LOANS, the check was
24 deposited into the R.E. LOANS checking account, and the amount was credited to investment
25 account COL041.

26 99. The acceptance of these two contributions on April 11, 2007, constituted illegal
27 membership sales, i.e., knowing violations of the rules and regulations of the SEC.

28 100. Notwithstanding the April 1, 2007, freeze on contributions to R.E. Loans and the freeze on

1 making new loans, on or about April 17, 2007, Plaintiffs in their capacity as trustees of the
2 Collins 2007 Revocable Trust made a fourth trust investment in the amount of \$52,586.01 in
3 R.E. LOANS.

4 101. The fourth trust account investment was accepted, the check was deposited into the R.E.
5 LOANS checking account, and the amount was credited to investment account COL040.

6 102. On the same day, April 17, 2007, plaintiff Dixon Collins in his capacity as Trustee of the
7 Collins Development Co. Defined Benefit Pension Plan and the 401(k) Profit Sharing Plan made
8 a third pension and profit sharing plan investment in the amount of \$52,586.01 in R.E. LOANS.

9 103. The third pension/profit sharing plan investment was accepted, the check was deposited
10 into R.E. LOANS checking account, and the amount was credited to investment account
11 COL041.

12 104. The acceptance of these two contributions on April 18, 2007, constituted illegal
13 membership sales, i.e., knowing violations of the rules and regulations of the SEC.

14 105. The Plaintiffs' total capital investment in R.E. LOANS, trust and pension, was
15 \$347,874.27, of which \$195,573.49 was accepted after April 1, 2007, constituting knowing
16 violations of the rules and regulations of the SEC.

17 **THE LOSS OF LIQUIDITY**

18 **A LINE OF CREDIT AND AN ASSIGNMENT OF LOAN PORTFOLIO**

19
20 106. Notwithstanding, the April 1, 2007, freeze on contributions and the sale of membership
21 shares and the resulting loss of new capital, and notwithstanding the April 1, 2007, representation
22 that Defendants "would use the same business procedures, practices and philosophy as the past
23 21 years," Defendants BRUCE HORWITZ, WALTER NG, and KELLY NG, and each of them,
24 undertook a secret plan to distribute principal to cash out their family and friends. The secret
25 distribution of principal began in March 2007 after notice of the SEC violations and before the
26 April 1, 2007, letter was sent to investors. The distribution of principal to their family and
27 friends, preferred investors, continued after the April 1 "freeze" letter to investors and throughout
28 the remainder of 2007.

1 107. The distribution of principal included, for example, a March 30, 2007, wire transfer of
2 \$5,000,000 to J. Robert Orton, III, a personal friend of Defendant, KELLY NG, an April 8, 2007,
3 check in the amount of \$6,691,300 to MCG Investments, which is controlled by Sherrat Reicher,
4 a personal friend of Defendant, BRUCE HORWITZ, and an April 23, 2007, check in the amount
5 of \$3,365,569 to Gifford Fong, a friend of Defendant, WALTER NG.

6 108. As a result of the freeze on contributions and the freeze on the sale of new membership
7 shares, and as a direct result of the secret distribution of principal to family and friends, R.E.
8 Loans' cash on hand diminished from \$55,540,620 on January 1, 2007 to just \$1,077,894 on
9 June 30, 2007.

10 109. Defendants, and each of them, concealed the secret distribution of principal to their family
11 and friends from the members of R.E. LOANS, including Plaintiffs herein,

12 110. Defendants also failed to reveal to the members of R.E. LOANS, including Plaintiffs
13 herein, that R.E. LOANS had significant unreserved and undistributed construction loan
14 commitments.

15 111. As a result of these unreserved construction loan commitments and as a result of the
16 distribution of capital to the preferred investors, by June 30, 2007, R.E. LOANS was illiquid in
17 the approximate amount of a negative \$20,000,000.

18 112. At a date currently unknown to Plaintiffs, but on information and belief, before May 30,
19 2007, Defendants BRUCE HORWITZ, WALTER NG, and KELLY NG, and each of them, in
20 their capacities as the R.E. LOANS' fund managers, replaced the law firm of Morgan Miller
21 Blair with Defendant, GREENBERG TRAUIG.

22 113. On or about July 17, 2007, in order to solve the illiquidity problem that they had created,
23 Defendants BRUCE HORWITZ, WALTER NG, and KELLY NG, and each of them, in their
24 capacities as the R.E. LOANS' fund managers, and with aid and assistance of Defendant,
25 GREENBERG TRAUIG, entered into a \$50,000,000 line of credit with Wells Fargo Foothill,
26 LLC, a Delaware limited liability company. (Hereinafter, "Wells Fargo Foothill.")

27 114. Plaintiffs are informed and believe that Defendants BRUCE HORWITZ, WALTER NG,
28 KELLY NG and GREENBERG TRAUIG and each of them, gave the unpublished and

1 uncirculated [December ____, 2006] Offering Circular, which allowed “leveraging the
2 portfolio” but which had been kept secret from investors and the members of R.E. LOANS, to
3 Wells Fargo Foothill as evidence that R.E. LOANS was authorized by its members to borrow
4 money from a third party lender and authorized by its members to assign the loan portfolio as
5 security for the loan.

6 115. Plaintiffs are informed and believe that Defendants BRUCE HORWITZ, WALTER NG,
7 KELLY NG and GREENBERG TRAUIG, and each of them, represented to Wells Fargo
8 Foothill that this \$50,000,000 line of credit would be used to fund loan commitments previously
9 made by R.E. LOANS to its existing first mortgage borrowers, for example, for unreserved
10 construction loan commitments, or for development entitlements on undeveloped land.

11 116. The Wells Fargo Foothill line of credit was secured. Plaintiffs are informed and believe
12 that Defendants, BRUCE HORWITZ, WALTER NG, KELLY NG, and each of them, assigned
13 as collateral some of the first mortgages held by R.E. LOANS to Wells Fargo Foothill at a ratio
14 of 5:1, i.e., \$250,000,000, as security for the \$50,000,000 line of credit.

15 117. Plaintiffs are further informed and believe that on or about July 13, 2007, and pursuant to,
16 or in anticipation of, the above-mentioned Loan and Security Agreement, Defendants, and each
17 of them, agreed that, among other things, the inventory, equipment, chattel paper, books, records,
18 and trade fixtures, together with all additions, substitutions, replacements, improvements and
19 repairs to same, was also security, i.e., collateral, for the Wells Fargo Foothill line of credit.

20 118. This secured line of credit was obtained without notice to the members of R.E. Loans,
21 including Plaintiffs herein, and the creation of the collateral was never fully disclosed.

22 119. Plaintiffs are informed and believe that a portion of the Wells Fargo Foothill line of credit
23 money was used by Defendants, not to exclusively fund loan commitments to the R.E. LOANS’
24 first mortgage borrowers, but instead to continue to cash out certain of R.E. LOANS’ preferred
25 investors; to pay interest to R.E. LOANS investors and/or to pay lenders commissions and
26 bonuses to Defendants; and directly or indirectly to pay for R.E. LOANS’ employee salaries,
27 office, mortgage and operating expenses.

28 120. Specifically, the first draw on the \$50,000,000 line of credit, taken on July 17, 2007, was in

1 the amount of \$43,624,663. Of that amount, \$21,335,590.46 was used to pay unreserved
2 construction loan commitments, while \$22,039,072.58 was taken by Defendants, BRUCE
3 HORWITZ, WALTER NG, and KELLY NG, to pay themselves, to continue their disbursement
4 of principal to preferred investors, and for other improper purposes.

5 121. On or about July 25, 2007, Defendants BRUCE HORWITZ and WALTER NG sent a letter
6 to the members of R.E. Loans, including Plaintiffs herein. The July 25, 2007, letter was a report
7 on the status of the company. In the letter, Defendants WALTER NG and BRUCE HORWITZ,
8 and each of them, intentionally concealed the millions of dollars of cash disbursements to
9 preferred investors, intentionally concealed the resultant need to enter into the Wells Fargo
10 Foothill \$50,000,000 line of credit, intentionally concealed the assignment of the loan portfolio
11 to secure the line of credit, and intentionally concealed the Defendants' misappropriation of
12 \$22,039,072.58 from the July 17, 2007, first draw of borrowed funds. Instead, Defendants
13 BRUCE HORWITZ and WALTER NG, and each of them, after much thought and deliberation,
14 merely stated: "We will contact you shortly with the evolution of the Fund."

15
16 **DEFRAUDING THE MEMBERS OF R.E. LOANS**
WITH A FALSE "CONFIDENTIAL MEMORANDUM"
TO OBTAIN VOTES FOR AN EXCHANGE AGREEMENT
17

18 122. On or about August 31, 2007, after depleting the July 17, 2007, \$50,000,000 line of credit
19 and after assigning part of the loan portfolio to Wells Fargo Foothill, Defendants, BRUCE
20 HORWITZ, WALTER NG, KELLY NG, sent a letter to the investors "to reassure you regarding
21 your investment in R.E. Loans, LLC (the "*Fund*")." Unlike most or all of the letters sent to
22 investors in the previous eight years, which were written by the Defendants themselves, the
23 Defendants' new attorneys, Defendant, GREENBERG TRAURIG, carefully crafted this letter.
24 Called a "Company Update," the attorney-drafted letter revealed for the first time the existence
25 of the Wells Fargo Foothill line of credit. The attorney-drafted letter states: "The Fund and
26 Manager have entered into a line of credit with a Wells Fargo affiliated lender to facilitate
27 liquidity to meet additional Fund cash flow needs."

28 123. The attorney-drafted letter omitted the important fact that the Defendants, BRUCE

1 HORWITZ, WALTER NG, and KELLY NG, and each of them, assigned the Fund's portfolio of
2 first deeds of trust and other collateral to Wells Fargo Foothill, and falsely stated that the
3 borrowed money was to facilitate liquidity. The Defendants, BRUCE HORWITZ, WALTER
4 NG, and KELLY NG, and each of them, did not facilitate liquidity with the Wells Fargo Foothill
5 line of credit. Because the \$43,624,663 received from Wells Fargo Foothill on July 17, 2007,
6 was immediately and completely disbursed on July 17, 2007, when the fund was illiquid, the
7 borrowed funds could not have facilitated liquidity. In addition, Defendants, BRUCE
8 HORWITZ, WALTER NG, and KELLY NG, and each of them, made the illiquidity situation
9 worse by taking \$22,039,072.58 on the first draw to pay themselves and to cash out family and
10 friends, the preferred investors, as alleged herein in Paragraphs 119 and 120, above. When the
11 Defendants, BRUCE HORWITZ, WALTER NG, and KELLY NG, sent the attorney-drafted
12 "Company Update" to the members of R.E. LOANS, including Plaintiffs herein, on or about
13 August 31, 2007, the Defendants, including Defendant, GREENBERG TRAUIG, and each of
14 them, knew their representations about liquidity in the letter were false.

15 124. The attorney-drafted "Company Update" also falsely represented to the members of R.E.
16 LOANS, including Plaintiffs herein, that the Defendants, BRUCE HORWITZ, WALTER NG,
17 and KELLY NG, needed to restructure the Fund. The letter falsely stated: "The growth of the
18 Fund requires us to reorganize the Fund and the structure of your investment to achieve
19 regulatory and operating efficiencies."

20 125. On or about October 8, 2007, three months after the Wells Fargo Foothill line of credit was
21 established, the R.E. LOANS' investors, including Plaintiffs herein, were told about the proposed
22 reorganization of R.E. Loans in a letter drafted by Defendants ELIZABETH R. COBEY and
23 GREENBERG TRAUIG and signed by Defendants, BRUCE HORWITZ, WALTER NG, and
24 KELLY NG. The letter falsely stated that the proposed reorganization was required "[i]n order
25 to achieve certain tax efficiencies and address federal regulatory requirements. . . ." As part of
26 the proposed reorganization, the investors were asked to convert their membership equity interest
27 in R.E. LOANS to that of a creditor of R.E. LOANS by accepting a promissory note in the
28 amount the investor had in the fund.

1 126. The October 8, 2007, attorney-drafted letter falsely stated: “The Promissory Note will be
2 secured by all the assets of the Fund.”

3 127. The members of R.E. LOANS, including Plaintiffs herein, received with the October 8,
4 2007, letter, a “Confidential Memorandum” dated October 2007, which was titled “R.E.
5 LOANS, LLC, REORGANIZATION PLAN AND NOTE PROGRAM.”

6 128. The “Confidential Memorandum” was created by Defendants ELIZABEH R. COBEY and
7 GREENBERG TRAUIG and supplied to the members of R.E. LOANS, including Plaintiffs
8 herein, solely for their use in deciding whether to approve or disapprove the reorganization of the
9 Fund by exchanging their membership interest for a promissory note.

10 129. Material statements in the “Confidential memorandum” were, and are, false. For example,
11 the “Confidential memorandum” at pages 7 – 8 stated:

12 **Portfolio Leverage – Current Fund**

13 The Fund has authority to borrow capital from third party lenders. As noted
14 in [the] Initial Offering Circular, [*repeated phrase omitted*] it is likely that
15 most or all of the Fund’s loan portfolio would be assigned to such lender as
16 security for the loan(s). In borrowing these funds, the Fund may increase the
17 yield to the Fund; however, leveraging the Fund’s portfolio entails certain
18 risks and also entails possible adverse tax consequences through the
19 generation of unrelated business taxable income (UBTI) for tax exempt
20 holders of Membership Interests. (*See “Leveraging the Portfolio,” “ERISA
21 Considerations” and “Risk Factors--Risk of Leverage” in the Initial Offering
22 Circular*).

23 130. This material statement in the “Confidential Memorandum” was false because the Initial
24 Offering Circular, the First Published Offering Circular, the Second Published Offering Circular,
25 and the Third Published Offering Circular all disclaimed borrowing money from a third party
26 lender and each and every published, or unpublished, Offering Circular described a business plan
27 or model that anticipated R.E. LOANS would generate adequate amounts of cash in the
28 operation of the mortgage pool so that a loan of cash from a third party lender would be
unnecessary, and not be reasonably expected by any potential investor in, or member of, R.E.
LOANS.

131. In addition, the statement in Paragraph 129, above, was false because none of the published

1 Offering Circulars contained “*Leveraging the Portfolio,*” or “*Risk Factors--Risk of Leverage,*”
2 or the phrase “leveraging the portfolio.”

3 132. At the time this “Confidential Memorandum” was circulated, it was never made clear to the
4 members of R.E. LOANS, including Plaintiffs herein, that the loans in the “the Fund’s loan
5 portfolio,” that “likely” “would be assigned to such lender” as security, had already been
6 assigned to Wells Fargo Foothill under various Collateral Assignment of Mortgage and Loan
7 Documents in July 2007, months earlier.

8 133. At the time this “Confidential Memorandum” was being circulated, it was also never made
9 clear to the investors that other collateral, also given as security for the Wells Fargo Foothill line
10 of credit as alleged in Paragraph 117, above, had already been assigned to Wells Fargo Foothill
11 in July 2007, months earlier.

12 134. Thus, the proposed promissory note offered in exchange for a member’s equity interest was
13 essentially unsecured and not “secured by all the assets of the Fund,” as stated in the October 8,
14 2007, attorney-drafted cover letter sent to Plaintiffs.

15 135. In a section entitled “Portfolio Loans - Current Fund,” the “Confidential Memorandum”
16 also falsely stated that “the Fund is authorized to make mortgage loans from . . . borrowed funds
17 from third party lenders.”

18 136. In a section entitled “Fund Objectives – Current Fund” the “Confidential Memorandum”
19 also falsely stated that the Fund made “loans secured by deeds of trust on real property located
20 primarily in California.” Defendants BRUCE HORWITZ, WALTER NG, KELLY NG, and
21 each of them, knew that more than 60% of Fund loans were secured by deeds of trust on
22 properties located outside of California and that this was a violation of the provisions of the
23 offering circulars.

24 137. In a section entitled “Suitability Standards – Current Fund” the “Confidential
25 Memorandum” falsely stated that membership interests in the Fund “were offered and sold
26 exclusively to investors who were California residents and who met certain minimum standards
27 of income and/or net worth.”

28 138. In a section entitled “Advantages of Owning the Fund’s Debt Securities” the “Confidential

1 Memorandum” stated that the Fund’s obligation to pay Noteholders “will take priority over the
2 rights of the Manager and servicer to unpaid fees” without revealing that the Defendants,
3 WALTER NG and KELLY NG, had misappropriated \$22,039,072.58 from the July 17, 2007,
4 first draw of borrowed funds, and that this misappropriation of funds included advances and fees.
5 139. The “Confidential Memorandum” concealed from the members of R.E. LOANS, including
6 Plaintiffs herein, that Defendant BRUCE HORWITZ had resigned as a manager of R.E. LOANS,
7 concealed that he remained as a “figurehead” for investor relations, and that when the
8 “Confidential Memorandum” was circulated in October 2007, Defendant BRUCE HORWITZ
9 had completely abandoned his post to go on an extended bicycle trip to Croatia.

10 140. In reliance on these false statements, the Defendants’ concealment of material facts, and in
11 reliance on the assurances of Defendants WALTER NG and BRUCE HORWITZ that Plaintiffs’
12 investments would be safe and secure, Plaintiffs voted to approve the reorganization of the Fund
13 and to exchange their membership interests for promissory notes.

14 141. Plaintiffs’ DIXON COLLINS and KATHLEEN COLLINS’ equity interest, as trustees of
15 the Collins 2007 Revocable Trust at the time of the purported transfer was \$146,215.

16 142. Plaintiff’s, DIXON COLLINS, equity interest, as trustee of the Collins Development Co.
17 Defined Benefit Pension Plan and the 401(k) Profit Sharing Plan at the time of the purported
18 transfer was \$220,216.26.

19 143. On or about November 15, 2007, Defendant, BRUCE HORWITZ, M.D., and Defendant,
20 WALTER NG, acting in their capacities as Managers of B-4 Partners, LLC, mailed a “Dear
21 Investor” letter, to Plaintiffs advising them that their equity shares in R.E. Loans had been
22 exchanged for two Secured Promissory Notes in the amount of \$146,215 and \$220,216.26.

23 144. An “Exchange Agreement,” a “Secured Promissory Note,” and a “Security Agreement”
24 were enclosed with the “Dear Investor” letter. The Exchange Agreement was signed by
25 Defendant, WALTER NG as Manager of R.E. LOANS, LLC, and signed by Defendant, BRUCE
26 HORWITZ, M.D., as manager of B-4 Partners, LLC, as Managing Member of R.E. LOANS,
27 LLC, and as “Attorney-In-Fact for the persons listed on Schedule A attached hereto.”

28 145. There was no Schedule A attached to the Exchange Agreement.

1 146. The Exchange Agreement was not signed by Plaintiffs, or either of them.

2
3 **PAYMENT DEMAND**

4
5 147. On or about September 1, 2008, Plaintiffs requested prepayment of \$50,000 of the accrued
6 interest on their investments. Plaintiffs' request complied with the terms of the "Secured
7 Promissory Note."

8 148. The request for prepayment would not have adversely affected R.E. LOANS obligations or
9 its liquidity. The request for prepayment was refused.

10 149. Plaintiffs are informed and believe that Wells Fargo Foothill had instructed Defendants
11 WALTER NG, BRUCE HORWITZ and KELLY NG, that they could no longer make payments
12 of interest or principal to any noteholder, including Plaintiffs herein.

13
14 **NOTICE OF DEFAULT**

15
16 150. On or about January 15, 2009, Development Specialists, Inc., a collateral agent for some or
17 all of the noteholders served a written Notice of Default and continuing default on R.E. LOANS,
18 LLC, for a failure to pay quarterly interest that was due on January 1, 2009.

19
20 **NOTICE OF MISMANAGEMENT**

21
22 151. On or about January 16, 2009, Plaintiffs requested information about the Wells Fargo
23 Foothill line of credit, including among other things, certain documents and the name and contact
24 information for a Wells Fargo Foothill representative to confirm the representations made by
25 Defendants WALTER NG and KELLY NG to the noteholders, including Plaintiffs herein.

26 152. These reasonable requests for information were denied on the grounds of "confidentiality."

27 153. Plaintiffs did not discover, and could not have reasonably discovered, Defendants' breaches
28 of fiduciary duty as alleged herein in Paragraphs 106 through 121 above, until April 2010, when

1 Plaintiffs received the printed text of the body of two letters, written by the Los Angeles
2 attorneys for Barney Ng and sent to Defendants WALTER NG and KELLY NG. The content of
3 the letters, which was based upon a computer printout of cash disbursements, revealed the secret
4 disbursements made by Defendants to their families and friends as alleged herein Paragraphs 106
5 and 107.

6 154. True and correct copies of the printed text of the body of two letters are attached hereto as
7 Exhibit "A."

8
9 **NOTICE OF FRAUD**

10
11 155. Plaintiffs could not have reasonably discovered the securities fraud arising out of the
12 material representations in the October 2007 Confidential Memorandum until April 2010, when
13 Defendants BRUCE HORWITZ and WALTER NG, produced a draft copy of the secret,
14 unpublished, and uncirculated [**December ____**, **2006**] Offering Circular to Plaintiffs' counsel in
15 another case.

16
17 **FIRST CAUSE OF ACTION**

18 (Intentional Failure to Ascertain Investor Suitability
19 And Intentional Evasion of Investor Suitability Standards
20 Against Defendants Bruce Horwitz, Walter Ng and Kelly Ng)

21 156. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
22 Paragraphs 1 through 155, of the General Allegations, above.

23 157. Defendants BRUCE HORWITZ, WALTER NG and KELLY NG, and each of them, as
24 sponsors of, or persons selling program interests on behalf of, Defendant R.E. LOANS, had the
25 duty to ascertain if Plaintiffs, or either of them, could bear the economic risk of an investment in
26 the R.E. LOANS real estate investment program or that an investment in R.E. LOANS real estate
27 investment program was appropriate for the Plaintiffs' investment objectives, portfolio structure
28 and financial situation.

1 158. Defendants BRUCE HORWITZ, WALTER NG and KELLY NG, breached their duty to
2 ascertain if Plaintiffs, or either of them, could bear the economic risk of an investment in the
3 program or that an investment in R.E. LOANS was appropriate for the Plaintiffs' investment
4 objectives, portfolio structure and financial situation.

5 159. In order to protect investors, like Plaintiffs herein, the mandatory investor suitability
6 standards for membership in R.E. Loans included a requirement that "[t]he amount of each
7 Investor's investment in Units offered hereby must not exceed ten percent (10%) of such
8 Investor's net worth (exclusive of home, furnishings and automobiles)."

9 160. Defendants intentionally and purposely encouraged Plaintiffs to make additional capital
10 contributions, after completing their first investment on November 20, 2006, as alleged in
11 Paragraphs 80, 81, 94, 96, 97, 98, 100 and 101, above. As a result, Plaintiffs' total capital
12 investment greatly exceeded 10% of their net worth, exclusive of their home, furnishings and
13 automobiles.

14 161. Defendants intentionally and purposely evaded the 10% of net worth mandatory investor
15 suitability standard by further representing to Plaintiffs, and other potential investors, that their
16 investments in the R.E. LOANS real estate program would be safe and liquid in any amount, that
17 the 10% requirement was merely a formality or a technicality, and that investments in the R.E.
18 LOANS real estate program were not limited by the 10% of net worth rule. In his response to a
19 question from one investor, for example, Defendant BRUCE HORWITZ stated that checking a
20 box on the Subscription Agreement form falsely confirming that an investment did not exceed
21 10% of the investor's net worth was acceptable to R.E. LOANS because "[we only] need [the
22 box checked on the form and the form] in the files for the Commissioner [of Corporations]."

23 162. Defendants BRUCE HORWITZ, WALTER NG and KELLY NG, made no effort to assure
24 that at all times herein, Plaintiffs, and each of them, met the 10% of net worth mandatory
25 investor suitability standard for membership in R.E. Loans.

26 163. Plaintiffs did not receive interest payments on their investments. Instead, interest payments
27 were reinvested to increase their capital investment, further making their total investment in the
28 R.E. LOANS real estate program a continuing violation of the 10% of net worth mandatory

1 investor suitability standard.

2 164. Defendant BRUCE HORWITZ's, WALTER NG's and KELLY NG'S, violation their
3 duties to ascertain the suitability of the investment(s) for Plaintiff(s) and to ascertain that an
4 investment in R.E. LOANS real estate program was appropriate for the Plaintiffs' investment
5 objectives, portfolio structure and financial situation, and Defendants evasion of the 10% of net
6 worth mandatory investor suitability standard were intentional.

7 165. As a proximate result of the violations of the duties stated herein, Plaintiffs, and each of
8 them, have been injured.

9 166. The conduct of Defendants, BRUCE HORWITZ, WALTER NG and KELLY NG, and
10 each of them, as alleged herein, including encouraging Plaintiffs, and each of them, to make
11 unlimited investments in the R.E. LOANS real estate program constitutes oppression, fraud, or
12 malice, as those terms are defined in Civil Code section 3294, entitling Plaintiffs, and each of
13 them, to an award of punitive damages.

14
15 **SECOND CAUSE OF ACTION**

16 (Fraud - Intentional Misrepresentation and False Promise
17 Against Defendants Bruce Horwitz, Walter Ng, Kelly Ng and R.E. Loans)

18 167. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
19 Paragraphs 1 through 155, of the General Allegations, above.

20 168. Defendants, BRUCE HORWITZ, WALTER NG, KELLY NG and R.E. LOANS, and each
21 of them, represented to Plaintiffs, and each of them, that a membership investment in R.E.
22 LOANS was safe, liquid, and would earn a high rate of return, based upon a business model that
23 Defendants, and each of them, had developed and had been in effect since 1984.

24 169. These representations were continuing throughout the time Plaintiffs, and each of them,
25 invested in membership shares in R.E. LOANS.

26 170. For example, on the R.E. LOANS website, on the page titled, "Summary of the
27 Investment," Defendants BRUCE HORWITZ and WALTER NG stated: "Safety is our
28 cornerstone;" "R.E. Loans LLC is an efficient way of safely investing in real estate loans with

1 high rates of return;” and “After your account is open, funds may be added or withdrawn at any
2 time.”

3 171. Concerning safety of an investment, the R.E. LOANS webpage titled, “About Us,”
4 Defendants, BRUCE HORWITZ, WALTER NG, KELLY NG and R.E. LOANS, and each of
5 them, further stated: “The first objective of our business is safety and that is the one concept we
6 will not change.”

7 172. Concerning liquidity, the R.E. LOANS webpage titled, “Frequently Asked Questions,” in
8 response to a question, “How do I withdraw money?” Defendants, and each of them, further
9 stated: “A fixed regular amount can be scheduled and sent to you on a monthly, quarterly, semi-
10 annual or annual basis. These checks are mailed on the first business day of the month. If you
11 need a check during the month, one will be cut and mailed on the Thursday following your
12 request.”

13 173. Concerning the continued use of their successful business model, Defendants, BRUCE
14 HORWITZ, and WALTER NG represented to Plaintiffs, and each of them, as alleged above in
15 Paragraph 90, that Defendants “would use the same business procedures, practices and
16 philosophy as the past 21 years.”

17 174. The representations, that a membership investment in R.E. LOANS was safe, liquid, and
18 would earn a high rate of return, based upon a business model that Defendants, and each of them,
19 had developed and had been in effect since 1984, were designed to develop a relationship of trust
20 and to induce the Plaintiffs, and each of them, to invest their money with Defendants and to buy
21 membership shares in R.E. LOANS.

22 175. The representations made by the Defendants were false and they knew them to be false.
23 The true facts were that Defendants had filed an application with the California Department of
24 Corporations for a permit allowing them to make numerous significant, substantive and material
25 changes to the business plan or model for R.E. LOANS, as alleged above in Paragraphs 57
26 through 65, inclusive. Those changes greatly increased the risks of an investment in membership
27 shares in R.E. LOANS, thereby making such an investment unsafe. Those changes also greatly
28 increased the risk that R.E. LOANS would be illiquid, and R.E. LOANS was illiquid when the

1 representations were made.

2 176. Plaintiffs, and each of them, at the time the representations were made by the Defendants
3 and at all times that Plaintiffs took the actions herein alleged, were ignorant of the falsity of the
4 Defendants' representations and believed them to be true. In reliance on these representations,
5 the Plaintiffs were induced to, and did, purchase membership shares in Defendant R.E. LOANS.
6 Had the Plaintiffs, or either of them, known the actual facts, they would not have taken such
7 action. The Plaintiffs reliance on the Defendants' representations was justified because
8 Defendants, and each of them, had a fiduciary relationship with Plaintiffs.

9 177. As a proximate result of the fraudulent conduct of the Defendants as stated herein,
10 Plaintiffs, and each of them, have been injured.

11 178. The conduct of Defendants, BRUCE HORWITZ, WALTER NG and KELLY NG, and
12 each of them, alleged herein, including falsely promising that a membership investment in R.E.
13 LOANS was safe, liquid, and would earn a high rate of return, based upon a business model that
14 Defendants, and each of them, had developed and had been in effect since 1984, constitutes
15 oppression, fraud, or malice, as those terms are defined in Civil Code section 3294, entitling
16 Plaintiffs, and each of them, to an award of punitive damages.

17
18 **THIRD CAUSE OF ACTION**

19 (Fraud – Concealment and Suppression of Fact
20 Against Defendants Bruce Horwitz, Walter Ng, Kelly Ng and R.E. Loans)

21 179. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
22 Paragraphs 1 through 155, of the General Allegations, and the allegations of Paragraphs 168
23 through 174 of the Second Cause of Action, above.

24 180. On or about November 13, 2006, and continuing thereafter, Defendants BRUCE
25 HORWITZ, WALTER NG, KELLY NG, and R.E. LOANS, and each of them, concealed and
26 suppressed the fact that Defendants had filed an application with the California Department of
27 Corporations for a permit allowing them to make numerous significant, substantive and material
28 changes to the business plan or model for R.E. LOANS, as alleged above in Paragraphs 57

1 through 66, inclusive. Those changes greatly increased the risks of an investment in membership
2 shares in R.E. LOANS, thereby making such an investment unsafe. Those changes also greatly
3 increased the risk that R.E. LOANS would be illiquid, and R.E. LOANS was illiquid when the
4 representations were made.

5 181. On or about November 14, 2006, and continuing thereafter, Defendants BRUCE
6 HORWITZ, WALTER NG, KELLY NG, and R.E. LOANS, and each of them, concealed and
7 suppressed the fact that Defendants had obtained a permit the California Department of
8 Corporations for a permit allowing them to make numerous significant, substantive and material
9 changes to the business plan or model for R.E. LOANS, as alleged above in Paragraphs 57
10 through 66, inclusive, but that they had not published or circulated the [**December ____, 2006**]
11 Offering Circular, which described these significant, substantive and material changes to the
12 business plan or model for R.E. LOANS, keeping it secret.

13 182. On or about April 1, 2007, and continuing thereafter, Defendants BRUCE HORWITZ,
14 WALTER NG, KELLY NG, and R.E. LOANS, and each of them, concealed and suppressed the
15 fact that Defendants had undertaken a plan to distribute principal to cash out their family and
16 friends, as alleged above in Paragraphs 106 through 108, inclusive, and concealed and
17 suppressed the fact that Defendant R.E. LOANS was illiquid in the approximate amount of a
18 negative \$20,000,000 as alleged above in Paragraph 111.

19 183. On or about April 1, 2007, and continuing thereafter, Defendants BRUCE HORWITZ,
20 WALTER NG, KELLY NG, and R.E. LOANS, and each of them, concealed and suppressed the
21 fact that Defendant BRUCE HORWITZ had resigned as a manger of R.E. LOANS and that his
22 responsibilities as a manager had been reassigned to Defendant KELLY NG, with Defendant
23 BRUCE HORWITZ continuing merely as a “figurehead” for investor relations as alleged above
24 in Paragraphs 91 through 93, inclusive.

25 184. On July 25, 2007, and continuing thereafter, Defendants BRUCE HORWITZ, WALTER
26 NG, KELLY NG, and R.E. LOANS, and each of them, concealed and suppressed the fact that
27 Defendants had entered into a \$50,000,000 line of credit with Wells Fargo Foothill and taken
28 \$22,039,072.58 from the first draw to pay themselves and to continue their plan to distribute

1 principal to cash out their family and friends, as alleged above in Paragraphs 106 through 108,
2 inclusive, and Paragraph 120.

3 185. The representations and failures to disclose information and the suppressions of
4 information herein alleged to have been made by the Defendants, and each of them, were made
5 with the intent to induce the Plaintiffs to act in the manner herein alleged in reliance thereon and
6 to induce the Plaintiffs to refrain from seeking to withdraw their investments from Defendant
7 R.E. LOANS.

8 186. Plaintiffs, and each of them, at the time these failures to disclose and suppressions of facts
9 occurred, and at all times that Plaintiffs took the actions, or refrained from taking the actions,
10 herein alleged, were ignorant of the existence of the facts that the Defendants suppressed and
11 failed to disclose. If the Plaintiffs, or either of them, had been aware of the existence of the facts
12 not disclosed by the Defendants, they would not have taken, or would have refrained from
13 taking, such action. The Plaintiffs' reliance on the Defendants' representations was justified
14 because Defendants, and each of them, had a fiduciary relationship with Plaintiffs.

15 187. As a proximate result of the concealment and suppression of facts by the Defendants as
16 stated herein, Plaintiffs, and each of them, have been injured.

17 188. The conduct of Defendants, BRUCE HORWITZ, WALTER NG and KELLY NG, and
18 each of them, alleged herein Paragraphs 180 through 185, inclusive, constitutes oppression,
19 fraud, or malice, as those terms are defined in Civil Code section 3294, entitling Plaintiffs, and
20 each of them, to an award of punitive damages.

21
22 **FOURTH CAUSE OF ACTION**

23 (Breach of Fiduciary Duty – Contractual Duty
24 Against Defendants Bruce Horwitz, Walter Ng, and Kelly Ng
And on Behalf of Defendant, R.E. Loans, LLC)

25 189. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
26 Paragraphs 1 through 155, of the General Allegations, above.

27 190. At all times herein, Defendants BRUCE HORWITZ, WALTER NG and KELLY NG, and
28 each of them, represented to Plaintiffs, and each of them, that they were the managers of

1 Defendant R.E. LOANS. (Hereinafter, “Defendant Managers.”)

2 191. Plaintiffs, and each of them, bring this Fourth Cause of Action on behalf of Defendant R.E.
3 LOANS pursuant to the authority of California Corporations Code § 17501.

4 192. At the time of the transactions alleged herein, Plaintiffs, and each of them, were members
5 of record of Defendant R.E. LOANS.

6 193. Barney Ng, another member of record Defendant R.E. LOANS, holding Account No.
7 NG_010, previously gave written notice of this derivative action against the Defendant Managers
8 on behalf of Defendant R.E. LOANS. The Defendant Managers refused to take action in
9 response to that written notice, copies of which are attached hereto as Exhibit “A.” Further
10 notice by Plaintiffs herein would be futile.

11 194. Section 3.02 of the R.E. Loans’ Operating Agreement states: “Fiduciary Duty. The
12 manager shall have fiduciary responsibility for the safekeeping and use of all funds and assets of
13 the Company, and the Manager shall not employ such funds in any manner except for the
14 exclusive benefit of the Company.”

15 195. Defendant Managers, and each of them, had a fiduciary duty to keep safe all funds and
16 assets of Defendant R.E. LOANS, and not employ such funds in any manner except for the
17 exclusive benefit of Defendant R.E. LOANS.

18 196. Defendants BRUCE HORWITZ, WALTER NG and KELLY NG, and each of them,
19 breached this fiduciary duty by, among other things, undertaking a plan to distribute principal to
20 cash out their family and friends, as alleged above in Paragraphs 106 through 108, inclusive, and
21 as described more fully in Exhibit “A,” attached hereto, by not using the \$50,000,000 line of
22 credit “to facilitate liquidity to meet additional Fund cash flow needs,” and by taking
23 \$22,039,072.58 from the first draw on the Wells Fargo Foothill line of credit to pay themselves,
24 to continue their plan to distribute principal to cash out their family and friends, as alleged above
25 in Paragraphs 106 through 108, inclusive, and Paragraph 120, and for other improper purposes.

26 197. As a proximate result of Defendants’ breaches of fiduciary duties as stated herein,
27 Defendant R.E. LOANS has been injured in the amount of \$22,039,072.58, or subject to proof.

28 198. The conduct of Defendants, BRUCE HORWITZ, WALTER NG and KELLY NG, and

1 each of them, alleged herein Paragraphs 194 through 196, inclusive, constitutes oppression,
2 fraud, or malice, as those terms are defined in Civil Code section 3294, entitling Defendant R.E.
3 LOANS to an award of punitive damages.

4
5 **FIFTH CAUSE OF ACTION**

6 (For an Accounting Against Defendants Bruce Horwitz, Walter Ng, and Kelly Ng
7 And on Behalf of Defendant, R.E. Loans, LLC)

8 199. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
9 Paragraphs 1 through 155, of the General Allegations, above.

10 200. The first draw on the Wells Fargo Foothill line of credit, as alleged above in Paragraph 120,
11 included the misappropriation of \$22,039,072.58 by Defendants, BRUCE HORWITZ, WALTER
12 NG and KELLY NG, and each of them.

13 201. The \$22,039,072.58 was transferred by Wells Fargo Foothill to Greater Bay Bank into B-4
14 Partners' Account No. 1605112801, and for disbursement as follows:

15	To Bar-K	2,404,875.24
16	To B-4 Partners	570,000.00
17	To Barney Ng	1,721,615.66
18	To Walter Ng	101,000.00
19	To Walter Ng Investors	1,270,000.00
20	To ROR-Ng	55,000.00
21	To Bar-K ("operating capital")	2,000,000.00
22	For "Investor Draws"	11,914,282.38
23	Bruce Horwitz/Walter Ng (note)	2,002,299.30

24
25 202. "Walter Ng Investors," which received \$1,270,000 from the first draw, was a dummy
26 entity created by Defendant WALTER NG for out-of- state investors, who were not eligible for
27 membership in R.E. LOANS.

28 203. Plaintiffs are informed that the payment of \$2,000,000 to BAR-K, the loan servicer for R.E.

1 LOANS, called “operating capital” was in fact a 4% fee charged by Bar-K to negotiate the line
2 of credit with Wells Fargo Foothill.

3 204. As a result of the previously alleged acts and omissions of Defendant Managers, and each
4 of them, Defendant Managers were in control of money that actually belonged to R.E. LOANS
5 and as result of their breaches of fiduciary duty, they have received and retained money
6 improperly.

7 205. An accounting that relates to the monies misappropriated from the first draw, as alleged
8 herein, and to all monies received by Defendants in their capacities as managers, shareholders,
9 officers and/or directors of R.E. Loans, LLC, Bar-4 Partners, LLC, and/or Bar-K, Inc., is
10 appropriate here because of the fiduciary relationship between Defendant Managers and
11 Defendant, R.E. LOANS.

12
13 **SIXTH CAUSE OF ACTION**
14 (Breach of Fiduciary Duty – Statutory Duty of a Partner
15 Against Defendants Bruce Horwitz, Walter Ng, and Kelly Ng)

16 206. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
17 Paragraphs 1 through 155, of the General Allegations, above.

18 207. Under California law, the fiduciary duties of a manager to the limited liability company and
19 to its members are those of a partner to a partnership and to the partners of a partnership.

20 Accordingly, a manager is accountable to a limited liability company as a fiduciary, which
21 means that a manager is required to exercise good faith and integrity with respect to company
22 affairs. This fiduciary duty is in addition to those duties and obligations of, and limitations on,
23 the Manager which are set forth in the Operating Agreement, alleged above in Paragraph 194.

24 208. Corporations Code § 16404 states:

25 (a) The fiduciary duties a partner owes to the partnership and the other partners are the duty
26 of loyalty and the duty of care set forth in subdivisions (b) and (c).

27 (b) A partner's duty of loyalty to the partnership and the other partners includes all of the
28 following:

1 (1) To account to the partnership and hold as trustee for it any property, profit, or benefit
2 derived by the partner in the conduct and winding up of the partnership business or
3 derived from a use by the partner of partnership property or information, including the
4 appropriation of a partnership opportunity.

5 (2) To refrain from dealing with the partnership in the conduct or winding up of the
6 partnership business as or on behalf of a party having an interest adverse to the
7 partnership.

8 (3) To refrain from competing with the partnership in the conduct of the partnership
9 business before the dissolution of the partnership.

10 (c) A partner's duty of care to the partnership and the other partners in the conduct and
11 winding up of the partnership business is limited to refraining from engaging in grossly
12 negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

13 (d) A partner shall discharge the duties to the partnership and the other partners under this
14 chapter or under the partnership agreement and exercise any rights consistently with the
15 obligation of good faith and fair dealing.

16 209. At all times herein, Defendants BRUCE HORWITZ, WALTER NG and KELLY NG, and
17 each of them, represented to Plaintiffs, and each of them, that they were the managers of
18 Defendant R.E. LOANS.

19 210. Defendants BRUCE HORWITZ, WALTER NG and KELLY NG, and each of them,
20 breached their fiduciary duty by committing grossly negligent or reckless conduct, and/or
21 intentional misconduct, acting to place their personal interests ahead of the interests of Plaintiffs
22 herein, in that, among other things: (1) Defendants undertook a plan to distribute principal to
23 cash out their family and friends, as alleged above in Paragraphs 106 through 108, inclusive, and
24 as described more fully in Exhibit "A," attached hereto; (2) Defendants allowed Defendant R.E.
25 LOANS to become illiquid by June 30, 2007, R.E. LOANS in the approximate amount of a
26 negative \$20,000,000; (3) Defendants did not use the \$50,000,000 line of credit "to facilitate
27 liquidity to meet additional Fund cash flow needs," (4) Defendants took \$22,039,072.58 from the
28 first draw on the Wells Fargo Foothill line of credit to pay themselves and to continue their plan

1 to distribute principal to cash out their family and friends, as alleged above in Paragraphs 106
2 through 108, inclusive, and Paragraph 120.

3 211. Defendants BRUCE HORWITZ, WALTER NG and KELLY NG, and each of them,
4 further breached their fiduciary duty, by accepting \$195,573.49 from Plaintiffs, and each of
5 them, after April 1, 2007, constituting knowing violations of the rules and regulations of the
6 SEC, as alleged in Paragraphs 94 through 105, above.

7 212. As a proximate result of Defendants' breaches of fiduciary duties as stated herein,
8 Plaintiffs, and each of them, have been injured.

9 213. The conduct of Defendants, BRUCE HORWITZ, WALTER NG and KELLY NG, and
10 each of them, alleged herein Paragraphs 210 and 211, constitutes oppression, fraud, or malice, as
11 those terms are defined in Civil Code section 3294, entitling Plaintiffs, and each of them, to an
12 award of punitive damages.

13 **SEVENTH CAUSE OF ACTION**

14 (Auditors' Liability against Defendant Armanino McKenna, LLP)

15
16 214. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
17 Paragraphs 1 through 155, of the General Allegations, above.

18 215. Defendant ARMANINO MCKENNA was retained by Defendant R.E. LOANS as an
19 independent auditor to make annual written reports, that is, audits, to the members of Defendant
20 R.E. LOANS, including Plaintiffs herein, with the knowledge that such reports would also be
21 used by potential investors, including Plaintiffs herein.

22 216. Defendant ARMANINO MCKENNA did make annual reports, that is, audits, to the
23 members of Defendant R.E. LOANS, including Plaintiffs herein, with the intention that the
24 potential investors of Defendant R.E. LOANS would rely upon those reports in determining
25 whether to invest money in membership shares in defendant R.E. LOANS, with the intention that
26 the members of Defendant R.E. LOANS would rely upon those reports in determining whether
27 to invest more money in membership shares in defendant R.E. LOANS, and with the intention
28 that the members of Defendant R.E. LOANS would rely upon those reports in determining

1 whether to withdraw their investments and/or memberships in Defendant R.E. LOANS.

2 217. At all times herein, Defendant ARMANINO McKENNA knew that from its inception
3 Defendant R.E. LOANS was operating in violation of the rules and regulations of the SEC.

4 218. Defendant ARMANINO McKENNA never reported to the members of Defendant R.E.
5 LOANS, that from its inception Defendant R.E. LOANS was operating in violation of the rules
6 and regulations of the SEC.

7 219. As part of their annual audit of Defendant R.E. LOANS, Defendant ARMANINO
8 McKENNA compared the actual business operation of Defendant R.E. LOANS against the
9 relevant Offering Circular to determine whether or not the Defendant managers of R.E. LOANS
10 were complying with the representations made to the prospective investors of Defendant R.E.
11 LOANS, like Plaintiffs herein, and to the members of Defendant R.E. LOANS, like Plaintiffs
12 herein.

13 220. Although the [**December ____**, **2006**] Offering Circular, which described significant,
14 substantive and material changes to the business plan or model for R.E. LOANS, as alleged
15 above in Paragraphs 57 through 66, inclusive, was kept secret from the prospective investors of
16 Defendant R.E. LOANS, like Plaintiffs herein, and from the members of Defendant R.E.
17 LOANS, like Plaintiffs herein, Defendant ARMANINO McKENNA had been given a copy of,
18 and had read, the [**December ____**, **2006**] Offering Circular, and thereby knew that Defendants,
19 BRUCE HORWITZ, WALTER NG and KELLY NG, had made significant, substantive and
20 material changes to the business plan or model for R.E. LOANS, effective November 14, 2006.

21 221. Defendant ARMANINO McKENNA never reported to the members of Defendant R.E.
22 LOANS, including Plaintiffs herein, that there were significant, substantive and material changes
23 to the business plan or model for R.E. LOANS, effective November 14, 2006.

24 222. Defendant ARMANINO McKENNA knew that there were significant, substantive and
25 material changes to the business plan or model for R.E. LOANS, effective November 14, 2006,
26 including the material change of leveraging the portfolio, which would earn UBTI, unrelated
27 business taxable income, for some members of R.E. LOANS.

28 223. Defendant ARMANINO McKENNA never reported to the members of Defendant R.E.

1 LOANS, including Plaintiffs herein, that there were significant, substantive and material changes
2 to the business plan or model for R.E. LOANS, effective November 14, 2006, including the
3 material change of leveraging the portfolio, which would earn UBTI, unrelated business taxable
4 income, for some members of R.E. LOANS.

5 224. Plaintiffs are informed and believe that Defendant ARMANINO McKENNA knew that the
6 **[December ____, 2006]** Offering Circular was not published and not circulated to the members
7 of defendant R.E. LOANS but that a copy was given to Wells Fargo Foothill as evidence of the
8 members' authorization for the \$50,000,000 line of credit, as alleged above in Paragraph 114,
9 and as evidence of the members' authorization for an assignment of the loan portfolio and other
10 collateral to secure the line of credit, as alleged above in Paragraph 116 and 117.

11 225. Defendant ARMANINO McKENNA never reported to the members of Defendant R.E.
12 LOANS, that the Wells Fargo Foothill line of credit and the assignment of the loan portfolio and
13 other collateral had not been authorized in the Initial Offering Circular, the First Published
14 Offering Circular, the Second Published Offering Circular, or the Third Published Offering
15 Circular.

16 226. Plaintiffs are informed and believe that Defendant ARMANINO McKENNA knew that
17 Defendants, BRUCE HORWITZ, WALTER NG and KELLY NG, had misappropriated
18 \$22,039,072.58 from the first draw on the Wells Fargo Foothill line of credit to pay themselves,
19 to continue their plan to distribute principal to cash out their family and friends, as alleged above
20 in Paragraphs 106 through 108, inclusive, and Paragraph 120, and for other improper purposes.

21 227. Defendant ARMANINO McKENNA never reported to the members of Defendant R.E.
22 LOANS, including Plaintiffs herein, that Defendants, BRUCE HORWITZ, WALTER NG and
23 KELLY NG, had misappropriated \$22,039,072.58 from the first draw on the Wells Fargo
24 Foothill line of credit, as alleged herein.

25 228. Plaintiffs, and each of them, at the time these failures to disclose and concealment of facts
26 occurred, and at all times that Plaintiffs took the actions, or refrained from taking the actions,
27 herein alleged, were ignorant of the existence of the facts that the Defendant ARMANINO
28 McKENNA knew, concealed, and failed to disclose. If the Plaintiffs, or either of them, had been

1 aware of the existence of the facts not disclosed by Defendant ARMANINO McKENNA, they
2 would not have taken, or would have refrained from taking, such action. The Plaintiffs reliance
3 on the Defendant's representations was justified because of Defendant's reputation, and because
4 one of the Defendant's founders was himself a member of Defendant R.E. LOANS, and it was
5 inconceivable that Defendant would conceal material facts from its founder.

6 229. As a proximate result of Defendants' breaches of fiduciary duties as stated herein,
7 Plaintiffs, and each of them, have been injured.

8 9 **EIGHTH CAUSE OF ACTION**

10 (Securities Fraud against Defendants Bruce Horwitz, Walter Ng,
11 Kelly Ng, R.E. Loans, Elizabeth R. Cobey, and Greenberg Traurig)

12 230. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
13 Paragraphs 1 through 155, of the General Allegations, above.

14 231. On or about October 8, 2007, Defendant R.E. LOANS acting through its managers,
15 Defendants, BRUCE HORWITZ, WALTER NG and KELLY NG, and each of them, and with
16 the material assistance of Defendant ELIZABETH R. COBEY and Defendant GREENBERG
17 TRAURIG proposed that the members of Defendant R.E. LOANS, including Plaintiffs herein,
18 vote to exchange their equity interests in Defendant R.E. LOANS for secured promissory notes.

19 232. Defendant ELIZABETH R. COBEY and Defendant GREENBERG TRAURIG, and each
20 of them, acted with intent to deceive or defraud.

21 233. The exchange transaction took place on or about November 15, 2007, as alleged in
22 Paragraph 143, above.

23 234. The exchange transaction was based upon an October 8, 2007, letter, which was
24 accompanied by a "Confidential Memorandum."

25 235. As alleged herein in Paragraphs 125 through 139, inclusive, the letter and "Confidential
26 Memorandum" contained material untrue statements of fact, and the letter and "Confidential
27 Memorandum" omitted to state material facts necessary in order to make the statements made in
28 those communication, in light of the circumstances under which they were made, not misleading.

1 236. As a result of the material misrepresentation(s) and omissions, Plaintiffs are entitled to
2 rescind the above-described exchange of their equity interests in Defendant R.E. LOANS for
3 secured promissory notes, as alleged in Paragraph 143, above.

4 237. Alternatively, Plaintiffs may elect to tender, before entry of judgment, the secured
5 promissory notes referred to in Paragraph 143, above, in return for \$146,215 and \$220,216.26,
6 respectively, with interest thereon at the legal rate from November 15, 2007, to the date of entry
7 of judgment.

8
9 **NINTH CAUSE OF ACTION**

10 (Financial Abuse of an Elder against Defendants Bruce Horwitz, Walter Ng,
11 Kelly Ng, Armanino McKenna, Elizabeth R. Cobey, and Greenberg Traurig)

12 238. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
13 Paragraphs 1 through 155, of the General Allegations, Paragraphs 215 through 228 of the Sixth
14 Cause of Action, and Paragraphs 231 through 235 of the Seventh Cause of Action, above.

15 239. Plaintiff, DIXON COLLINS, resides in California and is 65 or more years of age, entitled
16 to the protections of the financial abuse provisions of Welfare and Institutions Code § 15610.30.

17 240. By taking Plaintiff's money in November 2006 and February 2007 without revealing the
18 material change in the operational model of R.E. LOANS, by taking Plaintiff's money in April
19 2007 after knowing that R.E. LOANS was in violation of the rules and regulations of the SEC,
20 by taking more than 10% of Plaintiff's net worth in violation of the mandatory investor
21 suitability standards of R.E. LOANS, by creating approximately \$20,000,000 illiquidity in
22 Defendant R.E. LOANS, by entering into the unauthorized \$50,000,000 line of credit agreement
23 with Wells Fargo Foothill, by breaching the fiduciary duty owed to Plaintiff by taking
24 \$22,039,072.58 of the first draw from the \$50,000,000 line of credit, by falsely representing to
25 Plaintiff in the October 2007 "Confidential Memorandum" that the line of credit agreement with
26 Wells Fargo Foothill was authorized in the "Initial" Offering Circular, by not including an "opt-
27 out" provision for elders in the November 2007 exchange of investor equity for promissory
28 notes, and by refusing to return Plaintiff's money when he requested it in September 2008,

1 Defendants BRUCE HORWITZ, WALTER NG, KELLY NG, and each of them, committed
2 financial abuse of an elder.

3 241. Plaintiffs are informed and believe that when Defendants BRUCE HORWITZ, WALTER
4 NG, KELLY NG, and each of them, accepted Plaintiff's investments in Defendant R.E. LOANS,
5 after April 1, 2007, as alleged herein in Paragraphs 94 through 104, inclusive, their conduct was
6 intentional with the specific intent to use Plaintiff's money to cash out preferred investors,
7 defendants, their families and their friends.

8 242. By aiding, abetting and assisting Defendants BRUCE HORWITZ, WALTER NG and
9 KELLY NG, and each of them, by, among other things, failing to report that R.E. LOANS was
10 operating in violation of the rules and regulations of the SEC, by concealing the material change
11 in the operational model of R.E. LOANS, by never reporting to the members of Defendant R.E.
12 LOANS that the Wells Fargo Foothill line of credit and the assignment of the loan portfolio and
13 other collateral had not been authorized in the Initial Offering Circular, the First Published
14 Offering Circular, the Second Published Offering Circular, or the Third Published Offering
15 Circular, and by concealing the misappropriation of \$22,039,072.58 from the \$50,000,000 line of
16 credit, Defendant ARMANINO MCKENNA committed financial abuse of an elder.

17 243. By aiding, abetting and assisting Defendants BRUCE HORWITZ, WALTER NG and
18 KELLY NG, and each of them, by, among other things, concealing the material change in the
19 operational model of R.E. LOANS, by never reporting to the members of Defendant R.E.
20 LOANS that the Wells Fargo Foothill line of credit and the assignment of the loan portfolio and
21 other collateral had not been authorized in the Initial Offering Circular, the First Published
22 Offering Circular, the Second Published Offering Circular, or the Third Published Offering
23 Circular, by actively participating in obtaining the unauthorized Wells Fargo Foothill
24 \$50,000,000 line of credit, by concealing the misappropriation of \$22,039,072.58 from the
25 \$50,000,000 line of credit, and by committing securities fraud in the exchange transaction,
26 Defendant ELIZABETH R. COBEY and Defendant GREENBERG TRAUERIG, and each of
27 them, committed financial abuse of an elder.

28 244. As a proximate result of the acts of Defendants, and each of them, plaintiff suffered

1 financial loss in an amount to be proved at the trial of this matter.

2 245. The above-described conduct of Defendants, and each of them, was willful and was
3 intended to cause injury to Plaintiff. Plaintiff is therefore entitled to an award of exemplary or
4 punitive damages.

5
6 **TENTH CAUSE OF ACTION**

7 (Breach of Contract against Defendant Development Specialists, Inc.)

8 246. Plaintiffs reallege and incorporate by this reference as if restated herein, the allegations of
9 Paragraphs 1 through 155, of the General Allegations, above.

10 247. On or about November 13, 2007, Defendant DEVELOPMENT SPECIALISTS, INC., on
11 the one hand, and Defendant, R.E. LOANS, on the other hand, entered into a letter agreement
12 under which Defendant DEVELOPMENT SPECIALISTS, INC., agreed to provide services for
13 R.E. LOANS by acting as Collateral Agent for the November 1, 2007, Security Agreement R.E.
14 LOANS provided to its investors, including Plaintiffs herein, alleged above in Paragraphs 143
15 and 144.

16 248. The identity of Defendant DEVELOPMENT SPECIALISTS, INC., as the Collateral Agent
17 for the Security Agreement was not revealed in the version of the Security Agreement provided
18 to the R.E. LOANS investors, including Plaintiffs herein.

19 249. Defendant, R.E. LOANS, paid a retainer to Defendant DEVELOPMENT SPECIALISTS,
20 INC., and Defendant DEVELOPMENT SPECIALISTS, INC., became obligated to perform its
21 duties as Collateral Agent under the Security Agreement.

22 250. The Collateral Agent was created under the terms of the contract between Defendant, R.E.
23 LOANS, and Defendant DEVELOPMENT SPECIALISTS, INC., for the benefit of the R.E.
24 LOANS investors, including Plaintiffs herein.

25 251. As Collateral Agent under the Security Agreement, the primary responsibility of Defendant
26 DEVELOPMENT SPECIALISTS, INC., was “to retain title to the pledged assets sufficient to
27 provide value to the indemnities,” i.e., the R.E. LOANS investors, including Plaintiffs herein, by
28 acting as holder of the collateral, which included the promissory notes and deeds of trust that

1 Defendant R.E. LOANS had obtained from borrowers.

2 252. Perfection of the security interest in the borrowers' notes and deeds of trust required
3 transfer of possession of those promissory notes and deeds of trust from Defendant R.E. LOANS
4 to Defendant DEVELOPMENT SPECIALISTS, INC.

5 253. At all relevant times herein mentioned, Defendant DEVELOPMENT SPECIALISTS, INC.,
6 breached its duty by failing to obtain possession of those promissory notes and deeds of trust.

7 254. At all relevant times thereafter, Defendant DEVELOPMENT SPECIALISTS, INC.,
8 erroneously described its role as the "stakeholder," when, in fact, Defendant DEVELOPMENT
9 SPECIALISTS, INC., did not hold any stakes.

10 255. As a proximate result of Defendant's breaches of contractual duties as stated herein,
11 Plaintiffs, and each of them, have been injured.

12
13
14 **WHEREFORE**, Plaintiffs, and each of them, pray judgment against Defendants, and each
15 of them, as follows:

- 16 1. For compensatory damages in the amount of \$347,874.27, principal, with interest at the
17 legal rate from the date of each investment;
- 18 2. Alternatively, in return for the two secured promissory note, \$366,431.26, with interest at
19 the legal rate from November 15, 2007;
- 20 3. Alternatively, for rescission of the exchange transaction, with restitution of \$366,431.26,
21 with interest at the legal rate from November 15, 2007;
- 22 4. For compensatory damages for Defendant R.E. LOANS in the amount of \$22,039,072.58, or
23 an amount subject to proof after an accounting, with interest at the legal rate from July 17,
24 2007;
- 25 5. For attorneys fees in an amount determined by the court to be reasonable as authorized by
26 the contracts and/or statute;
- 27 6. For exemplary and punitive damages;
- 28 7. For costs incurred in this action; and

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8. For such other and further relief that the Court considers just or proper.

Dated: December 2, 2010

Robert W. Brower
Attorney for Plaintiffs,
DWIGHT DIXON COLLINS
and KATHLEEN D. COLLINS